

FD

30400

SUB

NO.

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MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

FEE LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

MICHAEL E. ROPER
Commerce Counsel

JUL 18 3 53 PM '84

214-651-6741

In reply refer to FD-30400

RECEIVED

July 17, 1984

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
12th and Constitution Ave., N.W.
Washington, DC 20423

Re: Finance Docket No. 30400, Santa Fe Southern Pacific
Corporation - Control - Southern Pacific Transporta-
tion Company

Sub 8

Dear Secretary Bayne:

Enclosed are the original and twenty copies of the responsive applications filed by Missouri-Kansas-Texas Railroad Company in the above entitled proceeding. Also enclosed is a cashier's check for \$1,700.00 to cover the filing fee.

Pursuant to Decision No. 11, served June 28, 1984, all verified statements in support of the applications, as well as certain supporting exhibits, will be filed on August 20, 1984.

Please return the triplicate of this letter so that I may know the applications have been filed.

Sincerely yours,

Michael E. Roper

Michael E. Roper

MER:vas
Enclosures

cc: Rail Section
Office of Proceedings
Room 5417
Interstate Commerce Commission
Washington, DC 20423

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4-200F015

Before the
INTERSTATE COMMERCE COMMISSION

No. _____
Date JUL 18 1984
Fee \$ 1,700.00
ICC Washington, D.C.

FINANCE DOCKET No. 30400 (SUB-Nos. 8 & 10)
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY SYSTEM --
TRACKAGE RIGHTS --
SOUTHERN PACIFIC TRANSPORTATION COMPANY

APPLICATION IN SUPPORT OF
REQUESTED CONDITION FOR TRACKAGE RIGHTS
BETWEEN SAN ANTONIO AND CORPUS CHRISTI, TEXAS

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I.C.C.

MISSOURI-KANSAS-TEXAS RAILROAD
COMPANY SYSTEM

Michael E. Roper, Commerce Counsel
Missouri-Kansas-Texas Railroad Company
701 Commerce Street
Dallas, TX 75202
(214) 651-6741

Robert N. Kharasch
Kathleen Mahon
Galland, Kharasch, Morse & Garfinkle, P.C.
1054 Thirty-First St., N.W.
Washington, DC 20007
(202) 342-5200

WMS

Dated: July 18, 1984

I N D E X

Application

Map Exhibit No. 1

Trackage Rights Agreement Exhibit No. 2

Opinion of Counsel Appendix A

Exhibit Nos. 6, 9, 9A, 10 and 11 are contained in
Volume 2 filed with application. All other exhibits
will be filed as late-filed exhibits in accordance
with Decision No. 11, served June 28, 1984.

Before the
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 30400 (Sub-Nos. 8 & 10)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY SYSTEM --
TRACKAGE RIGHTS --
SOUTHERN PACIFIC TRANSPORTATION COMPANY

APPLICATION IN SUPPORT OF
REQUESTED CONDITION FOR TRACKAGE RIGHTS
BETWEEN SAN ANTONIO AND CORPUS CHRISTI, TEXAS

This application is filed by the Missouri-Kansas-Texas Railroad Company System (Applicant) under Section 11343 et seq. of the Interstate Commerce Act in support of its request that the proposed Santa Fe Southern Pacific Corporation - Control - Southern Pacific Transportation Company; Merger - The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Transportation Company application, if approved, be conditioned upon the grant of trackage rights hereinafter described. Applicant is composed of the Missouri-Kansas-Texas Railroad Company (MKT) and its wholly-owned subsidiary, the Oklahoma, Kansas and Texas Railroad Company (OKT).

The person to whom correspondence with respect to this application should be addressed is:

Michael E. Roper
Commerce Counsel
Missouri-Kansas-Texas Railroad Company
701 Commerce Street
Dallas, TX 75202
Telephone: (214) 651-6741

It is also requested that copies of all correspondence be mailed to:

Robert N. Kharasch
Galland, Kharasch, Morse & Garfinkle, P.C.
1054 Thirty-first Street, N.W.
Washington, DC 20007
Telephone: (202) 242-5230

In support of its request for trackage rights conditions, and pursuant to 49 C.F.R. 1180, Subpart A, Applicant submits the following information:

SECTION 1180.6 SUPPORTING INFORMATION.

This responsive application involves a major market extension by means of trackage rights over a line of the Southern Pacific Transportation Company (SP) and would therefore be classified as a significant transaction.

(a) (1) Description of Proposed Transaction.

(i) Summary.

Applicant requests that if the control application of the Santa Fe Southern Pacific Corporation (SFSP) and the merger of the Atchison, Topeka and Santa Fe Railway Company (ATSF) and SP in F. D. 30400 and sub-numbers is approved, that the control and merger be conditioned upon the grant to Applicant of access to Mexico via SP trackage. The granting to Applicant of access to Mexico is necessary to ameliorate the anticompetitive effects of the proposed consolidation. Applicant is seeking trackage rights over the SP line from San Antonio to Corpus Christi, Texas, including the use of trackage of the Missouri Pacific Railroad Company (MP) that is presently used by SP in serving Corpus Christi. A separate application to use that MP trackage is being concurrently filed by Applicant. The right to interchange traffic with the Texas Mexican Railway Company (TM), MP, SP and Corpus Christi Terminal Association at Corpus Christi is also sought along with the right to serve the Port of Corpus Christi and to serve all other industries in Corpus Christi through reciprocal switching. Applicant also requests authority to construct, at its own expense, a connection from present MKT trackage in San Antonio to present SP trackage in San Antonio. The line over which such trackage rights are sought and the connection to be built are more specifically described as follows:

The connection will be constructed from approximately MKT Mile Post 1036.1 to approximately Mile Post 210.7 on the SP's Del Rio Subdivision east of Tower 112, a distance of approximately 1700 feet. MKT would then enter onto SP's Del Rio subdivision at Mile Post 210.7 near Tower 112 and would continue on to SP's Corpus Christi Subdivision at approximately Mile Post 211.3 and thence to SP Junction at Mile Post 122.6, a distance of approximately 122 miles; thence onto the MP's line at Sinton to MP Junction at Mile Post 152.8; then back onto the SP line at MP Junction to approximately Mile Post 156.6 in the SP-TM Joint Yard, said line being located in Bexar, Wilson, Karnes, Bee, San Patricio, and Nueces Counties, Texas.

If, for any reason, the Commission does not grant Applicant's primary request for trackage rights to Corpus Christi, then, and only then, Applicant requests trackage rights over the SP's line from San Antonio to Eagle Pass, Texas, including the construction of the same connection, plus the right to use SP terminal facilities and services at Eagle Pass, for which Applicant is willing to compensate SP. Applicant also seeks the right to serve all industries at Eagle Pass and to interchange with the National Railways of Mexico. The trackage rights and terminal rights sought are more specifically described as follows:

The same connection as described above to be built from MKT Mile Post 1036.1 to approximately Mile Post 210.7 on the SP's Del Rio Subdivision east of Tower 112. MKT would then continue on the Del Rio Subdivision to Spofford at Mile Post 341.7; then on the SP's Eagle Pass Branch to Mile Post 33.2 in the SP's Yard, a distance of approximately 164.2 miles, said line being located in Bexar, Medina, Uvalde, Kinney, and Maverick Counties, Texas.

(ii) The Proposed Time Schedule for
Consummation of the Proposed Transaction.

The proposed trackage rights for Applicant should be made effective on the same date that the control and merger is consummated pursuant to any final order of the Commission.

(iii) Purposes of the Proposed Transaction.

