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

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

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

MRL submitted its responsive application at the request of several shipper groups and individual shippers located in the central corridor.

Western Shippers Coalition, Kansas Grain and Feed
Association, Mountain Plains Communities and Shippers Coalition and other central corridor-based groups representing thousands of affected parties have expressly requested that the Board approve the MRL responsive application.

Individual shippers such as Weyerhauser, Stone Container, Louisiana Pacific, and Farmland Industries, likewise have endorsed MRL’s proposal. Still others, including the NIT League, have urged the Board to order divestiture of a central corridor route without identifying a preferred carrier.

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

The Department of Transportation has questioned MRL’s proposal on three grounds, none of which is valid. First, DOT states that Acquisition Company will not have gathering lines in Northern California sufficient to capture an adequate traffic base. This position is plainly wrong, given that the MRL proposal provides for acquisition of lines to
Stockton and Klamath Falls, with the right to quote proportional rates to every single SP station in California and Oregon.

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

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

As the Commission recognized in UP/NP/WP, in order for a carrier to compete with Union Pacific in the central corridor, it must have a system that stretches from the West Coast to friendly connections in Kansas City. The MRL proposal contemplates just
that. The Board should reject DOT's suggestion that MRL is over-reaching.

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

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

Regional railroads have proven time and time again that customer driven inter-line service by carriers that have flexible labor agreements can actually be improvements over single line service. The shipper community, including the NIT League, has told the Board that single line service simply is not a panacea if as here, the overall quality of
competition will decrease. We urge that the Board heed the shippers' voices.

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

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

MR. SIDMAN: Yes. The Western Shippers Coalition, the Mountain Plains Communities and Shippers Coalition, Kansas Grain and Feed Association, Larson Farms, Louisiana Pacific, Trip Lumber Co., Vincent Timber, Weyerhauser, Idaho Barley Commission, Idaho Wheat Commission, Kansas Colorado Oklahoma
Shipper Association. It’s a fairly eclectic, but fairly large group of shippers.

VICE CHAIRPERSON SIMMONS: What are flexible labor conditions?

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

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

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

VICE CHAIRPERSON SIMMONS: Those that work for you.

MR. SIDMAN: Excuse me?

VICE CHAIRPERSON SIMMONS: Those unions
that work for you. But the others are not too happy
with you.

MR. SIDMAN: There are some unions that
yes, that’s correct.

VICE CHAIRPERSON SIMMONS: Okay.

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

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

MR. SIDMAN: Dennis Washington is willing
to bet 155 million dollars of equity if they can make
this work. This system is essentially the DNRGW plus.
DNRGW was a highly successful railroad at
the time of its acquisition and subsequent. MRL is
confident that this system can work.

CHAIRPERSON MORGAN: Now you mentioned DOT

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

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

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

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

VICE CHAIRPERSON SIMMONS: So you say they won’t be a viable competitor?

MR. SIDMAN: I’m saying that they will
compete for the traffic when it suits them. If you
look at page 16 of their brief, it's very telling.
They talk about the implementation of the trackage
rights. They say on day one, they'll start out by
using haulage rights. It says thereafter, BN Santa Fe
intends to implement trackage rights operations on all
areas as quickly as possible, so far so good,
consistent with traffic volumes, consistent with
traffic volumes.

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

CHAIRPERSON MORGAN: Anything else?

COMMISSIONER OWEN: I have nothing else.

I'd just like to complement you on a very fine
regional railroad though.

MR. SIDMAN: Thank you.

CHAIRPERSON MORGAN: Thank you very much.

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

MR. ALLEN: Thank you, Chairman Morgan.
Vice Chairman Simmons, Commissioner Owen. I am here today representing the Texas Mexican Railway. I am accompanied by my colleague John Edwards.

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

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

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

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

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

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

Tex Mex is one of two railroads in this case that has filed responsive applications. Tex
Mex’s application seeks trackage rights between Corpus Christi and Beaumont, Texas. These would be mainly over lines of the SP between those points.

