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NO.

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MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

FEE OF LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

MICHAEL E. ROPER
Commerce Counsel

214-651-6741

JUL 18 3 59 PM '84

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 9*

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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FEE OF LAW DEPARTMENT

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FILED

Before the

1984 INTERSTATE COMMERCE COMMISSION

INTERSTATE
COMMERCE COMMISSION

FINANCE DOCKET No. 30400 (SUB-No. 9)

APPLICATION OF
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY SYSTEM
UNDER SECTION 11103 FOR ACQUISITION
OF USE OF TERMINAL FACILITIES
AT CCRPUS CHRISTI, TEXAS

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

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 Street, N.W.
Washington, DC 20007
(202) 342-5200

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Dated: July 18, 1984

Before the
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 30400 (Sub-No. 9)

APPLICATION OF
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY SYSTEM
UNDER SECTION 11103 FOR ACQUISITION
OF USE OF TERMINAL FACILITIES
AT CORPUS CHRISTI, TEXAS

Comes now Missouri-Kansas-Texas Railroad Company System (Applicant) and files this application to acquire the right to use certain facilities of the Missouri Pacific Railroad Company (MP) for access to the terminal area at Corpus Christi, Texas.

This application is related to the responsive application of Applicant filed in F. D. No. 30400 (Sub-Nos. 8 & 10) and bearing Applicant's identification number MKT-12 wherein Applicant seeks authority to acquire trackage rights over the lines of Southern Pacific Transportation Company (SP) between San Antonio and Corpus Christi, Texas. The terminal access facilities for which Applicant is seeking authority in this application are as follows:

The MP line from and between Mile Post 161.85 at Sinton, Texas, to Mile Post 154.57 at Odem, Texas, a distance of approximately 7.28 miles, and between Mile Post 132.30 at Odem and Mile Post 145.60 at Corpus Christi, Texas, a distance of approximately 13.30 miles, together with three connecting tracks 853 feet long at Sinton, 1193 feet at Odem, and 408 feet long at Corpus Christi.

The above described line is presently being used by SP under an Agreement dated August 14, 1964, for its only access to the Corpus Christi terminal area. MKT seeks to acquire the right to use the above described facilities upon the same terms and conditions contained in the August 14, 1964 Agreement, a copy of which is attached hereto as Exhibit No. 1.

In support of this application, Applicant states and represents to the Commission as follows:

1. Applicant is a corporation organized and existing under the laws of the State of Delaware, and qualified to do business in the States of Nebraska, Iowa, Missouri, Kansas, Oklahoma, and Texas. Applicant is a common carrier by railroad subject to the Interstate Commerce Act. Applicant also incorporates herein by reference the information set forth in the above related application.

2. Applicant seeks authority in this application to operate over the above described terminal facilities of MP, with its own locomotives and crews, to be able to reach the SP-Texas Mexican Railway Company (TM) Joint Yard in Corpus Christi. Use of this trackage is the SP's only access to Corpus Christi, and consequently is Applicant's only access if it is granted trackage rights over the SP from San Antonio to Corpus Christi.

3. The above described terminal facilities of the MP have sufficient capacity to permit movements of Applicant's trains, and Applicant's use of said facilities will not unreasonably interfere with or impair MP's own use of said terminal facilities to handle its own business. MP will not be required nor expected to perform any service for Applicant other than to allow Applicant to use the line for access to the SP-TM Joint Yard in Corpus Christi.

4. Applicant's use of said terminal access facilities is practicable and necessary in the public interest in the event Applicant's related application to acquire trackage rights (MKT-12) is authorized. At present Applicant neither owns, leases or otherwise possesses terminal facilities at Corpus Christi, TX. Therefore, without the use of MP's terminal access facilities as herein requested, the authorization of Applicant to acquire said trackage rights would be meaningless since it would have no available means of obtaining access to the Corpus Christi terminal. Approval of this application and Applicant's related application is necessary to permit Applicant to compete with the applicants in F. D. 30400 for traffic consigned to or received at Corpus Christi and to enable Applicant to interchange traffic with TM for movement into Mexico. Such additional competitive service, together with the additional car supply, rate innovations and other improvements Applicant could supply are particularly beneficial to shippers and will help to alleviate the anticompetitive effects of the SP merger with The Atchison, Topeka and Santa Fe Railway Company (SF). Applicant further incorporates herein by reference, the

information and data contained in the related application for trackage rights identified above (MKT-12).

Applicant's request for use of said terminal access facilities involves only the same exact use of the said terminal access facilities as is the SP's use under Exhibit No. 1. Applicant's use will not substantially increase the number of trains on the line and will not impair MP's ability to handle its own business.

5. In accordance with the provisions of 49 U.S.C. Section 11103, Applicant requests that the Commission initially impose as a condition to approval of the application in Finance Docket No. 30400 the obligation on MP to furnish to Applicant the use of the terminal access facilities upon the terms and conditions contained in Exhibit No. 1.

6. Approval of this application will not constitute a major Federal action having a significant effect on the quality of the human environment nor will it constitute a major regulatory action having the potential for a major impact on the conservation of energy resources or on energy efficient nor will approval have a broad effect on the operations of the surface transportation industry.

7. 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
Calland, Kharasch, Morse & Garfinkle, P.C.
1054 Thirty-first Street, N.W.
Washington, DC 20007
Telephone: (202) 342-5230

WHEREFORE, Applicant prays that the authority requested in this and the related application be granted in the event the primary application in Finance

Docket No. 30400 and related subnumbers be conditioned upon such grant, and for such other and further relief as may be proper in the premises.

