

STB FD 32760 6-10-96 I 84187

BEFORE THE
SURFACE TRANSPORTATION BOARD

Item No. _____

Page Count 58JUNE, 1996 #129

Finance Docket No. 32760

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

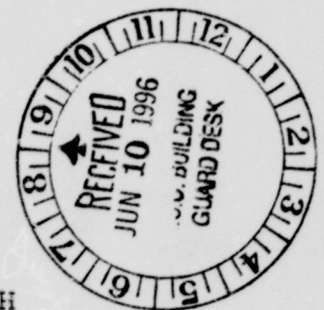
-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANYAPPLICANTS' MOTION TO STRIKE AND
FOR OTHER APPROPRIATE SANCTIONS AGAINST
PARTIES FILING NEW EVIDENCE IN THEIR BRIEFSCANNON Y. HARVEY
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UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
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APPLICANTS' MOTION TO STRIKE AND
FOR OTHER APPROPRIATE SANCTIONS AGAINST
PARTIES FILING NEW EVIDENCE IN THEIR BRIEFS

Applicants Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"),^{1/} Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and The Denver and Rio Grande Western Railroad Company ("DRGW"),^{2/} collectively, "Applicants," hereby move for sanctions for the willful disregard of Board regulations and procedures by certain parties that discussed and submitted new evidentiary material in their June 3 briefs.

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."

The Board's rules governing the content of briefs in this case have been crystal clear for many months. Under the procedural schedule adopted in October, briefs were to be submitted 20 days "after the close of the evidentiary record." Procedural Schedule, Decision No. 6, served Oct. 19, 1995, p. 9. In ruling on a joint motion filed by Conrail, KCS and other parties, the Board reiterated that the purpose of the parties' June 3 briefs would be "to present legal arguments succinctly and to marshal previously filed evidence." Decision No. 31, served Apr. 19, 1996, p. 3. In that ruling, the Board also expressly admonished all parties that "these briefs may not contain new evidence in the proceeding" and that "inappropriate evidentiary material will be stricken." Id.^{3/}

The submission by various parties of new evidence with their briefs squarely contravenes these directives. Moreover, the improper filing of this new evidence can only have been intended to get improper evidence brought to the

^{3/} In prior cases, the Commission has reminded parties that "new evidence introduced on brief is not permitted and will be subject to motions to strike and other appropriate sanctions," West Texas Utilities Co. v. Burlington Northern R.R., Docket No. 41191, 1995 ICC LEXIS 236, at *4 (Decision served Sept. 8, 1995), and has not hesitated to strike such new evidence from briefs. See, e.g., Increased Rates on Coal, Colstrip & Kuehn, MT to Minnesota, 362 I.C.C. 30, 31 (1979) (striking new evidence presented in post-hearing brief); Increased Rates on Coal, L&N R.R., October 31, 1978, 362 I.C.C. 370, 384 (1979) (striking verified statement attached to supplemental brief as improper attempt to "introduce off-the-record material into the record").

Board's attention by forcing the filing of a motion to strike. Such conduct is expressly prohibited by the Board's canons of ethical conduct:

"A practitioner shall not offer evidence which he knows the [Board] should reject, in order to get the same before the [Board] by argument for its admissibility"

49 C.F.R. § 1103.27(d) (1995). In consequence, all of the offending material should be stricken from the record and counsel for these parties should be strongly admonished.^{4/} And, in one particularly egregious case -- involving Conrail -- additional sanctions may be warranted to deter behavior of this kind.

We now address, party-by-party, the particular conduct that warrants striking and other appropriate sanctions:

I. CONRAIL (CR-40 and CR-41)

Conrail's disregard of the Board's rulings was blatant. Conrail's brief discusses and/or attaches three pieces of evidence that were not "previously filed" in this case.

The most significant breach of the Board's rules and orders is Conrail's discussion of purported results of a "comparison" of rail rates for polyethylene plastics traffic.

^{4/} For the remedy of striking to be effective, the Board should require the parties to file and serve new versions of their briefs and appendices that omit the stricken portions.

CR-40, p. 11. The "comparison" itself is included within Conrail's Appendix (CR-41) labelled as "Proposed Deposition Exhibit 1" to the May 15, 1996 deposition of B. Douglas Bernheim. Neither the document nor the underlying data are in evidence in this proceeding. There is no testimony that establishes (a) its author, (b) when it was prepared, (c) its purpose, (d) the source and nature of the underlying data, (e) the methodology used, or (f) the conclusions. No witness is available, or at this stage of the proceeding could be made available, to be cross-examined about it.

Because Conrail did not file a responsive application, its last opportunity to submit any evidence in this case directed to the application was March 29, 1996. Decision No. 31, served Apr. 19, 1996, p. 3. However, neither Conrail's voluminous March 29 evidentiary submission, which comprised three volumes and several hundred pages of argument and evidence including 15 verified statements of 20 witnesses (CR-21 to 23), nor the additional evidence filed by Conrail on April 29, entitled "Further Comments in Response to the CMA Settlement Agreement" (CR-37), contained any discussion of polyethylene rates. If Conrail legitimately wished to submit evidence concerning polyethylene rates, there is no excuse for it not to have done so in its March 29 submission, especially given that Applicants had submitted a much broader, properly-designed polyethylene rate study (using data for all UP Gulf Coast polyethylene traffic, not just that moving between Texas

and New Jersey via Conrail, and using UP's actual rates, including allowances and other discounts), backed by voluminous workpapers, as part of the original application on November 30, 1995. See UP/SP-23, Peterson, p. 180. Conrail elected not to respond to this evidence on March 29.

The document was prepared by or for Conrail or its counsel on or after May 13, 1996 (the date on several pages of the document), not for cross-examination of Professor Bernheim, which would have been the only legitimate use of it at deposition, but, in the words of Conrail's counsel, as part of an effort by Conrail to "provide some insights on certain issues." Bernheim Dep., May 15, 1996, p. 77 (remarks of Mr. Hut). The document was not produced by Conrail in discovery. Id., p. 77 (remarks of Mr. Hut).^{5/}

Conrail's first improper effort to get this study before the Board occurred on May 15, at the Bernheim deposition. Conrail failed to provide the required 24-hour

^{5/} The document fell within the scope of Applicants' document requests. On April 3 -- after Conrail had filed its March 29 evidence -- Applicants submitted to Conrail a discovery request calling for "all studies, reports or analyses . . . discussing (a) transport pricing or competition for chemicals or petrochemicals (i.e., any STCC 28 [including polyethylene] or STCC 29 commodity, or such commodities generally)." UP/SP-200, Document Request No. 30, pp. 18-19. Conrail responded on April 17 that "no responsive documents have been found." See Letter from Joseph E. Killory, Jr., to Gerald P. Norton, Apr. 17, 1996 (Response to "Second Round Document Request No. 30") (Exhibit A hereto). Conrail also never produced to Applicants any of its traffic data for 1995, the year of the new study; Conrail did produce certain traffic tapes for 1994, the base year in this proceeding, but those do not relate to the period of this purported study.

notice of documents to be used at a deposition, as required by the ALJ's discovery guidelines. Conrail's counsel, Mr. Hut, sent the document directly to Professor Bernheim in California, for delivery the morning of his deposition, without providing a copy to Applicants' counsel.^{5/} Conrail's counsel then attempted to have the document marked as an exhibit at the deposition, notwithstanding that it was clearly not an appropriate subject of cross-examination for the witness.^{2/} After seeing the document, the witness made clear that there was no foundation for any cross-examination based on the document:

"I've never seen this document before. I have absolutely no idea what it represents or where the numbers are derived from. I don't know what any of these things mean. None of my opinions are based or relate to this document. This is the first I've ever seen this."

Bernheim Dep., May 15, 1996, p. 86.

Conrail's counsel rejected repeated requests to explain how the document might relate to proper cross-examination; nonetheless, Conrail's counsel was adamant that

^{5/} See Letter from A. Stephen Hut, Jr., to B. Douglas Bernheim, May 14, 1996 (Exhibit B hereto).

^{2/} Conrail's counsel acknowledged that Conrail's participation in the Bernheim deposition was limited to cross-examination. See Bernheim Dep., May 15, 1996, p. 75 (Mr. Meyer: "I also object to this line of questioning with this witness as lacking foundation and not as appropriate cross-examination of this witness' statement which is, of course, what your deposition here is limited to." Mr. Hut: "Of course.").

the document be attached to the transcript or that its substance be described in the transcript. Id., pp. 76-98 (remarks of Mr. Hut and Mr. Meyer). The document was not marked as an exhibit. Subsequent to the deposition, the court reporter confirmed that the document would not be appended to the transcript absent an order from the Board or the ALJ.^{8/} Conrail never sought such an order, despite the lapse of several weeks since the Bernheim deposition.

These facts provide no room for debate that Conrail has willfully disregarded the Board's procedural rulings in attaching to its brief and discussing therein its purported polyethylene rate study. One is left to ask: What was Conrail's counsel thinking? Only one answer is plausible. Desperate to supplement its inadequate record with new evidence to which Applicants would have no ability to respond, Conrail apparently calculated that it could willfully disregard the Board's rules governing the content of briefs on the expectation that, since Applicants could not file a reply brief, the worst that could happen would be to have the inappropriate material stricken from its brief. In the meantime, the offending material would be called to the attention of the Board and its staff without Applicants' having had a chance to rebut it.

^{8/} See Letter from John B. Bulgozdy to Scott Swanson, Alderson Reporting Company, May 21, 1996, copied to Conrail counsel (Exhibit C hereto).

This conduct directly contravenes the Board's ethical canons (see 49 C.F.R. § 1103.27(d)) and should not be tolerated. At a minimum, the new "rate comparison" and all of Conrail's discussion of it should be stricken from Conrail's Brief and Appendix. This is the sanction that Conrail surely knew would be imposed when it embarked upon its course. On April 19, in response to a motion filed by Conrail and others, the Board stated that "inappropriate evidentiary material" -- whether submitted in briefs or otherwise filed by Conrail after March 29 -- "will be stricken." Decision No. 31, Apr. 19, 1996, p. 3. It is also the minimum sanction routinely imposed by the Board in cases such as this. See, e.g., Increased Rates on Coal, Colstrip & Kuehn, MT to Minnesota, 362 I.C.C. 30, 31 (1979); Increased Rates on Coal, L&N R.R., October 31, 1978, 362 I.C.C. 370, 384 (1979). Such relief is especially appropriate in light of the fact that Conrail's new evidence comes at "a stage in the proceeding at which the opposing party will not have an opportunity to respond." Pittsburgh & Lake Erie R.R. v. ICC, 796 F.2d 1534, 1544 (D.C. Cir. 1986) (affirming ICC decision striking new evidence improperly submitted in rebuttal).^{2/}

^{2/} It is clear from the face of the document newly proffered by Conrail that the purported polyethylene rate comparison it reflects is fundamentally flawed and entitled to no weight in this proceeding, and if the study had been introduced into evidence at an appropriate time Applicants could have demonstrated those flaws to the Board through cross-examination and responsive evidence. See also Bernheim Dep., May 15, 1996, (continued...)

Conrail's discussion of the extra-record polyethylene study was not the only instance in which Conrail and its counsel improperly sought to rely on evidence not in the record. The Appendix to Conrail's Brief also includes a new verified statement, by a lawyer for Conrail, attaching workpapers produced in discovery but not made part of the Board's evidentiary record. CR-41, Finizio. Conrail's Brief then cites these items as if they were evidence properly before the Board. See CR-40, p. 25 n.37 (citing BN/SF 09971 workpapers of Ice and Rose), p. 28 n.41 (citing BN/SF 09912 workpapers of Clifton).^{10/} The Finizio statement and the attached documents and all references to them should also be stricken.

Given the nature and extent of Conrail's misconduct in this case, moreover, Applicants submit that it may be appropriate to do more than merely return Conrail's brief to

^{2/}(...continued)

pp. 89-98. Nevertheless, at this stage in the proceeding Applicants would have no fair opportunity to cross-examine its sponsor (if one were ever identified), probe the underlying data (which Conrail has never produced in discovery), and marshal evidence responding to the purported comparison within the remaining time permitted by the Board's procedural schedule. Accordingly, and in order not to reward Conrail for its egregious misconduct, there can be no reasonable alternative but to strike the rate comparison from Conrail's brief.

^{10/} Conrail might have been able to make these workpapers part of the evidentiary record before the Board if Conrail had identified them as exhibits and laid a foundation for their use in cross-examining these witnesses at their depositions on May 10 and 15, 1996, as was done with other workpapers, but it made no attempt to do so.

the state in which it should have been filed in the first place. The Board has previously reminded litigants before it that new evidence introduced on brief will be subject to motions to strike "and other appropriate sanctions." West Texas Utilities, supra.^{11/} Here, lest future parties perceive -- as Conrail apparently has -- that there is no risk to submitting new evidence in flagrant disregard of the Board's carefully constructed procedures, Applicants submit that the Board should consider imposing an appropriate stronger sanction. The Board should also scrutinize Conrail's response to this motion to bar it from using a procedural disagreement to make substantive points in violation of 49 C.F.R. § 1103.27(d).

II. QUANTUM CHEMICAL CORPORATION (QCC-5)

The Board should strike Section A (pp. 1-7) of Quantum's brief and the verified statements of Bruce G. Kuiken and Michael D. Dunn and the exhibits to those statements, which Quantum attached to its brief. Quantum has submitted these two verified statements, and relies upon these statements in Section A of its brief, in a wholly improper effort

^{11/} Federal agencies have inherent authority to impose significant sanctions for failure to comply with the agency's procedural rules. See, e.g., Atlantic Richfield Co. v. Dept. of Energy, 769 F.2d 771, 792-96 (D.C. Cir. 1984) (upholding inherent right of agency to preclude party from raising affirmative defenses as sanction for failure to comply with order); Warner-Lambert Co. v. Heckler, 787 F.2d 147, 162 (3d Cir. 1986) (upholding discretion of agency to exclude evidence for party's failure to comply with procedural rules).

to create some factual basis for its otherwise naked assertions that the merger will eliminate a potential build-in to Quantum's facility at Chocolate Bayou, Texas. Quantum's attempt to submit evidence in its brief through the statements of two witnesses who will not, and at this stage of the proceeding could not, be subject to cross-examination, is a frontal violation of the Board's rules and orders in this proceeding.

Quantum had the opportunity to submit this evidence at the appropriate time, but chose not to do so. Quantum raised the build-in issue in its Comments filed on March 26, when it asked the Board to require that a second railroad be given direct access to Quantum's Chocolate Bayou facility, but it elected to submit no verified statements or other evidence at that time.^{12/} In their April 29 Rebuttal, Applicants responded specifically and extensively to Quantum's unsupported arguments, and demonstrated that the merger would not deprive Quantum of any real, viable build-in opportunity, and would actually make a build-in by BN/Santa Fe from its nearby line more likely. See UP/SP-231, Peterson, pp. 58-62; UP/SP-231, Gehring, pp. 14-15; UP/SP-230, pp. 158-60.

^{12/} On April 29, Quantum filed a verified statement of Thomas L. Moranz, its Manager, Distribution Logistics, in which Mr. Moranz merely reiterated Quantum's conclusory assertion (again without evidentiary support) that the merger would eliminate a build-in opportunity. QCC-4, Moranz.

Now, Quantum has attempted, for the first time, to present evidence regarding the build-in. Quantum says that it is doing this "so that the record is clear." QCC-5. But there is no such exception to the rule against presenting new evidence on brief. And if Quantum had believed that Applicants misstated any facts, it could have participated in the depositions of Applicants' witnesses and cross-examined them. It did not.^{13/} Instead, Quantum would have the Board accept new evidence that will not be subject to cross-examination and would deprive Applicants of their right to close the evidentiary record. This violation of the Board's rules and orders should not be tolerated.

III. DOJ (DOJ-14)

DOJ's brief also contains argument based on evidence not in the record.

First, in its discussion of SP's ability to raise capital in order to remain a significant competitor without the merger, DOJ relies upon a purported (but unsworn and unauthenticated) statement of Mr. Edmond Lincoln -- SP's financial advisor and a witness in this case. DOJ-14, p. 40. DOJ's brief cites and attaches handwritten notes made by Ms. Eileen Zimmer, a DOJ witness, of a conversation she had

^{13/} Martin W. Bercovici, who is listed on Quantum's brief as Of Counsel, did participate in the May 8 deposition of Richard B. Peterson, but indicated that he was representing only the Society of the Plastics Industry, Union Carbide and Montell. He did not ask any questions on behalf of Quantum or about a Quantum build-in.

with Mr. Lincoln. DOJ-14, Ex. 13. The notes are not part of the record (and, in any event, do not even support the statement attributed to Mr. Lincoln^{14/}). DOJ had the opportunity to depose Mr. Lincoln about his prior statements, which would have provided the witness and Applicants with the opportunity to refute DOJ's assertions about those statements. But DOJ chose not to depose Mr. Lincoln, cancelling his deposition after it was scheduled. DOJ's discussion of this point, as well as Ms. Zimmer's notes, should be stricken.

Second, in discussing the effectiveness of trackage rights, DOJ quotes the statement of an economist that was filed in another case over a decade ago. DOJ-14, p. 27 and Ex. 2. Needless to say, Applicants did not have the opportunity to depose this gentleman to question him about the statement nor the opportunity to rebut his "testimony" as it might relate to this case. DOJ easily could have introduced this or other evidence on this point in a timely manner. Other parties did so. DOJ's attempt to introduce this evidence now -- after Applicants have filed their rebuttal evidence, the record has closed, and the briefs have been written -- should be rejected.

Third, DOJ discusses and attaches to its brief various documents produced in discovery about SP's competitive

^{14/} DOJ's characterization of the remarks recorded in the notes is incorrect, but we will not reply to them herein and thereby compound the impropriety of DOJ's improper presentation of this new evidence.

efforts. DOJ-14, pp. 20 n.57, 37, & Exs. 8-10. No party placed these discovery documents in the Board's record, although DOJ had ample opportunity to do so.^{15/}

These portions of DOJ's brief and these exhibits should also be stricken. It is particularly surprising that DOJ has disregarded the Board's clear requirements, for DOJ has previously been "cautioned" that its briefs must be based only on "factual matter in the record." Rio Grande Industries, Inc., SPTC Holding, Inc. & Denver & Rio Grande Western Railroad Co. -- Control -- Southern Pacific Transportation Co., Decision served June 15, 1988, p. 2.

IV. KCS (KCS-60)

The Board should also strike portions of KCS' brief that contain argument based on purported evidence not in the record. KCS' brief contains an out-of-record discussion of the analysis of DOD bid data performed by Professor Bernheim. Relying solely on workpapers that neither KCS nor any other party placed in the record, KCS asserts that Professor Bernheim improperly designated the winning bidder by reference to revenue per ton-mile as opposed to revenue per car figures. KCS-60, p. 39. This argument is new lawyer's testimony masquerading as a "brief." KCS had the opportunity to elicit evidence supporting its assertion at Professor Bernheim's

^{15/} The fact that they were not previously placed in the record, of course, means that Applicants had no opportunity to rebut DOJ's assertions about them.

deposition, and it exercised that right by asking the witness how winning bidders were designated.^{16/} It is improper for KCS to make assertions in its brief based only on its own interpretation of out-of-record workpapers, especially when the witness' testimony directly contradicts those assertions.^{17/}

V. SIERRA PACIFIC POWER/IDAHO POWER (SPP-16)

Sierra Pacific's brief includes new factual material about the supposed reasons why a load-out operation from the Utah coal fields to BN/Santa Fe's line at Provo would supposedly be difficult. SPP-16, p. 15 & n.7. None of this material was included in Sierra Pacific's evidentiary submissions, and no record citation is provided to support these new factual allegations. Sierra Pacific deposed UP's Mr. Nock on this very subject, and tried and failed to develop support for those assertions.^{18/} What Sierra Pacific is trying to do in its Brief is present new evidence to respond to Mr. Nock's uncontradicted testimony about the feasibility of the Provo load-out. This is improper, and should be stricken.

^{16/} KCS chose not to inquire about the cited workpaper pages at Professor Bernheim's deposition, and they were not marked as an exhibit at the deposition.

^{17/} Bernheim Dep., May 15, 1996, pp. 173-74 ("we used revenue per car and not revenue per ton-mile").

^{18/} See Nock Dep., May 10, 1996, pp. 78-79.

CONCLUSION

For the foregoing reasons, the Board should:

With respect to Conrail:

(1) Strike from Conrail's brief (CR-40) (a) lines 11-14 and footnote 20 on page 11; (b) lines 4-8 of footnote 37 on page 25; and (c) the entirety of footnote 41 on page 28;

(2) Strike from the Appendix to Conrail's Brief (CR-41) (a) "Proposed Deposition Exhibit 1" to the deposition of B. Douglas Bernheim, stamped CR610169-183; and (b) the "Further Verified Statement of Steven P. Finizio" and all attachments thereto; and

(3) Order appropriate additional sanctions.

With respect to Quantum Chemical:

Strike from Quantum's brief (QCC-5) (a) all of Section A, pages 1-7; (b) the verified statement of Bruce G. Kuiken and all exhibits thereto; and (c) the verified statement of Michael P. Dunn and all exhibits thereto.

With respect to DOJ:

(1) Strike from DOJ's brief (DOJ-14) (a) footnote 57 on page 20; (b) line 14 on page 26 through line 1 on page 27 and footnote 77; (c) lines 21 through 29 on page 37; and (d) lines 3-5 and footnote 24 on page 40; and

(2) Strike from DOJ's Appendix (DOJ-15) Exhibits 2, 9-10 and 13.

With respect to KCS:

Strike from KCS' brief (KCS-40) lines 3-12 on
page 39.

With respect to Sierra Pacific:

Strike from Sierra Pacific's brief (SPP-16) lines
1-6 on page 15 and lines 1-2 of footnote 7.

Respectfully submitted,

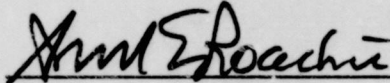
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June 10, 1996

CERTIFICATE OF SERVICE

I, Karen W. Kramer, certify that, on this 10th day of June, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
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Premarmer Notification Office
Bureau of Competition
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EXHIBIT A

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April 17, 1996

HAND DELIVERED

Gerald P. Norton, Esq.
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Dear Gerry:

Enclosed or set forth below on behalf of Conrail are the following materials and information responsive to various Applicant Discovery Requests:

1. Second Round Document Request Nos. 14 and 15:

Enclosed are Conrail's presentations to DOJ and DOT, as described in Steve Hut's April 16 letter to you.

2. Second Round Document Request No. 30: Conrail has conducted the requested search for any studies, reports, or analyses responsive to the request, as modified by our agreement. No responsive documents have been found. Unless you tell me otherwise, Conrail will assume that Applicants agree that there is no need for Conrail to further memorialize that fact by filing a formal supplement to its Responses and Objections.

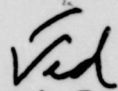
3. Sixth Round Document Request No. 36: Enclosed are responsive documents, as described in Conrail's April 16 Responses to Document Request No. 36 and Interrogatory Nos. 6-8. Please note that certain of the documents contain sensitive information, the dissemination of which would cause competitive harm to Conrail, and thus have been marked as Highly Confidential pursuant to the terms of the Protective Order.

