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dissolved by UP and BNSF. At the time it was dissolved, the HBT had served Houston well as the neutral switching carrier for nearly a century winning many safety awards. HBT began operations in 1908 in Houston. During its long history, it conducted efficient, impartial switching operations in the Houston terminal. It coordinated its service with the large number of rail carriers that served the Houston terminal. During HBT's history there were as many as seven or eight carriers that connected with and were served by the switching functions of HBT. Most of those carriers have since been merged into the present UP, leading to UP's ownership of virtually all of the main rail lines in and out of Houston, as well as UP's ownership of the half of HBT's stock not held by BNSF.

Tex Mex/KCS propose that the PTRRA would be the re-creation of a neutral switching carrier in Houston under the general mold of the HBT. As a neutral switching carrier, HBT operated the two principal "belt" routes through the City of Houston, along with the many yards adjacent to those belt lines. On the west side of town, HBT operated the West Belt, from Double Track Junction on the south to Belt Junction on the north. Located along this line segment are Old South Yard, Congress Yard, the Milby Street Roundhouse, Quitman Yard and Collingworth Yard. HBT also switched shippers north of Belt Junction to approximately Milepost 227, and south of Double Track Junction to T&NO Junction. This latter area included New South Yard, which also was operated by HBT.

HBT also performed switching for shippers using the yards and tracks of the East Belt. Those yards included East Belt Yard, Dallerup Yard, Basin Yard, Glass Track and Pierce Yard. Booth Yard also was operated by HBT as a switching facility. At one time, HBT also operated Settegast Yard, which was taken over from HBT by UP in the early 1990's. HBT switched as many as 200 shippers along the Belt.

2.1.8 PTRAs neutral switching would cover largely the former HBT

PTRA's neutral switching would cover largely the same territory formerly served by the HBT. Designating the PTRA as the neutral switching carrier would simply expand the PTRA's current switching operations. Specifically, the PTRA charter and operating agreement would be expanded to cover the territory formerly switched by HBT as well as include Tex Mex as a permanent member of PTRA. PTRA would use Congress, Quitman and Collingworth Yards for necessary yard and switching operations on the West Belt. (Both Collingworth and Congress Yards could be upgraded to accommodate additional traffic if that was needed.) On the East Belt, PTRA would use Pierce, Dallerup and Basin Yards to serve East Belt shippers. A third operating zone would be Glass Track. Each of these zones would require a single locomotive manned by three shifts of three-person crews, or a total of 27 train crew members. Each zone also would require a relief crew. In addition to train crews, I would estimate that approximately 10 signal maintenance personnel and approximately 24 maintenance of way personnel.

Each participating carrier would individually agree with PTRA on interchange procedures, and a standard set of switching fees would be established. Fees would be set at a level sufficient to cover PTRA's operating costs and to supply sufficient reserves to maintain and improve the Houston infrastructure.

Expanding PTRA's operations to a size sufficient to serve the Houston Terminal area would not be as difficult as BNSF and UP have publicly stated. PTRA has previously leased locomotives, and could do so again. Employees would be available from among former HBT employees and those performing switching services for BNSF and UP at present. PTRA has a capable upper level management team which has the ability to manage an expanded operation if augmented with additional personnel. PTRA's management is experienced in Houston

operational issues from PTRAs current involvement in Houston, particularly in safe operating management practices.

The reinstatement of an impartial and neutral operation of the Houston terminal will fulfill UP's goal of coordinating all train operations. As demonstrated by HBT's successful operation of the Houston terminal for almost 90 years, a neutral operator will improve the overall efficiency of the Houston terminal operations and facilities by:

- improving coordination of all train operations;
- improving the communication among railroads serving the Houston area;
- improving the efficiency of the yards serving the area; and
- expediting the Gulf Coast train operations.

2.1.9 Safety Will Be Enhanced With PTRAs As The Neutral Switcher

An added advantage of having PTRAs as the neutral switching carrier is that these operations would be placed in the hands of one of the safest operators in the rail industry. PTRAs is experienced in Houston switching operations due to its current operations in part of Houston. PTRAs also has an outstanding safety record, with an industry-leading accident ratio of 0.93.³ PTRAs also has substantial experience handling the sometimes high risk chemicals manufactured and shipped in Houston.

PTRAs earned 12 Harriman awards since 1983 at the bronze, silver and gold levels. This performance level contrasts with UP which has had 11 fatalities in 1997; almost three times the fatalities of any other Class I railroad. In fact, based on railroad monthly reports to the Association of American Railroads (AAR), UP had the highest number of casualties (fatalities, injuries and illnesses) among the major railroads. And UP had the highest frequency rate of transportation casualties among the major railroads.

³ This is computed as reportable accidents and injuries per 200,000 manhours

The Tex Mex/KCS plan remedies the safety issue by replacing a congestion-bound monolith with a proven, safe switching carrier. Safety data shows clearly that PTRA is a very safe operation.

Admittedly, terminal railroads sometimes have higher accident frequencies than line haul railroads. However, PTRA has had an excellent safety record over the years and has had a steadily declining accident frequency rate since 1991. As of 1997 the PTRA accident frequency rate was 0.93. By contrast, the average for terminal railroads was 4.56; the average for major line haul railroads was 2.17⁴ and UP's 1997 accident frequency rate was 2.27. Thus, in recommending that PTRA replace terminal switching services of UP, Tex Mex/KCS is recommending a proven switching carrier with a superior and improving safety record to replace a below average linehaul carrier which has a deteriorating safety record.

In addition, UP has been the subject of two FRA safety inspection blitzes and an extended NTSB hearing on its operating practices. It is my understanding the FRA investigations have concluded that a major part of the fault in many of the incidents occurring on UP has been mismanagement, as opposed to simple accidents. Unquestionably, PTRA is the safer operator as compared to UP. Therefore, placing Houston terminal switching operations in PTRA's hands would increase safety for all concerned.

2.2 PTRA Is Also The Obvious Solution For Neutral Dispatching

Truly neutral dispatching will also improve the efficiency of terminal operations. As shown in the verified statement of Patrick L. Watts, Tex Mex has suffered dispatching discrimination at UP's hands many times in Houston. Like neutral switching, neutral dispatching will eliminate preferential treatment as a consideration in dispatching priorities, and

⁴ Line Haul Railroads with 15 million or more man-hours annually (NSC, BNSF, CSX, UP/SP, CR, Amtrak).

will allow the overall operational efficiency of the terminal to supersede linehaul carrier priorities in dispatching. The neutral dispatching protocols proposed by Tex Mex/KCS would help assure impartial dispatching. To establish a neutral dispatching operation, PTRA would need to hire 6 regular dispatchers, plus perhaps 3 or 4 relief dispatchers.

Far from interfering with UP's operations, neutral dispatching will expedite movement of trains through Houston, benefiting UP and other carriers as well. Conceptually, neutral dispatching is somewhat akin to the joint dispatching that UP and BNSF now tout as neutral dispatching. Clearly, true neutral dispatching would be impartial as between all carriers operating through Houston, not just as between UP and BNSF with their joint dispatching center. Ending favored treatment of UP trains would eventually improve, not hinder, UP's operations. Under a neutral dispatcher, although each individual train of UP would not be given priority before all competing lines' trains, as UP did for many months in Houston, the increase in terminal operating efficiency that neutral switching and neutral dispatching would cause would, as a whole, benefit UP's operations. UP's Houston congestion problems had a ripple effect throughout many other parts of the UP system, are generally conceded to be the source of many of UP's service problems, and continue to the present day. Re-creating a neutral dispatching of Houston by the PTRA to operate the Houston terminal more efficiently would benefit, not harm, UP.

Neutral dispatching, however, is not a complete remedy in Houston since dispatchers do not decide which cars to pull and to switch, but only which presently active trains to permit on which tracks. Accordingly, neutral switching and neutral dispatching together are needed.

Quite simply, UP's handling of the Houston Terminal has been deplorable to this point. Substituting PTRA as the neutral switcher and dispatcher for Houston will increase operating

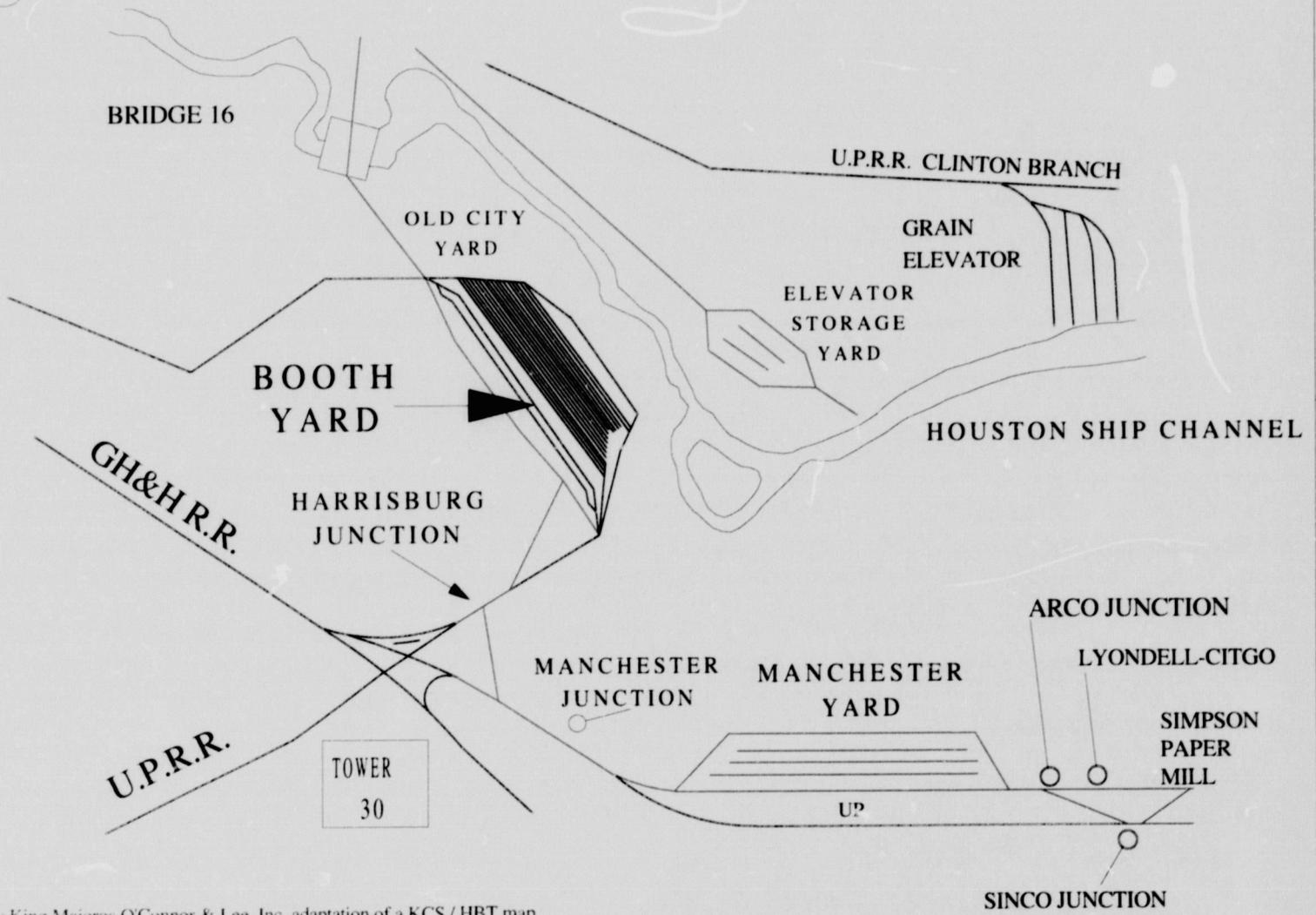
efficiency by eliminating patronage as a consideration in switching and dispatching. Moreover, PTRRA is an extremely safe railroad, considerably more so than UP. Accordingly, safety and efficiency in the Houston terminal would improve significantly if PTRRA were the dispatcher and not UP.

3 ALLOWING TEX MEX TO OPERATE BOOTH YARD WILL BENEFIT ALL CONCERNED

Booth Yard is a key pivot point in the Tex Mex/KCS proposal. The yard is essential to Tex Mex but is underutilized by UP. Its current condition clearly shows that the yard does not figure in UP's plans. While 17 tracks connect at the north end of the yard, as shown on the Booth Yard map on the next page, far fewer tracks now connect at the south end. Tex Mex will restore all 17 to full service.

HOUSTON TERMINAL - BOOTH YARD

UNION PACIFIC RAILROAD
PORT TERMINAL RAILROAD
NOT TO SCALE



Snavely King Majoros O'Connor & Lee, Inc. adaptation of a KCS / HBT map.

On February 20, 1998, a joint letter was sent from KCS Chief Executive Officer, Mike Haverty and Tex Mex Chief Executive Officer Larry Fields to UP Chief Executive Officer Dick Davidson outlining the reasons why Tex Mex needed a yard facility in Houston. The basis for needing a switch yard as part of their operations within Houston is described as follows.

Houston Switching Yard--- Tex Mex cannot effectively compete with UP and BNSF in Houston without its own switching facility. Tex Mex must backhaul many cars which increases costs, adversely effects service, and puts additional train movements across an already congested rail network in Houston. Both UP and BNSF have been reluctant to grant Tex Mex yard facilities in Houston. Thus, we have sought to buy or lease your Booth Yard from you. UP removed part of the yard so it is obviously not essential to UP for its operations but it gives Tex Mex an essential facility for it to be competitive.”

On February 27, 1998, UP CEO Davidson responded to the KCS and Tex Mex proposal for acquiring Booth Yard through purchase or lease. The UP response was as follows.

“Booth Yard

As you know, we are using every available track in the Houston area. Booth Yard provides us with badly-needed SIT and overflow capacity.... In addition, your plan to use Booth Yard as a switching facility in Houston would be disruptive.”

3.1 Tex Mex/KCS Will Utilize Booth Yard More Efficiently Than UP Has

Booth Yard is now used at less than 50% of its capacity. UP uses the yard as an overflow storage facility. By contrast, Tex Mex will use the yard for local switching and thereby improve service, diminish congestion and eliminate an inefficient 160-mile round-trip haul to and from Beaumont, Texas. And, as further discussed in the Operating Plan, Tex Mex will immediately expand the utilization of its existing trains and add new runs to move cars out of Houston. The benefits will begin immediately after that the plan to operate Booth Yard is approved.

Current track condition (as opposed to the track configuration) in Booth Yard is generally adequate for Tex Mex's planned use of the yard. Booth Yard now has continuous welded rail (112 to 115 LB) laid in 1993-1994. Relatively minor track alignment corrections and tie replacement will be initiated immediately upon approval of Tex Mex use of the yard. I estimate that the cost of alignment, tie renewal and restoring the missing switches at the south end of the yard is about \$150,000.

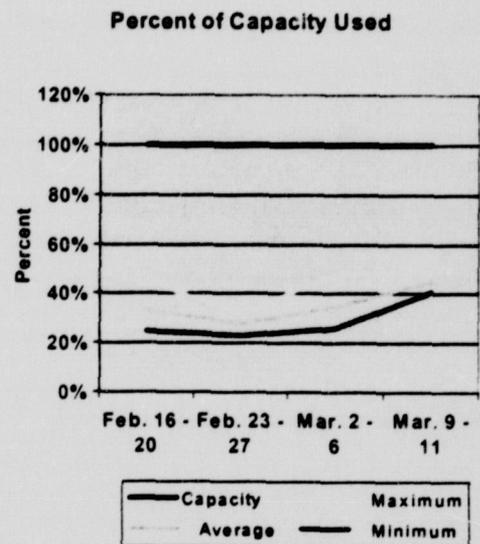
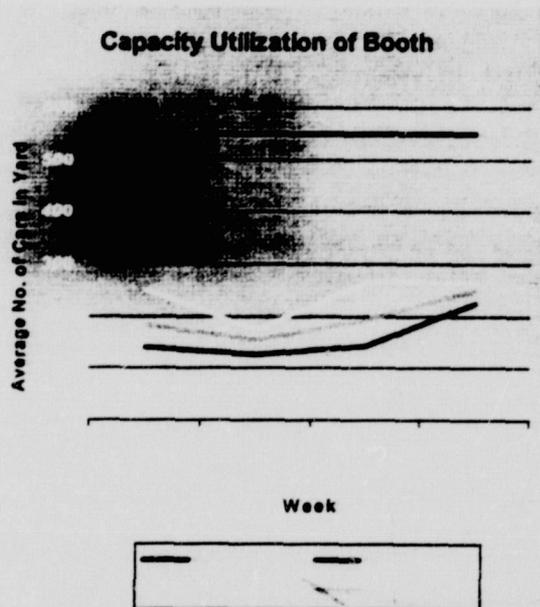
UP has made assertions about its need for Booth Yard, as a car storage facility. The Houston Terminal yard configuration, if properly managed, is more than sufficient to the needs of the area. However it is essential to transfer Booth Yard to Tex Mex, which will immediately be able to move up to 350 cars per day into and out of Houston using a yard that UP now is using primarily for car storage.

Houston has many, many yards. Booth Yard is a relatively minor part of the overall yard capacity available in Houston. UP, of course, controls virtually all of the yard capacity in Houston. All that Tex Mex is asking for is to be permitted to buy Booth Yard. With that, Tex Mex can help break the stranglehold that congestion now has on Houston.

A count of cars utilizing Booth Yard was taken daily, Monday through Friday, from February 16, 1998 through March 11, 1998. Those car counts are reflected in the table on the next page. It was also observed that many blocks of cars remained in the yard for as long as six days without being moved. Table 1 on the next page shows the minimum, maximum, and average number of cars on hand daily in Booth Yard between February 16 and March 11. The graphs below the table dramatically illustrates that usage of Booth Yard is well below the yard's capacity.

Figure 1: Utilization of Booth Yard by UP

TABLE I				
UTILIZATION OF BOOTH YARD				
Category	Week of			
	Feb. 16 - 20	Feb. 23 - 27	Mar. 2 - 6	Mar. 9 - 11
No. Of Cars:				
Capacity	550	550	550	550
Minimum	139	125	144	225
Maximum	249	174	266	263
Average	182	153	194	250
Pct. Of Utilization				
Minimum	25%	23%	26%	41%
Maximum	45%	32%	48%	48%
Average	33%	28%	35%	45%



3.2 UP Treats Booth Yard As A Low Priority Storage Facility

In the progress report on UP's recovery plan, dated December 1, 1997, UP outlined capital expenditures for specific yards in Houston. Booth Yard is notable by its absence from those investment plans.

The apparent reason that Booth Yard is not scheduled for any capital expenditures is that it is not a primary activity facility of UP and will only be used for Storage in Transit (SIT) and the temporary holding of cars going to or from Settegast or Englewood. Again, there seems to be only two possible reasons for UP's intransigence on Booth Yard:

- UP needs this yard to temporarily store cars due to the congestion UP has created in Houston, or
- UP wants to prevent Tex Mex from having an operating yard in what UP regards as UP territory.

If the only justification UP has for this additional storage infrastructure is to have more space to store cars; cars needing storage because of UP congestion, allowing Tex Mex to use the yard to help clear Houston congestion seems an obvious choice.

3.3 Service Will Be Improved With Tex Mex Operating Booth Yard

If the current UP and former SP yards are expanded as UP has projected, those yards will have more than ample facilities and capacity in Houston.⁵ UP's use of Booth Yard has seldom exceeded half of the capacity of Booth Yard and the use has been for car storage, a low priority use in a busy terminal area. Expanding facilities to accommodate increased traffic levels will not be a problem for UP, or any other railroad serving Houston, if shippers have a choice of railroads

⁵ In its March 23, 1998, letter to the Board transmitting its weekly service report on the western rail service crisis, UP stated, "Both [Englewood and Settegast] yards are regularly able to accept and depart trains, and both are looking for more cars to switch." Clearly UP now believes that it has surplus yard space in Houston.

to provide their service. The actual use of Booth Yard, by UP makes clear that Booth Yard is an overflow storage facility to UP and not an intermediate handling yard used in the normal movement of cars between shippers and classification yards.

In contrast to its underutilization by UP, acquisition of Booth Yard by Tex Mex will mitigate the congestion in Houston. Tex Mex will integrate Booth Yard into the overall plan of Tex Mex. This remedial action plan for Booth Yard is a key part of the Tex Mex solution to the disastrous situation that exists in Houston today.

At the March 13, 1998 National Industrial Transportation League ("NITL") meeting in Arlington, VA, Mr. Krebs, Chief Executive Officer of BNSF, endorsed Tex Mex having a yard in Houston. BNSF has endorsed this proposal on other occasions also. This repeated BNSF endorsement of the concept is further evidence that the Tex Mex/KCS plan is based on sound railroading.

4 WHY THE TEX MEX/KCS PLAN MUST BE GRANTED

The Tex Mex/KCS plan must be granted because experience with UP's service post-merger has shown that UP cannot properly manage the facilities available to move rail freight. Other carriers, including UP's predecessor SP, were able to handle Houston's freight under similar circumstances, but UP has shown inept management of available facilities, including closing and then reopening yards, failing to replace needed personnel, and a host of safety violations indicative of inadequate management control. Together, these facts show that the problem is not a lack of adequate infrastructure so much as it is mismanagement of the existing infrastructure. The Tex Mex/KCS solution meets both needs, adding infrastructure but, more importantly, reforming the management of Houston operations by reinstating the time-tested neutral switching and dispatching system modeled on the HBT.

4.1 Infrastructure and Management Issues

Restoring neutral dispatch brings back a proven infrastructure, which worked well for decades. The addition of the additional infrastructure called for in the Tex Mex/KCS plan will restore fluidity and balance to rail transportation in Houston and the surrounding areas.

UP has mismanaged its dispatching responsibilities. UP dispatching has proven disastrous to Tex Mex in terms of service. Traversing Houston formerly was routinely accomplished in 2 to 4 hours. Now it often requires 12 to 18 hours and two crews. This is due to poor communication among the three levels of dispatch:

- Harriman Center dispatch
- Spring dispatch
- Yardmaster control

Tex Mex has seen situations in which the path through the yard was known to the train crew but apparently unknown to the yardmaster. The three dispatch interfaces are barriers to movement and a potential threat to safety.