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

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

Contrary to the applicants, we believe
that that route will be very competitive, and will attract a good deal of traffic. But even if it doesn’t, the availability of that route will still provide shippers with an important competitive alternative that will seek to keep rates down and service up.

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

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

The main point I would like to stress today is that the applicants have not given this board any persuasive reasons for denying the rights Tex Mex said. As I said earlier, applicants and BN Santa Fe have not contended that granting those rights would
present significant operational problems for either of them.

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

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

Members of the Board, those are not good arguments for denying the rights sought by Tex Mex. Contrary to the applicant’s claim, there are lots of reasons to believe that the applicants settlement with BN Santa Fe will not come close to remedying the loss of competition that the merger will cause in the market served by Tex Mex.
Tex Mex is far from alone in that view. That opinion is shared by the United States Department of Justice, the United States Department of Transportation, the United States Department of Agriculture, the Texas Department of Transportation, the Texas Railroad Commission, the Texas Attorney General, and more than 100 shippers that have filed letters and verified statements in support of Tex Mex's responsive application.

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

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

Three, the fact that the BN Santa Fe's route to Corpus Christi will be significantly more
congested than the SP’s route over which Tex Mex seeks

trackage rights.

Four, the fact that even under the rosiest

traffic projections BN Santa Fe’s share of the U.S.

Mexican market is almost certain to be a small

fraction of the SP’s current share of more than a

third.

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

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

Given that fact, there are no good reasons

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

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

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

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

MR. ALLEN: Yes. We believe it does.

CHAIRPERSON MORGAN: Along with some other things.
MR. ALLEN: Yes. We believe it does.

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

MR. ALLEN: Thank you very much.

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

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

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

Today I will demonstrate first that the proposed merger will reduce access to class one carrier service on the Giddings/Llano from two to one. Second, that a modest revision to the BNSF agreement
would preserve competition without interfering with CMTA’s planned passenger rail system.

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

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

To my second point, as you can see from visual display number two, a modest revision to the
BNSF agreement would resolve this reduction in service in a manner consistent with the public interest. By extending BNSF's trackage rights south to include the segment between McNeil and Kerr, and granting the BNSF related interchange rights at either McNeil or Kerr, the Board would preserve competition, and at the same time, provide an incentive for the 80 percent of shipper traffic that originates west of McNeil, to move away from what will be the 89 percent of the passenger rail system in terms of boardings per day.

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

The Federal Transit Authority dictated that this segment and the line be used for mass transit when it granted funds for the purchase of the line.
CMTA recognizes that this is not the forum to resolve all the issues that may arise regarding the development of passenger rail in Austin. It simply asks that access to class one carrier service on the line be preserved in a manner that does not harm its planned passenger rail system.

In addition, because of the interrelationship of the rail grade crossing and the interchange rights at McNeil, CMTA also asks the board to retain jurisdiction over the accommodation of passenger rail through the McNeil interchange where the passenger rail will cross the UP/SP line.

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

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

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

MS. PALKO: Yes. That is correct.

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

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

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

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

Apparently now, the revision to the BNSF
agreement would make those local rights and would give
the BNSF the authority to interchange with
Giddings/Llano traffic there.

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

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

Second, this would still require as I
demonstrated briefly before, that in order to
interchange, the traffic would have to flow through
the main portion of the planned passenger rail system.
But even assuming arguendo that this revised BNSF agreement would resolve all of these issues, would arrange for appropriate competition with the BNSF at Elgin, it should still be rejected because it does not comply with the public interest standard as reflected in the statutes and regulations for the board.

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

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

The Austin San Antonio Rail Corridor Council predicts that only two rail lines can carry as
many passengers an hour as 16 lanes of highway. They simply have growth that is too great to be accommodated through a highway system. For Austin, this planned passenger rail will be an essential service.

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

The Board has supported passenger rail in its decisions in the past. In particular, in LACTC, they took the ICC took certain actions, and I’m quoting “to help LACTC to fulfill its mission to provide mass transit passenger service.”

