STB FD 32760 3-29-96 D 62231

Item No.________________

Page Count 7

Mar #211

62231

ORIGINAL

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I.C.C.

March 29, 1996

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

Dear Secretary Williams:

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

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

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

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

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

Sincerely yours,

Fritz R. Kahn

enc.
cc: All parties
Mr. Brian P. Felker

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SHL-3

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

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Finance Docket No. 32760

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

COMMENTS
OF
SHELL CHEMICAL COMPANY

ENTERED
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MAR 29 1996
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Fritz R. Kahn
Fritz R. Kahn, P.C.
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1100 New York Avenue, NW
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Tel.: (202) 371-8037

Attorney for
Shell Chemical Company

Due and dated: March 29, 1996

SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 32760

VERIFIED STATEMENT OF BRIAN P. FELKER

The following statement outlines Shell's concerns regarding the proposed UP/SP merger:

A) Anti-trust and Market Dominance Implications:

The proposed merger would combine two of the largest rail carriers in the U.S. and place control of a very substantial percentage of rail traffic (>50%) in the hands of a single service provider. In certain market segments this concentration is even greater, including over 70% of petrochemical shipments from the Gulf Coast, over 85% of plastics shipments from the Gulf Coast and over 90% of shipments between the U.S. and Mexico.

Market dominance has been defined by Congress in the ICC Termination Act of 1995 (sec 10707) as "... an absence of "effective" competition from other rail carriers or modes of transportation..." This merger will create an absence of effective competition from other rail carriers. The combination of the UP and SP will produce corridors in which the only competition from other rail carriers will be through the exercise of trackage rights by the BNSF.

Historically, trackage rights agreements have been a less than adequate solution to addressing competitive concerns. Operating as a tenant rather than an owner has been described by former Burlington Northern Santa Fe Chairman Gerald Grinstein in the December 18, 1995 issue of Forbes Magazine as "service with some disability".

Shell is very concerned that rate and service levels via BNSF will not produce effective competition, due to the cost and operating limitations associated with trackage rights. The owning railroad establishes the charges and controls track access and dispatching, which hampers the ability of the tenant railroad to effectively compete.

Additionally, there is an absence of effective competition from other modes of transportation. There are limitations to the use of other modes of transportation in mitigating the impact of the market dominance that would be created by this merger. Water transportation is limited to facilities accessible by water and able to receive the large parcel sizes involved. Motor transportation is not an economically viable alternative in most long-haul situations.

Customer requirements and facility limitations also influence the mode of transportation.

B) Conditions placed on the merger will reduce negative impacts of the proposed merger on Shell and other shippers:

The proposed merger of the UP and SP will significantly reduce rail competition for shippers that are currently able to choose among railroads operating in the states of Texas, Louisiana and Arkansas, as well as shippers that access Mexico via either UP or SP. Shell is one of the shippers that will face reduced alternatives for rail movements to and from our facilities.

In September of 1995, the UP and SP announced that an agreement had been reached with the recently merged Burlington Northern Santa Fe Corporation (BNSF) in which these two giant carriers systematically divided up rail service in the Western United States. Under the proposed agreement, BNSF would gain access to various UP and SP lines, primarily via trackage rights, to provide service to shippers and receivers presently served by both UP and SP. This proposed arrangement between the UP/SP and BNSF will not provide an adequate remedy for the substantial anti-competitive effects of this merger on Shell and other shippers.

The economic danger to Shell and other shippers from this reduction in competition is significant due to the potential for rate increases substantially beyond those justified by changes in the railroads' cost of service. Therefore, approval of the UP/SP merger must be predicated on one or both of the following:

1) A finding of market dominance for all locations served only by the BNSF and/or the UP/SP

2) Divestiture of certain SP lines to a third carrier.

1) A finding of market dominance for all locations served only by the BNSF and/or the UP/SP would facilitate the granting of rate relief to shippers (currently a very burdensome and little used remedy due to the time consuming and costly litigation involved) should the market powers of these two dominant carriers be abused. Such a finding would require the carriers involved in such movements to meet a rate reasonableness test, based on the methodology to be determined in Ex Parte 347 (Sub No. 2) for non-coal traffic.

If, as the UP and SP contend in their merger filing, this merger and the proposed trackage rights agreement with BNSF actually enhances competition in the West, then the use of this provision by shippers will not be required. In either case, inclusion of this provision will not hamper the railroads' efforts to deliver service at rate levels which generate returns above revenue adequacy levels.

2) In addition to the previously mentioned market dominance determination, vigorous competition could be fostered through the divestiture of certain SP rail lines to a third carrier.

Due to Shell's traffic patterns and the lack of alternative rail carriers, the lines of particular concern to Shell are those between Houston and St. Louis, Houston and Memphis, Houston and New Orleans, Houston and Corpus Christi, and St. Louis to Chicago. The alternative rail carrier in most of these corridors would be the BNSF via trackage rights. In the corridors which BNSF has track, their route is more circuitous and therefore less efficient than the current UP and SP routes.

Such a divestiture would provide a number of benefits to the shipper community including:

- A cash infusion to the merger participants to facilitate necessary capital investments

- Preservation of direct rail competition between owner railroads (as opposed to the use of trackage/haulage rights to compete)

- Increased choices by rail shippers, rather than fewer options for reaching key markets.

In summary, the proposed merger has a significant potential impact on Shell's ability to effectively move its products to the marketplace. There are substantial negative implications in terms of both rate and service levels that would evolve if the merger were to be approved without the imposition of certain conditions. Divestiture of parallel lines would preserve routing options, interchange locations and foster competitive rate and service levels. We are concerned that the purported economic benefits to be realized through the proposed merger will not translate into reduces rate levels for the shipper community.

The preservation and enhancement of effective rail competition, as stated by Congress in its enactment of the National Transportation Policy, is considered by Shell to be essential in ensuring the establishment of reasonable rates and adequate service to meet the needs of shippers and customers.

For these reasons, Shell urges the Board to reject the proposed merger of the UP and SP, unless it is conditioned upon the market dominance and/or divestiture remedies we feel are necessary to address the anti-competitive impacts of the merger.

Brian P. Felker, being duly sworn, deposes and says he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

Brian P. Felker

Brian P. Felker

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

W. W. Schilling

My Commission Expires:

8-2-97

W. W. SCHILLING
Notary Public, State of Texas
My Commission Expires 8-2-97

NOTARY PUBLIC STATE OF TEXAS

CERTIFICATE OF SERVICE

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

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

Fritz R. Kahn

STB FD 32760 3-29-96 D. 62227

Item No.________________

Page Count 38

Mar #707

LOVER & LOFTUS

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*ADMITTED IN PENNSYLVANIA ONLY

202 347-7170

March 29, 1996

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

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 for filing in the above-referenced proceeding please find an original and twenty (20) copies of the Comments of Arizona Electric Power Cooperative, Inc. **(AEPC-5)**. In accordance with prior orders in this proceeding, we have also enclosed a Wordperfect 5.1 diskette containing these Comments.

We have also enclosed an extra copy of this document. Kindly indicate receipt and filing by time-stamping this copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

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

Sincerely,

Andrew B. Kolesar III

Andrew B. Kolesar III

An Attorney for Arizona Electric Power Cooperative, Inc.

Enclosures

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

Original

AEPC-5

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
MAR 29 1996
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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

COMMENTS OF ARIZONA ELECTRIC POWER COOPERATIVE, INC.

ENTERED
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MAR 3 0 1996
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ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

By: Robert A. Hewlett
Assistant General Manager
Legal & Environmental Affairs
P.O. Box 670
1000 S. Highway 80
Benson, AZ 85602

OF COUNSEL:

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1224 Seventeenth Street, N.W.
Washington, D.C. 20036

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(202) 347-7170

Attorneys for Arizona Electric
Power Cooperative, Inc.

Dated: March 29, 1996

AEPC-5

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

**COMMENTS OF ARIZONA ELECTRIC
POWER COOPERATIVE, INC.**

Pursuant to the Board's prior Decisions in this proceeding, Arizona Electric Power Cooperative, Inc. ("AEPCO") submits these Comments in opposition to the pending Merger Application filed by Union Pacific Corporation, Union Pacific Railroad Company ("UP"), and Missouri Pacific Railroad Company ("MP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver and Rio Grande Western Railroad Company ("DRGW") (collectively "Applicants"). Approval of the subject Merger Application would jeopardize the public interest, would contravene the national rail transportation policy to maintain and encourage competition, and would hinder AEPCO's ability to obtain reasonable rail rates. Having recently experienced the negative impact of a reduction in the number of major rail carriers from four to three, the western coal transportation market cannot bear a further decrease from three to two. Such a reduction would render the market subject to the whims of two mega-carriers, each with the ability to command supra-competitive rates from its own destination-captive shippers. Accordingly, AEPCO opposes the proposed merger and asks that it be denied.

In the alternative, AEPCO respectfully requests that if the Board approves the Merger Application, the Board condition such approval in a manner sufficient to safeguard both the reasonableness of AEPCO's future coal rates and the quality of AEPCO's service, as outlined herein. In support of these Comments, AEPCO submits (i) the Verified Statement of Mr. Mark W. Schwirtz, AEPCO's Environmental & Fuels Resource Manager; and (ii) AEPCO's supporting Argument of Counsel. In addition, as a member of the Western Coal Traffic League ("WCTL"), AEPCO hereby specifically joins and adopts WCTL's Comments in Opposition to the Proposed Merger, filed on March 29, 1996.

IDENTITY AND INTEREST

AEPCO is a rural electric generation and transmission cooperative located in Benson, Arizona. AEPCO's service territory includes portions of Arizona, California, and New Mexico. AEPCO generates the majority of the power that it sells through its 520 MW Apache Generating Station, which is located near Cochise, Arizona on the lines of SP. This plant includes three steam turbines that are used to generate the bulk of AEPCO's load and three smaller combustion turbines that are used for peaking purposes. AEPCO has historically depended to a very large extent upon coal to meet its base load fuel needs.

SUMMARY OF ARGUMENT

The Board may only approve the subject Merger Application upon a determination that such approval would be in the "public interest." 49 U.S.C. § 11344(c).[1] The consolidation of Union Pacific and Southern Pacific, however, would be inconsistent with the public interest and would reduce competition in the western coal transportation market to a precariously low level. With specific regard to AEPCO, approval of the Merger Application would enhance UP/SP's ability (as a destination monopolist with the newly acquired capacity to originate coal transportation service out of the Powder River Basin ("PRB")), to exclude BNSF from participating in PRB movements. Specifically, UP/SP would likely decline to accept traffic in interchange with BNSF at Deming, New Mexico, and would likely raise short-haul arguments in an effort to thwart any rate reasonableness complaint seeking a rate for movement of coal between Deming and AEPCO's plant. By

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[1] The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 ("the Act"), which was enacted on December 29, 1995 and which took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board. Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996. Therefore, citations in these Comments are to the former sections of the statute.

employing this two-pronged strategy, the combined UP/SP would be positioned to force AEPCO to pay supra-competitive rates for UP/SP's single-line movements of PRB coal.

In addition, approval of the Merger Application would reduce the possibility that AEPCO will benefit from competition between coal suppliers. While AEPCO is captive to SP delivery service with no prospect of a build-out, AEPCO does enjoy the ability to utilize coal from a variety of coal producing regions. Among these competing supply sources are the SP-served Uinta Basin of Colorado and the UP-served PRB. If the Board were to approve the Merger Application, the combined UP/SP would likely absorb any potential savings that AEPCO might generate through negotiations with coal suppliers. Finally, approval of the merger application would lead to excessive congestion and deterioration of service standards on the Moffat Tunnel line through Colorado.

The Board should therefore decline to approve the Merger Application. If the Board elects to grant the Application, the Board should condition such approval on (i) the right for AEPCO to obtain and contest the reasonableness of a UP/SP rate from Deming to the plant for service originated on another carrier; (ii) mandatory divestiture of the DRGW (or a grant of trackage rights over the DRGW's lines to an independent carrier); and (iii) conditions to assure adequate service from western-Colorado origins.

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

VERIFIED STATEMENT OF
MARK W. SCHWIRTZ

My name is Mark W. Schwirtz and my business address is 1000 S. Highway, Benson, Arizona 85602. I am the Environmental & Fuels Resource Manager for Arizona Electric Power Cooperative, Inc. ("AEPCO"), and have primary responsibility to negotiate and manage AEPCO's coal transportation and coal supply contracts. The purpose of my statement is to summarize AEPCO's current coal supply and coal transportation agreements, to explain AEPCO's other potential transportation and supply options, and to descri-ibe the anticompetitive impact of the proposed merger of Union Pacific ("UP") and Southern Pacific ("SP") upon AEPCO. Having only recently seen the number of major western rail carriers drop from four to three as a result of the Burlington Northern/Santa Fe ("BNSF") merger, AEPCO believes that the further reduction in the number of carriers from three to two would only add insult to injury. In our estimation, instead of stimulating competition, approval of the proposed merger would merely allow the two mega-carriers to divide the west between themselves for their mutual benefit.

Due to the anticompetitive impacts that I will describe, AEPCO opposes the merger. In the event that the Board chooses to approve the Merger Application, however, AEPCO requests that the Board do so only upon the implementation of certain conditions to lessen its harmful effects upon AEPCO. In addition, I am authorized to state that, as a member of the Western Coal Traffic League ("WCTL"), AEPCO joins and adopts WCTL's Comments in this proceeding.

I. Background

AEPCO is a rural, generation and transmission electric cooperative located in Benson, Arizona. AEPCO is owned by six distribution cooperatives that supply power to more than 89,000 homes and businesses in various portions of Arizona, California, and New Mexico. AEPCO generates power at its 520-MW Apache Generating Station near Cochise, Arizona, and depends to a large extent upon coal to fuel the two main 175-MW steam units at Apache. In fact, we typically use some 1.2 million tons of coal per year to meet a full seventy to eighty percent of our total generating needs.

AEPCO currently purchases coal under a contract with the Pittsburg & Midway Coal Mining Company ("P&M"). This contract, which we entered into on June 11, 1993 and which expires on December 31, 1996, requires us to purchase a certain minimum number of tons of coal each year from P&M's McKinley Mine near Gallup, New Mexico. Unfortunately, competition for rail service from McKinley to Apache is non-existent. In particular, our current movement is captive to BNSF at origin and captive to SP at destination with no possibility of a build-out to another carrier. This "dual" captivity yields only one possible rail routing from the McKinley Mine to AEPCO: BNSF from origin to Deming, New Mexico (355 miles), and then SP from Deming to Cochise (151 miles).

AEPCO is a party to a July 14, 1993 rail transportation contract with BNSF and SP. Consistent with the terms of our coal supply agreement, this transportation contract requires AEPCO to ship a certain minimum number of tons of coal per year. This contract also expires on December 31, 1996. AEPCO is now engaged in an effort to secure new contracts for both coal supply and coal transportation.

II. <u>Coal Supply Options</u>

In addition to coal from New Mexico, the operating parameters of the Apache Station allow us to use coal from a number of different coal-producing regions. Specifically, Apache can burn coal from Colorado, Utah, and with certain modifications to ameliorate the related ash difficulties, coal from the Powder River Basin ("PRB").

A. Colorado Coal

During a work stoppage at P&M's McKinley Mine in the summer of 1994, AEPCO burned four unit trains of coal from Cyprus' Eagle Mine, near Craig, CO. On the basis of this satisfactory use of western-Colorado coal, we recently solicited bids from several coal suppliers in Colorado. We are now awaiting those bids.

B. Utah Coal

As in the case of Colorado coal, the Apache Generating Station has the capacity to burn coal from Utah. Consequently, we have also solicited a bid from a Utah producer for AEPCO's future business.

C. Powder River Basin Coal

In 1986, AEPCO test-burned a significant tonnage of PRB coal for use at Apache.[1] We discovered through these tests that by taking certain steps to tailor our plant to PRB coal's characteristics, AEPCO could utilize this low-priced source of coal to meet its base load generatin needs. Although PRB coal is a high "dusting" coal, it can nevertheless be used if we augment our current pollution control facilities, incur marginally greater handling expenses, and add a fourth ball mill at Apache to accommodate the greater volumes of PRB coal necessary to offset

[1] AEPCO tested coal from both ARCO's Black Thunder Mine and NERCO's Spring Creek Mine. This coal performed satisfactorily in our units.

the lower Btu values. We firmly believe that the PRB presents an important opportunity for AEPCO in the future.

III. Coal Transportation Options

As the Board is aware, a utility's ability to obtain truly competitive delivered fuel costs depends upon the presence of effective competition both among coal suppliers and among rail carriers. Unfortunately, AEPCO is in an extremely difficult position with respect to its rail transportation service because of SP's destination monopoly. This monopoly has prompted many years of contention between AEPCO and SP -- including a rate case before the Interstate Commerce Commission which spanned the majority of the 1980s.

I understand that in past merger proceedings, the Interstate Commerce Commission has concluded that a destination-captive utility with different options to originate traffic (such as AEPCO) would not be harmed by a merger because the destination carrier already had the power to obtain all of the monopoly profit of the utility's coal movement. If such a theory were completely accurate, however, AEPCO presumably would accept the fact that SP will necessarily command all of the possible profit in our delivered coal cost (to the exclusion of both the other carriers and the coal suppliers), and that we would be indifferent to the particular routing or source of our coal. I can assure the Board that this is not the case. To the contrary, we believe that competition between coal suppliers and/or competition between originating rail carriers -- when coupled with rate reasonableness litigation -- can have some impact upon our delivered fuel cost.

At this point, I would like to summarize the available routings to our Apache Station.

A. BNSF-Originated New Mexico Origins

As I have already indicated, the only possible routing to our plant from coal origins in northwestern New Mexico is BNSF to Deming and SP from Deming to Cochise. The first segment of this move (i.e. from origin to Deming) utilizes a BNSF line which had previously been owned by the former Atchison, Topeka and Santa Fe.

B. SP-Served Colorado and Utah Origins

SP presently originates rail transportation service for a number of coal mines in northwestern Colorado and eastern Utah. Coal traffic from these mines would travel to Apache in SP single-line service via Pueblo, Colorado; Stratford, Texas; El Paso, Texas; and Deming, New Mexico. SP must use trackage rights over the BNSF line from Pueblo to Stratford to complete this movement.

C. PRB Origins

Both BNSF and UP have the ability to originate coal traffic out of the Powder River Basin. BNSF, on the one hand, can move coal traffic from the PRB south through Denver and Pueblo, then southwest through New Mexico to Deming. At Deming, BNSF can interchange with SP to complete the movement to Cochise.

UP, on the other hand, can move PRB coal south only as far as Denver. At Denver, UP must interchange its traffic with SP, which can complete the movement. The SP portion of such a movement would proceed south to Pueblo and then southeast over BNSF track to Stratford, Texas. From Stratford, SP trains would turn to the southwest to El Paso, and then west to Deming and finally Cochise.

We believe that the ability to utilize either of the PRB originating carriers would allow us to obtain competitive rate levels for the origin portion of the haul. We would, of course, still be subject to SP's control of the destination portion.

IV. Effect of the Proposed Merger

In the event that the Board approves the Merger Application, AEPCO would suffer competitive harm for a variety of reasons. First, because of our destination captivity to SP and because of UP's control of SP, we would lose the benefit of competition between UP and BNSF to originate coal transportation service from the PRB. Second, we would lose the benefit of the potential source competition between suppliers of Uinta Basin and PRB coal. Third, because of the increase in projected traffic over the "Moffat Tunnel" line, we would likely encounter problems with the quality of UP/SP service for any future movements of western-Colorado coal.

A. Loss of the Benefit of Potential Competition Between BNSF and UP to <u>Originate PRB Transportation Service</u>

At the present time, AEPCO can arrange for the transportation of southern PRB coal by either BNSF or UP. From the southern PRB, BNSF can move that coal as close to the Apache Station as Deming, New Mexico (i.e. within 151 miles of Cochise). At Deming, SP can accept our coal traffic in interchange with BNSF and complete the movement. UP, on the other hand, can move PRB coal traffic only as far south as Denver. From Denver, SP can move the traffic the remainder of the way to Cochise. (SP's movement from Denver would be via Pueblo, Colorado; Stratford, Texas; El Paso, Texas; and Deming.) With UP and BNSF as two viable originating services, AEPCO can stimulate competition. In order to actually benefit from that competition, AEPCO must use the threat of rate reasonableness litigation against SP. We should, as I understand it, be entitled to obtain a rate for common carrier service by SP to the plant, if SP would not cooperate as a contract carrier. Due to the workings of such litigation, since SP lacks the ability to originate PRB traffic, it would not be positioned to raise the familiar (although in AEPCO's view, inapposite) "short-haul" arguments in defense of such a litigation. The potential leverage from such a proceeding therefore could allow AEPCO to retain some of the savings that we generate from our negotiations with the two possible originating carriers.

If the Board were to approve the subject Merger Application, however, AEPCO would no longer be able to select the BNSF transportation option because a combined UP/SP would refuse to offer a rate for transportation in interchange with BNSF from Deming to the plant. Instead, a combined UP/SP would force AEPCO to contract for UP/SP single-line service for the entire movement. In addition, as a potential originator of the PRB traffic, UP/SP would be better positioned to raise the short-haul arguments that I mentioned, and would therefore perceive the threat of rate litigation to have greatly lessened. Consequently, instead of increasing competition for our transportation service, creation of this new, single-line movement would completely eliminate competition for the transportation of coal from the PRB.

I am aware that in the recent BN/Santa Fe merger, the Commission found that a carrier with control over a given destination (such as SP) would not favor its merger partner over another possible originating carrier. As I understand the Commission's reasoning, such a destination carrier would necessarily have already captured all of the possible monopoly profit of the entire movement, regardless of the length of the destination-captive segment. We believe that this view of the market for rail service is over-generalized. We believe instead, that while an independent SP's rate offering from Deming to the plant would undoubtedly be supra-competitive, the threat of rate reasonableness litigation would prevent SP from capturing all of the profit associated with an entire PRB movement, and that AEPCO could potentially receive some of the savings associated with competition between UP and BNSF. We believe, on the other hand, that as a consolidated entity with the ability to perform the entire service (and therefore more likely to seek dismissal of a rate complaint on a short-haul basis), a combined UP/SP would not be indifferent between the two options of: (i) moving our coal traffic from the PRB to our plant; and (ii) accepting PRB traffic from BNSF at Deming for the final 151 miles of the movement. In our estimation, a combined UP/SP would not even offer a bid to us for the movement from Deming; and if it did offer such a bid, it would be so high as to preclude our use of the BNSF option.

B. Loss of the Benefit of Source Competition <u>Between Uinta Basin and PRB Coal Suppliers</u>

AEPCO has the ability to burn coal from a variety of origins. These origins include the UP-served PRB and the SP-served Uinta Basin. While we cannot escape the fact that SP exercises full control over the destination segment of any rail movement to our plant, we nevertheless endeavor to secure the benefit of source competition between different coal suppliers.

Again, a complaint against SP at the Board for movements from an interchange point with an origin carrier is a key aspect of our efforts to obtain the benefits of competition (both between coal suppliers and origin rail carriers). Prospects for such litigation are clearer, I understand, in circumstances in which SP cannot originate the traffic in question (e.g. PRB sources). If the Board were to approve the consolidation of UP and SP, however, our existing destination monopolist would gain the ability to originate PRB traffic. Consequently, the outcome of such litigation might be affected.

C. <u>Degradation of Colorado Service Quality</u>

In addition to eliminating the potential benefits of competition between suppliers and rail originators of Colorado and PRB coal, approval of the proposed merger could also lead to quality of service problems over SP's line between Bond and Denver, Colorado (the "Moffat Tunnel Line"), which line provides the routing for a great deal of coal from western-Colorado mines. As I understand the facts of this proceeding, the Applicants have requested authority to abandon most of a second line through Colorado; namely their DRGW line from Malta to Canon City over Colorado's Tennessee Pass. If approved, the Applicants would then divert coal traffic that previously had used the Tennessee Pass line to the Moffat Tunnel line. Furthermore, I am aware that the Applicants have entered into a Settlement Agreement with BNSF in this proceeding, which agreement would allow BNSF to move its own trains over the Moffat Tunnel line pursuant to trackage rights. With the benefit of these trackage rights, BNSF intends to move some six through trains per day over this line. I understand that while the Applicants and BNSF have admitted that traffic over the Moffat Tunnel line would double if the Board approves the Merger Application, the Applicants have made no commitment to add capacity to the line. Furthermore, given the mountainous nature of the terrain in the area, improvements necessary to accommodate this additional traffic may not be feasible. Needless to say, this potential congestion creates a significant concern in our minds regarding the future quality of transportation service out of western Colorado.

* * *

To summarize, AEPCO believes that consolidation of UP and SP would eliminate, or render more problematic, the benefits of competition between UP and BNSF to originate coal movements from the PRB and the benefits of source competition between Uinta Basin and PRB coal suppliers. Consolidation would also result in a degradation of the quality of service of any future Colorado movements for AEPCO.

V. <u>Proposed Remedies</u>

In the event that the Board should find that approval of the merger is in the public interest, AEPCO submits that the Board should only approve the Application upon a grant of certain conditions designed to protect AEPCO from the anticompetitive impacts of the proposed consolidation. First, the Board should condition approval of the Merger Application upon the requirement that AEPCO be entitled to obtain a rate from UP/SP, the reasonableness of which would be subject to review by this Board, for the movement of unit trains from Deming to the plant. Through the imposition of such a condition, AEPCO would preserve the potential competition between UP and BNSF to originate PRB coal service.

Second, the Board should require divestiture of SP's line from Grand Junction, Colorado eastward to Dotsero, Colorado, and its lines from Dotsero to Denver, Dotsero to Pueblo, and Denver to Pueblo, as well as the branch lines to the Craig and Montrose coal-origination areas. I understand that at least two independent rail carriers, Montana Rail Link and Wisconsin Central, are filing responsive applications seeking acquisition of (or trackage rights over) these as well as other SP lines in the so-called "Central Corridor." A condition granting one of these responsive applications would also be acceptable to AEPCO. (A less favorable, but still helpful condition would be to require UP/SP to grant trackage rights over the lines of the DRGW to an independent carrier -- i.e. other than BNSF).

Finally, the Board should decline to approve the abandonment of the Tennessee Pass line and should preclude the re-routing of existing Tennessee Pass line traffic over the Moffat Tunnel line. While this condition would still result in a net degradation in service on the Moffat Tunnel line due to the presence of new BNSF traffic, it would limit the additional volume of traffic to a less onerous level.

VERIFICATION

STATE OF ARIZONA)
) ss:
COUNTY OF COCHISE)

I, MARK W. SCHWIRTZ, hereby certify, that I have read the foregoing testimony, know the contents thereof, and believe it to be true to the best of my knowledge and belief.

Dated this 25th day of March, 1996.

MARK W. SCHWIRTZ

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

NOTARY PUBLIC

My Commission Expires: MY COMMISSION EXPIRES JULY 12, 1996

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two of the largest railroads in the western United States (and therefore reducing the number of Class I railroads in the west from three to only two), the proposed merger of Union Pacific and Southern Pacific would have a decidedly adverse effect upon the public interest.

The Board's regulations describe the "balancing test" that the Board uses to evaluate the public interest involved in this type of proceeding as follows:

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

49 C.F.R. § 1180.1(c)(1) (emphasis added). The Board's regulations identify a reduction in competition as one form of "harm to the public" that the Board must balance against any supposed public benefit:

> (i) *Reduction of competition.* 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 compe-

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<u>Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company</u>, at 50-51 (Decision served August 23, 1995) ("<u>BN/Santa Fe Decision</u>") (<u>citing</u> <u>Missouri-Kansas-Texas R. Co. v. United States</u>, 632 F.2d 392, 395 (5th Cir. 1980), <u>cert. denied</u>, 451 U.S. 1017 (1981)).

> tition 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. The [Board] recognizes that rail carriers face not only intramodal competition, but also intermodal competition from motor and water carriers. The [Board's] competitive analysis depends on the relevant market(s). In some markets the [Board'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)(2)(i). Furthermore, the Board's general policy statement governing mergers emphasizes that:

> . . . the [Board] does not favor consolidations that substantially reduce the transport alternatives available to shippers unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a less anticompetitive fashion. Our analysis of the competitive impacts of a consolidation is especially critical in light of the Congressionally mandated commitment to give railroads greater freedom to price without regulatory interference.

49 C.F.R. § 1180.1(a) (codifying the former Commission's Railroad Consolidation Procedures, 363 I.C.C. 784 (1981)). The proposed merger would reduce competition between rail carriers originating western coal to a significant degree. Because this loss of competition outweighs any alleged public benefits, the Board should decline to approve the merger on the basis of its balancing analysis.

II. **Background**

As indicated by AEPCO's Environmental & Fuels Resource Manager in his accompanying Verified Statement ("Schwirtz V.S."), AEPCO utilizes coal to meet the majority of its generation needs. Schwirtz V.S. at 2. Witness Schwirtz reports that AEPCO meets 70 to 80% of its generation demand by burning approximately 1.2 million tons of coal per year at its Apache Generating Station. Id. Unfortunately for AEPCO, SP is the only rail carrier with access to Apache, and AEPCO lacks the ability to build-out to another carrier. Id. at 3.

AEPCO's troubled history with SP is a familiar one to the Board. This history has seen SP (and The Atchison, Topeka and Santa Fe Railway Company ("SF")) seize upon every opportunity to squeeze additional revenues from AEPCO. Because of AEPCO's lack of effective competition, it has had to rely upon rate regulation litigation in its efforts to obtain reasonable rates. See, e.g., Incentive Rate on Coal -- Gallup, New Mexico to Cochise, Arizona, 357 I.C.C. 683 (1977), aff'd sub nom. Houston Lighting & Power Company and Arizona Electric Power Cooperative, Inc. v. United States, 606 F.2d 1131 (D.C. Cir. 1979), cert. denied, 444 U.S. 1073 (1980); Docket No. 37437, Arizona Electric Power Cooperative, Inc. v. The Atchison, Topeka and Santa Fe Railway Company, et al. ("AEPCO v. ATSF") (Decision served August 21, 1981); Docket No. 37437, AEPCO v. ATSF (Decision served March 30, 1982); Docket No. 37437, AEPCO v. ATSF (Decision served August 30, 1983); Docket No. 37437, AEPCO v. ATSF (Decision served April 10, 1986); Arizona Electric Power Cooperative, Inc. v. United States, 816 F.2d 1366, 1368 (9th Cir. 1987). The adverse interests that sparked this contentious history still exist today.

At the present time, AEPCO burns coal from Pittsburg & Midway's ("P&M") McKinley Mine, which is located in northwestern New Mexico near Gallup. See, generally, Schwirtz V.S. at 2-5. This coal moves to AEPCO via BNSF from origin to Deming, New Mexico and then, by necessity, via SP to Cochise. AEPCO's contracts with P&M and the two rail carriers will expire on December 31, 1996. In anticipation of that date, AEPCO has initiated an effort to secure new coal supply and coal transportation contracts. Through this process, AEPCO hopes to benefit from source competition between suppliers of coal from the various western coal producing regions. Among the coal producing regions with the potential to serve AEPCO's future fuel supply needs are the BNSF-served New Mexico (or southern-Colorado) origins, the SP-served western Colorado (or eastern-Utah) origins, and the BNSF- or UP-served PRB origins.[3] Regardless of which of these sources is selected, SP controls the destination segment of any rail movement to Apache.

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[3] As Witness Schwirtz indicates, minor plant modifications are needed to facilitate the base load use of PRB coal. See Schwirtz V.S. at 4-5.

III. Approval of the Merger Application Would Preclude AEPCO From Receiving the Benefits of Potential Origin Competition Between UP and BNSF for PRB Traffic

A. Rate Reasonableness Litigation Plays a Role in Preserving the Benefits of Origin Competition

At the present time, AEPCO has the ability to arrange for the transportation of southern PRB coal via either BNSF or UP for origination service. See Schwirtz V.S. at 7. If AEPCO reaches an agreement with one of these two carriers to provide contract carrier service, and if SP refuses to offer AEPCO a reasonable contract rate for the associated destination service, then AEPCO may secure (and litigate the reasonableness of) SP's common carrier service to the plant. See 49 U.S.C. § 11701. Consequently, if the competitive bidding between the two potential origin carriers generates any price reduction, then AEPCO can use regulatory means to prevent SP from usurping the benefit of that reduction.

If UP and SP were commonly controlled, on the other hand, this competitive opportunity would be foreclosed because the merged entity would naturally favor its own origin service over that provided by an origin competitor such as BNSF. A combined UP/SP would only offer contract rates for a joint movement with BNSF if that contract assured UP/SP of at least as much profit as it would receive moving the traffic in single-line service. Therefore, instead of increasing competition for service, creation of this new, single-line movement would eliminate the benefit of competition for the origin portion of movements from the PRB to AEPCO.

Approval of the merger could potentially also jeopardize the regulatory relief available to AEPCO from the Board. As indicated previously, if AEPCO were to purchase coal from the PRB in the absence of the merger, AEPCO could seek competitive origination service from either UP to Denver or from BNSF to Deming, and, if necessary, could initiate a rate case against SP in order to obtain a reasonable rate for the destination portion of the movement. Through such a rate case, AEPCO would hope to preserve the benefit of the competition between UP and BNSF to originate the movement. If the merger were approved, however, AEPCO could potentially face an impediment to such a rate case. Specifically, a combined UP/SP may well argue that since it had the ability to originate AEPCO's traffic, short-haul restrictions should preclude AEPCO from obtaining a UP/SP rate for service from Deming to the plant.

The so-called long-haul, short-haul provision, 49 U.S.C. § 10705(a)(2), limits, in certain circumstances, the Board's authority to prescribe through routes that would require a rail carrier to turn traffic over to another carrier at a point that is substantially less than the entire portion of the through route the first carrier is capable of covering. In other words, the provision establishes a preference for originating carriers. Without accepting the proposition that AEPCO's effort to obtain a rate from Deming to the plant would be subject to challenge on such a basis, AEPCO submits that a consolidated UP/SP would certainly raise the issue, at least until such situations may be clarified through decisions of this Board.

B. UP's Actions in Ongoing Rate Reasonableness Litigation Confirm AEPCO's Argument

Despite contrary language in the Commission's 1995 BNSF Decision regarding the supposedly unbiased motivations of a destination monopolist, recent UP filings before the Board confirm AEPCO's concern that approval of the merger would be anticompetitive. In BN/Santa Fe, the Commission rejected the argument that a destination monopolist would favor a merger partner to the exclusion of an independent originating carrier:

> The utilities also depend heavily on the companion argument that they will be harmed by the merger because a vertically integrated BN/Santa Fe will always act to foreclose unaffiliated origin or bridge carriers from participating in efficient through routes. Again, both experience and logic are to the contrary. Simply put, there is no reason for a carrier to foreclose an efficient connecting carrier just to achieve a longer haul.

BN/Santa Fe Decision, at 74. During the time since the Commission decided the BN/Santa Fe case, however, UP has provided an excellent example of this exact type of behavior. In particular, the Board is now considering a rate reasonableness case between MidAmerican Energy Company ("MidAmerican") and UP, in which MidAmerican has sought to challenge a UP class rate tariff that is applicable to the final ninety miles of a thousand-mile long movement from the PRB. See STB Docket No. 41626, MidAmerican

Energy Co. v. Union Pacific R.R. Co. and Chicago and North Western Ry. Co., complaint served September 27, 1995 ("MidAmerican"). While UP is the only carrier that is able to make the entire movement (as a combined UP/SP would be for AEPCO), BNSF is able to move MidAmerican's PRB coal traffic to within ninety miles of the plant in question. Contrary to the Commission's supposition in BN/Santa Fe, UP has declined to offer a bid for service over those final ninety miles (to be used in conjunction with BNSF service), but instead, has moved to dismiss MidAmerican's complaint, arguing that the Board cannot require it to short-haul itself. See Docket No. 41626, UP Motion to Dismiss, filed November 15, 1995. Notwithstanding AEPCO's view of the merits of UP's defense, this strategy confirms the reasonableness of AEPCO's belief that if the instant Merger Application were approved, UP/SP would view itself as having obtained the exclusive right to transport PRB coal to AEPCO's plant.

Significantly, the other carrier impacted by the MidAmerican case -- i.e. BNSF, which should have every interest in MidAmerican succeeding before the Board, instead has joined in the case (through its in-house counsel) as a named participant in the Association of American Railroad's ("AAR") Amicus Curiae Brief in support of UP's Motion to Dismiss. See Docket No. 41626, AAR Brief, filed January 26, 1996. Given the recent development of the western coal transportation market, however, perhaps this participation should not be surprising. If BNSF can help UP secure the right to command supra-competitive prices for the entire length of a PRB coal movement, then BNSF should expect to enjoy the same right for the destinations that it serves.

IV. Approval of the Merger Application Would Preclude AEPCO From Receiving the Benefits of Source Competition Between Uinta Basin and PRB Coal Suppliers

As previously stated, AEPCO is now engaged in an effort to secure a new coal supply arrangement to replace its existing contract with P&M, which contract will expire on December 31, 1996. Given the number of different options potentially available to AEPCO for coal supply, AEPCO hopes to obtain the benefit of competition between the various coal producers. If the Board were to approve the Merger Application, however, any potential savings that AEPCO may be able to generate through negotiation would likely be usurped by UP/SP.

At the present time, SP is only able to originate coal transportation service from origins in the Uinta Basin of western-Colorado and eastern-Utah. A combined UP/SP, on the other hand, would control both the Uinta and southern Powder River Basins. This control would be direct over Colorado origins in the sense that UP/SP would have exclusive origination ability, and indirect over PRB origins in the sense that UP/SP would control AEPCO's destination segment and would exclude BNSF from providing PRB service. To reiterate, although BNSF enjoys access to the southern PRB, for the reasons discussed in Section III, supra, a combined UP/SP would endeavor to prevent AEPCO from contracting for such service.

Armed with the control of two of the major western coal producing regions, UP/SP would be positioned to appropriate the savings generated by producer competition in a way that SP alone (which lacked PRB origination capability) could not. Consequently, to the extent that AEPCO now enjoys the benefits of source competition between coal suppliers that are served by either UP or SP, approval of the Merger Application would eliminate such benefits.

V. Approval of the Merger Application would Lead to the Degradation of SP's Service Standards

Witness Schwirtz explains in his attached statement that "approval of the proposed merger could also lead to quality of service problems over SP's line between Bond and Denver, Colorado (the "Moffat Tunnel line"), which line provides the routing for a great deal of coal from western-Colorado mines." Schwirtz V.S. at 11. These problems would stem from two significant developments: (i) the Applicants have sought authority to abandon the heavily utilized Tennessee Pass line through Colorado, and intend to redirect traffic from this line over the Moffat Tunnel line; and (ii) the Applicants have entered into a Settlement Agreement with BNSF dated September 25, 1995 which provides for BNSF trackage rights over the Moffat Tunnel line.

The November 30, 1995 Merger Application package includes an associated Application from The Denver and Rio Grande Western Railroad Company ("DRGW") for authorization to abandon the 109.0-mile portion of railroad known as the Malta-Canon City

Line, in Lake Chaffee and Fremont Counties, Colorado, and the 69.1-mile portion of railroad known as the Salga-Malta Line, in Eagle and Lake Counties, Colorado. See Volume 5 of Merger Application, at 302 et seq. and 289 et seq, respectively. The Applicants explain elsewhere in their Application that these lines can be abandoned "due to rerouting of all overhead traffic to other routes." Volume 3 of Merger Application, at 156. The particular rerouting that the Applicants have planned would impair UP/SP's ability to provide adequate service.

Specifically, UP and SP indicate that this traffic would be re-routed over the Moffat Tunnel line. See Volume 3 of Merger Application -- Operating Plan, at 384 (indicating that SP freight traffic over the DRGW line between Bond, Colorado and Denver (i.e. the Moffat Tunnel line) would increase from nine to twelve trains per day as a result of the merger). The Applicants further estimate that the increase in tonnage of SP's annual freight traffic would increase by 50 percent as a result of the merger. Id. at 396. In addition to the increased SP traffic, however, this important link between the western Colorado mines and AEPCO would also bear the burden of a significant level of BNSF traffic arising from the UPSP/BNSF Settlement Agreement. This agreement, which the parties signed on September 25, 1995, grants trackage rights to BNSF over this same line of track. Significantly, in Comments on the Primary Application which were filed on December 29, 1995, BNSF declared that it intended "to schedule and operate six regular trains (three train pairs) between Denver and Richmond/Oakland/Stockton, CA." BNSF Comments on Primary Application, Verified Statement of Neal D. Owen at 7 (footnote omitted). The traffic referenced by BNSF's Witness Owen would move via the Moffat Tunnel line.

Consequently, on the basis of the Applicants' and BNSF's own projections, traffic over the Moffat Tunnel line will double -- increasing from nine to eighteen trains per day. Despite this dramatic growth in traffic, however, AEPCO is aware of no indication in any document filed in this proceeding that the Applicants intend to make improvements to the line to increase its capacity. As stated by Witness Schwirtz, "this creates a significant concern . . . regarding the prospect of using western-Colorado coal." Schwirtz V.S. at 12.

Given the likely impossibility of making any significant improvements to the Moffat Tunnel line (which traverses very mountainous terrain), and given the importance of this line to the competitive balance of the western coal market, AEPCO submits that if the merger is granted, the Board must impose conditions that would ameliorate these problems.

VI. If the Board Approves the Application, it Should Condition Such Approval Upon Certain Conditions to Ameliorate the Anticompetitive Effects of the Merger

The Board possesses the authority to impose conditions upon the mergers that it considers. See 49 U.S.C. § 11344(c). In the BN/Santa Fe Decision, the Commission discussed its authority to impose such conditions. Specifically, the Commission indicated that "Section 11344(c) gives us broad authority to impose conditions governing railroad consolidations." BN/Santa Fe Decision, at 55.

In the event that the Board should find that approval of the merger is in the public interest, AEPCO submits that the Board should condition its approval upon a grant of the conditions described by Witness Schwirtz to protect AEPCO from the anticompetitive impact of the proposed consolidation. First, the Board should condition approval of the Merger Application upon the requirement that upon AEPCO's request, UP/SP would be obligated to provide a common carrier rate for AEPCO's unit train traffic between the Apache Station and Deming, New Mexico for connection with BNSF on coal traffic from the PRB, and further, that such rate would be subject to challenge to the same extent that it would be in the absence of the merger.