The primary purpose of the proposed transaction is to ensure that shippers moving traffic to and from Mexico will have sufficient competitive rail choices if the consolidation is approved. Presently, there are three carriers with direct access to Mexico: ATSF, MP, and SP (directly and in connection with the TM). After the consolidation, there will be only two railroad choices (ATSF/SP and MP) available to shippers shipping to Mexico. The result is a substantial lessening of competition among railroads serving Mexico.

In addition, Applicant is presently a vigorous competitor for Mexican traffic via joint routes and rates with the SP and the TM. After the merger, the ATSF/SP system will be able to cut off access to Mexico by Applicant by cancelling their joint routes and rates with Applicant. Applicant will not be able to establish joint routes with the MP because MP serves the same territory as Applicant. Again the result is a substantial lessening of competition.

Applicant believes the best solution is for it to be granted access to Mexico via trackage rights over the SP to Corpus Christi where traffic would be interchanged to a friendly connection -- the TM -- to Laredo for entry into Mexico. These rights are by far the preferable solution because the large majority of Mexican rail traffic moves across at Laredo. However, Applicant believes that access to Mexico is so critical to preserving competitive choices that trackage rights over the SP to Eagle Pass would be an acceptable, though less desirable, solution.

(iv) New Securities or Other Financial Arrangements.

Applicant does not propose to issue any new securities. See Exhibit 2 for a draft of proposed trackage agreement, unexecuted.

(2) Public Interest Justifications.

(1) The SP and STSF are two of the three major rail systems serving all of the Mexican gateways in the United States and are presently vigorous competitors for Mexican business. Applicant is a regional rail carrier and is also a vigorous competitor for Mexican traffic in joint line service with the SP and TM. Presently, most of Applicant's Mexican traffic moves over Applicant's line to Denison, Texas, where it is interchanged to the SP; then via SP to Corpus Christi for interchange to TM, and then over TM to Laredo.

After consolidation, at least two competitive alternatives will be eliminated. The ATSF-SP competition will be eliminated, and Applicant will be completely cut off from access to Mexico because the merged system will cancel its joint routes with Applicant. This substantial lessening of competition must be ameliorated by granting Applicant trackage rights for access to Mexico.

Trackage rights would enable Applicant to replace the lost competition and would provide shippers with new essentially single line service via Applicant/TM to Mexico. These rights would be particularly beneficial to shippers located on Applicant's lines who will be denied access to Mexico unless Applicant is able to provide direct single line service.

(ii) Financial Considerations.

Applicant consists of a Class I railroad (MKT) and a Class II railroad (OKT) and operates approximately 3,100 miles of railroad in six states. The SFSP/ATSF/SP control and merger application shows on its face that

the control and merger would divert \$5.2 million in traffic revenues from Applicant annually. MKT's own traffic diversion study indicates that the control and merger would divert substantially more in traffic revenues from it annually. If the control and merger application is not denied, the proposed trackage rights are necessary to ameliorate in part the anticompetitive effects of the transaction.

The financial considerations resulting from the acquisition of the trackage rights herein requested involve basically (1) payment of a train-mile charge to the owner line, plus Applicant's train operating expense; and (2) revenue from both longer hauls and new traffic obtained by Applicant. Exhibit No. 18, to be filed subsequently, is a statement of sources and application of funds showing the financial benefits to Applicant if this application is approved. It is estimated that the excess of revenue over expense generated by use of the requested trackage rights will produce a net benefit to Applicant, as shown in Exhibit No. 17, to be filed subsequently. Such benefit will only offset to a limited extent the major loss the Applicant would otherwise suffer from the control and merger and thereby help Applicant to replace the loss of rail competition that will result if the control and merger is approved and consummated.

(iii) Effect of any Guaranty or Assumption of Payment, or Fixed Charges.

There will be no increase in the fixed charges of Applicant, nor will there be any guaranty or assumption of dividends or fixed charges by Applicant.

(iv) Effect on Adequate Rail Service.

The acquisition of such trackage rights will benefit transportation service to the public by enabling Applicant to furnish single line service and new routes between the grain originating points on the line and other Midwest points on the one hand, and Mexico and the Port of Corpus Christi, on the other hand. Thus, in addition to affording shippers a greater choice of routes, such trackage rights will prevent a substantial lessening of rail competition in the area.

(v) Effect on Applicant Carriers' Employees.

Applicant does not anticipate that the proposed trackage rights will adversely affect the long-term interest of employees. As shown in the

labor impact statement to be filed subsequently, Applicant estimates that its use of the SP line with Applicant's own trains and crews will result in an increase in the number of train and engine employees of Applicant and also in its mechanical employees. Because of the limited impact of this trackage rights arrangement and the increase in traffic volume which would accrue to ATSF/SP as a result of the proposed transaction, these trackage rights should have no adverse impact upon ATSF or SP employees. No agreements with the labor organizations have been concluded.

(vi) Effect of Inclusion or Failure to Include Other Railroads.

Applicant does not anticipate that there would be any material effect upon the public interest upon the failure to include other railroads in the territory involved in the proposed transaction.

(3) Other Material Supporting or Descriptive Statement.

Applicant has been hurt by the recent series of consolidations approved by the Commission. Overall, the Commission has determined that Applicant would suffer losses of over \$32 million (BN Frisco - \$8.6 million; Tucumcari - \$4 million; CSX - \$1 million; and UP/MP - \$18.8 million). The merger of ATSF and SP will divert additional millions from Applicant but, more important, will result in a substantial lessening of rail competition to Mexico. The grant of access to Mexico through these trackage rights over the SP to Applicant will help offset that lessening of competition.

(4) Opinion of Counsel.

The required Opinion of Counsel is attached hereto as Appendix A.

(5) State or States in Which Any Part of the Property of the Applicant Involved Is Situated.

The property of Applicant and SP involved in this proceeding is all located in the State of Texas. Applicant also owns property in the States of Missouri, Kansas and Oklahoma and, in addition, operates in Nebraska and Iowa.

(6) Map

There is attached hereto, as Exhibit No. 1, a general map of the territory served by Applicant, and the area served by the SP line over which trackage rights are requested.

(7) Explanation of the Transaction.(i) Description of Nature of the Transaction, the Significant Terms and Conditions, and the Consideration to be paid.

By this application Applicant seeks authority to obtain trackage rights over the main line of the SP between San Antonio and Corpus Christi, Texas, a distance of approximately 144 miles, or, only in the alternative, between San Antonio and Eagle Pass, Texas, a distance of approximately 164.2 miles, all as shown on Exhibit No. 1, with the right to physically serve the Port of Corpus Christi and to serve all industries in Corpus Christi through reciprocal switching, and to interchange with the TM, SP, and MP at Corpus Christi. Applicant will negotiate an agreement with TM under which TM will perform all necessary terminal services for Applicant at Corpus Christi. If the Eagle Pass rights are granted, then Applicant requests the right to use SP's terminal facilities at Eagle Pass and to have SP perform all necessary terminal services for Applicant. Said line is located in the counties identified in (a)(1)(i), above.

Said trackage rights will be governed by a proposed agreement, attached hereto as Exhibit No. 2, which is substantially the same as several other trackage agreements now in effect. Such agreement provides that SP will be paid an agreed train-mile charge for each train of Applicant operated, plus escalation, and contains the usual provisions governing train control, liability and labor requirements. In addition, Applicant will pay SP for the use of the required terminal facilities and for services that SP performs for Applicant under a mutually agreed formula to be determined later. Applicant requests the Commission to retain jurisdiction to set the charges if the parties are unable to agree. The amount fixed as compensation must be at a low enough level to enable Applicant to effectively compete in its operations over the line.

(ii) Agreement

There is attached hereto as Exhibit No. 2 the proposed trackage agreement, which has not been executed. Exhibit No. 2 would have to be modified if Applicant is granted trackage rights from San Antonio to Eagle Pass in lieu of the Corpus Christi trackage rights.