Gerald P. Norton
April 17, 1996
Page 2

As we discussed earlier today, the Phillips item referenced in your April 16 letter to Judge Nelson has been resolved. Moreover, with regard to Applicants' requests for SP financial data ruled on by Judge Nelson last Friday, we have agreed that (i) I will let you know later today whether Conrail will file an appeal to the STB of Judge Nelson's ruling as to these materials, and (ii) if Conrail decides not to file an appeal, non-privileged responsive documents will be produced on Friday, April 19.

On that basis, it is our shared understanding that Applicants have no Conrail-related items to raise with Judge Nelson at the scheduled April 18 Discovery Conference.

Sincerely,


Joseph E. Killory, Jr.

Enclosures

EXHIBIT B

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May 14, 1996

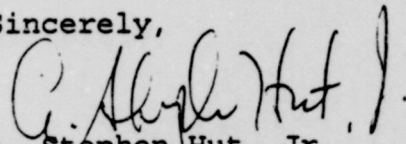
BY FEDERAL EXPRESS

Professor B. Douglas Bernheim
Cornerstone Research
1000 El Camino Real
Suite 250
Menlo Park, CA 94025-4315

Dear Professor Bernheim:

Counsel for Kansas City Southern has advised me that documents that may be used in connection with your deposition scheduled for tomorrow were to be sent to your attention by overnight mail. Accordingly, on behalf of Conrail I enclose a document with Bates Stamp Numbers CR610169 - 610183, which I may use in the deposition. I understand that Applicants' counsel will be with you in California, and I am not therefore sending an extra to their offices here. In addition, I expect to use your verified statement during the deposition.

Sincerely,


A. Stephen Hut, Jr.

Enclosure

EXHIBIT C

HARKINS CUNNINGHAM

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May 21, 1996

Mr. Scott Swanson
Alderson Reporting Company, Inc.
1111 14th Street, N.W.
Washington, D.C. 20005

Re: Deposition of B. Douglas Bernheim, STB Finance Docket
No. 32760, Union Pacific Corp., et al. -- Control &
Merger -- Southern Pacific Corp., et al.

Dear Mr. Swanson:

This letter will confirm our conversations on May 21, 1996, about the current posture of the transcript and exhibits of the May 15, 1996 deposition of B. Douglas Bernheim, which was reported by your firm.

At the deposition, there was a controversy, which is reflected on the record, concerning whether a particular document should be marked as an exhibit. At the close of the deposition, the document was not marked as an exhibit. After the deposition concluded, one of the participating counsel provided a copy of the particular document to the court reporter, and instructed the reporter to mark the document and bind it with the transcript. Counsel for other parties, and counsel for the witness, objected.

As it stands, the transcript of the deposition contains a verbatim record of the proceedings. The transcript does not include the document in question, and it has not been marked, belatedly or otherwise, as an exhibit. You have informed us of Alderson's view that, unless and until there is an order to mark and attach the exhibit, the transcript and exhibits will remain as they were at the time of the close of the deposition on May 15.

Therefore, as the record currently stands, the particular document in question will not be included as an exhibit to, and

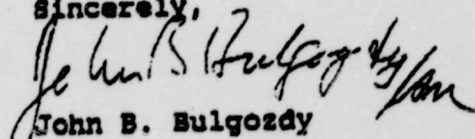
HARKINS CUNNINGHAM

Mr. Scott Swanson
May 21, 1996
Page 2

will not otherwise be bound into the transcript of, the deposition of Dr. Bernheim.

Please advise me if the situation changes in any way, or if this letter misstates in any way the current status of the transcript and exhibits. Thank you very much for your advice and cooperation in this matter.

Sincerely,


John B. Bulgozdy

cc: Stephen A. Hut, Jr., Esq.
David Foshee, Esq.
Michael D. Billiel, Esq.
Arvid E. Roach, II, Esq.
Mr. David Hallford

DEPOSITION EXCERPTS

BEFORE THE SURFACE TRANSPORTATION BOARD

PACIFIC CORPORATION,
UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --

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

TELEPHONIC DEPOSITION OF
B. DOUGLAS BERNHEIM, Ph.D.
Menlo Park, California
Wednesday, May 15, 1996

Reported by: Tina Marie Velasquez, CSR No. 10072

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1 the open and prepay tariff?

2 A. I don't recall coming across that.

3 Q. Does it refresh your recollection at
4 all -- and perhaps you have no recollection to be
5 refreshed -- if I say that, among other things, it
6 permits one to identify which railroads serve
7 which origins and destinations?

8 MR. MEYER: Steve, I think that the
9 record is quite clear about the pitfalls of
10 relying upon the open and prepay for that
11 determination without educated understanding of
12 specifics regarding plant access and the like.

13 And to the extent you're suggesting that
14 as a fact, I would object. I also object to this
15 line of questioning with this witness as lacking
16 foundation and not as appropriate
17 cross-examination of this witness statement which
18 is, of course, what your deposition here is
19 limited to.

20 MR. HUT: Of course. Have you finished?

21 MR. MEYER: But please continue. I have
22 not instructed the witness not to answer anything.

23 BY MR. HUT: I think it is fair
24 cross-examination, because I'm trying to elicit
25 from the witness whether there are other ways of

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1 achieving a specific identification of geographic
2 markets which he indicated was an important
3 criterion, and that was one way I thought to do
4 that.

5 MR. MEYER: Well, now, wait a minute.
6 You're entitled to examine this witness about his
7 identification of appropriate geographic markets
8 for purposes of his study and his assessment of
9 those issues with respect to his study.

10 I don't think this deposition is about a
11 wholesale examination of any old market definition
12 issue that might be relevant in this case. It is
13 not.

14 MR. HUT: I don't have any further
15 follow-up on that line in any event.

16 Let me ask if I can have marked the
17 document that I sent to you by overnight and by
18 fax.

19 MR. MEYER: You referring to the
20 document --

21 MR. HUT: It's --

22 MR. MEYER: Just a minute. You're
23 referring to the document that bears Bates number
24 CR610169 through 183?

25 MR. HUT: Right.

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1 MR. MEYER: Can I ask you, before we
2 proceed with that, was this a document that was
3 produced by Conrail in discovery?

4 MR. HUT: No, except to the traffic
5 tapes.

6 MR. MEYER: This is a compilation
7 prepared from Conrail's traffic tapes?

8 MR. HUT: In significant part, yes.

9 MR. MEYER: And was it prepared for
10 purposes of this deposition?

11 MR. HUT: In part. It was actually --
12 no. It was prepared to provide some insights on
13 certain issues, and I believe it's appropriate for
14 use in this deposition.

15 MR. MEYER: I'll show this to the
16 witness, but I will not allow it to be marked at
17 this point until there's some basis for its
18 inclusion in the record of this deposition, which,
19 as we all have agreed, is limited to
20 cross-examination.

21 MR. HUT: Let's mark it. You can
22 reserve whatever rights you want with respect to
23 it.

24 MR. MEYER: Well, we have an
25 identification of the Bates number. There's no

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1 issue about what the document is. If it needs to
2 be -- if you think it's appropriate to include
3 this document in the record, you can file it with
4 the board and see whether they accept it.

5 MR. HUT: It's my deposition, David, and
6 if we're paying for the reporter, I would like
7 Ms. Velasquez to mark this, please.

8 MR. MEYER: I would ask that you
9 establish some kind of foundation with this
10 witness before doing so. I will insist upon that.

11 MR. HUT: I will attempt to do so after
12 the document is marked.

13 MR. MEYER: I will not allow that.

14 MR. HUT: You're telling me that a
15 reporter that we have arranged for is not allowed
16 to mark something? You're taking advantage of the
17 physical constraint here in a way that's
18 completely inappropriate.

19 MR. MEYER: I don't think that's true.
20 I wouldn't allow this deposition to go forward if
21 you were present and insisted upon marking this
22 document before any foundation is laid for it.

23 MR. HUT: You can adjourn the deposition
24 after this is marked as far as I'm concerned.

25 MR. MEYER: No, because it's not going

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1 to be marked at this deposition.

2 MR. HUT: That is the appropriate way to
3 proceed.

4 MR. MEYER: What is?

5 MR. HUT: To have it marked. And if you
6 think that I'm -- with full rights to object or
7 with respect to any motions, you can then adjourn
8 the deposition.

9 MR. MEYER: We have identified this
10 document. It is marked by Bates number. There is
11 no issue as to what document this witness is
12 looking at for purposes of this deposition. The
13 inclusion of this document in the record may well
14 not be appropriate at this point in time.

15 MR. HUT: That's fine. You can then
16 move to strike it.

17 MR. MEYER: But it is not going to be
18 included in this deposition unless it is proper
19 for purpose of cross-examination.

20 You are not entitled to rebuttal in this
21 case. You know that. I don't know what you've
22 done with this compilation, which you have
23 testified was not prepared -- was not produced in
24 discovery. It was something prepared for purposes
25 of this deposition to shed light on some issue

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1 that you seem to think is relevant.

2 In other words, you have described this
3 as Conrail rebuttal testimony that you want to
4 include in the record. I'm not going to allow
5 that through the means of this deposition. You
6 can ask this witness about the document. The
7 witness has the document in front of him. We know
8 what document it is. You can begin to ask him
9 about it. At some point, we will cut it off if it
10 is not appropriate cross-examination.

11 MR. HUT: Here's what I'm going to do.
12 I'm going to ask the reporter to mark it, and I am
13 going to send this to Ms. Velasquez to be included
14 in the transcript. You cannot simply, by the fact
15 that I'm not there and you can embargo the
16 document, prevent it from appearing in the
17 transcript.

18 MR. MEYER: You can submit the document
19 to the board, if you wish, as a document that was
20 referred to at the deposition. And we, of course,
21 will reserve every right we have to strike the
22 document and strike such a filing by you.

23 We will not have this marked at this
24 deposition. It's as if you brought a rebuttal
25 statement from one of your witnesses, had it

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1 marked at the deposition and said "Now can you
2 answer some questions about a few of these
3 passages?" That is clearly inappropriate and you
4 know it.

5 This is no different until you've
6 established some foundation for proceeding with
7 this document with this witness at his deposition
8 which is limited for your purposes to
9 cross-examination, and that is where things will
10 stand, Steve. We're not going to continue with
11 your questions at all if you insist upon
12 proceeding in this manner. So if you don't have
13 any other proposed course of action, then we'll
14 just proceed with Mr. Foshee.

15 MR. HUT: My proposed course of action
16 is to send it to the court reporter who we have
17 retained --

18 MR. MEYER: No. It is absolutely not
19 appropriate for you to use this vehicle at this
20 deposition. I will not allow this to happen at
21 this deposition.

22 MR. HUT: You have your rights, but I'm
23 going to tell you what I'm going to do. Obviously
24 I can't make you turn the document over --

25 MR. MEYER: It is not an exhibit to this

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1 deposition.

2 MR. HUT: That's your view.

3 MR. MEYER: Well, why, Steve, are you so
4 adverse to attempting to establish foundation for
5 use of this cross-examination? I've offered you
6 that opportunity several times now. You have not
7 asked this witness one question about this.

8 It is clear to me that you simply want
9 this document to show up in the hands of the board
10 as an exhibit to some deposition. Well, it is not
11 going to happen that way.

12 So you can ask this witness questions,
13 and that's where we're going from here.

14 MR. HUT: Let me first describe the
15 document.

16 MR. MEYER: No, we're not going to have
17 a written description of your rebuttal testimony
18 in the record either. You are entitled to ask
19 this witness specific questions about the
20 document. He has it in front of him. He can look
21 at it, but we're not going to have you read it
22 into the record either. That is a clear effort to
23 circumvent the limitations that Conrail has placed
24 itself under by not being in a position to file
25 rebuttal testimony.

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1 MR. HUT: Well, I don't agree with you.

2 MR. MEYER: If you begin to describe the
3 document in any detail, I will end your portion of
4 this deposition.

5 You know this is inappropriate, Steve.
6 This is a gamut that is not going to work. So
7 let's move on.

8 MR. HUT: Well, why don't we reserve our
9 rights to file. I'll tell you what I'm going to
10 do. You've identified the document by Bate stamp
11 number. I am going to ask the reporter to mark
12 it. I'm going to do that by sending it to the
13 reporter and ask her to include it and bind it in
14 the transcript.

15 MR. MEYER: We will object to that.
16 And, in my opinion, that is not proper because
17 this has not been marked at this deposition.

18 MR. HUT: Well, I can't mark it. I'm
19 not there. If I were there, you know I could. So
20 I think you're really taking undo advantage.

21 MR. MEYER: Steve, you well know that
22 the only purpose served by putting a little
23 exhibit number on this document is so this shows
24 up in the board without you having to submit
25 rebuttal testimony. That's what this is. And it

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1 is totally improper and we will not allow it to
2 happen.

3 MR. HUT: I don't think that is fair
4 that --

5 MR. MEYER: Well, you can take that up
6 to the administrative law judge, then, Steve.
7 Maybe that's what we need to do.

8 Mr. Foshee, you can begin.

9 MR. HUT: I think you need to take it up
10 with the administrative board of services.

11 MR. MEYER: I don't think so.

12 MR. HUT: I told you what I propose to
13 do.

14 MR. MEYER: And I've told you we will
15 not allow that to happen. You can submit this to
16 the board and say it should have been marked as an
17 exhibit, as our long colloquy will reflect your
18 position, and you can make that position known to
19 the administrative law judge, to the board, and
20 they can determine whether it is appropriate.

21 We will obviously reserve our right, as
22 I've articulated here, to object and not allow
23 this to be included in the record. It's that
24 simple.

25 MR. HUT: And you can reserve your

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1 rights, and that's why I don't see why you are
2 not --

3 MR. MEYER: Because I'm not going to
4 allow you to submit the testimony first and then
5 force us to go to the trouble of trying to get it
6 unsubmitted. If you want to submit the testimony
7 first, file it as rebuttal and ask for leave to
8 submit the rebuttal. That's up to you.

9 MR. HUT: It is not rebuttal. It is a
10 fair grounds for cross-examination because what it
11 will show --

12 MR. MEYER: Wait a minute, Steve. Wait
13 a minute. Before you start arguing what it is and
14 what it will show, you haven't asked the witness
15 even whether he understands what it is or
16 understands how to read it. We haven't
17 established any foundation for your ability to
18 cross-examine this witness on this document at
19 all.

20 So why don't you do that first. I've
21 offered you the opportunity now probably five
22 times. This is beginning to get ridiculous. You
23 don't want to take that opportunity because all
24 you want is the chance to either submit the
25 document or then argue about what it shows. Well,

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1 that's what is called rebuttal, Steve, and you
2 know you're not permitted to have rebuttal. This
3 is a cross-examination deposition.

4 MR. HUT: Let me proceed, then, with the
5 document.

6 Q. If you would turn to page CR610175.

7 MR. MEYER: Let me ask the witness the
8 question that you haven't asked the witness.

9 Do you have any idea, Dr. Bernheim, what
10 this document relates to or what data it reflects
11 or what that data means?

12 THE WITNESS: I've never seen this
13 document before. I have absolutely no idea what
14 it represents or where the numbers are derived
15 from. I don't know what any of these things mean.
16 None of my opinions are based or relate to this
17 document. This is the first I've ever seen this.

18 MR. MEYER: I think we just established
19 that this is not an appropriate basis for
20 cross-examination.

21 MR. HUT: Well, I don't agree. You
22 asked me to establish a basis for
23 cross-examination. I did that.

24 MR. MEYER: You can ask him hypothetical
25 questions that have no relation to the document,

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1 if you wish. But this document is something the
2 witness, as he just testified, has no idea what it
3 is, how to interpret it, what it means, where it
4 came from. He's never seen it before. He's never
5 relied upon it. And that's the end of this
6 document for this deposition as far as I'm
7 concerned. So you can ask the witness any
8 question you want, but I removed the document
9 before the witness.

10 MR. HUT: So you're not going to allow
11 me a chance beyond which you have just asked for
12 me to establish some foundation?

13 MR. MEYER: All right. Ask your first
14 question, Steve, and we'll see where this goes.

15 BY MR. HUT: If there are other ways to
16 establish the criteria that he has indicated are
17 appropriate for a study of the effects of SP's
18 pricing --

19 MR. MEYER: You've been asking him about
20 things like seven-digit sticks. You've been
21 asking him things about the open and prepay,
22 you've been asking him about chemicals at length.
23 You've been asking those questions. I haven't
24 interfered with that examination.

25 Now you're trying to use some document

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1 that he doesn't know what the hell it is, and that
2 is inappropriate.

3 MR. HUT: It brings that to a level of
4 specificity that will shed more light on the
5 appropriateness and the correctness of his
6 criteria.

7 MR. MEYER: Then why don't you ask
8 questions at this level of specificity without
9 regard to the document. You're perfectly capable
10 of framing a proper question.

11 MR. HUT: I want to use the document,
12 and I've laid the foundation, the general
13 foundation, for the use of the document.

14 MR. MEYER: You've laid no foundation
15 whatsoever for use of this document in any way in
16 this deposition. All you have said is you are
17 exploring his criteria. Well, this witness
18 doesn't know what this document is or how to read
19 it or what it means. How could that have any
20 relationship to your examination of this witness
21 on his criteria?

22 Ask questions about how he did his
23 criteria or how they might apply to other
24 commodities. Feel free. And if you want to give
25 specific examples that are hypothetical in nature,

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1 feel free.

2 MR. HUT: You're not going to permit me
3 to examine him about the document?

4 MR. MEYER: I said a few moments ago to
5 go ahead and ask your first question, and said
6 you -- you have not asked that question.

7 MR. HUT: I'm asking him to turn to
8 610175.

9 MR. MEYER: Done.

10 BY MR. HUT:

11 Q. Now, at the top you see a word "plastic"
12 and then a seven-digit stick code.

13 Do you see that, Mr. Bernheim?

14 A. I see that on the paper.

15 Q. Do you have any reason to believe that
16 that is not a sufficiently narrow definition of
17 commodity as to achieve homogeneity as you
18 identify as one of your criteria?

19 A. All I have reason to believe is that
20 there is a piece of paper in front of me that
21 begins "Plastic, paren, STCC 2821142," end paren.
22 That's all I have reason to believe at this point.

23 Q. Do you know what that stick code stands
24 for?

25 A. No, I don't.

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1 Q. If I tell you that it's polyethylene
2 nonliquid, does that help you with respect to
3 homogeneity?

4 A. Do you want me to assume that -- I'm
5 sorry. I lost the name of the -- I lost the name
6 of the commodity.

7 Could you say the commodity name again?

8 Q. Polyethylene nonliquid.

9 A. And what's the question?

10 Q. Is that, in your view, a sufficiently
11 homogeneous commodity to meet that portion of your
12 set of criteria?

13 A. Is polyethylene nonliquid a sufficiently
14 homogeneous good to meet that portion of my
15 criteria?

16 Q. Right.

17 A. You have misunderstood my criteria. As
18 I testified before, none of the criteria are
19 applied on a purely on-off threshold basis. The
20 criteria are applied more broadly on the basis of
21 looking at an agglomeration of factors that might
22 be relevant to considering a particular product.

23 Q. Well, is one portion -- one criterion of
24 that agglomeration of the need for homogeneity?

25 A. You used the phrase "for need for

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1 homogeneity" before, and I disputed with you the
2 appropriateness of that phrase once before.

3 As I pointed out before, there is no
4 absolute measure of homogeneity. What we are
5 looking for is a product that has a collection of
6 characteristics that make it an appropriate basis
7 for conducting reliable analysis. And there is no
8 single criteria applied quantitatively as a
9 threshold of homogeneity.

10 Q. Do you agree that homogeneity is one
11 such criterion?

12 A. I would agree that the degree of
13 heterogeneity in a product is relevant for --
14 partly relevant, is one of the many factors that
15 are relevant. I think I have listed many other
16 factors that are relevant.

17 But one of the many factors that are
18 relevant in a broad evaluation of whether that
19 particular commodity is appropriate for the kind
20 of competitive analysis that might be used to shed
21 light on the desirability or undesirability of
22 this merger, and that's as far as it goes.

23 Q. With respect to the listing here on
24 successive pages of origin and destination cities
25 derived, I will represent to you from the open and

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1 prepaid tariff, it says that -- in your judgment,
2 does that define geographic markets in terms of
3 origins and destination with specific precision to
4 facility?

5 A. I have no --

6 MR. HERZOG: I object. Lack of
7 foundation.

8 THE WITNESS: I have no idea what this
9 listing is based on. I have never conducted a
10 study of -- what was the name of this product?

11 BY MR. HUT:

12 Q. Polyethylene nonliquid.

13 A. -- polyethylene nonliquid. And
14 therefore I am not venturing an opinion one way or
15 another as to whether those are appropriate
16 geographic markets. That hasn't been a subject of
17 my testimony.

18 I will add that, for any particular
19 good, it takes a detailed economic evaluation to
20 determine what the scope of the relevant market is
21 as I have discussed in great detail in the context
22 of Dr. Majure's wheat study.

23 There are all sorts of pitfalls involved
24 in that sort of thing, and one can't make those
25 sorts of judgments about whether a market has or

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1 has not been defined appropriate before conducting
2 that kind of analysis.

3 Q. Would you agree, sir, that two railroads
4 that deliver the same commodity between the same
5 origin and destination pairs participate in the
6 same geographic market?

7 MR. MEYER: Object to the form. How are
8 you defining origin and destination?

9 MR. HUT: As it's set out on this page.

10 MR. MEYER: As you've represented it to
11 be based on some open and prepaid designation?

12 Is that what you mean?

13 MR. HUT: Yes.

14 THE WITNESS: I wouldn't necessarily
15 agree with that. I don't know enough, as I sit
16 here, to form an opinion about that. The actual
17 geographic markets may be considerably more narrow
18 than the ones that you're using here. So it's not
19 necessarily the case that if two railroads serve
20 the same origin-destination pair, as you have
21 defined origin destinations, that they compete.

22 It is also not necessarily true for a
23 similar reason that they are the only railroads
24 that compete. There is no way to judge one way or
25 another, based on what you have told me, whether

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1 the railroads that you are listing as competitors
2 on that criterion bear any relationship whatsoever
3 to the railroads that actually compete. There's
4 no basis for that.

5 BY MR. HUT:

6 Q. I did not mean to imply or say that they
7 were the only railroads that competed necessarily.

8 What my question is -- let me try to say
9 it more particularly.

10 When two railroads ship the same
11 seven-digit stick commodity from the same origin
12 to the same destination, under what circumstances
13 would you say they are not competing in the same
14 geographic market?

15 MR. MEYER: Asked and answered.

16 BY MR. HUT:

17 Q. Go ahead and answer it again.

18 A. Well, as I said a minute ago, to
19 evaluate the answer to that question, to determine
20 the geographic markets properly, one would have to
21 conduct a detailed economic evaluation of the
22 transportation markets for that particular
23 commodity.

24 Having not done that for this commodity,
25 I cannot venture an opinion as to whether any

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1 definition of the markets that you place before me
2 is even remotely related to the actual markets. I
3 just have no basis for forming such an opinion. I
4 have not studied this commodity.