Second, the Board should require divestiture of the SP line from Grand Junction, Colorado eastward to Dotsero, Colorado, and its lines from Dotsero to Denver, from Dotsero to Pueblo, and from Denver to Pueblo, as well as the branch lines to the Craig and Montrose coal-origination areas. A condition granting one of the responsive applications to be filed in this proceeding seeking such divestiture would also be acceptable to AEPCO.[4]

Alternatively, the Board should decline to approve the abandonment of the Tennessee Pass line and should preclude UP/SP from re-routing traffic from this line to the Moffat Tunnel line.

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[4] While not as effective as divestiture, a condition requiring UP/SP to grant trackage rights over the lines of DRGW would also reduce the anticompetitive impact of the merger.

While this condition would still result in a net degradation in service on the Moffat Tunnel line due to the increase in BNSF traffic, it nevertheless would prevent the addition of approximately one-third of the proposed new traffic.

VI. Conclusion

For the reasons stated above, AEPCO requests that the Board decline to approve the subject Merger Application. In the event that the Board does approve the merger, then it should do so only upon the conditions outlined herein.

Respectfully submitted,

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Dated: March 29, 1996

Attorneys for Arizona Electric Power Cooperative, Inc.

CERTIFICATE OF SERVICE

I certify that I have this 29th day of March, 1996, served copies of the foregoing Comments of Arizona Electric Power Cooperative, Inc. by hand upon Applicants' counsel:

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by hand upon:

Michael D. Billiel, Esq.
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and by first class mail, postage prepaid on:

The Honorable Federico Pena
Secretary
U.S. Department of Transportation
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Washington, D.C. 20590

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
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Washington, D.C. 20530

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

Andrew B. Kolesar III

Andrew B. Kolesar III

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Item No.____________________

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Mar #706

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March 29, 1996

RECEIVED
MAR 29 1996
S.C. BUILDING
GUARD DESK

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

Dear Mr. Williams:

Enclosed for filing please find the signed original and twenty (20) copies of Comments and Verified Statement of the City of Reno.

Very truly yours,

Paul H. Lamboley

PHL:ks
Enclosure

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

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO, ILLINOIS HOUSTON, TEXAS LOS ANGELES, CALIFORNIA NEW YORK, NEW YORK
PEORIA, ILLINOIS SAN FRANCISCO, CALIFORNIA OAKBROOK TERRACE, ILLINOIS SCHAUMBURG, ILLINOIS

United States of America

Before the

SURFACE TRANSPORTATION BOARD

F.D. No. 32760

Union Pacific Corporation et al. --
Control and Merger -- Southern Pacific Corporation et al.

COMMENTS AND VERIFIED STATEMENT

OF THE

CITY OF RENO

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Dated: March 29, 1996

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F.D. 32760

COMMENTS OF THE CITY OF RENO

As comment on the application seeking approval for the merger of the railroad operations of the Union Pacific Corporation (UP) and the Southern Pacific Corporation (SP), the City of Reno (City) submits the following comments:

I. STATEMENT OF POSITION

The City of Reno opposes approval of the merger of UP and SP railroads because the post-merger operations proposed by the applicants will have substantial adverse impact on the environment, public health and safety, as well as the commerce, of the City and neither the application, nor the applicants, propose action that will adequately safeguard the environment, public health and safety, and mitigate the adverse impact of the proposed merged rail operation.[1]

Although the City and the UP are presently studying the engineering feasibility of options that may adequately protect the environment, public health and safety, and effectively mitigate the

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[1]The City's official position is contained in Resolution No. 5216, adopted unanimously March 28, 1996, a true copy is attached and incorporated under Tab 2. The City's position is supported as well by the Washoe County Commission, a true copy of whose letter is attached and incorporated under Tab 3, and the Tribal Council of Reno Indian Colony, a true copy of whose letter is attached and incorporated under Tab 4.

adverse impact that will result from the post-merger operations proposed in the application, to date there is no agreement between the City and the applicant regarding any specific remedial action plan.[2]

Once reached, an agreement for mitigation normally would become a condition of any decision to approve the merger. However, absent agreement, it is difficult to envision that the Surface Transportation Board (STB) and/or the Section of Environmental Analysis (SEA) can craft or impose specific conditions that would adequately protect the environment, public health and safety, and effectively mitigate the adverse impact of rail operations proposed in this case.

Finally, because the applicants have failed to file environmental assessment reports that sufficiently identify the adverse impact and mitigation proposals regarding the UPSP merged operations and that permitted under the BNSF agreement, the application and supporting material do not satisfy the public interest requirement criteria of the Interstate Commerce Act (ICA) 49 U.S.C. § 11344, and environmental requirements of 49 C.F.R. Part 1105, and do nothing to assist the STB in carrying out its

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[2]The City had requested Extension of Time in which to file these comments in order to allow the parties to complete the engineering study, and also to obtain preliminary draft environmental assessment (PDEA) materials regarding the BNSF operations permitted under the agreement with UP and SP. The UP opposed the request for extension of time and the Board denied the City's request in Decision No. 21, served March 20, 1996 .

responsibilities under the National Environmental Protection Act (NEPA), 42 U.S.C. § 4321 et seq. with respect to the environmental, public health and safety issues raised by this application.

II. DISCUSSION

A. The City of Reno presents a uniquely obvious site for adverse impact to environment, public health and safety as a result of merged operations.

The applicant railroads have provided rail transportation services to and in the City of Reno for decades. They are well aware of the City's unique character and features. The fact that adverse impacts on the environment, public health and safety of the City will result from the post-merger operations proposed by the applicants can be no surprise.

The applicants propose to re-make the Central Corridor the "premier" corridor for rail service between Northern California and the Mid-West. The post-merger operations propose to reduce transit distance almost 400 miles, thus beneficially affecting transit time, fuel consumption, locomotive and fleet utilization, and crewing requirements. Efficient, competitive Central Corridor service is the centerpiece of this merger transaction. The line segment between the City of Reno lies at the heart of the transaction.

Proposing to remove the physical "capacity constraints" in the Sierras through tunnel and track improvements, the applicants intend to effectively utilize the 190 mile, shorter SP Reno-Roseville route through the City for intermodal stack trains, automotive and certain manifest trains.

Description of the proposed operations, including that of the BNSF, demonstrate that substantial and dramatic change will occur on the rail lines passing through the 15 at-grade level crossings the lines that bisect the City and run through the center of the downtown metropolitan area. Those operations increase the train frequency threefold (from 13 to 38 trains per day), tonnage by almost 70% and train length from 6,000 to 8,000 feet.[3]

The City has a residential population of 283,000, and annual visitor population of 4.8 million. The University of Nevada campus located in the City has 12,000 students.

The City's principle economics and commerce is the tourism and hotel/casino industry, which operates on a 24-hour, never-close basis. The City's hotel/casino industry employs over 100,000 employees on a three-shift per day basis. City residents, visitors

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[3]The applicants acknowledge they transport hazardous materials, the volume of which will increase post-merger. However, the applicants here, as in the past, provide no information concerning the nature of the hazardous commodities being transported. Thus, the City's emergency response to an event is compromised.

and employees migrate throughout the City's downtown area as pedestrians or vehicular traffic, utilizing public or private transportation.

The SP line runs through the center of the City's downtown business district, as well as adjacent commercial and residential areas. City hospitals, university and schools are presently adversely impacted by rail operations, and surely will be more so in the future as a result of the result of a proposed post-merger operations.

The City is physically located on a high desert valley floor at a 4,400 foot elevation, ringed by mountains of significantly higher elevation. The valley forms a somewhat closed ecosystem. Atmospheric inversions occur year round which affect air quality. Noise, such as train whistles, reverberates around and throughout the valley. The watershed for municipal water is in the Sierras, and the upstream Truckee River frequently parallels the Reno-Roseville line segment.

B. The application and record established to date fail to address adverse impacts or propose mitigation measures.

With the evident adverse impact on the environment, public health and safety of the City of Reno that will result from proposed merged operations, the application does little more than serve notice that certain regulatory thresholds for air, noise, public health and safety elements may be met by the rail operating plan of the proposed merger. However, no effort has been made to identify the adverse impacts on any of these elements in any detail. Discussion of mitigation measures is totally absent from the presentation despite the evident impact.

Also totally absent is any discussion of the impact the operations of the BNSF permitted under agreement with UP and SP, which agreement has been made an integral element and condition of the merger application to address competitive concerns raised by the merger.

The applicants have the burden to specifically identify those operational adverse impacts that meet thresholds of regulatory criteria, to propose measures that adequately protect the environment, public health and safety, and effectively mitigate adverse impacts, and to demonstrate that the measures will do so in the long term should the merger be approved in as much as the merger, if approved, is a "forever" event. The application and the record developed to date are not sufficient to adequately identify the adverse impacts, and are totally silent on any proposed mitigation measures.

In short, the applicants have simply failed to date sustain their burden to adequately identify impacts on public health, safety and environment, to propose mitigation measures, and to demonstrate that those measures will effectively mitigate the adverse impacts that result from the merger transaction.[4]

C. The public interest criteria under the ICA and responsibility under NEPA cannot be satisfied on this record.

In evaluating application for merger, the STB is governed by the public interest criteria set out in the Interstate Commerce Act (ICA) 49 U.S.C. 11344. In addition, the Board has independent responsibility under the National Environmental Protection Act (NEPA) to safeguard environment, public health and safety. 49 C.F.R. Part 1105; 49 U.S.C. § 4321 et seq.

The record developed to date contains no basis for either crafting or imposing specific conditions which would adequately protect the environment, public health and safety, and effectively mitigate the evident adverse impacts in this case.

---

[4]By contrast, from its investigation, the City has concluded that of the several options, there are three mitigation measures worth pursuing: first and best, relocating the tracks to the I-80 transportation corridor, or elsewhere; second, fully depressing the tracks in their existing corridor; or third, partially depressing the tracks in a portion of the existing corridor in the downtown area and providing pedestrian and vehicular crossover/under's at certain other at-grade level crossing locations. The applicants appear to prefer to leave the tracks at-grade level in the downtown area. The obvious density of pedestrian and vehicular traffic on a 24 hour basis in the downtown hotel/casino area renders this a "take no action", "do nothing" approach in the face of evident public health, safety and environmental concerns which require remedial action.

Although parties often resolve such issues by agreement, no such agreement now exists. Absent agreement, crafting and/or imposing specific conditions to mitigate the adverse impacts would be extremely difficult, if not beyond the Board's present capabilities on the record in this case.

Without specific conditions to mitigate adverse impacts, approval is not justified in this case. Moreover, approval, containing only generalized, non-specific conditions to mitigate adverse impacts would not satisfy the Board's NEPA responsibilities in this case.

C. <u>CONCLUSION</u>

The City has invested considerable resources in discovery, investigation and study to identify the scope and extent of the adverse impacts of the proposed merged operations on public health, safety and environment. Because of the scale and scope of the proposed merger transaction, and as noted it is a "forever" event for the City of Reno, the Board must require the applicants to specifically identify adverse impacts, propose mitigation efforts, and demonstrate those measures will effectively mitigate the impacts not merely for the near term, but for the long term. Should the applicants continue to fail to do so as they have to date, the merger should be denied.

Protection of public health, safety and environment, and mitigation of adverse impacts are essential elements and requirements for approval of merger application. Both the City and the Board share responsibility to safeguard public health, safety and environment.

To the extent the applicants are willing to remove what are characterized "capacity constraints" by construction to achieve alleged merger benefits, by the same token then, the applicants are appropriately required to remove or mitigate the adverse impacts which are likewise "constraints" or "barriers" to the realization of the benefits applicants contend will result from the merger.

Dated: March 29, 1996

Respectfully submitted,

By: ______________________

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Counsel for the City of Reno

Of Counsel:
KECK, MAHIN & CATE
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

Certificate of Service

I hereby certify that I have served the foregoing notice to Arvid E. Roach II and Paul A. Cunningham, Esq. by messenger, and all parties of record on the service list in this proceeding by first class mail, postage prepaid this 29th day March 1996.

Paul H. Lamboley

a:\comments

RESOLUTION NO. 5216

RESOLUTION REGARDING CITY OF RENO'S OPPOSITION TO THE MERGER APPLICATION OF UNION PACIFIC (UP) AND SOUTHERN PACIFIC (SP) PENDING BEFORE THE SURFACE TRANSPORTATION BOARD, WASHINGTON, D.C.

WHEREAS, it is the obligation of the City of Reno, with an area population of 283,000, and an annual visitor population of 4,800,000, to safeguard public health, safety and environment, and provide infrastructure and services essential to do so, in a metropolitan setting known for its 24-hour hotel-casino tourism industry, and

WHEREAS, the Union Pacific Corporation (UP) and the Southern Pacific Corporation (SP) railroads have filed an application with the Surface Transportation Board (STB), Washington, D.C. seeking approval for merger of their railroad operations, which proceeding has been assigned docket No. 32760, entitled Union Pacific Corp. Et al - Control and Merger - Southern Pacific Corp. Et al., and

WHEREAS, it is evident from the merger application, subsequent discovery and investigation, that the merged railroad operations proposed by the UP and SP, including the BNSF operations permitted by agreement with the UP and SP, will increase train frequency threefold (from 13 to 38 trains per day) tonnage by almost 70% and train length of up to 8000 feet, and result in dramatic changes in traffic passing through the 15 at-grade level crossings on the rail lines that bisect the city, and run through the center of the downtown metropolitan area.

WHEREAS, it is evident that the post-merger railroad operations proposed by the UP and SP, will have substantial adverse consequences for the City, as well as the potential for events arising out of transportation of hazardous materials if the merger and agreement are approved without conditions to adequately protect the City's environment, public health and safety, and at the same time mitigate the adverse impacts on air and water quality, noise levels, congestion, safety of pedestrian and vehicular traffic as well as on fire, police and emergency services, and

WHEREAS, there is also evidence that post-merger railroad operations proposed by the UP/SP may have substantial adverse economic impact on the City's tourism and hotel/casino industry, as well as other commerce, including the City's future economic and urban development plans, and

WHEREAS, the City has evaluated potential actions necessary to adequately protect the City's environment, public health and safety, as well as its economic base, and to effectively mitigate the adverse impacts of the post-merger rail operations proposed by the UP and SP, and in so doing, has concluded that of the several alternatives, there are three options worth pursuing: first and best, relocating the tracks to the I-80 transportation corridor or elsewhere; second, fully depressing the tracks in their existing corridor; or third, partially depressing the tracks in a portion of the existing corridor in the downtown area, and provide for pedestrian and vehicular crossover or cross under at certain other at-grade level crossing locations, and

WHEREAS, with the support of Nevada's Congressional Delegation in Washington, D.C., (Senators Reid and Bryan, Representatives Vucanovich and Ensign), Governor Miller's office, Nevada Public Service Commission, and Nevada Department of Transportation, the City is studying the engineering feasibility of all options with the UP, in furtherance of the City's effort to find a basis for mutual agreement on mitigation or remedial action, and

WHEREAS, to date no basis for mutual agreement has been found, and the due date for the City's comments on the merger application before the Surface Transportation Board is March 29, 1996, following the UP's opposition and the Board's denial of the City's Request for Extension of Time sought to complete the study and to obtain preliminary draft environmental assessment (PDEA) materials which the UP, SP and BNSF failed to file earlier as required by regulations, 49 CFR Part 1105, and Board Decision No. 6, and

WHEREAS, to date, the City has taken no position on the merits of the merger application, but has focused on protection of the environment, public health and safety, and mitigation of adverse impacts as a result of the post-merger operations proposed by the applicants,

NOW THEREFORE BE IT RESOLVED, that the City of Reno hereby unanimously opposes approval of the merger proposed by the UP and SP pending in Case No. 32760 because the application contains no provision, and the applicants have not otherwise agreed, to adequately protect the environment, public health and safety and effectively mitigate the adverse consequences of the proposed merger on the City, its citizens and commerce, and accordingly the "public interest" criteria of 49 USC 11343, and the environment requirements of 49 CFR Part 1105, and the NEPA responsibilities under 42 USC 4321 et seq. have not been satisfied and cannot be satisfied by generalized, non-specific conditions in these circumstances.

On motion of Council member Pilzner, seconded by Council member Pearce, the foregoing Resolution was passed and adopted this 28th day of March, 1996, by the following vote:

AYES: Griffin, Herndon, Pilzner, Pearce, Pruett

NAYS: ____________________

ABSENT: Dalske, Hascheff ABSTAIN: ____________________

Approved this 28th day of March, 1996.

____
Mayor

ATTEST:

____
City Clerk and Clerk of the Reno City Council

WASHOE COUNTY COMMISSION

1001 E. 9th Street
P.O. Box 11130
Reno, Nevada 89520
(702) 328-2005

March 28, 1996

Mayor Jeff Griffin
City of Reno
P.O. Box 1900
Reno, NV 89505

Subject: Washoe County Commission's Comments on the Proposed Union Pacific/ Southern Pacific Railroads Merger

Dear Jeff:

The Washoe County Commission took formal action during its meeting of Tuesday, March 26, 1996, to officially transmit comments and concerns regarding the proposed Southern Pacific Railroad Corporation/Union Pacific Railroad Company merger to the City of Reno. Washoe County is not a party of record and therefore is unable to directly provide comments to the Surface Transportation Board (STB) on the proposed merger. The Commission asks that the Reno City Council include the attached comments with any comments the City will provide to the STB on the proposed merger.

The Commission's concerns with the proposed merger involve public safety (to include emergency access to those communities whose only public entrance is over the railroad), economic considerations and environmental concerns. Also included are potential mitigation measures.

I understand that the City Council will hold a special session on Thursday, March 28, 1996, to consider adopting a statement concerning the proposed merger. I apologize for the short time frame in providing these comments, however the Commission hopes the Reno City Council will include its comments in the statement. If you or your staff have any questions concerning these comments, please do not hesitate to call me or the staff member assigned to the matter. Mr. Webb can be reached at 328-3623. Thank you for your time and consideration on our behalf.

Sincerely,

Stephen T. Bradhurst

Stephen T. Bradhurst, Chairman
Washoe County Commission

STB:bw

cc: Galen D. Denio, P.E., Commissioner, State of Nevada Public Service Commission
Terry Reynolds, City Manager, City of Sparks
Steve Wright, Town Manager, Town of Truckee
Dean Haymore, Building Official and Planning Administrator, Storey County
William E. Wimmer, Senior Assistant Vice President, Union Pacific Railroad
Dori Owen, Special Projects Manager, Reno Redevelopment Agency
John MacIntyre, County Manager
John Hester, AICP, Director, Department of Comprehensive Planning

WASHOE COUNTY COMMISSION

1001 E. 9th Street
P.O. Box 11130
Reno, Nevada 89520
(702) 328-2005

March 28, 1996

Washoe County's comments on the proposed merger of the Southern Pacific Railroad Corporation with the Union Pacific Railroad Company.

On March 26, 1996, the Washoe County Commission adopted the following as their concerns and comments concerning the proposed merger of the Southern Pacific Railroad Corporation with the Union Pacific Railroad Company. The proposed merger could have significant impact on Washoe County and its citizens. The Washoe County Commission desires that its concerns be considered during evaluation of the proposed merger. Washoe County staff is available to coordinate resolution of any of these concerns. The Washoe County staff contact person is Bob Webb at (702) 328-3623.

Public Safety Concerns

1. Improve emergency access to communities and industrial/commercial areas which are isolated by the railroad. The attached map illustrates selected railroad crossings in Washoe County. The following areas must be evaluated for emergency access:

Description	Crossing ID (map)
Residential areas	
Quilici Ranch access	2
Truckee River Stables, Mogul	8
Woodland Avenue (River Edge)	10
Stag Lane	11
Patrick Exit, Ditho Road #1	14
Del Curto Lane	13
Patrick Exit, Ditho Road #2	15
Painted Rock Exit, Canal Road	17
Seneca Drive, Horizon Hills	21
Link Road, Panther Valley	24
Ranger Road, Panther Valley	25
Fantasia Pet Hotel, near Panther Valley	26
Comstock Drive, University Heights	27
Socrates Drive, University Heights	28
Isolated communities/areas	
River Inn	9
Woodland Avenue	10
SPPCo, pump station to Chalk Bluff	12
Granite Construction/KalKan	16
Reno Park Blvd. and Coast Gas	18
MarMac Street, Anderson Acres	19

a. Residential areas of particular concern include Woodland Avenue. Stag Lane, Del Curto Lane, Canal Road (Patrick Exit) and the Panther Valley area. Although these areas are currently isolated by railroad traffic, the proposed merger will significantly increase the possibility of delays at railroad crossings for emergency vehicles. In the case of Woodland Avenue, there is a paved road which could provide emergency access to both the residential area and the industrial/commercial area. However, the road is a private road constructed on railroad easement with two sets of locked gates. Additionally, the City of Reno Fire Department does not possess keys to unlock the gates.

b. Ensure that appropriate emergency response agencies have keys for the gates which control emergency access to isolated communities. Emergency response agencies include police protection (i.e., Sheriff's Office, City of Reno Police Department), fire protection (i.e., City of Reno Fire Department, Truckee Meadows Fire Protection District, Sierra Fire Protection District of the Nevada Division of Forestry), and medical response (REMSA).

c. Inform residents of isolated communities of actions they should take in case of an emergency situation where the railroad crossing is either blocked or unsafe to travel over.

2. Upgrade railroad crossings (both private and public), particularly at locations where the crossings are substandard. Railroad officials have indicated that they have no legal recourse to resolve concerns with private railroad crossings. Responsibility to correct deficiencies with private railroad crossings must be researched further. This item corresponds with item number 8 listed in the memorandum from Carl Cahill of the Washoe County District Health Department to Jerry Hall. A copy of that memorandum is attached.

3. Include appropriate Washoe County agencies as part of the working group formed between the City of Reno and Union Pacific/Southern Pacific Railroads. The working group is addressing railroad merger impacts and analyzing the benefits of various alternatives for future railroad traffic through the City of Reno (I-80 corridor realignment, depression through downtown, and underpass/overpass). The scope of the work plan should be expanded to include the entire railroad system through Washoe County (Donner Pass railroad line and the Reno Branch line). Potential Washoe County agencies include the District Health Department, Department of Public Works, Sheriff's Office, Truckee Meadows Fire Protection District and Emergency Management. The Sierra Fire Protection District of the Nevada Division of Forestry should also be included if possible. Under this approach, items 3 through 8 of the District Health memorandum could be addressed through the appropriate agencies.

Economic Concerns

1. Washoe County's economy is multi-faceted and depends upon a wide range of industries (e.g., tourism, gaming, warehousing, communications, transportation, etc.). A comprehensive analysis of the impact to Washoe County's economy must be completed to provide a better picture of the overall impact of the proposed merger. This analysis should include both benefits and detriments from the merger. For instance, expansion of the intermodal shipping facility in and/or near the current Sparks facility will benefit the County's economy. On the other hand, the negative reaction of tourists to increased delays at railroad crossings, or potential disasters such as the recent petroleum fires from a derailment in Wisconsin, could negatively impact the economy.

2. The economic analysis mentioned above should include the Incline Village/Crystal Bay area of Washoe County. The analysis should examine the effect of increased rail traffic on the crossing sites in the Town of Truckee, California and that impact on the north shore of Lake Tahoe. The analysis should also include any benefits of completing the California State Highway 267 bypass to the Incline Village/Crystal Bay area.

Environmental Concerns

1. Investigate the feasibility of installing electronic control measures for the isolation and/or diversion of the ditch system fed from the Truckee River. This item corresponds with item number 1 on the memorandum from District Health and is explained further in that document.

Other Concerns

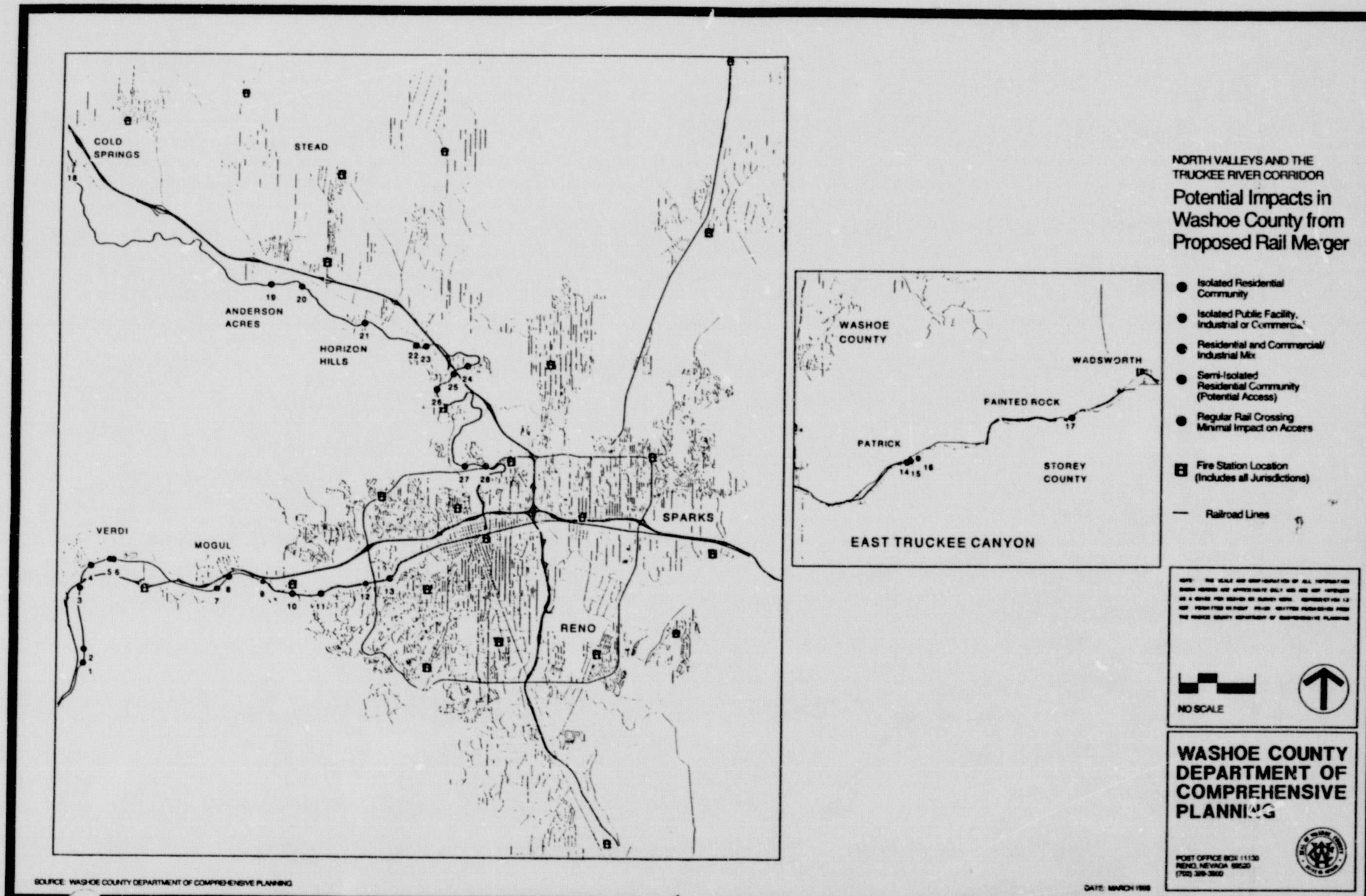
1. Construct trails as easements on railroad property. These trails could double as emergency access to isolated communities or industrial/commercial areas. If the isolated community is between the Truckee River and the railroad, then the trail could be adjacent to the river. This would enhance the river trail system while providing emergency access. If the isolated community is not adjacent to the river, then the trail could be adjacent to the railroad tracks. A graphic depicting this concept is attached.

2. Request that abandoned sections of railroad tracks be made available to public agencies for such uses as future light rail systems, conversion into public trails, etc.

3. Include Washoe County as a commenting agency on the Environmental Analysis (EA) which is being prepared by the Surface Transportation Board on the merger. The EA will discuss impacts of the merger on air quality, noise levels, water quality, safety, biological resources, hazardous materials, and/or transportation systems. The EA is due to be issued in mid-April 1996 with a 20 day public comment period.

4. Request that the Union Pacific and/or Southern Pacific Railroad Corporations review the master plans and development regulations for Washoe County, Reno and Sparks as they apply to railroads. This review could examine how the plans and regulations of the three jurisdictions address railroad related issues: e.g., compatibility of uses adjacent to railroads, regulations on railroad crossings, noise attenuation, etc. This review should provide an opportunity for the railroad corporations to provide suggestions on how the plans and regulations could be improved and/or better integrate the railroads into our communities.

5. In conjunction with item 4, review the Washoe County Comprehensive Plan and Development Code for railroad related policies and regulations. The Comprehensive Plan currently has policies which address use of alternate fuels for railroads, use of alternate modes of transportation (to include rail systems), and noise abatement for location of residential uses near railroads. The Development Code addresses noise abatement, access to subdivisions and site compatibility standards. This review should determine if there may be additional policies or regulations which could better address railroad issues and concerns.



NORTH VALLEYS AND THE TRUCKEE RIVER CORRIDOR
Potential Impacts in Washoe County from Proposed Rail Merger
Isolated Residential Community
Isolated Public Facility, Industrial or Commercial
Residential and Commercial/Industrial Mix
Semi-Isolated Residential Community (Potential Access)
Regular Rail Crossing Minimal Impact on Access
Fire Station Location (Includes all Jurisdictions)
Railroad Lines
COLD SPRINGS
STEAD
ANDERSON ACRES
HORIZON HILLS
VERDI
MOGUL
RENO
SPARKS
WASHOE COUNTY
STOREY COUNTY
PATRICK
PAINTED ROCK
WADSWORTH
EAST TRUCKEE CANYON
NO SCALE
WASHOE COUNTY DEPARTMENT OF COMPREHENSIVE PLANNING
POST OFFICE BOX 11130
RENO, NEVADA 89520
(702) 328-3600
SOURCE: WASHOE COUNTY DEPARTMENT OF COMPREHENSIVE PLANNING
DATE: MARCH 1996

RENO-SPARKS
INDIAN COLONY
TRIBAL COUNCIL
98 COLONY ROAD
RENO, NEVADA
89502
(702) 329-2936
FAX:
(702) 329-8710

February 29, 1996

Mayor Jeff Griffin
City of Reno
P.O. Box 1900
Reno, Nevada 89501

Dear Mayor Griffin:

The Reno-Sparks Indian Colony would like to express their support for the City of Reno's efforts regarding the merger of the Union Pacific and Southern Pacific Railroads.

The Reno-Sparks Indian Colony is a sovereign Indian nation within the Reno City limits. Geographically, the railroad tracks run along the border of our reservation which is over 90% residential. The Colony believes that the concerns that the City of Reno mirror our concerns. The issues regarding public safety and hazardous material transportation are of particular concern. The increased traffic engendered by the merger heightens our concern for the safety of our people.

Mayor Griffin, you have our permission to share our concerns to the appropriate federal bodies currently reviewing this matter. It is our understanding that you will be personally meet with these officials this Friday. Please include this letter in any submissions. After your return, we will be interested in the results of your meetings.

Sincerely,

Arlan D. Melendez

Arlan Melendez, Chairman
Reno-Sparks Indian Colony

cc: Senator Harry Reid
Senator Richard Bryan
Assemblyman Vucanovich
Assemblyman Ensign
Sparks Mayor Bruce Breslow
Washoe County Commissioner Bond
Governor Bob Miller
Attorney General Frankie Sue Del Papa

United States of America

Before the

SURFACE TRANSPORTATION BOARD

F.D. No. 32760

Union Pacific Corporation et al. --
Control and Merger -- Southern Pacific Corporation et al.

VERIFIED STATEMENT OF JERRY L. HALL, P.E.

My name is Jerry L. Hall. I am a registered Professional Engineer (Civil) in the State of Nevada. I am currently President of Strategic Project Management, Inc., and maintain offices at 1755 E. Plumb Lane, Reno, Nevada. Prior to becoming President of Strategic Project Management, I was Executive Director of the Regional Transportation Commission of Washoe County and served as the executive of that agency for over eighteen years. My functional responsibilities included all aspects of regional transportation planning, highway design, right-of-way acquisition, construction and public transportation operations.

I have served as Project Executive for an engineering team evaluating the impact of the merger of Union Pacific and Southern Pacific Corporation on the City of Reno. The engineering team is composed of:

Nolte and Associates, Inc., San Francisco, California, which serves as prime consultant, providing engineering and technical information concerning complex and urban infrastructure impacted by operational characteristics of railroad merger applications. For Nolte, Michael R. Christensen is a principle contributor. Mr. Christensen holds a B.S. in Civil Engineering from Arizona State University, and is a registered civil engineer in Kansas (1984), Oregon (1987), Arizona (1994), California (1985), Nevada and New Mexico (1995 as to each). He is currently employed as Vice President of Nolte and Associates, Inc., headquartered in Nolte's Walnut Creek, California office. Prior to joining Nolte, he was President and Chief Executive Officer of Summit/Lynch Consulting Engineers from September 1993 to October 1995, when Summit/Lunch was acquired by Nolte. Prior to that, he 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 of 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.

SEA Incorporated, Reno, Nevada, responsible for development of an earlier Reno Railroad Study in 1980, brings project specific experience in the person of Joe W. Howard, P.E., to update prior study and provide current assessment of civil engineering requirements.

Kleinfelder, Inc., Reno, Nevada, provides general engineering assessment, and through Chris Spandau, P.E., specific emphasis on geotechnical and environmental aspects of the study.

The attached document entitled "Railroad Merger Study-Fact Finding Report, March 1996" was the joint and collective product provided to the City by the project team working under my supervision.

The factual information contained in the Report was obtained from identified public sources as well as statements provided by the various state and local officials in charge of agencies having public health, safety and environment responsibilities.

The attached statements and correspondence contain information relevant to the study and Report.

The contents of the Fact Finding Report, Executive Summary and other items attached hereto are incorporated herein for the purposes of this statement.

Respectfully submitted,

Jerry C. Hall, P.E.

VERIFICATION

I, Jerry L. Hall, declare under penalty of perjury that the foregoing statement and attachments hereto, are true and correct. Further, I certify that I am qualified and authorized to file this statement, and attached documents on behalf of the City of Reno.

Executed on March ____, 1996.

Jerry L. Hall, P.E.

RENO TRANSPORTATION CORRIDOR ALTERNATIVES STUDY

MARCH, 1996

Executive Summary

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THE NORTHERN NEVADA REGION

The Northern Nevada Region includes three cities and a number of smaller communities dependent upon the larger metropolitan area for goods and services. The City of Reno and the adjacent community of Sparks are located in Washoe County and serve as an anchor for the regional area which includes portions of northeastern California and all of northern Nevada. The Reno-Sparks communities are nestled in a valley at the 4,300 foot elevation framed by the Sierra Nevada Mountains on the West (11,000 foot peaks within 15 miles) and the Virginia Mountain range on the east. The valley, traversed in a west to east direction by the Truckee River, is often referred to as the Truckee Meadows. The valley floor and surrounding mountains create a bowl effect and a fragile air quality basin.

The population of Washoe County in 1995 was approximately 280,363 persons including 152,444 (54.4 percent) in Reno and 63,023 (22.5 percent) in Sparks. From 1990 to 1995 the population of the Washoe County area grew from 242,536 to 280,363 or 15.5 percent. **Estimated visitors to Washoe County total an additional 4,851,269 (1995).**

Area businesses employ approximately 146,264 persons with approximately 73% employed in downtown Reno. Unemployment in the Reno/Sparks area was 5.3% in 1994, well below the state and national average.

The average median household income in unincorporated Washoe County was $31,891, in Reno $28,388 and in Sparks $32,520.

The region enjoys a high level of highway service provided by US 395 and Interstate 80 which make the entire western United States accessible by truck. Rail freight service to the north, east and west is provided by Union Pacific, service to the east and west is also offered by Southern Pacific, and Amtrak operates east/west passenger service on a quad-weekly basis. Reno/Tahoe International Airport, home of Reno Air, is a Port of Entry and is the nation's 49th busiest airport.

The region boasts a sophisticated telecommunication network which is 100 percent digitally switched and has an installed fiber optic network with ISDN capabilities. Nevada does not apply telephone sales taxes to local, intrastate or inter-state calls. The region also has been designated a Foreign Trade Zone (#126) which allows foreign goods to enter the U.S. without formal customs entry and payment of customs duties and excise taxes. The opportunities provided by the FTZ has led to rapid expansion of industrial space by 5.6% in 1994 reaching a total of 35 million square feet.

The central core area of the Truckee Meadows, known as hydrographic basin #87, has violated national air quality standards for carbon monoxide and fine particulate matter less than 10 microns in diameter (PM10). The entire Washoe County has violated standards for ozone. Although air quality has been better in recent years, the U.S. Environmental Protection Agency has designated all or a part of the County as a non-attainment area for these three pollutants.

Since the late 1980's, both carbon monoxide and particulate concentrations have been somewhat higher in the central business district than in other areas of the County.

THE CITY OF RENO

The City of Reno serves as a regional center for all of northern Nevada and northeastern California. As the economic center of Northern Nevada, the City provides a broad range of goods and services to people from an extremely large geographic area.

- Gaming produced gross revenues of $692,572,000 in 1995 compared to $605,879,000 in 1990.

- **The City has recently added a major entertainment venue, the National Bowling Stadium, the Silver Legacy, a new destination resort and a new Harrah's Hampton Inn Hotel. These recent additions represent private and public investment of approximately $450 million.**

- The convention industry boasts a 370,000 square foot convention center with support facilities including the Pioneer Center for the Performing Arts, the Reno Livestock Events Center hosting indoor rodeos, track and field events and other special venue activities, Lawlor Events Center and a new National Bowling Stadium which draw visitors from throughout the region. Local hotel properties can provide 415,000 square feet of on-property convention space.

- Downtown Reno has over 9,000 licensed deluxe hotel rooms located in the downtown Reno area within 1,500 feet of the railroad. Occupancy in the downtown facilities has averaged 83% in the last three years.

- The University of Nevada (12,000 enrollment, 200 acre campus and $400 million in land and improvements) includes a wide variety of programs including Engineering, Business Administration, Mining, Agriculture and School of Medicine. The National Judicial College is located on the University campus and hosts judges from all over the world. The campus is located approximately 2,700 feet from the rail line.

- Three major hospitals are located in the Reno-Sparks area providing emergency trauma care, a wide range of medical treatment and specialized care to citizens from throughout Nevada and Northeastern California.

- The economy is diversified and includes Porsche North America, International Game Technology, Ricoh Corporation and Reno Air with national corporate headquarters in Reno. Gannett Company, Blue Cross/Blue Shield and State Farm Insurance Companies have regional headquarters located in the Truckee Meadows, and a number of major distributors utilize the transportation facilities in the Reno area to quickly and efficiently move products to retailers.

- The City of Reno is the cultural center of the region and is home to the Reno Philharmonic Orchestra, two ballet companies, an opera company, two chamber orchestras, and a wide range of artisans.

- The area hosts the National Championship Air Races, Great Reno Balloon Races and a spectacular nostalgia event, Hot August Nights, which attracts approximately 40-50,000 spectators to downtown Reno during the peak event.

Reno is no longer a sleepy little town located beside the Southern Pacific tracks and Interstate 80. The community has grown and blossomed into a small but beautiful metropolitan area with a unique vitality providing a high standard of living and quality of life not available in other communities of similar size.

IMPACTS OF MERGER

Train traffic through Reno will increase from 14 to 38 trains per day as a result of this merger, elevating train traffic to 271% of its current level. Without mitigation this will result in the following impacts:

- Vehicular traffic delays increase 339% in the coming years
- Pedestrians see a nearly three-fold increase in delays due to trains in the downtown area
- Additional trains add 247 tons per year of pollutants to air already in a non-attainment status
- Idling vehicles stopped by trains will emit an additional 1,222.75 tons of pollutants per year
- Railroad noise levels to over 9,000 schools, churches, hospitals, residences, and hotel rooms within 1,500 feet of the tracks are substantially increased
- The Truckee River, the primary drinking water supply to over 275,000 people, is exposed to added risk from a railroad-related spill or release that could leave the region without potable water for an unknown period of time
- Emergency response calls (Fire and Ambulance) are increased by an average of ½ minute due to railroad blockages making it difficult to meet desired 4 minute response goals
- Police response time and capabilities, especially during downtown special events, will be severely compromised
- The nearly three-fold increase in vehicle-train and pedestrian-train conflicts will undoubtedly lead to an increase in accidents, injuries, and deaths due to collisions with trains, especially in the downtown area
- The community will suffer economic damage due to loss of business and property devaluation at the same time the railroad sees a $750 million annual benefit
- **Infrastructure and public service providers are required to serve not only residents but non-residents (approximately 4,851,269 annual visitors) and the University of Nevada campus student population (approximately 12,000 students)**
- Approximately 4,074,000 visitors to Washoe County utilize commercial accommodations
- Pedestrians frequently move, in migratory fashion, between major entertainment venues and facilities located within a few hundred feet each side of the railroad tracks

PUBLIC SAFETY PROBLEMS

The service infrastructure of the City of Reno is impacted to a great extent by the proposed merger of Union Pacific and Southern Pacific Railroads. While the community has built-up around the railroad environment, the significant increase in utilization of the corridor by virtue of the post-merger Union Pacific operation and the additional traffic occasioned by the use of trackage by Burlington Northern/Santa Fe has pointed out the danger and adverse impact of the rail operation in downtown Reno. While the impacts on air, water and ambient noise levels can be quantified, the following comments from the Reno Chief of Police clearly describe the impact of having a major rail operation cut through the center of a 24 hour tourism based community.