Respectfully submitted,

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

By: *H. L. Gastler*
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
H. L. Gastler

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

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

My Commission expires: March 24, 1986

THIS AGREEMENT, made and entered into by and between MISSOURI PACIFIC RAILROAD COMPANY, a Missouri corporation, hereinafter sometimes called "Missouri Company", and SOUTHERN PACIFIC COMPANY, a Delaware corporation, hereinafter sometimes called "Southern Company",

W I T N E S S E T H:

WHEREAS, Missouri Company presently owns and operates a line of railroad extending from Houston to Brownsville, passing through the Cities of Sinton and Odem and a line of railroad extending from San Antonio to Corpus Christi, passing through the City of Odem and crossing aforesaid Houston-Brownsville line, all in the State of Texas, and Southern Company owns and operates a line of railroad extending from Beeville to Corpus Christi, Texas, crossing Missouri Company's aforesaid line at Sinton, and

WHEREAS, Southern Company's aforesaid line of railroad crosses Nueces Bay over the so-called "Reef Bridge", which is expensive to maintain and operate, and enters Corpus Christi through a developed resort area known as North Beach, and Southern Company's trains then operate to its train yard in Corpus Christi over trackage of the Nueces County Navigation District No. 1, crossing Missouri Company's line in Corpus Christi on the Savage Lane Line, and

WHEREAS, it is mutually beneficial for Southern Company and Missouri Company, and in the public interest, for Southern Company to use Missouri Company's lines of railroad from Sinton to Corpus Christi, thus enabling Southern Company to abandon and remove a portion of its aforesaid line of railroad, including the Reef Bridge and trackage through North Beach,

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I

A. In consideration of the payments hereinafter stated and of the faithful performance of the covenants and agreements hereinafter contained, Missouri Company hereby grants to Southern Company, for the period of time and subject to the terms, conditions and limitations in this agreement expressed, the right and privilege to operate in common with Missouri Company, and its other tenants and licensees from time to time, its trains, engines and cars (which term shall include motor or highway-rail cars), on and over Missouri Company's main, passing and side tracks from and between Mile Post 161.85 at Sinton, Texas to Mile Post 154.57 at Odem, Texas, a distance of approximately 7.28 miles, and between Mile Post 132.30 at Odem and Mile Post 145.60 at Corpus Christi, Texas, a distance of approximately 13.30 miles, together with three connecting tracks 853 feet long at Sinton, 1193 feet long at Odem and 408 feet long at Corpus Christi (all such connecting tracks to include all signals governing the movements thereover which are owned by the Missouri Company), all as shown by appropriate legend on the map "Use of Missouri Company Facilities Sinton-Corpus Christi, Texas", dated July 1, 1964 and labeled Exhibit "A", attached hereto and hereby made a part hereof; and to use, in common with Missouri Company, all of said tracks and other appurtenances (including signalling and communication facilities) constituting Missouri Company's line of railroad between said points, being sometimes hereinafter called "Joint Track".

In consideration of the rights herein granted, Southern Company hereby grants to Missouri Company the right to use, for tail-track purposes only,

Southern Company's connecting track at Corpus Christi between Missouri Company's track and Savage Lane Line, which is shown on Insert "Y" of Exhibit "A". The connecting track, while being used by Missouri Company, shall be considered a part of Joint Track for purposes of liability under this agreement.

B. In order to provide suitable connections and other facilities for Joint Track as hereinabove in Paragraph A described, Missouri Company shall, when requested in writing by Southern Company, at Southern Company's sole cost and expense;

- (1) at Sinton, Texas, rearrange existing side tracks and construct new main line turnout with power switch, and necessary trackage, all on Missouri Company's right of way at Mile Post 161.85, to provide connection with trackage of Southern Company near the crossing of main tracks of Missouri Company's Kingsville Subdivision and of Southern Company, all as indicated by appropriate legend and approximated dimensions on Insert "X" on Exhibit "A" hereof, except that Missouri Company shall at its sole cost and expense remove that portion (740 feet in length) of existing Track No. 6 together with 98 feet of turnout to existing Track No. 8, which is to be retired;
- (2) at Corpus Christi, Texas, relocate existing turnout to industry spur and construct new main line turnout with spring switch, and necessary trackage, all on Missouri Company's right of way at Mile Post 145.6 to provide connection with trackage of Southern Company near the crossing of main track of Missouri Company's Corpus Christi Subdivision and the Savage Lane Line of the Nueces County Navigation District No. 1, together with the installation of necessary automatic block signals and appurtenances to govern movements over said connection switch in Missouri Company's main track and the approaches thereto, including approach signal on said Savage Lane Line, all as indicated on Exhibit "A" hereof and detailed by appropriate legend and approximated dimensions on Insert "Y" thereof, and Southern Company shall obtain any necessary permission for the installation and maintenance of approach signal in the said Savage Lane Line;
- (3) at Sinton and Odem, Texas and between these stations, install centralized traffic control signalling and all appurtenances thereto including approach signal on Southern Company's track at Sinton, together with remote controlled power switch mechanisms in Missouri Company's main line

switch to Southern Company's connection at Sinton, Mile Post 161.85, and in the main line switch of existing crossover No. 11 to side track at Odem, Mile Post 154.57. as well as perform necessary track work to convert said main line switch of crossover No. 11 at Odem from hand-throw to power operation, all as indicated by appropriate legend on Exhibit "A" hereof; and

- (4) provide and install necessary equipment to effect a connection between Missouri Company's communication facilities and Southern Company's communication facilities at Sinton and Corpus Christi.

The facilities described in Subparagraphs (1), (2), (3) and (4) of this Paragraph B, will, when constructed, be owned by Missouri Company, except that signals and appurtenances which will be installed hereunder on or along track of Southern Company at Sinton, and on or along the Savage Lane Line of Nueces County Navigation District No. 1 at Corpus Christi, will be owned by Southern Company. Maintenance of said signals and appurtenances which will be owned by Southern Company will be performed by Missouri Company and reimbursement therefor shall be deemed included and covered in the payments to be made by Southern Company, as hereinafter provided, for use of Joint Track. Missouri Company's employees, tools and equipment, while engaged in or incident to the construction and relocation of said facilities, or while engaged in or incident to the maintenance of said signals and appurtenances which will be owned by Southern Company, shall, for the purpose of Article V of this agreement, be deemed sole employees and sole property of Southern Company.