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

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

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

So I know public good is a right thing to work for, but at what point in time do you keep crowding the freight service out of the system there and say okay, you’ve got to slow down, you’ve got to move here and there. So it makes it a very difficult decision for us and a very difficult problem for me to
wrestle with personally, because here's somebody who
is paying their own pay. We're subsidizing all these
metro links and everything else around the country
here to a considerable degree.

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

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

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

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

MS. PALKO: Actually, this would be a
beneficial impact for the 80 percent that originates west of McNeil.

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

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

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

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

VICE CHAIRPERSON SIMMONS: Are they all with you, all 18 million of them?
MR. WILLIAMSON: In spirit they are. I will assure you that I may give Union Pacific 1,000 of them, but the rest of the 18 million are with us on this.

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

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

CHAIRPERSON MORGAN: We’re not saying that word up here.

MR. WILLIAMSON: We had probably about 15 hours of oral arguments. We were surprised to have this many people attend.
We also commissioned a comprehensive study of the merger from the Center for Economic Development at the University of North Texas. Our position after reviewing the evidence, the filings of Union Pacific, after reviewing the public testimony, after talking to the analysts, we voted unanimously, the three railroad commissioners, to oppose the merger, because we found that the merger was anti-competitive and not in the best interest of the shippers of Texas.

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

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

Now early on -- can I tell you a story? Early on, before this process began, before they had the public meetings, our assistant, a secretary executive assistant, a scheduler named Emily Baker. She's 25 years old, a graduate of SMU. No experience
in railroads, had no information, no knowledge of
this, because this is before we started. I asked
Emily, I said, "Look at this map, look at this map and
tell me why Union Pacific is buying Southern Pacific."

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

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

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

Let me show you the 1,753 miles of massive
parallel trackage. Shane, put the first map back up,
before the merger. I want to show you what we’re
talking about.
When you go, start in Texarkana, start at the first point of our state, when you go from Texarkana down to Houston, Texas, from Shreveport to Houston, massive parallel. You go from Texarkana over to Dallas Fort Worth, parallel. From Dallas Fort Worth down to Houston, parallel. From Dallas Fort Worth to Austin, Texas. To Austin, Texas to San Antonio, Texas, to Corpus Christi, parallel.

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

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

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

MR. WILLIAMSON: It does show the green, it's very small. But they are all to the west. Like Kansas City Southern runs down to Beaumont, and
Burlington Northern has a route into Houston. But most of them are to the west.

I wanted to highlight the parallel tracks in this map. Your map in front of you does show the other tracks. But suffice it to say, 7,000 of the 11,000 miles of track would be owned by one railroad. Eighty percent of the petrochemical industry, 88 percent of the plastic resins, 86 percent of the switching terminals, and 90 percent of our gateways to Mexico will be controlled.

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

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

MR. WILLIAMSON: Actually they would have.

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

When this merger is signed, if you sign it on Wednesday --
eight. I said 11 of the 13 rail lines coming out of Houston, Texas.

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

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

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

Ninety thousand carloads a year. Ninety thousand. I said 265,000 carloads. I said shippers, but it’s carloads. Ninety thousand carloads a year is
what is up for competition. Assuming the best case scenario that BN will get 50 percent of the 90,000 carloads a year. That works out to 123 carloads a day.

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

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

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

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

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

Inclosing, this proposed merger will allow
Union Pacific to dominate the major markets in Texas.
It will allow Union Pacific to monopolize the track ownership in the eastern half of our state. It will allow Union Pacific to control the 265,000 captive shippers. We know that. That's given up front. It will allow UP to have a virtual monopoly on the fourth largest city in America, Houston, Texas, a virtual monopoly.

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

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

Consumers and shippers, thousands, not only in Texas, but in the nation will be harmed as a result. I don’t think you want your legacy to be the Board that allowed one company to dominate the largest petrochemical complex in the world, to allow one
company to dominate the Texas routes to Mexico, to monopolize the Texas Gulf Coast.