Delays - There is little question that the closure of the main street thoroughfares as a result of train usage hampers our police response and patrol ability on a daily basis. The Police Department had divided the City into three policing districts. Two south districts are basically divided by the train tracks from the north district. This districting, which spans the entire west and east limits of the city, is not the most effective districting method but has been forced on the department because of the physical barrier trains create during an emergency response. Because of police staffing shortages and workload increases, police dispatchers routinely cross-dispatch north officers to emergencies and routine calls in the south part of town and vice versa. North district officers routinely cover officers on the south side of the train tracks. Train traffic has been a problem for years to responding police units, fire units, and paramedics, forcing the time consuming rerouting of personnel to avoid trains. This situation has become much worse in the past few years because of population growth, increased calls for service, and fewer police officers. In many cases, emergency vehicle delays result in a domino effect resulting in a time delay that impacts almost all our pending calls for service. In emergency and critical incident response cases, these delays require an immediate tactical redeployment of resources to insure an adequate response, leaving many of our citizens confused and irate when the police need to leave their call to respond to another with a higher response priority. The continual bisecting of special event activities downtown by trains already hampers the ability of police to control the events.

Post-Merger Delays - Any increase in train traffic, length, or decrease in speed will have a direct impact in the following areas:

1) Police response times will increase to emergency and non-emergency calls which are cross-dispatched. Cross-dispatching is routine and occurs 24 hours per day because of current police staffing shortages. Citizen response time complaints will increase.
2) Officer safety and citizen safety will be impacted by delayed response of police units to assist officers needing cover, police response to injury traffic accidents, or any other citizen injury type call.
3) Increased train crossing traffic violations will occur. Currently, impatient drivers ignore crossing arms to beat oncoming trains, make u-turns, or drive the wrong way to find an escape route to avoid train delays. Adding train traffic will exacerbate this already dangerous situation.
4) Special events management will deteriorate as trains bisect parades, static display street closures, and major special events.
5) Intoxicated pedestrians (tourists, transients, and locals) currently race across tracks to avoid trains. Their impaired condition increases the potential for an injury. Massive special event crowds, combined with noise levels of the event, often force pedestrians too close to train tracks. Reno's entertainment industry often results in tourists and local citizens being intoxicated or under the influence of alcohol in the downtown area.

Policing Problems - The physical environment created by the railroad tracks downtown serves as a magnet for local transients, bums, drug dealers, and even provides weapons for unruly crowds. Consider the following:

1) Our local population of street criminals congregate on railroad tracks right-of-ways behind buildings, crossing arms, and underpasses because these areas are often hidden from direct view of police officers. The right of way also makes excellent places of operation for panhandlers, strong arm robbers, and permanent homeless residents to accost our citizens. The railroad provides no immediately available property owner or security to monitor this problem and help regulate this crime. Since property owners throughout downtown prohibit this activity on their properties and can authorize trespassing arrests to remove petty criminals, the situation has forced many petty criminals onto the railroad right of way.
2) The railroad bed includes rocks, broken bottles, cans, grease, oil, and dirt. Rocks and bottles are routinely used during fights among petty criminals, provide drunks ammunition during major special events, and are hard to navigate by pursing officers.

Other Impacts - The presence of the railroad tracks in their current location represents a mixture with our economy not unlike oil and water. They are a critically dangerous segment of our downtown area in which we contain thousands and thousands of residents, tourists, gamers, and visitors. The police department has had to physically adapt its emergency operations to accommodate the train tracks. However, the accommodations are not in the best interest of the city.

Note: Additional information concerning public safety has been received but is not included here.

SUMMARY OF ENVIRONMENTAL IMPACTS

A review of UP/SP merger documents reveal that environmental impacts to Reno from the merger have not been fully considered. This document summarizes the findings contained on the attached report.

UP/SP merger will increase train traffic by as much as 25 trains per day above the current 14 trains per day. Air quality will degrade due to the increased train traffic and from increased automobile delays at grade crossings. The increase in noise will disturb a greater number of residents and the hotel business in downtown Reno. Rail realignment scenarios could reduce the environmental impact to Reno.

The current 13.6 trains per day passing through Reno directly emit 473 tons of pollution per year. An additional 9 trains per day will emit a 78 tons per year and an additional 25 trains per day will emit 247 tons per year. A bigger source of air pollutants not considered by UP/SP is the idling automobiles at the fifteen grade crossings located in Reno. The automobiles will emit 1,518.81 tons of pollutants per year in downtown Reno. The 1,518.81 tons per year could be eliminated if the rail alignment was depressed or moved along the I-80 corridor.

Noise impacts are less defined and require additional quantitative study. Night train traffic will increase causing disturbance to Reno residences and hotel patrons. Noise can be abated, but either realignment scenario would reduce the overall affect.

The natural resources along I-80 realignment were assessed to see if problems existed that would preclude the project. No natural resource problems were identified that could not be mitigated.

Neither route lay near CERCLIS, NPL, or RCRA sites under remediation or investigation of releases of hazardous or regulated materials.

Both routes pass near sites with registered USTs, sites undergoing leaking UST cleanups, and near both large and small quantity RCRA generators. The existing route passes 24 sites with registered USTs, four active leaking UST cleanup sites, seven RCRA SQGs, and three RCRA LQGs. The alternate I-80 route passes eight sites with registered USTs, two active leaking UST cleanup sites (one is nearly complete), seven RCRA SQGs, and five RCRA LQGs.

The existing route traverses directly over the groundwater PCE plume and passes over the northern edge of the groundwater hydrocarbon plume. The alternate I-80 route passes over the known northern edge of the PCE plume, but avoids the hydrocarbon plume.

Groundwater depths vary from less than 20 feet below ground surface to greater than 60 feet below ground surface. Generally, the depth to groundwater is deepest the I-80 alternate route and shallowest along the existing route.

MITIGATION ALTERNATIVES

This summary represents the results of an expedited preliminary study to evaluate and determine the probable costs of alternatives to mitigate the impacts of the Union Pacific/Southern Pacific merger to the City of Reno. The alternatives were a combination of historical projects with updated costs and a railroad relocation to an alignment near Interstate 80. These alternatives are illustrated on the attached figure entitled ***Railroad Mitigation Alternatives***. All three alternatives appear feasible, subject to justification of their respective costs and completion of a more formal analysis.

A. Depressed Railroad, Street-Level Crossings (based on 1978-80 study with updated costs)

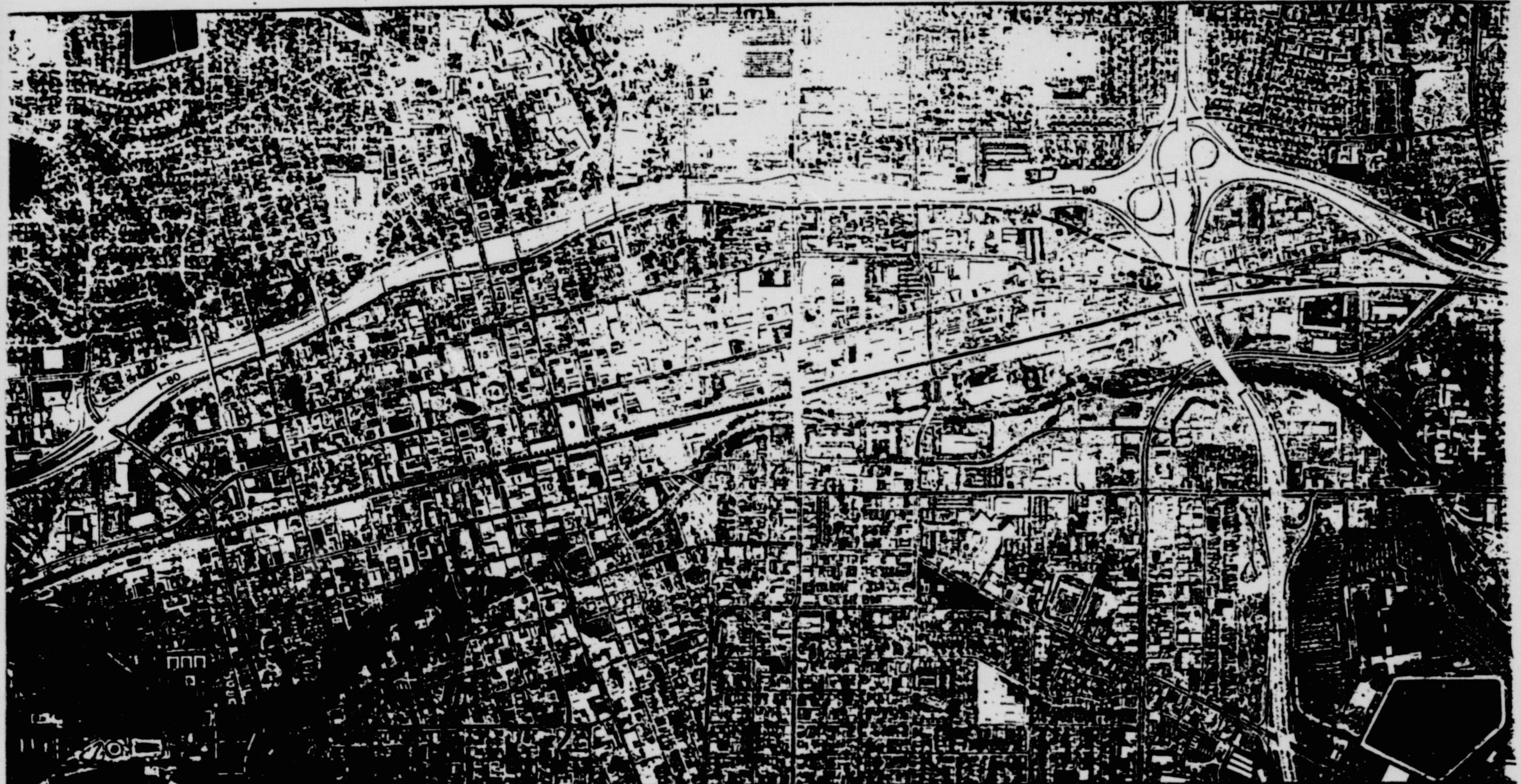
- Railroad on present alignment and depressed approximately 30 feet
- Utilizes a 3rd Street shoofly through the Bowling Center and adjacent parking structure (shoofly has been researched and determined to be feasible)
- 6,000 feet long depressed section
- 10 street crossings over depression
- A new grade separation at Sutro with the street going under the tracks
- Probable cost of ***$ 130,000,000*** in 1996 dollars, $160,000,000 spread over construction period
- Probable completion October, 2003

B. At-Grade Railroad, Grade-Separated Street Crossings (based on 1978-80 study with updated costs)

- Railroad on present alignment and at present grade
- Three street over crossings at Keystone, Vine, and Evans
- Eight street under crossings at Washington, Ralston, West, Sierra, Virginia, Center, Lake, and Sutro
- Four pedestrian over crossings
- Probable cost of ***$ 146,500,000*** in 1996 dollars, $178,600,000 spread out over construction period
- Probable completion June, 2004

C. Railroad Relocation to the I-80 Corridor

- Railroad immediately south of I-80
- Realignment 3.6 miles long
- Railroad depressed under 13 streets, all except 4th Street (with an alternate plan for depressed streets at several locations)
- Railroad depressed under an I-80 pedestrian overpass and the existing UP Reno Branch main track
- Railroad constructed through embankment under Highway 395 (I-580)
- 4th Street under crossings at both ends of the realignment
- Pipeline and fiberoptics relocated along with railroad
- 45 MPH + railroad alignment
- New Amtrak station near downtown area
- Probable cost of ***$ 420,000,000*** in 1996 dollars, $535,000,000 spread out over construction period
- Probable completion May, 2006



1. RENO POLICE DEPT.
2. RENO FIRE DEPT.
3. FEDERAL COURT HOUSE
4. RENO CITY HALL
5. WASHOE COUNTY COURT HOUSE
6. WASHOE MEDICAL CENTER HOSPITAL
7. ST. MARY'S HOSPITAL
8. UNIVERSITY OF NEVADA
9. NATIONAL BOWLING STADIUM
10. HARRAHS
11. FITZGERALDS
12. FLAMINGO HILTON
13. ELDORADO HOTEL
14. SILVER LEGACY
15. CIRCUS CIRCUS
16. RENO HILTON

LEGEND

EXISTING RAILROAD ALIGNMENT

SHOOFLY AND R.R. LOWERING PROJECT

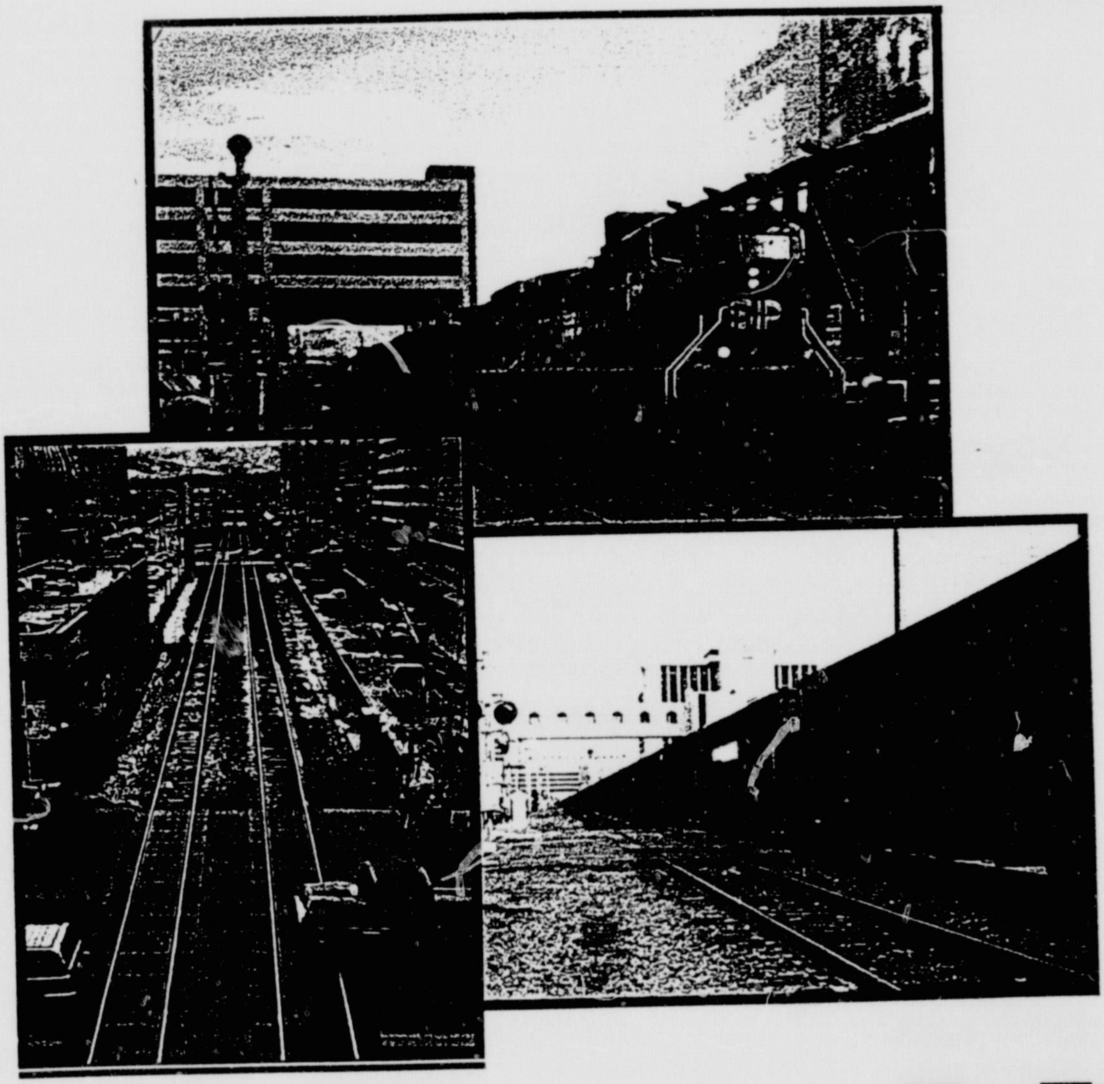
I-80 TRANSPORTATION CORRIDOR

RAILROAD MITIGATION ALTERNATIVES

CITY OF RENO NEVADA

Railroad Merger Study
Fact Finding Report
March 1996

CITY of RENO



KLEINFELDER

SEA, INCORPORATED

STRATEGIC PROJECT MANAGEMENT, INC.

NOLTE and ASSOCIATES, Inc.
Engineers / Planners / Surveyors

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1.0 INTRODUCTION

In the summer of 1995 the Union Pacific Corporation (UP) announced that it had reached an agreement with and would acquire the Southern Pacific Corporation (SP). On November 30, 1995, they filed an application with the Interstate Commerce Commission (ICC) for approval of this merger. In December, 1995, the City of Reno (City) retained the services of Nolte and Associates (Nolte) along with Kleinfelder Associates to perform this study on the UP/SP merger and determine the effects of this proposed merger on the community.

2.0 PROJECT APPROACH

Our team started this project by meeting with the City, railroad personnel, local engineering professionals, legal experts, and in-house railroad specialists. We gathered information on past, present, and future surface transportation issues related to the railroad through Reno. Our team examined historical data, reviewed the UP/SP merger application, and developed estimates on the rail traffic changes. We submitted a draft Fact Finding Report to the City and interested citizens for their review and included comments and feedback in the report.

The objective of this study was to determine the pertinent facts surrounding the effects of this merger on the City and assist the City in establishing their position on the merger. The study team was also to be available to provide a verified statement if needed. This report summarizes, in draft form, these findings and estimates.

3.0 AREA PROFILE

3.1 Northern Nevada Region

The Northern Nevada Region includes three cities and a number of smaller communities dependent upon the larger metropolitan area for goods and services. The city of Reno and the adjacent community of Sparks are located in Washoe County and serve as an anchor for the regional area which includes portions of northeastern California and all of northern Nevada. The Reno-Sparks communities are nestled in a valley at the 4,300 foot elevation framed by the Sierra Nevada Mountains on the west (11,000 foot peaks within 15 miles) and the Virginia Mountain range on the east. The valley, traversed in a west to east direction by the Truckee River, is often referred to as the Truckee Meadows. The valley floor and surrounding mountains create a bowl effect and a fragile air quality basin.

Population - The population of Washoe County in 1995 was approximately 280,363[1] persons including 152,444 (54.4%) in Reno and it's sphere of influence, 63,023 (22.5%) in Sparks and it's sphere of influence, and 64,896 (23.1%) in the unincorporated area. From 1990 to 1995 the population of the Washoe County area grew from 242,536 to 280,363 or 15.5%. Estimated visitors to Washoe County in 1995 totalled 4,851,269.

Employment - Approximately 146,264 person were employed in the Truckee Meadows in 1995 with approximately 73% employed in Reno. The Regional Transportation Commission (Metropolitan Planning Organization) estimates that downtown Reno has experienced the greatest amount of employment expansion in the northern Nevada region. The number of persons employed in the wholesale-retail trade, other services and government categories grew the fastest.[2] Unemployment in the Reno/Sparks area was 5.3% in 1994, well below the state and national average.

Income - The average median household income in unincorporated Washoe County was $31,891 in Reno $28,388 and in Sparks $32,520.[3] The 1994 cost of living index for the Reno metropolitan area was 12% higher than the national average. The index gained 10 points on the national average from 1989 to 1994.

Housing - In 1994, the median price for a home in Washoe County was $121,620. The median price was lower than the western states' average but higher than the national average.

Geography/Climate - The geographic and economic center of the region is clearly the Reno-Sparks Metropolitan area. The cities are located a few miles east of the Sierra Nevada Mountains in the Truckee Meadows. The high desert location (elevation 4,400 feet) offers a moderate climate year round with low humidity. The sun shines approximately 80% of the year providing the area with a beautiful backdrop of the clear skies framed by the foothills of the Sierras.

Transportation - The region enjoys a high level of highway service provided by US 395 and Interstate 80 which make the entire western United States accessible by truck. Rail freight service to the north, south, east and west is provided by Union Pacific, service to the east and west is also offered by Southern Pacific, and Amtrak operates east/west passenger service on a quad-weekly basis. Reno/Tahoe International Airport, home of Reno Air, is a Port of Entry and is the national's 49th busiest airport.

Telecommunications - In the Reno/Sparks area, Nevada Bell's telecommunication network is 100% digitally switched and has an installed fiber optic network with ISDN capabilities. Nevada does not apply telephone sales taxes to local, intrastate or inter-state calls.

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[1] Regional Transportation Commission
[2] Truckee Meadows Regional Plan
[3] 1990 Census

Warehousing - Located in Reno and opened in 1986, Foreign Trade Zone #126 allows foreign goods to enter the U.S. without formal customs entry and payment of customs duties and excise taxes. The opportunities provided by the FTZ has led to rapid expansion of industrial space by 5.6% in 1994 reaching a total of 35 million square feet.

Air Quality - The central core area of the Truckee Meadows, known as hydrographic basin #87, has violated national air quality standards for carbon monoxide and fine particulate matter less than 10 microns in diameter (PM10). The entire Washoe County has violated standards for ozone. Although air quality has been better in recent years, the U.S. Environmental Protection Agency has designated all or a part of the County as a non-attainment area for these three pollutants [RTC 1995]. The most recent violations for ozone, carbon monoxide and PM20, respectively, were in February 1990, December 1991 and January 1993, according to the Washoe County District Health Department (WCDHD), which has asked the U.S. EPA to lift the non-attainment designated for ozone. Both carbon monoxide and PM10 concentrations have been somwhat higher in the central business district than in other areas of the County since the late 1980's.

From 1989 to 1994, good air quality days increased and moderate and unhealthy days decreased. The was due, in part, to good weather buy also tot he following controls: use of oxygenated fuels in winter months, vapor recovery programs at gas stations, restrictions on residential wood burning, federal new car emission standards and motor vehicle inspection and maintenance.

Government and Taxes - The Washoe County area is governed by a County Commission, the Reno City Council and Sparks City Council. Other forms of intergovernmental coordination are present which allow the efficient provision of public service. The tax base in Washoe County includes a minimal property tax and sales and use tax. Special tax incentives are available to stimulate business investment and growth. The State of Nevada does not have a personal income tax.

3.2 The City of Reno

The City of Reno serves as a regional center for all of northern Nevada and north eastern California. As the economic center of Northern Nevada, the City provides a broad range of goods and services to people from an extremely large geographic area.

Economy - Gaming and tourism is the anchor of the economy and in the year ended June 30, 1995, gross gaming revenues of $692,572,000 were reported compared to $605,879,000 in 1990. A unique feature of the tourism industry is the ability to attract families to the area for winter skiing, summer hiking and touring of nearby Lake Tahoe and a myriad of other outdoor activities. Gaming and tourism are growing in the Washoe County area and represent the economic engine which sustains the economy of the community and the region. **The City has recently added a major entertainment venue, the National Bowling Stadium, the Silver Legacy, a new destination resort and a new**

Harrah's Hampton Inn Hotel. These recent additions represent private and public investment of approximately $450 million.

Conventions - National and regional corporate and industry trade groups continue to select Reno as primary convention location. The area boasts a 370,000 square foot convention center with support facilities including the Pioneer Center for the Performing Arts, the Reno Livestock Events Center hosting indoor rodeos, track and field events and other special venue activities, Lawlor Events Center and a new National Bowling Stadium which draw visitors from throughout the region. In additional, local hotel properties include 415,000 square feet of on-property convention space.

Hotel Accommodations - As home for major national conventions, the City of Reno has over 9,000 licensed deluxe hotel rooms located in the downtown Reno area. In addition, other hotels and facilities outside of the downtown boost the total to nearly 13,000. Occupancy in the downtown facilities has averaged 83% in the last three years. Approximately 4,074,000 visitors utilize Washoe County commercial accomodations annually. This does not include other day/night visitors and those visitors utilizing private homes or other facilities during their stay.

University of Nevada - The land grant college is a centerpiece of the community and has an enrollment of over 12,000 students. The University includes a wide variety of programs including Engineering, Business Administration, Mining, Agriculture and School of Medicine. The national Judicial College is located on the University campus and hosts judges from all over the world. The campus is located approximately 2,700 feet from the SP railroad main line.

Medical Services - Serving as the regional medical service provider, three major hospitals are located in the Reno-Sparks area. The ultra-modern facilities provide emergency trauma care, a wide range of medical treatment and specialized care to citizens form throughout Nevada and Northeastern California.

Industrial Diversification - The Northern Nevada area has created a diversified economy through the aggressive development of a variety of industries. Porche North America, International Game Technology, Ricoh Corporation and Reno Air are just a few of the national corporations based in Reno. Gannett Company, Blue Cross/Blue Shield and State Farm Insurance Companies have regional headquarters located in the Truckee Meadows and a number of major distributors utilize the transportation facilities in the Reno area to quickly and efficiently move products to retailers.

Culture - The City of Reno is home to the Reno Philharmonic Orchestra, two ballet companies, chamber orchestras, and a wide range of artisans. The community takes great pride in the multi-talented individuals that have chosen to make their home in the Truckee Meadows. In addition to the medical and economic issues described above, the Truckee Meadows serves as the cultural center of the region.

Special Events - In keeping with the nature of the tourism based economy, the area hosts a number of special events including the National Championship Air Races, Great Reno Balloon Races and a spectacular nostalgia event, Hot August Nights which attracts approximately 30,000 spectators to downtown Reno.

Reno is no longer a sleepy little town located beside the Southern Pacific tracks and Interstate 80. The community has grown and blossomed into a small but beautiful metropolitan area with a unique vitality providing a high standard of living and quality of life not available in other communities of similar size.

4.0 RENO TRANSPORTATION PROFILE

4.01 Railroad Operations in General

Railroad operations through northern Nevada utilize two main line routes. The first is the UP's line from Sacramento to Winnemucca via the Feather River canyon. The second is the SP route from Roseville through Reno and Winnemucca via the Donner pass. The SP route is at least 136 miles[4] shorter than the UP route between Oakland and Salt Lake City, saving an estimated two crews per train between those points. The UP line consists of single track with maximum 1% grade, while the SP line is double track with maximum 2.6% grade. The gradient of the SP track through downtown Reno ranges from 0.28% to 0.84% downward to the east.[5] The UP route is cleared for maximum-height double-stacked containers while the SP route is not.[6] Appendix A contains route maps and track charts illustrating these lines.

Union Pacific accesses Reno via its Reno Branch. This branch connects to the UP main line at Reno Junction about 28 miles north of UP's yard at their station of North Reno and 33 miles north of downtown Reno. The North Reno yard consists of 4 tracks, 2 used for intermodal loading and 2 for manifest storage and switching.[7] North Reno also contains the local UP intermodal facility (trailers and containers on flat cars). Appendix A also contains a UP diagram illustrating these tracks.

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

[5] SP Main Line Track Profile Plan, Section V-1/P-5.

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

[7] UP-SP Common Point Team #3 report on Area #6.

4.02 Current SP Reno Operations

Reno is located on the Roseville Subdivision of the SP at Mile Post (MP) 242.8. Two main tracks pass through downtown Reno, identified as No. 1 for westward trains and No. 2 for eastward. Established train operating rules mandate maximum train speeds of 20 mph for both passenger and freight as they pass between MP 243.2 and MP 242.0. The maximum authorized westward speed through downtown after locomotives have passed through these limits is 45 mph for passenger trains and 40 mph for freight trains. The eastward maximum authorized speed for passenger and freight trains is 25 mph due to the location of the Sparks yard.

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

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

An actual 24-hour lineup of trains through Reno on January 19, 1996, showed 15 trains. The same lineup on January 22, 1996, showed a total of 14 trains. Neither of these lineups showed the daily switch engine that travels from Sparks to West Reno and back approximately once each day. These trains included all categories of passenger and freight operating over Donner Summit.

Southern Pacific conducts its yard and intermodal operations at its terminal in Sparks. SP's Sparks yard consists of 16 tracks with a holding capacity of 800 cars plus a small intermodal facility (trailers and containers on flat cars). The Sparks terminal is served by 4 yard engines spread around the clock. Up to two local trains operate east out of Sparks daily. The SP intermodal facility utilizes 3 tracks, two of which are for loading or unloading, and uses a single PC-90 sidelift loader.[9]

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[8] This number was generated from an analysis of SP train density records showing train traffic through Reno on two representative days in 1994.

[9] UP-SP Common Point Team #3 report on Area #6.

4.03 Current UP Reno Operations

Union Pacific runs one local train from North Reno MP 28.3 to Reno Junction MP 0 six days per week. They also operate a local switcher from North Reno to Martin MP 21.3 as needed to service industries in the area. The UP intermodal facility can hold up to 41 intermodal flat cars on two tracks and uses one PC-90 sidelift loader. North Reno also supports an automobile unloading operation.[10]

Union Pacific and SP have an interchange track near 4th and Record Streets connecting the UP Reno Branch with the SP main line for exchanging rail cars. We received information from local SP operating representatives that this interchange is currently inactive. An inspection of this interchange track confirms this information.

4.04 Railroad Property Issues

This issue divides into two sub issues. The first concerns ownership of the railroad right-of-way and the second the ownership of the right to cross the railroad over a City street.

The first issue concerns both the size and type of title of the existing right-of-way through Reno. Pending further study, we believe that from Lake Street east, there is a Land Grant Station Reservation 400 feet in width. From Lake Street west, the right-of-way width is probably the two-hundred foot strip provided by the Congressional Grant. Southern Pacific has disposed of some of this property. However, since the ownership of much of the right-of-way results from the Congressional Land Grant, SP and UP may still have some control over the property occupied by others, even after the merger.

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

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

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[10] Ibid.

Whether the railroad or the City owns the property has a direct bearing on how the costs of improving grade crossings are allocated according to Nevada Public Service Commission (PSC) and federal rules. The agreement contained in a deed of easement or the franchise usually controls. We believe that Lake Street and possibly Virginia Street were public streets before the railroad was built. The rest of the streets in Reno were most likely built after the railroad.

4.05 Other Railroad Corridor Facilities

The SP right-of-way through downtown Reno also contains two other significant features, a 6 inch petroleum product pipeline and an MCI fiberoptic cable. The pipeline provides finished petroleum products to a large tank farm terminal in Sparks. This terminal is the easternmost outlet for pipeline-delivered petroleum products in northern Nevada. The fiberoptic cable is the principle "information superhighway" between Sacramento and Salt Lake City. Both facilities are buried at various depth and locations adjacent to the SP tracks.

4.06 Railroad Crossings in Downtown Reno

Reno streets cross the SP main line at-grade 15 times. These include the following:

1. Woodland Ave.
2. Del Curto Drive
3. Keystone St.
4. Vine St.
5. Washington St.
6. Ralston St.
7. North Arlington St.
8. West St.
9. Sierra St.
10. Virginia St.
11. Center St.
12. Lake St.
13. Morrill Ave.
14. Sutro St.
15. Sage St.

The Nevada (PSC) has issued an Order to construct a new at-grade crossing at Evans Avenue. This new crossing has not yet been constructed, and the City has no immediate plans to do so.

Galletti Way is not included in this list since it is in the City of Sparks. Other crossings of SP tracks not on the main line include Fourth St., Record St., and Fifth St., all of which are on inactive SP rail spurs. Appendix B contains a SP list of these crossings along with maps showing their location. All public crossings in Reno have active warning devices (flashers, gates, or both).

4.07 Vehicular Traffic Levels

Traffic models for downtown Reno forecast significant growth in vehicular and pedestrian traffic on nearly every street. For instance, from 1990 to 2015 traffic volumes across the tracks on Virginia Street could increase by 7,400 vehicles per day, Center St. by 7,400 vehicles per day, and Sierra St. by 9,600 vehicles per day.[11] With train traffic doubling, conflicts between trains and vehicles or pedestrians could represent the greatest potential constraint to the smooth flow of traffic in the downtown area.[12] Appendix C contains excerpts from Barton-Aschman's Reno Downtown Traffic/Parking Study report showing these traffic estimates.

4.08 Pedestrian Traffic Levels

The City conducted a pedestrian count "under the arch" on Virginia Street on Tuesday, February 27, 1996. This data represented a low to moderate level of room occupancy and general activity in the downtown area. Peak hour pedestrian counts were 1,623 across the tracks at Virginia St. (1:00 to 2:00 PM). Pedestrian traffic levels fall off at the crossings east and west of Virginia Street.

This count does not represent pedestrian traffic levels that would correspond to a major downtown special event or even a busy weekend. Additional data would be required to quantify peak pedestrian levels during these times.

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[11] Reno Downtown Traffic/Parking Study, Dec. 1995, Barton-Aschman Assoc. & Strategic Project Management.
[12] Ibid.

4.09 Accident History

Police files indicate that 3 people have died in railroad crossing accident in Reno from 1970 through 1995. During that same period 18 people have been injured in vehicles, and 41 collisions have resulted in some level of damage. Three pedestrians have been killed and 2 more injured. These figures do not include trespasser incidents between crossings. Appendix E contains a summary of these accident statistics.

As mentioned in a previous section, all at-grade public crossings in Reno are equipped with active warning devices including bells, flashers, and gates. The crossing detail table in Appendix B provides a summary of the present warning systems.

4.10 Emergency Access

The Regional Emergency Medical Services Authority (REMSA) indicates that they received 28,956 calls requesting service in 1995. Of these calls, 835 patients were transported code 3 to hospitals with life threatening illness or injuries. A significant number of these code 3 transports traveled over railroad crossings. Longer queues and more frequent blockages will cause problems for some patients. Also, two crossings at the west end of town, Woodland Ave. and Del Curto Drive, are the only ingress or egress for the surrounding area. Emergency access is cut off during train blockages in these neighborhoods.

4.11 Public Transit

The Regional Transportation Commission (RTC) advises that 704 bus trips cross the railroad tracks in Reno each day. These buses are on routes 1, 6, 9, 10, 13, 14, 16, 18, 19, and 24. These buses carry 8,713 rider across the tracks each day. These crossings are taking place primarily at Sierra, Center, and Lake Streets. Current rail traffic delays buses for 2 to 3 minutes according to RTC. However, Amtrak trains have been known to delay buses for as much as 20 to 30 minutes.[13]

Another transit issue is trains blocking pedestrian access between the CitiCenter transit center and points south of the tracks. Passenger transferring from one bus to another will often miss their connection due to crossing blockages. As some routes currently operate at a one-hour frequency transit riders can be delayed up to an hour by even a short train. Longer or more frequent trains will exacerbate these problems.

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[13] Statistic provided by RTC in Jan. 29, 1996 letter to Reno Redevelopment Agency, copy on file.

4.12 Air Quality

The merger application indicates an increase in air pollutants proportional to the anticitpated increase in train traffic of 9 trains per day.[14] These pollutants include 8.23 tons per year of CO (Carbon Monoxide) and 1.34 tons per year of PM (Particulate Matter). Both of these pollutants are already in a non-attainment status in Air Quality Control Region (AQCR) 148 that includes Reno and Sparks. It appears that these numbers do not include any adverse air quality impact from idling vehicles stopped at crossings which could be significant.

4.13 Water Quality

The Truckee River provides drinking water for the entire Truckee Meadows population as well as communities downstream. Historically this stream has been the only reliable source of water for a region in which water is seasonally in short supply. While water quality has been good, this river is at risk from highway or railroad spills or releases between Reno and Truckee. We could find no record of a recent railroad hazardous material spill or release into the Truckee River above Reno, though we did hear of numerous spills in the Sparks rail yard.[15]

Groundwater issues have a significant bearing on any major infrastructure changes made to remediate the effects of this merger in the downtown area. Groundwater was one of the major concerns voiced by SP engineers during the planning of the proposed depressed trainway in 1980.

Groundwater depth is controlled to a large extent by surface flows in the Truckee River. Water is shallowest adjacent to the river with depths ranging from 10 to 15 feet. Water depths increase to the north in proportion to the distance from the river. Water in the area of the SP tracks is on the order of 20 to 30 feet deep. This depth typically decreases during the spring and early summer when high snow melt flows in the river recharge basin. In the fall and winter, groundwater levels decline as the underground flows reverse and the river becomes the gaining stream. Groundwater depths may vary 5 to 10 feet depending on the season.

Groundwater quality has been impacted by a variety of historical activities over the years. Kleinfelder performed a preliminary assessment of hydrocarbons in the groundwater for the City in the early 1980's. This study revealed the presence of floating products including heating oil. This material was being intercepted by various basement drainage systems and discharged to the Truckee River. Dissolved constituents of gasoline and diesel fuels (BTEX) have also been encountered in the uppermost unconfined aquifer. Several small scale remedial projects are now underway.

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[14] ICC Finance Docket No. 32760, <u>Railroad Merger Application</u>, Volume 6, Part 2, Table 2-22, Page 85.

[15] Based on conversations with a Sparks Fire Department representative.

The State commissioned a study which revealed widespread presence of chlorinated solvents at relatively low concentrations. These pollutants have also been discovered in at least one municipal well (Morrill Street site). The Washoe County Regional Water Management Agency is pursuing the creation of a remediation district encompassing most of the downtown to effect a clean-up.

5.0 IMPACTS OF MERGER

5.01 Proposed Merged UP/SP Operations

The merged railroads' operating plan (Plan) included in the merger application shows one passenger and 20 freight trains per day through Reno for an increase of 7 trains per day from current levels.[16] The Plan calls for an increase in train tonnage through Reno from the present level of 20 million to 33 million gross tons per year, an increase of 63%. However, the Plan's estimates are not consistent and don't seem to match historic data or projected future traffic levels. For instance, the numbers in the Plan do not include Burlington Northern Santa Fe (BNSF) trains, Reno Fun trains, Ski and special excursion trains, or local operations. The environmental report section of the merger application, however, indicates an increase in train traffic of 9 trains per day,[17] which is different than Volume 3. Also, the Plan only looks at what traffic levels will be the day after the merger changes and construction projects take place with no provision for growth.

The Plan showing 21 trains per day does not include the expected 6 BNSF trains, 1 Reno fun or ski train, or 2 local switching movements. In addition, it shows 10 trains diverted away from the UP's Feather River route while only 7 are added to the Donner route.[18] Based on conversations with SP operating officers we believe that some trains might be diverted from the Feather River or Donner Pass routes to other rail routes including Roseville to Oregon and Roseville to southern California. We cannot, however, account for all trains removed from the Feather River route. We also believe that the Plan does not account for peak volumes that occur seasonally.

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[16] ICC Finance Docket # 32760, Railroad Merger Application, Volume 3, Page 385.
[17] Ibid., Volume 6, Page 2, Pages 56 and 93.
[18] The 7 trains would increase to 9 if the figures in Volume 6, Part 2 are used.

We estimate that actual post-merger traffic will be 34 through-freight, 2 passenger (on average), and 2 local trains per day through Reno for a total of 38 trains per day.[19] Historical trends factored into this estimate take into account the 22 trains per day moving through Reno in 1980,[20] the former Western Pacific Railroad (WP) operation of 6 trains per day, anticipated BNSF traffic of 6 trains per day,[21] expected and historic passenger train activity at 2 trains per day on average, and 2 movements of the local switch engine between Sparks and West Reno. This projection also takes into account the growth anticipated in rail traffic in and out of the Port of Oakland as part of their major expansion plans. The Port of Oakland is anticipating 6% average annual growth in rail demand. With UP's enhanced competitive position over the central corridor brought on by this merger, intermodal traffic through Reno should grow at a rate at least equivalent to this rate.[22]

Southern Pacific historically operated over Donner Summit with trains that ranged up to 8,000 feet in length and 10,000 tons. Trains of 7,000 feet (8,000 tons) or greater generally required helper locomotives to negotiate the 2.6% grade and heavy curvature. SP trains historically averaged around 6,000 feet in length.[23] Union Pacific operating personnel have indicated that they will probably operate most trains on this route without helper locomotives, indicating that most trains will not exceed 7,000 feet. We believe average post-merger train lengths will be around 6,500 feet with a few in the 7,000 to 8,000 foot range using helper locomotives. UP could, however, choose to operate standard-length 8,000 foot trains should business and locomotive availability favor the use of helper locomotives on this route segment.

Hazardous materials are most generally handled in manifest trains under strict positioning rules and regulations. Cars must be placarded identifying the commodity or chemical being moved. According to statistics from the American Association of Railroads (AAR) movement of these chemicals by rail is considerably safer that movement over the road. It is possible that a modest increase of this traffic will occur through Reno as a result of this merger. However, heavier and slower manifest trains most likely to carry these commodities will probably be routed

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

[20] 1980 represents the year of the Reno trainway bond issue vote.

[21] Verified statement of Mr. Neal D. Owen in BN/Santa Fe's Comments on the Primary Application, December 29, 1995, representing a possible diversion from their Southern California to Chicago route. This study assumes all 6 BNSF trains will use the Donner Pass route due to its reduced operating costs. Diversion to the Feather River route would reduce this number; however, increases due to additional business could offset these reductions.

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

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

through the Feather River line to avoid delaying the expedited intermodal and auto trains using the Donner route.

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

The merged operating plan indicates that UP will reduce their Reno branch operation to one local train per day from North Reno to Reno junction. They will also move their intermodal and automotive operations from North Reno to Sparks. This move will require an eventual expansion of SP's current intermodal facility at Sparks.[24]

5.02 Traffic Effects

As part of this study our team calculated the average time crossing gates would be down at a typical downtown Reno crossing for a variety of train lengths. We determined that a 6,000 foot train traveling at 20 mph would result in gates down for 3.9 minutes; a 6,500 foot train would hold gates down for 4.2 minutes; and a 1,500 passenger or local freight train would keep gates down for 1.4 minutes. We estimated that current gate down time based on 14 trains per day (11 freight, 1 passenger, and 2 local switching movements) would be 52.7 minutes per day. This number compares well with actual field measurements made by the City's traffic control computer for 4 downtown crossings in January, 1996.[25] Based on these assumptions we estimated that downtown traffic on the 8 crossings from and including Washington to Lake are presently causing around 4,314 minutes of delay to vehicles stopped for trains. Using this same methodology we estimated the delay that might occur by 2015 based on projected train and vehicular traffic levels downtown. For the same crossings we calculated a total of 18,952 minutes of delay to vehicles stopped for trains, an increase of 339%. This corresponds to each crossing being blocked about 133 minutes each day. See the table in Appendix D for a detail of these estimates.

These crossing blockage estimates do not account for a situation where two trains simultaneously converge on the downtown area. In this case some crossings would stay down for up to 8.5 minutes. Traffic stopped on streets such as Virginia, Center, or N. Arlington would probably gridlock several cross streets under such conditions.