5 Q. Similarly if you can turn to page
6 610182.

7 A. I'm there.

8 Q. Do you have any judgment as to whether a
9 particular set of shipments totalling 232,000 tons
10 in 1995 of approximately 13 million --
11 thirteen-and-a-half million dollars in gross
12 revenues is or might be sufficiently sizable to be
13 meaningful?

14 MR. MEYER: I take it, Steve, these are
15 Conrail revenues that you're purporting to
16 represent?

17 MR. HUT: I think these are not limited
18 to Conrail Railways, no. I believe the total
19 revenue --

20 THE WITNESS: Are you citing to me
21 numbers -- you're citing to me numbers that
22 include total revenue?

23 BY MR. HUT:

24 Q. Yes.

25 A. Then I can't venture an opinion as to

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1 whether that's significant or not in the context
2 of the issues raised in this merger.

3 Q. Can you venture an opinion whether if
4 the calculation of weighted average cents per
5 ton-mile reflect that that number is the lowest
6 when UP, SP and BNSF compete, and when SP is
7 removed, the price rises in terms of cents per
8 mile by some 50%, do you have any judgment whether
9 that's significant?

10 A. I have no idea what you're referring to.

11 Q. I'm referring to the last page of the
12 document, CR610813.

13 MR. MEYER: We're not going to talk
14 about this document in this regard. If you have a
15 hypothetical question with the content that you
16 just described, I'll permit that. I won't permit
17 specific reference to this document.

18 BY MR. HUT:

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1 A. When you say revenue ^{per} ton-mile, are
2 you referring to revenue per ton-mile for an
3 entire shipment?

4 Q. Yes.

5 A. That would include any eastern portion
6 of the shipment?

7 Q. It's the revenue paid by the shipper,
8 the totality of it, yes.

9 A. Well, under the hypothetical that you're
10 describing to me, I can't possibly imagine how
11 someone could conclude anything reliable from the
12 numbers that you're describing, in the first
13 place, because it would include the revenues of
14 eastern shippers and therefore not be focused on
15 western revenue.

16 In the second place, because there are a
17 wide variety of confounding factors, including
18 transportation from other modes that would have to
19 be considered, including the fact that I will have
20 to assume that you have defined the boundaries of
21 the markets correctly so that the right
22 competitors were placed in the right markets.

23 I would have to add to that the fact
24 that you have not in your hypothetical controlled
25 for any of the other many, many factors that might

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1 affect revenues per ton-mile such as mileage and
2 tonnage and all the other things that I attempt to
3 control for in my study.

4 So even assuming that there was a basis
5 for the kinds of numbers that you're
6 hypothetically putting before me, I would say that
7 there's no way on earth that a reasonable
8 economist could reach a reliable conclusion about
9 the effects of this merger from those kinds of
10 numbers.

11 MR. HUT: Subject to rights that I
12 reserved earlier, David, that will conclude my
13 examination.

14 But as I indicated, I propose to do what
15 I indicated earlier which is to ask the reporter
16 to bind this in the transcript as Exhibit 1.

17 MR. MEYER: You've made your request.
18 We don't think that is appropriate and will resist
19 that.

20 Mr. Foshee?

21 THE REPORTER: Let me change my paper.

22 (Recess taken.)

23 (Whereupon, Mr. Hut is no longer in
24 attendance at the deposition via telephone.)

25 EXAMINATION BY MR. FOSHEE

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1 I don't remember clearly because, as you
2 know, this didn't feature in the final analysis.

3 MR. FOSHEE: I think that's the end of
4 my questions. Thanks a lot, Professor Bernheim.

5 THE WITNESS: Thank you.

6 MR. MEYER: I just have a few items.
7 No particular order.

8 EXAMINATION BY MR. MEYER

9 BY MR. MEYER:

10 Q. Professor Bernheim, a short while ago
11 you were asked the question whether you for
12 purposes of your analysis of the amount of money
13 left on the table by the various carriers when
14 they bid, whether you determined the winning
15 bidder using revenue per car or revenue per
16 ton-mile.

17 Do you recall that?

18 A. Yes, I do.

19 Q. Do you know whether you used revenue per
20 ton-mile or revenue per car?

21 A. Yeah. During the break, I did have an
22 opportunity to check on what we had actually done
23 there. And for the purpose of doing the analysis
24 that you're referring to, the amount of money left
25 on the table difference between winning bids and

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1 losing bids, we used revenue per car and not
2 revenue per ton-mile.

3 Q. You were also asked a few questions
4 about clustering. And, in particular, you were
5 asked whether you used clustering in performing
6 your analysis of the Nunn and Ploth data.

7 If you had clustered or used clustering
8 with respect to that data, how would that have
9 been done?

10 A. Well, had I done some sort of adjustment
11 for clustering with that data, I would have done
12 it in a way that was consistent with what I had
13 done in the other -- for the other studies, for
14 the UP studies, and in the way that we looked at
15 the Majure data, which is basically to define the
16 clusters by railroad and by origin-destination
17 pairs.

18 And, you know, that makes sense in the
19 context of the UP data, for example. You have
20 only one railroad. You may observe a number of
21 shipments that are for the same origin-destination
22 pair, for the same automobile producer, therefore
23 covered by the same contract. And they belong in
24 the same cluster.

25 Now, applying that analysis to the

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BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN
PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

Washington, D.C.

Friday, May 10, 1996

Deposition of WILLIAM E. NOCK, a
witness herein, called for examination by counsel
for the Parties in the above-entitled matter,
pursuant to agreement, the witness being duly
sworn by ANN L. BLAZEJEWSKI, CM, a Notary Public
in and for the District of Columbia, taken at the
offices of Covington & Burling, 1201 Pennsylvania
Avenue, N.W., Washington, D.C., 20044-7566, at
10:05 a.m., Friday, May 10, 1996, and the
proceedings being taken down by Stenotype by
ANN L. BLAZEJEWSKI, CM, and transcribed under her
direction.

1 discuss in your testimony about the ability to
2 generate an adequate return going forward on the
3 merged coal business, are those based on the
4 projected costs of the merged system?

5 A. Yes. What we would project the costs
6 to be postmerger.

7 Q. And those would not be SP's costs?

8 A. No.

9 Q. Okay. If there's testimony from SP
10 witnesses relating to SP's ability to generate an
11 adequate return on investment for coal or for any
12 other segment of its business, would that be more
13 accurate information than what you're able to
14 testify to?

15 A. Yes.

16 Q. Now, you discussed with Mr. Allen the
17 potential for a load-out from the Utah coal
18 fields to Provo. Do you recall that?

19 A. Yes, I do.

20 Q. And do you consider a load-out to Provo
21 to be feasible?

22 A. Yes, I do.

23 Q. Could you explain why.

24 A. Well, the fact that there's been -- the
25 Sharp load-out is successful. Roughly the same

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1 distance that coal would need to be trucked to
2 get to Provo, and over, I think, potentially
3 better roads than the trucking of coal to Sharp
4 would lead me to believe that there would be the
5 possibility to construct such a loading facility.

6 Q. So is the terrain more favorable for a
7 load-out at Provo than it is for a load-out at
8 Sharp?

9 A. Well, I believe the truck move is over
10 better highways than occurs over Sharp. The
11 first third of the Sharp move is through very
12 mountainous roads, two-lane-highway type of roads
13 and that the last two-thirds of the move is
14 not -- is more comparable to what would occur
15 from the Price area, Price, Utah area to Provo.

16 Q. So do you consider the load-out option
17 that you discuss in your testimony for BN Santa
18 Fe at Provo to be a realistic possibility?

19 A. Yes, I do.

20 Q. Now, at around -- let me ask you to
21 look at page 50 of your testimony, please. In
22 the second full paragraph on that page you
23 enumerate three options for Valmy to secure
24 access to Utah coal postmerger. Do you see that?

25 A. Yes, I do.

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Item No. 84204

Page Count 2

JUNE, 1996 #133

DONELAN, CLEARY, WOOD & MASER, P.C.

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OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

June 11, 1996

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
12th Street & Constitution Avenue, NW
Washington, DC 20423



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

Dear Secretary Williams:

On Friday, June 7, 1996, we filed on behalf of a number of Interested Parties a supplemental response to the motion of the Western Shippers' Coalition for clarification or reconsideration of Decision No. 36. We had been authorized to include Capital Metropolitan Transportation Authority ("CMTA") among the Interested Parties joining in this supplemental response requesting additional time at the oral argument on July 1, 1996. However, we inadvertently omitted CMTA's name from the cover and its counsel of record from pages 5-6, even though its pleading number (CMTA-13) was shown on the cover. In addition, counsel of record for Conrail was also inadvertently omitted from pages 5-6.

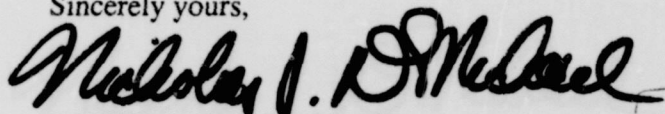
Please let the record be corrected to show that CMTA is among the parties joining in the supplemental response. The listing of counsel of record should also be corrected by adding the following:

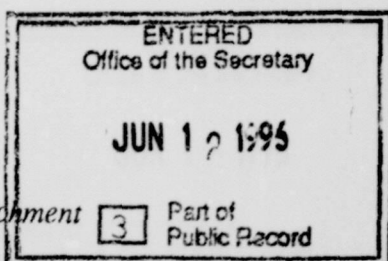
Albert B. Krachman
Monica J. Palko
BRACEWELL & PATTERSON, L.L.P.
2000 K Street NW, Suite 500
Washington, DC 20006
*Attorneys for Capital Metropolitan
Transportation Authority*

David K. Mayers
William J. Kolasky, Jr.
A. Stephen Hut, Jr.
WILMER, CUTLER & PICKERING
2445 M Street NW
Washington, DC 20037
*Counsel for Consolidated Rail
Corporation*

We have attached a new cover page showing CMTA as among the parties joining in the supplemental response. We apologize for any inconvenience this error may have caused the Board or any of the parties.

Sincerely yours,


NICHOLAS J. DEMICHAEL
FREDERIC L. WOOD



Attachment ☒ Part of
Public Record

cc: All Parties of Record

0124-480

ARU-17	CCRT-11	CMTA-13	CPSB-9
CR-42	DOW-26	ESI-26	FARM-3
IP-17	KCS-62	MONT-10	MPCSC-4
MRL-27	NITL- 20	RCT-8	RENO-5
SP-17	SPI-23	STRC-12	TM-40
TUE-18	UCC-15	WCTL-23	WEP-4
WPL-13	WPS-13		

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760



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

**SUPPLEMENTAL RESPONSE OF INTERESTED PARTIES
TO
MOTION OF WESTERN SHIPPERS' COALITION FOR
CLARIFICATION OR RECONSIDERATION OF DECISION NO. 36**

Allied Rail Unions/Transp. Comm. Union
City Public Service Board of San Antonio
Consolidated Rail Corporation
Farmland Industries, Inc.
Montana Rail Link, Inc.
Mountain-Plains Communities & Shippers Coalition
Sierra Pacific Power Co./Idaho Power Co.
Texas Utilities Electric, Inc.
The Kansas City Southern Railway Company
The Railroad Commission of Texas
Union Carbide Company
Wisconsin Electric Power Co.
Wisconsin Public Service Corporation

City of Reno
Coalition for Competitive Rail Transportation
Entergy Services, Inc..
International Paper Company
Montell USA, Inc.
Save the Rock Island Committee, Inc.
Texas Mexican Railway Company
The Dow Chemical Company
The National Industrial Transportation League
The Society of the Plastics Industry, Inc.
Western Coal Traffic League
Wisconsin Power and Light Company
Capital Metropolitan Transportation Authority

June 11, 1996

STB FD 32760 6-4-96 I 84027

84027

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Item No. _____

Page Count 5

JUNE, 1996 # 90

June 4, 1996



HAND DELIVERY

The Honorable Vernon A. Williams

Secretary

Surface Transportation Board

Room 2215

12th Street and Constitution

Avenue, N.W.

Washington, D.C. 20423

Re: UP/SP Merger, Finance Docket No. 32760

Dear Mr. Williams:

Attached for filing is the original and twenty copies of the Petition to Intervene, For Leave to File Brief and to Become Party of Record and Brief of the Port of Tacoma for filing with the Surface Transportation Board. Facsimile copies of these pleadings were filed with the Board on June 3, 1996. Also enclosed is a diskette containing these pleadings.

Sincerely,

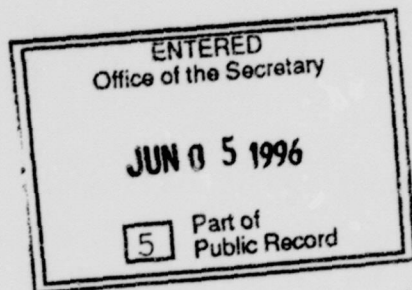
Ann R. Homan

Ann R. Homan,
Transportation Specialist

Enclosures

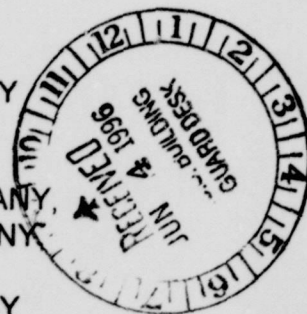
ENTERED	
Office of the Secretary	
JUN 05 1996	
5	Part of Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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



PORT OF TACOMA'S PETITION TO INTERVENE,
FOR LEASE TO FILE BRIEF AND TO BECOME PARTY OF RECORD

Pursuant to C.F.R. 1112.4, the Port of Tacoma ("POT"), a municipal corporation of the State of Washington, seeks leave to intervene in this proceeding, to file the accompanying brief and to become a party of record. POT previously provided a verified statement in support of the UP/SP merger dated March 8, 1996.

POT together with the Port of Seattle ("POS"), now enjoy the ranking of the second largest container load center in North America with 2.4 million containers annually moving through the ports, largely by rail. A recent study projects that container traffic (20 foot equivalents) moving through both ports will double by 2015 to 2.6 million, and Midwest corn exports through Washington State ports could grow 66 percent, exceeding 10 million metric tons by 2015. Thus, POT is, and will increasingly be, dependent upon rail service to ensure competitiveness.

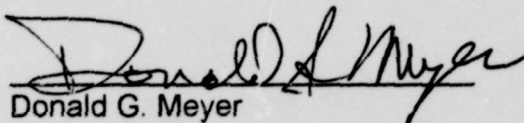
The POT Commission voted on March 7, 1996, to support the merger between UP and SP, POS, POT, and UP have established a cooperative effort to resolve future rail needs and infrastructure development in the Pacific Northwest. The merger between UP and SP will restore competitive balance in the western United States and enhance competition. POS, POT, and the entire Northwest will

receive the direct and immediate benefits of the improvements to be produced by the UP/SP merger.

POT previously participated in this proceeding by filing a verified statement. Its intervention, therefore, will not broaden the issues raised in the proceeding or affect the procedural schedule. Acceptance of the brief will not prejudice any party and will assist the Board in its deliberations.

POT requests that it be allowed to intervene and that the accompanying brief be accepted.

Respectfully submitted,



Donald G. Meyer
Deputy Executive Director
Port of Tacoma
PO Box 1837
Tacoma WA 98401
(206) 383-9410

Dated this 3rd day of June, 1996.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

BRIEF OF THE PORT OF TACOMA

The Port of Tacoma ("POT") submits this brief in support of the merger proposed by Union Pacific and Southern Pacific.

1. POT is a port district and municipal corporation of the State of Washington. POT and the Port of Seattle ("POS") together enjoy the ranking of second largest container load center in North America. A recent study projects that container traffic (20 foot equivalents) moving through both ports will double by 2015 to 4.6 million, and Midwest corn exports through Washington State ports could grow 66 percent, exceeding 10 million metric tons by 2015. Thus, POT is, and will increasingly be, dependent upon rail service to ensure competitiveness.

2. POT plays an important part in assuring the region's economic vitality and depends heavily on the ability to move rail freight through the region quickly, economically, and efficiently. The maintenance and enhancement of the region's freight railroads play an important role in maintaining the competitive position of the region's ports in relation to other West Coast ports.

3. POT supports the UP/SP merger, POT, POS, and UP share a common concern over the quality of rail service to and from the Pacific Northwest and mutually desire to ensure long term reliable service and access between intermodal

rail terminals over the main lines of UP and SP in order to accommodate future increases in demand for rail freight service.

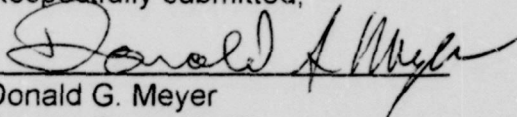
4. POT, POS, and UP have entered into a cooperative agreement that, among other things, assures that UP will respond to market demands by increasing capacity for rail traffic between Puget Sound and Chicago and along UP's new single line route in the I-5 Corridor through appropriate investments and operating improvements as described in the UP/SP merger application. (A copy of the agreement was previously submitted by POT with its verified statement.) POT and POS will actively support such improvements to help assure all governmental approvals are obtained quickly.

5. Jointly and cooperatively, POT, POS, and UP will address such issues as, mainline capacity, port access, grade separation, intermodal service, potential diversion, passenger rail issues, etc. This cooperative effort demonstrates the mutual commitment POT, POS, and UP have made to ensure that the Puget Sound region maintains a viable, competitive rail system in relation to other West Coast ports, and illustrates how well the ports can work with the private railroad sector to ensure economic health for the region.

6. The Burlington Northern/Santa Fe merger, which POT also supported, created a much larger and more efficient railroad than either UP or SP. The UP/SP merger, as conditioned on the agreement with BN/Santa Fe, will not only restore competitive balance in the western United States, but it will also enhance competition. The UP/SP merger will create single line service along the West Coast for the first time. The UP/SP agreement with BN/Santa Fe will add competition to that new single line service. POT and the entire Pacific Northwest will receive the direct and immediate benefits of those and many other improvements to be produced by the UP/SP merger.

7. For all the reasons set forth above, POT requests that this Board approve the UP/SP merger and the BN/Santa Fe agreement.

Respectfully submitted,

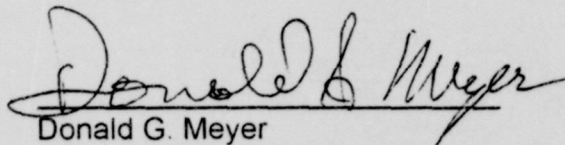


Donald G. Meyer
Deputy Executive Director
Port of Tacoma
PO Box 1837
Tacoma WA 98401
206-383-9410

Dated this 3rd day of June, 1996.

CERTIFICATE OF SERVICE

I certify that on this Feb 3rd 1996, copies of the Petition of the Port of Tacoma to Intervene, for Leave to File Brief and to Become Party of Record and the Brief of the Port of Tacoma, were served on all parties of record by first class mail, postage prepaid.



Donald G. Meyer
Deputy Executive Director
Port of Tacoma
PO Box 1837
Tacoma WA 98401
206-383-9410

STB FD

32760

6-3-96

I

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DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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Item No. _____

Page Count 7

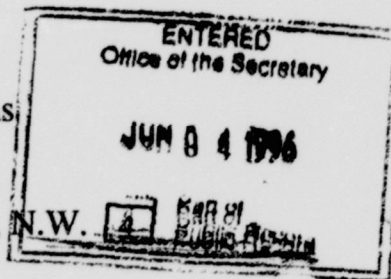
June 3, 1996

JUNE, 1996 #61

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary

Surface Transportation Board
12th and Constitution Avenue, N.W.
Washington, D.C. 20423



Re: Finance Docket No. 32760:

*Union Pacific Corporation, Union Pacific Railroad Company and
Missouri Pacific Railroad Company-- Control and Merger --
Southern Pacific Rail Corporation, Southern Pacific Transportation
St. Louis Southwestern Railway Company, SPCSL Corp. and the
Denver and Rio Grande Western Railroad Company.*

Dear Secretary Williams:

Please find enclosed for filing in the above-captioned proceeding an original and twenty (20) copies each of two separate documents: (1) Notice of Withdrawal of Counsel for Kennecott Energy Company, Kennecott Utah Copper Corporation and U.S. Borax, Inc., which is designated as KENN-20; and (2) Withdrawal of Request for Conditions, Withdrawal of Support for Responsive Application of Montana Rail Link, Inc., and Statement of Support for Control and Merger Application, which is designated as KENN-21. Also enclosed is a diskette formatted in WordPerfect 5.1 containing these documents.

In addition, this will serve to advise the Board that Kennecott Energy Company hereby withdraws its request to participate in oral argument in this proceeding, scheduled for July 1, 1996. In its letter-request dated May 24, 1996, Kennecott Energy Company requested 12 minutes of oral argument time. Kennecott Energy Company now withdraws that request for time, since it no longer wishes to participate in oral argument.

DONELAN, CLEARY, WOOD & MASER, P.C.

Honorable Vernon A. Williams

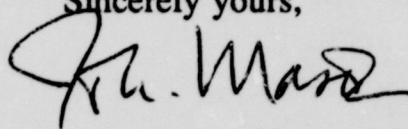
Secretary

June 3, 1996

Page 2

Should you have any questions, please do not hesitate to contact the undersigned. Thank you in advance for your cooperation and assistance.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "John K. Maser III", written in a cursive style.

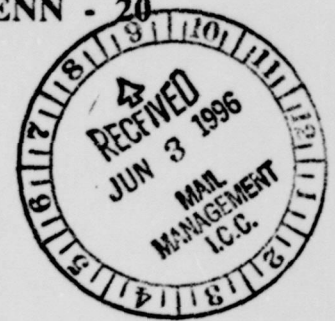
John K. Maser III

Enclosures
3760-020

cc: All parties of record.

KENN - 20

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

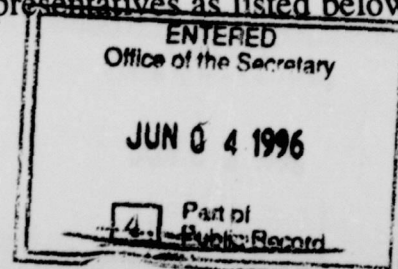
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

--Control and Merger--

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

NOTICE OF WITHDRAWAL OF COUNSEL
FOR KENNECOTT ENERGY COMPANY, KENNECOTT UTAH COPPER
CORPORATION AND U.S. BORAX, INC.