(iii) Not applicable.

(iv) Not applicable.

(v) Property Involved.

The proposed transaction does not involve all the property of applicant carriers. The property involved in this transaction is only the SP line, as described above.

(vi) Principal Routes and Terminals.

The line described in paragraph (i) above constitutes the only route involved. The principal points of interchange will be Corpus Christi, Texas. Applicant will need to use the terminal areas at Eagle Pass and a connection will have to be built at San Antonio.

(vii) Governmental Financial Assistance.

No governmental financial assistance is proposed as necessary or involved in this transaction.

(8) Environment Data.

Exhibit No. 4 will be late filed pursuant to Decision No. 11, served June 28, 1984.

(9) Energy Data.

Exhibit No. 5 will be late filed pursuant to Decision No. 11, served June 28, 1984.

(b) Additional Information.

(1) MKT's most recent Form 10-K is attached as Exhibit No. 6 in Volume 2 (MKT-18).

(2) None filed by MKT in recent history.

(3) None.

(4) Annual Reports for 1982 and 1983 are attached as Exhibit No. 9 and 9A, respectively in Volume 2 (MKT-18).

(5) See Exhibit 10, attached in Volume 2 (MKT-18).

(6) A corporate chart showing all relationships between MKT/OKT and other carriers and all affiliates and subsidiaries is attached as Exhibit No. 11 in Volume 2 (MKT-18).

(7) Not applicable.

(8) MKT/OKT is not part of any system or group of corporations or other persons, nor does it have any other relationships except to the extent shown in Exhibit No. 11.

SECTION 1180.7 MARKET ANALYSIS

Exhibit No. 12 will be filed at a later date pursuant to the Commission's Decision No. 11 served June 28, 1984.

SECTION 1180.8 OPERATIONAL DATA

Exhibit No. 13, the Operating Plan, and Exhibit No. 14, Density Charts, will be filed at a later date pursuant to the Commission's Decision No. 11, served June 28, 1984.

SECTION 1180.9 FINANCIAL INFORMATION

(a) Pro Forma Balance Sheet

Exhibit No. 16 will be filed at a later date pursuant to the Commission's Decision No. 11, served June 28, 1984.

(b) Pro Forma Income Statement

Exhibit No. 17 will be filed at a later date pursuant to the Commission's Decision No. 11, served June 28, 1984.

(c) Source and Application of Funds

Exhibit No. 18 will be filed at a later date pursuant to the Commission's Decision No. 11, served June 28, 1984.

(d) Property Encumbrance

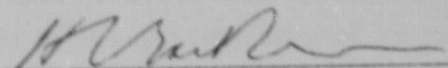
Property encumbrance (Exhibit No. 19) not applicable.

(e) -- Not applicable.

WHEREFORE, Applicant prays that the Commission condition any approval of the SFSP, ATSF, SP control and merger upon the grant to Applicant of trackage rights for access to Mexico, as set forth herein.

Respectfully submitted,

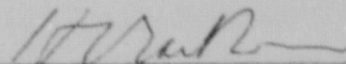
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OKLAHOMA, KANSAS AND TEXAS RAILROAD
COMPANY

by: 
H. L. Gastler, President
701 Commerce Street
Dallas, TX 75202

Dated: July 18, 1984

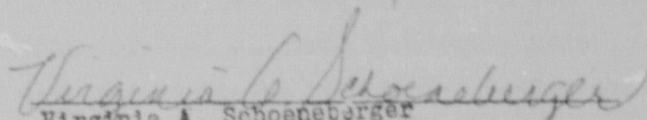
THE STATE OF TEXAS:

H. L. Gastler, being duly sworn, makes oath and says that he is President of Missouri-Kansas-Texas Railroad Company and Oklahoma, Kansas and Texas Railroad Company; that he has knowledge of the matters set forth in the foregoing application and has reviewed same; that they are true to the best of his knowledge and belief; that the foregoing application is made by authority of the Boards of Directors of Missouri-Kansas-Texas Railroad Company and Oklahoma, Kansas and Texas Railroad Company, as appears by resolutions adopted by meetings of the Boards of Directors; that he is one of the persons who is authorized by said Boards of Directors to sign, verify, and file the foregoing application.



 H. L. Gastler

Subscribed and sworn to before me this 11th day of JULY, 1984.



Virginia A. Schoeneberger
Notary Public in and for the State of
Texas

My Commission expires: MARCH 24, 1986

Katy Industries, Inc., as the principal stockholder of Missouri-Kansas-Texas Railroad Company, joins in the foregoing application.

KATY INDUSTRIES, INC.

By: Warren A. First
Vice President

STATE OF ILLINOIS)
) ss:
COUNTY OF KANE)

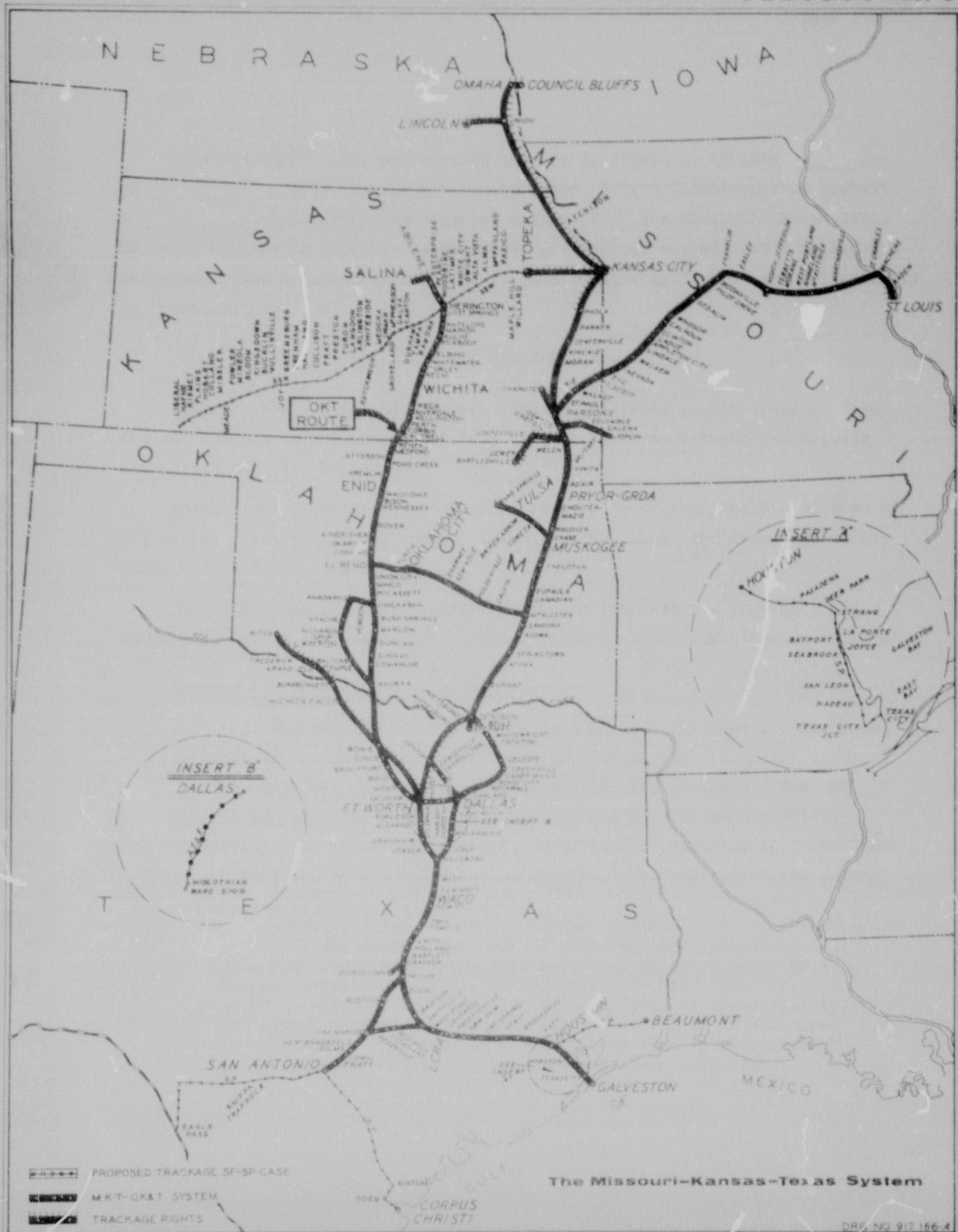
WARREN A. FIRST, being duly sworn, states that he is a Vice President of KATY INDUSTRIES, INC., a joint applicant herein; that he is authorized on the part of Katy Industries, Inc., to join MISSOURI-KANSAS-TEXAS RAILROAD COMPANY and OKLAHOMA, KANSAS AND TEXAS RAILROAD COMPANY in signing and filing with the Interstate Commerce Commission this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto; that he has knowledge of the matters set forth therein; and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.