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

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

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

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

MR. WILLIAMSON: Yes ma'am.

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

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

MR. WILLIAMSON: Laredo, as we heard
earlier from the Tex Mex lawyer, Mr. Allen, said that Laredo has 55-60 percent of the gateway to Mexico in Texas. They are the gateway to Mexico, the biggest gateway in Texas.

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

I think Union Pacific can stand that competition. They’re not getting any competition.
anywhere else. I think they can stand that competition.

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

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

MR. WILLIAMSON: We have the biggest railroad. And we have good competition. The biggest railroad had 35 percent of the competition and Southern specific had 40, 45 percent of the competition and we had head to head competition. They may be hurting in other parts of the nation, but they were making money in Texas, and that's what we want to preserve. And you can preserve this, Commissioner Owen, and still have your one line, your single line.
rail service. You can -- traffic flows north and
south through here, most of it does. You can do it.
You don’t have to divide up the railroads and segment
them. They’re going to do it anyway because they’re
just like the stagecoach. They’re going to stop at
every port if you can find a car. They’re going to do
that, a lot of them are going to do that.

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

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

I commend you for that.

VICE CHAIRPERSON SIMMONS: He had to do
that.

MR. WILLIAMSON: No, actually we didn’t.

VICE CHAIRPERSON SIMMONS: I’m from
Oklahoma. I know how you work down there.

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

In the interest of efficiency, we can be efficient, but they've got to carry their burden and if they don't do it, if we get into their deal and try to make it for them, that's not a market-based solution, that's a Government solution and we don't
want that. You don’t want it and I know you don’t want to do that.

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

All we ask is you divest the Texas track.

We’ll be fine.

COMMISSIONER OWEN: Thank you very much.

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

MS. FISHER: Good evening, Members of the Board. It is evening, I guess. My name is Rebecca Fisher and I’m an Assistant Deputy Chief for the Antitrust section of the Texas Attorney General’s Office.

I am here today to reiterate and accentuate the fact that it is the State of Texas that will suffer more than any other state in the country if the merger is approved as proposed.

I’m afraid, Vice Chairman Simmons, that I am going to sound both like Commissioner Williamson, as well as the DOJ, and I have little new to add, but
I would ask for your endurance for five more minutes.

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

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

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

This point is made obvious by the fact of
the massive parallel lines that were discussed, as
well as by the fact that the applicants have
identified more 2 to 1 points in Texas than in any
other state.

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

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

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

As has been discussed with numerous
speakers today, the Texas-Mexican gateways are also
threatened with substantial loss of competition, the
potential monopoly at Laredo that would be created at
Laredo and the general control that UPSP would have
over all of the Texas-Mexican gateways as addressed
mostly by Tex Mex, but other speakers here today, and
could have far-reaching consequences.

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

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

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

As you've just heard, the Texas Railroad Commission shares the belief held by the Attorney
General that the merger, as proposed, would not be in the public interest. And I think it is important that the Board know that these two agencies came to this conclusion under significantly different circumstances.

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

The Railroad Commission requests the merger be approved only if very substantial conditions are imposed on lines and terminals in Texas, but it is
the opinion of the Attorney General that the negative effects of the merger on the entire western United States justifies the finding by this Board that the merger be denied outright.

The overarching anticompetitive problems anticipated because of the duopoly that will be created if the merger is allowed will not be reduced by conditions being imposed on the rail markets in Texas, even the significant rail conditions that are being requested by the Railroad Commission.

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

We strongly urge the Board to deny the merger.

Thank you. Any questions? Thank you very much.

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

(Pause.)
Gregory Conlon will be presenting the statement.

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

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

The California Public Utility Commission, after a series of hearings, one specifically on the Montana Rail Link, had a 5-0 decision supporting the merger and less than a handful of shippers from California, every shipper in California that was
before us in three days of hearings supported this merger, everyone of them, but less than a handful.
So California thinks this merger is going to help the seventh largest economy in the world and the 32 million people that are in it.

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

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

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

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

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

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

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

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

So looking at the merger overall, the Commission supports it for five reasons. First, we think that the SP can no longer provide the adequate service as it should for a major competitor in...
Board consider certain conditions. All of those conditions were premised, if the trackage rights agreement does not work as envisioned, if it doesn’t work and provide the competition that we expect it to, then you have the right and the obligation to provide a divestiture alternative later if we determine that that’s appropriate.

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

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

So in summary, I believe I want to reiterate that the State of California is unified and strongly supports the merger, including the labor unions and we urge its approval. Now the labor unions will speak for itself later on, but I do want to thank
you for permitting me to speak today. I'm a little disappointed that the shippers weren't here because all you heard this afternoon was anti-merger and I think that you've got to recognize this is the largest railroad in California. California is the largest railroad -- is the largest economy west of the Mississippi. It's probably larger than all of those states, including Texas and this impact on this merger is very vital to us because all the traffic coming from Asia through California is going to be handled through those ports of Long Beach and through Port of Oakland.

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

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

(Laughter.)

But let me make one analogy. I apologize, but I think it's appropriate here. We're talking about going from 3 to 2 and the 2 is the trackage rights agreement and I think you've got to look at what the competition is without the 3 to 2. We'd be
having three carriers and I’m not sure they’d have one carrier with 35,000 miles of tracks the BN and Santa Fe, and you’d have two carriers less than 14,000 each competing against them. It’s kind of like having -- with all due respect -- it’s like the Dallas Cowboys playing against the Tampa Buccaneers and the Arizona Cardinals. I don’t think that works. I think you would have two competitors, the '49ers against Dallas and let them go head to head and the customers and the public of California will benefit through lower rates. So we’re saying two carriers is enough, if they’re both solid and they’re both viable to lower the rates, just like they had in your earlier corridor of Powder River.

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

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

MR. CONLON: We had three days of
hearings. We couldn’t find -- I can’t even remember a shipper that was against it. There were a couple, but I don’t remember who they were because I think there was one chemical company and one cement company, but I’m sure the applicant can tell you who they are, but we had support across the board, every shipper in California.

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

I think from Oakland, the single line service all the way to Chicago and the East Coast, and through the South, we cut 200 to 300 miles off of those and we get single line service all the way from the ports. Montana Rail Link stops 100 miles short of those ports. So I mean this was all looked at. We have nothing against Montana Rail Link, but we just thought we’d put it down and I must say the shippers are the ones that count. And they said that they...
would rather have the BN and Santa Fe trackage rights than the Montana Rail Link.

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

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

(Laughter.)

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

MR. CONLON: Not if you don’t approve it.

CHAIRPERSON MORGAN: You’ll have to worry about that.

MR. CONLON: I think Mr. Owen asked a question several hours ago that if this doesn’t go through, I think that we won’t have viable competition in California even though we’ll have three competitors and your scenario about the trackage rights, the one trackage like in the electric system, we’re doing
that. California is the leader in competition. We took the electric industry and opened it up to competition. We are taking the absolute lead. We almost got ourselves killed from the onslaught from Wall Street and some of the utilities and everybody else criticizing us, but we understand what competition does. We're relying on it in the telephone industry. We're going to open all competition in California in telecommunications January 1, ahead of the Act. We're going to open up competition in the electric industry January 1, '98. So we understand competition. We understand what it can do. We do not think that in this situation it's appropriate to have the alternate of divestiture versus a merger.

I apologize for rambling on there.

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

MR. CONLON: Absolutely, and I'll pass that on to him.
CHAIRPERSON MORGAN: The only other question I would ask is with respect to the shippers in the state, I presume that given some of your comments that they are concerned about, about SP's long-term ability to serve as they would like?

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

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

CHAIRPERSON MORGAN: Thank you very much.

MR. CONLON: Thank you.

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