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[24] UP-SP Common Point Team #3 Report, Area #6, and Intermodal Rationalization Summary.
[25] Memo dated 1/30/96 from Mr. Jim Position, City of Reno traffic department, copy on file, showing a range of total crossing closures from 41 min. 33 sec. to 54 min. 21 sec. on Sierra, Center, Virginia, and Sutro Streets from 5 Jan. to 25 Jan, 1996.

Based on available figures, we estimate that current levels of crossing delay are costing motorists $163,000 per year. Without mitigation, this cost could climb to $720,000 per year by the year 2015.

5.03 Environmental Assessment Thresholds

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

The ICC thresholds also apply to railroad yards and intermodal facilities. Based on criteria contained in the merger application,[26] the virtual doubling of activity at SP's intermodal facility at Sparks should require both an air quality and noise analysis for that location. However, the merger application does not contain such an analysis.

5.04 Air Quality

Kleinfelder estimated vehicular air emissions resulting from an increase in the number of trains traveling through Reno, Nevada. Emissions of volatile organic compounds (VOC), carbon monoxide (CO), oxides of nitrogen (NO_X), and particulate matter with aerodynamic diameter less than 10 microns (PM_{10}) occur when vehicles decelerate to a train crossing, idle, and then accelerate from the train crossing. The number of train trips through the area is expected to increase from 13.6 trains/day (1993 estimate) to 38 trains/day. The methods used to calculate vehicular emissions due to future train traffic are presented below. The results of all emission calculations are provided on the attached spreadsheets.

Vehicular air emission factors for VOC, NO_X, and CO due to train-caused delays were estimated using the United States Environmental Protection Agency's (U.S.EPA's) MOBILE5a model. Included as VOC are all non-methane and non-ethane hydrocarbons and aldehydes. MOBILE5a is useful for the analysis of air pollution impacts from gasoline and diesel-fueled highway mobile sources. The model calculates pollutant emission factors for eight individual vehicle types in two regions (low and high altitude areas). The emission factor estimates depend upon such conditions as ambient temperatures, average travel speed, operating modes, fuel type

[26] ICC Finance Docket No. 32760, Railroad Merger Application, Volume 6, Part 1, Page 5.

(e.g. oxygenated, reformulated, etc.), fuel volatility, and mileage accrual rates. Conditions such as the possibility of fuel system tampering and the existence of an inspection and maintenance program can be taken into account. MOBILE5a supersedes MOBILE4.1, incorporating several new options, calculating methodologies, emission factor estimates, and emission control regulations.

In order to account for differences in fuel types used and ambient temperatures from month to month, 12 separate monthly runs of MOBILE5a were completed. Model inputs were based almost exclusively upon data used by the state of Nevada to prepare a State Implementation Plan (SIP). Only the average vehicle speed was changed. It was assumed that inspection and maintenance and anti-tampering programs are in place. Oxygenated fuels were assumed to be used for 4 months of the year (October through January). For each month, the emission factor in grams/mile (g/mile) for each pollutant emitted per vehicle was obtained from MOBILE5a output. As described below, the emission factors were then used to calculate monthly emissions of each pollutant for all vehicles delayed at the train crossings. Annual emissions of each pollutant were obtained by summing the monthly emissions.

Each day, an estimated total of 125,283 vehicles travel over train tracks at 16 train crossings. About 38 trains are expected to pass through Reno, with an expected delay time of 9.5 minutes per train. The total delay time will be 38 x 9.5 minutes, or about 6 hours/day (6 hrs/day was the estimated blockage at the time the model was run. Lower levels of blockage would adjust pollution levels proportionately). Assuming vehicles pass over the tracks at a constant rate, the number of vehicles that will be delayed is calculated as 6 hours/day divided by 24 hours/day x 125,283 vehicles, or 31,321 vehicles delayed.

Much of the vehicular air emissions released during a train-caused delay occur when vehicles begin a phased cycle: 1) decelerating, 2) idling and, 3) accelerating. Daily emissions for each pollutant from vehicle deceleration (including the contribution to VOC emissions from exhaust, running losses, resting losses, and evaporation) were estimated by multiplying the emission factor (g/mile) obtained from MOBILE5a applicable to a given month by the length of the deceleration zone (assumed to be 200 feet) and the number of vehicles delayed (31,321). The emission factors were based upon a conservative input average vehicle speed of 2.5 miles/hour. The total emissions of each pollutant in each month were estimated by multiplying the daily emissions by the number of days in that month. Then monthly emissions were summed to obtain annual emissions

The minimum average vehicle speed MOBILE5a accepts is 2.5 miles/hour, and idling emissions are not calculated. To allow for this fact, to estimate idling emissions, MOBILE5a model was run with an input vehicle speed of 2.5 miles/hour, obtaining g/mile of each pollutant emitted from each vehicle. As required by U.S. EPA guidance (*Estimating Idle Emission Factors Using MOBILE5*, July 30, 1995), the emission factor for each pollutant (in g/mile) was converted to an emission rate (in g/hr) by multiplying by 2.5 miles/hour. Only the exhaust portion of VOC emissions were considered for idling, as suggested by U.S. EPA guidance. Daily emissions of each substance in each month were then calculated by multiplying the emission rate for each vehicle by the number of vehicles delayed, adjusting for the average delay time of each vehicle per day (9.5 min/day). Monthly and annual emissions of each pollutant were calculated using the procedures stated above for deceleration emissions.

Daily emissions for each pollutant from vehicle acceleration (including the contribution to VOC emissions from exhaust, running losses, resting losses, and evaporation) were estimated by multiplying the emission factor applicable to a given month by the length of the acceleration zone (assumed to be 150 feet) and the number of vehicles delayed (31,321). As with the deceleration emission calculations, the emission factors were based upon a conservative input average vehicle speed of 2.5 miles/hour. Monthly and annual emissions of each pollutant were then calculated using the procedures stated above for deceleration emissions.

Vehicular emissions of PM_{10} were estimated using emission factors stated in the South Coast Air Quality Management District's (SCAQMD's) California Environmental Quality Act (CEQA) manual, which is based upon the EMFAC7 model. The vehicle exhaust PM_{10} emission factors are 0.01 g/mile for light-duty vehicles (under 6001 lb vehicle weight), and 0.47 lb/mile for heavy-duty vehicles (over 6000 lb vehicle weight). PM_{10} emissions due to tire wear were ignored for this analysis, because tire wear emissions would already occur without a train-caused delay. Based upon the default vehicle mix assumed for the MOBILE5a model, 91.2% of the vehicles were assumed to be light-duty vehicles, and 8.8% were assumed to be heavy-duty vehicles. The deceleration, idling, and acceleration emissions were then calculated using methods stated above for other pollutants, accounting for a PM_{10} emission factor weighted by vehicle type. The emission factor for idling (g/mile) was converted to an emission rate (g/hr) by multiplying by 5.0 miles/hr instead of 2.5 miles/hr, since the EMFAC7 model runs were completed using an average vehicle speed of 5.0 miles/hr.

The results of emissions calculations are presented in the attached spreadsheets. The total estimated annual vehicular air emissions of VOC, CO, NO_X, and PM_{10} due to 38 train trips through the Reno area are 85.4 tons/year, 1,112 tons/year, 24.8 tons/year, and 0.55 tons/year, respectively.

The merger application indicates an increase in air pollutants from locomotives proportional to the anticipated increase in train traffic of 9 trains per day.[27] These pollutants include 8.23 tons per year of CO (Carbon Monoxide), 1.34 tons per year of PM (Particulate Matter), 2.65 tons per year of HC (volatile Hydocarobons), and 61.60 tons per year of No_x (Nitrogen Oxides). The air Quality Control Region (AQCR) 148 that includes Reno and Sparks is in a non-attainment (NA) status for PM, CO, and Ozone (Ozone is formed during complex photochemical reactions between No_x and HC in the preence of sunlight). However, if these pollution number are adjusted for the correct number of anticipated trains, they would indicate 22 tons per year of CO, 3.6 tons per year of PM, 7 tons per year of HC, and 165 tons per year of No_x. These numbers do not include added air pollutants from idling vehicles trapped in queues behind crossing gates.

[27] Ibid, Part 2, Table 2-22, Page 85.

5.05 Noise

Page 56 of Volume 6, Part 2, Page 56 of the merger application contains the following quote:

> "Reno, NV: The line runs through the center of Reno. There are several grade crossings along the tracks. The area is mainly industrial and commercial, but there are residential areas near Sparks, on the western edge of town, and near the tracks throughout the middle of town."

Table 2-14 on page 58 indicates that Reno has 41 sensitive receptors pre-merger and 146 post-merger. This number does not account for the actual number of additional trains, nor does it seem to match the actual number of sensitive receptors, especially in the downtown area. In fact downtown Reno is a high-density commercial and recreational area with 13,075 licensed hotel and motel rooms within one-half mile of the tracks along with 362 single family and 1,770 multi-family residential units. Over 9,000 hotel rooms are within 1,500 feet of the tracks. Hotel and motel room capacity has grown by over 18% in the last 5 years with this trend continuing.

The precise effect of added noise due to this merger cannot be determined without a more extensive study.

5.06 Water Quality and Toxics

Neither the existing nor the proposed rail routes lay near CERCLIS, NPL, or RCRA sites under remediation or investigation of releases of hazardous or regulated materials.

Both routes pass near sites with registered USTs, sites undergoing leaking UST cleanups, and near both large and small quantity RCRA generators. The existing route passes 24 sites with registered USTs, four active leaking UST cleanup sites, seven RCRA SQGs, and three RCRA LQGs. The alternate I-80 route passes eight sites with registered USTs, two active leaking UST cleanup sites (one is nearly complete), seven RCRA SQGs, and five RCRA LQGs.

The existing route traverses directly over the groundwater PCE plume and passes over the northern edge of the groundwater hydrocarbon plume. The alternate I-80 route passes over the known northern edge of the PCE plume, but avoids the hydrocarbon plume.

Groundwater depths vary from less than 20 feet below ground surface to greater than 60 feet below ground surface. Generally, the depth to groundwater is deepest the I-80 alternate route and shallowest along the existing route.

Southern Pacific Railroad

Input Data

AVT	125,283	vehicles/day (all streets)
Veh. delayed	31,321	vehicles/day (all streets)
Delay Time	9.5	min/vehicle
Accel. Zone	200	ft
Deaccel. Zone	150	ft

Emissions Due to Rail Crossings in Reno Calculated Using MOBILE5.0a

	Emission Factors				Idling Emissions			Decel./Accel. Emissions		
Month	Idling VOC (g/mile)	All VOC (g/mile)	CO (g/mile)	NOx (g/mile)	VOC (tpy)	CO (tpy	NOx (tpy)	VOC (tpy)	CO (tpy	NOx (tpy)
JAN	17.32	17.33	204.85	4.67	7.34	86.8	1.98	1.23	14.5	0.331
FEB	16.56	23.58	241.53	4.48	6.34	92.4	1.71	1.51	15.5	0.287
MAR	15.72	25.56	238.72	4.40	6.66	101	1.86	1.31	16.9	0.312
APR	14.96	28.90	235.09	4.31	6.13	96.4	1.77	1.98	16.1	0.296
MAY	12.58	18.98	186.18	4.16	5.33	78.9	1.76	1.35	13.2	0.295
JUN	11.75	16.25	172.75	4.07	4.82	70.8	1.67	1.12	11.9	0.279
JUL	10.95	17.11	162.63	3.94	4.64	68.9	1.67	1.21	11.5	0.280
AUG	10.95	17.11	162.63	3.94	4.64	68.9	1.67	1.21	11.5	0.280
SEP	11.01	15.90	160.96	4.00	4.51	66.0	1.64	1.09	11.1	0.275
OCT	12.29	29.34	165.97	4.18	5.21	70.3	1.77	2.08	11.8	0.297
NOV	14.15	22.20	174.09	4.43	5.80	71.4	1.82	1.52	12.0	0.304
DEC	15.93	15.94	190.2	4.58	6.75	80.6	1.94	1.13	13.5	0.325
TOTAL					68.2	952	21.3	17.3	160	3.56

SUMMARY OF EMISSIONS

Substance	Idling (tpy)	Decel./ Accel. (tpy)	Total (tpy)	Source of Emission Factors
VOC[1]:	68.2	17.3	85.4	Mobile 5.0a model runs
CO[1]:	952	160	1,112	Mobile 5.0a model runs
NOX[1]:	21.3	3.56	24.8	Mobile 5.0a model runs
PM_{10}[2]	0.50	0.0422	0.546	SCAQMD CEQA Manual (EMFAC7EP factors)

[1]For idling, g/mi values were multiplied by 2.5 mi/hr to obtain g/hr. Decel./accel. emissions conservatively assume a vehicle speed of 2.5 mi/hr.

[2]About 88% of vehicles are assumed to be under 6000 GVW (the default Mobile5a assumption). Emissions do not account for tire wear.

Figure 5-1

5.07 Emergency Services -Public Safety

The service infrastructure of the City of Reno is impacted to a great extent by the proposed merger of Union Pacific and Southern Pacific Railroads. While the community has built-up around the railroad environment, the significant increase in utilization of the corridor by virtue of the post-merger Union Pacific operation and the additional traffic occasioned by the use of trackage by Burlington Northern/Santa Fe has pointed out the danger and adverse impact of the rail operation in downtown Reno. While the impacts on air, water and ambient noise levels can be quantified, the following comments from the Reno Chief of Police clearly describe the impact of having a major rail operation cut through the center of a 24-hour tourism based community.

> *Delays* - There is little question that the closure of the main street thoroughfares as a result of train usage hampers our police response and patrol ability on a daily basis. The Police Department had divided the City into three policing districts. Two south districts are basically divided by the train tracks from the north district. This districting, which spans the entire west and east limits of the city, is not the most effective districting method but has been forced on the department because of the physical barrier trains create during an emergency response. Because of police staffing shortages and workload increases, police dispatchers routinely cross-dispatch north officers to emergencies and routine calls in the south part of town and vice versa. North district officers routinely cover officers on the south side of the train tracks. Train traffic has been a problem for years to responding police units, fire units, and paramedics, forcing the time consuming rerouting of personnel to avoid trains. This situation has become much worse in the past few years because of population growth, increased calls for service, and fewer police officers. In many cases, emergency vehicle delays result in a domino effect resulting in a time delay that impacts almost all our pending calls for service. In emergency and critical incident response cases, these delays require an immediate tactical redeployment of resources to insure an adequate response, leaving many of our citizens confused and irate when the police need to leave their call to respond to another with a higher response priority. The continual bisecting of special event activities downtown by trains already hampers the ability of police to control the events.
>
> *Post-Merger Delays* - Any increase in train traffic, length, or decrease in speed will have a direct impact in the following areas:
>
> 1) Police response times will increase to emergency and non-emergency calls which are cross-dispatched. Cross-dispatching is routine and occurs 24 hours per day because of current police staffing shortages. Citizen response time complaints will increase.
> 2) Officer safety and citizen safety will be impacted by delayed response of police units to assist officers needing cover, police response to injury traffic accidents, or any other citizen injury type call.
> 3) Increased train crossing traffic violations will occur. Currently, impatient drivers ignore crossing arms to beat oncoming trains, make U-turns, or drive the wrong way to find an escape route to avoid train delays. Adding train traffic will exacerbate this already dangerous situation.

4) Special events management will deteriorate as trains bisect parades, static display street closures, and major special events.
5) Intoxicated pedestrians (tourists, transients, and locals) currently race across tracks to avoid trains. Their impaired condition increases the potential for an injury. Massive special event crowds, combined with noise levels of the event, often force pedestrians too close to train tracks. Reno's entertainment industry often results in tourists and local citizens being intoxicated or under the influence of alcohol in the downtown area.

Policing Problems - The physical environment created by the railroad tracks downtown serves as a magnet for local transients, bums, drug dealers, and even provides weapons for unruly crowds. Consider the following:

1) Our local population of street criminals congregate on railroad tracks right-of-ways behind buildings, crossing arms, and underpasses because these areas are often hidden from direct view of police officers. The right-of-way also makes excellent places of operation for panhandlers, strong arm robbers, and permanent homeless residents to accost our citizens. The railroad provides no immediately available property owner or security to monitor this problem and help regulate this crime. Since property owners throughout downtown prohibit this activity on their properties and can authorize trespassing arrests to remove petty criminals, the situation has forced many petty criminals onto the railroad right-of-way.
2) The railroad bed includes rocks, broken bottles, cans, grease, oil, and dirt. Rocks and bottles are routinely used during fights among petty criminals, provide drunks ammunition during major special events, and are hard to navigate by pursing officers.

Other Impacts - The presence of the railroad tracks in their current location represents a mixture with our economy not unlike oil and water. They are a critically dangerous segment of our downtown area in which we contain thousands and thousands of residents, tourists, gamers, and visitors. The police department has had to physically adapt its emergency operations to accommodate the train tracks. However, the accommodations are not in the best interest of the City.

Note: Additional information concerning public safety has been received but is not included here.

5.08 Economic Effects of Merger on the Railroad

The combined UP/SP route between Oakland and Chicago will be shorter than the UP or the SP route. Mileage reductions will come from combining parts of the UP and SP routes to create a new route much shorter than either railroad's present system. Oakland to Chicago, via Reno, will show a reduction of 388 miles from SP's present route and 189 miles from UP's line.[28]

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

This merger will generate significant net savings to UP. Overall it will benefit the merged system approximately $750 million.[29] Operating savings coming from changes to yards and intermodal facilities in Reno and Sparks contribute about $400,000 annually to this figure.[30]

6.0 MERGER SCHEDULE

The City made the obligatory Notice of Intent to Participate by the January 16, 1996, deadline and is now listed as a party of interest. Any inconsistent and responsive application, comment, protest, request for conditions, or opposition evidence or argument is due not later than March 29, 1996. The City must now determine if it will prepare and submit verified statements to the Surface Transportation Board (STB). If these statements are to be submitted they must meet the March 29, 1996, deadline, and the City should be prepared to provide testimony before the STB supporting these statements if necessary.

7.0 CONCLUSION AND DISCUSSION

7.01 Problem Statement

Throughout this study we have attempted to more sharply focus the challenges caused by this merger into a concise problem statement. We have determined that along with the problems brought on by a significant increase in train traffic through Reno comes an opportunity to solve a long-standing problem, now brought back into the spotlight. This problem statement has evolved into the following:

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

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[29] Ibid., Page 93.
[30] UP-SP Common Point Team #3 Study, Page 2.

7.02 Potential Solutions

We have heard from a large number of intelligent, articulate, and informed professionals, civil servants, and residents concerning possible "fixes" for this problem. Most have been well conceived. Following is a brief list of the alternatives now being seriously discussed:

- No action
- A fully depressed trainway
- A partially depressed trainway
- Limited grade separations (underpasses or overpasses)
- Railroad relocation, possibly to the I-80 corridor

Throughout our discussions we have heard the recurring theme of combining a number of different transportation facilities such as pipelines, fiberoptics, power, water, and sewer into the same corridor. This "Transportation Corridor" concept could allow much more efficient use of valuable property and should be pursued.

7.03 Suggested Action Items

We suggest the following action items be considered be the City.

1. Union Pacific should provide financial assistance in finalizing the study effort which will identify reasonable mitigation efforts to resolve impacts on the downtown Reno area while increasing the efficiency of the railroad operation through downtown Reno.

   In order to clearly identify the impacts of the post-merger condition and to accurately assess the alternatives, additional engineering studies should be initiated and complete. The City of Reno has committed considerable effort and funds to move the project to the current stage. Additional funds should be forthcoming from Union Pacific to complete the initial engineering studies and to conduct a full alternatives analysis and /or major investment study. These studies, while expensive, would clearly delineate the alternatives and investments necessary to allow for informed decision making.

2. The Union Pacific and City of Reno should establish a mutually acceptable schedule to complete the study effort described in No. 1.

3. The Union Pacific and City of Reno should cooperatively develop a strategy to help resolve all of the issues which may impact identified implementation scenarios.

Legislative action at the state level - In order to implement a selected alternative, it may be necessary to develop a specific legislative program providing for legislative change. The Union Pacific could play a key role in this activity.

Legislative action at the federal level - Although current funding levels of ISTEA are limited, this is clearly a source of funding which should be explored.

Identification of potential funding sources - Private funding sources, as well as local, state and federal funding should all be considered for each mitigation element. Initially, in order to expedite the alternative analysis, it is suggested that funding be provided by Union Pacific to allow quick and complete evaluation of the alternatives. A major investment analysis should be performed and the task should be initiated as quickly as possible.

4. Establish a project coordination team to assure the timely and effective resolution of the issues and implementation strategies.

This coordination team should be composed of members of the consulting team, City of Reno, Union Pacific and other stakeholders. A team approach to identifying problems and finding solutions will clearly benefit all parties to the effort.

STB FD 32760 3-29-9~~8~~6 D 62226 2/2

APPENDIX A

RAILROAD TRACK CHARTS AND MAPS

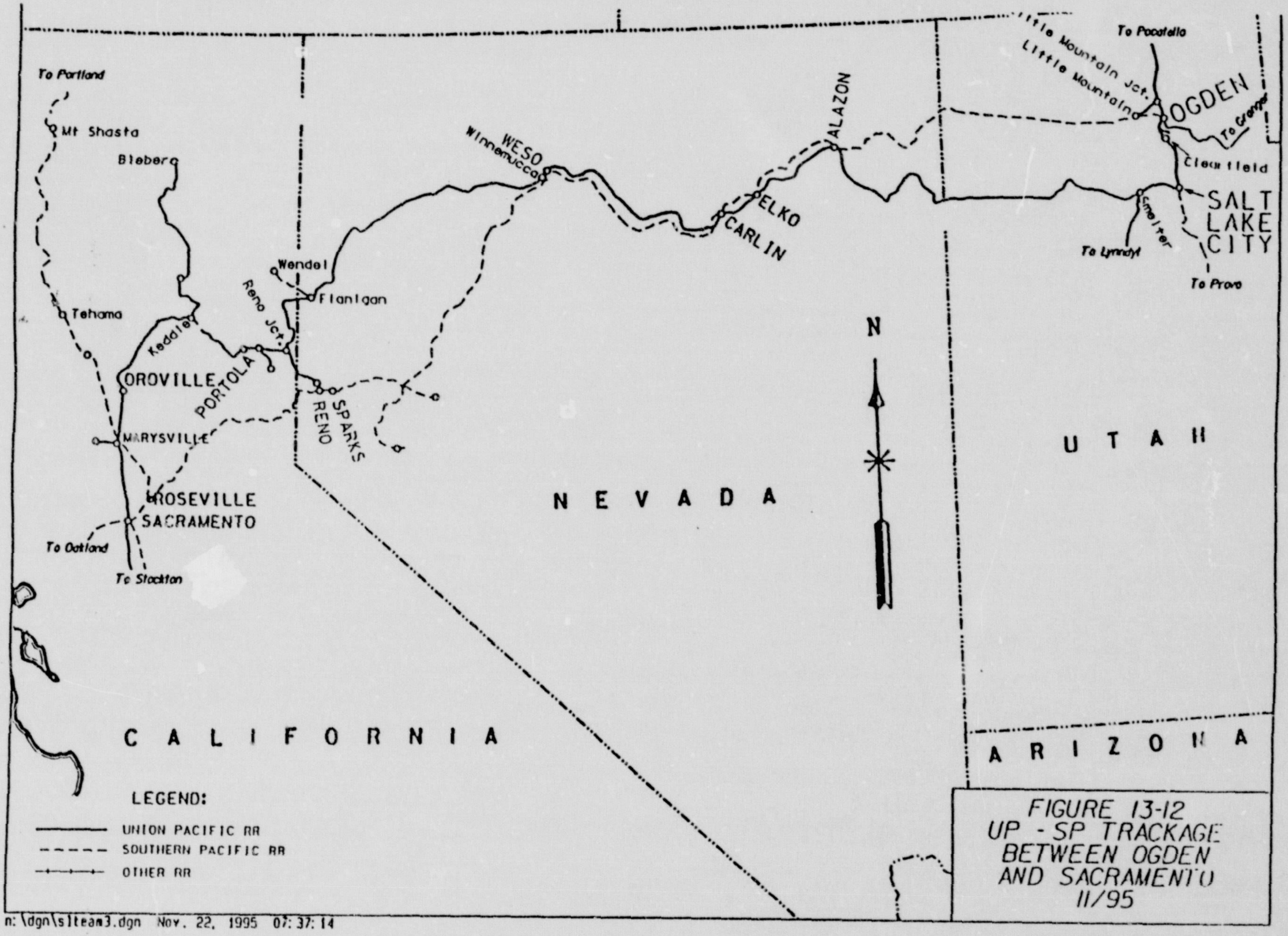
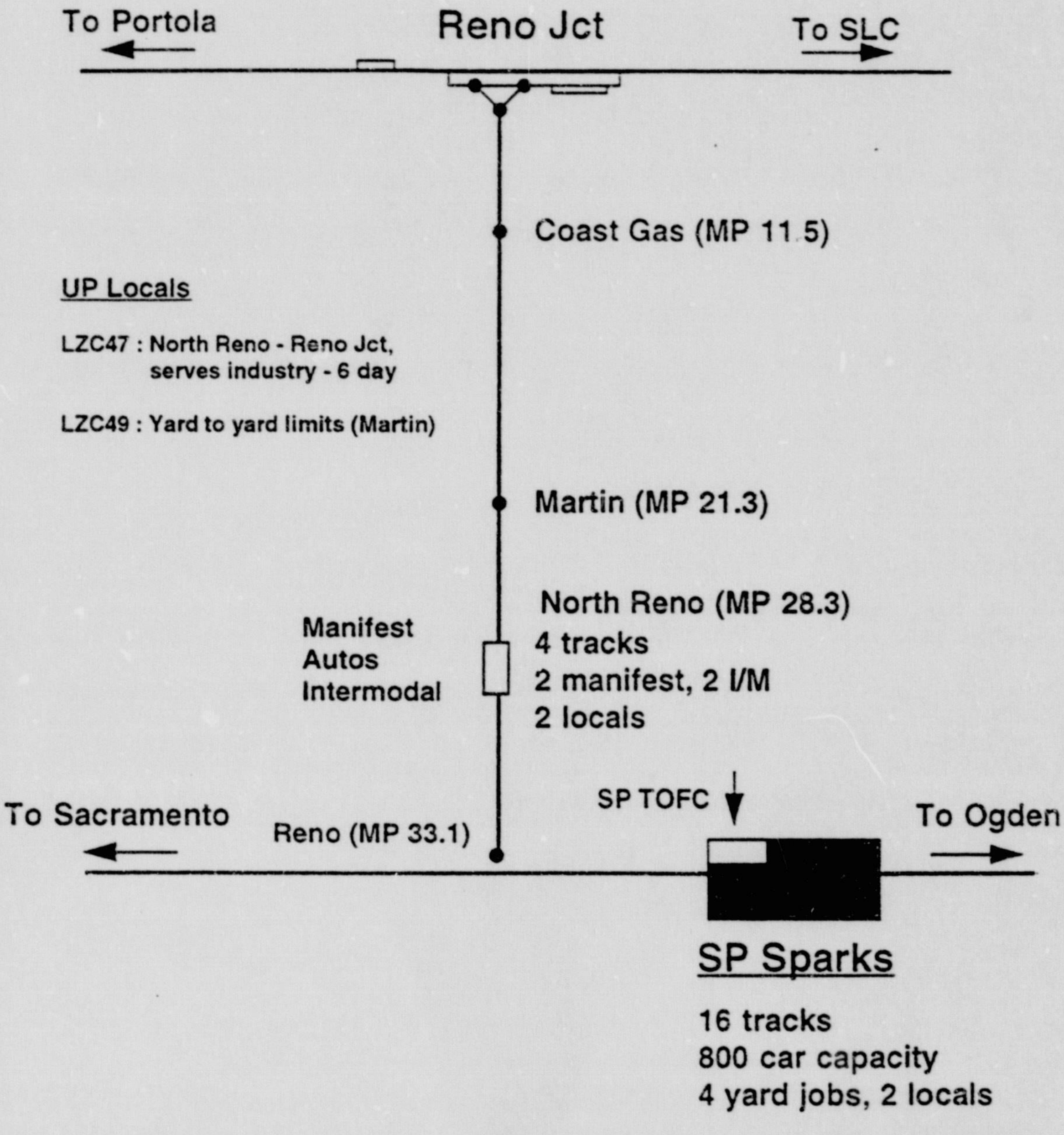
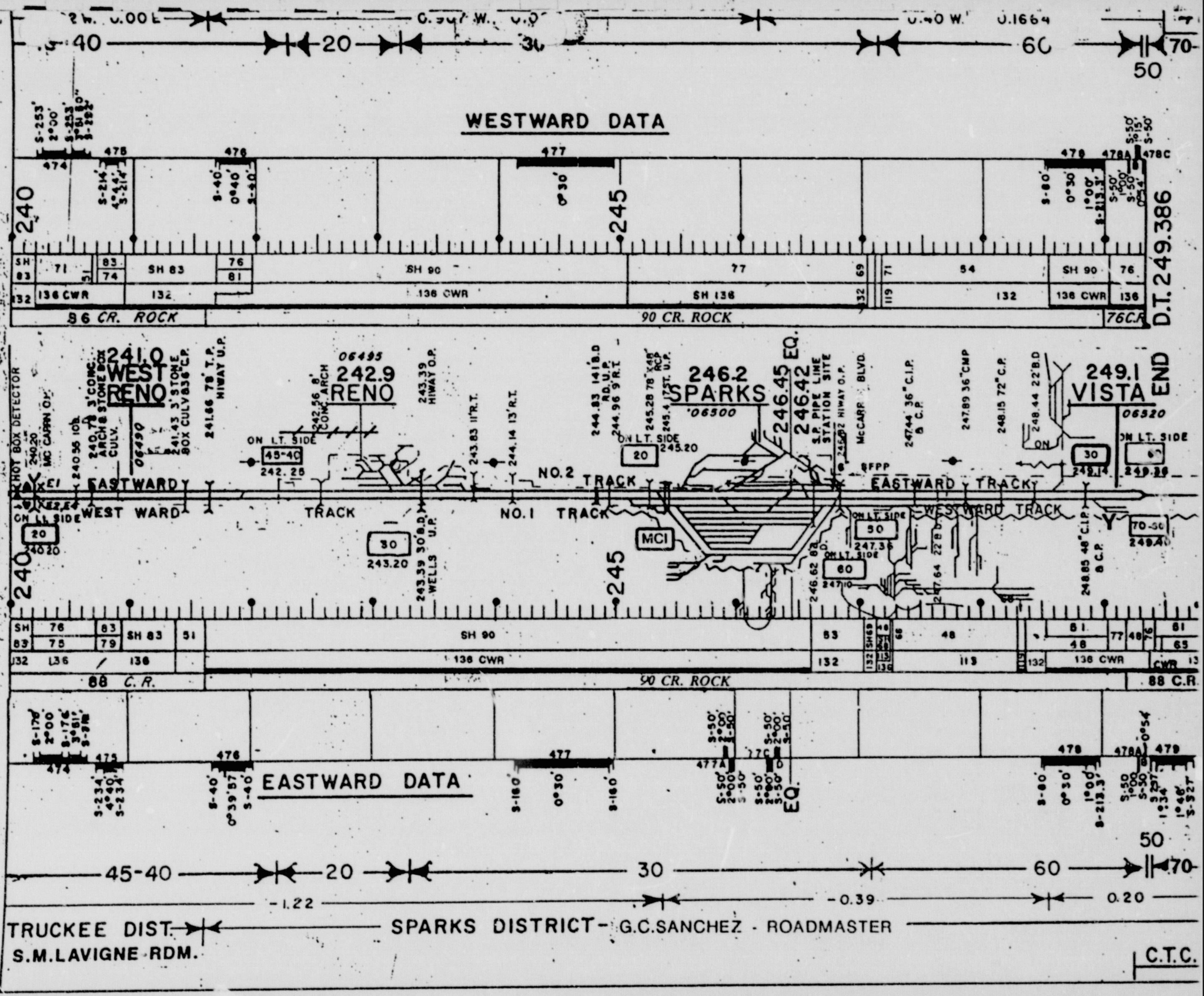


FIGURE 13-12
UP - SP TRACKAGE
BETWEEN OGDEN
AND SACRAMENTO
11/95

n:\dgn\slteam3.dgn Nov. 22, 1995 07:37:14

UP/SP Reno Current Operations




WESTWARD DATA
240
245
D.T. 249.386
86 CR. ROCK
90 CR. ROCK
76C.R.
SH 90
136 CWR
SH 136
241.0
WEST
RENO
06490
242.9
RENO
06495
246.2
SPARKS
06500
246.45
246.42
EQ.
249.1
VISTA
06520
END
HOT BOX DETECTOR
MC CARRAN O.P.
EASTWARD TRACK
WEST WARD TRACK
NO. 2 TRACK
NO. 1 TRACK
ON LT. SIDE
MCI
S.P. PIPE LINE STATION SITE
McCARRAN BLVD.
REVISED: JANUARY 1, 1996
88 C.R.
90 CR. ROCK
88 C.R.
EASTWARD DATA
45-40
20
30
60
70
50
-1.22
-0.39
0.20
TRUCKEE DIST.
S.M.LAVIGNE RDM.
SPARKS DISTRICT - G.C.SANCHEZ - ROADMASTER
C.T.C.

APPENDIX B

CROSSING DATA AND LOCATIONS

TLUC

DETAIL OF CROSSINGS BY LOCATION

-LROAD ID	FEDERAL DOT NUMBER	STATION		STREET OR ROADWAY	PRESENT WARNING SYSTEM	DATE IN SERVICE	CROSSING SURFACE
- 234.58-A	740713A	MOGUL		I 80 OVERPASS			
- 234.98-BX	740712T	MOGUL		PRIVATE UNDERPASS			
- 235.40-X	740714G	MOGUL		CANEPA RD (PRIV'TE)			FULL PLANK
- 235.60-	740715N	MOGUL		MOGUL ROAD	2 9	11/09/83	PLASTIC
- 235.81-	740716V	MOGUL		MOGUL ROAD	2 9	11/09/83	PLASTIC
- 236.10-X	740717C	MOGUL		PRIVATE CROSSING			FULL PLANK
- 237.00-X	740718J	LAWTON		GEORGE I.BENNY XING.	2 9 I 8	03/14/66	FULL PLANK
- 237.75-C	740903D	LAWTON		WHITE FIR			ASPHALT
- 238.00-	740719R	LAWTON	1	WOODLAND AVE.	2 9	04/06/73	ASPHALT
- 238.40-B	762080Y	LAWTON		MAYBERRY RD UNDERPAS			
- 238.75-X	740720K	LAWTON		PRIVATE CROSSING			ASPHALT
- 240.04-A	753563G	WEST RENO		MCCARRAN BL OVERPASS			
- 240.40-	740722Y	WEST RENO	2	DEL CURTO DRIVE	2 9	07/31/80	HEADERS
- 241.63-B	740723F	WEST RENO		WEST SECOND ST U.P.			
- 241.85-C	740893A	WEST RENO		WEST FOURTH STREET			
- 242.10-	740724M	RENO	3	KEYSTONE ST	2 9A	07/18/80	RUBBER
- 242.20-	740725U	RENO	4	VINE ST	2 9A	12/07/77	PLASTIC
- 242.30-	740726B	RENO	5	WASHINGTON ST	2 9	05/23/80	PLASTIC
- 242.38-C	740896V	RENO		FIFTH STREET	NOT ON MAIN LINE		ASPHALT
- 242.45-	740727H	RENO	6	RALSTON STREET	2 9	07/25/80	PLASTIC
- 242.60-	740728P	RENO	7	N ARLINGTON ST	2 9A 3G10	03/12/80	RUBBER
- 242.70-	740729W	RENO	8	WEST ST	2 9A 4G10	09/04/80	PLASTIC
- 242.74-	740730R	RENO	9	SIERRA ST	2 9A 4G10	04/16/80	RUBBER
- 242.81-	740731X	RENO	10	VIRGINIA ST	2 9A 4G10	04/18/80	RUBBER
- 242.88-	740732E	RENO	11	CENTER ST	2 9A 4G10	05/16/80	RUBBER
- 242.95-	740733L	RENO	12	LAKE ST	2 9A 4G10	06/27/80	PLASTIC
- 243.11-C	762076J	RENO		RECORD	NOT ON MAIN LINE		
- 243.37-C	740734T	RENO		FOURTH STREET	2 8A	01/30/81	
- 243.40-A	740735A	RENO		WELLS AVE OVERPASS			
- 243.50-	740736G	RENO	13	MORRILL AVENUE	2 9	04/24/81	ASPHALT
- 243.68-	762088D	RENO	14	SUTRO STREET	2 9A 2 9	06/16/89	RUBBER
- 243.91-	753815F	RENO	15	SAGE STREET	2 9	07/10/90	RUBBER
- 244.23-A	740739C	RENO		US 395 OVERPASS			
- 244.33-C	762072G	RENO		HAROLDS SPUR	PRIVATE		
- 244.38-C	762073N	RENO		NEV PURCHASING RD	PRIVATE		GRAVEL/DI:
- 244.41-C	762074V	RENO		NEV PURCHASING SP	PRIVATE		
- 244.46-C	762075C	RENO		NEV PURCHASING RD	PRIVATE		ASPHALT
- 244.65-	740740W	SPARKS		GALLETTI WAY	2 9	11/02/76	RUBBER
- 244.80-B	740741D	SPARKS		KIETZKE LANE U.P.			
- 245.34-C	762065W	SPARKS		18TH ST			ASPHALT
- 245.40-B	740742K	SPARKS		ROCK BLVD UNDERPASS			
- 245.69-C	762066D	SPARKS		15TH ST EXTENSION			ASPHALT
- 246.27-C	740898J	SPARKS		FREEPORT BLVD			ASPHALT
- 246.29-C	740899R	SPARKS		GREG STREET	2 9A	02/10/86	ASPHALT
- 246.40-C	740897C	SPARKS		GLENDALE AVE	2 9A	01/04/85	HEADERS
- 246.45-C	762071A	SPARKS		SEARS			GRAVEL/DI.
- 246.90-A	740743S	SPARKS		MCCARRAN BLVD O.P.			
- 246.95-C	740900K	SPARKS		EAST GLENDALE			ASPHALT
- 247.19-C	762070T	SPARKS		S S KRESGE CO			