C. As further required to provide suitable facilities for said Joint Track, Missouri Company shall initially relay those portions of Missouri Company's side tracks at Odem, the designations of which and approximate lengths to be relayed are as follows:

- (1) Track No. 11 - - - relay southerly 100 ft. portion of crossover Track No. 11 between main track and Track No. 1 at Mile Post 154.57, including south switch of crossover in Track No. 1, converting said switch from hand-throw to spring operation;
- (2) Track No. 27 - - - relay 770 ft. portion of wye Track No. 27 including north switch of said wye track in Track No. 1;
- (3) Track No. 26 - - - relay 128 ft. portion of Track No. 26 including switch in Track No. 1; and
- (4) Track No. 1 - - - relay 340 ft. portion of Track No. 1 through turnouts of Tracks Nos. 11, 26 and 27, the relaying of switches of

which tracks is covered in Subparagraphs (1),
(2) and (3) above;

all as indicated by appropriate legend and approximated dimensions on Insert "Z" on Exhibit "A" hereof, and the expense of all said initial relays above described, shall be borne jointly and equally by Missouri Company and Southern Company. Missouri Company's employees, tools and equipment, while engaged in or incident to said relays, shall, for the purpose of Article V of this agreement, be deemed to have the status of Joint Employees and Joint Property.

D. The right hereinbefore, in Paragraph A, granted to Southern Company shall be, except as hereinafter stated, for the purpose of operating its trains, engines and cars in bridge movement between Sinton and Corpus Christi, and Southern Company shall not, under cover of this agreement or otherwise, perform any switching or spotting or picking up of cars at any industrial, loading, unloading or other track or facility now or hereafter located along or connected with Joint Track, nor shall Southern Company have the right to construct or serve any industry, team or other track turning out of Joint Track. Southern Company shall retain unimpaired full rights to serve any industry, team or other track or facility, which can now or can hereafter be served by it from trackage other than Joint Track.

E. Missouri Company is agreeable to Southern Company's making arrangements with Western Union Telegraph Company for the installation of Southern Company's communications and signal wires on Western Union pole line located on Missouri Company's right of way within the limits of Joint Track, and to Southern Company's maintenance of said wires without cost to Missouri Company, without further permission from Missouri Company or the payment of rental or any other charge to Missouri Company for such use.

In any area along Joint Track in which Missouri Company owns a communications or signal pole line, or in event Western Union should dispose of its pole line and Missouri Company provides a pole line in substitution therefor, Missouri Company hereby agrees to grant Southern Company (to the extent space is available) the right of use of any such pole line within the limits of Joint Track without payment of rental or other charge to Missouri Company for such use, with the understanding that, should suitable space not be available, Southern Company shall stand entire cost and expense necessary to provide such space. In the event space cannot be provided on a pole line Missouri Company presently owns or in event Missouri Company does not provide a substitute line for one disposed of by Western Union, then Missouri Company hereby agrees to grant Southern Company the right to provide, own and maintain, without cost to Missouri Company, a pole line and necessary signal and communication wires thereon along Missouri Company's right of way within the limits of Joint Track in order to afford Southern Company continuity of its signal and communications lines.

Failure of Southern Company to exercise rights granted or to be granted under terms of this Paragraph E shall not in any way diminish such rights so long as this contract shall remain in effect.

ARTICLE II

A. Missouri Company shall have exclusive control of the management, maintenance and operation of Joint Track and of the making of additions and betterments thereto or retirements therefrom, and reserves to itself the sole and exclusive right to admit to the use thereof, in whole or in part, such other railroad companies as it may decide; provided, however, that any such retirement or admission shall not materially hinder or obstruct Southern Company in the fair and reasonable exercise of the rights granted it hereunder.

B. Southern Company shall, with its own employees and at its sole cost and expense, operate its engines, cars and trains over Joint Track but subject, however, to such rules, regulations and orders as Missouri Company may issue from time to time. All such rules, regulations and orders shall be reasonable and fair and shall not discriminate against either party hereto in the use of Joint Track. No employee of Southern Company shall engage in or be connected with the operation of engines, cars or trains hereunder until he shall have been examined successfully on Missouri Company's Operating Rules and Regulations. Missouri Company shall furnish the necessary books of rules and switch keys, and Southern Company shall pay Missouri Company the cost thereof.

C. The trains of the parties hereto shall be given equal dispatch and no preference shall be shown in admitting trains of either party proceeding in either direction to the use of Joint Track or to any segment thereof; provided, however, that road trains shall be given preference over switching movements.

D. It is understood that Missouri Company's timetable may be changed from time to time as a result of a change in operations of either party hereto, and Southern Company agrees to bear its fair share of the cost of such timetable changes. Said share shall be determined at the time said timetable may be changed, or supplement thereto issued or changed as the case may be. Both parties hereto shall have an equal right to fix the schedules of their trains.

E. If traffic on Joint Track or business thereon is interrupted or delayed by derailment or other cause not the willful act of either party, neither party shall have or make any claim against the other party hereto for loss or damage of any kind caused by or resulting from such interruption or delay.

F. With respect to the use of Joint Track and the operation of equipment thereon and thereover, each party hereto shall comply with all applicable laws and all applicable rules, regulations and orders promulgated by any municipality, board, or commission for the protection of persons or otherwise and, if any failure on the part of either party hereto so to comply therewith shall result in any fine, penalty, cost or charge being imposed or assessed on or against the other party, the party so failing shall promptly reimburse and indemnify the other party for or on account of such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in defending any action which may be brought against the other party on account thereof and shall, in the event of any such action, upon notice thereof being given to it by the other party, defend such action free of cost, charge, or expense to the other party.

G. Missouri Company shall at all times have the right to request the removal from service on Joint Track of any employee of Southern Company, not including officers, by making written request and showing reasonable cause therefor, and Southern Company hereby covenants that it will exercise its best efforts to effect such removal with all reasonable dispatch. Anything herein to the contrary notwithstanding, Southern Company shall not be required to remove any person from service if prevented from so doing by any law or regulation of a public authority having jurisdiction.

ARTICLE III

A. Missouri Company shall maintain, repair, and renew Joint Track and shall make any additions and betterments thereto or retirements therefrom as, in its judgment, are deemed necessary or desirable, and such additions and betterments shall thereupon become a part of Joint Track. Said 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 railroad companies as Missouri Company may hereafter admit to the use thereof, and, notwithstanding anything to the contrary hereinafter contained, Southern Company shall not, by reason of any defect therein or failure or neglect in the maintenance thereof, have or make against Missouri Company any claim or demand for any loss, damage, injury to death whatsoever arising from such defect, failure or neglect.