Warren A. First
Vice President

Subscribed and sworn to before me this 9th day of July, 1984.

Mikhaila Eber
Notary Public in and for Kane County,
Illinois

My Commission expires: July 23, 1984.



-  PROPOSED TRACKAGE SF-SP CASE
-  MKT-QK&T SYSTEM
-  TRACKAGE RIGHTS

The Missouri-Kansas-Texas System

THIS AGREEMENT, made and entered into in duplicate as of this _____ day of _____, 1984, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a _____ corporation, hereinafter called "SP," and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a Delaware corporation, hereinafter called "MKT," SP and MKT being sometimes hereinafter referred to individually as "Party" and collectively as "Parties:"

W I T N E S S E T H :

WHEREAS, both SP and MKT operate lines of railroad in the State of Texas, and MKT desires to use certain of SP's line of railroad between San Antonio and Corpus Christi, Texas; and

WHEREAS, SP is agreeable to the use of certain of its line of railroad by MKT between San Antonio and Corpus Christi, Texas, under the terms and conditions hereinafter set forth:

NOW THEREFORE, in consideration of the premises and the covenants and agreements herein expressed, the Parties hereto covenant and agree as follows:

Section 1. Definition of Joint Track.

(A) The term "Joint Track," as used in this Agreement, shall mean and include the following described tracks of SP with requisite right of way for their use, and the appurtenances thereto, including, but not limited to, signals, interlocking devices and plants, communication facilities, and other appurtenances, used in the operation of Joint Track in and incident to the movement of engines, cars and trains therealong and thereover:

(1) MKT would enter onto SP's Del Rio Subdivision at Mile Post 210.7 near Tower 112, and would continue on to SP's Corpus Christi Subdivision at approximately Mile Post 211.3 to SP Junction at Mile Post 122.6, a distance of approximately 123 miles; thence onto the MP's line at Sinton to MP Junction at Mile Post 152.8; then back onto the SP line at MP Junction to approximately Mile Post 156.6 in the SP-TM Joint Yard.

said main track and said other tracks described and hereinbefore referred to in Subparagraph (1) of this Subsection (A), are those tracks indicated by heavy blue lines on SP's print prepared in Office of Chief Engineer at dated _____, marked "Exhibit A," attached hereto as part hereof.

In the trackage to be jointly used are certain turnouts to exclusive tracks of SP, which, from point of switch to end of long switch ties, are an integral part of Joint Track and it is hereby understood and agreed that, solely for purposes of liability under this Agreement, such turnouts in their entirety, from the point of switch to the end of long switch ties (including appurtenances thereto within such limits), shall be deemed to be included in the term "Joint Track."

(B) In addition to the tracks with requisite right of way for their use, and the appurtenances thereto, hereinbefore referred to in Subsection (A) of this Section 1, as comprising Joint Track, there shall be deemed included as a part of said Joint Track, solely for purposes of liability under this Agreement (but solely during such period or periods of time and subject to such conditions, exceptions, restrictions, and limitations as are elsewhere expressed in this Agreement), any other tracks, and appurtenances thereto, if and when, from time to time, in cases of emergency or in the opinion of SP more efficient and expeditious operation of Joint Track will result, SP may elect to have MKT operate its engines, cars and trains along and over said other tracks.

Section 2. Grant of Rights to Use Joint Track. In consideration of the payments hereinafter stated and the faithful performance of the covenants and agreements hereinafter contained, SP hereby grants to MKT for the period of time and subject to the terms, conditions and limitations in this Agreement expressed, the right to use Joint Track, described in Section 1 hereof, in common with SP and SP's other tenants and licensees from time to time, when and as required, in the operation of MKT's engines, trains and cars, and in

the transaction of MKT's business incidental thereto, for the purpose of conducting solely through freight train service.

Section 3. Limitations of Use - Reservations.

(A) That portion of Joint Track described in Subparagraph (1) of Section 1(A) hereof, shall be used by MKT only in connection with the movement of through traffic of MKT trains between San Antonio and Corpus Christi, TX, except as in this Section 3 provided. It is distinctly understood and agreed that MKT is not granted the right to use any industry, team, loading or other similar track or any station platform, or station or terminal facilities at any time located along or leading from said portion of Joint Track. Except as otherwise provided in this Section 3, SP reserves unto itself exclusive right to all local business either originating or terminating upon said portion of Joint Track, as well as local business originating and terminating wholly upon said Joint Track, except through reciprocal switching arrangements where authorized by tariffs or authorized by existing or future contracts between the Parties hereto. MKT, insofar as it may legally decline to do so, shall do no local business of any kind or character upon said portion of Joint Track without written consent of SP.

The term "local business either originating or terminating upon said portion of Joint Track" shall be deemed to include freight, passenger, mail, baggage or express business transported from any station north of or beyond Joint Track at San Antonio or south of or beyond Joint Track at Corpus Christi, to any station on the portion of Joint Track between San Antonio and Corpus Christi, and also freight, passenger, mail, baggage and express business transported from any station on the portion of Joint Track between San Antonio and Corpus Christi to any station north of or beyond San Antonio or south of or beyond Corpus Christi.

In the event MKT should at any time be legally required to carry such local business, or should do so with the written consent of SP, then MKT shall pay SP sixty percent (60%) of SP's local distance commercial tariff rates for such business as may be carried upon said portion of Joint Track in the direction of the destination of such business.

(B) It is distinctly understood and agreed that the above limitation on performing local business shall be subject to the following exceptions:

(1) Anything in this Section 3 contained to the contrary notwithstanding, MKT shall have the right to handle local freight traffic originating from or destined to industries now or hereafter located on MKT's tracks at San Antonio, as well as industries or individuals thereat taking delivery or loading on MKT team tracks, MKT freight houses and/or MKT TOFC facilities.

(2) Anything in this Section 3 contained to the contrary notwithstanding, MKT shall have the right to handle local passenger, mail, baggage or express business originating at or destined to San Antonio and Corpus Christi and also to interchange passengers, mail, baggage or express with other railroads at San Antonio and Corpus Christi.

Section 4. Admission of Other Railroad Companies. SP shall have the right at any time to admit any other railroad company to the use of all or part of Joint Track upon such terms as it may desire, provided such use shall not unreasonably hinder or obstruct MKT in the enjoyment of the rights granted it hereunder. MKT shall have no right to admit any other railroad to the use of Joint Track.