We have seen multiple Operating Plan changes by UP without improvement. We have seen rejection of proven operating plan concepts which were well understood and time tested in the Houston operating situation. We have seen repeated delays in implementing plan changes.

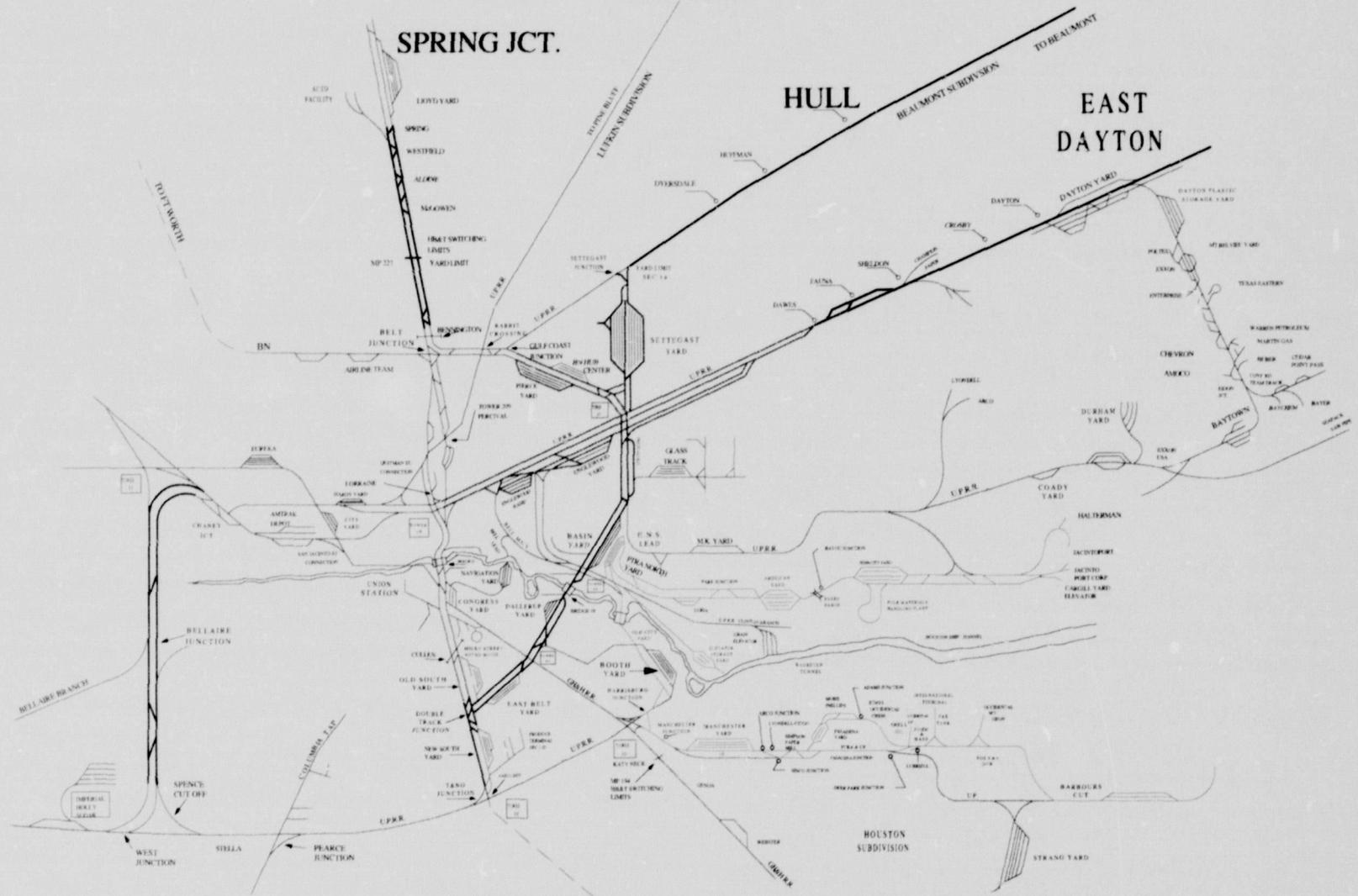
The common ingredient in these flaws is UP management decision-making. Some of the more prominent and persistent of the Houston terminal problem areas are shown on the map on the following page.

HOUSTON TERMINAL - PROBLEM AREAS

UNION PACIFIC RAILROAD
 B.N.S.F. RAILROAD
 PORT TERMINAL RAILROAD
 NOT TO SCALE



HUMBLE



HOUSTON PROBLEM AREAS

- SIDINGS GENERALLY FULL
- CONGESTED
- MOST CONGESTED
- GENERALLY SIX TRAINS ARE STOPPED

Snavely King Majoros O'Connor & Lee, Inc. adaptation of a KCS / HBT map.

The Tex Mex/KCS plan is simple; it basically restores a proven system which flowed efficiently with four carriers. The benefits provided by the Tex Mex/KCS plan are built on the concepts of neutral switching and neutral dispatching. The benefits are clear. Neutral switching and dispatching means that the customer has access to all the feasible options. Its absence in Houston, as is now obvious, means that artificial and needless constraints have eliminated proven transportation options and led to a service breakdown of epic proportions. The current system is choked and congested with UP as the dominant carrier.

4.1.1 Traffic Growth Has Been Moderate

Traffic growth in Houston has been moderate, averaging less than 5 % per year since 1990. The railroad operations in Houston prior to the merger coped effectively with this traffic growth. Why can't UP do so now?

4.1.2 Revenue Growth for Houston Traffic Outpaced Traffic Growth, Indicating That the Added Traffic Did Not Erode Profitability

Looking at rail traffic originating or terminating in the Houston BEA for 1990 through 1996⁶ shows that rail revenue growth was sufficient to support adequate infrastructure to handle increased traffic. Results on originations 1990 through 1996 show that the Houston area revenue growth was keeping pace with traffic growth. Specifically, revenue generated by Houston origin traffic in 1990 through 1996 grew from \$1,089,057,599 to \$1,404,554,791, an average annual increase of 4.8%. Meanwhile, overall tonnage grew from 32,363,690 to 40,019,407, an average annual increase of 3.9%. Accordingly, traffic origination data shows that traffic was growing

⁶ The Business Economic Area or BEA is defined as a major city, in this case Houston, and its surrounding economic hinterland.

moderately and revenue growth was closely comparable to traffic growth; that is, the Houston area was presenting no unmanageable surges in traffic and that traffic was paying its way.

Figure 2: The Houston growth patterns; Terminations

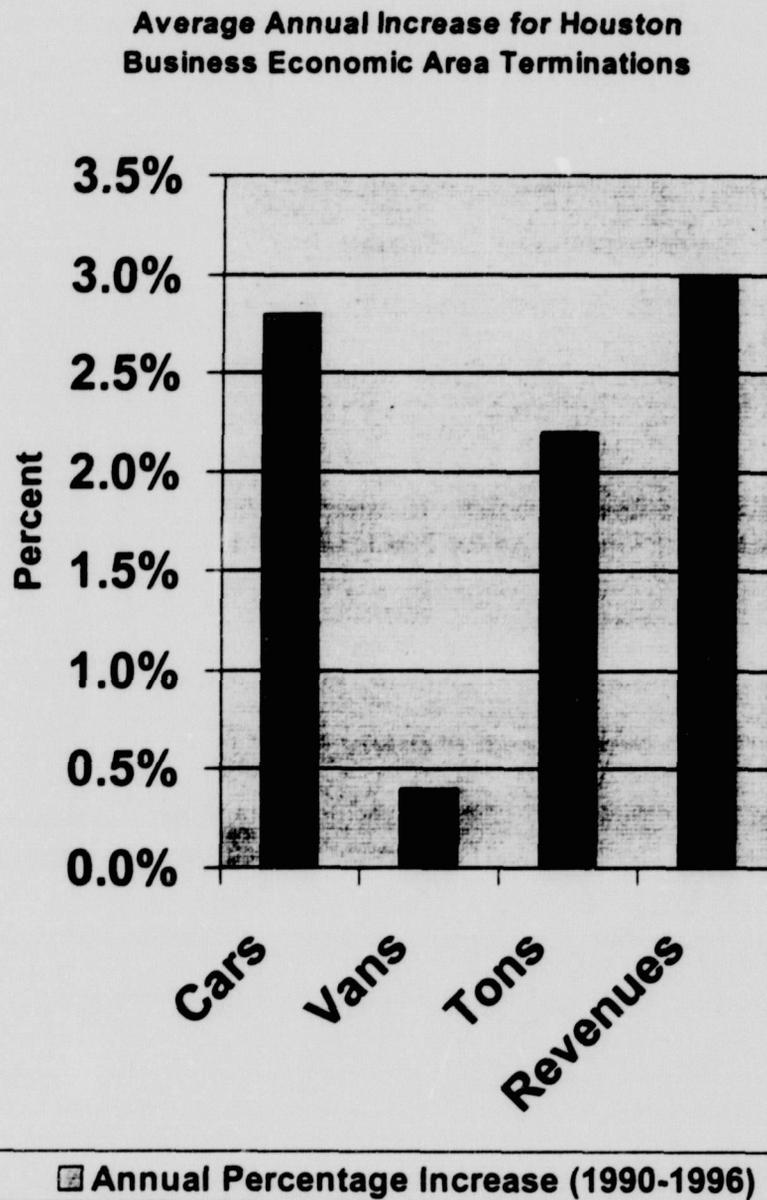
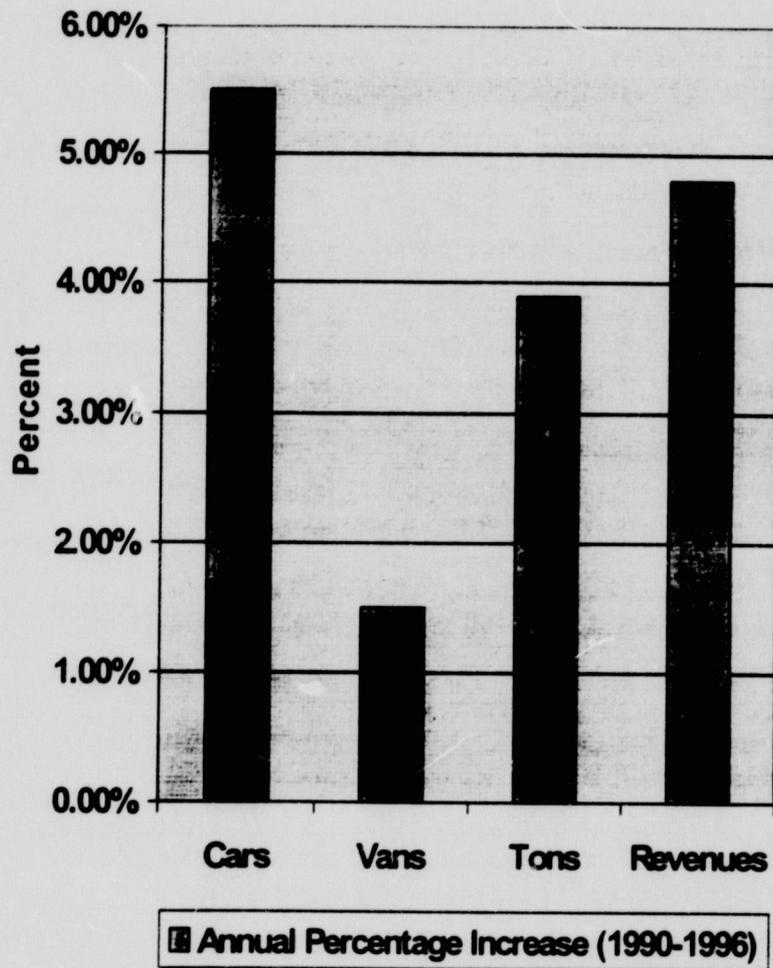


Figure 3: The Houston growth pattern; Originations

**Average Annual Increase for Houston
Business Economic Area Originations**



Review of rail traffic terminating in the Houston BEA also shows that revenue increases were keeping pace with traffic increases. Results on terminations 1990 through 1996 show revenue up from \$1,211,765,441 to \$1,432,022,204, an average annual increase of 3%, while tonnage grew from 59,493,683 to 67,339,597, an average annual increase of 2.2%.

The total revenue on traffic originating or terminating in the Houston area increased from \$2,300,823,040 to \$2,836,576,995. This is an average annual increase of 3.9%. Not only did traffic grow at a moderate rate, but the revenue growth kept pace with it.

4.1.3 UP Has Sufficient Yard and Track Capacity

While UP has recently complained about the lack of sufficient infrastructure, UP's actions have actually compounded the infrastructure problems. For example, despite its numerous assertions about improving the Houston infrastructure, since the UPSP merger, UP has in fact reduced the infrastructure:

- UP closed the former MKT line into Houston
- UP lost a substantial portion of MKT Eureka Yard in the heart of the Houston terminal by selling off a 100 foot path in the middle of the yard
- UP unwisely and inexplicably closed Strang Yard at a critical point, losing yard capacity in a fully functioning yard

In the November 1, 1997, division of HBT's assets UP acquired the following yard facilities:

<u>Yard</u>	<u>Car Capacity</u>
1. Pierce Yard	678
2. Glass Yard	146
3. Booth Yard	550
4. Dallerup Yard	81
5. Congress Yard	199
6. Basin Yard	595

These yards contributed more than 2,250 car spaces to UP's capacity in Houston beyond that provided by UP's major yards, Settegast and Englewood, which together have capacity of approximately 12,000 cars.⁷ As can be seen here and on the Houston terminal map, UP has ample yard facilities in the Houston area. The problem results from UP's failure to manage the facilities effectively. UP has some serious deficits on that point.

4.1.4 UP Has Been Indecisive

The AAR data on casualties and carloadings, UP's reports to the STB, the FRA safety report and the NTSB accident investigation reports all point to UP's management problems, including failure to implement, deteriorated internal controls and malfunctioning systems. UP management decisions regarding Houston likewise appear weak, misinformed and ineffective. A long series of statements by UP repeatedly promises a solution to these serious problems. Events, meanwhile, show failure to deliver, leading to another UP promise. *See* Recovery plan, Oct. 1, 1997; STB Hearing Statements, Oct. 27, 1997; Progress Report, Dec. 1, 1997; and STB Hearing Statements, Dec. 3, 1997.

Despite the promises, the bitter reality is that current conditions show little to no improvement. The failure to manage the Houston crisis is evident when one compares the operating and staffing plans for Houston to current conditions. The initial UP operating plan was passable but the UP implementation has been a failure.

(I would note that most discussion herein of the UP weekly data reported to the STB, is confined to the data as of the February 27, 1998 report. The reason for this is UP's claim in subsequent reports that data therein is unrepresentative because UP's rail operations were

⁷ By contrast, Booth Yard has a capacity of only about 550 cars. Redeploying Booth Yard to Tex Mex use will significantly increase the rail transportation throughput of the Houston terminal area while only marginally reducing UP's car storage spaces.

adversely affected by weather and other influences. Accordingly, the cut-off date of the week ending February 27 was chosen to eliminate any consideration of the possible effect of the weather and other events blamed by UP for its failings during the past month.)

Two of most important factors affecting operations in the complex Houston terminal area are the yards and operating personnel. In order for the traffic to flow in a fluid manner through Houston, efficient yards and the operating personnel are essential. UP's decisions regarding both areas are indecisive and as events have shown, ineffective.

The operating plan presented by UP/SP in the merger proceeding, included in UP/SP-24, described the then-current operations of UP and SP yards, as of November 1995, and the projected post merger changes that were to be implemented. These descriptions also identify the complexity of the operation of each yard and the level of integration required with other facilities and local and road trains operating within the Houston terminal.

If I were grading UP's Houston operations, I would give UP a "B" on the operating plan it originally filed with the STB. However, I would have to give UP an "F" on implementation.

I will use just one of the ill-advised changes imposed by UP to illustrate why the Houston situation has declined and become mired in congestion. In the midst of the congestion problems in Houston, and the excessive dwell times required to switch cars in Settegast Yard, UP's report to the STB on the progress of the recovery plan dated December 1, 1997 states that the yard's operation and purpose have been changed. Settegast Yard would no longer be the primary yard for north-south traffic, interchange traffic and local area traffic as stated in the operating plan. Instead, UP made Settegast Yard the principal outbound yard for all traffic from the Houston area. This change required that all outbound east-west traffic handled at Houston would now be routed through Settegast instead of Englewood Yard.

This single change, which UP insists on adhering to, complicates the entire Houston Terminal operation. This single change affects the handling procedures of all outbound east-west traffic, moving it to Settegast instead of Englewood, and all of the inbound north-south traffic in the Houston area went to Englewood instead of Settegast. Crews handling local cars within Houston had to become familiar with new routing procedures. Cars had to be handled by different yard assignments or receive extra switching between Settegast and Englewood.

According to UP's operating plan, Settegast Yard was switching 1,750 cars per day prior to the merger, although I know from personal experience, that Settegast frequently has switched as many as 2,000 cars per day in a smoothly coordinated manner. The data filed with the STB in the weekly reports, for the week ending February 27, 1998, shows that Settegast Yard is switching an average of 1,110 cars per day or 640 cars less per day than was handled before the merger. This decline in cars handled equates to over 4,400 cars that could have been switched at that yard that particular week but were not, due to UP's changes in the use of the yard.

Another indication of the inefficiency of the current operations of Settegast is that for the base line period of December 1997, the average dwell time per car was 33.8 hours as compared to the 68 hours experienced for the week ending February 27, 1998. Even between December 1996 and March 1997 the dwell hours per car increased from 33.8 to 37.7 in a period where congestion problems were not occurring, according to UP. In 1982, by contrast, dwell times in Settegast yard were less than 30 hours, quite a difference from the 60+ hours required recently for a freight car to clear this yard.

The data presented for Settegast and Englewood Yards, in the weekly reports to the STB, show that their level of operating efficiency is only approximately two-thirds of the level existing before the merger. If UP's facilities were operating at pre-merger efficiency levels in Houston

the current infrastructure would be more than sufficient for the present traffic volumes. UP's merger with SP led to deterioration of service in the Houston terminal.

UP made other sweeping changes which have impeded operations and complicated the situation. For example, UP and BNSF dissolved the HBT which further revised the handling of cars not only to and from Settegast, but all of Houston.

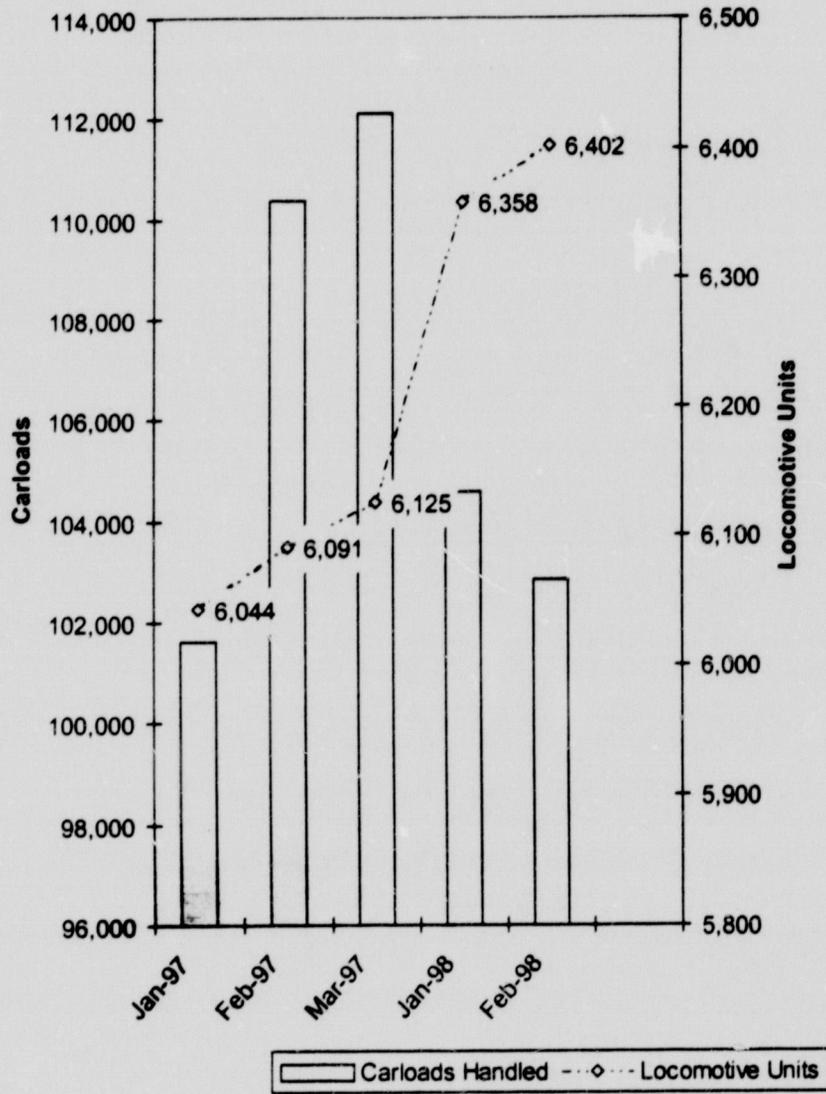
From the start of the STB investigation into service problems in the western US, UP has continually professed that as soon as they acquire the use of additional locomotives and train crews they will be able to move the traffic efficiently over their system. This has not been the case. Those resources have been applied and the problems persist.

In addition, the average weekly carloads handled by UP have decreased while the number of locomotives has increased. *See table and chart on next two pages.* Specifically, the table shows that in February and March of 1997, UP handled eight to ten thousand more carloads with 200 to 300 less locomotives than it did during the comparable period in 1998. The carloads handled are developed from the AAR weekly car loading reports and the source for the number of locomotives in the weekly service reports of UP filed with the Board.