B. If any engine, car, or other equipment handled by either company hereunder shall be wrecked or derailed, the same shall be picked up or rerailed by Missouri Company and the costs thereof shall be assumed and borne by or apportioned between the parties hereto in accordance with the provisions of Article V hereof. Bad order cars of Southern Company may be set out on any available track by said company and shall be repaired and picked up by it with all reasonable dispatch, except that such bad order cars which are set out on any tracks within Missouri Company's Corpus Christi Yard Limits, shall, after being repaired by Southern Company and due notice thereof given to Missouri Company's Yardmaster at Corpus Christi, be picked up and handled by Missouri Company's yard engine to a point designated by Southern Company within yard limits, where cars are customarily delivered to it for interchange. Southern Company shall pay to Missouri Company, promptly following receipt of bill therefor, \$10.00 for picking up and handling each such car from point where set out to point of delivery. Missouri Company shall not be liable for any loss or destruction of or damage to any such car or its contents, except where the same is caused by its sole negligence, while being handled by Missouri Company pursuant to the provisions of this Paragraph B.

ARTICLE IV

A. For the use of Joint Track, Southern Company shall, except as hereinafter provided, pay to Missouri Company annually without the necessity of its rendering a bill therefor, the sum of \$48,000 payable in twelve equal installments due, respectively, on the first day of each month; provided, that payment for use during only a part of a month at the beginning or end of the term of this agreement shall be that proportion of the sum of \$4,000 as the number of days Joint Track is used by Southern Company bears to the total number of days in said month.

B. To give effect to increases or decreases in the cost of labor and materials, the annual payment hereinbefore set forth shall be adjusted at intervals of not more than two years in the following manner:

The Indexes of Railroad Material Prices and Wage Rates (1957-1959=100) issued by the Bureau of Railway Economics, Association of American Railroads, Series Q-MPW, shall be used in determining the percentage of increase or decrease. In making such determination the Indexes for the Western District shall be used and the sum of 30 per cent (30%) of the Indexes for material and supplies (other than fuel) and 70 per cent (70%) of the Indexes for wage rates, both for the year 1963, shall be taken as the base. The first such adjustment shall be made effective July 1, 1967 and the annual payment shall be increased or decreased in the ratio that the sum of Indexes for the year 1966, developed in a similar manner, bears to the base established for the year 1963. Subsequent adjustments shall be made effective July 1 of the year during which they are to be effective and shall be developed in a similar manner using the Indexes for the prior year.

In the event the base for the Indexes issued by the Association of American Railroads shall be changed from the years 1957-1959, appropriate revision shall be made in the base established as herein provided for the year 1963. If the Association of American Railroads or any successor organization, discontinues said Indexes, an appropriate substitute for determining in a similar manner the percentage of increase or decrease shall be agreed upon by the parties hereto.

C. Bills for amounts payable under this agreement shall be rendered currently, if possible, and shall be paid within thirty (30) days after rendition thereof. All amounts payable by Southern Company hereunder shall be paid at the office of Missouri Company in St. Louis, Missouri. Errors or disputed items in any bills shall not be deemed a valid excuse for delaying payment, but shall be subject to subsequent adjustment; provided that, 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 (a) after the last day of a calendar month in which the expense covered thereby is incurred, or (b) after the last day of a calendar month during which final expenditures are made under a particular Authority for Expenditure or Work Order or (c) in the case of claims of third parties disputed as to amount or liability, after the amount is liquidated or the liability established. This provision shall not limit the retroactive adjustment of billing made pursuant to exceptions taken to original accounting by or under the authority of the Interstate Commerce Commission or retroactive adjustment of wage rates and settlement of wage claims.

D. In rendering bills, except for the payments provided for in Paragraph A of this Article and in Paragraph B of Article III hereof, Missouri Company

shall apply the rules and charges contained in Circular No. GMA 2710-B, "Rules Covering Preparation of Joint Facility and Other Bills between Carriers", revised effective June 1, 1963, of the General Managers' Association of Chicago, or any agency successor thereto, supplements and amendments to, and revisions of, said Circular from time to time. Rental of automotive equipment, rolling stock, work equipment and roadway machines, including transportation, shall be charged in accordance with the established rules and rates of Missouri Company at the time the work is performed.

E. So much of the books and accounts of either party hereto 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 therein contained relating to such subject matter.

F. Southern Company shall assume in full the cost of satisfying or complying with any conditions prescribed by the Interstate Commerce Commission pursuant to the provisions of Subdivision (f) of Section 5(2) of the Interstate Commerce Act or otherwise, for the protection of the employees of Southern Company or their interests affected by the entering into of this agreement.

G. Any and all payments, rentals, or other revenues due or accruing from the use, lease, or other occupancy by others not party to this agreement of any of Missouri Company's properties between the limits covered by this agreement shall inure to the use and benefit solely of Missouri Company and Southern Company shall have no claim thereto or interest therein.

ARTICLE V

A. With respect to any and all liability for damages arising out of the use of Joint Track, it is understood and agreed that the term "Damages", the term "Joint Property", and the term "Joint Employee", as used herein, shall have meanings as follows:

1. "Damages" means all loss of or damage to any and all property and all injuries to or death of any and all persons, and all liability therefor, including amounts paid under any state or federal law, and also embraces all costs and expenses incident thereto when suffered or occasioned in or incident to the use or attempted use of Joint Track by any engines, trains, or cars of the parties hereto or in the performance of any work or services in or incident to such use or attempted use or in, or incident to, the maintenance, repair, renewal or operation of and the making of additions and betterments to, changes in, or retirements from Joint Track.

2. "Joint Property" means (i) any tools, work trains or work equipment while engaged in or incident to maintaining, repairing, or renewing Joint Track or in the making of additions and betterments thereto, changes therein, or retirements therefrom; (ii) Joint Track; and (iii) any engine and equipment comprising any wrecking

outfit while engaged in performance of any service on Joint Track, the cost of which is included in any Damages for which the parties hereto shall be jointly liable;

3. "Joint Employee" means all officers and employees of Missouri Company while engaged in or incident to (i) the maintenance, repair, or renewal of Joint Track or in the making of additions and betterments thereto, changes therein, or retirements therefrom; (ii) performance of any wrecker service on Joint Track, the cost of which is included in any Damages for which the parties shall be jointly liable; (iii) dispatching, giving orders for, or directing movement of trains, engines, and cars on and along Joint Track; and (iv) performance of any other service for the common benefit of the parties hereto that is directly pertinent to the use of Joint Track.

