

245468

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

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William A. Mullins

Direct Dial: (202) 663-7823
wmullins@bakerandmiller.com

April 16, 2018

VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 46)
BNSF Railway Company – Terminal Trackage Rights – The Kansas City
Southern Railway Company And Union Pacific Railroad Company

Dear Ms. Brown:

The Kansas City Southern Railway Company hereby files, via e-filing, its "Reply To LyondellBasell." If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY TO LYONDELLBASELL

**W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Tel: (816) 983-1324
Fax: (816) 983-1227**

**William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
Telephone: (202) 663-7823
Facsimile: (202) 663-7849**

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

April 16, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRackage RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

REPLY TO LYONDELLBASELL

On January 12, 2018, BNSF Railway Company ("BNSF") filed a petition requesting the Surface Transportation Board (the "Board") to establish conditions of use and compensation for BNSF to directly serve a LyondellBasell ("Lyondell") facility in the Lake Charles, Louisiana area using the Rosebluff Lead ("Petition"). On April 9, 2018, Lyondell filed letter comments ("Lyondell Letter") in support of BNSF's Petition. KCS hereby replies to Lyondell's comments.

Presenting unverified comments,¹ Lyondell claims that its facility at issue is a former Montell Polyolefins facility and is entitled to direct service by BNSF as a result of the Lake Charles Condition. KCS has already conceded that the facility is located in West Lake Charles, and believes it is the same facility that was the subject of the Montell comments during the UP/SP proceeding.

Lyondell's assumption that it is automatically entitled to direct BNSF trackage rights simply because it is located in West Lake Charles and desires direct BNSF service is incorrect.

¹ Being unverified, the comments presented by Lyondell violate 49 C.F.R. § 1104.4(b) (3), which requires a document signed by a person not authorized to represent others before the Board to be verified under oath. Nonetheless, for purposes of this reply, KCS will assume that the Board will accept the non-verified statement into the record.

As the Board recognized in Decision No. 63 in the UP/SP proceeding, and as confirmed in Decision No. 3 in this proceeding, for BNSF to obtain direct terminal trackage rights, it must file an application and meet the requirements of 49 U.S.C. § 11102. Absent a grant of terminal trackage rights, the Board cannot impose trackage rights over carrier-owned track.² Moreover, the Board cannot compel BNSF access over private industry track even if Section 11102 is invoked.³ If the Section 11102 statutory elements cannot be met, BNSF direct access to Lyondell cannot be granted, even if Lyondell desires it.

BNSF's Petition with respect to Lyondell must be dismissed because BNSF has failed to make a prima facie case that Section 11102 applies to the Lyondell situation. First, BNSF's terminal trackage rights application dealt with serving CITGO, a plan BNSF has now discarded. There were no evidentiary findings that access to Lyondell met the standards of Section 11102, nor could there be as Lyondell was only mentioned in passing as a possible future service point, with no service plans presented.

Second, BNSF's Petition seeks access to Lyondell over 0.40 miles of connecting track (ownership of which is unclear) and track owned by the Port of Lake Charles (i.e., the Montell

² Because KCS was not an applicant in the UP/SP merger, the Board has no authority to compel BNSF access over KCS-owned track as a condition of someone else's merger. See Canadian National Ry., et al – Control – Illinois Central Corp., et al., STB Docket No. FD 33556 (Decision No. 37), slip op. at 32 (STB served May 25, 1999) (“[n]o provision of the Act gives us a general authority to impose trackage rights over the lines of a non-applicant carrier such as KCS.”); Rio Grande Industries, et al.—Pur. & Track. – CMW Ry. Co., 5 I.C.C.2d 952, 978 (1989) (The Board's predecessor agency explained that it cannot “compel a [non-applicant] carrier to grant trackage rights over its line to another carrier.”); and Rio Grande Industries, Inc., et al. – Purchase and Related Trackage Rights – Soo Line Railroad Company Line Between Kansas City, MO and Chicago, IL, Finance Docket No. 31505, Decision No. 6, slip op. at 8 (ICC served Nov. 15, 1989) (ICC re-stated its position that it could not use the pendency of a consolidation proceeding as an excuse for imposing trackage rights over the lines of a non-applicant carrier).

³ Pursuant to Section 11102, the Board only has legal authority to compel forced terminal trackage rights on tracks owned by carriers. 49 U.S.C. Section 11102(a): “The Board may require terminal facilities ... owned by a rail carrier ... to be used...”

Lead). BNSF has not made a prima facie showing that the 0.40 miles of connecting track is carrier-owned track for which Section 11102 applies.⁴ The record is not clear who owns that track, and Section 11102 cannot be invoked against industry-owned track.

Third, even though Lyondell claims that BNSF's operations of the Montell Lead will not impair UP's operations or service to Lyondell, BNSF has not presented a contract with the Port of Lake Charles granting BNSF access to use the Montell Lead. Until the terms and operating conditions of such a contract are presented, neither Lyondell nor the Board has any idea whether BNSF operation on the Montell Lead will interfere with service by UP or KCS. Again, there is no prima facie showing that its proposed direct service to Lyondell will not substantially impair UP's and KCS's service.

Fourth, it is now clear that the existing agreement between KCS, UP and the Port of Lake Charles prohibits the Port from granting BNSF trackage rights without both UP's and KCS's consent. The Port has not approached KCS regarding obtaining KCS's consent to BNSF access. Until UP's and KCS's consent is obtained, BNSF cannot present an agreement to the Board for the Board's consideration in the context of Section 11102 and the Board cannot make the requisite operational findings.

BNSF does acknowledge UP's and KCS's rights under the Port's contract, but claims that if the Port is willing to grant BNSF access, BNSF will simply invoke the "self-executing provisions of 49 U.S.C. §11321(a) [to] nullify the [consent] provision." BNSF March 21 Reply at 4-5. Section 11321(a) is not "self-executing". It may only be invoked when "necessary" to

⁴ The 0.40 mile piece of track connecting the Montell Lead to the Rosebluff Lead is not "part of" the Rosebluff Lead but is a separate track whose ownership is unclear at this stage. BNSF's several references in its March 21 Reply to the 0.40 connecting track as being "part of the Rosebluff Lead" are argument, not evidence.

carry out a transaction. Necessity must be established by evidence, and must be determined by the Board.⁵ It is not the power of a self-interested party to declare the contracts of others void for that party's own convenience. The UP/SP transaction was consummated more than 20 years ago. BNSF has had access to the LyondellBasell facility during that entire time via reciprocal switching and has the majority of traffic to/from Lyondell. It is certainly not "necessary" to override KCS's contractual rights to carry out the UP/SP merger or for Lyondell to have access to BNSF.

Dismissal of BNSF's Petition does not deprive Lyondell of the benefits associated with BNSF access or the Lake Charles condition. BNSF has had access to the Lyondell facility via a reciprocal switch since the merger. This access has allowed BNSF to obtain the majority of the traffic to/from the facility. Admittedly, Lyondell's unverified letter alleges that BNSF direct access would save 2 or more days' transit time. However, according to Montell's testimony in the UP/SP merger proceeding, "As plastic resin is manufactured [], it is immediately loaded into [Montell's] specialty rail cars for storage." Granatelli V.S. at 2, ¶5 (copy attached as Exhibit 1). There is no finding in this proceeding that moving cars to *storage* more quickly is in the public interest or outweighs the operational interference BNSF service would cause. Lyondell may desire BNSF direct access, but the Board's obligation is to preserve competition in the narrowest

⁵ CSX Corporation And CSX Transportation, Inc., Norfolk Southern Corporation And Norfolk Southern Railway Company – Control And Operating Leases/Agreements – Conrail Inc. And Consolidated Rail Corporation, FD 33388, 3 S.T.B. 196, 1998 WL 456510, *65-66 (STB served July 23, 1998) (additional evidence of a need to override the anti-assignment provisions in Gateway's Cahokia/Willows trackage rights agreements would be necessary before that relief could be granted); Id., Decision No. 100, 1998 STB Lexis 852 (1998) (refusing to override/modify blocking provisions because the party failed to demonstrate the relief it requested was necessary).

fashion possible.⁶ Compelling direct trackage rights via application of Section 11102 is to be used only in the rarest of cases, which this case is not.⁷

Here, access through reciprocal switch has provided Lyondell with a more than competitive option. In fact, access to BNSF via reciprocal switching is a competitive remedy far better than the remedies requested by Montell itself during the merger. In the merger, Montell requested that BNSF be granted the right to interchange with KCS so that a KCS/BNSF joint-line move could compete against a UP single-line move. Montell did not request a reciprocal switch to BNSF and certainly never requested that BNSF be granted compelled terminal trackage rights. See attached Exhibit A, March 29, 1996 Comments of Montell USA Inc. And Olin Corporation. Because Lyondell seeks greater access than requested by its predecessor, there has not been any showing that what Lyondell is in the public interest.

Lyondell's filing reinforces KCS's argument that BNSF has failed to make a prima facie showing that Section 11102 is even an available remedy. While the filing shows that Lyondell wants BNSF direct service, it does not show that what Lyondell wants is in the public interest or

⁶ See UP/SP, Decision No. 44, slip op. at 144-145 (conditions are to be narrowly tailored to address the specific adverse effects that it is intended to address and it cannot put the proponent of a condition in a better position than before the transaction.). Here, a grant of terminal trackage rights to BNSF puts Lyondell in a better position than it was prior to the UP/SP merger.

⁷ Trackage rights remedies are not preferred when other, less intrusive options are available. See Shenango Inc. v. Pitts., Chartiers & Yough. Ry. Co., 5 I.C.C.2d 995,1002 (1989) (as an ameliorative condition, "[t]rackage rights are a remedy of last resort for use when less intrusive remedies such as rate relief and reciprocal switching are insufficient"); Western Fuels Service Corporation v. The Burlington Northern and Santa Fe Railway Company, et al., STB Docket No. NOR 41987, et al. (STB served Jul. 28, 1997), slip op. at 7 ("[a]s we have stated on several occasions, the prescription of terminal trackage rights is an extraordinary remedy, one to be afforded only when less intrusive remedies such as rate relief, alternative through routes, or reciprocal switching are insufficient") (citations omitted).

outweighs operational interference BNSF service could cause. Until BNSF can address those elements, its Petition (application) remains incomplete and should be dismissed.⁸

Respectfully submitted,

W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Tel: (816) 983-1324
Fax: (816) 983-1227

April 16, 2018


William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
Telephone: (202) 663-7823
Facsimile: (202) 663-7849

Attorneys for The Kansas City Southern
Railway Company

⁸ At a minimum, the Board should not begin a proceeding or set a procedural schedule until such time as these missing elements are addressed so that discovery and evidence can address BNSF's entire case in chief, rather than one being assembled in a piecemeal ongoing fashion.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the The Kansas City Southern Railway Company's Reply to LyondellBasell filed in the above-captioned matter was served by first-class mail, postage prepaid, or by a more expeditious manner, this 16th day of April, 2018, on counsel for BNSF Railway Company, Union Pacific Railroad Company, and all other parties of record.



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

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 46)

**BNSF RAILWAY COMPANY
-- TERMINAL TRACKAGE RIGHTS APPLICATION --
THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
UNION PACIFIC RAILROAD COMPANY**

EXHIBIT A

**COMMENTS AND REQUEST FOR CONDITIONS OF
MONTELL USA INC. AND OLIN CORPORATION
MARCH 29, 1996**

MONT - 2
OLIN - 2

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

COMMENTS AND REQUEST FOR CONDITIONS
OF
MONTELL USA INC. and
OLIN CORPORATION

Martin W. Bercovici
Douglas J. Behr

KELLER AND HECKMAN
1001 G Street, N. W.
Suite 500 West
Washington, D.C. 20001
Tel: (202) 434-4100
Fax: (202) 434-4646

Attorneys for
Montell USA Inc. and
Olin Corporation

March 29, 1996

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

COMMENTS AND REQUEST FOR CONDITIONS
OF
MONTELL USA INC. and
OLIN CORPORATION

Montell USA Inc. ("Montell") and Olin Corporation ("Olin"), by and through their undersigned counsel, submit the following Comments and Request for Conditions with respect to the proposed merger between Applicants Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR") (collectively "UP") and Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCL") and The Denver and Rio Grande Western Railroad Company ("DRGW") (collectively "SP") (all of whom are collectively referred to as the "Applicants").

Montell and Olin are members of The Society of the Plastics Industry, Inc. ("SPI"), and the National Industrial Transportation League ("NITL"), and support the positions of SPI and NITL in this proceeding. If the relief requested by SPI and/or NITL is granted in full by the Surface Transportation

Board ("Board"), the issues raised in these Comments and Request for Conditions will be moot.

I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

Both Montell and Olin operate large manufacturing facilities in the West Lake Charles, Louisiana area. Montell's West Lake Charles plant is Montell's largest site in the United States. It produces primarily polypropylene and polyethylene. Verified Statement of Robert W. Granatelli (hereinafter referred to as "Granatelli V.S."), attached hereto, at ¶ 3. Olin's Lake Charles plant is a major facility producing a variety of chemical products for both domestic and international customers. Verified Statement of John Badger (hereinafter referred to as "Badger V.S."), attached hereto, at ¶ 5.

Both Montell and Olin are almost exclusively reliant on rail transportation to ship their products to market. Montell ships approximately 98% of its production from West Lake Charles by rail. Granatelli V.S. at ¶ 6. Olin ships approximately 80% by rail. Badger V.S. at ¶ 5. Both companies are further reliant on rail for the receipt of raw materials and storage of manufactured product. Granatelli V.S. at ¶ 5 & 6; Badger V.S. at ¶ 3.

The majority of the outbound shipments from Montell's and Olin's West Lake Charles plants go to gateways for shipment to the "Eastern" United States. Thus, fifty-eight percent (58%) of Montell's 1995 outbound shipments from West Lake Charles were shipped through gateways located at Chicago (23% or over 1,450 rail cars), St. Louis (24% or over 1,500 rail cars), Memphis (7%

or over 430 rail cars), and New Orleans (4% or over 270 rail cars) (collectively "Eastern Gateways"). Granatelli V.S. at ¶ 7. Olin ships approximately eighty percent (80%) or over 800 rail car loads a year of its outbound shipments through either New Orleans or St. Louis. Badger V.S. at ¶ 8. Montell ships another twenty percent (20%) or over 1,400 rail cars of its output to Houston, Granatelli V.S. at ¶ 8, while Olin expects that it will have shipments to Mexico as business develops in response to NAFTA. Badger V.S. at ¶ 10.

Montell's West Lake Charles plant is currently served by the SP and the Kansas City Southern railroad (KCS). SP offers single line service to the Eastern Gateways and Houston. KCS offers single line service only to New Orleans. However, the KCS single line service to New Orleans is very indirect route and not competitive. In order to offer competitive service to Montell from West Lake Charles to the Eastern Gateways and Houston, KCS needs to interconnect with the Missouri Pacific railroad, a part of the Union Pacific system (hereinafter "UP"). Granatelli V.S. at ¶ 7. The KCS/UP competitive option resulted in reductions in rates when Montell last put its contract up for bid. Id., ¶ 9.

Olin's plant is currently served by UP, SP and KCS. Both UP and SP compete for Olin's business because each offers single line, direct, competitive service to New Orleans and St. Louis. Badger V.S. at ¶ 8. KCS does not offer competitive, single line service to New Orleans and has not solicited Olin's business to St. Louis. Additionally, based on contractual limitations, KCS

cannot interchange with UP for Olin's business. Badger V.S. at ¶ 8.

If the merger is approved both Montell and Olin will suffer from the loss of competitive rail service. The applicants have addressed this loss of competition in the Gulf Coast area through the settlement with the Burlington Northern/Santa Fe ("BNSF"), however, they have excluded West Lake Charles from the benefits of that settlement. Assuming approval of the merger and settlement, this loss of competition at West Lake Charles must be addressed. The solution, however, is simple. Through the imposition of minimal conditions pursuant to the Surface Transportation Board's ("Board") authority under 49 U.S.C. § 11344(c) of the Interstate Commerce Act^{1/}, this loss of competition can be compensated for by allowing the BNSF, or whomever gets the trackage rights over the SP Houston to New Orleans line, to interchange line haul traffic at West Lake Charles, thereby allowing it to compete with the UP/SP for Montell's and Olin's rail traffic along that New Orleans -

^{1/} The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 ("Act"), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Board. Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This control and merger relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to sections 11323-25 of the Act. Therefore, the Board shall apply the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

Houston corridor. Further, BNSF, or whomever gets trackage rights over the SP line from Houston to Memphis, should be allowed to interchange with KCS at Shreveport, thereby creating a KCS West Lake Charles to Shreveport - BNSF Shreveport to Memphis/St. Louis/Chicago route to replace the KCS/UP routes to those gateways. This solution is appropriate since it preserves competition with little impact on the application and settlement now pending before the Board. These requested conditions, and the reasons why such conditions must be imposed, are specified in detail in this submittal.

PPG Industries, Inc. ("PPG Industries"), which also operates a manufacturing plant in West Lake Charles, has filed its own statement requesting essentially similar relief. Verified Statement of M.E. Petruccelli, attached hereto.

II. STATEMENT OF FACTS

A. Montell USA Inc.

1. Montell's West Lake Charles, Louisiana Plant.

Montell's West Lake Charles plant is Montell's largest site in the United States. It is located on the Gulf of Mexico Coast between New Orleans and Houston. Granatelli V.S. at ¶ 3.

Montell's plant produces primarily polypropylene and polyethylene. The plant is dependent on rail service for the storage of its output and the delivery of that output to its customers. Id.

Approximately fifty-eight percent (58%) of the plastic resins produced at West Lake Charles are shipped to Eastern

Gateways in New Orleans, Memphis, St. Louis and Chicago. An additional twenty percent (20%) of the resins produced are shipped by rail to Houston. Id. at ¶ 7 & 8.

2. Montell's Plant Is Dependent on Rail at West Lake Charles.

Montell ships approximately 98% of its plastic resin production from West Lake Charles by rail. The remaining transport is emergency truck transport generally resulting from a failure in rail delivery. It takes approximately four trucks to ship one rail car's worth of plastic resin. Granatelli V.S. at ¶ 6.

In order to ship by rail, Montell has made a significant economic investment. Montell owns over 3,800 specialty rail cars dedicated solely to the storage and transport of plastic resins that it manufactures. Id. at ¶ 5.

As plastic resin is manufactured by Montell, it is immediately loaded into the specialty rail cars for storage. Montell's plant is designed to function in this way. The use of rail cars for storage is important to Montell because it reduces capital investment in storage facilities and is a cost effective method of avoiding possible contamination. Faced with the need to store up to 50 products in a manner that does not lead to the contamination of any of them has resulted in the decision to use rail cars for storage rather than invest in multiple silos capable of meeting the high product integrity standards. Furthermore, one rail car load is the typical quantity of plastic resin ordered by Montell's customers. Finally, most of Montell's

customers are set up to receive and store their plastic resin raw materials in rail cars and to input that resin into their operations from rail cars. Id. at ¶ 5.

3. Montell Currently Has Two Competitive Rail Alternatives: Single Line SP and Joint KCS/UP.

The West Lake Charles plant is currently served by the SP, and by the KCS in conjunction with UP. SP offers single line service to the Eastern Gateways and to Houston. KCS offers single line service only to New Orleans. However, the KCS single line service to New Orleans is 494 miles due to a very indirect route through Shreveport. In order to offer competitive service to Montell from West Lake Charles to the Eastern Gateways, KCS needs to interconnect with the Missouri Pacific railroad, a part of the UP. KCS/UP offers service to New Orleans from West Lake Charles via KCS from West Lake Charles to DeQuincy, Louisiana and UP from DeQuincy to New Orleans. This joint route is 259 rail miles, and compares favorably to the SP's route of 219 rail miles. Movements to the other Eastern Gateways are routed on KCS from West Lake Charles to Texarkana and UP from Texarkana to Memphis and on north from there to St. Louis and Chicago if necessary. The KCS/UP also provides a route for traffic moving to Houston for cars that are destined to packaging locations. Granatelli V.S. at ¶ 7 & 8.

4. Montell Has Negotiated Competitively Based on Its Current Rail Service.

In 1989, when Montell last put its West Lake Charles rail traffic up for bid, it received a bid from the SP and a bid from

the KCS/UP. Both bids offered discounts from tariffed/MFTR rates. The KCS/UP bid contained offers of discounts by each of the participating railroads. Based on Montell's experience, railroads generally do not offer to transport freight at a discount from tariffed rates if there is not competition for those freight movements. Therefore, Montell believes that SP's price for moving freight from the West Lake Charles plant would have been substantially higher were it not for the presence of the KCS/UP competition. Granatelli V.S. at ¶ 9.

5. The Proposed Merger Eliminates Montell's Competitive Rail Situation at West Lake Charles.

If UP merges with SP, KCS will lose its friendly connection necessary to compete for Montell's West Lake Charles traffic. Post-merger, UP/SP would control traffic coming directly out of the plant as well as traffic shipped via KCS's joint service through DeQuincy and Texarkana. Certainly, UP/SP would have no incentive to discount the rate on its portion of the joint service in order to assist KCS to compete with UP/SP's single line service. Thus, the competitive KCS/UP routes to New Orleans, Houston and Memphis will be eliminated by the merger. Granatelli V.S. at ¶ 10.

B. Olin Corporation

1. Olin's West Lake Charles, Louisiana Plant.

Olin Corporation is a world-wide producer and marketer of a variety of organic, inorganic and specialty chemical products. Olin has a major production facility in the West Lake Charles, Louisiana area. The West Lake Charles plant produces a variety of products including nitric acid, toluene di-isocyanate ("TDI"), aliphatic di-isocyanates ("ADI"), hydrazine, toluene di-amine, hydrochloric acid, and di-nitro toluene. Badger V.S. at ¶ 5.

2. Olin Is Dependent on Rail at West Lake Charles.

Olin's West Lake Charles plant is generally dependent on rail service for delivery of its raw materials, for storage of its output and for the delivery of that output to customers. Olin leases 545 specialty tank cars for use in relation to just this facility for in-plant storage and outbound delivery. Approximately 80% of Olin product manufactured at West Lake facility is shipped via tank car. Badger V.S. at ¶ 5.

The typical shipment from West Lake Charles is in a 20,000 gallon tank car with a net weight of approximately 200,000 lbs. TDI and ADI are the two largest rail shipped products manufactured at the plant. The major markets for these products are in the Southeast, the Midwest and the Northeastern United States with a small number of customers in Southern California. The average length of haul for Olin's TDI fleet is about 1,850 miles (one way), and the average length of haul for its ADI shipments is about 950 miles (one way). Due to the nature of the

products, the volumes purchased by Olin's customers and the lack of consignee storage capacity, these chemicals are directly tied to rail service. These products are extremely competitive; as an example, Olin is one of five TDI producers in the U.S. Delivered cost (product price plus freight) largely determines whether a sale is made. The only alternate mode available is tank truck, which is not cost competitive with rail. Badger V.S. at ¶ 7.

Approximately eighty percent (80%) or approximately 800 rail car loads of Olin's West Lake Charles originated shipments move eastward to the Mississippi River gateways of New Orleans and St. Louis. Of the products moving to those gateways, sixty percent (60%) goes to St. Louis and forty percent (40%) to New Orleans. Badger V.S. at ¶ 8.

3. Olin Currently Has Two Competitive Rail Alternatives: UP and SP; KCS Service Is Not a Viable Option.

Presently, Olin's West Lake Charles plant is served by the SP, KCS and the UP, as a result of a long standing contractual agreement allowing UP access over the KCS track. However, because of this access, UP has not offered joint transit with the KCS on movements for Olin. Badger V.S. at ¶ 6.

Single line, direct rail service to the Eastern gateways is presently provided by both the SP and the UP. The KCS is not competitive to New Orleans as a single line hauler due to the circuitry of its route. KCS does not provide a direct single-line service route to the St. Louis gateway. The KCS can reach St. Louis but only by means of a 2-line haul. The KCS must

interchange West Lake-originating traffic with the BNSF at Neosho, MO, for total rail miles of 880 or 118% of the short-line SP rail miles. Olin has found that KCS is not service competitive to St. Louis because of the additional distance as well as longer transit times. In fact, KCS has not actively pursued Olin's business to this gateway. Badger V.S. at ¶ 8.

While Olin currently has little tank car business to Mexico, it anticipates that such traffic will increase as NAFTA is implemented. Presently, Olin can originate rail shipments to Mexico competitively via either the SP or the UP. The KCS, routing over Dallas to get to the BNSF and their gateway at El Paso - is very circuitous. Badger V.S. at ¶ 10.

The West Lake Charles facility is also dependent on raw materials delivered by rail. Specifically, Olin expects to receive about 2,000 carloads of chlorine at West Lake Charles, delivered from its McIntosh, Alabama facility. This movement utilizes the New Orleans gateway and enjoys competition between the SP and the UP between New Orleans and West Lake Charles. After the proposed merger, the only alternative would be the circuitous KCS routing through Shreveport, LA. That is 489 rail miles and is 223% longer than the SP route. Badger V.S. at ¶ 12. Obviously, the KCS alternative would cause Olin's loaded and empty transit times to be much greater, requiring Olin to invest in many additional tank cars, if we are to consider the KCS routing as the "competition". Id.

4. Olin Has Negotiated Competitively For Rail Service.

Olin has sought bids from all three railroads for the movement of inbound or outbound freight when they offer reasonable service alternatives. For instance, Olin has traditionally sought bids yearly for the delivery of chlorine to the plant. However, the KCS generally does not offer sufficiently direct service to be competitive with the UP and SP. Therefore, it has been Olin's experience that the realistic competition for Olin's business has been between the UP and the SP. *Badger V.S.* at ¶ 6.

5. The Proposed Merger Eliminates Olin's Competitive Rail Situation at West Lake Charles.

The real competition for Olin's traffic is between UP and SP. If the merger is approved, Olin will not have any true competition for its rail traffic. Although Olin is served by the KCS, the KCS does not offer competitive routes to the destinations that Olin needs to reach.

III. THE MERGER STANDARD

The Board's single and essential standard for approval is that the merger of two class I railroads be "consistent with the public interest." 49 U.S.C. § 11344(c). Missouri-Kansas-Texas R. Co. v. United States, 632 F.2d 392, 395 (5th Cir. 1980), cert. denied, 451 U.S. 1017 (1981); see also Penn Central Merger Cases, 389 U.S. 486, 498-499 (1968).^{2/}

^{2/} See fn. 1, infra.

In determining what is consistent with the public interest, 49 U.S.C. § 11344(b)(1) requires consideration of at least the following five factors: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.^{3/}

In addition to these explicit statutory considerations, the Board is also required by the Supreme Court's decision in McLean Trucking Co. v. United States, 321 U.S. 67 (1944) to weigh the policies embodied in the antitrust laws disfavoring diminution in competition resulting from a proposed rail merger.^{4/} See 49 C.F.R. § 1180.1(c)(2). As the Supreme Court has observed, the antitrust laws give "understandable content to the broad statutory concept of 'the public interest,'" FMC v. Aktiebolaget Svenska Amerika Linien, 390 U.S. 238, 244 (1968). In McLean

^{3/} The fifth factor, Section 11344(b)(1)(E), dealing with competitive effects on other railroads, was added by section 228(a)(2) of the Staggers Rail Act of 1980, Pub. L. No. 96-448 (Staggers Act).

^{4/} Under 49 U.S.C. 11341(a), transactions approved by the Board are exempt from the antitrust laws, and all other laws, as necessary to effect the transactions. Northern Lines Merger Cases, 396 U.S. 491, 504 (1970).

Trucking, the Supreme Court noted the proper weight to be accorded to antitrust policy in carrier control proceedings:

In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operations, lower costs, etc., to determine whether the consolidation will assist in effectuating the overall transportation policy. . . . 'The wisdom and experience of that Commission,' not of the courts, must determine whether the proposed consolidation is 'consistent with the public interest.'

McLean Trucking, 321 U.S. at 87-88; accord Bowman Transportation v. Arkansas-Best Freight, 419 U.S. 281, 298 (1974); Port of Portland v. United States, 408 U.S. 811, 841 (1972); Northern Lines Merger Cases, 396 U.S. 491, 514 (1970); Denver & R. G. W. R. Co. v. United States, 387 U.S. 485 (1967).

The Railroad Consolidation Procedures, 49 C.F.R. §§ 1180.0-1180.9 ("Rules"), sets forth the numerous elements of the public interest that the Board is to consider in evaluating specific merger proposals by performing a balancing test weighing "the potential benefits to the Applicants and the public against the

potential harm to the public." Id. at § 1180.1(c).^{5/} The Rules specifically note that:

If two carriers serving the same market consolidate, the result would be the elimination of the competition between the two. . . . a lessening of competition resulting from the elimination of a competitor may be contrary to the public interest. . . .

49 C.F.R. § 1180.1(c). Moreover, the Interstate Commerce Commission ("ICC") emphasized that "the effect of a transaction on competition is a critical factor in our consideration of the public interest. . . ." Santa Fe Southern Pacific Corp. -- Control -- SPT Co., 2 I.C.C.2d 709, 726 (1986) (SF/SP) (emphasis added).

Under the Interstate Commerce Act, the Board's power to attach conditions to its approval of a major rail merger is unqualified. When it is claimed that the proposed transaction will have a direct effect on competition, by eliminating competitive alternatives to the public, such as here, the Commission has imposed conditions in certain instances. Specifically, the Commission imposed conditions, if they were

^{5/} The Board is also guided by the rail transportation policy, 49 U.S.C. § 10101a, added by the Staggers Act. See Norfolk Southern Corp. -- Control -- Norfolk & W. Ry Co., 366 I.C.C. 171, 190 (1982) (NS Control). The 15 elements of that policy set forth in section 10101a, taken as a whole, emphasize reliance on competitive forces to modernize railroad actions and to promote efficiency. H.R. Rep. No. 96-1430, 96th Cong., 2d Sess. 88 (1980), reprinted in 1980 U.S.C.C.A.N. 4110, 4119. Element 5 provides that it is the policy of the United States to "foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers" and element 13 prohibits "predatory pricing and practices, to avoid undue concentrations of market power." 49 U.S.C. § 10101a (5) & (13).

feasible, to eliminate the harm threatened by the transaction, assuming such conditions were of greater benefit to the public than they were detrimental to the transaction. See Union Pacific Corp., Pacific Rail System, Inc. and Union Pacific Railroad Company-Control - Missouri Pacific Corporation and Missouri Pacific Railroad Company, 366 I.C.C. 462, 484 (1982) (UP/MP).

In light of the merger standard and the evidence presented herein demonstrating the proposed merger's elimination of what is today competition at West Lake Charles, it is imperative that the protective conditions that Montell, Olin and others request be imposed on the merger, if consummated.

IV. PROPOSED MERGER'S ANTICOMPETITIVE EFFECTS ON MONTELL USA INC. and OLIN CORPORATION

A. The Proposed Merger Will Eliminate Competition at Montell's and Olin's West Lake Charles, Louisiana Plants for Traffic to New Orleans.

The proposed merger will eliminate the only real competition for Montell's and Olin's West Lake Charles traffic to, and in the case of Olin from, New Orleans. As the merger between SP and UP presently is structured, including the September 25, 1995, trackage rights agreement between UP/SP and the BNSF ("BNSF Agreement"), Montell and Olin will have no realistic competitive options for traffic to and from New Orleans. First, KCS's single line route is unduly circuitous and clearly not competitive. Second, the KCS will not be able to partner with a railroad willing to offer discounts sufficient to compete with the SP to New Orleans as it currently does. Finally, although BNSF will

have a Houston/New Orleans route running past West Lake Charles, it does not currently have interchange line haul traffic rights there. Consequently, both Montell's and Olin's West Lake Charles plants will be captive to the UP/SP for all traffic moving through the New Orleans gateway. See Granatelli V.S. at ¶¶ 7 & 10; Badger V.S. at ¶¶ 6, 8 & 11. PPG Industries, which also maintains a plant in West Lake Charles stated in its own filing with the Board that it too will be in the same position if the merger is allowed without condition. Petruccelli V.S. at 2 - 3.

B. The Proposed Merger Will Eliminate Competition at Montell's West Lake Charles, Louisiana Plants for Traffic to Houston and Olin's to Mexico.

The proposed merger will eliminate the only real competition for Montell's and Olin's West Lake Charles present and future traffic to Houston and Mexico. As the merger between SP and UP presently is structured, including the BNSF Agreement, Montell will have no realistic competitive options to Houston. First, KCS has no single line service. Second, the KCS will not be able to partner with a railroad willing to offer discounts sufficient to compete with the SP to Houston, as it currently does. Third, although BNSF will have a Houston/New Orleans route running past West Lake Charles, it will not have interchange rights there. Consequently, Montell's plant will be captive to the UP/SP for all traffic moving to Houston. Olin's future shipments to Mexico are similarly affected. Badger V.S. at ¶ 10. Consequently, both Montell's and Olin's West Lake Charles plants will be captive to the UP/SP for all traffic moving to Houston and Mexico. See

Granatelli V.S. at ¶¶ 8 & 10; Badger V.S. at ¶ 10. PPG Industries, which also maintains a plant in West Lake Charles stated in its own filing with the Board that it too will lose competition to Mexico if the merger is allowed without condition. Petruccelli V.S. at 5.

C. The Proposed Merger Will Eliminate Competition at Montell's and Olin's West Lake Charles, Louisiana Plant for Traffic to Memphis and Other Northeastern Gateways.

The proposed merger will eliminate the only real competition for Montell's and Olin's West Lake Charles present and future traffic to Memphis/St. Louis/Chicago. As the merger between SP and UP presently is structured, including the BNSF Agreement, Montell and Olin will have no realistic competitive options to Memphis and the northern Mississippi River gateways. First, KCS has no single line service to Memphis. Second, the KCS will not be able to partner with a railroad willing to offer discounts sufficient to compete with the SP to Memphis, as it currently does. Third, although BNSF will have a Houston to Memphis route running through Shreveport, that could replace KCS' current interchange point with the UP at Texarkana, BNSF will not be able to interchange with KCS under the agreement. Consequently, Montell's and Olin's plants will be captive to the UP/SP for all traffic moving to Memphis and through to other Mississippi River gateways.

D. Applicants Recognize that the Merger Will Eliminate Competition in the Houston - New Orleans Corridor.

Applicants recognize that the merger will result in the elimination of rail competition in the Houston - New Orleans corridor due to circuitry of the KCS route. Thus, they have treated it as a "2-to-1" point and provided for the BNSF to obtain track and trackage rights in that corridor. Application, UP/SP -22, at 22. As Applicants' witness Peterson testified: "New Orleans has a lot of railroads, Houston has a lot of railroads, but we [UP] and SP have the only direct routes between the two. KCS as you know can connect them, but they were a little too circuitous so we call that [route] a two-to-one corridor." Deposition of Richard B. Peterson ("Peterson Deposition") at 76-77. See also Id. at 176-77, 191 (KCS single line is circuitous and therefore not competitive)^{6/}. He further acknowledged that there would be a loss of competition on the West Lake Charles/New Orleans route. Id. at 173-75. However, the Agreement with the BNSF does not provide for interchange line haul rights at West Lake Charles, Louisiana. See Settlement Agreement, UP/SP - 22, at 318 et seq.

Furthermore, applicants' witness Peterson acknowledged that the KCS does not offer a competitive route to Laredo/Mexico. When asked whether a shipper in Beaumont, Texas (one stop along

^{6/} Applicants have "classified movements as non-competitive where the route of one of the three carriers was 150% or more circuitous." Verified Statement of Richard B. Peterson, UP/SP - 23 at 191.

the KCS line from West Lake Charles) "[c]ould .. feasibly ship via KCS to Laredo?" he responded "No." Peterson Deposition at 276.

E. Applicants Recognize that the Merger Will Eliminate Competition in the Houston - Memphis Corridor, Which Includes Shreveport to Memphis.

Applicants recognize that the merger will result in the elimination of competition in the Houston - Memphis corridor. Thus, they have treated it as a "2-to-1" corridor and provided for the BNSF to obtain trackage rights in that corridor. Application, UP/SP - 22, at 22; Peterson Deposition at 77. The Houston - Memphis corridor includes the Shreveport to Memphis segment over which KCS/UP would move Montell's and Olin's traffic to Memphis. Although the Applicants recognize that KCS is handing off to UP and SP at Shreveport a lot of shorthaul traffic originating in West Lake Charles, Peterson Deposition at 71, the trackage rights agreement with the BNSF does not provide for interchange with the KCS at Shreveport. Agreement, UP/SP - 22, at 318 et. seq.

Furthermore, witness Peterson recognized that the primary market is the Houston to Memphis route. He noted that once in Memphis, the BNSF can connect with its Memphis to St. Louis line and "improve its St. Louis route considerably." Id. at 111.

F. The KCS/BNSF Mid South Route is Not an Alternative to the New Orleans and Memphis Gateways.

Applicants' witness Peterson opined that the KCS/BNSF Mid South route from Shreveport, Louisiana to Birmingham, Alabama was a competitive alternative to shipping through the New Orleans and

Memphis gateways into the Southeast. Peterson Deposition at 114, 176-77. Olin's experience is that this route is not a viable competitive option to the Memphis and New Orleans gateways due to length of haul and operational delays. Badger V.S. at ¶ 9. Montell found that this route was not economically competitive. Granatelli V.S. at ¶ 8. Both companies found that the New Orleans and Memphis gateways were preferred. Thus, the Board cannot rely on the KCS/BNSF MidSouth route to replace the direct competition that exists between the UP and the SP to New Orleans and Memphis.

G. The Traffic Affected by This Loss of Competition is Significant.

Both Montell and Olin have significant rail traffic that will be affected by the loss of competition that the proposed merger represents. Montell's West Lake Charles plant is its biggest facility. Approximately seventy-eight percent (78%) of the output of the plant is shipped by rail over the routes at issue in this merger. Those shipments represent more than 3,650 rail car loads a year to the Eastern gateways and over 1,400 rail car loads a year cars to Houston. Granatelli V.S. at ¶¶ 7 & 8.

Eighty percent (80%) of Olin product sales manufactured at West Lake Charles is shipped by tank car. Olin ships over 800 outbound rail cars to New Orleans and St. Louis per year. Each car carries approximately \$250,000 worth of product. Olin also receives over 2,000 rail cars of raw materials at West Lake Charles each year via the New Orleans gateway. