

INTERSTATE COMMERCE COMMISSION

07/01/96

FINANCE DOCKET # 32760

419-478

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1 Most importantly, unlike MRL, neither has  
2 any experience operating a mountain railroad.

3 Approval of the MRL responsive application  
4 would be in the public interest and meets the criteria  
5 established from imposing merger conditions. The MRL  
6 proposal has been on the table subject to public  
7 scrutiny since the beginning of these proceedings. It  
8 demonstrates that Acquisition Company would be a  
9 vigorous competitor for the combined UP for central  
10 corridor traffic. It would preserve competition  
11 between vituminous and sub-vituminous coals and avoid  
12 the abandonment of more than 400 miles of rail line.

13 The MRL proposal addresses every  
14 competitive issue in the central corridor. It takes  
15 virtually nothing away from the merger. MRL has gone  
16 so far as to be willing to grant overhead trackage  
17 rights both to BNSF and UP/SP in the event that those  
18 railroads need those corridors for overhead traffic.

19 MRL submitted its responsive application  
20 at the request of several shipper groups and  
21 individual shippers located in the central corridor.  
22 Western Shippers Coalition, Kansas Grain and Feed

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1 Association, Mountain Plains Communities and Shippers  
2 Coalition and other central corridor-based groups  
3 representing thousands of affected parties have  
4 expressly requested that the Board approve the MRL  
5 responsive application.

6 Individual shippers such as Weyerhaeuser,  
7 Stone Container, Louisiana Pacific, and Farmland  
8 Industries, likewise have endorsed MRL's proposal.  
9 Still others, including the NIT League, have urged the  
10 Board to order divestiture of a central corridor route  
11 without identifying a preferred carrier.

12 The Board must reject any claim by the  
13 applicants that the merger has widespread support from  
14 central corridor shippers because that simply is not  
15 the case.

16 The Department of Transportation has  
17 questioned MRL's proposal on three grounds, none of  
18 which is valid. First, DOT states that Acquisition  
19 Company will not have gathering lines in Northern  
20 California sufficient to capture an adequate traffic  
21 base. This position is plainly wrong, given that the  
22 MRL proposal provides for acquisition of lines to

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1 Stockton and Klamath Falls, with the right to quote  
2 proportional rates to every single SP station in  
3 California and Oregon.

4 The applicants own lead traffic witness  
5 concluded that Acquisition Company's revenues would be  
6 10 million dollars higher than the 621 million dollars  
7 in revenue projected by MRL. Apparently the  
8 applicants think that MRL could gather sufficient  
9 traffic. The Board must reject DOT's unsupported  
10 conjecture regarding the adequacy of Acquisition  
11 Company's traffic case.

12 DOT's second point, which contradicts its  
13 first, is that the MRL proposal goes beyond the areas  
14 in which UP and SP lines overlap. But a divestiture  
15 limited only to the two to one points in the central  
16 corridor would create a railroad completely at the  
17 mercy of UP/SP at both ends.

18 As the Commission recognized in UP/NP/WP,  
19 in order for a carrier to compete with Union Pacific  
20 in the central corridor, it must have a system that  
21 stretches from the West Coast to friendly connections  
22 in Kansas City. The MRL proposal contemplates just

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1 that. The Board should reject DOT's suggestion that  
2 MRL is over-reaching.

3 Finally, DOT raises the issue of single  
4 line service. MRL does not dispute that single line  
5 service presents some benefits. But MRL's own  
6 experience proves beyond a doubt that inter-line  
7 service provided by an aggressive regional carrier can  
8 be extremely efficient.

9 Last year, MRL handled 200,000 carloads of  
10 traffic that it inter-changed with BN not once, but  
11 twice. Tonnages over MRL's mainline have increased  
12 almost 70 percent in the nine years since it acquired  
13 that line from the Burlington Northern. This growth  
14 has occurred despite two interchanges where previously  
15 there were none.

16 Regional railroads have proven time and  
17 time again that customer driven inter-line service by  
18 carriers that have flexible labor agreements can  
19 actually be improvements over single line service.  
20 The shipper community, including the NIT League, has  
21 told the Board that single line service simply is not  
22 a panacea if as here, the overall quality of

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1 competition will decrease. We urge that the Board  
2 heed the shippers' voices.

3 In conclusion, the record clearly  
4 establishes that the competitive solution offered by  
5 applicants in the central corridor won't work. The  
6 only means of preserving true competition in that  
7 market is to require UP/SP to divest one of its  
8 central corridor routes. For the reasons I've  
9 discussed today and is set forth in MRL's pleadings,  
10 MRL urges that the Board approve its responsive  
11 application as a condition to the approval of the  
12 merger. Thank you. Ask any questions, if you have  
13 them.

14 CHAIRPERSON MORGAN: Now what individuals  
15 do you have supporting your particular proposal? I  
16 think you had some highlighted in your brief?

17 MR. SIDMAN: Yes. The Western Shippers  
18 Coalition, the Mountain Plains Communities and  
19 Shippers Coalition, Kansas Grain and Feed Association,  
20 Larson Farms, Louisiana Pacific, Trip Lumber Co.,  
21 Vincent Timber, Weyerhaeuser, Idaho Barley Commission,  
22 Idaho Wheat Commission, Kansas Colorado Oklahoma

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1 Shipper Association. It's a fairly eclectic, but  
2 fairly large group of shippers.

3 VICE CHAIRPERSON SIMMONS: What are  
4 flexible labor conditions?

5 MR. SIDMAN: Flexible labor agreements.  
6 MRL has perhaps the most innovative labor agreements  
7 in the railroad industry. Its employees are not  
8 subject to normal work rules. Their road crews can do  
9 yard work and vice versa. They simply are not  
10 burdened by the operational difficulties presented by  
11 the class one labor agreements.

12 VICE CHAIRPERSON SIMMONS: Sounds like the  
13 unions would be against you, wouldn't it?

14 MR. SIDMAN: MRL has a perfect partnership  
15 with its unions. The profit-sharing arrangement that  
16 it has with its unions has worked out spectacularly  
17 well for its employees, and it has probably one of the  
18 best relationships with labor in the country.

19 VICE CHAIRPERSON SIMMONS: Those that work  
20 for you.

21 MR. SIDMAN: Excuse me?

22 VICE CHAIRPERSON SIMMONS: Those unions

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1 that work for you. But the others are not too happy  
2 with you.

3 MR. SIDMAN: There are some unions that  
4 yes, that's correct.

5 VICE CHAIRPERSON SIMMONS: Okay.

6 CHAIRPERSON MORGAN: Some concern has been  
7 raised that the regional nature of this divestiture  
8 would make it difficult for a group like yours to  
9 compete in this market, particularly when you have BN  
10 Santa Fe now a bigger company than they once were.  
11 Now obviously you don't feel that way or you wouldn't  
12 have put yourself into this.

13 But I would imagine that you still realize  
14 that this would be a difficult challenge if this were  
15 to come about.

16 MR. SIDMAN: Dennis Washington is willing  
17 to bet 155 million dollars of equity if they can make  
18 this work. This system is essentially the DNRGW plus.

19 DNRGW was a highly successful railroad at  
20 the time of its acquisition and subsequent. MRL is  
21 confident that this system can work.

22 CHAIRPERSON MORGAN: Now you mentioned DOT

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1 and their position regarding your proposal. The  
2 California Public Utilities Commission as well is not  
3 in favor of your proposal.