Donelan, Cleary, Wood & Maser, P.C. hereby withdraws as counsel for Kennecott Energy Company, Kennecott Utah Copper Corporation, and U.S. Borax, Inc. in the above-referenced proceeding. These parties will continue to participate in this proceeding, but through their own representatives, as listed below, all of whom are already listed as Parties of Record on the service list in this proceeding. Accordingly, all orders, notices, and other pleadings in this proceeding should be directed to the indicated representatives as listed below:



Patricia Britton, Esquire
Chief Legal Officer
KENNECOTT ENERGY COMPANY
505 South Gillette Avenue
Gillette, Wyoming 82716

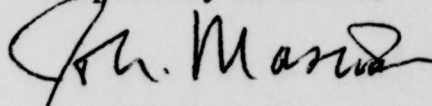
Mr. Gary L. McFarlen
Director-Transportation
KENNECOTT ENERGY
COMPANY
505 South Gillette Avenue
Gillette, Wyoming 82716

Ray D. Gardner, Esquire
Chief Legal Officer
KENNECOTT UTAH COPPER
CORPORATION
8315 West, 3595 South
P.O. Box 6001
Magna, Utah 84044-6001

Mr. Wayne L. Stockebrand
Director-Transportation
KENNECOTT UTAH
COPPER CORPORATION
8315 West, 3595 South
P.O. Box 6001
Magna, Utah 84044-6001

Michael I. Stockman, Esquire
General Counsel
U.S. BORAX, INC.
26877 Tourney Road
Valencia, California

Respectfully submitted,



John K. Maser III
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD &
MASER, P.C.
1100 New York, Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

June 3, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

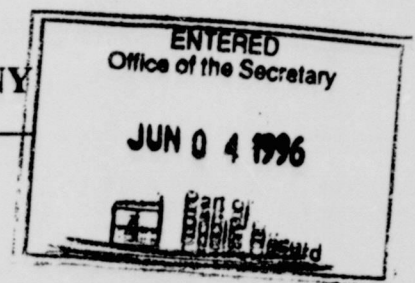
--Control and Merger--

*Southern Pacific Rail Corporation
Southern Pacific Transportation Company, St. Louis
Southwestern Railway Company, SPCSL Corp. And The
Denver And Rio Grande Western Railroad Company*

WITHDRAWAL OF REQUEST FOR
CONDITIONS, WITHDRAWAL OF SUPPORT
FOR RESPONSIVE APPLICATION OF
MONTANA RAIL LINK, INC., AND
STATEMENT OF SUPPORT
FOR CONTROL AND MERGER APPLICATION

submitted on behalf of

KENNECOTT ENERGY COMPANY



Kennecott Energy Company, a party of record in this proceeding, hereby withdraws its request for conditions (as set forth in its Comments, Evidence, and Request For Conditions, dated March 29, 1996, and identified as KENN-10 and KENN-11). Kennecott Energy Company also withdraws its support for the responsive application of Montana Rail Link, Inc. (as set forth in its Comments in

Support of the Responsive Application of Montana Rail Link, Inc., and identified as KENN-17). Kennecott Energy Company hereby states for the record in this proceeding that it now supports the merger and control application of Union Pacific Corporation, et al., and Southern Pacific Rail Corporation, et al.

Respectfully submitted,

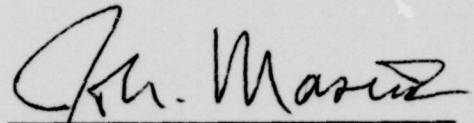
Patricia Britton (Jm)

Patricia Britton, Esquire
Chief Legal Officer
KENNECOTT ENERGY COMPANY
505 South Gillette Avenue
Gillette, Wyoming 82716

June 3, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 1996, copies of the foregoing (1) Notice Of Withdrawal Of Counsel for Kennecott Energy Company, Kennecott Utah Copper Corporation and U.S. Borax, Inc., and (2) Withdrawal Of Request For Conditions, Withdrawal Of Support For Responsive Application Of Montana Rail Link, Inc., And Statement Of Support For Control And Merger Application submitted on behalf of Kennecott Energy Company were served upon, Arvid E. Roach, II, Esq., Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044, and Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Washington, D.C. 20036, by hand delivery or telecopy, and upon all other parties of record by first-class mail, postage prepaid, in accordance with the rules of the Surface Transportation Board.



John K. Maser III

STB

FD

32760

6-3-96

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83970

83920

LAW OFFICES

KELLER AND HECKMAN LLP

1001 G STREET, N.W.
SUITE 500 WEST
WASHINGTON, D.C. 20001
TELEPHONE (202) 434-4100
FACSIMILE (202) 434-4648

BOULEVARD LOUIS SCHMIDT 87
B-1040 BRUSSELS
TELEPHONE 32(2) 732 52 80
FACSIMILE 32(2) 732 53 92

JOSEPH E. KELLER (1907-1994)
JEROME H. HECKMAN
WILLIAM H. BORGHESE, JR.
MALCOLM D. MACARTHUR
WAYNE V. BLACK
TERRENCE D. JONES
MARTIN W. BERCOVICI
JOHN S. ELDRED
RICHARD J. LEIGHTON
ALFRED S. REGNIERY
WILLIAM L. KOVACS
DOUGLAS J. BEHR
RAYMOND A. KOWALSKI
SHIRLEY A. COFFIELD
MICHAEL F. MORRONE
JOHN B. RICHARDS
JEAN SAVIGNY
JOHN S. DUBECK
PETER L. DE LA CRUZ
MELVIN S. DROZEN
LAWRENCE P. HALPRIN
RALPH A. SIMMONS
RICHARD F. MANN

C. DOUGLAS JARRETT
SHEILA A. MILLAR
GEORGE G. MISKO
STEPHANE E. BECKER
GARENE E. DODGE
PATRICK J. HURD
MARK A. SIEVERS
JEAN-PHILIPPE MONTFORT
DAVID G. SARVADI
JONATHAN R. SPENCER
CATHERINE R. NIELSEN
SUSAN M. HATELI
AMY N. RODGERS
ELLIOT BELLOS
MARK L. ITZKOFF
ROSEMARIE A. KELLEY
BRIAN T. ASHBY
T. PHILLIPS BECK
ARTHUR S. GARRETT III
LESLIE E. SILVERMAN
ELIZABETH N. HARRISON
ROBERT M. G. LOCKWOOD
CAROL MOORS TOTH

JOAN C. SYLVAIN
MARTHA E. MARRAPESE
DONALD T. WURTH
DAVID B. BERRY
NICOLE B. DONATH
S. DEBORAH ROSEN
DAVID R. JOY
FREDERICK A. STEARNS
TONY RUSSELL EPPS
THOMAS C. BERGER
JOHN F. FOLEY
ALEXANDRE MENCIK VON ZEBINSKY
PHILIP H. ANDREWS
JENNIFER A. BONANNO
JOHN REARDON
PATRICK W. RATKOWSKI
MARA A. MICHAELS
PAULA DEZA
JOHN W. HOPKINS, JR.

*NOT ADMITTED IN D.C.
*RESIDENT BRUSSELS

SCIENTIFIC STAFF

DANIEL S. DIXLER, Ph. D.
CHARLES V. BREDER, Ph. D.
ROBERT A. MATHEWS, Ph. D. D.A.B.T.
JOHN P. MODDERMAN, Ph. D.
HOLLY HUTMIRE FOLEY
JUSTIN C. POWELL, Ph. D.
JANETTE HOUK, Ph. D.
LESTER BORODINSKY, Ph. D.
THOMAS C. BROWN
MICHAEL T. FLOOD, Ph. D.
ANDREW P. JOVANOVIH, Ph. D.

WRITER'S DIRECT DIAL NUMBER

June 3, 1996

Item No. _____

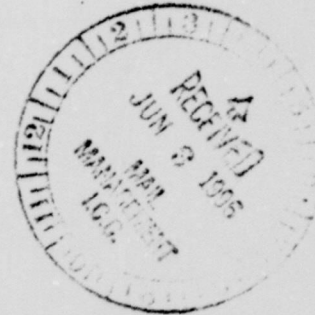
(202) 434-4179

Page Count 21

JUNE 1996 #68

HAND-DELIVERED

Office of the Secretary
Case Control Branch
Attention: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D. C. 20423



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

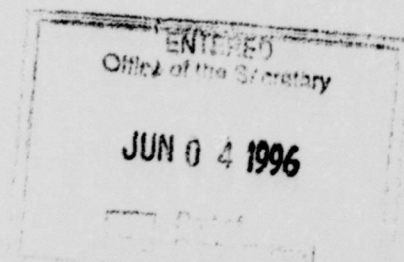
Dear Mr. Secretary:

Enclosed herewith for filing in the above-captioned proceeding are the original and 20 copies of the Brief On Behalf of North American Logistic Services, a division of Mars, Incorporated, NALS-2.

Yours very truly,

Terrence D. Jones
Terrence D. Jones

Attorney for North American
Logistics Services, a division
of Mars, Incorporated



STB FD 32760 6-3-96 I 83916



Port of Seattle

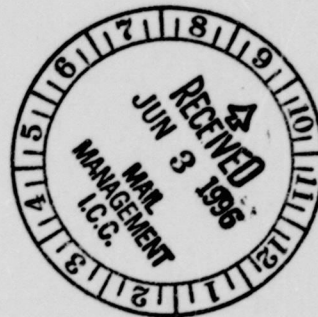
93916

Item No. _____

Page Count 6

May 31, 1996

JUNE, 1996 #86



VIA FEDERAL EXPRESS

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Room 2215
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

Re: ***Finance Docket No. 32760***
Union Pacific/Southern Pacific Rail Merger

Dear Secretary Williams:

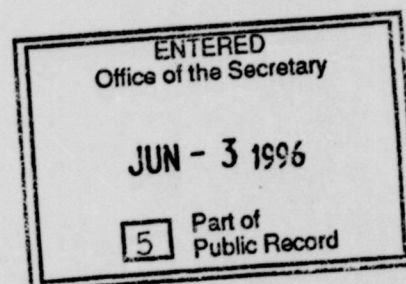
Enclosed please find the original and 20 copies of Port of Seattle's Petition to Intervene, For Leave to File Brief and To Become Part of Record, Brief of the Port of Seattle, and Certificate of Service in the above referenced matter.

Sincerely,

Ann DeKoster
Legal Administrator

Enclosure

acd

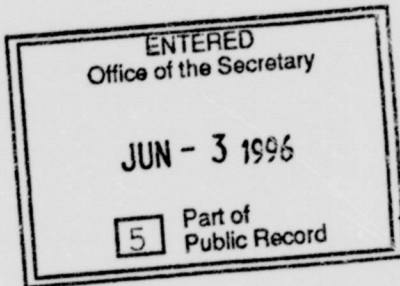


P.O. Box 1209
Seattle, WA 98111 U.S.A.
(206) 728-3000
TELEX 703433
FAX (206) 728-3252



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



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

PORT OF SEATTLE'S PETITION TO INTERVENE,
FOR LEAVE TO FILE BRIEF AND TO BECOME PARTY OF RECORD

Pursuant to C.F.R. § 1112.4, the Port of Seattle ("POS"), a municipal corporation of the State of Washington, seeks leave to intervene in this proceeding, to file the accompanying brief and to become a party of record. POS previously provided a verified statement in support of the UP/SP merger dated March 8, 1996.

POS together with the Port of Tacoma ("POT"), now enjoy the ranking of the second largest container load center in North America with 2.4 million containers annually moving through the ports, largely by rail. A recent study projects that container traffic (20 foot equivalents) moving through both ports will double by 2015 to 4.6 million, and Midwest corn exports through Washington State ports could grow 66 percent, exceeding 10 million metric tons by 2015. Thus, POS is, and will increasingly be, dependent upon rail service to ensure competitiveness.

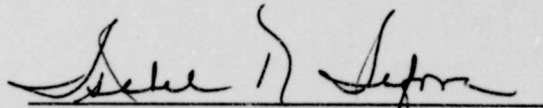
The POS Commission voted on March 6, 1996, to support the merger between UP and SP. POS, POT, and UP have established a cooperative effort to resolve future rail needs and infrastructure development in the Pacific Northwest. The merger between UP and SP will restore competitive balance in the western United States and enhance competition. POS, POT, and the entire Northwest will receive the direct and immediate benefits of the improvements to be produced by the UP/SP merger.

ORIGINAL

POS previously participated in this proceeding by filing a verified statement. Its intervention, therefore, will not broaden the issues raised in the proceeding or affect the procedural schedule. Acceptance of the brief will not prejudice any party and will assist the Board in its deliberations.

POS requests that it be allowed to intervene and that the accompanying brief be accepted.

Respectfully submitted,



Isabel R. Saford
Senior Port Counsel
Port of Seattle
P. O. Box 1209
Seattle, WA 98111
(206) 728-3216

Dated this 30th day of May, 1996.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

BRIEF OF THE PORT OF SEATTLE

The Port of Seattle ("POS") submits this brief in support of the merger proposed by Union Pacific and Southern Pacific.

1. POS is a port district and municipal corporation of the State of Washington. POS and the Port of Tacoma ("POT") together enjoy the ranking of second largest container load center in North America. A recent study projects that container traffic (20 foot equivalents) moving through both ports will double by 2015 to 4.6 million, and Midwest corn exports through Washington State ports could grow 66 percent, exceeding 10 million metric tons by 2015. Thus, POS is, and will increasingly be, dependent upon rail service to ensure competitiveness.

2. POS plays an important part in assuring the region's economic vitality and depends heavily on the ability to move rail freight through the region quickly, economically, and efficiently. The maintenance and enhancement of the region's freight railroads play an important role in maintaining the competitive position of the region's ports in relation to other West Coast ports.

3. POS supports the UP/SP merger. POS, POT, and UP share a common concern over the quality of rail service to and from the Pacific Northwest and mutually desire to ensure long term reliable service and access between intermodal rail

ORIGINAL

terminals over the main lines of UP and SP in order to accommodate future increases in demand for rail freight service.

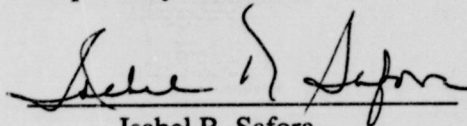
4. POS, POT, and UP have entered into a cooperative agreement that, among other things, assures that UP will respond to market demands by increasing capacity for rail traffic between Puget Sound and Chicago and along UP's new single line route in the I-5 Corridor through appropriate investments and operating improvements as described in the UP/SP merger application. (A copy of the agreement was previously submitted by POS with its verified statement). POS and POT will actively support such improvements to help assure all governmental approvals are obtained quickly.

5. Jointly and cooperatively, POS, POT, and UP will address such issues as, mainline capacity, port access, grade separation, intermodal service, potential diversion, passenger rail issues, etc. This cooperative effort demonstrates the mutual commitment POS, POT, and UP have made to ensure that the Puget Sound region maintains a viable, competitive rail system in relation to other West Coast ports, and illustrates how well the ports can work with the private railroad sector to ensure economic health for the region.

6. The Burlington Northern/Santa Fe merger, which POS also supported, created a much larger and more efficient railroad than either UP or SP. The UP/SP merger, as conditioned on the agreement with BN/Santa Fe, will not only restore competitive balance in the western United States, but it will also enhance competition. The UP/SP merger will create single line service along the West Coast for the first time. The UP/SP agreement with BN/Santa Fe will add competition to that new single line service. POS and the entire Pacific Northwest will receive the direct and immediate benefits of those and many other improvements to be produced by the UP/SP merger.

7. For all the reasons set forth above, POS requests that this Board approve the UP/SP merger and the BN/Santa Fe agreement.

Respectfully submitted,

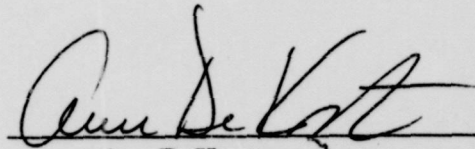


Isabel R. Safora
Senior Port Counsel
Port of Seattle
P. O. Box 1209
Seattle, WA 98111
(206) 728-3216

Dated this 30th day of May, 1996.

CERTIFICATE OF SERVICE

I certify that on this May 31, 1996, copies of the Petition of the Port of Seattle to Intervene, for Leave to File Brief and to Become Party of Record and the Brief of the Port of Seattle, were served on all parties of record by first class mail, postage prepaid.



Ann DeKoster
Legal Administrator
Port of Seattle
Legal Department

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ORIGINAL

STB FD 32760 6-1-96 I 83893

Item No. 83893

Page Count 1

JUNE, 1996 #3

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



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

RISS INTERMODAL'S PETITION TO
INTERVENE AND FOR LEAVE TO FILE BRIEF

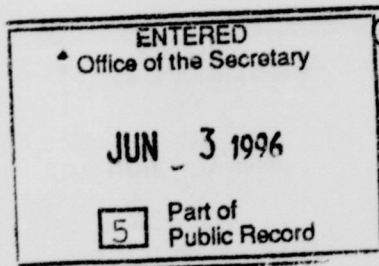
RISS Intermodal seeks leave to intervene in this proceeding and to file the accompanying brief.

RISS Intermodal previously provided a verified statement in support of the UP/SP merger dated October, 1995.

As a result, RISS' intervention will not delay this proceeding or introduce new issues. As a significant intermodal marketing company, RISS can contribute an important perspective for the Surface Transportation Board's consideration. RISS therefore requests permission to intervene and to file the accompanying brief.

Respectfully submitted,

Thomas R. Brown
President
RISS Intermodal
4 Orinda Way, Suite 100A
Orinda, CA 94563
(510) 253-3801
May 31, 1996



STB FD 32760

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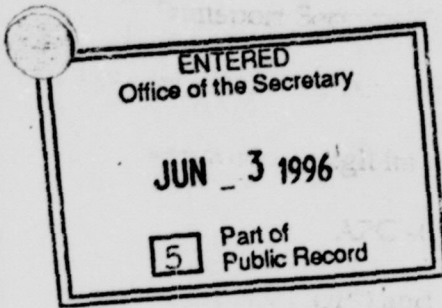
83892

Item No. 83892

Page Count 3

JUNE, 1996 #2

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760



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

AMERICAN PRESIDENT COMPANIES' PETITION
TO INTERVENE
FOR LEAVE TO FILE BRIEF AND TO BECOME
PARTY OF RECORD

Pursuant to 49 C.F.R. §1112.4, American President Companies ("APC") seeks leave to intervene in this proceeding, to file the accompanying brief and to become a party of record. APC previously provided a verified statement in support of the application by Union Pacific in this proceeding signed by Timothy J. Rhein and dated November 3, 1995.

APC is a multi-national company which provides international and domestic containerized transportation service. It contracts with various rail and motor carriers for inland movement of its international cargo as well as for the movement of domestic containerized cargo throughout North America. APC provides domestic wholesale and retail transportation brokerage service through its subsidiary, APL Land

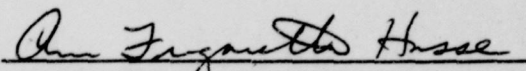
Transport Services, Inc. APL also provides international consolidation services through its subsidiary American Consolidation Services, Ltd., as well as logistic consulting services through its subsidiary, American President Business Logistics Services, Ltd.

APC strongly supports the merger between Union Pacific Railroad Company ("UP") and Southern Pacific Transportation Company ("SP"). APC believes the merger will benefit APC and its subsidiaries as well as its many thousands of customers by offering an efficient rail network which can compete vigorously with Burlington Northern/Santa Fe ("BNSF"). APC strong opposes any requests for divestiture because any divestiture will undermine the effectiveness of the broad system scope of the proposed merger and would negatively impact the operating plan which UP/SP propose.

APC previously participated in this proceeding by filing a verified statement. Its intervention therefore will not broaden the issues raised in the proceeding or affect the procedural schedule. Acceptance of the brief will not prejudice any party and will assist the Board in its deliberations.

APC requests that it be allowed to intervene and that the accompanying brief be accepted.

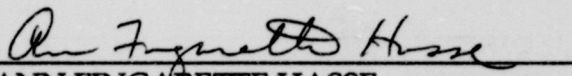
Respectfully submitted,


ANN FINGARETTE HASSE
American President Companies, Ltd.
1111 Broadway
Oakland, California 94607
(510) 272-7284

Dated: May 30, 1996

CERTIFICATE OF SERVICE

I certify that on this 31st day of May, 1996, copies of the Petition of American President Companies, Ltd. to Intervene, for Leave to File Brief and to Become Party of Record and the Brief of American President Companies, Ltd. were served on all parties of record by first-class mail, postage prepaid.


ANN FINGARETTE HASSE

AH960530Caa-0405ai-svc.

STB FD 32760

5-24-96

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BARNES & THORNBURG

83729

Franklin Tower
Suite 500
1401 Eye Street, N.W.
Washington, D.C. 20005
(202) 289-1313

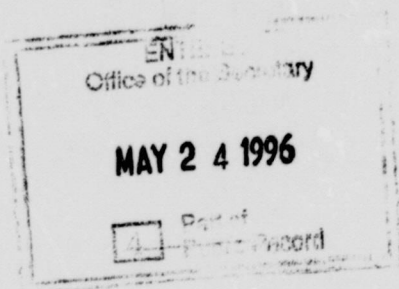
TWX 810-341-3427 B&T LAW IND
Telecopier (202) 289-1330

May 24, 1996

RECEIVED
SURFACE TRANSPORTATION
BOARD

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OFFICE OF SECRETARY



Item No. _____

Page Count _____

May, 1996 # 140

Vernon A. Williams, Secretary
Room 2223
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760 Oral Argument

Dear Secretary Williams:

Pursuant to the Order served May 9, 1996, the Railroad Commission of Texas ("RCT") requests 20 minutes to present argument with respect to the potential adverse impact of the above-captioned merger on the State of Texas and the need to impose the conditions sought by the Commission in its March 29, 1996 Comments. Argument would be limited to the need to impose trackage rights to protect the essential services of the Texas-Mexican Railroad in South Texas; the creation of neutral terminal railroads in various parts of the State; and the divestiture of parallel tracks to promote and preserve competitive rail service in the State. Given the potential adverse impact on the State of Texas, the need to protect the public interest, and the applicant's misleading attacks on the RCT's positions in their rebuttal Comments, it is respectfully submitted that the time sought for oral argument is fully warranted and reasonable. It is hereby certified that a true and correct copy of this Notification has been served on all parties of record, this 24th day of May, 1996, by first-class mail, postage prepaid.

Respectfully submitted,

Richard H. Streeter
Counsel of Record for the Railroad Commission of Texas

RHS:rs

cc: All parties of record

STB

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32760

5-24-96

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1/2

83725

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

WILLIAM A. MULLINS

DIRECT: 202-274-2953

May 24, 1996

HAND DELIVERED

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Item No. _____

Page Count 65

May, 1996 148



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

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are an original and twenty copies of The Kansas City Southern Railway Company's Petition to Reopen Decision No. 35 (KCS-57).

Also enclosed is a 3.5 inch Word Perfect diskette containing the text of KCS-57.

Finally, enclosed are 5 copies of KCS-57A, which contains excerpts of the depositions cited in the Petition.

Sincerely yours,

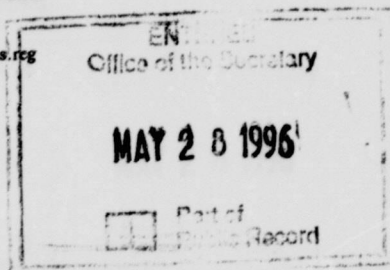
A handwritten signature in dark ink, appearing to read "William A. Mullins".

