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CALCULATION OF VARIABLE COST OVER TRACKAGE
RIGHTS -- HOUSTON - ST. LOUIS 1/
(BN OPERATION)

	Movement Costs	OPR	DL	OPR & DL	ROI	Units	OPR & DL	ROI	Total
BN-1	Gross ton mile	0.0014389	0.0004837	0.0019226	0.0007147	146,028	\$280.76	\$104.36	\$395.12
BN-2	Gross ton mile on rights	0.0007461	0.0001826	0.0009287	0.0000221	0	0.00	0.00	0.00
BN-3	Train mile other than crew	0.25790	0.02041	0.27821	0.02025	25.84	7.19	0.52	7.71
BN-4	Train mile other than crew on rights	0.19701	0.02041	0.21742	0.02025	0.00	0.00	0.00	0.00
BN-5	Train mile - crew	6.56173		6.56173		25.84	169.56	0.00	169.56
BN-6	Locomotive unit mile	1.81577	0.44657	2.26234	0.05416	76.23	172.45	4.13	176.58
BN-7	CLOF other than clerical	1.14607		1.14607		1.00	1.15	0.00	1.15
BN-8	CL orig or term. - clerical	14.44116		14.44116		1.00	14.44	0.00	14.44
BN-9	Switch engine minute	3.56912	0.19720	3.76632	0.53512	11.78	44.36	6.30	50.66
BN-10	Car Miles	0.03390	-0.00422	0.0296815	0.01760	0.00	0.00	0.00	0.00
BN-11	Car Days	3.21050	10.20431	13.414810C	2.42337	0.00	0.00	0.00	0.00
BN-12	BN Total Variable - 1994						\$689.90	\$115.32	\$805.22
BN-13	Index (RCAF-A)								0.967
BN-14	BN Total Variable - 4Q95								778.65
BN-15	Variable Cost Per Ton								\$8.86

BN

Inputs		
1	Lading	Avg.: ICC 1994 Costed Waybill Sample - STCC 28211
2	Tare	E2L106C1
3	Empty/Return ratio	Given
4	Gross tons per car	Line 1 plus (Line 2 times Line 3)
5	One way miles excl rights	2/
6	Gross ton miles/car	Line 4 times Line 5
7	Cars/Train	[A1L115C1+A1L117C1]+[A1L101C1+A1L103C1]
8	Train miles excl. rights per car	Line 3 times Line 5 divided by Line 7
9	One way miles incl. rights	2/
10	Train miles incl. rights per car	Line 3 times Line 5 divided by Line 7
11	Locomotives per train	[A1L105C1+A1L107C1]+[A1L101C1+A1L103C1]
12	Locomotive unit miles per car	Line 10 times Line 11
13	Orig/Term - Clerical	Given
14	Switch engine minutes	(2 times Line 13) times E2L106C25
15	Car miles	(private)
16	Car days	(private)

1/ Following the methodology of Witness Rebensdor' as shown on C04 - 700030 through C04 - 700033.
2/ Mileage from Houston to St. Louis from Rand McNally.

**CALCULATION OF VARIABLE COST OVER TRACKAGE
RIGHTS - HOUSTON - ST. LOUIS 1/
(UP OPERATION)**

	<u>Movement Costs</u>	<u>QPR</u>	<u>DL</u>	<u>QPR & DL</u>	<u>ROI</u>	<u>Units</u>	<u>QPR & DL</u>	<u>ROI</u>	<u>Total</u>
UP-1	Gross ton mile	0.0010616	0.0003589	0.0014205	0.0008565	121,087	\$172.01	\$103.71	\$275.72
UP-2	Gross ton mile on rights	0.0007031	0.0001142	0.0008173	0.0001990	0	0.00	0.00	0.00
UP-3	Train mile other than crew	0.54645	0.00761	0.55406	0.00299	21.72	12.03	0.07	12.10
UP-4	Train mile other than crew on rights	0.42048	0.00761	0.42809	0.00299	0.00	0.00	0.00	0.00
UP-5	Train mile - crew	6.91153		6.91153		21.72	150.09	0.00	150.09
UP-6	Locomotive unit mile	1.56542	0.25454	1.81996	0.44370	63.85	116.20	28.33	144.52
UP-7	CLOR other than clerical	11.69602		11.69602		1.00	11.70	0.00	11.70
UP-8	CL orig or term. - clerical	24.38675		24.38675		1.00	24.39	0.00	24.39
UP-9	Switch engine minute	3.04417	0.26665	3.31082	0.67645	17.12	56.68	11.58	68.26
UP-10	Car Miles	0.02646	0.01470	0.04116	0.02821	0.00	0.00	0.00	0.00
UP-11	Car Days	3.06430	8.51421	11.57851	4.91829	0.00	0.00	0.00	0.00
UP-12	UP Total Variable - 1994						\$543.10	\$143.68	\$686.78
UP-13	Index (RCAF-A)								0.967
UP-14	UP Total Variable - 4Q95								\$664.12
UP-15	Variable Cost Per Ton								\$7.56

Inputs

1	Lading	Avg.: ICC 1994 Costed Waybill Sample - STCC 28211	87.9
2	Tare	E2L106C1	31.4
3	Empty/Return ratio	Given	2.0
4	Gross tons per car	Line 1 plus (Line 2 times Line 3)	150.7
5	One way miles excl rights	2/	803.5
6	Gross ton miles/car	Line 4 times Line 5	121,087
7	Cars/Train	[A1L115C1+A1L117C1]+[A1L101C1+A1L103C1]	74
8	Train miles excl. rights per car	Line 3 times Line 5 divided by Line 7	21.72
9	One way miles incl. rights	2/	803.5
10	Train miles incl. rights per car	Line 3 times Line 9 divided by Line 7	21.72
11	Locomotives per train	[A1L105C1+A1L107C1]+[A1L101C1+A1L103C1]	2.94
12	Locomotive unit miles per car	Line 10 times Line 11	63.85
13	Orig/Term - Clerical	Given	1
14	Switch engine minutes	(2 times Line 13) times E2L106C25	17.12046
15	Car miles	(private)	0.00
16	Car days	(private)	0.00

UP

1/ Following the methodology of Witness Rebensdorf as shown on C04 - 700030 through C04 - 700033.
2/ Mileage from Houston to St. Louis from UP Timetables.

Variable Costs Caused By BNSF Running Over UP / SP Tracks

<u>Item</u> (1)	<u>Source</u> (2)	<u>UP - 1994</u> <u>GTM Related</u> (3)	<u>SP - 1994</u> <u>GTM Related</u> (4)	<u>Weighted</u> <u>Average</u> (5)
<u>Operating Expenses</u>				
1. Maintenance of Way	D1L157C10	0.00030343	0.00048185	xxx
2. Dispatching, Etc.	D3L169C25	0.07914	0.06531	xxx
3. Total Direct Train Mile	D3L172C25	0.34332	0.39047	xxx
4. Ratio Dispatching to Total	Line 2 / Line 3	23.0514%	16.7260%	xxx
5. Total Train Mile	D3L191C25	0.46248	0.52755	xxx
6. Dispatching Total	Line 4 x Line 5	0.10661	0.08824	xxx
7. Average Trailing Weight	A1L122C1 / A1L104C1	5255.186307	4972.99411	xxx
8. Train Mile Related Costs per GTM	Line 6 / Line 7	0.000020286	0.00001774	xxx
9. Subtotal Less Overheads	Line 1 + Line 3	0.000323716	0.00049959	xxx
10. Operating Overhead Ratio	D8L607C1	1.18158	1.12773	xxx
11. Variable Trackage Rights Related Exp.	Line 9 x Line 10	0.000382497	0.00056341	xxx
<u>Depreciation/Leases</u>				
12. Maintenance of Way	D1L234C10	0.00022313	0.00037117	xxx
13. Depr./Leases Overhead Ratio	D8L608C1	1.09674	1.05989	xxx
14. Variable Trackage Rights Related DL	Line 12 x Line 13	0.000244716	0.0003934	xxx
<u>Return on Investment</u>				
15. Maintenance of Way	D1L251C10	0.00062134	0.0009977	xxx
16. ROI Overhead Ratio	D8L609C1	1.05816	1.03043	xxx
17. Variable Trackage Rights Related ROI	Line 15 x line 16	0.000657477	0.00102806	xxx
<u>Total Trackage Rights Costs</u>				
18. Total Costs Related to Trackage Rights	Line 11 + Line 14 + Line 17	0.001284689	0.00198487	xxx
19. Indexed From 1994 to 4Q95	Line 18 x 0.967 1/	0.001242295	0.00191937	xxx
20. UP / SP Weighting Factors	NO 4 - 700009	43.52%	56.48%	100%
21. Weighted Cost Related to Trackage Rights	(Col. 3; Line 19 x Line 20)+ (Col. 4; Line 19 x Line 20)	xxx	xxx	0.001624704
22. Adjustment Ratio—Total GTM / Trailing GTM	CO 4 - 700054	xxx	xxx	1.101
23. Cost Incurred By UP / SP (Mills)	(Line 21 / Line 22) x 1000	xxx	xxx	1.48

1/ Ratio of 4Q95 RCAFA to 1994 Annual Average

**COMPARISON OF ANNUAL PERCENT
CHANGE IN RCAF WITH URCS VARIABLE
COSTS PER GTM RELATED TO TRACKAGE RIGHTS**

<u>Year</u> (1)	<u>URCS Variable Costs Per GTM</u>		<u>RCAF-U</u> (4)	<u>70% RCAF-U 1/</u> (5)	<u>RCAF-A</u> (6)
	<u>UP</u> (2)	<u>SP</u> (3)			
<u>A. Annual Change</u>					
1991/1990	-0.9%	2.8%	4.5%	3.2%	0.2%
1992/1991	-0.9%	-7.2%	0.9%	0.7%	-3.4%
1993/1992	-10.7%	-0.7%	3.8%	2.7%	-0.5%
1994/1993	1.7%	-8.1%	3.3%	2.3%	-1.5%
<u>B. Cumulative Percent</u>					
<u>Change (1990 - 1994)</u>	-10.9%	-12.8%	13.1%	9.0%	-5.1%

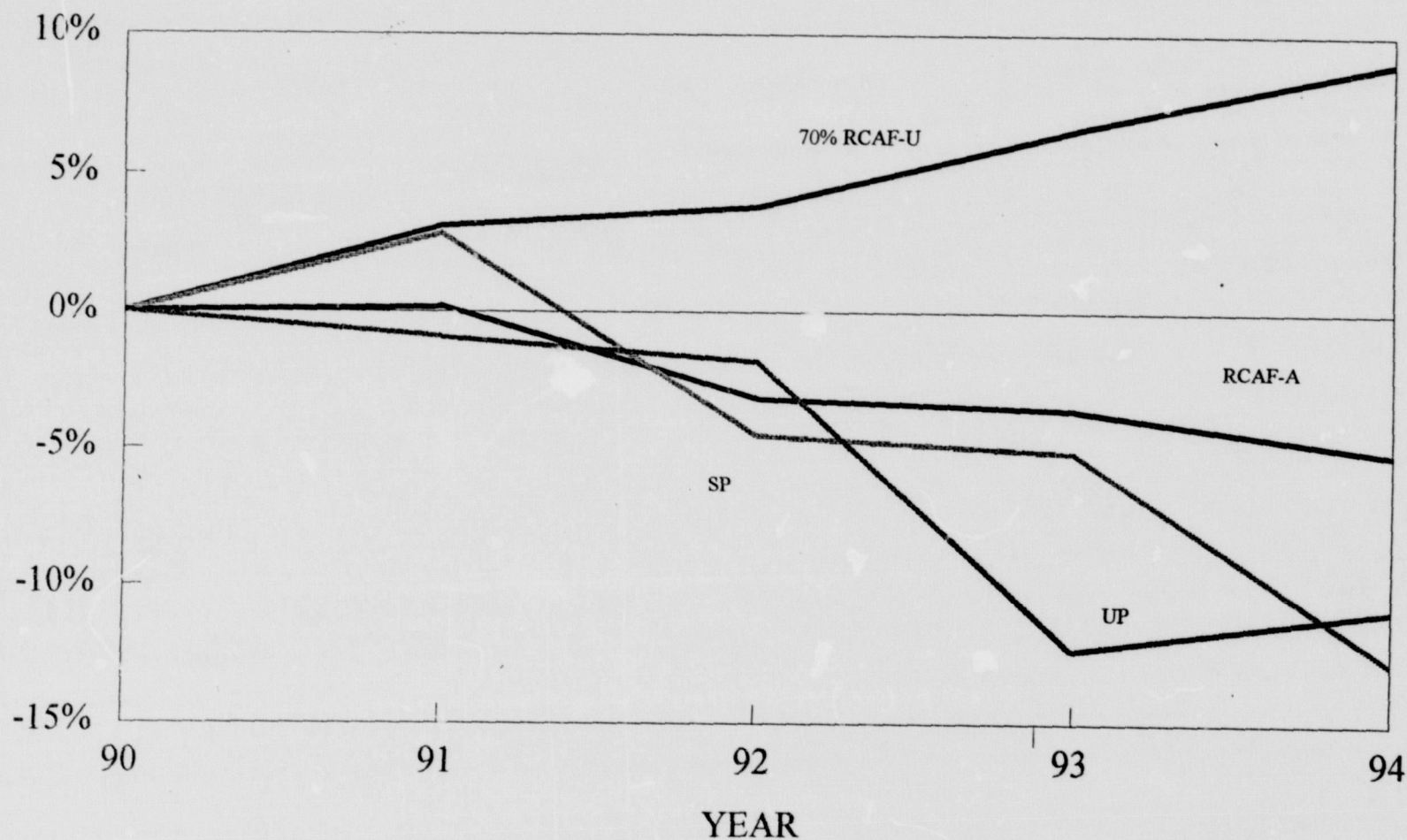
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**COMPARISON OF CHANGES IN
RCAF WITH URCS VARIABLE COSTS
PER GTM RELATED TO TRACKAGE RIGHTS**

<u>Year</u> (1)	<u>URCS Variable Costs Per GTM</u>		<u>RCAF-U 1/</u> (4)	<u>RCAF-A 1/</u> (5)
	<u>UP</u> (2)	<u>SP</u> (3)		
<u>Input Data</u>				
1990	\$0.00144	\$0.00228	0.925	-0.878
1991	0.00143	0.00234	0.967	0.880
1992	0.00142	0.00217	0.976	0.850
1993	0.00126	0.00216	1.013	0.846
1994	0.00128	0.00198	1.046	0.833
Cumulative Percent				
<u>Change (1994 ÷ 1990)</u>	-10.9%	-12.8%	13.1%	-5.1%

1/ Reflects value as of third quarter of each year. Indexes for 1990 through 1992 are rebased to 4Q92=100.

**COMPARISON OF CUMULATIVE PERCENT
CHANGE IN RCAF WITH URCS VARIABLE COSTS
PER GTM RELATED TO TRACKAGE RIGHTS**



**VERIFIED STATEMENT
OF
PARRY N. JOHNSON**

I am Parry N. Johnson. I am the Manager, Rail Operations, within the Marine & Rail Operations Department of Union Carbide Corporation.

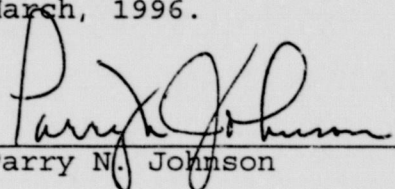
On the evening of Monday, September 25, 1995, I attended a dinner meeting of the Chemical Manufacturers Association at the ANA Hotel in Washington, D.C. The featured event at that meeting was a presentation by Richard Davidson, President of the Union Pacific Railroad, concerning the proposed merger of the Union Pacific and Southern Pacific Railroads.

At that dinner, Mr. Davidson announced the agreement entered into with the BNSF that morning for trackage rights for the "2-to-1" points. During the course of his remarks, Mr. Davidson commented that upon achieving control of the Southern Pacific, the UP would terminate the SP's "cash flow pricing."

It is well-known that the SP prices aggressively (generally at a lower level than the UP), whether as suggested in some corridors to compensate for the service problems they have experienced in the past and/or whether as a marketing tactic to secure customers at competitively-served points. In the context of his remarks, and based upon my ten years of experience in the transportation industry, the intent of Mr. Davidson's remarks was clear: rates for plastics and chemicals shippers which are

below the UP's benchmark level, whether those rates were for SP customers or for UP customers, driven in the latter case by SP competition, will be increased to the UP level if the merger is approved.

I, Parry N. Johnson, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement, executed on this 25 day of March, 1996.



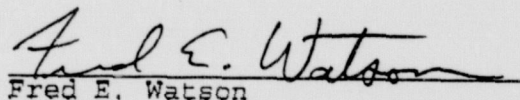
Parry N. Johnson

VERIFIED STATEMENT
OF
FRED E. WATSON

My name is Fred E. Watson. I am the author of the comments on behalf of Phillips Petroleum Company dated March 12, 1996, filed with the Surface Transportation Board in the UP/SP merger proceeding.

In the second paragraph of my letter statement, I discussed the competitiveness of the BNSF on a move from Houston to New Orleans, contingent upon the UP/SP merger being approved. My comment about the BNSF rates being "considerably higher than other available rail options" was based upon the fact that the BNSF proposal was more than % higher than the middle of the three bids.

I, Fred E. Watson, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement, executed on this 21st day of March, 1996.


Fred E. Watson



PHILLIPS PETROLEUM COMPANY
BARTLESVILLE, OKLAHOMA 74004 918 661-6600

Ms. Linda J. Morgan, Chairman
Surface Transportation Board
Department of Transportation
1201 Constitution Ave., Room 4126
Washington, D.C. 20423

RE: FINANCE DOCKET NO. 32760

Dear Ms. Morgan:

Phillips is very concerned about the competitive ramifications of the pending acquisition of the Southern Pacific Railroad (SP) by the Union Pacific Railroad (UP). Our concerns are particularly concentrated on that portion of the SP system that runs east of El Paso, TX, to the Mississippi River. All this track is essentially parallel track coverage with the present UP system. Phillips believes it should be the exception, not the rule, that allows two Class I railroads to consolidate parallel portions of their systems into one gigantic railroad.

Phillips likewise is not persuaded that the agreement between the UP and Burlington Northern (BN) will produce the effective competition espoused. Recently concluded contract negotiations with the BN yielded rates from Houston to New Orleans, contingent upon the SP/UP deal being approved, that have given us cause for concern. These rates proved to be considerably higher than other available rail options. If this is a preview of post-acquisition pricing, then the shipping public is in trouble! People knowledgeable of the rail industry are fully aware that trackage rights, haulage agreements, etc., are competitively inferior alternatives to track ownership.

Phillips has given careful consideration to Conrail's proposal to acquire a portion of the SP system commonly referred to as SP/EAST. Although we do not believe the SP is about to go out of business by any means, a decision by the SP board of directors to sell off the railroad must be addressed. Conrail's statements about preserving routes, freight interchanges locations, employment levels, and competitive rate levels makes their proposal much more credible in addressing our concerns. Not having over 85% of the plastics storage capacity in the Texas/Louisiana Gulf Region owned by a single carrier makes Conrail's proposal the better choice. Not having the terminal switching railroads in Houston and St. Louis controlled by the UP, again, makes Conrail's proposal the better choice. As for competition between Mexico and the Texas Gulf Coast, it's Conrail's proposal that would maintain the highest level of competition.

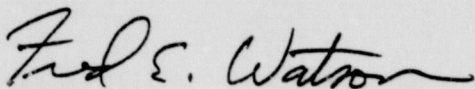
Phillips would urge the Surface Transportation Board to give heavy weight to maintaining competition and balance in an industry where large railroads often operate as quasi-public utilities. We are not persuaded that the \$660 million in purported benefits of a UP acquisition of the SP will filter down to reduced rate levels for the shipping public. Since railroads, in general, now refuse to recognize the AAR RCAF index, adjusted for productivity, why should the shipping public believe the productivity gains from a UP acquisition will be shared in the future?

Ms. Linda J. Morgan, Chairman
Page 2

For all these reasons, Phillips urges the Board to reject the proposed UP-SP merger unless it is conditioned upon acceptance of Conrail's proposal.

I, Fred E. Watson, 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 12, 1996.

Sincerely,



Fred E. Watson
Transportation Supervisor
328 Adams Bldg.
Bartlesville, Ok. 74004

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. 1104.12, I certify that I have this day served copies of the foregoing statement upon all parties of record in this proceeding, by first class, postage pre-paid U.S. mail.

Date: March 12, 1996

Signature: Fred E. Watson

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 CORPORATION AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

VERIFIED STATEMENT

of

WILLIAM G. SHEPHERD

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VERIFIED STATEMENT
OF
WILLIAM G. SHEPHERD

INTRODUCTION

My name is William G. Shepherd. I am a Professor of Economics in the Department of Economics at the University of Massachusetts, in Amherst, Massachusetts.

I am submitting this Statement jointly on behalf of the Chemical Manufacturers Association, The National Industrial Transportation League, and The Society of the Plastics Industry, Inc.

My professional experience and research qualifications are summarized in the attached biographical note. They include substantial attention to the transportation sector, including the railroad industry, as well as other sectors and markets throughout the U.S. economy.

In 1976 I was Chair of the Transportation and Public Utilities Group of the American Economic Association. In 1995 I was designated a Distinguished Member of that Group. I was President of the Industrial Organization Society in 1990. My research during 23 years at the University of Michigan and 9 years at the University of Massachusetts has resulted in some 21 books or editions of books, and over 80 papers mainly in professional research journals. They cover the standard issues of antitrust, mergers and deregulation, including the defining of markets, the degree of competition, and anti-competitive actions and effects.

My textbooks include The Economics of Industrial Organization, 3d ed., Prentice-Hall, 1990, and Public Policies Toward Business, 8th ed., Richard D. Irwin, 1991. I am the General Editor of the Review of Industrial Organization, a professional journal on economic research and public policies. Published six times yearly, it deals with competitive issues, antitrust policies, regulation and deregulation, and related topics. As General Editor I have to deal fairly with all sides of the controversies in this field.

In 1967-68 I participated directly in antitrust policy as the Special Economic Adviser to Donald F. Turner, then the Assistant Attorney General in charge of the Antitrust Division in the U.S. Department of Justice. One duty involved assisting in preparation of the first Merger Guidelines, issued by the Division in 1968.

I regularly teach Industrial Organization, Antitrust and Regulation at both the undergraduate and graduate levels.

I have been involved in numerous antitrust and regulatory proceedings, covering the issues that are involved in the current case. They are indicated in my biographical note. I testified in 1985 before the Interstate Commerce Commission on behalf of Union Pacific Railroad against the relevance of "contestability" assertions in the proposed Southern Pacific/ Santa Fe merger. I have also testified before Congressional hearings on various matters of policy toward industries.

For this case I have prepared by reading the merger application materials, reviewing the literature on the issues and the railroad industry, considering a variety of draft statements by witnesses

for various participants in this proceeding, and evaluating a variety of economic evidence prepared for this proceeding.

1. Summary of Conclusions

My main conclusions can be summarized as follows:

1. Reduction of Competition. The Union Pacific/Southern Pacific merger as it is now designed (including trackage rights) will reduce competition in substantial economic markets. In some markets (particularly the "2-to-1 markets"), dominance and unilateral market control will rise. In other markets (especially the "3-to-2 markets"), coordination between the two railroads will increase.¹

2. Specific Markets. The merger's anti-competitive effects occur in specific markets, areas and regions, and the cures for those effects are matters of specific detail. An assessment only of the merger's total effects will not clarify those individual effects.

3. Consider Net Merger Gains Only. The net economic gains of the merger proffered as a justification for the merger can be assessed properly only by comparison with alternative arrangements, such as long-term contracts, achieving efficient routing of traffic by joint rates, joint facilities agreements, and other mechanisms. The merger proposal does not address these net gains. The

¹The term coordination refers to the familiar range of tacit or overt agreement among competitors, with the effect of reducing competition. It may range from an unspoken pattern of mutual restraint up to tangible and detailed arrangements for collusion. See William J. Fellner, Competition Among the Few, New York: Knopf, 1949, ch. 1; Carl Kaysen and Donald F. Turner, Jr., Antitrust Policy: An Economic and Legal Analysis, Cambridge: Harvard University Press, 1959, ch. 3; George J. Stigler, The Organization of Industry, Homewood, Ill.: Richard D. Irwin, 1968, ch. 5, pp. 39-65; Jean Tirole, The Theory of Industrial Organization, Cambridge: MIT Press 1988, chs. 5-7; and F.M. Scherer and David Ross, Industrial Market Structure and Economic Performance, 3d ed., Boston: Houghton Mifflin, 1991, chs. 6-8.

inevitable conclusion is that the balance between net gains and competitive harms is less favorable than the statements by the applicants' witnesses would suggest.

4. BNSF Faces Four Barriers. The proposed trackage rights are inadequate to provide effective competition. For the 2-to-1 markets, Burlington Northern/Santa Fe is only a potential entrant, not an actual competitor. As it considers whether to enter any of the trackage-rights markets, it faces four types of economic barriers, even if it is given formal access: 1. an inability to serve a majority of shippers in the markets, 2. operational difficulties which will prevent BNSF from offering an assured quality of service, 3. cost disadvantages compared to UP/SP, and 4. the need for large, risky investments.

Consequently, in many or all of those markets BNSF will not be on an equal competitive footing, especially on routes between Houston and New Orleans, between Houston and Memphis and on to St. Louis, and in the central corridor between Denver and the west coast. In all of the trackage-rights markets, BNSF will lack traffic density and face disadvantages of cost, information and facilities. It will incur higher costs of service than UP/SP and will face high risks of having insufficient customers to justify investing in facilities.

Therefore BNSF is unlikely to compete fully in many or all of the trackage-right markets. Essentially, under the planned traffic rights, competition will be reduced from 2 competitors to 1 monopolist, at many or all points.

5. **Removal of Southern Pacific as a Maverick Competitor.** The Southern Pacific railway currently has incentives to behave, and has behaved, as a maverick competitor, willing to cut price deeply in order to offset various competitive disadvantages. The merger will eliminate that vigorous competitor.

6. **Supra-competitive Prices Will Result.** Therefore, because Burlington Northern/Santa Fe may well have little or no role in important markets while Southern Pacific will be removed as a competitive factor, the Union Pacific/Southern Pacific railroad will probably be able to charge higher supra-competitive prices in many markets.

7. **Mutual Restraint between UP/SP and BNSF as a Duopoly.** Also, the Union Pacific/Southern Pacific and Burlington Northern/Santa Fe rivals are likely to adopt coordinated duopoly behavior in many markets, rather than unrestrained price competition. This mutually-restrained duopoly behavior is likely to occur also along the larger regional patterns, where the two railroads differ in their regional presence, power and spheres of interest. In short, this merger is likely to yield live-and-let-live behavior by these two dominant railroads throughout the western U.S.

8. **Lack of Economic Evidence.** In denying these anti-competitive effects, Union Pacific's economic witness Dr. Robert D. Willig offers opinions that appear to be based on theory and intuition. The criteria he uses to reach his conclusions are not in accord with the mainstream research literature, nor with his own views about merger standards when he was an antitrust official.

9. **Specifying the Monopoly Impacts.** It is possible to identify with reasonable accuracy the markets and regions where the merger will reduce competition, in order to show the extent of the problems and to indicate where appropriate cures are needed.

10. **Possible Remedies.** Additional divestiture may be necessary as an appropriate cure for certain markets, given the likelihood of duopoly restraint and the inadequacy of the trackage rights that have been provided to BNSF. It is also possible that the terms of trackage rights can be adjusted markedly enough to give them some effectiveness in luring Burlington Northern/Santa Fe in as an attempted entrant.

2. Format of the Statement

To explain these conclusions, I will first review in Part I the economic criteria which are relevant to the policy judgments, considering the economic goals, the defining of relevant markets, the standards for judging effective competition and monopoly impacts, helpful examples in the airlines and telecommunications industries, and strategic pricing methods. I have to provide this careful review of the mainstream research literature, grounded as it is in general business experience, because Dr. W's ideas in his Verified Statement diverge so far from the literature. I will need to cite sources in the literature to show the criteria firmly.

Then I will consider this merger in Part II. First I will discuss the three levels of relevant markets, and then I'll review the likely increases in monopoly power.

Part III then considers trackage rights and other possible cures

for the monopoly impacts. I will explain why trackage rights will probably be ineffective, because BNSF will face at least four types of high barriers to entry. BNSF already behaves as if it will not try to enter. The removal of Southern Pacific as a maverick competitor will be a significant loss of competition in a substantial range of markets.

In Part IV I discuss the merger's effect in raising prices and reducing other directions of economic performance.

I. GENERAL ECONOMIC METHODS AND CRITERIA APPLY TO THE EVALUATION OF THIS MERGER

First I need to review the economic criteria that apply to competitive and monopoly conditions. I start with the economic goals, and the methods for defining relevant markets and assessing a merger's effects on competition. I will give examples of analogous monopoly problems from airlines and telecommunications. Then in Section 4 I will apply these criteria and methods to the facts in this case and show the basis for my conclusions.

The economic criteria arise from many decades of mainstream research in the field of Industrial Organization, on the basic conditions that occur in all markets, including railroads.² They also reflect many decades of established antitrust criteria and practices.

²For reviews of those criteria and their evolving research base, see Scherer and Ross, Industrial Market Structure and Economic Performance, chs. 1, 2, 11 and 18; William G. Shepherd, The Economics of Industrial Organization, Englewood Cliffs, N.J.: Prentice-Hall, 1990, especially chs. 1 and 3; George J. Stigler, "Perfect Competition, Historically Contemplated," Journal of Political Economy, 65 (February 1957), pp. 1-17; Richard Schmalensee and Robert D. Willig, eds., Handbook of Industrial Organization, Cambridge: MIT Press, 1989.

I recognize that the ICC in previous merger decisions has focused in part on the existence of two-railroad competition at every shipping point. **As I explain below, I believe that this merger does not even meet that standard because BNSF will not be able or adequately induced to enter and compete fully.**

Apart from such 2-to-1 questions at the micro-market level, this merger presents the Board for the first time with the creation of a 2-railroad dominance in the whole western two-thirds of the U.S. The Board needs to take a fresh look at this distinctive situation. It is different from other recent mergers. It is somewhat like the proposed Southern Pacific/Santa Fe merger in the early 1980s, which posed questions beyond specific micro-market conditions, in addition to raising questions, also found in the present merger, about the consolidation of parallel (rather than end-to-end) rail lines.

In broadening its view to include more than a narrow consideration of 2-to-1 markets, I hope that the Board will consider the competitive criteria that arise in the array of all markets. These mainstream criteria are relevant to markets in the railroad industry.³ An attempt to apply different criteria bears the burden of proof. If this industry is to continue evolving toward deferring regulation in favor of reliance on market

³The recognition that railroad economics does not differ fundamentally from mainstream industrial-market principles is well established and of long standing. On that unity, see John R. Meyer, Merton J. Peck, John Stenason and Charles J. Zwick, The Economics of Competition in the Transportation Industries of the United States, Cambridge: Harvard University Press, 1959; Alfred E. Kahn, The Economics of Regulation, 2 vols., New York: Wiley, 1971, vol. 1, chs. 1 and 6, vol. 2, chs. 1 and 4-6.

competition, it needs to be brought under the more complex mainstream antitrust criteria. Otherwise, competition in large parts of this industry may be crippled, and effective competition in those parts may never be reached.

1. The Economic Goals Include Efficiency, Innovation, Fairness and Freedom of Choice

Good economic performance has many dimensions. One is economic **efficiency**, as economists have long emphasized.⁴ Costs are minimized, and prices are constrained down to those cost levels. In that way, supra-competitive pricing and excess profits are prevented.

But efficiency in the use of current resources is just one goal: other important performance goals include **innovation**, in which all firms are motivated to adopt new products and technologies as rapidly as possible.⁵ The process of vigorous innovation raises productivity and income, in some cases by compound rates of growth, as Schumpeter and others have stressed. The resulting rises in income and arrays of new products can easily exceed the benefits from more static efficiency.

For example, Scherer and Ross's comprehensive text sums up the

⁴See Stigler, The Organization of Industry, ch. 2; Kaysen and Turner, Antitrust Policy, chs. 1 and 3; Scherer and Ross, Industrial Market Structure, chs. 11 and 18; Kahn, The Economics of Regulation, vol. 1, ch. 3; and Shepherd, The Economics of Industrial Organization, chs. 1 and 5-7.

⁵See for example Joseph A. Schumpeter, Capitalism, Socialism and Democracy, New York: Harper & Row, 1942, pp. 63-106; and Oliver E. Williamson, Markets and Hierarchies, New York: Free Press, 1975, ch. 10. Michael E. Porter, Competitive Advantage: Creating and Sustaining Superior Performance, New York: Free Press, 1985, stresses the importance of innovation both for social benefits and for the health of the firm itself (at chs. 2, 3, 5 and 6). Kaysen and Turner also stress the special importance of "progressiveness" and also fairness, in Antitrust Policy at pp. 14-17; and Scherer and Ross emphasize innovation, Industrial Market Structure, especially at ch. 17. In a public utility context, see Kahn, The Economics of Regulation, vol. 2, pp. 95-101.

literature (at p. 682): "In the long run, we have urged repeatedly, good economic performance depends much more critically upon sustaining a vigorous pace of technological progress than upon plausible variations in allocative efficiency or income distribution." Still other goals include **fairness** and **freedom of choice**. Those goals are important and deep-seated economic values in the U.S.

In sum, efficiency is important, but it is not the only criterion. The literature has recognized and emphasized that the other goals -- especially innovation -- may be more important in the long run. For valid policy decisions, a weighing of possible efficiency effects (e.g., merger "economies") is only one step in a multi-step evaluation.⁶ [Q: Can anything be said about whether benefits are distributed to shippers/public rather than flowing only to RR shareholders?] The other steps (especially considering innovation) may be more important. And a decision that permits efficiency while undermining the basis for innovation and freedom of choice may have negative economic effects, on balance.

2. The Relevant Markets Include Only Fully-Substitutable Services

In defining the relevant economic market, substitutability is

⁶See especially Kahn, The Economics of Regulation, Vol. 2, pp. 95-101; Shepherd, The Economics of Industrial Organization, chs. 1, 6 and 7; Scherer and Ross, Industrial Market Structure, chs. 1, 17 and 18. Moreover, good policy requires that the benefits of efficiency be passed on to the public rather than being captured only by railroad shareholders.

the governing criterion.⁷ One includes inside the market only the products or services that are fully substitutable for each other. Substitutability, and the markets themselves, exist in two dimensions: 1. by product (or service) types, and 2. by geographic areas.

To be relevant as a substitute and competitor in the market as defined, a carrier must be fully present in the market, with comparable facilities and operational abilities to serve most or all customers, and at equal costs. Only then will consumers be able to regard rival suppliers as genuine substitutes, so that the shippers can substitute freely among them.

A potential competitor is not to be considered to be in the market. For example, Southwest Airlines has had strong impacts, but only after it has actually entered specific city pair markets. Only after it has entered the market, gained substantial market position and achieved comparable costs can a potential entrant be safely regarded as a meaningful competitor.⁸ Moreover a potential competitor which faces strong barriers against entry usually has no economic relevance. If it will not be able to enter, then it has

⁷Phillip E. Areeda, Herbert Hovenkamp and John L. Solow, Antitrust Law, Vol. IIA, Boston: Little, Brown, 1995; Joe S. Bain, Industrial Organization, rev. ed., New York: Wiley, 1968; Shepherd, The Economics of Industrial Organization, ch. 3; Scherer and Ross, Industrial Market Structure, pp. 73-76; Richard A. Posner, Antitrust Law, Chicago: University of Chicago Press, 1976, chs. 4 and 6; Eleanor M. Fox and Lawrence A. Sullivan, Cases and Materials on Antitrust, St. Paul: West Publishing, 1989, pp. 139-43.

⁸This is clear from Bain's discussion in Joe S. Bain, Barriers to New Competition, Cambridge: Harvard University Press, 1956, ch. 1; and Scherer and Ross, Industrial Market Structure. Some writers seem to regard firms that might enter as if they already were real competitors; Drs. Willig, Janusz Ordover and David Scheffman for example call them "uncommitted entrants" just because they are in adjacent markets; see their papers in the Special Issue on Merger Guidelines, Review of Industrial Organization, pp. 139-50 and 173-90. But that is inaccurate, blurring the meaning of competition and entry.

no role in discussions of future competitive outcomes.

In the railroad industry, correctly-defined markets will include only the carriers that can provide transport precisely between the desired origins and destinations, under comparable service conditions and at comparable prices. If a carrier merely has physical operations at a point or in an area, that alone does not establish that the carrier is genuinely substitutable for other carriers' services in the market. Each carrier must also be fully able to provide comparable services (outgoing and incoming) linked to other areas and points, and at comparable prices.

The carrier must also have the abilities and the incentives to seek the shippers' business actively, in competition with others. And it must have a substantially equal chance to get it. If instead a carrier is physically present but is inactive, or is impeded, or is burdened with higher costs, then that carrier's services are not genuine substitutes in the market. The carrier then does not and will not exist as an economic competitor in the market.

**3. Effective Competition Involves Sufficient Numbers,
Reasonable Competitive Parity and Reasonably Easy Entry**

The central concept in the literature, and for an economic evaluation of this merger, is **effective competition**: will competition remain at an effective level after a merger or instead be substantially reduced by it? Or even if competition was not fully effective before the merger in some or many markets, will the merger reduce competition even further?

The meaning and presence of effective competition is often a

complex matter.⁹ There is usually some degree of actual or potential competition in most markets, but the competition may be weak or incomplete rather than vigorous and hard. Moreover, the net effect of a horizontal merger may be to reduce the market's degree of competition significantly further.

The concept of effective competition has come to involve a reasonably well-agreed set of criteria.¹⁰ The research literature has developed over a number of decades a recognition of three main conditions that usually provide for effective competition:

1. **Numerous competitors.** There needs to be **sufficient numbers** of significant competitors. If there are too few (especially as low as just 2 or 3), then those firms' incentives to coordinate with each other in some degree, either directly or indirectly, will often prevail over their incentives to compete independently.¹¹ Some degree of coordination will often occur and have significant effects even if there are some periods or geographic/product pockets of aggressive competition.

⁹One phrase for effective competition is "hard competition," as developed by members of the Chicago School. Hard competition involves maximal efforts by all firms, at all times. See Melvin Reder, "Chicago Economics: Permanence and Change," Journal of Economic Literature, (1982), pp. 1-38; also Stigler, The Organization of Industry, ch. 2.

¹⁰This has of course been a central issue in the research field for many decades. See Fellner, Competition Among the Few, ch. 1; George J. Stigler, ed., Business Concentration and Price Policy, Princeton: Princeton University Press, 1955; Kaysen and Turner, Antitrust Policy, chs. 1-3; Stigler, The Organization of Industry, ch. 2; Scherer and Ross, Industrial Market Structure, chs. 2 and 6-8; Shepherd, The Economics of Industrial Organization, chs. 1, 3 and 4. The mainstream discussion extends to the U.S. federal antitrust agencies, as shown by the discussions of competition and structure in their merger guidelines (noted below).

¹¹See Fellner, Competition Among the Few, ch. 1; Kaysen and Turner, Antitrust Policy, ch. 3, Scherer and Ross, Industrial Market Structure, chs. 1 and 6-8; Shepherd, The Economics of Industrial Organization, chs. 1, 3 and 13; and Tirole, The Theory of Industrial Organization, chs. 5-7.

Even if the Board were to expect that just two firms could guarantee hard, fully-effective competition all of the time, the merger will fail to meet that standard, as I will show below. But the general literature is substantially less tolerant of fewness.