APPENDIX C

CROSSING TRAFFIC LEVELS

APPENDIX C

CROSSING TRAFFIC LEVELS

APPENDIX C

CROSSING TRAFFIC LEVELS

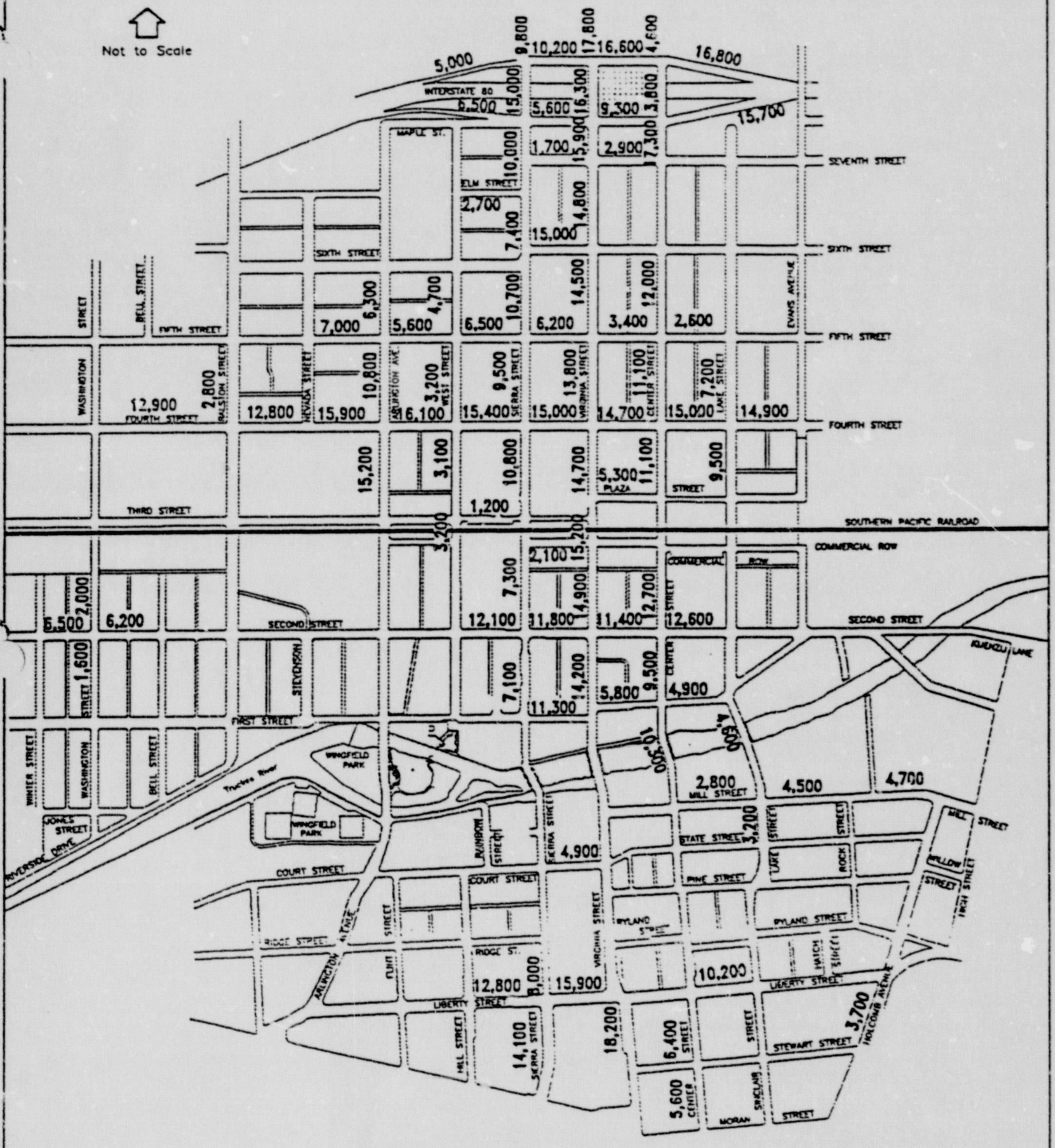


Figure 11

EXISTING AVERAGE DAILY TRAFFIC VOLUMES

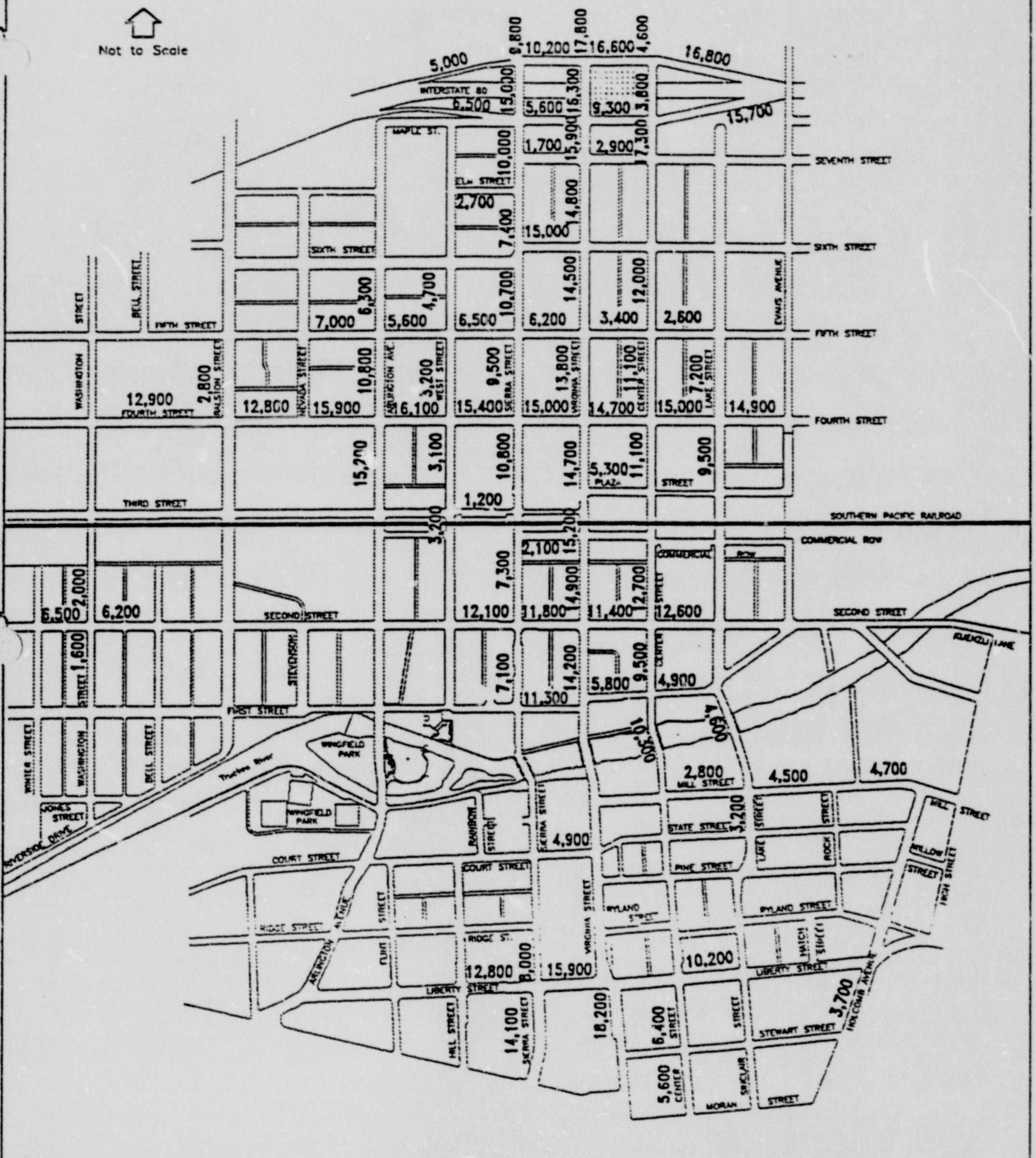


Figure 11

EXISTING AVERAGE DAILY TRAFFIC VOLUMES

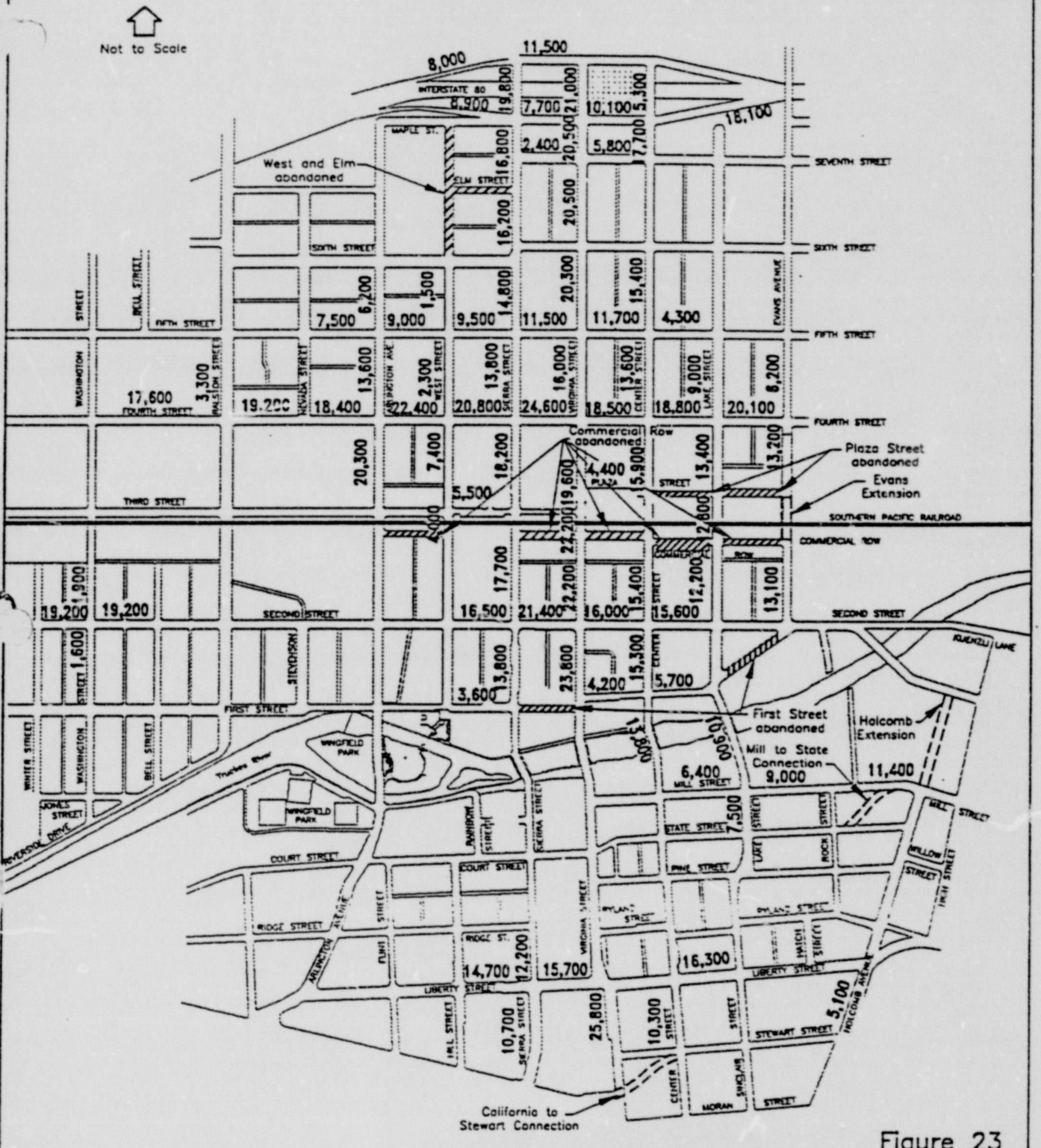


Figure 23

YEAR 2015 AVERAGE DAILY TRAFFIC VOLUMES (Modified Network)

APPENDIX D

VEHICULAR DELAY CALCULATION

ESTIMATED VEHICULAR DELAY

Crossing	1995 ADT	1995 Freight Trains (6000')*	1995 Delay (min.)	1995 Other Trains (1500')**	1995 Delay (min.)	1995 Total Delay (min.)	2015 ADT	2015 Freight Trains (6500')***	2015 Delay (min.)	2015 Other Trains (1500')**	2015 Delay (min.)	2015 Total Delay
Keystone	N/A	11	-	3	-	-	N/A	30	-	4	-	-
Vine	N/A	11	-	3	-	-	N/A	30	-	4	-	-
Washington	2,000	11	117	3	4	121	1,900	30	348	4	5	353
Ralston	2,800	11	163	3	6	169	3,300	30	604	4	9	613
N.Arlington	15,200	11	886	3	32	918	20,300	30	3,715	4	57	3,772
West	3,200	11	187	3	7	194	7,400	30	1,354	4	21	1,375
Sierra	10,800	11	630	3	23	653	18,200	30	3,330	4	51	3,381
Virginia	15,200	11	886	3	32	918	22,200	30	4,063	4	62	4,125
Center	12,700	11	740	3	27	767	15,900	30	2,910	4	45	2,955
Lake	9,500	11	554	3	20	574	12,800	30	2,342	4	36	2,378
Morrill	N/A	11	-	3	-	-	N/A	30	-	4	-	-
Sutro	N/A	11	-	3	-	-	N/A	30	-	4	-	-
Sage	N/A	11	-	3	-	-	N/A	30	-	4	-	-
Total						4,314						18,952
Increase												339%

* A 6,000 foot train causes 3.9 minutes of gate-down time @ 20 MPH

** A 1,500 foot train causes 1.4 minutes of gate-down time @ 20 MPH

*** A 6,500 foot train causes 4.2 minutes of gate-down time @ 20 MPH

APPENDIX E

CROSSING ACCIDENT DATA

STATE OF NEVADA

DEPARTMENT OF TRANSPORTATION

1263 S. Stewart Street
Carson City, Nevada 89712

BOB MILLER, Governor

January 25, 1996

TOM STEPHENS, P.E., Director

In Reply Refer to:

Ms. Dori Owen, Special Projects Manager
Reno Redevelopment Agency
City of Reno
P.O. Box 1900
Reno, NV 89505

Re: Your Information Request on SP-UP Merger

Dear Ms. Owen:

We have prepared data on grade crossing accidents for your use in considering the impact of the SP-UP merger in Reno. Our information is obtained from accident reports filed with the Reno Police Department and other law enforcement agencies. As incidents involving pedestrians and trains are not considered motor vehicle accidents, NDOT does not receive these reports. When we hear of these incidents, we request the reports from the law enforcement agencies, so our data is not complete. Additionally, our computer system has no means of capturing this data, so there is a great probability that the pedestrian accidents will be understated. Other trespass (between crossings) fatalities have occurred, however NDOT does not have these records.

As we mentioned at your first meeting, the Railroad Safety Section has a number of railroad crossing improvement projects planned in the downtown Reno area over the next few years. These projects are financed 95% by federal funds and 5% by a local match. This year, Vine St. will be improved. In 1997, Morrill Ave. is scheduled for enhancements. Were these crossings closed, the project funds may become available for other projects, such as grade separations, that would temper the effects of the merger and would greatly enhance safety in the downtown area. All projects must be approved by the Federal Highway Administration.

Crossings are chosen for improvements based on a Hazard Index. Many of the downtown crossings have very low traffic volume, such as Ralston St., and would not rank high enough on the Index to be improved for many years, while other crossings, such as Virginia St., have the current state of the art protection.

Many of the low volume crossings could be closed, with little impact on the neighboring crossing and streets, which could absorb the added traffic volume. This would make possible fewer but safer crossings. It would also open the possibility of grade separating some of the crossings, which is the safest alternative. Crossing closures can win the sympathy and support of the railroad and perhaps encourage them to financially participate in mitigating the impact of additional rail traffic in Reno. If streets are closed and others are grade separated, trains would not be required to blow their whistles for these crossings, thus decreasing the noise nuisance in the downtown area.

We hope this information is of help to you. Please contact Charlie Case or Anita Boucher of the Railroad Safety Section, at 687-4010, if you need additional details on the Railroad Safety Program or the enclosed data.

Sincerely,

Robert E. Hilderbrand
Chief Safety Engineer

REH:AB:dmg
Encl.

cc: L. Hastings, Chief Transportation Planning - NDOT
S. Varella, City Engineer - City of Reno
M. Einweck, Traffic Design Engineer - City of Reno

RAILROAD GRADE CROSSING COLLISIONS 1970 - 1995
SOUTHERN PACIFIC RAILROAD MAINLINE IN DOWNTOWN RENO

					COLLISIONS		
STREET NAME	DOT NO.	RR MP	RR ADT	HWY ADT	FATAL	PROPERTY DAMAGE	PERSONAL INJURY
WOODLAND AVE	740-719R	237.98	19.00	1,600	2	1	2
DEL CURTO AVE	740-722Y	240.62	19.00	130	0	0	0
KEYSTONE AVE	740-724M	242.10	23.00	20,800	0	8	4
VINE ST	740-725U	242.21	23.00	3,500	0	1	0
WASHINGTON ST	740-726B	242.30	25.00	1,700	0	0	0
RALSTON ST	740-727H	242.45	25.00	4,000	0	1	0
ARLINGTON AVE	740-728P	242.60	25.00	12,723	0	3	4
WEST ST	740-729W	242.70	25.00	4,700	0	0	0
SIERRA ST	740-730R	242.75	25.00	11,320	0	2	0
VIRGINIA ST	740-731X	242.80	25.00	16,300	1	10	3
CENTER ST	740-732E	242.90	25.00	13,791	0	4	0
LAKE ST	740-733L	242.95	25.00	10,700	0	6	1
MORRILL AVE	740-736G	243.50	25.00	500	0	1	0
SUTRO ST	762-096J	243.70	25.00	13,000	0	0	1
SAGE ST	753-815F	243.91	24.00	1,600	0	3	2
GALLETTI WAY	740-740W	244.65	27.00	9,119	0	1	1

NOTE: THIS COLLISION DATA INVOLVES MOTOR VEHICLE INCIDENTS ONLY. PEDESTRIAN V.S. TRAIN COLLISIONS ARE NOT INCLUDED AS THE DATA IS NOT REPORTED TO NDOT OR DMV.

PEDESTRIAN INCIDENTS AT RAILROAD CROSSINGS IN DOWNTOWN RENO
SOUTHERN PACIFIC MAINLINE
1970 THRU 1995

STREET NAME	INJURY ACCIDENT	NUMBER INJURIES	FATAL ACCIDENT	NUMBER FATALITIES
WOODLAND AVE				
DEL CURTO AVE				
KEYSTONE AVE				
VINE ST				
WASHINGTON ST				
RALSTON ST			1	1
ARLINGTON AVE				
WEST ST				
SIERRA ST				
VIRGINIA ST			1	1
CENTER ST	1	1		
LAKE ST			1	1
MORRILL AVE				
SUTRO ST	1	1		
SAGE ST				
GALLETTI WAY	—	—	—	—
TOTALS	2	2	3	3

NOTE: NDOT DOES NOT AUTOMATICALLY RECEIVE REPORTS OF TRAIN VS PEDESTRIAN COLLISIONS, THEREFORE THIS DATA ONLY REPRESENTS THOSE REPORTS THAT BEEN SECURED WHEN INCIDENTS HAVE COME TO THE ATTENTION OF NDOT AND IS NOT NECESSARILY COMPLETE.

POLICE DEPARTMENT
City of Reno
POST OFFICE BOX 1900 RENO, NEVADA 89505 (702) 334-2100

JIM WESTON
Chief of Police

February 23, 1996

Jerry Hall
Strategic Project Management
10 Suda Way
Reno, NV 89509

Ref: ***Railroad Merger Public Safety Concerns***

Dear Jerry:

In response to your request for information about the impact of train traffic on police operations, I have provided a response to each question. Since you indicated that NDOT had already provided you with specific accident data, I did not include that information within the response. If you need additional information or specific accident information from our files, please feel free to contact me.

For public safety reasons, I fully support any effort to relocate or depress the train tracks, at least through the downtown area.

Sincerely,

Jim Weston, Chief of Police

JW/cl

Attachment

A. Information concerning delays which have been encountered by your field officers in the course of policing the downtown or responding to calls.

There is little question that the closure of the main street thoroughfares as a result of train usage hampers our police response and patrol ability on a daily basis. The Police Department had divided the City into three policing districts. Two south districts are basically divided by the train tracks from the north district. This districting, which spans the entire west and east limits of the city, is not the most effective districting method but has been forced on the department because of the physical barrier trains create during an emergency response. Because of police staffing shortages and workload increases, police dispatchers routinely cross-dispatch north officers to emergencies and routine calls in the south part of town and vice versa. North district officers routinely cover officers on the south side of the train tracks. Train traffic has been a problem for years to responding police units, fire units, and paramedics, forcing the time consuming rerouting of personnel to avoid trains. This situation has become much worse in the past few years because of population growth, increased calls for service, and fewer police officers. In many cases, emergency vehicle delays result in a domino effect resulting in a time delay that impacts almost all our pending calls for service. In emergency and critical incident response cases, these delays require an immediate tactical redeployment of resources to insure an adequate response, leaving many of our citizens confused and irate when the police need to leave their call to respond to another with a higher response priority. The continual bisecting of special event activities downtown by trains already hampers the ability of police to control the events.

B. We have accident information provided by NDOT. Are there any accidents which may come to mind which were particularly troublesome or could have been worse if the circumstances had been slightly different?

Every accident involving a train requires that train to stop, normally in the middle of town, creating huge traffic gridlocks for citizens, and public safety response limitations. Each accident, regardless of its initial severity, runs the risk of train vehicle derailment. Sliding, spilling, tumbling and crashing derailed train cars would literally cause significant death, injury, and destruction within our downtown area of disastrous proportions. The presence of spilling hazardous material could blanket our entire city in cloud of toxic material. The potential perilous scenarios are virtually endless, depending on what each train may be carrying.

C. How will the additional delays impact your policing efforts?

Any increase in train traffic, length, or decrease in speed will have a direct impact in the following areas:

1) Police response times will ~~decrease~~ increase to emergency and non-emergency calls which are cross-dispatched. Cross-dispatching is routine and occurs 24 hours per day because of current police staffing shortages. Citizen response time complaints will increase.

2) Officer safety and citizen safety will be impacted by delayed response of police units to assist officers needing cover, police response to injury traffic accidents, or any other citizen injury type call.

3) Increased train crossing traffic violations will occur. Currently, impatient drivers ignore crossing arms to beat oncoming trains, make u-turns, or drive the wrong way to find an escape route to avoid train delays. Adding train traffic will exacerbate this already dangerous situation.

4) Special events management will deteriorate as trains bisect parades, static display street closures, and major special events.

5) Intoxicated pedestrians (tourists, transients, and locals) currently race across tracks to avoid trains. Their impaired condition increases the potential for an injury. Massive special event crowds, combined with noise levels of the event, often force pedestrians too close to train tracks. Reno's entertainment industry often results in tourists and local citizens being intoxicated or under the influence of alcohol in the downtown area.

D. Are there problems associated with the current track location or mode of operation which would be significantly different if the tracks were depressed, relocated or otherwise modified?

The physical environment created by the railroad tracks downtown serves as a magnet for local transients, bums, drug dealers, and even provides weapons for unruly crowds. Consider the following:

1) Our local population of street criminals congregate on railroad tracks right-of-ways behind buildings, crossing arms, and underpasses because these areas are often hidden from direct view of police officers. The right of way also makes excellent places of operation for panhandlers, strong arm robbers, and permanent homeless residents to accost our citizens. The railroad provides no immediately available property owner or security to monitor this problem and help regulate this crime. Since property owners throughout downtown prohibit this activity on their properties and can authorize trespassing arrests to remove petty criminals, the situation has forced many petty criminals onto the railroad right of way.

2) The railroad bed includes rocks, broken bottles, cans, grease, oil, and dirt. Rocks and bottles are routinely used during fights among petty criminals, provide drunks ammunition during major special events, and are hard to navigate by pursing officers.

Relocating the tracks to a less populous area (pedestrian and vehicle traffic) would be a benefit. Depressing the tracks would have a positive impact, depending on the design of the tunnels and how access to pedestrians is controlled.

E. Are there other issues which impact the city and your public safety duties and responsibilities?

The presence of the railroad tracks in their current location represents a mixture with our economy not unlike oil and water. They are a critically dangerous segment of our downtown area in which we contain thousands and thousands of residents, tourists, gamers, and visitors. The police department has had to physically adapt its emergency operations to accommodate the train tracks. However, the accommodations are not in the best interest of the city.

interoffice
M E M O R A N D U M

to: Larry S. Farr, Fire Chief
from: Vikki Crume
subject: Report of Incidents Affected by RailRoad
date: March 6, 1996

Multi Company Stills and Multiple Alarms in District 1	751
Multi Company Stills and Multiple Alarms in FRC 401	32
Alarms in District 4 South of Railroad Tracks	380
Still Alarms in District 1 North of Railroad Tracks	937
TOTAL NUMBER OF INCIDENTS IN 1995 AFFECTED BY RAILROAD CROSSINGS	**2100**

The City of Sparks

FIRE DEPARTMENT

FIRE CHIEF
Ronald B. Irwin

DEPUTY CHIEF
Stephen E. Chapman
Lee Leighton

February 27, 1996

Mr. Jerry Hall
Strategic Project Management
10 Suda Way
Reno, Nevada 89509

Dear Jerry:

In response to your letter dated February 26, 1996, we have completed a search of incidents, particularly any toxic or hazardous materials incidents, which would have impact at the railroad yard.

The search was limited to years 1990-1995 to the following categories:

Fixed Property Type:	Railway Storage, Railroad Right of Way, Switch Yard, Siding/Spurs, and Railroad property not classified.
Mobile Property Type:	Rail Transport, Passenger Car, Freight/Box Car, Tank Car, Locomotive, Self-Powered Cars, Maintenance Equipment, and Rail Transport, not classified
Type of Situations:	3 box car incidents (1) Boxcar fire (1) Smoke in passenger train car (1) Vehicle fire 2 medical incidents 8 Spill - Leak w/no ignition 2 Rescue calls 1 Smoke visible 1 Smoke scare 1 Arching Wires 1 Chemical Emergency 1 Power Line 1 Hazardous Condition-Standby <u>1 Unclassified Condition</u>
Total	22 Incidents

Mr. Jerry Hall
February 28, 1996
Page Two

As you can see, we have not had a significant amount of incidents over the past five years, but the majority of them have been related to hazardous spills with no ignition.

Over the course of the past several years, the railroad yard and crossings have not caused a major problem for our fire department. It is my opinion that if the proposed merger occurs, the probability of an increase in incidents with railcars carrying hazardous materials such as nuclear waste, explosives, petroleum, and propane through our area will pose a greater threat to this department. Sparks' relationship to the railroad is different from Reno's in that we are the primary switching yard prior to trains traveling through our area. It could be anticipated that with an increase in rail traffic, the likelihood of incidents occurring during the switching process and the movement of cars through the rail yard is much greater.

As far as any concern regarding the present location of the train tracks, these tracks have been here for a hundred years. The growth of the industrial area around the City of Sparks is encroaching toward the railroad tracks which poses a cause for concern. In addition, as The Nugget Hotel expands and more visitors are brought into the Victorian Square area, several railroad tracks are located across the street from the hotel's main entrance. If an incident involving a railcar carrying a hazardous material should occur at this point on the train tracks, it could be a major disaster in this city. By relocating the train tracks, it could definitely lower the possibility of a disaster occurring in our main visitor area.

As a side thought to this, we may need to consider building another overpass to give public safety an additional response route in reaching the other side of the city. There are presently three overpasses, but with the increased visitor and business traffic, as well as more companies moving into the industrial area in Sparks, an additional overpass would allow for a quicker response to an incident on the other side of the railroad tracks.

Please feel free to call me to discuss any of the above issues. If you prepare a written document on the railroad merger issue, I would appreciate a copy being forwarded to me. We are in the process of planning for future growth in the downtown area and this will be part of our impact analysis.

Sincerely,

Ronald B. Irwin
Fire Chief

RBI/j

DISTRICT HEALTH DEPARTMENT

DATE: February 28, 1996

TO: Jerry Hall

FROM: Carl Cahill, Director CC

SUBJECT: Railroad Issues

Per your request, the following information is provided:

RAILROAD INCIDENTS

Washoe County District Health Department (WCDHD) was notified (not by fire or emergency management authorities) of a derailed train near the Sparks yard and WCDHD investigated. Two Liquified Petroleum Gas (LPG) tank cars derailed less than 100 yards west of the McCarran Avenue overpass just before noon. Upon arrival no fire response personnel were present. Shortly after, it was reported that a long train with many railcars loaded with explosives came into the area and parked alongside the derailed cars. Fortunately, the LPG cars did not leak and there was no further incident.

Local agencies responded to a train derailment caused by a switching error in which two trains collided at the Rock Boulevard overpass in Sparks. The saddle tanks on the train were ruptured, spilling diesel fuel which required remediation. Fortunately, no rail cars fell off the overpass and no other hazardous materials were involved.

Local agencies have responded to two large phosphoric acid spills at the Sparks terminal. Both spills were in the range of 6,000 gallons each. One tank car leaked acid along the tracks all the way to the Washoe County line to the east - a distance of over 20 miles. Both spills were caused by tank failure.

Local agencies have responded to several incidents of train tank cars containing anhydrous ammonia in which ammonia odors were detected along the tracks. The largest involved a train of 22 tank cars of ammonia The problems encountered have been caused by the pressure relief valve venting excess pressure caused by the change in vapor density due to the difference in elevation and weather

1001 EAST NINTH STREET / P.O. BOX 11130, RENO, NEVADA 89520 (702) 328-2400 FAX (702) 328-2279

conditions here and at the loading facility.

Another railcar venting incident occurred when a tank car loaded with wine spirits (95% ethanol) was found leaking severely at the top hatch flange. A large puddle of flammable alcohol also formed under the tank car. Again, the vapor pressure inside the car was much more than atmospheric pressure. Instead of attempting to tighten the flange bolts it was recommended to open the pressure relief valve which had not functioned. This equalized pressure in the tank car and a clean-up of the track area was conducted.

On Thanksgiving morning, local agencies responded to a train accident in which a semi-tractor trailer got stuck on the track crossing at Patrick and could not move. Local residents attempted to pull the vehicle off the tracks with their private vehicles but were unsuccessful. An eastbound train did not see the truck in time to stop and struck the truck rupturing its fuel tanks. The fuel along the tracks ignited along the 1/4 mile it took to stop the train. No other hazardous material was involved.

WCDHD was informed several days after the occurrence of a fuel spill along the tracks west of Reno. It was determined that a boulder rolled down the hill in the Mayberry area and struck the locomotive's saddle tank tearing a hole in it. The engineer was unaware of the incident until he reached the terminal. The amount of fuel spilled was not a quantity which could be cleaned up because it sprayed lightly along the track.

These are just some of the rail related incidents WCDHD and other local agencies have responded to - more than 20 in the past 8 years. Others incidents include releases from valves which could be closed, rupturing of drums or other containers that were being transported, and transloading operations. These incidents have occurred on both Union Pacific and Southern Pacific lines, and in some cases, have required extensive response and clean-up activities and severely depleted the local community manpower and equipment resources.

RECOMMENDATIONS

The following suggestions are presented for discussion:

1. Electronic control measures should be looked at for isolation and diversion of the ditch system, which is fed from the Truckee River. The ditch system flows throughout the Truckee Meadows Basin. If a hazardous material were to get into the river upstream from ditch entrances no expedient method to shut the flow off is available, allowing the contaminant to flow unabated.

contaminant to flow unabated. These ditches flow through many residential subdivisions, through populated industrial areas, and significant water recharge areas.

2. Road access to the rail line must be improved to allow vehicle access for emergency responders to an accident. Throughout Washoe County the Southern Pacific line can be extremely difficult to access for single vehicles, let alone a county-wide response to a hazardous materials incident along the tracks. Where there is locked gate access to the rails keys should be provided to certain agencies for emergency response and remediation activities.

3. With the increased potential of hazardous materials incidents originating from rail transportation, local railroad response personnel must be available and trained to the level needed when dealing with rail and tank cars. This is not the case at this time. The closest Hazardous Materials Control Officer in the Southern Pacific system who would respond to the Sparks terminal is stationed in Sacramento and when he is not available, one must be dispatched by vehicle from Oakland. This is seriously inadequate for this community. A Hazardous Materials Control Officer should be stationed at the Sparks Terminal to respond to Nevada incidents.

4. Due to the limited hazardous materials response capability from the private sector, additional spill control and containment equipment must be strategically located in the area and made available for immediate use by responding agencies. This must include such things as containment booms, absorbent materials, pneumatic transfer pumps, and other specialized equipment.

5. In conjunction with the railroad company, install a computer system or devise a method in which responding agencies could have immediate access to waybills, consists, or other documentation pertinent to transportation of hazardous materials through the terminal.

6. Provide specialized training to responding agencies in Nevada and eastern California who are involved with emergency response to railroad accidents. Hazardous materials incident response in the Truckee River corridor on the California side has a direct bearing on emergency actions taken by local agencies.

7. Working with Local Emergency Planning Committees (LEPC),

the railroad should provide funding and resources in developing evacuation and emergency action plans for the populated areas along the rail corridor.

8. Installation of crossing signals and gates at all at-grade crossings in the Truckee River corridor and watershed should be considered.

9. Enhanced notification procedures should be developed for reporting of rail incidents. Current procedures call for railroad personnel to contact their Denver office, who in turn make the calls within their system and to appropriate agencies, which sometimes causes delays in local response time.

Regional Transportation Commission

600 Sutro Street ◆ Mailing Address: P.O. Box 30002 ◆ Reno, Nevada 89520-3002 ◆ FAX 348-0450 ◆ Phone 702-348-0480

James M. Shaw, Chairman
Tom Herndon, Vice Chairman
John R. Mayer, Commissioner
Judy Pruett, Commissioner
Grant D. Sims, Commissioner
Celia G. Kupersmith, Executive Director

January 29, 1996

FR: Chrono

Ms. Dori Owen
Special Projects Manager
Redevelopment Agency
City of Reno
P.O. Box 1900
Reno, NV 89505

Dear Ms. Owen:

In response to your letter of January 19, I have collected the following information pertaining to transit operations in downtown Reno. The following table lists all transit routes currently operating through downtown that cross the railroad tracks.

Route	Weekday Track Crossings Outbound	Weekday Track Crossings Inbound	Total Daily Passenger Load Outbound	Total Daily Passenger Load Inbound
Route 1	59	58	1055	935
Route 6	24	25	270	239
Route 9	47	45	644	543
Route 10	51	48	961	675
Route 13	29	29	262	250
Route 14	32	31	450	441
Route 16	17	17	140	149
Route 18	37	37	592	365
Route 19	29	29	185	113
Route 24	30	30	235	209
Total	355	349	4794	3919

The first column of the table indicates the number of buses (by route) which cross the railroad tracks downtown on a weekday in the outbound direction (southbound). The next column shows the number of buses crossing the tracks coming inbound (northbound). All of these crossings take place on Sierra, Center or Lake Street. The table does not show crossings at Keystone; Route 19 crosses the tracks at Keystone (on outbound trips only) the same number of times it crosses the tracks downtown. The third column shows the number of bus passengers crossing on each route in the outbound direction on a typical weekday. Column four shows the number of inbound bus passenger crossings. This should provide some idea of the number of buses and passengers (or passenger trips) which are affected by trains every weekday. Current freight traffic typically will delay a bus for only 2-3 minutes, but Amtrak trains have been known to delay transit vehicles for anywhere from 20-30 minutes — a situation which is aggravated by the fact that the two Amtrak trains are timed to arrive in downtown Reno during the morning and afternoon peak travel periods.

The other primary customer access issue which is affected by trains blocking downtown streets is that of transit riders walking to CitiCenter from points south of the tracks. These people are frequently in the frustrating position of being able to see their bus without a way to reach it in time. Passengers transferring from one bus to another will often miss their connecting buses due to trains coming through downtown. As some routes currently operate at a one-hour frequency (in the case of Route 8, even less frequently), transit riders can be delayed an hour or more by even a short train.

Employee access issues are not as great a concern, as a relatively small number of employees work at CitiCenter or (in the case of coach operators) start work there.

I have enclosed a system map and schedules for all of the bus routes. If I can provide any additional information or answer any questions for you, please feel free to give me a call at 348-0480.

Sincerely,

Jason P. Crow

Jason Crow
Planning Technician

JPC:mlh
J:\FILES\TRANSFER\RENOREDV.LTR

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
1263 S. Stewart Street
Carson City, Nevada 89712

BOB MILLER, *Governor*

TOM STEPHENS, P.E., *Director*

January 25, 1996

In Reply Refer to:

RECEIVED
JAN 29 1996
REDEVELOPMENT AGENCY
OF THE CITY OF RENO

Ms. Dori Owen, Special Projects Manager
Reno Redevelopment Agency
City of Reno
P.O. Box 1900
Reno, NV 89505

Re: Your Information Request on SP-UP Merger

Dear Ms. Owen:

We have prepared data on grade crossing accidents for your use in considering the impact of the SP-UP merger in Reno. Our information is obtained from accident reports filed with the Reno Police Department and other law enforcement agencies. As incidents involving pedestrians and trains are not considered motor vehicle accidents, NDOT does not receive these reports. When we hear of these incidents, we request the reports from the law enforcement agencies, so our data is not complete. Additionally, our computer system has no means of capturing this data, so there is a great probability that the pedestrian accidents will be understated. Other trespass (between crossings) fatalities have occurred, however NDOT does not have these records.

As we mentioned at your first meeting, the Railroad Safety Section has a number of railroad crossing improvement projects planned in the downtown Reno area over the next few years. These projects are financed 95% by federal funds and 5% by a local match. This year, Vine St. will be improved. In 1997, Morrill Ave. is scheduled for enhancements. Were these crossings closed, the project funds may become available for other projects, such as grade separations, that would temper the effects of the merger and would greatly enhance safety in the downtown area. All projects must be approved by the Federal Highway Administration.

Crossings are chosen for improvements based on a Hazard Index. Many of the downtown crossings have very low traffic volume, such as Ralston St., and would not rank high enough on the Index to be improved for many years, while other crossings, such as Virginia St., have the current state of the art protection.

Many of the low volume crossings could be closed, with little impact on the neighboring crossing and streets, which could absorb the added traffic volume. This would make possible fewer but safer crossings. It would also open the possibility of grade separating some of the crossings, which is the safest alternative. Crossing closures can win the sympathy and support of the railroad and perhaps encourage them to financially participate in mitigating the impact of additional rail traffic in Reno. If streets are closed and others are grade separated, trains would not be required to blow their whistles for these crossings, thus decreasing the noise nuisance in the downtown area.

We hope this information is of help to you. Please contact Charlie Case or Anita Boucher of the Railroad Safety Section, at 687-4010, if you need additional details on the Railroad Safety Program or the enclosed data.

Sincerely,

Robert E. Hilderbrand
Chief Safety Engineer

REH:AB:dmg
Encl.

cc: L. Hastings, Chief Transportation Planning - NDOT
S. Varella, City Engineer - City of Reno
M. Einweck, Traffic Design Engineer - City of Reno

RAILROAD GRADE CROSSING COLLISIONS 1970 - 1995
SOUTHERN PACIFIC RAILROAD MAINLINE IN DOWNTOWN RENO

STREET NAME	DOT NO.	RR MP	RR ADT	HWY ADT	COLLISIONS FATAL	PROPERTY DAMAGE	PERSONAL INJURY
WOODLAND AVE	740-719R	237.98	19.00	1,500	2	1	2
DEL CURTO AVE	740-722Y	240.62	[illegible]	130	0	0	0
KEYSTONE AVE	740-724M	242.10	23.00	20,800	0	8	4
VINE ST	740-725U	242.21	23.00	3,500	0	1	0
WASHINGTON ST	740-726B	242.30	25.00	1,700	0	0	0
RALSTON ST	740-727H	242.45	25.00	4,000	0	1	0
ARLINGTON AVE	740-728P	242.60	25.00	12,723	0	3	4
WEST ST	740-729W	242.70	25.00	4,700	0	0	0
SIERRA ST	740-730R	242.75	25.00	11,320	0	2	0
VIRGINIA ST	740-731X	242.80	25.00	16,300	1	10	3
CENTER ST	740-732E	242.90	25.00	13,791	0	4	0
LAKE ST	740-733L	242.95	25.00	10,700	0	5	1
MORRILL AVE	740-736G	243.50	25.00	500	0	1	0
SUTRO ST	762-098J	243.70	25.00	13,000	0	0	1
SAGE ST	753-815F	243.91	24.00	1,500	0	3	2
GALLETTI WAY	740-740W	244.65	27.00	9,119	0	1	1

NOTE: THIS COLLISION DATA INVOLVES MOTOR VEHICLE INCIDENTS ONLY. PEDESTRIAN V.S. TRAIN COLLISIONS ARE NOT INCLUDED AS THE DATA IS NOT REPORTED TO NDOT OR DMV.

PEDESTRIAN INCIDENTS AT RAILROAD CROSSINGS IN DOWNTOWN RENO
SOUTHERN PACIFIC MAINLINE
1970 THRU 1995

STREET NAME	INJURY ACCIDENT	NUMBER INJURIES	FATAL ACCIDENT	NUMBER FATALITIES
WOODLAND AVE				
DEL CURTO AVE				
KEYSTONE AVE				
VINE ST				
WASHINGTON ST				
RALSTON ST			1	1
ARLINGTON AVE				
WEST ST				
SIERRA ST				
VIRGINIA ST			1	1
CENTER ST	1	1		
LAKE ST			1	1
MORRILL AVE				
SUTRO ST	1	1		
SAGE ST				
GALLETTI WAY	___	___	___	___
TOTALS	2	2	3	3

NOTE: NDOT DOES NOT AUTOMATICALLY RECEIVE REPORTS OF TRAIN VS PEDESTRIAN COLLISIONS, THEREFORE THIS DATA ONLY REPRESENTS THOSE REPORTS THAT BEEN SECURED WHEN INCIDENTS HAVE COME TO THE ATTENTION OF NDOT AND IS NOT NECESSARILY COMPLETE.

RENO POLICE DEPARTMENT
MICRO TRAFFIC RECORDS SYSTEM - VERS. 5.0

ACCIDENTS BY VEHICLE & ACCIDENT TYPE
FOR THE PERIOD: 01/01/90 TO 12/31/95

ACCIDENTS BY PRIMARY COLLISION TYPE

	NUMBER		PCT.
1. REAR END	5002	*	24.02
2. ANGLE	7006	*	33.64
3. HEAD ON	1302		6.25
4. SIDESWIPE - SAME	2133	*	10.24
5. SIDESWIPE - OPP	787		3.78
6. FIXED OBJECT-IN	8		0.04
7. TRAIN	1		0.00
8. NON-COLLISION	310		1.49
9. FIXED OBJECT-OFF	4		0.02
10. DEER	0		0.00
11. OTHER ANIMAL	3		0.01
12. PEDESTRIAN	682		3.27
13. BICYCLIST	392		1.88
14. MOTORCYCLIST	320		1.54
15. BACKED INTO	1396	*	6.70
16. OTHER	1481	*	7.11
	======		
TOTAL	20827		

ACCIDENTS BY TYPE

	NUMBER	PCT.
1. DRIVER ERROR	19987	95.81
2. DRIVER OFFENSE	20046	96.09
3. SPEED INVOLVED	2181	10.45
4. ALCOHOL INVOLVED	1766	8.47
5. HIT & RUN	2998	14.37
6. VISION OBSCURED	953	4.57
7. FIXED OBJECT	12	0.06
8. PEDESTRIAN	770	3.69
* 9. RAILROAD CROSSING	13	0.06
10. ROADWAY DEFECT	858	4.11
11. SLICK ROAD	2092	10.03
12. SINGLE VEHICLE	2228	10.68
13. NIGHT TIME	5446	26.11
TOTAL	(20861)	

* INDICATES GREATER THAN AVERAGE

1993 Emission Inventory for CO2

11/95 Washoe Co. District H. Dept by Andrew Goodrich. Linda O'Brien

RAILROADS

Railroad operations in 1993* produced 47 tons/year of CO within the Truckee Meadows CO NAA. Railroad activity levels were obtained from the Southern Pacific Transportation Company (SP) and Union Pacific Railroad (UP). The SP trainmaster reported that there were no coal powered locomotives active in Washoe County in 1993. The activity data reported for diesel locomotives and preliminary calculations are contained in Appendix B.4. Annual emissions of CO are summarized in Table 4-19 below.

Figure 12 is a map which shows the railroad tracks within Washoe County. UP's main line operates in Northern Washoe County, which is outside the Truckee Meadows CO and PM non-attainment area. However, the UP does have a short stretch of track which enters the CO and PM non-attainment area in north Reno. The SP uses UP's tracks in northern Washoe County, but primarily runs freight and passenger trains across Washoe County through its Sparks yard.

The peak season emissions for this source were determined using the seasonal adjustment factors and number of activity days listed in Table 4-3. Total peak season emissions were 258 lbs/day CO.

TABLE 4-19

EMISSIONS DATA FOR DIESEL RAILROAD LOCOMOTIVES

	Annual CO Emissions (tons/yr)
Union Pacific Railroad	
Freight Trains	0.17
Southern Pacific Transportation	
Freight Trains	42.9
Passenger Trains	0.01
Yard Locomotives	3.69
TOTAL	46.77

* Data from 1992

TO: Reno Exec Com. Feb 2.

REMSA

Regional Emergency Medical Services Authority

January 29, 1996

Dori Owen
Special Projects Manager
Reno Redevelopment Agency
490 South Center Street, Suite 203
P.O. Box 1900
Reno, NV. 89505

Dear Dori,

I am writing in response to the City of Reno study on the impacts of the proposed merger of Southern Pacific and Union Pacific railroads. In review of 1995 calendar year, REMSA received 28,956 calls requesting service. Of these calls, 835 patients were transported code 3 to hospitals with life threatening illness or injuries. Any delay in reaching definitive treatment, at a hospital, can create a possible negative outcome for these patients.

We encourage mitigation to the proposed increase and length of additional train traffic to the city.

Sincerely,

Jim Gubbels

Jim Gubbels RN
Director Contract Services

450 Edison Way • Reno, NV 89502-4117
(702) 858-5700 • FAX: (702) 858-5726

Regional Transportation Commission

600 Sutro Street ◆ P.O. Box 30002 ◆ Reno, Nevada 89520-3002 ◆ FAX 348-0450 ◆ Phone 702-348-0480

January 26, 1996

FR: Chrono

Ms. Dori Owen, Special Projects Manager
Redevelopment Agency of the City of Reno
490 South Center Street, Suite 203
P.O. Box 1900
Reno, NV 9505

Dear Ms. Owen:

In response to your letter of January 19, I have collected the following information pertaining to transit operations in downtown Reno. The following table lists all transit routes currently operating through downtown that cross the railroad tracks.

	Weekday Track Crossings Outbound	Weekday Track Crossings Inbound	Total Daily Passenger Load Outbound	Total Daily Passenger Load Inbound
Route 1	59	58	1055	935
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Route 14	32	31	450	441
Route 16	17	17	140	149
Route 18	37	37	592	365
Route 19	29	29	185	113
Route 24	30	30	235	209
Total	355	349	4794	3919

The first column of the table indicates the number of buses (by route) which cross the railroad tracks downtown on a weekday in the outbound (in this case southbound) direction. The next column shows the number of buses crossing the tracks coming inbound (northbound). All of these crossings take place on Sierra, Center or Lake Street.

This does not include crossings at Keystone (Only Route 19 crosses the tracks at Keystone -the same number of times it crosses the tracks downtown). The third column shows the number of person crossings by bus on each route on a typical weekday in the outbound direction. Column four shows the number of inbound person crossings. This should provide some idea of the number of buses and passengers (or passenger trips) which are affected by trains every weekday. Current freight traffic typically will delay a bus for only 2-3 minutes, but Amtrak trains have been known to delay transit vehicles for anywhere from 20-30 minutes -a situation which is aggravated by the fact that the two Amtrak trains are timed to arrive in downtown Reno during the morning and afternoon peak travel periods.

The other primary customer access issue which is affected by trains blocking downtown streets is that of transit riders walking to CitiCenter from points south of the tracks. These people are frequently in the frustrating position of being able to see their bus leave and have no way to reach it in time. Passengers transferring from one bus to another will often miss their connecting buses due to trains coming through downtown. As some routes currently operate at a one-hour frequency (in the case of Route 8, even less frequently), transit riders can be delayed an hour or more by even a short train.

Employee access issues are not as great a concern, as a relatively small number of employees work at CitiCenter or (in the case of coach operators) start work there.

I have enclosed a system maps and schedules for all of the bus routes. If I can provide any additional information or answer any questions for you, please feel free to give me a call at 348-0480.

Sincerely,

Jason Crow
Planning Technician

JPC
J:\FILES\JASON\RENOREDV.LTR

Regional Transportation Commission

600 Sutro Street ◆ P.O. Box 30002 ◆ Reno, Nevada 89520-3002 ◆ FAX 348-0450 ◆ Phone 702-348-0480

March 6, 1996

FR: Chrono/TR 2-5

Mr. Jerry Hall
Strategic Project Management
10 Suda Way
Reno, NV 89509

Dear ~~Mr. Hall:~~ JERRY

In response to your letter dated February 21, 1996, Celia Kupersmith and I have put together the following information, thoughts, and concerns that RTC and Citifare staff have concerning the increased railroad traffic associated with the proposed merger of Union Pacific and Southern Pacific railroads.

- ***Does RTC have information suggesting Citifare vehicles or passengers have been endangered by the current rail service and the conflict with routine transit operations? Do you have any documented cases?***

We do not have any information that suggests that Citifare vehicles or passengers have been endangered by the current rail service.

- ***How will the additional delays impact your transit operation?***

Any additional delay caused by railroad traffic will affect Citifare in several ways. For example, if the buses are delayed beyond the amount of scheduled "recovery" time provided at either end of the route, not only will that trip be late, but the following trip will be late as well. Furthermore, if the delay is significant or occurs during a peak ridership period, part of the following trip may have to be skipped or the trip missed entirely to get the bus back on schedule. If this becomes a more common occurrence, Citifare ridership will suffer as passengers begin to view the schedule as undependable.

In response to increased railroad traffic, it is likely that bus schedules will be adjusted to build in more "recovery" time to keep the service dependable. As you know, additional time requires additional money. Given the current financial constraints that RTC is facing, we would have to reduce the overall amount of service Citifare provides to add more schedule time to those routes affected by the railroad crossings.

- ***Are there problems associated with the current track location or mode of operation that would be significantly different if the tracks were depressed, relocated or otherwise modified?***

As shown in the following table, the current location directly impacts 10 of Citifare's 24 routes. In addition, it indirectly affects another six routes through route interlines. If needed, we could estimate the average number of buses delayed per train and come up with a rough financial impact on Citifare operations associated with current and future rail operations. However, to do so, I would need you to provide me with the estimated average delay per train currently and in the future. We could also estimate a financial impact on our passengers if you could provide us with an average hourly cost per passenger associated with the delays.

Another problem we face today is caused by the location of a building immediately southeast of Center Street that blocks our coach operator's view of the railroad tracks. Citifare procedures require the operator to come to a complete stop at all railroad tracks and look both directions before proceeding. Since operators have difficulty seeing beyond the building, they must inch the coach forward for a clear view. On occasion, when pulled forward sufficiently to see down the railroad tracks to the east, coach operators have had the warning signals activate and the crossing arm comes down on the front of the bus. The number of times that this has occurred has not been documented; however, it is thought to be only once every few years.

If the railroad tracks were lowered, these impacts would be reduced or eliminated entirely. If they were relocated, these impacts may simply be relocated as well.

Route No.	Weekday Track Crossings Outbound	Weekday Track Crossings Inbound	Total Daily Passenger Load Outbound	Total Daily Passenger Load Inbound	Route Interlines With Routes
1	59	58	1,055	935	10 and 11
6	24	25	270	239	4
9	47	45	644	543	5
10	51	48	961	675	1 and 11
13	29	29	262	250	19
14	32	31	450	441	18 and 24
16	17	17	140	149	3 and 15
18	37	37	592	365	14 and 24
19	29	29	185	113	13
24	30	30	235	209	14 and 18
Total	355	349	4,794	3,919	

- ***Do you have documented or anecdotal information concerning transit coaches that may have been stranded on the tracks due to traffic signal operations or train signal operations?***

As mentioned above, we are only aware of a few cases in which the crossing arms came down on the front of the bus. In these instances, there was no danger to the coach operator or Citifare passengers.

- ***Are there other issues that impact Citifare and your customer service delivery duties and responsibilities that were not covered in your letter of January 29?***

I am not sure what letter you are referring to. Jason Crow of my staff sent a letter to Dori Owens (attached) dated January 26 that discussed the impacts shown in the above table. Other than those issues associated with transit delay and pedestrian access, we cannot think of other critical issues.

- ***Are there issues related to the periodic provision of emergency services to other agencies that may be impacted by the current or post merger railroad operations?***

RTC and Citifare cooperate with emergency response providers by helping transport ambulatory injured individuals involved in an emergency event. Citifare is also expected to provide evacuation transportation if necessary. The delays caused by trains adversely affect Citifare's ability to follow through with these critical transportation functions.

If you have any questions or if I can be of further assistance, please don't hestitate to give me a call.

Sincerely,

David F. Jickling

David F. Jickling
Principal Planner, Transit

DFJ/dsc
Enclosures

cc Celia Kupersmith
Greg Krause

J:\TRANSIT\RAILROAD\J-HALL.LTR

Dori
TyI

City Manager's Office
MAR 08 6
CITY OF RENO

eti electro-test incorporated

Independent Testing & Engineering Services for Electrical Power Systems

Reno Area Office
121 WOODLAND AVENUE, SUITE 190
RENO, NV 89523
Tel. (702) 746-4466
Fax: (702) 746-4468

March 6, 1996

Mr. Jeff Griffin
Mayor
City of Reno
490 South Center Street
Reno, Nevada 89501

Re: Train Traffic

Dear Mr. Griffin:

I would like to take a moment of your time to discuss concerns involving the news of the rail merger. Electro-Test, Inc. is the largest independent electrical testing company in the United States, and is part of the Emerson family of companies. We are an emergency response service provider for all major businesses and utilities within Northern Nevada. Our clients are such as St. Mary's Regional Medical Center, Washoe Medical Center, JC Penny, All Major Casinos, State facilities (UNR, Prisons, etc.), water treatment facilities, all the numerous power generating facilities within the area, and Nevada's mines. ***These clients depend on us for immediate response***.

As you may be aware, the current situation with the rail traffic in our area, Reno West Industrial Park/Mayberry Industrial Park, is nearly intolerable. Trains are using this area as a switching yard and completely block vehicle traffic for twenty minutes or longer at times. This is a frequent occurrence and my Engineers have been caught several times. I have in the past considered pursuing action to correct these problems as things currently stand.

Now I hear that with this merger train traffic will be considerably increased. This may make it impossible for my company to conduct business at this location. I cannot believe that this is good for business in general in Reno. I want to add our voice to those that know this will cost Reno considerably.

Sincerely,

RL Olinger

Rodney L. Olinger
Supervising Engineer
Reno Service Center
Electro-Test, Inc.

cc: James I. Schaap, Strategic Manager, Microflex
Richard Bryan & Harry Reid, State Senators
Robert Miller, Governor of the State of Nevada
Charles McNeely, Reno City Manager
All Reno City Counsel Members
Ralph Jaeck, Reno Redevelopment Agency & Assistant City Manager
Dori Own, Reno Redevelopment Agency
Ken Lynn, Commissioner, Economic Development Authority of Western Nevada
Kathy Sharp, Economic Development Authority of Western Nevada
Bruce Breslow, Sparks Mayor
Dennis Banks, Dennis Banks Construction Company
Ernie Ruschar, Executive Vice President of Operations, Patagonia
Business Neighbors, Reno West Industrial Park

DENNIS BANKS CONSTRUCTION COMPANY
5690 Riggins Court, Suite B
Reno, NV 39502
(702) 827-0545 • fax (702) 827-0859

6 March, 1996

Jeff Griffin
Mayor, City of Reno

Re:Increased train traffic

Dear Mr. Mayor,

I am corresponding at this time to express our legitimate concerns at River Banks West regarding the proposed increase in train traffic. I am sure you are aware of our neighborhood if you are not I would be happy to give you a 5 min. tour.

We are a community currently housing 35 families representing approximately 130 family members. At conclusion of this community within 36-48 months, we will have 240 homes representing approximately 1000 family members. Our community River Banks West is unique in many ways one being we have and always will have only one entrance to our community.

The west bound train stops at the intersection of Woodland and Forth Street to add engines preparing to go over the sierras. The average time for this procedure is 15 minutes per train but frequently it has taken up to 45 minutes.

Emergency Vehicle Access is our primary concern. Point in fact, Mr. And Mrs. Prostiak delivered a baby girl at St Mary's within thirty minutes from their home departure time (thank god there was not a train). At capacity of 1000 residents in an affluent community, the potential for a serious situation is inevitable thereby creating a financial liability for the city.

Safety, hauling of hazardous materials, increase in noise and of course time delays are several more of our concerns. Our buyer profile at this time is 75% young families with children. At this point we suffer 7 trains daily increasing the train traffic through this route is only asking for trouble.

Our community is the only nieborhood in Reno city limits that has a land lock situation due to the train. This proposed increase in train traffic has generated an unrest with our homeowners.

I am sure that after reviewing this unique situation you will be in agreement that due to all of the issues mentioned above that there has to be another solution to this situation.

Sincerely,

Wayne Griffin

Wayne Griffin
River Banks West
Homeowners Association
827-0545

February 29, 1996 **(via fax)**

Mr. Jeff Griffin
Mayor
City of Reno
490 South Center Street
Reno, Nevada 89501

Dear Jeff:

What is about to happen with the rail merger will have a major, negative, impact on our city!

It has been a while since we last chatted. I hope all is well in the mayor's office.

I understand you are headed off to Washington, D.C. next week, preparing for discussions about the possible rail merger between Union Pacific and Southern Pacific.

Microflex Medical Corporation, a distributor of the finest latex gloves in the market and employer of 65 people, a company growing at a fast pace, just moved here from South San Francisco. It moved its corporate headquarters to the Truckee Meadows for a variety of reasons. Unfortunately, it didn't move its entire business operations here to experience abnormal train traffic.

Jeff, as it stands, the constant train traffic in our area (Reno West Industrial Park/Mayberry Industrial Park) is causing additional disruption to our normal business activities. Coming back from lunch yesterday, I had to wait over 20 minutes just to cross the railroad tracks and go back to work.

It is our opinion that the City of Reno cannot afford to let the railroad merger happen. As it is, we are experiencing well over a dozen crossings on our street during our normal business hours. Each crossing is tying up traffic for about 10-20 minutes, let alone the added pollution it is causing by having traffic sit idle at the train crossing.

We are even more concerned about emergency access should there be a need for emergency services. These tracks clearly separate the possibility for emergency vehicles and services to arrive at our facility or our neighbors in a timely manner. With a possible merger looming in the shadows, with delays already at 10-20+ minutes, a merger would play havoc on us and our neighbors should the need for a crisis arise.

I understand the merger will increase train traffic in Reno by over 100%. I am told that we will experience up to 30 trains a day during the normal business hours. From a public safety, emergency access, and air quality control standpoint, along with the increased chance of a hazardous (chemical) spill, Microflex is more than concerned about this merger.

As you know, we are experiencing a significant amount of development and growth in the area. Patagonia is moving in shortly. Dennis Banks Construction Company is building very nice homes along the Truckee River. There are additional "for sale" signs going up in the vicinity. Obviously, this area is catching on. Again, the merger would create an added impediment to all of us.

Lastly, reading this morning's article in the Gazette-Journal, "Union Pacific disputes claims", concerns us, knowing that we may have rate hikes in our utility bill and about the possible problems of our drinking water. Utility rate hikes will certainly make the area less competitive and might discourage continued growth. In any case, this possible merger is certainly a cause for consternation.

If there is anything Microflex can do to stave off this merger, just let me know. I am located at 127 Woodland Avenue, 702-746-6600, ext. 752. We are here to help in any way possible.

Sincerely,

James I. Schaap

James I. Schaap
Strategic Manager

cc. Nathan Saks, CEO/President - - Microflex
Richard Bryan & Harry Reid -- State Senators
Robert Miller -- Governor
Charles McNeely -- Reno City Manager
All Reno City Council Members
Ralph Jaeck - Reno Redevelopment Agency & Assistant City Manager
Dori Own - Reno Redevelopment Agency
Ken Lynn -- President, Economic Development Authority of Western Nevada
Kathy Sharp -- Economic Development Authority of Western Nevada
Bruce Breslow -- Sparks Mayor
Dennis Banks -- Dennis Banks Construction Company
Ernie Ruschar -- Executive Vice President of Operations, Patagonia
Business Neighbors -- Reno West Industrial Park
Homeowners of the Mayberry Park and River Bank areas

Don's Pharmacy

Re: Railroad Merger

I am the owner of Don;s Pharmacy located in Reno at 501 Ralston Street. We are one of the few pharmacies that has a delivery service. Many of our customers are of limited mean, with no transportation. In those cases we deliver for no charge.

We are concerned that the railroad merger would further disrupt our delivery service tc these customers that live on the south side of the railroad. If the railroad would lower the tracks or put in several overpasses before the train traffic is increased it would be less disruptive.

We ask that the city council go on record against the merger at the present time.

Yours truly,

Sherman Rigby

501 Ralston St. • Reno, NV 89503 • (702) 329-1775 • 1-800-525-9119 • FAX (702) 329-~~2???~~ 6716
343 Elm Street Suite 101 • Reno, NV 89503 • (702) 329-6677

STB FD 32760 3-29-96 D 62225

62225

Item No. ______

Page Count 7

Mar #705

OPPEN

Two Prude
45th Floor
180 North
Chicago, I

(312) 616-1800
FAX (312) 616-5800

Brussels
Chicago
Minneapolis
New York
Paris
Saint Paul
Washington, D.C.

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

Thomas J. Litwiler
(312) 616-5861

March 29, 1996

VIA HAND DELIVERY

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

Re: **Finance Docket No. 32760**
Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company

Dear Secretary Williams:

Enclosed for filing with the Board in the above-captioned proceeding are twenty-one copies of the **Comments of Gateway Western Railway Company in Support of Primary Application** (GWWR-6), dated March 28, 1996.

Copies of this filing have been served on all parties of record in this proceeding, as shown on the certificate of service.

Please contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Gateway Western Railway Company

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

TJL:tl

Enclosures

cc: Parties of Record

ORIGINAL

GWWR-6

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

FINANCE DOCKET NO. 32760

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

COMMENTS OF GATEWAY WESTERN RAILWAY COMPANY
IN SUPPORT OF PRIMARY APPLICATION

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

Robert H. Wheeler
Thomas J. Healey
Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-1800

ATTORNEYS FOR GATEWAY WESTERN RAILWAY COMPANY

Dated: March 29, 1996

GWWR-6

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

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

COMMENTS OF GATEWAY WESTERN RAILWAY COMPANY
IN SUPPORT OF PRIMARY APPLICATION

On January 29, 1996, Gateway Western Railway Company, including its wholly-owned subsidiary Gateway Eastern Railway Company (collectively, "GWWR"), filed initial comments (GWWR-2) in this proceeding, including a description of anticipated responsive applications which GWWR was then considering.

GWWR has since had further opportunity to review the record in this case and Applicants' proposed operations, and to resolve with Applicants matters of concern with respect to GWWR's own operations in the context of the proposed merged UP/SP system. GWWR believes that, on balance, the substantial and well-documented public benefits set forth in Applicants' filings outweigh any limited adverse impacts. More particularly, in those areas in which GWWR conducts its railroad operations, GWWR is satisfied that the proposed merger and the benefits arising from the merger are consistent with the public interest in competitive and efficient rail operations.

Competitive Advantages

The public benefits and efficiencies that will flow from the UP/SP merger have been extensively documented by Applicants, and range well beyond the limited operating territory of GWWR. GWWR can add little of value to what Applicants have already submitted. However, GWWR would note that GWWR, itself a product of post-Staggers deregulation and ongoing railroad restructuring, is supportive of initiatives, including mergers, taken by carriers to continue to improve the delivery of competitive rail services to shippers. The proposed UP-SP merger represents an important initiative and, as presented to the Board, warrants approval.

GWWR Operating Territory

GWWR had raised concerns in its January 29th filing over the effects of the proposed merger on shippers in and around the St. Louis/East St. Louis terminal area and in the Chicago-Springfield-St. Louis corridor. GWWR operations in the St. Louis terminal area are conducted largely under terms of a 1989 Joint Facility Agreement ("JFA") with SPCSL Corp. (an SP subsidiary) approved by the Interstate Commerce Commission in connection with the establishment of SPCSL. Rio Grande Industries, et al. -- Pur. & Track. -- CMW Ry., 5 I.C.C.2d 952 (1989). The JFA had been entered into prior to GWWR's formation by GWWR's predecessor, the Trustee of the bankrupt Chicago, Missouri & Western Railway Company. As such, the terms of the JFA did not reflect what GWWR believes is necessary for provision of the most competitive and efficient rail service to GWWR's shippers. Moreover, the JFA itself contained provisions which impeded GWWR's own operations.

GWWR also operates into Springfield and interchanges traffic with other carriers there under the terms of an interchange agreement with SPCSL and provides service into Chicago under the terms of a Haulage Agreement with SPCSL. GWWR has had the same issues and concerns with these agreements with respect to provision of the most effective competitive service to shippers as it had with the JFA. GWWR was concerned that the operations of the proposed merged system would exacerbate these matters.

However, GWWR has been able, in discussions with Applicants, to resolve concerns over these operations and is satisfied that GWWR's capacity to provide even more competitive service to its shippers in the St. Louis terminal and in the Springfield and Springfield-Chicago markets will be enhanced as a result of the merger and the operational arrangements reached with the combined UP/SP system. These understandings have been incorporated in a settlement agreement with the Applicants and, upon effectiveness of the UP/SP merger, will accommodate benefits in service to GWWR shippers and other shippers which would not otherwise be possible.

GWWR therefore believes that the UP/SP merger as proposed by Applicants should be approved by the Board. The general public benefits are substantial and, in the area of GWWR's operations, additional benefits which previously were unobtainable will now be possible.

WHEREFORE, GWWR respectfully requests that these comments on the Primary Application herein be accepted into the record.

Respectfully submitted,

By:______________________________

Robert H. Wheeler
Thomas J. Healey
Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-1800

ATTORNEYS FOR GATEWAY WESTERN RAILWAY COMPANY

Dated: March 29, 1996

<u>**CERTIFICATE OF SERVICE**</u>

I hereby certify that on this 29th day of March, 1996, a copy of the foregoing **Comments of Gateway Western Railway Company in Support of Primary Application** (GWWR-6) was served by overnight delivery upon:

Arvid E. Roach, II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

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

James V. Dolan
Paul A. Conley
Louise A. Rinn
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Cannon Y. Harvey
Southern Pacific Transportation Company
1860 Lincoln Street
14th Floor
Denver, CO 80295

Louis P. Warchot
Carol A. Harris
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathyrn A. Kusske
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

Jeffrey R. Moreland
Richard E. Weicher
The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, IL 60173

Janice G. Barber
Michael E. Roper
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102-5384

and by first class mail, postage prepaid, upon all other parties of record in this proceeding, as identified in Decision Nos. 15 and 17 herein.

Thomas J. Litwiler

STB FD 32760 3-29-96 D 62223

62223

Item No.

Page Count 2

Mar #703

TODD STAPLES
STATE REPRESENTATIVE
DISTRICT 11

AUS
(512) 463-0592
FAX: (512) 463-8792

DISTRICT OFFICE:
P.O. BOX 257
PALESTINE, TX 75802-0257
(903) 729-7717
FAX: (903) 723-0408

ADVISE OF ALL PROCEEDINGS

March 28, 1996

RECEIVED
MAR 29 1996

ENTERED
Office of the Secretary
MAR 31 1996
3 Part of Public Record

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th St.& Constitution Ave. NW
Room 2215
Washington, D.C. 20423

Dear Mr. Williams:

RE: Request for conditions from Members of the Texas Legislature and the Texas Railroad Commission's opinion Regarding Finance Docket No. 32760

Dear Secretary Williams:

On March 29, 1996, Texas State Representatives Junell, Cook and Saunders submitted for the board's consideration a request for conditions(JRC-2, RAJ-2, RMS-2) regarding finance docket no. 32760. I am writing to express my support for the consideration of these conditions. I am very concerned that the merger of the Union Pacific Corporation and the Southern Pacific Rail Corporation will significantly reduce rail competition in Texas, seriously impacting Texas business and our State's economy. I believe the request for conditions from these Texas Legislators address my concerns.

In addition to the concerns of Texas Legislators, the Texas Railroad Commission formally opposed the merger unless substantial divestitures of SP lines were included in the application. This decision by the State of Texas was based on independent impact studies and the testimonies of all involved parties.

Without substantial divestiture, I cannot support this merger because of its impact on communities and the loss of competition in Texas will not survive. The lack of competition between railroads will dramatically reduce the options for shippers and rural communities. I feel that divestiture as opposed to trackage rights is the only way to ensure competition.

Thank you for consideration of the requests for conditions.

Sincerely,

Todd Staples
State Representative
House District 11

TS/sw

STB FD 32760 3-29-96 D 62214

62214 [illegible]

Item No.__________

Page Count 8

Mar #694

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-1795

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STEPTOE & JOHNSON INTERNATIONAL
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SAMUEL M. SIPE, JR.
(202) 429-6486

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

March 29, 1996

BY MESSENGER

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

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

Dear Secretary Williams:

Enclosed for filing in the captioned proceeding are the original and 20 copies of the Comments of the Port of Los Angeles and the Port of Long Beach in Support of the Application.

Sincerely,

Samuel M. Sipe, Jr.

Samuel M. Sipe, Jr.

Enclosures

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

POLA/POLB-2

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MAR 29 1996
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I.C.C.

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, SPCLS Corp., and The Denver and Rio Grande Western Railroad Company

COMMENTS OF THE PORT OF LOS ANGELES AND THE PORT OF LONG BEACH IN SUPPORT OF THE APPLICATION

The City of Los Angeles, CA, a municipal corporation, acting by and through its Board of Harbor Commissioners ("the Port of Los Angeles" or "POLA"), and The City of Long Beach, CA, a municipal corporation, acting by and through its Board of Harbor Commissioners ("the Port of Long Beach" or "POLB") (collectively referred to as "the Ports") hereby submit their comments on the proposed merger of the Union Pacific ("UP") and Southern Pacific ("SP") railroad families.

After careful review, the Ports have concluded that the proposed merger is in the best interests of the Ports and their tenants. Accordingly, the Ports support the proposed transaction. The reasons for their support are set forth in the attached declaration of Ezunial Burts, Executive Director of the Port of Los Angeles, and the attached declaration of Steven R. Dillenbeck, Executive Director of the Port of Long Beach.

Respectfully submitted,

Samuel M. Sipe, Jr.
Carolyn Doozan Clayton
STEPTOE & JOHNSON LLP
1330 Connecticut Ave. N.W.
Washington, D.C. 20036
(202) 429-6486

ATTORNEYS FOR APPLICANTS THE CITY OF LOS ANGELES AND THE CITY OF LONG BEACH

James K. Hahn, City Attorney
Gerald F. Swan, Assistant
425 South Palos Verdes Street
San Pedro, California 90733
(310) 732-3775

ATTORNEYS FOR THE CITY OF LOS ANGELES

John R. Calhoun, City Attorney
Richard L. Landes, Principal Deputy
333 E. Ocean Boulevard
11th Floor
Long Beach, California 90802
(310) 570-2200

ATTORNEYS FOR THE CITY OF LONG BEACH

March 28, 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, SPCLS Corporation, and The Denver and Rio Grande Western Railroad Company

---

DECLARATION OF EZUNIAL BURTS,
EXECUTIVE DIRECTOR OF THE PORT OF LOS ANGELES, CA
IN SUPPORT OF THE APPLICATION

On behalf of the Port of Los Angeles, I am submitting this statement in support of the Union Pacific and Southern Pacific Railroads' merger application.

The Port of Los Angeles is the second largest container port in the United States. Last year, the Port handled approximately 2.6 million container units of cargo. The Port of Los Angeles and the Port of Long Beach, if a combined port, would be the third largest port in the world.

The Port relies on rail and motor carrier transportation with increasing emphasis on the rail mode. Union Pacific, Southern Pacific, and Burlington Northern/Santa Fe serve the Port of Los Angeles.

The UP/SP merger will create faster, more direct routes into and out of the Los Angeles area which will allow more efficient access for shippers using the Port. More direct routes also should make the Port an even more attractive harbor for connecting waterborne cargo to land-based transit for inland destinations.

I have reviewed the merger proposal of Union Pacific and Southern Pacific and I have concluded that this proposal is in the best interest of the Port. I believe that, once implemented, the UP/SP merger will improve rail transportation to and from the Port and will also stimulate vigorous rail competition in many existing and new markets, which will benefit both import and export trade through the Port.

Sustained rail competition is vital to economic development in the Los Angeles region in general. Although the UP/SP merger will mean that the Port and Southern California will be served by one less rail carrier, the two remaining financially strong rail lines serving the Los Angeles market would benefit the international and domestic shippers.

The Port will be a direct beneficiary of the merger. UP/SP have announced in the merger application a plan to invest in major capital improvements that will produce more efficient service over the Southern Corridor and from Southern California to major Midwestern markets. These major improvements will enable UP/SP to challenge BN/Santa Fe's strength in intermodal traffic between Southern California and the Midwest. The Port and its customers will be beneficiaries of these improvements and the resulting increased competition.

UP/SP also plan to use their local terminal facilities more efficiently and invest in expansion where necessary. In particular, I note that UP/SP plan a major expansion of the Intermodal Container Transfer Facility (ICTF) at a cost of more than $27 million. The ICTF serves both the Ports of Long Beach and Los Angeles. This investment in conjunction with main line improvements will mean that UP/SP will be able to provide more competitive intermodal service than either UP or SP can today.

Another matter of great importance to the Port of Los Angeles is the timely and successful completion of the Alameda Corridor project. I am on the board of directors for this project. This $1.8 billion undertaking holds great promise for improving the efficiency of freight transportation to and from the Ports. UP, SP, and BN/Santa Fe have worked cooperatively on this project with the Ports and the other government entities to improve the rail infrastructure in the Long Beach-Los Angeles port area with the goal of making rail operations more efficient for everyone involved while mitigating the effects of such transportation on surrounding communities. The Port of Los Angeles welcomes the consolidation of UP and SP because a financially sound merged railroad as a participant in this project is important to the attainment of project objectives.

For the reasons set forth above, the Port of Los Angeles supports the merger and I urge the Surface Transportation Board to approve the application promptly.

VERIFICATION

I, Ezunial Burts, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on March 28, 1996.

Ezunial Burts
Executive Director
Port of Los Angeles

March 28, 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, SPCLS Corporation, and The Denver and Rio Grande Western Railroad Company

---

DECLARATION OF STEVEN R. DILLENBECK,
EXECUTIVE DIRECTOR OF THE PORT OF LONG BEACH, CA
IN SUPPORT OF THE APPLICATION

On behalf of the Port of Long Beach, I am submitting this statement in support of the Union Pacific and Southern Pacific Railroads' merger application.

The Port of Long Beach is the largest container port in the United States. Last year, the Port handled approximately 91 million tons of cargo. The Port generates approximately 230,000 regional jobs and $427 billion in economic activity annually.

The Port relies on rail and motor carrier transportation. Union Pacific, Southern Pacific, and Burlington Northern/Santa Fe serve the Port of Long Beach.

Having reviewed the merger proposal of Union Pacific and Southern Pacific, I have concluded that this proposal is in the best interest of the Port. I believe that, once implemented, the UP/SP merger will improve rail transportation to and from the Port and will also stimulate vigorous rail competition in many existing and new markets, which will benefit both import and export trade through the Port.

The UP/SP merger will create faster, more direct routes into and out of the Los Angeles area which will allow more efficient access for shippers using the Port. More direct routes also should make the Port an even more attractive harbor for connecting waterborne cargo to land-based transit for inland destinations.

The Port will be a direct beneficiary of the merger. UP/SP have announced in the merger application a plan to invest in major capital improvements that will produce more efficient service over the Southern Corridor and from Southern California to major Midwestern markets. UP/SP will invest over $365 million to upgrade the Tucumcari Line and also add capacity west of El Paso by investing $221.4 million on SP's Sunset Route to Los Angeles. These major improvements will enable UP/SP to challenge BN/Santa Fe's strength in intermodal traffic between Southern California and the Midwest. The Port and its customers will be beneficiaries of these improvements and the resulting increased competition.

UP/SP also plan to use their local terminal facilities more efficiently and invest in expansion where necessary. In particular, I note that UP/SP plan a major expansion of the Intermodal Container Transfer Facility (ICTF) at a cost of more than $27 million. The ICTF serves both the Ports of Long Beach and Los Angeles. This investment in conjunction with main line improvements will mean that UP/SP will be able to provide more competitive intermodal service than either UP or SP can today.

Sustained rail competition is vital to economic development in Long Beach and in the Los Angeles region in general. Although the UP/SP merger will mean that the Port will be served by one fewer rail carrier after the merger, the financially strong rail lines serving the Los Angeles market would be beneficial to international and domestic shippers.

Another matter of great importance to the Port of Long Beach is the successful completion of the Alameda Corridor project. I am on the board of directors for this project. This $1.8 billion undertaking holds great promise for improving the efficiency of freight transportation to and from the Ports. UP, SP, and BN/Santa Fe have worked cooperatively on this project with the Ports and the other government entities to improve the rail infrastructure in the Long Beach-Los Angeles port area with the goal of making rail operations more efficient for everyone involved while mitigating the effects of such transportation on surrounding communities. The Port of Long Beach welcomes the consolidation of UP and SP because a financially sound merged railroad as a participant in this project is important to the attainment of project objectives.

For the reasons set forth above, the Port of Long Beach supports the merger and I urge the Surface Transportation Board to approve the application promptly.

VERIFICATION

I, Steven R. Dillenbeck, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on March 28, 1996.

Steven R. Dillenbeck
Executive Director
Port of Long Beach

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the Port of Los Angeles and The Port of Long Beach in Support of the Application was served via first-class mail, postage prepaid, on this 29th day of March, 1996, on all parties of record.

Samuel M. Sipe, Jr.

STB FD 32760 3-29-96 D 62195

L2195

House of Representatives

ATE OF UTAH

Item No.

REP. B Page Count 2

Mar #675

(WASATC)
HCR 65, BOX 36
ALTAMONT, UTAH 84001-9801
RES. 454-3719 / BUS. 722-4523

COMMITTEES: EDUCATION, CHAIR; TRANSPORTATION AND PUBLIC SAFETY; GENERAL GOVERNMENT AND CAPITAL FACILITIES APPROPRIATIONS SUBCOMMITTEE

March 25, 1996

Vernon A. Williams, Secretary
Surface Transportation Board
Room 1324
Room 1324
Twelfth Street & Constitution Avenue N.W.
Washington, D.C. 20432

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

Dear Secretary Williams:

As a Representative of the Utah Legislature, I want to express my strong support for the proposed merger f Union Pacific Railroad Company and Southern Pacific Transportation Company which is presently pending before the Surface Transportation Board.

Union Pacific has had a long and rich history intertwined with the state of Utah since the completion of the first transcontinental railroad commemorated by the driving of the golden spike in 1860 at Promontory Point, Utah. Southern Pacific, which now includes the Denver and Rio Grande Western Railroad Company, has also provided rail services in the state of Utah. Both railroads have competed vigorously with rail traffic to and from the state of Utah.

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

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

The UP/SP merger will benefit Utah shippers by improving railroad services from Utah to the Bay area, Denver, Texas, and the Gulf coast. In particular, Utah shippers will obtain faster routes to cement and trona plants in the Mojave Desert and to Los Angeles/Long Beach port facilities. Utah shippers will enjoy extensive new single line service between SP points in Utah and UP points in Washington, Idaho, Montana, Oregon, and California, the Midwest and upper Midwest, Southwest and Gulf Coast, and points throughout the SP system.

The merger of the Union Pacific and Southern Pacific will also provide other benefits to Utah:

> It will result in less rail congestion along the Wasatch Front (Provo, Salt Lake and Ogden), thus benefitting the motoring public; and
>
> It will enhance the opportunities for mass transit in the metropolitan Salt Lake area

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

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

Sincerely,

Beverly Evans

Representative Beverly Evans
District 54

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CMA-7

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED MAR 29 1996

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

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Office of the Secretary
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Public Record

COMMENTS OF THE CHEMICAL MANUFACTURERS ASSOCIATION

On December 8, 1994, Richard K. Davidson, CEO of UP and President of Union Pacific Corporation, was reported to have said that the Union Pacific had rejected the idea of merging with the Southern Pacific Railroad because to do so would "corner the freight market in Gulf Coast chemicals, raising competitive questions that would be challenged at the ICC."[1] Now, UP proposes to merge with SP, and to address anti-competitive concerns through a Comprehensive Agreement providing trackage rights and limited line sales to the BNSF (the "BNSF

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1 "Union Pacific Is On Track to Lock Up Railroad Lead," Wall Street Journal, December 8, 1994, Davidson Depo., Exh. 1. The article did not purport to quote Mr. Davidson directly. At his deposition, Mr. Davidson acknowledged that he had shared the competitive concerns with the Wall Street Journal, but that any remaining competitive concerns with the current merger were addressed with the BNSF Agreement. Davidson Depo. Tr. at 74-76.

Agreement"). The main issue in this proceeding is whether the BNSF Agreement in fact ameliorates the anticompetitive effects of the merger by providing effective rail-to-rail competition at each point where the merger will otherwise result in the reduction of available railroads from two to one ("2-to-1 points"). For the reasons stated below, the BNSF Agreement will not be effective to address anti-competitive concerns because (1) it appears unlikely that BNSF will have sufficient economic incentive to exercise its traffic rights to serve traffic to and from CMA member facilities in the Gulf Coast, (2) even if BNSF did elect to serve CMA member facilities, the rates that would be charged by the UP/SP and BNSF following the merger would almost certainly be higher than those charged today, (3) the BNSF Agreement would not in any case do anything to compensate for (a) the loss of leverage enjoyed by some sole-served UP and SP shippers today by the threat to have a nearby carrier "build in" to the shipper's facility, (b) the loss of SP as an aggressive "maverick" competitor and (c) the reduction in the number of rail competitors in the West other than at 2-to-1 points, and the extreme geographic concentration of Gulf Coast chemical shipments in the hands of the combined UP/SP system.

I. STATEMENT OF IDENTITY AND INTEREST OF CMA

The Chemical Manufacturers Association ("CMA") is a nonprofit trade association whose member companies have approximately 90% of the United States' productive capacity for basic industrial chemicals. CMA's members depend heavily on rail transportation of bulk chemicals, which typically move in tank cars and covered hopper cars owned or leased by the companies.

CMA has not in recent years involved itself in rail merger proceedings. Its involvement in this proceeding reflects its serious concerns about the effect of this merger on movements of chemicals from Texas and Louisiana, and inbound raw materials to Texas and Louisiana, including movements to and from Mexican gateways. As is evident from the submissions of the Applicants themselves, there is a tremendous concentration of chemical production in the Gulf Coast areas of Texas and Louisiana, especially in the vicinity of Houston and between Houston and New Orleans.[2] If the merger were approved as proposed, that region would be dominated almost exclusively by the combined UP/SP, subject only to the right (but not obligation) of BNSF to serve a limited number of 2-to-1 points over trackage rights, and to isolated competition from the KSC and IC on the eastern fringes of the region.

II. SUMMARY OF CMA'S POSITION

CMA has analyzed the proposed merger objectively with a focus on whether the BNSF Agreement will ensure the maintenance of effective rail competition at all points that would otherwise lose a choice of rail carriers. Because the analysis provided by CMA's experts shows that BNSF will not be able to compete effectively using the trackage rights granted in the BNSF Agreement (and indeed may well choose not to compete at all), CMA opposes the merger.

CMA would support the merger, however, if the Applicants and the BNSF took the steps set out in Attachment 1 hereto. These steps include (1) providing more detailed assurances and supporting operating and capital investment plans for the service that BNSF will provide under the BNSF Agreement, (2) ensuring that all 2-to-1 points will be open to the BNSF regardless of whether there has been traffic moving from the points in the past, (3) giving BNSF access under

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[2] For example, Mr. Spero (UP/SP-23 at 703) states that "about 70 percent of all primary petrochemicals are produced in Texas and Louisiana)."

the BNSF Agreement to 3-to-2 points for which, on a routing to a particular destination, there would be no alternative to and from the point other than the merged UP/SP system, (4) modifying the level of compensation provided by BNSF for the trackage rights, or providing that the compensation be paid into a trust fund, and (5) giving BNSF access under the BNSF Agreement to new facilities built post-merger on the lines over which BNSF will have trackage rights.

CMA notes that its remedial points do not address all of the likely anti-competitive effects of the merger. For example, they would not compensate for the loss of leverage now enjoyed by shippers by virtue of the potential for "build-ins" from nearby, potentially competing railroad lines. Nor would CMA's points compensate for the loss of the SP as a vigorous price competitor. Nonetheless, CMA submits that its points are a reasonable and achievable way to address its principal concern here -- that the BNSF under the BNSF Agreement as currently formulated lacks the incentive and ability to compete vigorously for Gulf Coast chemical traffic.

Although CMA's analysis has focused on whether the BNSF Agreement would preserve at least two-railroad competition at all points that currently enjoy rail competition -- and concludes that it would not -- CMA urges the Board to consider whether the limited analysis of competitive effects applied in recent rail merger cases should not be revisited and expanded. This merger would have the unprecedented effect of relegating fully two-thirds of the contiguous United States to dominance by only two rail carriers. For the reasons persuasively presented by Dr. William G. Shepherd,[3] mainstream economists are united in the view that a reduction in

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[3] The Verified Statement of Dr. Shepherd was prepared jointly on behalf of CMA, The National Industrial Transportation League, and The Society for the Plastics Industry, Inc., and is attached to the Comments filed by The Society of the Plastices Industry, Inc., SPI VS-7.

competition from three competitors to two (or even from four to three or five to four) can have pronounced anticompetitive effects. Therefore, while CMA emphasizes again that the current merger application does not pass muster under the Board's existing precedent, CMA urges the Board to take a "fresh look" at this merger rather than permitting itself to be pushed inexorably towards a future in which there are only two giant transcontinental rail systems from which to "choose."

III. SUMMARY OF CMA'S COMPETITIVE CONCERNS

Because the UP and SP dominate the movement of chemicals[4] from Texas and Louisiana, as well as the movement of inbound raw materials to CMA member-owned facilities in those states, the merger will have the effect of further concentrating the dominance of the merged UP/SP system over such movements. Although BNSF would have the right under the BNSF Agreement to serve selected locations classified as "2-to-1" points, BNSF is projected to obtain only a small share of inbound and outbound movements to Texas and Louisiana chemical facilities even if it chooses to exercise those rights. For example, using essentially the same assumptions used by the Applicants to estimate the likely diversion of traffic to the BNSF -- i.e., that BNSF will capture 90% of the traffic from 2-to-1 points moving to destinations which BNSF exclusively serves, and 50% of traffic to neutral gateways post-merger, Mr. Crowley in his

[4] Chemicals are generally grouped into STCC 28 (Chemical and Allied Products). CMA also has concern about movements of inbound raw materials, some of which are classified in STCC 14 (Nonmetallic Minerals Except Fuel), STCC 29 (Petroleum or Coal Products), STCC 48 (Hazardous Waste), and STCC 49 (Hazardous Materials).

attached Verified Statement calculates that the BNSF would have only a minuscule share of movements for STCCs of concern to CMA, as summarized in the following table:[5]

Table 1

Market Shares Pre- and Post-Merger for Texas/Louisiana Originations of Selected STCCs

	Pre-Merger			Post-Merger		
STCC	UP	SP	Other RRs	UP/SP	BNSF	Other RRs
28-Chemical and Allied Products						
29-Petroleum or Coal Products						
14-Non-metalic Minerals						

Moreover, the above market shares are based upon the assumption that BNSF will fully enter the market using the trackage rights granted in the BNSF Agreement. As is detailed below and in the verified statements of Dr. Shepherd[6] and Thomas D. Crowley,[7] there is serious doubt

[5] Verified Statement of Thomas D. Crowley, Attachment 2 hereto, at Exh._(TDC-4), Exh._(TDC-5) and Exh._(TDC-6). (Hereinafter "Crowley VS.")