Figure 4: Changes in Carloads and Locomotives

<u>Time Period</u>	<u>Carloads Handled</u>	<u>Locomotive Units</u>
Jan. 1997	101,626	6,044
Feb. 1997	110,376	6,091
March 1997	112,123	6,125
Jan. 1998	104,585	6,358
Feb. 1998 (3 weeks)	102,849	6,402

UP Carloads and Locomotive Units



Similarly, crew hiring does not seem to be UP's answer. UP has mismanaged its personnel post-merger. Relatively small numbers of train crew personnel have been added by UP. Only about 800 of the 3,800 new hires in 1997 were train crew. UP furloughed too many people, failed to retain key SP operating personnel; only about 25% of SP operating management stayed on post merger. Altogether, UP has lost needed experience through its personnel policies.

UP's position - "just keep adding locomotives and crews" - will not fix the problem and just isn't the answer. Trains can be made up, power units can be added, and the trains can be crewed, but if they cannot get out of, into, or through the terminals, or other areas of congestion, it will not solve the service problems. As identified in the FRA report and discussed in other sections, UP's problems are much more complicated than insufficient locomotives and train crews.

In its weekly report to the STB, dated March 9, 1998 UP discusses three major changes implemented to integrate UP and SP operations in Houston. Those are (1) conversion to the TCS system, (2) integration and redeployment of operating personnel, and (3) implementation of directional running between Texas and Memphis/Southern Missouri. Each of these changes has caused disruptions and required its own recovery efforts.

The March 9th report to the STB stated that UP has studied the situation carefully and determined what needs to be done. This is exactly the purpose and explanation given by UP when they described the service recovery plan issued on October 1, 1997, some six months ago. It is unclear what UP is attempting to do now and whether that is different from the unsuccessful actions that UP attempted in its recovery plan.

4.1.5 UP's Houston/South Texas Problems Are Causing Real Harm to Shippers

UP's mismanagement of its service has proven disastrous to many Houston area shippers. Many shippers have publicly reported dismal and prolonged experience with poor service from UP. Many shippers have adopted the practice of going to the UP yards themselves to locate cars and so they can inform UP of a car's location so it can be delivered. This is clear evidence of the collapse of the UP service.

Although UP claims that many of its current problems pre-existed the merger, many shippers state that service is worse than it was before the merger. The following sample of shippers who report that service is worse as a result of the UP/SP merger illustrates the scope and severity of the problem:

- **Cemex USA** Previously, departure delays were 19-20 hours per train, now they are weeks. Already lost a major DOT job near Beaumont, TX.
- **Occidental Chemical** In NITL Statement for Ex Parte 573, OxyChem reported that it experienced 50% worse transit times 6/96 – 9/97.
- **Fina Oil** In TRC hearings, Fina reported that it has experienced an abnormally high number of delays and other service problems since the merger.
- **North American Logistics Services (NALS)** As of the EP 573 and Sub-21 hearings in 8/97 and 10/97, respectively, NALS reported drastically increased transit times and deteriorating service.
- **Redland Stone** As of 10/97 TRC hearings and EP 573 proceedings, business off 23%, losses of \$1,000,000 in 9/97 due to rail service problems. Turn times 9/97 were double that in 9/96. Have filed a claim for \$4 million to UP. State that they have been one of SP's largest customer in the area.
- **Commercial Metals** As of 10/97 TRC hearings, Commercial Metals had lost \$4.8 million due to UP problems. Commercial Metals is upset at the HBT being dismantled. Notes an inability of UP personnel to deal with crisis situations in comparison to SP.
- **Solvay Polymers** According to Solvay Polymer's most recent EP 573 filing of 2/23/98, UP transit times were best during the second half of 1995 and have become

consistently worse since then. The estimated cost of these deficiencies is over \$200,000 per month.

- **Martco Partnership** Before the merger, rail cars used to be switched on a daily basis. Now, they are more erratic, not switching for a week or so. Transit times to California from Louisiana plants used to be 7 to 10 days. Now, it can take from 30 to 40 days.
- **HB Fuller Company** HB Fuller has had many costly delays and increased transit times, particularly for Texas – California moves.

4.1.6 UP's Problems Are Systemic, Not Isolated As Would be the Case if Infrastructure Were the Only Problem

UP's Houston problems are just one indication of a much larger and more widespread problem. It has been almost six months since UP implemented its "Recovery Plan" along with other continuous system changes and yet the operations in Houston have not improved to any discernible degree. The continuing downward spiral of performance factors over the last few weeks is very disheartening to those hoping for improved railroad operating efficiency.

Table 3 below includes data from the UP weekly reports to the STB that reflect the dates nearest to:

- The issuance of UP's "Recovery Plan" on October 1, 1997;
- The first hearing held at the STB on October 27, 1997;
- The second hearing held at the STB on December 3, 1997; and,
- The latest report to the STB that includes the impacts of all of UP's changes, prior to the time that UP began to blame delays on weather, Feb. 27, 1998.⁸

Those data do not show significant improvement in UP operations, some five months after UP implemented its "fixed by Thanksgiving" recovery plan.

⁸ I note in passing that we have reviewed the data subsequent to February 27 and using that data would not change any of our findings or recommendations.

Figure 5: UP Operating Statistics

TABLE 3				
OPERATING STATISTICS ON UP SYSTEM				
	Recovery Plan	First STB Hearing	Second STB Hearing	STB Report
<u>Data Item</u>	<u>Oct. 1, 1997</u>	<u>Oct. 27, 1997</u>	<u>Dec. 3, 1997</u>	<u>Feb. 27, 1998</u>
TX, LA Car Inventory	108,822	103,395	101,777	107,453
Car Dwell Hours System Avg.	43.3	42.2	40.6	42.6
Sidings Blocked:				
Houston-Beaumont	N/A	N/A	4 1/	6
Total System	N/A	134	70	172
Avg. Train Speed	13.2	12.7	13.1	13.5
GTM's per HP Day	105.9	101.7	113.1	104.0

1/ This data was not reported until the week ending Dec. 12, 1997.

Table 3 shows the situation was serious, remains serious, and in some cases is getting worse:

- Car Dwell hours declined only slightly
- Blocked sidings are worse both for Houston and the UP overall
- Train speed shows little improvement
- GTM's per HP day declined

UP's widespread problems are causing shippers to "vote with their feet," so to speak, seeking other carriers and other modes to move their goods. As the following graph comparing the first seven weeks of 1997 and the same time period in 1998 shows, UP's total carloads handled are down approximately 9,500 carloads from the comparable period the previous year. Of this total, the cars loaded on the UP are down about 4,900 cars while the cars received by UP are down approximately 4,600.

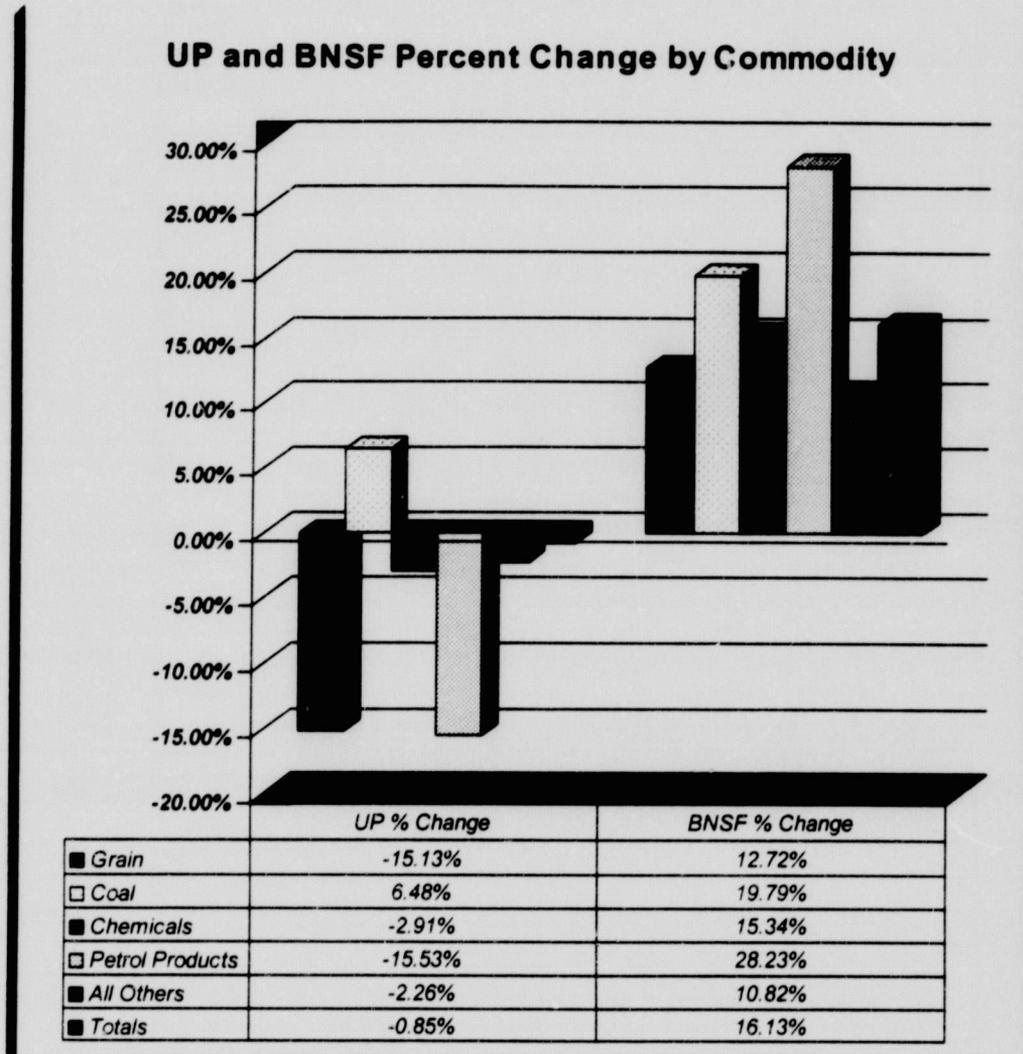
There has been an increase in car loads of chemicals received on line by UP that could represent changes in the transportation patterns of chemical shippers that must use UP. The

increase in carloads of chemicals received by UP could, however, merely represent a lack of shipper confidence in UP's ability to deliver the freight in a timely manner. As a result of UP's poor service, some shippers have placed additional cars into the UP system, attempting to assure that their customers will receive an adequate volume of product. In effect they are pumping more freight into a transportation pipeline which is both slower and more erratic.

This erosion in UP's share appears related to the significant deterioration in UP performance. UP's erosion in market share has caused it to grasp even more tightly to traffic to which it only has direct access, as stated by Pioneer Concrete of Texas, Inc., in a filing with the STB dated February 14, 1998, responding to the STB's request for shipper comments on rail service in the western US:

"In addition, I would like to share a recent UP response to renewing one of our contracts. Pioneer's contract to supply sand to our Plano, Texas plant, approximately eighteen percent of Houston Rail Sales, was not renewed because of congestion. The BNSF expressed an interest to takeover this movement, if the UP would grant trackage rights to our facility. Access was denied, and I quote a UP manager's response to the vice president of another railroad, "They are our marbles, we paid for them and have no reason to share." This attitude and power is of great concern to all captive shippers, now and in the future."

Figure 6: UP and BNSF Changes in Carloadings⁹



⁹ A similar pattern is reflected in Houston, where BNSF is gaining traffic while UP is losing traffic. PTRAs data on total moves in 1997 show the BNSF had 46%; UP had 34% and SP had 20%. However, by year end 1997, BNSF had 52%, UP/SP had 48%.

5 SAFETY ISSUES

5.1 AAR Accident Records, FRA Records And NTSB Findings All Indicate That The UP Safety Performance Is Weak

There are clear signs of danger in the current situation at Houston;

- Dangers from increased congestion
- Dangers from deteriorated management performance
- Dangers from an overworked operating force trying to do too much while readily available and willing Tex Mex forces are idled

The Tex Mex/KCS plan proposes that the PTRA become the neutral dispatcher and neutral switcher for the Greater Houston Terminal Area, including all lines currently served by PTRA and those lines in Houston which were served by the HBT before it was dismantled by UP and BNSF on November 1, 1997. That proposal is a direct response to increased safety dangers in Houston.

5.2 UP Has Systemic Safety Problems

Safety and service go hand in hand. The widespread complaints lodged against UP service are mirrored in an equally dismal UP safety record. Tragically, the UP sustained 11 fatalities in 1997; almost three times the fatalities of any other Class I railroad. Overall, UP had the highest frequency rate of casualties (fatalities, injuries and illnesses) among the major railroads.

The Federal Railroad Administration (FRA) conducted an exhaustive review of UP management policies and practices.¹⁰ The FRA review was expanded twice because of the seriousness of the initial and intermediate findings. The report cites numerous flawed UP

¹⁰ US Department of Transportation; Federal Railroad Administration Summary of Union Pacific Railroad Safety Assurance Assessment, Feb. 25, 1998.

operating policies and practices. This systemic pattern of flawed management decisions and practices has contributed to the disastrous situation in Houston.

Seven major accidents have occurred on UP within the past year according to the Safety Report released February 25, 1998. The UP accidents cited by FRA include:

- Two UP trains collided head-on, killing 4 and injuring 2 on June 22, 1997, in Devine, TX.
- UP train failed to stop at siding and struck a passing UP intermodal train. Engineer was killed on July 2 in Kenefick, KS.
- Unattended UP consist traveling 60 MPH collided head-on with UP train. Killed engineer, engineer pilot on August 20 in Forth Worth, TX.
- A UP unit coal train struck the rear of a standing BNSF train. Derailed equipment struck passing UP train. UP conductor and engineer were injured on August 23 at Shawnee Jct., WY.
- Two UP freight trains collided head-on. Five of six locomotives caught fire and were destroyed on October 21 in Houston, TX.
- UP train struck the rear of a standing UP train on October 29, 1997, in Navasota, TX.

The National Transportation Safety Board (NTSB) has also conducted investigations of many serious accidents on UP. The NTSB is an independent federal agency charged with finding the "probable cause" of transportation accidents and formulating recommendations to improve safety. The scope of the accidents which NTSB investigates include aviation accidents, major railroad accidents, major marine accidents, major pipeline accidents, releases of hazardous materials, recurring transportation problems. Like the FRA, the NTSB has also recently performed an investigation of UP and found a number of potential safety issues.

In addition to the accidents noted above, NTSB has investigated these significant UP accidents since the merger:

- UP train derailed 27 cars near Marshall, MO while traveling at a speed of 48 miles per hour May 27, 1997. Accident caused by defective length of rail.
- UP train derailed 18 cars while traveling 40 mph near Kinter, AZ on March 16, 1997. Inspection of truck vans on flat car revealed that large rolls of paper had not been properly braced and had shifted to one side, probably causing the car to derail.
- UP train struck the rear end of other UP train near Odem, TX on February 21, 1997. The crew of the standing train mistakenly thought that the train was carrying 64 cars and that their train did not exceed the Odem yard limits, when in fact their train carried 136 cars and exceeded the yard limits by 2,100 feet.

- UP train derailed near Wellington, KS on February 13, 1997. The use of the track was improper because of maintenance activities at the time.
- UP train derailed 14 cars in Gurnee, IL on February 7, 1997.
- Amtrak train derailed on UP track near Granite, WY on January 13, 1997. Derailment occurred at a length of broken track.
- UP train derailed January 12, 1997 near Kelso, CA. Engineer mistakenly shut down locomotive diesel engines and therefore disabled dynamic braking. Hurling out of control as it descended a hill, the train derailed after reaching 75 mph in a zone with a 20 mph limit.
- Runaway cut of cars with unmanned locomotive struck UP train on October 11, 1996. Train on adjacent track struck cars which had derailed as a result of the collision and in turn derailed. Handbrakes had not been set.

As noted above, like the FRA, the NTSB has also recently found a number of potential safety issues in its investigation of UP. In Exhibits 3-A through 3-N of NTSB Docket No. ATL-98-SR001, key issues thus far identified include the following:

- Management oversight
- Crew fatigue
- UP management safety oversight of the mechanical department
- Effectiveness of UP locomotive engineer certification program
- Effectiveness of the UP fatigue education program
- Inadequacy of defect detection equipment to discover pending rail failures
- UP management oversight of operating crews
- Effectiveness of the UP efficiency testing program
- Effectiveness of the UP engineer training program

The issues identified by the FRA and NTSB are very disturbing, and underline the importance of the Tex Mex/KCS proposal to allow PTRC to act as neutral switching and neutral dispatching entity for the Greater Houston Terminal Area. That need is further emphasized by the significant share of rail traffic in Houston that involves the chemical industry.

The chemical industry is a major part of the Houston economy. Chemical shipments account for a significant share of rail volume in the Houston terminal area. Accordingly, safety is a paramount consideration. The catalogue of omissions and errors and gaps found by FRA and NTSB are a cause of serious concern. UP's dismal safety record is one of the principal reasons

for recommending an enhanced role for PTRA, which is one of the safest carriers in the US, according to FRA reportable accidents and injuries.¹¹

5.3 PTRA's Safety is Excellent

As stated previously in this statement, PTRA has had an excellent safety record over the years and has had a steadily declining accident frequency rate¹² since 1991. As of 1997 the PTRA accident frequency rate was 0.93. By contrast, the average for terminal railroads was 4.56; the average for line haul railroads was 2.17¹³ and UP's 1997 accident frequency rate was 2.27.

UP's safety record is weaker than that of most major line haul carriers, while PTRA's safety record is significantly better than those same linehaul carriers, and vastly superior to other switching and terminal carriers.

In recommending neutral dispatching and neutral switching by PTRA, the Tex Mex/KCS plan recommends increasing the operating scope of PTRA, which has a superior and improving safety record. The Houston region would thereby rely less on UP, which has a deteriorating safety record. Safety and service go hand in hand and Houston has suffered from a loss of both. Allowing PTRA to operate as the neutral switching carrier and dispatcher of the Greater Houston Terminal Area would restore both safety and service.

¹¹ Source: AAR Summary of Monthly Accident Frequency reports

¹² Computed by dividing total casualties by 200,000 manhours.

¹³ Line Haul Railroads with 15 million or more man-hours annually (NSC, BNSF, CSX, UP/SP, CR, Amtrak).

6 POST MERGER EXPERIENCE WITH UP OPERATIONS REQUIRES REMEDIAL ACTION BY THE STB

The UP operating problems are well documented in the record of this proceeding. In fact, Chairman Morgan saw first hand some of the problems during her March 2 and March 3 visit to the Houston area. I also was in Houston during the Chairman's visit and can personally attest to the disarray evident in the Houston rail operation. Some specifics include:

- Multiple trains stopped on the main line
- Yard congestion at Settegast, Englewood and other yards
- Poor communication between road trains and dispatchers

These specific problems are visible symptoms of the pervasive operating problems plaguing the Houston area. These operating problems affect virtually all aspects of the rail transportation process, and are evident as:

- Transit Time delays
- Misrouted Cars
- Shipments lost in transit
- Cars sent to wrong locations
- Misroutes due to clearing yards by sending cars in the general direction of the destination
- Cars stalled at intermediate points and terminals

The implications of the operating problems and UP's failure to recover are severe. Trains and cars block facilities, leading to further congestion. The Houston terminal area seems trapped in a situation characterized by:

- Failure to deliver
- Failure to pick up
- Disruptions to customer businesses
- Disruptions to connecting railroads

These are a few of the problems which are now obvious and which cry out for remedial action:

- **Massive** UP service problems have compounded and grown
- **Many** Houston area shippers would welcome a return to SP service levels
- **Some** publicly reported shipper data shows SP service (velocity) was better at the time of the merger than UP service is now. For example, International Paper and Dow Chemical data show this.¹⁴ Whether the focus is on capacity, infrastructure or safety, the UP record is sorely lacking. The Tex Mex/KCS plan offers the STB an opportunity to respond effectively to this historic lapse.

7 REGIONAL IMPACTS

I am familiar with the Houston economy due to my years of rail operations management. I have seen Houston weather some difficult times brought on by downturns in the petro-chemical industry. I have seen Houston come back and diversify and emerge stronger than ever. After all of that, it pains me, as it pains many others, to see the economic harm now being inflicted on Houston. Others have measured the harm in regional economic terms and the massive size of the economic loss now impacting Houston is beyond doubt.

It is clear to me that the impact of the problems gripping Houston such as the loss of HBT as neutral switcher and dispatcher has extended across Texas, the West and the entire nation. Even at the limited perspective of the rail operations level, the impact of the rail disaster in Houston has impacted the national level as tie ups reached west to the Pacific Coast, north to Kansas and south to Central Mexico. Shipments into and out of the key Houston area have been delayed, lost, diverted and foregone. Houston can do better. We are ready. And we would like the green light to proceed.

8 SUMMARY OF CONCLUSIONS AND RECOMMENDATION

- Houston needs a truly neutral switching and neutral dispatching entity.
- The PTRA should be expanded to become that neutral entity.

¹⁴ It should be noted that Dow Chemical recently filed a \$25 million lawsuit against UP to recover damages resulting from service lapses.

- **Houston needs the most efficient utilization of the current infrastructure.**
- **Tex Mex should be permitted to purchase, expand, and operate Booth Yard.**

HARLAN W. RITTER
SENIOR MANAGEMENT EXECUTIVE

As of March 17, 1997, I have held the position of vice president/executive representative for the Kansas City Southern Railway as part of their strategic plan to capitalize on the winning of the Mexico franchise on the Northeast Railway between Laredo and Mexico City.

For the past 30 years, I have exercised broad-based senior management responsibility demonstrated in my current work in international rail management and in my previous positions as president and executive director of Texas City Terminal Railway/Port of Texas City and as president of Houston Belt & Terminal Railway. I have developed a broad range of rail and transportation industry expertise, spanning all areas of corporate leadership: marketing, corporate identity, strategic and master planning, asset evaluation and management, safety, union interface and negotiations, financial planning and all aspects of operations.

