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by July 15 of that year. Tr., p. 437. In fact, despite the passage of over six months, the line between Elgin and Giddings remains out of service.

6. During late December 1996, I personally inspected the 32-mile segment of the Giddings-Llano line between Elgin and Giddings, much of which is visible from adjacent roads. I reached three conclusions: (a) no train had run over this line for a considerable period of time; (b) extensive rehabilitation work is needed before any train service can be resumed, and still more extensive work would be needed to handle the heavy-loading granite and aggregates traffic that Longhorn asserts it would like to move over this line; and (c) maintaining this segment for ongoing operations would place a very substantial financial burden on the Giddings-Llano operator. Since there are no active industries located on this portion of the Giddings-Llano line, traffic interchanged at Giddings would have to bear all of this burden.<sup>1/</sup>

7. Even when the Giddings-Llano line was in service between Elgin and Giddings, and there was an active interchange with SP at Giddings, the volume of traffic interchanged was negligible. Based on SP traffic data, and confirmed by knowledgeable former-SP operating personnel, the interchange between the previous operator of the line -- ACNW -- and SP at Giddings handled only 5-10

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<sup>1/</sup> There are a few rail-served industries at Giddings, but Longhorn cannot serve them because SP retained exclusive access when it spun-off the Giddings-Llano line.



cars per week total (inbound and outbound).<sup>2/</sup> This amounted to 6% or less of AUNW's total traffic; the balance was interchanged with UP. This paucity of traffic confirms the insignificance of the competition provided by this SP connection.

**ELGIN IS FAR SUPERIOR TO GIDDINGS  
AS A POINT OF INTERCHANGE WITH BNSF**

8. CMTA's decision to select Elgin as the point of interchange with BNSF should end any inquiry into the relative merits of Giddings and Elgin. When more than one potential interchange point is available, the relative merits of those interchanges depends on numerous factors, and the specific configuration of existing trackage is usually at most a very minor consideration. This is particularly so with respect to CMTA's choice between Elgin and Giddings. CMTA was well aware of Longhorn's belief that the existing track configuration at Giddings was superior to that at Elgin, yet chose Elgin for reasons that have far more significance to shippers on the Giddings-Llano line.

9. As CMTA has noted, Elgin is 32 miles closer to the shippers on the Giddings-Llano line than is Giddings. CMTA-14/BNSF-75, pp. 2-3. This means that to implement a BNSF interchange Longhorn need not expend its limited resources rehabilitating the 32 miles of out-of-service trackage east of Elgin, and the

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<sup>2/</sup> AUNW typically delivered 2 cars per week to SP and received 4 cars per week from SP at Giddings before the line was placed out of service east of Smoot.

future operator of the line -- whether that is Longhorn or a successor -- will not be burdened by the significant costs associated with maintaining the extra trackage.

10. Longhorn asserts that the total mileage of a Longhorn-BNSF route between Giddings-Llano shippers and their Houston markets is shorter via Giddings and Caldwell than via an Elgin interchange. Longhorn's calculations are erroneous. In fact, a Longhorn-BNSF route to Houston via Elgin and Sealy is 19 miles shorter than via Giddings and Caldwell.

11. To implement an interchange with BNSF at Giddings, BNSF would have to be granted additional rights between Caldwell and Giddings to serve a Giddings interchange (which Applicants have informed CMTA they would grant if CMTA selected Giddings). Whereas CMTA can be confident that BNSF will offer frequent, high-quality service through Elgin -- which is on BNSF's primary link between its Western network and the Eagle Pass gateway -- there can be no similar confidence about the level of service that BNSF might provide using trackage rights giving it the equivalent of a 29-mile "branch" between Caldwell and Giddings that would exist solely to serve the Giddings interchange. Especially if the Longhorn-BNSF interchange volumes turn out to be small -- as was the case when there was an SP interchange at Giddings, and as Longhorn seems to acknowledge they will be (see Longhorn Submission, p. 5) -- it seems certain that BNSF's level of service at Giddings, in terms of frequency of pick-up and delivery and total transit time, would be far inferior as compared to Elgin.

**THE FACILITIES AT ELGIN**  
**PERMIT EFFECTIVE INTERCHANGE**

12. I have personally inspected the geography and configuration of the trackage at Elgin. There is no truth to BNSF's and Longhorn's suggestions that the existing interchange facilities at Elgin will not permit effective interchange between them.

13. Before turning to a discussion of why those facilities are adequate, I should note that, since BNSF and/or Longhorn could make any improvements they wish to existing facilities (including the construction of entirely new facilities), the feasibility of interchange using existing facilities is really irrelevant to implementation of the CMTA condition. Nevertheless, it is quite apparent that the existing track configuration does permit effective interchange at Elgin.

14. First, interchange between UP (and other Class I railroads) and shortlines is routinely conducted throughout the United States using interchange facilities that are no more extensive or elaborate than those already in place at Elgin.

15. Second, it is important to recognize that UP has been interchanging a small number of cars at Elgin for some time with Longhorn and its predecessor, AUNW. The existing connecting track in the northeast quadrant of the crossing (shown on the diagram set forth as Attachment A hereto) has permitted UP trains to pick up and deliver those cars without difficulty.



16. Third, a detailed examination of the existing facilities at Elgin confirms that they are satisfactory to permit effective interchange of the traffic that Longhorn asserts it would like to handle in conjunction with BNSF. As shown on Attachment A, the existing trackage at Elgin consists of (a) UP's north-south single-track mainline, (b) the east-west Giddings-Llano line, (c) a connecting track in the northeast quadrant of the crossing of these line, and (d) a siding adjacent to Longhorn's line east of the UP crossing, which is used to serve Longhorn's sole Elgin customer. About one mile south of the UP/Longhorn crossing is the UP Siding, which is beyond the extent of the diagram on Attachment A.

17. Using these facilities both BNSF northbound and southbound trains could readily exchange cars with Longhorn. BNSF's January 21 submission explains that BNSF would have no difficulty interchanging any number of cars with Longhorn using its northbound trains. See BNSF-76, p.2 n.2. As BNSF indicates, those trains could simply pull past the existing connection, back into that connection, and connect to (or disconnect from) Longhorn cars.

18. As BNSF recognizes, and as UP's experience interchanging cars at Elgin confirms, this configuration will be more than ample for the small volumes likely to be interchanged between BNSF and Longhorn. As noted above, the historical level of interchange between the Giddings-Llano line and SP was only 5-10 cars per week. Even a several-fold increase in this volume could easily be accommodated on the existing connecting track.

19. Moreover, the length of the existing connecting track would not prevent BNSF and Longhorn from interchanging any number of cars in this manner. To the extent longer cuts of cars were to be exchanged, they could be left on Longhorn's mainline east of the UP crossing and connecting track. Since Longhorn's track is out of service east of Elgin -- and evidently would remain so if interchange were conducted at Elgin -- there would be no problem with leaving cars there, even for extended periods of time. Contrary to Longhorn's assertion, those cars would not block any grade crossings because none exist for almost a mile east of the Avenue F crossing, which is only a few hundred feet east of the existing connecting track (see Attachment A). If Longhorn wished to avoid leaving cars on its mainline, it could meet BNSF trains at Elgin, perhaps using the locomotive that Longhorn stations at Elgin to switch a local industry. If it did this, the same BNSF train could both pick up and deliver cars, since Longhorn's locomotive could move any BNSF deliveries out of the way so that BNSF could then pick up Longhorn's outbound cars.

20. BNSF southbound trains could also pick up and deliver Longhorn cars at Elgin using existing facilities. BNSF would have at least two options. First, a southbound BNSF train could stop short of the Longhorn connection, pull through the connection with cars for Longhorn, and leave the cars in Longhorn's existing siding or west of the UP crossing for Longhorn to pick up. (BNSF could pick up Longhorn cars left on Longhorn's existing siding or west of the UP crossing in a similar manner, or both pick up and deliver cars.) Second, as noted

in CMTA-14/BNSF-75 (p. 3), Applicants have agreed to allow BNSF to make limited use of the UP Siding to facilitate interchange by BNSF southbound trains.

Using that siding, which is about one mile south of Elgin and 1.25 miles in length, a BNSF southbound train could stop adjacent to the siding on the UP mainline and cut off its locomotives. Those locomotives could use the siding to run around their train, disconnect Longhorn cars from the rear of the train and pull them north to the Longhorn connection, where they could be left for pick-up by Longhorn. Those same locomotives could also pick up Longhorn cars by pulling through the connecting track and connecting to Longhorn cars that were left west of the UP crossing (or, alternatively, this operation could be facilitated by a Longhorn crew).

**THERE IS NO OBSTACLE TO THE CONSTRUCTION OR IMPROVEMENT  
OF INTERCHANGE FACILITIES AT ELGIN**

21. If BNSF and/or Longhorn wished to make their interchange at Elgin even more convenient, nothing would prevent them from doing so. Based on the purported shortcomings of Elgin's facilities that BNSF and Longhorn identify (which, as I have shown, are not impediments to effective interchange), there are only two improvements that BNSF and/or Longhorn might realistically desire to make in order for their interchange to be more convenient: (1) a new connection in the southeast quadrant of the UP/Longhorn crossing (shown by a dashed line labelled "A" on Attachment A) and (2) a run-around track east of the UP crossing adjacent to Longhorn's track (shown by a dashed line labelled "B" on Attachment A). A new



connection would allow BNSF's southbound trains to deliver and pick up cars on the Longhorn by pulling past the crossing and pushing Longhorn cars back on to the new connecting track. BNSF's submission describes how easily the comparable movement could be performed by northbound trains using the existing connection in the northeast quadrant. BN/SF-76, p. 2 n.2. A new run-around track would allow Longhorn or BNSF to leave long cuts of cars for interchange without having to leave them on Longhorn's (still out-of-service) line east of Elgin. With these improvements, the configuration of trackage at Elgin would be superior to that at Giddings, where there is a connection only in the northwest quadrant.

22. BNSF and CMTA/Longhorn certainly have the right to make these improvements -- or any others they might deem desirable. CMTA/Longhorn, of course, can make whatever improvements it wishes to its own line. And the BNSF settlement agreement and implementing trackage rights agreement allows BNSF to construct new connections and/or sidings on the UP/SP trackage rights lines. See BNSF settlement agreement, § 9b; Sealy, Texas to Waco and Eagle Pass, Texas Trackage Rights Agreement, §§ 2(j) & (l), 5.

23. Nor is there any physical obstacle to the construction of these new facilities. Regarding a possible southeast quadrant connection (i.e., "A"), such a connection once existed, and the grading and roadbed for it remains in place and is unobstructed. Constructing such a connection would be a simple matter of installing one switch on the UP mainline, one switch on Longhorn's track, and a few hundred

feet of track. It would not be necessary for BNSF and/or Longhorn to make any expensive signal improvements to implement this new connection, because the UP mainline through Elgin is unsignalled track warrant territory.

24. Regarding a possible new run-around track (i.e., "B"), Longhorn asserts that 20-car blocks of traffic could not be left on its track at Elgin because they would block several grade crossings. This assertion is incorrect. Only a few hundred feet east of the existing connecting track (east of Avenue F), there is a stretch of Longhorn's line over one mile in length that is not crossed by any roads. A run-around track of ample length could be constructed at this location. Based on my personal inspection of this site, such an installation would be feasible and involve modest expense. It would require only two switches, some light grading and whatever length of track Longhorn and/or BNSF wished to install.

25. At one time, there was a long siding along the Giddings-Llano line a few miles east of Elgin. At some point, this siding was removed by Longhorn's predecessor, apparently because traffic volumes between Elgin and Giddings did not warrant its continued maintenance.

**BNSF'S PROPOSED USE OF THE UP SIDING SOUTH  
OF ELGIN IS UNACCEPTABLE**

26. As described above, it is clearly not necessary for BNSF southbound trains to deposit cars in the UP Siding for later pick-up by Longhorn, or for Longhorn to deposit cars there for later pick-up by BNSF. Such operations

would unacceptably interfere with mainline operations on UP's line and put UP unfairly at risk from Longhorn's operations over UP's line to access the UP Siding.

27. Use of the UP Siding for the storage of cars awaiting pick-up by BNSF or Longhorn would cause operational interference because this siding is a critical component of UP's single-track mainline between Waco and Smithville. The siding is actively used for the passing and meeting of freight trains on this line, and will also be used to handle BNSF trains when its trackage rights operations commence. As shown on the attached UP track diagram (Attachment B hereto), the nearest alternative sidings are 18 miles to the north and 11.5 miles to the south. If the Elgin siding were unavailable for train meets -- as it would be if Longhorn interchange cars were occupying it -- there would be a gap of about 30 miles without any passing siding. It is unclear how long BNSF contemplates cars would sit on the UP Siding awaiting pick-up, but in "standard industry practice and custom" (BN/SF-76, p. 2) it is not uncommon for them to sit for days -- especially if the connection is with a shortline whose operations are infrequent. But whether the UP Siding were taken out of service for days or for hours, the result would be significant delays to freight operations on this line and a significant reduction in the line's capacity and fluidity.

28. BNSF belittles the potential for operational interference by suggesting that it will be operating (at least initially) only three trains per week in both directions. For several reasons, however, BNSF's purported judgment about the



effects of its proposed use of the UP Siding cannot be relied upon. Most significantly, the relative infrequency of BNSF's own operations will make it all the more likely that cars would be left on the UP Siding for lengthy periods of time, exacerbating the problems I have described. UP/SP will be operating several times more trains over this line than BNSF plans to operate (at least four trains per day, even after the traffic reductions on the line anticipated in the Applicants' Operating Plan), and the burden of delay will therefore fall upon UP/SP, not BNSF. Indeed, BNSF may not care about the problems caused by cars left sitting on the UP Siding, since its trains would generally be stopping at that siding to pick up and deliver Longhorn cars in any event, rather than using the siding for through movements.

29. There is another major problem with BNSF's proposal. A central feature of that proposal involves Longhorn's operation over UP's mainline to reach the UP Siding. This is unacceptable for two reasons. First, it would result in an additional set of movements on UP's mainline that would have to be accommodated by UP's dispatcher and would interfere with mainline operations. The entire time that Longhorn crews spent reaching the siding and switching cars there, the mainline would be blocked. Applicants should not be required to convert their mainline into the equivalent of a switching yard for the convenience of Longhorn and BNSF.

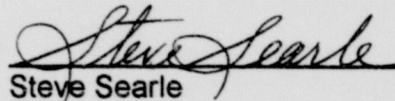
30. Second, Applicants are not willing to allow Longhorn to operate over their mainline trackage for any purpose. The operation of any third party over

Applicants' property inherently multiplies risks of derailment or other accident. Applicants have no reason to believe that Longhorn's train crews are adequately trained to minimize those risks, or that Longhorn is adequately capitalized and insured to prevent the financial burden of such risks from falling upon Applicants. Unlike carriers with which UP has entered consensual trackage rights arrangements, Applicants are not prepared to accept the risks of Longhorn's operations on their lines.

## VERIFICATION

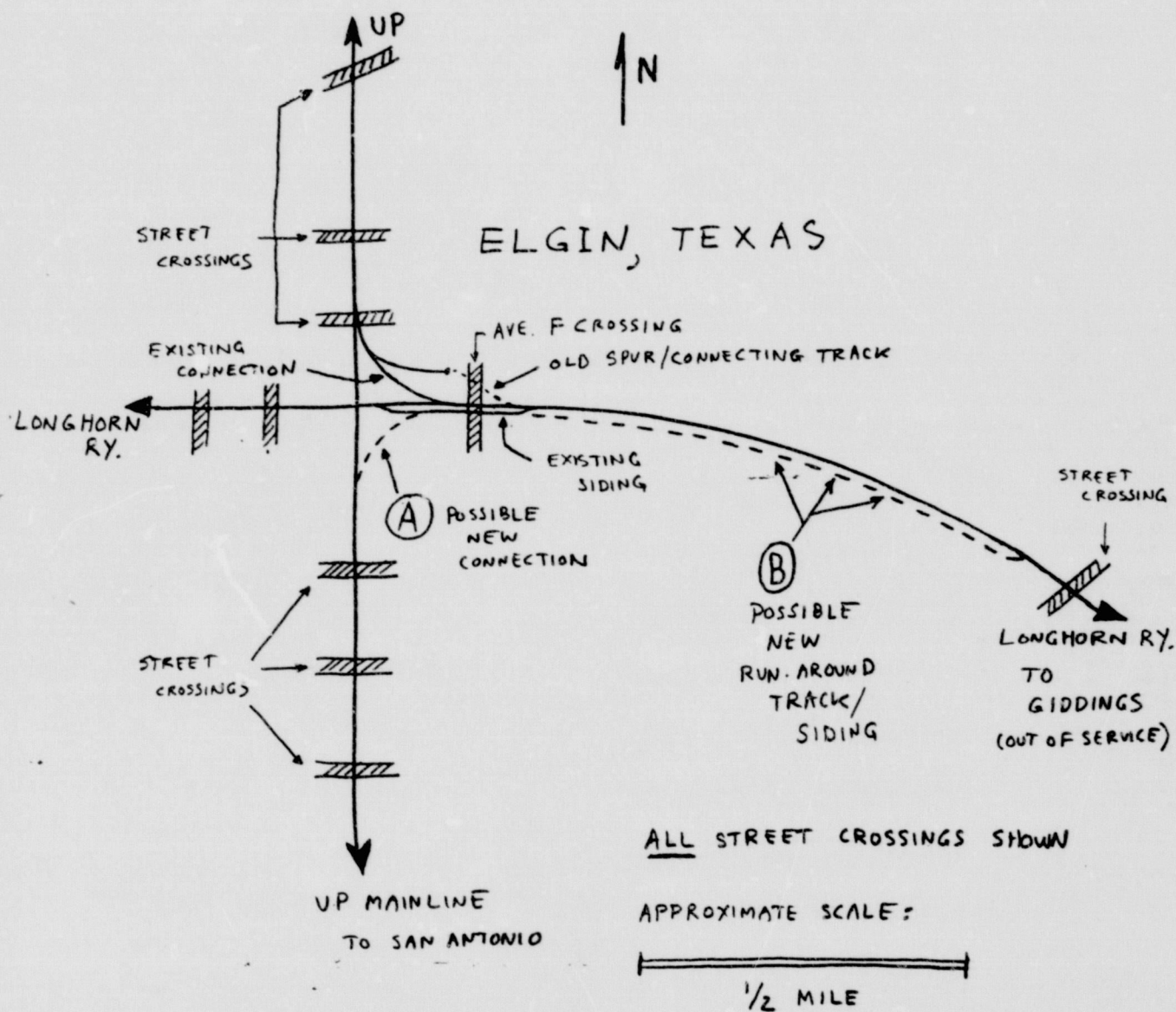
I, Steve Searle, declare under penalty of perjury that the foregoing statement is true and correct.

Executed on January ~~24~~, 1997.

  
Steve Searle

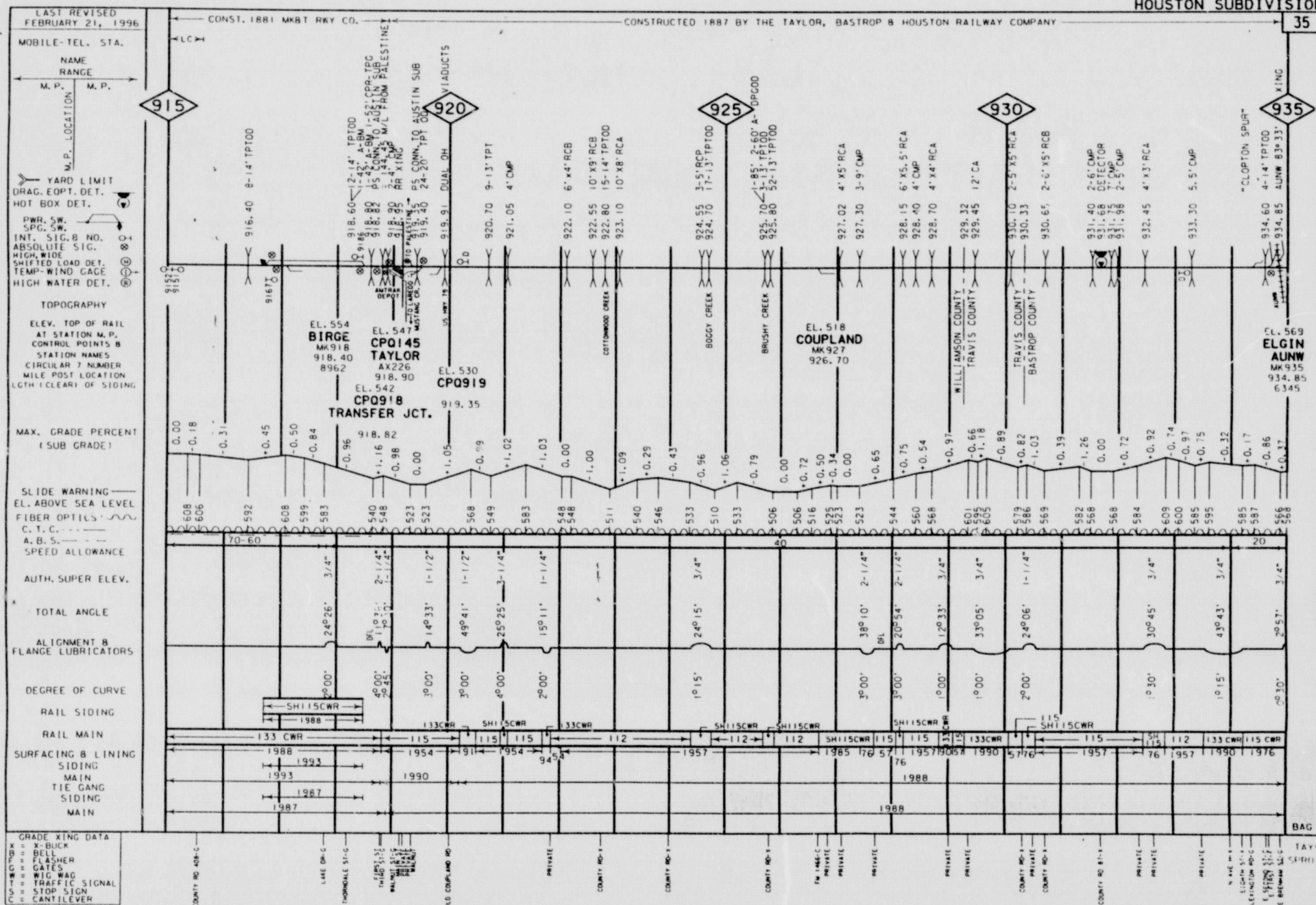


# ATTACHMENT A



## ATTACHMENT B

SAN ANTONIO DIVISION  
HOUSTON SUBDIVISION



CONSTRUCTED 1887 BY THE TAYLOR, BASTROP & HOUSTON RAILWAY COMPANY

LAST REVISED  
FEBRUARY 21, 1996

MOBILE-TEL. STA.

NAME  
RANGE

M. P. M. P.

M. P. LOCATION

YARD LIMIT

DRAG, EOPT, DET.

HOT BOX DET.

PWR. SW.

SPC. SW.

INT. SIG. B NO.

ABSOLUTE SIG.

HIGH, WIDE

SHIFTED LOAD DET.

TEMP. WIND GAGE

HIGH WATER DET.

TOPOGRAPHY

ELEV. TOP OF RAIL

AT STATION M.P.

CONTROL POINTS B

STATION NAMES

CIRCULAR T. NUMBER

MILE POST LOCATION

LGTH (CLEAR) OF SIDING

MAX. GRADE PERCENT

(SUB GRADE)

SLIDE WARNING

EL. ABOVE SEA LEVEL

FIBER OPTICS

C. T. C.

A. B. S.

SPEED ALLOWANCE

AUTH. SUPER ELEV.

TOTAL ANGLE

ALIGNMENT B

FLANGE LUBRICATORS

DEGREE OF CURVE

RAIL SIDING

RAIL MAIN

SURFACING B LINING

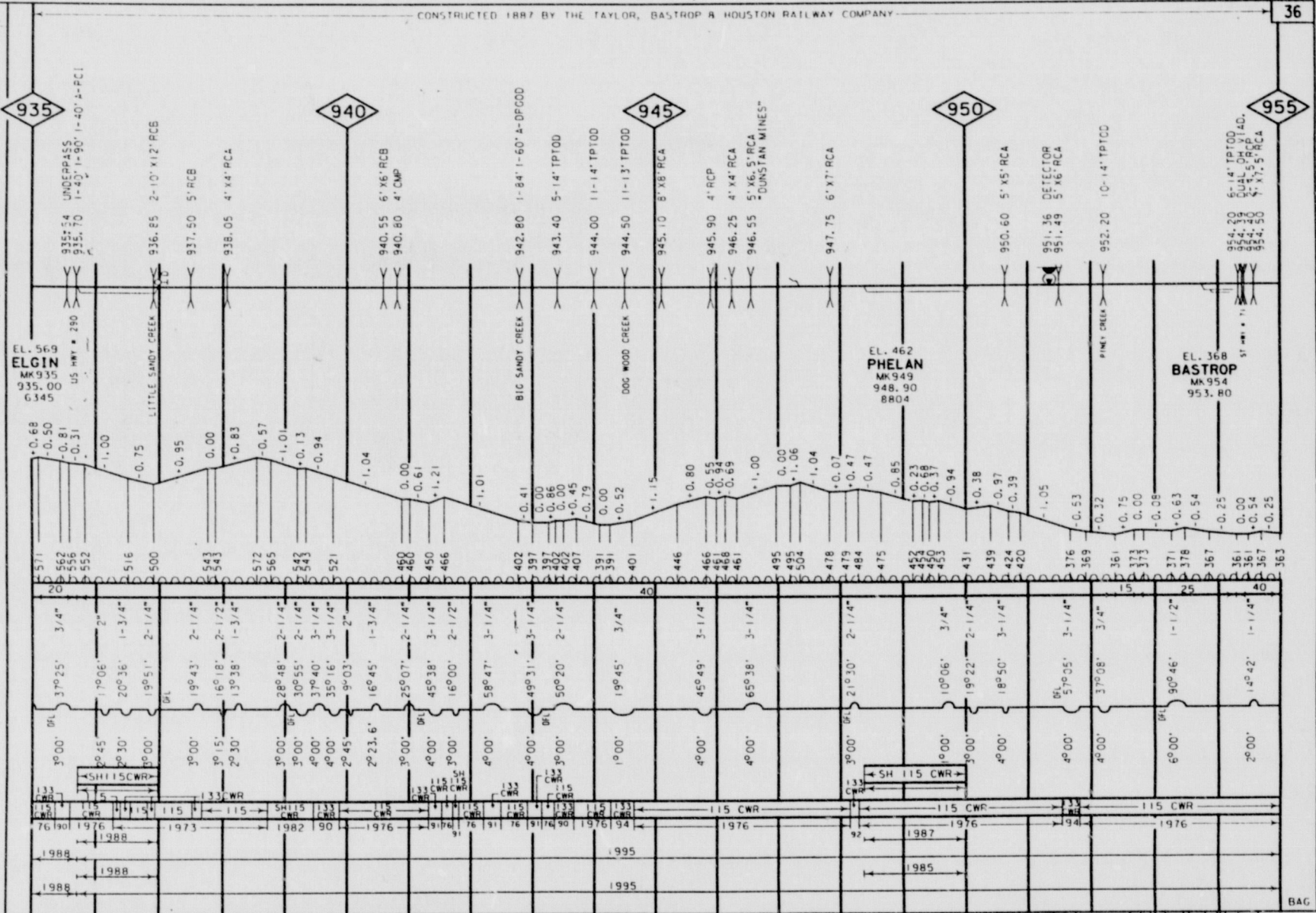
SIDING

MAIN

TIE GANG

SIDING

MAIN



GRADE XING DATA	EL. 569	EL. 462	EL. 368
X-BUCK	935.00	945.90	954.50
BELL	936.85	946.25	954.40
FLASHER	937.50	946.55	954.50
GATES	938.05	947.75	954.50
WIG WAG	940.55	948.90	954.50
TRAFFIC SIGNAL	940.80	949.00	954.50
STOP SIGN	942.80	950.60	954.50
CANTILEVER	943.40	951.36	954.50



## CERTIFICATE OF SERVICE

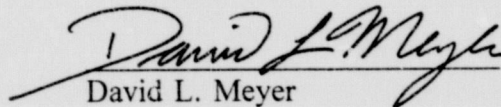
I hereby certify that, pursuant to Decision No. 65, I have this 28th day of January, 1997, served the foregoing document by hand on:

Albert B. Krachman, Esq.  
Monica J. Palko, Esq.  
Bracewell & Patterson, L.L.P.  
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and by Federal Express on:

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The Longhorn Railway Company  
10220-E Metropolitan  
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David L. Meyer

STB

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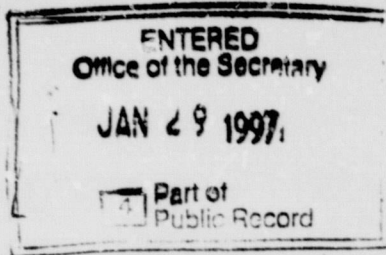
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UP/SP-298



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, SPSCL CORP. AND THE DENVER AND  
RIO GRANDE WESTERN RAILROAD COMPANY

Finance Docket No. 32760 (Sub-No. 10)

RESPONSIVE APPLICATION -- CAPITAL METROPOLITAN  
TRANSPORTATION AUTHORITY

**APPLICANTS' REPLY TO SUBMISSIONS OF  
LONGHORN AND BNSF PURSUANT TO DECISION NO. 67**

The primary applicants, UPC, UPRR, SPR, SPT, SSW, SPSCL and DRGW,<sup>1/</sup> are submitting this paper, together with the supporting verified statement of Steve Searle, in reply to the submissions filed by Longhorn (unnumbered) and BNSF (BN/SF-76) on January 11, 1997 addressing implementation of the CMTA condition. As set forth in Decision No. 67, CMTA has exercised the unilateral choice given it by the Board by selecting Elgin as the point of interchange between

<sup>1/</sup> The acronyms used herein are the same as those in Appendix B to Decision No. 44. MPRR merged into UPRR on January 1, 1997.



BNSF and the operator of the Giddings-Llano line, and Applicants have agreed to terms that will implement such an interchange. Decision No. 67 also noted that BNSF and Longhorn had questioned the adequacy of the existing interchange facilities at Elgin, and the Board provided those parties with the opportunity to submit evidence addressing that issue by January 21.

In their submissions pursuant to Decision No. 67, Longhorn and BNSF both lose sight of the only issue the Board should consider: whether an interchange at Elgin implemented on the terms proposed by Applicants will preserve the competitive rail options that Giddings-Llano shippers would have had absent the UP/SP merger.<sup>2/</sup> Evidently recognizing that the answer to that question is clearly yes, and indeed that shippers will be made significantly better off with a BNSF interchange at Elgin (and ignoring completely their ability to make any improvements they might wish to the facilities at Elgin), BNSF and Longhorn instead attempt to refocus the debate on a very different set of issues: whether the existing track configuration at Elgin is equivalent to that at Giddings, and whether Applicants should grant additional rights to make a BNSF-Longhorn interchange more convenient.

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<sup>2/</sup> Longhorn (at 4) does articulate this standard -- stating that the "purpose of Condition 31 was to make the situation as close to what it had been before the Applicants were allowed their desired mergers" -- but then quickly proceeds to disregard it.

To this end, Longhorn argues that it would prefer to hand off traffic to BNSF at Giddings based on vague assertions that the facilities there are better than those at Elgin. BNSF, on the other hand, recognizes that an Elgin interchange is superior to one at Giddings, and acknowledges that the existing facilities at Elgin are adequate to effect interchange of any number of cars with BNSF's northbound trains and of at least 10-14 cars at a time<sup>3/</sup> with BNSF's southbound trains. BN/SF-76, p. 2.

BNSF's submission is not accompanied by any evidence supporting the lawyers' assertions therein. BNSF does not explain why interchange of a greater number of cars with its southbound trains is impossible -- much less contest that it could be made more convenient through the construction of new facilities. Nonetheless, BNSF asks that its southbound trains be permitted to use a UP passing siding one mile south of Elgin (hereafter the "UP Siding") for purposes of leaving cars, perhaps for several days, for later pick-up by Longhorn, and that Longhorn be permitted to operate over UP's mainline to access the siding and leave cars there, again perhaps for several days, for later pick-up by BNSF.

Although Applicants will demonstrate that existing facilities are in fact adequate to effect interchange between Longhorn and BNSF, and that BNSF's

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<sup>3/</sup> This is the number of cars Longhorn indicates (at 3) can be held on the existing connecting track. As we explain below (at pages 16-18), existing facilities at Elgin in fact can accommodate a much larger number of cars.

proposal would cause unacceptable problems, Applicants submit that the Board need not even reach those issues. All that is required to preserve -- and indeed, more than preserve -- the pre-merger options of Giddings-Llano shippers is for BNSF to have the right to interchange with Longhorn at Elgin and for BNSF and Longhorn to have the right to construct any facilities they might deem necessary or desirable, now or in the future, to facilitate that interchange. The implementation terms proposed by Applicants fulfill these requirements, and even go a step farther by allowing BNSF to make limited use of the UP Siding so that interchange with BNSF southbound trains can be even more convenient.