Section 5. Ownership, Management, Maintenance and Operation of Joint Track. Joint Track shall be and remain the property of SP. SP shall have exclusive management and control of the operation and maintenance of Joint Track, and shall control the admission and exit of engines and trains and the movement of the same thereover, and MKT's engines, cars, trains and employees while on Joint Track shall be subject to the rules, timetables, regulations and orders of SP from time to time in effect.

All rules, timetables, regulations and orders governing operations on and along Joint Track shall be promulgated by SP from time to time, and shall be fair, reasonable and uniform to each Party. All officers and employees engaged in the operation and maintenance of Joint Track shall attend to the business of each Party without preference as to the other Party. Trains of the Parties shall be given equal dispatch. Operations by each Party upon Joint Track shall

be conducted with due regard and without undue interference with the rights of the other Party.

SP may, from time to time, at its sole discretion and at its sole cost and expense, make such changes, relocations, additions and betterments to, or retirements from, Joint Track as shall in its judgment be necessary or desirable for the operation thereof, or as shall be required by Federal or State law, or by lawful Municipal Ordinance or Public Service Regulation or Order, and the same shall immediately become a part of or be excluded from Joint Track, as the case may be.

MKT, with its own employees, and at its sole cost and expense, shall operate its engines, cars and trains on and along Joint Track. MKT shall have the right to fix the schedules of its trains, provided such schedules do not unreasonably interfere with the operation of SP trains.

Section 6. Maintenance of Joint Track. SP shall, at SP's sole cost and expense, maintain, repair and renew Joint Track. Joint Track shall be kept in a state of reasonable repair and reasonably suitable for the combined requirements of the Parties hereto and of such other parties as SP may hereafter admit to the use thereof. In the event there are conditions from time to time which require emergency slow orders with respect to any location on SP's main track, SP shall, with reasonable promptness, start to repair such conditions and continue until completed so as to permit the removal of such emergency slow orders. If, at any time, in the judgment of MKT, SP is not maintaining any part of said main track in a condition satisfactory for operation of freight trains at speeds authorized by timetable, MKT may give notice, pursuant to the provisions of Section 26 hereof, specifying the location at which such maintenance is deficient and, promptly following receipt of such notice by SP, a joint inspection of said part of main track shall be made by the respective Chief Engineers of the Parties, or their authorized representatives. If they are in agreement as to the work which should be performed to bring said part of main Joint Track to satisfactory condition, SP shall promptly proceed with such work and continue with reasonable diligence until completed. In the event said Chief Engineers, or their authorized representatives, are unable to agree as to whether or not said main Joint Track is in satisfactory condition or as to work needed, the matters may be submitted to arbitration under the provisions of Section 21 hereof at the option of either Party.

Section 7. Qualification of MKT's Employees - Rule Books and Timetables. All employees of MKT engaged in or connected with the operation of engines, cars or trains along and over Joint Track shall be required to pass examination on the Operating Rules and Regulations of SP.

SP shall provide and supply MKT with the necessary book of rules (if or when unlike book of rules is adopted) and with switch keys, and MKT shall pay to SP the cost thereof. MKT shall bear the entire cost of printing and issuing timetables and supplements thereto made necessary solely by any changes in its operations, including any change affected by this Agreement. If any changes in SP's operations, but not those of MKT, require the printing and issuance of timetables or supplements thereto, MKT shall not be required to pay any portion of the expense incurred in connection therewith. If any such changes be necessitated by changes in the operations of SP coupled with changes in the operations of MKT, then the cost of printing and issuing such timetables or supplements shall be assumed one-half by MKT and one-half by SP.

Section 8. Discipline. SP shall have the right to require MKT to discipline its employees who operate engines, cars, and trains along and over Joint Track who violate SP's rules, timetables, orders or instructions. Discipline may be by dismissal, suspension, demerits or reprimands and will be assessed under the disciplinary rules of MKT's working agreements. Investigations shall be held at some point near Joint Track which is mutually agreeable to the Parties and an officer of MKT shall be present to assist the investigating officer in conforming the investigation to MKT's working agreements.

Section 9. Operation of Highway-Rail Motor Cars Over Joint Track. MKT owns combination highway-rail motor cars which are operated by its officers via rail from time to time in making inspections and in connection with the operation of its railroad. SP hereby grants to MKT the right to operate its highway-rail motor cars along and over Joint Track, without charge, subject to the rules and regulations of SP from time to time in effect. During such time as any such highway-rail motor car is not occupying the status of Joint Property, as defined in Section 19 hereof, MKT hereby agrees to assume and indemnify and hold harmless SP from and against any and all liability for injury to or death of any officers or employees of MKT operating on or about

any such highway-rail motor car, and for any loss, destruction or damage to any such highway-rail motor car or any property of such officers or employees contained therein arising from, incident to or growing out of such operation, use or presence of any such highway-rail motor car on Joint Track and regardless of SP's negligence.

Section 10. Clearing Wrecks. In the event any accident, derailment or wreck shall occur on Joint Track involving solely the engines, cars or trains of solely one of the Parties, or the engines, cars or trains of both Parties, SP, unless otherwise mutually agreed to by the Superintendents of the Parties, shall clear such accident, derailment or wreck, and the total cost of clearing such accident, derailment or wreck and of repairing the tracks and appurtenances damaged thereby shall be assumed and borne by the Party or Parties liable therefor pursuant to the provisions of Section 19 hereof.

Section 11. Bad Order Cars. In the event any car shall become defective (bad order) while being transported by MKT over Joint Track, MKT shall have the right to set out such bad order car on any available track and MKT shall furnish the necessary labor and materials for and repair such defect, following which MKT shall pick up such car with its trains, or, at the request of MKT, SP may pick up any such car with a train of SP, shall handle such car to San Antonio and shall deliver the same to MKT at San Antonio. In the event MKT, within a reasonable period of time (SP solely shall determine what is reasonable), fails to repair such defect, SP may furnish the necessary labor and materials for and repair such defect. MKT shall pay to SP, promptly following receipt of bill therefor, the cost, computed in accordance with the provisions of Section 15 hereof, incurred by SP in repairing any such bad order car, plus \$80.00 for picking up and handling each car from point where set out to point of delivery. SP shall not be liable for any loss or destruction of or damage to any such car or its contents, regardless of SP's negligence, while being handled by SP pursuant to the provisions of this Section 11.

Section 12. Train Orders.

(A) SP shall handle and transmit when and as required, from time to time, any orders or messages dealing with operations of MKT along and over

Joint Track. SP's communication facilities shall be available for use by MKT when and as required incident to said operations. MKT shall bear the entire cost and expense of any additional communication facilities or equipment, provided by SP or MKT, required for handling and transmitting any orders or messages dealing with operations of MKT over Joint Track.

(B) In the event the operations of MKT require SP to retain an assigned agent or operator beyond his normal assigned hours, or to call an agent or operator for the express purpose of handling MKT's trains or delivery orders or other instructions or messages to MKT's trains, or if an agent or operator is required to deliver orders or other instructions or messages to MKT's trains at locations other than at or in the vicinity of his assigned train order office location, then, in connection with any of the foregoing, MKT shall reimburse SP for any added costs in connection therewith.

SP's employees, while engaged or being used in or incident to providing such services exclusively for MKT, and any vehicles or other equipment, while engaged in or incident to the performance of such services exclusively for MKT, shall, for purposes of liability under this Agreement, be deemed Sole Employees and Sole Property respectively of MKT.

Section 13. Payment for Use of Joint Track.

(A) MKT shall pay to SP, monthly upon rendition of bills therefor, for the use of Joint Track in the operation of its trains thereover and for all services to be performed and facilities furnished by SP pursuant to this Agreement, where a specific payment is not otherwise provided for, at the rate of _____ (\$) per train mile for each train operated in each direction by MKT over said Joint Track during the month to which such bill is applicable.