EXPERIENCE SUMMARY

Vice Present/Executive Representative/Kansas City Southern Railway

My work with the Kansas City Southern Railway in Mexico has been directed toward the successful transformation of the federally owned, Mexican rail connection between Mexico City and Laredo to a smoothly functioning, privately run rail enterprise, Transportacion Ferroviaria Mexicana. As part of the ongoing effort, I have performed contract negotiations on trackage rights, evaluated terminal operations and utilized my extensive rail experience as executive representative for Mike Haverty, president and chief executive officer of Kansas City Southern Railway. Diplomacy and a keen awareness of the political aspects of rail management have been key factors in the success of this ongoing effort at international rail cooperation.

President and Executive Director, Texas City Terminal Railway Company and the Port of Texas City

In 1995, I assumed the position of president and executive director, Texas City Terminal Railway Company and the Port of Texas City. The Port of Texas City is the eighth largest port in the U.S., third largest in Texas and a worldwide leader in petrochemicals, handling over \$21 million in annual revenues. The port has 43 berths, a 40' draft harbor with authorization to 50', and excellent land links by both rail and interstate freeway. Switching is provided by the Texas City Terminal Railway to Union Pacific and Burlington Northern Santa Fe lines, joint owners of both the port and the terminal company.

As president and executive director, I initiated a comprehensive reevaluation of the company's status, developing and implementing strategies in identity, marketing, communications, operating efficiencies and asset evaluation and reallocation. Major accomplishments include:

Strategic Planning

Upon assuming my duties with the port and terminal company, I initiated marketing and feasibility studies that culminated in the development of the Strategic and Master Plans, formulated in 1995. These contained a wide range of initiatives spanning the next ten to twenty years and included marketing, corporate identity, facilities and land use improvement, the development of an industrial park, and funding for these activities. Phase One included corporate identity creation and increased visibility and culminated with the relocation of Port headquarters in 1996 to SH 146 North. Following Phase One, I embarked on Phase Two of the plan, appointing a director of trade development. Future recommendations contained in the Strategic and Master Plans outline opportunities for expansion and growth, evaluating all the resources at hand with an eye toward developing them for the highest and best use.

Corporate Identity and Marketing

Within the first six months at the port, I completed a comprehensive effort to create a new corporate identity for the port, which had formerly been identified as the Texas City Terminal Railway. Repositioning the company's name to focus on the harbor operation was high priority of the re-identification and an essential element in efforts to pursue increased market share worldwide. Elements completed included renaming, the development of a logo, site signage, direct mail, relocation and corporate brochures, highway signage and billboard. Efforts to raise awareness and visibility included a consistent program of press release and advertising and the relocation for corporate headquarters.

Operations

During the past two years, I completed the evaluation and modification of all phases of operations, reducing crew sizes to foreman-only, and eliminating yardmasters and carmen with union approval. These moves reduced employees, eliminated crafts and increased efficiency and revenues.

Financial

Within the period, I reevaluated all assets. Non-performing assets were sold or priced closer to market value. In addition, I reevaluated and adjusted the rate structure. These measures increased revenues by over \$5 million over the two-year period.

President, Houston Belt & Terminal Railway

In 1981, I assumed the position of president of Houston Belt & Terminal Railways after serving as assistant general manager and general manager from 1978. HBT was, at the time of my departure, the third largest terminal company in the United States, with 480 employees handling over \$400 million in annual revenues. During the period, it was owned by Union Pacific, Santa Fe Railway and Burlington Northern Railroad. With total P&L responsibility, I reshaped and revitalized the company. Major accomplishments included:

Corporate Philosophy and Marketing

As president of HBT, I pursued a consistent philosophy of terminal companies as low-cost service centers - shared facilities with equal treatment for owner lines. Within this concept, I

maintained a goal of generating revenues to offset as far as possible the cost of operations to the owners.

Moving HBT to a higher level of productivity and performance, I spearheaded the reassessment of company image, customer service and marketing strategies, leading to the creation of a redesigned, more meaningful company logo, a revised corporate vision, corporate mission, customer creed and corporate values. All were engineered to form a strong foundation for fundamental changes in attitudes toward customers, job performance, growth and profitability. With increased customer-orientation as a focus, I led the company to develop the following:

- Effective Personal Leadership Classes which include strong quality process and customer service elements
- Customer surveys, customer appreciation days and customer profiles on computer
- Training in telephone answering techniques and customer service through Strawberry Communications
- Training in problem resolution on behalf of customers
- Increasing awareness of customers among employees and the Houston business community through profiles in the company magazine
- Trade show participation and the development of Transportation Service Representatives (TSR's).

Operations:

From 1978 to 1981, I managed the consolidation of yard offices, communications and signal systems and installation of a state-of-the-art video system. During the period, I managed plant improvements totaling \$46 million, \$19 million of which covered improvements in Settegast Yard alone. All improvements were planned and carried out to reinforce a safe, efficient work environment. Physical plant and operational improvements included the addition of electronic switching, motorized train inspections and increased in-train mechanical repair capabilities. Managed major plant improvements including:

- U.S. Highway 59 Project: HBT began construction of the Phase One relocation of approximately 1.6 miles of its main track, construction of Buffalo Bayou Bridge and interstate Highway 10 Bridge adjacent to its East Main. The \$14.8 million work order provided for the construction of 1.2 miles of track north along the Southern Pacific main line from Tower 26 to Collingsworth. This alignment retired Quitman and Collingsworth Streets rail crossings, benefiting both HBT and Southern Pacific. Phase Two design, plans and specifications were begun.
- Supervised \$11 million projects to relay the main line from MP 0.00 at Belt Junction to the north end of Market Street at MP 6.00. Tracks were constructed of 115# to 133# continuous welded rail. All turnouts were standardized to control inventory and reduce expenditures.
- Innovative utilization of Trackmaster/Dowty Retarders in a large portion of the classification yard, the first time in the industry retarders were used to prevent

rollout as well as to control switching speeds. The improvement raised switching speeds while preventing damage to material in cars thereby reducing potential claims.

- Installation of state-of-the-art Automatic Equipment Identification (AEI) system to replace video camera system.
- Developed and implemented successful safety policies and programs such as the Safety Hot Line, Save-A-Back, Pro-Back and other ergonomic health and safety programs. All were under continuous scrutiny to promote greater employee health knowledge and create involvement in a safe work place through swift reporting of conditions needing prompt attention. As a result of these efforts, during a 17-year period from 1978 to 1995, HBT won 11 Harrimans and experience only one fatality.
- Improved operating standards over a five-year period. For example, hourly production increased 21% while detention time was reduced 39%, an all time low.
- Initiated total computerized hardware augmentation and software development for both professional and support staffs - including the establishment of an electronic mail system.

Financial

- While president, I reduced payroll from 1270 people to 480.
- Analyzed HBT's tax structure and corrected tax problems, reducing tax liability by 25%.
- Lowered property tax evaluation from \$3.3 million to \$1.6 million, significantly enhancing profit contribution.
- Updated lease agreements, while initiating a systematic contract monitoring procedure leading to approximately \$600,000 in incremental new business.
- Successfully located 30 new customers along HBT's tracks while retaining and increasing existing business.

Personnel

- Led the effort to change crew allocations from five-man crews to foreman-only crew size, increasing operational efficiency and contributing to the growth and profitability of shareholders. Established 18 foreman-only jobs.
- Administered and personally implemented a goal-oriented management system.
- Implemented use of software that generated an increase in capabilities of 15% and overtime decrease of 32%, reducing labor costs by almost \$200,000.

INDUSTRY EXPERIENCE

Throughout my career, I have consistently demonstrated bottom-line orientation by implementing cost reductions and improving company performance. A turnaround specialist, during my 14 years with Houston Belt & Terminal Railway, I established precedent-setting records in quality, customer service and cooperation among railroads to further the industry's seamless transportation system. I planned and executed a five-year improvement plan leading to increase capacity, new business development, improved scheduling and significantly reduced operating expenses. With company goals a priority, I exhibited excellent communications skills while overseeing all personnel functions, including union negotiations to implement foreman-only train crews.

HBT originally recruited me in 1978 for the position for assistant general manager. While being groomed for the presidency, I was responsible for turning around the safety program and consolidating existing operations. In this capacity, I strengthened HBT's safety record to such a degree that the company received the industry's highest safety award for ten consecutive years. Prior to this, HBT's experience was one of the worst in the industry with claims payouts in the millions. I also managed personnel consolidation, utilizing closed circuit television and computer software developed in house. This \$800,000 project paid for itself in 14 months.

In 1964, I joined Missouri Pacific Railroad, prior to its merger with Union Pacific, one of the top five companies in the industry in miles operated and revenues. Initially a management trainee, I progress through the ranks in increasingly responsible positions. Before joining HBT, I was assistant to the vice president of operations at corporate headquarters.

EDUCATION/PERSONAL

In addition to my B.S. degree, which I received in 1964 from Fort Hayes State college, I pursued post graduate studies at the Harvard Business School and Northwestern University. Through the years, I have maintained state-of--the-art competency through workshops and seminars.

INDUSTRY MEMBERSHIP ACTIVITIES

Taxpayers Research Council
Texas City Chamber of Commerce
Texas Port Association
Gulf Port Association
Association of American Port Authorities
The Transportation Club of Houston

Council of Logistics Management
Texas Transportation Institute
Southwest Shippers Advisory Board
Houston Chamber of Commerce
Central Houston, Inc.
Downtown Houston Association

HONORARY POSITIONS, AWARD AND RELATED INTERESTS

Board of Directors, Merchants Bank
Board of Directors, Texas City Chamber of Commerce
Member, Board of Directors, Transportation Club of Houston, Present
President, Transportation Club of Houston, 1993-1994
First Vice President, Transportation Club of Houston, 1992-1993
Second Vice President, Transportation Club of Houston, 1991-1992
Person of the Year, Transportation Club International,, 1993
Member, Board of Directors, Buffalo Bayou Partnership, Present
Author of articles in Industrial Engineering News and HBT's in-house journal, *The Belt*.

VERIFICATION

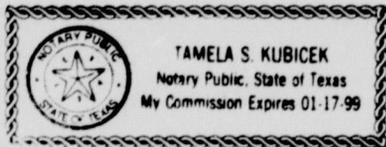
STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

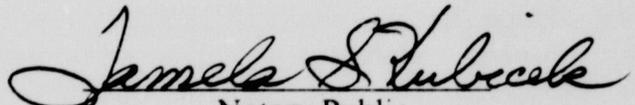
I, Harlan Ritter, being first duly sworn, upon my oath state that I have read the foregoing statement and the contents thereof are true and correct as stated.



Harlan Ritter

Subscribed and sworn to before me this 26 day of March, 1998.





Notary Public

My Commission Expires: 1-17-99

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33568

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR
EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT AND OPERATE
A RAIL LINE BETWEEN ROSENBERG AND VICTORIA, TEXAS**

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**Attorneys for The Kansas City Southern
Railway Company**

March 30, 1998

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33568

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR
EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT AND OPERATE
A RAIL LINE BETWEEN ROSENBERG AND VICTORIA, TEXAS**

COME NOW The Texas Mexican Railway Company (hereinafter "Tex Mex") and the Kansas City Southern Railway Company (hereinafter "KCS") and pursuant to 49 U.S.C. § 10502 hereby petition the Surface Transportation Board (hereinafter the "Board" or "STB") for an exemption from the prior approval requirements of 49 U.S.C. § 10901, to be granted to *Tex Mex*, for the proposed reconstruction/rehabilitation and subsequent operation of approximately eighty-eight (88) miles of line by *Tex Mex*. The line begins at approximately Milepost 0.0¹⁵ in Rosenberg, Texas and proceeds in a southern and westerly direction to approximately Milepost 87.8 near Victoria, Texas. *Tex Mex* and KCS acknowledge that the requested exemption from prior approval requirements of § 10901 does not amount to an exemption from the environmental review to be conducted under the National Environmental Policy Act and the Board's regulations.

¹⁵ Southern Pacific Lines ("SP") was granted an exemption to abandon the Rosenberg to Wharton portion of this line beginning at Milepost 2.5. As a result, SP retained the stub end at Rosenberg. In a later abandonment proceeding, which included the Wharton to Victoria portion, SP also retained the stub end at Victoria. Recently, Union Pacific indicated its willingness to sell its remaining interest in the line between Milepost 0.0 in Rosenberg to approximately Milepost 85.8, near Victoria. Then UP would grant rights for *Tex Mex* to operate over the approximate 4 remaining miles between Milepost 85.8 to Milepost 89.8 in Victoria. Depending on the outcome of the negotiations between the parties, *Tex Mex* and KCS are requesting that *Tex Mex* be granting authority to operate and/or purchase the stub end portions as applicable.

Pursuant to the Board's regulations at 49 C.F.R. § 1105.10(d), counsel requested approval from the STB's Section of Environmental Analysis ("SEA") on March 6, 1998 to retain a third-party consultant to work under the supervision and direction of SEA in order to prepare the appropriate environmental documentation. This request was granted on March 18, 1998.

STATEMENT OF FACTS

Tex Mex is a class II carrier which operates approximately 157 miles of line between the Mexican border at Laredo, Texas and Corpus Christi, Texas, with a connection to the UP's Brownsville Subdivision at Robstown, Texas. It operates between Robstown and Houston, Texas and between Houston and Beaumont, Texas over UP's rail lines pursuant to trackage rights granted as a condition in the UP/SP control proceeding. Those trackage rights were granted to enable Tex Mex to connect with KCS in Beaumont and, through the connection with KCS, to provide an effective competitive alternative to UP/SP for rail traffic between the United States and Mexico. Tex Mex's trackage rights between Robstown and Houston, however, are over a quite circuitous, 289 mile route through Placedo, Victoria, and Flatonia, Texas. Tex Mex also operates over terminal trackage rights on the tracks of the Houston Belt & Terminal Railroad Company ("HBT") in Houston, Texas. Tex Mex has the right to serve shippers located in Houston on the PTRS and the HBT. Its right to so serve Houston shippers is restricted to traffic having a prior or subsequent move across Tex Mex's line between Corpus Christi and Laredo, Texas.

KCS is a class I carrier which operates approximately 2,913 route miles of line in the Midwest and Gulf Coast including lines in the states of Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. In addition, KCS also serves, via trackage rights, haulage rights and/or other arrangements in Nebraska, Illinois and Iowa. KCS

has 381 miles of track in the state of Texas. KCS' parent company, Kansas City Southern Industries Inc. owns 49% of Tex Mex's parent company Mexrail, Inc.

By this petition Tex Mex and KCS seek to provide more infrastructure to the Houston area and an alternative to the circuitous trackage rights route over UP lines via Flatonia currently utilized by Tex Mex. KCS has a direct and vital interest in the project not only because of Kansas City Southern Industries' investment in Tex Mex but also because of KCS's interest in improving the efficiency and competitive effectiveness of the route by which KCS and Tex Mex together compete with UP for traffic in furtherance of the Board's purpose in granting the trackage rights to Tex Mex.

The subject rail line was previously granted abandonment authority by the Board's predecessor, the Interstate Commerce Committee, to Southern Pacific (hereinafter "SP") in two proceedings. In *Southern Pacific Transportation Company -- Abandonment Exemption -- In Jackson, Victoria and Wharton Counties, TX*, Docket No. AB 12 (Sub-No. 162X) (ICC served Nov. 1, 1993), a notice of exemption was published for SP's abandonment of the 62 mile portion of the Wharton Branch between Milepost 25.8, near Wharton rail station and Milepost 87.8, near Victoria rail station. In *Southern Pacific Transportation Company -- Abandonment Exemption -- In Fort Bend and Wharton Counties, TX*, Docket No. AB 12 (Sub-No. 166X) (ICC served March 8, 1995), SP was granted an exemption to abandon certain rail lines including the 23.3 mile portion called the Wharton segment extending between Milepost 2.5, west of rail station McHattie to Milepost 25.8, west of and including the Wharton rail station.

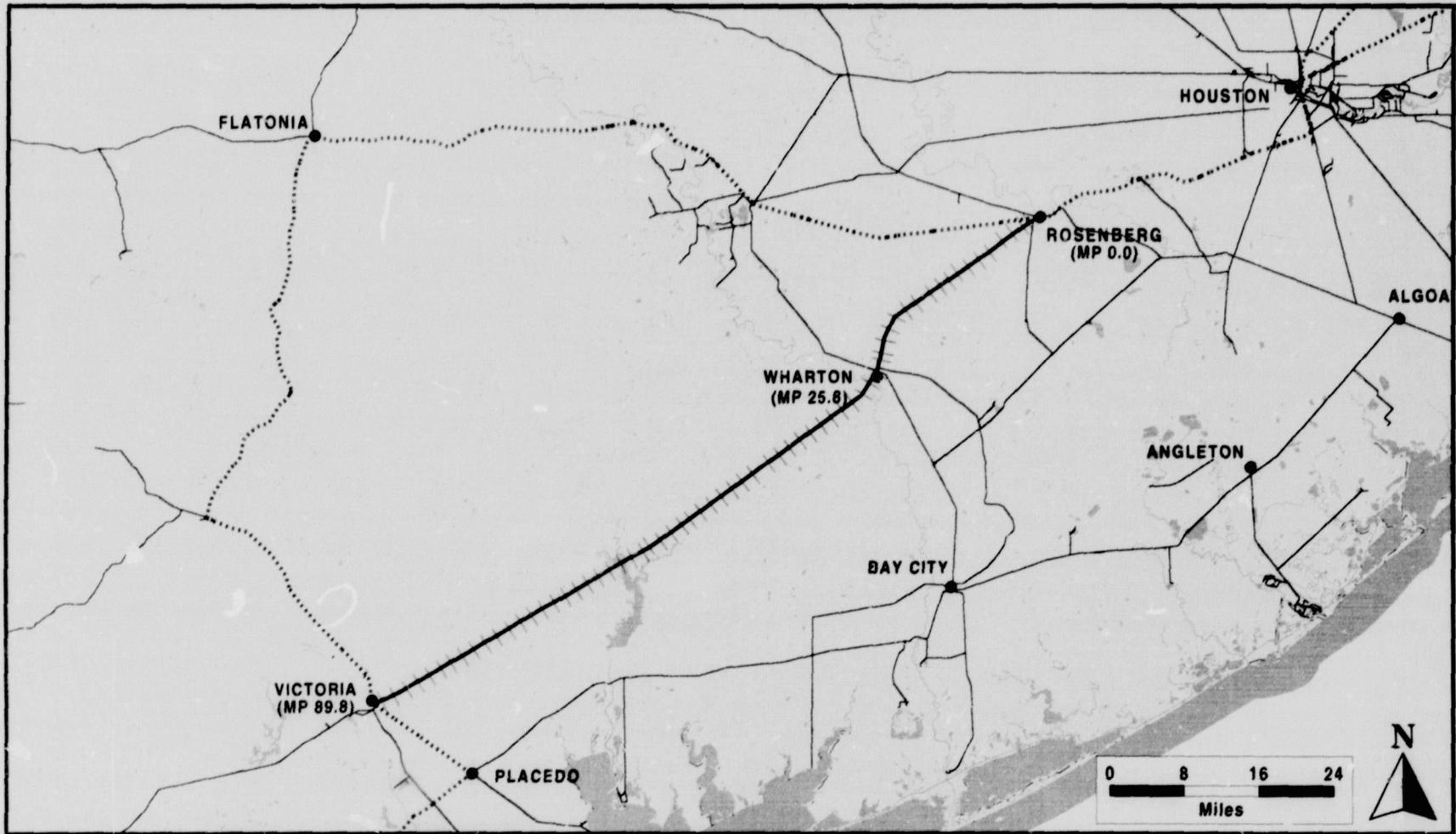
The total rail line proposed to be constructed, rehabilitated and/or reactivated for service will be approximately eighty-eight (88) miles in length between Rosenberg and Victoria, Texas. See Map on next page. For the most part, the line will be reconstructed on an existing rail bed.

However, approximately 25.8 miles of line from Rosenberg to near Wharton and approximately 4 miles from Victoria heading north still has the track in place and will only require rehabilitation leaving approximately fifty-eight (58) miles to be fully reconstructed on the existing rail bed. Furthermore, for the most part the bridges and trustles along the line remain in place. As a result, Tex Mex and KCS estimate that the cost for reconstruction, rehabilitation and purchase of necessary right of way will cost approximately \$66 million. See attached Verified Statement of David W. Brookings and David M. Lewis (hereinafter "V.S. Brookings" and "V.S. Lewis") for further details on the cost of reconstruction of the Rosenberg to Victoria line.

Tex Mex will be responsible for the construction and/or rehabilitation of the entire proposed rail line. Tex Mex estimates that it will take approximately nine (9) months to complete the engineering, procurement and construction of the rail line proposed herein after the right of way is procured. See V.S. Brookings and V.S. Lewis. In addition, Tex Mex proposes to begin operations over this line within one year after the construction authority is granted, including the appropriate environmental review. Most importantly, the 88 mile Rosenberg to Victoria line will provide a new and needed infrastructure alternative to the approximately 160 mile route Tex Mex is currently compelled to use from Rosenberg to Victoria via the Flatonia route. Unquestionably, the construction and reactivation of service over the entire Rosenberg to Victoria line, in the most expedient manner possible, is in the best interest of all concerned.