As a result, neither Longhorn nor BNSF provide any justification for implementing the CMTA condition on terms other than those proposed by UP/SP. The arguments of Longhorn and BNSF should be recognized as simply efforts to improve their own competitive posture at Applicants' expense. Those railroads do not need any additional rights -- much less the implementation of a Giddings interchange in lieu of one at Elgin, as Longhorn seems to request -- to interchange traffic effectively, and thereby provide a competitive alternative to the existing connection with UP at McNeil. By any measure, a new interchange with BNSF at Elgin on the terms Applicants have proposed will leave Giddings-Llano shippers far better off than they would have been absent the UP/SP merger.



As explained in more detail below:

- (1) Any BNSF interchange will make shippers on the Giddings-Llano line -- as well as Longhorn -- significantly better off that they would have been absent the UP/SP merger.
- (2) There are good and sufficient reasons for CMTA -- which has every incentive to protect the long-term interests of Giddings-Llano shippers -- to prefer an interchange with BNSF at Elgin over one at Giddings, even if it were assumed (contrary to actual fact) that implementing the former might require some expenditure on new facilities by BNSF or Longhorn.
- (3) Whatever conclusion might be reached regarding the adequacy of existing facilities at Elgin to handle the interchange traffic Longhorn contemplates, that issue is irrelevant because (a) there is no obstacle to the construction of any new facilities BNSF or CMTA/Longhorn might deem necessary or desirable and (b) CMTA has chosen Elgin over Giddings as the better overall alternative.
- (4) Even if the adequacy of existing facilities were relevant, there is no question that those facilities are adequate to permit interchange between Longhorn and BNSF. Any grant of additional rights to BNSF and/or Longhorn would -- in addition to being unnecessary and unfair -- interfere with operations on UP's mainline through Elgin.

**I. ANY INTERCHANGE WITH BNSF WILL SIGNIFICANTLY  
IMPROVE THE COMPETITIVE OPTIONS OF GIDDINGS-LLANO  
SHIPPERS**

Absent the UP/SP merger, the only competitive option that Giddings-Llano shippers would have had was an interchange with SP at Giddings that did not provide, and would not have provided, a meaningful alternative to the UP connection at McNeil. The SP interchange had been out of service for several years because the

operator of the Giddings-Llano line had discontinued service east of Smoot. See Decision No. 44, p. 34. For the connection with SP to have any competitive significance would have required the operator of the Giddings-Llano line to resume service to Giddings over 32 miles of line that had been left moribund, and to bear the considerable additional burden of maintaining that trackage. It is hard to take seriously Longhorn's assertions about the supposed superiority of Giddings as a point of interchange when one understands that, despite repeated assurances and the explicit representation of CMTA's counsel that service to Giddings would commence by July 15, 1996,<sup>4/</sup> Longhorn has still not rehabilitated its line east of Elgin to permit such service. Longhorn Submission, pp. 4, 5; Searle VS, ¶¶ 5-6.

Applicants have inspected Longhorn's line east of Elgin, and confirmed that it would require considerable additional rehabilitation -- at considerable additional expense -- before any train service could be resumed to Giddings, and still greater expenditures to handle the heavy granite and aggregates traffic that Longhorn says it wishes to interchange there. Searle VS, ¶ 6; Longhorn Submission, p. 3. Maintaining that additional trackage would present a further significant burden for Longhorn and any subsequent operator of the line. Searle VS, ¶ 6. Because there are no active shippers along the Giddings-Llano line east of Elgin, that burden would have to be borne entirely by Giddings interchange traffic. Id. Accordingly, replacing

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<sup>4/</sup> See July 1, 1996 Oral Argument Tr., p. 437.

SP with BNSF at Elgin permits creation of a new connection with a second Class I without the need for the Giddings-Llano line (and indirectly its shippers) to bear all of this additional expense.

Even when the connection with SP at Giddings was active, it did not provide meaningful competition to the UP connection at McNeil. SP's interchange volumes with Longhorn's predecessor, AUNW, were negligible even before AUNW took its line out of service east of Smoot. SP and AUNW exchanged only 5-10 cars per week, amounting to 6% or less of AUNW's total traffic (the balance of which was interchanged with UP). Id., ¶ 7.

In fact, Longhorn argues that SP did not provide a meaningful competitive alternative to a UP routing via McNeil for the traffic that Longhorn asserts it would like to interchange with BNSF. Longhorn contends that "SP, previously unmerged with UP, refused to give competitive rates to the Giddings-Llano railroad's shippers, primarily aggregate, into the Houston market." Longhorn Submission, p. 4. Longhorn contends that, because UP/SP has given assurances that it would provide Giddings-Llano shippers with rates that are competitive with rates from San Marcos and San Antonio -- the "merger thus may in fact create competition, not eliminate it," even without any BNSF connection at Elgin or Giddings. Id. (emphasis added). Longhorn thus does not contest that the CMTA condition -- however implemented -- will make Giddings-Llano shippers better off.



In place of a moribund and out-of-service connection with SP, implementation of the CMTA condition on Applicants' terms will provide Giddings-Llano shippers with an active and operational connection with BNSF, which not only is eager to compete with UP/SP but is far more capable of doing so than SP. In this context, the Board should not entertain the pleas of Longhorn and BNSF for additional rights to further enhance this new option at Applicants' expense.

**II. THERE ARE STRONG REASONS FOR CMTA TO HAVE  
PREFERRED ELGIN OVER GIDDINGS EVEN IF IT WERE  
ASSUMED THAT THE ELGIN'S FACILITIES WOULD HAVE TO BE  
IMPROVED**

In addition to the fact that any interchange with BNSF will make Giddings-Llano shippers far better off than they would have been with an SP interchange at Giddings, there are strong reasons for CMTA to have preferred Elgin over Giddings as a point of interchange with BNSF. The Board's decision granting the CMTA condition was quite clear in stating that CMTA would have the unilateral right to choose a single interchange point with BNSF to preserve a connection with a Class I railroad other than UP/SP.

In making its choice, CMTA was entitled to consider all factors bearing on the advantages and disadvantages of these potential interchange points. CMTA could have chosen Giddings, which would have duplicated as closely as possible the SP connection that once existed, including the track configuration of that connection. Instead, CMTA chose Elgin, which irrefutably establishes that, whatever judgment

might be made about the relative merits of the existing track configuration at Giddings and Elgin, CMTA believes that a connection at Elgin will provide Giddings-Llano shippers with a superior competitive alternative as compared to a connection at Giddings.<sup>5/</sup>

CMTA's explanation of the reasons for its choice highlights two basic respects in which an Elgin interchange is superior to one at Giddings. First, Elgin is 32 miles closer to the Giddings-Llano shippers than Giddings. CMTA-14/BNSF-75, p. 3; Searle VS, ¶ 9. This is significant for two reasons. Most immediately, while Longhorn has resumed service to Elgin, it still has not placed its line between Elgin and Giddings back into service -- despite the express representation CMTA made to this Board at the oral argument last July that Longhorn planned to resume operations to Giddings by July 15, 1996. Not only does this fact call into question the credibility of Longhorn, it underscores the fragility of an interchange at Giddings that will require Longhorn to revive 32 miles of long-out-of-service track and then saddle Longhorn and any subsequent operator of the line with the considerable burden of maintaining the line to handle interchange traffic. See discussion at pages 6-7, supra. Since those burdens will have to be shouldered by the interchange traffic alone, the viability of this segment is especially doubtful if, as Longhorn appears to

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<sup>5/</sup> Implicitly recognizing that an Elgin interchange would provide Giddings-Llano shippers with a superior option to that which existed before the merger, the Board nevertheless allowed CMTA to make that choice in order to "hold applicants to their representation that they will allow such a connection." Decision No. 44, p. 182.

acknowledge, interchange volumes will be very small. See Longhorn Submission, p. 5 (referring to "[l]ittle, [sic] to no traffic at Giddings, which UP/SP reminds this Board is still not open for the Giddings/Llano railroad"). Searle VS, ¶¶ 6, 9. Indeed, past experience is a strong reminder that service east of Elgin will be at best tenuous.

In its quest to second-guess CMTA's judgment about the relative merits of Giddings and Elgin, Longhorn appears to assert that a Longhorn-BNSF route via Giddings is shorter from origin to destination than one via Elgin for the traffic Longhorn desires to interchange with BNSF. See Longhorn Submission, p. 6. If Longhorn intended to make this assertion, it is erroneous. For example, Longhorn speaks of potential movements of aggregates traffic via BNSF to Houston. A Longhorn-BNSF route for this traffic via Elgin and Sealy (using BNSF's trackage rights via Smithville) would be shorter by at least 19 miles than a route via Giddings. Searle VS, ¶ 10. More importantly, Longhorn's assertion misses the point that an interchange at Elgin relieves the Giddings-Llano operator of the obligation to revive and maintain an additional 32 miles of its own trackage.

Second, CMTA appropriately considered the much higher level of service BNSF will offer at Elgin as compared to Giddings. CMTA-14/BNSF-75, p. 3. At Elgin, BNSF's Operating Plan indicates that BNSF initially will operate three through freights each way weekly. BNSF-PR-1, Ex. A, p. 12. BNSF's trackage rights through Elgin provide the primary link between BNSF's system and the important Eagle Pass gateway. At Giddings, by contrast, the level of BNSF



service is highly uncertain. To implement a Giddings interchange, BNSF would have to receive entirely new operating rights over the 29-mile segment between Giddings and Caldwell.<sup>6/</sup> CMTA properly understood that the level of service provided by a BNSF "branchline" operations over the 29-mile former-SP segment between Caldwell and Giddings, for the sole purpose of serving an interchange with Longhorn, would likely be far inferior -- in terms of frequency and transit time -- to BNSF's planned mainline operations at Elgin. Searle VS, ¶ 11.

Given these two fundamental advantages of Elgin over Giddings -- over and above the fact that any interchange with BNSF would provide be far superior to an interchange with SP -- it was entirely reasonable for CMTA to conclude that Elgin was the superior option.<sup>7/</sup> This is so even if there were some legitimate doubt (which there is not) about whether interchange at Elgin could be achieved as

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<sup>6/</sup> Longhorn is incorrect in suggesting that BNSF's lack of existing trackage rights to serve Giddings dictated CMTA's choice of interchange point. Longhorn Submission, pp. 4, 5. To the contrary, very early in the implementation process Applicants communicated to all concerned that they were prepared to implement an interchange at either Elgin or Giddings, as ordered by the Board, and that if CMTA selected Giddings, Applicants would grant BNSF new rights permitting it to interchange there.

<sup>7/</sup> Longhorn's contention (at 4) that "MKT's interchange with the Giddings/Llano railroad at Elgin was always known to be inferior to where SP interchanged with the same railroad at Giddings" is both incomprehensible and nonsensical. Historically, the Giddings-Llano line was operated by SP, and thus access to the SP system at Giddings was naturally preferred to interchange with a competing road at Elgin. Moreover, since 1988, when UP and MKT merged and shortly after SP spun-off the Giddings-Llano line, the connection at Elgin has been with UP, not MKT, and shippers have preferred the McNeil interchange with UP for reasons unrelated to the issues presented here.

conveniently as BNSF and Longhorn might wish using existing facilities. CMTA was well aware of the nature of the existing facilities at both Elgin and Giddings. Those matters were the subject of extensive correspondence, as set out in part in Applicants' January 9 submission (UP/SP-292, pp. 6-8). Indeed, UP/SP rejected the precise operational proposal now reiterated by BNSF (i.e., use of the UP Siding to hold cars awaiting pick-up or delivery) and explained how interchange could be carried out without such operations, using either existing facilities or new ones constructed by BNSF or Longhorn (see id.), and CMTA still chose Elgin over Giddings. Now that CMTA has chosen Elgin based on all of the relevant considerations, it is inappropriate in the extreme for BNSF and Longhorn to attempt to isolate one narrow factor -- i.e., the track configurations at Elgin and Giddings<sup>8/</sup> -- and ask that in that respect too Elgin be made superior at Applicants' expense.

### **III. THERE IS NO OBSTACLE TO THE CONSTRUCTION OR IMPROVEMENT OF INTERCHANGE FACILITIES AT ELGIN**

As Applicants have previously explained, the BNSF settlement agreement and the implementing trackage rights agreement give BNSF the right to construct whatever connections and associated sidings it may deem necessary or desirable to facilitate interchange with Longhorn at Elgin. Longhorn (and/or CMTA)

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<sup>8/</sup> In fact, BNSF's does not attempt to compare Elgin's facilities with those at Giddings, much less establish that the Elgin facilities are inadequate. (Nor, as noted above, does BNSF offer any evidence in support of its lawyers' assertions.) Instead, it simply makes a bald-faced request that BNSF be given additional rights to make its operations more convenient, without BNSF's having to bear the expense.

has a similar inherent right with respect to its own trackage.<sup>9/</sup> There is no dispute about this.

BNSF's silence on the question of new facilities acknowledges that there is no obstacle to constructing them at Elgin if BNSF or CMTA/Longhorn conclude that they are desirable.<sup>10/</sup> Longhorn, on the other hand, makes vague assertions that the movement of 20-car blocks of traffic would "never be possible at Elgin," or at least that it would be "singularly difficult to configure facilities" to permit this. Longhorn Submission, pp. 4, 5. Those assertions are false.

Steve Searle, who has extensive operating experience and personally conducted an on-site inspection of the facilities and geographic configuration at Elgin for purposes of implementing the CMTA condition, explains in his attached verified statement that existing facilities are adequate to permit effective interchange. Searle VS, ¶¶ 12-20. But even if it somehow were necessary for BNSF and Longhorn to carry out their interchange in a manner that the existing track configuration does not permit, BNSF and Longhorn could make whatever improvements they might desire. Based on the supposed shortcomings that BNSF and Longhorn describe, there are

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<sup>9/</sup> See UP/SP-292, pp. 4-5; BNSF settlement agreement § 9b; Sealy, Texas to Waco and Eagle Pass, Texas Trackage Rights Agreement, June 1, 1996, §§ 2(j) & (l), 5.

<sup>10/</sup> BNSF is also silent on the question whether any new facilities are actually needed, as opposed to merely desirable to achieve the greatest possible convenience for BNSF. In fact, as discussed below (at pages 16-18), the existing facilities at Elgin are perfectly adequate to permit effective interchange.



only two improvements they might wish to make for their interchange to be more convenient, both of which are shown on Attachment A to the Searle Verified Statement: (1) a new connection in the southeast quadrant of the Longhorn-UP crossing (labelled "A" on Searle Attachment A), which would permit BNSF southbound trains to perform the simple back-up maneuver that northbound trains already can perform,<sup>11/</sup> and (2) a new siding adjacent to the Longhorn's line east of the UP crossing (labelled "B" on Searle Attachment A), which would allow longer cuts of cars to be left for pick-up by Longhorn or BNSF without blocking Longhorn's line east of Elgin. Id., ¶ 21.<sup>12/</sup> Mr. Searle explains that, contrary to Longhorn's assertions about grade crossings and other limitations, construction of either or both of these new facilities would be feasible. Id., ¶¶ 22-23.<sup>13/</sup> With them, moreover, the track configuration at Elgin would be superior to that at Giddings. Id., ¶ 21.

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<sup>11/</sup> BNSF's submission describes the ease with which BNSF northbound trains can interchange Longhorn cars using the existing connection in the northeast quadrant. See BN/SF-76, p. 2 n.2.

<sup>12/</sup> As explained below (at page 16), however, BNSF and Longhorn could use Longhorn's existing trackage at Elgin to hold longer cuts of cars because, without the need to interchange with BNSF at Giddings, Longhorn trains will not have to operate east of Elgin.

<sup>13/</sup> Indeed, Applicants have previously informed CMTA, BNSF and Longhorn about the feasibility of precisely these improvements (see UP/SP-292, pp. 6-7), and those parties' failure even to address the point in their January 21 submissions should be taken as a concession that such improvements are feasible.

Construction of a new connection in the southeast quadrant would be a simple matter because precisely such a connection once existed, and the grading and roadbed for it remains in place. Installing such a connection would require two new switches and a few hundred feet of track. No costly signalling improvements would be required. Id., ¶ 23.

In addition, there is ample room for a lengthy new siding adjacent to Longhorn's line a few hundred feet east of the UP crossing at Elgin. If desired, such a siding could accommodate cuts of almost a mile in length without blocking any grade crossings, although Longhorn appears to desire capacity for only 20-car blocks. Construction of such a siding would also be a simple matter, involving some light grading and the installation of two switches and whatever length of track Longhorn might desire. Id., ¶ 24. The feasibility of such a siding is underscored by the fact that there once was a long siding on the Giddings-Llano line a few miles east of Elgin, until it was removed by Longhorn's predecessor because traffic levels east of Elgin did not warrant its continued maintenance. Id., ¶ 25.

Nor is there any merit to Longhorn's passing suggestion (at 5) that the cost of any improvements to facilities at Elgin be borne by Applicants rather than BNSF or CMTA/Longhorn. As we have already demonstrated, implementation of a BNSF connection at Elgin will make Giddings-Llano shippers far better off than they would have been absent the merger, and better off than they would be with a BNSF connection at Giddings that makes use of existing facilities there. Applicants should

not be required to pay for still further improvements to the new BNSF connection Elgin.

**IV. EXISTING INTERCHANGE FACILITIES AT ELGIN ARE ADEQUATE TO PERMIT EFFECTIVE INTERCHANGE**

Finally, Applicants respond to the assertions made by Longhorn and BNSF that the facilities at Elgin might be inadequate to allow effective interchange.

As Mr. Searle explains, the adequacy of the facilities at Elgin is demonstrated by the fact that they are no less extensive or elaborate than the facilities routinely used for interchange between Class I railroads and shortlines throughout the United States. In addition, UP has itself used the Elgin facilities to carry out interchange with Longhorn and its predecessor. *Id.*, ¶¶ 14-15.

Furthermore, Mr. Searle analyzes in detail the track configuration at Elgin and demonstrates that both BNSF northbound and southbound trains could exchange cars with Longhorn without difficulty. *Id.*, ¶¶ 16-20. BNSF's submission explains how BNSF's northbound trains could conveniently interchange any number of cars with Longhorn using the existing connecting track. BN/SF-76, p. 2 n.2. If the number of cars to be exchanged exceeded the capacity of that track, moreover, those cars could be left on Longhorn's line a few hundred feet east of the UP connection without blocking any grade crossings, contrary to Longhorn's contention (at 3). Searle VS, ¶ 19. Thus, even if interchange volumes were many times greater than the volume historically interchanged with SP at Giddings -- which even



Longhorn (at 5) appears to regard as unlikely -- existing facilities are adequate for interchange with BNSF northbound trains. Searle VS, ¶ 18.

The same is true for interchange with BNSF southbound trains.

BNSF's critique of existing facilities is limited to the narrow context of southbound BNSF trains that might need to interchange more cars than will fit in the existing connecting track. BN/SF-76, p. 2. Although BNSF does not say that interchange would be impossible in these circumstances, it nevertheless urges that it and Longhorn be given the right to leave cars on the UP Siding for later pick-up to facilitate such interchange. BNSF's proposal contemplates that both BNSF and Longhorn would leave cars occupying this siding for a period of time consistent with "industry practice and custom" (BN/SF-76, p. 2) -- which, as Mr. Searle points out (at ¶ 27), could be several days -- and that, in addition, Longhorn would have the right to operate over UP's mainline to access the siding. Mr. Searle explains that use of the siding in this manner is both unnecessary and unacceptable. Searle VS, ¶¶ 20, 26-30.

First, existing facilities are ample to permit interchange of any number of cars with BNSF southbound trains. As Mr. Searle explains, BNSF would have two options: its trains could (1) stop short of the existing connection and leave and/or pick up cars on Longhorn's existing siding or on Longhorn's line west of the UP crossing or (2) stop adjacent to the UP siding and use that siding for the limited purpose of running around the train to pick up and/or receive Longhorn cars left on

the existing connecting track or on Longhorn's line to the east. Id., ¶ 20 & Att. A. The fact that BNSF might prefer to make its operations even more convenient in the unlikely event interchange volumes grow significantly does not mean that existing facilities are inadequate to permit effective interchange.

Second, as Applicants have explained at length to all interested parties, use of the UP Siding in the manner BNSF contemplates would unacceptably interfere with mainline operations. See UP/SP-292, pp. 6-8; Searle VS, ¶¶ 27-28. UP's line through Elgin is a single-track mainline, the fluid operation of which requires well-spaced passing sidings. Were the siding south of Elgin occupied by BNSF-Longhorn interchange cars -- even for hours, much less for days -- it would be unavailable for train meets, leaving a gap of 30 miles between sidings that would significantly impair the fluidity of train operations on this line. Searle VS, ¶ 27. BNSF's submission belittles this point (BN/SF-76, pp. 2-3), but BNSF's judgment -- even if it were supported by evidence, which it is not -- cannot be relied upon in this circumstance. Applicants, not BNSF, will bear the brunt of the resulting delays, and BNSF may not care that the UP Siding would be unavailable for train meets because it anticipates that its trains would be using the siding to pick up and deliver cars, rather than for through movements. Searle VS, ¶ 28.

Third, a salient feature of BNSF's proposed operational scheme involves Longhorn's operation over UP's mainline to pick up and deliver cars at the UP siding. Such operations would introduce an entirely separate set of delays on

UP's mainline, in effect converting UP's mainline into a switching yard for Longhorn's benefit. Id., ¶ 29. Longhorn's operations over UP's mainline are also unacceptable for another reason. The operations of any third-party on UP's trackage inherently multiplies the risks of derailment or other accident. Applicants have no confidence that Longhorn's train crews are properly trained to minimize these risks, or that Longhorn has the financial resources to prevent the burden of any accident from falling upon Applicants. Id., ¶ 30. Unlike carriers with which UP has entered consensual trackage rights arrangements, Applicants are not willing to bear the risks associated with Longhorn's operations over its mainline, and it would be unfair and inequitable to require them to do so.

### CONCLUSION

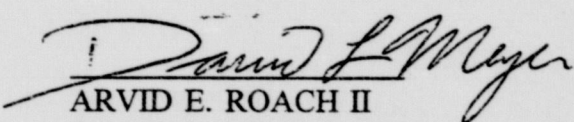
For the foregoing reasons, the Board should implement the CMTA condition on the terms proposed by Applicants.



Respectfully submitted,

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January 28, 1997

## VERIFIED STATEMENT OF

STEVE SEARLE

1. My name is Steve Searle. I am Superintendent Trackage Rights for Union Pacific Railroad ("UP"). In that capacity, I serve as the principal UP liaison with the BNSF Operating Department with respect to BNSF's implementation of the trackage rights it received as a result of the UP/SP merger. I have 38 years of experience in UP's Operating Department, including many years of service as a Superintendent and Assistant Superintendent with responsibility for terminal operations. That experience has provided me with extensive expertise regarding the interchange of traffic among railroads and the facilities used to carry out such interchange.

2. I submitted testimony before the Interstate Commerce Commission in the UP/CNW control case, Finance Docket No. 32133. My testimony in that case concerned operating issues involving the Kansas City terminal, where I was then UP's Superintendent.

3. My testimony in this statement concerns the implementation of Condition No. 31 imposed by the Surface Transportation Board in Decision No. 44, which I will refer to as the "CMTA condition." The purpose of my testimony is to address several factual issues relevant to the implementation of the CMTA condition and to respond to various assertions made in the January 21 submissions of BNSF and Longhorn. For reasons I will set forth below, the terms proposed by Applicants -- which are described in CMTA-14/BNSF-75, at page 3 -- will

appropriately implement the CMTA condition. Under those terms, shippers on the Giddings-Llano line will have a connection with BNSF at Elgin that is far superior to the potential connection with SP at Giddings that existed prior to the UP/SP merger. I will also explain in more detail that (1) the existing interchange facilities at Elgin permit effective interchange between BNSF and Longhorn, (2) there is no obstacle to the construction of any improved facilities that BNSF and/or Longhorn might desire, and (3) BNSF's proposal that it and Longhorn have the right to leave cars on a UP mainline passing siding one mile south of Elgin (which I will refer to as the "UP Siding") is operationally infeasible and unacceptable.

**A BNSF INTERCHANGE AT ELGIN IS FAR SUPERIOR  
TO THE POTENTIAL SP INTERCHANGE AT GIDDINGS**

4. First of all, it should be stressed that Longhorn's and BNSF's arguments miss the more fundamental point that any interchange with BNSF is far superior to what Giddings-Llano shippers would have had absent the UP/SP merger. The connection with SP at Giddings would have provided those shippers with at most a very weak competitive alternative to the connection with UP at McNeil.

5. At the time the Board imposed the CMTA condition, the 32-mile segment of the Giddings-Llano line between Elgin and Giddings had been out of service for many years, leaving Giddings-Llano shippers with no Class I connection other than UP. At the July 1, 1996 oral argument, counsel for CMTA told the Board that Longhorn was going to resume service to Giddings within two weeks, or



by July 15 of that year. Tr., p. 437. In fact, despite the passage of over six months, the line between Elgin and Giddings remains out of service.

6. During late December 1996, I personally inspected the 32-mile segment of the Giddings-Llano line between Elgin and Giddings, much of which is visible from adjacent roads. I reached three conclusions: (a) no train had run over this line for a considerable period of time; (b) extensive rehabilitation work is needed before any train service can be resumed, and still more extensive work would be needed to handle the heavy-loading granite and aggregates traffic that Longhorn asserts it would like to move over this line; and (c) maintaining this segment for ongoing operations would place a very substantial financial burden on the Giddings-Llano operator. Since there are no active industries located on this portion of the Giddings-Llano line, traffic interchanged at Giddings would have to bear all of this burden.<sup>1/</sup>

7. Even when the Giddings-Llano line was in service between Elgin and Giddings, and there was an active interchange with SP at Giddings, the volume of traffic interchanged was negligible. Based on SP traffic data, and confirmed by knowledgeable former-SP operating personnel, the interchange between the previous operator of the line -- AUNW -- and SP at Giddings handled only 5-10

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<sup>1/</sup> There are a few rail-served industries at Giddings, but Longhorn cannot serve them because SP retained exclusive access when it spun-off the Giddings-Llano line.

cars per week total (inbound and outbound).<sup>2/</sup> This amounted to 6% or less of AUNW's total traffic; the balance was interchanged with UP. This paucity of traffic confirms the insignificance of the competition provided by this SP connection.

**ELGIN IS FAR SUPERIOR TO GIDDINGS**  
**AS A POINT OF INTERCHANGE WITH BNSF**

8. CMTA's decision to select Elgin as the point of interchange with BNSF should end any inquiry into the relative merits of Giddings and Elgin. When more than one potential interchange point is available, the relative merits of those interchanges depends on numerous factors, and the specific configuration of existing trackage is usually at most a very minor consideration. This is particularly so with respect to CMTA's choice between Elgin and Giddings. CMTA was well aware of Longhorn's belief that the existing track configuration at Giddings was superior to that at Elgin, yet chose Elgin for reasons that have far more significance to shippers on the Giddings-Llano line.

9. As CMTA has noted, Elgin is 32 miles closer to the shippers on the Giddings-Llano line than is Giddings. CMTA-14/BNSF-75, pp. 2-3. This means that to implement a BNSF interchange Longhorn need not expend its limited resources rehabilitating the 32 miles of out-of-service trackage east of Elgin, and the

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<sup>2/</sup> AUNW typically delivered 2 cars per week to SP and received 4 cars per week from SP at Giddings before the line was placed out of service east of Smoot.

future operator of the line -- whether that is Longhorn or a successor -- will not be burdened by the significant costs associated with maintaining the extra trackage.

10. Longhorn asserts that the total mileage of a Longhorn-BNSF route between Giddings-Llano shippers and their Houston markets is shorter via Giddings and Caldwell than via an Elgin interchange. Longhorn's calculations are erroneous. In fact, a Longhorn-BNSF route to Houston via Elgin and Sealy is 19 miles shorter than via Giddings and Caldwell.

11. To implement an interchange with BNSF at Giddings, BNSF would have to be granted additional rights between Caldwell and Giddings to serve a Giddings interchange (which Applicants have informed CMTA they would grant if CMTA selected Giddings). Whereas CMTA can be confident that BNSF will offer frequent, high-quality service through Elgin -- which is on BNSF's primary link between its Western network and the Eagle Pass gateway -- there can be no similar confidence about the level of service that BNSF might provide using trackage rights giving it the equivalent of a 29-mile "branch" between Caldwell and Giddings that would exist solely to serve the Giddings interchange. Especially if the Longhorn-BNSF interchange volumes turn out to be small -- as was the case when there was an SP interchange at Giddings, and as Longhorn seems to acknowledge they will be (see Longhorn Submission, p. 5) -- it seems certain that BNSF's level of service at Giddings, in terms of frequency of pick-up and delivery and total transit time, would be far inferior as compared to Elgin.



**THE FACILITIES AT ELGIN**  
**PERMIT EFFECTIVE INTERCHANGE**

12. I have personally inspected the geography and configuration of the trackage at Elgin. There is no truth to BNSF's and Longhorn's suggestions that the existing interchange facilities at Elgin will not permit effective interchange between them.

13. Before turning to a discussion of why those facilities are adequate, I should note that, since BNSF and/or Longhorn could make any improvements they wish to existing facilities (including the construction of entirely new facilities), the feasibility of interchange using existing facilities is really irrelevant to implementation of the CMTA condition. Nevertheless, it is quite apparent that the existing track configuration does permit effective interchange at Elgin.

14. First, interchange between UP (and other Class I railroads) and shortlines is routinely conducted throughout the United States using interchange facilities that are no more extensive or elaborate than those already in place at Elgin.

15. Second, it is important to recognize that UP has been interchanging a small number of cars at Elgin for some time with Longhorn and its predecessor, AUNW. The existing connecting track in the northeast quadrant of the crossing (shown on the diagram set forth as Attachment A hereto) has permitted UP trains to pick up and deliver those cars without difficulty.

16. Third, a detailed examination of the existing facilities at Elgin confirms that they are satisfactory to permit effective interchange of the traffic that Longhorn asserts it would like to handle in conjunction with BNSF. As shown on Attachment A, the existing trackage at Elgin consists of (a) UP's north-south single-track mainline, (b) the east-west Giddings-Llano line, (c) a connecting track in the northeast quadrant of the crossing of these line, and (d) a siding adjacent to Longhorn's line east of the UP crossing, which is used to serve Longhorn's sole Elgin customer. About one mile south of the UP/Longhorn crossing is the UP Siding, which is beyond the extent of the diagram on Attachment A.

17. Using these facilities both BNSF northbound and southbound trains could readily exchange cars with Longhorn. BNSF's January 21 submission explains that BNSF would have no difficulty interchanging any number of cars with Longhorn using its northbound trains. See BNSF-76, p.2 n.2. As BNSF indicates, those trains could simply pull past the existing connection, back into that connection, and connect to (or disconnect from) Longhorn cars.

18. As BNSF recognizes, and as UP's experience interchanging cars at Elgin confirms, this configuration will be more than ample for the small volumes likely to be interchanged between BNSF and Longhorn. As noted above, the historical level of interchange between the Giddings-Llano line and SP was only 5-10 cars per week. Even a several-fold increase in this volume could easily be accommodated on the existing connecting track.

19. Moreover, the length of the existing connecting track would not prevent BNSF and Longhorn from interchanging any number of cars in this manner. To the extent longer cuts of cars were to be exchanged, they could be left on Longhorn's mainline east of the UP crossing and connecting track. Since Longhorn's track is out of service east of Elgin -- and evidently would remain so if interchange were conducted at Elgin -- there would be no problem with leaving cars there, even for extended periods of time. Contrary to Longhorn's assertion, those cars would not block any grade crossings because none exist for almost a mile east of the Avenue F crossing, which is only a few hundred feet east of the existing connecting track (see Attachment A). If Longhorn wished to avoid leaving cars on its mainline, it could meet BNSF trains at Elgin, perhaps using the locomotive that Longhorn stations at Elgin to switch a local industry. If it did this, the same BNSF train could both pick up and deliver cars, since Longhorn's locomotive could move any BNSF deliveries out of the way so that BNSF could then pick up Longhorn's outbound cars.

20. BNSF southbound trains could also pick up and deliver Longhorn cars at Elgin using existing facilities. BNSF would have at least two options. First, a southbound BNSF train could stop short of the Longhorn connection, pull through the connection with cars for Longhorn, and leave the cars in Longhorn's existing siding or west of the UP crossing for Longhorn to pick up. (BNSF could pick up Longhorn cars left on Longhorn's existing siding or west of the UP crossing in a similar manner, or both pick up and deliver cars.) Second, as noted



in CMTA-14/BNSF-75 (p. 3), Applicants have agreed to allow BNSF to make limited use of the UP Siding to facilitate interchange by BNSF southbound trains. Using that siding, which is about one mile south of Elgin and 1.25 miles in length, a BNSF southbound train could stop adjacent to the siding on the UP mainline and cut off its locomotives. Those locomotives could use the siding to run around their train, disconnect Longhorn cars from the rear of the train and pull them north to the Longhorn connection, where they could be left for pick-up by Longhorn. Those same locomotives could also pick up Longhorn cars by pulling through the connecting track and connecting to Longhorn cars that were left west of the UP crossing (or, alternatively, this operation could be facilitated by a Longhorn crew).