4 MR. SIDMAN: Well, California Public  
5 Utilities Commission raised a single issue. They said  
6 that they thought that the single line service  
7 opportunities presented by BN/SF overweighed the other  
8 attractions of the MRL proposal. We think that they  
9 are wrong about that.

10 We think that in the central corridor  
11 BN/SF will not be an effective carrier. It can not  
12 replace the competition that's provided by an owner  
13 operator for one simple reason. It's going to operate  
14 there by virtue of trackage rights, not trackage  
15 obligations. It has the right to chase the traffic  
16 that has the profit and contribution that meets its  
17 system requirements.

18 When those opportunities do not present  
19 itself, it's not going out into that market.

20 VICE CHAIRPERSON SIMMONS: So you say they  
21 won't be a viable competitor?

22 MR. SIDMAN: I'm saying that they will

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1 compete for the traffic when it suits them. If you  
2 look at page 16 of their brief, it's very telling.  
3 They talk about the implementation of the trackage  
4 rights. They say on day one, they'll start out by  
5 using haulage rights. It says thereafter, BN Santa Fe  
6 intends to implement trackage rights operations on all  
7 areas as quickly as possible, so far so good,  
8 consistent with traffic volumes, consistent with  
9 traffic volumes.

10 When the traffic is there, they will be  
11 there. Acquisition Company will have paid for the  
12 property, it will be there. It's got no place else to  
13 go.

14 CHAIRPERSON MORGAN: Anything else?

15 COMMISSIONER OWEN: I have nothing else.  
16 I'd just like to complement you on a very fine  
17 regional railroad though.

18 MR. SIDMAN: Thank you.

19 CHAIRPERSON MORGAN: Thank you very much.

20 Next we will hear from Richard Allen,  
21 representing the Texas Mexican Railway Company.

22 MR. ALLEN: Thank you, Chairman Morgan,

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1 Vice Chairman Simmons, Commissioner Owen. I am here  
2 today representing the Texas Mexican Railway. I am  
3 accompanied by my colleague John Edwards.

4 You have heard from the Department of  
5 Justice, Department of Transportation and others that  
6 the merger as proposed by the applicants will have  
7 anti-competitive effects that will dwarf any other  
8 rail merger in history. No where will those effects  
9 be greater than in the market for rail transportation  
10 between the United States and Mexico.

11 Today that market is dominated by the  
12 Union Pacific Railroad. But the Southern Pacific,  
13 working with the Tex Mex is a strong competitor. In  
14 1994, SP accounted for more than a third of the rail  
15 tonnage between the United States and Mexico. The  
16 SP's principle route for that traffic was via the Tex  
17 Mex from Corpus Christi to Laredo.

18 BN Santa Fe is the third major U.S.  
19 carrier serving U.S. Mexican gateways. But its share  
20 of the tonnage in 1994 was less than five percent. If  
21 the merger is approved with the settlements proposed  
22 by the applicants, the merged UP/SP will completely

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1     dominate this market.

2             Applicants claim that their settlement  
3     with BN Santa Fe will keep this market just as  
4     competitive as it is today. But that is simply not  
5     true.

6             That settlement would give BN Santa Fe the  
7     option of using either trackage rights or haulage  
8     rights over the UP's line from Houston to Brownsville  
9     to connect with the Tex Mex near Corpus Christi. That  
10    so-called solution simply does not come close to being  
11    an adequate replacement for the competition that SP  
12    now provides the UP in this market.

13            For many reasons, which are probably best  
14    summarized by the attorney general of the state of  
15    Texas, who says in his brief, while it's accurate to  
16    say that BNSF is UP's biggest competitor in certain  
17    geographic areas, in these two economically  
18    indispensable Texas locales, i.e. the Gulf coast and  
19    the Texas Mexican gateways, UP is buying up its most  
20    aggressive competition.

21            Tex Mex is one of two railroads in this  
22    case that has filed responsive applications. Tex

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1 Mex's application seeks trackage rights between Corpus  
2 Christi and Beaumont, Texas. These would be mainly  
3 over lines of the SP between those points.

4 In terms of their impact on the  
5 applicants, the rights sought by Tex Mex are extremely  
6 modest. Neither applicants nor the BN Santa Fe have  
7 even claimed that granting those rights would impose  
8 any significant operational problems on either of  
9 them. In fact, the thrust of the applicant's argument  
10 is that those rights would have no significant impact,  
11 because they claim that the route that Tex Mex seeks  
12 is inferior to the route that BN Santa Fe will be  
13 getting and will not be attractive to shippers.

14 On the other hand, in terms of preserving  
15 competition, the rights sought by Tex Mex will have a  
16 major effect. The most important affect of those  
17 rights will be to preserve three competitive  
18 alternatives for shippers of goods between the United  
19 States and Mexico, by giving Tex Mex a direct  
20 connection to another class one railroad, namely the  
21 Kansas City Southern at Beaumont.

22 Contrary to the applicants, we believe

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1 that that route will be very competitive, and will  
2 attract a good deal of traffic. But even if it  
3 doesn't, the availability of that route will still  
4 provide shippers with an important competitive  
5 alternative that will seek to keep rates down and  
6 service up.

7 In this regard, the Department of  
8 Transportation, among many others, is especially  
9 concerned about the anti-competitive effects of this  
10 merger on U.S. Mexican rail transportation in view of  
11 the importance of the Mexican market to U.S.  
12 agriculture.

13 The Department of Agriculture is  
14 specifically urging this Board to ensure that three  
15 class one railroads will continue to serve U.S.  
16 Mexican gateways. The rights sought by Tex Mex would  
17 do just that.

18 The main point I would like to stress  
19 today is that the applicants have not given this board  
20 any persuasive reasons for denying the rights Tex Mex  
21 said. As I said earlier, applicants and BN Santa Fe  
22 have not contended that granting those rights would

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1 present significant operational problems for either of  
2 them.

3 The applicants have also not argued that  
4 granting Tex Mex's requested rights would undermine  
5 any of the public or private benefits of the merger.  
6 Instead, what the applicants have argued is that the  
7 competitive problems in the markets served by Tex Mex  
8 will be completely remedied by their settlement  
9 agreement with BN Santa Fe.

10 Applicants in fact claim that BN Santa Fe  
11 will be a better connection for Tex Mex and will  
12 interchange more traffic with Tex Mex than SP does  
13 today. In a nutshell, applicants argument is that Tex  
14 Mex and U.S. shippers, U.S. Mexican shippers don't  
15 need the rights that Tex Mex seeks.

16 Members of the Board, those are not good  
17 arguments for denying the rights sought by Tex Mex.  
18 Contrary to the applicant's claim, there are lots of  
19 reasons to believe that the applicants settlement with  
20 BN Santa Fe will not come close to remedying the loss  
21 of competition that the merger will cause in the  
22 market served by Tex Mex.

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1           Tex Mex is far from alone in that view.  
2           That opinion is shared by the United States Department  
3           of Justice, the United States Department of  
4           Transportation, the United States Department of  
5           Agriculture, the Texas Department of Transportation,  
6           the Texas Railroad Commission, the Texas Attorney  
7           General, and more than 100 shippers that have filed  
8           letters and verified statements in support of Tex  
9           Mex's responsive application.

10           The reasons that BN Santa Fe settlement  
11           will not remedy the loss of the competition that the  
12           merger will cause in Tex Mex arguments are discussed  
13           and documented at great length in Tex Mex's responsive  
14           application and its rebuttal statement. These reasons  
15           include, one, the fact that the Burlington Northern  
16           Santa Fe's access to many shippers now served by SP  
17           will be inferior to SP's access today.