For the purpose of computing the number of trains operated and train miles daily, a train shall be deemed to have operated over Joint Track for the entire length thereof in the same day in which it entered upon said Joint Track, and each day shall begin at 12:01 A.M. and end at 12:00 o'clock midnight.

For the purpose of this Section 13, the term "train mile" means the movement of one train, regardless of length or number of cars or locomotive units contained therein, a distance of one mile over Joint Track.

(B) In computing train miles operated by MKT trains, only the distance operated by such trains in through movement over Joint Track, as described in Section 1 hereof, shall be considered and such distance shall be deemed to be _____ miles for each MKT train operated.

(C) MKT shall maintain record of its trains moved along and over Joint Track in each calendar month and shall furnish to SP, within ten (10) days after the close of each such month, a statement showing the number of trains and train miles so moved. Such statement shall be furnished by MKT to such person as SP shall designate.

Section 14. Changes in Train Mile Rate and Other Charges. Because of the possibility of changes in the cost of maintenance and operation of Joint Track as a result of increases or decreases in labor, material costs and taxes, said train mile rate as provided for in Section 13 hereof shall be changed from time to time as follows:

(A) For the purpose of computing such increases or decreases, _____ of _____ per train mile rate shall be considered the portion of such train mile rate representing interest rental on Joint Track, and the remainder of such train mile rate shall be considered the portion representing cost of maintenance, operation and taxes.

(B) The portion of the train mile rate representing cost of maintenance, operation and taxes shall be increased or decreased effective as of July 1 of the year in which MKT begins operations under this Agreement, and on July 1 of each year thereafter during the term hereof to compensate for any increases or decreases in such costs according to the following formula: Indexes of Railroad Materials Prices and Wage Rates (1967 equal 100) issued by the Economic and Finance Department, Association of American Railroads, Series Q-MPW, to be the basis used for determining the percentage of increase or decrease. In making such determination, indexes for the Western District shall be used and the sum of 30% of the

index for materials and supplies (other than fuel) and 70% of the index for wage rates and supplements for the year 1982, which is a composite index of 261.62, shall be taken as the base. The composite index for labor and material for the full calendar year immediately prior to the year in which the change is to be made effective shall be computed in a similar manner. In order to provide for improvement in the art and other changes having the effect of reducing the cost of maintenance and operation, such composite index shall be reduced by 25.0% of the increase over or decrease under the composite index for the base period. The ratio of the adjusted composite index so developed to the index for the base period shall be obtained. The portion of the train mile rate representing cost of maintenance, operation and taxes shall be increased or decreased by such ration. In the event the base for the index issued by the Association of American Railroads shall be changed from the year 1967, appropriate revision shall be made in the base established as herein provided for the year 1982. If the Association of American Railroads, or any successor organization, discontinues said indexes of Railroad Material Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the Parties hereto.

(C) It is understood and agreed that under no circumstances shall the train mile rate be less than as provided in Section 13 hereof.

Section 15. Definition of Cost. Except as herein otherwise provided, in computing bills for cost and expense, SP shall use the rules and rates contained in the "Schedule of Surcharges and Rates for Joint Facility Billing Purposes" issued by The Atchison, Topeka and Santa Fe Railway Company.

Section 16. Rendition and Payment of Bills. Bills for amounts payable under this Agreement shall be rendered monthly. All such bills shall be paid promptly following receipt thereof. All amounts payable to MKT hereunder shall be paid at the office of the Treasurer of SP.

Errors or disputed items in any such bills shall not be deemed a valid excuse for delaying payment, but shall be subject to subsequent adjustment;

provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years after the last day of the calendar month in which the expense covered thereby is incurred or, in the case of claims of third parties disputed as to amount or liability, after the amount is liquidated and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the Interstate Commerce Commission or retroactive adjustment of wage rates and settlement of wage claims.

Section 17. Inspection of Books and Accounts. So much of the books and accounts of each Party as relates to the subject matter of this Agreement shall, at all reasonable times, be open to inspection by the proper officers and agents of the other Party who shall, if they desire, be permitted to make copies from said books or accounts of any matter contained therein relating to such subject matter.

Section 18. Observance of Laws, Public Rules and Regulations. MKT, in the operation of its engines, cars and trains along and over Joint Track, shall comply with all laws, rules and regulations made by lawful authority, Federal, State or Municipal, governing the construction, equipment, renewal, maintenance, inspection and operation of engine cars and trains, and hereby agrees to assume and to indemnify and hold SP I r'ess from and against any and all damages, costs, expenses, penalties, fines, judgments or decrees on account of its violation of, or failure to comply with, any such laws, rules and regulations, the judgment or decree of any Court in any case to the contrary notwithstanding.

Section 19. Liability.

(A) For the purpose of this Section 19, the following terms or definitions are used:

(1) "Damages" means all loss of or damage to any and all property and all injuries to or death of any and all persons, including but not limited to any property or employees of the Parties

hereto, and all liability therefor, including amounts paid under any Municipal, State or Federal law, and also embraces all costs and expenses incidental thereto.

(2) "Joint Property" means:

(a) Joint Track;

(b) Any engine and equipment comprising any wrecking outfit while engaged in or incident to the performance of any wrecker service on Joint Track, the cost of which is included in any Damages for which SP and MKT shall be jointly liable;

(c) Any engine and equipment comprising any work train while engaged, or any tools and machinery while being used, in or incident to the construction, operation, maintenance or repair of, or the making of additions or betterments to, or retirements from, Joint Track;

(d) Any property while being used to provide services for MKT pursuant to Section 11 hereof contemporaneously with the provisions of a similar or like service for SP;

(e) Any highway-rail motor car of MKT (the right to operate which is granted in Section 9 hereof) or SP, while being used to transport officers or employees of both MKT and SP over Joint Track.

(3) "Joint Employee" means:

(a) All persons while engaged in or incident to the operation (including, but not limited to dispatching, giving orders for or directing the movement of trains), maintenance, management, or repair of, or the making of additions or betterments to or retirements from Joint Track;

(b) All persons assigned to any engine and equipment comprising any wrecking outfit while occupying the status of Joint Property;

(c) All persons assigned to any engine and equipment comprising any work train while occupying the status of Joint Property;

(d) Any employee of SP while engaged in or incident to the performance of service pursuant to Section 11 hereof for MKT contemporaneously with the performance of a similar or like service for SP;

(e) Any person while engaged in the operation of any highway-rail motor car while occupying the status of Joint Property.

(4) "Sole Property" means:

(a) Property (including property in the custody or control of the Party concerned) of MKT or SP, as the case may be, except while Joint Property, as defined above, and except as hereinafter in this (4) provided;

(b) Any engine and equipment comprising any wrecking outfit while engaged in or incident to the performance of any wrecking service on Joint Track, the cost of which is included in any Damages for which either MKT or SP shall be solely liable, shall be deemed the Sole Property of MKT or SP, as the case may be.

(c) Any equipment, engine, motor vehicles, tools and appliances of SP as and when from time to time used exclusively in the performance of any work or services solely for MKT pursuant to this Agreement shall be deemed the Sole Property of MKT;

(d) Any highway-rail motor car when not occupying the status of Joint Property shall be deemed the Sole Property of the owner thereof.