Once operations begin on the Rosenberg to Victoria line, Tex Mex will not operate on UP's heavily congested Glidden subdivision (part of the Sunset Route) between Tower 17 in Rosenberg and Flatonia, Texas, a distance of 83.7 miles. Importantly, the removal of Tex Mex from the 83.7 mile portion of the Sunset Route will remove freight trains from the congested Amtrak route. In addition, after operations begin on the Rosenberg to Victoria line, Tex Mex

Tex Mex / KCS Proposed Construction



- Tex Mex Trackage Rights Granted In UPSP Merger
- Rosenberg to Victoria Reconstruction / Rehabilitation

will not operate on UP's Brownsville subdivision between Houston and Placedo via Algoa, Texas. *See Joint Petition of the Texas Mexican Railway Company and the Kansas City Southern Railway Company for Imposition of Additional Remedial Conditions Pursuant to the Board's Oversight Jurisdiction, F.D. No. 32760 (Sub No. 21), TM-7/KCS-7 (hereinafter "TM-7/KCS-7"); Verified Statement of Patrick L. Watts at 179 (hereinafter "V.S. Watts").* Currently, Tex Mex operates 2 scheduled trains per day between Laredo and Beaumont via the Flatonia route South of Houston. If the Board approves and authorizes the Tex Mex/KCS plan for additional remedial conditions, and once operations commence on the Rosenberg to Victoria line, Tex Mex projects that 4 additional daily Tex Mex trains will operate between Laredo and Beaumont and one additional train will operate over the Rosenberg to Victoria line for local traffic. These calculations place the projections for traffic over the Rosenberg to Victoria line at 7 trains per day. For additional details on the current and post-Tex Mex/KCS proposed operations, *see V.S. Watts, Operating Plan at Attachment 1.*

DISCUSSION

Tex Mex projects to invest approximately \$66 million in the Rosenberg to Victoria reconstruction project as part of its desire and affirmative actions to provide additional infrastructure and a more competitive alternative route to the current rail transportation service provided over the highly congested and circuitous route via Flatonia. Furthermore, the construction authority sought herein, combined with the additional remedial conditions sought in the full evidentiary submission, will enable Tex Mex to effectively compete with UP in the Houston, Laredo and NAFTA markets. Importantly, in order for Tex Mex to make an investment of nearly \$66 million in expanding capacity by reconstructing the Rosenberg to Victoria line, Tex Mex must realize at least a \$7.1 million increase in operating income to

support an investment that large. See TM-7/KCS-7, V.S. Joseph J. Plaistow at 129 (hereinafter "V.S. Plaistow). Tex Mex desires to make these capital investments in Houston and UP has indicated its acquiescence to the project. Nevertheless, Tex Mex needs the lifting of the Houston traffic restriction and the additional remedial conditions in order to make this needed investment. See V.S. Plaistow at 128.

A. THE LEGAL STANDARDS UNDER 49 U.S.C. § 10502 FOR AN EXEMPTION FROM THE REQUIREMENTS OF 49 U.S.C. § 10901 FOR THE CONSTRUCTION AND OPERATION OF THIS RAIL LINE HAVE BEEN MET

Under 49 U.S.C. § 10901, construction of a new line of railroad by a rail carrier requires prior Board approval. However, under 49 U.S.C. § 10502, the Board must exempt such construction from regulation if it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101a; and (2) either (a) the transaction or service is of limited scope, or (b) the application of a provision of the Interstate Commerce Act is not needed to protect shippers from the abuse of market power.

The construction of this rail line is the type of transaction for which the exemption provision of the Staggers Act¹⁶ was designed. The exemption provision was considered an important cornerstone of the legislation. *American Trucking Association v. ICC.*, 656 F.2d 1115, 1119 (5th Cir. 1981). As President Carter stated upon signing the Staggers Act into law, the Act "strips away **needless and costly** regulations in favor of market forces, competitive market forces, whenever possible." 16 Weekly Comp. President Doc. 2225-26 (Oct. 14, 1980). The Court in *American Trucking* at 1119 cited the affirmative use of § 10502 to exempt transactions, quoting from legislative history that "the Commission is charged with the responsibility of actively

¹⁶ Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1897 (1980).

pursuing exemptions for transportation and service that comply with the section's standards." The Board is further charged with removing "as many as possible of the Commission's restrictions" H.R. Rep. No. 1430, 96th Cong., 2d Sess. at 105 (1980). As explained in detail below, the rail line proposed herein complies with § 10502 and, accordingly, should be exempted from the burdensome filing requirements of obtaining Board approval under § 10901.

1. **An Exemption will Promote The Rail Transportation Policy**

Regulation of the reconstruction and operation of this approximately eighty-eight (88) mile rail line is not necessary to carry out the rail transportation policy expressed in 49 U.S.C. § 10101a. Currently, Tex Mex is prevented from providing efficient and economic rail transportation service into and out of Houston and Laredo because of the Houston traffic restriction and UP's congestion problems. Specifically, Tex Mex's current operating ratio for the 3rd quarter of 1997 was 113% and Tex Mex experienced operating losses of \$1,193,000 for 1997. See V.S. Plaistow at 128. This is not a sustainable operating ratio. However, with the construction of the proposed new rail line and the grant of the other requested additional remedial conditions, Tex Mex will be capable of providing transportation service for the Houston, Laredo and NAFTA markets on an efficient and economical basis. The proposed rail line to be reconstructed between Rosenberg and Victoria is an integral part of the Tex Mex/KCS plan which will finally permit Tex Mex and KCS together to effectively compete with UP in order to retain and to increase their respective shares of the transportation service provided to and from the Houston, Laredo and NAFTA markets.

Granting an exemption, instead of requiring burdensome regulation, will promote the rail transportation policy as expressed in 49 U.S.C. § 10101a. Specifically, the transportation policies which will be promoted by the issuance of a construction exemption are as follows:

- To allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail [10101a(1)];
- To minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required [10101a(2)];
- To promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues [10101a(3)];
- To ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers to meet the needs of the public [10101a(4)];
- To foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes [10101a(5)];
- To reduce regulatory barriers to entry into the industry [10101a(7)];
- To encourage honest and efficient management of rail roads [10101a(9)]; and
- To provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part [10101a(15)].

First, the reconstruction and reactivation of the Rosenberg to Victoria rail line will foster competition among rail carriers [10101a(5)], ensure the development of a sound rail transportation system [10101a(4)], and allow the competition and the demand for Tex Mex and KCS service, rather than federal regulation, to govern the level of rates for transportation service in the Houston, Laredo and NAFTA markets [10101a(1)]. Authorizing Tex Mex to reconstruct the rail line and reactivate rail service on the Rosenberg to Victoria line, will put the former SP rail line back into service in an area which nationally has been declared in need of added infrastructure and capacity. In addition, the reconstruction of the Rosenberg to Victoria line, combined with the other additional remedial conditions requested, will enhance the ability of Tex Mex and KCS together to provide an effective competitive alternative to Texas and NAFTA shippers. The Board expects the Tex Mex to provide an effective competitive alternative in the

important Laredo to United States market. Therefore, the Board should approve the acquisition of the Tex Mex owned and non-circuitous route from Rosenberg to Victoria with unrestricted traffic solicitation ability in Houston. See TM-7/KCS-7; Verified Statement of George C. Woodward.

Second, by granting an exemption for this construction project, the Board will be minimizing the need for federal regulatory control over the rail transportation system [10101a(2)] and reducing the regulatory barriers to entry into the rail industry [10101a(7)]. As the Board has stated, the potential for new entry occasionally may increase the bargaining power of (1) shippers that might otherwise be captive, and (2) carriers seeking to provide service through "competitive access" to a shipper not located directly on their lines. *Class Exemption for Rail Construction Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 3), (ICC served May 29, 1987), *renoticed in Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 2) and *Class Exemption for Rail Construction Under 49 U.S.C. 10901*, Ex Parte No. 392 (Sub-No. 3), (ICC served September 15, 1992). Accordingly, the Board should carefully scrutinize any arguments which are purposefully designed to erect barriers to entry and deny the benefits of competition.

Third, this construction exemption will promote safe and efficient rail transportation and will enhance Tex Mex's ability to earn adequate revenues from its transportation services [10101a(3)], and encourage honest and efficient management of railroads [10101a(10)]. Additional detail and support of these policies of the Rail Transportation Policy can be found in the Verified Statements of Joseph J. Plaistow, George Woodward, Patrick L. Watts, Michael H. Rogers, Harlan Ritter, Paul L. Broussard, A.W. Rees, Larry Fields, David W. Brookings, and David M. Lewis, all but the last two submitted in TM-7/KCS-7.

Fourth, Tex Mex and KCS are requesting expedited consideration of this petition for construction exemption which is also supported by the Rail Transportation Policy [10101a(2) and 10101a(15)].

In conclusion, Board approval pursuant to 49 U.S.C. § 10901 is not necessary to carry out the policies of the Rail Transportation Policy. In fact, to require such approval, by means other than by exemption, with its attendant risk of delay and consequent failure, would be inconsistent with the rail transportation policies articulated in § 10101a. Failure to grant the petition will inhibit development of a sound transportation system, and promote inefficiencies contrary to the Congressional intention that competition promotes efficiency, the keystone of the Staggers Act.

2. The Transaction to be Exempted is Limited in Scope

The second test for exemption is stated in the alternative, *i.e.*, the transaction is of limited scope or regulation is not needed to protect shippers from the abuse of market power. The transaction proposed herein is the reconstruction and/or reactivation of a rail line approximately ninety (90) miles in length. As stated above, the line will be reconstructed on an existing rail bed and includes approximately 30 miles of track and most bridges and trestles still in place. This 30 miles of track, as well as the bridges and trestles, will be rehabilitated to FRA Class 4 track standards. V.S. Brookings at 294. This leaves approximately 60 miles of track to be fully reconstructed and brought up to FRA Class 4 track standards. *Id.* Under Board precedent, applying § 10505(a) in analogous circumstances, Tex Mex and KCS assert that the current transaction is of limited scope. See, *The Elk River Railroad, Inc., -- Construction and Operation Exemption - Clay and Kanawha Counties, WV*, Finance Docket No. 31989, (ICC served May 21, 1992) (A proposed construction project of 30 miles on an existing roadbed in a single state was found to be limited in scope). See also *Ozark Mountain Railroad - Construction Exemption*,

Finance Docket No. 32204, (ICC served Feb. 10, 1993) where the Commission found that the 75 mile construction project met the section 10505 [now section 10502] exemption criteria as a threshold matter.¹⁷

Most importantly, Tex Mex and KCS believe that the construction of the rail line proposed herein is of limited scope because it involves the reconstruction and reactivation of a previously abandoned rail line on an existing rail bed and includes almost 30 miles of track, as well as bridges and trussels still in place. Additionally, as shown on the attached map which follows this page, the proposed rail line is to be located within a fairly limited and defined geographic region of Texas. As a result of the limited construction area and the fact that the rail bed has been previously disturbed, there will be only minor impacts resulting from construction of the rail line. Accordingly, Tex Mex and KCS respectfully submit that these facts support a finding that the proposed construction is limited in scope.

3. **Regulation is Not Needed to Protect Shippers from the Abuse of Market Power**

Because the transaction is limited in scope, the Board is not required to make a finding that regulation is not necessary in order to protect shippers from the abuse of market power. Nonetheless, such a finding can be made. And in the event that the Board does not find that the transaction is limited in scope, the Board must find that regulation is not needed to protect shippers from abuse of market power. In fact, the reconstruction of the Rosenberg to Victoria

¹⁷ Tex Mex and KCS acknowledge that the Ozark proceeding ran into various other problems which ultimately warranted more detailed scrutiny than an exemption affords. Nevertheless, the threshold as determined in Ozark has been met here. More importantly, since this construction exemption is being filed as part of a larger evidentiary submission for additional remedial conditions, a plethora of detail has already been provided to the Board.

rail line is designed to introduce and enhance rail competition in the delivery of products in Texas and the NAFTA market.

By enhancing competition between rail carriers, regulation is not needed to protect shippers from the abuse of market power since market power results from the lack of competition, whereas the proposed project here is designed to increase competition. The test of abuse of market power was included in § 10502 in order to assess whether deregulation could result in harm to shippers who lack competitive alternatives. In this case, the construction of the rail line will avoid harm to shippers since the construction will enhance competition and ensure the long term viability of Tex Mex. As just one example, in a March 19, 1998 statement¹⁸ by Shell Chemical Company ("Shell"), Shell states that "[W]e believe that establishment of the Tex Mex as a permanent presence in the Houston market will be an important contribution to the efforts to address the long term needs of Houston shippers." Importantly, Shell has utilized the Tex Mex under the Board's emergency service order and would like to have the right to use Tex Mex permanently. As such, Shell supports the Board's granting Tex Mex authority to reconstruct the Rosenberg to Victoria line in order to increase capacity and improve efficiency for Tex Mex movements which will enhance rail competition.

B. THE EXEMPTION TO CONSTRUCT SHOULD BE EFFECTIVE ON COMPLETION OF THE BOARD'S ENVIRONMENTAL ANALYSIS

Tex Mex and KCS propose that the Board grant the requested exemption authority to Tex Mex subject to completion of the environmental review. Tex Mex and KCS understand the need of the Board to give appropriate consideration to the exemption sought herein. Tex Mex and

¹⁸ A copy of the Shell statement is included in TM-7/KCS-7 along with copies of numerous other shipper letters in support of the Tex Mex/KCS plan received to date.

KCS also recognize the requirements set forth in the regulations at 49 C.F.R. § 1105 for the Board to **undertake** an independent environmental evaluation in connection with the construction exemption. As stated *supra*, Tex Mex and KCS have consulted with the SEA with respect to the proposed environmental analysis to be prepared by the third-party consultant. The environmental review will be completed as soon as feasible.

Tex Mex and KCS submit that the issuance of the construction exemption at this time with the effective date to coincide with the completion of the Board's environmental review is in accord with the law. See *Illinois Commerce Commission v. Interstate Commerce Commission*, 848 F.2d 1246 (D.C. Cir. 1988); *Chicago and North Western Transportation Company -- Construction and Operation Exemption-- City of Superior, Douglas County, WI*, Finance Docket No. 32433 (ICC served May 11, 1994); *Burlington Northern Railroad Company -- Construction and Operation Exemption -- Macon and Randolph Counties, Missouri*, 9 I.C.C.2d 1161 (1993); *Southern Gulf Railway Company -- Construction Exemption -- In Calcasieu Parish, LA*, Finance Docket 32321 (ICC served September 9, 1993); *Aroostock Valley Railroad Company-- Construction Exemption--Aroostock, County, ME*, Finance Docket No. 32030 (ICC served April 28, 1992); *Sioux & Western Railroad Company--Construction Exemption--Charles County, MO.*, Finance Docket No. 32016 (ICC served March 25, 1992); *Joppa and Eastern Railroad Co. - Construction Exemption - Joppa, Il.*, Finance Docket No. 31656 (ICC served July 5, 1990); *Southern Electric Generating Company -- Petition for Exemption -- Construction of a Rail Line in Shelby County, Alabama*, Finance Docket No. 31498 (ICC served September 19, 1989); and *Louisville & Jefferson Riverport Authority and CSX Transportation, Inc. -- In Jefferson City, Ky.*, Finance Docket No. 31136 (ICC served December 22, 1987).

EXPEDITED CONSIDERATION REQUESTED

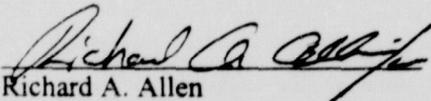
Tex Mex and KCS respectfully request the Board to issue an order exempting the construction of the rail line proposed herein as expeditiously as possible. Tex Mex and KCS respectfully urge the Board to issue an order exempting the construction proposed herein as soon as feasible, but delay its effective date until the Board has completed its environmental evaluation.

CONCLUSION

For the foregoing reasons Tex Mex and KCS respectfully request the Board to issue a construction exemption sought herein for the for Tex Mex to reconstruct and reactive the Rosenberg to Victoria line, as expeditiously as possible, with the effective date to coincide with the completion by the Board of its environmental review.

Respectfully submitted,

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March 30, 1998

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33568

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR
EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT AND OPERATE
A RAIL LINE BETWEEN ROSENBERG AND VICTORIA, TEXAS**

**VERIFIED STATEMENT
OF
DAVID W. BROOKINGS**

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6 of 6

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33568

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR
EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT AND OPERATE
A RAIL LINE BETWEEN ROSENBERG AND VICTORIA, TEXAS**

VERIFIED STATEMENT

OF

DAVID W. BROOKINGS

My name is David W. Brookings and I am Vice President and Executive Representative of Kansas City Southern Lines, Inc., the immediate parent company of The Kansas City Southern Railway Company ("KCS"). My business address is 114 West 11th Street, Kansas City, Missouri 64105. In my capacity, I provide expert engineering consultation to the railroad subsidiaries of Kansas City Southern Lines, Inc. I have held my current position since September, 1996. Prior to being appointed to my current position, I served as KCS' Vice President and Chief Engineer. In all, I have been employed by KCS, and now its parent, in railroad engineering jobs for more than twenty-five years, starting as a Bridge Engineer in September, 1972, an Engineer of Track between 1985 and 1986, Chief Engineer from 1986 to 1992, and Vice President and Chief Engineer between 1992 and 1996. In these capacities, I have had significant experience with the design, layout, and construction of railroad lines and the rebuilding and rehabilitation of lines. When KCS acquired the MidSouth railroads in 1993, I was responsible for the planning and implementation of a significant upgrading of MidSouth's line between Shreveport, Louisiana and Meridian, Mississippi to create a competitive rail link for traffic to and from the Southeastern

United States. I also was involved in due diligence leading to purchase by KCS' indirect parent, Kansas City Southern Industries, Inc. ("KCSI"), and its partner, Transportacion Maritima Mexicana, of the privatized Northeast Rail Line in Mexico ("TFM"). Since the acquisition of TFM's line, I have provided professional consultation with respect to rehabilitation and maintenance of way on its lines. All of this work has required my development of projected costs of construction and rehabilitation of rail lines, for both budgetary and financing purposes.

I graduated in 1972 from Louisiana Tech University with a Bachelor of Science Degree in Civil Engineering. I am registered as a Professional Engineer in the states of Missouri and Louisiana. My professional affiliations include the American Society of Civil Engineers and the American Railway Engineering and Maintenance-of-Way Association. I have submitted previous testimony, through verified statements, to the Interstate Commerce Commission in Finance Docket No. 32000, *Rio Grande Industries, Inc., et al. - Control - Southern Pacific Transportation Company*, and in Finance Docket No. 32167, *Kansas City Southern Industries, Inc., et al. - Control - MidSouth Corporation, et al.*

My purpose in this Verified Statement is to set forth my expert estimate of the costs relating to the reconstruction/rehabilitation of the SP's old Wharton Branch line, running between Rosenberg, Texas and Victoria, Texas. I was asked to develop these cost estimates as evidence supporting the "*Joint Petition of the Texas Mexican Railway Company and The Kansas City Southern Railway Company for Imposition of Additional Remedial Conditions Pursuant to the Board's Retained Oversight Jurisdiction*" (TM-5, KCS-5, filed February 12, 1998, in Finance Docket No. 32760 (Sub-No. 21), hereafter referred to as the "Joint Petition"). This Verified Statement is offered in support of that Joint Petition. I have not included in my estimates the cost

of acquiring the right of way of the line. I understand that that evidence is being provided by another witness.

As preparation for my cost estimate, I physically inspected the line in question. In my inspection, I looked at the state of repair of the line where it was still in place and, where it had been removed, I examined the state of the road bed with an eye to necessary grading and vegetation removal and fill that might be required to accommodate a rebuilt line. Because the line which has been removed was in place as recently as 1996, I found that only minimal earthwork is required. Of course, new ballast would need to be applied, but that is true of the entire line. I also looked at grade crossings to determine their likely need for replacement or repair. In most cases the public grade crossings will need to be rebuilt and the appropriate signage or grade crossing warning protection installed.

The reconstruction/rehabilitation of the 88-mile former Southern Pacific line between Rosenberg, Texas and Victoria, Texas would be performed by railroad track contractor(s). I anticipated that this rail line, which is predominantly tangent and level, will be reconstructed to FRA Class 4 track standards to allow for 59 MPH freight train speeds. The track structure will consist of 88 miles of continuous welded rail on timber ties and crushed stone ballast. Approximately 300,000 tons of ballast will be required. The rail will be new 136-pound rail, welded with electric flash butt welds into quarter-mile strings and field welded together. The 289,250 timber ties will be 7" x 9" x 9'-0" creosoted oak or hardwood ties spaced on 19-1/2" centers and the stone ballast will be graded between 1 1/4" and 3/4". Material for the subballast will be screened for particle sizes of 1/2" and under. Finally, I have included an estimate of the cost of installing CTC signalization on the line.

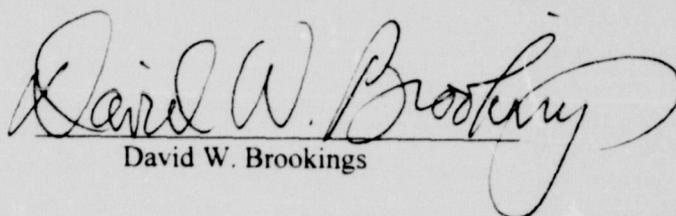
Once the track is in service, it is anticipated that four (4) maintenance personnel would perform required repairs and inspections. One supervisory personnel would perform track inspections and grade crossing protection inspections, while a 3-man section gang would perform all necessary maintenance functions. The annual operating expenses for maintenance activities is estimated to be \$355,000

The estimated reconstruction/rehabilitation cost of the 88-mile segment from Rosenberg to Victoria, exclusive of the right-of-way cost, is \$57.5 million. Total construction time will be 6 to 9 months, depending on weather conditions.

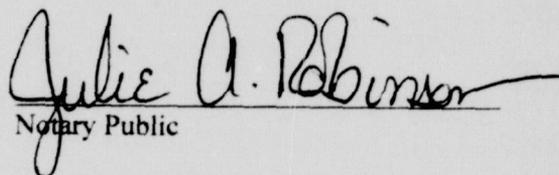
VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

I, David W. Brookings, being first duly sworn, upon my oath state that I have read the foregoing statement and the contents thereof are true and correct as stated.


David W. Brookings

Subscribed and sworn to before me this 23rd day of March, 1998.


Notary Public

My Commission Expires:

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33568

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR
EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT AND OPERATE
A RAIL LINE BETWEEN ROSENBERG AND VICTORIA, TEXAS**

VERIFIED STATEMENT

OF

DAVID M. LEWIS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33568

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR
EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT AND OPERATE
A RAIL LINE BETWEEN ROSENBERG AND VICTORIA, TEXAS**

VERIFIED STATEMENT

OF

DAVID M. LEWIS

My name is David M. Lewis. I am a Texas state certified real estate appraiser and consultant. My business address is 952 Echo Lane, Suite 315, Houston, Texas. I have more than 35 years experience in real estate appraising. I have provided expert consultation on real estate values for a variety of purposes, including litigation and, specifically, condemnation actions. I have served as a consultant and an expert witness in over 500 condemnation cases. My experience and qualifications are more fully set forth in the Appendix to this statement.