18           Two, the fact the BN Santa Fe's route to  
19           Corpus Christi will be longer for many movements than  
20           the SP's route is today.

21           Three, the fact that the BN Santa Fe's  
22           route to Corpus Christi will be significantly more

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1 congested than the SP's route over which Tex Mex seeks  
2 trackage rights.

3 Four, the fact that even under the rosiest  
4 traffic projections BN Santa Fe's share of the U.S.  
5 Mexican market is almost certain to be a small  
6 fraction of the SP's current share of more than a  
7 third.

8 Finally, and perhaps most importantly,  
9 even if all the problems I've just mentioned didn't  
10 exist, the merger with the BN Santa Fe settlement  
11 would still eliminate one of the three class one  
12 railroads serving U.S. Mexican gateways.

13 The important point I want to leave with  
14 you today is simply this. There are at the very  
15 least, substantial reasons for concluding that the  
16 Department of Justice, the Department of  
17 Transportation, the Texas agencies and many others are  
18 right that the BN Santa Fe settlement will not solve  
19 the problems, the competitive problems in the markets  
20 served by the Tex Mex railway. The applicants are  
21 wrong in that regard.

22 Given that fact, there are no good reasons

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1 for denying a remedy that the applicants themselves  
2 have not claimed will harm them or reduce the public  
3 benefits in the merger. When that remedy will at  
4 least ensure that shippers will have a third  
5 competitive alternative for their shipments between  
6 the United States and Mexico and will ensure that Tex  
7 Mex is not completely dependent on a connection with  
8 the Burlington Northern Santa Fe at Corpus Christi  
9 that Tex Mex has good reasons to believe will be fatal  
10 to it. Thank you very much.

11 CHAIRPERSON MORGAN: Now one of your  
12 interests I'm sure is Laredo as a gateway into Mexico.  
13 Does that continue to be a dominant gateway?

14 MR. ALLEN: Yes, it does, Chairman Morgan.  
15 It accounts for more than 55 percent of the tonnage  
16 that moves between the United States and Mexico.

17 CHAIRPERSON MORGAN: The proposal that you  
18 have put forth does address ensuring competition at  
19 that gateway?

20 MR. ALLEN: Yes. We believe it does.

21 CHAIRPERSON MORGAN: Along with some other  
22 things.

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1 MR. ALLEN: Yes. We believe it does.

2 COMMISSIONER OWEN: I don't have any  
3 questions. Just a comment. I think all those  
4 gateways along there are very important to us.

5 MR. ALLEN: Thank you very much.

6 CHAIRPERSON MORGAN: Thank you. Next we  
7 will hear from Monica Palko, representing Capital  
8 Metropolitan Transportation Authority.

9 MS. PALKO: Madam Chairman, Mr. Vice  
10 Chairman, Mr. Commissioner, my name is Monica Palko.  
11 With me here at counsel's table is Al Krachman. We  
12 are with the law firm of Bracewell and Patterson. We  
13 represent the Capital Metropolitan Transportation  
14 Authority, CMTA or Capital Metro.

15 CMTA is the regional transit authority in  
16 the Austin metropolitan area. It's the manager of the  
17 Giddings/Llano line, and it holds a mass transit  
18 easement over a segment of the line.

19 Today I will demonstrate first that the  
20 proposed merger will reduce access to class one  
21 carrier service on the Giddings/Llano from two to one.  
22 Second, that a modest revision to the BNSF agreement

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1 would preserve competition without interfering with  
2 CMTA's planned passenger rail system.

3 First, the proposed merger will reduce  
4 access to class one carrier service on the  
5 Giddings/Llano from two to one. As you can see from  
6 visual display number one, and you should have an  
7 eight and a half by 11 version of this, SP is  
8 indicated in green. Pre-merger, a shipper on the line  
9 has access to the UP at McNeilor Elgin, and access to  
10 the SP at Giddings.

11 Post-merger, there will be no access to an  
12 alternative class one carrier at Giddings. Although  
13 the former operator, the AUNW, discontinued service to  
14 Giddings, it did so for less than a year before the  
15 new operator took over on May 3 of this year. The new  
16 operator is re-instituting this service on STB  
17 authority and just last week, executed a final  
18 agreement with the SP to interchange traffic at  
19 Giddings. It plans to have this segment open by the  
20 15th of this month.

21 To my second point, as you can see from  
22 visual display number two, a modest revision to the

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1 BNSF agreement would resolve this reduction in service  
2 in a manner consistent with the public interest. By  
3 extending BNSF's trackage rights south to include the  
4 segment between McNeil and Kerr, and granting the BNSF  
5 related interchange rights at either McNeil or Kerr,  
6 the Board would preserve competition, and at the same  
7 time, provide an incentive for the 80 percent of  
8 shipper traffic that originates west of McNeil, to  
9 move away from what will be the 89 percent of the  
10 passenger rail system in terms of boardings per day.

11 Interchange at Elgin is inadequate. It  
12 would still require the 80 percent of freight traffic  
13 that originates west of McNeil to move over the  
14 passenger rail segment in order to interchange with  
15 the BNSF. This would harm what will be for Austin,  
16 the essential service of passenger rail, with its  
17 associated environmental and energy conservation  
18 benefits.

19 The Federal Transit Authority dictated  
20 that this segment and the line be used for mass  
21 transit when it granted funds for the purchase of the  
22 line.

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1 CMTA recognizes that this is not the forum  
2 to resolve all the issues that may arise regarding the  
3 development of passenger rail in Austin. It simply  
4 asks that access to class one carrier service on the  
5 line be preserved in a manner that does not harm its  
6 planned passenger rail system.

7 In addition, because of the inter-  
8 relationship of the rail grade crossing and the  
9 interchange rights at McNeil, CMTA also asks the board  
10 to retain jurisdiction over the accommodation of  
11 passenger rail through the McNeil interchange where  
12 the passenger rail will cross the UP/SP line.

13 This request for an expedient means to  
14 resolve disputes in no way prejudices the applicants,  
15 since it would be effective only in the event the  
16 parties were unable to agree.

17 In closing, the insignificant harm to the  
18 transaction, if any, will be outweighed by the  
19 conditions overwhelming public benefits.

20 CHAIRPERSON MORGAN: Now when you began  
21 your statement, I heard you say that you had worked  
22 out an arrangement regarding Giddings. Did I get that

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1 right?

2 MS. PALKO: Yes. That is correct.

3 CHAIRPERSON MORGAN: Now that does not  
4 solve all of your problems though.

5 MS. PALKO: That is correct. The filing  
6 that the applicants made on Friday impacts CMTA. In  
7 fact, we were specifically listed in one of the bullet  
8 items on the first page. I would appreciate some  
9 additional time just to comment on how that effects  
10 CMTA since we'll have no opportunity to submit written  
11 comments.

12 CHAIRPERSON MORGAN: I'll give you a  
13 couple of minutes.

14 MS. PALKO: Okay. Thank you. First, what  
15 the agreement would apparently do, and we haven't had  
16 the opportunity to evaluate it in detail, but  
17 originally as you can see, the trackage rights  
18 represented there in the highlighted yellow were only  
19 overhead trackage rights at Elgin. They had not  
20 replaced the lack of competition or the reduction in  
21 competition in any way.

22 Apparently now, the revision to the BNSF

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1 agreement would make those local rights and would give  
2 the BNSF the authority to interchange with  
3 Giddings/Llano traffic there.