William A. Mullins

Enclosures

cc: The Honorable Jerome Nelson
All Parties of Record

(carroll)\wpdocs\mohmhc\kcs\upsp\williams.reg



BEFORE THE
SURFACE TRANSPORTATION BOARD

KCS-57

Finance Docket No. 32760

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



THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
PETITION TO REOPEN DECISION NO. 35

Office of the Secretary

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Part of
Record

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May 24, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
PETITION TO REOPEN DECISION NO. 35

On April 29, 1996, The Kansas City Southern Railway Company ("KCS") filed its "Motion to Require Amendment to Application or in the Alternative to Allow Parties to Conduct Discovery and Submit Evidence Relating to Applicants' Settlement Agreement with CMA (UP/SP-219)." On May 9, 1996, the Board denied that motion (Decision No. 35), but, based upon Applicants' indication that witnesses with knowledge of the CMA Agreement would be available for deposition, the decision indicated that discovery could be conducted and that information gained in such depositions may be included in KCS's June 3, 1996 Brief.

KCS's original motion was two pronged. First, it sought amendment of the application with the concomitant right to "test" the amended application. Alternatively, the motion requested the right to conduct discovery and to submit additional evidence that may illustrate the inadequacy of the CMA Settlement Agreement. The Board denied this motion

stating that, "KCS has made no specific showing of what additional information it intends to uncover in discovery that would be material or relevant to this proceeding." (Decision No. 35, p.3)¹ Relevance and materiality were repeated as criteria for requiring amendment of the Application or the opportunity for other parties to submit evidence. "Again we do not believe that KCS has shown the relevance or materiality of the sought information." *Id.* Denial of KCS's motion on these grounds is clearly material error, and Decision No. 35 should be reopened pursuant to 49 C.F.R. § 1115.4(b)(3). Further, KCS and other parties have now taken the depositions of Applicants' and BN/Santa Fe's witnesses regarding the effect of the CMA Agreement, and submits this new evidence as grounds for reopening Decision No. 35 pursuant to 49 C.F.R. § 1115.4(b)(1). Finally, KCS shows that the Board's final decision in this proceeding on the merits of the merger proposal itself should be based on nothing less than the most complete record possible and that parties should be allowed the opportunity to submit evidence regarding the inadequacy of the CMA Agreement as a solution to the competitive harms not solved by the original BN/Santa Fe Agreement.

KCS's motion sought amendment of the Application to reflect the effects of the settlement agreement Applicants entered into with the Chemical Manufacturers Association (CMA) and BN/Santa Fe. Although the agreement is referred to as the "CMA Agreement,"

Agreement is not
material or material

¹ Since Applicants and BN/Santa Fe consented to the depositions of their witnesses, the this issue is not addressed herein. It should be noted, however, that to require parties to predict what information may be revealed in discovery defeats the purpose of discovery! (See generally 49 C.F.R. § 1114.21 - 1114.31 and Fed. R. Civ. P. 26-37.)

a more descriptive reference would be "BN/Santa Fe - Part 3," for the Agreement actually is a second amendment to Applicants' September 25, 1996 Agreement with BN/Santa Fe.² The Board denied KCS's Motion, however, on the ground that KCS did not show "the relevance or materiality of the sought information." This reasoning is flawed. First, KCS's Motion set out, in as much detail as was possible prior to examination of witnesses, the portions of the Application that it believed would require amendment. Since the original BN/Santa Fe Agreement constitutes an integral part of the entire Application, it is conceivable that some portion of the majority of the exhibits to the Application would be affected by the new agreement. KCS is not the Applicant, and it therefore could not state at the time the motion was filed the exact provisions of the Application that should be revised. Even after deposing Applicants' and BN/Santa Fe's witnesses, KCS is not in a position to specifically point to every revision that should be made. KCS's original motion did, however, point to several specific portions of the Application that KCS viewed as likely candidates for amendment, e.g., the Operating Plan, the Market Impact Analysis, the Summary of Benefits (and underlying data) and the required Financial disclosures. (KCS-49, p. 6). To contend that KCS did not show the relevance or materiality of the effect of the CMA Agreement can be interpreted in but two ways -- either (1) the original BN/Santa Fe Agreement is not relevant or material to the Application or (2) the CMA Agreement is not relevant or material to the transaction.

² The CMA Agreement was filed by Applicants as UP/SP 219. A short description of the primary provisions was set forth in KCS's Motion (KCS-49, at 2-3).

Applicants have certainly relied heavily -- in fact almost exclusively -- on the relevance and materiality of the original BN/Santa Fe Agreement as its proposed solution to the loss of competition that will be suffered by shippers currently served exclusively by UP and SP. Applicants would therefore certainly contend that it is relevant and material. It thus follows that if the original BN/Santa Fe Agreement is relevant and material to the Application, any substantial amendments to the Agreement would be rendered relevant and material to the Application.

Likewise, Applicants agreed to the provisions of the CMA Agreement presumably to induce CMA to withdraw its opposition the merger. The CMA Agreement was also intended to address issues raised by Conrail, KCS and witness Crowley, who filed twelve verified statements on behalf of eight shippers and four trade associations. (Rebensdorf dep. at 29-30).³ The CMA Agreement is therefore both material and relevant to the transaction.

The Board in fact acknowledged the relevance of the CMA Agreement when it denied KCS's motion. "We will evaluate the effects of the CMA Settlement Agreement on the original BN/Santa Fe settlement agreement, and we will determine the efficacy of the agreements in rectifying any competitive problems that we conclude would result from applicants unconditioned merger." (Decision No. 35, at 3) The Board reiterated its intention to evaluate the CMA Agreement's effect on ameliorating competitive harms of the merger

³ References to deposition testimony in this petition will refer to the witness' post-rebuttal deposition, and five copies of the relevant pages will be filed with Secretary Williams as provided in Administrative Law Judge Jerome Nelson's April 16, 1996 Order.

are in Decision No. 37 (Decision No. 37, at 5).⁴ Accordingly, to characterize either the original BN/Santa Fe Agreement or the CMA Agreement (which is actually an amendment to the original BN/Santa Fe Agreement⁵) as not material or relevant is a clear contradiction of the Board's own positions. In fact, if the Board did not consider the CMA Agreement as relevant or material, it would have granted KCS's motion to strike references to the CMA Agreement (KCS-53). The Board's denial of KCS Motion on these grounds therefore constitutes material error.

I. The Application Should Be Amended to Reflect the Impact of the CMA Agreement Upon the Transaction

The Market Analyses (Exhibit 12) required by 49 C.F.R. § 1180.7 address the impact of the merger upon competition. "Applicants shall submit analyses of the impact of the proposed transaction - both adverse and beneficial on inter- and intramodal competition . . . Each aspect of the analysis should specifically address significant impacts as they relate to . . . essential services and competition . . . Analyses should reflect the consolidated company's marketing plan and existing and potential competitive alternatives." (emphasis added). If the CMA Agreement is indeed an attempt to resolve the concerns of parties relating to the loss of competition, then the Market Analyses (Exhibit 12) are no longer

⁴ KCS moved to strike references to the CMA Agreement from Applicants' and BN/Santa Fe's April 29 filings based on Applicants failure to amend the Application to reflect the effects of the Agreement and upon the CMA Agreement's being tantamount to a new study or new evidence and thus inappropriate for rebuttal. (KCS-53) The Board's Decision No. 37 denied that motion.

⁵ Decision No. 37, at 5, n. 5.

accurate. An important portion of Exhibit 12 that is relevant to the effect of the CMA Agreement is the requirement that "the anticipated effects of the transaction on traffic patterns, market concentration or transportation alternatives available to the shipping public" be disclosed. As shown in deposition testimony, the CMA Agreement will affect all these -- if it does not, then neither CMA, nor BN/Santa Fe nor any other party will benefit from the CMA Agreement.

The Operating Plan (Exhibit 13) required by 49 CFR § 1180.8 is to be based upon the market analysis (Exhibit 12). The traffic patterns and market concentrations required by § 1180.7(a) dictate the "operational changes following consummation of the proposed transaction . . . and the anticipated traffic density and general categories of traffic (including numbers of trains) on all main and secondary lines in the system." Exhibits 12 and 13 thus have a symbiotic relationship, and amendment of one requires amendment of both. Like the Market analyses, the Operating Plan requires amendment if the CMA Agreement is to be more than a meaningless sheet of paper.

The increased traffic resulting from the CMA Agreement impacts both the Operating Plan and the Market Analyses. The Board therefore should require amendment. As shown in the depositions taken since Applicants and BN/Santa Fe filed Rebuttal and Reply Comments and Statements on April 29, 1996, the CMA Agreement will affect traffic volume, which in turn affects the Operating Plan. Neal Owen (an outside consultant to BN/Santa Fe) testified that he believed the greatest opportunity for increased traffic as a result of the CMA Agreement was "throughout the State of Texas and also Louisiana and to degree Arkansas." Owen at 6. Mr. Owen agreed that the new traffic sources at Lake

Charles and West Lake, Louisiana would provide additional traffic. Owen at 29-30. Moreover, Mr. Owen conceded that the Memphis gateway traffic to and from Shreveport and Texarkana will provide additional traffic as a result of the CMA Agreement. Owen at 30. Mr. Owen also acknowledged that BN/Santa Fe's movement of an eastern interchange car "would move better over East St. Louis." Mr. Owen went on to say that, "if it moves through Tulsa now, it would certainly move via the St. Louis trackage rights under the settlement agreement and the CMA Agreement." Owen at 32. Exhibit 12 and 13 of the Application therefore should be amended to reflect the traffic impacts, and both are material and relevant to the transaction.

Further, the costs and benefits of the transaction reflected in the Application do not reflect the changes that will result from the CMA Agreement. The financial effects of the merger are certainly material and relevant because, if the CMA Agreement does anything, it changes the cash position of both railroads systems. The pro forma financial regulations require that changes in cash tie to the balance sheet. Moreover, the regulations require that the form and content of Exhibit 18 should be constructed in accordance with the schedule "Statement of Changes in Financial Condition" required in the most recently Annual filed Annual Report Form R-1 for the Applicants.⁶ The Applicants' Pro Forma Source and application of funds (Exhibits 18) did not tie to their Pro Forma Balance sheet (Exhibit 16) before the CMA Agreement was introduced. (See KCS-33, Verified Statement of O'Connor Darling) That link is even weaker now, with the inevitable effect that the Application starts more and more from the Application.

⁶ 49 CFR 1180.9(c).

Pro forma financial statements are forecasts. In this context, the phrase pro forma is defined to "describe accounting, financial, and other statements or conclusions based upon assumed or anticipated facts."⁷ Further, the regulations plainly speak of "forecasted adjustments" to the income statement⁸ and of "a forecast of sources and application of funds for each carrier."⁹ Footnote 7 to § 1180.9 permits -- but does not require -- the applicants to exclude general economic conditions from their forecasts, but no other exclusion or deviation from the use of forecasts is permitted by the regulations. Certainly the CMA Agreement, touted as a cure all to a wide range of competitive harms, should be reflected in the pro formas. Accordingly, the Board should reopen Decision No. 35 and require Applicants to amend their Application or, at the very least, allow the parties the opportunity to submit evidence regarding the effect of the CMA Agreement on the transaction.

II. Parties Should Be Allowed the Opportunity to Submit Evidence Regarding the Effects of the CMA Agreement To Insure That The Board's Decision Is Based Upon A Complete Record

A. Parties Should Be Allowed to Submit Evidence As To The Effect of Individual Provisions of The CMA Agreement

As predicted in KCS's original Motion (KCS-49), the CMA Agreement will accomplish little more than the original BN/Santa Fe Agreement would to ameliorate the competitive harm to shippers. By way of example the Verified Statement of Joseph J. Plaistow filed contemporaneously herewith, illustrates that BN/Santa Fe's ability to compete

⁷ See, for example, Black's Law Dictionary, or any other similar source texts.

⁸ 49 CFR 1180.9(b).

⁹ 49 CFR 1180.9(c).

with the merged UP/SP will be marginally better over some routes; however, BN/Santa Fe's costs will still be 40% to 134% higher than UP/SP's. Mr. Plaistow also points out the fallacy of relying on the directional routings as a solution to concerns expressed by the parties (V.S. Plaistow at 3-5). Finally, although it is not reflected in the CMA Agreement, both UP/SP's and BN/Santa Fe's April 29 filings, refer to the option to utilize joint facility billing. This concession, however, would have little if any effect on BN/Santa Fe economics. Mr. Plaistow's comments illustrate that the CMA Agreement does little to improve BN/Santa Fe's ability to compete as a trackage rights tenant. Parties should be allowed to submit evidence on this and other issues relating to the CMA Agreement.

B. Parties Should Be Allowed To Submit Evidence As To The Effect of the Unresolved Issues In CMA Agreement

Also of significant importance to Applicants' reliance on the BN/Santa Fe Agreement as their "grand solution" is the fact that so many issues remain unresolved both as to the Operating Plan and the competitiveness of BN/Santa Fe. A glaring flaw in Applicants' reliance on the BN/Santa Fe is magnified of the CMA Agreement, i.e., there are many unresolved issues regarding implementation by the Agreement. As explained by Mr. Carl in his deposition, the implementation process contains two activities; "negotiations" and "process of refining the details associated with implementation." Ice at 17. As articulated by Mr. Ice, negotiations yet to be concluded are:

- rates for reciprocal switch
- rates for traffic that moves under haulage agreements, and
- the specific geographic locations of the two-to-one points.

Ice at 18-19. Asked to define the "specific locations for the two-to-one points," Mr. Ice stated, "part of the implementation process is to define actual physical parameters of where the two-to-one locations start and stop." In addition to these three issues, Mr. Rose testified that the amount of space available to BN/Santa Fe at the Dayton SIT facilities had to be negotiated. Finally, as to third party switching, something both Mr. Rose and Frank Clifton want, this issue has to be resolved. As Mr. Ice stated in his Reply statement, "BN/Santa Fe separately agreed with UP and SP that the CMA Agreement does not preclude BN/Santa Fe from continuing the process of negotiating the detailed implementation of the Agreement . . ." Ice Reply at 5. See also Rose deposition at p.65.

Mr. Clifton elaborated on this in his deposition:

The meaning behind that was that they had to be established, a rate had to be established before we could really make a determination as to whether we would directly or reciprocally switch a customer. Obviously, if the SP rate was still at a high of 400 and some odd dollars, then you may opt to switch every place yourself directly if, in fact, that worked with what the customers' needs were and what our operational needs were. But that certainly had a bearing on what we decided to do at each location. And that had to be resolved first.

Clifton at 58.

1. SIT Facility at Dayton, Texas

The Dayton SIT facility presents other unresolved issues. The SIT facilities at Dayton play an important role for the plastics industry. SIT facilities are used to store cars containing plastic product manufactured in a production cycle sometimes well in advance of knowing which customers will purchase the product and the customer's location. Because producers do not know the destination of the shipments and because of the need to test

the cars while in storage, producers require that SIT facilities be as close to the production facilities as possible. Rose at 98. Dayton SIT facilities are therefore critical.

Although the CMA Agreement provides that BN/Santa Fe will have access to 50% of storage capability at Dayton, there are certain key issues that need to be resolved. As Mr. Rose testified, "there's a couple of things that have yet to be nailed down on the CMA agreement." Rose at 101. One of the issues to be resolved is availability of space. If space is available, BN/Santa Fe will get what it needs, subject to the 50% cap. However, if space is not available, BN/Santa Fe has proposed to give UPSP a "reasonable time, 30 days or 60 days" within which UPSP "would have to move their cars off that Dayton facility and give us access" Rose at 102. This is one of the issues that has yet to be "nailed down." Another issue is the length of time for BN/Santa Fe access. Since BN/Santa Fe will be subleasing space from UP/SP, does the period of time coincide with the Applicants' lease or with the period of time contained in the customer's transportation contract? Again, that issue "has not been worked out." Rose at 102-03. Until these issues are resolved, BN/Santa Fe will not know how much space at the Dayton facility will be made available to BN/Santa Fe, or when, or for what period of time; and until these issues are resolved, BN/Santa Fe will not know how competitive it will be.

2. Reciprocal Switching vs. Third Party Switching

Although Mr. Owen testified in deposition that "I don't think there would be any significant adverse service provided by the switching carrier intentionally to disadvantage the road haul carrier (Owen at 12), BN/Santa Fe officials appear to think otherwise. On behalf of BN/Santa Fe, Frank Clifton stated that "BN/Santa Fe and shippers prefer using a third

party contractor." Clifton Verified Statement at 9. When asked why he believed it was "better to have neutral individual switching," Mr. Clifton stated that he thought "It seemed to make more sense . . . from an operating side." He continued "you [would have] somebody that was representing the interests of both parties equally." Clifton at 45. As Mr. Rose testified, reciprocal switching is not just as good as third-party switching. Rose at 46. Mr. Rose continued, "the Dayton sub is fairly congested, and instead of having two railroads down there switching at the same plant, we feel it will be a more efficient and lower-cost option to have only one railroad out there." Rose at 12. Thus, BN/Santa Fe believes that from an operating side, neutral third-party switching is "more efficient" and a "lower-cost option" which also avoids "congestion." UPSP has rejected third-party switching, instead insisting that UPSP provide its own switching, citing to a labor issue. Clifton at 45.

In providing this switching service, UPSP proposes a reciprocal switch charge which BN/Santa Fe has not agreed to. In fact, BN/Santa Fe in signing the CMA Agreement expressly reserved the right to negotiate the level of the reciprocal switch charge. As Mr. Clifton stated, reciprocal switching or direct switching will not be resolved "until we get a resolution on rates and full identification with what the customers' requirements may be." Clifton at 93-94.

3. Joint Facility Arrangements

With respect to joint facility arrangements, Carl Ice testified that "part of the implementation process is to define the actual physical parameters of where the two-to-one switches start and stop, by a milepost, switching limit, something like that." Ice at 19. As Mr. Rose put it, we need "to understand the physical characteristics of how we will serve a

plant" Rose at 54. Asked to define joint facility negotiations, Mr. Rose stated, "it would be the actual joint facilities work with Union Pacific/Southern Pacific . . . exactly the details of how this joint facilities agreement would be executed, and that would be everything from doing an exchange of power locomotives to how we're going to operate each physical plant" Rose at 62-3. As Mr. Clifton testified, we need "identification" of "joint facilities infrastructure to support operations," much the same as Houston. Clifton at 96. At Houston, Mr. Clifton stated "the identification of mileposts, we have that as it pertains to the boundaries of Houston. . . . Physical operating parameters, we've done some of that at Houston, such as understanding where we would actually get on the SP trackage." Clifton at 91. Clifton continued, in general, by saying, "joint facilities would certainly cover where we make the transition from ownership to trackage rights and also have some language as to what degree of control we would share with UP/SP over dispatching." Clifton at 96. In any event, there are no final joint facility agreements. Clifton at 87.

4. Haulage vs. Trackage Rights

There has been no agreement between Applicants and BNSF on the use of haulage rights as opposed to trackage rights. As Mr. Clifton testified, "haulage rights have not been established." Clifton at 81. However, the more traffic volume BN/Santa Fe has, the more likely it is that BN/Santa Fe will utilize trackage rights. Clifton at 79. Asked what criteria standards would be used in making the decision of switching from haulage to trackage rights, Mr. Clifton replied, "In BN/Santa Fe's case it's going to be how quickly we can get people trained and have the facilities established for our crews to change places to make the move" Clifton at 80-81. Initially, BN/Santa Fe is planning to use haulage rights

in all areas. Clifton at 82. When the agreements are fully implemented, BN/Santa Fe would "do trackage rights in all segments" when "volumes would warrant the trackage rights" with the exception of "the piece between Robstown and Brownsville and between Little Rock and Pine Bluff." Clifton at 81-2.

As Mr. Clifton stated, "the only thing that's driving right now between haulage and trackage is our ability to get up to speed and get a full blown operation and a physical presence on these lines. . . . We are not going to make a financial outlay on something that may or may not happen at this point. So obviously we're not going to spend millions of dollars building connections, spend thousands of dollars on training crews for something that may not, in fact, happen." Clifton at 83. As later explained by Mr. Clifton, "Trains, what we're looking for is trains, and volumes at major locations by customers, because that will vary to some degree based on customer needs whether . . . you have a physical presence in the area or not." Clifton at 88.

In addition to these substantive issues, which have to be vigorously negotiated, the implementation of the Settlement Agreements have to be worked out. In large part, if not completely, this involves finalizing BN/Santa Fe's plan of operation.

5. BN/Santa Fe's Plan of Operations

At several points, parties to the proceeding have asked for BN/Santa Fe's plan of operations. The Chemical Manufacturer's Association has asked for it. KCS and others have raised the issue. In fact, Mr. Ice testified that CMA "specifically asked what we were going to do to implement our rights and how we would utilize them, and I believe we felt this [the schedule] addressed that." Ice at 26.

Until now the best information available was Neal Owen's "operating description." Mr. Owen expressly stated it was not an operating plan. Owen at 14. In his Reply Comments, Mr. Owen states, "I am aware of no requirement that mandates commenters to provide formal Operating Plans. . . . The December 29, description provided more detail on planned operations than I have seen presented in any recent proceeding" Owen Reply at 2.

The depositions of witnesses who submitted statements on April 29, 1996, reveals why more detail has not been provided. Asked why BN/Santa Fe does not yet have an operating plan for operations under trackage rights agreements. Mr. Clifton responded, "we have put together a preliminary look at what we will do operationally and it's a collection of notes as we have gone along on our site inspections." Clifton at 11. And, its "evolving". Clifton at 12.

With respect to its plan for operations, Mr. Rose testified that "Its an ongoing process. It is certainly not completed, but as we go over every inch of railroad and understand how we will serve a plant, where we will base our crews, where crews will be hired from, . . . where we will put crews to rest in, where we will fuel locomotives. . . ." Rose at 54.

As Mr. Clifton put it, "Determination of interim temporary operations, that has not been completely concluded because some of that would depend on what the final agreement is on mechanical facilities and who gains ownership." Moreover a "Determination of final and ultimate operations, until we can get a good feel on the customer information, that has

not been determined as far as the final. Formulation of the engineering plans for connections, we have not progressed to the point of estimating costs. . . ." Clifton at 95.

In any event, Mr. Clifton states that "the focus of implementing team was primarily on the areas that were outlined in the initial settlement agreement. . . . And I really haven't had a full opportunity to completely look at what [the CMA Agreement] does to us operationally." Clifton at 44.

6. Effects Upon Competition

Because of the many unresolved issues regarding implementation of the BN/Santa Fe Agreement and the CMA Agreement, the effect of these Agreements upon competition cannot be calculated. In his reply statement, Matthew Rose, Senior Vice-President for BN/Santa Fe, stated that "After the BN/Santa Fe Agreements¹⁰ take effect, an additional 30,000 - 40,000 carloads of chemicals and plastics traffic will be open to BN/Santa Fe" Rose Reply at 4. In his deposition, Mr. Rose conceded that the 30-40,000 additional carloads resulted from the original BN/Santa Fe UP Settlement Agreement. According to Rose, the CMA Agreement did not add additional carloads. Rose at 18.

When questioned about this, Mr. Rose, stated that it was "somewhat of a puzzle" why paragraph 8 of the CMA Agreement limited access of BN/Santa Fe only to West Lake and Lake Charles, Louisiana and did not include West Lake Charles. Rose at 114. Mr. Rose agreed that there was no substantial difference in providing transportation to Lake Charles,

¹⁰ The BN/Santa Fe Settlement Agreement and the CMA Agreement constitute the BN/Santa Fe Agreements" Rose Reply at 2.