**THERE IS NO OBSTACLE TO THE CONSTRUCTION OR IMPROVEMENT  
OF INTERCHANGE FACILITIES AT ELGIN**

21. If BNSF and/or Longhorn wished to make their interchange at Elgin even more convenient, nothing would prevent them from doing so. Based on the purported shortcomings of Elgin's facilities that BNSF and Longhorn identify (which, as I have shown, are not impediments to effective interchange), there are only two improvements that BNSF and/or Longhorn might realistically desire to make in order for their interchange to be more convenient: (1) a new connection in the southeast quadrant of the UP/Longhorn crossing (shown by a dashed line labelled "A" on Attachment A) and (2) a run-around track east of the UP crossing adjacent to Longhorn's track (shown by a dashed line labelled "B" on Attachment A). A new

connection would allow BNSF's southbound trains to deliver and pick up cars on the Longhorn by pulling past the crossing and pushing Longhorn cars back on to the new connecting track. BNSF's submission describes how easily the comparable movement could be performed by northbound trains using the existing connection in the northeast quadrant. BN/SF-76, p. 2 n.2. A new run-around track would allow Longhorn or BNSF to leave long cuts of cars for interchange without having to leave them on Longhorn's (still out-of-service) line east of Elgin. With these improvements, the configuration of trackage at Elgin would be superior to that at Giddings, where there is a connection only in the northwest quadrant.

22. BNSF and CMTA/Longhorn certainly have the right to make these improvements -- or any others they might deem desirable. CMTA/Longhorn, of course, can make whatever improvements it wishes to its own line. And the BNSF settlement agreement and implementing trackage rights agreement allows BNSF to construct new connections and/or sidings on the UP/SP trackage rights lines. See BNSF settlement agreement, § 9b; Sealy, Texas to Waco and Eagle Pass, Texas Trackage Rights Agreement, §§ 2(j) & (l), 5.

23. Nor is there any physical obstacle to the construction of these new facilities. Regarding a possible southeast quadrant connection (i.e., "A"), such a connection once existed, and the grading and roadbed for it remains in place and is unobstructed. Constructing such a connection would be a simple matter of installing one switch on the UP mainline, one switch on Longhorn's track, and a few hundred

feet of track. It would not be necessary for BNSF and/or Longhorn to make any expensive signal improvements to implement this new connection, because the UP mainline through Elgin is unsignalled track warrant territory.

24. Regarding a possible new run-around track (i.e., "B"), Longhorn asserts that 20-car blocks of traffic could not be left on its track at Elgin because they would block several grade crossings. This assertion is incorrect. Only a few hundred feet east of the existing connecting track (east of Avenue F), there is a stretch of Longhorn's line over one mile in length that is not crossed by any roads. A run-around track of ample length could be constructed at this location. Based on my personal inspection of this site, such an installation would be feasible and involve modest expense. It would require only two switches, some light grading and whatever length of track Longhorn and/or BNSF wished to install.

25. At one time, there was a long siding along the Giddings-Llano line a few miles east of Elgin. At some point, this siding was removed by Longhorn's predecessor, apparently because traffic volumes between Elgin and Giddings did not warrant its continued maintenance.

**BNSF'S PROPOSED USE OF THE UP SIDING SOUTH  
OF ELGIN IS UNACCEPTABLE**

26. As described above, it is clearly not necessary for BNSF southbound trains to deposit cars in the UP Siding for later pick-up by Longhorn, or for Longhorn to deposit cars there for later pick-up by BNSF. Such operations



would unacceptably interfere with mainline operations on UP's line and put UP unfairly at risk from Longhorn's operations over UP's line to access the UP Siding.

27. Use of the UP Siding for the storage of cars awaiting pick-up by BNSF or Longhorn would cause operational interference because this siding is a critical component of UP's single-track mainline between Waco and Smithville. The siding is actively used for the passing and meeting of freight trains on this line, and will also be used to handle BNSF trains when its trackage rights operations commence. As shown on the attached UP track diagram (Attachment B hereto), the nearest alternative sidings are 18 miles to the north and 11.5 miles to the south. If the Elgin siding were unavailable for train meets -- as it would be if Longhorn interchange cars were occupying it -- there would be a gap of about 30 miles without any passing siding. It is unclear how long BNSF contemplates cars would sit on the UP Siding awaiting pick-up, but in "standard industry practice and custom" (BN/SF-76, p. 2) it is not uncommon for them to sit for days -- especially if the connection is with a shortline whose operations are infrequent. But whether the UP Siding were taken out of service for days or for hours, the result would be significant delays to freight operations on this line and a significant reduction in the line's capacity and fluidity.

28. BNSF belittles the potential for operational interference by suggesting that it will be operating (at least initially) only three trains per week in both directions. For several reasons, however, BNSF's purported judgment about the

effects of its proposed use of the UP Siding cannot be relied upon. Most significantly, the relative infrequency of BNSF's own operations will make it all the more likely that cars would be left on the UP Siding for lengthy periods of time, exacerbating the problems I have described. UP/SP will be operating several times more trains over this line than BNSF plans to operate (at least four trains per day, even after the traffic reductions on the line anticipated in the Applicants' Operating Plan), and the burden of delay will therefore fall upon UP/SP, not BNSF. Indeed, BNSF may not care about the problems caused by cars left sitting on the UP Siding, since its trains would generally be stopping at that siding to pick up and deliver Longhorn cars in any event, rather than using the siding for through movements.

29. There is another major problem with BNSF's proposal. A central feature of that proposal involves Longhorn's operation over UP's mainline to reach the UP Siding. This is unacceptable for two reasons. First, it would result in an additional set of movements on UP's mainline that would have to be accommodated by UP's dispatcher and would interfere with mainline operations. The entire time that Longhorn crews spent reaching the siding and switching cars there, the mainline would be blocked. Applicants should not be required to convert their mainline into the equivalent of a switching yard for the convenience of Longhorn and BNSF.

30. Second, Applicants are not willing to allow Longhorn to operate over their mainline trackage for any purpose. The operation of any third party over

Applicants' property inherently multiplies risks of derailment or other accident.

Applicants have no reason to believe that Longhorn's train crews are adequately trained to minimize those risks, or that Longhorn is adequately capitalized and insured to prevent the financial burden of such risks from falling upon Applicants.

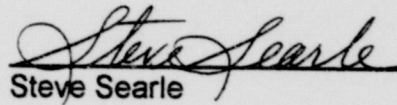
Unlike carriers with which UP has entered consensual trackage rights arrangements, Applicants are not prepared to accept the risks of Longhorn's operations on their lines.



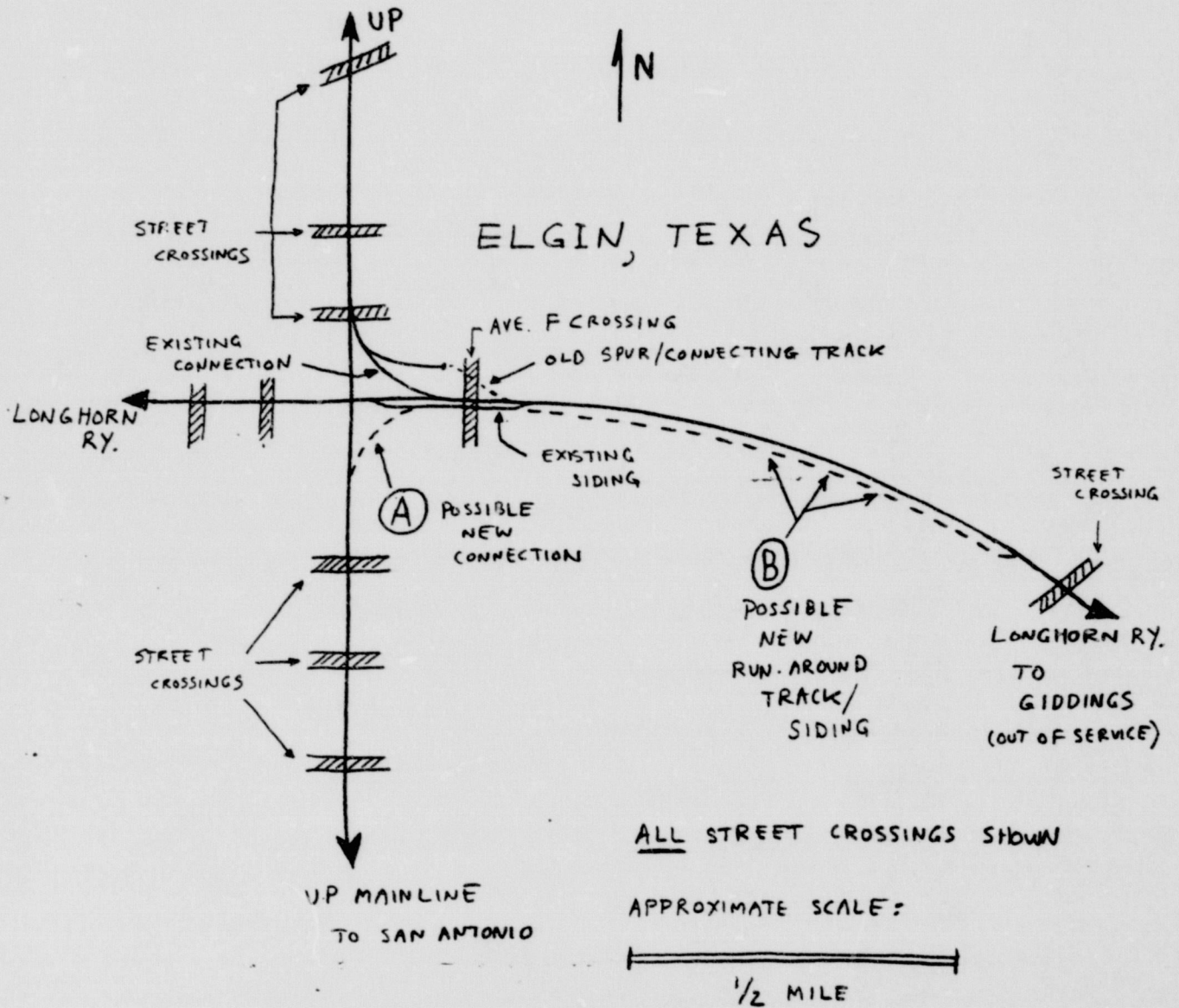
**VERIFICATION**

I, Steve Searle, declare under penalty of perjury that the foregoing statement  
is true and correct.

Executed on January 24, 1997.

  
Steve Searle

# ATTACHMENT A

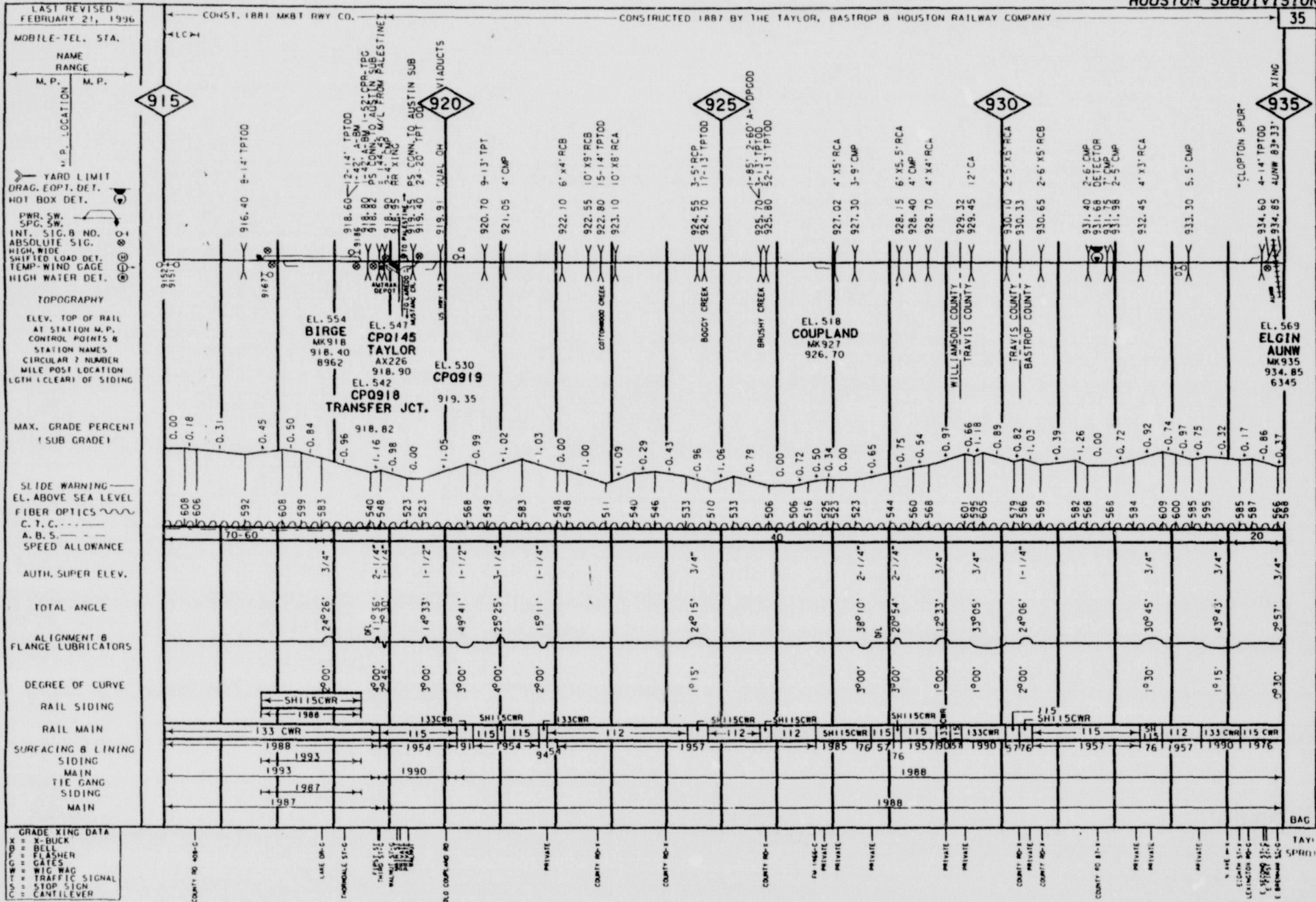






# ATTACHMENT B

SAN ANTONIO DIVISION  
HOUSTON SUBDIVISION



CONSTRUCTED 1887 BY THE TAYLOR, BASTROP & HOUSTON RAILWAY COMPANY

LAST REVISED  
FEBRUARY 21, 1996

MOBILE-TEL. STA.

NAME  
RANGE  
M. P. M. P.

MOBILE-TEL. STA.  
NAME  
RANGE  
M. P. M. P.

YARD LIMIT  
ORAG. EOP. DET.  
HOT BOX DET.  
PWR. SW.  
SFG. SW.  
INT. SIG. B NO.  
ABSOLUTE SIG.  
HIGH WIDE  
SHIFTED LOAD DET.  
TEMP. WIND GAGE  
HIGH WATER DET.

TOPOGRAPHY

ELEV. TOP OF RAIL  
AT STATION M.P.  
CONTROL POINTS B  
STATION NAMES  
CIRCULAR 7 NUMBER  
MILE POST LOCATION  
LGTH (CLEAR) OF SIDING

MAX. GRADE PERCENT  
(SUB GRADE)

SLIDE WARNING  
EL. ABOVE SEA LEVEL  
FIBER OPTICS  
C.T.C.  
A.B.S.  
SPEED ALLOWANCE

AUTH. SUPER ELEV.

TOTAL ANGLE

ALIGNMENT B  
FLANGE LUBRICATORS

DEGREE OF CURVE

RAIL SIDING

RAIL MAIN

SURFACING B LINING

SIDING

MAI

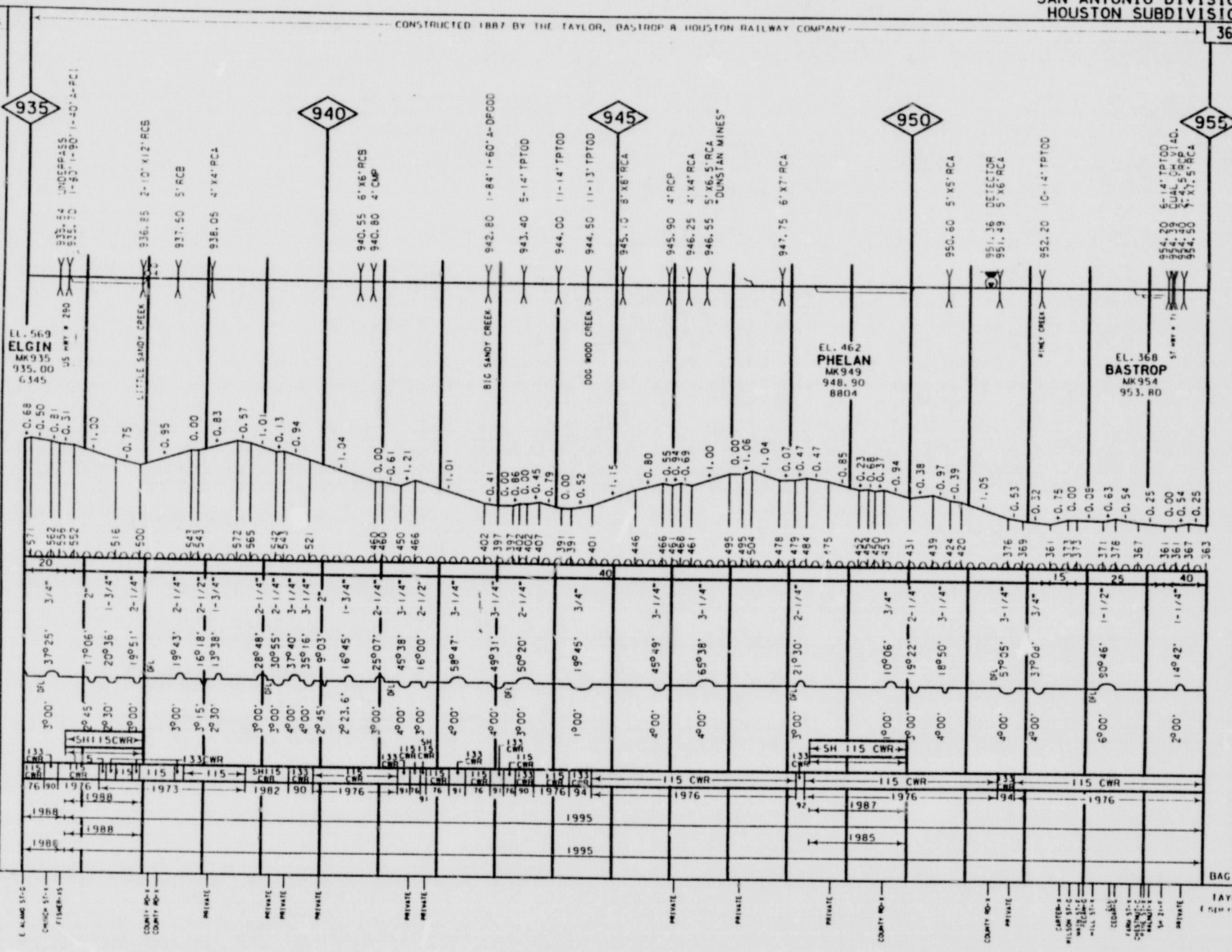
TIE CANG

SIDING

MAIN

GRADE KING DATA

X-BUCK  
BELL  
FLASHER  
GATES  
W.C. WAD  
TRAFFIC SIGNAL  
CANTILEVER



BAG

TAY

1995

## CERTIFICATE OF SERVICE

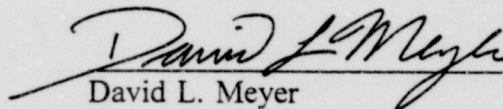
I hereby certify that, pursuant to Decision No. 65, I have this 28th day of January, 1997, served the foregoing document by hand on:

Albert B. Krachman, Esq.  
Monica J. Palko, Esq.  
Bracewell & Patterson, L.L.P.  
2000 K Street, N.W., Suite 500  
Washington, D.C. 20006  
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Erika Z. Jones, Esq.  
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Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
Attorneys for BNSF

and by Federal Express on:

Donald Cheatham, Esq.  
The Longhorn Railway Company  
10220-E Metropolitan  
Austin, TX 78728

  
David L. Meyer



89290  
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January 28, 1997

**BY HAND**

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



**Re: Finance Docket Nos. 32760 & 32760 (Sub-No. 10)**

Dear Secretary Williams:

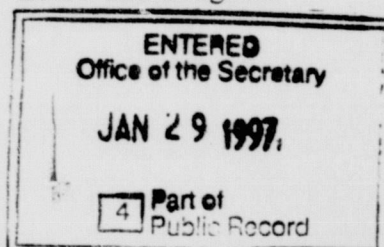
Enclosed for filing in the above-captioned dockets are the original and 20 copies of Applicants' Reply to Submissions of BNSF and Longhorn Pursuant to Decision No. 67 (UP/SP-298). Kindly date stamp the extra copy of this filing and return it with our waiting messenger.

Also enclosed is a disk containing a copy of UP/SP-298 in WordPerfect 5.1 format.

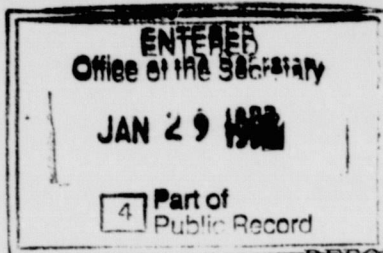
Sincerely,

David L. Meyer

cc: Counsel for CMTA,  
BNSF and Longhorn



89290  
89291



UP/SP-298



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, SPSCL CORP. AND THE DENVER AND  
RIO GRANDE WESTERN RAILROAD COMPANY

Finance Docket No. 32760 (Sub-No. 10)

RESPONSIVE APPLICATION -- CAPITAL METROPOLITAN  
TRANSPORTATION AUTHORITY

**APPLICANTS' REPLY TO SUBMISSIONS OF  
LONGHORN AND BNSF PURSUANT TO DECISION NO. 67**

The primary applicants, UPC, UPRR, SPR, SPT, SSW, SPSCL and DRGW,<sup>1/</sup> are submitting this paper, together with the supporting verified statement of Steve Searle, in reply to the submissions filed by Longhorn (unnumbered) and BNSF (BN/SF-76) on January 21, 1997 addressing implementation of the CMTA condition. As set forth in Decision No. 67, CMTA has exercised the unilateral choice given it by the Board by selecting Elgin as the point of interchange between

<sup>1/</sup> The acronyms used herein are the same as those in Appendix B to Decision No. 44. MPRR merged into UPRR on January 1, 1997.

BNSF and the operator of the Giddings-Llano line, and Applicants have agreed to terms that will implement such an interchange. Decision No. 67 also noted that BNSF and Longhorn had questioned the adequacy of the existing interchange facilities at Elgin, and the Board provided those parties with the opportunity to submit evidence addressing that issue by January 21.

In their submissions pursuant to Decision No. 67, Longhorn and BNSF both lose sight of the only issue the Board should consider: whether an interchange at Elgin implemented on the terms proposed by Applicants will preserve the competitive rail options that Giddings-Llano shippers would have had absent the UP/SP merger.<sup>2/</sup> Evidently recognizing that the answer to that question is clearly yes, and indeed that shippers will be made significantly better off with a BNSF interchange at Elgin (and ignoring completely their ability to make any improvements they might wish to the facilities at Elgin), BNSF and Longhorn instead attempt to refocus the debate on a very different set of issues: whether the existing track configuration at Elgin is equivalent to that at Giddings, and whether Applicants should grant additional rights to make a BNSF-Longhorn interchange more convenient.

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<sup>2/</sup> Longhorn (at 4) does articulate this standard -- stating that the "purpose of Condition 31 was to make the situation as close to what it had been before the Applicants were allowed their desired mergers" -- but then quickly proceeds to disregard it.



To this end, Longhorn argues that it would prefer to hand off traffic to BNSF at Giddings based on vague assertions that the facilities there are better than those at Elgin. BNSF, on the other hand, recognizes that an Elgin interchange is superior to one at Giddings, and acknowledges that the existing facilities at Elgin are adequate to effect interchange of any number of cars with BNSF's northbound trains and of at least 10-14 cars at a time<sup>3/</sup> with BNSF's southbound trains. BN/SF-76, p. 2.

BNSF's submission is not accompanied by any evidence supporting the lawyers' assertions therein. BNSF does not explain why interchange of a greater number of cars with its southbound trains is impossible -- much less contest that it could be made more convenient through the construction of new facilities. Nonetheless, BNSF asks that its southbound trains be permitted to use a UP passing siding one mile south of Elgin (hereafter the "UP Siding") for purposes of leaving cars, perhaps for several days, for later pick-up by Longhorn, and that Longhorn be permitted to operate over UP's mainline to access the siding and leave cars there, again perhaps for several days, for later pick-up by BNSF.

Although Applicants will demonstrate that existing facilities are in fact adequate to effect interchange between Longhorn and BNSF, and that BNSF's

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<sup>3/</sup> This is the number of cars Longhorn indicates (at 3) can be held on the existing connecting track. As we explain below (at pages 16-18), existing facilities at Elgin in fact can accommodate a much larger number of cars.

proposal would cause unacceptable problems, Applicants submit that the Board need not even reach those issues. All that is required to preserve -- and indeed, more than preserve -- the pre-merger options of Giddings-Llano shippers is for BNSF to have the right to interchange with Longhorn at Elgin and for BNSF and Longhorn to have the right to construct any facilities they might deem necessary or desirable, now or in the future, to facilitate that interchange. The implementation terms proposed by Applicants fulfill these requirements, and even go a step farther by allowing BNSF to make limited use of the UP Siding so that interchange with BNSF southbound trains can be even more convenient.

As a result, neither Longhorn nor BNSF provide any justification for implementing the CMTA condition on terms other than those proposed by UP/SP. The arguments of Longhorn and BNSF should be recognized as simply efforts to improve their own competitive posture at Applicants' expense. Those railroads do not need any additional rights -- much less the implementation of a Giddings interchange in lieu of one at Elgin, as Longhorn seems to request -- to interchange traffic effectively, and thereby provide a competitive alternative to the existing connection with UP at McNeil. By any measure, a new interchange with BNSF at Elgin on the terms Applicants have proposed will leave Giddings-Llano shippers far better off than they would have been absent the UP/SP merger.

As explained in more detail below:

- (1) Any BNSF interchange will make shippers on the Giddings-Llano line -- as well as Longhorn -- significantly better off that they would have been absent the UP/SP merger.
- (2) There are good and sufficient reasons for CMTA -- which has every incentive to protect the long-term interests of Giddings-Llano shippers -- to prefer an interchange with BNSF at Elgin over one at Giddings, even if it were assumed (contrary to actual fact) that implementing the former might require some expenditure on new facilities by BNSF or Longhorn.
- (3) Whatever conclusion might be reached regarding the adequacy of existing facilities at Elgin to handle the interchange traffic Longhorn contemplates, that issue is irrelevant because (a) there is no obstacle to the construction of any new facilities BNSF or CMTA/Longhorn might deem necessary or desirable and (b) CMTA has chosen Elgin over Giddings as the better overall alternative.
- (4) Even if the adequacy of existing facilities were relevant, there is no question that those facilities are adequate to permit interchange between Longhorn and BNSF. Any grant of additional rights to BNSF and/or Longhorn would -- in addition to being unnecessary and unfair -- interfere with operations on UP's mainline through Elgin.

**I. ANY INTERCHANGE WITH BNSF WILL SIGNIFICANTLY  
IMPROVE THE COMPETITIVE OPTIONS OF GIDDINGS-LLANO  
SHIPPERS**

Absent the UP/SP merger, the only competitive option that Giddings-Llano shippers would have had was an interchange with SP at Giddings that did not provide, and would not have provided, a meaningful alternative to the UP connection at McNeil. The SP interchange had been out of service for several years because the



operator of the Giddings-Llano line had discontinued service east of Smoot. See Decision No. 44, p. 34. For the connection with SP to have any competitive significance would have required the operator of the Giddings-Llano line to resume service to Giddings over 32 miles of line that had been left moribund, and to bear the considerable additional burden of maintaining that trackage. It is hard to take seriously Longhorn's assertions about the supposed superiority of Giddings as a point of interchange when one understands that, despite repeated assurances and the explicit representation of CMTA's counsel that service to Giddings would commence by July 15, 1996,<sup>4/</sup> Longhorn has still not rehabilitated its line east of Elgin to permit such service. Longhorn Submission, pp. 4, 5; Searle VS, ¶¶ 5-6.

Applicants have inspected Longhorn's line east of Elgin, and confirmed that it would require considerable additional rehabilitation -- at considerable additional expense -- before any train service could be resumed to Giddings, and still greater expenditures to handle the heavy granite and aggregates traffic that Longhorn says it wishes to interchange there. Searle VS, ¶ 6; Longhorn Submission, p. 3. Maintaining that additional trackage would present a further significant burden for Longhorn and any subsequent operator of the line. Searle VS, ¶ 6. Because there are no active shippers along the Giddings-Llano line east of Elgin, that burden would have to be borne entirely by Giddings interchange traffic. Id. Accordingly, replacing

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<sup>4/</sup> See July 1, 1996 Oral Argument Tr., p. 437.

SP with BNSF at Elgin permits creation of a new connection with a second Class I without the need for the Giddings-Llano line (and indirectly its shippers) to bear all of this additional expense.

Even when the connection with SP at Giddings was active, it did not provide meaningful competition to the UP connection at McNeil. SP's interchange volumes with Longhorn's predecessor, AUNW, were negligible even before AUNW took its line out of service east of Smoot. SP and AUNW exchanged only 5-10 cars per week, amounting to 6% or less of AUNW's total traffic (the balance of which was interchanged with UP). Id., ¶ 7.

In fact, Longhorn argues that SP did not provide a meaningful competitive alternative to a UP routing via McNeil for the traffic that Longhorn asserts it would like to interchange with BNSF. Longhorn contends that "SP, previously unmerged with UP, refused to give competitive rates to the Giddings-Llano railroad's shippers, primarily aggregate, into the Houston market." Longhorn Submission, p. 4. Longhorn contends that, because UP/SP has given assurances that it would provide Giddings-Llano shippers with rates that are competitive with rates from San Marcos and San Antonio -- the "merger thus may in fact create competition, not eliminate it," even without any BNSF connection at Elgin or Giddings. Id. (emphasis added). Longhorn thus does not contest that the CMTA condition -- however implemented -- will make Giddings-Llano shippers better off.

In place of a moribund and out-of-service connection with SP, implementation of the CMTA condition on Applicants' terms will provide Giddings-Llano shippers with an active and operational connection with BNSF, which not only is eager to compete with UP/SP but is far more capable of doing so than SP. In this context, the Board should not entertain the pleas of Longhorn and BNSF for additional rights to further enhance this new option at Applicants' expense.

**II. THERE ARE STRONG REASONS FOR CMTA TO HAVE PREFERRED ELGIN OVER GIDDINGS EVEN IF IT WERE ASSUMED THAT THE ELGIN'S FACILITIES WOULD HAVE TO BE IMPROVED**

In addition to the fact that any interchange with BNSF will make Giddings-Llano shippers far better off than they would have been with an SP interchange at Giddings, there are strong reasons for CMTA to have preferred Elgin over Giddings as a point of interchange with BNSF. The Board's decision granting the CMTA condition was quite clear in stating that CMTA would have the unilateral right to choose a single interchange point with BNSF to preserve a connection with a Class I railroad other than UP/SP.

In making its choice, CMTA was entitled to consider all factors bearing on the advantages and disadvantages of these potential interchange points. CMTA could have chosen Giddings, which would have duplicated as closely as possible the SP connection that once existed, including the track configuration of that connection. Instead, CMTA chose Elgin, which irrefutably establishes that, whatever judgment



might be made about the relative merits of the existing track configuration at Giddings and Elgin, CMTA believes that a connection at Elgin will provide Giddings-Llano shippers with a superior competitive alternative as compared to a connection at Giddings.<sup>5/</sup>

CMTA's explanation of the reasons for its choice highlights two basic respects in which an Elgin interchange is superior to one at Giddings. First, Elgin is 32 miles closer to the Giddings-Llano shippers than Giddings. CMTA-14/BNSF-75, p. 3; Searle VS, ¶ 9. This is significant for two reasons. Most immediately, while Longhorn has resumed service to Elgin, it still has not placed its line between Elgin and Giddings back into service -- despite the express representation CMTA made to this Board at the oral argument last July that Longhorn planned to resume operations to Giddings by July 15, 1996. Not only does this fact call into question the credibility of Longhorn, it underscores the fragility of an interchange at Giddings that will require Longhorn to revive 32 miles of long-out-of-service track and then saddle Longhorn and any subsequent operator of the line with the considerable burden of maintaining the line to handle interchange traffic. See discussion at pages 6-7, supra. Since those burdens will have to be shouldered by the interchange traffic alone, the viability of this segment is especially doubtful if, as Longhorn appears to

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<sup>5/</sup> Implicitly recognizing that an Elgin interchange would provide Giddings-Llano shippers with a superior option to that which existed before the merger, the Board nevertheless allowed CMTA to make that choice in order to "hold applicants to their representation that they will allow such a connection." Decision No. 44, p. 182.

acknowledge, interchange volumes will be very small. See Longhorn Submission, p. 5 (referring to "[l]ittle, [sic] to no traffic at Giddings, which UP/SP reminds this Board is still not open for the Giddings/Llano railroad"). Searle VS, ¶¶ 6, 9. Indeed, past experience is a strong reminder that service east of Elgin will be at best tenuous.