4 This would be inadequate for two main  
5 reasons. In the first instance, it's unclear whether  
6 or when or how the BNSF would ever exercise those  
7 trackage rights. In decision number 25 in this  
8 proceeding, the Board ruled that because CMTA is a  
9 non-carrier seeking trackage rights on behalf of an  
10 unnamed carrier unaffiliated with the applicants, that  
11 carrier-specific issues regarding the line could be  
12 resolved in a follow-up proceeding.

13 Because it has not had the opportunity to  
14 discuss these rights with the BNSF, who is  
15 contractually obliged not to assist CMTA in its  
16 responsive application, CMTA believes that it is still  
17 appropriate to permit the parties to hammer out the  
18 carrier specific issues in a follow-up proceeding.

19 Second, this would still require as I  
20 demonstrated briefly before, that in order to  
21 interchange, the traffic would have to flow through  
22 the main portion of the planned passenger rail system.

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1 But even assuming arguendo that this  
2 revised BNSF agreement would resolve all of these  
3 issues, would arrange for appropriate competition with  
4 the BNSF at Elgin, it should still be rejected because  
5 it does not comply with the public interest standard  
6 as reflected in the statutes and regulations for the  
7 board.

8 In the first instance, harm to essential  
9 services would result from that particular interchange  
10 point. In particular, for Austin, the planned  
11 passenger rail would be an essential service. It is  
12 alternatively listed as either the first or the third  
13 fastest growing metropolitan area.

14 The State of Texas reportedly has  
15 insufficient funds, only sufficient funds to build  
16 half the required highways that would be necessary.  
17 It hovers near non-attainment. The Texas Natural  
18 Resources and Conservation Commission has listed it as  
19 near non-attainment from NOX and VOCs, the primary  
20 source of which is automobiles.

21 The Austin San Antonio Rail Corridor  
22 Council predicts that only two rail lines can carry as

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1 many passengers an hour as 16 lanes of highway. They  
2 simply have growth that is too great to be  
3 accommodated through a highway system. For Austin,  
4 this planned passenger rail will be an essential  
5 service.

6 But in addition to these energy and  
7 environmental benefits which are dictated by the  
8 regulations and the statute, the public's interest  
9 standard includes these and is broad enough to  
10 encompass more than simply the competition element  
11 that might be satisfied from an interchange at Elgin.

12 The Board has supported passenger rail in  
13 its decisions in the past. In particular, in LACTC,  
14 they took the ICC took certain actions, and I'm  
15 quoting "to help LACTC to fulfill its mission to  
16 provide mass transit passenger service."

17 The applicants accuse CMTA of serving an  
18 alternative goal here, only the passenger rail. To  
19 the contrary, CMTA is the manager of a line. It is  
20 responsible for smooth and efficient freight  
21 transportation, and to require it to move across that  
22 segment would be a significant burden for the freight

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1 traffic.

2 In addition, speed limits through that  
3 segment are limited to about 10 miles per hour. So  
4 that would raise serious questions about the  
5 attractiveness of Elgin as an alternative for the  
6 freight shippers. Thank you.

7 COMMISSIONER OWEN: You raised a serious  
8 question with the passenger trains and subsidized  
9 automobile and subsidized airports and subsidized  
10 passenger traffic. Mind you, I'm in favor of  
11 passenger trains. I think we have to go that way in  
12 the future. But we come up against the freight  
13 carriers. You have heard a number of them speak  
14 today, from Montana Rail Link to Kansas City and UP  
15 naturally, and SP, and a number of Con Rail. They pay  
16 their own way.

17 So I know public good is a right thing to  
18 work for, but at what point in time do you keep  
19 crowding the freight service out of the system there  
20 and say okay, you've got to slow down, you've got to  
21 move here and there. So it makes it a very difficult  
22 decision for us and a very difficult problem for me to

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1       wrestle with personally, because here's somebody who  
2       is paying their own pay. We're subsidizing all these  
3       metro links and everything else around the country  
4       here to a considerable degree.

5               To say okay, we're going to crowd those  
6       people out, they have been on those tracks for many  
7       years. I hear what you are saying, but --

8               MS. PALKO: CMTA concurs completely. This  
9       is a means by which to accommodate the 80 percent of  
10      freight traffic by not forcing it to cross the  
11      passenger rail.

12              In addition, CMTA plans to purchase the  
13      rail line. The Federal Transit Authority has  
14      instructed the City of Austin to sell it. They  
15      anticipate they will do so within a few months. CMTA  
16      anticipates that they will buy it within a year. But  
17      this would be a way for them to assist the freight  
18      traffic movement and not inhibit it by forcing it  
19      across the passenger rail segment.

20              COMMISSIONER OWEN: What would be the  
21      negative impact for the freight traffic?

22              MS. PALKO: Actually, this would be a

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1 beneficial impact for the 80 percent that originates  
2 west of McNeil.

3 For some of the shippers, Giddings was a  
4 superior interchange point because of the location of  
5 them as shippers and the destination of their goods.  
6 But for the majority of shippers on the line, they  
7 will benefit from this proposed condition.

8 CHAIRPERSON MORGAN: Thank you. We will  
9 next hear from Barry Williamson, the Railroad  
10 Commission of Texas.

11 MR. WILLIAMSON: Madam Chairman, Vice  
12 Chairman Simmons, Commission Owen, thank you for  
13 allowing me to appear before you today. My name is  
14 Barry Williamson. I am one of three state-wide  
15 elected Republican railroad commissioners.

16 I will tell you, Commissioner Owen, that  
17 we are a very free-market oriented railroad  
18 commission. I come to you today representing 18  
19 million, over 18 million Texans. With me today is  
20 counsel Richard Streeter.

21 VICE CHAIRPERSON SIMMONS: Are they all  
22 with you, all 18 million of them?

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1 MR. WILLIAMSON: In spirit they are. I  
2 will assure you that I may give Union Pacific 1,000 of  
3 them, but the rest of the 18 million are with us on  
4 this.

5 Governor George W. Bush asked the railroad  
6 commission back in September to formulate a position  
7 on the merger and to communicate that position to this  
8 board. Our process has been a public one from the  
9 very beginning. This is a huge merger, the largest in  
10 history. The merger will affect over 20 percent --  
11 over 20 percent of the trackage in this merger will be  
12 in our state of Texas. You have heard a lot about our  
13 state of Texas today.

14 We held three state-wide public hearings.  
15 We had over 1,000 people attend similar to this. I  
16 will say though, ours was a little livelier. I have  
17 only heard the word liar used once today.

18 CHAIRPERSON MORGAN: We're not saying that  
19 word up here.

20 MR. WILLIAMSON: We had probably about 15  
21 hours of oral arguments. We were surprised to have  
22 this many people attend.

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1 We also commissioned a comprehensive study  
2 of the merger from the Center for Economic Development  
3 at the University of North Texas. Our position after  
4 reviewing the evidence, the filings of Union Pacific,  
5 after reviewing the public testimony, after talking to  
6 the analysts, we voted unanimously, the three railroad  
7 commissioners, to oppose the merger, because we found  
8 that the merger was anti-competitive and not in the  
9 best interest of the shippers of Texas.

10 The merger would simply allow Union  
11 Pacific ownership of virtually all the rail lines.  
12 Let me show you the map. All the rail lines I-35  
13 east. Virtually all.

14 One company, one company would control --  
15 would own, excuse me, 7,000 of the 11,000 miles of  
16 track in our state. This merger would have 1,753  
17 miles, 1,753 miles of parallel lines.