I was asked by an attorney retained by The Kansas City Southern Railway Company ("KCS") and the Texas Mexican Railway Company ("Tex Mex") to provide an estimate of the acquisition costs that KCS and Tex Mex would have to incur if they were to acquire the Southern Pacific Transportation Company 100 foot right-of-way¹ extending between Rosenberg and Victoria, Texas, a distance of approximately ninety (90) miles.

¹ Although the right-of-way is generally 100 foot in width, at certain points the right-of-way is a greater width to accommodate such adjunct rail structures as depot buildings and passing storage tracks.

I have determined that the right-of-way to be acquired consists of approximately 1,200 total acres. I have based my estimate of the land cost upon comparable land sales activity in the vicinity of the railroad route. The railroad right-of-way is situated in the counties of Fort Bend, Wharton, Jackson, and Victoria, Texas. I have obtained records of sales of comparable properties within the last five (5) years in these areas. From these comparable sales, I have determined the purchase price per acre. I then applied that calculated per acre price to the total acres in each comparable right-of-way parcel to determine an estimated price. I have based my estimated costs for title opinions, surveys, legal expenses, expert witness fees, and court costs upon my many years of experience in providing consulting and opinion testimony in more than 500 condemnation cases.

The total estimated cost for the entire right-of-way acquisition is \$8,000,000.00.

David M. Lewis, CRE, MAI, SRA

Biographic Data

David M. Lewis is a state certified (Certification No. TX-1321307-G [exp. 6-30-99]) real estate appraiser and consultant, headquartered at 952 Echo Lane, Suite 315, Houston, Harris County, Texas. Born in Houston, Texas in 1937, Mr. Lewis attended public schools before entering the University of Houston and graduating with a business degree, majoring in real estate economics and finance, in 1958. He served in the US Army Infantry upon graduation.

Employment

While attending college, Lewis worked part-time as a real estate broker for his father. Upon leaving the armed services with an honorable discharge, he was employed by the Federal Housing Administration serving 18 months as a staff appraiser. In 1962, Mr. Lewis started his own valuation and consulting practice, which he has headed for the last 35 years.

Scope of Professional Assignments

Mr. Lewis' consulting assignments have included acquisitions/dispositions, asset management, development/redevelopment, expert witness, facilities planning, financing/joint ventures, investment analysis, land assembly, lease negotiation, location/relocation analyses, management counseling, property management, real estate valuation, economic feasibility, and market studies. His work has involved all types of real property, including but not limited to commercial, industrial, historical, and special purpose.

From 1972 to 1975, Lewis served as a member of the City of Houston Planning Commission.

Specific assignments of interest include acting as real estate consultant to Texas Eastern Corporation (1974-76) in the acquisition of 36 square blocks in the Central Business District of Houston, Texas and the leasing of II Houston Center, a one million square foot office building. Lewis acted as coordinator between engineering, marketing, construction, and planning and headed the leasing team for both retail and office.

Mr. Lewis served from 1978 to 1980 as managing local consultant to the City of Houston for the purpose of appraising the City of Houston (for ad valorem tax); over one million parcels of property. Upon completion, Lewis served as a founding member of the Board of Directors of the Harris County Appraisal District with ultimate responsibilities for the appraisal of all properties in Harris County.

In 1992, Mr. Lewis acted as a consultant and headed the negotiating team for Metropolitan Transit Authority (Metro) in the purchase of 158 miles of transportation corridors from Southern Pacific Railroad Company.

In a 1993 address to the Section of Natural Resources, Energy and Environmental Law, Litigation, and Real Property of the American Bar Association, Lewis spoke on "Environmental Considerations and the Elements of Value Affecting Real Property," including such concerns as remediation, cost to correct, reduced marketability and stigma.

Lewis has acted as development, transactional, valuation and market damage consultant on such varied environmental questions as clay mining, pipelines, underground gas storage, nesting bald eagles, endangered species, wetlands, asbestos, leaking storage tanks, air, soil, subsoil and ground water contamination, electromagnetic fields and polybutylene plumbing.

He has been qualified and testified as an expert witness in environmental lawsuits and was quoted by Fortune Magazine's December 31, 1990 issue on damage by stigma resulting from electromagnetic fields.

Professional Affiliations

Mr. Lewis is a member and past national governor and Gulf Coast chairman of the American Society of Real Estate Counselors (CRE) and member and past President of the Houston Chapter Appraisal Institute (MAI, SRA). He is also a member of the National Association Realtors, Texas Association of Realtors and the Houston Board of Realtors. A former member of the Houston Archeological and Historical Commission.

Mr. Lewis' interest in furthering real estate education has brought him to lecture on real estate economics and valuation of both the University of Houston (1965 through 1978), the American Institute of Real Estate Appraisers, and the Society of Real Estate Appraiser (1967 through 1982).

General Business Affiliations

Member

American Society of Real Estate Counselors (CRE)

National: Communications (1982-83), Government Affairs(1982-82), Member, Membership Development Committee (present).

National Chairman, Chapter Activities Committee (1989-91)

Houston Chapter: Secretary/Treasurer (1988-89)

South Coast Chapter: Chairman (1990-91)

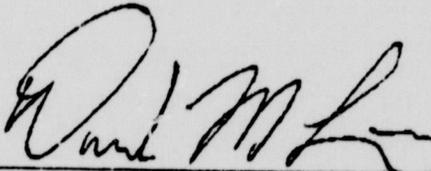
National: Member - Board of Governors (1992-94)

- Member** **Appraisal Institute (MAI) (SRA)**
Houston Chapter: President (1968), Secretary (1966)
Treasurer (1965), Director (1965-69)
National: National Education (1980), External Affairs (1981),
Professional Relations (1981), Regional Professional Standards
Panel of the Appraisal Institute (1990)
- Member** **Houston Board of Realtors**
Chairman of Education Committee (1975)
- Member** **Texas Association of Realtors**
- Member** **National Association of Realtors**
- Associate Member Urban Land Institute**
- Co-Managing Partner Historical Re-Development of Majestic Theater,**
Broadway style theater in San Antonio, Texas (1983-Present)
- Member of the Board Small Business Development Corporation (1997-)**
- Founding Member of Board Harris County Appraisal District (1980-82)**
- Former Member of Board City of Houston Planning Commission, (1972-75)**
- Former Vice Chairman of the Board of First American Bank and Trust**

VERIFICATION

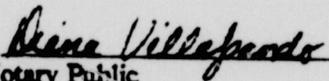
STATE OF TEXAS)
)
COUNTY OF HARRIS)

I, David M. Lewis, being first duly sworn, upon my oath state that I have read the foregoing statement and the contents thereof are true and correct as stated.



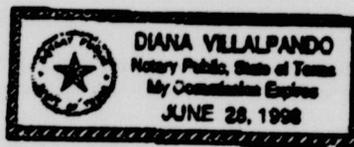
David M. Lewis

Subscribed and sworn to before me this 27 day of March, 1998.



Notary Public

My Commission Expires:



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760 (Sub No. 21)

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

OVERSIGHT PROCEEDING

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE
KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF
ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED
OVERSIGHT JURISDICTION**

**SHIPPER AND
GOVERNMENTAL STATEMENTS**

AMERIPOL SYNPOL CORPORATION

P.O. BOX 657
1816 MAIN STREET
FORT WORTH, TEXAS 76101

March 17, 1998

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, DC

RE: Finance docket No. 32760 (Sub-No. 21), Union Pacific Corp., et al--Control & Merger -
Southern Pacific Rail Corp. et al. Oversight Proceeding

Dear Secretary Williams:

I am writing on behalf of Ameripol Synpol Corporation to advise you of our support of Texas Mexican Railway Company's (Tex Mex) and Kansas City Southern Railway Company's proposed plan for the Houston area. Specifically, Ameripol Synpol supports neutral switching and neutral dispatching in Houston as well as additional measures aimed at obtaining efficiency and capacity enhancement in Houston.

Ameripol Synpol Corporation is a Delaware corporation with headquarters located in Port Neches, Texas. Along with its wholly owned subsidiaries, Engineered Carbons, Inc. and Mallard Creek Polymers, Ameripol Synpol Corporation is the world's largest manufacturer of SBR synthetic rubber and a major manufacturer of carbon black and SBR latex. Ameripol Synpol Corporation services a worldwide market with consolidated annual sales in the range of \$550,000,000. Our customers include many of the world's largest tire, industrial product and consumer product companies. We have five plants in Texas and North Carolina and employ approximately 1,200 people. Our Port Neches, Texas plant has been producing synthetic rubber since 1943. As a privately held corporation, we do not publish financial statements.

Our production requirement includes 15-20 rail hopper cars of carbon black per month. Shipments originate Laredo, Texas with final destination, Port Neches, Texas routed Tex Mex/Beaumont/KCS. We use Tex Mex/KCS for moving this traffic out of Mexico and into and out of Houston. Currently, transit time is 14 days. The Tex Mex/KCS service is essential to our transportation needs. In addition, the trackage rights granted to Tex Mex in the UP/SP merger are vital to our operations.

However, the fact that there is no neutral dispatching or switching in Houston, and the fact that Tex Mex does not have yard space or sufficient infrastructure, makes it impossible for Tex Mex/KCS to provide the integral service and competitive alternatives we need. The trackage rights granted to Tex Mex need to be improved, changed and broadened and Tex Mex/KCS need to be permitted to increase their infrastructure in the Houston area so that Tex Mex/KCS can provide more efficient and competitive rail service for our traffic. Importantly, Tex Mex/KCS has a proven commitment of service for both big and small shippers into and out of the Mexican market. International trade routes such as Tex Mex/KCS's through south Texas be preserved and permitted to prosper.

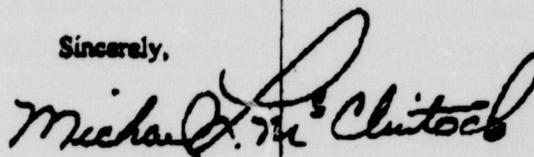
The current rail service crisis in south Texas is monumental. The Surface Transportation Board (Board) has rightfully recognized UP's inability to solve the problem, at least in the short term, through the Board's implementation of their Emergency Service Orders. In fact, even UP has recently admitted publicly that its service in south Texas is not back to normal and that UP will no longer attempt to predict when normal service will return.

Our Company has been and continues to be hurt by UP's problems. We need more than a short-term fix. We need a long-term solution to the service problems in south Texas. Ameripol Synpol Corporation believes that the implementation of the Tex Mex/KCS proposed plan for south Texas which includes neutral switching and neutral dispatching in Houston, is essential to a long-term solution. In addition, we believe that Tex Mex and KCS must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

As a Texas shipper, we also understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading. The Tex Mex/KCS proposed plan will foster these goals.

I, Michael L. McClintock, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of Ameripol Synpol Corporation, executed on March, 17, 1998.

Sincerely,



M. L. McClintock
Corporate Traffic Manager

WBV:MLM:ldr (8011MLM.WPD)

AXIS INTERNATIONAL

March 10, 1998

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street N.W.
Washington, D.C. 20006

Re: Finance Docket No. 32760 (Sub-No. 21), *Union Pacific Corp., et. al. -- Control & Merger -- Southern Pacific Rail Corp., et. al. Oversight Proceeding*

Dear Secretary Williams:

I am writing on behalf of Axis International to advise you of our support for neutral switching and neutral dispatching in Houston, as well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

Axis International is a Houston-based NVOCC with primary trade lanes in Southeast Asia, the Far East, and Australia. As such, much of the freight we handle is moved via rail out of Houston to the West Coast. However, the rail service crisis in South Texas has caused considerable disruption in the services Axis provides to its customers.

The Surface Transportation Board ("Board") has recognized UP's inability to solve its problems in the short term with its implementation of its Emergency Service Orders. However, UP cannot predict when it will resume normal operations, and our customers will continue to suffer until a long term solution is implemented.

Axis believes that the implementation of neutral switching and neutral dispatching in Houston is essential to a long term solution. In addition, competing railroads must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service.

I, Peter Van Ertan, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of Axis International, executed this 10th day of March 1998.

Sincerely,



Peter Van Ertan
President
Axis International

650 N. Sam Houston Pkwy East
Suite 520
Houston, Texas 77060

E-mail| axis@axisintl.com
Web| <http://axisintl.com>

Phone| 281.820.5200
Fax| 281.820.5252
Toll-Free| 800.377-1348



P.O. Box 10312
 148 East Main Street
 Rock Hill, SC 29730
 (803) 327-3883
 Fax (803) 327-3881

Baroco Products

George A. Anderson

March 18, 1998

Mr. Vernon A. Williams, Secretary
 Surface Transportation Board
 Suite 700
 1825 K Street, N.W.
 Washington, DC 20006

Re: Finance Docket No. 32760 (Sub No. 21), Union Pacific Corp., et al.
 Control & Merger - Southern Pacific Rail Corp., et al. Overnight Proceeding

Dear Secretary Williams:

I am writing on behalf of Baroco Products to advise you of our support of Texas Mexican Railway Company's ("Tex Mex") and Kansas City Southern Railway Company's proposed plan for the Houston area. Specifically, Baroco Products supports neutral switching and neutral dispatching in Houston, as well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

Baroco Products, a Pennzoil / Baker Petroleum Partnership, is a marketer of paraffin, microcrystalline and synthetic waxes. Baroco has 28 employees and ships from Pennzoil's plant in Shreveport, LA. We also ship from plants in Reno / Rouseville, PA, and Barnedell, OK. During the period 1997, Baroco had freight expenditures in excess of 2 million dollars and rail cars movements of more than 400. We use Tex Mex/KCS for moving shipments into and out of Mexico and into and out of Houston. The Tex Mex/KCS service is essential to our transportation needs. In addition, the trackage rights granted to Tex Mex in the UP / SP merger are vital to our operations.

However, the fact that there is no neutral dispatching or switching in Houston, and the fact that Tex Mex does not have yard space or sufficient infrastructure, makes it impossible for Tex Mex/KCS to provide the integral service and competitive alternatives we need. The trackage rights granted to Tex Mex need to be improved, changed and broadened and Tex Mex/KCS need to be permitted to increase their infrastructure in the Houston area so that Tex Mex/KCS can provide more efficient and competitive rail service for our traffic. Importantly, Tex Mex/KCS has proven commitment of service for both big and small shippers into and out of the Mexican market. International trade routes such as Tex Mex/KCS's through south Texas must be preserved and permitted to prosper.

Surface Transportation Board
March 16, 1988
Page Two

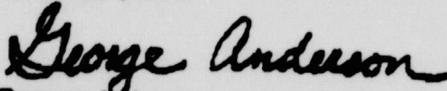
The current rail service crisis in south Texas is monumental. The Surface Transportation Board ("Board") has rightfully recognized UP's inability to solve the problem, at least in the short term. Through the Board's implementation of the Emergency Service Orders. In fact, even UP has recently admitted publicly that its service in south Texas is not back to normal and that UP will no longer attempt to predict when normal service will return.

Our company has been and continues to be hurt by UP's problems. We need more than a short term fix. We need a long term solution to the service problems in south Texas. Bareco believes that the implementation of the Tex Mex/KCS proposed plan for south Texas, which includes neutral switching and neutral dispatching in Houston, is essential to a long term solution. In addition, we believe that Tex Mex and KCS must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

As a Louisiana petroleum product shipper, we also understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive alternative in south Texas is key to our success and competitive success of the United States in NAFTA trading. The Tex Mex/KCS proposed plan will foster these goals.

I, George A. Anderson, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of Bareco Products, executed on March 16, 1988.

Sincerely yours,


George A. Anderson
Manager, Supply & Distribution

Vinyl Building Products Group

CertainTeed Corporation
P.O. Box 253
Sulphur, LA 70884
(318) 882-1441

CertainTeed 

March 12, 1988

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20008

Re: Finance Docket No. 32760 (Sub-No.21), Union Pacific Corp., et al, -Control
& Merger - Southern Pacific Rail Corp., et al, Oversight Proceeding

Dear Secretary Williams:

I am writing on behalf of CertainTeed, Corporation, Sulphur, LA, to advise you of our support for neutral switching and neutral dispatching in Houston, as well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

CertainTeed produces 450 million pounds of poly vinyl chloride (PVC, plastics) per year, which is shipped to 6 different CertainTeed locations:

Grinnell, IA	Jackson, MI	McPherson, KS,	Waco, TX
Williamsport, MD	Social Circle, GA		

We ship about 280 cars a year to the Grinnell plant; 375 to the Jackson plant, 550 to the McPherson plant, 275 to the Waco plant, 350 to the Williamsport plant, and about 450 to the Social Circle, GA, plant. Grinnell, McPherson and Waco are serviced by Union Pacific. Due to the location of these plants, trucks are not a viable option for CertainTeed.

The plant employs about 75 people and has an annual freight expenditure of approximately five million dollars.

The rail service crisis in south Texas is monumental. The Surface Transportation Board ("Board") has rightfully recognized UP's inability to solve the problem, at least in the short term, through the Board's implementation of their Emergency Service Orders. In fact, even UP has recently admitted publicly that its service in south Texas is not back to normal and that the UP will no longer attempt to predict when normal service will return.

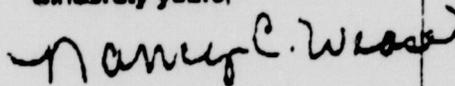
Page 2.
Mr. Vernon A. Williams, Secretary
Surface Transportation Board
March 11, 1998

Our company has been and continues to be hurt by UP's problems. We need more than a short term fix. We need a long term solution to the service problems in south Texas. CertainTeed believes the implementation of neutral switching and neutral dispatching in Houston is essential to a long term solution. In addition, competing railroads must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

As a shipper who has freight moving through Texas, we also understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading. Neutral switching, neutral dispatching and permitting competing railroads to increase their infrastructure will foster these goals.

I, Nancy C. Wease, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of CertainTeed Corporation, Vinyl Building Products, Sulphur, LA, executed on this day, Thursday, March 12, 1998.

Sincerely yours,



Nancy C. Wease
Traffic Manager
CertainTeed Corporation



CITGO Petroleum Corporation
TRANSPORTATION DEPARTMENT

P.O. Box 40
Tulsa, Oklahoma 74102

March 18, 1998

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N. W.
Washington, D. C. 20006

Re: Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corp., et al. - Control &
Merger - Southern Pacific Rail Corp., et al. Oversight Proceeding

Dear Mr. Williams:

I am writing on behalf of CITGO PETROLEUM Corporation, to advise you of our support for neutral switching and neutral dispatch in Houston, TX. As well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

As the Corporate Transportation Operations Manager for CITGO Petroleum Corporation, I am responsible for the coordination and arrangements for tank car shipments for CITGO. CITGO Petroleum Corporation is a domestic petroleum refining, marketing, and transportation company with 5,000 employees, 6 major manufacturing facilities, ownership in 52 product terminals and a supplier of motor fuels to more than 13,000 independent CITGO branded outlets. CITGO'S largest refinery is located near the Houston area in West Lake Charles, LA. Securing competitive rail service is essential to our ability to effectively service our customers as well as develop new market opportunities.

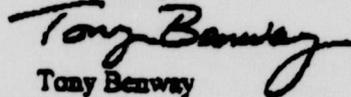
Our company has been and continues to be hurt by UP's service problems. We need more than a short term fix. We need a long term solution to the service problems in south Texas. I strongly urge the STB to lift all service restrictions on the Tex Mex, giving it full local service access in the greater Houston area on a permanent basis. Full access would provide for a viable third rail competitor in Houston that could connect with other carriers in Beaumont, including the Union Pacific, BNSF, and The Kansas City Southern. Competing railroads must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

Page 2

As a rail shipper currently into Mexico, we understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading. Neutral switching, neutral dispatching and permitting competing railroads to increase their infrastructure will foster these goals.

I, Tony Benway, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of CITGO Petroleum corporation, executed on March 18, 1998.

Sincerely,



Tony Benway
Corporate Transportation Operations Manager



DENVER RAILWAY CAR COMPANY

12450 Greenspoint Drive, Suite 1260
Houston, Texas 77060-1916
(281) 874-2102 FAX (281) 874-2107

February 18, 1998

NAFTA Railway
501 Crawford, Room 317
Houston, TX 77002-2192

Gentlemen:

Please, please, please, please get
Houston another Class I rail competitor.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John R. Parten", with a long horizontal flourish extending to the right.

John R. Parten
President

/vc

MAR-19-1998 14:48

HUNTSMAN TRAFFIC

713 235 6000 P. 02/03

HUNTSMAN

March 19, 1998

Mr. Vernon A. Williams
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20006

Re: **EX PARTE NO. 573: (Sub-No. 21), Union Pacific Corp., et al. - Central & Merger - Southern Pacific Rail Corp., et al. Overnight Proceeding**

Dear Secretary Williams:

I am writing on behalf of Huntsman Corporation, to advise you of our support for neutral switching and neutral dispatching in Houston, as well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

Huntsman is the nation's largest privately-held chemical company with annual sales exceeding \$5 billion. We currently ship in excess of three billion pounds per year via rail, with 20% of that volume originating on Union Pacific lines. Our annual rail freight budget (including approximately 30 cars/mo. to Mexico) exceeds \$60 million. Many of our customers are equipped only to receive shipments via rail where trucks and barges are not an option.

The rail service crisis in south Texas is monumental. The Surface Transportation Board ("Board") has rightfully recognized UP's inability to solve the problem, at least in the short term, through the Board's implementation of its Emergency Service Orders. In fact, even UP has recently admitted publicly that its service in south Texas is not back to normal and that UP will no longer attempt to predict when normal service will return.