The mainstream literature has suggested that a minimum of about five competitors is needed if competition is to be relied on to be fully effective.¹² For example George J. Stigler, the leader of the conservative Chicago School from the 1950s to the 1980s, considered structural evidence as relevant, and he set standards for empirical evidence for "the existence of competition" that are even stricter than the mainstream conditions that I note. In considering "a variety of statistical tests of the existence of competition" that "deserve some attention," Stigler considered first the number of firms, the absence of dominance, and low concentration: "The presence of numerous firms, none dominant in size, is directly observable and is usually described by a low concentration ratio."¹³ Later he says, "...a large number of rivals is sufficient to achieve competition," and that "many producers" will be sufficient for "the socially optimum amount of

¹²One part of the literature has discussed small-numbers behavior, under the incentives of joint maximization of profits. Fellner's landmark discussion identified the tendencies for the few leading firms to adopt joint maximization of profits. Kaysen and Turner, Antitrust Policy, ch. 3, define and discuss tight oligopoly (with high concentration in just a few leading competitors) as "unreasonable market power," at pp. 77-80. They regarded tight oligopoly as "shared monopoly."

¹³Stigler, The Organization of Industry, ch. 2, at p. 14. Stigler noted various reservations about structural data, and he noted other possible indicators of the degree of competition, including "the absence of systematic price discrimination" and the "traditional" indicator of monopoly as "a high rate of return on investment," pp. 14-15. But he clearly implies that many firms are necessary in order to give effective competition.

competition."¹⁴

Kaysen and Turner's landmark study says, "If we wish to eliminate unreasonable market power, we must in general move toward less concentrated markets in which there are more sellers with smaller shares. An increase in the number of competitors and a decrease in the relative market positions of the larger of them is usually a sufficient condition for the reduction of market power in any market."¹⁵ If market concentration in the largest 4 firms exceeds 75 percent, market power is "unreasonable."¹⁶

Scherer and Ross's leading text on industrial organization notes "Economic theory suggests that the vigor of competition is related positively to the number of firms in the relevant industry, other things (such as the height of entry barriers) being equal."¹⁷ As they summarize, "Pure monopolists, oligopolists, and monopolistic competitors possess monopoly power or market power," (page 17).

If all five (or more) firms are comparable, strong and well

¹⁴Stigler, The Organization of Industry, p. 18. In a discussion of "The Minimum Necessary Condition for Competition," he noted that perfect competition was more than was necessary; "These conditions are much stronger than we need, however, and this note will argue (but not rigorously prove) that a large number of rivals is sufficient to achieve competition," pp. 16-18.

¹⁵Kaysen and Turner, Antitrust Policy, p. 79. They do note reservations about unnecessarily trying for excess precision in structural conditions. But their whole theme is the market power created when concentration in a few firms is high; "Both economic theory and experience indicate the likelihood of a monopoly problem in the structurally oligopolistic markets," (at page 25).

¹⁶Kaysen and Turner, Antitrust Policy, pp. 29-34.

¹⁷Scherer and Ross, Industrial Market Structure, p. 71. They note that a market is "oligopolistic" when firms are few and mutually interdependent; they distinguish between that and "a competitive market structure," page 17. They note that the mainstream literature (with the exception of "contestability" theory) regards tight oligopoly as involving market power, at page 17.

motivated, they may usually act independently and forcefully to provide hard competition. Then the tendencies to coordinate may not be strong enough to prevail, at least not most of the time.

With each reduction below 5 firms (5-to-4, 4-to-3, 3-to-2, and of course 2-to-1) there is a significant loss of competition as the incentives for coordination become relatively stronger, compared to the rewards for independent competitive actions. In most normal markets, mainstream researchers would not expect that 2 or 3 firms would provide effective competition. A few markets might have unusual conditions which permit less than 5 firms to yield effective competition, but that possibility would need to overcome a heavy burden of proof. As shown below, that is not the situation in this case.

2. **No Unilateral Market Dominance.**¹⁸ There also needs to be reasonable **competitive parity** among the competitors, so that they all apply strong mutual pressure on each other to perform well. Instead, one firm may hold market dominance, with a market share of half or more of the market and no close rival.¹⁹ Then competition

¹⁸I am using the term "market dominance" here as it is commonly used in the economics literature, primarily relating to market shares and entry conditions. That is different from the term's technical use in the statutory jurisdiction of the STB.

¹⁹In the economics literature, a dominant firm has more than 40 percent and "no close rival," which may usually mean that the lesser rival's market share is 20 points or more lower. Such an indicator of market dominance is roughly similar to the "50%-10%" guideline adopted by Richard B. Peterson of Union Pacific Railroad (Verified Statement, pp. 233-34) as a test for whether the Union Pacific and Southern Pacific may be viewed as competing currently for the transportation of chemical products from the Gulf Coast. If the two firms combined have a market share of 50 percent or more for the transportation of a particular product, and both have more than 10 percent, then there is a particular concern that the merger will adversely affect the market for transportation of that product. If on the other hand the two firms combined have a market share of 50 percent or more, while one has less than 10 percent, then the firm with the small market share is not viewed as currently competing effectively, and there is less concern about the reduction of competition as to that market segment.

will usually be unbalanced and ineffective.²⁰

The dominant firm will apply a degree of unilateral control in the market, raising prices and adopting strategic discriminatory pricing in ways which limit its rivals' ability to compete. The dominant firm will not be pressed hard to perform well, and the lesser rivals in that market will be over-matched by the dominant firm's greater resources in the market.²¹

3. **Easy entry.** There needs to be reasonably easy or free entry into the market and among all its segments.²² Numerous new firms will be able to enter quickly and freely, to survive, and to acquire significant market shares, if the incumbent firms raise prices significantly. Impeded entry, in contrast, permits the few firms to collude more effectively and raise prices further.

Some theorists (including Dr. Willig) have explored certain pure cases in which 3, 2 or even just 1 firm may instead tend toward competitive efficiency results.²³ But those cases assume extreme

²⁰See Scherer and Ross, Industrial Market Structure, pp. 221-26; Donald Hay and John Vickers, The Economics of Market Dominance, Oxford: Basil Blackwell, 1987; and Shepherd, The Economics of Industrial Organization, ccs. 11 and 12.

²¹If the firms are just parts of larger firms, then the mismatch of resources may depend both on conditions **inside** the market as well as the firms' total resources **outside** the market. Yet the positions inside the market may govern the main ability of the dominant and lesser firms to compete and gain profits.

²²See especially Joe S. Bain, Barriers to New Competition, Cambridge: Harvard University Press, 1956; Joe S. Bain and H. Michael Mann, "Seller Concentration, Barriers to Entry, and Rates of Return in 30 Industries, 1950-1960," Review of Economics and Statistics, August 1966, pp. 296-307.

²³"Contestability" theory is a leading example of this; see William J. Baumol, John Panzar and Robert D. Willig, Contestable Markets and the Theory of Industry Structure, San Diego: Harcourt Brace Jovanovich, 1982. This theory purportedly "proves" that even a monopoly can be relied on to reach competitive results (though only in terms of static efficiency: the theory says little about other economic goals, including innovation and freedom of choice). See also Tirole, The Theory of Industrial Organization, chs. 5-7.

conditions of totally free entry and exit, with no sunk costs, and they are in any event merely matters of theorizing. They have not been supported by research evidence from real markets nor by widespread business experience. As shown below, BNSF will face barriers, rather than completely open entry.

In this case, Dr. Willig relied (Verified Statement, pp. 586-89) on Richard Peterson's interpretation (Verified Statement, pp. 177-85) that two-firm competition is strong in various railroad situations, including traffic on the Southern Corridor and coal shipments from the Powder River Basin. But those situations involved highly specialized circumstances where a new competitor did in fact have or obtain equal access to very substantial amounts of new traffic, for which it had the incentive and ability to make major investments to compete. And, given that they decided to make the heavy investment needed to enter the market, had every incentive to compete aggressively for the traffic needed to pay off their investment.

In the Powder River Basin, the CNW/UP entered the market at a time when few utilities had signed rail transportation contracts, since clear contracting authority and implementing rules had first been promulgated after the passage of the Staggers Act. Thus, the market was largely "open" and was not foreclosed by the presence of existing contracts, thus permitting the CNW and the UP to compete at the outset for substantial amounts of traffic. More importantly, in the case of the movement of massive amounts of Powder River Basin coal, the capture of just a few individual

movements of traffic between a single origin and a single destination for a single customer were large enough by themselves to support the investment required. Additionally, the CNW, along with its joint-line partner, the UP, itself served major consumers of coal, and therefore had natural advantages in competing with the BN, a fact that could help to justify the necessary investments. Finally, each contract for PRB coal traffic, and to a large extent Southern Corridor intermodal traffic, is defined by a market for a discrete product between a discrete origin and one or at most a few destinations, making it relatively easy for a potential competitor to "target" the customer and his needs.

Here, those conditions are not present. There are substantial barriers to BNSF entry, and there are substantial handicaps if BNSF tries to compete. There is not even the potential available traffic base that would tempt BNSF to compete vigorously, even aside from the barriers and handicaps it must face. Unlike the CNW/UP with respect to Powder River Basin coal traffic, the BNSF does not directly serve large numbers of important destinations for plastics and chemical shippers. Moreover, a substantial amount of potential traffic is under existing contracts. The "network" pattern of much chemical or plastics traffic, which moves from relatively few origins but to numerous destinations, makes it difficult for a single carrier to identify and isolate its competitive opportunities.

The mainstream literature has developed extensive evidence that when there is dominance, rivals are few, and entry is impeded, then

the standard effects of monopoly power will occur.²⁴ In one authoritative summary: "Perceptive managers will recognize that their profits will be higher when cooperative policies are pursued than when each firms looks only after its own narrow self-interest. As a consequence, even in the absence of any formal collusion among firms, we should expect tightly oligopolitic industries to exhibit a tendency toward the maximization of collective profits, perhaps even approaching the pricing outcome associated with pure monopoly."²⁵ This applies to several-firm dominance; the conclusion holds more strongly, of course, for single-firm dominance.

Some dominant firms have had such strong and lasting monopoly effects that major antitrust cases have been necessary in order to restore competition.²⁶ In addition, some remaining dominant firms nowadays (such as local newspaper monopolies) are recognized to present serious problems, for which remedies are needed but not currently available.

In addition, there are a number of familiar cases from business experience that show the impacts of single-firm dominance and tight oligopoly.

²⁴Bain, Barriers to New Competition, chs. 1 and 7; Scherer and Ross, Industrial Market Structure, chs. 11 and 18; Leonard W. Weiss, Concentration and Price, Cambridge: MIT Press, 1991.

²⁵Scherer and Ross, Industrial Market Structure, p. 226, see also chs. 6, 7 and 8.

²⁶The leading cases include, among many others, the Standard Oil trust (1911), American Tobacco (1911), the Aluminum Company of America (1945), United Shoe Machinery (1954), and AT&T (1984); see Areeda and Turner, Antitrust Law; Fox and Sullivan, Antitrust, ch. 2, pp. 99-281; and William G. Shepherd, Public Policies Toward Business, 8th ed., Homewood, Ill.: Richard D. Irwin, 1991, chs. 6 and 7.

4. Airlines and Telecommunications Offer Helpful Examples and Parallels to This Merger

In recent industrial experience, there are important examples, including two industries -- airlines and telecommunications -- whose network basis makes them closely parallel to the railroad industry.

a. Airlines

The airline industry provides a set of significant parallels and examples.²⁷ "Hub dominance" is an important element of airline market power. Since 1980 there has developed extensive dominance by one or two airlines at many of the major airports, including Detroit, Minneapolis, Dallas, St. Louis, Pittsburgh, Chicago, Denver and San Francisco. The consensus of empirical research is that the dominance has tended to raise fares by about from 17 to 26 percent.²⁸ This effect appears to occur both for unilateral dominance and for duopoly situations, even though direct collusion is illegal and the duopolies are fully known and subject to close observation by policy agencies, economic specialists and the public.

²⁷See Steven A. Morrison and Clifford Winston, The Evolution of the Airline Industry, Washington, D.C.: Brookings Institution, 1993; Elizabeth E. Bailey, David R. Graham, and Daniel P. Kaplan, Deregulating the Airlines, Cambridge, Mass.: MIT Press, 1985; Richard H.K. Vietor, "Contrived Competition, Airline Regulation and Deregulation, 1925-1988," Business History Review, Spring 1990, pp. 61-108.

²⁸See among many others Severin Borenstein, "Hubs and High Fares: Dominance and Market Power in the U.S. Airlines Industry," Rand Journal of Economics, 20 (1989), pp. 344-65; William N. Evans and Ioannis Kessides, "Localized Market Power in the U.S. Airline Industry," Economic Statistics, 75 (February 1993), pp. 66-75; Alfred E. Kahn, "The Competitive Consequences of Hub Dominance: A Case Study," Review of Industrial Organization, 8 (August 1993), pp. 379-405; Margaret A. Peteraf, "Sunk Costs, Contestability and Airline Monopoly Power," Review of Industrial Organization, 10 (June 1995), pp. 289-306; Morrison and Winston, Evolution of the Airline Industry; John R. Meyer and Clinton V. Oster, Jr., Deregulation and the Future of Intercity Passenger Travel, Cambridge: MIT Press, 1987, ch 9.

Another instance is the east coast air shuttle duopoly. Delta and USAir are in a long-standing duopoly in the northeast corridor of the U.S. between Washington, New York and Boston. Entry is closed because of their control of scarce airport landing slots.²⁹ The two airlines have carefully avoided price competition for many years in this set of markets. The fares are substantially higher than those for comparable shuttle service between San Francisco and Los Angeles, where entry is open.³⁰ The profits on the east coast shuttle duopoly have been correspondingly high.³¹ With new entry closed, this duopoly has avoided sharp competition, in ways which railroad duopoly may replicate.

b. **Telecommunications**

The telephone-service industry offers equally instructive parallel examples, both in long-distance markets and local-service markets.³² In **long-distance service**, AT&T was the total monopoly until the 1970s, when MCI and Sprint were allowed to enter. AT&T then became a dominant firm with these two small rivals plus a fringe of tiny new competitors, most of which soon exited by

²⁹See the thorough discussion in Edwin McDowell, "Shuttles in Northeast Thrive and Keep Fares Up," New York Times, May 8, 1995, p. D3.

³⁰The fare in 1995 was \$147 on both the New-York-Boston and New-York-Washington routes. On the open-entry route between Los Angeles and Oakland the fare was only \$69; on the Los Angeles-San-Francisco route, it was \$99, still well below \$147. McDowell, "Shuttles."

³¹Delta reported a profit of as much as \$20 million on its shuttle operations in 1994, while losing \$159 million on all operations. USAir, which suffered a much-larger total loss of \$685 million in 1994 and yet still recorded an expected net shuttle income of about \$6 million. McDowell, "Shuttles."

³²See Robert W. Crandall, After the Breakup, Washington, D.C.: Brookings Institution, 1991, chs. 1 and 3.

closing or selling out. At first MCI and Sprint competed by setting prices that were markedly lower than AT&T's prices, usually 30 percent lower or more.

But since 1986, all three firms have charged similar prices. Despite the surface appearance of active non-price competition (advertising campaigns, special discounts for certain groups, etc.), the three firms can be seen as a stable dominant-firm/three-firm tight oligopoly whose participants have tacitly agreed to avoid sharp, frontal price competition.³³ There may be no explicit collusion, but the mutual forbearance among the Big Three is a recognized fact.

This outcome is caused partly by AT&T's continuing dominant position. Quick substantial entry did not occur; instead MCI and Sprint were able only to nibble at AT&T's dominance during 1980 to 1989. It took MCI at least 10 years to gain its 20 percent share, point by point, and Sprint has been able to gain only 10 percent. When AT&T was constrained before 1989 by the Federal Communications Commission's moderate regulation of it, AT&T's share did recede at about 4 points per year. But the FCC deregulated AT&T in 1989, and AT&T has stabilized its dominant share at about 60 percent of the market.

The outcome also reflects the mutual comfort of these three firms in avoiding all-out competition. A few minor competitors have survived, while many others have been forced out. Entry has

³³Paul W. MacAvoy, "Tacit Collusion under Regulation in the Pricing of Interstate Long-Distance Telephone Services," Journal of Economics and Management Strategy, 4 (Summer 1995), pp. 147-85.

become virtually closed to any major entrants. That is why the Telecommunications Competition Act of February 1996 took drastic steps to allow the Baby Bells to enter long distance markets. Competition was widely agreed to be ineffective, and only these massive adjacent firms had a chance of making substantial entry into each others' markets.³⁴

Local telephone service also offers instructive examples. Entry into many large-city local-exchange markets has been "open" for a number of years, and yet only minor entry has occurred in a relative few of them. Despite this nominally open entry, the Local Bells' monopoly power has remained so great that regulation has still been needed. As shown below, similar controls can be applied by UP/SP against BNSF, such as by controlling dispatching and other mechanisms.

c. Lessons from Airlines and Telecommunications

These two closely-studied sectors are parallel to railroad markets in many respects: network-based industries, with many submarkets, widespread dominance and few-firm conditions, bottlenecks that may control competitive access, and discriminatory pricing.

Effects of Market Power despite Deregulation. One main lesson of these two cases is that dominance, the fewness of competitors, and impeded entry will cause the major effects of monopoly in situations where deregulation is seeking to create effective

³⁴The Act permits mutual entry (under certain conditions) between the long-distance markets and the local-service markets. That entry had been previously barred, after the break-up of the Bell System in 1984.

competition.

Both unilateral dominance and few-firm coordination have had substantial impacts in a large variety of market settings in much of the U.S. Only the unleashing of possible competition, as provided by the new Telecommunications Act, offers some promise of escaping from dominance and three-firm tight oligopoly in telecommunications, as it is reinforced further by difficult-entry conditions.

Mutual Restraint. These cases also show that it is important to be realistic about whether firms that seem to compete are really competing fully by using all competitive weapons. Often they are not.

Impeding Entry. Still another lesson is the ability of the incumbents in network-based industries to prevent strong entry. Repeatedly, the legal shift to "open entry" has yielded only little or no significant entry. Therefore, comparable markets are likely to experience only minor entry by small increments, rather than massive entry that quickly captures large market positions.

One tactic used by telephone-service firms (and railroads, in transportation markets) to prevent strong entry is strategic discriminatory pricing -- "pin-point pricing", "sharp-shooting", cutting discount deals with the best customers -- as a way to restrain smaller rivals in the market and confine them to market niches. AT&T used extensive discounting after 1988 to impede MCI

and Sprint from attracting the best customers.³⁵ Airlines have developed price discrimination (called "yield management") to extremely refined degrees, with the effect of enhancing profits and discouraging mutual entry.³⁶

Spheres of Interest. A final lesson is that these network-based industries tend to develop patterns of market accommodation and "spheres of interest," so that parallel dominant firms in few-firm situations learn to stay out of each other's main territory. That can be expected to occur in similar industries, such as railroads.

5. Concentration and Numbers of Rivals Are Relevant in Assessing a Merger's Effects on Competition

The degree of competition is not a matter of guesswork and personal opinions. The numbers of substantial competitors, together with market shares and concentration indexes (4-firm ratios and HHIs), indicate the likelihood that there is unilateral power or coordination in a market. As I discussed at length above, when the numbers of competitors are low, and market shares and concentration are high, they set the burden of proof against any claim that the duopoly competition will be strict.

It is simple and straightforward to consider the reduction in the number of significant competitors. As I noted earlier, every reduction below 5 causes a significant rise in the likelihood that

³⁵AT&T used its customized Tariffs 12 and 15 to protect or gain at least 75 major national accounts, under deep price discounts and specialized service arrangements. Among the customers held in this way were General Electric, Ford Motor Co., E.I. DuPont de Nemours, and Holiday Inns. See Jay Arnold, "FCC Rejects Challenge to Customized Phone Service," Associated Press, Business News, June 30, 1989.

³⁶See the discussion in Morrison and Winston, Evolution of the Airlines Industry; Bailey, Graham and Kaplan, Deregulating the Airlines.

tight-oligopoly behavior will tend to be implicitly or directly coordinated.

As for market shares and concentration, research economists and the antitrust agencies use these data extensively in assessing situations of market power as well as mergers. Since 1982, the HHI has been a standard test. The main threshold criterion has been an HHI value of 2,000; above that level, it is expected that the leading firms are likely to adopt cooperative behavior. The higher the HHI index is above 2,000, the stronger is the presumed tendency to collude.

The HHI is also used to assess the reduction of competition that the merger will cause. The two partners' shares are multiplied together and doubled. A rise of 100 points or more is regarded as a significant reduction in competition, if the HHI level is already above 2,000.

Both uses -- the level of market power and the possible increase of market power -- are relevant to this merger case, and both calculations can readily be made for significant markets. Both will indicate monopoly levels that violate the standard antitrust criteria in many markets.

6. The Net Economic Gains from a Merger Are the Correct Bases for Evaluating That Merger

In assessing mergers, only the **net economic gains** (compared to non-merger alternative arrangements such as long-term contracts, achieving efficient routing of traffic by joint rates, joint facilities agreements, and technical coordination) are the proper basis for a public-policy evaluation. The UP and SP merger

partners in this case have stressed instead the gross gains in efficiency. That ignores the non-merger ways that may be available to achieve the same benefits.

Where competition may be reduced by the merger, any valid comparison of the merger's benefits with its monopoly impacts needs to identify and incorporate solely the net benefits.

In addition, Applicants have not stated what proportion of the efficiency gains will be passed on. Given the reduction in competition, it is likely that most of the gains will instead be retained for the benefit of the UP/SP shareholders only.

**7. Strategic Price Discrimination by a Dominant Firm
Can Tend to Reduce Competition Without Giving
"Ramsey-Pricing" Efficiency**

Dominant firms normally develop extensive price discrimination, using pin-point pricing in a dynamic process so as to deter competition and extract maximum profits.³⁷ Notice that price discrimination could promote competition, when it is done by firms with small market shares. But it tends to reduce competition when done by dominant firms, who typically suppress the rivals with smaller shares in the market by using pin-point strategic pricing against them.

³⁷For particularly thorough analysis of discrimination's possible anticompetitive effects, see Kahn, The Economics of Regulation, pp. 131-91; and Scherer and Ross, Industrial Market Structure, pp. 499-502. Stigler also stresses that price discrimination can signal a lack of effective competition: "A related evidence of competition is more powerful: the absence of systematic price discrimination." The Organization of Industry, pp. 14-15. Leading past examples of dominant-firm anticompetitive discrimination include IBM in tabulating equipment and computers, Xerox in the copier industry, AT&T in long-distance service, and airlines after 1978. See for example Richard T. DeLamarter, Big Blue: IBM's Use and Abuse of Power, New York: Dodd, Mead, 1986, chs. 2, 6 and 9-13; also, for analysis and examples, see Shepherd, The Economics of Industrial Organization, ch. 12, pp. 287-315.

As Scherer and Ross summarize the literature, "In sum, systematic price discrimination can preserve and strengthen monopoly positions by permitting large firms to buy inputs at lower prices than their smaller rivals, by tying buyers together with sellers giving discounts for concentrated purchases, and by making entry into narrow segments of a market more difficult," (at p. 502).

This discrimination does not offer the efficiency-promoting properties which Ramsey pricing is said to have.³⁸ Ramsey pricing theory is relevant primarily to the static-efficiency effects of pricing by a complete monopoly with declining-cost conditions, in the absence of dynamic competition. Even for use in that narrow situation, the principal author of Ramsey pricing theory now states that Ramsey pricing is impractical for use in guiding real policies.³⁹

³⁸See Scherer and Ross, Industrial Market Structure, pp. 496-502; Kahn, The Economics of Regulation, vol. 1, pp. 137-181; William G. Shepherd, "Ramsey Pricing: Its Uses and Limits," Utilities Policies, October 1993, pp. 295-98; and William G. Shepherd, "Contestability vs. Competition -- Once More," Land Economics, August 1995, pp. 299-309.

³⁹See William J. Baumol and J. Gregory Sidak, Toward Competition in Local Telephony, Cambridge: MIT Press, 1994, pp. 36-39. It may be helpful to quote the reasons in full, as explained by Baumol and Sidak at pp. 38-39: "Therefore, to use the full Ramsey analysis to calculate second-best optimal prices, one needs information on the marginal cost of, and the own-price elasticity of demand for, each of the products in question. One probably needs to know the full set of cross-price elasticities as well. This data requirement is one reason why most regulators and consulting economists have rejected the use of the Ramsey formulas even to provide approximations for the prices that the regulated firm should be permitted to charge for its products. Marginal-cost figures are difficult enough to come by, although reasonably defensible approximations have been provided by firms to regulatory bodies. But up-to-date estimates of the full set of pertinent elasticities and cross-elasticities are virtually impossible to calculate, particularly in markets where demand conditions change frequently and substantially. As a result, an attempt to provide the regulator with an extensive set of Ramsey prices is likely to be beset by inaccuracies, by obsolete demand data, and by delays that will prevent the firm from responding promptly and appropriately to evolving market conditions. ... In sum... , Ramsey analysis is unlikely to determine the actual magnitudes of regulated prices."

Once a competitive process begins, as it did long ago among railroads, the strategic impacts of dynamic discrimination come to the fore and the static-efficiency role fades away. Any lingering static-efficiency benefits that price discrimination may give are replaced by the reduction of competition, with its harms to efficiency, innovation and other economic goals.

Network-based industries such as railroads often contain hundreds of individual markets, within which the participants have extensive contact with each other. That provides many opportunities for strategic pricing using discounts, and the discounting intensifies the incentives to adopt "diplomatic behavior" recognizing "spheres of interest," which I noted earlier.⁴⁰ The discounting magnifies the extent of precise punishment which dominant carriers can impose on their rivals in many related markets.

Accordingly, the rivals learn to avoid frontal challenges to each other. The resulting peaceful-coexistence behavior has been a normal feature of a number of network-based, multiple-market industries containing market dominance.

II. THE MERGER WILL REDUCE COMPETITION IN MANY MARKETS, INCLUDING MANY OR MOST OF THE TRACKAGE-RIGHTS MARKETS

This merger is likely to reduce competition not only in 3-to-2 markets and 2-to-1 markets but also generally in the western U.S.

⁴⁰ Airline hubs are an important parallel example of spheres of influence. That is highlighted by the fact that the maverick airline Southwest Airlines attempts successfully to crack fortress hubs, as a central part of its strategy. In contrast, the established airlines generally do not try to invade each others' fortress hubs, preferring instead to observe mutual restraint about each others' main areas of interest.

because of mutual duopoly restraint. For the 2-to-1 markets, Union Pacific/Southern Pacific has pointed to the Burlington Northern/Santa Fe railroad as an effective competitor, by means of a set of trackage rights. These rights were negotiated as part of the merger design, and Union Pacific presents them as a complete solution.

In discussing the 3-to-2 situations, the merger application presents Dr. Willig saying at length that the duopolists will engage in hard competition, with no tendencies toward cooperative behavior. On the larger problem of mutual duopoly restraint, Dr. Willig provides his opinion that all interactions will involve maximum hard competition, with unlimited and ubiquitous strife. The evidence suggests the opposite.

The trackage rights issue may be the more important and complex specific topic. I will address it and the likelihood of duopoly restraint, after covering some points of market definition.

- 1. The Relevant Markets Include Shipping Points, Corridors, and Region-Wide Areas**

Attention naturally focuses on the relevant markets within which the merger will reduce competition. They include not only several major route corridors, but also many more specific origin-destination pairs and route lines, as well as the larger western-U.S. railroad services market.

Modal Competition. First, I need to mention modal competition, in which trucks and barges may substitute for railroad services. Modal competition is important for some categories of freight, in some directions. But for many major categories (including most

plastics, many chemicals and others), it is not feasible and not economically important in practice.

In 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.⁴¹ Railroads are most suitable for high-bulk, uniform, low-speed, long distance freight.

Trucking is substitutable for railroad carriage for some types of freight, and it is superior for certain categories, such as low-bulk, high-value, differentiated cargo that must be delivered to multiple locations (as in a city). But certain major cargo classes are out of reach for trucks, both by the relatively higher cost of trucking and the specific service features and locations.⁴²

Plastics resins are particularly captive to rails, because the industry requires large-scale storage of the resins on rail cars as part of the process of accommodating output and holding material to

⁴¹Leading discussions include Meyer, Peck, Stenason and Zwick, The Economics of Competition in the Transportation Industries of the United States; Kahn, The Economics of Regulation, pp. 178-93; Dudley F. Pegrum, Transportation: Economics and Public Policy, Homewood, Ill.: Richard D. Irwin, 1968; Theodore E. Keeler, Railroads and Public Policy, Washington, D.C.: Brookings Institution, 1983, chs. 4 and 5. For expert opinions that are directed to this case, see the Verified Statements of Larry D. Ruple and A.O. Bowles, Jr. on behalf of the Society of the Plastics Industry in this proceeding.

⁴² At best, the anecdotes provided by Mr. Peterson and others show that some shippers have used other modes for some shipments, or have threatened to attempt to use other modes in order to gain leverage. But even if one shipper can use non-rail transportation for some shipments, this does not mean that other shippers can do so, or that the first shipper can do so for all shipments. The UP/SP have presented no systematic evidence of the ability of shippers on their systems to use non-rail transportation for the long-distance movements that are of most concern to shippers in this case.

fit demand patterns.⁴³ Also, covered hopper cars provide the levels of security and cleanliness that are necessary for these products. Therefore virtually all production facilities are designed to transfer the resins to rail cars. Even the small amount of plastics resin that is eventually carried by trucks is moved "initially by rail in that the plants are designed for rail rather than motor carrier loading."⁴⁴

As for chemicals, the ICC itself in 1989 recognized the rail-dependency of the important STCC groups 28-1 and 29-1: ".... the products in these groups moving by rail often travel long distances in shipper-owned or leased tank cars."⁴⁵

Waterborne traffic may appear to overlap more closely with railroad services in categories of distance, uniformity, less need for speed, etc. But waterborne traffic is tightly confined along fixed waterways, with a limited reach and pattern of pathways across the country. Although it is theoretically possible to use trans loading between trucks and barges to reach points not on water, I understand that this is rarely done for chemicals or

⁴³A.O. Bowles Verified Statement, pp. 3-8, "The plastics industry truly is dependent upon rail transportation for the movement of product from production to customer destinations" (p. 8); Larry D. Ruple Verified Statement, pp. 12-15, "Producers are almost totally reliant on the rail car for loading production, storage track for both loaded and empty, and movement to final destination and return of empty cars." (p. 13). "No other means can be substituted or supply the multitude of logistics characteristics that rail represents." (p. 15)

⁴⁴A.O. Bowles Verified Statement, p. 7.

⁴⁵Ex Parte No. 346 (Sub-No. 24), Rail General Exemption Authority -- Miscellaneous Manufactured Commodities, 6 I.C.C. 2d 186 at 201 (1989). In the notice of proposed rulemaking in that same proceeding, the Commission noted that "the length of haul is a major economic measure of the relative potential of competition between rail and truck, as rails tend to have the competitive cost advantage over longer distances and trucks their relative potential advantage over shorter distances," ibid., Notice of Proposed Rulemaking, served February 9, 1988.

plastics traffic, for reasons including the extra cost, the need to prevent product contamination, and the need to minimize the risks of handling hazardous materials. In addition, waterborne traffic is subject to seasonal interruptions and uncertainties (e.g., from winter ice and blockages in parts of the country). Therefore waterborne traffic offers little or no substitution for major categories and directions of rail carriage.⁴⁶

The Verified Statements of A.O. Bowles, Jr., and Larry D. Ruple on behalf of the Society of the Plastics Industry, Inc. in this case show clearly the distinctive nature of rail service for most plastics and chemicals, as well as other freight.

My Statement focuses on those types of freight which, because of their types and locations, rely on rail carriage. They include plastics and chemicals concentrated in the Texas coastal area, as well as a variety of shippers on the Central Corridor between Denver and the west coast.

It is my understanding that the definition of markets in this case is not a principal area of disagreement among experts and officials. Accordingly I have been happy to join Dr. Willig in not developing a detailed discussion of market definition. Richard Peterson and Richard Barber, witnesses for UP/SP, treat corridors, shipping points and regions as a meaningful basis for assessing competition. My discussion joins in that approach.

⁴⁶See Larry D. Ruple Verified Statement, pp. 13-15; A.O. Bowles Verified Statement, pp. 7-8, "Waterborne movement of plastics resins for distribution within the U.S. has never been a major factor for several reasons." (p. 7)

But I would stress that many shipping points may actually be part of more than one genuine market, because the two or three railroads at them go in different directions and to different destinations.

Three Levels of Markets. Markets can be considered on 3 levels, ranging from broad to highly specific. They include whole regions, major traffic corridors, and specific shipping points or origin-destination pairs.

1. Some of the relevant markets include whole corridors, particularly between Houston and New Orleans, between Houston and Memphis and on to St. Louis, and in the Central Corridor between Denver and Oakland.

2. Many relevant markets are much narrower, including specific origin-destination pairs. Moreover, for some of them the relevant traffic is in just one direction (that is, outgoing or incoming).

In many of these cases, the geographic scope of substitution and competition is precisely defined. The product dimension is commonly less exactly specified, because a given shipping location may handle a variety of types of cargo. Yet many shipping locations actually have just one producer/shipper, and so the product type in effect is tightly defined as well.

3. One can also define region-wide markets, where whole rail systems interact and carry out strategic choices.

2. The Merger Will Raise Monopoly Power in Many of the Relevant Markets

Applying the above analysis, and now turning to actual markets in this case, one finds a series of cases where the merger will

reduce competition.

a. In Corridor Markets

As for corridors, the merged railroad would have high shares of traffic in the Houston-New Orleans and Houston-Memphis-St. Louis corridors. As shown in Mr. Peterson's Verified Statement (p. 160), the pre-merger combined UP and SP shares of all traffic in the Houston-New Orleans corridor was % in 1994, and the share in the Houston-Memphis corridor was %.

b. In Specific Shipping-Point and Origin-Destination Markets

The merger affects a large number of narrow markets, both shipping points and origin-destination pairs. Recognizing this, the proposal included elaborate discussions of these markets and the efforts to prevent monopoly effects. Dr. Willig also offered general opinions that the cures would be complete. Yet Mr. Crowley provides extensive evidence that many markets will undergo substantial rises in market power. In 2-to-1 markets, competition will probably virtually cease, and BN will gain few customers.⁴⁷ In 3-to-2 markets, the loss of competition will be severe even if the remaining duopolists do not adopt coordinated behavior. That is obvious from the reduction in numbers. It also is starkly reflected in concentration evidence. Mr. Crowley calculated the

⁴⁷ At best, using reasonable assumptions about the share of available traffic that may be captured by the BNSF railroad using its trackage rights obtained from the UP/SP, the BNSF would gain 90 percent of the traffic moving to the relatively few destinations exclusively served by the BNSF and 50 percent moving to interchanges served by BNSF and at least one other railroad. These are the assumptions used by both the UP/SP in their traffic diversion studies and by Mr. Crowley in his Verified Statements for NITL, CMA and SPI. Richard Peterson, however, in his analysis of competition for chemical traffic, bases many of his observations and conclusions on the inconsistent and highly implausible assumption that BN will win every possible customer to all destinations.

HHI for rail movement of Gulf Coast plastics pre- and post-merger, and they are extremely high -- for polyethedone, from 2440 pre-merger to 4075 post-merger and for polypropylene, from 3275 to 5778. Both of them would directly violate economic and antitrust criteria for competition.

In these many markets; the merger would therefore be unacceptable and would require direct actions to maintain competition. Dr. Willig says instead that the merger has no monopoly effects whatever; rather, he says, it will promote competition. Note, however, that Dr. Willig's conclusions are based not on his own analysis, but rather on his essentially uncritical acceptance of the conclusions of UP personnel (principally Richard Peterson), including that some selected two-railroad markets are hotly competitive. Willig Verified Statement, page 641-42, I have already discussed above why in my view the principal examples do not shed light on the issue of whether BNSF is likely to enter and compete strongly in this case. (See my discussion of the Southern Corridor and Powder River Basin examples above.)

Dr. Willig's rejection of HHI evidence here conflicts with his stated views during 1989-91, when he was the chief economist at the Antitrust Division and leading the revision of the Division's Merger Guidelines (issued in 1992). He supported the validity of the economic standards of competition (including the 2,000-threshold HHI values) at that time, in showing the likelihood of

indirect or direct collusion.⁴⁸ But his Verified Statement in this case makes no mention of those standards nor of the fact that the merger will create values that are a multiple of 2,000 in many important markets.

c. In Larger Regional Markets

Beyond these specific market patterns lie the larger regional presence and layouts of the two major western railroads after the merger. It is fully recognized in the industry and the business press (and among experts) that each railroad system will now have its main home areas and corridors, where it holds long-established dominance and superior resources.

The competition will not be evenly spread throughout a general western-U.S. market (although there are of course numerous overlaps between these duopoly railroads, including overlaps that may arise from the attempts to use trackage rights to create competition). Instead, competition will be at the edges of the main home areas of the duopolists. Also, in many of the specific markets, there is a marked imbalance between the dominant railroad and its one or two competitors.

These spheres of interest and unbalanced competition give the railroads strong incentives to avoid trying to mount hard competition in each others' home areas, corridors and markets.

⁴⁸In his previous approach, the only condition that may supersede the strict 2,000 HHI standard is extremely free entry; see his joint paper, Janusz A. Ordover and Robert D. Willig, "Economics and the 1992 Merger Guidelines: A Brief Survey," in the Special Issue on Merger Guidelines, Review of Industrial Organization, April 1993, pp. 139-50. Yet entry is in fact exceedingly difficult or entirely blocked in railroad markets, because of its particular lack of openness and the need for an entrant to possess its own road-bed and full array of associated facilities. Trackage rights do not overcome that entry blockage, as I explain in this Statement.

Each railroad can respond against a challenger by retaliating against it in many other specific markets throughout the west. The net gains to BNSF or UP/SP from invading the other's home markets will therefore usually be low or negative.

The deterrents to competition are sharpened because strategic price discrimination is common throughout the railroad industry. Rail rates are negotiated between railroads and individual customers, based on individual demand and cost conditions. Sophisticated discrimination is the way of life. That can be healthy and pro-competitive when no firm dominates. The discounting by all firms promotes healthy, flexible pricing. But, as I noted in Part I, point 7 above (pp. 31-33), the literature indicates that discrimination can suppress competition when it is used extensively and systematically by the dominant firm.

Therefore these railroad duopolists know that dynamic pin-point pricing will be used freely in multiple-market patterns, in order to protect the core customer base and home markets against competition from "outside." Even if two equal-sized railroads use the weapons head to head against each other, the incentives tilt them toward mutual restraint and against invading each others' main regional base.

3. BNSF Is Only a Potential Entrant to Trackage-Rights Markets, and It May Choose Not to Enter or to Compete Fully in Many or All of the Relevant Markets

In the context of trackage rights, BNSF will be a potential entrant into trackage-rights markets, an outsider which may (or may not) seek to enter many or all of the Texas-coast-related markets,

the central-Denver-west-coast corridor, and other markets. BNSF faces many barriers against its entry, as I discuss more fully below, and it will also need to consider the likelihood of multiple-market retaliation by UP/SP.

As I will discuss, BNSF actually has scant prospects of successful entry, even if it were strongly motivated to try. Therefore BNSF will have particularly strong incentives to draw back and focus on keeping out of battles with UP/SP, working instead to develop and protect its own home-area regional operations.

Even if instead the trackage rights were entirely effective in giving BNSF a fully equal competitive status with UP/SP, there would still be strong incentives for BNSF not to compete fully on those corridors and in those markets, as is explained in the following section.

III. AMONG POSSIBLE REMEDIES FOR THE MONOPOLY EFFECTS, THE CURRENTLY-NEGOTIATED TRACKAGE RIGHTS WILL NOT CURE THE PROBLEM

I have considered carefully the trackage rights (and limited divestiture) that UP/SP has negotiated with BNSF. These rights have been candidly offered by UP/SP in recognition that the merger will otherwise have sharp and widespread monopoly-increasing effects in a large number of substantial markets for railroad services. The trackage rights function solely as an entry-permitting method. That makes them similar to the formal opening of entry into telecommunications and airlines markets: entry is now permitted, as a legal matter.

Two main economic questions need to be asked and answered:

1. If BNSF attempts to enter, would the trackage rights put BNSF on a fully equal competitive footing in all markets, immediately able to match UP/SP in all dimensions of service and price?
2. If not, will BNSF actually take advantage of such opportunities, in order to compete at all in every one of the relevant markets?

The answer to both questions is No. BNSF is unlikely to enter and offer hard competition in many or all of these markets. Even where it does try to enter, BNSF is likely to face substantial disadvantages in many or all of the trackage-rights markets, so that it may fail or at least compete less than fully.

1. BNSF Faces at Least Four Types of High Barriers, and So the Trackage Rights Will Not Let BNSF Enter Successfully into Many or All of the Relevant Markets

Some limitations of the trackage rights are already well-known, and I will not try to cover all of them here. The economic role of these rights is the attempt to make it possible for an outside railroad to extend itself as an effective entrant against an incumbent dominant railroad, using that dominant railroad's roadbed.

But the trackage rights remove only one type of barrier -- the physical barrier -- against entry. They passively open up the outside railroad's physical access to some shippers on some parts of the UP/SP railroad system. If there are no other economic barriers or disadvantages, then the potential entrant may try to become an actual entrant into the trackage-rights markets. But

instead, the potential entrant may not try to enter at all, or it may make mild efforts to serve some shippers on some routes.

BNSF's entry and survival will depend on its obtaining enough **traffic density**. That is the standard determinant of success in network-based industries such as railroads. Only by gaining quickly as much traffic flow as UP/SP already has might BNSF acquire an equal economic footing with UP/SP as a competitor (apart from BN's other disadvantages).

Because instead BNSF in practice will be deprived of such full density under the Trackage Rights Agreement, BNSF will be at a cost disadvantage. Knowing that, BNSF may rationally choose not even to try to compete in many or all markets. BNSF will consider its opportunity costs, given by the returns it can obtain on operations in its own system. If the returns in the trackage-rights markets are less than that, then BNSF lacks economic incentive to try to enter those markets.

On top of that, BNSF will also face four additional and **different kinds of barriers**. Each of these other barriers is, by itself, capable of deterring BNSF from entering many or most of the markets involved with trackage rights. These four types of barriers are:

1. A simple exclusion from access to compete for certain customers.
2. Operational difficulties in arranging to provide good-quality service along UP/SP's tracks.
3. Higher operating costs for BNSF, compared to UP/SP.

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

I will now discuss each of these barriers. They are in addition to still other barriers. In fact there are at least 14 categories of economic barriers that can deter entry in large-scale, complex markets, including railroads.⁴⁹

BARRIER 1. BNSF's inability to serve a majority of customers in the trackage-rights markets.

Even if it enters, BNSF will be unable to bid meaningfully to serve a large fraction of the traffic in the trackage-rights markets. The first reason is that BNSF will not be able to serve all points along the lines over which it has trackage rights, but rather only the 2-to-1 points. The second reason is that many shippers at the 2-to-1 points ship to or from points exclusively served by the UP/SP. UP/SP would therefore be able to use its veto power over joint rates to ensure that the traffic remains on its system rather than being diverted to the BNSF. BNSF will therefore be relegated, at best, to competing for the small amount of traffic moving to destinations which it exclusively serves, and a portion of traffic moving to jointly served destinations or interchange points.

The extent of this inability to serve may be large. BNSF is unable at the outset to serve 62 to 63 percent of plastic traffic

⁴⁹For surveys of the many sources of entry barriers, see Bain, Barriers to New Competition, especially ch. 1 but also chs. 2-7; Shepherd, The Economics of Industrial Organization, Chapter 11, where 14 sources of barriers are discussed; and Scherer and Ross, Industrial Market Structure, ch. 10.

from Gulf Coast origins, according to data prepared by Peabody.⁵⁰ In the central corridor Denver-to-Oakland, the exclusion of BNSF will be even greater, at 87.4 per cent.⁵¹

Further, many large shippers are locked into long term contracts, up to 10 years in duration. If a substantial number (say, half) of shippers are locked into contracts in any year, then there is no substantial window of contract renewals which gives BNSF a chance at a large volume of traffic, enough to justify the volume of investment and related costs necessary to enter the market in appropriate scale. Finally, the trackage rights as now negotiated for BNSF would not enable BNSF the ability to "build-in" to serve shippers on nearby lines. Currently, shippers that are on a Union Pacific line that is near to Southern Pacific line (or vice versa) can and do put pressure on Union Pacific for lower rates by threatening to apply to the Surface Transportation Board for permission to build a rail spur out to the Southern Pacific line or have the Southern Pacific build a line in to the location. The merger will extinguish this leverage, and will preclude this potential market from the BNSF.

Consequently, BNSF appears to be barred at the outset from a clear majority of the markets into which the trackage rights are

⁵⁰See Crowley Verified Statement for SPI.

⁵¹The economic basis of these calculations is the UP/SP's own views, as noted by Richard B. Peterson at page 292 in Volume II of the UP/SP Application, that BNSF would capture 90% of the traffic to the destinations it exclusively serves and 50% of the traffic to neutral interchanges.

theoretically supposed to give it access.⁵² Even if the barriers noted below are not considered, the shares of traffic from 2-to-1 points that BNSF is likely to obtain are low: only 17.3 percent for movements via the Houston-to-Memphis corridor, and 8.2 percent for movement via the Denver-to-Oakland corridor, according to Peabody calculations.

That will automatically prevent BNSF from gaining traffic density enough to lower its operating costs toward a reasonable ability to compete with UP/SP. Looked at objectively, a barrier this severe would be quite sufficient, in many or most other markets in the U.S. economy, to deter a rational entrant even from trying to enter.

BARRIER 2. Operational difficulties in arranging high-quality service along UP/SP's tracks.

The most obvious difficulty will occur in the Houston-to-Memphis corridor, where traffic is one-way southward on one route as part of the whole corridor. BNSF trains carrying shipments from Houston northward would face one-way traffic coming the other way. That would limit BNSF's traffic flow and impede its efficiency and ability to provide the desired quality of service.

There are numerous other operational difficulties. In its dispatching role, UP/SP has incentives to retard BNSF's trains by means of scheduling arrangements which favor UP/SP's own traffic. UP/SP will also automatically acquire valuable monitoring

⁵²In practice, many shippers are already tied up in long-term contracts with UP and SP. That increases even further the degree of exclusion that BNSF would face.

information about BNSF's traffic. For scheduling purposes UP/SP will learn details about BNSF's shipments, and that will help UP/SP in trying to take away BNSF's customers.

BARRIER 3. Higher operating costs for BNSF, compared to UP/SP.

To assess the next barrier, Peabody has derived estimates of variable costs of service over key corridors. These reflect reasonable assumptions about the loads, car types, empty returns, trackage-rights fees, and switching charges.

The result is that on two corridors, BNSF's costs will significantly exceed UP/SP's costs. On Houston-to-Memphis, BNSF's costs for plastic movement will be \$1.31 per ton (that is, 22 percent) higher than UP/SP's costs. On that basis, BNSF would not rationally choose to use the UP/SP route. That will leave all shippers on that route facing a UP/SP monopoly despite the existence of trackage rights.

On the Denver-to-Oakland corridor, BNSF's costs would be \$3.78 per ton higher, a 24 percent disadvantage.

A cost barrier as large as this would probably deter rational potential entrants from most markets elsewhere in the economy, and there is no reason that BNSF could ignore this extra cost burden in this situation. Even if it were irrational enough to attempt entry in some of the trackage-rights markets, one would not expect BNSF to attempt and succeed in making significant entry into the trackage-rights markets.

In any event, this barrier alone would give UP/SP a rational basis for raising its own prices to shippers by some or all of that

cost difference. The supra-competitive pricing would be raised to the limit price, by some 23 percent or possibly more.

BARRIER 4. Extra investment costs that BNSF must incur even before it can solicit business from shippers.

Entering into any of the markets will require BNSF to start from scratch, creating or enhancing its own infrastructure, including switching and classification yards, fueling yards, crewing, and other storage and loading facilities.⁵³ To enter significantly in any markets at all, BNSF will need 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. That will require BNSF to make a large volume of new investments, which bear high degrees of risk since they depend on BNSF's gaining large shares of the traffic (which is highly unlikely, as I have noted). I would note for contrast, and in a note of skepticism, that Richard Peterson of Union Pacific in his deposition said that BNSF would not need to make significant investments.⁵⁴ The risk is all the greater because it is a gamble on getting large future volumes of traffic. BNSF will have to make those investments in advance of obtaining any actual customers.

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.

⁵³An example of the costs that must be invested in advance is the need for BNSF to invest in training their crews to handle hazardous chemicals. That these costs are large is indicated by Department of Transportation regulations detailing the required training, as shown at Section 172-702, Subpart H - Training, of Research and Special Programs Administration, 49 CFR ch. 1 (10-1-93 Edition), pp. 407-409.

⁵⁴Peterson deposition transcript at 1058-59.

Such sunk costs are particularly strong deterrents to entry.⁵⁵ They alone would probably deter BNSF from trying to enter a significant portion of the markets, let alone every one of the markets.

In summary, BNSF faces at least four separate ranks of barriers if it seeks to use the trackage rights.⁵⁶ Each barrier would probably prevent entry by itself, and each one would cripple BNSF as a competitor even if it irrationally did try to enter and compete.

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.

2. BNSF May Not Actually be a Committed Prospective Competitor

There appear to be signs that BNSF is not fully committed to providing hard competition against UP/SP by using trackage rights. Indeed, I understand that BNSF did not seek the trackage rights from UP/SP in the first place, and that there is also evidence that could be construed as reflecting a reluctance on BNSF's part to enter particular markets with its own equipment using its trackage

⁵⁵Baumol, Panzar and Willig, Contestable Markets, chs. 1 and 2.

⁵⁶Still another deterrent is that tendency of a carrier holding a dominant position to make a shipper give all of its business to the carrier, even from other locations. That amounts to a use of leverage to extend control from one market to others.

rights. Meanwhile, BNSF has long-standing profitable operations and prospects in its main established service areas. And a substantial aggressive entry by BNSF into UP/SP's home areas via trackage rights may stir UP/SP retaliation in other markets, including BNSF's core markets.

3. Southern Pacific is a Maverick Competitor, Whose Removal by the Merger Will Reduce Competition

Both the research literature and antitrust policies recognize the importance of maverick firms.⁵⁷ These distinctive competitors regularly depart from the shared values and interests that often lead to a joint-maximizing of profits by the few firms in tight oligopolies. Maverick behavior is especially likely when a firm is under unusual pressure, so that its incentives tip it toward price-cutting against the others rather than co-existing comfortably.

Southern Pacific has been in that hard-pressed maverick's situation, with disadvantages which Dr. Willig and other UP witnesses discuss in detail. Accordingly, Southern Pacific's behavior has been more independent, with a greater willingness than Union Pacific and BNSF to resort to price-cutting.⁵⁸

The merger will remove that maverick railroad and its effect in

⁵⁷ A maverick has been recognized in the economics and antitrust literature as an independent and unruly firm, which tends to depart from the patterns established by other firms. Mavericks are often strong influences toward effective competition, rather than being merely irresponsible or trivial participants. An example is Southwest Airlines, with its willingness to break the settled lines and pricing patterns. Public policies (for example, the 1968 Merger Guidelines issued by the Antitrust Division), made provision for stricter rules to protect the independence of maverick competitors.

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a large variety of markets. As one indication, Richard Davidson, President of the Union Pacific Railroad, apparently said at a chemical industry association meeting that the Union Pacific planned to bring Southern Pacific's aggressive pricing ("cash flow pricing") to a stop after the merger.⁵⁹

4. Source and Destination Competition are Minor Possible Elements, Which Will Not Remove the Merger's Monopoly Effects

UP officials and witnesses say that any monopoly-raising effects of the merger will be nullified by source and destination competition faced by shippers. This argument has an element of logic, because source and destination competition are conditions which might have some effect.

Yet in this case these elements would offer no significant protection against the strong monopoly effects. At the most, these forms of competition are only indirect influences on transportation prices. Some element of them may be present in some situations, but extreme care must be used in evaluating such claims on the basis of detailed evidence that such competition is full, "hard" competition. Moreover, the geographical concentration of chemicals and plastics producers, and of the UP/SP dominance over the Gulf Coast area, means that the merger, if anything, would diminish source competition. Indeed, the UP/SP has entered a stipulation with the Kansas City Southern Railroad that there is at present source competition permitting some shippers on UP lines to switch

⁵⁹See SPI witness Johnson's Verified Statement (SPI V.S.-6), p. 1.

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or threaten to switch production to facilities on the SP (or vice versa) in order to obtain bargaining leverage in negotiating rail rates or services. Any such existing competition between the UP and SP would, of course, be completely eliminated by the merger except in the unlikely event BNSF entered the market, and then only at the relatively few 2-to-1 points to which BNSF would obtain access under its agreement with the UP/SP.

The UP materials include rosy opinions, but they provide no significant tangible evidence that source and destination competition will actually be a significant force in many markets, much less in all of them. The effects are likely to be minor at best. And they would not weigh against the larger loss of competition throughout the western U.S.

The anecdotes provided by Mr. Peterson and others generally focus on the theoretical ability of a receiver of a product to choose among alternative sources of supply. Even if such choices are available in some cases to receivers, the first-order effect of such a choice would be to constrain the delivered price at which the product would be accepted at the destination. While such destination market competition might place a limit on the combination of the shipper's product price and the transportation rate to that destination, the example provided says nothing about whether the shipper or the railroad has the greater bargaining leverage to capture the larger portion of the shared profit component of the delivered price. It is clear as a general matter, however, that the proposed merger, by increasing UP/SP's dominance,

including their regional dominance in the Gulf Coast, will diminish whatever bargaining power shippers might have in this respect.

5. The Merger Deserves Special Scrutiny

This merger differs from numerous earlier railroad mergers, in which the monopoly effects have been relatively limited and correctable without undermining the main gains in efficiency and other elements. Rather, this merger seems more like the proposed Southern Pacific/Santa Fe merger of the early 1980s, where the monopoly impacts were large.

The sum of reduced competition in this merger is substantial, on at least two levels. One is the specific losses in markets on the Houston-New-Orleans, Houston-Memphis-St. Louis, and Denver-Oakland corridors. The second level is the probable larger reductions in competition from mutual duopoly restraint by the UP/SP and BNSF throughout the western U.S. As is detailed above, the proposed trackage rights, as they are now designed, will be ineffective as a cure for both of these effects.

IV. THE MERGER WILL RESULT IN HIGHER PRICES AS WELL AS LOWER PERFORMANCE IN OTHER DIMENSIONS

This merger is permeated with reductions in competition, at three levels: specific shipping points, several main corridors, and in the larger duopoly setting of the entire western U.S. The resulting rises in railroad pricing are likely to be substantial.

We have direct evidence of the minimum price increases that will occur. That evidence is the cost disadvantages that BNSF would

have, even if it were to enter using trackage rights along the three corridors: Houston-Memphis-St. Louis, and Denver-Oakland. Those cost disadvantages for BNSF are on the order of 23 percent. That 23-percent gap in turn indicates the minimum limit price that UP/SP would rationally adopt. Other corridors may have similar results but I have not seen specific evidence about them.

In fact, BNSF is extremely unlikely to enter those trackage-rights markets at virtually any price. Therefore a 23 percent rise in UP/SP's prices on those routes is actually an underestimate of the likely actual increment. Moreover the effects toward higher prices are likely to be spread throughout much of the UP/SP system, as it and BNSF adopt mutual restraint in the larger duopoly interaction between them.

In short, this merger presents the Surface Transportation Board with a relatively clear and unambiguous case; there is a preponderance of negative economic effects. The prices for railroad transportation services may be elevated at least 25 percent above costs on average, throughout much or most of the western U.S.

The cost levels themselves might be reduced in some parts of the UP/SP system, thanks to merger efficiencies. But the discussion by the applicants of those prospective efficiencies are only in terms of gross amounts of gains. It is instead the net gains that matter, compared to alternative methods (long-term contracts, pooling, etc.). Those net gains may be small. The net gains may in turn be offset by the general internal inefficiencies that may

emerge in both systems under the mutual restraint and moderate competition that UP/SP and BNSF are likely to adopt.

Meanwhile the loss of competition will also reduce the stimulus for innovation, and it will decidedly reduce the freedom of choice for a large number of shipping customers.

V. IN MY OPINION, THE BOARD SHOULD APPROVE THIS MERGER ONLY IF IT REQUIRES SUBSTANTIAL ADDITIONAL PROCOMPETITIVE CONDITIONS

Accordingly, the economic choice before the Surface Transportation Board appears to be clear. A merger that sacrifices competition, raises prices, reduces innovation, and reduces freedom of choice is different from most earlier mergers considered by the ICC, where the benefits were generally positive and the remaining competition was still substantial. Here (as in the proposed 1980s Southern Pacific-Santa Fe merger) they are negative and a lot of competition will be eliminated.

One cure is divestiture of parallel lines. Alternatively, the trackage rights might conceivably be revised and extended, so as to put BNSF on a fully competitive footing in at least a significant number of markets. The rights would need to be framed so that they actually overcome the four high barriers that BNSF must face, and also overcome BNSF's incentives to stay out and adopt cooperative behavior with UP/SP.

If the Board approves this merger, it should require substantial pro-competitive changes in the merger, such as those suggested above, as conditions for approval in order to prevent monopoly pricing, enhance economic welfare and promote effective rail competition.

I, William G. Shepherd, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement, executed on this 26th day of March, 1996.

William G. Shepherd

William G. Shepherd

III. DOCUMENTARY EVIDENCE

Exhibits 16, 17, 19, 21, 25

Exhibits 1-15, 18, 20 and 22-24 (Redacted)

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Married, with four children. Born: August 15, 1936.

Education:

Ph.D. in Economics, Yale University, 1963; M.A. in Economics,
1958.

B.A. in Economics, Amherst College, 1957 (with honors).

Professional Positions and Awards:

Professor of Economics, University of Massachusetts, since 1986.
Chairman, Department of Economics, University of Massachusetts,
1991 to 1994.

General Editor, Review of Industrial Organization, 1990 to the
present.

Professor of Economics, Department of Economics, University of
Michigan, 1971-86.

Associate and Assistant Professor, Department of Economics,
University of Michigan, 1963-71.

Special Economic Assistant to the Assistant Attorney General for
Antitrust, U.S. Department of Justice, Washington, D.C.,
1967-1968.

Chairman, The Transportation and Public Utilities Group of
the American Economic Association, 1976-1977.

President, the Industrial Organization Society, 1990-1991.

Distinguished Member, Transportation and Public Utility Group,
American Economic Association, 1995.

Fields of Teaching and Research:

Industrial organization. Public policies toward business,
particularly Antitrust and Regulation. Microeconomics.

Books Published:

- Public Policies Toward Business, 8th ed., Homewood, IL: Richard D. Irwin, 1991.
- The Economics of Industrial Organization, 3d ed., Englewood Cliffs, NJ: Prentice-Hall, 1990 (with a Teacher's Manual). 4th ed. in preparation for 1996.
- Unconventional Wisdom: Essays on Economics in Honor of John Kenneth Galbraith, Boston: Houghton Mifflin, 1990, co-editor (with Samuel Bowles and Richard Edwards).
- Mainstreams in Industrial Organization, 2 vols., Dordrecht: Kluwer Academic Publishers, 1986, co-editor (with H. W. de Jong).
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Economic Performance under Public Ownership: British Fuel and Power, New Haven: Yale University Press, 1965. Italian edition, L'economicita di Gestione Nell'impresa Pubblica, CIRIEC, 1968.

Journals Edited and Published:

Review of Industrial Organization, Kluwer Academic Publishers, 6 issues per year, approximately 850 pages, with occasional Special Issues and Symposia. Continuing as General Editor, since 1990.

Articles and Contributions Published:

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Research in Preparation or Submitted:

Competition and Progress, a book-length reassessment of the nature of competition and of policies toward market power.

Economic Foundations of National Security: Self-Interest and Global Interests. A restatement of economic choices involving military and alternative methods of advancing national interests.

"Competition and Extremism: Failures in the Marketplace of Ideas"

"The Emergence of Dominance: Properties of Instability in the Competitive Process"

Other Professional Activities:

Visiting Professor: Williams College, 1982; University of Massachusetts, 1984-1985.

Preparation of numerous conferences on industrial organization, antitrust, regulation and public enterprise.

University of Glasgow, Fulbright Fellowship, 1959-60.

Research in Britain, in 1959-60, 1962, 1964, 1967, 1969, 1971, 1974, 1978, 1985 and 1987.

Awarded Ford Foundation Faculty Fellowship, 1967-68 (declined, to do the year at the Antitrust Division).

Numerous book reviews, refereeing of articles and books, screening research proposals, comments on other papers in conference volumes, etc., not listed individually here.

Addresses and seminars at various universities and colleges in the U.S. (University of Chicago, University of Michigan, University of Cincinnati, Wesleyan University, Amherst College, Miami University, University of Miami, University of Wyoming, Michigan State University, Middlebury College, College of William & Mary); Canada (McGill University, Dalhousie University); Britain (London School of Economics, Oxford University, Cambridge University, University of Lancaster); Europe (University of Amsterdam, University of Louvain, University of Rome); China (Nankai University) and Japan (Doshisha University).

The Merrill Center for Economics, Associate Conferee, summer 1956.

Invited 4-week lecture series on Industrial Organization, Nankai University, Tianjin, China, April-May 1983. Further lectures at Nankai University, May, 1989; and September 1994 (for three weeks).

Director of Graduate Studies, Chairman of the Graduate Program Committee, and Chairman of the Graduate Admissions and Fellowships Committee, Department of Economics, University of Michigan, 1966-67, 1968-70.

Director of Graduate Studies in Economics, University of Massachusetts, 1990-91.

Statement and testimony for the Subcommittee on Antitrust and Monopoly, U.S. Senate; on industrial concentration, 1965; on antitrust policy in Britain, 1968; on discrimination in managerial employment, 1972; and for the House Committee on Energy, on Electric Sector competition, 1985.

Adviser at various times to: Antitrust Division, U.S. Department of Justice. U.S. Federal Trade Commission. U.S. Senate Subcommittee on Antitrust and Monopoly. Regulatory commissions in Massachusetts, New Jersey, the District of Columbia and Michigan. The African Development Bank, Abidjan, Ivory Coast. various city governments, foundations, and private companies.

Testimony and consulting as an expert witness in antitrust and regulatory cases, including cases involving: IBM Corp. (California Computer Products), AT&T (Diversified Industries), DuPont Company (the titanium dioxide case), G.D. Searle, Pfizer Inc. (International Rectifier), the Santa Fe and Southern Pacific railroad merger, Southern California Edison (Cities of Anaheim et al); Macy's Federated merger; Chicago Daily Herald v. Chicago Tribune et al; Rochester Gas & Electric; drug producers (price discrimination); and before the Federal Energy Regulatory Commission (the Williams Pipeline case, 1992), and the

regulatory commissions of the District of Columbia, New Jersey, Florida, Maine, Massachusetts, Montana and Virginia.

Adviser to the African National Congress, South Africa, on South African antitrust and related industrial policies, since 1992.

Adviser on industrial policies to departments and agencies of the Republic of Slovenia, since March 1995.

Chairman, the Ann Arbor Cablecasting Commission, 1973.

Included in Whols Who in Economics: A-Biographical Dictionary of Major Economists, 1700-1980, by M. Blaug and P. Sturges, London: 1983; and in the revised edition of Whols Who in Economics, 1986.

Co-Editor (with Henry W. de Jong) of the monograph series, Studies in Industrial organization, Dordrecht: Kluwer Academic Publishers, since 1978.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S FIRST SET OF
INTERROGATORIES AND DATA REQUESTS ON BURLINGTON NORTHERN
RAILROAD COMPANY AND THE ATCHISON, TOPEKA, AND SANTA FE
RAILWAY COMPANY

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Janice G. Barber
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Attorneys for Burlington Northern Railroad Company
and The Atchison, Topeka and Santa Fe Railway Company

February 20, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
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INTERROGATORIES AND DATA REQUESTS ON BURLINGTON NORTHERN
RAILROAD COMPANY AND THE ATCHISON, TOPEKA,
AND SANTA FE RAILWAY COMPANY

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe") answer and object as follows to The Society of the Plastics Industry Inc.'s ("SPI") "First Set of Interrogatories and Data Requests on Burlington Northern Railroad Company and The Atchison, Topeka, and Santa Fe Railway Company," as modified by counsel's agreement. These responses and objections are being served pursuant to the Discovery Guidelines Order entered by the

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that it will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

8. Identify all plastics producers or plants not currently served by BNSF which will be available for BNSF service according to the BNSF Agreement and any plans, analyses or shipper contacts with regard to serving those producers.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Request No. 8 to the extent that it is overly broad and unduly burdensome and requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BN/Santa Fe further objects to this Request to the extent that it would require BN/Santa Fe to speculate as to the legal meaning of a document that is readily available to SPI and that speaks for itself.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that it has not identified specific plastics producers or plants that it will gain access to under the BNSF Agreement. The BNSF Agreement identifies in Exhibit A locations at which BN/Santa Fe will gain access to serve any such producers and plants which are presently served (either directly or by reciprocal switch) only by both UP and SP and no other railroad.

9. Identify all studies, analyses and reports prepared in determining the facilities and operations necessary to serve those producers identified in response to Request No. 8 above.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Request No. 9 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed

December 29, 1995, and in workpapers in BN/Santa Fe's document depository. BN/Santa Fe objects to Request No. 9 to the extent that it is overly broad and unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. BN/Santa Fe further objects to this Request to the extent that it would require BN/Santa Fe to speculate as to the legal meaning of a document that is readily available to SPI and that speaks for itself.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statements of Carl R. Ice and Neal D. Owen, and in Mr. Ice's related workpapers numbered BN/SF-04000 -- 04427 and in Mr. Owen's related workpapers numbered BN/SF-02500 -- 03238 in BN/Santa Fe's document depository, it has no other information or documents pertaining to the specific facilities and operations necessary to serve the identified producers.

10. Identify each and every complaint and/or concern expressed by BNSF or other railroads possessing trackage rights over any segment of UP or SP track.

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden and scope objections, BN/Santa Fe objects to Request No 10 to the extent that it is vague, overly broad and unduly burdensome. BN/Santa Fe further objects to Request No. 10 on the grounds that it requests information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections as modified by counsel's agreement, BN/Santa Fe states that it is unaware of any responsive information or documents.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S FIRST REQUEST FOR
ADMISSIONS ON BURLINGTON NORTHERN RAILROAD COMPANY AND THE
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February 20, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S FIRST REQUEST FOR
ADMISSIONS ON BURLINGTON NORTHERN RAILROAD COMPANY AND THE
ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe") answer and object as follows to The Society of the Plastics Industry Inc.'s ("SPI") "First Request for Admissions on Burlington Northern Railroad Company and The Atchison, Topeka, and Santa Fe Railway Company." These responses and objections are being served pursuant to the Discovery Guidelines Order entered by the Administrative Law Judge in this proceeding on December 5, 1995 ("Discovery Guidelines").

purposes of responding to SPI's Request for Admissions, construe "Studies, analyses, and reports" to mean analyses, studies or evaluations in whatever form.

RESPONSES AND OBJECTIONS TO REQUESTED ADMISSIONS

1. That BNSF does not have any studies, analyses, reports or plans regarding the construction or acquisition of additional storage capacity for plastics resins shipments.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Request for Admission No. 1 to the extent that it is vague and would require an unreasonably burdensome search of BN/Santa Fe's files. BN/Santa Fe further objects to Request for Admission No. 1 on the ground that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe admits that, other than as contained in the Verified Statement of Neal D. Owen and in his related workpapers, it has no such specific studies, analyses, reports or plans at this time but that it is currently in the process of developing such plans.

2. That BNSF does not have any studies, analyses, reports or plans relating to facilities and operations necessary to serve plastics producers or plants not currently served by BNSF.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Request for Admission No. 2 to the extent that it is vague and would require an unreasonably burdensome search of BN/Santa Fe's files, BN/Santa Fe further objects to Request for Admission No. 2 on the ground that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe admits that, other than as contained in the Verified Statement of Neal D. Owen and in his related workpapers, it has no such specific studies, analyses, reports or plans at this time but that it is currently in the process of developing such plans.

3. That BNSF does not have any operating plans to serve plastics resins production points opened to BNSF service by the BNSF Agreement.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Request for Admission No. 3 to the extent that it is vague and would require an unreasonably burdensome search of BN/Santa Fe's files. BN/Santa Fe further objects to Request for Admission No. 3 on the ground that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe admits that, other than as contained in the Verified Statement of Neal D. Owen and in his related workpapers, it has no such specific plans at this time but that it is currently in the process of developing such plans.

Respectfully submitted,

Erika Z. Jones KEO

Erika Z. Jones

Adrian L. Steel, Jr.

Roy T. Englert, Jr.

Kathryn A. Kusske

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To: Attn: Topeka and Santa Fe

For Burlington Northern Railroad Company
and for the Union, Topeka and Santa Fe Railway Company

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32760

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

APPLICANTS' RESPONSES TO THE
SOCIETY OF THE PLASTICS INDUSTRY, INC.'S
FIRST SET OF INTERROGATORIES AND DATA REQUESTS

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MICHAEL L. ROSENTHAL
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(202) 662-5388

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

December 22, 1995

Exhibit 19

4. Identify, by shipper, origination and destination points, any plastics resins traffic served by either Applicant for which the other Applicant carrier has studied or proposed a build-in (i.e., construction of track between the shipper's facilities or a connecting short line railroad and the carrier's track facility) since January 1, 1990, the rates and terms proposed by Applicant to said shipper and the disposition of the consideration of said build-in, and identify all documents related thereto.

Response

Applicants object to this request as unduly vague and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

See Responses to KCS Interrogatories Nos. 27 and 28, and the ruling by Judge Nelson on this matter at the hearing held on December 20, 1995.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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
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APPLICANTS' RESPONSES TO KCS' FIRST INTERROGATORIES

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

December 15, 1995

tariffs and of all trackage rights or joint facility agreements under which UP or SP is able to serve shippers located on lines of the other are being produced.

Interrogatory No. 27

"Describe all discussions relating to the possibility of constructing a new rail line in order to give SP access, in competition with UP, to a shipper served by UP, by identifying the dates, locations, and participants in such discussions, the identities of the affected shippers, and all documents that refer to, relate to or evidence such discussions."

Response

Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

Documents identifying one proposed trackage construction project are being produced. No other such projects of any substance (that is, that are or were underway or under serious consideration, as opposed to, for instance, being examined as a possibility by SP or mentioned by a shipper and not pursued) have been identified.

Interrogatory No. 28

"Describe all discussions relating to the possibility of constructing a new rail line in order to give UP access, in competition with SP, to a shipper served by SP, by identifying the dates, locations, and participants in such discussions, the identities of the affected shippers, and all

documents that refer to, relate to or evidence such discussions."

Response

Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

UP is producing its copy of the record in Finance Docket No. 32571, which concerns the proposed construction of a line by UP to serve shippers at Mont Belvieu, Texas. Documents identifying one other proposed trackage construction project are also being produced. No other such projects of any substance (that is, that are or were underway or under serious consideration, as opposed to, for instance, being examined as a possibility by UP or mentioned by a shipper and not pursued) have been identified.

Interrogatory No. 29

"Identify, by shipper, origin and destination, and five-digit STCC code, any traffic as to which UP and SP have bid against each other, including the dates and results of the bidding, where the revenues at issue were in excess of \$250,000 annually to either Applicant, and identify all documents that reflect the traffic referred to in this response."

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January 25, 1996

BY FACSIMILE

Alan E. Lubel, Esq
Troutman Sanders
Suite 601 - North Building
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Dear Alan:

In your telephone message to me of late last Friday, you said that you could think of no way to narrow KCS Interrogatory No. 21 to make it any less burdensome, and that you were open to suggestions. You also said that for Interrogatory No. 22, you would propose to narrow the request by excluding grain shippers, eliminating shippers not named in your December 7 letter, and identifying the commodities in which you have an interest where named shippers ship multiple commodities.

We have carefully considered how best to provide information responsive to Interrogatories 21 and 22 without imposing an undue burden on the Applicants, and believe we have reached a fair solution.

As we understand KCS' "revised" interrogatories, the Applicants are being asked in Interrogatory No. 21 to search files relating to some 100 shippers to identify all documents that refer to instances when shippers on UP lines have requested lower rates in order compete with shippers on SF lines (and vice versa) for shipments involving ten "corridors" you have defined. In Interrogatory No. 22, the Applicants are being asked to search the files of these same 100 shippers (now excluding grain shippers) for communications where shippers sought to obtain either lower rates or improved service based on the fact that one of the Applicants provided an alternative to the other.

We have explained on many previous occasions that these types of requests, which seek information that is contained in Applicants' shipper files, place an extraordinary

Exhibit 20

Alan E. Lubel, Esq.
January 25, 1996
Page 2

burden on the Applicants. To perform the searches required to respond to such requests, personnel at both UP and SP must search through the files of each shipper. Many of these shippers transport numerous commodities, and thus their files are found in more than one marketing group within the railroads. Furthermore, as we have also explained on many occasions, limiting the scope of the search by geographic region is not helpful because shipper files are not organized by region. Thus, your suggestion in revised Interrogatory No. 21 to limit the search to the ten "corridors" you identify does nothing to reduce the burden -- it would still be necessary to search the entire shipper file for responsive documents.

Interrogatory No. 22 presents the same problem. The burden would not be substantially reduced even if, with respect to this interrogatory, we followed the proposal you outlined in your phone call and limited the search to one commodity per shipper, eliminated grain shippers, and eliminated shippers not listed in your December 7 letter. Applicants would still have to spend an extraordinary amount of their time reviewing the files of the approximately 80 non-grain shippers you name. While at the December 20 hearing Applicants were agreeable to a process of making reasonable inquiries of railroad marketing personnel about their knowledge of requests for improved service by a shipper of a specific commodity between specific origins and destinations (Mr. Mullins used the example of Exxon shipments of gasoline from Houston to New Orleans, see Tr. 304-05), this is not the approach KCS took in Interrogatory No. 22.

In order to provide responsive information, Applicants propose two stipulations. With respect to KCS Interrogatory No. 21, Applicants will stipulate:

Shippers on a line of one railroad sometimes request lower rates in order to compete with shippers on lines of other railroads. Such "source" competition sometimes occurs with respect to shippers on the lines of SP and UP. Source competition occurs with respect to many commodities and most major transportation corridors.

With respect to KCS Interrogatory No. 22, Applicants will stipulate:

Shippers on a line of one railroad often seek improved service based on the fact that another railroad provides an alternative means of transportation or represents an alternative carrier

Alan E. Lubel, Esq.
January 25, 1996
Page 3

for the shipper. Such service competition sometimes occurs with respect to shippers served by both SP and UP. Such service competition occurs with respect to many commodities and most major transportation corridors.

Applicants believe that these stipulations provide KCS with as much, if not more, evidence of source and service competition than it would find through its original request, without requiring the Applicants to undertake the extremely burdensome searches KCS' Interrogatories Nos. 21 and 22 would require.

Sincerely,

Arvid E. Roach II /mlr

Arvid E. Roach II

cc: Hon. Jerome Nelson
Restricted Service List (by facsimile)

UP and SP Parallel Lines Serving the Gulf Coast Region



STB

FD

32760

3-29-96

D

62179

Item No. 1

Page Count Mar #659

62179

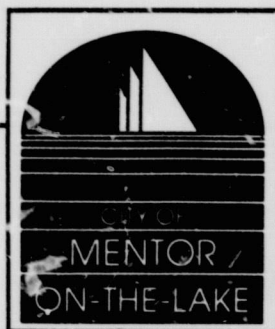
Mayor/Safety Director
JOHN M. ROGERS

Council President
WARREN C. ZORN

Council Vice President
JOHN HAWKINS

Members of Council

KAY T. CATLETT
TROY D. ELAM
DALE O. LANGBEHN
SUSAN M. SHIRLEY
DIANE E. STROUD



Administrative Director
KIP L. MOLENAAR

Law Director
JAMES M. LYONS

Police Prosecutor
JOSEPH M. GURLEY

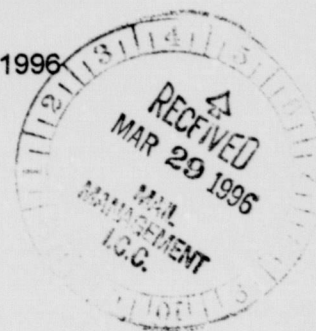
Engineer
FRANK FEDERICO

Fire Chief
ROBERT J. MAHONEY

Police Chief
EDWARD P. WILD

Service Director
BERT A. GUINN

March 26, 1996



Honorable Vernon Williams
Secretary
Surface Transportation Board
12th Street and Constitution Ave.
Washington, D.C. 20423

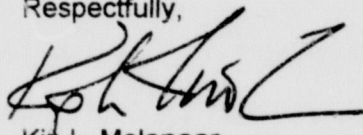
Dear Secretary Williams:

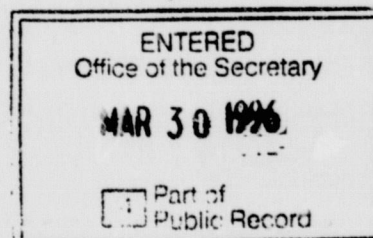
As someone who represents working families and consumers, I am concerned about the proposed Union Pacific-Southern Pacific merger. I do not believe it is in the public interest for the following reasons:

1. I believe it would result in unnecessary layoffs and job losses among the affected railroad workers;
2. It would weaken Northeast Ohio's economy by weakening eastern and midwestern railroads, and threatening industrial jobs here, and;
3. By concentrating so many resources, it could negatively affect prices and service — potentially hurting area families at the market and in the workplace.

We therefore find that the merger is not in the public interest, and ask that it be disallowed by the Surface Transportation Board.

Respectfully,


Kip L. Molenaar
Administrative Director



**ADVISE OF ALL
PROCEEDINGS**

5860 ANDREWS ROAD • MENTOR-ON-THE-LAKE, OHIO 44060 • (216) 257-7216 FAX (216) 257-2766

STB FD 32760 3-29-96 D 62177

Item No. _____
Page Count 2
Mar #657

RICH HENDERSON
Chief Counsel



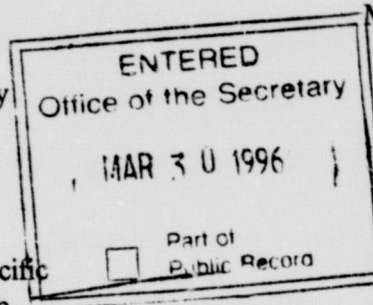
MARI ANN WINTERS
Secretary

MISSOURI HIGHWAY AND TRANSPORTATION COMMISSION

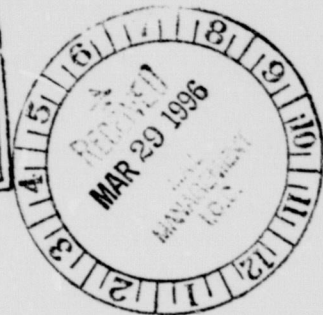
Capitol Ave. at Jefferson St., P.O. Box 270, Jefferson City, Missouri 65102 Telephone (314) 751-7454 Fax (314) 526-4403

March 28, 1996

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board, Room 1324
1201 Constitution Avenue, N.W.
Washington, D.C. 20423



MHTD-2



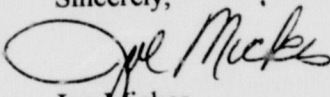
RE: Finance Docket No. 32760, Union Pacific
Control and Merger - Southern Pacific

Dear Secretary Williams:

I write to advise the Surface Transportation Board (Board) that the Missouri Highway and Transportation Commission supports the proposed merger of the Union Pacific (UP) and Southern Pacific (SP) railroads. The UP through its subsidiary Missouri Pacific, provides substantial service in the State of Missouri. We have found UP to be responsive to the needs of our communities and our shippers. SP also serves a number of shippers in the State of Missouri, and some of their Missouri customers are exclusively served by SP. We are concerned about the viability of the SP standing alone, and we want to be sure that our shippers continue to have effective competitive alternatives. We believe this proposed merger between Union Pacific and Southern Pacific will bring substantial benefits to shippers, workers and consumers in the State of Missouri.