18 Now early on -- can I tell you a story?  
19 Early on, before this process began, before they had  
20 the public meetings, our assistant, a secretary  
21 executive assistant, a scheduler named Emily Baker.  
22 She's 25 years old, a graduate of SMU. No experience

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1 in railroads, had no information, no knowledge of  
2 this, because this is before we started. I asked  
3 Emily, I said, "Look at this map, look at this map and  
4 tell me why Union Pacific is buying Southern Pacific."

5 She came back a day later. She said,  
6 "Well, it appears to me, Commissioner, that Union  
7 Pacific goes the same route that Southern Pacific  
8 does. It appears to me that the red, the Union  
9 Pacific is trying to buy up everything in Texas."

10 Now when Dick Davidson came to see me, I  
11 told him the story of Emily. He said, "Well I need to  
12 go talk to Emily." Rob Krebbs came by. I told him  
13 the Emily story also. He said, "Well, we need to go  
14 talk to Emily."

15 The point is, that if they can't convince  
16 Emily Baker, they sure can't convince you. This  
17 merger that we are talking about today is parallel.  
18 It's not just parallel, it's massively parallel.

19 Let me show you the 1,753 miles of massive  
20 parallel trackage. Shane, put the first map back up,  
21 before the merger. I want to show you what we're  
22 talking about.

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1 When you go, start in Texarkana, start at  
2 the first point of our state, when you go from  
3 Texarkana down to Houston, Texas, from Shreveport to  
4 Houston, massive parallel. You go from Texarkana over  
5 to Dallas Fort Worth, parallel. From Dallas Fort  
6 Worth down to Houston, parallel. From Dallas Fort  
7 Worth to Austin, Texas. To Austin, Texas to San  
8 Antonio, Texas, to Corpus Christi, parallel.

9 Then you jump over along the petrochemical  
10 area from New Orleans on into Houston on into San  
11 Antonio to the gateways of Mexico. We are parallel  
12 tracks side by side.

13 This gives Union Pacific control of those  
14 shipments of up to 80 percent of the petrochemical  
15 industry in our state. That is the largest  
16 petrochemical complex in the world. That's two-thirds  
17 of this nation's petrochemical complex.

18 CHAIRPERSON MORGAN: Now this map though  
19 does not show other railroads in the state.

20 MR. WILLIAMSON: It does show the green,  
21 it's very small. But they are all to the west. Like  
22 Kansas City Southern runs down to Beaumont, and

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1 Burlington Northern has a route into Houston. But  
2 most of them are to the west.

3 I wanted to highlight the parallel tracks  
4 in this map. Your map in front of you does show the  
5 other tracks. But suffice it to say, 7,000 of the  
6 11,000 miles of track would be owned by one railroad.  
7 They are all I-35 east. That's where the markets are.

8 Eighty percent of the petrochemical  
9 industry, 88 percent of the plastic resins, 86 percent  
10 of the plastic storage capacity, 92 percent of the  
11 switching terminals, and a 90 percent of our gateways  
12 to Mexico will be controlled.

13 When this merger is signed, if you sign it  
14 on Wednesday --

15 VICE CHAIRPERSON SIMMONS: Maybe UP should  
16 have moved their headquarters to Texas, then they  
17 wouldn't have any problem.

18 MR. WILLIAMSON: Actually they would have.  
19 We still would have not approved this because it's too  
20 important to the state. This is huge to the state of  
21 Texas. UP would control 11 of the 13 rail lines  
22 coming out of Houston, Texas. I didn't say seven or

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1 eight. I said 11 of the 13 rail lines coming out of  
2 Houston, Texas.

3 Now let me talk about the trackage rights  
4 agreement, if I could. The question was asked earlier  
5 today, does the trackage rights agreement solve the  
6 anti-competitive problems, 80 to 90 percent.

7 If I could, I would like to give you a  
8 different argument on the trackage rights agreement.  
9 Simple economics of how railroads are run, that will  
10 help you come to the right solution in this case. It  
11 is simple economics. What we are talking about is two  
12 to one traffic and one to one traffic.

13 Union Pacific will get all 265,000 captive  
14 shippers. I didn't come here today to talk about  
15 captive shippers. That is another issue for a  
16 different day. Two hundred and sixty five thousand  
17 captive shippers would go to Union Pacific. The two  
18 to one traffic is up for competition under the  
19 agreement that they have negotiated.

20 Ninety thousand carloads a year. Ninety  
21 thousand. I said 265,000 carloads. I said shippers,  
22 but its carloads. Ninety thousand carloads a year is

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1 what is up for competition. Assuming the best case  
2 scenario that BN will get 50 percent of the 90,000  
3 carloads a year. That works out to 123 carloads a  
4 day.

5 Now there are six major routes coming out  
6 of Houston, Texas. If you consider you have to go one  
7 way and come back, that's 12 trains a day. Twelve  
8 trains a day at 123 carloads is 10 cars a train.  
9 Ladies and gentlemen, you can't run a railroad on 10  
10 cars a day. It won't work. It won't work five times  
11 that much. We're assuming they are going to get 50  
12 percent of the market. They probably won't get that  
13 much because that base.

14 That 265,000 captive shippers that  
15 Southern Pacific had was their base to go out and  
16 compete. They had to have that base to compete. So  
17 what you have done, or what is being proposed, you  
18 haven't done anything yet. What has been proposed is  
19 simply two to one. It's not two to two. It's two to  
20 one with a trackage rights agreement that doesn't get  
21 it to two to two. It gets it to 1.25 at the best. So  
22 we're talking about one to 1.25, not two to two.

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1 We're talking about one carrier with ownership, and  
2 we're talking about one carrier.

3 The smallest carrier in the area has 15 to  
4 20 percent of the traffic, is going to try to get  
5 another 45,000 carloads. It won't work. That dog  
6 won't hunt in Texas. That's why we are here today.

7 We are here to tell you that it's going to  
8 hurt us in Texas. It is going to hurt our abilities  
9 to compete. I asked Rob Krebbs that question when he  
10 came to see me, "Rob, how are you going to compete  
11 with the domination of Union Pacific." He looked me  
12 in the eye and he said, "Barry, I have cut a good  
13 deal. I have every economic incentive to compete."

14 You know, Rob Krebbs is one of the best in  
15 the business. He is going to do his best. He will do  
16 his best. But you know, you asked the question,  
17 Chairman, earlier, they don't have the volume to  
18 compete. They simply can not compete. Nobody could  
19 with these kind of odds. This trackage rights  
20 agreement does not in any way equal competition.

21 Inclosing, this proposed merger will allow  
22 Union Pacific to dominate the major markets in Texas.

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1 It will allow Union Pacific to monopolize the track  
2 ownership in the eastern half of our state. It will  
3 allow Union Pacific to control the 265,000 captive  
4 shippers. We know that. That's given up front. It  
5 will allow UP to have a virtual monopoly on the fourth  
6 largest city in America, Houston, Texas, a virtual  
7 monopoly.

8 Now you know the resason not one state-  
9 wide elected official in Austin, there are 10 of us,  
10 five Republicans and five Democrats, are out  
11 supporting Union Pacific in this deal, not one of  
12 them.

13 When you have Lloyd Doggett on the left  
14 and Barry Williamson on the right, you cover the whole  
15 spectrum of Texas. I can assure you. Nobody is  
16 supporting this deal from the elected standpoint, from  
17 the state-wide elected standpoint in Austin, Texas.

18 Consumers and shippers, thousands, not  
19 only in Texas, but in the nation will be harmed as a  
20 result. I don't think you want your legacy to be the  
21 Board that allowed one company to dominate the largest  
22 petrochemical complex in the world, to allow one

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1 company to dominate the Texas routes to Mexico, to  
2 monopolize the Texas Gulf Coast.