Westlake and West Lake Charles. At that point in the deposition the following exchange occurred:

- Q. But there is a very substantive difference in terms of the traffic available between the points that you can access and the points that you cannot access; is that correct?
- A. That is correct.
- Q. By your calculations here, it's about a 13-to-one ratio; is that right?
- A. That's correct.
- Q. And the 13 being the traffic that's unavailable to you and the one being the traffic that is available to you, so you have got access to about 7 percent of the traffic; is that correct?
- A. That's correct.

Rose at 115. That BN/Santa Fe secured access to only 7 percent of the business in the Lake Charles, Louisiana area brings into question the impact of the CMA Agreement as offering competition to the other 83% of shippers in this area. If KCS is afforded the opportunity to submit further evidence, it will show that BN/Santa Fe's failure to prepare an operating plan as to the original Agreement has been magnified by the increased traffic to which it will gain access by virtue of the CMA Agreement.

C. Parties Should Be Allowed To Submit Additional Evidence In Order To Complete The Record

The tradition that the Board has inherited from the former Commission includes the policy of deciding each matter based upon a complete record. Thus, the procedural guidelines are often "bent" in favor of assuring a just determination of the issues as provided in 49 CFR § 1100.3. For instance, the Commission often waived Rule § 1104.13(c), which prohibits a reply to a reply, in the "interest of obtaining a comprehensive and complete

record."¹¹ The former Commission's liberal construction of the procedural rules has been followed by the Board to allow parties to file a reply to a reply "in the interest of developing a full and complete record," *CSX Corporation -- Control -- Chessie System, Inc. and Seaboard Coast Line Industries, Inc.*, Finance Docket No. 28905 (Sub-No. 26) (ICC Served April 29, 1996), slip op. at p.2. The Commission in fact sometimes characterized the type of filing that KCS urges as a reply to a reply. "While no provision is made in the rules to permit a response to rebuttal, we will accept it here in the interest of developing a more complete record." *Burlington Northern Railroad Company -- Abandonment Exemption -- In Sedgwick, Harvey & Reno Counties, KS; In the Matter of a Request to Set Terms and*

¹¹*National Railroad Passenger Corporation and Consolidated Rail Corporation -- Application Under Section 402(a) of the Rail Passenger Service Act for an Order Fixing Just Compensation*, Finance Docket No. 32467, (ICC Served March 24, 1995), 1995 ICC LEXIS 60 at *8, fn.11. See also, *Genesee & Mohawk Valley Railroad Co. -- Acquisition and Operation Exemption -- Consolidated Rail Corporation, et al.*, Finance Docket Nos. 32169, 32170, 32335, 32336, (ICC Served March 24, 1995), 1995 ICC LEXIS 59 at *4 ("We will accept UTU's June 26, 1994 reply to a reply in the interest of a more complete record."); *Wyoming & Colorado Railroad Co., Inc. -- Abandonment Exemption -- Jackson County, Co.*, Docket No. AB-307 (Sub-No. 2X), (ICC Served Feb. 17, 1994), 1994 ICC LEXIS 17 at *3 ("Under 49 C.F.R. 1104.3(c), a reply to a reply is not permitted. In the interest of making an informed decision on a complete record, we shall accept the tendered rebuttal."); *Toledo, Peoria & Western Railway Corp. -- Trackage Rights Compensation--Peoria & Pekin Union Railway Co.*, Finance Docket No. 26476 (Sub-No 1.) (ICC Served Sept. 20, 1994), 1994 ICC LEXIS 175 at *4 (rebuttal responding to new issues raised in reply accepted in the interest of a complete record). *Rio Grande Industries, Inc., et al., -- Trackage Rights --- Burlington Northern Railroad Company Lines between Kansas City, MO and Chicago, IL, et al.*, Finance Docket Nos. 31730, 31731, (March 8, 1991) 1991 ICC LEXIS 57 at *2 ("In the interests of reaching a decision on a complete record, and because the complained of material is arguably relevant and could not have been introduced at an earlier time, we will deny the motion to strike [the reply to a reply]."); *Maine Central Railroad Company -- Petition for Review of Arbitration Award; Maine Central Railroad Company -- Abandonment -- Rockland Branch*, Finance Docket No. 31434; Docket No. AB-83 (Sub-No. 8) (April 13, 1990) 1990 ICC LEXIS 120 at *1 ("Although the reply constitutes an unauthorized reply to a reply, we will accept it. The Commission has accepted and considered such material in the interest of a more complete record in prior arbitration proceedings.").

Conditions, Docket No. AB-6 (Sub-No. 358X) (ICC Served June 30, 1994) 1994 ICC LEXIS 104 at *3 Thus, in order to evaluate the Application based upon a "complete record," the Board should allow the parties to introduce evidence regarding the impact of the CMA Agreement on the Merger Application so that the Board's decision will not be based upon anything less than a complete record.

The evidence that KCS proposes to introduce may also be characterized as rebuttal or surrebuttal. In the recent BN/Santa Fe Merger proceeding, Phillips Petroleum Company (PPC) sought leave to file a rebuttal verified statement to address new factual information regarding a particular rail line build-out situation. PPC argued that denial of the chance to rebut the "newly discovered" evidence would be unfair and against the public interest. Further, PPC argued that allowing the verified statement would be in the interest of an accurate and complete record and "would help the Commission arrive at a fully informed decision." Applicants opposed PPC's request to file the verified statement on the grounds that "the rebuttal filings are improper because the filing parties did not file inconsistent or responsive applications in this proceeding." The Commission however rejected the applicants' arguments and allowed PPC to file its rebuttal as to the rail line build out that was introduced by Applicants as new evidence. *Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway*, Finance Docket No. 32549, Decision No. 34, (ICC Served June 23, 1995) 1995 ICC LEXIS 153 at *6-10.

Similarly, Applicants' reliance upon the CMA Agreement in their April 29 Rebuttal is analogous to presentation of new evidence or a new study at the rebuttal stage of the

proceeding. (See Motion to Strike (KCS-54).) In *Ashley Creek Phosphate Co. v. Chevron Pipe Line Co., et al.*, Docket No. 40131 (Sub-No. 1), No. 40810, (ICC Served April 21, 1995), 1995 ICC LEXIS 90, the Interstate Commerce Commission was faced with a motion to file surrebuttal in response to new evidence and argument presented for the first time in the opponent's rebuttal. The Commission agreed with the characterization of some of the testimony in question as new evidence and granted the opportunity to file surrebuttal as to these limited areas to "provide the [Board] with a more complete record upon which to base its decision." 1995 ICC LEXIS 90 at *8. The Commission also accepted surrebuttal testimony in *Gateway Western Railway Company -- Construction Exemption -- St. Clair County, IL.; Gateway Western Railway Company -- Petition Under 49 U.S.C. 10901(d)*, Finance Docket No. 32158 (Sub-No. 1), (ICC Served May 11, 1993), finding that "liberal construction of our rules is permitted where necessary to develop an adequate record." 1993 ICC LEXIS 88 at *3. See also *Association of P&C Dock Longshoremen v. The Pittsburgh Conneaut Dock Co., et al.*, Finance Docket No. 31363 (Sub-No. 1), 8 I.C.C.2d 280 (January 3, 1992), 1992 ICC LEXIS 27 at *13 (reply and surrebuttal allowed "to assure fairness and a complete factual record.")¹²

¹² Surrebuttal has been allowed "to complete the record" in numerous other ICC proceedings, e.g., *National Railroad Passenger Corporation and Consolidated Rail Corporation - Application under Section 402(a) of the Rail Passenger Service Act for an Order Fixing Just Compensation*, Finance Docket No. 32467 (ICC Served January 19, 1996) 1995 ICC LEXIS at *2, fn.4; *CSX Transportation, Inc. -- Abandonment -- Between South Hardeeville & North Milledgeville in Jasper County, SC and Chatham County, GA*, Docket No. AB-55 (Sub-No. 469), (ICC Served December 10, 1993), 1993 ICC LEXIS 270 at *21 and 27; *Coal, Wyoming to Arkansas, AR*, No. 37276 (Sub-No. 1), (December 7, 1984) 1984 ICC LEXIS 85 at *1; *Potomac Electric Power Co. v. Consolidated Rail Corp.*, No. 36114 (Sub-No. 1), 367 I.C.C. 532 (July 1983) 1983 ICC LEXIS 22 at *8; *Increased Rates on Coal, Midwestern Railroads*, August (continued...)

The rationale for accepting additional evidence as to the effects of the CMA Agreement was articulated by the Commission in *Missouri Pacific Railroad Co. -- Abandonment -- Between Weatherford and Mineral Wells in Parker and Palo Pinto Counties, TX*, Docket No. AB-3 (Sub-No. 75), (November 14, 1988).

The Commission is seeking this additional evidence mindful of its responsibilities as an administrative agency. Not only does it act as an adjudicator, balancing burden of proof issues, it has an independent obligation to determine the public interest. Our discretion is broad, and such considerations as administrative convenience and relative costs and burdens to the parties influence how we choose to structure proceedings. As an administrative agency, we are obligated to obtain the most appropriate and applicable evidence available. Accordingly, due to the nature of this case, we find that submission of the additional evidence at this stage to complete the record is necessary to enable us to carry out our regulatory functions.

1988 ICC LEXIS 346 at *4.

The Commission's liberal interpretation of the procedural rules is reflected not only in its acceptance of a reply to a reply (or rebuttal or surrebuttal), but in its consideration a variety of other untimely or "procedurally incorrect" types of evidence proffered and accepted in the interest of assuring that its decision was based upon the most completed

¹²(...continued)

79, No. 37246, 364 I.C.C. 29 (June 16, 1980) 1980 ICC LEXIS 79 at *5; *Trainload Rates for Radioactive Materials, Eastern Railroads*, Docket No. 9205, 362 I.C.C. 756 (April 11, 1980) 1980 ICC LEXIS 98 at *5 and 9-10; *Radioactive Materials, Special Train Service, Nationwide*, 36325, 359 I.C.C. 70 (March 8, 1978) 1978 ICC LEXIS 88 at *17; *Investigation of the Freight Rate Structure -- Lumber and Lumber Products [Part 1 of 2]*, Ex Parte No. 270 (Sub-No. 7), 345 I.C.C. 2552, 1977 ICC LEXIS 61 at *5; *Determination of Cost Reimbursement under Section 405(f) of the Rail Passenger Service Act, as Amended*, Finance Docket No. 27194, 341 I.C.C. 325 (Dec. 18, 1972) 1972 ICC LEXIS 1 at *6.

record available.¹³ The Merger Application currently before the board will have significant

¹³ *Wyoming & Colorado Railroad Company, Inc. -- Abandonment Exemption -- Jackson County, CO*, Docket No. AB-307 (Sub-No. 2X), (ICC Served May 19, 1995), 1995 ICC LEXIS 107 at *3 ("In the interest of compiling as complete a record as possible we will accept and consider all pleadings and letters submitted by the parties in response to our February 17 decision."); *Bessemer and Lake Erie Railroad Co., -- Abandonment and Discontinuance of Trackage Rights in Erie County, PA Request to Set Terms and Conditions*, Docket No. AB-88 (Sub-No. 6), (ICC Served February 21, 1995), 1995 ICC LEXIS 24 at *2 ("The waivers and acceptance of the pleadings are in the interest of a complete evidentiary record."); *National Railroad Passenger Corp. and Consolidated Rail Corp. -- Application Under Section 402(a) of Rail Passenger Service Act for an Order Fixing Just Compensation*, Finance Docket No. 32467, (ICC Served July 25, 1995), 1995 ICC LEXIS 192 at *9, fn.15 (letter filed with Commission arguably reply to reply accepted "in order to develop a complete record.") *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control -- Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Co.*, Finance Docket No. 32133, Decision No. 14, (April 7, 1994) 1994 ICC LEXIS 62 (Untimely supplementary statement allowed "in the interest of developing a complete a record as possible"); *Chicago Southshore & South Bend Railroad -- Trackage Rights Exemption -- Norfolk and Western Railway Company*, Finance Docket No. 32392 (ICC Served March 4, 1994) 1994 ICC LEXIS 25 at *15, fn. 15 (motion to strike argument in an appeal denied "in order to develop a more complete record."); *The Crowell Corporation -- Petition For Declaratory Order -- Certain Rates and Practices of A-Line, Ltd.* No. 40668, (ICC Served May 27, 1993), 1993 ICC LEXIS 103 at *2 (despite several orders to respond and the record being closed, Commission took notice of Respondent's argument in a related proceeding "in the interest of developing a more complete evidentiary record."); *Gateway Western Railway Company -- Construction Exemption -- St. Clair County, IL; Gateway Western Railway Company -- Petition Under 49 U.S.C. 10901(d)*, Finance Docket No. 32158, (ICC Served August 9, 1993), 1993 ICC LEXIS 147 at *3, fn. 3 (evidence accepted out of time "in the interest of a more complete record."); *Norfolk and Western Railway Company and New York, Chicago and St. Louis Railroad Company -- Merger, etc. (Arbitration Review)*, Finance Docket No. 21510 (Sub-No. 4) (ICC Served July 27, 1993), 1993 ICC LEXIS 133 at *1 (rebuttal accepted "in the interest of a more complete record."); *Association of American Railroads -- Petition to Exempt Industrial Development Activities from 39 U.S.C. @ 10761(a), 10761(a)(1), 11902, 11903, and 1904(a)*, Ex Parte No. 346 (Sub-No. 26) 8 I.C.C.2d 365 (March 24, 1992), 1992 ICC LEXIS 4 at *4, fn.8 (reply comments allowed by party who had not filed initial comment, and late reply to those comments allowed "in order to compile the most complete record possible"); *Grand Trunk Western Railroad Company -- Merger -- Detroit and Toledo Shore Line Railroad Company, Arbitration Review*, Finance Docket No. 29709 (Sub-No. 1) (March 30, 1990), 1990 ICC LEXIS 100 at *3 (record reopened to allow filing of additional documents, evidence and argument "to clarify the issues and rectify the deficiencies in the record so that our evaluation of this matter is based on the most complete and relevant information available").

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economic consequences throughout the economy. With the "ripple effects" attendant to any transaction of this magnitude, the consequences are much greater. Accordingly, the Application should completely and fully reflect the transaction under consideration. As the Application stands now, it does not reflect the transaction. If the Commission elects to look to the record to complement the Application, rather than require amendments to the Application, then the record should be as complete as possible. Because KCS and other parties were not allowed to take discovery and submit additional evidence, the record is not as complete as possible.

CONCLUSION

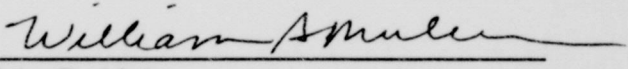
If the Board is to render an informed decision in this the largest railroad merger in this country's history, it must have before it all information relevant to the merger. It is therefore in the Board's best interest to allow all parties to provide it with any information available that may relate to the transaction. The Board should not deny itself the benefit of the expertise available from members of the railroad profession, or shippers or labor groups or governmental entities or agencies. The stakes in this proceeding are too large to have the decision made upon anything less than a full and complete record. The Board therefore

should reopen Decision No. 35 and require Applicants to amend the Application or allow parties the opportunity to present evidence regarding the impact of the CMA Agreement.

This 24th day of May, 1996.

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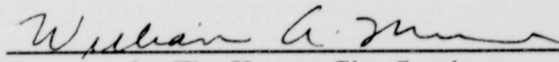
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Petition to Reopen Decision No. 35" was served this 24th day of May, 1996, by hand delivery to counsel for Applicants and by hand delivering or depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party of record.


Attorney for The Kansas City Southern
Railway Company

(carrolbh)\wpdocs\molmhe\kcs\upsp\kcs#

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760

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

**VERIFIED STATEMENT
OF
JOSEPH J. PLAISTOW
IN SUPPORT OF PETITION TO REOPEN**

**VERIFIED STATEMENT OF JOSEPH J. PLAISTOW IN SUPPORT OF
PETITION TO REOPEN**

My name is Joseph J. Plaistow, and I am a Senior Consultant for Snively King Majoros O'Connor & Lee, Inc. with offices at 1220 L Street, NW, Washington, DC 20005. I have submitted two prior verified statements in this proceeding on behalf of KCS. *Comments of Kansas City Southern Railway Company on Proposed Procedural Schedule*, (KCS-3) dated September 18, 1995, and *Comments of Kansas City Southern Railway Company and Request for Conditions* (KCS-33, Vol. II) dated March 29, 1996. My background and qualifications are fully set forth in those statements.

In my March 29, 1996 statement I analyzed the September 25, 1995 Agreement between Applicants on the one hand, and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (collectively "BNSF") on the other hand.¹ Because of the unprecedented harm to competition that would result from an unconditioned merger of UP and SP, Applicants entered into the BNSF Agreement, claiming it would ameliorate all competitive harms by granting trackage rights to BNSF. I was retained by KCS to evaluate UP/SP's claims. In my March 29th Statement, I concluded that²:

1. BNSF's economic disadvantages will be insurmountable as it attempts to compete as a tenant with trackage rights against the UP/SP landlord.

¹ This Agreement (including the November 18, 1995 Supplemental Agreement) is contained Volume I of UP/SP's November 30, 1995 Application, pp. 318-359. References herein will refer to "the BN/Santa Fe Agreement."

² Verified Statement, Joseph J. Plaistow, March 29, 1996, page 193.

2. No amount of determination will permit BNSF to attain significant traffic levels in the face of BNSF costs 53% to 157% higher than UP/SP's.
3. BNSF's economic disadvantage is so dramatic that only divestiture of the parallel duplicative line segments in the Cotton Belt, Central and New Orleans to San Antonio Corridors would permit a competitor to gain significant market share.
4. For the Houston to Corpus Christi and Brownsville Corridor, I recommend that the markup over costs cited by Richard Kauders in his deposition of 77% be removed from the trackage rights charges of 3.1 mills per ton-mile. The new charge should be 1.75 mills per ton-mile.

I showed that the BNSF Agreement will not resolve the merger's damage to competition. I showed that from an economic perspective, BNSF could not compete and would not be able to develop the traffic volume levels necessary to become economically efficient.³

Since that time and in spite of UP/SP's claims that the September 25, 1995 BNSF Agreement fully resolved the competitive harms of the merger, UP/SP has found it necessary to enter into a second amendment to its Agreement with BNSF -- the CMA Agreement. UP/SP again pronounces all competitive harms resolved. These additional agreements significantly altered the Operating Plans that UP/SP and BNSF had entered into evidence on November 30, 1995 and December 30, 1995 and upon which I had based my March 29, 1996 analysis.

KCS has asked me to evaluate UP/SP's renewed claims based upon the CMA Agreement. The CMA Agreement⁴ was concluded on April 18, 1996, twenty days after I

³ Other KCS witnesses addressed this issue from an operating perspective.

⁴ See Attachment - CMA Settlement Agreement, April 18, 1996, Volume I of Applicants' Submittal - UP/SP-230.

submitted my Statement in this proceeding. The CMA Agreement changed the basic operating parameters and some of the economic inputs underlying my March 29th analysis.

First, the reduction in reciprocal switch charges called for by the CMA Agreement reduces BNSF's economic disadvantage for my 26 study movements and causes me to restate my second conclusion. In my March 29th Statement I said, "[Reciprocal] [s]witching is one of the largest single categories of economic difference between the cost to UP/SP and the costs to BNSF." At page 2, the CMA Agreement states:

(a) The BN/Santa Fe Settlement Agreement shall be amended to provide for a reciprocal switch charge at "2-to-1" points of no more than \$130 per car. This charge shall be adjusted upward or downward each year on the basis of 50% of RCAF (U).

(b) In addition, effective upon consummation of the UP/SP merger, all SP reciprocal switch charges with other railroads (other than those at "2-to-1" points) that are higher than \$150 per car shall be reduced to no more than \$150 per car. This charge shall be adjusted upward or downward each year on the basis of 50% of RCAF (U).

As a result of these changes, I am forced to restate my second conclusion as follows:⁵

No amount of determination will permit BNSF to attain significant traffic levels in the face of BNSF costs 40% to 134% higher than UP/SP's." (The range of BNSF's economic disadvantage prior to the CMA Agreement had been 53% to 157%.)

Second, the CMA Agreement also significantly altered traffic routings suggested in the Operating Descriptions previously announced by UP/SP and BNSF. Pages 1 and 2 of the CMA Settlement Agreement states:

⁵ In Appendix A to my March 29th statement, I listed all the reciprocal switch charges published in public tariffs and that were reflected in my economic analysis for the 26 study movements. Because of the CMA Agreement, revised Appendix A at the end of this Rebuttal Statement is adjusted to reflect the revised reciprocal switching charges contained within the CMA Agreement.

9. The BN/Santa Fe Settlement Agreement shall be amended to grant BN/Santa overhead trackage rights (a) over UP's line between Houston, Texas, and Valley Junction [E. St. Louis], Illinois, via Palestine, Texas, (b) over SP's line between Fair Oaks, Arkansas, and Valley Junction, Illinois, and (c) over UP's line between Fair Oaks and Bald Knob, Arkansas. These rights shall be for traffic moving to or from points south of Bald Knob and Brinkley, Arkansas. Local access shall be limited to that provided for in Section 6c of the BN/Santa Fe Settlement Agreement.
10. The BN/Santa Fe Settlement Agreement shall be amended to specify that, in the Houston-Memphis-St. Louis corridor, BN/Santa Fe has the right to move some or all of its traffic via its trackage rights over either the UP line or the SP line, at its discretion, for operating convenience.

According to BNSF's Carl Ice, the practical consequences of these operating changes are that BNSF traffic is now permitted to "go with the flow" of the UP/SP traffic. That is, in the Cotton Belt Corridor from Houston to St. Louis, BNSF can operate north over the former UP line and south over the former SP line. North of Memphis, BNSF no longer has to use its own line to go to or through St. Louis. BNSF can now elect to use either the former UP, the former SP or the BNSF line.

One of the criticisms contained within my March 29, 1996 Statement was that the BNSF Agreement left so many operating circumstances undefined. The CMA Agreement clarifies some operating parameters, and BNSF witness ICE clarifies others in his April 29, 1996 Verified Statement. However, for several of my study movements, the route of movement was altered by these new operating descriptions.

The directional routing of loads north and empties south within the Cotton Belt Corridor has improved some of the routings of my 26 study movements, but directional routing is problematical for other movements originating within the Cotton Belt Corridor itself at non-BNSF points, such as loads originating at Little Rock. For example, because of

BNSF's limitations in supplying freight cars at points distant from the BNSF system itself, coupled with the directional flow of empty cars, BNSF will have to absorb empty miles over and above system average levels to meet shipper's car supply needs at places like Little Rock. BNSF cannot depend on UP/SP to supply cars at points such as Little Rock where BNSF is trying to "steal" UP/SP's traffic. This change in the bi-directional flows is reflected in my Rebuttal analysis of the 26 study movements.⁶

The third and final change to my March 29th analysis that results from the CMA Agreement is precipitated by the change in the trackage rates usage charge to a joint facilities usage charge. At page 15, Volume I (UP/SP-230) of UP/SP's April 29, 1996 filing, UP/SP states, "Nonetheless, to eliminate any possible issue with regard to trackage rights compensation from this case, Applicants are also extending to BN/Santa Fe the option of using traditional joint facility billing." This is confirmed in Volume I (BN/SF-54) of BNSF's April 29, 1996 filing at page 8 of Witness Carl Ice's filing where Witness Ice claims that substitution of a joint facility charge "could produce a lower trackage rights charge, which would increase our competitiveness and would be desirable to BN/Santa Fe."

Applicants have characterized joint facilities billing as having no built-in mark-up, or as being a cost pass-through. In comparison, they say my previous statement inflated costs

⁶ It should be noted, however, that BN/Santa Fe repeatedly reiterated in deposition testimony that it still has no operating plans. Many joint facilities agreements are still uncompleted and many other operating arrangements are still to be announced. See Rebuttal depositions of Carl Ice at pp 18-19; Matthew Rose p. 65, 101-103; Frank Clifton at pp. 45, 58.

with a mark-up, the necessity for which would be eliminated with joint facility type billing.⁷ UP/SP and BN/SF are wrong on both accounts. Joint facility charges are based on the full cost of providing a given service divided by the number of times the service was provided. (Capital costs of the associated capital are in addition to these charges). The average cost of each service provision is charged to the user.⁸ UP/SP's Witness Kauders and I calculated the charges for providing trackage rights services in relationship to variable costs, not the full costs used in joint facilities charges. Full costs, and, thus, joint facilities charges, always constitute a mark-up over variable costs.⁹

In my revised study movement costs attached to this statement, I continue to be conservative since I estimate only a few joint facilities charges categories. Since BNSF will have few, if any, facilities over vast stretches of the trackage rights, they will have to pay for the use of UP/SP facilities through joint facilities charges -- with their concomitant mark-up over variable costs -- for many more categories than those for which I have charged. Most expenses incurred by BNSF result from costs incurred other than the trackage rights charges. Permitting BNSF to convert the trackage rights charge to joint facilities charges will have an small effect on BNSF economics.

⁷ See R.V.S. Ice in BN/SF-54 at 8 and BN/SF-54, R.V.S. Kent and Klick at 48. proceeding.

⁸ While this over-simplifies a relatively complicated area, my portrayal is accurate for its intended purpose here.

⁹ The amount of the mark-up over variable costs will depend upon the specific service referenced. If the cost variability of the specific function is 50%, then the amount by which the joint facilities charges exceeds variable costs is 100%, i.e., you must increase variable costs by 100% to derive full costs in the example.

In this statement, I continue to cost the 26 study movements I chose in my initial verified statement. I adjusted each of the analyses, as appropriate, to reflect the new evidence submitted by UP/SP and BNSF after my filing. My current analyses reflect new reciprocal switch charges and new routes of movement for several study movements. These changes reduced BNSF's economic disadvantage, but not by much.

Shippers will select between BNSF and UP/SP based on the service and price offerings of the two competitors. Costs serve as a floor for the price offerings of each carrier; so I have compared BNSF costs to UP/SP costs. Although the new reciprocal switch charges and operating descriptions have reduced BNSF's economic disadvantage, such changes have not been significant enough to change my conclusions stated in my March 29th verified statement.

The following two pages report the results of my current analysis and compare them to the results of my initial analysis reported on March 29, 1996. In my Revised Base Case analysis I report economic disadvantages ranging from a low of 40% to a high of 134%. Additional details of my Revised Base Case analyses are reported in my Revised Tables 1-4, attached. My Revised Alternative Case reports that even if you use BNSF system average costs, BNSF's economic disadvantage ranges from a low of 15% to a high of 94%. Additional details of my Revised Alternative Case analyses are reported in my Revised Tables 5-8, attached.

In conclusion, the CMA Agreement does not sufficiently improve the financial benefits to BNSF to permit it to be an effective competitor to UP/SP under the trackage rights agreement. BNSF's economic disadvantages will be insurmountable as it attempts to compete as a tenant with trackage rights against the UP/SP landlord.

COMPARISON OF BNSF
ECONOMIC DISADVANTAGE
BEFORE & AFTER
THE CMA AGREEMENT

BASE CASE

STUDY MOVEMENT NUMBER	ORIGIN	DESTINATION	ECONOMIC DISADVANTAGE BEFORE	ECONOMIC DISADVANTAGE AFTER	
				LOADED & EMPTY ON ALL TRKG RGTS	LOADED & EMPTY ON BNSF TRACK AND SOME TRKG RGTS

COTTON BELT CORRIDOR

1	HOUSTON	ST. LOUIS	80%	60%	65%
2	HOUSTON	CHICAGO	79%	67%	70%
3	HOUSTON	MEMPHIS	78%	61%	NA
4	HOUSTON	LITTLE ROCK	64%	42%	NA
5	LITTLE ROCK	DALLAS	157%	NA	134%
6	LITTLE ROCK	LAFAYETTE	87%	NA	75%
7	LITTLE ROCK	LAKE CHARLES	81%	NA	71%
8	ST. LOUIS	LITTLE ROCK	81%	60%	62%
9	BEAUMONT	LITTLE ROCK	102%	NA	40%
10	SHREVEPORT	SAN ANTONIO	104%	NA	125%
11	SAN ANTONIO	ST. LOUIS	82%	68%	71%

CENTRAL CORRIDOR

12	CHICAGO	OAKLAND	59%	NA	56%
13	CHICAGO	SALT LAKE CITY	66%	NA	63%
14	SACRAMENTO	SALT LAKE CITY	77%	71%	NA
15	SACRAMENTO	DENVER	69%	66%	NA
16	OAKLAND	SALT LAKE CITY	78%	NA	73%
17	RENO	SALT LAKE CITY	79%	73%	NA
18	SALT LAKE CITY	STOCKTON	75%	69%	NA

HOUSTON TO CORPUS CHRISTI TO BROWNSVILLE CORRIDOR

19	HOUSTON	BROWNSVILLE	58%	NA	47%
20	BROWNSVILLE	DALLAS	73%	NA	58%
21	SAN ANTONIO	BROWNSVILLE	136%	NA	128%
22	CORPUS CHRISTI	DALLAS	77%	NA	60%

NEW ORLEANS TO SAN ANTONIO CORRIDOR

23	EAGLE PASS	NEW ORLEANS	53%	NA	53%
24	HOUSTON	SAN ANTONIO	106%	NA	75%
25	SAN ANTONIO	BEAUMONT	124%	NA	75%
26	SAN ANTONIO	DALLAS	106%	NA	72%

COMPARISON OF BNSF
ECONOMIC DISADVANTAGE
BEFORE & AFTER
THE CMA AGREEMENT

ALTERNATIVE CASE

STUDY MOVEMENT NUMBER	ORIGIN	DESTINATION	ECONOMIC DISADVANTAGE BEFORE	ECONOMIC DISADVANTAGE AFTER	
				LOADED & EMPTY ON ALL TRKG RGTS	LOADED & EMPTY ON BNSF TRACK AND SOME TRKG RGTS
COTTON BELT CORRIDOR					
1	HOUSTON	ST. LOUIS	49%	35%	37%
2	HOUSTON	CHICAGO	47%	39%	40%
3	HOUSTON	MEMPHIS	48%	35%	NA
4	HOUSTON	LITTLE ROCK	37%	19%	NA
5	LITTLE ROCK	DALLAS	108%	NA	94%
6	LITTLE ROCK	LAFAYETTE	58%	NA	45%
7	LITTLE ROCK	LAKE CHARLES	53%	NA	42%
8	ST. LOUIS	LITTLE ROCK	47%	34%	32%
9	BEAUMONT	LITTLE ROCK	68%	NA	15%
10	SHREVEPORT	SAN ANTONIO	69%	NA	88%
11	SAN ANTONIO	ST. LOUIS	52%	42%	43%
CENTRAL CORRIDOR					
12	CHICAGO	OAKLAND	32%	NA	30%
13	CHICAGO	SALT LAKE CITY	36%	NA	33%
14	SACRAMENTO	SALT LAKE CITY	48%	43%	NA
15	SACRAMENTO	DENVER	43%	40%	NA
16	OAKLAND	SALT LAKE CITY	49%	NA	45%
17	RENO	SALT LAKE CITY	50%	44%	NA
18	SALT LAKE CITY	STOCKTON	47%	42%	NA
HOUSTON TO CORPUS CHRISTI TO BROWNSVILLE CORRIDOR					
19	HOUSTON	BROWNSVILLE	31%	NA	22%
20	BROWNSVILLE	DALLAS	42%	NA	30%
21	SAN ANTONIO	BROWNSVILLE	98%	NA	91%
22	CORPUS CHRISTI	DALLAS	44%	NA	30%
NEW ORLEANS TO SAN ANTONIO CORRIDOR					
23	EAGLE PASS	NEW ORLEANS	28%	NA	28%
	HOUSTON	SAN ANTONIO	69%	NA	44%
	SAN ANTONIO	BEAUMONT	84%	NA	45%
	SAN ANTONIO	DALLAS	68%	NA	41%

TABLE 1
REVISED

BASE CASE (PAGE 1 OF 4)

SUMMARY OF VARIABLE COSTS
RELATED TO UP/SP-BNSF AGREEMENT
ADJUSTED URCS COSTS
(DOLLARS PER CAR)

COTTON BELT CORRIDOR

STUDY MOVEMENT NUMBER	ORIGIN	DESTINATION	UP/SP ON		BNSF LOADED & EMPTY ON ALL TRKG RGTS	BNSF LOADED & EMPTY ON BNSF TRACK AND SOME TRKG RGTS	BNSF ECONOMIC DISADVANTAGE	
			UP TRACK	SP TRACK			LOADED & EMPTY ON ALL TRKG RGTS	LOADED & EMPTY ON BNSF TRACK AND SOME TRKG RGTS
1	HOUSTON	ST. LOUIS	\$1,021		\$1,531	\$1,686	60%	65%
2	HOUSTON	CHICAGO	\$1,225		\$2,045	\$2,079	67%	70%
3	HOUSTON	MEMPHIS	\$821		\$1,323	NA	61%	NA
4	HOUSTON	LITTLE ROCK	\$716		\$1,019	NA	42%	NA
5	LITTLE ROCK	DALLAS	\$654		NA	\$1,527	NA	134%
6	LITTLE ROCK	LAFAYETTE	\$725		NA	\$1,270	NA	75%
7	LITTLE ROCK	LAKE CHARLES	\$707		NA	\$1,213	NA	71%
8	ST. LOUIS	LITTLE ROCK	\$665		\$1,064	\$1,077	60%	62%
9	BEAUMONT	LITTLE ROCK	\$726		NA	\$1,018	NA	40%
10	SHREVEPORT	SAN ANTONIO	\$719		NA	\$1,818	NA	125%
11	SAN ANTONIO	ST. LOUIS	\$1,198		\$2,016	\$2,050	68%	71%

TABLE 2
REVISED

BASE CASE (PAGE 2 OF 4)

SUMMARY OF VARIABLE COSTS
RELATED TO UP/SP-BNSF AGREEMENT
ADJUSTED URCS COSTS
(DOLLARS PER CAR)

CENTRAL CORRIDOR

STUDY MOVEMENT NUMBER	ORIGIN	DESTINATION	UP/SP ON SP TRACK	UP/SP ON UP TRACK	BNSF ON BNSF ROUTE	BNSF ECONOMIC DISADVANTAGE
12	CHICAGO	OAKLAND	\$2,350	\$2,300	\$3,593	56%
13	CHICAGO	SALT LAKE CITY	\$1,790	\$1,554	\$2,525	63%
14	SACRAMENTO	SALT LAKE CITY	\$921	\$972	\$1,571	71%
15	SACRAMENTO	DENVER	\$1,379	\$1,431	\$2,283	66%
16	OAKLAND	SALT LAKE CITY	\$989	\$1,085	\$1,709	73%
17	RENO	SALT LAKE CITY	\$797	\$839	\$1,374	73%
18	SALT LAKE CITY	STOCKTON	\$958	\$1,011	\$1,620	69%

TABLE 3
REVISED

BASE CASE (PAGE 3 OF 4)

SUMMARY OF VARIABLE COSTS
RELATED TO UP/SP-BNSF AGREEMENT
ADJUSTED URCS COSTS
(DOLLARS PER CAR)

HOUSTON TO CORPUS CHRISTI TO BROWNSVILLE CORRIDOR

STUDY MOVEMENT NUMBER	ORIGIN	DESTINATION	UP/SP ON SP TRACK	UP/SP ON UP TRACK	BNSF ON BNSF ROUTE	BNSF ECONOMIC DISADVANTAGE
19	HOUSTON	BROWNSVILLE	\$678	\$639	\$936	47%
20	BROWNSVILLE	DALLAS	\$772	\$820	\$1,223	58%
21	SAN ANTONIO	BROWNSVILLE	\$572	\$568	\$1,295	128%
22	CORPUS CHRISTI	DALLAS	\$656	\$709	\$1,048	60%

TABLE 4
REVISED

BASE CASE (PAGE 4 OF 4)

SUMMARY OF VARIABLE COSTS
RELATED TO UP/SP-BNSF AGREEMENT
ADJUSTED URCS COSTS
(DOLLARS PER CAR)

NEW ORLEANS TO SAN ANTONIO CORRIDOR

STUDY MOVEMENT NUMBER	ORIGIN	DESTINATION	UP/SP ON SP TRACK	UP/SP ON UP TRACK	BNSF ON BNSF ROUTE	BNSF ECONOMIC DISADVANTAGE
23	EAGLE PASS	NEW ORLEANS	\$934	\$997	\$1,431	53%
24	HOUSTON	SAN ANTONIO	\$509	\$566	\$893	75%
25	SAN ANTONIO	BEAUMONT	\$575	\$634	\$1,009	75%
26	SAN ANTONIO	DALLAS	\$602	\$591	\$1,018	72%

TABLE 5
REVISED

ALTERNATIVE CASE (PAGE 1 OF 4)

SUMMARY OF VARIABLE COSTS
RELATED TO UP/SP-BNSF AGREEMENT
URCS COSTS
(DOLLARS PER CAR)

COTTON BELT CORRIDOR

STUDY MOVEMENT NUMBER	ORIGIN	DESTINATION	UP/SP ON	BNSF	BNSF	BNSF ECONOMIC DISADVANTAGE	
			UP TRACK LOADED SP TRACK EMPTY	LOADED & EMPTY ON ALL TRKG RGTS	LOADED & EMPTY ON BNSF TRACK AND SOME TRKG RGTS	LOADED & EMPTY ON ALL TRKG RGTS	LOADED & EMPTY ON BNSF TRACK AND SOME TRKG RGTS
1	HOUSTON	ST. LOUIS	\$1.021	\$1.376	\$1.400	35%	37%
2	HOUSTON	CHICAGO	\$1.225	\$1.707	\$1.713	39%	40%
3	HOUSTON	MEMPHIS	\$821	\$1.109	NA	35%	NA
4	HOUSTON	LITTLE ROCK	\$716	\$854	NA	13%	NA
5	LITTLE ROCK	DALLAS	\$654	NA	\$1.265	NA	94%
6	LITTLE ROCK	LAFAYETTE	\$725	NA	\$1.050	NA	45%
7	LITTLE ROCK	LAKE CHARLES	\$707	NA	\$1.003	NA	42%
8	ST. LOUIS	LITTLE ROCK	\$665	\$888	\$875	34%	32%
9	BEAUMONT	LITTLE ROCK	\$726	NA	\$835	NA	15%
10	SHREVEPORT	SAN ANTONIO	\$719	NA	\$1.349	NA	38%
11	SAN ANTONIO	ST. LOUIS	\$1.198	\$1.703	\$1.710	42%	43%

TABLE 6
REVISED

ALTERNATIVE CASE (PAGE 2 OF 4)

SUMMARY OF VARIABLE COSTS
RELATED TO UP/SP-BNSF AGREEMENT
URCS COSTS
(DOLLARS PER CAR)

CENTRAL CORRIDOR

STUDY MOVEMENT NUMBER	ORIGIN	DESTINATION	UP/SP ON SP TRACK	UP/SP ON UP TRACK	BNSF ON BNSF ROUTE	BNSF ECONOMIC DISADVANTAGE
12	CHICAGO	OAKLAND	\$2,350	\$2,300	\$2,987	30%
13	CHICAGO	SALT LAKE CITY	\$1,790	\$1,554	\$2,068	33%
14	SACRAMENTO	SALT LAKE CITY	\$921	\$972	\$1,318	43%
15	SACRAMENTO	DENVER	\$1,379	\$1,431	\$1,934	40%
16	OAKLAND	SALT LAKE CITY	\$989	\$1,085	\$1,432	45%
17	RENO	SALT LAKE CITY	\$797	\$839	\$1,148	44%
18	SALT LAKE CITY	STOCKTON	\$958	\$1,011	\$1,361	42%

TABLE 7
REVISED

ALTERNATIVE CASE (PAGE 3 OF 4)

SUMMARY OF VARIABLE COSTS
RELATED TO UP/SP-BNSF AGREEMENT
URCS COSTS
(DOLLARS PER CAR)

HOUSTON TO CORPUS CHRISTI TO BROWNSVILLE CORRIDOR

STUDY MOVEMENT NUMBER	ORIGIN	DESTINATION	UP/SP ON SP TRACK	UP/SP ON UP TRACK	BNSF ON BNSF ROUTE	BNSF ECONOMIC DISADVANTAGE
19	HOUSTON	BROWNSVILLE	\$678	\$639	\$777	22%
20	BROWNSVILLE	DALLAS	\$772	\$820	\$1,007	30%
21	SAN ANTONIO	BROWNSVILLE	\$572	\$568	\$1,084	91%
22	CORPUS CHRISTI	DALLAS	\$656	\$709	\$856	30%

TABLE 8
REVISED

ALTERNATIVE CASE (PAGE 4 OF 4)

SUMMARY OF VARIABLE COSTS
RELATED TO UP/SP-BNSF AGREEMENT
URCS COSTS
(DOLLARS PER CAR)

NEW ORLEANS TO SAN ANTONIO CORRIDOR

<u>STUDY MOVEMENT NUMBER</u>	<u>ORIGIN</u>	<u>DESTINATION</u>	<u>UP/SP ON SP TRACK</u>	<u>UP/SP ON UP TRACK</u>	<u>BNSF ON BNSF ROUTE</u>	<u>BNSF ECONOMIC DISADVANTAGE</u>
23	EAGLE PASS	NEW ORLEANS	\$934	\$997	\$1,191	28%
24	HOUSTON	SAN ANTONIO	\$509	\$566	\$734	44%
25	SAN ANTONIO	BEAUMONT	\$575	\$634	\$834	45%
26	SAN ANTONIO	DALLAS	\$602	\$591	\$836	41%

APPENDIX A

STUDY OF RECIPROCAL SWITCHING IN SIX STATES
Finance Docket No. 99100

Finance Docket No. 30700

SUBJECT OF RECIPROCAL SWITCHING IN SIX STATES												
Finance Docket No. 30700												
DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOM	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
ARKANSAS	GENERAL	BN		GRAIN	MP 8170 C	135						
	GENERAL	BN		NON GRAIN	MP 8170 C	140				\$60.00		
	GENERAL	MP		GRAIN	SP 9500 D	6050				\$130.00		
	GENERAL	MP		NON GRAIN	BN 8005 D	290					\$100.00	
	GENERAL	SP		GRAIN	MP 8170 C	125-D		\$130.00				
	CAMDEN	ALL		ALL	MP 8170 C	505-A				\$130.00		
	EAGLE MILLS	EACH		ALL OTHER	SP 9500 D	7080				\$83.00		
	EAGLE MILLS	EACH		GRAIN	SP 9500 D	7080					\$300.00	
	EL DORADO	SCAP		ALL	MP 8170 C	760					\$250.00	
	FT SMITH	AM			KCS 8100 A	280				\$112.00		
	FT SMITH	FSR			KCS 8100 A	280			\$200.00			
	FT SMITH	KCS		ALL	MP 8170 C	500-B			\$200.00			
	FT SMITH	MP			KCS 8100 A	280				\$191.00		
	GENERAL	ADN		ALL	MP 8170 C	500-B			\$200.00			
	GENERAL	BN			MP 8170 C	500-B				\$113.00		
	GENERAL	KCS			MP 8170 C	500-B				\$83.00		
	GENERAL	MDN			MP 8170 C	500-B				\$210.00		
	GENERAL	SP			MP 8170 C	500-B				\$115.00		
	GENERAL	SSW			MP 8170 C	500-B				\$83.00		
	HOPE	ALL		ALL	MP 8170 C	510-A				\$83.00		
	JONESBORO	SSW		ALL	BN 8005-D	3320				\$231.00		
	LITTLE ROCK	LRP		ALL	SP 9500 D	7090			\$495.00			
	TEXARKANA	MP		LUMBER	KCS 8100 A	400						\$82.00
	TEXARKANA	SP			KCS 8100 A	400				\$220.00		
	VAN BUREN	ALL			MP 8170 C	515-D			\$495.00			
	VAN BUREN	ALL		OTHER	MP 8170 C	515-E					\$231.00	
	VAN BUREN	ALL		O/B S&GRAV	MP 8170 C	515-E					\$96.00	
	VAN BUREN	ALL		O/B S&GRAV	MP 8170 C	515-E					\$139.00	
	VAN BUREN	AM		WHEAT	MP 8170 C	515-D					\$135.00	
	VAN BUREN	AM	AG PROC	O/B BEANS	MP 8170 C	515-D					\$86.00	
VAN BUREN	AM	ARKHOLA	SAND	MP 8170 C	515-D					\$86.00		

STUDY OF RECIPROCAL SWITCHING IN SEVEN STATES

Finance Docket No. 30700

DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOMER	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
KANSAS	GENERAL	ATSF		GRAIN	SP9500-D	6040						
	GENERAL	ATSF		NON-GRAIN	MP 8170-C	122-A					\$100.00	
	GENERAL	ATSF		NON-GRAIN	MP 8170-C	122-A				\$100.00		
	GENERAL	BN		GRAIN	MP 8170-C	135				\$60.00		
	GENERAL	BN		GRAIN	ATSF 8001-E	355	\$100.00					
	GENERAL	BN		NON-GRAIN	MP 8170-C	140				\$130.00		
	GENERAL	BN		NON-GRAIN	ATSF 8001-E	355	\$106.00					
	GENERAL	HN			ATSF 8001-E	355	\$62.00					
	GENERAL	KCS			ATSF 8001-E	355	\$133.00					
	GENERAL	KSW			ATSF 8001-E	355	\$69.00					
	GENERAL	MP			ATSF 8001-E	355	\$69.00					
	GENERAL	MP		GRAIN	ATSF 8001-E	116	\$60.00					
	GENERAL	MP		GRAIN	SP9500-D	6050					\$0.00	
	GENERAL	MP		NON-GRAIN	BN 8005-D	290		\$130.00			\$100.00	
	GENERAL	SP		GRAIN	MP 8170-C	125-D				\$495.00		
	GENERAL	SP		GRAIN	ATSF 8001-E	366	\$495.00					
	GENERAL	SSW		GRAIN	ATSF 8001-E	366	\$495.00					
	GENERAL	SSW		GRAIN	MP 8170-C	125-D				\$495.00		
	GENERAL	UP		GRAIN	SP9500-D	6050					\$100.00	
	GENERAL	UP		GRAIN	ATSF 8001-E	355	\$114.00					
	GENERAL	UP		GRAIN	ATSF 8001-E	116	\$60.00					
	GENERAL	UP		NON-GRAIN	ATSF 8001-E	355	\$133.00					
	GENERAL	UP		NON-GRAIN	BN 8005-D	290		\$130.00				
	ABILENE	MP		GRAIN,CHEM	ATSF 8001-E	370	\$148.00					
	ABILENE	UP		GRAIN,CHEM	ATSF 8001-E	370	\$133.00					
	ANTHONY	MP		GRAIN	ATSF 8001-E	410	\$77.00					
	ARKANSAS CITY	BN		GRAIN	ATSF 8001-E	485	\$105.00					
	ARKANSAS CITY	MP		GRAIN	ATSF 8001-E	485	\$77.00					
	ATCHISON	ATSF	MACZUK INDUSTRIES	GRAIN	MP 8170-C	530-B				\$102.00		
	ATCHISON	ATSF		NON-GRAIN	MP 8170-C	530-B				\$79.00		
	ATCHISON	ATSF		ALL	BN 8005-D	1380						
	ATCHISON	BN		GRAIN	ATSF 8001-E	495	\$74.00	\$151.00				
	ATCHISON	BN		GRAIN	MP 8170-C	530-B				\$102.00		

STUDY OF RECIPROCAL SWITCHING IN SEVEN STATES

Finance Docket No. 30700

DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOMER	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
KANSAS	ATCHISON	BN	MACZUK INDUSTRIES	NON-GRAIN	MP 8170-C	530-B				\$118.00		
	ATCHISON	KCS		GRAIN	MP 8170-C	530-B				\$102.00		
	ATCHISON	KCS		GRAIN	ATSF 8001-E	495	\$74.00					
	ATCHISON	KCS		NON-GRAIN	MP 8170-C	530-B				\$146.00		
	ATCHISON	MDR		ALL	BN 8005-D	1380		\$151.00				
	ATCHISON	MDR		GRAIN	MP 8170-C	530-B				\$102.00		
	ATCHISON	MP	MACZUK INDUSTRIES	NON-GRAIN	MP 8170-C	530-B				\$121.00		
	ATCHISON	MP		GRAIN	ATSF 8001-E	495	\$98.00					
	ATCHISON	MP(MKT)		ALL	BN 8005-D	1380		\$151.00				
	ATCHISON	MP(MKT)		GRAIN	ATSF 8001-E	495	\$74.00					
	BELLE PLAIN	ATSF		ALL	MP 8170-C	535-A				\$77.00		
	BELLE PLAIN	UP		ALL	MP 8170-C	535-A				\$139.00		
	CHANUTE	MP(MKT)		CHEM	ATSF 8001-E	570-580	\$141.00					
	COFFEYVILLE	ATSF		ALL	MP 8170-C	540-B				\$146.00		
	COFFEYVILLE	MP		GRAIN,CHEM	ATSF 8001-E	610-620	\$77.00					
	COFFEYVILLE	MP(MKT)		GRAIN,CHEM	ATSF 8001-E	610-620	\$198.00					
	CONCORDIA	MP		GRAIN	ATSF 8001-E	610-620	\$77.00					
	CONCORDIA	UP		GRAIN	ATSF 8001-E	610-620	\$122.00					
	COURTLAND	KYLE		GRAIN	ATSF 8001-E	700	\$124.00					
	EL DORADO	MP		CHEM	ATSF 8001-E	1055-1060	\$77.00					
	FREDONIA	BN		GRAIN	ATSF 8001-E	1130	\$105.00					
	FREDONIA	MP		ALL	BN 8005-D	2960		\$150.00				
	FREDONIA	MP		GRAIN	ATSF 8001-E	1130	\$77.00					
	FREDONIA	SKOL		ALL	BN 8005-D	2960		\$150.00				
	GARDEN CITY	GCV		GRAIN	ATSF 8001-E	1157	\$141.00					
	HUTCHINSON	HN		ALL	SP9500-D	6150					\$148.00	
	HUTCHINSON	MP		GRAIN	ATSF 8001-E	1160-1190	\$77.00					
	KANOPOLIS	UP		ALL	MP 8170-C	535				\$129.00		
	LEAVENWORTH	ATSF		GRAIN	MP 8170-C	545-A				\$102.00		
	LEAVENWORTH	ATSF		NON-GRAIN	MP 8170-C	545-A				\$118.00		
	LEAVENWORTH	BN		GRAIN	MP 8170-C	545-A				\$102.00		
	LEAVENWORTH	BN		NON-GRAIN	MP 8170-C	545-A				\$119.00		
	LEAVENWORTH	CNW		GRAIN	MP 8170-C	545-A				\$102.00		
	LEAVENWORTH	CNW		NON-GRAIN	MP 8170-C	545-A				\$101.00		

APPENDIX A - REVISED

STUDY OF RECIPROCAL SWITCHING IN SEVEN STATES

Finance Docket No. 30700

DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOMER	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
KANSAS	LEVENWORTH	BN	CARGILL-NUTRENA	GRAIN	ATSF 8001-E	1280	\$35.00					
	LEVENWORTH	BN		NON-GRAIN	ATSF 8001-E	1280	\$113.00					
	LYONS	BN		GRAIN	ATSF 8001-E	1325-1330	\$105.00					
	LYONS	BN		GRAIN	ATSF 8001-E	1325-1330	\$77.00					
	MC PHERSON	MP		GRAIN,CHEM	ATSF 8001-E	1335-1340	\$77.00					
	MC PHERSON	UP		GRAIN,CHEM	ATSF 8001-E	1335-1340	\$133.00					
	MCPHERSON	CKRY		ALL	SP9500-D	7390					\$175.00	
	NEWTON	MP		ALL	ATSF 8001-E	1385-1410	\$77.00					
	NICKERSON	MP		ALL	ATSF 8001-E	1420	\$77.00					
	NORTON	KYLE		ALL	BN 8005-D	4640		\$140.00				
	OLATHE	BN		ALL	ATSF 8001-E	1780	\$105.00					
	PITTSBURG	ATSF		ALL	MP 8170-C	555-A				\$77.00		
	PITTSBURG	BN		ALL	MP 8170-C	555-A				\$83.00		
	PITTSBURG	KCS		ALL	MP 8170-C	555-A				\$191.00		
	PITTSBURG	SEKR		ALL	BN 8005-D	4830		\$200.00				
	SALINA	MP		GRAIN	ATSF 8001-E	2005-2025	\$148.00					
	SALINA	UP		GRAIN	ATSF 8001-E	2005-2025	\$148.00					
	SCOTT CITY	MP		GRAIN,CHEM	ATSF 8001-E	2060	\$77.00					
	SCOTT CITY	MP		GRAIN,CHEM	ATSF 8001-E	2030	\$77.00					
	TOPEKA	ATSF		ALL	MP 8170-C	560-B				\$83.00		
	TOPEKA	BN		ALL	MP 8170-C	560-B				\$83.00		
	TOPEKA	KCS		ALL	ATSF 8001-E	2100-2180				\$139.00		
	TOPEKA	KCS		ALL	MP 8170-C	560-B				\$118.00		
	TOPEKA	MDR		ALL	MP 8170-C	560-B						
	TOPEKA	MP		GRAIN	ATSF 8001-E	2100-2180	\$139.00					
	TOPEKA	MP(MKT)		ALL	ATSF 8001-E	2100-2180				\$145.00		
	TOPEKA	SP		ALL	MP 8170-C	560-B				\$145.00		
	TOPEKA	SSW		ALL	MP 8170-C	560-B						
	TOPEKA	UP		ALL	ATSF 8001-E	2100-2180	\$146.00			\$139.00		
	TOPEKA	UP		GRAIN	MP 8170-C	560-B						
	WELLINGTON	MP(OKKT)		ALL	ATSF 8001-E	2260-2285	\$163.00					
	WICHITA	ATSF		NON-GRAIN	BN 8005-D	6240		\$130.00		\$148.00		
	WICHITA	ATSF		GRAIN	MP 8170-C	860-E				\$75.00		
	WICHITA	ATSF	GARVEY	GRAIN	MP 8170-C	860-E						

APPENDIX A - REVISED

STUDY OF RECIPROCAL SWITCHING IN SEVEN STATES

Finance Docket No. 30700

DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOMER	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
KANSAS	WICHITA	BN	WEYERHAUSER	ALL	MP 8170-C	860-E				\$109.00		
	WICHITA	BN		ALL	BN 8005-D	6250		\$382.00				
	WICHITA	KSW		ALL	SP9500-D	7395					\$175.00	
	WICHITA	MP		ALL	BN 8005-D	6240		\$130.00				
	WINFIELD	ATSF		ALL	MP 8170-C	560-B				\$83.00		
	WINFIELD	BN		ALL	MP 8170-C	560-B				\$83.00		
	WINFIELD	KCS		ALL	MP 8170-C	560-B				\$139.00		
	WINFIELD	MDR		ALL	MP 8170-C	560-B				\$118.00		
	WINFIELD	SP		ALL	MP 8170-C	560-B				\$145.00		
	WINFIELD	SSW		ALL	MP 8170-C	560-B				\$145.00		
	WINFIELD	UP		ALL	MP 8170-C	560-B				\$139.00		

REVISED
STUDY OF RECIPROCAL SWITCHING IN SEVEN STATES

Finance Docket No. 30700

DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOMER	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
LOUISIANA	GENERAL	ATSF		GRAIN	SP9500-D	6040					\$100.00	
	GENERAL	ATSF		NON-GRAIN	MP 8170-C	122-A				\$100.00		
	GENERAL	BN		GRAIN	MP 8170-C	135				\$60.00		
	GENERAL	BN		NON-GRAIN	MP 8170-C	140				\$130.00		
	GENERAL	MP		GRAIN	SP9500-D	6050					\$100.00	
	GENERAL	MP		GRAIN	ATSF 8005-E	111	\$60.00					
	GENERAL	MP			ATSF 8005-E	216	\$495.00					
	GENERAL	SP		GRAIN	ATSF 8005-E	836	\$450.00					
	GENERAL	SP		GRAIN	MP 8170-C	125-D				\$130.00		
	GENERAL	SSW			ATSF 8005-E	216	\$495.00	\$0.00				
	GENERAL	SSW		GRAIN	ATSF 8005-E	836	\$450.00					
	GENERAL	SSW		GRAIN	MP 8170-C	125-D				\$130.00		
	GENERAL	UP		GRAIN	SP9500-D	6050					\$100.00	
	GENERAL	MP			ATSF 8005-E	114	\$100.00					
	ALEXANDRIA	KCS		ALL	MP 8170-C	575-A				\$244.00		
	ALEXANDRIA	MDR		ALL	MP 8170-C	575-A				\$191.00		
	ALEXANDRIA	MP		ALL	KCS 8100-A	210			\$320.00			
	ALEXANDRIA	SP		ALL	MP 8170-C	575-A				\$138.00		
	ALEXANDRIA	SSW		ALL	MP 8170-C	575-A				\$138.00		
	AVONDALE	IC		ALL	SP9500-D	6180					\$390.00	
	AVONDALE	NON-IC		ALL	SP9500-D	6180					\$358.00	
	BALWDIN	LDRR		LA INTRAST	SP9500-D	7400					\$145.00	
	BASTROP	IC		ALL	MP 8170-C	580				\$205.00		
	BASTROP	MSRC		ALL	MP 8170-C	580				\$128.00		
	BATON ROUGE	IC		ALL	KCS 8100-A	220			\$625.00			
	BATON ROUGE	MF		ALL	KCS 8100-A	220			\$625.00			
	BAYOU SALE	LDRR		LA INTRAST	SP9500-D	7410					\$145.00	
	CROWLEY	AKDN		LA INTRAST	SP9500-D	7420					\$206.00	
	DE RIDDER	ATSF		ALL	KCS 8100-A	270			\$220.00			
	DE RIDDER	KCS			ATSF 8005-E	360	\$189.00					
	LAKE CHARLES	ATSF		ALL	MP 8170-C	570-B				\$72.00		
	LAKE CHARLES	KCS		ALL	MP 8170-C	570-B				\$191.00		

APPENDIX A - REVISED

STUDY OF RECIPROCAL SWITCHING IN SEVEN STATES

Finance Docket No. 30700

DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOMER	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
LOUISIANA	LAKE CHARLES	MP		ALL	KCS 8100-A	320			\$342.00			
	LAKE CHARLES	SP		ALL	KCS 8100-A	270			\$495.00			
	LAKE CHARLES	SP		ALL	MP 8170-C	570-B				\$78.00		
	LAKE CHARLES	SSW		ALL	MP 8170-C	570-B				\$78.00		
	MONROE	ALM		ALL	KCS 8100-A	340			\$109.00			
	MONROE	DSSR		ALL	KCS 8100-A	340			\$189.00			
	MONROE	IC		ALL	MP 8170-C	580				\$205.00		
	MONROE	MP		ALL	KCS 8100-A	340			\$189.00			
	MONROE	MSRC		ALL	MP 8170-C	580				\$128.00		
	NEW IBERIA	LDRR		LA INTRAST	SP9500-D	7430					\$145.00	
	NEW ORLEANS	CSXT		ALL	KCS 8100-A	360			\$248.00			
	NEW ORLEANS	IC		ALL	KCS 8100-A	360			\$296.00		\$390.00	
	NEW ORLEANS	IC		ALL	SP9500-D	6190						
	NEW ORLEANS	MP		ALL	KCS 8100-A	360			\$248.00			
	NEW ORLEANS	NON-IC		ALL	SP9500-D	6190					\$130.00	
	NEW ORLEANS	NOPB		ALL	SP9500-D	7440					\$200.00	
	NEW ORLEANS	NS		ALL	KCS 8100-A	360			\$248.00			
	NEW ORLEANS	SP		ALL	KCS 8100-A	360			\$495.00			
	OAKDALE	ATSF		ALL	MP 8170-C	570				\$66.00		
	OAKDALE	KCS		ALL	MP 8170-C	570				\$177.00		
	OAKDALE	SP		ALL	MP 8170-C	570				\$72.00		
	OAKDALE	SSW		ALL	MP 8170-C	570				\$72.00		
	SCHRIEVER	LDRR		LA INTRAST	SP9500-D	7450					\$145.00	
	SHREVEPORT	KCS		ALL	MP 8170-C	590				\$192.00		
	SHREVEPORT	MP		ALL	KCS 8100-A	380			\$220.00			
	SHREVEPORT	MSRC		ALL	MP 8170-C	590				\$189.00		
	SHREVEPORT	SP		ALL	KCS 8100-A	380			\$495.00			
	SHREVEPORT	SSW		ALL	KCS 8100-A	380			\$220.00			
	TEXARKANA	MP		ALL	KCS 8100-A	400			\$220.00			
									\$495.00			

APPENDIX A - REVISED

STUDY OF RECIPROCAL SWITCHING IN SEVEN STATES

Finance Docket No. 30700

DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOMER	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
MISSISSIPPI	ABERDEEN	BN		ALL	KCS 8100-A	135						
	ABERDEEN	KCS		ALL	BN 8005-D	1240						
	CORINTH	NS		ALL	KCS 8100-A	250		\$157.00	\$180.00			
	CORINTH	RRC		ALL	KCS 8100-A	250			\$275.00			
	GULFPORT	CSXT		ALL	KCS 8100-A	290			\$275.00			
	MERIDIAN	MBRR		ALL	KCS 8100-A	330			\$313.00			
	MERIDIAN	NS		ALL	KCS 8100-A	330			\$175.00			
	TUPELO	BN		ALL	KCS 8100-A	410			\$175.00			
	TUPELO	KCS		ALL	KCS 8100-A	5900			\$185.00			
					BN 8005-D			\$157.00				

APPENDIX A - REVISED

STUDY OF RECIPROCAL SWITCHING IN SEVEN STATES

Finance Docket No. 30700

DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOMER	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
MISSOURI	GENERAL	ATSF	(EXCEPT K. CITY)	GRAIN	SP9500-D	6040					\$100.00	
	GENERAL	ATSF		NON-GRAIN	MP 8170-C	122-A				\$100.00		
	GENERAL	BN		GRAIN	MP 8170-C	135				\$60.00		
	GENERAL	BN		NON-GRAIN	MP 8170-C	140				\$130.00		
	GENERAL	BN		GRAIN	ATSF 8001-E	355	\$89.00					
	GENERAL	BN		NON-GRAIN	ATSF 8001-E	355	\$100.00					
	GENERAL	MP		GRAIN	SP9500-D	6050					\$100.00	
	GENERAL	MP		NON-GRAIN	BN 8005-D	290		\$130.00				
	GENERAL	MP		ALL	ATSF 8001-E	355	\$68.00					
	GENERAL	SP		GRAIN	ATSF 8001-E	366	\$495.00					
	GENERAL	SP	(EXCEPT K. CITY)	GRAIN	MP 8170-C	125-D				\$130.00		
	GENERAL	SSW		GRAIN	ATSF 8001-E	366	\$495.00					
	GENERAL	SSW		GRAIN	MP 8170-C	125-D				\$130.00		
	GENERAL	UP		GRAIN	SP9500-D	6050					\$100.00	
	GENERAL	UP		NON-GRAIN	BN 8005-D	290		\$130.00				
	CAPE GIRARDEAU	MP		ALL	BN 8005-D	1730		\$293.00				
	CAPE GIRARDEAU	SE		ALL	BN 8005-D	1730		\$293.00				
	CAPEDEAU JCT	SE		ALL	SP9500-D	7460					\$150.00	
	CARTHAGE	MNA		ALL	BN 8005-D	1750		\$130.00				
	CARTHAGE	MP		ALL	BN 8005-D	1750		\$213.00				
	JOPLIN	BN	PROCTOR & GAMBLE	ALL	KCS 8100-A	300			\$252.00			
	JOPLIN	BN		ALL	MP 8170-C	610-A				\$83.00		
	JOPLIN	KCS		ALL	MP 8170-C	610-A				\$191.00		
	JOPLIN	MNA		ALL	KCS 8100-A	300			\$252.00			
	JOPLIN	MP		ALL	KCS 8100-A	300			\$252.00			
	LA PLATTA	NS		ALL	ATSF 8001-E	1275	\$84.00					
	LAMAR	MNA		ALL	BN 8005-D	4120		\$200.00				
	LAMAR	MP		ALL	BN 8005-D	5100		\$94.00				
	MARSHALL	GWWR		ALL	MP 8170-C	600-E				\$213.00		
	NEOSHO	BN		ALL	KCS 8100-A	350			\$220.00			
	SPRINGFIELD	BN		ALL	MP 8170-C	595-A				\$144.00		
	SPRINGFIELD	MNA		ALL	BN 8005-D	5640		\$133.00				
	SPRINGFIELD	MP		ALL	BN 8005-D	5640		\$133.00				

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APPENDIX A - REVISED

STUDY OF RECIPROCAL SWITCHING IN SEVEN STATES

Finance Docket No. 30700

MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER

DESCRIPTION							MAX. RECIPROCAL SW CHARGES PER CAR BY CARRIER					
STATE	CITY	ROAD	CUSTOMER	COMMODITY	TARIFF	ITEM(S)	ATSF	BN	KCS	MP	SPTC	ALL OTHER
MISSOURI	ST JOSEPH	ATSF		GRAIN	BN 8005-D	5100		\$94.00				
	ST JOSEPH	ATSF		GRAIN	MP 8170-C	618-A				\$120.00		
	ST JOSEPH	ATSF		NON-GRAIN	BN 8005-D	5100		\$180.00				
	ST JOSEPH	ATSF		NON-GRAIN	MP 8170-C	618-A				\$150.00		
	ST JOSEPH	ATSF		NON-GRAIN	MP 8170-C	618-A				\$120.00		
	ST JOSEPH	BN		GRAIN	MP 8170-C	618-A						
	ST JOSEPH	BN		GRAIN	ATSF 8001-E	2076-2077	\$98.00					
	ST JOSEPH	BN		NON-GRAIN	ATSF 8001-E	2076-2077	\$187.00					
	ST JOSEPH	BN		NON-GRAIN	MP 8170-C	618-A				\$150.00		
	ST JOSEPH	BN		NON-GRAIN	BN 8005-D	5100		\$94.00				
	ST JOSEPH	CNW		GRAIN	ATSF 8001-E	2076-2077	\$30.00					
	ST JOSEPH	CNW		NON-GRAIN	BN 8005-D	5100		\$180.00				
	ST JOSEPH	CNW		NON-GRAIN	ATSF 8001-E	2076-2077	\$85.00					
	ST JOSEPH	CNW		NON-GRAIN	ATSF 8001-E	2076-2077	\$98.00					
	ST JOSEPH	MP		GRAIN	BN 8005-D	5100		\$94.00				
	ST JOSEPH	MP		NON-GRAIN	ATSF 8001-E	2076-2077	\$98.00					
	ST JOSEPH	MP		NON-GRAIN	BN 8005-D	5100		\$180.00				
	ST JOSEPH	MP		NON-GRAIN	BN 8005-D	5100		\$94.00				
	ST JOSEPH	UP		GRAIN	ATSF 8001-E	2076-2077	\$45.00					
	ST JOSEPH	UP		GRAIN	ATSF 8001-E	2076-2077	\$126.00					
	ST JOSEPH	UP		NON-GRAIN	ATSF 8001-E	2076-2077						
	ST JOSEPH	UP		NON-GRAIN	BN 8005-D	5100		\$180.00				
	ST LOUIS	ALL		ALL	BN 8005-D	5190		\$225.00				
	ST LOUIS	ALL	ELEVATOR "A"	GRAIN	BN 8005-D	5220		\$110.00				
	ST LOUIS	BN		ALL	MP 8170-C	832-D				\$130.00		
	ST LOUIS	PSDR		ALL	BN 8005-D	8230		\$250.00				
	ST LOUIS	CR		ALL	MP 8170-C	832-D				\$385.00		
	ST LOUIS	CR		ALL	BN 8005-D	5190		\$364.00				
	ST LOUIS	CR	ELEVATOR "A"	GRAIN	BN 8005-D	5220		\$364.00				
	ST LOUIS	CSXT		ALL	BN 8005-D	5190		\$150.00				
	ST LOUIS	CSXT		ALL	MP 8170-C	832-D				\$104.00		
	ST LOUIS	CSXT	ELEVATOR "A"	GRAIN	BN 8005-D	5220		\$150.00				
	ST LOUIS	GWWR		ALL	MP 8170-C	832-D				\$235.00		
	ST LOUIS	IC		ALL	MP 8170-C	832-D				\$275.00		
	ST LOUIS	MP	ELEVATOR "A"	GRAIN	BN 8005-D	5220		\$66.00				