The Missouri Highway and Transportation Commission urges the Surface Transportation Board to act promptly to approve the merger of Union Pacific and Southern Pacific.

Sincerely,


Joe Mickes
Chief Engineer

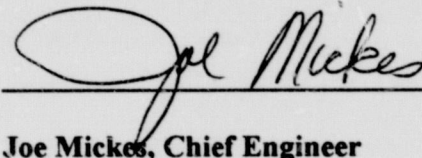
im/jh/ck-tr

Copies: Arvid E. Roach II, Covington & Burling (UP)
Paul A. Cunningham, Harkins Cunningham (SP)
USDOJ
USDOT

Enclosures: 20 Copies

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Missouri Highway and Transportation Commission's (Missouri Highway and Transportation Department's) filing -- MHTD-2 -- has been served this 28th day of March, 1996 by first class mail on all parties of record on the service list in this proceeding, Finance Docket No. 32760.

A handwritten signature in cursive script, reading "Joe Mickes", is written over a horizontal line.

Joe Mickes, Chief Engineer

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3-29-96

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Item No. _____

MAHER-ROSS FAX

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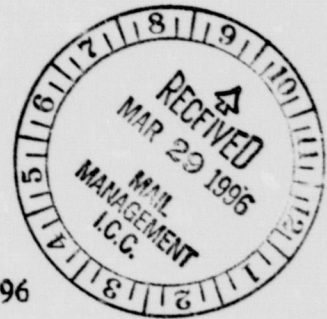
Page Count 12

Mar # 655

od of
re Engineers



1370 ONTARIO STREET
CLEVELAND, OHIO 44113-1700
TELEPHONE (216) 241-2650
FAX (216) 241-0511



March 29, 1996

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
12th & 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.

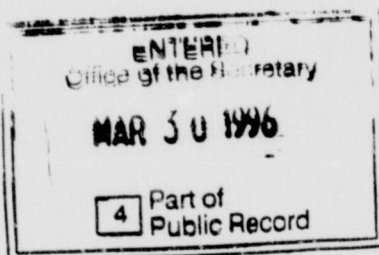
Dear Mr. Williams:

The undersigned is General Counsel for the International Brotherhood of Locomotive Engineers ("BLE"). Accordingly, I have authority to submit this letter and to make this request.

It would be appreciated if the Board would accept for filing the original and twenty (20) copies of the Comments and Verified Statement of Ronald P. McLaughlin, International President of BLE, submitted in behalf of BLE.

Due to the fact that Mr. McLaughlin is in transit and cannot be reached and the original documents signed by him for filing apparently have been lost in the mail, BLE requests that the documents be accepted as filed at this time. BLE will submit copies signed by Mr. McLaughlin as soon as possible, but no later than Wednesday, April 3, 1996, which shall be substituted for the documents attached hereto.

Thanks for your cooperation in this matter.



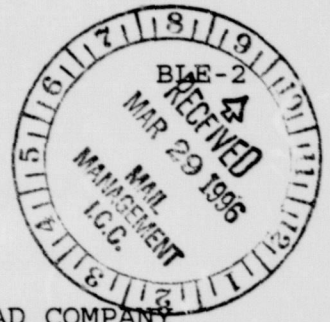
Very truly yours,

Harold A. Ross
Harold A. Ross
General Counsel

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
RIO GRANDE WESTERN RAILROAD COMPANY



COMMENTS ON BEHALF OF BROTHERHOOD
OF LOCOMOTIVE ENGINEERS

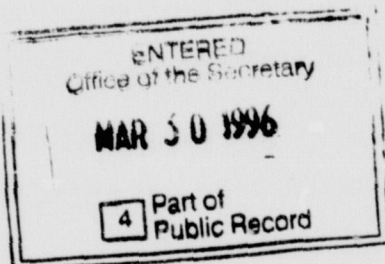
The International Brotherhood of Locomotive Engineers
("BLE") hereby submits the Comments and Verified Statement of
Ronald P. McLaughlin, International President of BLE, as BLE's
comments in the above-captioned proceedings.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Harold A. Ross".

Harold A. Ross, General Counsel
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
1370 Ontario Street
Cleveland, Ohio 44113
(216) 861-1313

Dated: March 29, 1996



COMMENTS AND VERIFIED STATEMENT
OF
R. P. McLAUGHLIN

My name is R.P. McLaughlin. I am President of the Brotherhood of Locomotive Engineers. I have 38 years of service in the railroad industry of which over 25 have been in the rail labor movement.

My organization represents about 10,000 members of the unionized work force of the Union Pacific and the Southern Pacific. This verified statement is submitted on behalf of the BLE and its membership in support of the proposed merger of UP and SP.

As President of BLE, my chief responsibility is to protect the economic interests of our members, whose work makes possible the efficient functioning of the nation's transportation system. As the Board is aware, labor has been very concerned about, and very critical of, rail mergers because of the significant job loss that they entail. A recent newspaper article stated that no rail merger in the past 25 years has proceeded with major union support.

But BLE supports the proposed UP/SP merger for two key reasons: First, UP has agreed to a number of conditions that will help mitigate the impact of job loss on our members; Second, we are convinced that the combination of SP and UP to form a strong competitor to BN/Santa Fe is in the best interest

of rail labor in the future. Union Pacific's commitments, which relate to the application of New York Dock conditions, are attached hereto.

VERIFICATION

I, Ronald P. McLaughlin, 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 29, 1996.

UNION PACIFIC RAILROAD COMPANY

J. J. MARCHANT
SR. ASST. VICE PRESIDENT/
LABOR RELATIONS

1416 DODGE STREET
OMAHA, NEBRASKA 68179



March 8, 1996

Mr. R. P. McLaughlin
President - Brotherhood of
Locomotive Engineers
Standard Building
1369 Ontario Street
Cleveland OH 44113

Dear Sir:

This refers to our discussions concerning the issues of New York Dock protection and the certification of adversely affected BLE employees.

As you know, Union Pacific, in its SP Merger Application, stipulated to the imposition of the New York Dock conditions. The Labor Impact Study which Union Pacific filed with the Merger Application reported that 251 engineers would transfer and that 772 engineer jobs would be abolished because of the implementation of the Operating Plan.

Within the New York Dock conditions, Section 11 addresses disputes and controversies regarding the interpretation, application or enforcement of the New York Dock conditions (except for Sections 4 and 12). Under Section 11, perhaps the two most serious areas for potential disputes involve whether an employee was adversely affected by a transaction and what will be such employee's protected rate of pay.

In an effort to eliminate as many of these disputes as possible, Union Pacific makes the following commitment regarding the issue of whether an employee was adversely affected by a transaction: Union Pacific will grant automatic certification as adversely affected by the merger to the 1023 engineers projected to be adversely affected in the Labor Impact Study and to all other engineers identified in any Merger Notice served after Board approval. Union Pacific will supply BLE with the names and TPA's of such employees as soon as possible upon implementation of approved merger. Union Pacific also commits that, in any Merger Notice served after Board approval, it will only seek those changes in existing collective bargaining agreements that are necessary to implement the approved transaction, meaning such changes that produce a public transportation benefit not based solely on savings achieved by agreement changes(s).

Union Pacific commits to the foregoing on the basis of BLE's agreement, after merger approval, to voluntarily reach agreement for implementation of the Operating Plan accompanying the Merger Application.

Even with these commitments, differences of opinion are bound to occur. In order to ensure that any such differences are dealt with promptly and fairly, Union Pacific makes this final commitment: If at any time the affected General Chairman or the assigned International Vice President of the BLE believes Union Pacific's application of the New York Dock conditions is inconsistent with our commitments, BLE and Union Pacific personnel will meet within five (5) days of notice from the General Chairman or the International Vice President to attempt to resolve the dispute. If the matter is not resolved, the parties will agree to expedited arbitration with a written agreement within ten (10) days after the initial meeting. The Agreement will contain, among other things, the full description for neutral selection, timing of hearing, and time for issuance of Award(s).

In view of Union Pacific's position regarding the issues of New York Dock protection and the certification of employees, I understand that the BLE will now support the UP/SP merger.

Sincerely,

A handwritten signature in dark ink, appearing to read "John J. ...", with a long, sweeping horizontal stroke extending to the right.

UNION PACIFIC RAILROAD COMPANY

J. J. MARCHANT
SR. ASST. VICE PRESIDENT/
LABOR RELATIONS

1416 DODGE STREET
OMAHA, NEBRASKA 68179



March 8, 1996

Mr. R. P. McLaughlin
President - Brotherhood
of Locomotive Engineers
Standard Building
1370 Ontario Street
Cleveland, OH 44113

Dear Sir:

This refers to my letter of March 8, 1996, outlining our respective commitments relative to BLE's support of the UP/SP merger. At an informal meeting regarding this matter there were several other related issues discussed, and this letter confirms the substance of those discussions.

Union Pacific recognizes that implementing a merger of UP and SP will be a complex undertaking which will require planning and cooperation between the parties. Much of our discussions revolved around the process which would best facilitate the implementing agreement negotiation efforts. During our discussions, I agreed to meet with BLE in advance of the serving of New York Dock notices to try to come to consensus on various aspects of the implementing agreement process. Conceptually, it appears the parties are in agreement that our discussion of process should include the following topics:

- A discussion of what will be contained in the notices, whether they will be all-inclusive as to territory or relate to individual regions/corridors, timing of service of notices, etc.
- An effort to separate the focus of negotiations into logical regions/corridors and prioritize those negotiations so they match up in a meaningful way with the operational implementing priorities, territorial boundaries of labor agreements, etc.
- General understandings and/or guidelines regarding size of the respective negotiating teams, where and how often they will meet, administrative support, and other such ground rules for the actual conduct of negotiations.

We also discussed a concern expressed by several committees regarding the potential that Union Pacific might elect to lease the SPT, SSW, SPCSL and/or DRGW to the UP or MP for certain financial reasons. It was the concern of BLE that such an arrangement might create an avenue by which Union Pacific could avoid New York Dock protective obligations on some of the leased entities.

Union Pacific has agreed to accept imposition of New York Dock protective conditions in this proceeding, and by definition that includes SPT, SSW, SPCSL and DRGW, as well as UP and MP. While we have no intention to consummate this merger through such a lease arrangement, Union Pacific commits to the application of New York Dock to such territories even if such a lease arrangement were to occur.

The final issue which was discussed pertained to integration of seniority as a result of post-merger consolidations and implementing agreements. BLE asked if Union Pacific would defer to the interested BLE committees regarding the method of seniority integration where the committees were able to achieve a mutually agreeable method for doing so. In that regard, Union Pacific would give deference to an internally devised BLE seniority integration solution, so long as; 1) it would not be in violation of the law or present undue legal exposure; 2) it would not be administratively burdensome, impractical or costly; and 3) it would not create an impediment to implementing the operating plan.

I trust that the foregoing accurately reflects our discussions.

Sincerely,

A handwritten signature in dark ink, appearing to read "John J. ...", with a long, sweeping horizontal line extending to the right.

0308jjm

UNION PACIFIC RAILROAD COMPANY

J. J. MARCHANT
SR. ASST. VICE PRESIDENT/
LABOR RELATIONS

1416 DODGE STREET
OMAHA, NEBRASKA 68179



March 9, 1996

Mr. R. P. McLaughlin
President - Brotherhood
of Locomotive Engineers
Standard Building
1370 Ontario Street
Cleveland, OH 44113

Dear Sir:

This refers to my March 8 letter and to our March 8 meeting in Las Vegas, both of which dealt with the issues of New York Dock protection and the certification of adversely affected BLE employees and our respective commitments relative to BLE's support of the UP/SP merger.

At the March 8 meeting, we reached an understanding that the certification provided for in the March 8 letter will begin at the time of implementation of the particular transaction in question. The following example illustrates this understanding:

The UP/SP merger is approved on August 1. The implementing agreement with the BLE is reached on October 1 and is implemented on December 1. Certification will begin on December 1.

I trust the foregoing accurately reflects our understanding.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. J. Marchant", with a long, sweeping horizontal stroke extending to the right.

0308jjm.par

UNION PACIFIC RAILROAD COMPANY

J. J. MARCHANT
SR. ASST. VICE PRESIDENT/
LABOR RELATIONS

1416 DODGE STREET
OMAHA, NEBRASKA 68179



March 22, 1996

R. P. McLaughlin
President, BLE
1370 Ontario Avenue
Cleveland, OH 44113-1702

Dear Sir:

This refers to my letter of March 9, 1996, dealing with when certification begins.

The example in my letter deals with a situation where a single transaction is implemented and indicates that certification begins on the date of implementation. You have asked me to clarify when certification begins in the event the SP Merger results in multiple New York Dock transactions.

In the event the SP Merger leads to multiple transactions with different implementation dates, certification will begin for those employees affected by a particular transaction on the date that transaction is implemented. In other words, multiple transactions with different implementation dates lead to different starting dates for certification.

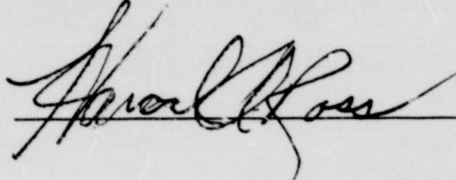
A handwritten signature in black ink, appearing to read "John J. Marchant", with a long, sweeping horizontal line extending to the right.

John J. Marchant

0322ajjm.par

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of March, 1996,
I served the foregoing Comments and Verified Statement of Ronald
P. McLaughlin on all parties of record in this proceeding by
first-class mail or by a more expeditious method of delivery



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Item No. _____

Page Count 10MAR #156

MAR 8 U 1996

Part of
Public RecordBEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

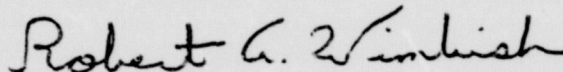
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANYBRGI-3 / BND-1STATEMENTS OF THE BROWNSVILLE AND RIO GRANDE INTERNATIONAL
RAILROAD AND THE BROWNSVILLE NAVIGATION DISTRICT
IN SUPPORT OF THE APPLICANTS

The Brownsville and Rio Grande International Railroad ("BRGI") and the Brownsville Navigation District ("BND") hereby submit the attached statements in support of the Applicants in the above-captioned merger proceeding. BRGI and BND's decision to support the proposed merger -- conditioned only upon the BNSF rights as set forth in the Settlement Agreements dated September 25, 1995 and November 18, 1995 (See, BNSF-1) -- is the result of an agreement by and between the Union Pacific Railroad Company ("UP"), BRGI and BND, executed March 28, 1996. A copy of this agreement, also identified as a "Letter of Understanding," is attached to the attached Verified Statement of L.E. Cantu.¹

¹ See, Exhibit A.

Previously, both BRGI and BND had advised the STB that they intended to participate in this merger proceeding -- BRGI as a Responsive Applicant, and BND as a Commenter. Today, instead of filing either Responsive Applications or comments, BRGI and BND submit, by this joint filing, the attached Verified Statements in support of the Applicants.² BRGI and BND request that the STB retain their respective standing as parties of record in this proceeding. All filings and decisions relating to this proceeding should continue to be served upon the undersigned, BRGI and BND's designated counsel.

Respectfully submitted,



Robert A. Wimbish
John D. Heffner
REA, CROSS & AUCHINCLOSS
1920 N Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Attorneys for the Brownsville and Rio
Grande International Railroad and the
Brownsville Navigation District

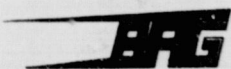
Dated: March 29, 1996

² Verified Statement of William W. Reed, Jr., Chairman of the Board of the Brownsville Navigation District is attached hereto as Exhibit B.

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of March 1996, served copies of the foregoing document upon the Primary Applicants and all parties of record by means of U.S. mail, first class postage prepaid, or by more expeditious delivery where such delivery has been requested by certain participants in the subject proceeding.

Robert A. Wimlish
Robert A. Wimlish



**BROWNSVILLE AND RIO GRANDE
INTERNATIONAL RAILROAD**

P.O. Box 3818
Brownsville, Texas 78523-3818
Phone: (210) 831-7731
Fax: (210) 831-2142

VERIFIED STATEMENT
OF

L.E. CANTU

ON BEHALF OF

BROWNSVILLE & RIO GRANDE INTERNATIONAL RAILROAD



I am President and Chief Operating Officer of the Brownsville & Rio Grande International Railroad ("BRGI"). I previously submitted a statement, which Applicants filed with their Application (Vol. 4, Part 5 (UP/SP-25), p. 358), in which I explained that the merger of Union Pacific and Southern Pacific, coupled with the grant of trackage rights to BN/Santa Fe to serve Brownsville, would provide significant benefits to all shippers in South Texas, including those at the Port of Brownsville served by BRGI.

In my previous statement, I indicated that BRGI believed certain local issues would have to be addressed in order to ensure that these benefits would be achieved. In January of this year, through counsel, BRGI filed a "Description of Responsive Application," which preserved BRGI's ability to have these local issues resolved by the Surface transportation Board if necessary. Our principal concern related to BN/Santa Fe's ability to be an effective competitor for traffic to and from BRGI and Brownsville -- and the connection with the Mexican rail system (the FNM) at Matamoros -- under the rights granted in the Settlement Agreement with applicants.

Over the past several months, BRGI has discussed its concerns in separate meetings with Applicants and BN/Santa Fe. Both have been cooperative, and BRGI's concerns have been satisfied. Specifically those concerns which BRGI had expressed in my earlier statement have been addressed & resolved, and BRGI no longer finds it necessary to pursue a Responsive Application before the Surface Transportation Board. Thus, BRGI supports approval of the UP/SP merger, conditioned only by the grant of trackage rights in the UP/SP Settlement Agreement with BN/Santa Fe.

BRGI recognizes that BN/Santa Fe intends to be an aggressive competitor for traffic originating and terminating in Brownsville and Mexico. With the rights granted to it in the Settlement Agreement, BN/Santa Fe will have the capability to replace and potentially improve upon the service previously provided by SP. BN/Santa Fe has conveyed to us that it intends to compete vigorously for Brownsville traffic. BN/Santa Fe will have the right and

obligation to connect directly with BRGI, provide BRGI with competitive access to the FNM, and, via haulage or trackage rights service, provide an effective competitive alternative to service via the UP/SP system. Given this, shippers served by BRGI and elsewhere in Brownsville will not lose any competitive options, and may instead see their service improved. In the event that the purposed merger is consummated, UP/SP and BN/Santa Fe will each provide greater single-line market access over their extensive systems, and will be able to provide improved levels of service to Brownsville. Clearly the potential benefits of a UP/SP Merger for Brownsville are in the public interest. For these reasons, BRGI request that the STB Approve the purposed UP/SP Merger.

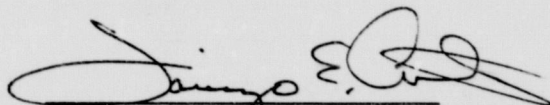
I, Lorenzo E. Cantu, declared under penalty of perjury that foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement on behalf of BRGI.

A handwritten signature in dark ink, appearing to read 'Lorenzo E. Cantu', with a stylized flourish at the end.

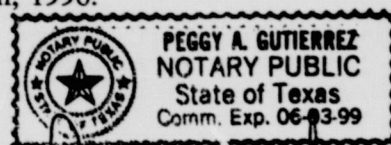
Lorenzo E. Cantu
President & Chief Operating Officer

VERIFICATION

Lorenzo E. Cantu, being duly sworn, deposes and says that he read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.



Lorenzo E. Cantu

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



My Commission expires:

6-3-99


Notary Public

UNION PACIFIC RAILROAD COMPANY

JOHN H. REBENS DORF
VICE PRESIDENT-STRATEGIC PLANNING

1416 DODGE STREET
OMAHA, NEBRASKA 68179
402-271-4279



March 21, 1996

Commissioners, Brownsville Navigation District
Trustees, Brownsville & Rio Grande International Railroad
Brownsville, TX

Dear Commissioners and Trustees:

At a meeting between representatives of Brownsville Navigation District (BND), the Brownsville & Rio Grande International Railroad (BRGI) and Union Pacific Railroad Company (UPRR) on March 13, 1996, we discussed the Union Pacific/Southern Pacific (UP/SP) merger and UP's operations in the Brownsville area.

We understand that you are now satisfied that the UP/SP agreement with Burlington Northern Santa Fe (BNSF) will result in BNSF having competitive access to Brownsville and the Port. Furthermore, BRGI will be able to interchange traffic directly with BNSF at Brownsville.

Our discussion included the current Railroad Relocation Project under the 1982 Memorandum of Understanding to which both UP and SP are parties. UP assures you that UP is prepared to assume SP's responsibilities under the 1982 MOU. UP will support the sponsor's request to the Federal Highway Administration and the U.S. Department of Transportation to reallocate relocation priorities to expedite Segment II completion.

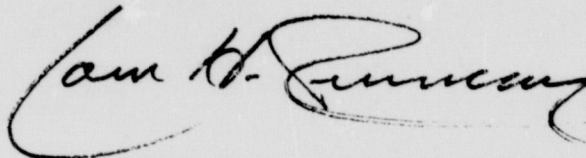
UP agrees to escalate the pace of negotiations previously undertaken with BRGI to attain a mutually acceptable plan for the switching of traffic on the Port Lead by BRGI and eventually for the possibility of direct BRGI interchange with the FNM, provided that the plan is economically beneficial for both parties. It is UP's intention to grant BRGI direct access to FNM on reasonable terms and conditions if UP and BRGI, as a result of these negotiations, can reach an agreement that is economically beneficial and operationally feasible for both UP and BRGI.

In exchange for the above, it is our understanding that BND and BRGI will support the approval of the UP/SP merger as conditioned only on the BNSF settlement agreement with UP/SP. BND and BRGI will also support the reallocation of relocation

priorities which will be mutually beneficial to BND, BRGI and UP/SP. The commitments and assurances set forth in this letter are contingent upon regulatory approval of the UP/SP merger as conditioned by the UP/SP agreement with BNSF and consummation of control by UP over SP.

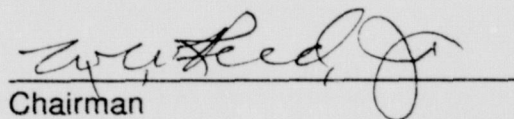
If this is acceptable to both the BND and BRGI, please indicate your acceptance below.

Sincerely,



AGREED TO AND ACCEPTED BY:

Brownsville Navigation District



Chairman
Board of Commissioners

Date: March 28, 1996

Brownsville & Rio Grande International Railroad



Chairman
Board of Trustees

Date: March 26, 1996

VERIFIED STATEMENT

OF

WILLIAM W. REED JR.

ON BEHALF OF

BROWNSVILLE NAVIGATION DISTRICT



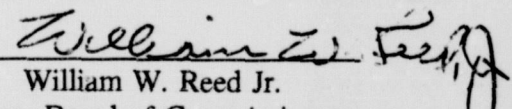
I am William W. Reed Jr., Chairman of the Board of the Brownsville Navigation District of Cameron County, Texas ("BND"). The BND operates the Port of Brownsville which is a first-class deepwater port providing facilities for the movement of cargo to all parts of the world. The Port is located at the southern most tip of Texas on the U.S. - Mexico border and connects with the Gulf of Mexico via a 17 mile channel. Since 1936, the port has efficiently served the region of South Texas and Northern Mexico, influencing economic development on both sides of the border. The Port is served by the Brownsville & Rio Grande International Railroad ("BRGI"), which in turn connects directly with the Union Pacific and reaches the Southern Pacific and the Mexican railroad system (the FNM) at Matamoros via reciprocal switching.

BND has carefully evaluated the effects of the UP/SP merger and the grant of trackage rights to BN/Santa Fe pursuant to the Settlement Agreement between Applicants and BN/Santa Fe. BND has also considered the merger, in light of recent negotiations between BRGI and both UP and BN/Santa Fe. Based on these circumstances, the BND Board of Canal Commissioners voted at a duly called meeting, March 28, 1996 to support the approval of the UP/SP merger as conditioned only upon the BN/Santa Fe rights.

As explained in the Verified Statement of L. E. Cantu, BRGI's President, certain local issues of concern to both BRGI and BND have been resolved with the Applicants. BND understands the UP/SP merger will not reduce rail service competition to the Port of Brownsville and may improve rail competition for our shippers. Clearly the potential benefits of a UP/SP Merger are in the public interest. For these reasons, BND request that the Surface Transportation Board approve the purposed UP/SP Merger.

I, William W. Reed, declare under penalty of perjury that foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement on behalf of BND.

Executed on March 28, 1996.

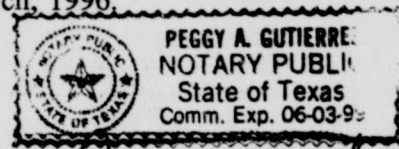

William W. Reed Jr.
Chairman, Board of Commissioners
Brownsville Navigation District

VERIFICATION

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

William W. Reed Jr.
William W. Reed Jr.

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



My Commission expires:

6-3-99

Peggy A. Gutierrez
Notary Public

STB

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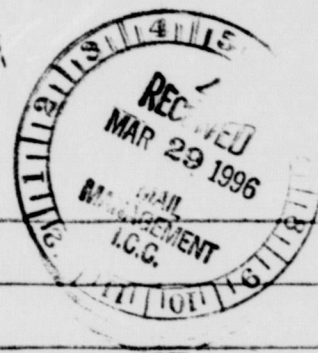
Mar #641

ENTERED
the Secretary

MAR 30 1996

Part of
Public Record

3-25-96



The Honorable Vernon A Williams
Secretary Surface Transportation Board

Dear Sir,

In Reference Finance Docket 32760

Please do not allow the merger
of the Union Pacific & Southern Pacific
railroad in the State of Texas.

We need the rails to move our
livestock & manufactured goods. The
competition fosters more fair rates &
jobs for the citizens of Texas.

Thank you.

Reta Weaker

908 East 35th

San Angelo, TX 76903

ADVISE OF ALL

PROCEEDINGS

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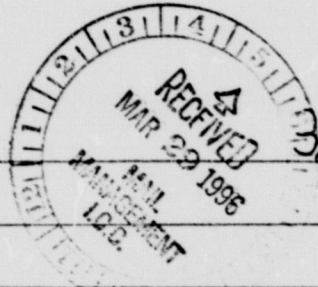
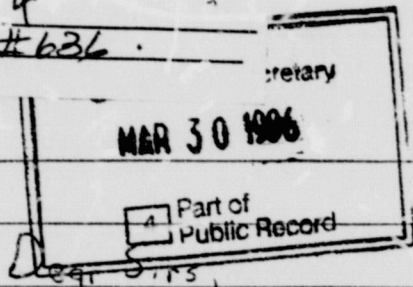
ADVISE OF ALL PROCEEDINGS

Item No. _____

Page Count 4

MAR #636

(1)



I'm writing to you as a Union Pacific stockholder but more importantly as a longtime serious rail fan. I'm writing to voice my support for the proposed Union Pacific-Southern Pacific merger. Much of objections raised about this merger is a bunch of crap. Conrail claims they need to reach point in Texas and the Gulf Coast to stay competitive. Why? They don't go there now. If they don't want to interchange with the UP they can switch their business to the BNSF. They just want to build up their debt to fend off a takeover by Norfolk Southern. Kansas City Southern is also crying they need protection. Again more silly crying. KCS was ready to buy the Southern Pacific back in 1986 when the SPSF was vetoed by the ICC. Why is it okay for them to go after SP but not the Union Pacific. UP has already offered them trackage + haulage rights into Chicago and St. Louis areas they don't go into now but they said it's not good enough. They also backed out of their proposed merger with the Illinois Central. Union Pacific gave the KCS the trackage rights that the Katy had back in 1988 when the UP + Katy merged. This gave KCS access to Omaha, Topeka KS + Houston. No one objected when KCS swallowed up Mid-South a couple years ago. Apparently KCS wants to go into everyone's backyard but doesn't want anyone in theirs. Another complaint about the merger is that most of the West + Gulf coast will be served by only two railroads. (BNSF + UP-SP)

Again, so what! The Southeast is basically served by two railroads CSX and Norfolk Southern. ~~New~~ The New York City area has only Conrail. (CP Rail serves the area but only over trackage rights on Conrail.) BNSF is the only railroad going directly from the Upper Midwest to the Pacific Northwest. Union Pacific has reached an historic agreement with the BNSF giving BNSF access over much of the UP + SP. This guarantees that no customer will have service from just one railroad. UP + SP will keep BNSF honest and vice-versa. The states that are complaining apparently never heard of the trucking industry. And that's what this and any other rail merger boils down to. Led by a boom in intermodal traffic railroads are experiencing large traffic growth. After years of rationalizing and downsizing the industry is growing. Railroads are double + triple tracking their mainlines, expanding terminals, even hiring new employees. The one thing they still need to improve on is interchanging. Since most intermodal traffic travels over more than one railroad it's important that they interchange well. Merging with your connections is the best way to improve on interchanges. Also, railroads are looking beyond their own lines to expand capacity. Old lines are being revived to handle growing traffic. The Union Pacific is proposing to rebuild and expand lines that not too long ago were in danger of being abandoned. The old Kansas Pacific from Topeka KS. to Denver was downgraded to local service years ago. It is one line that is being proposed to upgrade and increase traffic over.

The former Ksty line, the OK+T lines purchased in 1982 is ~~are~~ another line up for improvement. This line runs from Herrington KS down to Texas. The Ksty with government help, purchased it in '82 from the estate of the Rock Island. This line now sees only marginal traffic. Another line that will see a revival is the old Texas+Pacific line across Texas into El Paso. The Union Pacific needs these lines plus other parts of the SP to remain competitive with the UP. While the old UP slogan of "Serves all the West" is true it doesn't have the quickest, shortest routes in some areas. The old Los Angeles + Salt Lake route between Salt Lake City, Utah ~~and~~ Los Angeles is slower longer than Santa Fe's lines across New Mexico and Arizona into Los Angeles. Railroads need to find better routes that the competitive intermodal market demands. In intermodal if you can't move it you lose it, usually to the highways. Do states want more trucks busting up their roadways? Ironically the one state they will lose trackage, Colorado, is not protesting the merger. The line over Tennessee Pass will be abandoned after the merger. Why aren't they protesting? Because of the better service they will receive from the merger. While the Union Pacific is a strong railroad the Southern Pacific isn't. If the merger is denied, SP will probably be chopped up and sold off the other railroads. Some areas could be left without any rail service if that happens. If you don't think that can happen think back to 1974.

(4)

The ICC after years of dragging their feet finally approved the Union Pacific - Rock Island merger. However they attached so many conditions to it that it was feasible for the UP to accept it. What happened? The Rock Island went bust and was sold off line by line to other railroads. Don't make that same mistake again! I'm not a politician, or an industry insider or a major shipper, I'm just a railfan. I feel that my views and opinions should be heard.

Thanks You,
John T. Erhardt
920 Ridge Sq. - Apt 115
ELK GROVE VILLAGE, IL 60007-4167

STB

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• 32760

3-21-96

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Item No. _____

Page Count 1

Mar # 650

OFFICE OF REPRESENTATIVES
STATE OF UTAH

REPRESENTATIVE TOM HATCH

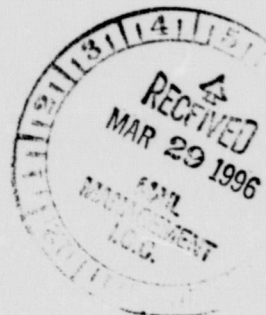
73RD DISTRICT
(BEAVER, GARFIELD, KANE, PIUTE, SEVIER,
WASHINGTON AND WAYNE COUNTIES)
P.O. BOX 391
PANGUITCH, UTAH 84759
RES. 676-2214 / BUS. 676-3808



STANDING COMMITTEES: ENERGY, NATURAL RESOURCES
AND AGRICULTURE; STATE AND LOCAL AFFAIRS
APPROPRIATIONS: NATURAL RESOURCES AND ENERGY

March 25, 1996

Vernon A. Williams, Secretary
Surface Transportation Board
Room 1324
Twelfth St. & Constitution Ave. N.W.
Washington, D.C. 20423



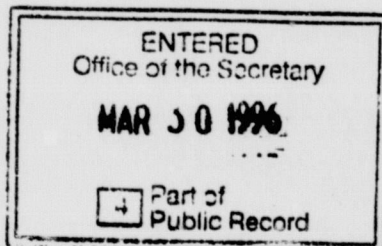
Re: Finance Docket No. 32760, Union Pacific Corp., et al-
Control and Merger - Southern Pacific Rail Corp., et al

Dear Secretary Williams:

As a member of the Utah Legislature, I want to express my strong support for the proposed merger of 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 completion of the first transcontinental railroad commemorated by the driving of the golden spike in 1869 at Promontory Point, Utah. Southern Pacific, which now included the Denver and Rio Grande Western Railroad Company, has also provided rail services in the State of Utah. Both railroads have competed vigorously for rail traffic to and from the state of Utah.

The proposed merger will benefit Utah shippers by improving railroad services from Utah to other areas of our nation. It will also assure that Utah shippers continue to have access to high quality rail service in our State. In light of these and other advantages to shippers within Utah, I urge your support of the Union Pacific / Southern Pacific merger.



Sincerely,

Tom Hatch
State Representative

ADVISE OF ALL
PROCEEDINGS

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32760

2-20-96

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Item No. _____

Page Count 17

Feb 21 1996

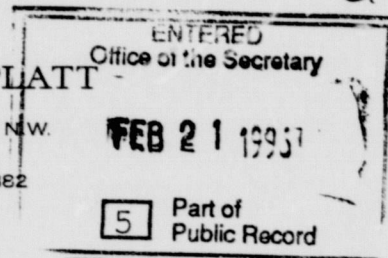
BROWN & PLATT

CHICAGO
IRLIN
USSELS
JUSTON
LONDON
LOS ANGELES
NEW YORK
TOKYO
MEXICO CITY CORRESPONDENT
JAUREGUI, NAVARRETE, NADER Y ROJAS

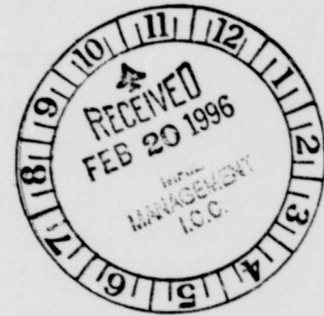
ENNSYLVANIA AVENUE, NW.
WASHINGTON, D.C. 20006-1882

KELLEY E. O'BRIEN
MEMBER OF THE VIRGINIA BAR
NOT ADMITTED IN THE DISTRICT OF COLUMBIA
202-778-0607

February 20, 1996



202-463-2000
TELEX 892603
FACSIMILE
202-861-0473



BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 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 (20) copies of: (i) Response and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to Consolidated Rail Corporation's First Set of Interrogatories and Second Set of Requests for Production of Documents (BN/SF-20); (ii) Response and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to Western Coal Traffic League's First Set of Interrogatories and Document Production Requests (BN/SF-21); (iii) Response and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to The Texas Mexican Railway Company's First Interrogatories (BN/SF-22); (iv) Response and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to The Texas Meixcan Railway Company's First Request for Production of Documents (BN/SF-23); (v) Response and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to The Society of Plastics Industry, Inc.'s First Set of Interrogatories and Data Requests (BN/SF-24); and (vi) Response and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to The Society of Plastics Industry, Inc.'s First Request for Admissions (BN/SF-25) Also enclosed is a 3.5-inch disk containing the text of the pleadings in Wordperfect 5.1 format.

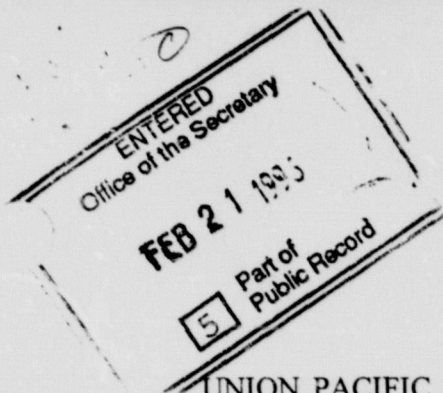
MAYER, BROWN & PLATT

I would appreciate it if you would date-stamp the enclosed extra copies of the pleadings and return them to the messenger for our files.

Sincerely,

Kelley F. O'Brien

Kelley O'Brien



BN/SF-20

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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



RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO CONSOLIDATED RAIL CORPORATION'S FIRST SET OF INTERROGATORIES
AND SECOND SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS TO BNSF CORPORATION

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Sidney L. Strickland, Jr.

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(817) 333-7954

Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 463-2000

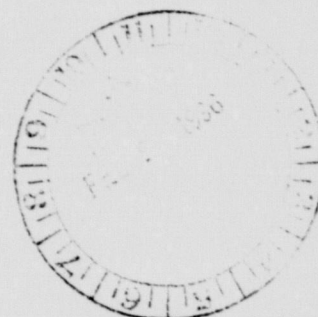
and

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

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

February 20, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO CONSOLIDATED RAIL CORPORATION'S FIRST SET OF INTERROGATORIES
AND SECOND SET OF REQUESTS FOR THE
PRODUCTION OF DOCUMENTS TO BNSF CORPORATION

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe") answer and object as follows to Consolidated Rail Corporation's ("Conrail") First Set of Interrogatories and Second Set of Requests For the Production of Documents to BNSF Corporation. These responses and objections are being served pursuant to the Discovery Guidelines Order entered by the Administrative Law Judge in this proceeding on December 5, 1995 ("Discovery Guidelines").

Subject to the objections set forth below, BN/Santa Fe will produce non-privileged documents responsive to Conrail's First Set of Interrogatories and Second Set of Requests

for the Production of Documents. If necessary, BN/Santa Fe is prepared to meet with counsel for Conrail at a mutually convenient time and place to discuss informally resolving these objections.

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

GENERAL OBJECTIONS

BN/Santa Fe objects to Conrail's First Set of Interrogatories and Second Set of Requests for the Production of Documents on the following grounds:

1. Parties. BN/Santa Fe objects to Conrail's First Set of Interrogatories and Second Set of Requests for the Production of Documents to the extent that they are directed to BNSF Corporation (now, Burlington Northern Santa Fe Corporation) rather than BN and Santa Fe. Burlington Northern Santa Fe Corporation is not a party to and has not appeared or intervened in this proceeding. Notwithstanding this objection, BN/Santa Fe will include as a part of its responses to Conrail's Requests any non-privileged, responsive documents in the possession of Burlington Northern Santa Fe Corporation.

2. Privilege. BN/Santa Fe objects to Conrail's First Set of Interrogatories and Second Set of Requests for the Production of Documents to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.

3. Relevance/Burden. BN/Santa Fe objects to Conrail's First Set of Interrogatories and Second Set of Requests for the Production of Documents to the extent

that they seek information or documents that are not directly relevant to this proceeding and to the extent that a response would impose an unreasonable burden on BN/Santa Fe.

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

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

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

9. "Document" means any and all writings and recordings as defined in Rule 1001 of the Federal Rules of Evidence, including drafts, typings, printings, minutes or copies or reproductions thereof in the possession, custody or control of BNSF Corporation.