In its quest to second-guess CMTA's judgment about the relative merits of Giddings and Elgin, Longhorn appears to assert that a Longhorn-BNSF route via Giddings is shorter from origin to destination than one via Elgin for the traffic Longhorn desires to interchange with BNSF. See Longhorn Submission, p. 6. If Longhorn intended to make this assertion, it is erroneous. For example, Longhorn speaks of potential movements of aggregates traffic via BNSF to Houston. A Longhorn-BNSF route for this traffic via Elgin and Sealy (using BNSF's trackage rights via Smithville) would be shorter by at least 19 miles than a route via Giddings. Searle VS, ¶ 10. More importantly, Longhorn's assertion misses the point that an interchange at Elgin relieves the Giddings-Llano operator of the obligation to revive and maintain an additional 32 miles of its own trackage.

Second, CMTA appropriately considered the much higher level of service BNSF will offer at Elgin as compared to Giddings. CMTA-14/BNSF-75, p. 3. At Elgin, BNSF's Operating Plan indicates that BNSF initially will operate three through freights each way weekly. BNSF-PR-1, Ex. A, p. 12. BNSF's trackage rights through Elgin provide the primary link between BNSF's system and the important Eagle Pass gateway. At Giddings, by contrast, the level of BNSF

service is highly uncertain. To implement a Giddings interchange, BNSF would have to receive entirely new operating rights over the 29-mile segment between Giddings and Caldwell.<sup>6/</sup> CMTA properly understood that the level of service provided by a BNSF "branchline" operations over the 29-mile former-SP segment between Caldwell and Giddings, for the sole purpose of serving an interchange with Longhorn, would likely be far inferior -- in terms of frequency and transit time -- to BNSF's planned mainline operations at Elgin. Searle VS, ¶ 11.

Given these two fundamental advantages of Elgin over Giddings -- over and above the fact that any interchange with BNSF would provide be far superior to an interchange with SP -- it was entirely reasonable for CMTA to conclude that Elgin was the superior option.<sup>7/</sup> This is so even if there were some legitimate doubt (which there is not) about whether interchange at Elgin could be achieved as

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<sup>6/</sup> Longhorn is incorrect in suggesting that BNSF's lack of existing trackage rights to serve Giddings dictated CMTA's choice of interchange point. Longhorn Submission, pp. 4, 5. To the contrary, very early in the implementation process Applicants communicated to all concerned that they were prepared to implement an interchange at either Elgin or Giddings, as ordered by the Board, and that if CMTA selected Giddings, Applicants would grant BNSF new rights permitting it to interchange there.

<sup>7/</sup> Longhorn's contention (at 4) that "MKT's interchange with the Giddings/Llano railroad at Elgin was always known to be inferior to where SP interchanged with the same railroad at Giddings" is both incomprehensible and nonsensical. Historically, the Giddings-Llano line was operated by SP, and thus access to the SP system at Giddings was naturally preferred to interchange with a competing road at Elgin. Moreover, since 1988, when UP and MKT merged and shortly after SP spun-off the Giddings-Llano line, the connection at Elgin has been with UP, not MKT, and shippers have preferred the McNeil interchange with UP for reasons unrelated to the issues presented here.



conveniently as BNSF and Longhorn might wish using existing facilities. CMTA was well aware of the nature of the existing facilities at both Elgin and Giddings. Those matters were the subject of extensive correspondence, as set out in part in Applicants' January 9 submission (UP/SP-292, pp. 6-8). Indeed, UP/SP rejected the precise operational proposal now reiterated by BNSF (i.e., use of the UP Siding to hold cars awaiting pick-up or delivery) and explained how interchange could be carried out without such operations, using either existing facilities or new ones constructed by BNSF or Longhorn (see id.), and CMTA still chose Elgin over Giddings. Now that CMTA has chosen Elgin based on all of the relevant considerations, it is inappropriate in the extreme for BNSF and Longhorn to attempt to isolate one narrow factor -- i.e., the track configurations at Elgin and Giddings<sup>8/</sup> -- and ask that in that respect too Elgin be made superior at Applicants' expense.

### **III. THERE IS NO OBSTACLE TO THE CONSTRUCTION OR IMPROVEMENT OF INTERCHANGE FACILITIES AT ELGIN**

As Applicants have previously explained, the BNSF settlement agreement and the implementing trackage rights agreement give BNSF the right to construct whatever connections and associated sidings it may deem necessary or desirable to facilitate interchange with Longhorn at Elgin. Longhorn (and/or CMTA)

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<sup>8/</sup> In fact, BNSF's does not attempt to compare Elgin's facilities with those at Giddings, much less establish that the Elgin facilities are inadequate. (Nor, as noted above, does BNSF offer any evidence in support of its lawyers' assertions.) Instead, it simply makes a bald-faced request that BNSF be given additional rights to make its operations more convenient, without BNSF's having to bear the expense.

has a similar inherent right with respect to its own trackage.<sup>9/</sup> There is no dispute about this.

BNSF's silence on the question of new facilities acknowledges that there is no obstacle to constructing them at Elgin if BNSF or CMTA/Longhorn conclude that they are desirable.<sup>10/</sup> Longhorn, on the other hand, makes vague assertions that the movement of 20-car blocks of traffic would "never be possible at Elgin," or at least that it would be "singularly difficult to configure facilities" to permit this. Longhorn Submission, pp. 4, 5. Those assertions are false.

Steve Searle, who has extensive operating experience and personally conducted an on-site inspection of the facilities and geographic configuration at Elgin for purposes of implementing the CMTA condition, explains in his attached verified statement that existing facilities are adequate to permit effective interchange. Searle VS, ¶¶ 12-20. But even if it somehow were necessary for BNSF and Longhorn to carry out their interchange in a manner that the existing track configuration does not permit, BNSF and Longhorn could make whatever improvements they might desire. Based on the supposed shortcomings that BNSF and Longhorn describe, there are

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<sup>9/</sup> See UP/SP-292, pp. 4-5; BNSF settlement agreement § 9b; Sealy, Texas to Waco and Eagle Pass, Texas Trackage Rights Agreement, June 1, 1996, §§ 2(j) & (l), 5.

<sup>10/</sup> BNSF is also silent on the question whether any new facilities are actually needed, as opposed to merely desirable to achieve the greatest possible convenience for BNSF. In fact, as discussed below (at pages 16-18), the existing facilities at Elgin are perfectly adequate to permit effective interchange.

only two improvements they might wish to make for their interchange to be more convenient, both of which are shown on Attachment A to the Searle Verified Statement: (1) a new connection in the southeast quadrant of the Longhorn-UP crossing (labelled "A" on Searle Attachment A), which would permit BNSF southbound trains to perform the simple back-up maneuver that northbound trains already can perform,<sup>11/</sup> and (2) a new siding adjacent to the Longhorn's line east of the UP crossing (labelled "B" on Searle Attachment A), which would allow longer cuts of cars to be left for pick-up by Longhorn or BNSF without blocking Longhorn's line east of Elgin. *Id.*, ¶ 21.<sup>12/</sup> Mr. Searle explains that, contrary to Longhorn's assertions about grade crossings and other limitations, construction of either or both of these new facilities would be feasible. *Id.*, ¶¶ 22-23.<sup>13/</sup> With them, moreover, the track configuration at Elgin would be superior to that at Giddings. *Id.*, ¶ 21.

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<sup>11/</sup> BNSF's submission describes the ease with which BNSF northbound trains can interchange Longhorn cars using the existing connection in the northeast quadrant. See BN/SF-76, p. 2 n.2.

<sup>12/</sup> As explained below (at page 16), however, BNSF and Longhorn could use Longhorn's existing trackage at Elgin to hold longer cuts of cars because, without the need to interchange with BNSF at Giddings, Longhorn trains will not have to operate east of Elgin.

<sup>13/</sup> Indeed, Applicants have previously informed CMTA, BNSF and Longhorn about the feasibility of precisely these improvements (see UP/SP-292, pp. 6-7), and those parties' failure even to address the point in their January 21 submissions should be taken as a concession that such improvements are feasible.



Construction of a new connection in the southeast quadrant would be a simple matter because precisely such a connection once existed, and the grading and roadbed for it remains in place. Installing such a connection would require two new switches and a few hundred feet of track. No costly signalling improvements would be required. Id., ¶ 23.

In addition, there is ample room for a lengthy new siding adjacent to Longhorn's line a few hundred feet east of the UP crossing at Elgin. If desired, such a siding could accommodate cuts of almost a mile in length without blocking any grade crossings, although Longhorn appears to desire capacity for only 20-car blocks. Construction of such a siding would also be a simple matter, involving some light grading and the installation of two switches and whatever length of track Longhorn might desire. Id., ¶ 24. The feasibility of such a siding is underscored by the fact that there once was a long siding on the Giddings-Llano line a few miles east of Elgin, until it was removed by Longhorn's predecessor because traffic levels east of Elgin did not warrant its continued maintenance. Id., ¶ 25.

Nor is there any merit to Longhorn's passing suggestion (at 5) that the cost of any improvements to facilities at Elgin be borne by Applicants rather than BNSF or CMTA/Longhorn. As we have already demonstrated, implementation of a BNSF connection at Elgin will make Giddings-Llano shippers far better off than they would have been absent the merger, and better off than they would be with a BNSF connection at Giddings that makes use of existing facilities there. Applicants should

not be required to pay for still further improvements to the new BNSF connection Elgin.

**IV. EXISTING INTERCHANGE FACILITIES AT ELGIN ARE ADEQUATE TO PERMIT EFFECTIVE INTERCHANGE**

Finally, Applicants respond to the assertions made by Longhorn and BNSF that the facilities at Elgin might be inadequate to allow effective interchange.

As Mr. Searle explains, the adequacy of the facilities at Elgin is demonstrated by the fact that they are no less extensive or elaborate than the facilities routinely used for interchange between Class I railroads and shortlines throughout the United States. In addition, UP has itself used the Elgin facilities to carry out interchange with Longhorn and its predecessor. *Id.*, ¶¶ 14-15.

Furthermore, Mr. Searle analyzes in detail the track configuration at Elgin and demonstrates that both BNSF northbound and southbound trains could exchange cars with Longhorn without difficulty. *Id.*, ¶¶ 16-20. BNSF's submission explains how BNSF's northbound trains could conveniently interchange any number of cars with Longhorn using the existing connecting track. BN/SF-76, p. 2 n.2. If the number of cars to be exchanged exceeded the capacity of that track, moreover, those cars could be left on Longhorn's line a few hundred feet east of the UP connection without blocking any grade crossings, contrary to Longhorn's contention (at 3). Searle VS, ¶ 19. Thus, even if interchange volumes were many times greater than the volume historically interchanged with SP at Giddings -- which even

Longhorn (at 5) appears to regard as unlikely -- existing facilities are adequate for interchange with BNSF northbound trains. Searle VS, ¶ 18.

The same is true for interchange with BNSF southbound trains.

BNSF's critique of existing facilities is limited to the narrow context of southbound BNSF trains that might need to interchange more cars than will fit in the existing connecting track. BN/SF-76, p. 2. Although BNSF does not say that interchange would be impossible in these circumstances, it nevertheless urges that it and Longhorn be given the right to leave cars on the UP Siding for later pick-up to facilitate such interchange. BNSF's proposal contemplates that both BNSF and Longhorn would leave cars occupying this siding for a period of time consistent with "industry practice and custom" (BN/SF-76, p. 2) -- which, as Mr. Searle points out (at ¶ 27), could be several days -- and that, in addition, Longhorn would have the right to operate over UP's mainline to access the siding. Mr. Searle explains that use of the siding in this manner is both unnecessary and unacceptable. Searle VS, ¶¶ 20, 26-30.

First, existing facilities are ample to permit interchange of any number of cars with BNSF southbound trains. As Mr. Searle explains, BNSF would have two options: its trains could (1) stop short of the existing connection and leave and/or pick up cars on Longhorn's existing siding or on Longhorn's line west of the UP crossing or (2) stop adjacent to the UP siding and use that siding for the limited purpose of running around the train to pick up and/or receive Longhorn cars left on



the existing connecting track or on Longhorn's line to the east. Id., ¶ 20 & Att. A. The fact that BNSF might prefer to make its operations even more convenient in the unlikely event interchange volumes grow significantly does not mean that existing facilities are inadequate to permit effective interchange.

Second, as Applicants have explained at length to all interested parties, use of the UP Siding in the manner BNSF contemplates would unacceptably interfere with mainline operations. See UP/SP-292, pp. 6-8; Searle VS, ¶¶ 27-28. UP's line through Elgin is a single-track mainline, the fluid operation of which requires well-spaced passing sidings. Were the siding south of Elgin occupied by BNSF-Longhorn interchange cars -- even for hours, much less for days -- it would be unavailable for train meets, leaving a gap of 30 miles between sidings that would significantly impair the fluidity of train operations on this line. Searle VS, ¶ 27. BNSF's submission belittles this point (BN/SF-76, pp. 2-3), but BNSF's judgment -- even if it were supported by evidence, which it is not -- cannot be relied upon in this circumstance. Applicants, not BNSF, will bear the brunt of the resulting delays, and BNSF may not care that the UP Siding would be unavailable for train meets because it anticipates that its trains would be using the siding to pick up and deliver cars, rather than for through movements. Searle VS, ¶ 28.

Third, a salient feature of BNSF's proposed operational scheme involves Longhorn's operation over UP's mainline to pick up and deliver cars at the UP siding. Such operations would introduce an entirely separate set of delays on

UP's mainline, in effect converting UP's mainline into a switching yard for Longhorn's benefit. Id., ¶ 29. Longhorn's operations over UP's mainline are also unacceptable for another reason. The operations of any third-party on UP's trackage inherently multiplies the risks of derailment or other accident. Applicants have no confidence that Longhorn's train crews are properly trained to minimize these risks, or that Longhorn has the financial resources to prevent the burden of any accident from falling upon Applicants. Id., ¶ 30. Unlike carriers with which UP has entered consensual trackage rights arrangements, Applicants are not willing to bear the risks associated with Longhorn's operations over its mainline, and it would be unfair and inequitable to require them to do so.

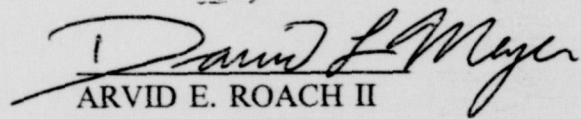
### **CONCLUSION**

For the foregoing reasons, the Board should implement the CMTA condition on the terms proposed by Applicants.

Respectfully submitted,

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Attorneys for Applicants

January 28, 1997



## VERIFIED STATEMENT OF

STEVE SEARLE

1. My name is Steve Searle. I am Superintendent Trackage Rights for Union Pacific Railroad ("UP"). In that capacity, I serve as the principal UP liaison with the BNSF Operating Department with respect to BNSF's implementation of the trackage rights it received as a result of the UP/SP merger. I have 38 years of experience in UP's Operating Department, including many years of service as a Superintendent and Assistant Superintendent with responsibility for terminal operations. That experience has provided me with extensive expertise regarding the interchange of traffic among railroads and the facilities used to carry out such interchange.

2. I submitted testimony before the Interstate Commerce Commission in the UP/CNW control case, Finance Docket No. 32133. My testimony in that case concerned operating issues involving the Kansas City terminal, where I was then UP's Superintendent.

3. My testimony in this statement concerns the implementation of Condition No. 31 imposed by the Surface Transportation Board in Decision No. 44, which I will refer to as the "CMTA condition." The purpose of my testimony is to address several factual issues relevant to the implementation of the CMTA condition and to respond to various assertions made in the January 21 submissions of BNSF and Longhorn. For reasons I will set forth below, the terms proposed by Applicants -- which are described in CMTA-14/BNSF-75, at page 3 -- will

appropriately implement the CMTA condition. Under those terms, shippers on the Giddings-Llano line will have a connection with BNSF at Elgin that is far superior to the potential connection with SP at Giddings that existed prior to the UP/SP merger. I will also explain in more detail that (1) the existing interchange facilities at Elgin permit effective interchange between BNSF and Longhorn, (2) there is no obstacle to the construction of any improved facilities that BNSF and/or Longhorn might desire, and (3) BNSF's proposal that it and Longhorn have the right to leave cars on a UP mainline passing siding one mile south of Elgin (which I will refer to as the "UP Siding") is operationally infeasible and unacceptable.

**A BNSF INTERCHANGE AT ELGIN IS FAR SUPERIOR  
TO THE POTENTIAL SP INTERCHANGE AT GIDDINGS**

4. First of all, it should be stressed that Longhorn's and BNSF's arguments miss the more fundamental point that any interchange with BNSF is far superior to what Giddings-Llano shippers would have had absent the UP/SP merger. The connection with SP at Giddings would have provided those shippers with at most a very weak competitive alternative to the connection with UP at McNeil.

5. At the time the Board imposed the CMTA condition, the 32-mile segment of the Giddings-Llano line between Elgin and Giddings had been out of service for many years, leaving Giddings-Llano shippers with no Class I connection other than UP. At the July 1, 1996 oral argument, counsel for CMTA told the Board that Longhorn was going to resume service to Giddings within two weeks, or

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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



APPLICANTS' REPLY TO VERIFIED STATEMENT  
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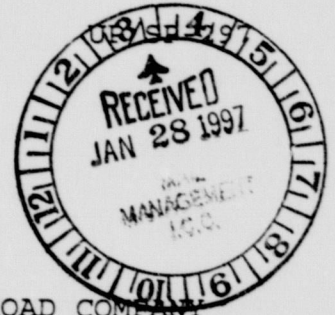
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BEFORE THE  
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' REPLY TO VERIFIED STATEMENT  
OF GEORGE W. CARTER, JR.

The primary applicants, UPC, UPRR, SPR, SPT, SSW, SPCSL and DRGW,<sup>1/</sup> hereby reply to the verified statement of George W. Carter, Jr., filed by BNSF on January 24, 1997. The Board should disregard Mr. Carter's verified statement because it is procedurally improper and because Mr. Carter's hearsay assertions are clearly contrary to the record in this proceeding.

On December 19, 1996, Enterprise Products Company petitioned for a Board order granting BNSF direct access to EPC's Mont Belvieu facility. Applicants replied to EPC's petition on January 8, 1997, which was the deadline for filing replies. BNSF never filed a reply, and the Board should reject its unexcused attempt to reply at this late date.

<sup>1/</sup> The acronyms used herein are the same as those in Appendix B to Decision No. 44. MPRR merged into UPRR on January 1, 1997.

More significantly, the Board should reject BNSF's belated attempt to weigh in on EPC's side because Mr. Carter's verified statement attributes to EPC assertions of "facts" that are simply untrue -- "facts" that EPC has explicitly disavowed in its own sworn testimony.

Mr. Carter asserts in his verified statement (p. 2) that he has "been informed by Enterprise Products that UP apparently did at one time plan for [its proposed build-in to Exxon, Amoco and Chevron] to serve the Enterprise Products plant." But Mr. Carter has clearly been misinformed both as to the facts and as to EPC's own knowledge of the facts.

Mr. Carter's hearsay assertion is directly contradicted by EPC's own prior statements. EPC's vice president, Rudy A. Nix, submitted sworn testimony that UP's "new Mont Belvieu Branch was not proposed to serve Enterprise." EPC's Verified Statement, filed Mar. 28, 1996, p. 6. In Decision No. 44, p. 189, the Board specifically recognized that "as EPC itself concedes, the Mont Belvieu Branch, as initially proposed by UP, would not even have reached EPC." Even in its recent attempt to reopen this issue, EPC has not retracted its candid admission that UP's Mont Belvieu build-in was not to include EPC. In its recent petition, EPC again acknowledged that "Enterprise's Mont Belvieu facility was not identified specifically as a site to



be served by UP's new line." Petition of EPC, Dec. 19, 1996, p. 2.<sup>2/</sup>

Accordingly, as we have previously shown, the Board's existing conditions fully protect EPC's potential build-out option, and EPC's request for direct service by BNSF (as well as Mr. Carter's belated suggestion, for BNSF, of some sort of enhanced build-out right to a closer point) should be rejected.

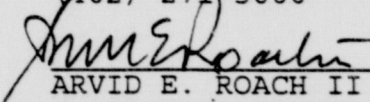
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<sup>2/</sup> Mr. Carter's assertion also contradicts previously unchallenged testimony from Applicants' witness Richard B. Peterson, who explained that while "UP considered access to Enterprise as part of its initial planning of the Mont Belvieu project," UP ultimately "decided not to include Enterprise as part of that effort." UP/SP-231, Peterson, p. 62.

Respectfully submitted,

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January 28, 1997

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 28th day of January, 1997, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

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Suite 500  
Department of Justice  
Washington, D.C. 20530

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



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Michael L. Rosenthal



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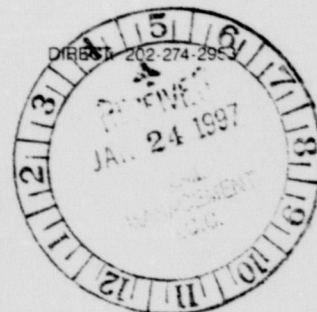
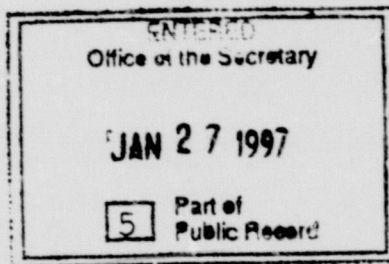
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WILLIAM A. MULLINS

January 24, 1997

**HAND DELIVERED**

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Case Control Branch  
Room 2215  
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Washington, D.C. 20423



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

Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding are the original and twenty-one copies of KCS-1/2, The Comments Of The Kansas City Southern Railway Company In Support Of The Proposal Respecting Implementation Of The TUE Condition (TUE-20). Please date and time stamp one of the copies for return to our offices. Included with these filings is a 3.5 inch Word Perfect, Version 5.1 diskette with the text of the pleading.

Sincerely yours,

William A. Mullins  
Attorney for The Kansas City Southern  
Railway Company

cc: Robert K. Dreiling  
W. James Wochner  
Modified Service List

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ORIGINAL

KCS-72

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  
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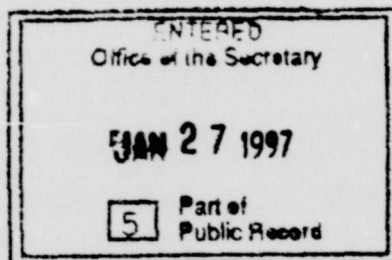
COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY  
IN SUPPORT OF THE PROPOSAL RESPECTING IMPLEMENTATION  
OF THE TUE CONDITION (TUE-20)

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January 24, 1997

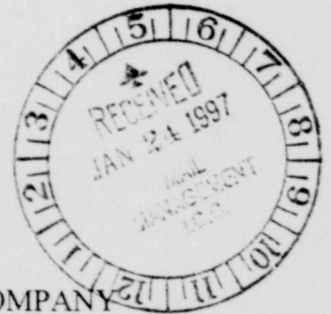


Attorneys for The Kansas City  
Southern Railway Company



BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY  
IN SUPPORT OF THE PROPOSAL RESPECTING IMPLEMENTATION  
OF THE TUE CONDITION (TUE-20)

In Decision No. 44, the Surface Transportation Board ("Board" or "STB") imposed, as a condition of its approval of the proposed transaction, the requirement that Union Pacific and Southern Pacific (collectively, "UPSP") amend the agreement with the Burlington Northern Railroad Company and The Atchison, Topeka, and Santa Fe Railway Company (collectively, "BNSF") to allow The Kansas City Southern Railway Company ("KCS") and the BNSF to interchange Texas Utilities Electric Company ("TUE") coal trains at Shreveport, LA, and Texarkana, TX for the movement of coal to TUE's Martin Lake Generating Station. The Board directed UPSP, BNSF, KCS, and TUE to negotiate the terms and conditions of the interchange, or alternatively, to submit proposals to the Board by December 12, 1996. *See* Decision No. 44, Condition 32. The due date was subsequently extended to January 24, 1997. *See* Decision No. 64.


TUE, KCS, and BNSF have been unable to reach an agreement with UPSP. Accordingly, today, TUE has submitted its proposal for implementing Condition No. 32 (TUE-20). KCS hereby expresses its support for the principles and routing proposals outlined by TUE. UPSP's attempt to prevent loaded trains destined for Martin Lake, especially unit coal trains, from interchanging with the BNSF at Texarkana for movement to Longview via BNSF's trackage rights over that segment is contrary to the STB's decision. The Board should not sanction UPSP's attempt to prevent TUE from achieving the benefits from the most efficient routing, *i.e.*,

Powder River Basin to Kansas City via the BNSF, Kansas City to Texarkana via the KCS, Texarkana to Longview via the BNSF's trackage rights over the UPSP line, and then Longview to Martin Lake over the BNSF line. UPSP's position not only would require a longer mileage route, but it would also require TUE to spend a significant amount of additional capital improvement dollars as compared to the Texarkana-Longview routing. TUE's proposal is consistent with the Board's decision, preserves TUE's pre-merger routing options, and provides an efficient competitive alternative to UPSP's current service. Accordingly, KCS supports the TUE principles and routing proposals.

Respectfully submitted this 24th day of January, 1997.

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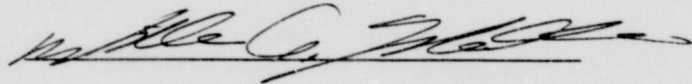
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing " COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY IN SUPPORT OF THE PROPOSAL RESPECTING IMPLEMENTATION OF THE TUE CONDITION (TUE-20)" was served this 24th day of January, 1997, by hand delivery or by depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to counsel for TUE, BNSF, and UPSP.



Attorney for The Kansas City Southern Railway Company



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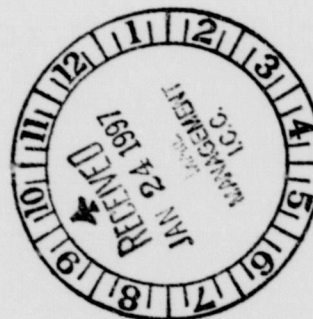
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January 24, 1997

202 347-7170

BY HAND DELIVERY

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



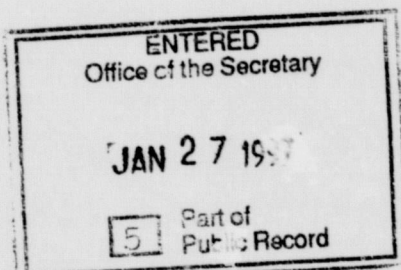
Re: Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger --  
Southern Pacific Rail Corporation, et al.

Dear Mr. Secretary:

Enclosed please find an original and twenty (20) copies of the Proposal Respecting Implementation of the TUE Condition (TUE-20). An extra copy of the Proposal is enclosed. Kindly indicate receipt and filing by time-stamping this copy and returning it to the bearer of this letter.

Also enclosed is a diskette in Word Perfect 5.1 format containing the text of the Proposal.

Thank you for your attention to this matter.



Sincerely,

*John H. LeSeur*

John H. LeSeur  
An Attorney for Texas Utilities  
Electric Company

JHL:mfw  
Enclosures

Best +  
Copy  
Avialble



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Office of the Secretary

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Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

89219  
TUE-20



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

Finance Docket No. 32760

PROPOSAL RESPECTING  
IMPLEMENTATION OF THE TUE CONDITION

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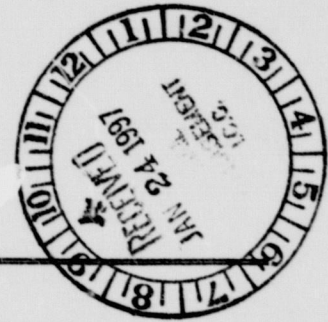
Dated: January 24, 1997

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Attorneys for Texas Utilities  
Electric Company

BEFORE THE  
SURFACE TRANSPORTATION BOARD



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

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Finance Docket No. 32760

PROPOSAL RESPECTING  
IMPLEMENTATION OF THE TUE CONDITION

Texas Utilities Electric Company ("TUE")<sup>1</sup> presents this separate proposal to implement Condition No. 32 ("TUE Condition") in Decision No. 44, and in support hereof states as follows:

SUMMARY

To properly implement Condition No. 32, TUE respectfully urges the STB to adopt implementing conditions that:

- Perfect BNSF's rights to move TUE trains, either directionally or non-directionally, over the involved track-age rights lines; and
- Grant TUE the ancillary rights necessary to perfect and enforce the TUE Condition.

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<sup>1</sup> TUE shall utilize the same abbreviations for parties' names and documents as the STB employed in Decision No. 44.



TUE appends as Counsel's Exhibit No. 1 the text of its proposed implementing terms.

TUE's proposed implementing terms comply with the text of the TUE Condition, as well as the STB's intent in prescribing it: to provide TUE with an efficient BNSF/KCS routing to TUE's Martin Lake Electric Generating Station ("Martin Lake Station").

#### BACKGROUND

The TUE Condition grants BNSF specified interchange and trackage rights necessary for BNSF and KCS to provide service, independent of UP/SP, to TUE's Martin Lake Station. The TUE Condition states in pertinent part:

Texas Utilities Electric Company. We will require that the BNSF agreement be amended to permit KCS and BNSF to interchange TUE coal trains: (a) at Shreveport, for movement by BNSF over SP's line between Shreveport and Tenaha; and (b) at Texarkana, for movement by BNSF over UP's line between Texarkana and Longview. Without this condition, all but one of TUE's PRB routings would involve UP/SP, and the one that would not would be excessively circuitous. We add that, although TUE sought only a Shreveport interchange, we are allowing a Texarkana interchange as well, to allow BNSF's routings of TUE coal trains to connect with the additional BNSF trackage rights provided for in the CMA agreement. This also will facilitate BNSF's directional running of these trains. . . .

Decision No. 44 at 186.

The STB directed TUE, BNSF, KCS and UP/SP to submit agreed-upon, or separately proposed, implementing terms by



December 12, 1996. At the joint request of TUE, BNSF, KCS and UP/SP, the submission due date was extended to January 24, 1997. See Decision No. 64 at sheet 2 (served Dec. 10, 1996).

TUE has been unable to reach agreement with UP/SP on implementing terms.<sup>2</sup> Accordingly, TUE appends in Counsel's Exhibit No. 1 its proposed implementing terms. These terms consist of proposed amendments to the BNSF Agreement and the Houston Agreement.<sup>3</sup> Counsel's Exhibit No. 2 illustrates the Exhibit 1 terms in add/delete format.

#### DISCUSSION

The disagreement between TUE and UP/SP involves four implementation matters:

- Directional running of trains;
- TUE participation in selecting trackage rights facilities;
- TUE Condition enforcement rights; and
- Commodity limitations.

TUE submits that its position on each of these four issues comports with Decision No. 44 and should be adopted by the Board.

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<sup>2</sup> BNSF's and KCS's positions are set forth in their separate submissions.

<sup>3</sup> Houston, Texas to Valley Junction, Illinois Trackage Rights Agreement (dated June 1, 1996) ("Houston Agreement").

I.

DIRECTIONAL RUNNING OF TRAINS

TUE's position is that the TUE Condition gives TUE and BNSF three potential route options for serving the Martin Lake Station:

- (i) moving loaded and empty trains between Texarkana and Longview;
- (ii) moving loaded and empty trains between Shreveport and Tenaha; or
- (iii) running trains "directionally"<sup>4</sup> with loaded trains moving via Shreveport and Tenaha and unloaded trains moving via Longview and Texarkana.

A schematic illustrating these routes is appended as Counsel's Exhibit No. 3 hereto.<sup>5</sup>

UP/SP's position -- as thus far articulated by UP/SP -- on directional running is somewhat unclear. UP/SP has maintained that the TUE Condition requires directional running, i.e., (iii) above. Alternatively, UP/SP has hinted that it views the Decision as permitting loaded and empty trains to move between Shreveport and Tenaha, i.e., (ii), above. However, UP/SP stead-

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<sup>4</sup> UP/SP plans to move most southbound overhead traffic over SP's line from Memphis to Houston (which includes the Shreveport-to-Tenaha SP line segment), and most northbound overhead traffic over UP's line from Houston to Valley Junction, Illinois (which includes the Longview-to-Texarkana UP line segment). Decision No. 44 at 135-36.

<sup>5</sup> As discussed, infra, TUE will select one of these route options prior to the commencement of BNSF service to TUE's Martin Lake Station.

fastly claims that BNSF has no right whatsoever to move loaded trains non-directionally between Texarkana and Longview.

TUE's position on the directional running issue is correct as a matter of law and as a matter of commercial and operating reality.

A. THE LAW.

Decision No. 44 very clearly states that BNSF will be granted rights to interchange TUE trains at Shreveport for transportation "between" Shreveport and Tenaha, and at Texarkana for transportation "between" Texarkana and Longview:

We will require that the BNSF agreement be amended to permit KCS and BNSF to interchange TUE coal trains: (a) at Shreveport, for movement by BNSF over SP's line between Shreveport and Tenaha; and (b) at Texarkana, for movement by BNSF over UP's line between Texarkana and Longview.

Decision No. 44 at 168. To the same effect is Decision No. 64, which states:

In Decision No. 44, the Board imposed a condition (referred to as the TUE condition) that requires that the BNSF agreement be amended to permit KCS and BNSF to interchange TUE coal trains (a) at Shreveport, for movement by BNSF over SP's line between Shreveport and Tenaha; and (b) at Texarkana, for movement by BNSF over UP's line between Texarkana and Longview.

Id. at 1.

The term "between," as used in the context of transportation "between" two points, has always been understood to include transportation "in either direction[]" between the two



points. See, e.g., Advance Thresher Co. v. Orange & Northwestern R.R., 15 I.C.C. 599, 600 (1909); Wyeth Co. v. Great Northern Ry., 299 I.C.C. 636, 639 (1957).

Consistent with the text of Decision Nos. 44 and 64, TUE proposes to amend Section 6(c) of the BNSF Agreement, as follows, to authorize BNSF service to and from the involved points:

BNSF shall also have the right to interchange with . . . (vi) KCS at Shreveport, LA, for movements of trains to and from Texas Utilities Electric Company's ("TU Electric") Martin Lake Generating Station; and (vii) KCS at Texarkana, TX/AR, for movements of trains to and from TU Electric's Martin Lake Generating Station.

Similar conforming changes are proposed for the Houston Agreement (see Counsel's Exhibit No. 1, proposed amendment to Houston Agreement Section 2(a)(v)).

Despite the plain and clear language of Decisions No. 44 and 64,<sup>6</sup> UP/SP has presented several errant arguments to support its contrary reading of the TUE Condition, including the following:

- UP/SP errantly claims the STB mandated directional running of TUE trains. The STB did not mandate directional running on the involved line segments. The STB simply noted in the TUE Condition that adding the Longview/Texarkana routing "will facilitate BNSF's directional running of these trains."

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<sup>6</sup> The literal reading of the TUE Condition should be dispositive. See Decision No. 61 at 7 (served Nov. 20, 1996) (cited STB conditions should "be read literally").

Decision No. 44 at 186 (emphasis added). "Facilitate" does not mean mandate.

Moreover, UP/SP's reading of the TUE Condition as mandating directional running places the TUE Condition in direct conflict with the CMA and BNSF conditions. The STB has prescribed, subject to exceptions not here relevant, both the CMA Agreement and the BNSF Agreement as merger conditions. Decision No. 44 at 231. Section 10 of the CMA Agreement, as subsequently incorporated into Section 6(c) of the BNSF Agreement, expressly provides BNSF the right "at its discretion" to move traffic on a directional basis on the UP Texarkana-to-Longview and SP Shreveport-to-Tenaha lines. Any STB "mandate" that BNSF run TUE trains directionally on these line segments would violate the prescribed provisions in the BNSF and CMA Agreements that permit, but do not require, BNSF to operate directionally over these line segments.

Conversely, TUE's correct reading of the TUE Condition produces no such conflict. TUE's construction permits, but does not require, BNSF to run TUE trains non-directionally. Thus, the TUE reading of the TUE Condition produces no conflict with the BNSF and CMA conditions.

It is most unlikely that the STB intended -- as UP/SP claim -- that the TUE Condition conflict with the BNSF and CMA conditions. Rather, the STB quite correctly intended the TUE, BNSF and CMA conditions to work in harmony. That is the result if TUE's construction of the TUE Condition is adopted.

• UP/SP errantly claims that BNSF agreed to run TUE trains directionally in the Houston Agreement. The Houston Agreement is one of the many trackage rights implementing agreements called for by Section 9(f) of the BNSF Agreement. The Houston Agreement applies to the Texarkana-Longview and Shreveport-Tenaha line segments and was executed by UP/SP and BNSF as of June 1, 1996. UP/SP claims that in Section 2(c) of the Houston Agreement BNSF agreed to run TU's trains directionally. Section 2(c) provides that once UP/SP begins directional operations in the Houston-Valley Junction corridor, BNSF shall run its trains directionally, except for "local" and "switch" moves:

On the Houston-Valley Junction Line User shall have the right to move some or all of its traffic via trackage rights over the MPRR line or the SP line, at its discretion, for operating convenience; provided, however, that at such time as UP/SP begins directional operations over the Joint Trackage, it is the parties' intent that User's traffic shall operate with the current of flow along with UP/SP traffic. This provision shall not apply to local or switch moves by User over the Joint Trackage.

UP/SP's claims are wrong for several reasons.

First, as cited above, the Houston Agreement was executed as of June 1, 1996. The STB did not grant the TUE Condition until July 3, 1996 at its open voting conference, and did not issue the written text of the TUE Condition until it served Decision No. 44 on August 12, 1996. Obviously, BNSF could not give up its right to run TUE trains non-directionally in a



June 1, 1996 agreement since the right supposedly given up did not even exist at that time.

Second, once BNSF was accorded the trackage rights under the TUE Condition, BNSF has steadfastly maintained its position that the Houston Agreement did not strip it of its later-acquired rights to provide TUE non-directional service, at TUE's request.

Third, BNSF informed the STB in BNSF's Operating Plan, filed at the STB on October 1, 1996, that BNSF intended to treat TUE's traffic as "local" traffic on the Longview-Texarkana and Shreveport-Tenaha lines, thus permitting BNSF to move this traffic, like BNSF's other local traffic, non-directionally. BNSF's Operating Plan thus provides:

Martin Lake coal will be handled by BN/Santa Fe local service via Texarkana and/or Shreveport on an as-needed basis.

BNSF Progress Report and Operating Plan, Exhibit A at 11.<sup>7</sup>

In Counsel's Exhibit No. 1, TUE proposes to add a sentence at the end of Section 2(c) of the Houston Agreement that specifically codifies BNSF's right to move TUE trains non-directionally. TUE also points out that, even if the STB finds that BNSF and UP/SP agreed in the Houston Agreement to run TUE's trains directionally, TUE clearly was not a party to any such agreement and neither TUE, nor the STB, is bound by it. For this independent reason, the STB should prescribe the proposed change

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<sup>7</sup> UP/SP expressed no objections to this portion of BNSF's Operating Plan at the time the Plan was filed.

to Section 2(c), or prescribe similar language, expressly codifying BNSF's right to move TUE trains non-directionally.

- UP/SP errantly claims that TUE is asking to improve its post-merger position. According to UP/SP, BNSF's use of the Texarkana-Longview line to transport loaded TUE trains would constitute an unlawful "improvement" over TUE's pre-merger routing alternative to UP direct service to the Martin Lake Station -- i.e., BNSF/KCS/SP service via Shreveport and Tenaha. UP/SP's "improvement" contention is misguided for several reasons.

First, the STB obviously rejected UP/SP's route "improvement" concerns when the STB included the Longview-Texarkana routing as part of the TUE Condition.

Second, it makes no sense for UP/SP to maintain that using the Longview-to-Texarkana line for loaded train movements is somehow a route improvement, whereas using this line to move unloaded trains is not.

Third, as the STB recognized in Decision No. 44, UP/SP's directional running plans make it impossible to exactly replicate UP and SP's pre-merger operations because, pre-merger, neither the SP Shreveport-to-Tenaha line nor the UP Longview-to-Texarkana line was operated directionally.

Fourth, as UP/SP knows, and is discussed in Section C, infra, forcing BNSF to run TUE's trains directionally will substantially impair TUE's post-merger position because the cost of the facilities necessary to perfect post-merger directional

running of BNSF/KCS trains will be substantially greater than the cost of the facilities necessary to perfect the pre-merger, non-directional running of BNSF/KCS/SP trains.

For these reasons, UP/SP's "improvement" contentions are wrong. TUE is not asking to improve its competitive position, but -- consistent with the STB's directives<sup>8</sup> -- seeks the flexibility to have BNSF move its trains in the most efficient and cost-effective manner possible in light of the new post-merger operating realities.

B. OPERATING ISSUES.

UP/SP has opined that it, and BNSF, may face operating problems if TUE trains move against the flow on the Shreveport-Tenaha and Longview-Texarkana line segments. However, the only specific concern raised by UP/SP to date is that some undisclosed portions of the Texarkana-Longview line might be too "undulating" to handle loaded unit trains of coal.

UP/SP's professed operating concerns are baseless for the reasons discussed in detail in the Verified Statements of BNSF's Witness Hord and TUE's Witness Dunn. These statements demonstrate that the Longview-Texarkana line clearly is not too "undulating" to handle loaded coal trains because:

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<sup>8</sup> The STB emphasized in Decision No. 44 that the purpose of the TUE Condition was to provide TUE with an efficient BNSF/KCS routing to the Martin Lake Station. Id. at 154.



- the physical characteristics of the track demonstrate that loaded unit coal trains can move over the line; and
- the actual traffic that moves over this track, today, consists of heavy volume trains similar in nature to unit coal trains.

V.S. Hord at 8; V.S. Dunn at 14-15.

Witness Hord's and Witness Dunn's verified statements also show that operating TUE's trains against the flow on the Longview-Texarkana and Shreveport-Tenaha line segments is feasible from an operating perspective because:

- The non-directional movements are quite short, i.e., only 85.5 miles on the Longview-Texarkana line and only 54.5 miles on the Shreveport-Tenaha line.
- There are a sufficient number of passing sidings on the Longview-Texarkana and Shreveport-Tenaha line segments to facilitate non-directional running of TUE trains.
- The projected traffic patterns (including daily train flows) on the Longview-Texarkana and Shreveport-Tenaha lines can easily accommodate the projected, non-directional TUE train movements.<sup>9</sup>
- No crew changes will be necessary while the trains are on the Longview-Texarkana and Shreveport-Tenaha line segments.

V.S. Hord at 4-8; V.S. Dunn at 12-13.

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<sup>9</sup> Indeed, once directional running begins on the Texarkana-Longview segment, UP/SP's projected daily train traffic (including scheduled BNSF trains and TUE trains) will be less than the number of daily UP trains that utilized this line segment in 1994. V.S. Hord at 7.

Though operating non-directionally is feasible on both the Longview-Texarkana and Shreveport-Tenaha line segments, as between the two, it appears to TUE at this juncture that non-directional movement of TUE trains will best be accomplished on the Longview-Texarkana line because:

- the siding configuration is superior, and
- it is equipped with a Centralized Traffic Control System.

V.S. Dunn at 12.

Finally, TUE points out that UP/SP's directional flow contentions come with particular ill-grace in light of UP/SP's prior and consistent pronouncements that "against the flow" movements usually raise no significant operating concerns. As UP's principal operating witness previously testified in this proceeding:

I have read the concerns about the difficulty of running trains against the flow of traffic on directional lines, and I have read in the press about "salmon swimming upstream." Unless there is a dam in the way, salmon usually make it upstream, and so do trains. .  
. . . So it can be and routinely is done.

Applicants' Rebuttal (UP/SP-232), R.V.S. King at 19-20 (April 29, 1996).

#### C. COMMERCIAL ISSUES

TUE presented its relief request to the STB in its comments filed on March 29, 1996. At that time, UP/SP had agreed in the BNSF Agreement to grant trackage rights to BNSF only over

the SP Shreveport-to-Tenaha line, and UP/SP planned to run its trains (but not BNSF's) directionally over the line.<sup>10</sup> TUE proposed that to preserve its pre-merger BNSF/KCS independent routing option to Martin Lake Station, the STB permit BNSF interchange rights with KCS at Shreveport. TUE estimated the facility cost to perfect the BNSF/KCS route via Tenaha and Shreveport to the Martin Lake Station at \$6.7 million.<sup>11</sup>

Following the filing of TUE's comments, UP/SP and BNSF modified the BNSF Agreement to permit BNSF, at its option, to run its trains directionally over the SP line between Houston and Memphis (which line includes the SP Shreveport-to-Tenaha line segment), and further gave BNSF the right to run its trains, at its option, directionally over the UP's line between Houston and Valley Junction, Illinois (which line includes the Longview-to-Texarkana UP line segment).<sup>12</sup> UP/SP granted BNSF the additional trackage rights over the UP line in response to concerns raised by certain shippers -- concerns that UP/SP said were wrong and misguided -- that BNSF might have problems running against the flow of UP/SP's directional traffic on the Houston-Memphis line.<sup>13</sup>

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<sup>10</sup> Decision No. 44 at 136, fn. 154.

<sup>11</sup> TUE Comments (TUE-7), V.S. Johnson at 3-4 (March 29, 1996).

<sup>12</sup> See CMA Agreement, § 10 (dated April 18, 1996); Second Supplemental Agreement to BNSF Agreement, § 6(c) (dated June 22, 1996).

<sup>13</sup> Applicants' Rebuttal (UP/SP-232), Vol. 3, V.S. King at 5-6 (April 29, 1996).



In Decision No. 44, the STB granted BNSF trackage rights over TUE's requested SP Tenaha-to-Shreveport line and added trackage rights relief over UP's Longview-to-Texarkana line. Subsequent to Decision No. 44, TUE, BNSF and KCS have examined the Longview-to-Texarkana routing. To use this routing, new facilities and track upgrades will be necessary. TUE's Witness Dunn estimates the facility cost to perfect the BNSF/KCS route via Texarkana and Longview to the Martin Lake Station at \$6.6 million.

If, as UP/SP has argued to TUE, BNSF trains must run directionally, with loaded trains accessing TUE's Martin Lake Station from the south via Shreveport and Tenaha and with empty trains departing from the north via Longview and Texarkana, the access cost for BNSF/KCS will approximate \$13.3 million -- i.e., approximately double the access cost associated with TUE's initial condition request (\$6.7 million). Doubling the access cost will obviously inure to the competitive detriment of both TUE and BNSF/KCS.<sup>14</sup>

TUE submits that the alternative that makes the most commercial sense -- and the one that TUE asserts the STB adopted in the TUE Condition -- is to permit TUE and BNSF the option of selecting the most efficient routing that will keep BNSF/KCS as a

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<sup>14</sup> TUE plans on bidding UP direct service versus BNSF/KCS service to obtain coal deliveries at its Martin Lake Station, with the low bidder getting the initial business. If BNSF is required to run its TUE trains directionally, BNSF's bid must factor in the additional \$6.6 million in access costs.

viable and efficient competitor for TUE's Martin Lake coal business. Such a selection process fully comports with Decision No. 44, which states in pertinent part:

We will require that the BNSF agreement be amended to permit BNSF and KCS to provide an efficient PRB joint-line movement into Martin Lake as an independent competitive alternative to the UP/SP single-line routing it will gain access to once the spur is completed.

Id. at 154 (emphasis added).

TUE anticipates that prior to the commencement of BNSF service to Martin Lake, BNSF and TUE will select one of the three trackage rights options (i.e., via Texarkana, via Shreveport or directional running) and inform UP/SP of its choice so that the specific service details can be arranged in advance of the commencement of BNSF service to TUE. TUE further anticipates that the most efficient option will be routing its loaded and empty trains via Texarkana-Longview, but TUE (and BNSF/KCS) need to keep all options open at this time until TUE, BNSF and KCS complete their ongoing routing and operating studies.

A related commercial matter should also be briefly addressed. TUE's routing studies to date indicate that UP/SP may itself have to route loaded trains to the Martin Lake Station via non-directional running over the Texarkana-Longview line.<sup>15</sup> In

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<sup>15</sup> See TUE Comments (TUE-7), V.S. Crowley at 2 (March 29, 1996). A schematic of this route is appended as Counsel's Exhibit No. 4. UP/SP has recently suggested that it may be able to route TUE trains to Martin Lake via Dallas/Fort Worth, with loaded and empty trains moving directionally to and from Martin Lake. UP/SP has provided no details concerning such routes and, (continued...)

addition, UP/SP is now providing unit train coal service to TUE's Monticello Station. Those trains now traverse UP's line between Little Rock and Texarkana in both directions.<sup>16</sup> The Texarkana-Little Rock line segment is a continuation of the Longview-to-Texarkana line, and UP/SP also plan to operate the Texarkana-Little Rock line segment directionally. To continue service to Monticello on the current routing, UP/SP will have to move TUE trains non-directionally. Thus, UP/SP may be advocating an approach where only UP/SP, not BNSF, can run TUE coal trains non-directionally -- again, to TUE's and BNSF's obvious commercial detriment.

TUE submits that the foregoing commercial considerations further demonstrate the wisdom in the STB's approach of providing TUE and BNSF/KCS with several operating choices to access TUE's Martin Lake Station via UP/SP trackage rights.

## II.

### OTHER ISSUES

#### A. FACILITIES SELECTION.

The BNSF Agreement (§ 9(b)) provides that BNSF and UP/SP shall choose the facilities necessary to provide service

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<sup>15</sup>(...continued)  
in the past, UP/SP has claimed that congestion and other operating problems in the Dallas/Fort Worth area have made UP/SP routings to TUE's Monticello Station via Dallas/Fort Worth impractical.

<sup>16</sup> A schematic of this route is appended as Counsel's Exhibit No. 5.



under the granted trackage rights. TUE asks that this provision be amended to permit TUE and KCS to participate in the selection process, as follows:

b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have the right to do so upon payment to the other party of one-half (1/2) the original cost of construction such facilities. In addition, BNSF, UP/SP, KCS and TU Electric will agree upon the necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted BNSF under this Agreement to provide service to TU Electric's Martin Lake Generating Station.

A similar conforming change to the Houston Agreement (Section 5(a)) is also proposed. TUE should be able to participate in the facilities selection because TUE has been the party that sought the TUE Condition; it has led efforts to locate and identify the needed trackage rights facilities; and, ultimately, the cost of such facilities will be incorporated into the Martin Lake coal transportation rate offerings presented to TUE.

B. ENFORCEMENT RIGHTS.

Section 17 of the BNSF Agreement provides no enforcement rights to shippers like TUE. However, in Decision No. 44, the STB did grant specified enforcement rights to shippers. The Decision states in pertinent part:

Section 17 of the BNSF agreement appears to be a standard "no third party beneficiaries" provision; it provides that nothing in the BNSF agreement is intended to give any person other than the signatories any legal or equitable right, remedy or claim. This provision may be standard but it is clearly at odds with the logic of the BNSF agreement, and we therefore wish to clarify that we understand that the BNSF agreement does provide rights and claims (and, by implication, remedies) to persons other than the signatories. We note, by way of illustration, that a shipper at a point opened up to BNSF under the BNSF agreement is such a person; a subsequent UP/SP-BNSF arrangement restricting BNSF's ability to serve that shipper would, among other things, violate that shipper's rights under the BNSF agreement.

Decision No. 44 at 12, fn 17.

TUE proposes to add the following underscored language so that Section 17 conforms to Decision No. 44:

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement; provided, however, TU Electric and KCS shall be permitted to enforce the rights granted hereunder to BNSF to serve TU Electric's Martin Lake Generating

Station in the manner set forth in the Surface Transportation Board's Decision No. 44 in Finance Docket No. 32760.

C. TRAIN SERVICE COVERED.

UP/SP insists that the TUE Condition applies only to TUE coal trains and not TUE shipments of commodities other than coal. TUE submits that there is no reasoned basis for UP's arbitrary limitation.

Prior to the merger of UP/SP, TUE could have used all or portions of its proposed coal train routings involving UP and SP to transport commodities other than coal. The merger of UP and SP eliminated this UP/SP competition for all commodities. Accordingly, the TUE Condition should apply to all commodities.

TUE also notes that TUE, like City Public Service Board of San Antonio ("CPSB"), focused its evidentiary presentation to the Board on coal train service, but the STB ultimately approved BNSF trackage rights to CPSB's Elmendorf Station that included BNSF's right to transport all commodities over its UP/SP trackage rights -- not just coal. See Decision No. 52 at 3 (served Sept. 10, 1996) (trackage rights apply to all "CPSB traffic").

CONCLUSION

For the reasons discussed above, TUE respectfully requests the STB adopt the specific implementing conditions set out in Counsel's Exhibit No. 1 hereto.



Respectfully submitted,

OF COUNSEL:

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Dated: January 24, 1997

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Attorneys for Texas Utilities  
Electric Company

I. AMENDMENTS TO THE BNSF SETTLEMENT AGREEMENT

Section 6(c) shall be amended by inserting "(v)" between "with" and "the" in the last sentence, deleting the period at the end of that sentence, and adding at the end of the Section:

"; (vi) KCS at Shreveport, LA, for movements of trains to and from Texas Utilities Electric Company's ("TU Electric") Martin Lake Generating Station; and (vii) KCS at Texarkana, TX/AR, for movements of trains to and from TU Electric's Martin Lake Generating Station."

Section 9(b) shall be amended by adding at the end of the Section:

"In addition, BNSF, UP/SP, KCS and TU Electric will agree upon the necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted BNSF under this Agreement to provide service to TU Electric's Martin Lake Generating Station."

Section 17 shall be amended by striking the period at the end of the Section and inserting:

"; provided, however, TU Electric and KCS shall be permitted to enforce the rights granted hereunder to BNSF to serve TU Electric's Martin Lake Generating Station in the manner set forth in the Surface Transportation Board's Decision No. 44 in Finance Docket No. 32760."

II. AMENDMENTS TO THE HOUSTON AGREEMENT

Section 2(a)(v) is amended by inserting "(a)" between "with" and "the", deleting the period, and adding at the end of the Section:

"; (b) the Kansas City Southern Railway Company ("KCS") at Shreveport, LA, for movements of trains to and from Texas Utilities Elec-

tric Company's ("TU Electric") Martin Lake Generating Station; and (c) KCS at Texarkana, TX/AR, for movements of trains to and from TU Electric's Martin Lake Generating Station."

Section 2(c) is amended by substituting "KCS" for "The Kansas City Southern Railway Company ("KCS")" in 2(c)(ii), and by adding at the end of the Section:

"Transportation over the Joint Trackage to and from TU Electric's Martin Lake Generating Station shall be considered a local move for purposes of this Section."

Section 5 shall be amended by adding the following sentence after the first sentence in Section 5(a):

"In addition, Owner, User, KCS and TU Electric will agree upon what connections and sidings are necessary to implement the trackage rights granted BNSF under this Agreement to provide service to TU Electric's Martin Lake Generating Station."



AMENDMENTS TO  
THE BNSF AGREEMENT

Section 6(c) Amendment:

c) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the SP-owned lines listed in Section 6a (except the line between Fair Oaks, AR and Illmo, MO). Except as provided in Section 91 of this Agreement, BNSF shall not have the right to enter or exit at intermediate points on UP's and SP's lines between Memphis and Valley Junction, IL. Traffic to be handled over the UP and SP lines between Memphis and Valley Junction, IL is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana except that traffic originating or terminating at points listed on Exhibit A under the caption "Points Referred to in Section 6c" may also be handled over these lines. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 55), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via its trackage rights over either the UP line or the SP line, at its

discretion, for operating convenience. BNSF shall also have the right to interchange with (v) the Little Rock and Western Railroad at Little Rock and the Little Rock Port Authority at Little Rock; (vi) KCS at Shreveport, LA, for movements of trains to and from Texas Utilities Electric Company's ("TU Electric") Martin Lake Generating Station; and (vii) KCS at Texarkana, TX/AR, for movements of trains to and from TU Electric's Martin Lake Generating Station."

Section 9(b) Amendment:

b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have the right to do so upon payment to the other party of one-half (1/2) the original cost of construction such facilities. In addition, BNSF, UP/SP, KCS and TU Electric will agree upon the necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted BNSF under this Agreement to provide service to TU Electric's Martin Lake Generating Station.

Section 17 Amendment:

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement; provided, however, TU Electric and KCS shall be permitted to en-



force the rights granted hereunder to BNSF to serve TU Electric's Martin Lake Generating Station in the manner set forth in the Surface Transportation Board's Decision No. 44 in Finance Docket No. 32760.

AMENDMENTS TO  
THE HOUSTON AGREEMENT

Section 2(a)(v) Amendment:

(v) Connect with or interchange with any other railroad; provided, however, User shall have the right to interchange with (a) the Little Rock and Western Railway Company at Little Rock, Arkansas and Little Rock Port Authority at Little Rock, Arkansas; (b) The Kansas City Southern Railway Company ("KCS") at Shreveport, LA, for movements of Texas Utilities Electric Company's ("TU Electric") trains to and from the Martin Lake Generating Station; and (c) KCS at Texarkana, TX/AR, for movements of trains to and from TU Electric's Martin Lake Generating Station.

Section 2(c) Amendment:

(c) User traffic to be handled over the MPRR and SSW lines between Fair Oaks, Bald Knob and East St. Louis is limited to (i) traffic that moves through, originates in, or terminates in Texas, Arkansas or Louisiana, (ii) traffic of shippers open to all of UP, SP and ~~The Kansas City Southern Railway Company ("KCS")~~ KCS at Texarkana, Texas/Arkansas and Shreveport, Louisiana, or (iii) traffic that moves to and from the Memphis BEA (BEA 55), but not including proportional, combination, or Rule 11 rates via Memphis or other points in the Memphis BEA (BEA 55). Shippers to which User shall have the right to handle traffic shall be those published in the respective tariffs of SP, KCS and UP, and amendments thereto.

On the Houston-Valley Junction Line User shall have the right to move some or all of

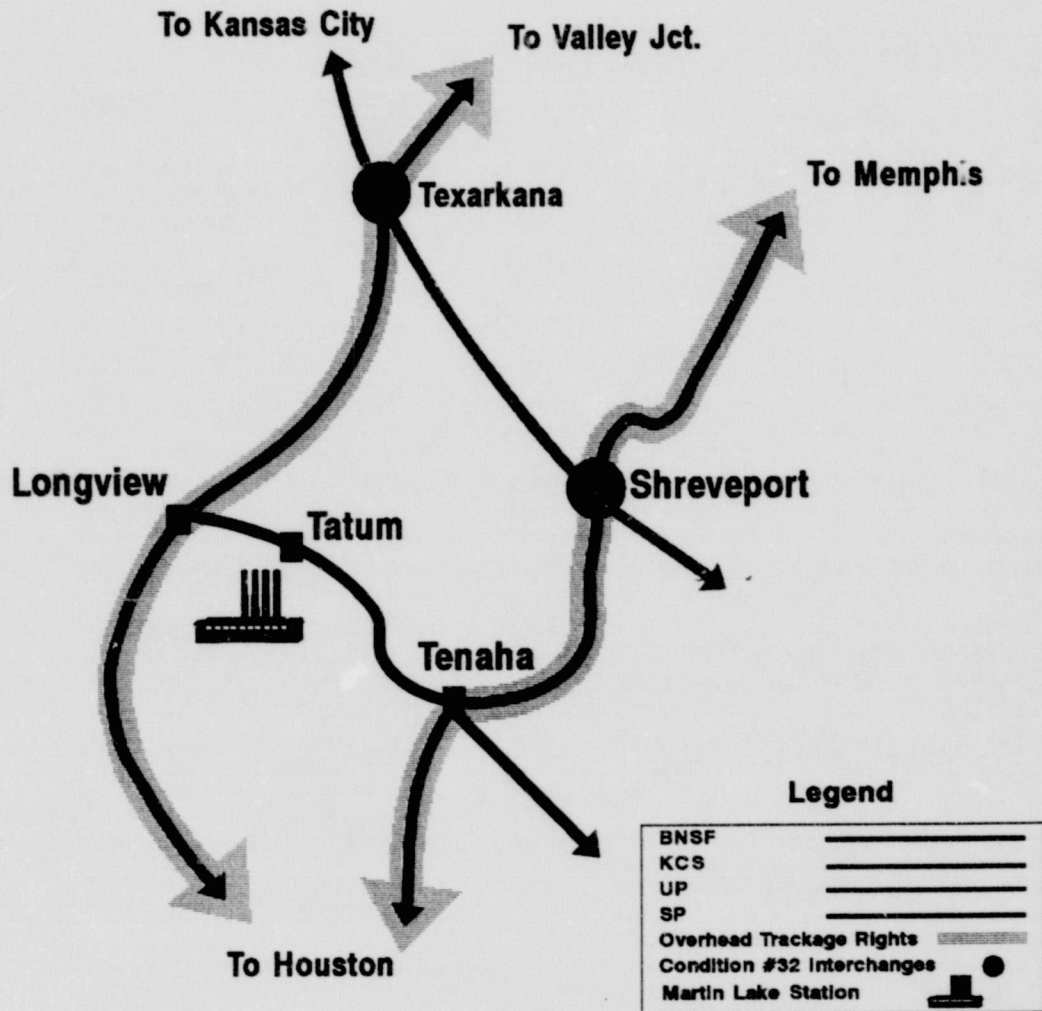


its traffic via trackage rights over the MPRR line or the SPT line, at its discretion, for operating convenience; provided, however, that at such time as UP/SP begins directional operations over the Joint Trackage, it is the parties' intent that User's traffic shall operate with the current flow along with UP/SP traffic. This provision shall not apply to local or switch moves by User over the Joint Trackage. Transportation over the Joint Trackage to and from TU Electric's Martin Lake Generating Station shall be considered a local move for purposes of this Section.

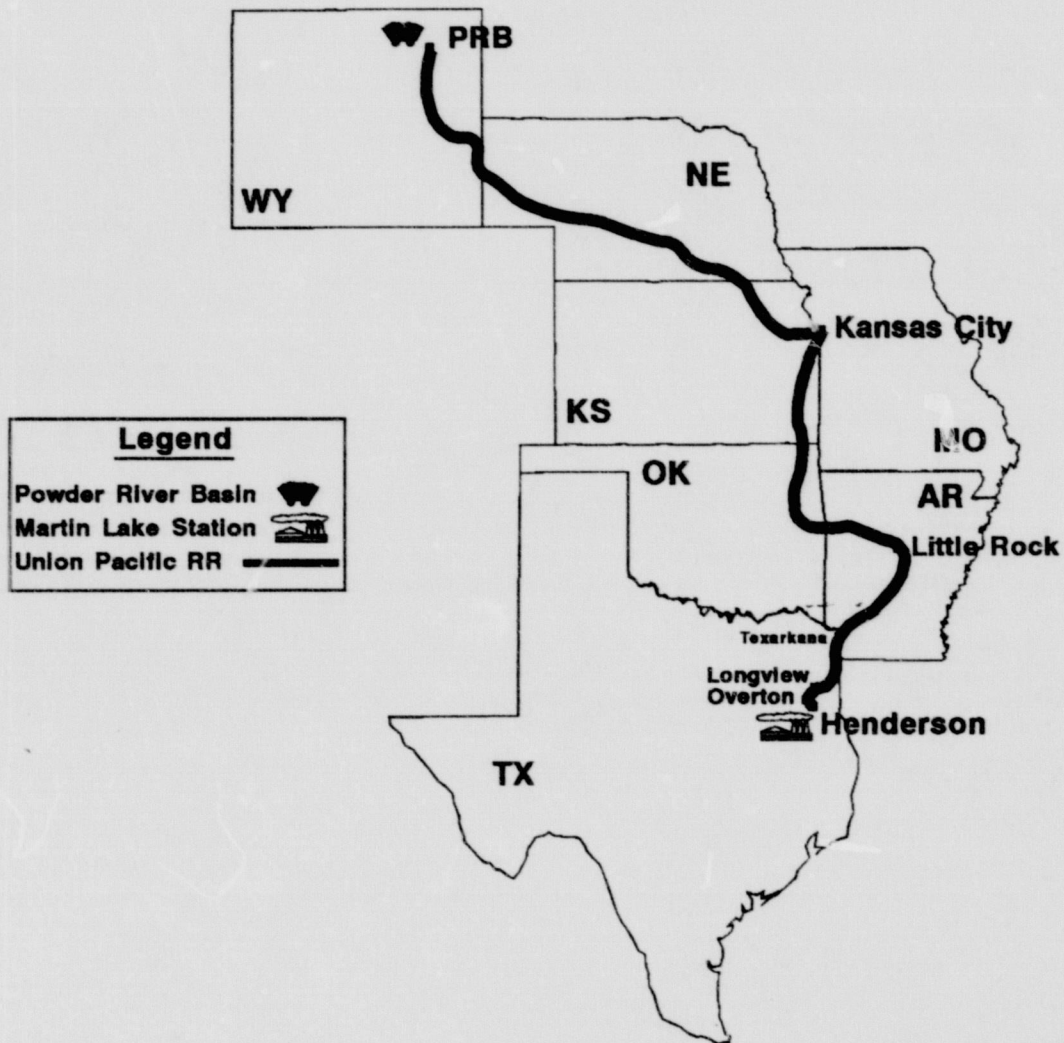
Section 5(a) Amendment:

(a) Owner and User shall conduct a joint inspection to determine what connections ("Connections") and sidings or siding extensions associated with Connections ("Sidings") are necessary to implement the rights granted under Section 2 of this Agreement. In addition, Owner, User, KCS and TU Electric will agree upon what connections and sidings are necessary to implement the trackage rights granted BNSF under this Agreement to provide service to Texas Utilities Electric Company's Martin Lake Generating Station. . .