[6] As noted previously, the Shepherd VS, filed jointly on behalf of CMA and two other parties, is attached to the Comments of the Society of the Plastics Industry, Inc., SPI VS-7. References here are to the page numbers of that statement.

[7] Attachment 2 hereto.

whether the BNSF would have sufficient incentives to enter the market at all to pursue chemical traffic potentially open to it under the BNSF Agreement.

As explained by Mr. Crowley and Dr. Shepherd, BNSF's incentives to enter the market are severely limited by the facts that:

(1) BNSF will be able to serve only a small number of points on each line over which it has trackage rights -- i.e., the 2-to-1 points -- and will be able to capture only the traffic from those 2-to-1 points that is destined for BNSF's few exclusively served destination, plus a portion of traffic moving to neutral gateways. BNSF's traffic density will thus be much lower than UP/SP's density on the same lines, and BNSF's costs per car will consequently be higher, thus severely impairing its ability to compete.

(2) BNSF would have to make substantial investments (estimated by Mr. Crowley to total at least $100 million) in yards, maintenance and fueling facilities, switch connection, and other facilities before it could hope to effectively compete with UP/SP for business from chemical shippers using its new trackage rights. In addition, it would need to hire and train new crews.

(3) The UP/SP would have the power to make access difficult through control of dispatching and operations on its lines over which the BNSF would operate -- putting BNSF in the position of offering "service with some disability," to use the words of outgoing BNSF Chairman Grinstein.[8]

(4) BNSF would face other operational hurdles, including the need to run it loaded trains northbound from Texas to Memphis over unsignalled SP track that would be operated by UP/SP one-way southbound.

(5) In contemplating whether to make the investments of time and money necessary to enter the markets offered by its new trackage rights, the BNSF might never face a window of time in which a critical mass of traffic sufficient to justify its investment is available, because much Gulf Coast chemical traffic is committed under transportation contracts to the UP or SP, and because shippers would have no choice but to continue

[8] "Can Drew Lewis Drive the Golden Nail," Forbes magazine, December 18, 1995 at 52, 64. Mr. Grinstein confirmed his views concerning the difficulties of BNSF's serving customers using trackage rights in his deposition. Grinstein Depo. Tr. at 69, line 15 through 70, line 4.

renewing such UP/SP contracts unless and until BNSF has taken the steps necessary to enter the market.

(6) BNSF will have to pay to the UP/SP a trackage rights fee that further raises BN's costs above those of the UP/SP and hence puts the BNSF at a competitive disadvantage.

(7) UP/SP will have the ability to seek to prevent entry by BNSF, or retaliate against BNSF entry, by "pin-point" pricing to undercut the BNSF, and in doing so will have the advantage of a substantially lower cost structure.

If BNSF fails to enter the market, or fails to enter it fully, the effect will not only be to further increase UP/SP's dominance of Texas/Louisiana rail movements, but more significantly, to deprive shippers at 2-to-1 points of any effective choice of rail carrier. Whereas before the merger they could seek to obtain competitive bids from the UP and the SP, after the merger they will have no choice but the combined UP/SP system. CMA also submits, as the Applicants and their witnesses effectively concede, that modal and source competition would not be sufficient to counterbalance the dominance of the UP/SP over Texas and Louisiana chemical traffic.

For all these reasons, the merger should not be approved in the absence of the clarifications and expansion of the BNSF Agreement set out in Attachment 1 hereto. Each of these issues is addressed in more detail in the following sections.

IV. DISCUSSION

A. The BNSF Agreement Does Not Effectively Ameliorate The Anti-Competitive Effects Of The Merger Because BNSF Would Face High Barriers Which Would Likely Deter Its Entry Into Markets It Would Have the Right to Serve Under the Agreement.

In assessing the value of the BNSF Agreement in ameliorating the anticompetitive effects of the merger, the threshold question is whether BNSF would have sufficient incentive under the

Agreement to enter and compete at all in the markets potentially opened to it by the Agreement, and, if it entered at all, whether it would enter only sporadically and partially. As is discussed more fully in the Verified Statement of Dr. William G. Shepherd (hereinafter "Shepherd VS"), the BNSF will probably choose not to enter the market for Gulf Coast chemical traffic in light of substantial barriers to entry. In summary, the BNSF will be unlikely to enter because it will be unable to compete effectively and cannot hope to realize the returns on capital by investing in service under the BNSF Agreement that it could realize on other investments. As Dr. Shepherd notes, unless and until BNSF actual decides to enter and compete, it is only a potential competitor, not a real competitor.[9] Dr. Shepherd points to the example of Southwest Airlines -- Southwest can have a substantial competitive effect on prices, but only after it actually enters a particular city-pair market.[10]

The combined effect of these barriers will likely be to prevent the BNSF from entering the market and quickly gaining as much traffic flow as UP/SP already has, and hence would prevent the BNSF from obtaining traffic density comparable to that of the UP SP. Dr. Shepherd states that the ability of an entrant to capture sufficient traffic density to be on "an equal economic footing" with the incumbent is "the standard determinant of success in network-based industries such as railroads."[11]

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[9] Shepherd VS at 4, 12-13.

[10] Id. at 11.

[11] Id. at 42.

The barriers to entry identified by Dr. Shepherd include:[12]

1. The fact that BNSF will be able to serve a very limited traffic base, and hence will have lower traffic densities and higher unit costs than the UP/SP operations on the same lines.

2. Operational difficuities in attempting to provide good-quality service over UP/SP's tracks.

3. Higher operating costs for BNSF, compared to UP/SP, including higher costs resulting from payment of trackage rights fees to UP/SP.

4. Extra investment costs that BNSF must incur even before it is able to solicit business from shippers.

These barriers are discussed in turn below.

1. Inability of BNSF to compete for certain customers. Under the BNSF Agreement, BNSF will only be able to serve the relatively few 2-to-1 points along the lines over which it has trackage rights. As a result, the BNSF will have lower traffic density, lower revenue per mile, higher costs than the UP/SP, and a consequent inability to compete effectively against the incumbent UP/SP.[13] In addition, much of the traffic that BNSF might otherwise compete for is locked up in long term contracts with the UP or SP. This reduces that amount of traffic that is available during any particular "window of opportunity" in which BNSF might be considering committing to the market, and further deters entry.[14]

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[12] Id. at 42-43.

[13] Id. at 43-45, 46-47; Crowley VS at 33-50.

[14] Shepherd VS at 44; Crowley VS at 16.

BNSF will realistically be able to compete only for traffic moving to destinations on its own system, or to neutral gateways. BNSF provides exclusive service to very few destinations, because its route structure runs principally to the north and west from Texas and Louisiana, whereas the predominant flows of chemical traffic from those states are to the east and northeast. Even if the Applicants' own assumptions are used, and BNSF captures 90% of the traffic from 2-to-1 points moving to destinations which BNSF exclusively serves, and 50% of traffic to neutral gateways, the traffic that would be handled by BNSF would be quite small relative to the UP/SP traffic. See Table 1 above and pages 5-8 and Exhs._(TDC-1) through (TDC-8) of the attached Crowley VS.

2. <u>Operational difficulties in arranging to provide good-quality service along UP/SP's tracks.</u> These difficulties include the fact that BNSF will not control the dispatching of the traffic, the difficulties inherent in attempting to move loaded traffic originating in Texas against the flow of UP/SP directional southbound traffic on the key Houston-Memphis route, and the absence of present BNSF facilities to provide storage-in-transit for plastics resins traffic.[15]

Outgoing BNSF Chairman Grinstein commented to <u>Forbes</u> magazine that the trackage rights under the BNSF Agreement would constrain BNSF to offering "service with some disability."[16] Grinstein affirmed this position in his deposition in this case.[17] This comment is in fact consistent with the verified statement of Mr. Peterson contained in the Application:

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[15] Crowley VS at 20-22, 37-40.

[16] See note 8 above.

[17] Grinstein Depo. Tr. at 69, line 15 through 70, line 4.

> Independent railroads simply do not agree to operate their basic routes and facilities in common. The reasons are the same as those that make joint-line service inferior to single-line service: differing priorities. railroads' desire for control of their separate destinies. and the inherent difficulty in reaching agreement on complex and ever-changing matters.

Peterson VS at 57.

Perhaps most tellingly, one of the Applicants, the SP, has previously criticized the other, the UP, for UP's failure to provide equitable handling of trains operating on UP's system over trackage rights. The SP has stated that:

> SP's evidence has demonstrated substantial deficiencies in UP's handling of SP trains operating over UP's lines pursuant to trackage rights.... At bottom, the evidence shows that UP failed to take appropriate and sufficient steps to afford SP trains the equal, non-discriminatory treatment required under the Commission's orders.[18]
>
> Because control of the dispatching and movement of SP trains over the UP lines was in the hands of UP, SP was not in a position to avoid delays, to take steps to make up for them, and to provide consistent, reliable performance, as UP was able to and did do for its own trains.[19]

These comments are crucial, because they are likely better evidence of what can be expected of UP in dispatching BNSF trains than the assurances provided by UP that it will handle BNSF trains "without discrimination." Note that the same "without discrimination" language found in the Joint Line Agreement in the Powder River Basin has failed to ensure equal dispatch. The CNW, which has complained strenuously about the abuses of BN dispatchers despite the "without discrimination" clause, has said that the situation "is the competitive equivalent of

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[18] Finance Docket 32133, Union Pacific Railroad Co. and Missouri Pacific Railroad Co. -- Control -- Chicago and Northwestern Transportation Co. and Chicago and Northwestern Railway Co. (SP opening brief filed October 12, 1994).

[19] Id.

having United Airlines and American Airlines operating out of the same busy airport, but giving United exclusive authority over the control tower!"[20]

Other examples can readily be given. One was recently reported in the press: When several of KCS' grain trains operating over trackage rights were stranded on the lines of the UP-CNW, several KSC locomotives sent to rescue them were commandeered by the UP to run its own trains in competition with the KCS trains.[21]

These difficulties are compounded by the fact that the trackage rights provided to the BNSF are of unprecedented length, totaling 3,800 miles. Skepticism about the adequacy of incentives for BNSF to attempt to overcome UP/SP's physical control of these lines is no doubt a major reason why shippers, who are intimately familiar with these problems, have opposed this merger in large numbers.

The prospects for just such problems will certainly give BNSF, at the very least, good reason to build in a high risk factor when calculating the potential return from investment in starting new service to Gulf Coast chemical shippers as opposed to investing in developing traffic elsewhere on its system. As Dr. Shepherd points out in his verified statement. BNSF will probably decide to invest in other traffic elsewhere rather than trying to overcome the substantial risks and barriers to entry found in the potential markets afforded by the BNSF Agreement.[22]

[20] CNW, Important Message from Chicago and Northwestern Railway Company, quoted in Crowley VS at 21.

[21] Traffic World, December 18/25. 1996 at 9.

[22] Shepherd VS at 40.

3. Higher operating costs for BNSF, compared to UP/SP. Because BNSF exclusively serves only relatively few destinations that receive products from the 2-to-1 points under the BNSF Agreement, and would be able to capture only a portion of traffic from neutral gateways, it would be virtually impossible for BNSF to gain sufficient traffic density to lower its operating costs to be able to compete with UP/SP. Dr. Shepherd concludes from this factor alone that "Looked at objectively, a barrier this severe would be quite sufficient, in virtually all other markets in the U.S. economy, to deter a rational entrant even from trying to enter."[23]

Added to the problem of lower traffic density is the burden imposed by the trackage rights fees that BNSF would have to pay to use the UP/SP track. According to calculations by Mr. Crowley, on the Houston-Memphis-St. Louis route, BNSF's costs (including the trackage rights compensation between Houston and Memphis) would be ' (or %) higher than the costs faced by the UP/SP,[24] and that differential will increase substantially over time because the trackage rights compensation paid by the BNSF will escalate using a rail cost adjustment factor (RCAF) that will not be adjusted for the substantial productivity gains that have been achieved by railroads in the recent past and are likely to continue to be achieved in the future.[25]

At a minimum, as Dr. Shepherd points out, "this barrier alone would give UP/SP a rational basis for raising its own prices to shippers by precisely that cost difference. The

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[23] Shepherd VS at 46.

[24] Crowley VS at 49-50.

[25] Crowley VS at 55-58.

supra-competitive pricing would be raised to the limit price, by some 25 percent (average) or possibly more."[26]

4. Investment costs that BNSF must incur before it can solicit business from shippers. As Dr. Shepherd demonstrates, BNSF's prospects for successfully entering markets using its new trackage rights will depend on its ability "to enter at a large scale over broad areas and corridors, in order to have a substantial and flexible full-service system to offer shippers."[27] Yet such entry will require very substantial investment in its own infrastructure, including locomotives, storage and other yards, switch connections, and fueling, crewing, loading and maintenance facilities.[28] Hiring and training new crews will itself be a substantial expense,[29] and the barrier presented by the hiring of new labor is magnified by the fact that, should crews then have to be laid off, they will probably be entitled to benefits under the New York Dock labor protective conditions.[30]

Such new investments would bear a very high degree of risk since they depend on BNSF's gaining large shares of the traffic notwithstanding the substantial barriers to doing so already noted above.[31] In addition, as Applicants' own witness Willig concedes, the return on

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26 Shepherd VS at 46-47.

27 Shepherd VS at 47.

28 Crowley VS at 42-48.

29 Among other expenses, BNSF will need to train the new crews to handle hazardous chemicals, as required by Department of Transportation regulations. See 49 CFR §172.700 et seq. (specifying training required for haz mat workers), §171.8 (defining haz mat employee to include transportation workers).

30 New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 ICC 60 (1979), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

31 Shepherd VS at 47.

capital that a business will demand for a new proposed investment will be higher than the market cost of capital, and will reflect the risks inherent in the project.[32]

The risk to BNSF is all the greater because, as Dr. Shepherd points out. "the investments will be in the nature of sunk costs, which BNSF would not be able to recover if it is forced to exit the market. Such sunk costs are particularly strong deterrents to entry."[33] Dr. Shepherd concludes that the need for these investment alone "would probably deter BNSF from trying to enter a significant portion of the markets, let alone every one of the markets."[34] In summary, Dr. Shepherd concludes that:

> Taken together, all of these barriers make it virtually certain that BNSF will not enter significantly in any markets. It is even less likely that BNSF would try to enter every one of those markets and corridors, as UP/SP and its witnesses predict. Therefore, any expectation that the trackage rights will cure the monopoly impacts of this merger is not in touch with economic and business reality.[35]

Were BNSF to attempt to make the necessary investment and use its trackage rights to serve Gulf Coast chemical shippers, the UP/SP would have powerful weapons to retaliate against such entry. Using its cost advantage (see 1, 3 and 4 above), the UP/SP could choose to undercut BNSF's prices at will. This form of strategic or "pin-point" pricing is a typical anti-competitive

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[32] Willig Depo. Tr. (first day) at 462 line 18 through 464 line 10.

[33] Shepherd VS at 47-48.

[34] Id. at 48.

[35] Id.

tool used by dominant firms.[36] Knowing full well the potency of this weapon should it decide to enter, the BNSF would be probably consider such entry too risky.

In sum, there is not only no assurance that BNSF would enter the Gulf Coast chemical market -- there is every reason to believe that most or all shippers at 2-to-1 points would receive no service from the BNSF, much less the type of aggressive service that the Applicants would have the Board believe is an unvarying hallmark of the BNSF. If the BNSF is the strong and well-managed competitor it is portrayed to be, it will certainly not allocate its scarce resources on markets in which it is unlikely to be successful. And of course, in the absence of service by the BNSF, or other conditions imposed by the Board, no other rail carrier would be able physically or legally to step into the void left by the consolidation of what are even today the dominant carriers serving the Gulf Coast chemical market. At best, the BNSF would provide service, but prices for its services as well as that of UP/SP would be quite substantially (20-25%) higher.

B. The BNSF Agreement Does Not Cover All Service From Nominally 3-to-2 Points Where the Merged System Provides the Only Rail Alternative for a Given Routing.

A portion of Lake Charles is presently served by the UP, SP and the KCS. But the KCS' only line from Lake Charles runs north to Shreveport before turning sharply southeast to New Orleans. For traffic from Lake Charles bound for New Orleans, then, the only reasonably direct routing is via the merged system. Yet the BNSF Agreement does not even attempt to address this issue because, given the present of KSC, this is not classified as a "2-to-1" point. This is one of the issues addressed in CMA's list of points that need to be addressed (Attachment 1 hereto).

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[36] Id. at 25, 28-30.

C. The BNSF Has Given No Concrete Assurances That It Will Exercise Its Rights Under The BNSF Agreement.

The BNSF in its comments filed December 29, 1995 (at 2) claimed that the terms of the BNSF Agreement would "permit BN/Santa Fe to compete vigorously to serve affected shippers." (Emphasis added.) In the same filing, the BNSF recited the terms of its trackage rights agreement with Applicants and offered generalizations about how it might serve such shippers under that Agreement, but carefully refrained from committing itself to offer such service, or from giving details of its plans to implement such service.

Since that December filing, BNSF President Krebs is reported to have made general statements apparently intended to reassure shippers that BNSF will enter the market, but there has been no record statement or commitment from BNSF about its proposed service or rates. The only evidence of any rates quoted by BNSF on traffic that would be handled over the trackage rights that would be received in this case is contained in a March 12, 1996 letter from Phillips Petroleum Corporation to Chairman Morgan, reporting that a quote received from BNSF for Houston-New Orleans movements was "considerably higher than other available rail options." This letter is not encouraging regarding the aggressiveness of BNSF's pricing post-merger.

D. In Any Event, the BNSF Would Not Compensate for the Loss of the Vigorous Price Competition Provided by the SP.

As Dr. Shepherd testifies, both the research literature and antitrust policies recognize the importance of maverick firms.[37] These distinctive competitors regularly depart from the shared

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[37] Shepherd VS at 49.

interests that often lead to a joint-maximizing of profits by the few firms in tight oligopolies. SP can be viewed as a maverick competitor, with a greater willingness than Union Pacific and BNSF to resort to price-cutting.[38]

The merger will decisively remove that maverick railroad and its price competition. Indeed, Richard K. Davidson, President of Union Pacific Corporation, said at a chemical industry association meeting that the Union Pacific planned to end Southern Pacific's aggressive "cash flow pricing" after the merger.[39] Mr. Davidson also affirmed in his deposition that the UP had a duty to its shareholders to attempt to maximize profits, including by obtaining the highest revenue possible from customers without losing business.[40] Absent the competitive constraints provided by vigorous rail price competition, then, UP would have a fiduciary obligation to its shareholders to increase its rates if possible.

E. Modal And Source Competition Will Not Effectively Constrain The UP/SP System.

Several of applicants' witnesses concede that the merger should not be approved in the absence of effective assurance that rail-to-rail competition will be preserved at points where it

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[38] Id. at 49-50. Another example cited by Dr. Shepherd is the pricing of plastics traffic by the Chicago and Northwestern (CNW) at rates below UP, with the effect of holding down UP rates.

Id. at 49, n. 58.

[39] See SPI witness Johnson's Verified Statement (SPI V.S.-6), p. 1. Mr. Davidson in his deposition did not deny having made this statement.

[40] Davidson Depo. Tr. at 77 line 20 through 79 line 17.

would otherwise be eliminated.[41] UP witnesses, including UP's CEO Mr. Davidson, rely on the BNSF Agreement to perform that function.[42]

Applicants thus effectively concede that, if the BNSF Agreement does not provide adequate rail-to-rail competition to constrain anti-competitive behavior by the merged system, such competition would not be fully provided by other modes, or by the ability of producers or end users to trade off sources of supply served by different carriers.

Nonetheless, the Applicants rely on a sizable amount of aggregate statistics purporting to show the range of modal and/or source choices to producers and/or end users. Yet apart from anecdotes, the Applicants provide no evidence regarding the ability of particular shippers at particular locations to benefit from modal or source competition in lieu of effective rail competition. It is axiomatic to anyone with experience dealing with railroads that just because another shipper has a choice of transportation does not confer any benefits to a shipper not so situated. For example, the fact that one shipper may have the ability to ship some products to some destinations using barge does not benefit a shipper who is not located on water, or whose customer is not located on water.[43]

Applicants also overstate the importance of non-rail modes in the transportation of chemicals. For example, UP/SP witness Spero cites a CMA publication, U.S. Chemical Industry Statistical Handbook, for the proposition that nearly half of chemical traffic was handled by truck

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41 Barber Depo. Tr. at 521 line 12 through 522 line 5.

42 Barber, id.; Davidson Depo.Tr. at 74-76.

43 Shepherd VS at 32 n. 42.

in 1994.[44] But those statistics are based on movements that are not relevant to the question of whether rails dominate the movement of long-distance bulk chemicals. Specifically, the CMA publication notes that while trucks have increasingly been used for bulk movements of intermediate chemicals, "trucking is most widely used for small-volume packaged chemical products." In fact, the statistics for truck are inflated not only because they are reported on a ton (not ton-mile) basis, but also because they reflect multiple movements of packaged products at various stages in the packaging, repackaging, wholesale and retail distribution cycles.

As Dr. Shepherd confirms that "[i]n the literature of transportation economics, it has long been recognized that trucks and barges do not provide effective substitutes or competitors for railroads on major classes of traffic. Railroads are most suitable for high-bulk, uniform, low-speed, long distance freights."[45] The latter characterization certainly includes much, if not all, chemical traffic.

V. CONCLUSION

Because the analysis provided by CMA's experts shows that BNSF will not be able to compete effectively using the trackage rights granted in the BNSF Agreement (and indeed may well choose not to compete at all), CMA opposes the merger. CMA would support the merger, however, if the Applicants and the BNSF took the steps set out in Attachment 1 hereto in order to (1) provide more detailed assurances and supporting operating and capital investment plans

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[44] Spero VS at 703. The relevant pages of the CMA Handbook are workpapers pages NO4 110009 and NO4 110010.

[45] Shepherd VS at 32 and n. 41.

Attachment 1

UP-SP MERGER
CONCERNS & REMEDIES

This document described CMA member concerns and remedies with the proposed Union Pacific-Southern Pacific Railroad merger as it was presented in the application pending before the Surface Transportation Board, Finance Docket 32760.

CONCERN: RAIL COMPETITION

CMA is concerned with the reduction of rail competition to, and from, CMA member facilities in Texas and Louisiana.

1. REMEDY: SCOPE OF TRACKAGE RIGHTS AGREEMENT

The UP should ensure effective competition by two railroads at all 2:1 locations, and at selected 3:2 locations at which only one railroad effectively serves a route over which chemicals are shipped. Specifically:

1A. Include all 2:1 points regardless of whether any traffic has been shipped through these points in the past;
1B. Include all 3:2 points where only the merged system can directly serve a "defined" route; and
1C. Provide BNSF with rights to serve new (post-merger) facilities on the lines over which it has been granted trackage rights.

2. REMEDY: SERVICE AND COMPETITION UNDER TRACKAGE RIGHTS AGREEMENT

The UP should expand the scope of the UP-SP and BNSF Trackage Rights Agreement to address the following remedies. Specifically:

2A. Provide a detailed operating and capital investment plan to address, for example, storage-in-transit, and other facilities to support competitive BNSF service to shippers over the trackage rights;
2B. Provide a detailed plan to ensure equal dispatching of trains;
2C. Renegotiate (lower) the trackage rights fees or establish a trust fund to provide for shared maintenance costs rather than subsidize the host railroad's operations;
2D. Provide BNSF with rights to Brownsville/Laredo on the same terms to what the SP has currently; and
2E. Provide BNSF rights to operate trains in the same direction as UP-SP trains over UP-SP tracks wherever UP-SP has or may have instituted directional operations (for the same length of time agreed to under the Agreement).

detailing the service that BNSF will provide under the BNSF Agreement, (2) ensure that all 2-to-1 points will be open to the BNSF regardless of whether there has been traffic moving from the points in the past, (3) give BNSF access under the BNSF Agreement to 3-to-2 points for which, on a routing to a particular destination, there would be no alternative to and from the point other than the merged UP/SP system, (4) modify the level of compensation provided by BNSF for the trackage rights, or provide that the compensation be paid into a trust fund, and (5) give BNSF access under the BNSF Agreement to new facilities built post-merger on the lines over which BNSF will have trackage rights.

Respectfully submitted,

Scott N. Stone
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6000

Outside counsel for Chemical
Manufacturers Association

David F. Zoll, Vice President
and General Counsel
Thomas E. Schick, Assistant
General Counsel
Chemical Manufacturers
Association
Commonwealth Tower
1300 Wilson Boulevard
Arlington, VA 22209
(703) 741-5172

Inside counsel for Chemical
Manufacturers Association

Dated: March 28, 1996

CERTIFICATE OF SERVICE

I hereby certify that copies of Comments of Chemical Manufacturers Association have been served this 29th day of March, 1996, by hand and overnight courier to counsel for Applicants and for the BNSF and by first-class mail, postage prepaid on all parties of record in Finance Docket No. 32760. Restrictions on the distribution of Highly Confidential material have been observed.

Scott N. Stone
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6335

STB FD 32760 3-29-96 D 62178

62178

Item No. ____________

Page Count 2

Mar #763

STATE of TEXAS
HOUSE of REPRESENTATIVES

THE STATE OF TEXAS

GARNET F. COLEMAN

STATE REPRESENTATIVE
DISTRICT 147

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

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

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

Dear Secretary Williams:

I am deeply troubled by the proposed railroad merger of Union Pacific Corporation and Southern Pacific Corporation. I believe this merger will lead to a drastic reduction in competition, inevitably leading to rising prices for consumers through higher shipping costs. We can talk about "rising intermodal transportation costs" and "reduced competitive atmosphere", but what we are really saying is that simple items, milk, diapers, trash bags, will all cost the average taxpayer more because petrochemical companies will have higher transportation costs. Food and clothing prices will rise as shipping costs for farmers increase. The ripple effect in our economy could be enormous.

If the merger is granted, there will be a duopoly of railroad conglomerates controlling rail shipping throughout Texas and most of the South and with Mexico. The economic dangers of having such a vital industry in the hands of so few outweigh the potential benefits. It is not only dangerous, but un-American to allow one firm to control an industry so important to our economic security and freedom.

On March 29, 1996, Texas State Representatives Junell, Cook and Saunders submitted for the board's consideration a request for conditions(JRC-2, RAJ-2, RMS-2) regarding finance docket no. 32760. I am writing to express my support for this request. My concerns lie within three areas, and consist of the following:

Competitive Impact

Union Pacific's proposed $5.4 billion acquisition of SP, would create the country's largest freight rail system, and have a definite negative influence on competition in the railroad industry in the State of Texas. This merger undermines the principles of free market and open competition by placing an estimated 31,000 miles of track in 25 states, including 7100 miles in Texas, under the control of one company. If the acquisition of SP becomes a reality, then UP/SP would control 90% of rail activity, and 70% of the state's petrochemical tonnage between Texas and Mexico.

The new conglomerate would also control the following:

* nearly two-thirds of the Class 1 miles within the state, and more than half of the rail traffic carried on Class 1 railroads.
* two direct routes linking Texas ports, including the petrochemical complexes on the Houston Ship Channel and gateways in New Orleans, Memphis and St. Louis.
* majority of rail ports of entry into Mexico except for El Paso.

Such centralized control smacks of duopoly, and would create higher rates for commodities, such as agriculture, chemical, petroleum, and manufactured goods, which are essential for the fiscal and economic well-being of Texas. Union Pacific's current control of the Chicago,IL to Laredo,TX route illustrates how reduction in competition leads

ADVISE OF ALL PROCEEDINGS

Committees: Appropriations • Public Health

P.O. BOX 2910 • AUSTIN, TEXAS 78768-2910 • (512) [illegible]
P.O. BOX 88140 • HOUSTON, TEXAS 77288 • (713) [illegible]

to increased intermodal container rates. From 1991 through 1993, these rates increased by .25 cents per container-mile along this route. In order to maintain a greater accessibility to markets and competitive shipping rates, the State of Texas should consider distributing trackage rights, and divestiture of a third rail carrier, unaffiliated with UP/SP and Burlington Northern Rail Corporation(BN). This alternative would provide a more competitive alternative for domestic and international shipping.

Fiscal Concerns
The State of Texas will face severe fiscal repercussions as a result of reduced competition from the proposed merger. The detrimental effect associated with the merger will especially be felt among Texas petro-chemical shippers. Increase in shipping costs due to reduced competition, will force the petro-chemical industry to endure a loss of:

* $45,202,749 in annual expenditure;
* $13,675,691 in annual gross state product;
* and $5,593,703 in annual personal income.

The merger would grant control of three-quarters of the freight rail service between the United States and Mexico to UP/SP, resulting in a less competitive environment and, consequently, reduce the potential fiscal benefits among industries involved. Therefore, agreement for divestiture of the SP East Texas line along with trackage rights, as requested by Texas-Mexican Railway and South Orient Railroad, would afford an opportunity for a third rail carrier to provide service to and from Mexico through the gateways of Laredo and Presidio, Texas. This course of action would help contribute to the success of the North American Free Trade Agreement(NAFTA).

Economic\Environmental Effects
The proposed rail merger would create severe economic and environmental concerns for the State of Texas. The merger would eliminate an estimated 3,900 permanent jobs, including 500 engineer, conductor, and trainmen positions. Within 3 years, approximately 700 positions would be terminated along with 1,100 clerical positions. It would also reduce economic industrial development causing increased transportation rates and reduce incentive for improved and innovative customer service.

As a result of consolidation and non-competitive pricing, the trucking industry, as an alternative, will be heavily relied upon for the transportation of goods, raising serious environmental concerns. An already congested highway system in the state will be further burdened with increased trucking activity, adding to and complicating Texas existing environmental problems.

For these reasons, I urge the board to approve the request for conditions filed by my colleagues in the Texas Legislature. The approval of this request is vital to maintaining a free enterprise system among the rail industry in Texas.

Sincerely,

Representative Garnet F. Coleman

Representative Debra Danburg

Kevin Bailey

Representative Kevin Bailey

STB FD 32760 3-29-96 D 62169

62164 29

Item No.

Page Count 2
Mar #649

Limited Liability Company
Box 745
TELLURIDE, CO 81435

ENTERED
Office of the Secretary
MAR 29 1996
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RECEIVED MAR 29 1996 MAIL MANAGEMENT I.C.C.

Office of the Secretary
Surface Transportation Board
1201 Constitution Avenue, NW
Room 2215
Washington, DC 20423

RE: Southern-Pacific/Union Pacific Merger/Track Abandonment

Statement of Opposition and Petition for Intervention

E.R. Jacobson as Director, Vice President of Engineering and principal shareholder of Atlas 1 LLC (Colorado) owners and operators of the American Atlas Cogeneration plant situated near Rifle in Garfield County, Colorado, states as follows:

1) The Atlas plant is Rifle's largest employer, providing over 120 year-round jobs.

2) The Atlas plant is one of the largest property tax payers in the region, with annual tax payments in excess of $1 million to Garfield County.

3) The Atlas plant utilizes large prime movers which can only be shipped by rail due to unit weights in excess of 100 tons.

4) That the combustion turbine assemblies and steam turbine castings are too large to be shipped over the Moffat Tunnel - Dotsero cutoff route.

5) That said units have successfully moved over the Tennessee Pass line.

6) That both the steam turbines and the combustion turbines and replacement castings pertinent thereto are only produced in East Coast foundries.

7) That the Atlas Plant will be placed in a difficult position if another steam turbine main body casting cracks.

ADVISE OF ALL PROCEEDINGS

8) That it is in the Atlas plant's best interest for the Tennesee Pass line to remain open so that vital components may continue to be delivered to our power generation installation.

E.R. Jacobson

STB FD 32760 3-29-96 D 62164

6216.4

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Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501

Telephone (610) 481-4911

AIR PRODUCTS

ENTERED
Office of the Secretary

MAR 29 1996

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28 March 1996

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

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Department of Transportation
1201 Constitution Avenue, NW, Room 2215
Washington, DC 20423

Re: Finance Docket #32760

Dear Secretary Williams:

Air Products and Chemicals, Inc., is a $3.9 billion producer of chemicals and industrial gases. Our chemicals business annually spends $30 million for rail transportation. Approximately 70% or 6300 carloads originate in the Texas-Louisiana corridor. It is for this reason that we have concerns about the proposed merger of the Union Pacific and Southern Pacific railroads.

With this and the recent wave of railroad mergers, we sense a disturbing trend toward consolidation of the railroad industry in the U.S. With fewer railroads, there will be less competition. With less competition, there is more likelihood that the shipping community will be subjected to predatory practices by the remaining railroads and will be economically harmed. Further, without sufficient competition, incentives to provide adequate service will be non-existent and the gains of recent years, largely the result of deregulation as promulgated by the Staggers Act, will be lost.

This is no more evident than in the Gulf Coast area where the large petrochemical industry is heavily dependent on affordable rail service. Based upon our $20 million expenditure for rail service in this area, it is essential to our company that competition be preserved. The UP proposed remedy, the trackage agreement with the Burlington Northern Santa Fe, does not adequately address this need. Too much is unknown about the cost arrangements, and operational constraints will not allow them to adequately service the region. Also, there is something fundamentally wrong with an arrangement that allows the UP to gain revenue from its major competitor on all traffic that the competitor carries. In other words, they will gain whether they win or lose a given segment of the business.

ADVISE OF ALL PROCEEDINGS

It is our company's position that a property owner will best serve the economic and service needs of our company and others in the Gulf. We believe that a railroad that has full control over train schedules, storage yards, and full access to all industries in the area, including opportunities for capital investment, will be able to provide the best service, and by doing so will effectively force the UP and others to compete on a service basis as well as an economic one. We believe that true economic competition will be best served by a property owner rather than through a contrived trackage agreement.

We concur with recent positions taken by the Texas Railroad Commission, The Society of the Plastics Industry, and the National Industrial Transportation League that this merger, as proposed, is detrimental to the shipping community in the Texas Gulf area. We urge the Board to consider the economic well being of the shipping community as it deliberates this matter and that, if approved, the merged railroad be ordered to divest SP properties in the Texas Gulf region.

Very truly yours,

Richard C. Walters

Richard C. Walters
Manager,
North American Distribution

m:\windows\railroad.doc

STB FD 32760 3-29-96 D 62154

Item No.____________
Page Count ____4____
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62154 104

MOUNTAIN COLLEGE

LC-2

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

March 21, 1996

RECEIVED MAR 29 1996

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

Re: Finance Docket No. 32760, Union Pacific Corporation, 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.

Docket No. AB-8 (Sub-No. 36X), The Denver and Rio Grande Western Railroad Discontinuance Exemption, Sage-Leadville Line in Eagle and Lake Counties, Colorado
and
Docket No. AB-12 (Sub-No. 189X), Southern Pacific Transportation Company Abandonment Exemption, Sage-Leadville Line in Eagle and Lake Counties, Colorado.

Docket No. AB-8 (Sub-No. 39), The Denver and Rio Grande Western Railroad Company Discontinuance, Malta-Canon City Line in Lake, Chaffee and Fremont Counties, Colorado
and
Docket No. AB-12 (Sub-No. 188) Southern Pacific Transportation Company Abandonment, Malta-Canon City Line in Lake, Chaffee and Fremont Counties, Colorado.

Dear Secretary Williams:

On December 22, 1995, I advised you, on behalf of the Leadville Coalition, of our intent to participate in the above referenced proceedings. The Coalition is composed of a Board of Directors representing the Lake County Board of Commissioners; The City of Leadville; The Leadville Sanitation District; The Parkville Water District; The Lake County School District, R-1; The Colorado Mountain Junior College District and the Greater Leadville Area Chamber of Commerce. Associate memberships are held by St. Vincent General Hospital; The Lake County Parks and Recreation Department; The U. S. Forest Service, Pike-San Isabel National Forest,

LEADING THROUGH LEARNING

TIMBERLINE CAMPUS
901 South Highway 24 Leadville, Colorado 80461 719-486-2015

Leadville Ranger District and The Leadville Transportation Department. Collectively, we have a number of concerns regarding the proposed merger, abandonment and exemption.

It is our understanding that the Union Pacific Railroad Company, the Southern Pacific Transportation Company and their respective subsidiaries, hereinafter referred to as the "Companies", are required to prepare an Environmental Assessment Report on properties proposed for abandonment. It is our impression, substantiated by the January 12, 1996 "Notice of Intent to Participate" filed by the United States Environmental Protection Agency, Region VIII, that the report filed by the Companies is not in compliance with a variety of federal statutes and regulations.

Portions of the properties owned by the Southern Pacific(SP) and proposed for abandonment lie within the California Gulch Superfund Site covering parts of Leadville and unincorporated areas in Lake County. In its filing, Volume 6; Part 4; Chapter 5.0, Colorado; Section 5.1, Sage to Leadville, Colorado; Subsection 5.1.2.5.1, Conditions of the Rail Segment, it is acknowledged that "SP own three slag piles included in the site, referred to as the Harrison Street Pile, the La Plata Pile, and ASARCO Pile." The ASARCO Pile is referred to in other documents as the Arkansas Valley or AV Pile. It is further stated that" Ballast-sized slag (greater than 0.25 inch in diameter) was released for use by the Environmental Protection Agency (EPA) in 1993. As a result of that ruling, SP resumed use of appropriately sized slag as ballast in 1995."

The statement continues " The three slag piles in SP ownership contain some lead "fines" (slag less than 0.25 inch in diameter), as well as ballast-sized slag. It is anticipated that following the merger, slag would continue to be used as ballast, an action that would reduce the size of the piles." However, the appears to be no mention of remedial action contemplated by SP in relation to the "fines" which remain at the three sites.

In our view, the term "piles" is somewhat relative and does not accurately describe SP's area of responsibility. In the November, 1991 document "Sampling and Analysis Plan for Slag Pile Remedial Investigation/Feasibility Study at California Gulch Site, Leadville, Colorado," prepared for D & RGWRC by Morrison Knudsen Corporation, the description of the "piles" is more precise.

The report states " The Arkansas Valley (AV) pile is the largest and westernmost of the three slag piles owned by D&RGW at this site.... The AV pile covers an area of approximately two million square feet. The maximum depth of the pile is approximately 50 feet, but in some areas the depth is less that one foot." (p. A-6) The report continues "The La Plata (LP)...slag pile is irregular in shape and covers an area of approximately 500 feet by 600 feet. This pile has steep sides approximately 30 feet high." (P. A-6) , and finally, " The Harrison Street (HR)...pile thickness ranges from approximately five feet to over 40 feet. The size of this pile is approximately 400 feet by 400 feet." (p. A-7)

Responsibilities of the Companies for remediation of these sites has yet to be fully determined. In the partial Consent Decree between the D &RGW and the EPA, it is noted that "EPA will prepare the ROD (Record of Decision) for OU3 (Operable Unit 3) addressing all sources of potential contamination within the OU, however D&RG shall only implement the remedial action selected in the ROD for the three D&RG owned slag piles." (Appendix A, p. 3) As of this time, the Record of Decision has not been entered.

Based on these unresolved issues, our concerns can be summarized as follows:

1. The final responsibility of the Companies for remedial action on its properties within the California Gulch Superfund Site have yet to be fully determined through the filing of a Record of Decision by EPA.

2. The remedial actions currently under discussion are based largely on current land use. Future undefined usage of the properties proposed for abandonment as part of the merger may require further risk assessment and remedial action.

3. The January 12, 1996 "Notice of Intent to Participate" filed by EPA Region VIII raises a number of compliance and use issues which do not seem to be adequately and/or appropriately addressed.

4. It appears that the Environmental Assessment presented by the Companies is incomplete and does not seek to define the responsibilities of the corporate entity created by the merger in completing remedial action within the California Gulch Superfund Site and other sites under investigation by EPA.

Given these considerations, we believe that further risk assessment addressing contemplated uses of the properties to be abandoned is necessary. We ask that no decision be made by the Surface Transportation Board on the merger, the abandonment or the exemption until appropriate, required environmental assessments are completed. Further, we ask that decisions on the merger abandonment and exemption be deferred until a complete Consent Decree and a Final Record of Decision are entered by the Environmental Protection Agency.

These documents should define the responsibilities of the corporate entity to be created by the merger for action within the California Gulch Superfund Site and other sites under investigation by EPA along the route proposed for abandonment and/or exemption.

Sincerely,

Joe D. Forrester, President
Leadville Coalition

/cc

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by pre-paid U.S. first class mail on all other Parties of Record (POR) in accordance with Surface Transportation Board's Decision No. 15, as well as on upon each of the parties listed below.

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

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

Hon. Jerome Nelson, Administrative Law Judge
Interstate Commerce Commission
825 North Capitol Street, NE
Washington, DC 20426

Arvid E. Rosch, II, Esq.
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, DC 20044

Paul Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, NW
Washington, DC 20036

Dated at Leadville, Colorado, this 3/21, 1996.

Joe D. Forrester

STB FD 32760 3-29-96 D 62151

MITCHELL, BLACKSTOCK AND BARNES
ATTORNEYS
1010 WEST THIRD STREET
LITTLE ROCK, ARKANSAS 72201
(501) 378-7870

62151

76

EUGENE R. WARREN (1909-1980)
MICHAEL W. MITCHELL*
CLAYTON R. BLACKSTOCK**
MARCIA BARNES
JACK WAGONER III
DAVID IVERS
EMILY SNEDDON

MAILING ADDRESS
P.O. BOX 1510
LITTLE ROCK, AR 72203-1510
TELEFAX 501-375-1940
*CERTIFIED IN CIVIL TRIAL ADVOCACY
BY NATIONAL BOARD OF TRAIL ADVOCACY
**ALSO LICENSED IN TEXAS

March 28, 1996

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

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

RE: FINANCE DOCKET NO. 32760

Dear Sir:

Please find enclosed an original verified statement in the above referenced matter.

Very truly yours,

MITCHELL, BLACKSTOCK & BARNES
1010 West Third Street
Little Rock, AR 72203
(501) 378-7870

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

By: Michael W. Mitchell

MWM/ddb
Enclosure

cc: Ms. Karen Kramer
Mr. Joe Bell

ADVISE OF ALL PROCEEDINGS

FINANCE DOCKET NO. 32760

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

CONTROL AND MERGER

SOUTHERN PACIFIC RAIL CORPORATION,
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ET AL.

VERIFIED STATEMENT OF
JEAN EDWARDS, ARKANSAS STATE SENATOR, DISTRICT 8

I, Jean Edwards, Arkansas State Senator from Sherrill, Arkansas, in my capacity as an Arkansas State Senator, submit this verified statement to express my support for the proposed merger of Union Pacific Railroad and the Southern Pacific Lines.

The Union Pacific and Southern Pacific-Cotton Belt Railroads have provided services to the shippers in and around Pine Bluff, Arkansas and surrounding areas for many years. The presence of the Union Pacific and Southern Pacific has contributed substantially to the economic growth and development of Pine Bluff and the State of Arkansas, providing reliable service to shippers throughout the state. The Southern Pacific-Cotton Belt, however, has suffered financial problems and has not been able to provide the level of service to which it is capable. I and other city officials have become increasingly concerned about its long-term liability.

I recognize the ability of a combined Union Pacific/Southern Pacific to use both UP and SP routes in Arkansas, and to make investments to upgrade these lines, will provide Arkansas shippers with mileage savings and service improvements for movements between Arkansas and western delivery points, especially those in California, Mexico and Canada. ~~Increased traffic through Arkansas due to improved efficiency and service levels is likely to result in increased employment for Arkansas.~~ JCE

I believe that the combination of UP and SP should improve rail competition in Arkansas, especially in light of the agreement with Burlington Northern/Santa Fe Railroad for trackage rights to serve customers in our area.

In the circumstances existing today, it appears that two larger rail systems -- Burlington Northern/Santa Fe and UP/SP -- will provide shippers in our area and in Arkansas more vigorous competition than one large and two smaller railroads, particularly where one of the smaller carriers is suffering from significant financial problems.

For all these reasons, I support the merger of the Union Pacific and Southern Pacific Railroads.

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

EXECUTED this 25 day of April, 1996.

Jean C. Edwards
Jean Edwards, Arkansas State Senator
District 8

STB FD 32760 3-29-96 D 62148

OPPE[illegible]

Two Pr[illegible]
45th Fl[illegible]
80 North [illegible]
Chicago, IL 60601-6710

(312) 616-1800
FAX (312) 616-5800

Item No. ____________

Page Count 10

Mar #630

62148

Brussels

Chicago

Minneapolis

New York

Paris

Saint Paul

Washington, D.C.

William C. Sippel
(312) 616-5874

March 29, 1996

VIA HAND DELIVERY

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

Re: **Finance Docket No. 32760**
Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company

Dear Secretary Williams:

Enclosed for filing with the Board in the above-captioned proceeding are an original and twenty copies of the **Comments of Illinois Central Railroad Company** (IC-3), dated March 29, 1996.

Copies of this filing have been served on all parties of record in this proceeding, as shown on the certificate of service.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

William C. Sippel

William C. Sippel
Attorney for Illinois Central Railroad Company

WCS:tjl

Enclosures

cc: Parties of Record

ORIGINAL

IC-3

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

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

COMMENTS OF
ILLINOIS CENTRAL RAILROAD COMPANY

Ronald A. Lane
Myles L. Tobin
Illinois Central Railroad Company
455 North Cityfront Plaza Drive
Chicago, Illinois 60611-5504
(312) 755-7621

William C. Sippel
Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-1800

ATTORNEYS FOR ILLINOIS CENTRAL RAILROAD COMPANY

Dated: March 29, 1996

IC-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

COMMENTS OF
ILLINOIS CENTRAL RAILROAD COMPANY

Pursuant to the procedural schedule adopted in Decision Nos. 6 and 9 herein, Illinois Central Railroad Company ("IC") hereby submits the following comments on the proposed merger of the Union Pacific and Southern Pacific rail systems.[1] As Applicants have advised the Board, IC has reached a settlement with Applicants in this proceeding. As a result of that settlement, IC takes no position on the proposed merger.

In a Notice of Intent to File Responsive Application (IC-1), dated November 14, 1995, IC indicated that it would seek to purchase or acquire operating rights over certain SPT, SSW and MP lines between Memphis, Tennessee and Houston, Texas, between Houston and Brownsville, Texas, and between Houston and New

1. The Union Pacific system, collectively referred to herein as "UP," includes the Union Pacific Railroad Company and the Missouri Pacific Railroad Company ("MP"). The Southern Pacific system, collectively referred to herein as "SP," includes the Southern Pacific Transportation Company ("SPT"), the St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. and The Denver and Rio Grande Western Railroad Company. UP, SP and their respective parents are collectively referred to herein as "Applicants."

Orleans, Louisiana. Applicants filed their Railroad Merger Application (UP/SP-22 to UP/SP-28) on November 30, 1995, and IC and Applicants subsequently engaged in settlement discussions. On January 30, 1996, IC and Applicants entered into a settlement agreement (the "Agreement") related to this proceeding. Applicants submitted a copy of the Agreement for the record in this proceeding on February 2, 1996. See UP/SP-74.[2]

The Agreement addresses a variety of marketing and operational items to the benefit of both railroads. In addition, the Agreement maintains open gateways between the IC and combined UP/SP systems and assures that efficient routing options for IC's customers will not be foreclosed. This agreed routing protection is set forth in Section 8(a) of the Agreement (a copy of which is attached as Appendix A). In prior rail merger proceedings before the Interstate Commerce Commission, IC expressed its concern that the rail mergers proposed therein would close interchange gateways and exclude IC from otherwise efficient and competitive joint rates and routings. As the Agreement assures that efficient routing options involving IC will continue to be available to IC's customers after a UP/SP merger, IC has no such concerns in this proceeding.

The Agreement also provides for a marketplace solution in the event that the Board determines that competitive remedies in addition to or in lieu of those provided in Applicants' agreement

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2. A full copy of the Agreement was filed with the Board under seal and placed in Applicants' document depository under a "highly confidential" designation. A redacted version of the Agreement was filed in the public docket and served on other parties to the proceeding.

with BN/Santa Fe are necessary. Under the Agreement, UP/SP has agreed to negotiate with IC to provide additional competitive service if conditions beyond those in the BN/Santa Fe agreement are imposed by the Board. Section 14(b) (a copy of which is attached as Appendix B) sets forth this commitment.

If the Board does not require relief beyond that agreed to by the Applicants with BN/Santa Fe, this component of the Agreement would not be triggered. Should additional conditions be imposed, however (a matter as to which IC expressly takes no view), IC is prepared to implement its Agreement with UP/SP and immediately enter into negotiations with Applicants to effectuate such conditions -- whether by purchase, lease, trackage rights, haulage or other transaction -- as necessary to satisfy the Board's requirements.

In light of its Agreement with Applicants, IC hereby withdraws its prior notice of intent to file a responsive application in this proceeding and takes no position on the merits of the proposed UP/SP merger.

WHEREFORE, IC respectfully requests that these comments on the proposed transaction herein be accepted into the record.

Respectfully submitted,

By: William C. Sippel/MMG

Ronald A. Lane
Myles L. Tobin
Illinois Central Railroad Company
455 North Cityfront Plaza Drive
Chicago, Illinois 60611-5504
(312) 755-7621

William C. Sippel
Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-1800

ATTORNEYS FOR ILLINOIS CENTRAL RAILROAD COMPANY

Dated: March 29, 1996

8. Joint Rates and Routes.

a) UP/SP intend to work with IC to market interline business after consummation of the UP/SP merger. Routing and divisions between UP/SP and IC for interline carload traffic shall be established as follows:

i) UP/SP agrees that between (a) stations or industry on its lines and the lines of its short line connections on the one hand, and (b) stations or industry (which are not served by UP/SP), excluding plastics transload facilities, on IC's and CCP's lines (if IC and CCP merge or come under common control) and the lines of their short line connections on the other hand, UP/SP will join with IC in market competitive rates on new or renewal business where the joint route is reasonably efficient, or where a competitive service package satisfactory to the customer can be offered. For example, in business originating or terminating at UP/SP stations south of Memphis and destined to or originating at IC stations (which are not served by UP/SP) north of Memphis, both IC and UP/SP will favor the Memphis Gateway for their joint line routes. In constructing the associated joint rates, UP/SP agrees that its portion of such joint rates shall be reasonably related first to the proportion it would receive under so-called "established divisions" with consideration given to commodity type and second, to its proportion of the distance involved, with consideration given to minimum divisions over the gateway and other relevant cost considerations, including absorbed switching charges and short-line connecting divisions (absorbed switching charges and short-line connecting divisions will be first deducted from the through rate and the balance of the through rate will be divided between UP/SP and IC in accordance with the foregoing guidelines). "Established divisions" shall be defined as divisions in place over a gateway as of the date of this Agreement or divisions which are subsequently established by mutual Agreement between UP/SP and IC. If multiple divisions exist for a specific commodity and origin/designation paid and interchange point, the division most favorable to IC shall be used.

ii) UP/SP further agrees that (a) from and to stations on the IC (except those that are also served by UP/SP), and (b) from and to stations on railroads beyond IC which connect with IC but not with UP/SP, UP/SP will establish and maintain joint rates with IC on terms at least as favorable as those granted IC's competing railroads for similar routes and movements.

14. Government Approvals.

b) UP/SP agree that (i) if conditions in addition to or in lieu of the BN/Santa Fe Agreement are required as a condition to the merger, and (ii) UP/SP decide to go forward with the merger as so conditioned, then to the extent UP/SP have any choice in negotiating with other carriers to satisfy such additional conditions, they will first negotiate with IC; provided, however, that UP/SP shall not be obligated to first negotiate with IC if the additional condition or conditions are addressed via tracks or at points covered by the BN/Santa Fe Agreement and can be satisfied by negotiating with BN/Santa Fe. UP/SP will not negotiate with any other party until they have been unable to reach agreement with IC. The term "BN/Santa Fe Agreement" refers to the Agreement dated September 25, 1995 and the Supplemental Agreement dated November 18, 1995 between UP/SP and BN/Santa Fe.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 1996, a copy of the foregoing **Comments of Illinois Central Railroad Company** was served by overnight delivery upon:

Arvid E. Roach, II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

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

James V. Dolan
Paul A. Conley
Louise A. Rinn
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Cannon Y. Harvey
Southern Pacific Transportation Company
1860 Lincoln Street
14th Floor
Denver, CO 80295

Louis P. Warchot
Carol A. Harris
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathyrn A. Kusske
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

Jeffrey R. Moreland
Richard E. Weicher
The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, IL 60173

Janice G. Barber
Michael E. Roper
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102-5384

and by first class mail, postage prepaid, upon all other parties of record in this proceeding, as identified in Decision Nos. 15 and 17 herein.

Thomas J. Litwiler

STB FD 32760 3-29-~~98~~96 D 62147

62147

Item No. ________

Page Count 4

Mar #629

ISRI Industries, Inc.
THE ORIGINAL RECYCLERS

1325 G Street, N.W., Suite 1000
Washington, DC 20005-3104

202 • 737-1770
Fax 202 • 626-0900

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

March 29, 1996

Via Hand Delivery
Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Department of Transportation
Room 1324
12th Street & Constitution Avenue, NW
Washington, DC 20423

Re: Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company.*

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are an original and twenty (20) copies of a Public Version of the Institute of Scrap Recycling Industries, Inc.'s COMMENTS, designated ISRI-5. A 3.5-inch diskette containing this pleading in Word Perfect 5.1 is also enclosed. Additionally, an extra copy of this pleading is enclosed for the purpose of date stamping and returning to our office.

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

Respectfully submitted,

Herschel Cutler
Executive Director

ISRI-5

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32780

UNION PACIFIC, 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 IN SUPPORT OF APPLICANTS

The Institute of Scrap Recycling Industries, Inc. ("ISRI") hereby submits its comments in support of applicants request for regulatory approval of Union Pacific's control of and merger with Southern Pacific. ISRI respectfully states the following:

ISRI is the trade association representing approximately 1,600 companies that process, broker, and consume recyclable materials, including ferrous and non-ferrous metals, paper, plastic, glass, rubber, and textiles. Suppliers of equipment and services to this industry complete ISRI's membership.

ISRI's members are substantial users of the nation's railroads for the receipt of inbound commodities and the shipment of outbound commodities. Many ISRI members are users of railroad services provided by the Applicants and other railroads in the Western United States, and such members would be affected, directly or indirectly, by the proposed merger and related transactions at issue in this important proceeding. ISRI, on behalf of its members, is vitally concerned with the preservation and enhancement of competitive rail rates and services.

ISRI studied the proposed merger of Union Pacific and Southern Pacific (UP/SP), their application to the Surface Transportation Board, including the agreement UP/SP entered into with Burlington Northern/Santa Fe (BN/Santa Fe), and the comments and criticism voiced by other railroads and organizations. This analysis has led ISRI to the conclusion that, on behalf of its 1,600 member companies, ISRI should support the UP/SP merger as conditioned by the BN/Santa Fe agreement with UP/SP pertaining to line sales and trackage rights.

ISRI's members have a significant stake in this case as shippers and receivers by rail throughout the United States. Many of these companies currently rely on SP to pick up, deliver, and/or transport from origin to destination significant volumes of business. They recognize, as does ISRI, that SP historically has been an aggressive competitor in the rail transportation industry. However, SP's ability to compete effectively has declined drastically over the last few years. Its services have become unreliable; its ability to supply rail equipment necessary for our members to ship their products has been questionable; and its responsiveness to needed capital improvements on its system has been ineffective.

The decline has become more noticeable since the BN/Santa Fe merger has been implemented. SP is a distant and weak third behind BN/Santa Fe and UP in every critical service category such as car supply, reliability of service and customer responsiveness. SP's senior officers have been candid in their assessment that the SP cannot continue as an effective rail competitor in the West. Consequently, something must be done before SP suffers a total collapse which would cause widespread disruption of service to ISRI members.

The UP/SP merger proposal represents a positive solution. While ISRI would prefer to see a financially strong SP remain as an independent competitor, that no longer appears likely or feasible. Therefore, ISRI supports SP's consolidation with UP. This support is premised on the benefits that a UP/SP merger can deliver subject to the competition BN/Santa Fe is expected to provide as the result of the settlement agreement it has with UP/SP.

The line sales and trackage rights in the UP/SP and BN/Santa Fe agreement will enable many shippers to have access to the two largest rail systems. The benefits of single-line service for so many more rail customers are a major attraction of this arrangement. Both UP/SP and BN/Santa Fe will have the financial resources to maintain their trackage, acquire necessary rail equipment and implement the technological systems that should improve rail transportation.

The settlement agreement offers more than maintaining the status quo. Both UP/SP and BN/Santa Fe will have the capability to move traffic between the Pacific Northwest down the West Coast and across the Southern Corridor to Texas. The UP/SP merger, properly conditioned on the BN/Santa Fe agreement, will mean competitive single line service in major markets where, in many cases, none exists today.

ISRI supports the UP/SP merger based on the benefits described in the November 30, 1995 application. This support is conditional on the acceptance and application of the line sales and trackage rights provided in the UP/SP and BN/Santa Fe agreement and with the BN/Santa Fe being allowed to freely and effectively compete with the UP/SP in all geographic areas and distinct markets where both carriers will compete.

ISRI is relying on the UP/SP representations that equipment supply on the combined system will be better than it is on SP today. SP shippers have experienced recurring shortages of gondolas on the SP. This has resulted in higher costs and/or lost sales. It has also affected recycling production schedules. UP, on the other hand, has a more modern and larger equipment fleet. The combination of the two fleets along with the consolidation of the two route systems will reduce car cycle times. Improved equipment utilization through common fleet management over the consolidated system which offers more backhaul opportunities is tantamount to adding more cars to the rail system's fleet of gondolas. It will make the railroads and ISRI members more productive.

In summary, ISRI expresses great concern for the future of rail competition in the Western United States. In light of SP's current condition and its growing inability to compete effectively, ISRI endorses SP's merger with UP provided the BN/Santa Fe settlement agreement is imposed by the Surface Transportation Board as a condition of approval. ISRI's endorsement of this merger is also conditional upon the BN/Santa Fe being allowed to freely and effectively compete with the UP/SP in all geographic areas and distinct markets where both carriers will compete.

Therefore, ISRI respectfully requests the Surface Transportation Board to grant the UP/SP application for authority to merge subject to the BN/Santa Fe settlement agreement and subject to a finding by the Board that the BN/Santa Fe will be allowed to freely and effectively compete with the UP/SP.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Public Version of the Institute of Scrap Recycling Industries, Inc.'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

Jacqueline A. Spence

STB FD 32760 3-29-96 62146 D

62146

p. ________________

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Mar #628

COMMUNITY **CROSSROADS OF KANSAS** PETROLEUM

Hoisington Chamber of Commerce

123 North Main Street

Hoisington, Kansas 67544-2594

Telephone (316) 653-4311

Facsimile (316) 653-4311

March 28, 1996

BY USPO EXPRESS MAIL

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

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

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty copies of "Page 15", that was omitted during the binding and mailing contract.

I would appreciate your including this with the previous comment submission, and we have in turn mailed by first-class postage copies of this page to the Administrative Law Judge, Attorney's for the applicants, and all known parties of record.

We are extremely sorry for this error, and if necessary would be more than happy to provide you newly bound copies.

Thanks so very much for your consideration in this matter

Sincerely,

Robert K. Glynn

enc:as

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

Respectfully submitted,

ROBERT K. GLYNN
Executive Vice President
Hoisington Chamber of
Commerce
123 North Main
Hoisington, KS 67544
(316) 653-4311

March 26, 1996

STB FD 32760 3-27-96 D 62375

Item No.________________

Page Count 2

Mar #812

62375

Alice CHAMBER OF COMMERCE

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Office of the Secretary
MAR 29 1996
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RECEIVED
MAR 29 1996
MAIL MANAGEMENT
I.C.C.

March 28, 1996

Mr. Vernon Williams
Office of the Secretary
Surface Transportation Board
U.S. Department of Transportation
1201 Constitution Avenue, N.W., Room 2215
Washington, D.C. 20423-0001

Fax: 202/927-5984

Subject: Proposed Union Pacific/Southern Pacific Railroad Merger - Finance Docket #32760

Dear Secretary Williams:

On behalf of the Alice Chamber of Commerce, we would like to submit our written comments in support of the Texas Mexican Railway Company's (Tex Mex) petition to obtain trackage rights from Corpus Christi, Texas, to Beaumont and Houston, Texas, in order to connect with Tex Mex's new partner, Kansas City Southern Railway. We understand that the Surface Transportation Board (STB) will be considering granting of these trackage rights as a condition of the proposed Union Pacific/Southern Pacific Railroad merger. Tex Mex is Alice's only railroad carrier and we believe that if the UP/SP merger is approved, granting of these trackage rights is essential for Tex Mex to continue as a competitive, regional South Texas railroad providing service from Laredo through Alice to the Port of Corpus Christi, and to other regions of the country.

Tex Mex has served Alice and South Texas for more than 125 years, and has been Alice's only railroad since Southern Pacific abandoned their tracks and rights-of-way through Alice in the 1980's. If the UP/SP merger is approved and the trackage rights requested by Tex Mex are not granted, we are concerned that rail freight service for our local businesses will not be available at reasonable, competitive rates, and that the long-term, economic viability of Tex Mex may be threatened.

We are also concerned regarding the potential impact of the proposed UP/SP merger on the Port of Corpus Christi. The Port has been a major, regional ally in support of our transportation and economic development initiatives. We ask that provisions also be included as conditions to merger approval which will insure that competitive options will be available for shippers requiring rail service connecting with the Port of Corpus Christi.

In summary, we support Tex Mex's petition for trackage rights, and the inclusion of provisions to insure competitive options for shippers utilizing the Port of Corpus Christi as conditions for approval of the proposed UP/SP merger. Approval of these conditions will provide continued, uninterrupted rail service at competitive rates for present and future shippers in the Alice area, and for shippers requiring rail service connecting with the Port of Corpus Christi.

We appreciate your consideration of our written comments and recommendations. Please contact us if you require any additional information.

Respectfully,

Earl C. Whiteley

Earl Whiteley
President

David R. Cich

David R. Cich
Executive Vice President

STB FD 32760 3-27-96 D 62334

62334
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Item No.

Page Count EE 24
Mar #831

BETTS PATTERSON & MINES, P.S.

800 Financial Center
1215 Fourth Avenue
Seattle, Washington 98161-1090
Fax: 206-343-7053
Phone: 206-292-9988

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

Stephen L. Day

March 28, 1996

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

Attn: Case Control Branch's Finance Docket No. 32760

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty copies of Statement Of Weyerhaeuser Company In Opposition To The Merger As Proposed, And Requesting Competitive Conditions, an interested party in this proceeding. Also enclosed is a 3.5-inch disk containing the text of this pleading in Wordperfect 5.1 format.

I would appreciate it if you would date-stamp the enclosed extra copy of the pleading and return it to us in the enclosed envelope for our files.

Sincerely,

Stephen L. Day

SLD/lp

Enclosures (original and 21 copies)

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

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

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

STATEMENT OF WEYERHAEUSER COMPANY IN OPPOSITION TO THE MERGER AS PROPOSED, AND REQUESTING COMPETITIVE CONDITIONS

DATE: March 29, 1996

John B. Ficker
Regulatory and Contract
Support Manager
Weyerhaeuser Company

Stephen L. Day
Jack A. Friedman
Betts, Patterson & Mines, P.S.
800 Financial Center
1215 Fourth Avenue
Seattle, WA 98161-1090
(206) 292-9988

Attorneys for Weyerhaeuser Company

BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION

FINANCE DOCKET NO. 32760

STATEMENT OF
WEYERHAEUSER COMPANY
IN OPPOSITION TO MERGER AS PROPOSED,
AND REQUESTING COMPETITIVE CONDITIONS

I. THE MERGER APPLICATION

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

The following statement in opposition and requests for conditions regarding this application is filed pursuant to 49 C.F.R. § 1180.4(d)(1), as modified by Decision No. 6 in this proceeding, on behalf of Weyerhaeuser Company ("Weyerhaeuser"), a party of record in this proceeding.

VERIFIED STATEMENT OF

JOHN B. FICKER

II. INTRODUCTION

My name is John B. Ficker. I am employed by Weyerhaeuser Company as its Regulatory and Contract Support Manager. My business address is: Weyerhaeuser Company, Tacoma, Washington, 98477. I am familiar with all of Weyerhaeuser's facilities and its transportation requirements. I have worked in the transportation industry for twenty-six years, and have been employed for both shippers and carriers, including the Penn Central Railroad and the Southern Pacific Railroad. I have worked for Weyerhaeuser since 1986. For the first four years of my employment, I was its Southern Transportation Manager. In that position, I was responsible for transportation from and to eleven (11) Weyerhaeuser manufacturing facilities and forty (40) distribution centers east of the Rocky Mountains. In 1990, I assumed my current responsibilities, which include reviewing Weyerhaeuser's transportation agreements, determining whether they comply with applicable regulations and statutes, and representing Weyerhaeuser before regulatory agencies. I am a registered ICC practitioner and am authorized to represent Weyerhaeuser before federal and state regulatory bodies and present this statement on behalf of Weyerhaeuser.

A. Weyerhaeuser Is a Vitally Interested Party.

Weyerhaeuser is a multi-plant forest products company with facilities across North America. Our 1995 annual sales were over $11 billion. We produce, manufacture, distribute, and sell logs, woodchips, lumber, plywood, particleboard, hardboard, oriented strandboard, woodpulp, paper, pulpboard, shipping containers, chemicals, and related products. We are engaged in major recycling efforts across North America and in 1995 moved over 2.5 million tons of recycled paper. We own and operate large mill complexes in Alabama, Georgia, Mississippi, North Carolina, Oklahoma, Oregon, Washington, and Wisconsin, and the Canadian provinces of British Columbia, Alberta, and Saskatchewan. We have numerous packaging plants and distribution facilities across the United States and Canada. (See Exhibit 1.) We also own five Class III shortline common carrier railroads.

Weyerhaeuser is a significant user of rail transportation services. Transportation costs are a significant portion of our products' delivered prices. Between forty percent (40%) and fifty percent (50%) of our finished products move by rail. In 1996, our rail bill will exceed two hundred million dollars ($200,000,000). Because of their shipping characteristics and the locations of our key markets, many of our products have limited modal options and rely on dependable, cost-efficient rail transportation. Thus, the structure, competitiveness, and efficiency of the rail industry directly affects our daily and long-term ability to move our products to the marketplace.

The SP and UP are two of our largest rail service providers. We estimate the combined UP/SP 1996 revenue from Weyerhaeuser will exceed ninety-five million dollars ($95,000,000) and will involve the movement of over sixty thousand carloads (60,000). Exhibit 1 is a map of Weyerhaeuser facilities across North America. Exhibit 2 is a list of the Weyerhaeuser facilities served by SP, and Exhibit 3 is a list of the Weyerhaeuser facilities served by UP. We are seriously concerned that this proposed merger will detrimentally affect both our own competitiveness and the transportation of all goods across North America.

B. Weyerhaeuser Opposes the Proposed Merger as Currently Structured.

Weyerhaeuser opposes the proposed merger as currently structured because it would: 1) cause a real and substantial decrease in rail-to-rail competition; 2) result in higher rail transportation costs for Weyerhaeuser and other shippers; and 3) erode Weyerhaeuser's ability to remain competitive in key markets. Unless the Board imposes specific minimum conditions, the merger as currently structured will run counter to the public interest and the interests of shippers like Weyerhaeuser.

We believe a healthy rail-to-rail competitive market requires a minimum of three rail carriers. The proposed merger would leave the entire western United States with only two rail carriers resulting in a duopoly — a shared monopoly system, with monopolistic pricing as an inevitable result. More importantly, the merger proposal raises broad and serious public interest implications. We believe our proposed conditions will protect and enhance the public interest and ensure the nation's shippers access to actual, rather than illusory, rail-to-rail competition. The Board should, therefore, impose conditions which ensure the following: 1) divestiture to create a three-railroad competitive option in the Central Corridor; 2) divestiture to create a third railroad option in the Gulf Coast region; 3) trackage rights to provide a third rail carrier alternative for service to Mexico; 4) trackage rights to Eugene, Oregon; and 5) competitive conditions in the Pacific Coast Corridor. I will address our general concerns and these specific concerns in separate sections within and conclude with suggested specific conditions to the proposed merger which would address Weyerhaeuser's concerns. We are also an active member of the National Industrial Transportation League ("NIT League") and have reviewed its position on this merger. We agree with its conclusions and support its position.

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III. GENERAL CONCERNS

A. This Merger Will Create a Duopoly

The merger as currently structured would leave the West with only two major railroads with little incentive to compete aggressively with one another. The West will become a de facto shared monopoly, or a duopoly. The result will be an increase in prices and a decrease in service quality.

These duopolistic effects concern us greatly since they would affect Weyerhaeuser's long-term ability to compete in national and international markets. Weyerhaeuser is in a very competitive business, and competitive viability is one of our more serious concerns. Efficient rail service is a critical element of our ability to compete. Indeed, the quality of rail service affects all shippers, thereby impacting the national economy.

The devastating effects of a monopoly on the economy and public welfare are well-documented and need not be reiterated here. It should suffice to say that it is in the public's, as well as Weyerhaeuser's, interest that meaningful competition occur among rail carriers in the West.

The UP/SP and Burlington Northern Santa Fe (BNSF) have recognized, and entered into a settlement agreement which they claim addresses, the anti-competitive concerns this merger creates. In its comments to the Board, the BNSF specifically recognized the competitive harm inherent in the proposed merger and the need to alleviate that harm through real competition.[1] BNSF then acknowledged tha , without these conditions, the UP/SP

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1 BNSF characterized the settlement agreement as one which creates conditions "intended to alleviate competitive harms to shippers who would otherwise lose the only real competition available to them." (BNSF-1 at 2.)

merger would present "serious competitive problems, combining two largely overlapping railroad systems that now compete effectively for traffic in many major freight corridors and at many locations that are served only by UP and SP today."[2] Our fear, however, is that this agreement not only fails to alleviate these harms, but is a major factor in dividing the West into a shared monopoly.

This conclusion is compellingly demonstrated in a study conducted by the economic consulting firm of L.E. Peabody & Associates, Inc., which analyzed the likely effectiveness of the UP/SP-BNSF settlement agreement.[3] Peabody analyzed the variable costs and anticipated traffic volume between Denver and Oakland and concluded that cost differences would render BNSF non-competitive where it had to use the trackage rights. Peabody found that the Denver to Oakland variable costs per ton for BNSF over the trackage rights would equal $19.60. For the UP/SP, on the same move, the variable costs would be $15.82 per ton. This $3.78 difference in variable costs would prohibit BNSF from being competitive using these trackage rights.

Peabody also found similar cost differentials for traffic on the Houston to Memphis Corridor. While BNSF would reduce its overall mileage from 1,008 currently to 883 miles, UP/SP would still move on this corridor at 802 miles. The BNSF variable costs per ton on this corridor over trackage rights would equal $11.85. The UP/SP's variable costs per ton would be $9.64. The difference totals $2.21 variable cost per ton. BNSF's alleged

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2 BNSF-1 at 3 (Comments of Carl Ice).

3 This study was done on behalf of NIT League. The full report has been filed as an exhibit to the NIT League's comments in this proceeding. Weyerhaeuser finds the analysis in the Peabody report to be accurate and convincing and urges the Board to review those findings carefully.

competitiveness in this market lane would also be illusory.[4] Peabody then carefully analyzed the statements submitted by BNSF's consultant, Neal D. Owen, and concluded that his comments lacked detail and specificity and were largely based on opinion and conjecture. Owen did not address basic operating functions such as dispatching and train superiority, power assignments, power maintenance, fueling, rolling stock, rolling stock maintenance, crew assignments, crew domicile locations, increases in switching, train building complexity, and storage capacity.

Peabody's findings strongly suggest that, since these trackage rights will not give BNSF a legitimate competitive opportunity, they will not be a real competitive choice for shippers. We can only conclude that BNSF's trackage rights will not alleviate our concerns about the lack of competition in the West. We also conclude that a two-carrier market will not have the downward pressure on rates normally created in a competitive, multi-carrier market. For this reason, we believe that a third carrier must exist in the West before real competition can take place.

Recognizing that the Board is concerned with safeguarding real competition from the dangers of monopolistic practices, Weyerhaeuser urges the Board to look beyond the assurances of the two interested carriers.

B. There Must Be Rivalry in the Marketplace.

We agree with UP's witness, Robert D. Willig, that the Board must examine "the character of the rivalry in the market," in order to determine whether competition truly

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4 Peabody also arrived at almost identical findings for traffic moving through the Houston to St. Louis Corridor.

exists.[5] We believe, however, that a two rail carrier system will not provide the rivalry needed to serve the public interest. In fact, as the two interested rail carriers become comfortable with their market positions, we fear that they will allow the level of rates to rise and the motivation for service innovation to wane. Our concerns are increased by the noncompetitive nature of the settlement agreement between the UP, SP, and BNSF, which limits, rather than enhances, competition. It will take a third rail carrier in the marketplace to insure competition, innovation, and protection of the public interest.

The Canadian experience with only two railroads also suggests that two carrier competition is less than vigorous. The Canadian market tends to be divided, and there appears to be little inclination for carriers to compete within the other's territory. Even though they have statutorily imposed competitive provisions, they are rarely utilized. Interswitching zones are a useful but not a universal solution. The Competitive Line Rates (CLR) provisions are basically inoperative due to the fact that the Canadian National Railway and Canadian Pacific Railway have effectively declined to compete with each other through CLRs. As a result, rates are stabilized, innovation is stifled, and there is little difference between service provided by one or the other Canadian railroad. (See "Competition in Transportation," National Transportation Act Review Commission, v. 1, 131, 1993.)

C. Will This Lead to Only Two Transcontinental Railroads?

The possibility that a UP and SP merger will encourage further mergers fuels a concern we have about the trend toward over-concentration in the rail market. SP and Santa Fe initially tried to merge, but were denied because of anti-competitive concerns.

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5 UP/SP Railroad Merger Application, v. 2, p. 573, submitted Nov. 30, 1995.

BN then successfully merged with Santa Fe. Conrail could potentially break up and lead to more mergers in the East. Many shippers, including Weyerhaeuser, are concerned that rail carriers will eventually consolidate into only two transcontinental railways. This raises our concern relating to a lack of marketplace rivalry to the national level.

IV. SPECIFIC CONCERNS

A. The Central Corridor Requires a Third Carrier.

If the Board approves this merger as currently structured, only two rail carriers will control routes across the Rocky Mountains. Shippers will have virtually no choices. Only BNSF operates in the North, and only UP/SP will operate in the South and Central Corridor.[6]

The only practical solution, and the one we support, is to divest the Central Corridor route and allow a third rail carrier to provide competitive service thereon. Such a divestiture would not disrupt UP/SP's post-merger plans, as UP/SP has stated that it already intends to abandon large portions of the Central Corridor line. The third rail carrier could operate along those lines UP/SP intends to abandon. By so doing, it would satisfy a vital public need without disrupting UP/SP's operations.

B. The Route to Mexico Requires a Third Carrier.

The proposed UP/SP merger will negatively impact competition for international traffic to Mexico. The Kansas City Southern Railroad ("KCS") reports that UP/SP currently controls over ninety percent (90%) of all U.S. rail traffic to and from Mexico through all

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6 Assurances that BNSF will compete with UP/SP over the Central Corridor are not persuasive. As noted above, BNSF's trackage rights will not permit it to compete with UP/SP. Even if it did, the duopoly relationship discussed above would eliminate real competition and deprive shippers of a true choice of rail providers.

gateways. BNSF controls the remaining ten percent (10%). The BNSF Settlement Agreement would protect BNSF's status as the second railroad into Mexico and exclude a third carrier from serving this market. BNSF will not be able to compete seriously with UP/SP in this area. UP/SP's gateway through Laredo has a large capacity and offers direct access to the Mexican markets. The gateway granted to BNSF in the settlement agreement, Eagle Pass, has only limited capacity and less direct access to the Mexican markets.

We agree with KCS's conclusion that the proposed merger and settlement agreement with BNSF would extend the western rail duopoly to the Mexican border. The merger would thus have an anti-competitive impact on Mexican traffic similar to the impact it would have on the U.S. domestic market. For this reason, Weyerhaeuser views a third rail carrier option as necessary to protect competition in this important developing traffic lane.

C. A Third Carrier Is Required in the Gulf Coast.

The proposed merger will give UP/SP exclusive control of the routes from the Texas Gulf Coast to Memphis and St. Louis. UP/SP's only proffered solution to this situation has been to offer BNSF trackage rights along these routes. But, as discussed earlier, such rights do not create a competitive situation and would leave shippers without viable competitive alternatives.

Although Weyerhaeuser does not have facilities directly on this line, we do ship products from our Canadian, Michigan, Wisconsin, Georgia, Mississippi, Alabama, and North Carolina facilities to reach Texas, California, and the growing Mexican market. For this reason, Weyerhaeuser urges the Board to require divestiture of this line. Divestiture will not disrupt UP/SP's ability to operate in this lane, as it already owns the only other track running from the Texas Gulf Coast into Memphis and St. Louis.

V. MERGER CONDITIONS REQUIRED FOR MEANINGFUL RAIL COMPETITION

Weyerhaeuser believes that the proposed merger is not in the public interest and the application as presently structured should be denied. Without substantial competitive conditions, any potential benefits claimed by the applicants are far outweighed by potential harm to the public.

The conditions we propose herein would do much to mitigate the harm, ensure effective rail-to-rail competition, and would in turn protect the public interest. Therefore, any approval of this transaction must contain the following minimum conditions.

A. Divest the Central Corridor Line.

We urge the Board to direct UP/SP to divest one of its two Central Corridor lines. As currently structured, UP/SP would control all rail access across the Central Corridor. Though it has offered to grant BNSF trackage rights, as previously discussed these rights would be ineffective. The Peabody study carefully demonstrates that BNSF would not be a meaningful competitor in this corridor under the settlement agreement.

We strongly support Montana Rail Link's ("MRL") responsive application, including the proportional rate agreement from Portland, Oregon. MRL's application seeks to operate from Klamath Falls, Oregon, to Denver, Colorado, and on to Kansas City. We would welcome a financially strong, innovative, and aggressive third rail option in the Central Corridor; and MRL meets these criteria.

B. Ensure Mexican Market Access.

The Mexican market is a key market for our products and the products of many other U.S. manufacturers. To remain competitive, we need access to this market by a third rail carrier with access through the most significant Mexican gateway — Laredo. Access through Laredo allows the most direct access to major markets of Monterey and Mexico City.

Therefore, we support the inconsistent application of the Texas Mexican Railway Company. We also support the effort by KCS to establish a third competitive railroad for this critical and developing marketplace.

C. <u>Divest the Gulf Coast-Cotton Belt Line</u>.

Weyerhaeuser urges the Board to require divestiture of this critically important line. KCS seeks divestiture of the Cotton Belt (between Houston, Texas, and St. Louis, Missouri). Who will be the eventual operator is a separate question which need not be decided in this proceeding. Nevertheless, consistent with our expressed views, we would support a viable third carrier when that issue is addressed.

Weyerhaeuser's concerns for this line relate to our need for access to markets through truly competitive railroads. Several of our key markets are located in Texas, California, and Mexico. We rely on the availability of an independent routing choice along this corridor to be able to deliver products from our facilities in Canada, Michigan, Wisconsin, Georgia, Mississippi, Alabama, and North Carolina to customers in these areas.

D. <u>Provide MRL Access to Eugene, Oregon</u>.

In addition to our support of the MRL's proposal for purchase of one of the Central Corridor lines, we also request a condition allowing MRL to compete on a broader scale in Oregon. We have facilities at North Bend[7] and Cottage Grove, Oregon, served by the Central Oregon and Pacific Railroad (CORP), a shortline created in 1994, with routing

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[7] Near Coos Bay, Oregon.

interchange restricted to the SP at Eugene, Oregon. We need the routing flexibility to move our products North, South, and East from Eugene and the competitive options necessary to keep rates at market access levels.

For these reasons, Weyerhaeuser requests that the Board impose a condition of interchange, overhead trackage rights, or similar arrangement to allow MRL to penetrate the Eugene, Oregon market by operating between Klamath Falls, and Eugene, Oregon, and open interchange with the CORP. This would allow Oregon shippers served by the CORP access to UP/SP, BNSF, and MRL with the option of routing traffic to the North, South, or East. These multiple options would create genuine price competition and offer Oregon shippers a bona fide choice between railroads.

E. Enhance Competition on the Pacific Coast Corridor.

Our comments have been directed towards ensuring meaningful rail-to-rail competition. While the BNSF agreement does not address our concerns for rail-to-rail competition in the Central Corridor, Gulf Coast, and access to Mexico, we believe that the portions of the BNSF settlement agreement dealing with the Pacific Coast Corridor (along Interstate 5) will enhance rail-to-rail competition. We support that portion of the BNSF settlement agreement and urge the Board to require it to be a condition of any approval of this merger.

SUMMARY

Meaningful rail competition in the western United States is vital to the public interest. Shippers need competitive market-based pricing from their rail transportation providers rather than shared monopoly-based pricing. With only two rail carriers in the West, rail shippers face the prospect of increasing rates and declining product competitiveness. A duopoly will not be innovative in reducing costs or providing creative new services.

It is of vital economic importance for shippers to have real, not merely theoretical, price competition. If the merger is to be approved and the public interest protected, it must include conditions which will ensure meaningful rail-to-rail competition.

Any approval of this transaction must contain the following minimum conditions: 1) Providing a third rail competitor in the Central Corridor — and we support the responsive application of the MRL; 2) A third rail competitor to provide access to the Mexican market — and we support the inconsistent application of the Texas Mexican Railway; 3) Divestiture of the Cotton Belt line from St. Louis to Houston to provide a third rail competitor in this market; 4) MRL access to Eugene, Oregon; and 5) Inclusion of Pacific Corridor section of the BNSF settlement agreement.

Weyerhaeuser is a firm believer in competition as the most effective regulator of markets. The transition of the rail industry from a regulated to a competitive marketplace must be successfully brought to maturity. Unfortunately, this merger does not foster that transition. It would be a bitter pill, indeed, if the elimination of unnecessary regulation merely re-established the same rail monopolies that strangled the nation's economy in the late 1800s. For all of these reasons, Weyerhaeuser urges the Board to deny the application for the merger as currently structured.

I declare the foregoing to be true and accurate to the best of my knowledge under penalty of perjury of the laws of the State of Washington.

John B. Ficker
John B. Ficker
Regulatory and Contracts Support
Manager,
WEYERHAEUSER COMPANY

Executed this 28 day of March, 1996,
at Seattle, Washington.

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 1996, I served the foregoing document, Statement of Weyerhaeuser Company In Opposition To The Merger As Proposed, and Requesting Competitive Conditions, on all parties of record in accordance with Decision No. 6, by first-class, U.S. mail, postage prepaid.

JACK A. FRIEDMAN

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[Sen]ate of The State of Texas

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THE SENATE OF TEXAS

COMMITTEE:
NATURAL RESOURCES
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March 27, 1996

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

ADVISE OF ALL PROCEEDINGS

RE: Finance Docket 32760

Dear Secretary Williams:

This letter is in regards to an application pending before you that seeks approval of a merger between the Union Pacific Railroad Company (UP) and Southern Pacific Lines. This proposal brings about concern that the merger of these two railroads will significantly reduce rail competition in Texas. This will seriously impact business and the economy in 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 acknowledges that the merger would greatly reduce rail competition and has proposed a trackage rights agreement with the Burlington Northern-Santa Fe (BNSF) Line as the solution.

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

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

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

Sincerely yours,

Bill Sims

BILL SIMS
State Senator

BS/jm