4. Singular forms of any of the terms as defined in this Paragraph A shall comprehend and encompass the plural forms of any of such terms.

B. Except as may be otherwise provided in this agreement, Damages shall be allocated to and liability therefor shall be assumed by the parties hereto in accordance with the following:

1. Damages due to

- a) acts or omissions of a sole employee of one of the parties, or
- b) concurring acts or omissions of a sole employee of one of the parties and of a third person or persons, or
- c) concurring acts or omissions of a Joint Employee and of a sole employee of one of the parties, or
- d) any defect in or failure of any kind in the sole property of one of the parties,

shall be borne by the party whose sole employee was solely or concurrently involved, or by the party whose sole property was defective or failed.

2. Damages due to

- a) concurring acts or omissions of a sole employee of one of the parties and of a sole employee of the other party, notwithstanding any concurrence by a third person or persons, or
- b) concurring acts or omissions of a Joint Employee and sole employee of each of the parties notwithstanding any concurrence by a third person or persons, or

- c) defects in or failure of the sole property of both parties,

shall be borne equally by the parties; except that each party shall bear all such Damages to its sole property and as to its sole employees, passengers, and patrons and all others on its engines, cars, or trains (other than engines, cars, or trains while occupying the status of Joint Property), or on or about Joint Track in transaction of such party's business or business with such party.

3. Damages due to

- a) acts or omissions of a Joint Employee, notwithstanding any concurrence by a third person or persons, or
- b) failure of or defect in any of the Joint Property, or
- c) any other cause whatsoever not hereinbefore provided for,

(i) shall be borne by each of the parties as to such party's sole property, and as to such party's sole employees, passengers, and patrons and all others on such party's engines, cars, or trains or on or about Joint Track in transaction of such party's business or of business with such party, and (ii) shall be pro-rated equally between the parties as to third persons and their property, Joint Employees and their property, and Joint Property; except that, in case of an occurrence in which the engines, cars, trains (other than engines, cars, or trains while occupying the status of Joint Property) or sole employees of only one of the parties are concerned, then liability for resulting Damages shall be borne solely by that one of the parties whose sole engines, cars, trains, or sole employees are solely concerned.

C. If it shall be impossible to determine whether any person is the passenger, patron, or employee of solely one of the parties, then liability for 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.

D. Each party shall pay all Damages for which such party shall be liable under the provisions of this Article and shall indemnify and save harmless the other party against such Damages.

E. 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 Article and to defend or cause to be defended all suits for recovery of any such Damages.

F. In the event that both parties shall be liable hereunder for any Damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefor, release from liability shall be taken to and in the name of both parties so liable; provided, however, that no such settlement in excess of Five Thousand Dollars (\$5,000.00) shall be made by or for either party so jointly liable without the

authority of the other party, but any settlement made by either party in consideration of said sum or a lesser sum shall be binding upon the other party.

G. 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 Article, the party so sued shall give notice in writing to such other party of the pendency of such suit and thereupon such other party shall assume or join in the defense of such suit.

H. 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.

ARTICLE VI

Subject to the approval of any governmental authority having jurisdiction, Missouri Company may abandon all or any portion of the lines of railroad covered by this agreement at any time after having given Southern Company six (6) months' written notice of its intention so to do, and, after the end of such period, Missouri Company shall not be required to maintain or operate that part of the line it so abandons. In the event of such abandonment, Southern Company may, if it so elects and notifies Missouri Company in writing within said six (6) months' period, purchase all or any portion of said line so abandoned upon the payment to Missouri Company of,

- (1) a sum equal to the salvage value (giving consideration to the cost of recovery) of the materials therein, exclusive of such materials as were provided without cost to Missouri Company, plus
- (2) a sum equal to the then appraised value of right of way required for such portion of the said line, such value to be agreed upon by the parties, or, if they shall fail to agree, then the value shall be determined by appraisal, one appraiser to be appointed by Missouri Company, one to be appointed by Southern Company and, in event the two appraisers so appointed do not agree upon a value, then a third appraiser shall be appointed by the two chosen by the parties. In the event the two appraisers cannot agree within ten (10) days upon a third appraiser, then the third appraiser shall be appointed by the United States District Judge longest in service who is then sitting in the district in which the line, or part thereof, is located and is willing to act. A decision by any two of the aforesaid appraisers, reduced to writing and signed by the said two appraisers, shall be final and binding upon the parties.

Each party shall pay the fee and expenses of the appraiser chosen by it and the fee and expenses of the third appraiser, if any, shall be paid one-half by Southern Company and one-half by Missouri Company.

If such option shall be exercised by Southern Company, Missouri Company shall, upon payment of the purchase price, transfer said property, including right of way, by quitclaim deed to Southern Company subject to trackage or other rights, if any, theretofore granted by Missouri Company to railroad companies or others not party hereto, and Missouri Company shall thereafter have no right to use or operate upon the same. Southern Company shall become the successor of Missouri Company in any contract or contracts theretofore made granting trackage or other rights as aforesaid to railroad companies or others not party hereto, and shall assume all the obligations and be entitled to all the rights of Missouri Company under said contract or contracts.

Further, in the event of abandonment by Missouri Company of a portion, only, of said Joint Track and the exercise by Southern Company of its option to purchase said portion, the sum payable by Southern Company to Missouri Company under provisions of Paragraph A of Article IV hereof (subject to fluctuations under provisions of Paragraph B) shall be appropriately reduced.

ARTICLE VII

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 third party.

ARTICLE VIII

If Southern Company shall fail to pay any sum payable by it hereunder on the date when same shall be due, or shall fail to perform or comply with any other covenant or condition by it to be performed or complied with under this agreement and such default shall continue for a period of ninety (90) days after written demand for such payment or performance shall have been made upon Southern Company by Missouri Company, then and in such event Missouri Company shall have and is hereby given the right at its election to declare this agreement terminated and, after giving notice in writing of such election to Southern Company, this agreement then and there and by such notice shall be terminated and all rights of Southern Company shall cease and determine and Missouri Company may, subject to any consent of the Interstate Commerce Commission then required by law, exclude Southern Company wholly from the line of railroad covered hereby. No such termination shall affect any right or obligations which may have accrued or liabilities, accrued or otherwise, which may have arisen prior thereto. It is expressly agreed that the failure or refusal of Southern Company to make payments or to perform or comply with any covenant or condition which shall be the subject of arbitration or litigation between the parties hereto or on which Southern Company shall offer to arbitrate within sixty (60) days after said demand shall not, until the expiration of sixty (60) days after final determination of such arbitration or litigation or refusal by Missouri Company of the offer

to arbitrate, be deemed cause for terminating this agreement. A waive by Missouri Company of any breach by Southern Company of any covenant or condition of this agreement shall not impair the right of Missouri Company to avail itself of any subsequent breach thereof.