## Potential BNSF Routes to Martin Lake Station

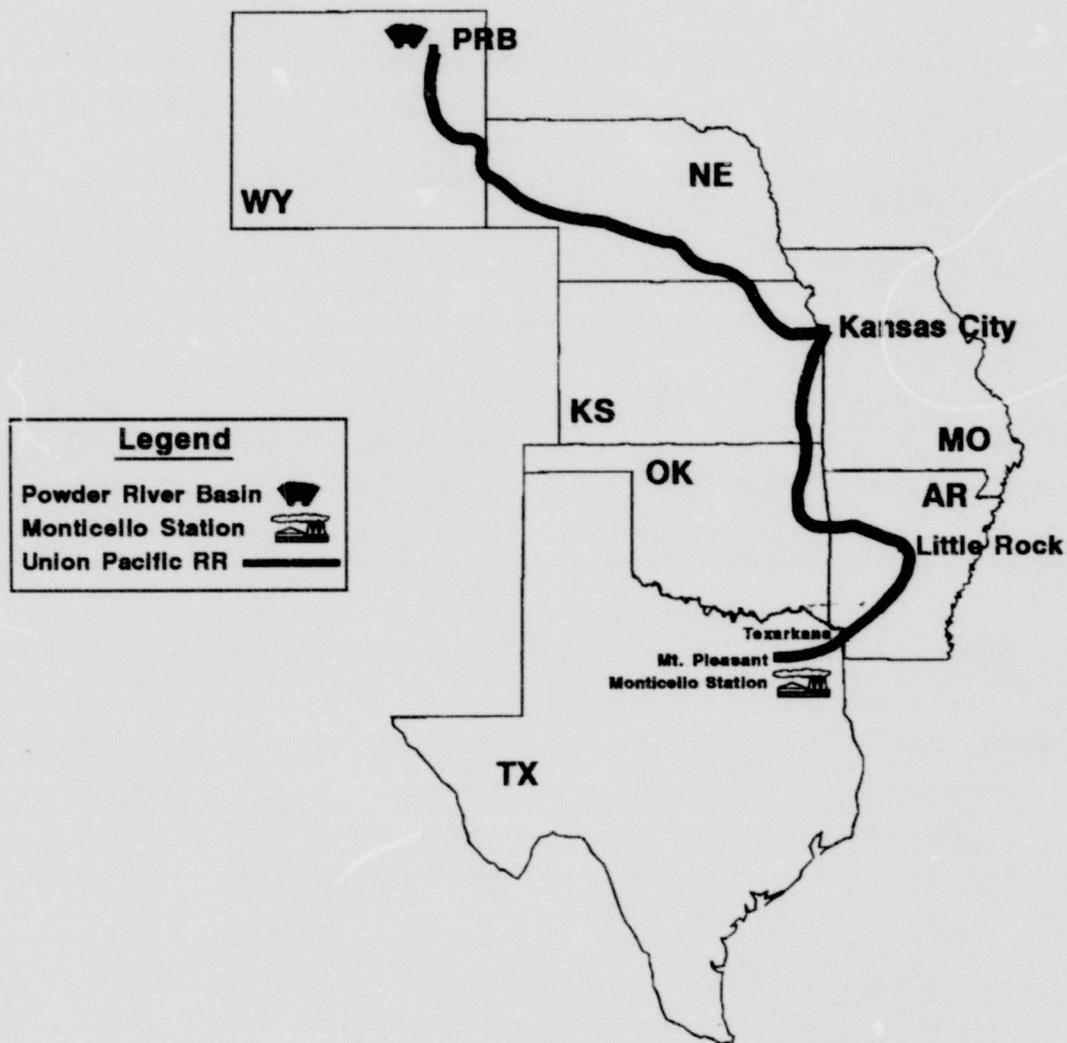


## UP Direct Route to Martin Lake Station





## UP Direct Route to Monticello Station



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Finance Docket No. 32760

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

**--CONTROL AND MERGER--**

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

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Verified Statement  
of  
**Ronald H. Dunn, P.E.**  
President  
**R.H. Dunn & Associates, Inc.**

On Behalf of  
TU Electric

Due Date: January 24, 1997

## **VERIFIED STATEMENT OF RONALD H. DUNN**

### **I. INTRODUCTION**

My name is Ronald H. Dunn, P.E. I am President of R.H. Dunn & Associates, Inc., a firm that specializes in railway consulting engineering services. The firm's offices are located at 149 Hunting Cove, Williamsburg, Virginia 23185, with a mailing address of P.O. Box 3106, Williamsburg, Virginia 23187-3106.

I am a Registered Professional Engineer and a graduate of Johns Hopkins University, where I earned a Bachelor of Science degree in Engineering. I have been elected to the grade of FELLOW by the American Society of Civil Engineers, the National Academy of Forensic Engineers and also by the Institute of Transportation Engineers. I am a LIFE member of the American Railway Engineering Association and a Board Certified DIPLOMATE-FORENSIC ENGINEER.

I have more than 40 years of professional experience in railway engineering gained through active employment with a major railroad, with three of the largest engineering firms in the nation, and, for the previous thirteen years, with my own firm. More details of my professional qualifications and experience are provided in my curricula vitae, a copy of which is included as Appendix A. I have personally been involved in engineering projects of 18 railroads and 17 rail rapid transit systems in more than 40 states, D.C. and 6 provinces. Examples of these projects are listed in Appendix B.

I have been requested by Texas Utilities Electric Company ("TU") to submit this verified statement concerning the implementation of "Condition No. 32" imposed by the Surface



Transportation Board ("STB") in Decision No. 44 served August 12, 1996. In Condition No. 32, the STB has required that the trackage rights settlement agreement between the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BNSF") and the Union Pacific Railroad Company and Southern Pacific Transportation Company ("UP/SP") ("BNSF Agreement") be amended to permit the Kansas City Southern Railway Company ("KCS") and BNSF to interchange TU's coal trains: (a) at Shreveport, Louisiana, for movement by BNSF over the SP's line between Shreveport and Tenaha, Texas; and (b) at Texarkana, Texas, for movement by BNSF over the UP's line between Texarkana and Longview, Texas.

My statement specifically addresses the modifications, such as new construction and track rehabilitation, that would be necessary to allow the head-on movement of TU's unit coal trains over each of these lines via the indicated interchanges. With respect to the modifications required, I have relied on the pertinent maps of the areas proposed and my on-site review of the sites. On November 8, 1996, I was part of a delegation of representatives from TU, UP, BNSF and the KCS which collectively met to evaluate the feasibility of the potential construction and operations of the proposed routes and sites at Texarkana, Longview, and Shreveport. I will also comment on why the TU trains will be able to operate against the "directional flow" on the UP/SP granted trackage rights, only requiring the construction costs for one chosen route. This statement is organized under the following headings:

- II. Overview of TU Routes
- III. Sites Reviewed and Modifications Required
- IV. "Double Cost" Issue
- V. Non-Directional Running of Trains
- VI. Summary and Conclusion

## II. OVERVIEW OF TU ROUTES

Under the BNSF agreement, as amended pursuant to a separate settlement agreement among UP/SP, BNSF and the Chemical Manufacturers Association, BNSF was granted overhead trackage rights over two UP/SP lines in the Memphis-Houston corridor. These lines include SP's line via Pine Bluff, AR and Shreveport, LA, and UP's line via Little Rock, AR and Texarkana, TX. In Condition No. 32, the Board granted BNSF the right to use a portion of its trackage rights over both of these lines to transport trains to and from TU's Martin Lake Plant via two alternative BNSF/KCS routes. Specifically, the condition allows BNSF to interchange TU coal trains with KCS (a) at Shreveport, LA for movement by BNSF over SP's line between Shreveport and Tenaha, TX, or (b) at Texarkana, TX for movement by BNSF over UP's line between Texarkana and Longview, TX. (BNSF has an existing line between Tenaha and Longview that allows access to a spur connecting this line with the Martin Lake Plant near Tatum, TX.)

Each route for TU's western coal movement would originate in Wyoming on BNSF lines and move to Kansas City for interchange with the KCS. On the first route, the KCS would interchange TU's unit coal trains with the BNSF at Shreveport where the trackage rights over SP's line between Shreveport and Tenaha would be accessed. At Tenaha, the trains would return to BNSF's own line for movement to Tatum, Texas, where BNSF connects with TU's private line to the Martin Lake Plant. The second route would allow the KCS/BNSF to interchange the trains at Texarkana so the BNSF could access and traverse the trackage rights over the UP line between Texarkana and Longview, Texas for continued service on the BNSF's



line to Tatum. Approaching Tatum on either route, the BNSF would access TU's private rail line which is approximately three miles from the Martin Lake Plant. Empty trains would move in the reverse direction over the same routes. A third route would involve operations over both of the above described line segments, with the loaded trains moving via Shreveport and Tenaha and the empty trains moving via Longview and Texarkana. This route would provide for operation of TU coal trains with the "directional flow" of traffic on the trackage right lines. To allow efficient head-on unit coal train movements over these routes, the following construction and track rehabilitation would be required.

### **III. SITES REVIEWED AND MODIFICATIONS REQUIRED**

The alternate routes described above will require a number of modifications with respect to construction and track rehabilitation to enable TU's unit coal trains to operate as efficient head-on movements. Descriptions and cost estimates for the construction of the required connections at Shreveport, Texarkana and Longview, along with the necessary rehabilitation of track at Shreveport and Tenaha and on the BNSF line accessing Tatum are addressed under their respective routes below. With respect to the "Route via Shreveport/Tenaha", I have summarized the modifications evaluated and discussed by Edward Q. Johnson, Senior Engineering Consultant of L.E. Peabody & Associates, Inc., found in his verified statement dated March 29, 1996, on behalf of TU for the UP/SP before the STB. (Unfortunately, Mr. Johnson has passed away since his earlier testimony was filed.) For the "Route via Texarkana/Longview", I conducted an on-site review of the potential areas for the connections in Texarkana and Longview, along with an in-office review and analysis of the pertinent maps.

#### **A. ROUTE VIA SHREVEPORT/TENAHA**

The route via Shreveport and Tenaha will require certain construction and track rehabilitation work to enable the efficient head-on operation of TU unit coal trains. This work, and its estimated cost, are described in detail in Exhibit\_\_ (EQJ-3) of E.Q. Johnson's verified statement on behalf of TU filed on March 29, 1996.

In summary, the necessary work includes construction of a connection between the KCS and SP lines in Shreveport; rehabilitation of the connection between the SP and BNSF lines at

Tenaha; modifications to adjust existing horizontal and vertical curves on BNSF's line between Tenaha and Tatum; and construction of a loop track connecting the BNSF line with TU's private line accessing the Martin Lake Plant near Tatum. Mr. Johnson's estimate of the total cost of this work was \$6.73 million.

**B. ROUTE VIA TEXARKANA/LONGVIEW**

The route via Texarkana and Longview will require the construction of connections at each interchange to allow efficient head-on movement for the TU unit coal trains. Three potential sites were considered, with the area north of the Kerr McGee tie plant being my preferred choice.

**1. Texarkana: KCS/UP Connection**

- a. **North of Kerr McGee Tie Plant** -- Although our delegation did not see this site, further review of the maps shows that a potential site for connection is located approximately 1.7 miles north of the Kerr McGee tie plant. Here, the KCS and UP lines are approximately 150 feet apart at similar elevations requiring 1,340 feet of track construction for the connection. The estimated cost of a connection at this location is \$0.28 million.
- b. **East of Kerr McGee Tie Plant** -- A second feasible Texarkana connection site would involve the KCS line running south from Kansas City connecting with the UP trackage rights line running between Little Rock, Arkansas and Houston, Texas. TU has identified a desirable point for the connection between the two lines near the



Kerr McGee Tie Plant. At this point, the KCS and UP lines are approximately 800 feet apart running parallel to each other.

From my initial site visit and review of the maps, there do not appear to be any insurmountable physical obstructions between the two lines such as buildings, and the grade on the two lines seem very similar. The connection would require the construction of approximately 2,430 feet of track with moderate grading, and clearing of 2.8 acres of 20-30 foot tall trees and light brush. The estimate for construction is \$0.57 million.

- c. **UP/SP Yard** -- Another site was reviewed for a possible connection of the two lines in the UP/SP yard, but the UP/BNSF/KCS representatives accompanying us were all in agreement that the yard would be too congested and the connection curvature too tight for unit train service.

- 2. **Longview: UP/BNSF Connection** -- The Longview connection would allow unit coal trains from Texarkana on UP tracks to move onto the BNSF line en route to Tatum and the Martin Lake Plant. The preferred location would be to connect the UP track near UP's Longview yard to the BNSF's wye track. The BNSF wye track approaches the UP line at a right angle ending approximately 500 feet from the line.

The connection would require new construction of approximately 2,690 feet of track and the removal of 2,100 feet of existing track including the west leg of the wye track.

Because the tail end of the BNSF wye track is approximately 14 feet above the UP's main line, the connection would require considerable grading starting at the approximate location of the existing point of switch. The raising and/or the relocation of a pole line, along with the relocation and/or encasing of a fiber optics line would also be required. A public road with no development and very little traffic might need a bridge because it is in the area of connection, but rerouting or severing the road with provisions of cul de sacs may be feasible alternatives. At the UP connection a power switch would be needed. The total estimated cost for the work required for this connection is \$1.58 million.

3. **Rehabilitation of Longview to Tatum** -- The BNSF has estimated a cost of \$1.75 million for track rehabilitation and bridgework on this line segment. A significant portion of the cost is directly attributable to the upgrading of a timber trestle bridge that crosses the Sabine River north of Easton, Texas.
4. **BNSF/TU Private Line Connection** -- From the BNSF line at Tatum, the construction of a connection to TU's private line would be required to allow head-on movement for the TU unit coal trains. Although I did not review the site, a preliminary estimate of this connection based on information provided by TU electric would be approximately \$3.0 million. It is my understanding that construction of this connection would require 4,000 feet of track, considerable grading and the purchase of land. The BNSF line, which runs east of Highway 149, would also have to cross the 4 lane undivided highway with grade separation in the area of Martin Lake Junction.

#### IV. "DOUBLE COST" ISSUE

UP/SP plan to implement directional running of through trains in the Memphis/East St. Louis to Houston corridor as a result of their merger. Under this plan, UP/SP's southbound through traffic will move over SP's line via Pine Bluff, Shreveport and Tenaha, and its northbound through traffic will move over UP's line via Longview, Texarkana and Little Rock. In general, BNSF will also operate through trains between Memphis and Houston with the "directional flow", meaning northbound trains will operate over the UP line and southbound trains will operate over the SP line. However, in order to operate TU coal trains in a head-on manner consistent with this directional flow, both routes will require modifications as described above. The cost estimates of the necessary construction and rehabilitation are summarized in the table below.



Table 1

<u>Route/Modification</u> (1)	<u>Estimate (millions)</u> (2)
1. Shreveport/Tenaha	
a. KCS/SP Connection	\$0.90
b. KCS Track Rehabilitation	1.80
c. SP/BNSF Connection & Rehabilitation	0.12
d. BNSF Track Rehabilitation	0.71
e. Loop Track Connecting BNSF/TU Line	<u>3.20</u>
f. Total	\$6.73
2. Texarkana/Longview	
a. KCS/UP Connection	\$0.28
b. UP/BNSF Connection	1.58
c. BNSF Track Rehabilitation	1.75
d. BNSF/TU Line Connection	<u>3.00</u>
e. Total	\$6.61

Moving with the proposed directional flow would mean the \$6.73 million spent on the modifications for the Shreveport/Tenaha route would only apply to the loaded trains, or half the route. To then move the empty trains from the Martin Lake Plant to Longview and Texarkana so as to "flow" with the UP northbound traffic would require another \$6.61 million for necessary modifications, which would also only be spent to accommodate the TU traffic moving in one direction. Construction and track rehabilitation is expected for either of the routes, but the directional routing would mean that all the modifications and expenses would be required. If BNSF is permitted to operate both loaded and empty TU coal trains via one route, thus allowing half of those trains to traverse against the flow, only the expense for the chosen route would be incurred.

## V. NON-DIRECTIONAL RUNNING OF TRAINS

Avoiding the double-cost problem described in the preceding section will require operation of both loaded and empty TU coal trains over one of the two alternative routes granted in Condition No. 32. However, TU, BNSF and KCS have not yet decided which of the three possible routes is preferable, although it appears from the analysis conducted to date that the route via Texarkana and Longview is preferable from an operational standpoint because it has more numerous passing sidings than the Shreveport-Tenaha route and is equipped with Centralized Traffic Control. At this point, they desire the flexibility to choose any route, although a preferred route would be selected prior to commencement of the Martin Lake coal movement.

If all TU coal trains are operated over a single route, a total of ten trains per week would be involved based on TU's projections as to the total annual volume of coal traffic that would move to Martin Lake. Five loaded trains per week would move southbound, and five empty trains per week would move northbound. The loaded trains would move against the "directional flow" if UP's line between Texarkana and Longview is used, and the empty trains would move against the "directional flow" if SP's line between Shreveport and Tenaha is used.

BNSF has submitted a verified statement by Ernest L. Hord which discusses BNSF's proposed operation of TU coal trains in more detail. That statement indicates that operations against the directional flow on either line should not be a problem. Because the TU movement would be unique to the anticipated directional running of UP/SP and BNSF traffic, I, too,

believe that the TU unit coal trains will not encounter any problems running against the directional flow. I also believe that UP/SP's concerns that the line between Texarkana and Longview is not conducive to the southbound movement of loaded coal trains because of the track's "undulating" profile is unfounded in view of this line's physical characteristics and historically balanced traffic density.

**A. "AGAINST THE FLOW"**

The TU movements in both directions on either of the proposed trackage rights lines are unique to the other through traffic because the unit trains would only require movement against the directional flow over a portion of the trackage rights and both movements will be joint moves with the KCS involving interchanges at Texarkana or Shreveport as granted in Condition No. 32. A review of the timetables shows that there are sufficient sidings to "hide" unit train traffic on both trackage rights lines, and the Texarkana-Longview line is equipped with centralized traffic control. The detailed written trackage rights protocol agreed to by the BNSF and UP/SP referred to by the STB in their decision also ensures equal dispatching treatment for all trains. In addition, the BNSF/KCS interchanges of the trains at Texarkana and Longview will require the trains to be stopped for crew changes before the trackage rights are accessed. The railroads would then have control of when to proceed with or against the flow of the other traffic and would only be required to stop the trains while on the trackage rights to "hide" on one of the sidings if needed to meet a train moving in the opposite direction.



**B. "UNDULATING" TRACK  
BETWEEN TEXARKANA/LONGVIEW**

The UP/SP has described the line between Texarkana and Longview as "undulating" and feels the loaded TU unit coal trains would not be able to traverse the line in a southbound direction which is against the flow of the other traffic. Therefore, it must be assumed that other heavy tonnage trains or trains with comparable tonnage have not used this line in the past.

Although I have not personally inspected the entire line between Texarkana and Longview, I have reviewed the track profile for this segment, as reflected in UP's most recent track chart which was provided to TU. A copy of this track chart is attached as Exhibit\_\_ (RHD-1). The track chart shows that the Texarkana-Longview line has a high-quality track structure including 133-pound continuous welded rail which is the UP's standard for high-density main lines. Although there are a few areas of rise and fall with curves, including some grades slightly in excess of 1%, they do not appear to be severe enough to present an obstacle to the movement of heavy tonnage trains.

I have also reviewed UP's 1994 traffic density charts, which were included in UP/SP's merger application. The charts show that the Texarkana-Longview line is a high-density line in terms of tonnage handled, and that the tonnage densities moving in each direction are similar (about 30 million gross tons annually). Thus, this line appears fully capable of handling heavy southbound tonnages.

It should also be noted that UP presently operates other unit coal trains for TU in both directions on the same UP line. I am advised by TU that loaded coal trains destined to TU's

Monticello Plant near Mount Pleasant, TX presently operate over this line in a southbound direction between Little Rock, AR and Texarkana. (From Texarkana, these trains operate westward over a portion of SP's Texarkana-Fort Worth line to Mount Pleasant.)

## **VI. SUMMARY AND CONCLUSION**

From an operational standpoint, it is not necessary for the unique TU coal trains to operate with the "directional flow" on the trackage rights lines. Operating in this manner approximately doubles the cost of the required connections between the various lines involved, as well as necessary track rehabilitation work, compared with the cost of the modifications required if TU trains are operated in both directions over one route. This is an inefficient use of resources given the ability of a few TU trains (five per week) to operate against the directional flow for a maximum distance of only 85.5 miles if the Texarkana-Longview route is selected.





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#### FORENSIC ENGINEERING QUALIFICATIONS

Mr. Dunn is a Licensed Professional Engineer with more than 35 years of experience in the design, construction, maintenance, and operation of railroads and rail rapid transit systems; including ten years with the Baltimore & Ohio Railroad and personal involvement in major engineering projects of 18 railroads and 17 rail rapid transit properties throughout North America (In more than 35 states, D.C. and 6 provinces). He is knowledgeable of European and Asian railway standards and practices through professional involvement there. His railway and rail transit consulting services include: forensic railway engineering, track failure/derailment investigations, railroad and crossing accident investigations, construction audits/overviews, construction claims investigations, track construction/maintenance inspections, laboratory tests monitoring, track material procurement inspection, and technical input/expert witness testimony for plaintiffs or defendants in litigation and arbitration cases, including construction claims, wrongful death, personal injury and FELA claims.

In addition to forensic testimony based upon his professional engineering background, Mr. Dunn, relying upon his extensive experience, training and knowledge of railroad industry practices, including operations, rules, statutes, training, and maintenance, has also testified to: main line and yard operations, switching and kicking of cars (including placarded cars), radio communications, couplers and coupling/uncoupling of cars, event recorders, handholds and sill steps, railroad operating and safety rules, employee training, derailment and accident investigations, clearances, function and operation of switches and derails, maintenance tools/equipment, maintenance standards/practices, walkways/walking conditions, vegetation, lighting, blue flags, air hoses and hand brakes, yard layout, track and train inspections, turntables, and human factors.

He earned a B.S. Engineering, at Johns Hopkins University and is: a Board Certified DIPLOMATE-FORENSIC ENGINEER; a FELLOW in ASCE, NAPE and ITE; a LIFE MEMBER of AREA; a MEMBER of APTA, CSCE, CSI, NARSCI, NSPE, SAME, TRB and VSPE; an active member of 6 technical committees in those organizations, and of a select panel of THE NATIONAL ACADEMY OF SCIENCES-NRC/TRB; and an ARBITRATOR in the American Arbitration Association.

COURT EXPERIENCE: Federal, State, Local, Interstate Commerce Commission, Army Corps of Engineers-Board of Contract Appeals, American Arbitration Association, and The Queen's Bench, Canada.



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**RONALD H. DUNN, P.E., F.ASCE**  
President

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**EDUCATION:**

Johns Hopkins University, B.S. Engineering

**MANAGEMENT TRAINING:**

Dimensional Management Training Program; Dimensional Sales Training Program; Design Professionals Liability Course; Liability: Prevention and Protection; The Engineer As An Expert Witness; Virginia Construction Law; Construction Claims Arbitration Training (AAA); and The Role of Expert Witnesses.

**PROFESSIONAL SOCIETY MEMBERSHIPS AND AFFILIATIONS:**

American Arbitration Association - Arbitrator, Construction Industry

American Public Transit Association:

Member of "Ways and Structures" Committee; "Track Construction and Maintenance" Subcommittee; "Operations" Committee; "Light Rail Transit" Subcommittee-Design Subgroup; "Elevated Structures" Task Force; "Girder Rail" Task Force

American Railway Bridge and Building Association

American Railway Engineering Association - Life Member:

Member "Economics of Plant, Equipment and Operations" Committee, 1966-85; "Track" Committee, "Track Design", "Turnout and Crossing Design" and "Highway-Railway Grade Crossings" Sub-Committees, 1985-present; "Rapid Transit" Committee, 1986-Present

American Society of Civil Engineers - Fellow

Canadian Society For Civil Engineering

Construction Specifications Institute

Institute of Transportation Engineers - Fellow

National Academy of Forensic Engineers - Fellow and Board Certified Diplomate

National Academy of Sciences - NRC/TRB/FTA/TDC:

Member select panel investigating "Derailment of Transit Vehicles in Special Trackwork", 1993 - Present

National Association of Railroad Safety Consultants and Investigators

National Institute for Engineering Ethics

National Society of Professional Engineers

Roadmasters and Maintenance-of-Way Association of America

Society of American Military Engineers

Transportation Research Board, National Research Council

Member "Railway Maintenance" Committee, 1984-1990; "Rail Transit System Design" Committee, 1985-Present; "Railroad Track Structure System Design" Committee, 1990-Present

U.S. Department of Transportation, 1968-1971

Member of committee which advised DOT in developing its test track

Virginia Society of Professional Engineers

**PROFESSIONAL EXPERIENCE:**

Mr. Dunn is a Licensed Professional Engineer with more than 35 years of diversified experience in railroad and rail transit engineering. He has been personally involved in engineering of major yard, shop and trackwork projects of 18 railroads and 17 rail rapid transit properties throughout North America.



December, 1983 - Present:

R.H. Dunn & Associates, Inc., Fairfax, VA, and Williamsburg, VA, President.

o Current and recent assignments include design criteria preparation and review for yards and trackwork, construction overview, construction inspection, track inspection, inspection training, maintenance manual preparation, maintenance planning, derailment investigation, cost estimating, claim investigation, material procurement inspection, laboratory tests monitoring, staff and organization planning, supplemental technical staff, proposal assistance, and expert forensic engineering testimony. Clients for which these services have been provided include: Massachusetts Bay Transportation Authority (MBTA); Metro Canada Limited (MCL); Urban Transportation Development Corp. (UTDC); UTDC (USA), Inc.; Teledyne Engineering Services, Inc.; City of Calgary, Alberta; Port Authority (Transit) of Allegheny County (PAT); British Columbia Transit (BCT); Ontario Ministry of Transportation and Communications; City and County of Honolulu, HI; County of Maui, HI; Union Pacific Railroad; U.S. Department of Interior; Santa Clara County (CA) Transportation Agency; Metro Dade Transit Agency (Miami); City of Chicago; Consolidated Rail Corp.; U.S. Naval Facilities Engineering Command (Pacific Division); and many major law firms throughout the United States.

May, 1978 - April, 1984:

Parsons Brinckerhoff Quade & Douglas, Inc., McLean, VA and Pittsburgh, PA. Vice President, Technical Director-Railway Engineering, Professional Associate.

o As Technical Director, responsible for quality of technical production and for staffing and training of personnel resources of firm's railway engineering projects; managed projects and actively involved in business development, management and administration of firm's Railway Division.

o Developed and conducted a formal training program on the principles of track design, fabrication, construction, and inspection. Program included 26 hours of classroom and field instruction for staff of 25 engineers responsible for monitoring and inspecting work of all trackwork material suppliers and installation contractors on a major transit project.

o Area Manager responsible for overall management and operation of firm's McLean, VA office in addition to management of the Railway Division.

o Principal-in-Charge and Project Director for preliminary and final design of trackwork and material procurement documents for advanced light rail transit (ALRT) system of Metro Canada Limited in Vancouver, B.C., a fully automated, 14-mile linear induction rail transit system.

o Principal-in-Charge and Project Director for preliminary and final design of trackwork for Detroit Central Automated Transit System (CATS), a fully automated, linear induction rail transit system for the Southeastern Michigan Transportation Authority (SEMTA).

o Principal-in-Charge of final design of a 60 mile coal haul railroad for unit train operation in Utah for a major coal company. This major branch line will comprise part of the D&RGW Railroad system.

o Principal-in-Charge and Project Director for forensic investigation of track failure, preparation of bid documents for material procurement and reconstruction of direct fixation track and resident engineering services during reconstruction under revenue traffic for City of Calgary, Alberta, light rail transit (LRT) system. Engineering consultant for extension to LRT system for City of Calgary.



- o Technical Consultant on "Project Yellow", a vital \$460 million joint venture engineering and construction project of the Union Pacific Railroad and the Chicago and North Western Railroad.
- o Project Director for development of trackwork design criteria and directive drawings for governing final design of Guadalupe Corridor light rail transit project, San Jose, CA.
- o Principal-in-Charge and Project Director for final design of trackwork, (including yards trackage), material procurement documents and floating slabs, and for provision of material procurement inspection services for light rail rapid transit system of Niagara Frontier Transportation Authority (NFTA), Buffalo, NY.
- o Chief Trackwork Engineer for the Frankford Elevated Structure Rehabilitation Project for the City of Philadelphia/Southeastern Pennsylvania Transportation Authority (SEPTA). This rehabilitation project was planned for being accomplished under revenue traffic.
- o Principal-in-Charge for trackwork material procurement and final design documents required on the Newark City Subway Rehabilitation Project for New Jersey Transit (NJT), a major track rehabilitation project performed under revenue traffic.
- o Trackwork Project Manager for Commuter Rail Improvement Program of MBTA in Boston. Project involved track inspection of all track, formulation of recommendations and engineering for rehabilitating seven commuter rail lines. Program work included track undercutting, drainage improvements, grade crossing improvements, cross tie renewal, turnout renewal, surfacing and lining, and laying of continuous welded rail under commuter traffic conditions, and coordination with operating department of MBTA.
- o Responsible for preparation of trackwork design criteria and technical specifications for material procurement for LRT track rehabilitation of PAT, Pittsburgh, PA.

February, 1976 - May, 1978:

Morrison-Knudsen Co., Inc., Boise, ID, Director-Railroad Engineering.

- o In this position, Mr. Dunn had overall responsibility for creation and management of a railroad engineering organization performing conceptual and detail design of rail car maintenance shops; preliminary and detail design of railroad branch lines to serve new coal mines; and studies comparing economics of alternative modes of coal transportation.

February, 1973 - February, 1976:

PBTB, Atlanta, GA, Manager of Engineering Support.

- o In this position, Mr. Dunn, for the Parsons Brinckerhoff joint venture engaged as the General Engineering Consultant of the Metropolitan Atlanta Rapid Transit Authority (MARTA) Project, developed and managed a large multidisciplinary department comprised of Railroad, Rail Facilities, Survey, Acoustics, and Utility Sections. He was responsible for the technical review and coordination of all design work with the 29 railroads, agencies and utilities affected by the Project. Was also responsible for conceptual, preliminary and final design of rail transit yards, shops and trackwork; writing the design review procedures and the surveying and mapping specifications; contract administration and technical management of surveying and photogrammetric mapping; and was the technical manager of the noise and vibration consultant's work.

June, 1966 - February, 1973:

De Leuw, Cather & Co., Washington, DC, Chief Engineer-Yards, Shops & Trackwork.

o His major responsibilities on Washington, DC Metro Project included: development of design criteria and directive drawings: final design, cost estimates of major repair yard, all trackwork (including state-of-the-art direct fixation rail fastener specifications), 3 service and inspection yards; engineering of noise and vibration control features, including floating slabs for special trackwork; direction of staff engaged in comprehensive study of track design, construction and maintenance practices of North American and European rail transit systems; and an in-depth analytical investigation of track design principles, including an economic study of track structure components. Was Project Engineer for final design of Major Repair Shop, procurement of shop equipment and for conceptual design of Service & Inspection Shops.

November, 1958 - June, 1966:

Baltimore and Ohio Railroad (Chesapeake System) Baltimore, MD.

Mr. Dunn's various assignments included:

o Resident engineer for construction of a power plant and facilities to expand railroad's coal-handling capacity. Responsibilities included route location and preparation of plans and cost estimates for alignment changes, relocation of main tracks, and construction of new branch lines, sidings and yards. Was also involved in all facets of track maintenance, on-site studies into causes of major train derailments, train movements of continuous welded rail (CWR), laying of CWR in-track, and engineering design and surveying of the railroad's TOFCEE facility in Baltimore.

#### **PUBLICATIONS AND PAPERS:**

While working on the Washington, D.C. Metro project, Mr. Dunn wrote the report, Recommended Trackwork Standards, a text in trackwork design which set forth formulas and step-by-step procedures to be followed by track design engineers. Technical papers presented include: "Modern Railroad Concepts for Transporting Western Coal", April, 1976, "Railroad Transportation with Unit Trains-Key to Western Coal Development", July, 1976, and "Availability of Girder Rail for Light Rail Rapid Transit", April, 1980; Direct Fixation Rail Fasteners - Engineering, Procurement and Construction Experience, April, 1989; Effect of Track Stiffness on Dynamic Loading of Direct Fixation Rail Fasteners, August, 1989; North American Trackwork Design, Construction and Maintenance Standards and Practices, December, 1989.

#### **HONORS:**

At invitation of Japan Railway Civil Engineering Association, Mr. Dunn toured Japan in 1972 to inspect/observe/discuss railroad and rail transit facilities there. He has also toured railroad and rail transit facilities of several European countries in 1980, 1982 and 1984, and in Hong Kong and China in 1985. In 1988, at invitation of French National Railroads and Paris Transport Authority, he toured France to inspect/observe/discuss railroad and rail transit facilities there. Selected for inclusion in 16th edition (1978-1979) Who's Who in the West; 21st-29th editions (1979-1997) Who's Who in Finance and Industry; 17th-24th editions (1980-1996) Who's Who in the South and Southwest; 5th-13th editions (1980-1997) Who's Who in the World; 20th-22nd editions (1985-1990) Who's Who in the East; 1st-3rd editions (1992-1997) Who's Who in Science and Engineering; 19th-20th editions Who's Who in Railroad and Rail Transit; and 1989-1995 editions Directory of Railroad Safety Consultants.

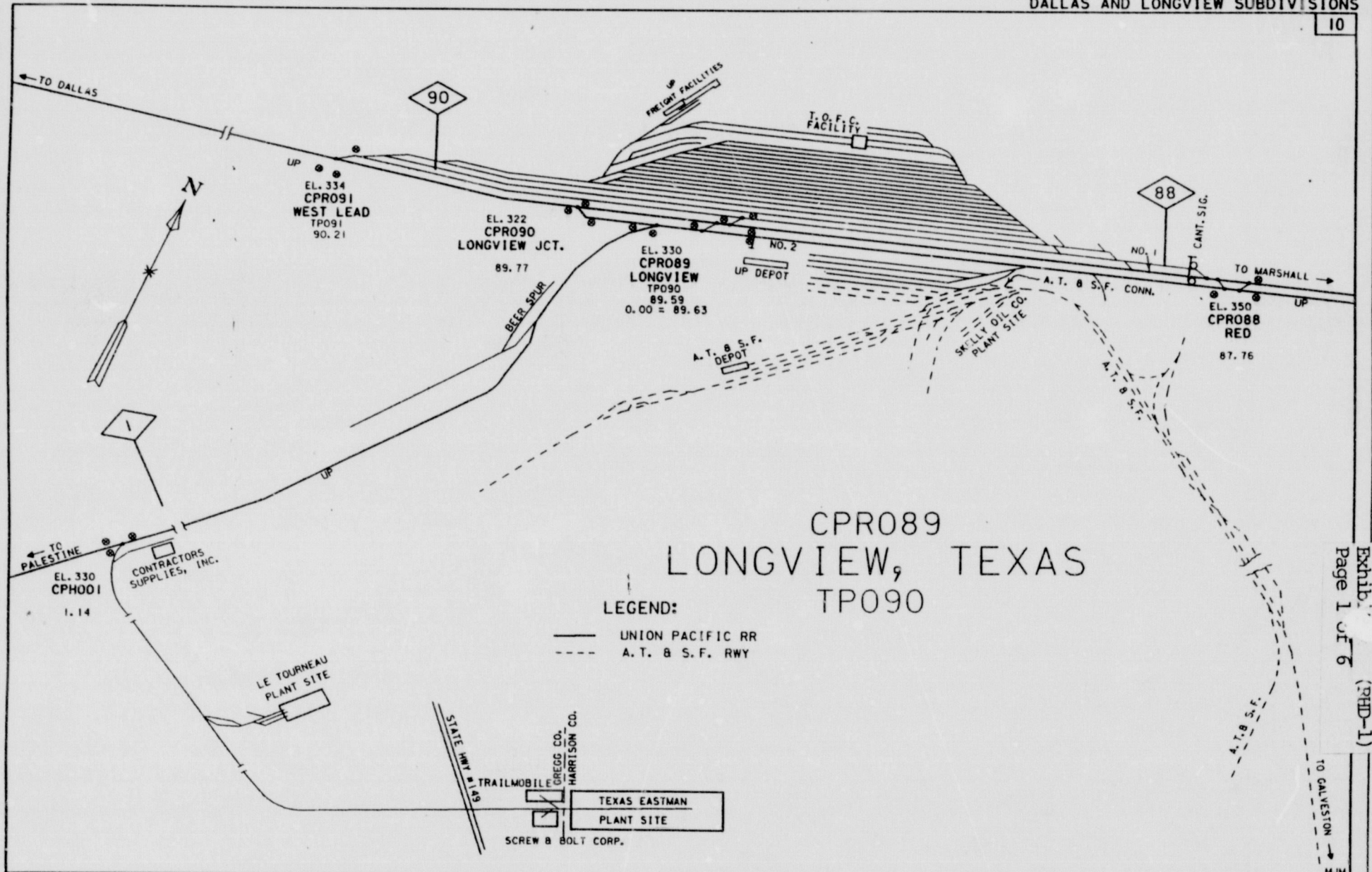


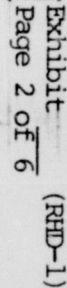
## Appendix B

Page 1 of 1

- Project Director for the engineering design of a 35 mile long railroad branch line of CP Rail in the heart of the Canadian Rockies to serve the coal field of Elco Mining Ltd., Calgary, Alta., Canada.
- Project Director for the engineering design of numerous railroad branch lines to serve coal fields of various Clients in Wyoming, Montana, Utah, and Colorado.
- Principal-in-Charge of final design of a 60 mile coal haul railroad for unit train operation in Utah for a major coal company as a proposed major branch line of the D&RGW Railroad.
- Resident engineer for construction of a B&O RR power plant required to support its massive tidewater terminal and yard facilities, Baltimore, MD.
- Resident engineer for construction on an accelerated basis of a B&O RR coal thawing and handling facility required to increase the railroad's export coal handling capacity, Curtis Bay, MD.
- Technical Consultant on "Project Yellow", a joint venture of the Union Pacific Railroad and the Chicago and North Western Railroad, Omaha, NE and Chicago, IL.
- Principal-in-Charge and Project Director for preliminary and final design of trackwork and material procurement documents for automated linear induction rail transit system in Vancouver, B.C., Canada. Subsequently, was responsible for performing a detailed construction audit throughout the period of trackwork installation.



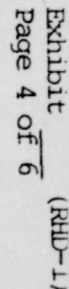












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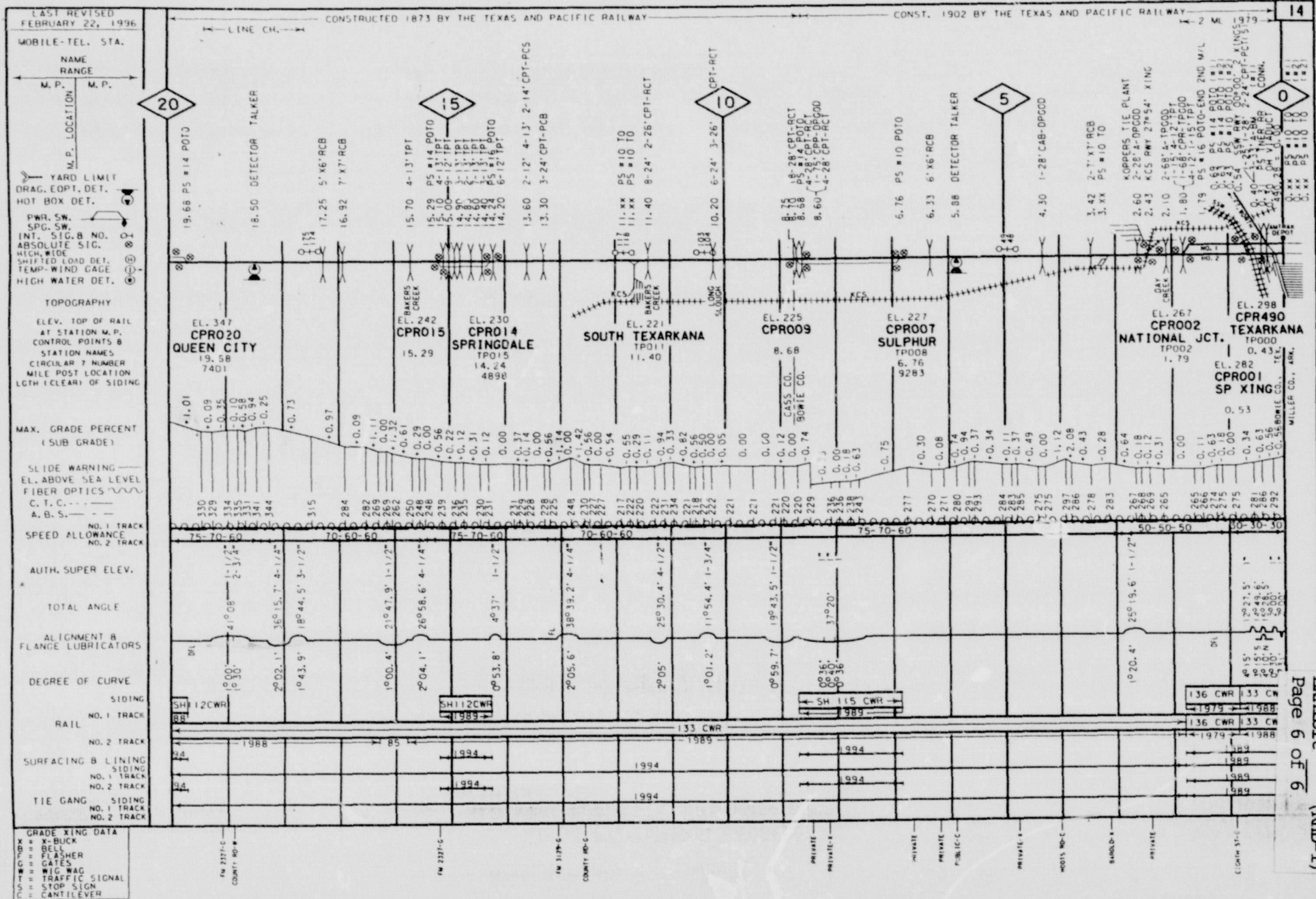
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Exhibit (RHD-1)  
Page 5 of 6





VERIFICATION

COMMONWEALTH OF VIRGINIA )

CITY OF ALEXANDRIA )

RONALD H. DUNN, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

Ronald H. Dunn, P.E.

Ronald H. Dunn

Sworn to and subscribed  
before me this 24 day  
of January, ~~1996~~ 1997 *cc*

Witness my hand and official seal.

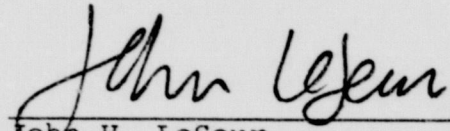
Christina L. Campbell

My Commission Expires March 31, 2000 .

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Proposal Respecting Implementation of the TUE Condition on counsel for UP/SP, BNSF and KCS by postage prepaid, first-class United States mail.

Dated this 24th day of January, 1997 at Washington,  
D.C.

  
\_\_\_\_\_  
John H. LeSeur



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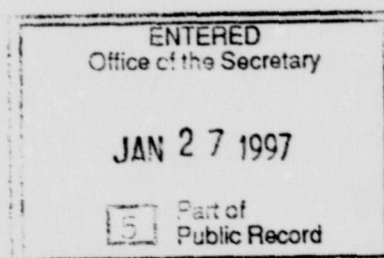
**DAVID L. MEYER**

DIRECT DIAL NUMBER

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ENGLANDTELEPHONE: 44-171-495-5655  
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44 AVENUE DES ARTS  
BRUSSELS 1040 BELGIUM  
TELEPHONE: 32-2-512-9890  
TELEFAX: 32-2-502-1598

January 24, 1997

**BY HAND**Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Twelfth Street and Constitution Ave., N.W.  
Washington, D.C. 20423**Re: Finance Docket No. 32760**

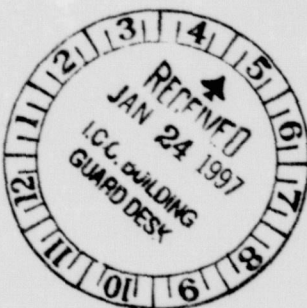
Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and 20 copies of Applicants' Submission Respecting Implementation of the TUE Condition (UP/SP-296). Kindly date stamp the extra copy of this filing and return it with our waiting messenger.

Sincerely,

A handwritten signature in cursive script that reads "David L. Meyer".

David L. Meyer

cc: Counsel for TUE,  
BNSF and KCS

**COVINGTON & BURLING**

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BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

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January 24, 1997

**BY HAND**

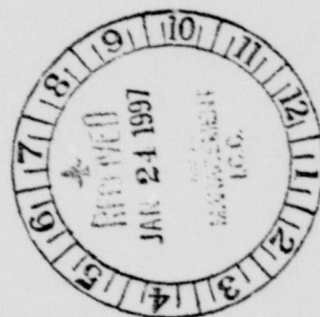
Hon. Vernon A. Williams

Secretary

Surface Transportation Board

Twelfth Street and Constitution Ave., N.W.

Washington, D.C. 20423



**Re: Finance Docket No. 32760**

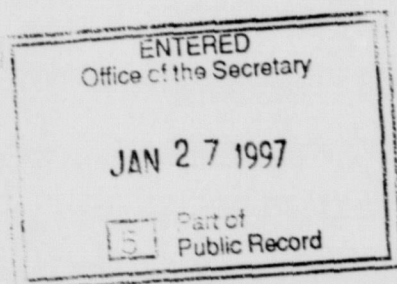
Dear Secretary Williams:

Enclosed is a disk containing Applicants' Submission Respecting Implementation of the TUE Condition (UP/SP-296), which was filed earlier today. The document is in WordPerfect 5.1 format.

Sincerely,

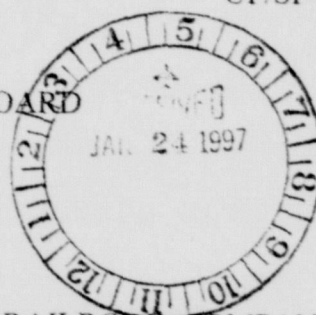
David L. Meyer





UP/SP-296

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, SPSCL CORP. AND THE DENVER AND  
RIO GRANDE WESTERN RAILROAD COMPANY

APPLICANTS' SUBMISSION RESPECTING  
IMPLEMENTATION OF TUE CONDITION

The primary applicants, UPC, UPRR, SPR, SPT, SSW, SPSCL and DRGW,<sup>1/</sup> are submitting this paper addressing the terms that will govern Condition No. 32 imposed in Decision No. 44. That condition requires that the BNSF settlement agreement be amended "to permit KCS and BNSF to interchange TUE coal trains (a) at Shreveport, for movement by BNSF over SP's line between Shreveport and Tenaha and (b) at Texarkana, for movement by BNSF over UP's line between Texarkana and Longview." Decision No. 44, pp. 186, 233. The condition was designed to preserve TUE's potential competitive options for the movement of PRB coal to its Martin Lake generating plant. *Id.*, pp. 58, 186.

<sup>1/</sup> The acronyms used herein are the same as those in Appendix B to Decision No. 44. MPRR merged into UPRR on January 1, 1997.

In Decision No. 44, the Board allowed the interested parties -- TUE, BNSF, UP/SP and KCS -- to negotiate concerning the precise details of the condition, and allowed the parties until December 10, 1996 to submit agreed-upon terms or separate proposals respecting implementation. In Decision No. 64, the date for those submissions was extended by 45 days, until January 24, 1997.

Applicants are prepared to implement the TUE condition by modifying the BNSF settlement agreement, and the trackage rights agreement with BNSF that implements that agreement, to permit BNSF to interchange TUE Martin Lake coal trains with KCS at Texarkana and Shreveport.<sup>2/</sup> TUE has insisted that additional provisions must be inserted into these agreements. TUE proposes that:

- (1) BNSF be permitted to interchange both northbound and southbound TUE coal trains with KCS at Texarkana and operate them over UP's Texarkana-Longview route in both directions, without making any use of SP's Shreveport-Tenaha segment, which was the only interline route involving SP that could have been affected by the UP/SP merger;
- (2) BNSF be permitted to interchange any TUE traffic, not just TUE's Martin Lake coal trains, with KCS at Shreveport and Texarkana;

---

<sup>2/</sup> The specific modifications to these agreements that Applicants believe would appropriately implement the TUE condition are set forth in the accompanying Appendix.

- (3) BNSF and UP/SP be obligated to secure the agreement of both TUE and KCS concerning the location and form of any new connections, sidings, or other interchange facilities that BNSF wishes to construct to facilitate the use of its trackage rights to handle TUE traffic;
- (4) TUE and KCS, in addition to BNSF, have the right to enforce the BNSF settlement agreement as it relates to the trackage rights BNSF would use to handle TUE traffic.<sup>3/</sup>

Each of these additional modifications reflects an overreaching attempt to seize upon the Board's narrow TUE condition as an opportunity to expand TUE's competitive options and ability to dictate the affairs of the railroads handling its traffic. TUE's proposals should be rejected.

### **BACKGROUND**

The TUE condition concerns potential future traffic at TUE's Martin Lake generating station, located near Henderson, Texas. TUE's Martin Lake facility is local to BNSF's line between Longview and Tenaha. Neither UP nor SP serve the Martin Lake facility. The only competitive concern identified by TUE in this proceeding involved potential competition for future shipments of PRB coal. TUE contended that, before the UP/SP merger, it would have had two independent rail routes for these shipments: (1) a UP single-line route, which would require a costly

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<sup>3/</sup> See Letter from John LeSeur to David Meyer, Nov. 26, 1996 (Exhibit A hereto).



six-mile build-out from the Martin Lake plant to UP's line at Henderson; and (2) a BNSF-SP-KCS-BNSF interline routing, which would make use of SP's line between Tenaha and Shreveport. See Decision No. 44, p. 58.<sup>4/</sup>

TUE argued that, in order to preserve the independence of the BNSF-SP-KCS-BNSF joint-line route after the UP/SP merger, BNSF should be permitted to replace SP on the Tenaha-Shreveport segment. Since the BNSF settlement agreement already provided BNSF with trackage rights over that segment, TUE acknowledged that the only relief necessary to preserve its existing competitive options was for BNSF to be granted the right to use its trackage rights to interchange TUE coal trains with KCS at Shreveport, which the BNSF settlement agreement otherwise would not permit. Id. See also TUE-17, pp. 2-3 & Attachment 2 (appended hereto as Exhibit B).<sup>5/</sup>

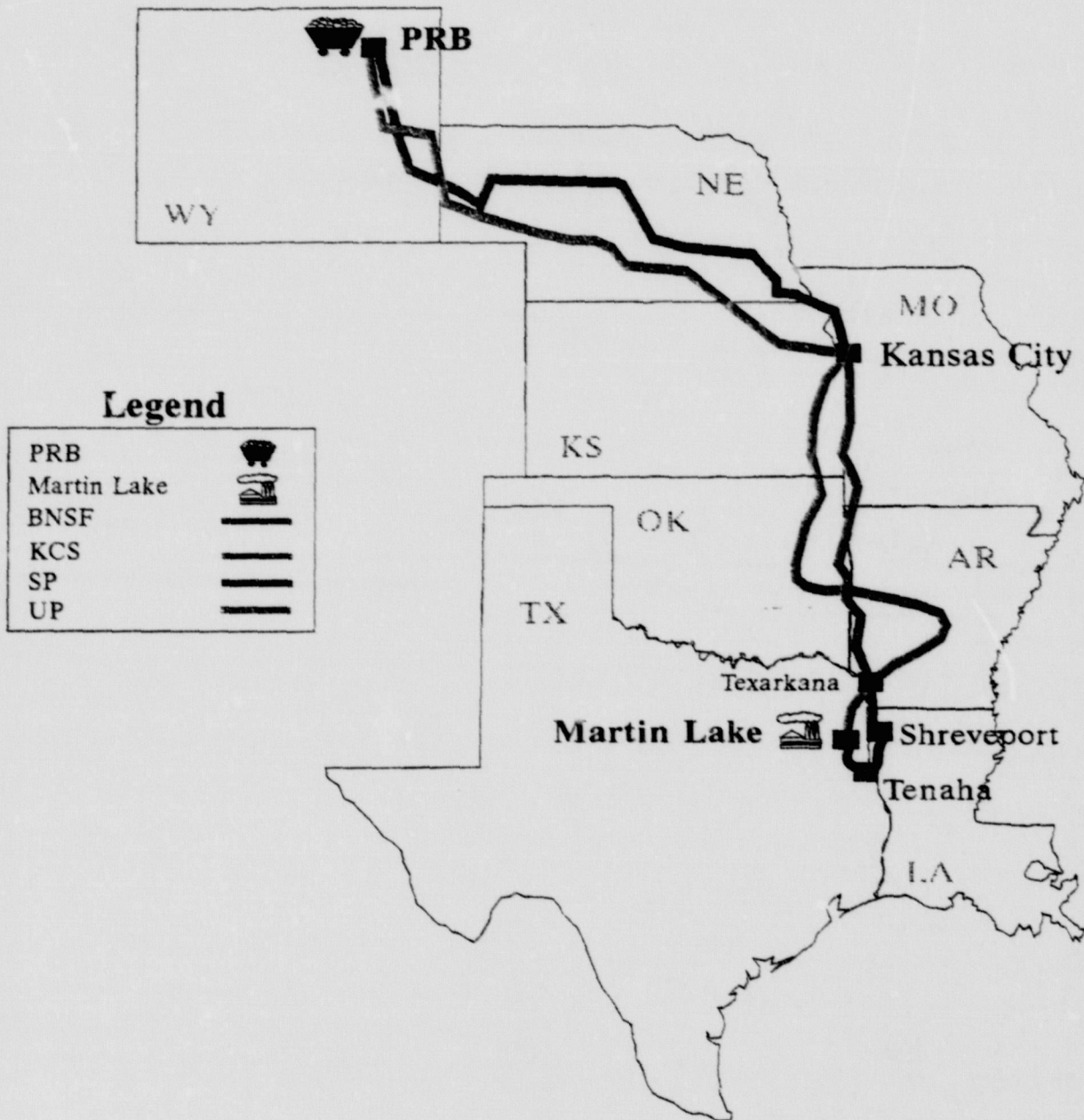
In Decision No. 44, the Board granted TUE's request that BNSF have the right to interchange TUE coal trains at Shreveport. Decision No. 44, p. 186. In addition, although TUE had not requested such rights, the Board granted BNSF the right to interchange TUE coal trains "at Texarkana, for movement by BNSF over

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<sup>4/</sup> These routes are shown on the color map following this page, which was Attachment 1 to TUE's Brief. Applicants pointed out that, in addition to these routes, TUE would also have a BNSF single-line route. However, TUE argued, and the Board found, that this route would be "excessively circuitous" for PRB coal shipments. Decision No. 44, p. 186.

<sup>5/</sup> The Board rejected TUE's further argument that the trackage rights compensation set in the BNSF settlement agreement should be reduced. See Decision No. 44, p. 186.

# Schematic of UP Direct and BNSF/KCS/SP Routes to Martin Lake



UP's line between Texarkana and Longview." Id. The Board explained: "Without this condition, all but one of TUE's PRB routings would involve UP/SP, and the one that would not would be excessively circuitous." Id. The Board explained its additional, sua sponte grant of the right to interchange at Texarkana as follows:

"We add that, although TUE sought only a Shreveport interchange, we are allowing a Texarkana interchange as well, to allow BNSF's routings of TUE coal trains to connect with the additional BNSF trackage rights provided in the CMA agreement. This will also facilitate BNSF's directional running of these trains."

Id.

In light of the Board's decision to impose this condition, Applicants have acknowledged that BNSF must be permitted to interchange TUE Martin Lake coal trains at both Shreveport and Texarkana. Specifically, Applicants believe -- and have informed the other parties hereto -- that appropriately implementing the Board's condition requires that BNSF have two options for the operation of TUE coal trains using its trackage rights and KCS interchanges: First, BNSF has the right to step into the shoes of SP and operate loaded and empty TUE Martin Lake coal trains (in both directions) over the former-SP segment between Tenaha and Shreveport. This is all that TUE requested. Second, if, in light of Applicants' plan to establish directional running on their two former-UP and -SP lines between Texas and St. Louis, BNSF desires to operate the coal trains in a directional manner, BNSF would also have the right to operate northbound TUE empty coal trains with the current of flow on the former-UP segment between Longview and Texarkana and southbound



TUE loaded coal trains with the current of flow on the former-SP segment between Tenaha and Shreveport, thereby using both the Texarkana and Shreveport interchange rights.

TUE, BNSF and KCS want more. They seek to "implement" the Board's decision by giving BNSF the right to handle TUE coal trains without using the former-SP Tenaha-Shreveport segment at all, and instead using only the former-UP segment between Longview and Texarkana, despite the fact that the UP/SP merger had no effect on that route's availability as a competitive option for TUE's future PRB coal trains. In addition, TUE (and possibly BNSF and KCS as well) seek to (1) expand BNSF's interchange rights to include all TUE traffic, not just TUE Martin Lake coal trains; (2) interject TUE and KCS into BNSF's decisions regarding the construction of new interchange facilities on the trackage rights lines, as permitted under the BNSF settlement agreement and implementing trackage rights agreement; and (3) have TUE and KCS be given the right to enforce the BNSF settlement agreement.

**I. THE DEMAND THAT BNSF BE ALLOWED TO USE ONLY THE LONGVIEW-TEXARKANA ROUTE, IN PLACE OF THE FORMER-SP TENAHA-SHREVEPORT ROUTE**

The Board has made clear in this case and many others that where a condition is imposed to remedy harms caused by the "loss of a rail option, it should be confined to restoring that option rather than creating new ones." Decision No. 44,

p. 145 n.176. Thus, the Board does not impose conditions that would put the recipient "in a better position than it occupied before the consolidation." Id., p. 145.

TUE's proposed implementation of the TUE condition would do just that, by giving TUE access to a new, much shorter BNSF-KCS-BNSF route via Longview and Texarkana that TUE would not have had absent the merger. While UP/SP will not contest the Board's determination that BNSF should be permitted to operate TUE coal trains in a directional manner if it chooses to do so, allowing BNSF to operate in both directions over the Texarkana-Longview segment would create a windfall and work to UP/SP's competitive disadvantage in competing for future TUE coal shipments.

The competition TUE sought to preserve was SP's participation with BNSF and KCS in a joint-line route via Tenaha and Shreveport. See, e.g., TUE-17, p.9. By granting BNSF the additional right to interchange at Texarkana, which TUE had not sought, the Board could not have intended to allow BNSF and TUE to improve upon TUE's existing competitive options by letting it entirely substitute the Longview-Texarkana route for the Tenaha-Shreveport route it sought to preserve. Instead, the Board clearly sought only to permit BNSF to operate TUE's coal trains between Martin Lake and a connection with KCS with the current of flow, using its trackage rights over both of the UP/SP segments that Applicants intended to convert to directional operation. To do this would require that northbound, empty TUE trains returning to the PRB move over the former-UP line between Longview and

Texarkana rather than over the former-SP line between Tenaha and Shreveport. See UP/SP-24, pp. 125, 148, 268 (Fig. 13-1) (describing planned directional operations of Tenaha-Shreveport and Longview-Texarkana segments). To accommodate this potential circumstance, therefore, it made sense to grant BNSF the right to interchange TUE coal trains with KCS at both Texarkana and Shreveport.

TUE would turn the logic of this additional grant on its head, by allowing BNSF to disregard directional operations, and the former-SP route that BNSF would have used absent the merger, in favor of operating all TUE trains on the Longview-Texarkana segment, including loaded southbound TUE coal trains against the current of flow.

Granting BNSF this right would allow it to achieve an unfair competitive advantage over UP, using UP's own assets. It is important to bear in mind that UP does not currently serve the Martin Lake facility. In order for TUE to consider any bid by UP on TUE's future PRB traffic, TUE would have to take account of the very substantial cost of constructing a six-mile connection between the Martin Lake facility and UP's line at Henderson. See TUE-7, Crowley, Exh. EQJ-2, p. 1 (estimating cost of build-out at between \$6.5 and \$12 million). Absent the UP/SP merger, a UP bid would have been competing against BNSF's competitive options, both of which would take advantage of BNSF's existing, direct access to TUE at Martin Lake: (1) BNSF's own single-line route; and (2) the BNSF-SP-KCS-BNSF interline route via Tenaha and Shreveport, which, as TUE pointed out, is



shorter than UP's single-line route. See TUE-17, p. 16. Now, with the rights granted to BNSF by the Board (as Applicants propose to implement them), UP will be competing against BNSF's single-line route and an interline route via Shreveport that will have been rendered significantly more effective than it would have been absent the merger, because: (1) it will be a two-carrier rather than three-carrier route, and (2) BNSF, if it wishes, will be able to take advantage of the efficiencies of directional running using the Texarkana-Longview segment.

TUE and BNSF want to make BNSF's potential interline route still more efficient at UP's expense, by allowing BNSF to use only UP's line between Longview and Texarkana, which would create a route that is over 46 miles shorter than the Tenaha-Shreveport route (shortening the distance between Texarkana and Martin Lake by 30%). The ironic result would be that, as a result of its merger with SP, UP would be handicapped in its efforts to compete with BNSF for TUE's future PRB movements, and could end up being frozen out of those movements as a result of BNSF's new-found ability to use UP's own assets against UP.<sup>6/</sup>

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<sup>6/</sup> Applicants submit that if BNSF were entitled to interchange all TUE coal trains at Texarkana using UP's Longview-Texarkana route -- thereby creating a shorter route and tilting the competitive playing field for future TUE coal traffic sharply against UP/SP -- BNSF would have to be required to provide Applicants with the comparable right to use BNSF's trackage between Longview and Martin Lake (and between Martin Lake and Tenaha to permit directional movements). Such a right would give UP/SP the opportunity to compete on a more even footing with the newly-enhanced BNSF interline route, since TUE would not have to spend millions of dollars on a six-mile build-out in order to access UP's line from its Martin Lake facility. Applicants are content to compete aggressively against BNSF for TUE's future traffic using their existing competitive abilities, but if BNSF were to be entitled to shorten its route at Applicants' expense, fairness would compel that

## II. THE DEMAND THAT BNSF BE ALLOWED TO USE THE INTERCHANGE RIGHTS FOR ALL TUE TRAFFIC

TUE's bid to expand BNSF's interchange rights to include all TUE traffic, and not just TUE Martin Lake coal trains, is another inappropriate effort to expand the Board's narrow condition. The Board was explicit that BNSF was to have the right to interchange "TUE coal trains" at Texarkana and Shreveport. Decision No. 44, p. 186. That was precisely the relief that TUE sought. According to TUE, and as found by the Board, the only reason that the UP/SP merger might have an adverse competitive impact on TUE was because it would result in UP/SP's involvement in all but one of the routings available to TUE for its potential future PRB coal trains. Id., pp. 58, 186. In arguing that its proposed condition was "narrowly tailored," TUE emphasized that BNSF would use its rights "for the sole and limited purpose of transporting TU Electric coal trains between Shreveport and Tenaha." TUE-17, pp. 11-12 (emphasis added).

There was no evidence that the UP/SP merger would affect other TUE traffic. TUE's Martin Lake facility is local to BNSF and not served at all by UP and SP. With or without the UP/SP merger, BNSF has always been able to serve any and all TUE traffic using its extensive Western rail network, and as a result of the BNSF agreement, BNSF can now also use its expanded network of trackage rights lines to provide such service. UP, by contrast, still cannot serve TUE, and will not

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Applicants be accorded this equivalent enhancement in their competitive abilities so that they not be unfairly handicapped in their efforts to compete.

be able to do so unless TUE constructs -- at great expense -- a new six-mile connection with UP's existing line at Henderson. There is no room for dispute that such a connection would only be constructed in order to allow UP to handle TUE's potential future movements of PRB coal. See, e.g. TUE-7, Crowley, p. 2 & Exh. EQJ-2. In this context, TUE and BNSF would receive an unfair windfall if BNSF were permitted to enhance its existing ability to handle TUE's non-coal traffic by using its trackage rights to interchange with KCS at Texarkana and Shreveport.

### **III. THE EFFORT TO INTERJECT TUE AND KCS INTO DECISIONS REGARDING THE CONSTRUCTION OF NEW INTERCHANGE FACILITIES**

The BNSF settlement agreement and the trackage rights agreement that implements it with respect to the lines at issue here provide BNSF with the right to require the construction of any new connections, and sidings or siding extensions associated with connections, that may be necessary to implement BNSF's trackage rights.<sup>2/</sup> To the extent connections might be necessary at Shreveport, Texarkana, Tenaha or Longview in order for BNSF to use its trackage rights to handle TUE coal trains, these provisions allow BNSF to step into the shoes of SP (or UP, at Longview and Texarkana). Just as SP could have constructed new connections with KCS at Shreveport and/or with BNSF at Tenaha, BNSF now can construct those same connections. And just as TUE previously could have relied on SP (and its interline

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<sup>2/</sup> BNSF settlement agreement, § 9(b); Houston, Texas to Valley Junction, Illinois Trackage Rights Agreement ("Houston-Valley Junction Agreement"), June 1, 1996, § 5(a).



connections) to construct those connections in a manner that facilitated the operation of TUE coal trains in competition with a UP single-line route, TUE can now rely on BNSF (and its interline connection KCS) to do the same.

TUE, however, insists that it (and KCS) be given a formal contractual right to participate in decisions relating to the construction of such connections -- and indeed to dictate how those decisions are made through exercise of a veto power. Specifically, TUE proposes to modify both the BNSF settlement agreement and the Houston-Valley Junction Agreement to provide that:

"In addition, BNSF, UP/SP, KCS and TU Electric will agree upon the necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted BNSF under this Agreement to provide service to TU Electric's Martin Lake Generating Station."

(Emphasis added.)<sup>8/</sup>

There is no justification for granting TUE and KCS the contractual right to a veto over decisions regarding BNSF's construction of connections on UP/SP's trackage to implement BNSF's trackage rights operations. These decisions are properly made by the railroads involved, which possess superior knowledge and experience respecting matters of railroad engineering and operations, and which must also bear the risks associated with operating over any new connections. More importantly, TUE never would have had any veto right absent the merger. To be

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<sup>8/</sup> See Letter from John LeSeur to David Meyer, Nov. 29, 1996, Attachment 2, p. 2 (proposed amendments to BNSF settlement agreement, § 9(b)). See also id., p. 4 (proposed changes to Houston-Valley Junction Agreement, § 17).

sure, as a shipper of potentially large volumes of traffic, TUE would have had some influence over these matters, and it will continue to have that influence without any need for modifications to the BNSF agreements. Indeed, TUE now will have the additional right, which it would not have had absent the UP/SP merger, to seek relief from the Board if it believes that the Board's conditions have not been implemented in a manner that achieves their competition-preserving objectives. It would be highly inappropriate to make TUE a necessary contractual party to any decisions about new connections and sidings.

Granting such a right to KCS is even more clearly inappropriate. With respect to any potential connection with KCS at Shreveport or Texarkana, KCS already will have an inherent right to participate, to the extent its own trackage is involved. And to the extent KCS' own trackage is not involved, new construction on UP/SP's property is none of KCS' concern. It should be even more obvious that KCS has no legitimate role in decisions by BNSF and/or UP/SP involving possible new connections at Tenaha and Longview.

#### **IV. THE EFFORT TO GIVE TUE AND KCS THE RIGHT TO ENFORCE THE BNSF SETTLEMENT AGREEMENT**

TUE has insisted that the BNSF settlement agreement be formally amended to state that "TU Electric and KCS shall be permitted to enforce the rights granted hereunder to BNSF to serve TU Electric's Martin Lake Generating Station in a manner set forth in the Surface Transportation Board's Decision No. 44 in Finance

Docket No. 32760."<sup>9/</sup> Even if TUE's proposed enforcement rights were appropriately tailored, which they are not,<sup>10/</sup> they are neither necessary nor appropriate. The Board has already made clear in Decision No. 44 that it was (1) imposing the BNSF settlement agreement as a condition of the merger (p. 145) and (2) clarifying that, notwithstanding "the third party beneficiary" language in the BNSF settlement agreement, the agreement "does provide rights and claims (and, by implication, remedies) to persons other than the signatories," such as shippers at points "opened up to BNSF" (p. 12 n.15). Applicants acknowledge that TUE (and KCS) should have the same rights that any other party has to enforce the Board's conditions pursuant to the Board's decision, but no more. TUE (and KCS) already have those rights by virtue of Decision No. 44, and there is no need to modify the language of the BNSF settlement agreement, much less to do so in a way that might be construed as giving TUE and KCS greater rights than other beneficiaries of the Board's conditions.

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<sup>9/</sup> See Letter from John LeSeur to David Meyer, Nov. 29, 1996, Attachment 2, pp. 2-3 (proposed amendments to BNSF settlement agreement, § 17).

<sup>10/</sup> For example, even if KCS were entitled to enforce BNSF's right to interchange with KCS at Shreveport and Texarkana, it plainly ought not to have the right to enforce BNSF's trackage rights between Shreveport and Tenaha and between Texarkana and Longview, as TUE's proposed language would provide.



### CONCLUSION

For the foregoing reasons, the Board should implement the TUE condition on the terms proposed by Applicants, as set forth in the accompanying Appendix.

Respectfully submitted,

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Attorneys for Applicants

January 24, 1997

## APPENDIX

[New language is double-underscored.]

### **I. CHANGES TO BNSF SETTLEMENT AGREEMENT**

#### Section 6(c):

"(c) . . . BNSF shall also have to interchange with (x) the Little Rock and Western railroad and the Little Rock Port Authority at Little Rock; (y) KCS at Shreveport, Arkansas, solely for movements of loaded and/or empty unit coal trains to/from the Martin Lake generating station of Texas Utilities Electric Company ("TUE"); and (z) KCS at Texarkana, Texas, solely for movements of empty unit coal trains from TUE's Martin Lake generating station."

### **II. CHANGES TO HOUSTON, TEXAS TO VALLEY JUNCTION, ILLINOIS TRACKAGE RIGHTS AGREEMENT**

#### Section 2(a)(v):

". . . User [BNSF] shall not have the right to:

(v) Connect with or interchange with any other railroad, provided, however User shall have the right to interchange with (a) the Little Rock and Western Railway Company at Little Rock, Arkansas and Little Rock Port Authority at Little Rock, Arkansas; (b) KCS at Shreveport, Arkansas, solely for movements of loaded and/or empty unit coal trains to/from the Martin Lake generating station of Texas Utilities Electric Company ("TUE"); and (c) KCS at Texarkana, Texas, solely for movements of empty unit coal trains from TUE's Martin Lake generating station."





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November 26, 1996

VIA TELECOPIER

David L. Meyer, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044-7566

Re: Finance Docket No. 32760

Dear Mr. Meyer:

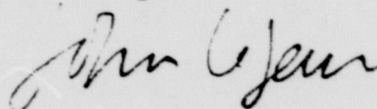
We are in receipt of your letter dated November 20, 1996 containing your proposal to implement Condition No. 32. As we see it, implementation of that condition requires KCS, UP/SP, BNSF and TU Electric to (i) agree on the location and form of the necessary interchange facilities; (ii) permit KCS and BNSF to interchange at Shreveport and Texarkana; (iii) clarify TU Electric's and KCS's enforcement rights; and (iv) incorporate pertinent portions of the BNSF Operating Plan concerning the operation of TU Electric's trains. We enclose herewith proposed amendment language (Attachment 1), and we show the amendments in add/delete format in Attachment 2.

Your letter addresses one topic: KCS/BNSF interchange at Shreveport and Texarkana (item (ii), above). We agree that Section 2(a)(v) of the Houston Agreement needs to be amended to permit these interchanges, as does the BNSF Agreement. The STB did not limit the interchanges to unit coal trains, so our draft removes that feature of your draft, and we also have made other clarifying changes.

David L. Meyer, Esq.  
November 26, 1996  
Page 2

If the enclosed is satisfactory to all parties, we will be happy to participate in preparing a short, covering letter or report to the STB, appending the Attachment 1 amendments.

Sincerely,

A handwritten signature in cursive script, appearing to read "John H. LeSeur".

John H. LeSeur

JHL:mfw

cc: Adrian L. Steel, Jr., Esq.  
William A. Mullins, Esq.

I. AMENDMENTS TO THE BNSF SETTLEMENT AGREEMENT

Section 6(c) shall be amended by inserting "(v)" between "with" and "the" in the last sentence, deleting the period at the end of that sentence, and adding at the end of the Section:

"; (vi) KCS at Shreveport, LA, for movements of trains to and from Texas Utilities Electric Company's ("TU Electric") Martin Lake Generating Station; and (vii) KCS at Texarkana, TX/AR, for movements of trains to and from TU Electric's Martin Lake Generating Station."

Section 9(b) shall be amended by adding at the end of the Section:

"In addition, BNSF, UP/SP, KCS and TU Electric will agree upon the necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted BNSF under this Agreement to provide service to TU Electric's Martin Lake Generating Station."

Section 17 shall be amended by striking the period at the end of the Section and inserting:

"; provided, however, TU Electric and KCS shall be permitted to enforce the rights granted hereunder to BNSF to serve TU Electric's Martin Lake Generating Station in the manner set forth in the Surface Transportation Board's Decision No. 44 in Finance Docket No. 32760."

II. AMENDMENTS TO THE HOUSTON AGREEMENT

Section 2(a)(v) is amended by inserting "(a)" between "with" and "he", deleting the period, and adding at the end of the Section:

"; (b) the Kansas City Southern Railway Company ("KCS") at Shreveport, LA, for movements of trains to and from Texas Utilities Elec-



AMENDMENTS TO  
THE BNSF AGREEMENT

Section 6(c) Amendment:

c) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" shipper facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facility at points listed on Exhibit A to this Agreement, (iii) any new shipper facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the SP-owned lines listed in Section 6a (except the line between Fair Oaks, AR and Illmo, MO). Except as provided in Section 91 of this Agreement, BNSF shall not have the right to enter or exit at intermediate points on UP's and SP's lines between Memphis and Valley Junction, IL. Traffic to be handled over the UP and SP lines between Memphis and Valley Junction, IL is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana except that traffic originating or terminating at points listed on Exhibit A under the caption "Points Referred to in Section 6c" may also be handled over these lines. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 55), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via its trackage rights over either the UP line or the SP line, at its

discretion, for operating convenience. BNSF shall also have the right to interchange with (v) the Little Rock and Western Railroad at Little Rock and the Little Rock Port Authority at Little Rock; (vi) KCS at Shreveport, LA, for movements of trains to and from Texas Utilities Electric Company's ("TU Electric") Martin Lake Generating Station; and (vii) KCS at Texarkana, TX/AR, for movements of trains to and from TU Electric's Martin Lake Generating Station."

Section 9(b) Amendment:

b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have the right to do so upon payment to the other party of one-half (1/2) the original cost of construction such facilities. In addition, BNSF, UP/SP, KCS and TU Electric will agree upon the necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted BNSF under this Agreement to provide service to TU Electric's Martin Lake Generating Station.

Section 17 Amendment:

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement; provided, however, TU Electric and KCS shall be permitted to en-



force the rights granted hereunder to BNSF to serve TU Electric's Martin Lake Generating Station in the manner set forth in the Surface Transportation Board's Decision No. 44 in Finance Docket No. 32760.

AMENDMENTS TO  
THE HOUSTON AGREEMENT

Section 2(a)(v) Amendment:

(v) Connect with or interchange with any other railroad; provided, however, User shall have the right to interchange with (a) the Little Rock and Western Railway Company at Little Rock, Arkansas and Little Rock Port Authority at Little Rock, Arkansas; (b) The Kansas City Southern Railway Company ("KCS") at Shreveport, LA, for movements of Texas Utilities Electric Company's ("TU Electric") trains to and from the Martin Lake Generating Station; and (c) KCS at Texarkana, TX/AR, for movements of trains to and from TU Electric's Martin Lake Generating Station.

Section 2(c) Amendment:

(c) User traffic to be handled over the MPRR and SSW lines between Fair Oaks, Bald Knob and East St. Louis is limited to (i) traffic that moves through, originates in, or terminates in Texas, Arkansas or Louisiana, (ii) traffic of shippers open to all of UP, SP and ~~The Kansas City Southern Railway Company ("KCS")~~ KCS at Texarkana, Texas/Arkansas and Shreveport, Louisiana, or (iii) traffic that moves to and from the Memphis BEA (BEA 55), but not including proportional, combination, or Rule 11 rates via Memphis or other points in the Memphis BEA (BEA 55). Shippers to which User shall have the right to handle traffic shall be those published in the respective tariffs of SP, KCS and UP, and amendments thereto.

On the Houston-Valley Junction Line User shall have the right to move some or all of

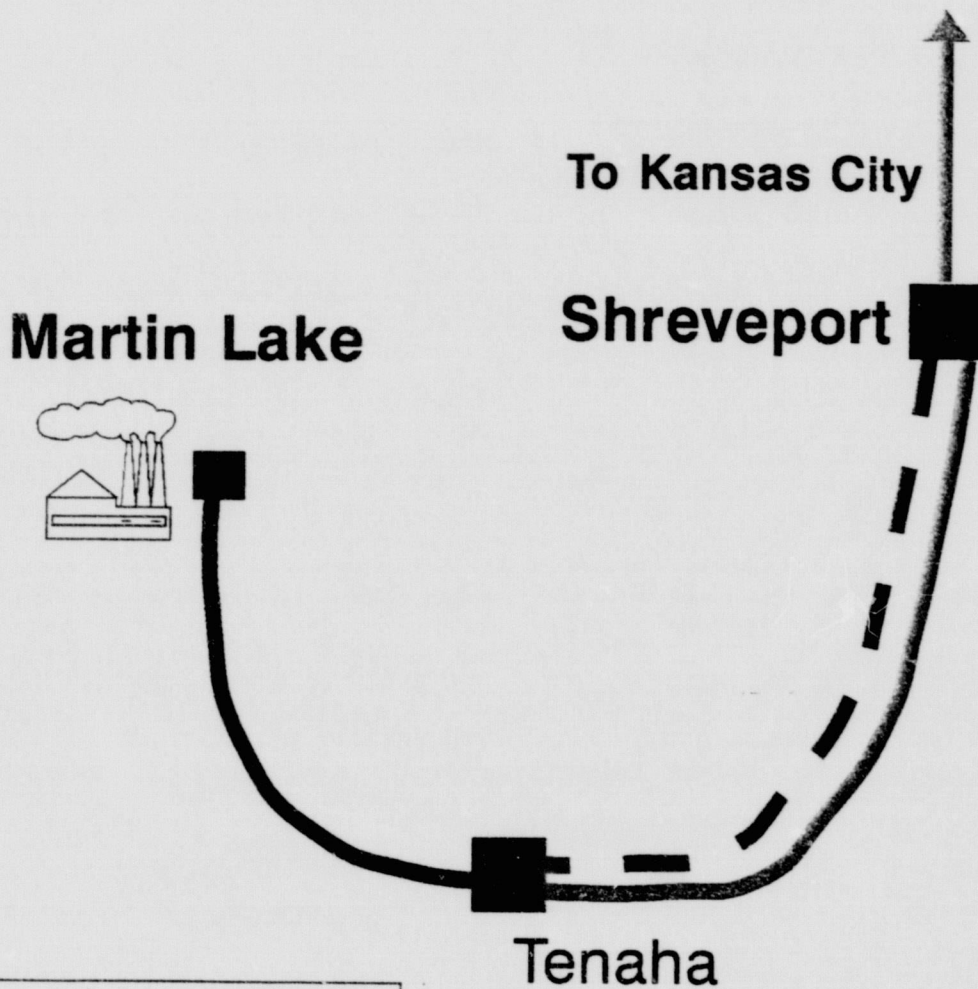


its traffic via trackage rights over the MPRR line or the SPT line, at its discretion, for operating convenience; provided, however, that at such time as UP/SP begins directional operations over the Joint Trackage, it is the parties' intent that User's traffic shall operate with the current flow along with UP/SP traffic. This provision shall not apply to local or switch moves by User over the Joint Trackage. Transportation over the Joint Trackage to and from TU Electric's Martin Lake Generating Station shall be considered a local move for purposes of this Section.

Section 5(a) Amendment:

(a) Owner and User shall conduct a joint inspection to determine what connections ("Connections") and sidings or siding extensions associated with Connections ("Sidings") are necessary to implement the rights granted under Section 2 of this Agreement. In addition, Owner, User, KCS and TU Electric will agree upon what connections and sidings are necessary to implement the trackage rights granted BNSF under this Agreement to provide service to Texas Utilities Electric Company's Martin Lake Generating Station. . .

## Schematic of Requested Trackage Rights



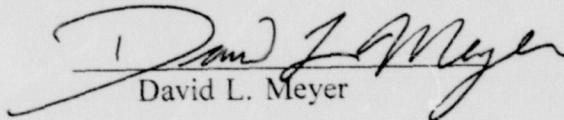
## CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Decision No. 64, I have this 24th day of January, 1997, served the foregoing document by hand on:

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David L. Meyer



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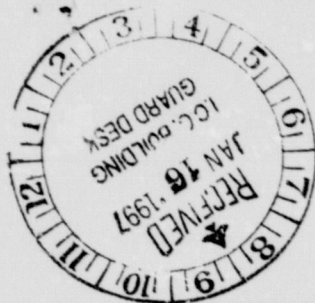
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' REPLY TO "PETITION AND REPLY"  
OF ENTERPRISE PRODUCTS COMPANY

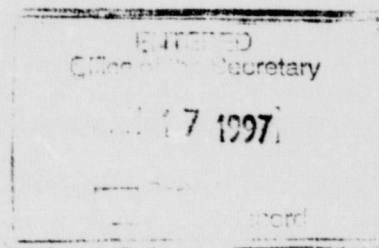
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January 16, 1997



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

---

APPLICANTS' REPLY TO "PETITION AND REPLY"  
OF ENTERPRISE PRODUCTS COMPANY

The primary applicants, UPC, UPRR, SPR, SPT, SSW, SPCSL and DRGW,<sup>1/</sup> submit that the Board should reject EPC's "Petition and Reply," filed January 13, 1997. That paper contains nothing that could not have been included in EPC's opening filing, and indeed repeats many arguments that EPC has made in its various prior filings. It is clearly an impermissible reply to a reply, barred by 49 C.F.R. § 1104.13. If the Board nonetheless accepts EPC's sur-reply, the Board should also consider the following:

(1) EPC argues (pp. 2-3) that its Mont Belvieu facility should be considered a "2-to-1" point because Mont Belvieu was named as a "2-to-1" point in Applicants' settlement agreement with BNSF and because certain other Mont Belvieu shippers were treated as "2-to-1" shippers. However,

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<sup>1/</sup> The acronyms used herein are the same as those in Appendix B to Decision No. 44. MPRR merged into UPRR on January 1, 1997.



EPC ignores the fact that Applicants' settlement agreement explicitly provides that Amoco, Exxon and Chevron are the only Mont Belvieu shippers to be treated as "2-to-1" shippers. See UP/SP-22, Rebensdorf, p. 355 (Supplemental Agreement § 9(c)). Applicants' witnesses John H. Rebensdorf and Richard B. Peterson specifically explained that the three named Mont Belvieu shippers were included in the settlement agreement as a special case because a build-in to those three shippers was well underway at the time of the merger. See Rebensdorf Dep., Jan. 22, 1996, pp. 185-86; Rebensdorf Dep., Jan. 23, 1996, pp. 320-24; Peterson Dep., Feb. 5, 1996, pp. 80-81; UP/SP-231, Peterson, p. 49. EPC's situation, as the Board has already ruled, is fundamentally different. See Decision No. 44, p. 189.

(2) EPC states (p. 2 n.2) that Applicants identified Fremont, Kohler, and Shinn, California, as "2-to-1" points because of their build-in potential. That is simply not true. Fremont, Kohler, and Shinn were designated as "2-to-1" points because shippers at those locations were served by both UP and SP prior to the merger.

(3) EPC also states (p. 2 n.2) that there is no distinction between its Mont Belvieu facility and Bayer's Eldon, Texas, facility. However, as with the Amoco, Exxon and Chevron facilities in Mont Belvieu, Applicants' settlement agreement with BNSF explicitly identifies Bayer's Eldon

facility as a "2-to-1" point. See UP/SP-22, Rebensdorf, p. 355 (Supplemental Agreement § 9(c)). And Applicants' witnesses Rebensdorf and Peterson explained that Bayer's Eldon facility was included as a "2-to-1" point because, like the Amoco, Exxon and Chevron facilities in Mont Belvieu, it was the subject of a build-in that was well underway at the time of the merger. See Rebensdorf Dep., Jan. 23, 1996, p. 325; Peterson Dep., Feb. 5, 1996, pp. 80-81, 84.

(4) EPC argues (p. 2) that Decision No. 44 entitles it to ask the Board for the relief it is seeking. However, the Board's build-in condition provides that Board processes may be invoked to resolve "technical disputes" regarding implementation of the build-in remedy. Decision No. 44, p. 146. EPC is seeking a Board ruling that it is entitled to direct BNSF service. This is hardly a "technical dispute" regarding implementation of the build-in remedy; it is instead a new request for relief that would place EPC in a much better position than it was in before the merger.

(5) EPC suggests (p. 4) that there is something special about its situation because "BNSF . . . literally will pass the lead to Enterprise's Mont Belvieu facility but is prohibited from entering it." EPC's situation, however, is no different from that facing any other non- "2-to-1" shipper along UP or SP lines over which BNSF received overhead trackage rights. Those shippers, like EPC, may be able to

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 16th day of January, 1997, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

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

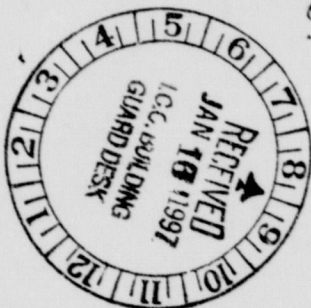
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Bureau of Competition  
Room 303  
Federal Trade Commission  
Washington, D.C. 20580



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Michael L. Rosenthal





UP/SP-294

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' REPLY TO "PETITION AND REPLY"  
OF ENTERPRISE PRODUCTS COMPANY

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Attorneys for Applicants

January 16, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY  
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APPLICANTS' REPLY TO "PETITION AND REPLY"  
OF ENTERPRISE PRODUCTS COMPANY

The primary applicants, UPC, UPRR, SPR, SPT, SSW, SPCSL and DRGW,<sup>1/</sup> submit that the Board should reject EPC's "Petition and Reply," filed January 13, 1997. That paper contains nothing that could not have been included in EPC's opening filing, and indeed repeats many arguments that EPC has made in its various prior filings. It is clearly an impermissible reply to a reply, barred by 49 C.F.R. § 1104.13. If the Board nonetheless accepts EPC's sur-reply, the Board should also consider the following:

(1) EPC argues (pp. 2-3) that its Mont Belvieu facility should be considered a "2-to-1" point because Mont Belvieu was named as a "2-to-1" point in Applicants' settlement agreement with BNSF and because certain other Mont Belvieu shippers were treated as "2-to-1" shippers. However,

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<sup>1/</sup> The acronyms used herein are the same as those in Appendix B to Decision No. 44. MPRR merged into UPRR on January 1, 1997.

EPC ignores the fact that Applicants' settlement agreement explicitly provides that Amoco, Exxon and Chevron are the only Mont Belvieu shippers to be treated as "2-to-1" shippers. See UP/SP-22, Rebensdorf, p. 355 (Supplemental Agreement § 9(c)). Applicants' witnesses John H. Rebensdorf and Richard B. Peterson specifically explained that the three named Mont Belvieu shippers were included in the settlement agreement as a special case because a build-in to those three shippers was well underway at the time of the merger. See Rebensdorf Dep., Jan. 22, 1996, pp. 185-86; Rebensdorf Dep., Jan. 23, 1996, pp. 320-24; Peterson Dep., Feb. 5, 1996, pp. 80-81; UP/SP-231, Peterson, p. 49. EPC's situation, as the Board has already ruled, is fundamentally different. See Decision No. 44, p. 189.

(2) EPC states (p. 2 n.2) that Applicants identified Fremont, Kohler, and Shinn, California, as "2-to-1" points because of their build-in potential. That is simply not true. Fremont, Kohler, and Shinn were designated as "2-to-1" points because shippers at those locations were served by both UP and SP prior to the merger.

(3) EPC also states (p. 2 n.2) that there is no distinction between its Mont Belvieu facility and Bayer's Eldon, Texas, facility. However, as with the Amoco, Exxon and Chevron facilities in Mont Belvieu, Applicants' settlement agreement with BNSF explicitly identifies Bayer's Eldon



facility as a "2-to-1" point. See UP/SP-22, Rebensdorf, p. 355 (Supplemental Agreement § 9(c)). And Applicants' witnesses Rebensdorf and Peterson explained that Bayer's Eldon facility was included as a "2-to-1" point because, like the Amoco, Exxon and Chevron facilities in Mont Belvieu, it was the subject of a build-in that was well underway at the time of the merger. See Rebensdorf Dep., Jan. 23, 1996, p. 325; Peterson Dep., Feb. 5, 1996, pp. 80-81, 84.

(4) EPC argues (p. 2) that Decision No. 44 entitles it to ask the Board for the relief it is seeking. However, the Board's build-in condition provides that Board processes may be invoked to resolve "technical disputes" regarding implementation of the build-in remedy. Decision No. 44, p. 146. EPC is seeking a Board ruling that it is entitled to direct BNSF service. This is hardly a "technical dispute" regarding implementation of the build-in remedy; it is instead a new request for relief that would place EPC in a much better position than it was in before the merger.

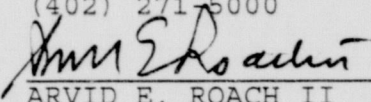
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take advantage of the build-in or transloading conditions the Board imposed, but they are not entitled to direct BNSF service.

Respectfully submitted,

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January 16, 1997

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Michael L. Rosenthal



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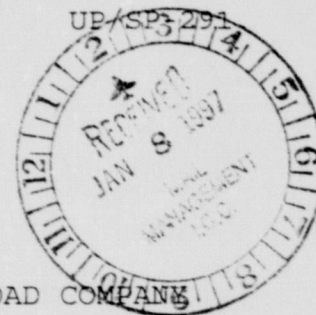
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BEFORE THE  
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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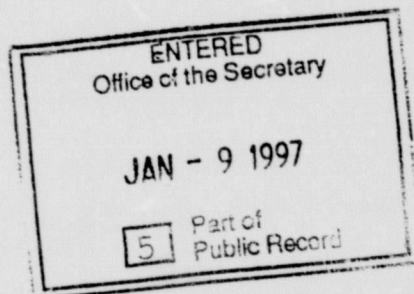
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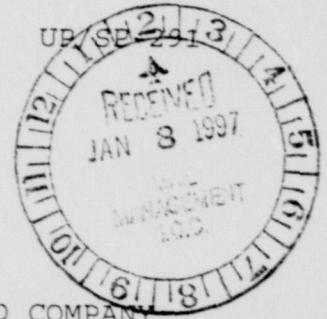
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Attorneys for Applicants



January 8, 1997

BEFORE THE  
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APPLICANTS' REPLY TO THE  
PETITION OF ENTERPRISE PRODUCTS COMPANY

The primary applicants, UPC, UPRR, SPR, SPT, SSW, SPCSL and DRGW,<sup>1/</sup> hereby reply to the "Petition of Enterprise Products Company" filed December 19, 1996. EPC's Petition asks that BNSF be allowed to serve directly EPC's Mont Belvieu, Texas, facility, which was exclusively served by SP prior to the UP/SP merger. EPC's Petition should be rejected whether it is viewed as (1) a misguided attempt to invoke the build-in condition imposed by the Board in approving the primary application, (2) an untimely and insufficient petition to reopen with regard to issues the Board resolved against EPC in Decision No. 44, or (3) an equally untimely and meritless

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attempt to seek relief EPC failed to seek at an appropriate stage of the merger proceeding.<sup>2/</sup>

I. THE PETITION, VIEWED AS AN ATTEMPT TO INVOKE THE DECISION NO. 44 BUILD-IN CONDITION, IS WITHOUT MERIT

EPC's Petition appears to be based on a misunderstanding of the build-in condition the Board imposed in approving the UP/SP merger. EPC apparently believes that the build-in condition requires Applicants to allow BNSF to serve directly any shipper that may have lost a feasible build-in option as a result of the merger. EPC Petition, pp. 3-4. This is not the relief the Board's build-in condition provides. In Decision No. 44, the Board conditioned its approval of the UP/SP merger on the Applicants' making available to all shippers an arbitration process set forth in their CMA settlement agreement under which, if the merger would eliminate a shipper's feasible build-in option, the shipper can secure an order requiring Applicants to grant BNSF trackage rights necessary to reach a build-in point.<sup>3/</sup> The condition allows a shipper that was exclusively served by one of the merging rail systems to pursue a build-in to a point on the other merging rail system, with associated BNSF trackage

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<sup>2/</sup> The Board should also reject EPC's request (p. 6) that it be granted fifteen days to reply to this reply. A reply to a reply is not permitted. 49 C.F.R. § 1104.13.

<sup>3/</sup> EPC has not invoked this arbitration remedy, which underscores that EPC is seeking more than the right to pursue a build-in.

rights to reach the latter point; it does not allow BNSF to serve the shipper's facility directly. See Decision No. 44, p. 146. UP/SP-230, Attachment (CMA Agreement § 13).<sup>4/</sup> The Board thus expressly dealt both with specific shipper claims that the merger would eliminate potential build-in opportunities, and with generalized claims that the merger would eliminate the competition provided by potential build-ins. Decision No. 44, p. 146.<sup>5/</sup>

The Board did not, however, take the unprecedented step of requiring Applicants to allow another carrier to serve directly shippers that claimed the loss of a potential build-in option. Such relief would be contrary to specific Board and ICC precedent regarding the preservation of build-in options, including the OG&E condition in the BNSF merger case on which EPC specifically relies (Petition, p. 4). See

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<sup>4/</sup> The Board also required Applicants to remove the time limitation the CMA agreement had placed on shippers' ability to raise such a claim, and modified a provision in the agreement requiring parties to arbitrate disputes about the feasibility of build-ins according to the principles the ICC articulated in its BN/Santa Fe decision by providing that "the only test of feasibility" of a build-in/build-out "is whether the line is actually constructed." Decision No. 44, p. 146.

<sup>5/</sup> The Board followed this principle in granting Entergy's request for a condition to preserve a potential build-out from its White Bluff facility. Id., p. 185. In another instance, involving Dow, the Board also imposed additional conditions related to Dow's claimed lost build-in opportunity, but those conditions were also designed only to preserve the build-in possibility. Indeed, the Board drew a careful line between conditions that would preserve Dow's build-in option and conditions that would improve Dow's competitive position. Id., p. 188.

Decision No. 44, p. 188 (rejecting Dow's request to move build-in point closer to Dow); Finance Docket No. 32549, Burlington Northern, Inc. & Burlington Northern R.R. -- Control & Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry. ("BNSF"), Decision No. 38, served Aug. 23, 1995, pp. 68 (rejecting OG&E's request for trackage rights to allow UP to serve OG&E's facility directly, but granting trackage rights to build-in point). Such relief would also be contrary to well-established precedent providing that the conditioning power must be used to preserve competitive options, not expand them. See, e.g., Decision No. 66, served Dec. 31, 1996, p. 14; Decision No. 44, pp. 188; BNSF, Decision No. 38, p. 99.

EPC argues (Petition, p. 4) that it should be considered a "2-to-1" shipper entitled to direct BNSF service because the merger eliminated its build-in option. The Board's decisions in this proceeding completely preclude any such argument. Nothing in Decision No. 44 provides that a shipper with a feasible build-in is to be treated as a "2-to-1" shipper entitled to direct BNSF service. To the contrary, Decision No. 44 imposed a very specific condition applicable to all shippers claiming to have lost a build-in option. Moreover, the Board has explicitly rejected the argument that a shipper that lost a potential build-in option should be treated as a "2-to-1" shipper. See Decision No. 57, served



Nov. 20, 1996, pp. 7-8 (rejecting Entergy's request that it be considered a "2-to-1" shipper for purposes of applying the Board's contract modification condition).

EPC also clouds the issue by arguing that EPC's Mont Belvieu facility "inexplicably was not included" in Applicants' voluntary agreement to allow BNSF to serve certain SP-exclusive shippers located near EPC's facilities. EPC Petition, p. 3. But UP had committed to these shippers, before the merger with SP was agreed upon, to build in to their facilities, and had pursued a construction application at the ICC for authority to carry out that build-in. See Finance Docket No. 32571, Missouri Pacific R.R. -- Construction & Operation Exemption -- Harris & Chambers Counties, TX, Decision served June 30, 1995. EPC's facility was not to be served by that build-in. EPC's Petition fails to acknowledge that EPC was thus in a fundamentally different position from those shippers. In fact, EPC already conceded this fundamental distinction in its filings with the Board. See Decision No. 44, p. 189 ("as EPC itself concedes, the Mont Belvieu Branch, as initially proposed by UP, would not even have reached EPC").

Thus, contrary to EPC's claim, there is no basis in Decision No. 44 for the relief EPC seeks.

II. THE PETITION, VIEWED AS A REQUEST TO REOPEN OR A NEW REQUEST FOR RELIEF, IS BOTH UNTIMELY AND WITHOUT MERIT

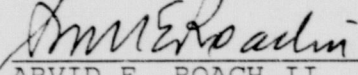
EPC's Petition might also be construed as a petition to reopen Decision No. 44, or a new request for a condition to allow BNSF to serve EPC directly. On either of these constructions, the Petition is untimely. The deadline for filing petitions to reopen was September 3, more than three months before EPC's filing. 49 C.F.R. § 1115.3(e). The deadline for filing requests for relief in the merger proceeding itself was March 29, 1996, see Decision No. 9, p. 15, and while EPC filed a statement requesting conditions, it never asked for the relief it requests here. See Verified Statement of Enterprise Products Company, Mar. 28, 1996, p. 7; Decision No. 44, p. 68 (describing EPC's request for conditions). EPC's Petition should thus be denied as untimely. See Decision No. 66, served Dec. 31, 1996.

Even if it had been timely, EPC's Petition would be without merit. First, it does not even come close to satisfying the Board's rigorous standards for reconsidering a final decision. The Board will reconsider a final decision only upon a showing of material error, new evidence or changed circumstances. 49 C.F.R. § 1115.3(b). EPC does not attempt to allege material error, new evidence or changed circumstances, and its petition should be denied on this ground alone. See Finance Docket No. 31231, IC Industries, Inc. -- Securities Notice of Exemption Under 49 CFR 1175,

Respectfully submitted,

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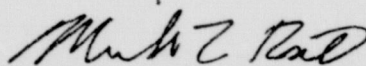


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