(5) "Sole Employee" means:

(a) The officers, employees, agents and contractors of each Party except while Joint Employees, as defined above, and except as hereinafter in this (5) provided:

(b) All persons assigned to any engine and equipment comprising any wrecking outfit while Sole Property under the provisions of Section 19(A)(4)(b) shall be deemed the Sole Employees of MKT or SP, as the case may be, with respect to which said engine and equipment shall at the time occupy the status of Sole Property;

(c) Any employee of SP while engaged exclusively in performance of work or services solely for MKT pursuant to this Agreement shall be deemed the Sole Employee of MKT;

(d) Any employee while engaged in the operation of any highway-rail motor car along and over Joint Track while such highway-rail motor car is not occupying the status of Joint Property shall be deemed the Sole Employee of the Owner of such car.

(B) SP shall be bound to use only reasonable care, skill and diligence in the maintenance, operation, repair and renewal of Joint Track and MKT shall not have or assert any claim or demand against SP for any

Damages whatsoever by reason of any defect in Joint Track or by reason of the failure or neglect of SP to repair any such defect.

(C) Except as may be elsewhere in this Agreement otherwise provided, Damages suffered or occasioned in connection with:

(1) the operation, maintenance, repair and renewal of, or making additions or betterments to or retirements from, Joint Track or the use or attempted use of any such tracks by the trains of MKT or SP, the use or attempted use of any such tracks by MKT's or SP's highway-rail motor cars, and the performance by SP of work and service pursuant to Section 11;

(2) the operation by SP or MKT of engines, cars and trains, and in the transaction of their business incident thereto, along and over Joint Track as contemplated in this Agreement.

(3) the performance of any work or services in connection with or in relation to any of the matters or things hereinbefore in this Section 19(C) referred to; and

(4) the presence on or in the vicinity of Joint Track of any officer, employee, agent, licensee or invitee of MKT or SP incident to the performance of any work or services for, or the conduct of any business with, such Party;

shall be allocated to, and liability therefor shall be assumed, solely as between the Parties, by MKT and/or SP in the manner hereinafter in this Section 19 provided.

Such Damages when due to:

(a) the acts or omissions, negligent or otherwise, of a Sole Employee or Sole Employees of MKT or SP; or

(b) the concurring acts or omissions, negligent or otherwise, of a Joint Employee or Joint Employees and of a Sole Employee or Sole Employees of either MKT or SP; or

(c) any defect in or failure of any kind in the Sole Property of either MKT or SP;

shall be borne by the Party (MKT or SP, as the case may be) whose Sole Employee or Sole Employees was or were solely or concurrently involved,

or by the Party (MKT or SP, as the case may be) whose Sole Property was defective or failed.

Such Damages when due to:

(d) the concurring acts or omissions, negligent or otherwise, of a Sole Employee or the Sole Employees of MKT and of a Sole Employee or the Sole Employees of SP; or

(e) the concurring acts or omissions, negligent or otherwise, of a Joint Employee or Joint Employees and of a Sole Employee or the Sole Employees of both MKT and S.^o; or

(f) defects of any kind in the Sole Property of both MKT and SP;

shall be borne equally by MKT and SP, except that each Party shall bear all such Damages as to its Sole Property and as to its Sole Employees, passengers and patrons, and all others on its engines, cars or trains (other than the engines and equipment while occupying the status of Joint Property as in Section 19[A][2] provided) or on or about Joint Track in the transaction of such Party's business or of business with such Party.

Such Damages when due to:

(g) the acts or omissions, negligent or otherwise, of a Joint Employee or Joint Employees; or

(h) the failure of or defect in any of the Joint Property; or

(i) any other cause whatsoever not hereinbefore provided for;

(1) shall be borne by each Party (MKT and SP respectively) as to its Sole Property and as to its Sole Employees, passengers and patrons, and all others on its engines, cars or trains, or on or about Joint Track in the transaction of its business or of business with it; and (2) shall be prorated between both Parties as to third persons and their property, Joint Employees and their property, and Joint Property, in the ratio that the number of trains operated by each Party (MKT and SP respectively) over Joint Track during the month preceding the month during which such Damages occurred bears to the total number of trains operated by both MKT and SP over Joint Track during such month; provided, however, if such Damages to

third persons and their property, Joint Employees and their property, and Joint Property result from or are connected with providing services or property pursuant to Section 11 hereof, they shall be borne equally by MKT and SP; and provided further, that in case of accident in which the engines, cars, trains (other than engines and equipment while occupying the status of Joint Property as in Section 19[A][2] provided) or Sole Employees of only MKT or only SP are concerned, then the liability for the resulting Damages shall be borne solely by such Party, as the case may be, whose engines, cars, trains or Sole Employees are solely concerned.

(D) The engines, cars, trains, officers, employees, agents, licensees or invitees of any railroad, other than the Parties, now using or hereafter admitted to use of Joint Track, or any part thereof, shall for the purposes of this Section 19 be regarded as the engines, cars, trains, officers, employees, agents, licensees or invitees of SP.

(E) If it shall be impossible to determine whether any person is the passenger, patron or employee of MKT or SP, then the liability for any injury to or death of such person or for loss of or damage to the property of such person shall be apportioned as in the case of third persons.

(F) Each Party shall bear all Damages for which such Party shall be liable under the provisions of this Section 19, and shall indemnify and save harmless the other Party against such Damages.

(G) Each Party shall have the right to settle, or cause to be settled for it, all claims for Damages for which such Party shall be liable under the provisions of this Section 19, and to defend or cause to be defended all suits for the recovery of any such Damages.

(H) In the event both of the Parties shall be liable under the provisions of this Section 19 for any Damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the Parties jointly liable therefor, release from liability shall be taken to and in the names of both Parties so liable. However, any such settlement in excess of the sum of Ten Thousand Dollars (\$10,000) shall not be made by or for either Party so jointly liable without the authority of

such other Party jointly liable for said Damages; but any settlement made by either Party in consideration of said sum or a lesser sum shall be binding upon the other Party.

(I) In case a suit shall be commenced against either Party for or on account of Damages for which the other Party is solely or jointly liable under the provisions of this Section 19, the Party so sued shall give to such other Party notice in writing of the pendency of such suit and thereupon such other Party shall assume or join in the defense of such suit.

(J) Neither Party shall be concluded by any judgment against the other Party unless such Party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the Party so notified shall be concluded by the judgment as to all matters which could have been litigated in such suit.

(K) All claims and demands for Damages arising under the provisions of this Section 19 shall be investigated by or for the account of the Party whose employee is injured or whose property is damaged, but in the event employees of both Parties are injured, or the properties of both Parties are damaged, the representatives of both Parties who handle such claims shall agree among themselves as to which Party shall make the investigation.

Section 20. Liability for Interruption or Delay of Traffic. If traffic on the tracks included in Joint Track, or business thereon, is at any time interrupted or delayed by derailments or from any cause other than the willful act of either Party, then and in such case neither Party shall have any claim against the other Party for loss or damage of any kind caused by or resulting from such interruption or delay.

Section 21. Arbitration of Disputes. In case any disagreement shall arise between the Parties to this Agreement relative to the construction or interpretation of any part of this Agreement, or concerning the observance or performance of any of its terms or conditions, or as to any other matter of

dispute arising under this Agreement, then such questions shall be submitted to the arbitrament of persons who shall be experienced railroad men then or recently in Class I railroad service, and who shall be experienced in matters of the character in dispute, to be chosen as follows:

(A) The Party desiring arbitration shall select its arbitrator and give written notice thereof to the other Party and shall in such notice state precisely the matter or matters which it proposes to bring before the arbitrators, and only the matters so stated shall be considered by them. Within thirty (30) days after the service of such notice the Party so notified shall select an arbitrator and notify the moving Party in writing of such selection. If the Party so notified shall not select an arbitrator and notify the moving Party of such selection, as aforesaid, then the second arbitrator may be appointed by the Judge of the District Court of the United States for the District in which the City of _____ shall be located, who shall have served longest in that capacity in said District and is willing to act, upon application of the moving Party upon giving ten (10) days' written notice of such application to the other Party to the controversy.