ARTICLE IX

Notices given under this agreement or demands shall be in writing and shall be served upon the President or any Vice President or the General Manager of the party to be so notified having jurisdiction in the premises. Any such notice may be served by registered or certified United States mail properly addressed to any of said persons.

ARTICLE X

This agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, lessees and assigns, but no sale, assignment, mortgage or lease by Southern Company of any interest or right given it under this agreement separate and apart from the sale, assignment, mortgage or lease of its entire railroad shall be valid or binding without the prior written consent of Missouri Company.

ARTICLE XI

This agreement shall take effect, after approval by the Interstate Commerce Commission, on the date Southern Company gives Missouri Company the written request provided for in Paragraph B of Article I herein, and, unless sooner terminated as herein provided, shall continue in full force and effect for a period of one (1) year and thereafter for so long as Southern Company shall desire to use Joint Track; provided, however, that Southern Company may terminate this agreement after the expiration of six months' written notice of its intent so to terminate.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate on this, the 18 day of August, 1964.

ATTEST:

MISSOURI PACIFIC RAILROAD COMPANY

By H. G. Chetfield
Assistant Secretary

By [Signature]

ATTEST:

SOUTHERN PACIFIC COMPANY

By _____

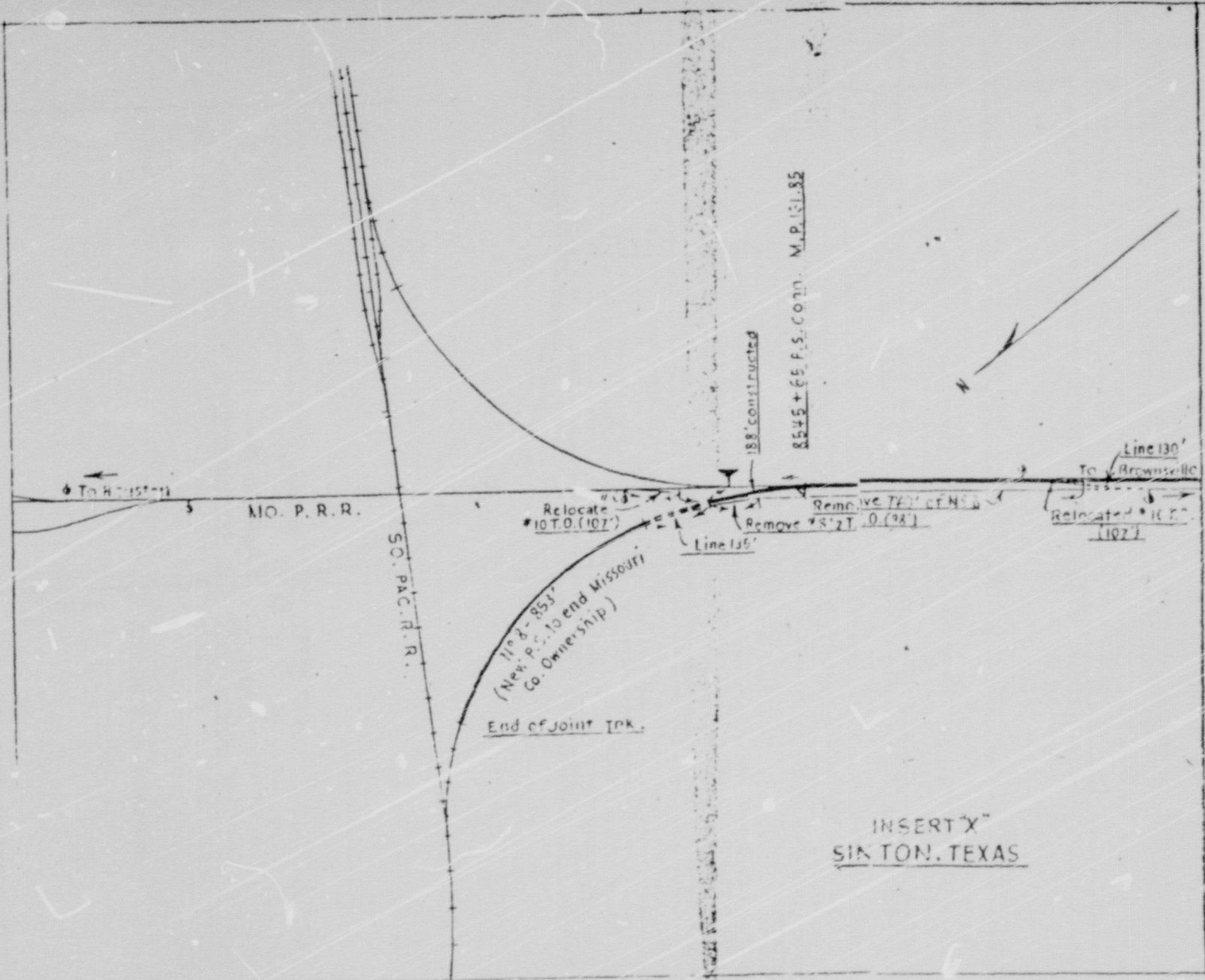
By [Signature]
Vice President

RECOMMENDED

[Signature]

Approved as to form

[Signature]
General Counsel
(Texas and Louisiana Lines)



MO. P. R. R.

SO. PAC. R. R.

188' constructed
8545 + 65 F.S. Conn. M.P. 151.85

Relocate #10 T.O. (107)

Remove #8' T.O. (98)

Remove T.O. of N.S.