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

14. "Relating" or "related" to a given subject matter means constitutes, contains, comprises, consists of, embodies, reflects, identifies, states, refers to, deals with, sets forth, proposes, shows, evidences, discloses, describes, discusses, explains, summarizes, concerns, authorizes, contradicts or is any way pertinent to that subject, including, without limitation, documents concerning the presentation of other documents.

BN/Santa Fe objects to the definition of "Relating" or "related to" in that it requires subjective judgment to determine what is requested and, further, that it potentially calls for the production of documents that are not directly relevant to this proceeding.

Notwithstanding this objection, BN/Santa Fe will, for the purposes of responding to Conrail's requests, construe "Relating" or "related to" to mean "make reference to" or "mention".

16. "Analyses or Analysis" include any analyses, studies, evaluations, discussions, or reports in whatever form, including letters, memoranda, tabulations, measurements, electronic mail, notes, diary notations, journals, and computer printouts of data selected from a database.

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

17. References to railroads, shippers, and other companies (including Applicants) include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

BN/Santa Fe objects to this instruction to the extent that it requests documents to be produced by partnerships and joint ventures in which BN or Santa Fe are members.

Notwithstanding this objection, BN/Santa Fe will produce any non-privileged, responsive documents in the possession of BN, Santa Fe, or Burlington Northern Santa Fe Corporation.

7. Instructions. BN/Santa Fe makes the following objections to Conrail's instructions:

5. All documents that respond, in whole or part, to any paragraph of a Request shall be produced in their entirety. Documents that in their original condition were stapled, clipped, or otherwise fastened together, shall be produced in such form. In addition, all documents are to be produced in the file folders or jackets in which they are maintained.

BN/Santa Fe objects to this instruction to the extent that it requests documents to be produced in the file folders or jackets in which they are maintained on the grounds that such manner of production is unduly burdensome and would interfere with BN/Santa Fe's operations and activities, particularly in light of the requirement under the Discovery Guidelines that all document depositories be maintained in the Washington D.C. area.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

1. Identify any agreements between, or proposals or requests by (a) Applicants, the Houston Belt and Terminal Railroad ("HBTR") and/or BN/Santa Fe relating to HBTR's storage of rail cars on behalf of BN/Santa Fe for service provided by BN/Santa Fe under the BN/SF Agreement; or (b) Applicants, the Port Terminal Railroad Association ("PTRA"), and/or BN/Santa Fe relating to PTRA's storage of rail cars on behalf of BN/Santa Fe for service provided by BN/Santa Fe under the BN/SF Agreement.

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

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it is unaware of any agreement, or any proposal or request, relating to HBTR's or PTRAs storage of rail cars on behalf of BN/Santa Fe for service to be provided by BN/Santa Fe under the BN/SF Agreement. BN/Santa Fe further states that it is unaware as to whether Applicants, HBTR and/or PTRAs have entered into any such agreement, or made or received any such proposal or request, between each other.

2. Identify any and all UP and/or SP facilities that BN/Santa Fe and/or Applicants have identified, reserved, and/or requested, on behalf (or in the account) of BN/Santa Fe for the storage of rail cars to serve any and all Shippers under the BN/SF Agreement. For each facility, identify its location, owner, total storage capacity, and available capacity for the storage of rail cars in the account of BN/Santa Fe.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 2 to the extent that it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it is unaware of any specific UP or SP facilities that have been identified or reserved or to which access has been requested for the storage of rail cars for service to be provided by BN/Santa Fe under the BN/SF Agreement. BN/Santa Fe further states that it is unaware whether Applicants have done so.

3. With respect to lines where BN/Santa Fe will have trackage rights under the BN/SF Agreement, (a) how will BN/Santa Fe trains enter the post-merger UP/SP system? (b) What are the criteria for priority in giving BN/Santa Fe trains access at points where such trains arrive to enter the Applicants' postmerger lines?

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 3 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed

consolidation of Union Pacific and Southern Pacific approved and the BN/SF Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position. BN/Santa Fe further objects to Interrogatory No. 3 to the extent that it contains terms and phrases such as "enter the . . . system" and "criteria for priority" that are vague and ambiguous.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that its trains will enter the post-merger UP/SP system at existing connections or new connections to be constructed, as described in the Verified Statement of Neal D. Owen, and that the criteria for giving access to BN/Santa Fe trains are set forth in the "equal dispatch" requirement of Section 9(d) of the BN/SF Agreement.

4. Have you or Applicants performed any Analysis of crew cycles and/or the operation of crew cycles on the primarily directional routes in the Gulf/Eastern region that are described in the Application?

Response: Subject to and without waiving the General Objections stated above, in particular the burden, relevance and scope objections, BN/Santa Fe objects to Interrogatory No. 4 on the grounds that it is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence and to the extent that it calls for the production of information or documents not in the possession of BN/Santa Fe.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it is unaware of any Analyses of crew cycles as described in this Interrogatory. BN/Santa Fe further states that it is unaware as to whether Applicants have performed any such Analyses.

5. State all capital expenditures (both the total amount and such expenditures broken down according to category of expenditure) made in connection with

(a) BN/Santa Fe's direct route between St. Louis and Memphis, as described on page 158 of the Verified Statement of Richard B. Peterson and page 20 of the Verified Statement of Neal D. Owen and (b) BN/Santa Fe's operations between Houston and St. Louis (via Temple, TX and/or Ft. Worth, TX).

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 5 to the extent that it is overly broad and unduly burdensome and would require an unreasonable search of BN/Santa Fe's files. BN/Santa Fe further objects to Interrogatory No. 5 on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

6. a. Do you maintain train schedules for operations along specified routes, in addition to timetables?

b. What data do you maintain for measuring performance in accordance with any such schedules that you maintain?

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden and scope objections, BN/Santa Fe objects to Interrogatory No. 6 to the extent that it is vague, overly broad and unduly burdensome. BN/Santa Fe further objects to Interrogatory No. 6 on the grounds that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it maintains train schedules for operations on certain of its routes. Samples of documents reflecting the types of data maintained for measuring performance under those schedules will be produced in accordance with the Discovery Guidelines.

7. Identify all facilities of any sort to which BN/Santa Fe will receive access to enter, to use, or for any other purpose in connection with the trackage rights grants or line sales under the BN/SF Agreement.

Response: Subject to and without waiving the General Objections stated above, in particular the burden, relevance and scope objections, BN/Santa Fe objects to Interrogatory No. 7 to the extent that it is overly broad and vague. BN/Santa Fe further objects to Interrogatory No. 7 to the extent that it would require BN/Santa Fe to speculate as to the legal meaning of a document that is readily available to Conrail.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that, other than as may be identified in the BN/SF Agreement, it has not identified the specific facilities to which BN/Santa Fe will receive access pursuant to the BN/SF Agreement. Neal D. Owen addresses such access and use by BN/Santa Fe in his Verified Statement.

8. For each 2-to-1 customer (as that term is used in the BN/SF Agreement) that BN/Santa Fe expects to serve under rights granted by the BN/SF Agreement, state

- a. from what yard will it serve such 2-to-1 customer;
- b. the capacity of each such yard; and
- c. the present level of activity of each such yard.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 8 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 8 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position. BN/Santa Fe further objects to this Interrogatory to the

extent that it calls for the production of information or documents not in the possession of BN/Santa Fe and to the extent that it would require BN/Santa Fe to speculate as to the legal meaning of a document that is readily available to Conrail.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statement of Neal D. Owen, and in his related workpapers numbered BN/SF-02500 -- 03238 in BN/Santa Fe's document depository, it is unaware of any other information or documents responsive to this Interrogatory.

RESPONSES AND OBJECTIONS TO REQUESTS
FOR PRODUCTION OF DOCUMENTS

1. All documents, dating from January 1, 1993, to the present, comprising (a) timetables and track charts for any and all BN/Santa Fe operations along BN/Santa Fe's direct route between St. Louis and Memphis, as described on page 158 of the Verified Statement of Richard B. Peterson and page 20 of the Verified Statement of Neal D. Owen; (b) timetables and track charts for BN/Santa Fe's current operations between Houston and St. Louis (via Temple, TX and/or Ft. Worth, TX).

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Document Request No. 1 to the extent it calls for the production of all documents, without limitation, on the grounds that it is overly broad and unduly burdensome. BN/Santa Fe further objects to Document Request No. 1 on the grounds that it is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

2. All documents relating to any and all UP and/or SP facilities that BN/Santa Fe and/or Applicants have identified, reserved, or requested on behalf (or in the

account) of BN/Santa Fe for the storage of rail cars used to serve Shippers in connection with the BN/SF Agreement, including but not limited to

- (a) such facilities from, with or involving the HBTR or the PTRAs;
- (b) any proposals, agreements or requests among or between Applicants, BN/Santa Fe, and/or HBTR concerning such storage; and
- (c) any proposals, agreements, or requests among or between Applicants, BN/Santa Fe, and/or PTRAs concerning such storage.

Response: Subject to and without waiving the General Objections stated above, in particular the burden, relevance and scope objections, BN/Santa Fe objects to Document Request No. 2 to the extent it is overly broad and unduly burdensome. See Responses to Interrogatory Nos. 1 and 2.

3. All documents relating to any discussions or agreements between HBTR and BN/Santa Fe relating to service to be provided by BN/Santa Fe pursuant to rights granted by the BN/SF Agreement.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Document Request No. 3 to the extent it is overly broad and unduly burdensome. See Response to Interrogatory No. 1.

4. All documents relating to any discussions or agreements between PTRAs and BN/Santa Fe relating to service to be provided by BN/Santa Fe pursuant to rights granted by the BN/SF Agreement.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Document Request No. 4 to the extent it is overly broad and unduly burdensome. See Response to Interrogatory No. 1.

5. If you answered Interrogatory No. 4 in the affirmative, all such Analyses.

Response: See Response to Interrogatory No. 4.

6. If you answered Interrogatory No. 6(a) in the affirmative, all documents comprising such train schedules for the lines specified in Interrogatory No. 5 (and Document Request No. 1).

Response: See Response to Interrogatory Nos. 5 & 6(a) and Document Request No.

1.

7. All documents relating to any performance measurement identified in response to Interrogatory No. 6(b) for the lines specified in Interrogatory No. 5 (and in Document Request No. 1).

Response: See Response to Interrogatory Nos. 5 & 6(b) and Document Request No.

1.

8. Track charts for each yard specified in response to Interrogatory No. 8.

Response: See Response to Interrogatory No. 8.

Respectfully submitted,

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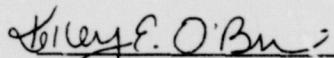
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Attorneys for Burlington Northern Railroad Company
and The Atchison, Topeka and Santa Fe Railway Company

February 20, 1996

CERTIFICATE OF SERVICE

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



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Item No. _____

BN/SF-21

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FORE THE

TRANSPORTATION BOARD

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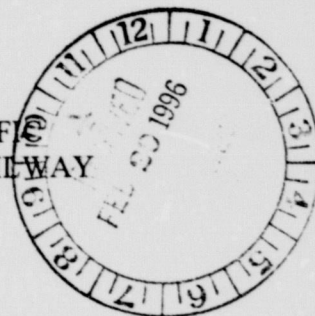
Finance Docket No. 32760

ORIGINAL

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

-- CONTROL AND MERGER --

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



RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO WESTERN COAL TRAFFIC LEAGUE'S FIRST SET OF INTERROGATORIES
AND DOCUMENT PRODUCTION REQUESTS TO BN/SANTA FE

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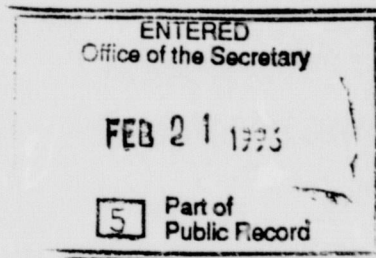
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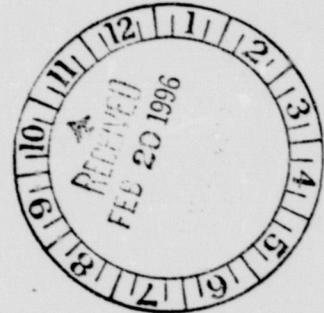


Attorneys for Burlington Northern Railroad Company
and The Atchison, Topeka and Santa Fe Railway Company

February 20, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



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

-- CONTROL AND MERGER --

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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO WESTERN COAL TRAFFIC LEAGUE'S FIRST SET OF INTERROGATORIES
AND DOCUMENT PRODUCTION REQUESTS TO BN/SANTA FE

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe") answer and object as follows to Western Coal Traffic League's ("WCTL") "First Set of Interrogatories and Document Production Requests to BN/Santa Fe." These responses and objections are being served pursuant to the Discovery Guidelines Order entered by the Administrative Law Judge in this proceeding on December 5, 1995 ("Discovery Guidelines").

Subject to the objections set forth below, BN/Santa Fe will produce non-privileged documents responsive to WCTL's First Set of Interrogatories and Document Production Requests. If necessary, BN/Santa Fe is prepared to meet with counsel for WCTL at a mutually convenient time and place to discuss informally resolving these objections.

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

GENERAL OBJECTIONS

BN/Santa Fe objects to WCTL's First Set of Interrogatories and Document Production Requests on the following grounds:

1. Privilege. BN/Santa Fe objects to WCTL's First Set of Interrogatories and Document Production Requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.

2. Relevance/Burden. BN/Santa Fe objects to WCTL's First Set of Interrogatories and Document Production Requests to the extent that they seek information or documents that are not directly relevant to this proceeding and to the extent that a response would impose an unreasonable burden on BN/Santa Fe.

3. Settlement Negotiations. BN/Santa Fe objects to WCTL's First Set of Interrogatories and Document Production Requests to the extent that they seek information or documents prepared in connection with, or related to, the negotiations leading to the

Agreement entered into on September 25, 1995, by BN/Santa Fe with Union Pacific and Southern Pacific, as supplemented on November 18, 1995.

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

5. Definitions. BN/Santa Fe makes the following objections to WCTL's definitions:

3. "Document" means the term "document" as that term is used in Fed. R. Civ. P. 34(a) in BN/Santa Fe's current or prior possession, custody or control. "Document" as used herein also encompasses electronic mail and physical things such as computer disks in BN/Santa Fe's current or prior possession, custody or control.

BN/Santa Fe objects to the definition of "Document" to the extent that it is overly broad and unduly burdensome and calls for the production of materials and documents that are as readily, or more readily, available to WCTL as to BN/Santa Fe.

9. "Relate to" or "Relating to" means making a statement about, discussing, describing, referring to, reflecting, explaining, analyzing, or in any other way pertaining, in whole or in part, to a subject.

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

RESPONSES AND OBJECTIONS TO INTERROGATORIES

1. Assuming the proposed merger is consummated, state, by origin, destination and shipper:
 - (a) the volume of coal traffic that BN/Santa Fe expects to gain annually as a result of the Settlement Agreement and/or any other agreement(s) between BN/Santa Fe, Applicants, and any other rail carrier(s); and
 - (b) the volume of coal traffic that BN/Santa Fe expects to be diverted to UP/SP as a result of the merger.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 1 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 1 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position. BN/Santa Fe further objects to this Interrogatory to the extent that it would require BN/Santa Fe to perform a special study in order to respond to the Interrogatory and to the extent that it is thereby overly broad and burdensome.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statements of Neal D. Owen and Larry M. Lawrence, and in Mr. Owen's related workpapers numbered BN/SF-02500 -- 03238 and in Mr. Lawrence's related workpapers numbered BN/SF-00050 -- 01065 in BN/Santa Fe's

document depository, it has no other actual figures or concrete estimates as to the volume of coal traffic that BN/Santa Fe expects to gain annually after consummation of the proposed merger or the volume of coal traffic BN/Santa Fe expects to be diverted to UP/SP as a result of the merger.

2. Identify the origin(s) for coal shipments in Utah and Colorado to which BN/Santa Fe will gain access as a result of the Settlement Agreement and any other agreements among BN/ Santa Fe, Applicants, and any other rail carrier(s). For purposes of this Interrogatory, "access" means the ability to serve directly with BN/Santa Fe's power and crews and/or the ability to serve via reciprocal switch or interchange with a rail carrier other than UP or SP that directly serves an origin.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 2 to the extent that it is overly broad and vague and calls for speculation. BN/Santa Fe further objects to this Interrogatory to the extent that it would require BN/Santa Fe to speculate as to the legal meaning of a document that is readily available to WCTL and that speaks for itself.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that, assuming that BN/Santa Fe's Settlement Agreement and the Applicants' agreement with Utah Railway Company are approved as currently structured, the following origins in Utah for coal shipments may be opened for access:

- Andalex Resources, Inc.
- Cyprus Amax (both the current mine and a new mine origin that is under development)
- Genwal Coal
- Rail-truck loadout at CV Spur in Helper/Price, Utah area run by Savage Trucking

3. With respect to the agreement between Applicants and IC described in the UP press release attached hereto as Appendix 1:

- (a) Identify any communications between BN/Santa Fe and Applicants with respect to the matters described in the first paragraph at the top of the second page of such press release;
- (b) Describe any adverse impact that would result to BN/Santa Fe operations and/or service in the Central Corridor under the Settlement Agreement if the Board imposes a condition to any grant of merger authority that Applicants must sell to a rail carrier other than BN/Santa Fe the SP line(s) between Salt Lake City/Provo, UT and Kansas City, MO/KS via Denver and Pueblo, CO, including associated lines necessary to enable such other rail carrier to serve coal mines in Colorado and Utah presently served by SP, and assuming Applicants decide to go ahead with the merger.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 3 to the extent that it is overly broad and vague and to the extent that it uses ambiguous terms such as "adverse impact." BN/Santa Fe further objects to Interrogatory No. 3 to the extent it calls for the production of information or documents subject to a confidentiality provision and to the extent that it calls for speculation.

Subject to and without waiving the foregoing objections, BN/Santa Fe states as follows:

- (a) See Transcript of the Deposition of Carl R. Ice, February 14, 1996, at pages 197-98.
- (b) BN/Santa Fe is unable to speculate about the potential effects of a hypothetical order by the Surface Transportation Board as described in this Interrogatory. BN/Santa Fe does not know whether the services and operations proposed to be undertaken by BN/Santa Fe pursuant to the

Settlement Agreement would be practical or efficient if other rights are granted to permit additional carriers to serve locations covered by the Settlement Agreement.

4. Are there any instances where Santa Fe submitted a bid or rate proposal for the movement of coal to a customer within one year prior to the date of exercise of the common control authority granted by the Interstate Commerce Commission in its decision served August 23, 1995 in Finance Docket No. 32549, and BN/Santa Fe submitted a higher bid or rate proposal for the same movement (or a coal movement of comparable tonnage involving the same origin mining area and destination and the same time frame) subsequent to the date of exercise of such common control authority?

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden and scope objections, BN/Santa Fe objects to Interrogatory No. 4 to the extent that it is vague, overly broad and would require an unreasonably burdensome search of BN/Santa Fe's files.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it has not identified any instances where Santa Fe submitted a bid or rate proposal for the movement of coal to a customer within one year prior to the date of exercise of the common control authority granted by the Interstate Commerce Commission in its decision served August 23, 1995 in Finance Docket No. 32549, and BN/Santa Fe submitted a higher bid or rate proposal for the same movement (or a coal movement of comparable tonnage involving the same origin mining area and destination and the same time frame) subsequent to the date of exercise of such common control authority.

5. If the answer to Interrogatory No. 4 is affirmative, identify with respect to each such instance:

- (a) The origin mining area involved;
- (b) The destination state;
- (c) The amount of the increase expressed as a percentage; and

- (d) Whether BN provided bids or rate proposals for the movement of coal to the same customer(s) during the same time frames from (i) the same mining areas, or (ii) other origin mining areas.

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden and scope objections, BN/Santa Fe objects to Interrogatory No. 5 to the extent that it is vague, overly broad and would require an unreasonably burdensome search of BN/Santa Fe's files.

Subject to and without waiving the foregoing objections, see Response to Interrogatory No. 4.

6. Has BN/Santa Fe (or any of its affiliates) entered into a "separate..... haulage agreement" with SP pursuant to Section 5(f) of the Agreement entered into on April 13, 1995 between BN/Santa Fe and SP and filed with the Interstate Commerce Commission in Finance Docket No. 32549 implementing the haulage services SP agreed to provide to Santa Fe "between Caldwell, Texas and the Elmendorf Facility at San Antonio" as set forth in Section 6(a) of the April 13, 1995 Agreement?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 6 to the extent that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it has entered into a haulage agreement as described in this Interrogatory with SP dated August 1, 1995.

7. If the answer to Interrogatory No. 6 is negative, when, if ever, does BN/Santa Fe (or any of its affiliates) plan to enter into the "separate. . . haulage agreement" identified in Interrogatory No. 6?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 7 to the extent that it is neither relevant nor

reasonably calculated to lead to the discovery of admissible evidence. BN/Santa Fe further objects to Interrogatory No. 7 on the grounds that it calls for speculation.

Subject to and without waiving the foregoing objections, see Response to Interrogatory No. 6.

RESPONSES AND OBJECTIONS TO DOCUMENT PRODUCTION REQUESTS

1. Produce all documents relating to communications identified in response to Interrogatory No. 3(a).

Response: See Response to Interrogatory No. 3(a).

2. If the answer to Interrogatory No. 6 is affirmative, produce a copy of the agreement described therein.

Response: See Response to Interrogatory No. 6.

3. Produce the Agreement dated April 13, 1995 between BN/Santa Fe and SP concerning the proposed merger of BN and Santa Fe that was approved by the Interstate Commerce Commission in Finance Docket No. 32549.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Document Request No. 3 on the ground that it is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe will produce the Agreement dated April 13, 1995 between BN/Santa Fe and SP in accordance with the Discovery Guidelines.

Respectfully submitted,

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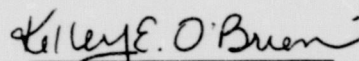
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Attorneys for Burlington Northern Railroad Company
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February 20, 1996

CERTIFICATE OF SERVICE

I hereby certify that copies of Responses and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to Western Coal Traffic League's First Set of Interrogatories and Document Production Requests to BN/Santa Fe (BN/SF-21) have been served this 20th day of February, 1996, by fax and by first-class mail, postage prepaid on all persons on the Restricted Service List in Finance Docket No. 32760 and by hand-delivery on counsel for Western Coal Traffic League.

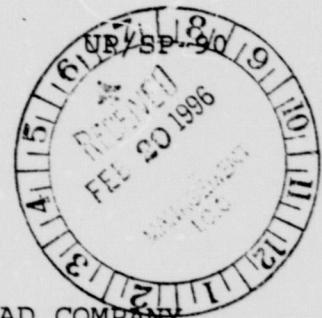


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BEFORE THE
TRANSPORTATION BOARD



Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' RESPONSES TO TEX MEX'S
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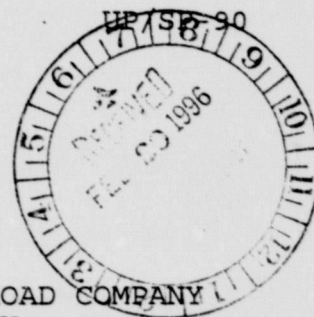
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February 20, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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



APPLICANTS' RESPONSES TO TEX MEX'S
SECOND SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW,
collectively, "Applicants," hereby respond to Texas Mexican
Railway Company's Second Interrogatories to Applicants and
Second Document Requests to Applicants.^{1/}

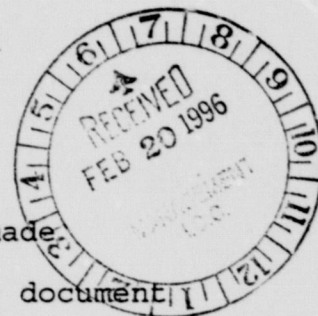
GENERAL RESPONSES

The following general responses are made with
respect to all of the interrogatories.

1. Applicants have conducted a reasonable search
for documents responsive to the interrogatories and document
requests. Except as objections are noted herein,^{2/} all

^{1/} In these responses, Applicants use acronyms as they have
defined them in the application. However, subject to General
Objection No. 10 below, for purposes of interpreting the
requests, Applicants will attempt to observe Tex Mex's
definitions where they differ from Applicants' (for example,
Tex Mex's definitions of "UP" and "SP," unlike Applicants',
include UPC and SPR, respectively).

^{2/} Thus, any response that states that responsive documents
are being produced is subject to the General Objections, so
(continued...)



responsive documents have been or shortly will be made available for inspection and copying in Applicants' document depository, which is located at the offices of Covington & Burling in Washington, D.C. Applicants will be pleased to assist Tex Mex to locate particular responsive documents to the extent that the index to the depository does not suffice for this purpose. Copies of documents will be supplied upon payment of duplicating costs (including, in the case of computer tapes, costs for programming, tapes and processing time).

2. Production of documents or information does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any objection stated herein.

3. Certain of the documents to be produced contain sensitive shipper-specific and other confidential information. Applicants are producing these documents subject to the protective order that has been entered in this proceeding.

4. In line with past practice in cases of this nature, Applicants have not secured verifications for the answers to interrogatories herein. Applicants are prepared to

^{2/}(...continued)

that, for example, any documents subject to attorney-client privilege (General Objection No. 1) or the work product doctrine (General Objection No. 2) are not being produced.

discuss the matter with Tex Mex if this is of concern with respect to any particular answer.

GENERAL OBJECTIONS

The following objections are made with respect to all of the interrogatories and document requests. Any additional specific objections are stated at the beginning of the response to each interrogatory or document request.

1. Applicants object to production of, and are not producing, documents or information subject to the attorney-client privilege.

2. Applicants object to production of, and are not producing, documents or information subject to the work product doctrine.

3. Applicants object to production of, and are not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

4. Applicants object to production of public documents that are readily available, including but not limited to documents on public file at the Board or the Securities and Exchange Commission or clippings from newspapers or other public media.

5. Applicants object to the production of, and are not producing, draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such

documents have been treated by all parties as protected from production.

6. Applicants object to providing information or documents that are as readily obtainable by Tex Mex from its own files.

7. Applicants object to the extent that the interrogatories and document requests seek highly confidential or sensitive commercial information (including inter alia, contracts containing confidentiality clauses prohibiting disclosure of their terms) that is of insufficient relevance to warrant production even under a protective order.

8. Applicants object to the interrogatories and document requests to the extent that they call for the preparation of special studies not already in existence.

9. Applicants object to the interrogatories and document requests as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1993.

10. Applicants incorporate by reference their prior objections to the definitions and instructions set forth in Tex Mex's first sets of interrogatories and document requests.

11. Applicants object to Instructions 1, 4 and 5 in Tex Mex's second set of document requests as unduly burdensome and further object to the extent that those instructions seek

to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Interrogatory No. 1

"Has UP, SP or both engaged in negotiation with BNSF concerning the level of reciprocal switching charges to be to be charged after the proposed merger (a) by BNSF for reciprocal switching performed by BNSF for the Combined System or (b) by the Combined System for reciprocal switching performed for BNSF?"

Response

No.

Interrogatory No. 2

"If the answer to interrogatory No. 1 is yes, describe the negotiations and any resulting agreements."

Response

Not applicable.

Interrogatory No. 3

"Has UP, SP or both engaged in negotiation with BNSF concerning the level of compensation to be paid by BNSF for haulage services between Houston, Corpus Christi and Brownsville, TX by the Combined System after the merger under Section 4(f) of the BNSF Agreement or about any other terms related to such haulage services?"

Response

No.

Interrogatory No. 4

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

Response

Not applicable.

Interrogatory No. 5

"Describe the consideration given by Richard B. Peterson in developing the adjusted traffic base described in his verified statement at pages 261-266 of Volume 2 of the Application to the compensation to be paid by BNSF to SP for the trackage rights and/or haulage rights under the BNSF-SP Agreement, and the quantitative effect of such compensation, if any, on the adjusted traffic base developed by Mr. Peterson."

Response

Mr. Peterson assumed that BN/Santa Fe would be fully competitive.

Interrogatory No. 6

"Applicants' corrected answer to Tex Mex's First Interrogatory No. 18 (corrected by letter of counsel dated January 23, 1996) states: 'In the stage of the Traffic Study that evaluated the effect of the settlement with BN/Santa Fe, 25% of the traffic accessible to BN/Santa Fe that had been left on an SP-Tex Mex routing or moving on a UP/SP routing was diverted to a BN-Tex Mex routing.' Does 'traffic accessible to BNSF' only mean traffic accessible to BNSF at the origin or does it include traffic not accessible to BNSF at origin but capable of being interchanged with BNSF at some point on the route?"

Response

"Traffic accessible to BN/Santa Fe" means traffic not solely served by UP and/or SP at the other end.

Interrogatory No. 7

"In his verified statement at page 220 of Volume 2, Mr. Peterson states that 'SP does not have access to UP-switched Wichita industries.' ICC Decision No. 38 in Finance Docket No. 32549, served August 23, 1995, on page 121, Appendix B, states that 'SP will receive the right to operate over Santa Fe lines between Kansas City and Fort Worth . . . and between Hutchinson and Winfield Junction, KS (via Wichita, KS.) These will be overhead rights except for specified access to: . . . industries served either directly or by reciprocal switching by BN or Santa Fe at Wichita. . . .'

- (a) Identify those industries in Wichita served by both UP and either BN or Santa Fe.
- (b) Identify those industries identified in response to interrogatory 6(a) to which SP does not have access.
- (c) Explain why SP does not have access to the industries identified in response to interrogatory 6(b)."

Response

Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

(a) To identify all industries would require a burdensome special study. Most industries at Wichita are open to UP and BN/Santa Fe. UP switching tariffs have been placed in Applicants' document depository.

(b) Those industries switched by UP to which BN/Santa Fe has access by reciprocal switching, with the exception of industries on the Wichita Terminal Railroad.

(c) Because UP provides switching at Wichita only for BN and Santa Fe.

Interrogatory No. 8

"Mr. Peterson, in developing the adjusted traffic base, states in his verified statement at page 266 of Volume 2, that 'the new marketing opportunities that BN/Santa Fe

would realize by gaining access to Eagle Pass were estimated [in part] by diverting to BN/Santa Fe's new Eagle Pass routes . . . 20% of the traffic that moved via UP direct or SP-Tex Mex between competitive points and Laredo.' By 'competitive points', does Mr. Peterson mean points accessible, directly or by reciprocal switch, to BNSF and either UP or SP or both? If not, explain what he means by 'competitive points.'"

Response

Diversion rules for Mexican traffic are fully set forth in the enclosure to Applicants' letter to Tex Mex dated February 5, 1996. Mr. Peterson was available to explain these rules further at his deposition.

Interrogatory No. 9

"With reference to the 20% of the traffic referred to by Mr. Peterson at page 266, was the 20% diversion factor applied to carload traffic:

- (a) between points in the Southeast served solely by CSX and Laredo?
- (b) between points in the Northeast served by Conrail and Laredo?
- (c) between competitive points in Southern California and Laredo?
- (d) between Houston and Laredo?
- (e) between competitive points in Nebraska and Laredo on traffic previously routed BN-SP-Tex Mex?
- (f) competitive points in Nebraska and Laredo on traffic previously routed ATSF-SP-Tex Mex?"

Response

See Response to Interrogatory No. 8.

Interrogatory No. 10

"If the answer to any of questions 9(a) through 9(f) are no, what was the diversion factor that Mr. Peterson applied to the traffic described in those questions?"

Response

See Response to Interrogatory No. 8.

Interrogatory No. 11

"In considering the effect of the proposed UP/SP merger on the adjusted traffic base before considering the effect of the BNSF Agreement, what diversion percentages did Mr. Peterson apply to traffic moving between Laredo via Tex Mex and each of the other points referred to in questions 9(a) through 9(f)?"

Response

See Response to Interrogatory No. 8.

Interrogatory No. 12

"In considering the effect of the BNSF Agreement on traffic after the proposed merger, what diversion percentages did Mr. Peterson apply to traffic moving between Laredo via Tex Mex and each of the other points referred to in questions 9(a) through 9(f)?"

Response

See Response to Interrogatory No. 8.

Interrogatory No. 13

"For carload traffic from Houston to Laredo in 1994 that was routed SP-Tex Mex, describe the routings (including carriers involved) over which, and the Mexican Gateways through which, Mr. Peterson's traffic study anticipates that traffic will move after the merger and the percentage of that traffic expected to move via each routing and gateway."

Response

See Response to Interrogatory No. 8.

Interrogatory No. 14

"On page 300 of his verified statement, Mr. Peterson states that 'to derive net revenue impacts, costs were estimated by Richard F. Kauders, UP's Manager-Economic Research.'

- (a) Was Mr. Kauders' approach based on URCS?
- (b) Describe the procedure used by Mr. Kauders to estimate these costs.
- (c) Did Mr. Kauders develop combined costs for UP/SP or did he develop and apply a different set of costs depending on whether the line involved was a UP line or a SP line.
- (d) If Mr. Kauders developed combined costs for UP/SP, did he use costs based on the costs and operating efficiencies of UP before its merger with CNW or of UP after its merger with CNW but before its proposed merger with SP or of UP/SP after their proposed merger? If he derived costs on some other basis, describe that basis.
- (e) Were the costs estimated by Mr. Kauders generally higher or lower or equal to the costs for UP prior to the proposed merger with SP?
- (f) Were the costs used by Mr. Kauders to develop the net revenue estimates: a) variable costs; b) fully allocated costs; or c) some other type of cost?"

Response

(a) Generally yes. The exceptions are described in subpart (b) below.

(b) Mr. Kauders calculated the URCS costs, which differed from the ICC version for the UP and SP in the following ways: (i) 1994 UP, CNW and SP data were combined; and (ii) in most applications, labor and associated fringes were removed from unit costs in order to ensure consistency

with the separate calculation of labor impact costs and savings. In addition, URCS unit costs were not used for auto, intermodal and double stack car costs. Instead, typical car hire rates were substituted for URCS values. Diesel fuel cost was based on UP, CNW and SP R-1 data because the MultiModal Model computed changes in fuel consumption on the basis of gallons and URCS unit cost for fuel is not based on gallons. A typical locomotive lease rate was substituted for URCS Locomotive Unit Mile depreciation and lease unit costs.

(c) Combined UP/CNW/SP URCS costs were used for all changes associated with the traffic diversion study.

(d) The combined URCS used was provided by Klick, Kent & Allen. Operating efficiencies associated with the UP/CNW merger were not reflected in the URCS unit costs; those benefits, however, were reflected in the base-year pro forma financial statements.

(e) No study has been made of the combined URCS unit costs compared to the URCS unit costs of UP or SP.

(f) Generally, variable costs were developed as described in response to subpart (b) above.

Interrogatory No. 15

"Identify the shippers in Texarkana that originated the 2,464 carloads that Mr. Peterson identifies as competitive on page 225 of his verified statement."

Response

The 2,464 figure includes, as well as UP and SP shippers, an estimate of competitive traffic based on 1994 Waybill Sample data. The Waybill Sample data does not include shipper identity, and therefore only UP and SP shippers can be identified. For information related to UP and SP shippers, see Documents Nos. HC01-006861, 919 and 920.

Interrogatory No. 16

"For each shipper identified in response to interrogatory 15, state how many of the 2,464 carloads that shipper originated."

Response

See Response to Interrogatory No. 15.

Interrogatory No. 17

"Identify the shippers in Shreveport that originated the 10,611 carloads that Mr. Peterson identifies as competitive on page 226 of his verified statement."

Response

Only UP and SP shippers can be identified, because the volume of competitive traffic includes an estimate of competitive traffic based on 1994 Waybill Sample data that excludes shipper identity. For information related to UP and SP shippers, see Documents Nos. HC01-006862 and 6921.

Interrogatory No. 18

"For each shipper identified in response to interrogatory 17, state how many of the 10,611 carloads that shipper originated."

Response

See Response to Interrogatory No. 17.

Interrogatory No. 19

"Identify the shippers in Houston that originated the 97,739 carloads that Mr. Peterson identifies as competitive on page 204 of his verified statement."

Response

Only UP and SP shippers can be identified, because the volume of competitive traffic includes an estimate of competitive traffic based on 1994 Waybill Sample data that excludes shipper identity. For information related to UP and SP shippers, see Documents Nos. HC01-006850 to 59 and 6913 to 6919.

Interrogatory No. 20

"For each shipper identified in response to interrogatory 19, state how many of the 97,739 carloads that shipper originated."

Response

See Response to Interrogatory No. 19.

Interrogatory No. 21

"Is Robstown, Texas considered a 3-to-2 point as that term is used by Mr. Peterson in his verified statement? Why or why not?"

Response

No. It is served only by Tex Mex and UP.

Interrogatory No. 22

"Is Beaumont, Texas considered a 3-to-2 point as that term is used by Mr. Peterson in his verified statement? Why or why not?"

Response

No. It is served by UP, SP, KCS and BN/Santa Fe.

Interrogatory No. 23

"Identify any origin-destination commodity flow pair for which competition will be reduced if the merger, as conditioned with the BNSF Settlement Agreement, is approved as described in the application."

Response

None.

Interrogatory No. 24

"According to the operating plan submitted by the Applicants in the Volume 3 of the Application (UP/SP-24), how many BNSF trains are expected to operate in each direction over the lines specified in Appendix A?"

Response

The Operating Plan was developed on the assumption that BN/Santa Fe would operate its own trains over the UP/SP lines on which BN/Santa Fe negotiated trackage rights, but no specific number of trains was assumed. Separately, the Applicants performed a study to estimate the number of BN/Santa Fe trains on each line segment in order to comply with environmental requirements. The results are reflected in Document No. C02-302691.

Interrogatory No. 25

"Does the operating scenario discussed in Messrs. King and Ongerth's verified statement at pages 41-53 of Volume 3, assume any train meets between UP/SP trains and BNSF trains on the trackage rights granted to BNSF pursuant to the BNSF Agreement over any of the lines specified in Appendix A?"

Response

Yes.

Interrogatory No. 26

"If the answer to Interrogatories 25 is yes, then for each of the lines described on those pages (not including 'Pacific Northwest-Denver-South Central Services' described on page 53):

- (a) state how many train meets;
- (b) explain how Messrs. King and Ongerth took this into consideration in determining the number of trains the Applicants would run on each of those lines; and
- (c) explain how Messrs. King and Ongerth took this into consideration in determining the transit times for each of the trains Applicants would run on each of those lines."

Response

(a) This number was not determined. An estimate would be derived by considering the post-merger train schedules for each line segment contained in Applicants' document depository.

(b)-(c) In view of the response to subpart (a) above, no response is possible. Mr. King addressed in his deposition how BN/Santa Fe train operations were considered in developing the Operating Plan and train schedules.

Document Request No. 1

"Produce every document identified by Applicants in response to Interrogatory Nos. 1-26 of the Texas Mexican Railway Company's Second Interrogatories to Applicants (TM-9)."

Response

See Responses to Interrogatory Nos. 1-26.

Document Request No. 2

"Produce the CTC activity logs and, for any line for which CTC logs are not available, Digicom DTC activity logs

showing all train movements, including switch movements, over the lines listed on Appendix 1 to these Second Request For Documents in the months of March, July and October 1994."

Response

Applicants object to this document request as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 3

"Produce all records identifying the trains that operated over the lines listed on Appendix 1 in the months of March, July and October 1994."

Response

Applicants object to this document request as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 4

"Produce all records showing the on-duty and off-duty hours in the months of March, July and October 1994 of all train crew members assigned to trains operated over the lines listed in Appendix 1 in those months."

Response

Applicants object to this document request as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

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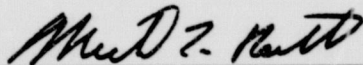
January 29, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 20th day of February, 1996, I caused a copy of the foregoing document to be served by hand on Richard A. Allen, counsel for The Texas Mexican Railway, at Zuckert, Scoutt & Rasenberger, 888 Seventeenth Street, N.W. Suite 600, Washington, D.C. 20006-3939, and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

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

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



Michael L. Rosenthal

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Item No. _____

Page Count 26

Feb 14 1996

BEFORE THE
CE TRANSPORTATION BOARD

Finance Docket No. 32760



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5 Part of
Public Record

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

APPLICANTS' RESPONSES TO WISCONSIN POWER'S AND
WISCONSIN PUBLIC SERVICE'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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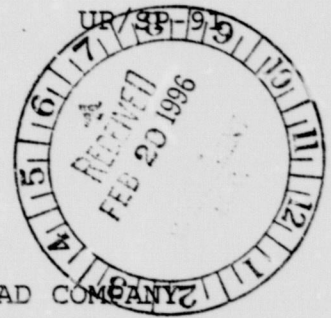
Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

February 20, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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



APPLICANTS' RESPONSES TO WISCONSIN POWER'S AND
WISCONSIN PUBLIC SERVICE'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW,
collectively, "Applicants," hereby respond to Wisconsin
Power's and Wisconsin Public Service's First Set of Inter-
rogatories and Requests for Production of Documents.^{1/}

GENERAL RESPONSES

The following general responses are made with
respect to all of the interrogatories and document requests.

1. Applicants have conducted a reasonable search
for documents responsive to the interrogatories and document
requests. Except as objections are noted herein,^{2/} all

^{1/} In these responses, Applicants use acronyms as they have
defined them in the application. However, for purposes of
interpreting the requests, Applicants will attempt to observe
Wisconsin Power and Wisconsin Public Service's definitions
where they differ from Applicants' (for example, Wisconsin
Power and Wisconsin Public Service's definitions of "UP" and
"SP," unlike Applicants', include UPC and SPR, respectively).

^{2/} Thus, any response that states that responsive documents
are being produced is subject to the General Objections, so
(continued...)

responsive documents have been or shortly will be made available for inspection and copying in Applicants' document depository, which is located at the offices of Covington & Burling in Washington, D.C. Applicants will be pleased to assist Wisconsin Power and Wisconsin Public Service to locate particular responsive documents to the extent that the index to the depository does not suffice for this purpose. Copies of documents will be supplied upon payment of duplicating costs (including, in the case of computer tapes, costs for programming, tapes and processing time).

2. Production of documents or information does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any objection stated herein.

3. Certain of the documents to be produced contain sensitive shipper-specific and other confidential information. Applicants are producing these documents subject to the protective order that has been entered in this proceeding.

4. In line with past practice in cases of this nature, Applicants have not secured verifications for the answers to interrogatories herein. Applicants are prepared to discuss the matter with Wisconsin Power and Wisconsin Public

^{2/}(...continued)

that, for example, any documents subject to attorney-client privilege (General Objection No. 1) or the work product doctrine (General Objection No. 2) are not being produced.

Service if this is of concern with respect to any particular answer.

GENERAL OBJECTIONS

The following objections are made with respect to all of the interrogatories and document requests. Any additional specific objections are stated at the beginning of the response to each interrogatory or document request.

1. Applicants object to production of, and are not producing, documents or information subject to the attorney-client privilege.

2. Applicants object to production of, and are not producing, documents or information subject to the work product doctrine.

3. Applicants object to production of, and are not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

4. Applicants object to production of public documents that are readily available, including but not limited to documents on public file at the Board or the Securities and Exchange Commission or clippings from newspapers or other public media.

5. Applicants object to the production of, and are not producing, draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such

documents have been treated by all parties as protected from production.

6. Applicants object to providing information or documents that are as readily obtainable by the requesting parties from their own files.

7. Applicants object to the extent that the interrogatories and document requests seek highly confidential or sensitive commercial information (including inter alia, contracts containing confidentiality clauses prohibiting disclosure of their terms) that is of insufficient relevance to warrant production even under a protective order.

8. Applicants object to the definitions of "relating to" and "related to" as unduly vague.

9. Applicants object to Instructions Nos. 2, 3 and 4 and the definition of "identify" when used with reference to documents to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

10. Applicants object to Instructions Nos. 2, 3 and 4 and the definition of "identify" when used with reference to documents as unduly burdensome.

11. Applicants object to the interrogatories and document requests to the extent that they call for the preparation of special studies not already in existence.

12. Applicants object to the interrogatories and document requests as overbroad and unduly burdensome to the

extent that they seek information or documents for periods prior to January 1, 1993.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Interrogatory No. 1

"Identify the members of the 'Transportation Plan' team, as introduced on pages 16-17 of Witnesses King and Ongerth's Verified Statement."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

See Documents Nos. C37-400001 to 14 in Applicants' document depository.

Interrogatory No. 2

"Describe any plans, evaluations, studies, analyses or reports performed or written by the 'Transportation Plan' team with respect to post-merger unit train coal traffic flow on the UP mainline across Nebraska and Iowa to the Chicago and Wisconsin areas. For purposes of this Interrogatory and all further interrogatories and document requests, 'UP mainline' refers to the UP east-west line which runs through Cheyenne, Wyoming; North Platte, Gibbon and Fremont, Nebraska; and Council Bluffs, Iowa; and thence, via Boone and Clinton, Iowa, to the Chicago and Wisconsin areas."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

No such plans, evaluations, studies, analyses or reports were performed or written, except that the MultiRail model described in the Operating Plan included schedules for such unit trains. See Documents Nos. N02-201273 to 494 in Applicants' document depository.

Interrogatory No. 3

"Identify all documents relating to your responses to Interrogatory Nos. 1 and 2."

Response

Subject to the General Objections stated above, Applicants respond as follows:

See Responses to Interrogatories Nos. 1 and 2.

Interrogatory No. 4

"State whether, in planning for post-merger unit train coal traffic flow, Applicants considered, analyzed, addressed or evaluated (i) post-merger increased congestion on the UP mainline across Nebraska and Iowa to the Chicago and Wisconsin areas; or (ii) the effect of the loss of competitive rail service by the SP for western coal moving to the Chicago and Wisconsin areas."

Response

Subject to the General Objections stated above, Applicants respond as follows:

(i) At the King/Ongerth deposition, Applicants stipulated that their Operating Plan, in keeping with Board regulations, is not intended or designed to address post-merger increases in traffic unrelated to the merger or the steps being taken to handle such increases. As Mr. King testified, Applicants do not believe that the minor increases in traffic on the UP mainline across Nebraska and Iowa resulting from the UP/SP merger will cause increased congestion. In addition, Applicants' recent settlement with IC will give UP/SP a preferable alternative route for inter-modal and automotive traffic to and from Chicago over the IC

line between Chicago and Joliet in connection with trackage rights over BN/Santa Fe between Joliet and Kansas City.

(ii) Applicants concluded that there will be no such loss of competition for coal transportation as a result of the UP/SP merger. See Verified Statement of Richard G. Sharp.

Interrogatory No. 5

"Identify all documents relating to your response to Interrogatory No. 4."

Response

Subject to the General Objections stated above, Applicants respond as follows:

See Response to Interrogatory No. 4. There are no other responsive documents.

Interrogatory No. 6

"With respect to post-merger unit train coal traffic flow on the UP mainline across Nebraska and Iowa to the Chicago and Wisconsin areas, identify the basis for Witnesses King and Ongerth's statement on page 59-60 of their Verified Statement that 'we expect the UP/SP consolidation to improve the reliability of rail service compared to the service experienced by UP or SP shippers today. Our goal is to meet shippers' demands for predictability and time-definite delivery . . .'"

Response

Subject to the General Objections stated above, Applicants respond as follows:

This subject was addressed by Mr. King at his deposition.

Interrogatory No. 7

"Describe in detail any plans by UP or SP to make improvements or modifications to any of the physical facilities used for the interchange of unit train or trainload coal traffic between UP or SP and Wisconsin Central Ltd., in the vicinity of Chicago."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

No such plans have been developed.

Interrogatory No. 8

"Identify all documents relating to your response to Interrogatory No. 7."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

There are no responsive documents.

Interrogatory No. 9

"Describe in detail any forecasts made or relied upon by Witnesses King or Ongerth in the preparation of their Verified Statement and/or Operating Plan, concerning the volumes of coal expected to be transported over the UP mainline to Chicago following consummation of the proposed merger. In answering this Interrogatory, please describe also the extent to which consideration was given to plans by rail carriers other than UP or SP to make improvements or modifications to their lines serving Chicago, and the impact of such improvements or modifications on forecast traffic flows."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

Please refer to the stipulation described in the Response to Interrogatory No. 4. Such forecasts and plans were not made, relied on, or considered.

Interrogatory No. 10

"Identify all documents relating to your response to Interrogatory No. 9."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

There are no responsive documents.

Interrogatory No. 11

"At page 35 of their Verified Statement, Witnesses King and Ongerth state: 'All manifest traffic between Southern California and Chicago or the Upper Midwest will be shifted to UP's Central Corridor line via Ogden, with its greater capacity and efficient North Platte hump yard.' With regard to this statement, please:

- (a) describe the amount and type of manifest traffic, in number of trains per day, that is expected to be shifted;
- (b) describe the scheduling priority(ies) that such trains will have; and
- (c) describe in detail the effect that the presence of such trains is expected to have on schedules and transit times for unit train or trainload coal traffic moving on the UP mainline to Chicago."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

- (a) Applicants are unable to respond to this question in terms of trains per day, because entire trains

will not be shifted. Instead, UP/SP will shift to the UP line the modest SP manifest traffic flows between Chicago and Southern California and the eastbound flow from Southern California to Kansas City.

(b) Manifest trains generally carry the same priority as unit coal trains.

(c) Schedules and transit times for unit or trainload coal traffic should be more reliable because several expedited intermodal and automotive trains with higher priorities will be added to the SP route.

Interrogatory No. 12

"Identify all documents relating to your response to Interrogatory No. 11."

Response

Subject to the General Objections stated above, Applicants respond as follows:

All documents relating to this response are located in Applicants' document depository. Schedules for post-merger intermodal, doublestack, automotive and manifest trains may be found in Documents Nos. N02-202428 to 880, and schedules for unit coal trains may be found in Documents Nos. N02-201273 to 494. Post-merger train counts by direction and track segment may be found in Documents Nos. N02-201837 to 909.

Interrogatory No. 13

"At page 58 of their Verified Statement, Witnesses King and Ongerth state: 'The KP route will also be available as a relief route for UP's mainline via North Platte when it

experiences congestion or heavy maintenance, . . . ' With regard to this statement, please:

- (a) describe in detail the frequency with which UP and SP expect that unit train or trainload coal traffic will be diverted to the KP route, including an estimate of the number of trains each year;
- (b) describe the procedures that will be employed to determine when and which traffic will be diverted to the KP route, including any priorities that will be assigned to given traffic or type of service; and
- (c) describe the difference in transit time (expressed in hours) that a unit train or trainload coal shipment originating at Thunder Junction, Wyoming and normally routed over the UP mainline to Chicago would experience if diverted to the KP route."

Response

Subject to the General Objections stated above, Applicants respond as follows:

(a) No estimate has been made because this route will be used as a relief route only on an exception basis.

(b) Diversions will occur only during unusual operating conditions. Priorities will be determined based on the customer requirements associated with each train during such unusual conditions and cannot be determined in advance.

(c) Applicants do not expect to use the KP route for such shipments.

Interrogatory No. 14

"Identify all documents relating to your response to Interrogatory No. 13."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

There are no responsive documents.

Interrogatory No. 15

"Describe in detail the effect that the process of pre-blocking trains at North Platte, as described on page 184 of the Verified Statement of Witnesses King and Ongerth, will have on scheduling and/or transit times of unit train or trainload coal traffic transported over the UP mainline through North Platte to Chicago."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

As shown in Attachment 13-4 to the Operating Plan, the UP/SP merger will reduce the number of cars switched each day at North Platte by 262 cars per day, which should improve operations in that busy terminal for all trains and reduce delays caused by manifest trains awaiting classification.

Interrogatory No. 16

"Identify all documents relating to your response to Interrogatory No. 15."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

There are no responsive documents.

Interrogatory No. 17

"Identify the expected post-merger rail route and transit time (in both loaded and empty directions) for coal

traffic moving from Thunder Junction, Wyoming for ultimate delivery:

- (a) to WP&L's generating facilities known as Columbia Generating Station (Portage, Wisconsin) and Edgewater Generating Station (Sheboygan, Wisconsin); and
- (b) to WPSC's generating facilities known as Pulliam Generating Station (Green Bay, Wisconsin) and Weston Generating Station (Wausau, Wisconsin)."

Response

Subject to the General Objections stated above, Applicants respond as follows:

Post-merger rail routes will, as always, depend on shipper routing instructions. For example, it appears that in 1994 alone, coal shipments from Thunder Junction, WY, to the Weston Generating Station at Wausau, WI, were made over at least four different routes. Accordingly, the following information is provided on the understanding that the shipper and involved railroads may elect to use routes different from those discussed here:

(a) Possible post-merger routes to Portage, WI:
UP/SP via North Platte to CP at either Bryn Mawr, IL, or St. Paul. Rail transit time between Bill, WY, and Bryn Mawr, IL estimated at 52 hours loaded, 51 hours empty.

Possible post-merger route to Sheboygan: UP/SP direct via North Platte and Proviso, IL. Rail transit time between Bill, WY, and Sheboygan estimated at 81 hours loaded, 80 hours empty.

(b) Possible post-merger route to Green Bay, WI: UP/SP via North Platte to WC at Chicago. Rail transit time between Bill, WY, and Chicago estimated at 52 hours loaded, 51 hours empty.

Possible post-merger route to Wausau, WI: UP/SP via North Platte to WC at Proviso or Minneapolis or to CP at Bryn Mawr or St. Paul. Rail transit time between Bill, WY and St. Paul via Sioux City, IA, estimated at 50 hours loaded, 49 hours empty.

Interrogatory No. 18

"Identify the expected post-merger rail route and transit time (in both loaded and empty directions) for coal traffic moving from either Acco, Utah or Co-op, Utah for ultimate delivery to WP&L's generating facilities known as Rock River Generating Station (Beloit, Wisconsin), Nelson Dewey Generating Station (Cassville, Wisconsin), and Edgewater Generating Station (Sheboygan, Wisconsin)."

Response

Subject to the General Objections stated above, Applicants respond as follows:

See the opening paragraph of the Response to Interrogatory No. 17. Applicants have not developed transit times for such coal movements. Potential post-merger routes include the following:

To Rock River Generating Station: UP/SP via Grand Junction, Denver, Cheyenne, and North Platte to CP at Clinton, IA.

To Nelson Dewey Generating Station: UP/SP via Grand Junction, Denver, Cheyenne and North Platte to CCP at Council

Bluffs, IA, for movement to transloading facility at Dubuque, IA.

To Edgewater Generating Station: UP/SP via Grand Junction, Denver, Cheyenne, North Platte and Proviso to Sheboygan.

Interrogatory No. 19

"Describe any operational constraints that inhibit or prohibit Applicants' efficient provision of unit train service for both WP&L's and WPSC's coal traffic from either PRB or Colorado and Utah origins for ultimate delivery to each generating facility identified in Interrogatory Nos. 17 and 18."

Response

Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

In recent months UP has acknowledged significant service problems, some of which have affected Wisconsin Power and Wisconsin Public Service's coal traffic, and it has described efforts it is making to address these problems. In addition, and independently of the proposed merger, UP is taking aggressive steps to increase capacity throughout its coal-hauling network. Major increases in capacity, including double- and triple-tracking, have been implemented on the

Joint Line in Wyoming, and additional expansions are planned. With significant new capacity on the Joint Line, UP and BN/Santa Fe are now observing delays resulting from limited loading capacity and limited track capacity at the mines in the Basin, and the two railroads are jointly studying those constraints. UP is continuing to add capacity on its lines between North Platte, NE, and Shawnee Junction, WY, as well as adding additional track between North Platte and Gibbon, NE. UP has also recently begun restoring a second main track that was removed several years ago by CNW in Western Iowa.

SP faces significant operational constraints affecting its coal routes from Utah and Colorado to the Upper Midwest. SP's route between Colorado and the Upper Midwest is circuitous and expensive to operate. Its route has jointed rail which will need to be replaced. It suffers from congestion approaching and in Kansas City. These constraints persist due to limited capital, as described in the Verified Statements of Messrs. Gray and Yarberry. The UP/SP merger will address these constraints, which otherwise are unlikely to be addressed on a timely basis, if at all. Notwithstanding these constraints, SP is building a new connection between its lines and BN/Santa Fe at Topeka, which will relieve some of the congestion on the line jointly used by UP and SP between Kansas City and Topeka.

Interrogatory No. 20

"Describe any analyses, discussions or evaluations that have been undertaken by Applicants (either together or singly) concerning ways in which the operational constraints described in Interrogatory No. 19 could be eliminated or ameliorated either before or after the proposed merger."

Response

Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

See Response to Interrogatory No. 19. In large measure, the application represents a response to the SP constraints.

Document Request No. 1

"Produce all documents identified in response to Interrogatory No. 3."

Response

Subject to the General Objections stated above, Applicants respond as follows:

See Responses to Interrogatories Nos. 1 and 2.

Document Request No. 2

"Produce all documents identified in response to Interrogatory No. 5."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

See Response to Interrogatory No. 4.

Document Request No. 3

"Produce all documents which supported the quoted statement in Interrogatory No. 6 and all documents which specifically relate to traffic on the UP mainline across Nebraska and Iowa to the Chicago and Wisconsin areas."

Response

Applicants object to this document request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

See Response to Interrogatory No. 6 and the documents referenced in the Response to Interrogatory No. 12.

Document Request No. 4

"Produce all documents identified in response to Interrogatory No. 8."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

No documents were identified in response to
Interrogatory No. 8.

Document Request No. 5

"Produce all documents identified in response to Interrogatory No. 10."

Response

Subject to the General Objections stated above, Applicants respond as follows:

No documents were identified in response to Interrogatory No. 10.

Document Request No. 6

"Produce all documents identified in response to Interrogatory No. 12."

Response

Subject to the General Objections stated above, Applicants respond as follows:

See Response to Interrogatory No. 12.

Document Request No. 7

"Produce all documents identified in response to Interrogatory No. 14."

Response

Subject to the General Objections stated above, Applicants respond as follows:

No documents were identified in response to Interrogatory No. 14.

Document Request No. 8

"Produce all documents identified in response to Interrogatory No. 16."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

No documents were identified in response to
Interrogatory No. 16.

Document Request No. 9

"Produce all documents which support or relate to
the response given to Interrogatory No. 17."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

All such documents, including schedules for
unit coal trains in Document Nos. N02-201273 to 494, are in
Applicants' document depository.

Document Request No. 10

"Produce all documents which support or relate to
the response given to Interrogatory No. 18."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

See Response to Document Request No. 9.

Document Request No. 11

"Produce all documents which support or relate to
the response to Interrogatory No. 19."

Response

See objections to Interrogatory No. 19. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

The entire application and numerous supporting workpapers are responsive.

Document Request No. 12

"Produce all documents which support or relate to the response given to Interrogatory No. 20."

Response

See objections to Interrogatory No. 20. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

See Response to Document Request No. 11.

Document Request No. 13

"Produce all documents prepared for or in the possession or control of Applicants that relate to potential post-merger changes in:

- (a) rail transportation service to WP&L and to WPSC; or
- (b) the revenues or rates received by Applicants for such service; or
- (c) the amount of existing or potential inter- or intra-modal competition for participation in such service,

that might result from the merger and other transactions for which Applicants seek approval in this proceeding."

Response

Applicants object to this document request as unduly burdensome. Without waiving this objection, and subject to

the General Objections stated above, Applicants respond as follows:

(a) See Response to Document Request No. 9.

No other responsive, nonprivileged documents have been located.

(b) - (c) No responsive documents have been located.

Document Request No. 14

"Produce all documents prepared for or in the possession or control of Applicants that relate to the possible effect of the merger and other transactions, for which Applicants seek approval in this proceeding, on the ability of carriers other than Applicants to participate in the movement of coal from coal mines in the PRB or coal mines in Colorado or Utah for ultimate delivery either to WP&L-owned electric generating facilities or to WPSC-owned electric generating facilities, which facilities are identified in Interrogatory Nos. 17 and 18, supra."

Response

Subject to the General Objections stated above, Applicants respond as follows:

The Settlement Agreements between Applicants and BN/Santa Fe and Utah Railway have already been produced. No other responsive nonprivileged documents have been located.

Document Request No. 15

"Produce all communications with producers or receivers of PRB coal concerning complaints related to the service provided by UP with respect to the transportation of such coal over its mainline across Nebraska and Iowa to the Chicago and Wisconsin areas from the period January 1, 1994 to present."

Response

Applicants object to this document request as unduly vague and unduly burdensome, and overbroad in that it includes

requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

See Responses to Conrail Document Request No. 21(a) and DOJ Document Request No. 14. In addition, Applicants have produced the analyses that UP recently completed of operational and service problems arising in connection with UP's acquisition of CNW. Applicants also will be producing documents from certain shipper files, pursuant to Judge Nelson's order (Tr., Jan. 26, 1996, pp. 951-52), some of which may be responsive to this request. Mr. King was available to discuss these matters further during his deposition.

Document Request No. 16

"Produce all communications with producers or receivers of Colorado and/or Utah coal concerning complaints related to the service provided by SP with respect to the transportation of such coal to the Chicago and Wisconsin areas from the period January 1, 1994 to present."

Response

Applicants object to this document request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

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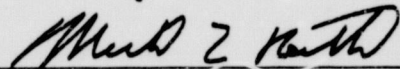
February 20, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 20th day of February, 1996, I caused a copy of the foregoing document to be served by hand on C. Michael Loftus, counsel for Wisconsin Power & Light and Wisconsin Public Service Corporation, at Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036, and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

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

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



Michael L. Rosenthal

STB

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61269

Barry R. McBee, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Dan Pearson, *Executive Director*



61269

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

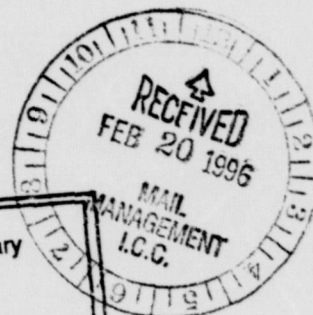
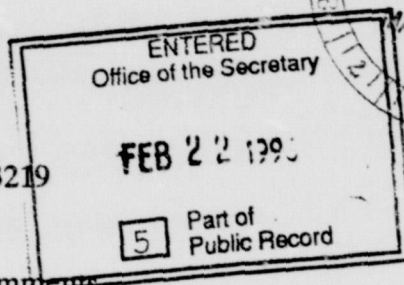
Item No. _____

February 14, 1996

Page Count 10

Feb # 129

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



Attn: Finance Docket No. 32760 - Comments

Re: Union Pacific and Southern Pacific Railroads Merger

Dear Ms. Kaiser:

The following staff of the Texas Natural Resource Conservation Commission (TNRCC) has reviewed the above-referenced project and offer the following comments:

Office of Policy and Regulatory Development:

The Office of Policy and Regulatory Development has reviewed the above-referenced project for General Conformity impacts in accordance with 40 CFR Part 93 and Chapter 101.30 of the TNRCC General Rules. General Conformity regulations require that both direct and indirect air emissions be considered when determining the applicability of general conformity. The proposed merger potentially impacts three ozone, one carbon monoxide, and one respirable particulate matter (PM10) nonattainment areas within the state of Texas. The areas have a NOx exemption in accordance with Section 182(f) of the Federal Clean Air Act, therefore, only the volatile organic compound (VOC) precursors must be considered for general conformity purposes regarding ozone. The merger also impacts one ozone maintenance area (Victoria County) within the state. A map of current Texas nonattainment areas and a copy of the state general conformity regulations are enclosed for your use.

The Houston/Galveston area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) is classified as a severe ozone nonattainment area with a level of significance for ozone precursor emissions increases of 25 tons/year. The El Paso

February 14, 1996

(El Paso County) ozone nonattainment area is classified as a serious area with a level of significance for precursor increases of 50 tons/year. The Dallas/Fort Worth (Collin, Dallas, Denton, and Tarrant Counties) area is classified as a moderate ozone nonattainment area with a level of significance for precursor increases of 100 tons/year. Victoria County is classified as an ozone maintenance area, with a level of significance of 100 tons/year.

The CO nonattainment area and the PM10 nonattainment areas are both located in El Paso County. The CO area consists of a small area within the city limits of El Paso which essentially follows Interstate 10 and the Rio Grande River. The PM10 area is contained within the city limits of El Paso. The levels of significance for both pollutants are 100 tons/year.

General Conformity regulations require that Federal actions be considered as a whole rather than a series of separate, but related, actions. For that reason, the actions which deal with changes in rail and/or intermodal activity should be combined with construction actions within each nonattainment area in order to determine the net emissions increase/decrease for conformity purposes. For example, an increase in emissions from increased rail activity in El Paso County may be offset by the retirement of a rail yard or line somewhere else in the same nonattainment area. Although conformity regulations do not require that general conformity evaluations be included within the National Environmental Policy Act (NEPA) documents, the air quality impact section of the NEPA documents is an appropriate location for general conformity reporting.

If you have any questions regarding air quality comments, please feel free to contact Mr. Buddy Henderson, Air Policy & Regulations Section, at (512) 239-1510.

Agriculture and Watershed Management Division:

The staff of the Watershed Planning and Assessments Section has no comments pertaining to any water quality effects of the project.

However, during construction, runoff of storm water can affect surface water quality. This so-called nonpoint source pollution can have an impact on water quality and aquatic life by carrying sediment and chemical contaminants into nearby streams.

These impacts can be minimized by the use of construction and post-construction water quality protection practices, and we urge you to use such practices as you undertake this project.

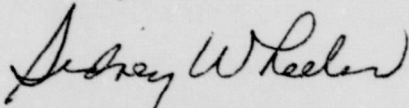
If you have any questions regarding comments on water quality, please feel free to contact Mr. Tom Remaley, Watershed Planning and Assessments Section, at (512) 239-4576.

Ms. Elaine K. Kaiser
Page 3

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Thank you for the opportunity to review this project. If I may be of further service, please call me at (512) 239-3503.

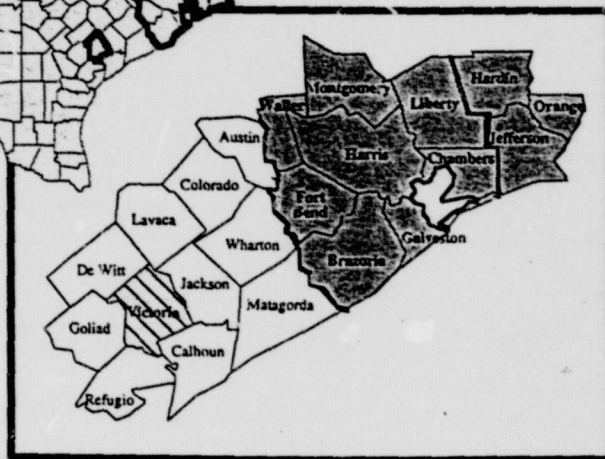
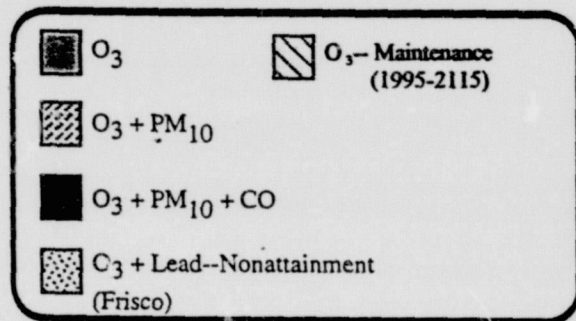
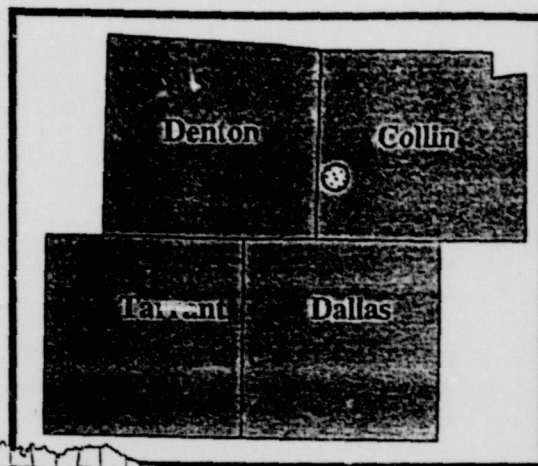
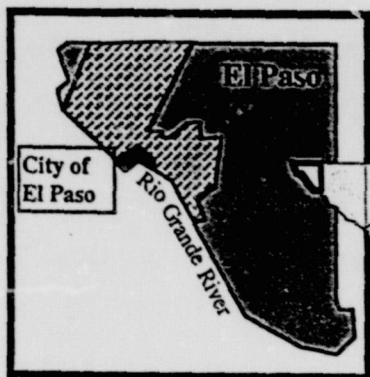
Sincerely,

A handwritten signature in cursive script, appearing to read "Sidney Wheeler".

(Ms.) Sidney Wheeler
Program Administrator
Intergovernmental Relations Division

Enclosure

Nonattainment Areas in Texas



formity determinations, and the federal conformity regulations contained in 40 CFR, Part 93 would apply only for the portion, if any, of the state's conformity provisions that is not approved by EPA.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 21, 1994.

TRD-9451206

Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Effective date: December 12, 1994

Proposal publication date: August 9, 1994

For further information, please call: (512) 239-1970

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Commission on Jail Standards

The following adopted repeals and new sections submitted by the Commission on Jail Standards will be serialized beginning in the December 6, 1994 issue of the *Texas Register*. The effective date of these adoptions is December 19, 1994.

Chapter 260. County Correctional Centers -

General

§§260.1-260.8 (repeal)

§§260.1-260.4 (new)

CCC Design, Construction and Furnishing Requirements

§§260.20-260.95 (repeal)

§§260.100-260.163 (new)

Chapter 261. Existing Construction Rules

Existing Jail Design, Construction and Furnishing Requirements

§§261.1-261.88 (repeal)

§§261.100-261.171 (new)

Existing Lockup Design, Construction and Furnishing Requirements

§§261.101-261.113, 261.115-261.183 (repeal)

§§261.200-261.266 (new)

§§261.300-261.361 (new)

Existing Low-Risk Design, Construction and Furnishing Requirements

§§261.191-261.265 (repeal)

Chapter 263. Life Safety

General

§§263.1-263.4 (repeal)

§§263.1-263.3 (new)

Design and Materials

§§263.10-263.23 (repeal)

§§263.10-263.21 (new)

Detection and Alarm Systems

§§263.30-263.33 (repeal)

§§263.30-263.33 (new)

Plans and Drills for Emergencies

§§263.40-263.44 (repeal)

§§263.40-263.42 (new)

Life Safety and Emergency Equipment

§§263.50-263.57 (repeal)

§§263.50-263.56 (new)

Records and Reports

§§263.70-263.71 (repeal)

§§263.70-263.71 (new)

Additional Information/Recommendations

§§263.80-263.83 (repeal)

Part XIII. Texas Commission on Fire Protection

The following adopted repeal, amendments and new sections submitted by the Texas Commission on Fire Protection will be serialized beginning in the December 6, 1994 issue of the *Texas Register*. The effective date of these adoptions is December 14, 1994.

Chapter 521. Fire Extinguisher Rules

§§521.6, 521.7, 521.10, 521.21 (amendments)

Chapter 541. Fire Sprinkler Rules

§§541.7, 541.13, 541.14, 541.18, 541.19, 541.20, 541.21, 541.22, 541.23 (new and amendment)

§§541.19, 541.20-541.22 (repeal)

TITLE 40. SOCIAL SERVICE AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 50. Day Activity and Health Services

The Texas Department of Human Services (DHS) adopts the repeal of §§50. 901-50.904, 50.1901-50.1903, 50.2901, 50.2903-50.2910, 50.3901-50.3915, 50. 4901, 50.4902, and 50.5901; and adopts new §§50.1-50.5, 50.101-50.105, 50. 201, 50.202, 50.301, 50.302, 50.401-50.410, 50.501, 50.502, 50.601, 50.701-50. 704, and 50.801-50.803 in its day activities and health services chapter. New §§50.2, 50.101, 50.301, 50.302, 50.403, and 50.703 are adopted with changes to the proposed text as published in the September 16, 1994, issue of the *Texas Register* (19 TexReg 7237). The repeal of §§50.901-50.904, 50. 1901-50.1903, 50.2901, 50.2903-50.2910, 50.3901-50.3915, 50.4901, 50.4902, and 50.4901; and new §§50.1, 50.3-50.5, 50.102-50.105, 50.201, 50.202, 50.401, 50.402, 50.404-50.410, 50.501, 50.502, 50.601, 50.701-50.703, and 50.801-50. 803 are adopted without changes to the proposed text and will not be republished.

The justification for the repeals and new sections is to incorporate some day activity and health services rules into Chapter 98, Adult Day Care Facilities; create new rules to clarify

liance with subsection (j) of this section before the determination of conformity is made.

(2) Procedures for Conformity Determination of General Federal Actions.

(1) The analyses required under this rule shall be based on the latest planning assumptions.

(A) All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip rate per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) shall be derived from estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or the agency authorized under state law to make such estimates.

(B) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, shall be approved by the MPO or other agency authorized to make such estimates for the area.

(2) The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

(A) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA shall be used in the preparation or revision of implementation plans in the state or area. All be used for the conformity analysis as specified below:

(i) the EPA must have published in the *Federal Register* a notice of availability of any new motor vehicle emissions model; and

(ii) a grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period, or no more than three years after the *Federal Register* notice of availability of the latest emission model, may

continue to use the previous version of the model specified by EPA, if a final determination as to conformity is made within three years of such analysis.

(B) For nonmotor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" shall be used for the conformity analysis unless more accurate emissions data are available, such as actual stack test data for stationary sources which are part of the conformity analysis.

(3) The air quality modeling analyses required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication number 450/2-78-027R), unless:

(A) the guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

(B) written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(4) The analyses required under this rule shall be based on the total of direct and indirect emissions from the action and shall reflect emission scenarios that are expected to occur under each of the following cases:

(A) the FCAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(B) the year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and

(C) any year for which the applicable implementation plan specifies an emissions budget.

(j) Mitigation of air quality impacts.

(1) Any measures that are intended to mitigate air quality impacts shall be identified (including the identification and quantification of all emissions reductions claimed); and the process for implementation (including any necessary funding of such measures and tracking of such emis-

sions reductions), and enforcement of such measures shall be described, including an implementation schedule containing explicit timelines for implementation.

(2) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination shall obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with paragraph (1) of this subsection.

(3) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of such commitments.

(4) In instances where the federal agency is licensing, permitting, or otherwise approving the action of another governmental or private entity, approval by the federal agency shall be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in paragraph (1) of this subsection.

(5) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with subsections (h) and (i) of this section and this paragraph. Any proposed change in the mitigation measures is subject to the reporting requirements of subsection (e) of this section and the public participation requirements of subsection (f) of this section.

(6) Written commitments to mitigation measures shall be obtained prior to positive conformity determination and such commitments must be fulfilled.

(7) After this implementation plan revision is approved by EPA, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(k) Savings Provisions. The federal conformity rules under 40 CFR, Part 51, Subpart W establish the conformity criteria and procedures necessary to meet the requirements of the FCAA §176(c) until such time as this conformity SIP revision is approved by EPA. Following EPA approval of this SIP revision (or a portion thereof), the approved (or approved portion of the) state criteria and procedures would govern con-

1, 1994 in Beaumont, and on September 2, 1994 in Houston. However, because no one signed the roster to speak in Beaumont or Houston, the court reporter did not prepare an official transcript for those two hearings.

The El Paso City/County Health and Environmental District (EPCCHED) generally agreed with the rules and SIP revision as proposed.

The EPA generally supported the rule and SIP revision; however, they suggested several editorial changes to both the rule and the SIP narrative. In the rule, EPA suggested that the word "or" be replaced with "and/or" in §101.30(b)(15)(A), and in §101.30(h)(2). The EPA suggested that the phrase "as indicated in 40 CFR, §93.153(c)(3)" be deleted from §101.30(c)(3)(C) because the TNRC is not adopting the EPA rules by reference. The EPA suggested that the phrase "state or federal" be changed to "state and federal" in §101.30(c)(12), and the phrase "applicable SIP or maintenance" be changed to "applicable SIP, attainment or maintenance" in §101.30(h)(1)(A). The EPA suggested that the word "determined" be changed to "determines" in §101.30(h)(1)(D)(ii). The EPA also suggested editorial changes to the preamble narrative of the rule. In the SIP narrative, EPA suggested that any reference to "nonattainment areas" also include a reference to "maintenance areas" throughout the SIP. In the SIP Section b., concerning Background Information, EPA suggested that the phrase "or are regionally significant" be added after the word "levels" in the first paragraph, and the word "similar" be replaced with the phrase "nonfederal as well as federal" in the second paragraph. Finally, EPA suggested that the discussion concerning "de minimis level" in Section b. be changed to a footnote to improve clarity, and the phrase "state agencies" be replaced with "nonfederal entities."

Although none of the editorial changes significantly affected the requirements or meaning of the rule language, the TNRC staff made the editorial changes. The TNRC staff also made the editorial changes to the SIP narrative as suggested.

The six other commenters: the American Lung Association of Fort Worth (ALA-FW), Flo Stahly of the Coppell City Council (Coppell), Jean Murph of the Coppell Citizens' Advocate Newspaper (Advocate), the Texas Citizens' Lobby (Citizens' Lobby), the Galveston-Houston Association for Smog Prevention (GHASP), and one individual suggested revisions to the general conformity rule and to the process of determining general conformity.

GHASP comments included over four typewritten pages of suggested changes to the rule, all of which would make the state rule more stringent than the federal rule. The GHASP suggestions included extending the federal *de minimis* level down to the major modification level for each nonattainment area; requiring a general conformity analysis on federal actions which occurred before March 15, 1994; changing definitions specified in the federal rule; changing the situations specifically listed in the federal rule for which general conformity requirements do not apply or are presumed to conform; changing

the federal definition of "a regionally significant action," requiring the TNRC to perform the conformity analysis rather than the appropriate federal agency; changing the frequency of general conformity determinations; changing the federal criteria for determining general conformity; and changing the mitigation requirements to require an equal or greater emissions reduction for the proposed federal action.

The new rule is essentially an adoption of the federal general conformity rules for the State of Texas. Section 93.151 of the federal rule allows the state, or the state's designated agency (TNRC), to adopt a rule which is more stringent than the federal rule, if the state also applies the rule to all nonfederal (state and local agency) actions within the nonattainment and maintenance areas. For example, if the state wished to make the *de minimis* level lower than the federal level, then the entire rule would have to apply to all state and local agency actions. The EPA set the *de minimis* level in an effort to limit time and resources invested by agencies in making determinations for thousands of federal actions annually, and to serve as a cutoff point to focus on those federal actions which are truly significant. A lower *de minimis* level would then add thousands of federal, state, and local actions annually to the general conformity determination process. The TNRC chose not to pursue a more stringent general conformity rule, although the TNRC reserves the right to increase the stringency with future rulemaking.

EPCCHED expressed a concern that the federal portion of the volatile organic compound (VOC) emissions have not been regulated or controlled as strictly as they should have been.

The general conformity rule was a statutory obligation under the FCAA, §176(c)(4), which authorized EPA and the states to regulate federal activities to a greater extent than they regulate private activities. All activities, private, state, and federal, must comply with specific SIP requirements and obtain preconstruction permits, if applicable. However, in accordance with the FCAA, §176, only federal agencies are required, as an additional matter, to determine whether an action will conform to the SIP.

One individual from the ALA-FW expressed a personal religious conviction against being required to take an oath before being allowed to testify at a public hearing. The individual also stated that the hearings are too restrictive because questions voiced during the hearing are not answered at the hearing and included as part of the public record.

Attendees who wish to present oral comments are not required to take an oath. They are asked by the court reporter to stand and be sworn, but anyone who chooses not to be sworn may present comments nonetheless. As stated in public hearing notices and in preambles to proposed rules, "Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, a TNRC staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer

questions before and after each hearing." Any questions from the audience during the open discussions before or after a hearing receive immediate responses from the staff. Questions rarely occur during the formal hearing, but, when they do, they receive a written response later in the analysis of testimony which becomes part of the official hearing record and is included in the preamble to the adopted rules and SIP published in the Texas Register.

ALA-FW questioned whether a federal project, such as the Superconducting Supercollider, which had been cancelled before the general conformity rules were in effect, would be required to comply with general conformity in the event of a revival of the project.

If the project was located in a nonattainment area and was resurrected in such a manner that the original National Environmental Policy Act (NEPA) analysis was still valid, and that NEPA analysis had been completed by January 31, 1994, then the project would not have to go through general conformity. If the project was modified sufficiently upon resurrection, however, that the NEPA analysis was revised, then the general conformity rule would apply. In the specific case of the Ellis County Superconducting Supercollider, the project was located in an attainment area for all criteria pollutants; therefore, general conformity would not apply at this time.

ALA-FW questioned whether a proposed airport in Ellis County would contribute to the nonattainment status of the Dallas/Fort Worth (DFW) ozone nonattainment area. ALA-FW also questioned why Ellis County was not included as part of the DFW ozone nonattainment area. Finally, ALA-FW questioned why Ellis County is not designated nonattainment for SO₂ when it is apparently in exceedance of the SO₂ standard.

The inclusion of certain outlying counties, such as Ellis and Johnson, was seriously considered when the current four-county nonattainment area designation was made by EPA in 1991. However, the emphasis of this proposed general conformity rule and SIP revision is not to determine how many counties should be included in the DFW ozone nonattainment area, but rather to implement a methodology whereby federal actions are reviewed for SIP compliance in nonattainment or maintenance areas. Although the outlying counties were not specifically included in the control strategy for DFW ozone attainment, the emissions from these outlying counties were included as part of the airshed modeled by the Urban Airshed Model (UAM). The UAM results demonstrate that even with the uncontrolled emissions from the outlying counties, the four-county nonattainment area will reach attainment with the current four-county control strategy. However, during the maintenance period of 20 years after redesignation to attainment, the emissions from the outlying counties will be periodically reviewed and considered as possible targets for reduction as the situation warrants. The current federal rule only applies to nonattainment or maintenance areas; however, EPA has expressed an intent to extend the general conformity rule to certain attain-

presentation of required basic and advanced training modules for clients and employees.

- (d) Facility administrators are responsible for ensuring that clients and employees receive the training.

§405.295. Exhibits. The following exhibits are referenced in this subchapter:

(1) Exhibit A-Recommendations for Basic Evaluation of HIV-Infected Patients: CD4 Cell Counts, Use of Antivirals, and Prevention of Opportunistic Infections;

(2) Exhibit B-HIV/AIDS Prevention Program;

(3) Exhibit C-Management of Accidental Exposure to Blood/Body Substances-TXMHMR Protocol for Serologic Testing and Follow-up;

(4) Exhibit D-Public Health Services Statement on Management of Occupational Exposure to Human Immunodeficiency Virus, including Considerations Regarding Zidovudine Postexposure Use; and

(5) Exhibit E-TDMHMR HIV/AIDS Workplace and Confidentiality Policy.

§405.296. References. The following laws and rules are referred to in this subchapter:

(1) Texas Communicable Disease Prevention and Control Act, Texas Health and Safety Code, Chapters 61 and 85;

(2) Rehabilitation Act of 1973, §504;

(3) The Americans with Disabilities Act of 1990;

(4) Chapter 402, Subchapter C of this chapter (relating to Transfer to Ver-non Maximum Security Unit);

(5) Chapter 404, Subchapter E of this chapter (relating to Rights of Patients Receiving Mental Health Services);

(6) Chapter 405, Subchapter F of this chapter (relating to Restraint and Seclusion in Mental Health Facilities);

(7) Chapter 405, Subchapter H of this chapter (relating to Behavior Management-Facilities Serving Persons with Mental Retardation); and

(8) Chapter 405, Subchapter Y of this chapter (relating to Client Rights-Mental Retardation Facilities).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 22, 1994.

TRD-9451259

Ann K. Utley
Chairman, Texas Board of
Mental Health and
Mental Retardation
Texas Department of
Mental Health and
Mental Retardation

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For further information, please call: (512) 206-4516

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 101. General Rules

• 30 TAC §101.30

The Texas Natural Resource Conservation Commission (TNRCC) adopts new §101.30 and revision to the State Implementation Plan (SIP), concerning the criteria and procedures for determining general conformity with the SIP in nonattainment and maintenance areas, with changes to the proposed text as published in the August 9, 1994, issue of the *Texas Register* (19 TexReg 6197). The new §101.30 is adopted as a revision to the SIP for the control of criteria pollutants (ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), particulate matter (PM₁₀), and lead) in the nonattainment and maintenance areas. Changes to the rule include several minor editorial changes suggested by the United States Environmental Protection Agency (EPA) in §§101.30(b)(15)(A), 101.30(c)(3)(C), 101.30(c)(12), 101.30(h)(1)(A), 101.30(h)(1)(D)(ii), and 101.30(h)(2). None of the editorial changes affected the requirements or meaning of the rule language. Changes to the SIP include adding the phrase "maintenance area" to any reference to "nonattainment area" regarding the applicability of the rule, adding the phrase "or are regionally significant" and replacing the word "similar" with the phrase "nonfederal as well as federal" in Section b. (Background Information), and placing the discussion concerning *de minimis* level in Section b. (Background Information) at the bottom of the page as a footnote. These revisions were required by the Federal Clean Air Act (FCAA) Amendments of 1990 and the subsequent November 30, 1993 general conformity rulemaking by EPA. The EPA required that a SIP revision and an enforceable rule be adopted concerning general conformity no later than November 30, 1994.

This new rule is necessary to implement procedures for determining the general conformity of federal actions in nonattainment and maintenance areas with the SIP in force in those areas. The rule is necessary to allow EPA to make a finding that the general con-

formity SIP meets the requirements of the FCAA, and the final EPA rule on general conformity in the Code of Federal Regulations (CFR), 40 CFR, Part 51. The new rule is essentially an adoption of the federal general conformity rule for the State of Texas. The federal rule allows the state, or the state's designated agency (TNRCC), to adopt a rule which is more stringent than the federal rule, if the state also applies the rule to all nonfederal actions within the nonattainment and maintenance areas. The TNRCC chose not to pursue a more stringent general conformity rule, although the TNRCC reserves the right to increase the stringency with future rulemaking.

Under the provisions of general conformity, any federal agency that is considering an action in a nonattainment or maintenance area which will cause the emissions of a criteria pollutant (or a precursor of that criteria pollutant) to increase above the *de minimis* level, or be regionally significant, will be required to mitigate that increase back to zero. The federal agency will also have to document the conformity analysis to demonstrate to the TNRCC that the action conforms to the applicable SIP for the nonattainment or maintenance area. In cases where the federal agency does not have, or cannot purchase, sufficient emissions reduction credits to mitigate the proposed increase, the federal agency may petition the state to amend the applicable SIP to make the reductions elsewhere in the nonattainment area. If the state does not agree to amend the SIP and the federal agency cannot find mitigation reductions elsewhere, then the action may be denied. There are many federal actions which have been determined to be exempt from these rules. Federal agencies must make their conformity determinations available for public review and comment.

With the exception of Federal Highways Administration and Federal Transit Authority transportation actions, this rule applies to all federal agencies in nonattainment and maintenance areas that either directly fund, or have approval control, for actions within those areas. Typical agencies and actions that will be affected by this rule include the Federal Aviation Administration (FAA) with airport actions and the Department of Defense with military installation closures and realignments.

This proposed rule contains definitions specific to general conformity, the applicability of federal actions to the rule, exemptions of several federal actions from the rule, and the procedures for determining general conformity with the SIP. The procedures specify the requirements of the general conformity determinations, the analysis procedure, the reporting and public comment requirements, the frequency of conformity determinations, the criteria by which conformity is determined, and the process of emissions mitigation. The rule also contains a savings provision which specifies when a federal agency shall follow the federal rule and when a federal agency shall follow the state rule.

Public hearings were held on August 31, 1994 in El Paso and Irving, Texas. Public hearings were also scheduled on September

(ii) where the TNRCC determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is appropriate, and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on areawide modeling, or meet the requirements of paragraph (1)(E) of this subsection;

(E) for ozone or nitrogen dioxide, and for purposes of paragraphs (1)(C)(ii) and (1)(D) (ii) of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

(i) where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990, and the state makes a determination as provided in subclause (I) of this clause, or where the state makes a commitment as provided in subclause (II) of this clause. Any such determination or commitment shall be made in compliance with subsections (e) and (f) of this section

(I) The total of direct and indirect emissions from the action, or portion thereof, is determined and documented by the TNRCC to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable SIP.

(II) The total of direct and indirect emissions from the action, or portion thereof, is determined by the TNRCC to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budget specified in the applicable SIP and the TNRCC makes a written commitment to EPA which includes the following:

(-a-) a specific schedule for adoption and submittal of a revision to the applicable SIP which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

(-b-) identification of specific measures for incorporation into the applicable SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(-c-) a demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(-d-) a determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action. As a matter of TNRCC policy, a commitment will be made only if the TNRCC determines that the project sponsors and responsible federal agencies have sought all available emissions offsets and made all reasonably available modifications of the action to reduce emissions; and

(-e-) written documentation including all air quality analyses supporting the conformity determination.

(III) Where a federal agency made a conformity determination based on a state commitment under paragraph (1) (E)(i)(II) of this clause, such a state commitment is automatically deemed to call for a SIP revision by EPA under the FCAA, §110(k)(5), effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the state commits to revise the applicable SIP;

(ii) the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under §114.27 of this title, concerning Transportation Conformity, or the Transportation Conformity SIP, or 40 CFR, Part 93, Subpart A;

(iii) the action, or portion thereof, fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP, or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) where EPA has not approved a revision to the relevant SIP, attainment demonstration, or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years as described in subsection (i)(4) of this section do not increase emissions with respect to the baseline emissions; and:

(I) the baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during:

(-a-) calendar year 1990;

(-b-) the calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR, Part 81; or

(-c-) the year of the baseline inventory in the applicable PM₁₀ SIP;

(II) the baseline emissions are the total of direct and indirect emissions calculated for the future years, described in subsection (i)(4) of this section using the historic activity levels described in paragraph (1)(E)(iv)(I) of this subsection and appropriate emission factors for the future years; or

(v) where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projects that are in the applicable SIP, based on assumptions regarding per capita use that are developed or approved in accordance with subsection (i)(1) of this section.

(2) The areawide and/or local air quality modeling analyses must:

(A) meet the requirements in subsection (i) of this section; and

(B) show that the action does not:

(i) cause or contribute to any new violation of any standard in any area; or

(ii) increase the frequency or severity of any existing violation of any standard in any area.

(3) Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable SIP, unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements; and such action is otherwise in compliance with all relevant requirements of the applicable SIP.

(4) Any analyses required under this section shall be completed, and any mitigation requirements necessary for a finding of conformity shall be identified in

ral agency making the determination must obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making such determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this implementation plan revision is approved by EPA, enforceability through the applicable SIP of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

(d) **Conformity Analysis.** Any federal department, agency, or instrumentality of the federal government taking an action subject to 40 CFR, Part 51, Subpart W and this section shall make its own conformity determination consistent with the requirements of this rule. In making its conformity determination, a federal agency must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or make its own analysis in order to make its conformity determination.

(e) **Reporting Requirements.**

(1) A federal agency making a conformity determination under subsection (h) of this section shall provide to the appropriate EPA Regional Office, the TNRCC, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO, a 30-day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

(2) A federal agency shall notify the appropriate EPA Regional Office, TNRCC, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO within 30 days after making a final conformity determination under subsection (h) of this section.

(3) As a matter of policy, the state will not make any determination under subsection (h)(1)(E)(i)(I) of this section or any commitment under subsection (h)(1)(E)(i)(II) of this section, unless the federal agency provides to the TNRCC information on all projects or other actions which may affect air quality or emissions in an area to which this rule is applicable, whether such project or action is determined to be subject to this rule under subsection (c) of this section. As a matter of policy, the

emissions budget that would otherwise be available for projects of any federal agency under subsection (h) of this section shall be reduced by 50% [or other percentage as the state determines] in the case of any federal agency that does not provide to the TNRCC information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, regardless of whether such project or action is determined to be subject to this rule under subsection (c) of this section.

(f) **Public Participation and Consultation.**

(1) Upon request by any person regarding a specific federal action, a federal agency shall make available for review its draft conformity determination under subsection (h) of this section with supporting materials which describe the analytical methods, assumptions, and conclusions relied upon in making the applicability analysis and draft conformity determination.

(2) A federal agency shall make public its draft conformity determination under subsection (h) of this section by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(3) A federal agency shall document its response to all the comments received on its draft conformity determination under subsection (h) of this section and make the comments and responses available, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.

(4) A federal agency shall make public its final conformity determination under subsection (h) of this section for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within 30 days of the final conformity determination.

(g) **Frequency of Conformity Determinations.**

(1) The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported under subsection (e) of this section, unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

(2) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redetermination so long as the

emissions associated with such activities are within the scope of the final conformity determination reported under subsection (e) of this section.

(3) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in subsection (c)(1) of this section, a new conformity determination is required.

(h) **Criteria for Conformity Determination of General Federal Actions.**

(1) An action required under subsection (c) of this section to have a conformity determination for a specific pollutant, will be determined to conform to the applicable plan if, for each pollutant that exceeds the rates of subsection (c)(2) of this section, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (3) of this subsection, and meets any of the following requirements:

(A) for any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP attainment or maintenance demonstration;

(B) for ozone or NO_2 , the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a measure similarly enforceable under state and federal law that effects emission reductions so that there is no increase in emissions of that pollutant;

(C) for any criteria pollutant, except ozone and NO_2 , the total of direct and indirect emissions from the action shall meet the requirements:

(i) specified in paragraph (2) of this subsection, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) specified in paragraph (1)(E) of this subsection and, for local air quality modeling analysis, the requirement of paragraph (2) of this subsection;

(D) for CO or PM_{10} ;

(i) where the TNRCC determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on local air quality modeling analysis; or

(1) Conformity determinations federal actions related to transportation ns, programs, and projects developed, ided, or approved under Title 23 United tes Code or the Federal Transit Act (49 ited States Code, §1601 *et seq.*) shall et the procedures and criteria of §114.27 this title, regarding Transportation Com- munity, and the Transportation Conformity P, in lieu of the procedures set forth in s rule.

(2) For federal actions not cov- ed by paragraph (1) of this subsection, a nformity determination is required for ch pollutant where the total of direct and direct emissions in a nonattainment or aintenance area caused by a federal action ould equal or exceed any of the rates in bparagraphs (A) or (B) of this paragraph.

(A) For purposes of para- graph (2) of this subsection, the following tes apply in nonattainment areas (NAAs): gure 1: §101.30(c)(4)(A).

(B) For purposes of para- graph (2) of this subsection, the following tes apply in maintenance areas: gure 2: §101.30(c)(2)(B).

(3) The requirements of this rule all not apply to:

(A) actions where the total direct and indirect emissions are below e emissions levels specified in paragraph) of this subsection;

(B) the following actions hich would result in no emissions increase an increase in emissions that is clearly *de inimis*:

(i) judicial and legisla- ve proceedings;

(ii) continuing and recur- ng activities, such as permit renewals, here activities conducted will be similar in ope and operation to activities currently eing conducted;

(iii) rulemaking and pol- y development and issuance;

(iv) routine maintenance nd repair activities, including repair and aintenance of administrative sites, roads, ails, and facilities;

(v) civil and criminal en- orcement activities, such as investigations, udits, inspections, examinations, prosecu- ons, and the training of law enforcement ersonnel;

(vi) administrative actions uch as personnel actions, organizational hanges, debt management or collection, ash management, internal agency audits,

program budget proposals, and matters re- lating to the administration and collection of taxes, duties, and fees;

(vii) the routine, recurring transportation of material and personnel;

(viii) routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or person- nel are required) to perform as operational groups, or for repair or overhaul;

(ix) maintenance dredg- ing and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site;

(x) with respect to exist- ing structures, properties, facilities, and lands where future activities conducted will be similar in scope and operation to activi- ties currently being conducted at the exist- ing structures, properties, facilities, and lands, actions such as relocation of person- nel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency;

(xi) the granting of leases, licenses such as for exports and trade, per- mits, and easements where activities con- ducted will be similar in scope and operation to activities currently being con- ducted;

(xii) planning, studies, and provision of technical assistance;

(xiii) routine operation of facilities, mobile assets, and equipment;

(xiv) transfers of owner- ship, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

(xv) the designation of empowerment zones, enterprise communi- ties, or viticultural areas;

(xvi) actions by any of the federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency, or instrumentality of the United States;

(xvii) actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy;

(xviii) actions that imple- ment a foreign affairs function of the United States;

(xix) actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Re- sponse, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, titles, or real properties;

(xx) transfers of real property, including land, facilities, and re- lated personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal en- tity to another federal entity for subsequent deeding to eligible applicants;

(xxi) actions by the De- partment of the Treasury to effect fiscal policy and to exercise the borrowing author- ity of the United States;

(C) actions where the emis- sions are not reasonably foreseeable, such as the following actions:

(i) initial outer continen- tal shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level;

(ii) electric power mar- keting activities that involve the acquisition, sale, and transmission of electric energy;

(D) individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable SIP, such as pre- scribed burning actions which are consistent with a land management plan that has been found to conform to the applicable SIP. Such land management plan shall have been found to conform within the past five years.

(4) Notwithstanding the other requirements of this rule, a conformity de- termination is not required for the following federal actions (or portion thereof).

(A) the portion of an action that includes major new or modified station- ary sources that require a permit under the new source review (NSR) program (FCAA, §173) or the prevention of significant de- terioration (PSD) program (Title I, Part C of the FCAA).

(B) actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (5) of this subsection.

(C) research, investigations, studies, demonstrations, or training other than those exempted under paragraph (3)(B) of this subsection, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the state agency primarily responsible for the SIP.

(D) alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions.

(E) direct emissions from remedial and removal actions carried out under the CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the NSR/PSD permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(5) federal actions which are part of a continuing response to an emergency or disaster under paragraph (4)(B) of this subsection and which are to be taken more than six months after the commencement of the response to the emergency or disaster under paragraph (4)(B) of this subsection are exempt from the requirements of this section only if:

(A) the federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments; or

(B) for actions which are to be taken after those actions covered by paragraph (5)(A) of this subsection, the federal agency makes a new determination as provided in paragraph (5)(A) of this subsection.

(6) Notwithstanding other requirements of this rule, individual actions or classes of actions specified by individual federal agencies that have met the criteria

set forth in either paragraph (7)(A) or (7)(B) of this subsection and the procedures set forth in paragraph (8) of this subsection are presumed to conform, except as provided in paragraph (10) of this subsection.

(7) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (7)(A) or (7)(B) of this subsection:

(A) the federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) cause or contribute to any new violation of any standard in any area;

(ii) interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) increase the frequency or severity of any existing violation of any standard in any area; or

(iv) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP or purposes of:

(I) a demonstration of reasonable further progress;

(II) a demonstration of attainment; or

(III) a maintenance plan; or

(B) the federal agency shall provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (2) of this subsection, based, for example, on similar actions taken over recent years.

(8) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (7)(A) or (7)(B) of this subsection, the following procedures must also be complied with to presume that activities will conform:

(A) the federal agency shall identify through publication in the *Federal Register* its list of proposed activities that are presumed to conform and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions;

(B) the federal agency shall notify the appropriate EPA Regional Office, TNRCC, local air quality agencies and, where applicable, the Texas Department of Transportation (TxDOT) and the MPO, and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(C) the federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(D) the federal agency shall publish the final list of such activities in the *Federal Register*.

(9) Notwithstanding the other requirements of this rule, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in paragraph (2) of this subsection, but represents 10% or more of a nonattainment or maintenance area's total emissions of that pollutant, then the action is defined as a regionally significant action and the requirements of subsections (a) and (e)-(j) of this section shall apply for the federal action.

(10) Where an action, presumed to be *de minimis* under paragraph (3)(A) or (B) of this subsection, or otherwise presumed to conform under paragraph (6) of this subsection is a regionally significant action or does not in fact meet one of the criteria in paragraph (7)(A) of this section, that action shall not be considered *de minimis* or presumed to conform and the requirements of subsections (a) and (e)-(j) of this section shall apply for the federal action.

(11) The provisions of this section shall apply in all nonattainment and maintenance areas.

(12) Any measures used to affect or determine applicability of this rule, as determined under this subsection, must result in projects that are in fact *de minimis*, must result in such *de minimis* levels prior to the time the applicability determination is made, and must be state and federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed); and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the fede-

lied impacts that are higher than would really occur. As some evidence that the predicted results are probably higher than the actual concentrations, ambient monitoring results in the DFW area generally have not documented exceedances of the standards for CO or NO_x. The last recorded exceedance of the CO standard was in 1985, and was traced to unusual traffic events in the vicinity of a monitor located near downtown Dallas. There has never been a monitored exceedance of the NO_x standard in the DFW area. The CO levels in 1992 were less than one-third of the hourly standard. In addition, as part of the development of the EIS for the proposed runway expansion, the FAA conducted ambient air monitoring in the vicinity of terminal 2E. If the CO concentrations were as high as those predicted by the SCREEN model, then the CO monitors would have registered high levels due to their central location. The measured values, however, never exceeded four parts per million (ppm), while the SCREEN model predicted values greater than 35 ppm out to a distance of five kilometers. In any event, future airport actions must comply with general conformity requirements which will prevent significant increases of the precursor emissions of VOC, NO_x, and CO.

The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§101.30. Conformity of General Federal and State Actions to State Implementation Plans.

(a) Purpose.

(1) The purpose of this rule is to implement §176(c) of the Federal Clean Air Act (FCAA), as amended (42 United States Code, §7401 *et seq.*) and regulations under the Code of Federal Regulations (CFR), 40 CFR, Part 51, Subpart W, with respect to the conformity of general federal actions with the applicable state implementation plan (SIP). Under those authorities, no department, agency, or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for; license or permit; or approve any activity which does not conform to an applicable SIP. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such action to the applicable SIP.

(2) Under FCAA, §176(c) and 40 CFR, Part 51, Subpart W, a federal agency must make a determination that a federal action conforms to the applicable SIP in accordance with the requirements of this rule before the action is taken, with the exception of federal actions where either:

(A) a National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final

environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(B) prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis; and sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under the FCAA, §176(c); and a written determination of conformity under the FCAA, §176(c) has been made by the federal agency responsible for the federal action by March 15, 1994.

(3) Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable SIP does not exempt the action from any other requirements of the applicable SIP, the NEPA, or the FCAA.

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC or Commission), the terms used by the Commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected federal land manager—The federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the FCAA (42 United States Code, §7472) that is located within 100 kilometers of the proposed federal action.

(2) Applicable state implementation plan (SIP)—The portion (or portions) of the SIP, or most recent revision thereof, which has been approved under the FCAA, §110 or promulgated under the FCAA, §110(c) (Federal Implementation Plan or FIP), or promulgated or approved pursuant to regulations promulgated under the FCAA, §301(d) and which implements the relevant requirements of the FCAA.

(3) Areawide air quality modeling analysis—An assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

(4) Cause or contribute to a new violation—A federal action that:

(A) causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise

not be in violation of the standard during the future period in question if the federal action were not taken; or

(B) contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

(5) Cause by, as used in the terms "direct emissions" and "indirect emissions,"—Emissions that would not otherwise occur in the absence of the federal action.

(6) Criteria pollutant or standard—Any pollutant for which there is established a NAAQS in 40 CFR, Part 50.

(7) Direct emissions—Those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.

(8) Emergency—A situation where extremely quick action on the part of the federal agencies involved is needed, and where the timing of such federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, and civil disturbances such as terrorist acts and military mobilizations.

(9) Emissions budgets—Those portions of the total allowable emissions defined for a certain date in a revision to the applicable SIP for the purpose of meeting reasonable further progress milestones, attainment demonstrations, or maintenance demonstrations; for any criteria pollutant or its precursors allocated by the applicable implementation to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of actions, to any class of area sources, or to any subcategory of the emissions inventory. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable SIP.

(10) Emissions offsets, for purposes of subsection (h) of this section—Emissions reductions which are quantifiable; consistent with the applicable SIP attainment and reasonable further progress demonstrations; surplus to reductions required by and credited to other applicable SIP provisions; enforceable under both state and federal law; and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under the United States Environmental Protection Agency's (EPA) new source review requirements.

(11) Emissions that a federal agency has a continuing program responsibility for—Emissions that are specifically required by an agency carrying out its authority, but does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

(12) Federal action—Any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency, or instrumentality of the federal government supports in any way; provides financial assistance for; licenses, permits, or approves. Activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 United States Code or the Federal Transit Act (49 United States Code, §1601 *et seq.*) are not considered to be federal actions under general conformity. Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that required the federal permit, license, or approval.

(13) Federal agency—A federal department, agency, or instrumentality of the federal government.

(14) Increase the frequency or severity of any existing violation of any standard in any area—To cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

(15) Indirect emissions—This term does not have the same meaning as given to an indirect source of emissions under §110(a)(5) of the FCAA, but for general conformity are those emissions of a criteria pollutant or its precursors that:

(A) are caused by the federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

(B) the federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:

(i) traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(ii) emissions related to the activities of employees of contractors or federal employees;

(iii) emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality;

(iv) emissions related to the use of federal facilities under lease or temporary permit;

(v) emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States.

(16) Local air quality modeling analysis—An assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

(17) Maintenance area—Any geographic region of the United States previously designated nonattainment pursuant to the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under the FCAA, §175A.

(18) Maintenance plan—A revision to the applicable SIP, meeting the requirements of the FCAA, §175A.

(19) Metropolitan Planning Organization (MPO)—That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code, §134 and 49 United States Code, §1607.

(20) Milestone has the meaning given in the FCAA, §182(g)(1) and §189(c)(1)—A milestone consists of an emissions level and the date on which it is required to be achieved.

(21) National Ambient Air Quality Standards (NAAQS)—Those standards established pursuant to the FCAA, §109 and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone, particulate matter (PM₁₀), and sulfur dioxide (SO₂).

(22) NEPA—The National Environmental Policy Act of 1969, as amended (42 United States Code, §4321 *et seq.*).

(23) Nonattainment area (NAA)—Any geographic area of the United States which has been designated as nonattainment under the FCAA, §107 and described in 40 CFR, Part 81.

(24) Precursors of a criteria pollutant are:

(A) for ozone, nitrogen oxides (NO_x) [unless an area is exempted from NO_x requirements under the FCAA, §182(f)] and volatile organic compounds (VOC); and

(B) for PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable SIP as significant contributors to the PM₁₀ levels.

(25) Reasonably foreseeable emissions—Projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

(26) Regionally significant action—A federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

(27) Regional water or wastewater projects—Projects which include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

(28) Total of direct and indirect emissions—The sum of direct and indirect emissions increases and decreases caused by the federal action; i.e., the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsection (c)(3), (4), (5), or (6) of this section are not included in the "total of direct and indirect emissions," except as provided in subsection (c)(10) of this section. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses, when emissions are reasonably foreseeable, is not permitted by this rule.

(c) Applicability.

the state agency which reviews NEPA or general conformity analyses is to ensure the data used in the analyses is valid, and that the correct assumptions and methodologies are used.

Coppel requested that a mobile air quality monitor be located in Coppell, similar to the monitor placed in Grapevine, to assist in determining the impact of airport-related emissions on their air quality.

The Citizens' Lobby requested that CO and nitrogen oxides (NO_x) be included as compounds monitored by the mobile air toxics monitoring unit in the City of Grapevine. The Citizens' Lobby requested the extra compounds so that the citizens in the vicinity of DFW airport could know the source of their illnesses and receive proper treatment.

The TNRCC acknowledges that a mobile air toxics monitoring unit was located in the City of Grapevine. The request for a mobile air toxics monitoring unit to be located in Coppell will be forwarded to the monitoring staff in the TNRCC. The TNRCC has already added two toxics monitors in the vicinity, one at the north boundary of DFW airport, and one at the south boundary of DFW airport. The TNRCC is also considering siting one or more toxics monitors on the airport property proper, and to add NO_x and CO capability to the monitors.

The Citizens' Lobby stated that Texas released 157 million pounds of toxic air emissions in 1992 which was the most of any state. They stated that the state must slow down, stop, address the situation, and be- come very hard-nosed if the situation is ever to be reversed.

The TNRCC agrees that the state led the nation in toxic air emissions in 1992; however, the FCCA amendments of 1990 de- voted Title III, Air Toxics, to the resolution of those emissions. On the other hand, the FCCA devoted Title I, Nonattainment Areas, to the resolution of six criteria pollutants, one of which is ozone. The TNRCC staff is currently following the very prescriptive require- ments and guidelines of Title I in the resolution of the DFW ozone problem as evi- denced by the 15% Rate-of-Progress SIP, the Attainment Demonstration SIP, and the gen- eral conformity SIP. Although the toxic air emissions problem is not being addressed in this specific SIP, the TNRCC is implementing Title III for the state of Texas. This process will address the air toxics problem in a most expeditious manner.

The Citizens' Lobby stated that VOC, NO_x, and CO are three legs to the ozone stool and that the state is only addressing the ozone problem by removing one leg of the stool. They also stated that reducing just the VOC portion would only remove the dirty brown color and prevent the observation of the ozone which would still be in the air.

Ozone is a chemical which is generated by an extremely complex chemical process in which VOCs, NO_x, and to a minor extent CO react in the presence of sunlight. High ozone concentrations are achieved when external conditions, such as high ambient tempera- tures, low wind speeds, and a stagnant air- mass, occur simultaneously with the introduc-

but would be an economic incentive for the air carriers to save fuel costs. DFW airport has also improved management and opera- tions procedures by using a hard-piped fuel distribution system thus eliminating the fuel trucks from fuel transfer operations, providing central electrical power and air conditioning at each aircraft gate thus eliminating the gaso- line or diesel power carts normally used at the gates, installing floating roof seals and roof covers on all the tanks at the fuel farm, converting to alternative fuel or electric pow- er ground support equipment, and install- ing a state-of-the-art fire training facility which uses propane instead of jet fuel. In addition, the air carriers at DFW airport are converting their aircraft to the quieter and more fuel efficient Stage III engines. Finally, in regard to the emissions increase associated with the runway expansion, the UAM emissions inven- tory for DFW airport was projected to in- crease approximately 20% by 1996. The attainment demonstration modeling runs in- cluded about a 11% reduction associated with aircraft stage III engine emissions, while the actual aircraft emission reduction will be closer to 40%. Altogether, the UAM modeled aircraft engine emissions total growth of about 50% compared to the 100% growth estimated by the commenters. This modeled 50% growth should account for the addition of the one runway under construc- tion. A general conformity determination will be necessary for any aircraft emissions in- creases which are above the de minimis level for the DFW nonattainment area. The state includes aircraft emissions as part of the SIP emissions budget which will be used to dem- onstrate conformity in the future.

The Advocate stated that based on a conver- sation with the examiner after the hearing, they believe the TNRCC has accepted the DFW runway expansions as a done deal. The Advocate also stated that the City of Grape- vine has a case pending with the Supreme Court regarding the runway expansion, and the issue has not been decided.

If a final NEPA analysis has been completed for the runway additions before January 31, 1994, then the action is grandfathered and the general conformity rule will not apply. This in no way, however, limits the rights of citi- zens or local communities to use litigation as a means to review the runway expansion project.

The Advocate expressed concern that the TNRCC was accepting emissions information from DFW airport officials instead of an inde- pendent party. The Advocate believes that DFW airport has a vested interest which con- flicts with the interests of the state regarding airport emissions. The Advocate stated that an independent study by an independent EIS statements should be prepared through an independent study by an independent party.

Both the federal NEPA rules (which cover EIS analyses) and the federal general conformity rules require the federal agency, which has the funding or controlling authority over the applicable action, to perform the NEPA and general conformity analysis. As a matter of course, the federal agency must rely on emis- sions data from the organization that is actu- ally constructing the project. The role of EPA

is not to provide guidance for this federal rule does not provide guidance for this action.

FA has not established a schedule for the additional rulemaking at this time. There are instances where an action in an attainment area can cause indirect emission increases which are analyzed through the gen- eral rule does not provide guidance for this action.

Coppel expressed a concern regarding the impact runway 1634E will have on the quality of life enjoyed by the residents of their com- munity. Coppel stated that the planned 1634E runway is 3,000 feet longer than origi- nally designed in the airport master plan, which will place airport traffic 2,000 feet away from Coppel residents. The residents are currently 7,000 feet from runway 1735, but traffic will be rerouted to runway 1634E when runway 1735 and other runways are repaired. Coppel stated that they have been working with the DFW airport board regarding the adverse noise impact, but were also con- cerned about the adverse impact of increased traffic on Coppel air quality. Finally, Coppel requested that restrictions be placed on the use of runway 1634E which will limit times aircraft can land or take-off, and will limit those operations to aircraft with the qui- ter and more-efficient Stage III engines.

The Citizens' Lobby submitted a petition of approximately 4,200 signatures requesting that the airport expansion be halted. They stated that because the FCCA specifically excluded the FAA, and therefore airports, from the requirements of Transportation Con- formity, the FAA and airports should be required to make reductions under the 15% rule. In addition, because the airport construction is not the facility under construction in the Environmental Impact Statement (EIS), they requested the TNRCC consider funds from the expansion at DFW airport.

The Advocate stated that the runway expan- sion for DFW airport will double the aircraft operations and therefore double the aircraft emissions. The Advocate also asked that a moratorium be placed on any airport expan- sion project which will increase emissions. The Advocate stated that if the TNRCC is aware of an entity (DFW airport) that is caus- ing one percent of an ozone problem, then that entity should receive special corrective action, rather than be allowed to double its current emissions. The Advocate requested verification that the DFW airport emissions represent approximately one percent of the total emissions in the DFW ozone nonattainment area.

During the development phase of the DFW Attainment Demonstration SIP, the TNRCC staff visited DFW airport and reviewed their efforts to make meaningful reductions of emissions. One of the discussion items was extended taxing on the ground to get to and from the runway. As explained by the airport management staff, part of the plan for the new runway projects was a restructuring of aircraft traffic flow to minimize the tax- ing restructuring will not only be ben- efitting reducing aircraft engine emissions,

tion of large quantities of the precursor chemicals (VOCs, NO_x, and CO) into the air mass. Because we cannot easily change the ambient temperature, wind speed, or the presence of a stagnant air mass, a reasonable approach to reducing ozone is to reduce the quantity of one or more of the precursor compounds. Of the three precursor compounds, VOCs and NO_x have the most dramatic effect on the production of ozone, and are therefore targeted in the control strategy. The ozone producing chemical process is further complicated by the fact that the chemical reactions are reversible and depend on the relative quantities of VOCs and NO_x. There are some situations where VOC reductions alone will have the greatest reduction effect on ozone, and still other situations where VOC and NO_x reductions are both required to greatly reduce ozone. The UAM is the tool used by the TNRCC to determine which reduction strategy is the most beneficial. For the DFW area, the UAM has demonstrated that ozone levels can be maintained below the standard of 120 parts per billion (ppb) with only the FCAA mandated 15% (net-of-growth) VOC reductions. The primary purpose of the general conformity rule in the DFW area is to ensure federal actions do not increase VOC and NO_x emissions so that the area exceeds its emissions budget. The TNRCC agrees that ozone will be present in the DFW area after the SIP control strategy is implemented; however, the UAM predicts that ozone will not be generated in sufficient quantities to exceed the standard. The Citizens' Lobby stated that the TNRCC is only considering emission controls and does not stress management and operations of the DFW airport runway addition would cause an emissions increase of 160% due to extended taxiing on the ground to get to the new runways. They also stated that if DFW airport would use three parallel north-south runways (one for landing, one for taxiing, and one for taxiing-off), the airport could reduce emissions by 250% due to reduced taxiing. During the development phase of the SIP, the TNRCC staff visited DFW airport and reviewed the efforts to make meaningful reductions of emissions. One of the discussions was extended taxiing on the ground to get to and from the runway. As explained by the airport management staff, part of the plan for the new runway projects was a restructuring of the aircraft gate flow to minimize the taxi times. This restructuring will not only be beneficial by reducing aircraft engine emissions, but would be an economic incentive for the air carriers to save fuel costs. DFW airport has also improved management and operations procedures by using a hard-piped fuel distribution system thus eliminating the need for fuel transfer operations, providing central electrical power and air conditioning at each aircraft gate thus eliminating the gasoline or diesel power carts normally used at the gates, installing floating roof seals and roof covers on all the tanks at the fuel farm, converting to alternative fuel or electric powered ground support equipment, and installing a state-of-the-art fire training facility.

which uses propane instead of jet fuel. Finally, the air carriers at DFW airport are conducting the aircraft to the quieter and more fuel efficient Stage III engines. In the case of future projects at DFW airport, the airport management staff and the air carriers will be required to improve operations and management practices in order to provide emissions reductions for mitigation purposes. One individual stated that the catalytic converters had been removed from all vehicles which are used by the airport. According to the TNRCC Mobile Source Division, all vehicles which operate at DFW airport and which are registered for highway use, must pass the inspection and maintenance (I/M) testing. The I/M test will capture those vehicles which are missing their catalytic converter. If there are other unregistered airport vehicles which are missing their catalytic converter, then the airport management and/or vehicle owner/operator should have the vehicle repaired. As the airport service fleet is converted to alternative fueled or electric vehicles, this problem should be eliminated. The Advocate relayed a statement from an air conditioning repairman who has repaired units all over the DFW Metroplex, but who has found units in which the air conditioning parts (water) have totally rusted out only in the vicinity of the City of Coppell. The repairman is concerned that the cause of the rust problem is the pollutants from the aircraft at DFW airport. The Advocate also stated that the four-city area surrounding DFW airport contains a grandfathered power plant which was built in 1959 and emits NO_x and SO₂. The Advocate believes that this power plant, which was grandfathered from permitting, is contributing to the poor air quality problem especially when its emissions are combined with the DFW airport emissions. The TNRCC agrees that NO_x emissions produce acid particles which contribute to respiratory problems and acid rain; however, ambient air quality monitors in the DFW area have not revealed NO_x concentrations which exceed the standard. Regarding the rust problem with Coppell air conditioning units, the problem is more likely the result of the condition of the Coppell water system rather than acid rain. If NO_x emissions from DFW airport were the problem, then one would expect similar rusting effects in the cities of Grapevine, Euless, Southlake, and Irving which are adjacent to the airport. The general conformity rule cannot solve the problem with air conditioning units, nor can it address the permitting problem with the grandfathered power plant. The rule can, however, prevent the emissions from DFW airport from increasing significantly as a result of future actions. The Citizens' Lobby submitted a petition which contained over 80 people who believe that their health problems are related to the air emissions generated by DFW airport. One individual stated that she had never had allergy problems until she moved to the DFW area as an adult. She stated that her physician has practiced in many states and had said that the allergies in the DFW area were the worst he had seen.

Another individual stated that when her family moved from Richardson to Coppell (near DFW airport), her previously healthy daughter had a series of sinus infections ever since. She expressed concern that with the DFW airport runway expansion, her daughter's health will get worse. The Citizens' Lobby stated that DFW airport expansion was causing an increase in emissions in the vicinity of the airport. They also stated that the current emissions were causing serious respiratory and health problems for citizens in the vicinity of the airport. One individual stated that she had received letters from families in Coppell regarding the possible health effects of DFW airport. One individual stated that she could tell that an ozone advisory was going to be announced by the way she felt. She stated that her breathing is very shallow on ozone alert days, and when the ozone level is very high, her chest hurts. The TNRCC acknowledges that there may be detrimental health effects associated with ozone concentrations over the standard. There may also be detrimental health effects associated with the other criteria pollutants of lead, PM₁₀, CO, NO_x, and SO₂. In addition, there are many detrimental health effects associated with toxic compounds, many of them associated with toxic compounds, many of them associated with the other criteria pollutants of lead, PM₁₀, CO, NO_x, and SO₂. However, the emphasis of this general conformity SIP is not to solve the problems associated with all of the airborne pollutants and toxics, but rather to mitigate future increases of criteria pollutants in nonattainment or maintenance areas which are caused by federal actions. The TNRCC believes that the Attainment Demonstration SIP, when coupled with the general conformity rule, addresses the health effects near DFW airport associated with ozone and will make great strides toward the mitigation of those effects. The Citizens' Lobby submitted a screen model-eling package for the DFW airport which implies that the area surrounding the airport should be declared nonattainment for NO_x and CO. The TNRCC disagrees that DFW airport should be declared nonattainment for either NO_x or CO on the basis of the SCREEN (not an acronym) model results submitted at a public hearing. The SCREEN model is considered to be a conservative model that is based on "worst case" assumptions about meteorological conditions that generally will result in over prediction of air pollution impacts. It is designed as a relatively simple screening tool to confirm whether a given source will not have an adverse impact as summing worst case conditions. In order to use the SCREEN model for DFW airport, it was necessary to make several simplifying assumptions. Chief among these was the assumption that all of the aircraft emissions are emitted from a single stationary point located five meters off the ground. Realistically, these emissions would have been spread out over a large area, and a portion of the emissions would be emitted from higher elevations as planes take off and land. This assumption and the general "worst case" nature of the model would be expected to result in pre-

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Surface Transportation Board 5 Part of
12th Street and Constitutional Avenue, NW
Washington, D.C. 20423
Public Record



Dear Surface Transportation Board,

Concerning the sale of the former C&NW Railroad, now the Union Pacific, Colony, Wyo. to Chadron and Crawford, Nebr. Line. A meeting was held 1/19/96 for Union Pacific employees. We were told we are to get no job protection. The Union Pacific, a Class 1 railroad, is selling the line to DM&E, a Class 2 railroad. There is no reason the employee's shouldn't get job protection.

This portion of railroad generates about 40 million dollars a year. Union Pacific said they only cleared 21 million which I don't quite believe. Union Pacific officials wouldn't tell us what they were selling the rail line for at the meeting. The rumor is that they are selling it for 15 million which is a good buy for any investor at that price. I can see why the Union Pacific may want to sell the line since it is an island of track not connected to its main line. The track is also in a state they don't have any other track in, plus they will get part of the haul or some of the profit anyway at the DM&E east end where the two lines connect.

The Union Pacific is trying to sell old C&NW Railroad track from Colony, Wyo. to Chadron and Crawford, Nebr. They brought on merger with C&NW Railroad in 1995, and I guess they feel that 21 million dollars is not enough to monkey with. With this amount of profit, job protection for employees should be affordable or the DM&E Railroad should have to hire the employees. Most of us employees would rather work for the DM&E than move, if the salary and benefits were close to what we are getting now. I also think that they can't operate with any less employees because we are having trouble getting all the work done now.

The Union Pacific Railroad is a big company and will be even bigger with the possible sales of the Southern Pacific & Mexican Railroads. The company is getting so big it may be able to control the government. I don't understand how the government, you Congressmen, Representatives, and the president, can let big companies in buy outs, mergers, and take overs of small companies take place without job protection to employees. You must know how devastating it is to loose your job or having to move my family is. Deregulation may be alright, but there should be at least protection for the jobs and not just a way to get rid of jobs or lower the pay.

The ICC should be reinstated or some type of regulative system should be in place to protect employees when take overs, mergers, or companies try to get out of paying Union wage. It is a shame when company presidents and officials that make 300,000 to a million a year as a salary treat their employees that make 10 to 60 thousand a year as just numbers. In some cases, they treat their employees as a way to eliminate competition with no thought given to the lives and families of the affected employee. I am not so sure that bigger companies is the way to go when it comes to company efficiency. When the Union Pacific Railroad took over the C&NW Railroad they had and still are having major rail traffic problems in high density areas with 10 to 15 of the 100 train cars stacked up with not enough engine power to pull the trains. With all

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PROCEEDINGS

the train traffic and not enough time to inspect and repair track, makes safety a big concern here. I am also concerned that some of these big companies are getting so big that they may be able to control and run the United States government. I am especially concerned with how Senator Larry Pressler is controlled by the DM&E Railroad because of his help in getting rid of the ICC, and his sneaky way in which he and the help of his former chief of staff Kevin Schieffer are trying to avoid job protection for the Colony Line sale. Senator Larry Pressler tried to amend the ICC Termination Act of 1995 with an amendment which would exempt the DM&E Railroad from a section 10902 job protection. This was opposed by rail labor and defeated. When this was in a closed conference committee to reconcile differences between the House and Senate version of the ICC Termination Act, Kevin Schieffer and Larry Pressler sneaked in an amendment that would exclude the DM&E Railroad from section 10902-job protection-without even mentioning the DM&E name(Outrageous). It buried on page 245 Sec 713 Hr 2539, letters enclosed. I would like to know what the population of a state or a Federal Loan have to do with us Union Pacific employees getting our rightful job protection. Hey, are tax dollars helping pay for the loan? In 1992, when the C&NW Railroad tried to sell the Colony Line which fell through because of the DM&E financial situation job protection was provided for employees in this sale by the ICC.

I think that Senator Larry Pressler is afraid of losing face as he has boasted or complained that he saved the railroad for South Dakota. He may have, but he has made me loose my job and move twice now and is trying a second time on my third job loss and move. This time there is definitely no reason for him to support the DM&E Railroad except for saving face. The Nebraska Line has been abandoned so the only way for east car rail movement is through South Dakota. Even if the DM&E Railroad went bankrupt there is enough revenue that some other railroad would buy quickly. I think it would be much better for South Dakota if Union Pacific was forced or had to keep the Colony Line at least we have a big pool of rail cars for shippers and definitely wouldn't have to put any more tax dollars in this portion of the railroad as the Union Pacific is a fortune 500 company.

If I have to move because of the sale as a Senior Union Employee I will bump a Junior Employee. The Junior employee in turn bumps his Junior employee and this goes down the list until someone loses their job. This chain reaction could end up affecting two, four, or more families. This sale involves 40 employees so around 160 families could have to move or change jobs from this sale and even more if their wives have jobs.

There are a few questions that I would like to have the answer to. They are:

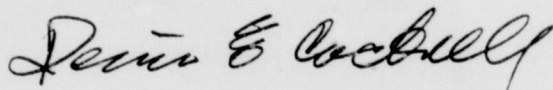
1. Will DM&E have enough rail cars to even keep the shipper in stock? I know of several cases in Pierre when shippers were short of grain cars when they were in need. The rail cars must be shipped on time to get the price quoted.
2. What financial shape is DM&E in now, and what shape will it be in after the sale? I think shippers would be shock at how far in debt DM&E is.
3. How much money does the DM&E still owe the Federal government and the Minnesota and South Dakota governments? How much more tax dollars will be spent on the DM&E and this new portion of the railroad?

4. What portin of profit does DM&E get now and will they get after the sale? For example, DM&E ships rail cars from Colony, Wyo. to Winona, Minn., and then Union Pacific ships the cars to the destination. Will the Union Pacific make close to the same profit as before the sale? We don't know what kind of deal is being made here. Is it a sale where the Union Pacific sells the Colony line cheap, but they want more of the yearly profit, a business deal in which employees don't matter? If that is so our jobs should be protected.

I have been employed by C&NW Railroad for 35 years and I am now working for Union Pacific, here is a little background on what has already happened to me concerning my job. In 1982, CN&W Railroad diverted all rail carloads out of Rapid City and Colony line to Chadron and through the Nebraska line. They then put the Rapid City to Pierre line up for abandonment and the rest of the line from Pierre to Winona, Minn. up for sale. They started cutting employees on the Pierre line. I was forced to move to Pierre from Tulare to keep a job. From 1983 to 1986, the C&NW tried to sell or make a short line railroad of the line from Rapid City to Winona, Minn. They had several interested buyers but no takers. Finally in 1986, a contract was made with formal C&NW officials. I think the line was sold very cheap at about 11.6 million dollars, part of which was wrote off in 1992 or 1993. This resulted in the DM&E Railroad, a short line railroad that is non-union with less wages and less benefits. I was forced to move to Belle Fourche with no expenses paid. In 1990-1991 C&NW diverted all rail cars out of Rapid City, and the Colony Line, from the Nebraska line to the DM&E railroad and put the Nebraska line up for abandonment. In 1993, C&NW Railroad tried to sell the Colony Line to DM&E Railroad, but they failed because of financial situation of DM&E and job protection which they would have had to pay. Now the Union Pacific Railroad is trying to sell the Colony line which the C&NW had decided to keep. This sale is a direct result of a buy out of the CN&W Railroad. I have received no compensation for any of the moves which are estimated at 14,000 dollars lost not even counting all the extra miles we have to travel to see our folks and relatives.

I am presently working for the Union Pacific as a Section Foreman in Belle Fourche, S.D. I am married and have three teenagers, a 7th grader, a Freshman, and a Junior. All three of my children definately do not want to move, especially my oldest daughter who would like to finish her Senior year here in Belle Fourche. My wife also does not want to move because she has a good job that she enjoys, and she has had this job for almost eight years. If we would move she would also lose her job. So if there is anything you can do to help get the Sec 713 revoked of the Surface Transportation Board and get job protection for us employees my family and I would really appreciate it.

Sincerely,



Dennis Cockrell
1310 National St.
Belle Fourche, S.D. 57717
(605)892-4164

ENCLOSURE

(3) in section 6(a) (46 U.S.C. 565(a)) by striking "Interstate Commerce Commission" and inserting in lieu thereof "Board".

SEC. 331. ALASKA RAILROAD TRANSFER ACT OF 1982 AMENDMENTS.

Section 608 of the Alaska Railroad Transfer Act of 1982 (45 U.S.C. 1297) is amended—

(1) by striking "the jurisdiction of the Interstate Commerce Commission under chapter 105" in subsection (a)(1) and inserting in lieu thereof "part A"; and

(2) by striking "the jurisdiction of the Interstate Commerce Commission under chapter 105" in subsection (c) and inserting in lieu thereof "part A".

SEC. 337. REGIONAL RAIL REORGANIZATION ACT OF 1973 AMENDMENTS.

The Regional Rail Reorganization Act of 1973 is amended—

(1) in section 102(15) (45 U.S.C. 702(15)) by striking "common carrier by railroad as defined in section 1(3) of part 1 of the Interstate Commerce Act (49 U.S.C. 1(3))" and inserting in lieu thereof "rail carrier subject to part A of subtitle IV of title 49, United States Code";

(2) in section 301(b) (45 U.S.C. 741(b)) by striking "common carrier by railroad under section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))" and inserting in lieu thereof "rail carrier subject to part A of subtitle IV of title 49, United States Code";

(3) in section 304 (45 U.S.C. 744)—

(A) by striking "205(d)(6) of this Act" in subsection (a)(2)(B) and inserting in lieu thereof "10362(a)(6) of title 49, United States Code";

(B) by striking "Interstate Commerce Act" and inserting in lieu thereof "part A of subtitle IV of title 49, United States Code";

(C) in subsection (d)(3)—

(i) by striking "this title," and all that follows through "(A) shall take" and inserting in lieu thereof "this title, the Commission shall take"; and

(ii) by striking "this subsection; and" and all that follows through "205(d)(6) of this Act" and inserting in lieu thereof "this subsection";

(D) in subsection (e)(4)—

(i) by striking "and under regulations issued by the Office pursuant to section 205(d)(5) of this Act" in subparagraph (A); and

(ii) by striking "and regulations issued by the Office pursuant to section 205(d)(5) of this Act" in subparagraph (C);

(B) in subsection (e)(5)—

(i) by striking "and under regulations issued by the Office pursuant to section 205(d)(5) of this Act" in subparagraph (A); and

(ii) by striking "and under regulations issued by the Office pursuant to section 205(d)(5) of this Act" in subparagraph (B);

(F) in subsection (e)(7)(A) by striking "and under regulations issued by the Office pursuant to section 205(d)(5) of this Act"; and

(G) in subsection (g) by striking "the Interstate Commerce Act" and inserting in lieu thereof "part A of subtitle IV of title 49, United States Code";

(4) in section 308 (45 U.S.C. 748)—

(A) by striking "10905(d)-(f)" in subsection (d)(1) and inserting in lieu thereof "10904"; and

(B) by striking "10903(b)(2)" in subsection (f) and inserting in lieu thereof "10903(b)(3)"; and

(5) by inserting after section 712 the following new section:

"CLASS II RAILROADS RECEIVING FEDERAL ASSISTANCE

"SEC. 713. The Surface Transportation Board shall impose no labor protection conditions in approving an application under section 10902 of title 49, United States Code, when the application involves a Class II rail carrier which—

"(1) is headquartered in a State, and operates in at least one State, with a population of less than 1,000,000 persons, as determined by the 1990 census; and

"(2) has, as of January 1, 1996, been a recipient of repayable Federal Railroad Administration assistance in excess of \$5,000,000."

SEC. 332. MILWAUKEE RAILROAD RESTRUCTURING ACT AMENDMENT.

Section 18 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 918) is repealed.

SEC. 333. ROCK ISLAND RAILROAD TRANSITION AND EMPLOYEE ASSISTANCE ACT AMENDMENTS.

The Rock Island Railroad Transition and Employee Assistance Act is amended—

(1) in section 104(a) (45 U.S.C. 1003(a)) by striking "section 11126 of title 49, United States Code, or"; and

(2) by striking section 120 (45 U.S.C. 1016).

SEC. 334. RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976 AMENDMENTS.

The Railroad Revitalization and Regulatory Reform Act of 1976 is amended—

(1) in section 102(7) (45 U.S.C. 802(7)) by striking "common carrier by railroad or express, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3))" and inserting in lieu thereof "rail carrier subject to part A of subtitle IV of title 49, United States Code";

(2) in section 605(a)(3) (45 U.S.C. 825(a)(3))—

(A) by striking "A financially responsible person (as defined in section 10010(a)(1) of title 49, United States Code)" and inserting in lieu thereof "(A) A financially responsible person"; and

(B) by inserting at the end the following new subparagraph:

"(B) For purposes of this paragraph, the term 'financially responsible person' means a person who (i) is capable of paying the constitutional minimum value of the railroad line proposed to be ac-

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BEFORE THE

FINANCE TRANSPORTATION BOARD

UP/SP-89



Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' OBJECTIONS TO WESTERN SHIPPERS' COALITION'S
FIRST SET OF INTERROGATORIES
AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

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Corporation, Union Pacific
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February 20, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' OBJECTIONS TO WESTERN SHIPPERS' COALITION'S
FIRST SET OF INTERROGATORIES
AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and
DRGW submit the following objections to the discovery requests
served by Western Shippers' Coalition on February 12, 1996.
These objections are made pursuant to paragraph 1 of the
Discovery Guidelines applicable to this proceeding, which
provides that objections to discovery requests shall be made
"by means of a written objection containing a general
statement of the basis for the objection."

Applicants intend to file written responses to the
discovery requests. It is necessary and appropriate at this
stage, however, for Applicants to preserve their right to
assert permissible objections.

GENERAL OBJECTIONS

The following objections are made with respect to
all of the interrogatories and document requests.

1. Applicants object to production of documents or information subject to the attorney-client privilege.

2. Applicants object to production of documents or information subject to the work product doctrine.

3. Applicants object to production of documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

4. Applicants object to production of public documents that are readily available, including but not limited to documents on public file at the Board or the Securities and Exchange Commission or clippings from newspapers or other public media.

5. Applicants object to the production of draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such documents have been treated by all parties as protected from production.

6. Applicants object to providing information or documents that are as readily obtainable by WSC or its members from their own files.

7. Applicants object to the extent that the interrogatories and document requests seek highly confidential or sensitive commercial information (including inter alia, contracts containing confidentiality clauses prohibiting disclosure of their terms) that is of insufficient relevance to warrant production even under a protective order.

8. Applicants object to the interrogatories and document requests to the extent that they call for the preparation of special studies not already in existence.

9. Applicants object to the interrogatories and document requests as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1993.

10. Applicants object to the inclusion of Philip F. Anschutz and The Anschutz Corporation in the definition of "Applicants," "you" and "your" as overbroad.

11. Applicants object to the definition of "identify" to the extent that it calls for home telephone numbers and addresses as overbroad.

12. Applicants object to the definition of "relating to" or "related" as unduly vague.

13. Applicants object to Instructions 1, 2, 4, 5, 6, 7, 8 and 9 to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

14. Applicants object to Instructions 1, 2, 4, 5, 6, 7 and 9 as unduly burdensome.

ADDITIONAL OBJECTIONS TO SPECIFIC
INTERROGATORIES AND DOCUMENT REQUESTS

In addition to the General Objections, Applicants make the following objections to the interrogatories and document requests.

Interrogatory No. 1. "Is the list on pages 235-86 of Volume 2 of the Application of five projected new marketing opportunities involving coal traffic a complete list of all specific projected new marketing opportunities or projections for coal that have been identified by Applicants?"

Additional Objections: None.

Interrogatory No. 2: "If the answer to Question No. 1 is anything other than an unqualified yes, please describe in detail any and all other specific new coal market opportunities or projections that have been identified by Applicants."

Additional Objections: None.

Interrogatory No. 3: "Identify and describe Applicants' best estimate of traffic from 1991-95 on the lines of Applicants through the Central Corridor, including but not limited to: (1) the lines of the D&RGW in Utah and Colorado, which run generally from Ogden through Salt Lake City, Utah to Denver or Pueblo, Colorado, as well as ancillary lines; (2) Applicants' lines between Denver and Kansas City, Missouri and Pueblo and Kansas City; and (3) Applicants lines from Salt Lake City or Ogden to Stockton or Oakland, California."

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 4: "Identify and describe Applicants' projections for 1996-2000 of traffic on the lines specified in Interrogatory No. 3. If this request is deemed unduly burdensome because any of Applicants employ different time periods, Applicants are instructed to provide estimates for the number of years that have been made."

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is

Interrogatory No. 11: "How many cars were switched from SP to UP in the Greater Salt Lake City territorial boundary under the fee described in your response to Interrogatory No. 9 for the last three years?"

Additional Objections: Applicants object to this interrogatory as unduly burdensome.

Document Request No. 1: "All documents that relate to any of WSC First Set of Interrogatories."

Additional Objections: Applicants object to this document request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 2: "All documents that relate to Applicants' agreement with Utah Railway Company dated January 17, 1996."

Additional Objections: Applicants object to this document request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 3: "All documents that relate to Applicants' agreement with Illinois Central Railroad Company dated January 30, 1996."

Additional Objections: Applicants object to this document request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

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

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

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

Arvid E. Roach II
ARVID E. ROACH II
J. MICHAEL HEMMER
MICHAEL L. ROSENTHAL
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

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

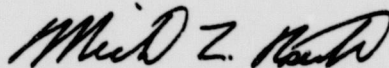
February 20, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 20th day of February, 1996, I caused a copy of the foregoing document to be served by hand on Michael F. McBride, counsel for Western Shippers' Coalition, at LeBoeuf, Lamb, Greene & MacRae, 1875 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20009-5728, and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

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

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



Michael L. Rosenthal

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Page Count 2
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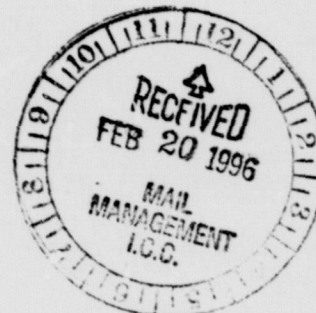
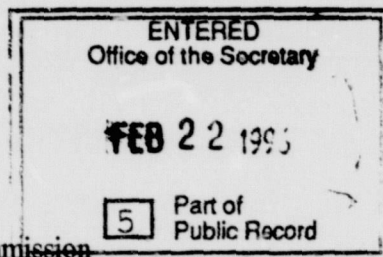
Rapid Industrial Plastics Co., Inc.

Distributors of Plastic Resins
Manufacturers of Quality Products

RAPID PLASTICS

February 14, 1996

Mr. Vernon Williams
Interstate Commerce Commission
Room 3315
12th and Constitution, N.W.
Washington, D.C. 20423-0001



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

Dear Mr. Williams:

Our company has been a major user of rail services for transportation between the United States and Mexico. Rapid Industrial Plastics has a strong interest in competitive rail transportation between the United States and Mexico. The Laredo/ Nuevo Laredo gateway is the primary route for shipments between the two countries for the majority of international traffic. This gateway possesses the strongest infrastructure of customs brokers. It also provides the shortest routing between major Mexican industrial and population centers and the Midwest and Eastern United States.

Our company depends on competition to keep prices down and to spur improvements in products and services. For many years Union Pacific and Southern Pacific have competed for our traffic via Laredo, resulting in substantial cost savings and a number of service innovations. TexMex has been Southern Pacific's partner in reaching Laredo in competition with Union Pacific, as Southern Pacific does not reach Laredo directly.

A merger of Union Pacific and Southern Pacific will seriously reduce, if not eliminate, our competitive alternatives via the Laredo gateway. Although these railroads have recently agreed to give certain trackage rights to the new Burlington Northern Santa Fe Railroad, we do not believe the BNSF, as the only other major rail system remaining in the Western United States, will be an effective competitive replacement for an independent Southern Pacific on this important route.

ADVISE OF ALL
PROCEEDINGS

13 Linden Avenue East
Jersey City, New Jersey 07305
U.S. Toll Free 800-526-3038; In N.J. 201-433-5500
Fax 201-433-5500 Fax 201-433-5979
TWX 710-733-5239 RIP-JCTY

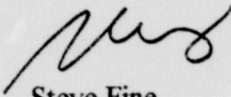
Rapid-Champion
1031 Goodnight Trail, Houston, Texas 77060
Tel. 713-443-6220; Fax 713-443-2069

13382 Benson Avenue
P.O. Box 2289, Chino, California 91710
Tel. 714-591-1893; Fax 714-628-1708

I understand there is an alternative that will preserve effective competition for my traffic. TexMex as indicated a willingness to connect with other carriers via trackage rights to provide efficient competitive routes. Trackage rights operating in such a way as to allow TexMex to be truly competitive are essential to maintain the competition at Laredo that would otherwise be lost in the merger. Thus I urge the Commissioners to correct this loss of competition by conditioning this merger with a grant of trackage rights via efficient routes between Corpus Christi and these connecting railroads.

Economical access to international trade routes should not be jeopardized when the future prosperity of both countries depends so strongly on international trade.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Steve Fine', is written over the typed name.

Steve Fine
Export Manager

cc: The Texas Mexican Railway Company

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File # 131

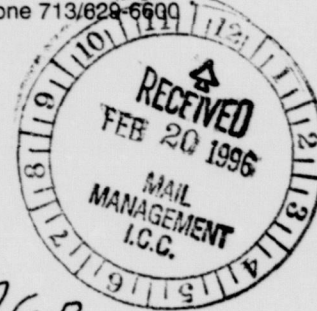


**Marathon
Oil Company**

P.O. Box 3128
Houston, TX 77253-3128
Telephone 713/629-6600

February 13, 1996

Mr. Vernon Williams
Secretary
Surface Transportation Board
Room 3315
12 and Constitution N.W.
Washington, DC 20423-0001



Dear Mr. Williams:

I am writing in regard to the proposed acquisition of Southern Pacific by Union Pacific Railroad, and the potential negative competitive effects of this merger on Marathon Oil Company's rail transportation operations. We recognize the proposed trackage rights agreement between the Union Pacific and Burlington Northern/Santa Fe railroads is intended to remedy these concerns, but we are not convinced this will produce truly effective competition for our rail traffic.

We believe that another carrier acquiring some of the Southern Pacific lines would be more appropriate and effective in addressing our concerns. The benefits of trackage rights are uncertain, and the owning railroad can easily manipulate these rights to its advantage.

We strongly believe the Surface Transportation Board should carefully evaluate the adverse impact this merger would have on preserving open and fair competition throughout the national rail system. I am asking your help to insure this merger receives a full and unhurried review, since a competitive railroad industry is in everyone's best interest. Thank you for your attention to this matter.

Sincerely,

David S. Maples
Manager/LPG Acquisition & Supply

DSM:njc

WPVW52DSMDSM129

ADVISE OF ALL
PROCEEDINGS

ENTERED	
Office of the Secretary	
FEB 22 1996	
5	Part of Public Record

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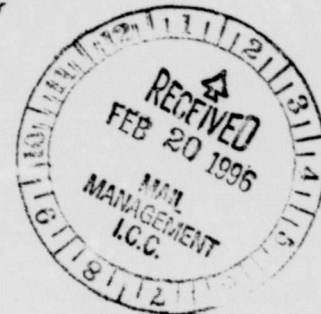
OFFICE OF THE MAYOR

February 14, 1996



James A. Maloof
mayor

Mr. Vernon Williams, Secretary
Surface Transportation Board
12th Street and Constitution Avenue, NW
Washington, DC 10423

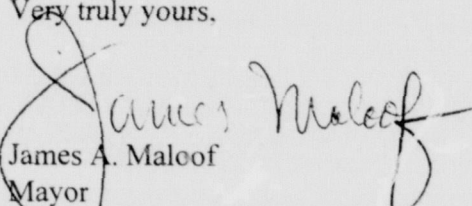


RE: Finance Docket 32760 - Union Pacific/Southern Pacific

Dear Mr. Williams:

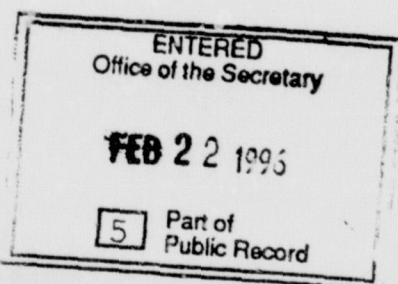
The purpose of this letter is to formally advise you that the City of Peoria will not oppose the merger of the Union Pacific and Southern Pacific. We are hopeful that this merger will bring additional rail traffic into the area.

Very truly yours,


James A. Maloof
Mayor

JAM/csk

c Thomas Zapler



**ADVISE OF ALL
PROCEEDINGS**

City Hall Building
419 Fulton Street
Peoria, Illinois 61602
309/672-8519
FAX 309/672-1517

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2-20-96

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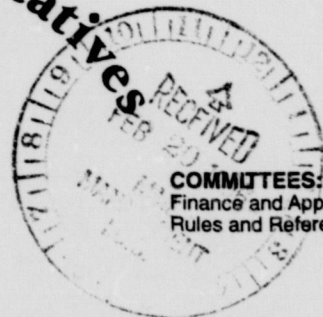
61274

Ohio

House of Representatives



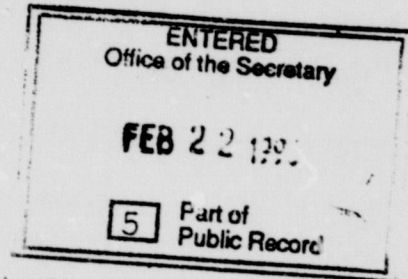
TOM JOHNSON
State Representative
96th House District



179 Montgomery Blvd.
New Concord, Ohio 43762
(614) 644-8728
(614) 826-4447
96th House District
Morgan, and part of Athens,
Muskingum and Washington Counties

February 14, 1996

Vernon A. Williams, Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue
Washington DC 20423



Dear Secretary Williams,

I am chairman of the Ohio House of Representatives Finance and Appropriations Committee. My committee spends a great deal of time reviewing the transportation infrastructure of our state.

I am writing to express my support of the Conrail initiative to acquire a portion of the Southern Pacific Railroad. As you know, this acquisition will be very beneficial to all of Ohio. If this happens, Ohio will be connected to both Canada and Mexico via rail. This will allow us to take full advantage of the NAFTA agreement.

The automobile industry has a very strong presence in Ohio, and the connection of these lines would greatly impact Ohio's economy in that one area alone. When you include the many other Ohio industries that take advantage of the rail system, then this proposal make a great deal of sense for Ohio.

I understand that your commission will review Union Pacific's merger with Southern Pacific, and I hope that you would give favorable consideration to the Conrail alternative to the UP-SP merger

Sincerely,

Tom Johnson, Chairman
Finance and Appropriations Committee

cc: Mr. David Levan

**ADVISE OF ALL
PROCEEDINGS**

South High Street, Columbus, OH 43266-0603

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OF COLLEGE STATION

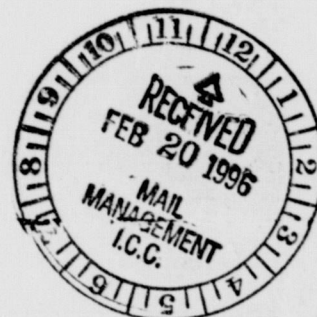
Ice Box 9960 1101 Texas Avenue
College Station, Texas 77842-9960
(409) 764-3500

61275

**ADVISE OF ALL
PROCEEDINGS**

February 15, 1996

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



Attention: Finance Docket No. 32760 - Comments

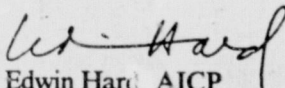
Dear Ms. Kaiser:

This letter is in response to the January 29th letter from the Surface Transportation Board to Brazos County Judge Alvin Jones requesting comments regarding the potential environmental impacts of the abandonment of the 16.2 mile, Bryan-to-Suman Southern Pacific railroad line.

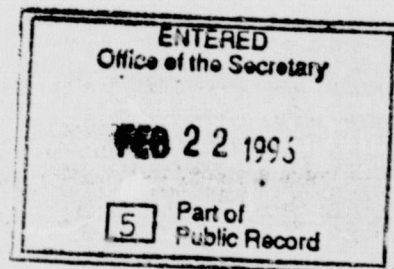
The proposed abandonment is not within the limits of the City of College Station and we do not foresee any significant environmental impacts. However, we stand in support of Brazos County and the City of Bryan and share their concern for the possible negative impacts the proposed abandonment could have on northwestern Brazos County and downtown Bryan and its surrounding residential neighborhoods.

The College Station City Council recently passed a resolution in opposition to this proposed railroad abandonment as part of the UP/SP merger. The Bryan-College Station community is currently seeking clarification from Southern Pacific Railroad on what, if any, portion of this line is still planned for abandonment.

Sincerely,


Edwin Hard AICP
Transportation Planner

cc: Skip Noe, City Manager, City of College Station
Tom Brymer, Asst. City Manager, City of College Station
Gary Basinger, Bryan-College Station Chamber of Commerce



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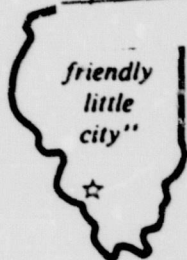
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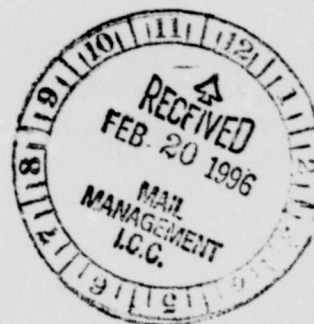
City of Pinckneyville

104 South Walnut Street
Pinckneyville, Illinois 62274
(618) 357-6916

Frances I. Thomas
City Clerk

Kirwan Heisner
Mayor

February 13, 1996



ADVISE OF ALL
PROCEEDINGS

Mr. Vernon Williams
Secretary
Surface Transportation Board
12th Street and Constitution Avenue, NW
Washington, DC 20423

RE: Finance Docket 32760 - Union Pacific/Southern Pacific

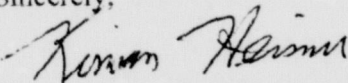
Dear Mr. Williams:

My name is Kirwan Heisner, and I am the Mayor of the City of Pinckneyville, State of Illinois.

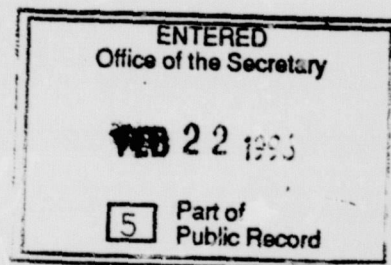
The purpose of this letter is to formally advise you that I support the Union Pacific and Southern Pacific merger.

My reason for support of this merger is that there will be a dramatic improvement in service and will strengthen competition. The merged system will meet a competitive challenge. Problems of the Southern Pacific service, finances and capital constraints will be overcome, and SP customers will have the assurance of long-term, top-quality service from a financially strong railroad.

Sincerely,


Kirwan Heisner, Mayor
City of Pinckneyville

cc: Thomas Zapler
Special Representatives
Union Pacific Railroad
165 N. Canal, 8-N
Chicago IL 60606



Pinckneyville City Commissioners

Harlan M. Yeager
Accounts & Finance

Samuel J. Fulk
Public Health & Safety

Lewis M. Feltmeyer
Streets & Public Improvements

Sammy D. Peradotta
Public Property

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GARRY G. BC
REPRESENTATIVE, SEVENTY-SECOND DISTRICT
14 CIRCLE DRIVE
NEWTON, KANSAS 67114-1328

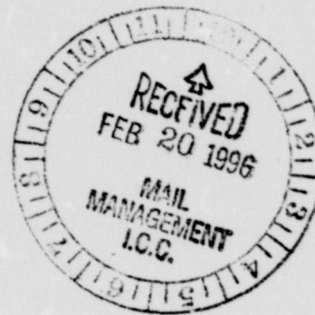
COMMITTEE ASSIGNMENTS
CHAIR: FEDERAL & STATE AFFAIRS
MEMBER: BUSINESS, COMMERCE & LABOR
ECONOMIC DEVELOPMENT

TOPEKA

HOUSE OF
REPRESENTATIVES

February 12, 1996

SURFACE TRANSPORTATION BOARD
217 SE Fourth
Thacher Bldg, 3rd Floor
Topeka, KS 66603



FD 32760

Dear Sirs:

I am writing regarding a hardship that would occur for the Newton, Kansas, area should the proposed Union Pacific/Southern Pacific merger materialize as presently drafted. My understanding is that the merger agreement proposes abandoning the trackage between Newton, Kansas, and Whitewater. The point where service would end is two miles southeast of mile post 487. This would appear to be either somewhere inside the industrial area or possibly at the current boundary of the park.

Currently Newton, the Kansas Department of Commerce and Housing and others are working hard to locate a major rail related manufacturing plant some two miles past the proposed end of trackage. The decision to cease operation beyond this point would certainly cause Newton and Kansas to default and be removed from further consideration.

This industrial park has expanded sufficiently in the past three years and prospects of future growth are excellent. This does not only apply to the current park, but also should allow some leeway for future growth.

Should you wish additional information or testimony, please advise.

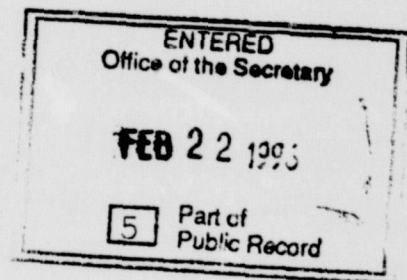
Sincerely,

A handwritten signature in cursive script that reads "Garry Boston".

Garry Boston
STATE REPRESENTATIVE
72nd District

GB/ab

CC: Phil Kloster, City Manager, Newton
John Schierman, Chief, Bureau of Rail Affairs
Gary Sherrer, Secretary, Kansas Department of Commerce & Housing



**ADVISE OF ALL
PROCEEDINGS**

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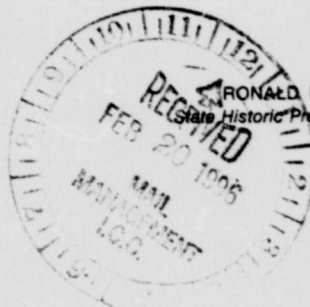


BOB MILLER
Governor

JOAN G. KERSCHNER
Department Director

STATE OF NEVADA
OF MUSEUMS, LIBRARY AND ARTS
STATE HISTORIC PRESERVATION OFFICE
Capitol Complex
100 Stewart Street
Carson City, Nevada 89710

February 15, 1996



ATTN: Finance Docket No. 32760 - Comments
Ms. Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th and Constitution Ave Rm 3219
Washington DC 20423-0001

SUBJECT: Surface Transportation Board Request for Environmental Comments on the Potential Environmental Impacts of the Control and Merger Application between the Union Pacific and Southern Pacific Railroads (Finance Docket No. 32760)

Dear Ms. Kaiser:

The Nevada State Historic Preservation Office (SHPO) has reviewed the subject undertaking. We would like to state that we received this request on February 1, 1996, giving this office only 15 days to respond. By law we have 30 days. Although we understand that this comment period has been expedited, we do not believe that 15 days provides an adequate amount of time to review and comment on historic, cultural, and archaeological resources potentially affected by this proposed merger.

Based on the information provided in Attachment 1 Union Pacific/Southern Pacific Proposed Merger Environmental Information Package (State-By-State Overview), we have the following comments:

The SP Rail Yard in Carlin, Nevada, has not been surveyed for cultural, historic, and archaeological resources.

The UP Facility in Reno, Nevada, has not been surveyed.

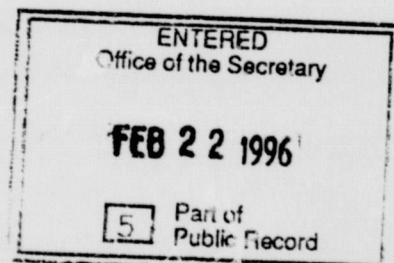
The SP Rail Yard in Sparks, Nevada, has been surveyed.

If you have any questions concerning these comments, please contact me at (702) 687-7601 or Rebecca Palmer at (702) 687-5138.

Sincerely,

Julie Nicoletta

Julie Nicoletta
Architectural Historian



STB

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2-20-96

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61280



United States
Department of
Agriculture

Natural
Resources
Conservation
Service

61280
760 South Broadway
Salina, Kansas
67401-4642
913-823-4500 / FAX 913-823-4540

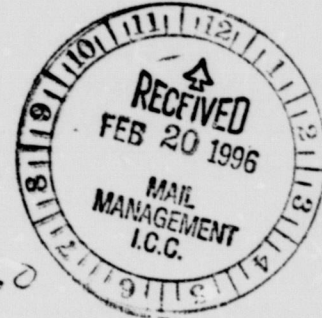
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FEB 14 1996

February 14, 1996

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



FD 32760

Dear Ms. Kaiser:

*Thank you for the opportunity to review the plans for the merger of the Union Pacific and Southern Pacific Railroads into a single company.

I have previously responded to Dames and Moore located in Illinois on the merger of the various rail segments throughout the state of Kansas.

The proposed merger itself should have no effect on prime farmlands. There are no other negative impacts regarding this merger in areas for which the Natural Resources Conservation Service (NRCS) has responsibility for evaluating. In the event that new construction involves both the acquisition of privately owned lands which are considered either prime farmlands or contain soils of statewide importance and federal monies are involved in the project, then a Form AD-1006 will need to be completed and returned to this office. If the latter occurs, you will need to outline and determine those acreages from areas on county base maps so we can determine if there are any negative impacts to important farmlands as defined by the Farmland Protection Policy Act (FPPA).

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

Sincerely,

James N. Heibiger
State Conservationist

ACTING FOR