(B) The arbitrators selected or appointed in the manner provided in the preceding paragraph, within thirty (30) days after the designation of the one of them last chosen, shall jointly name a third arbitrator.

(C) If in any case, as aforesaid, the arbitrators so chosen shall fail to agree upon the selection of an additional arbitrator, such arbitrator may be appointed by the Judge of the District Court of the United States for the District in which the City of _____ shall be located, who shall have served longest in that capacity in said District, and is willing to act, upon application of the moving Party upon ten (10) days' written notice of such application to the other Party.

The arbitrators having taken and subscribed an oath before some person authorized by law to administer oaths to the effect that they will well and truly try and impartially and justly decide the matter in controversy according to the best of their ability (which oath shall be filed with their decision)

shall, as soon as possible after their selection, meet to hear and decide the question or questions submitted to them and shall give to each of the Parties reasonable notice of the time and place of such meeting. The hearings of the board of arbitrators shall be conducted in a lawful manner, and after hearing both Parties and taking such sworn testimony or making such investigation as they may deem necessary, the written decision of the arbitrators, signed by a majority of them, shall determine the controversy, and such determination shall be final and conclusive upon the Parties.

Upon the making of such decision, each Party shall and will immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision may be required of it.

Each Party shall pay the expense of its own arbitrator, and the cost and expense of any neutral arbitrator and any other cost of the arbitration shall be borne by the Party against whom the award is made, if the award is made against one Party, but if the award is made against both Parties, such expenses shall be borne equally.

Until the arbitrators shall make their award upon any question submitted to them, the business, settlements and payments to be transacted and made under this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such question.

In lieu of a board of arbitrators chosen in the manner hereinbefore in this Section 21 prescribed, any dispute or disagreement may be submitted to a single arbitrator selected by the Parties and the written decision of such arbitrator shall be final and binding.

Section 22. Default. In the event MKT shall at any time fail to pay, when and as due, all sums payable to SP as herein provided or shall default in the performance of any of its covenants, agreements or obligations hereunder and shall continue in such default for a period of sixty (60) days after written notice from SP specifying the matters in respect to which such default exists, this Agreement may be terminated by SP at the end of said sixty-day period on one day's written notice; provided, however, that in respect to any matter concerning which MKT requests arbitration hereunder and proceeds therewith in good faith, SP shall not have the right to terminate this Agreement as

aforesaid unless default shall continue for thirty days after final decision of the arbitrators.

SP may waive any default on the part of MKT, but no waiver of SP shall extend to, affect or impair the rights of SP with respect to any other default on the part of MKT.

No termination of this Agreement shall release MKT from any liabilities or obligations which may have been incurred by or which may have accrued against it hereunder during the term of this Agreement.

Section 23. Protection of Employees. MKT shall assume in full the cost of satisfying or complying with any conditions prescribed by the Interstate Commerce Commission, pursuant to the provisions of 49 USC Section 11347 (formerly Subdivision [f] of Section 5[2] of the Interstate Commerce Act) for the protection of the interests of MKT's employees affected by entering into this Agreement.

Section 24. Abandonment of Joint Track. Subject to approval of any governmental body having competent jurisdiction, SP may abandon all or any part of Joint Track at any time after having given MKT six months' written notice of its intention to do so, and after the end of such six months' period, SP shall not be required to maintain or operate the part of Joint Track so abandoned. In event of such abandonment, MKT may, if it so elects and notifies SP in writing within said Six-months' period, purchase from SP such part of Joint Track so abandoned upon payment to SP of (a) a sum equal to the salvage value (giving consideration to cost of recovery) of the material entailed, plus (b) a sum equal to the then appraised value of SP's ownership in right of way required for such part of Joint Track, such values to be agreed upon by the Parties or, on failure to agree, to be determined by arbitration as provided in Section 21 hereof. If such option shall be exercised by MKT, SP shall, upon the payment of the purchase price, transfer said property, including right of way, by Quitclaim Deed, free of all liens created by, through or under SP and no further, to MKT, subject to crackage or other rights, if any, theretofore granted by SP to parties not Parties hereto, and deliver to MKT releases of all mortgages with respect to such property. SP, upon so

abandoning and disposing of its said property, shall not thereafter have any right to use or operate upon same. MKT shall become the successor of SP in any contract or contracts theretofore made granting trackage rights or other rights as aforesaid to others not Parties hereto with respect to such Joint Track so purchased, and shall assume all the obligations and be entitled to all of the rights of SP under said contract or contracts.

Section 25. Effective Date - Term. This Agreement shall be effective from and after the date of beginning of operation, howsoever legally authorized, pursuant to the provisions of this Agreement, and except as otherwise provided hereinafter or in Sections 22 and 24 hereof, shall continue in effect for a period of ten (10) years and thereafter until terminated by SP serving on MKT, or vice versa, ninety (90) days' written notice of its intention so to do. Notwithstanding the foregoing, this Agreement shall terminate immediately upon the effective date of an order, if any, of the Interstate Commerce Commission or any other governmental agency having jurisdiction over this Agreement and the operation contemplated thereunder denying permission for same.

Section 26. Service of Notices. Any notice to be given hereunder to either Party shall be in writing and deemed to be properly served after deposited in the Post Office, postage prepaid, addressed to the Party as follows, unless notice of change of address has been previously given in writing:

Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

Missouri-Kansas-Texas Railroad Company
701 Commerce Street
Dallas, TX 75202

Section 27. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their respective successors, lessees and assigns, but no assignment by MKT of any interest or right under this Agreement separate and apart from any assignment, sale or lease of substantially its entire railroad shall be valid without the written consent of SP.

Section 28. Agreement to Be Construed Liberally - Not for the Benefit of Other Parties. This Agreement shall be construed liberally so as to secure to each Party hereto all the rights, privileges and benefits herein provided or manifestly intended. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any other party.

Section 29. Section Headings. All section headings are for convenience only and shall not affect any construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed in duplicate as of the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

ATTEST:

By: _____
Vice President

Secretary

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

ATTEST:

By: _____
Vice President

Secretary

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

MICHAEL E. ROPER,
Commerce Counsel

214-651-6741

In reply refer to: FD-30400

July 18, 1984

Interstate Commerce Commission
Washington, DC 20423

OPINION OF COUNSEL

Gentlemen:

I am Commerce Counsel of Missouri-Kansas-Texas Railroad Company and, as such, have examined the accompanying application filed under Section 11343 of the Interstate Commerce Act, for approval and authorization by the Interstate Commerce Commission for acquisition by Missouri-Kansas-Texas Railroad Company of certain trackage rights over the line of the Southern Pacific Transportation Company between San Antonio and Corpus Christi or Eagle Pass, Texas.

I am of the opinion that the proposed transaction, as aforesaid, will meet the requirements of law, and will be legally authorized and valid if approved by the Interstate Commerce Commission.

Respectfully submitted,

Michael E. Roper

Michael E. Roper
Commerce Counsel

MER:vas

CERTIFICATE OF SERVICE

I certify that I have this day served a conformed copy of the foregoing application, by first class mail, properly addressed with postage prepaid, upon the following persons required to be served by 49 C.F.R. 1180.4(c)(5), namely:

(i) The Governor, Public Service Commission and the Department of Transportation of each state in which any part of the properties of the applicant carrier involved in the proposed transaction is situated;


(ii) The United States Secretary of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, S.W., Washington, DC 20590);

(iii) The Attorney General of the United States;

(iv) The Federal Trade Commission;

(v) All persons who have requested a copy in accordance with the Commission's regulations.

Dated at Dallas, Texas this 18th day of July, 1984.



Michael E. Roper