3 You know, there are benefits, and there's  
4 a simple easy way to get to those benefits and prevent  
5 anti-competitive nature. That is to require  
6 divestiture.

7 If we fail to act now, our year experiment  
8 with deregulation would come to an abrupt end and then  
9 we all lose.

10 Thank you. I'd be glad to answer any  
11 questions that you might have.

12 CHAIRPERSON MORGAN: One of the concerns,  
13 I'm sure, for Texas is the NAFTA trade.

14 MR. WILLIAMSON: Yes ma'am.

15 CHAIRPERSON MORGAN: Assuring competition  
16 for that trade. We've talked a little bit about  
17 Laredo today. We've talked a little bit about Tex  
18 Mex.

19 Could you give me your comments from the  
20 state perspective on how you would assure competition  
21 in the --

22 MR. WILLIAMSON: Laredo, as we heard

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1 earlier from the Tex Mex lawyer, Mr. Allen, said that  
2 Laredo has 55-60 percent of the gateway to Mexico in  
3 Texas. They are the gateway to Mexico, the biggest  
4 gateway in Texas.

5 Tex Mex is a competitor at this point with  
6 Union Pacific. If they cease to exist, they will no  
7 longer be a competitor, obviously, and Union Pacific  
8 would dominate that gateway and if BN runs their  
9 trackage rights on their system down, they will go  
10 straight through San Antonio to Laredo. Southern  
11 Pacific ran their traffic around through Victoria down  
12 to Corpus Christi, around the Tex Mex. I don't know  
13 why they did it, but that's the way they did it. The  
14 State of Texas, in the 1800s, put money up with the  
15 Mexican government to build that railroad. That is a  
16 vital link from Mexico to the Gulf coast. That's a  
17 vital link for the Port of Corpus Christi. We think  
18 it's worth saving. And what we're asking today is  
19 give the Tex Mex the ability to reach its partner,  
20 Kansas City Southern.

21 I think Union Pacific can stand that  
22 competition. They're not getting any competition

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1 anywhere else. I think they can stand that  
2 competition.

3 Excuse me, I said Laredo, "going through  
4 Laredo", BN goes through Eagle Pass, but they'll  
5 divert that traffic to Laredo. It would be very easy  
6 to do that. It will save 240 miles as opposed to  
7 taking it around Victoria and coming through Corpus  
8 and taking it down to Tex Mex. It's simple economics.  
9 They say they'll do it. I wouldn't do it. It doesn't  
10 make sense. No money in it.

11 COMMISSIONER OWEN: It's a big state. I  
12 thought you were one of the biggest railroads down  
13 there.

14 MR. WILLIAMSON: We have the biggest  
15 railroad. And we have good competition. The biggest  
16 railroad had 35 percent of the competition and  
17 Southern specific had 40, 45 percent of the  
18 competition and we had head to head competition. They  
19 may be hurting in other parts of the nation, but they  
20 were making money in Texas, and that's what we want to  
21 preserve. And you can preserve this, Commissioner  
22 Owen, and still have your one line, your single line

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1 rail service. You can -- traffic flows north and  
2 south through here, most of it does. You can do it.  
3 You don't have to divide up the railroads and segment  
4 them. They're going to do it anyway because they're  
5 just like the stagecoach. They're going to stop at  
6 every port if you can find a car. They're going to do  
7 that, a lot of them are going to do that.

8 At some point they're going to stop, but  
9 you'll have the opportunity to divest the tracks and  
10 still keep the massge benefits of merger. And there  
11 are benefits of the merger. A single line car from  
12 California to Tennessee and back is a good deal.

13 COMMISSIONER OWEN: I think you did an  
14 excellent job by holding the hearings there in Texas,  
15 expanding our mailing list here considerably.

16 I commend you for that.

17 VICE CHAIRPERSON SIMMONS: He had to do  
18 that.

19 MR. WILLIAMSON: No, actually we didn't.

20 VICE CHAIRPERSON SIMMONS: I'm from  
21 Oklahoma. I know how you work down there.

22 MR. WILLIAMSON: That's true.

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1 (Laughter.)

2 MR. WILLIAMSON: You know us better than  
3 anybody then. We spent six to eight months on this.  
4 We spent a tremendous amount of time because when we  
5 began looking -- we were all neutral in the beginning  
6 and actually we had Commissioners going for the  
7 proposal and that's why you heard from the record a  
8 lot of serious lobbying going on, but in the final  
9 analysis, the Commissioner came down in the interest  
10 of the public. What we found was quite simple and I  
11 think you will find is Union Pacific has the burden  
12 and they failed to carry the burden. You have the  
13 duty and we have the duty to protect the public  
14 interest and if their deal doesn't protect the public  
15 interest, it's not your fault. It's not our fault.  
16 It's not these other railroads' fault. It's their  
17 fault.

18 In the interest of efficiency, we can be  
19 efficient, but they've got to carry their burden and  
20 if they don't do it, if we get into their deal and try  
21 to make it for them, that's not a market-based  
22 solution, that's a Government solution and we don't

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1 want that. You don't want it and I know you don't  
2 want to do that.

3 Give them the opportunity go back, if they  
4 don't like the divestiture and come up with another  
5 deal, because this deal is not in the public interest.

6 All we ask is you divest the Texas track.  
7 We'll be fine.

8 COMMISSIONER OWEN: Thank you very much.

9 CHAIRPERSON MORGAN: Thank you. Next we  
10 will hear from Rebecca Fisher, State of Texas,  
11 Attorney General.

12 MS. FISHER: Good evening, Members of the  
13 Board. It is evening, I guess. My name is Rebecca  
14 Fisher and I'm an Assistant Deputy Chief for the Anti-  
15 trust section of the Texas Attorney General's Office.  
16 I am here today to reiterate and accentuate the fact  
17 that it is the State of Texas that will suffer more  
18 than any other state in the country if the merger is  
19 approved as proposed.

20 I'm afraid, Vice Chairman Simmons, that I  
21 am going to sound both like Commissioner Williamson,  
22 as well as the DOJ, and I have little new to add, but

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1 I would ask for your endurance for five more minutes.

2 The reasons that this merger is going to  
3 hurt Texas more than anyone else is two-fold, as I  
4 said. First, the state's many unique characteristics  
5 make Texas shippers more rail dominant than any other  
6 state. This point has been borne out, I think, I was  
7 going to say by many, but I think after listening  
8 today, by most of the speakers you've heard today.

9 The plastics and other petrochemical  
10 producers you have explained how the nature of their  
11 product is very rail dependent in most situations and  
12 other evidence on the record is replete and confirms  
13 the fact that the sheer size of the state, together  
14 with its international border and its ports, make rail  
15 the only competitive mode of transportation for many  
16 commodities shipped to and from Texas.

17 The second reason why this proposed merger  
18 will hurt Texas the most is that which Barry  
19 Williamson just told you very effectively, is that UP  
20 and SP compete more in Texas on more routes in Texas  
21 than in any other state.

22 This point is made obvious by the fact of

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1 the massive parallel lines that were discussed, as  
2 well as by the fact that the applicants have  
3 identified more 2 to 1 points in Texas than in any  
4 other state.

5 As has been expressly confirmed in ICC  
6 decisions previously, including the SBSF decision, the  
7 consolidation with railroads which have significant  
8 parallel track are the ones that will most likely  
9 assure increased loss of competition.

10 The applicants have tried to address these  
11 obvious loss of competition by the BNSF agreement with  
12 rights, trackage rights over most of these parallel  
13 lines in Texas and consequently we do have more  
14 trackage rights routes. More than a fourth of the  
15 trackage rights are in Texas, but we believe the  
16 potential for real competition by BNSF is severely  
17 hampered by all of the reasons that are set out in the  
18 record and that have been alluded to today by DOJ, NIT  
19 League, Society of Plastics and others, and because of  
20 the large amount of trackage rights that are in Texas,  
21 its shippers will be subjected more than anyone else  
22 to all of the concerns and shortcomings of this

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1 agreement.

2 If BNSF fails to seriously and immediately  
3 compete on any of these trackage routes in Texas,  
4 .damaging loss of competition will result. An  
5 additional concern is that the applicants have so  
6 narrowly defined their 1 to 1 points. There are many  
7 Texas shippers who have valid arguments that they will  
8 be losing current competition between UP and SP that  
9 are not included in this 2 to 1 definition. You've  
10 heard from many of these Texas shippers today,  
11 including Dow, the Lower Colorado River Authority was  
12 alluded to, Texas Utilities & Electric, the Service  
13 Board of San Antonio, all of these are shippers who  
14 are seriously threatened with immediate loss of  
15 competition.

16 As has been discussed with numerous  
17 speakers today, the Texas-Mexican gateways are also  
18 threatened with substantial loss of competition, the  
19 potential monopoly at Laredo that would be created at  
20 Laredo and the general control that UPSP would have  
21 over all of the Texas-Mexican gateways as addressed  
22 mostly by Tex Mex, but other speakers here today, and

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1 could have far-reaching consequences.

2 Applicants deny or ignore even the  
3 potential loss of competition for these shippers that  
4 have particularized their problems today, as they have  
5 for those shippers who use Texas-Mexican gateways and  
6 for the shippers who will be losing competition at the  
7 3 to 1 points that was discussed by DOJ earlier, that  
8 each of these situations does intensify the potential  
9 erosion of competition in the State of Texas if it is  
10 approved, if this merger is approved.

11 It was suggested earlier that a lot of  
12 this is just rhetoric, but Madam Chairman, I would  
13 suggest that the importance of the fact of the  
14 uniqueness of Texas and the direct effect of rail  
15 competition on its rail market is more than a matter  
16 of simple provincial rhetoric or chauvinistic hype.

17 As repeatedly explained in the record, the  
18 types and quantities of commodities that are produced  
19 and transported to and from Texas affect the entire  
20 national economy as well as international trade.

21 As you've just heard, the Texas Railroad  
22 Commission shares the belief held by the Attorney

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1 General that the merger, as proposed, would not be in  
2 the public interest. And I think it is important that  
3 the Board know that these two agencies came to this  
4 conclusion under significantly different  
5 circumstances.

6 The Railroad Commission and the Attorney  
7 General brought forth different backgrounds and  
8 perspectives to this analysis. The Railroad  
9 Commission had a broad focus with its experts' review  
10 and competitive issues as well as labor, environment  
11 and other general economic issues. The focus of the  
12 Attorney General has been more concentrated on the  
13 anti-competitive effects of the merger as exemplified  
14 by its more circumscribed reports of its experts, but  
15 as Commissioner Williamson said, the final analysis,  
16 the record in this case led both agencies to reach the  
17 same conclusion, that the merger will have a crippling  
18 effect on shippers and receivers of rail transported  
19 goods in Texas.

20 The Railroad Commission requests the  
21 merger be approved only if very substantial conditions  
22 are imposed on lines and terminals in Texas, but it is

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1 the opinion of the Attorney General that the negative  
2 effects of the merger on the entire western United  
3 States justifies the finding by this Board that the  
4 merger be denied outright.

5 The overarching anti-competitive problems  
6 anticipated because of the duopoly that will be  
7 created if the merger is allowed will not be reduced  
8 by conditions being imposed on the rail markets in  
9 Texas, even the significant rail conditions that are  
10 being requested by the Railroad Commission.

11 We implore this Board to make the decision  
12 that will protect the public interest, that will  
13 protect competition and that will, ultimately, protect  
14 the railroad industry.

15 We strongly urge the Board to deny the  
16 merger.

17 Thank you. Any questions? Thank you very  
18 much.

19 CHAIRPERSON MORGAN: Thank you. Now, I'm  
20 not sure whether we have someone from the California  
21 Public Utilities Commission?

22 (Pause.)

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1 Gregory Conlon will be presenting the  
2 statement.

3 MR. CONLON: After following my two  
4 colleagues from Texas, I feel a little bit underwelt,  
5 but I just want to say that Madam Chair, and the Board  
6 Members, that I'm here on behalf of the State of  
7 California and unlike the two Texas agencies from  
8 which you heard, the State of California strongly  
9 supports this merger. Unfortunately, I'm the only one  
10 here today to represent California, so I want to try  
11 to do everything I can to send the message of how  
12 strongly we really believe.

13 You've received a letter from the  
14 Governor, Pete Wilson, from the State of California;  
15 the Attorney General's Office made their own  
16 independent study and filed comments in support of the  
17 merger after looking at any adverse competition.

18 The California Public Utility Commission,  
19 after a series of hearings, one specifically on the  
20 Montana Rail Link, had a 5-0 decision supporting the  
21 merger and less than a handful of shippers from  
22 California, every shipper in California that was

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1 before us in three days of hearings supported this  
2 merger, everyone of them, but less than a handful.

3 So California thinks this merger is going to help the  
4 seventh largest economy in the world and the 32  
5 million people that are in it.

6 I beg that you look very hard at the  
7 impact on California. We're not talking about  
8 California. We're talking about the Port of Los  
9 Angeles, the Port of Long Beach, the Port of Oakland,  
10 which brings in all the overseas freight that goes  
11 through those intermodal ports on to the Midwest and  
12 to the East.

13 It's not the fact that competition is  
14 adversely affected or impacted. It's the shippers in  
15 California that wants this. Who better than the  
16 shippers who judge the competitive effects of this  
17 merger? I mean we looked at the competitive facts.  
18 The Attorney General looked at the competitive facts.  
19 But it's the shippers who decided that in their best  
20 interest, that they felt that the merger was better  
21 than any other rail proposal.

22 I think that we had hearings in San

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1 California; that the combined UPSP will offer a  
2 financially stronger and a faster and more reliable  
3 service than that which we received today in  
4 California; that California will benefit from the  
5 improved routes, particularly the north to south  
6 Seattle to Los Angeles, the I-5 corridor will be  
7 invigorated with two competitors where today, neither  
8 competitor has a good route.

9 Fourth, the expanded single line service  
10 will be available to California shippers, both to the  
11 Northwest and to the Midwest with virtually every line  
12 shortened by 200 to 300 miles.

13 The UP represents a much stronger  
14 financial entity capable of extensive investment in  
15 tracks, equipment and facilities improvement needed in  
16 California to serve Californians.

17 Finally, the merger will be beneficial for  
18 the two major projects in California, namely, the  
19 Alameda Railroad Corridor from Los Angeles and the  
20 NAFTA improvements needed in Imperial and San Diego  
21 Counties.

22 So in our brief, we recommended that the

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1 Francisco. We had hearings in Los Angeles. We had a  
2 special hearing on the Montana Rail Link and we came  
3 away with two messages. First, that the merger will  
4 greatly enhance and shorten single line service to and  
5 from California, particularly for intermodal shipments  
6 moving from those three ports that I mentioned.

7 The second message is that the proposed  
8 divestiture of one of the two lines in the central  
9 corridor is not a good idea for California.  
10 Initially, our Commission would show some interest in  
11 the Montana Rail Line for divestiture of a line  
12 through the central corridor and as I mentioned after  
13 reviewing the comments of the party and the record for  
14 the workshops devoted to the Montana Rail Link  
15 proposal, we concluded that the BN Santa Fe, through  
16 its trackage rights, will provide the kind of central  
17 corridor service and competition will be best for  
18 California.

19 So looking at the merger overall, the  
20 Commission supports it for five reasons. First, we  
21 think that the SP can no longer provide the adequate  
22 service as it should for a major competitor in

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1 Board consider certain conditions. All of those  
2 conditions were premised, if the trackage rights  
3 agreement does not work as envisioned, if it doesn't  
4 work and provide the competition that we expect it to,  
5 then you have the right and the obligation to provide  
6 a divestiture alternative later if we determine that  
7 that's appropriate.

8 We also believe that the BN Santa Fe  
9 trackage agreement should provide them with the  
10 ability to serve new customers on both the UP and the  
11 SP line and not just on the SP line.

12 The other are a couple of requirements on  
13 the rural areas. We believe the MODOC line should  
14 continue in operation and not be abandoned and that  
15 there's one, the Northwestern Pacific Railroad should  
16 be given a second carrier to accessing its cars out of  
17 Northern California.

18 So in summary, I believe I want to  
19 reiterate that the State of California is unified and  
20 strongly supports the merger, including the labor  
21 unions and we urge its approval. Now the labor unions  
22 will speak for itself later on, but I do want to thank

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1 you for permitting me to speak today. I'm a little  
2 disappointed that the shippers weren't here because  
3 all you heard this afternoon was anti-merger and I  
4 think that you've got to recognize this is the largest  
5 railroad in California. California is the largest  
6 railroad -- is the largest economy west of the  
7 Mississippi. It's probably larger than all of those  
8 states, including Texas and this impact on this merger  
9 is very vital to us because all the traffic coming  
10 from Asia through California is going to be handled  
11 through those ports of Long Beach and through Port of  
12 Oakland.

13 VICE CHAIRPERSON SIMMONS: I didn't think  
14 anything was larger than Texas.

15 MR. CONLON: Hey! I won't comment on that  
16 one.

17 (Laughter.)

18 But let me make one analogy. I apologize,  
19 but I think it's appropriate here. We're talking  
20 about going from 3 to 2 and the 2 is the trackage  
21 rights agreement and I think you've got to look at  
22 what the competition is without the 3 to 2. We'd be

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1       having three carriers and I'm not sure they'd have one  
2       carrier with 35,000 miles of tracks the BN and Santa  
3       Fe, and you'd have two carriers less than 14,000 each  
4       competing against them. It's kind of like having --  
5       with all due respect -- it's like the Dallas Cowboys  
6       playing against the Tampa Buccaneers and the Arizona  
7       Cardinals. I don't think that works. I think you  
8       would have two competitors, the '49ers against Dallas  
9       and let them go head to head and the customers and the  
10      public of California will benefit through lower rates.  
11      So we're saying two carriers is enough, if they're  
12      both solid and they're both viable to lower the rates,  
13      just like they had in your earlier corridor of Powder  
14      River.

15               So I think that's really what we're  
16      relying on, is two strong competitors are better than  
17      one strong competitor and two weak competitors. So  
18      that is really where we're coming from.

19               CHAIRPERSON MORGAN: In terms of the  
20      shippers that you've mentioned are in support of this  
21      merger, is that pretty wide spectrum of shippers?

22               MR. CONLON: We had three days of

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1 hearings. We couldn't find -- I can't even remember  
2 a shipper that was against it. There were a couple,  
3 but I don't remember who they were because I think  
4 there was one chemical company and one cement company,  
5 but I'm sure the applicant can tell you who they are,  
6 but we had support across the board, every shipper in  
7 California.

8 So I don't know what's going on in the  
9 capital corridor in Texas because I'm not a Texan, but  
10 I'll just tell you, in California, we believe this is  
11 the right answer for those three major ports and to  
12 get better service in California and to have more  
13 single line service.

14 I think from Oakland, the single line  
15 service all the way to Chicago and the East Coast, and  
16 through the South, we cut 200 to 300 miles off of  
17 those and we get single line service all the way from  
18 the ports. Montana Rail Link stops 100 miles short of  
19 those ports. So I mean this was all looked at. We  
20 have nothing against Montana Rail Link, but we just  
21 thought we'd put it down and I must say the shippers  
22 are the ones that count. And they said that they

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1 would rather have the BN and Santa Fe trackage rights  
2 than the Montana Rail Link.

3 CHAIRPERSON MORGAN: Let's say the merger  
4 was not approved and the SP was sold in pieces. How  
5 do you think the shippers in California would respond  
6 to that?

7 MR. CONLON: Very negatively. Very  
8 disappointed that after their testifying unanimously  
9 in support of this, that I didn't do a good job of  
10 conveying their best interest to you.

11 (Laughter.)

12 CHAIRPERSON MORGAN: Well, whatever we do,  
13 you did a good job.

14 MR. CONLON: Not if you don't approve it.

15 CHAIRPERSON MORGAN: You'll have to worry  
16 about that.

17 MR. CONLON: I think Mr. Owen asked a  
18 question several hours ago that if this doesn't go  
19 through, I think that we won't have viable competition  
20 in California even though we'll have three competitors  
21 and your scenario about the trackage rights, the one  
22 trackage like in the electric system, we're doing

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1 that. California is the leader in competition. We  
2 took the electric industry and opened it up to  
3 competition. We are taking the absolute lead. We  
4 almost got ourselves killed from the onslaught from  
5 Wall Street and some of the utilities and everybody  
6 else criticizing us, but we understand what  
7 competition does. We're relying on it in the  
8 telephone industry. We're going to open all  
9 competition in California in telecommunications  
10 January 1, ahead of the Act. We're going to open up  
11 competition in the electric industry January 1, '98.  
12 So we understand competition. We understand what it  
13 can do. We do not think that in this situation it's  
14 appropriate to have the alternate of divestiture  
15 versus a merger.

16 I apologize for rambling on there.

17 COMMISSIONER OWEN: No, I was just going  
18 to say, compliment Chairman Fessler on his work on  
19 that up here. I was really proud of him in the State  
20 the way they performed on that.

21 MR. CONLON: Absolutely, and I'll pass  
22 that on to him.

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1 CHAIRPERSON MORGAN: The only other  
2 question I would ask is with respect to the shippers  
3 in the state, I presume that given some of your  
4 comments that they are concerned about, about SP's  
5 long-term ability to serve as they would like?

6 MR. CONLON: I don't think anybody is  
7 saying that the SP is going to go bankrupt, but I  
8 think everybody believes that they will cut back, they  
9 will downsize, they will not be as viable a competitor  
10 and provide the service that the BN and Santa Fe would  
11 do with the UPSP on the other side of the fence.

12 I mean each shipper had to make that  
13 decision independently and as I say, less than a  
14 handful and we had three days of these hearings. We  
15 didn't have one day. We had three days and not one  
16 shipper that I can remember was against it. There  
17 were a half a dozen, but I don't even remember who  
18 they were.

19 CHAIRPERSON MORGAN: Thank you very much.

20 MR. CONLON: Thank you.

21 CHAIRPERSON MORGAN: Next we will hear  
22 from Tom McFarland, again, representing Springfield

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