Relocate #10 T.O. (107)

Line 130

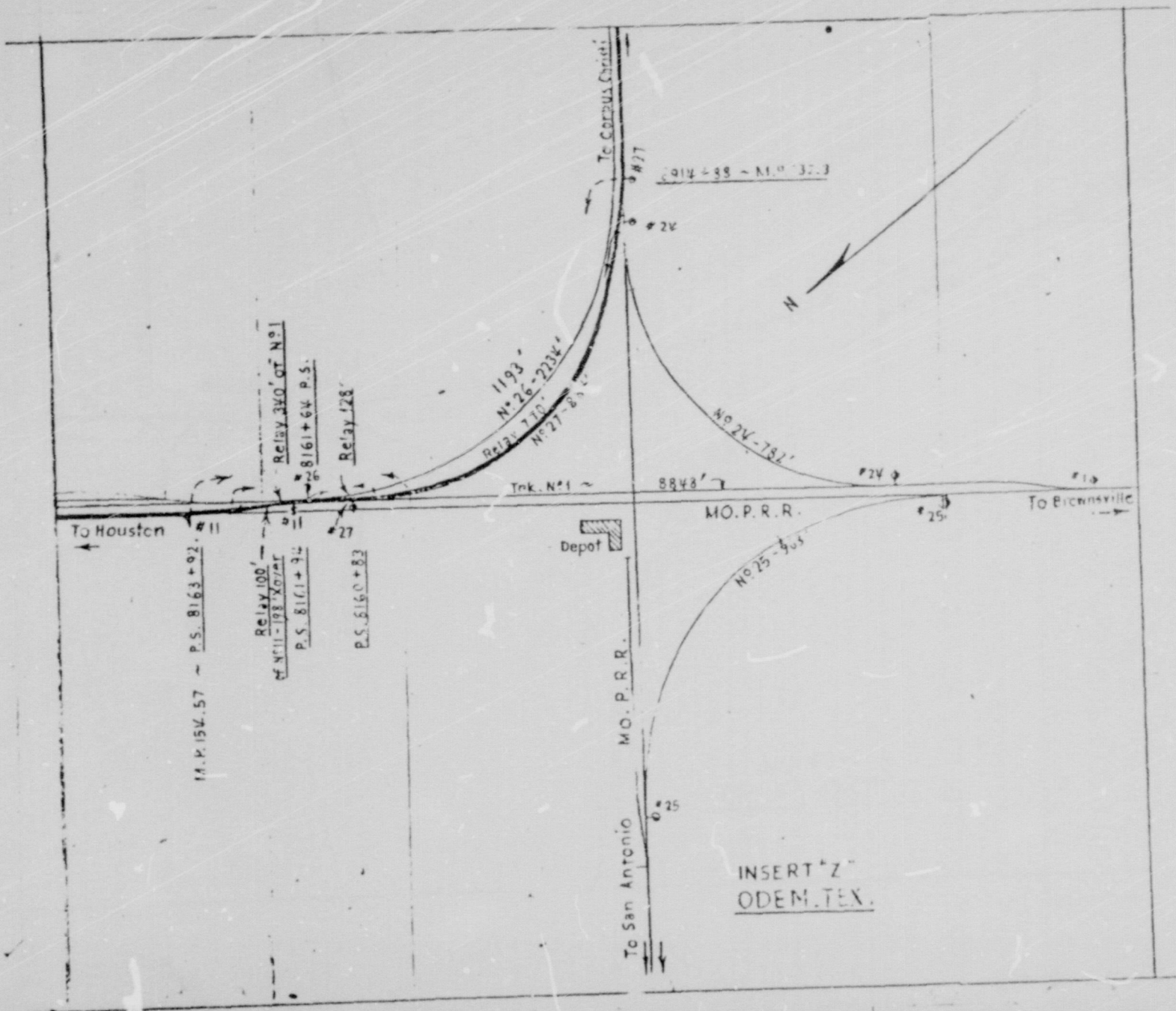
To Brownsville

Line 135

1103-853
(New P.C. to end Missouri Co. Ownership)

End of Joint Trk.

INSERT X
SIN TON, TEXAS



To Houston

M. P. 154.57 ~ P.S. 8163+92

Relay 100' of No. 1 of No. 11-198' Xover
P.S. 8161+94

P.S. 8160+83

Relay 340' of No. 1
P.S. 8161+64 P.S.

Relay 128'

1193' No. 26-2234'

Relay 710' No. 27-834'

Trk. No. 1

Depot

To San Antonio
MO. P. R. R.

8848'

MO. P. R. R.

No. 24-782'

No. 25-905

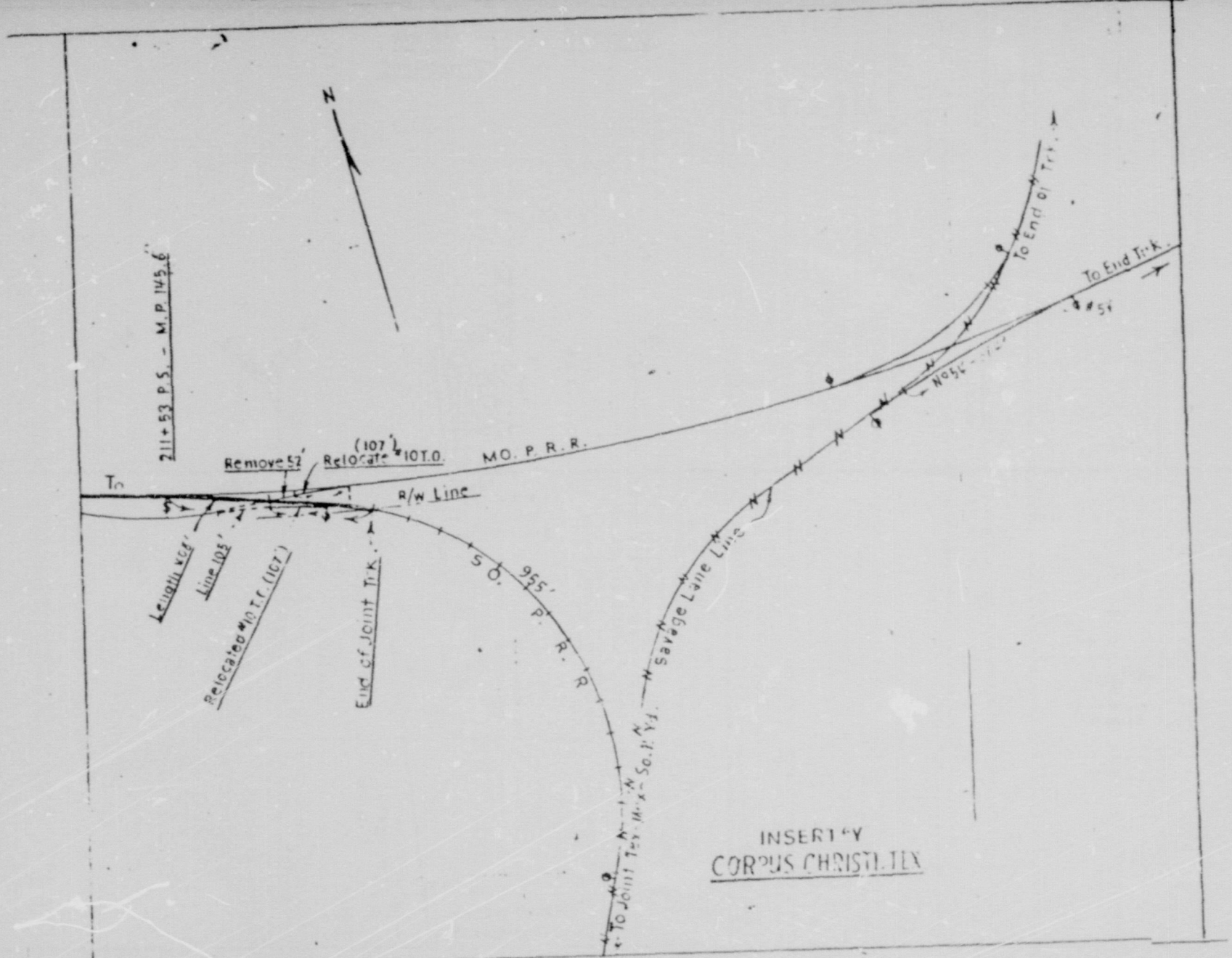
INSERT "Z"
ODEM, TEX.

914+88 ~ N. 1.0 37.3

To Corpus Christi

N

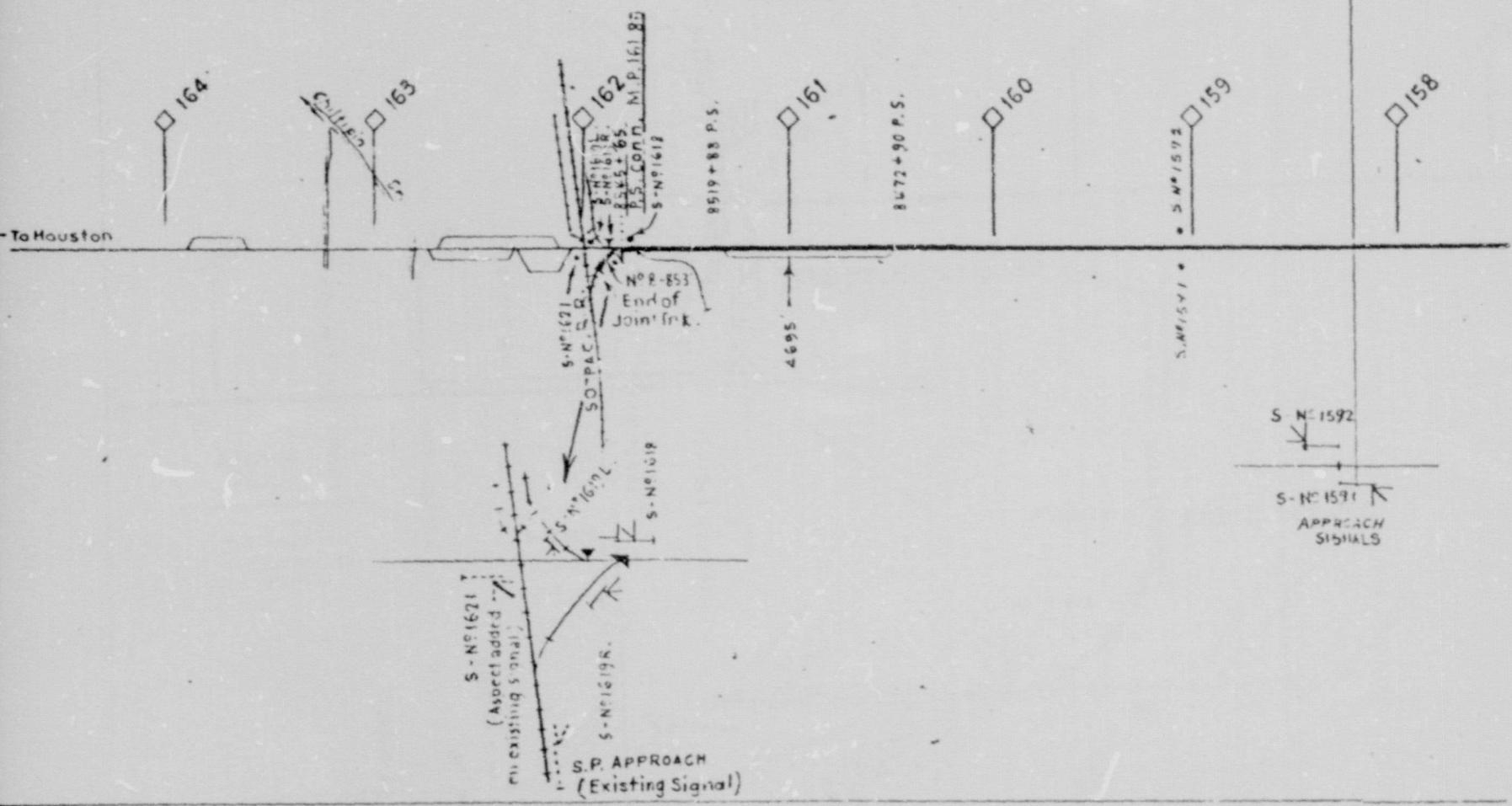
To Brownsville



INSERT 4Y
CORPUS CHRISTI, TEX

SINTON
See Insert "X"

3X SIDING



S-NP1592

S-NP1591

APPROACH SIGNALS

VICIA

137

138

7245+68 = 578+76 EQUATION

139

140

141

142

143

San Pedro de Nueces RIVER

YARD

San Pedro de Nueces

P.S. 457+31

S-N° 1449

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

Michael E. Roper