Huntsman has been and continues to be hurt by UP's problems. We need more than a short term fix. We need a long term solution to the service problems in south Texas. Huntsman believes that the implementation of neutral switching and neutral dispatching in Houston is essential to a long term solution. In addition, competing railroads must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

As a Texas shipper of chemicals and plastics, we also understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive

HUNTSMAN CORPORATION

3040 Post Oak Boulevard • Houston, Texas 77056 • 713-235-6000 • Fax 713-235-6416

MAR 27 1998 17:00 NO. 001 P. 06

ID: 229-9196

KANSAS CITY SOUTHERN

MAR-19-1998 14:49

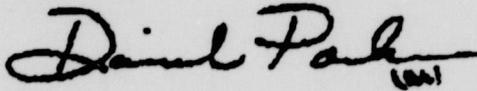
HUNTSMAN TRAFFIC

713 235 6000 P.03/03

alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading. Neutral switching, neutral dispatching and permitting competing railroads to increase their infrastructure will foster these goals.

I, David Parlin, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of Huntsman, executed on March 19, 1998.

Sincerely yours,



David Parlin
Director-Transportation & Logistics

DP/rj

DP/rj/111111 3-19-98

MAR-28-1998 14:23

HUNTSMAN TRAFFIC

713 235 6000 P. 02/03

HUNTSMAN

March 20, 1998

Mr. Vernon A. Williams
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20006

Re: Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corp., et al. - Control
& Merger - Southern Pacific Rail Corp., et al. Oversight Proceeding

Dear Secretary Williams:

I am writing on behalf of Huntsman Corporation, to advise you of our support for neutral switching and neutral dispatching in Houston, as well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

Huntsman is the nation's largest privately-held chemical company with annual sales exceeding \$5 billion. We currently ship in excess of three billion pounds per year via rail, with 20% of that volume originating on Union Pacific lines. Our annual rail freight budget (including approximately 50 cars/mo. to Mexico) exceeds \$60 million. Many of our customers are equipped only to receive shipments via rail where trucks and barges are not an option.

The rail service crisis in south Texas is monumental. The Surface Transportation Board ("Board") has rightfully recognized UP's inability to solve the problem, at least in the short term, through the Board's implementation of its Emergency Service Orders. In fact, even UP has recently admitted publicly that its service in south Texas is not back to normal and that UP will no longer attempt to predict when normal service will return.

Huntsman has been and continues to be hurt by UP's problems. We need more than a short term fix. We need a long term solution to the service problems in south Texas. Huntsman believes that the implementation of neutral switching and neutral dispatching in Houston is essential to a long term solution. In addition, competing railroads must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

As a Texas shipper of chemicals and plastics, we also understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive

HUNTSMAN CORPORATION

3040 Post Oak Boulevard • Houston, Texas 77056 • 713-235-6000 • Fax 713-235-6416

MAR 27 1998 17:03 NO.001 P.12

ID: 229-9196

KANSAS CITY SOUTHERN

MAR-28-1998 14:24

HUNTSMAN TRAFFIC

713 235 6888 P.03/03

alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading. Neutral switching, neutral dispatching and permitting competing railroads to increase their infrastructure will foster these goals.

I, David Parkin, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of Huntsman, executed on March 20, 1998.

Sincerely yours,

David Parkin
Director-Transportation & Logistics

DP/rj

a:\o\rj\stbkcs 3-20.doc

LaRoche Industries Inc.

1100 JOHNSON FERRY ROAD N.E.
ATLANTA GA 30342-1708
(404) 861-2300

March 16, 1998

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D. C. 20006

Re: Finance Docket No. 3260 (Sub-No. 21), Union Pacific
Corp., et al. - Control & Merger - Southern Pacific Rail
Corp., et al. Overnight Proceeding

Dear Secretary Williams:

I am writing on behalf of LaRoche Industries Inc., to advise you of our support of Texas Mexican Railway Company's ("Tex Mex") and Kansas City Southern Railway Company's proposed plan for the Houston area. Specifically, LaRoche Industries Inc. supports neutral switching and neutral dispatching in Houston, as well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

Our company is a shipper of freight traffic into Houston and Mexico from various geographic regions. We have major plants located in Louisiana, Missouri, Alabama, Utah and Illinois, and have shipped as many as 35 cars, per month into Mexico. We ship over 11,000 car loads, per year and use all the major rail carriers. We currently do not have the option to use Tex Mex/KCS on some of our shipments into Houston or Mexico. However, if the Tex Mex/KCS plan is adopted by the STB, we would use their service more. We have some shipments moving from Louisiana to Mexico moving via KCS-Broom - Tex Mex through Laredo and service has been very good.

The current rail service crisis in south Texas is monumental. The Board has rightfully recognized UP's inability to solve the problem, at least in the short term, through the Board's implementation of their Emergency Service Orders. In fact, even UP has recently admitted publicly that its service in south Texas is not back to normal and the UP will no longer attempt to predict when normal service will return.

Our company has been and continues to be hurt by UP's problems. We need more than a short term fix. We need a long term solution to the service problems in south Texas. LaRoche Industries Inc. believes that the implementation of the Tex Mex/KCS proposed plan for south Texas, which includes neutral switching and neutral dispatching in

Houston, is essential to a long term solution. In addition, we believe that competing railroads, such as Tex Mex and KCS, ~~must~~ be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

As a shipper, we also understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading. The Tex-Mex/KCS proposed plan will foster these goals.

I, Dean W. DeVore, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of LaRoche Industries Inc., executed on March 16, 1998.

Sincerely,

Dean W. DeVore
Manager Transportation

DWD/sk



PO Box 4484
Houston, Texas 77210-4484
Telephone (713) 321-4111
Fax (713) 321-5480



March 20, 1998

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1625 K Street, N.W.
Washington, DC 20006

RE: Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corp., et al. - Control & Merger -
Southern Pacific Rail Corp., et al. Oversight Proceeding

Dear Secretary Williams,

I am writing on behalf of Lyondal-Chgo Refining Company, Ltd. (LCR), to advise you of our support of Texas Mexican Railway Company's ("Tex Mex") and Kansas City Southern Railway Company's proposed plan for the Houston area. Specifically, LCR supports neutral switching and neutral dispatching in Houston, as well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

Our company is currently a shipper on the Tex Mex and KCS lines. We ship 24,000 and 27,000 gallon railcars containing petroleum lubricating products all over the United States and Mexico. We currently use Tex Mex/KCS for moving shipments in and out of Houston. The Tex Mex/KCS service is essential to our transportation needs. In addition, the trackage rights granted to Tex Mex in the UP/SP merger are vital to our operations.

However, the fact that there is no neutral dispatching or switching in Houston, and the fact that Tex Mex does not have yard space or sufficient infrastructure, makes it impossible for Tex Mex/KCS to provide the integral service and competitive alternatives we need. The trackage rights granted to Tex Mex need to be improved, changed and broadened; and Tex Mex/KCS need to be permitted to increase their infrastructure in the Houston area so that Tex Mex/KCS can provide more efficient and competitive rail service for our traffic. Importantly, Tex Mex/KCS has a proven commitment of service for both big and small shippers into and out of the Mexican market. International trade routes such as Tex Mex/KCS's through south Texas must be preserved and permitted to prosper.

The current rail service crisis in Texas is monumental. The Surface Transportation Board ("Board") has rightfully recognized UP's inability to solve the problem, at least in the short term, through the Board's implementation of their Emergency Service Orders. In fact, even UP has recently admitted publicly that its service in south Texas is not back to normal and that UP will no longer attempt to predict when normal service will return.

Our company has been and continues to be hurt by UP's problems. We need more than a short term fix. We need a long term solution to the service problems in south Texas. LCR believes that the implementation of the Tex Mex/KCS proposed plan for south Texas, which includes neutral switching and neutral dispatching in Houston is essential to a long term solution. In addition, we believe that Tex Mex/KCS must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

SENT BY:

Mar 20, 1998 3:29PM

3-20-98 : 3:59PM :
LUBRICANTS MARKETING

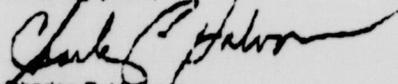
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As a Texas petroleum lubricating oil shipper, we also understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading. Neutral switching, neutral dispatching and permitting competing railroads to increase their infrastructure will foster these goals.

Sincerely yours,



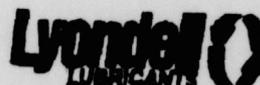
Charles P. Harverson

Manager, Transportation & Base Oil Purchases



NPRA

PO Box 4404
Houston, Texas 77210-4404
Telephone (713) 321-4111
Fax (713) 321-4404



March 20, 1998

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1625 K Street, N.W.
Washington, DC 20006

RE: Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corp., et al. - Control & Merger --
Southern Pacific Rail Corp., et al. Oversight Proceeding

Dear Secretary Williams:

I am writing on behalf of Lyondell-Citgo Refining Company Ltd. (LCR), to advise you of our support for neutral switching and neutral dispatching in Houston, as well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

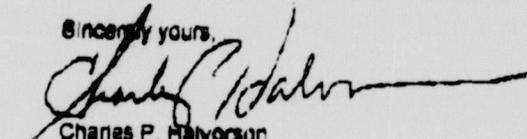
LCR ships 24,000 and 27,000 gallon railcars containing petroleum lubricating products all over the United States and Mexico.

The rail service crisis in south Texas is monumental. The Surface Transportation Board ("Board") has rightfully recognized UP's inability to solve the problem, at least in the short term, through the Board's implementation of their Emergency Service Orders. In fact, even UP has recently admitted publicly that its service in south Texas is not back to normal and that UP will no longer attempt to predict when normal service will return.

Our company has been and continues to be hurt by UP's problems. We need more than a short term fix. We need a long term solution to the service problems in south Texas. LCR believes that the implementation of neutral switching and neutral dispatching in Houston is essential to a long term solution. In addition, competing railroads must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

As a Texas petroleum lubricating oil shipper, we also understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Importantly, we believe that ensuring the continuation of an effective competitive alternative in south Texas is key to our success and the competitive success of the United States in NAFTA trading. Neutral switching, neutral dispatching and permitting competing railroads to increase their infrastructure will foster these goals.

Sincerely yours,


Charles P. Halverson
Manager, Transportation & Base Oil Purchases



Reagent Chemical & Research, Inc.

1300 POST OAK BLVD • SUITE 680 • HOUSTON, TEXAS 77066
OFFICE: (713) 626-1643 • FAX (713) 969-0951

March 18, 1998

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20006

Re: Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corp., et al
- Control & Merger - Southern Pacific Rail Corp., et al. Oversight
Proceeding

Dear Secretary Williams:

I am writing on behalf of Reagent Chemical to advise you of our support of a proposal that calls for neutral switching and neutral dispatching in Houston, as well as additional measures aimed at obtaining efficiency and capacity enhancements in Houston.

Reagent Chemical is the largest marketer of Hydrochloric Acid (HCL) in the United States. We operate the largest private fleet of rubber lined tank cars and tank trailers. The predominance of our production is in the Gulf Coast and 60% of our customers are located in the Western United States. We ship approximately 5,000 carloads and 8,000 truckloads of HCL annually in all areas of the country.

The rail service crisis in the Gulf Coast is monumental. The Surface Transportation Board (STB) has rightfully recognized the Union Pacific's (UP) inability to solve the service problem, at least in the short term, and implemented their Emergency Service orders. In fact, the UP even recently admitted publicly that its service in the Gulf Coast is not back to normal and they will no longer attempt to predict when normal service will return.

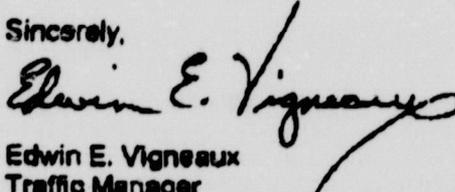
Our company has been and continues to be hurt by UP's problems. We need more than a short-term fix. We need a long-term solution to the service problems in the Gulf Coast. Reagent Chemical believes that the implementation of neutral switching and neutral dispatching in Houston is essential to a long-term solution. In addition, competing railroads must be permitted to increase their infrastructure in the Houston area in order to provide more efficient and competitive rail service for our traffic.

Mr. Vernon A. Williams
March 18, 1998
Page Two

Reagent Chemical has always been a staunch supporter of increased rail competition in all areas of the United States, but particularly along the Gulf Coast. Competition is the one factor that forces entities to perform at their highest level of competence. Less or no competition allows companies to provide whatever service they want at whatever they want to charge their customers, with little or no recourse by those customers.

I, Edwin E. Vigneaux, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of Reagent Chemical, executed on March 11, 1998.

Sincerely,



Edwin E. Vigneaux
Traffic Manager

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

FINANCE DOCKET NO. 32760 (SUB NO. 21)
UNION PACIFIC CORP., ET AL
- CONTROL & MERGER - SOUTHERN PACIFIC RAIL CORP., ET AL
OVERSIGHT PROCEEDING

TESTIMONY OF SHELL OIL COMPANY AND
SHELL CHEMICAL COMPANY

Shell Oil Company and/or Shell Chemical Company "for itself and as agent for Shell Oil Company" (hereinafter jointly referred to as "Shell") hereby file joint comments in support of the plan proposed by the Texas-Mexican Railway Company (Tex-Mex) and the Kansas City Southern Railway Company (KCS) to address rail service in the Houston area. Shell is utilizing the Tex-Mex under the current STB Emergency Order in an attempt to mitigate some of the adverse effects of the current UP service performance on our business units.

The recent rail service problems in the western U.S. and particularly in the Houston area have severely impacted Shell's ability to meet the needs of our customers. Significant shipment delays and the shortage of available tank and hopper cars for loading have resulted in numerous late deliveries and have required substitution of substantially higher cost alternative transportation, primarily motor earnings. Production schedules have also been adversely impacted, resulting in supply problems and increased costs. Previous Shell filings have detailed these matters.

Specifically, Shell supports the following actions by the STB to facilitate the implementation of the plan put forth by the Tex-Mex/KCS, most of which is consistent with our previous filings related to this matter:

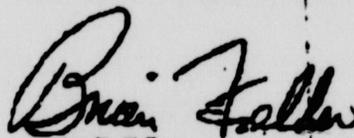
1. The granting of permanent rights to the Tex-Mex to serve Houston shippers for both north and southbound movements. This will provide the certainty necessary to justify infrastructure investment by the Tex-Mex to more effectively service the Houston region. It will also provide shippers a viable alternative carrier on a long term basis, enhancing the competitive environment. It is generally recognized that increased competition induces improved service and lower rates, which are important and desirable components to transportation service for shippers in a market as important as Houston. These are also consistent with the goals of our national Rail Transportation Policy, as set forth in section 10101 of the RRA Transportation Act of 1993.
2. Granting Tex-Mex access to the UP's Booth Yard, which is essential to facilitating the operation of the Tex-Mex to efficiently interchange traffic with the FT&A. If this cannot be accomplished through a private sector agreement, a divestiture order should be considered.
3. Mandating the establishment of neutral dispatching in the greater Houston area, including the participation of the FT&A and Tex-Mex, to ensure the fair and efficient use of all shared rail lines by all carriers. This would include very close scrutiny of the recent UP-BNSF joint line ownership agreement for the former Southern Pacific Houston to Beaumont line. If these private sector solutions do not prove workable, ordering the divestiture of the former Missouri Pacific line from Houston to Beaumont to the Tex-Mex should be strongly considered.
4. Ordering the involved carriers to implement a neutral switching operation that will service as much of the greater Houston area as is practical, providing alternative rail service to many shippers currently without any choice of carrier.
5. Facilitating the transfer to the Tex-Mex of the abandoned former Southern Pacific rail line from Rosenberg to Victoria, along with its connections at both ends, to provide increased capacity and improved efficiency for Tex-Mex movements between Houston and Corpus Christi/Robstown, TX. Again, if a private sector agreement cannot be reached, a divestiture order should be considered.

Please note that Shell, consistent with its desire to allow the development of private sector solutions to these problems, advocates consideration of divestiture of privately owned assets only if the involved parties are unable to reach agreement. We believe that the STB must play a significant role in getting the parties together to discuss such solutions.

Shell has taken an unusually strong public position on these matters. It is vital to Shell's ability to meet the needs of our customers that we have a strong, competitive and efficiently operated rail transportation network for the movement of our products. This has not been the case for the past eight months in the western United States. Shell has major production facilities in Houston, and a significant number of rail shipments from our Louisiana plants must move through Houston to their final destinations. We believe that establishment of the Tex-Mex as a permanent program in the Houston market will be an important contribution to the efforts to address the long term needs of Houston shippers.

Respectfully submitted,

SHELL CHEMICAL COMPANY
For itself and as agent for Shell Oil Company



Date: March 19, 1998

Brian P. Feller
One Shell Plaza
Post Office Box 2463
Houston, Texas 77252

000000000000

March 20, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Suite 700
1925 K Street N.W.
Washington, DC 20006

Re: Finance Docket No. 32760 (Sub-No. 21), *Union Pacific Corp., et al. - Control & Merger - Southern Pacific Rail Corp., et al. Oversight Proceeding*

Dear Secretary Williams:

I am writing on behalf of Solvay Polymers, Inc. to advise the STB of our support for neutral switching and dispatching in the Houston area, as well as additional long term measures aimed at improving the flow of rail traffic in and around Houston. The Tex Mex and Kansas City Southern Railway Companies' recently proposed plan offers this opportunity and should be implemented in some form.

Solvay Polymers is a wholly-owned subsidiary of Solvay America, Inc. and a member of the worldwide Solvay group of companies. Our company manufactures 2.4 billion pounds of high density polyethylene (HDPE) and polypropylene (PP) plastic resin annually at our Deer Park, TX manufacturing facility. Our principal means of product distribution is by railcar. We operate a fleet of more than 2700 privately owned covered hopper railcars. Since 100% of our plant's production is loaded into railcars, we are wholly dependent upon rail service to sustain our manufacturing operations and to meet our customer's supply needs. We make more than 13,000 rail shipments annually to more than 900 plastics processors located in every state, Canada and Mexico. Our success, and our customers' continued operation, depends upon reliable rail service.

We have patiently worked with each of the railroads, as well as through our trade associations and with the STB, and have allowed more than ample time to resolve these problems which stem from the UP-SP rail merger. Now it is time for the STB to exercise its merger oversight authority by taking action which will allow more competition, neutral switching for all carriers and stimulate the needed investment in rail infrastructure in the Houston area. We strongly believe that these three are essential elements of any long term solution.

Solvay Polymers continues to experience additional costs in excess of \$100,000 per month as a direct result of the current rail service problems. In spite of all efforts taken to date, rail service continues to deteriorate. We need actions leading to long term solutions, not more band-aids, or empty promises of recovery.

As a Texas plastics shipper we understand the importance of ensuring the continued and expanding growth in trade throughout the NAFTA corridor. Having effective and competitive alternatives in south Texas is key to our competitiveness in NAFTA trade.

I, Mike Scherm, state that the foregoing is true and correct. Further, I certify that I am qualified to file this statement on behalf of Solvay Polymers, Inc., executed on March 20, 1998.

Sincerely yours,

Mike Scherm
Director of Logistics and Customer Service

Copy for Mr. Ducksh

Witco

Witco Corporation
One American Lane
Greenwich, CT 06831-2559
(203) 552-3000
(203) 552-2874 Fax

John G. Breslin
Director of Logistics

March 18, 1998

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW, Room 711
Washington, DC 20423

RE: Ex Parts No. 573; *Rail Service in the Western United States*
Service Order No. 1518, *Joint Petition for Service Order*

Dear Secretary Williams:

I am filing this letter in response to the Surface Transportation Board's January 14 request in the referenced cases that shippers file information on "requests for service and the extent to which those service requests were met (e.g., the timeliness with which cars were placed for loading and the timeliness with which transportation was completed)," covering the four month period ending February 6, 1998.

The service available to my company has not improved significantly since last October and remains far more erratic and unreliable than service available from Union Pacific Railroad ("UP") and Burlington Northern Santa Fe Railway Company ("BNSF") during the October 1996 to February 1997 period. Therefore, I urge the STB to keep its emergency service order in place for as long as possible and to make alternative, permanent arrangements to relieve the service failures on UP and BNSF.

My company, Witco Corporation, ships from the following facilities located on lines of UP and BNSF:

<u>Location</u>	<u>Railroad Serving that Location</u>
1. Houston, TX	UP
2. Taft, LA	UP
3. Gretna, LA	UP
4. Mepleton, IL	UP

Since October 1997, my company has suffered substantial delays in obtaining rail cars for loading and unloading and in delivering shipments when using UP or BNSF service.

(continued)

The Honorable Vernon A. Williams
Surface Transportation Board
March 18, 1988
Page 2.

A summary of our experience, shipping from UP and BNSF-served facilities, is as follows:

Deliveries - October 1987

Approximate % of deliveries comparable to 10/88:	85%
Approximate % of deliveries one or two days late:	15%
Approximate % of deliveries three or four days late:	20%
Approximate % of deliveries five to 10 days late:	40%
Approximate % of deliveries more than 10 days late:	25%

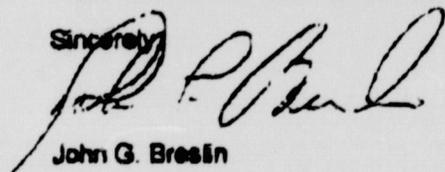
Deliveries - January 1988

Approximate % of deliveries comparable to 2/87:	85%
Approximate % of deliveries one or two days late:	5%
Approximate % of deliveries three or four days late:	25%
Approximate % of deliveries five to 10 days late:	56%
Approximate % of deliveries more than 10 days late:	15%

As you can see, delays by UP and BNSF in filling car orders and in delivering my company's shipments have not been significantly reduced between October 1987 and January 1988, and remain significantly worse than during the comparable period in the prior year. Accordingly, Wilco Corporation urges the STB to take more aggressive steps to remedy the ongoing service problems, including, at a minimum, extending the current service order until a more permanent solution can be obtained.

The Board also needs to allow KCS and Tex Mex a more solid footing from which to help resolve the south Texas problem by enforcing neutral switching and dispatch in the Houston terminal area and allowing KCS and Tex Mex the opportunity to control facilities which any railroad needs to operate efficiently. For months, UP allowed its problems in Texas to grow until gridlock occurred. The Board's Emergency Service Order helped some, but very significant problems remain, as shown above. UP and BNSF since have joined in such actions as dissolving the Houston Belt and Terminal Railway, but problems persist nonetheless. It therefore is obvious that UP cannot, either by itself or with its main collaborator BNSF, solve the south Texas problem. Accordingly, I believe that it is essential that the Board take steps to enforce neutral dispatching and switching in Houston and allow Tex Mex and KCS the opportunity to own and control facilities (lines and yards) in Houston and south Texas in order to have a solid base from which to contribute to correcting what UP and BNSF together have not been able to resolve.

Sincerely,



John G. Breslin



CITY OF HOUSTON

Post Office Box 1562 Houston, Texas 77251-1562

Lee P. Brown, Mayor

February 18, 1998

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington DC 20423

RE: STB Service Order No. 1518
Joint Petition for Service Order

STB Ex Parte No. 573
Rail Service in the Western United States

Dear Secretary Williams:

As the Mayor of Houston and on behalf of the citizens of this City, I request that action be taken by the Surface Transportation Board (STB) to alleviate the problems currently being experienced in Houston due to Union Pacific Railroad's difficulties in moving trains through Houston expeditiously. Union Pacific's problems have led to safety concerns for our citizens and the employees of Union Pacific, serious economic losses for our local industries and major inconveniences for citizens traveling on the streets of Houston. Following are some of the issues that must be addressed:

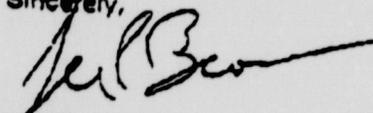
- ▶ Stopped trains blocking intersections for long periods of time - Besides the obvious traffic congestion, we have had various reports of children climbing over or under stopped trains to get to their homes or schools. Moving trains blocking intersections for long periods of time have also become much more of a problem.
- ▶ Gridlock of Union Pacific trains causing economic problems - The inability of Union Pacific to move their trains through Houston in a timely manner has caused significant economic losses to local businesses. Also, there have been difficulties in getting non-Union Pacific trains in/out/through Houston because of Union Pacific's problems and their control of the local dispatching.
- ▶ Local problem resolution difficulties - We have had difficulty in determining who can resolve problems locally and in getting issues resolved once they are brought to the railroad's attention. Previously, the City had a liaison position funded by the railroads that worked well to enhance communication between the railroads and the City. This position was discontinued several years ago.

- Poorly maintained track, cars and right of way - These issues have led to safety issues and visual blight in Houston.

Most of these issues have become a routine part of the local and national news, yet promised corrective action has not occurred. I believe that it is time for the STB to take stronger action to ensure necessary corrective measures are undertaken. Your staff may contact Richard Lewis, Director of Finance & Administration at (713) 247-2144 to determine what efforts the City might exert to help resolve these serious problems.

The businesses and citizens of Houston need and deserve your expeditious efforts to resolve these problems. We look forward to working with you and seeing significant improvements that we believe the STB can help bring about.

Sincerely,



Lee P. Brown
Mayor

LPB:sb

cc: Council Member Rob Todd, Chairman, Regulatory Affairs Committee
Jim Kollaer, President & CEO, The Greater Houston Partnership
Ned Holmes, Chairman, Port of Houston Authority Commission

CITY OF HOUSTON RESOLUTION NO. 98-8

A RESOLUTION CALLING ON THE FEDERAL SURFACE TRANSPORTATION BOARD AS WELL AS OTHER PARTIES TO EXPEDITIOUSLY RESPOND TO AND TO RESOLVE THE HOUSTON AREA RAILROAD PROBLEMS.

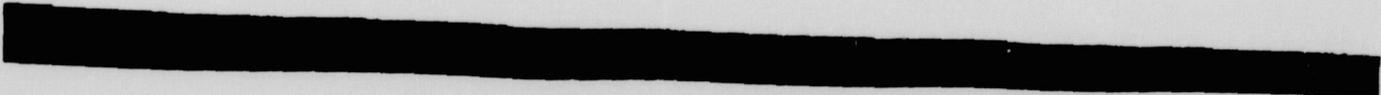
WHEREAS, beginning in the Summer of 1997 and continuing into 1998, problems associated with railroad traffic have had serious detrimental effects on the Houston regional economy, the public safety of the citizenry and the quality of life in the community at large; and

WHEREAS, the negative economic impact for Texas has been estimated at \$100 million per month in the cost of freight rail delays and lost production reaching a total of over \$1 billion with no immediate end in sight; and

WHEREAS, the petrochemical industry, located primarily on the Gulf Coast of Texas, has experienced increased monthly costs from service disruption of an estimated \$60 million, totaling \$500 million over the period, and

WHEREAS, the rail congestion in Houston and its immediate area and the resulting blockage of traffic intersections, which includes the nuisance of idling trains near neighborhoods, poses a significant threat to the public safety, health and welfare of all Houstonians; and

WHEREAS, effective communication and cooperation between the railroads, the City, the Port Authority, other governmental entities, and the business community have deteriorated significantly over the past several years and should be immediately restored; and



WHEREAS, it has been estimated that an investment of approximately 1 billion dollars is needed in railroad infrastructure, locomotives, crews, and capacity in order to ensure Houston's competitive position as a regional and international economic center; and

WHEREAS, additional transportation costs and poor rail service will make the Houston region a less competitive place to locate or to expand a business than other locations around the country and the world; and

WHEREAS, current National Rail Transportation Policy includes expectations to ensure effective competition among rail carriers and the fostering of sound economic conditions in transportation, **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1: That the Federal Surface Transportation Board continue to issue emergency orders as necessary and take the following short term actions to address these concerns:

- a. Eliminate rail congestion through the immediate implementation of a neutral rail dispatching system for both long haul and short haul lines with original and emergency trackage rights;
- b. Support the continuance of the neutral switching operation of the Port Terminal Railroad;
- c. Ensure the immediate adequacy of railroad operating capacity provided by the railroads to move trains expeditiously, in a lawful manner, into, out of, and through

the Houston region to minimize further economic damage, threats to public safety and nuisance to neighborhoods, and,

- d. Closely monitor the results of the emergency order to determine whether successful provision of the necessary levels of rail service in the Houston region are being achieved

Section 2: The Federal Surface Transportation Board take the following long term steps to ensure that the rail system in the Houston region can accommodate anticipated industrial and business growth in the area.

- a. Mandate a master rail plan for the Houston region to address capacities needed for mainline tracks, yard tracks, new yards, overpasses, locomotives, possible cooperative commuter rail lines, etc., and take steps to ensure railroad investments are made to implement the master plan over the next three years;
- b. Mandate that all railroads operating in the Houston region work together to design and implement efficient customer service oriented dispatch and switch systems for the region;
- c. Work with the railroads to ensure that the rail system in the Houston region is designed in a manner that will attract the needed capital for additional rail capacity and will result in an economical and efficient competitive rail system as the Houston region grows, and,
- d. Review the issue of rail freight competition in the Houston Gulf Coast area to ensure that adequate incentives for customer service improvements are fostered and maintained during the current rail crisis and in future years as the local economy continues to expand.

Section 3: That the Houston and Texas Congressional delegation and Senators Gramm and Hutchinson are respectfully requested to conduct appropriate legislative oversight of the Federal Surface Transportation Board in its responses to concerns expressed in Sections 1 and 2 above.

Section 4: That the Mayor is requested to direct the appropriate City departments to undertake necessary enforcement actions for the unlawful blocking of intersections which pose significant public safety hazards, as well as to explore other regulatory measures not currently preempted by federal or state law that the City might take to address its concerns, and to work with the railroads to promptly address railroad capacity issues involving City oversight.

Section 5: That the railroads, particularly the Union Pacific and Burlington Northern, are encouraged in the strongest terms to immediately assign and locate executive personnel in the Houston region to correct operational problems as well as to jointly provide a liaison for the City, the Port Authority, and other governmental entities with sufficient authority to address poorly maintained street crossings, tracks, rights-of-way, the high cost of sidewalk crossings, and other matters affecting the public health, safety and welfare.

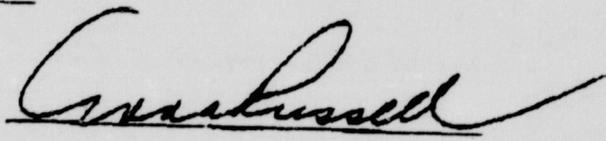
Section 6: This resolution shall be passed finally on the date of its introduction and shall take effect immediately upon its passage and approval by the Mayor, however, in the event the Mayor fails to sign this resolution within the five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 18th day of March, 1998

APPROVED this ___ day of _____, 1998

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Resolution is MAR 24 1998

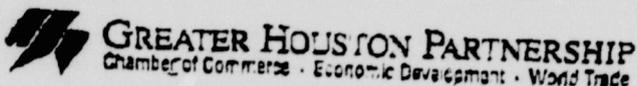


Anna Russell, City Secretary

Prepared by Legal Dept: Francis J. Postward
Senior Assistant City Attorney

Requested by Richard Lewis, Director, Finance and Administration

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: MAR 24 1998



Contact: Mariou A. Schopper 713-844-3640 Pager 713-710-5254

For Immediate Release, March 3, 1998

PARTNERSHIP RESOLVES TO TAKE ACTION ON HOUSTON RAIL CRISIS

HOUSTON ... Today the Board of the Greater Houston Partnership voted on a resolution calling for immediate action to end Houston's freight rail service crisis. The resolution pinpoints key steps to be taken by the federal Surface Transportation Board (STB) and others that would translate into relief for the local economy from this on-going transportation slow down that shows few signs of abating. The Greater Houston Partnership, responding to the nearly 10-month old crisis with estimated costs of more than \$1 billion in freight rail delays in Texas, calls on the Union Pacific and Burlington Northern Railroads to undertake significant and immediate actions to implement rail service recovery, most specifically for Houston shippers and the Port of Houston.

The Partnership calls on the STB to act diligently in its oversight of rail service responsibilities and to investigate the capabilities and commitments of the railroads to invest in infrastructure to support the growth of the Houston community.

Other Partnership recommendations include:

- ensuring a neutral dispatching system to serve Houston's port and industrial complex.

- adding the Port of Houston and the Tex Mex Railroad as voting board members of the Port Terminal Railroad, the only neutral switching operation in the Houston area.

- determining whether the emergency orders result in adequate levels of service to the Houston Gulf Coast area.

- assuring that the trackage rights can be fully executed and are honored completely.

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PARTNERSHIP RESOLVES ... PAGE 2 OF 2

• assuring that the rail system service for the Houston metropolitan area is designed to attract adequate investment to expand capacity to serve our growing market.

• implementing an effective neutral switch operation to service as large an area as practical.

• development of a freight rail master plan for the region.

The Partnership adds that it concurs with the STB extension of emergency orders to the 270 day limit and prefers that the STB schedule update hearings on the issue at 60 to 90 day intervals. In addition to passing today's recommendation, The Greater Houston Partnership's Freight Rail Task Force will continue to actively monitor rail service levels and actions of the STB and report findings directly to the Partnership Board.

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The Greater Houston Partnership, with its Chamber of Commerce, Economic Development and World Trade divisions, is the primary advocate of Houston's business community and is dedicated to building economic prosperity throughout the region.

Greater Houston Partnership

March 3, 1998

**Resolution of the Board of Directors
To Resolve Houston's Current and Future Freight Rail Service Issues**

Statement of Position

The Board of Directors of the Greater Houston Partnership insists on immediate, bold and meaningful action by the Surface Transportation Board to resolve the current rail service crisis gripping much of the Houston-Gulf Coast and causing continuing, devastating impact on the economy and business community.

We conclude from all available information on this issue that the current service disruptions may not be satisfactorily resolved among the participants in the best long term interests of the Houston area unless the Surface Transportation Board indicates an interest in acting swiftly and forcefully.

The freight rail service failures have caused obvious and significant threats to the Houston economy, the competitiveness of its industry and port and raise serious concerns about the future capacity of the rail system to adequately and efficiently support the expansion of the Gulf Coast economy and the hundreds of millions dollars in public and private investments in infrastructure and commerce.

The Current Freight Rail Crisis Threatens Houston's Economy and Investment

The current freight rail crisis, now reaching nearly 10 months in duration, shows no conclusive signs of abating. Common measures of freight rail service reported by railroads and shippers continue to indicate extremely poor and unacceptable performance particularly in the Houston Gulf Coast area.

Estimates of the cost imposed by the freight rail delays in Texas have been placed at over \$1 billion with the likelihood of an additional \$640 million if the crisis continues.¹ The chemical industry in the United States that is primarily centered in the Gulf Coast area served by Union Pacific, has experienced increased monthly cost resulting from the service disruptions of over \$60 million.² This is up from a monthly cost of over \$30 million in the summer of 1997. To date, the total estimated cost is \$500 million in higher freight charges and lost production.³

Freight Rail Statement

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The Partnership believes the long term impact of the increased costs and deteriorating service make the Houston area less attractive to expanding and relocating businesses. Additionally, it threatens current and planned infrastructure investments designed to keep the economy of the Houston Gulf Coast internationally competitive. These public investments are placed at serious risk by the current, unacceptable rail service levels.

Criteria for Freight Rail Service

The Greater Houston Partnership recommendations for improved near term and long term freight rail services are based upon the following principles:

1. The performance of the freight rail system in the Houston Gulf Coast international port/industrial complex must be in the top tier of United States cities, equal to that provided to the nation's west and east coasts. The system must offer "best in class" competitive value and costs; train speeds, flows and intermodal connectivity; operational safety; responsiveness and reliability.
2. Rail system operators must have the financial, physical and logistical ability to expand system capacity to accommodate economic growth and the resulting shipping needs of the Houston port/industrial complex.
3. Rail system operators in the Houston complex must have the resource capabilities to respond to changing industry mixes and changing distribution patterns.

Recommendation—Short Term

Using these principles, the Greater Houston Partnership recommends the following actions be taken immediately to address the near-term freight rail service problems:

1. The Surface Transportation Board must ensure that a truly neutral dispatching system be put in place to serve the Houston Port and industrial complex. This dispatching system must include both the long haul and short line railroads with original or emergency package rights.
2. The Port Terminal Railroad, the only neutral switching operation in the Houston area, should include as voting board members the Port of Houston and the Tex Mex Railroad.
3. The Surface Transportation Board must extend the current emergency order in increments of 60 or 90 days from March 15 with the intent of utilizing the full length of time available to it.
4. The Surface Transportation Board must assure that those rights can be executed fully and are completely honored without impediment.

Freight Rail Statement:

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5. The Surface Transportation Board must determine whether the emergency order results, as intended, in adequate levels of service to the Houston Gulf Coast area. The incremental approach described will provide important opportunities to the parties involved to make observations concerning the status of rail service.

Recommendation—Long Term

The Greater Houston Partnership is greatly concerned with the ability of the freight rail system to adequately accommodate the longer term needs of the community resulting from industrial expansion. With a strong sense of the need to respect property rights and with a firm belief in the long term benefits of competition, the Greater Houston Partnership recommends the Surface Transportation Board take the following steps:

1. The Surface Transportation Board should order all railroads involved, working with affected parties, to determine and implement the most effective approach to providing a neutral switch operation in as large an area as is practical.
2. The Surface Transportation Board should assure that the rail system service for the Houston metropolitan area is designed to attract adequate investment to expand capacity to serve our growing market.
3. The Greater Houston Partnership calls for the creation of a regional freight rail facilities and services master plan to help guide development in the best interest of shippers and the community at large. This master plan should identify and propose resolutions to all of the multi-modal interface issues and seek to maximize freight rail service for the Port and industrial areas of the community.

In making these recommendations, the Greater Houston Partnership does not advocate a position of a particular railroad. However, the urgency of this matter can not be overstated. Action needs to be taken immediately.

Ansel L. Condray, Chairman

Jim C. Kollaer, President & CEO

Ned S. Holmes, Secretary



RESOLUTION

WHEREAS, the merger of the Union Pacific and Southern Pacific railroads has been an unmitigated disaster for Harris County, the Port of Houston and the many rail shippers dependent upon rail service; and

WHEREAS, Dr. Bud Weinstein of the University of North Texas has estimated that this merger has already cost Texas in excess of \$1.1 billion and most of the seismic damage has happened to businesses within 50 miles of downtown Houston; and

WHEREAS, the competitiveness of the Harris County and the Port of Houston has been severely eroded by the rail congestion that has enveloped Harris County in the wake of the merger and that has made Harris County the epicenter of the "worst rail crisis in the twentieth century"; and

WHEREAS, this breakdown in rail service has caused increased use of trucks; which in turn has compounded the Clean Air Act problems that this County and area face; and

WHEREAS, literally hundreds of stalled and abandoned trains have caused tremendous aggravation to neighborhoods and citizens as they try to go about their daily business and the constant blocking of road crossings; the abandonment of trains for hours and days the generally chaotic condition of the rail system in Harris County all have contributed to an increase in accidents and raised serious safety questions; and

WHEREAS, this County and this port were built on competition; this one railroad now has near monopoly power over the rail business in this area; and

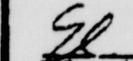
WHEREAS, these problems in the wake of the UPSP merger have created an absolutely intolerable situation for this county;

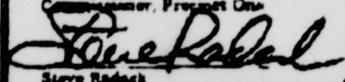
THEREFORE BE IT RESOLVED that Harris County Commissioners Court adopt the following resolution

1. In an increasingly competitive world market place, an efficient and competitive rail system is essential to economic success for the Harris County and the Port of Houston.
2. The free enterprise system is the greatest economic system ever devised but it works only when there is real competition. Consequently we believe that at least three railroads are necessary all with the ability to serve as many shippers as possible so that shippers have real competitive choice.
3. Sufficient rail competition will attract the necessary capital to expand the current infrastructure to meet the future needs of a growing economy. A competitive and efficient rail system will attract more cargo from trucks at a more efficient cost and with less air pollution.
4. Neutral dispatching and neutral switching should be expanded and employed to help achieve a more competitive rail system. These principles have long been used by the Port Terminal Rail Authority and the Houston Belt and Terminal Authority to achieve these goals.
5. The Surface Transportation Board, which approved this merger and which has called this rail merger a rail crisis, should exercise its considerable powers to re-inject real rail competition permanently into this area.
6. The Texas Congressional Delegation should insist that the STB take all necessary steps to ensure real rail competition in this area.

IT IS HEREBY ORDERED that this Resolution be printed upon the minutes of Commissioners Court this 2nd day of March 1998.

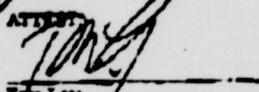

Robert Kohls
County Judge


El Franco Lee
Commissioner, Precinct One


Steve Radach
Commissioner, Precinct Three


Jim Fontana
Commissioner, Precinct Two


Gary Overholt
Commissioner, Precinct Four

ATTEST:

Tom Lee
Deputy County Clerk
Harris County, TEXAS



Congress of the United States
Washington, DC 20515

March 12, 1998

Mr. Dick Davidson
President
Union Pacific/Southern Pacific Corp.
1717 Main Street, Suite 5900
Dallas, Texas 75201-4605

Dear Dick:

We are writing out of our continuing concern about rail congestion in Texas. This problem, particularly in the Houston area, is not improving as we had hoped. Some estimates put the cost of this congestion in Texas at over \$1 billion since the problem began last summer.

We have been patient in permitting the STB emergency order, changes in UP's operating plan in the Houston area, and the agreement between UP and BNSF to work. It is now time for progress. We urge you to undertake immediate and aggressive capital investment in the Houston rail infrastructure to counter the effects that limited capacity, antiquated facilities, and inefficient configuration have had in contributing to the massive congestion problem. We do not believe that UP will be able to resolve its problems in Houston without such an effort.

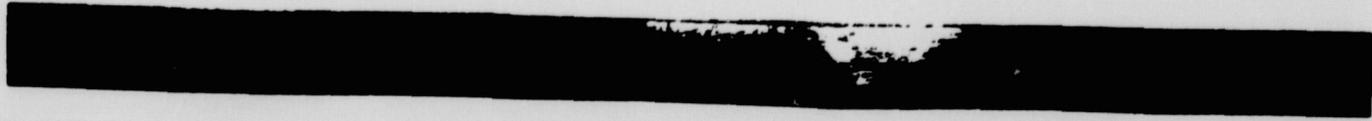
We understand that UP has stated its intent to make extensive investment in the Houston and Gulf Coast rail infrastructure it owns. We were pleased to know that the company has targeted \$570 million for Gulf Coast rail assets. Implementation of these plans should not be delayed, and the railroad should work closely with shippers and the other railroads in the area to ensure that the most critical needs are met first.

We believe that increased investment is a necessary step, and the railroad should immediately dedicate the time, money, planning, and coordination among all affected parties to implement it.

Sincerely,

Kay Bailey Hutchison
Dick Aroney
Sam Johnson

Phil From
Phil Arden
Joe Bartow
Tom DeLay



✓ Kevin V. Seal

✓ Kay Hargis

✓ Jimmy Conant

✓ Mac T. My

✓ Ron Paul

✓ Patsy Sessia

✓ Mark Tamm

✓ Ciro D. Padua

✓ Mac Fine

✓ Hynd Doggett

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✓ [Signature]

✓ Ruben Hinojosa

✓ [Signature]

✓ Charlie Steinhilber

✓ [Signature]

✓ Ralph M. Hall

✓ [Signature]



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION --EVIDENTIARY SUBMISSION" was served this 30th day of March, 1998, by hand-delivery, overnight delivery, or first-class mail in a properly addressed envelope with adequate postage thereon addressed to all known parties of record.



William A. Mullins
Attorney for The Kansas City Southern
Railway Company

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BEFORE THE
SURFACE TRANSPORTATION BOARD

SURFACE
TRANSPORTATION BOARD

FD 335 GF
FINANCE DOCKET NO. 32760 (Sub-No. 21)



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

ENTERED
Office of the Secretary

MAR 31 1998

3 Part of
Public Record

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS
CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF ADDITIONAL REMEDIAL
CONDITIONS PURSUANT TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

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FILED

MAR 30 1998
March 30, 1998

SURFACE TRANSPORTATION BOARD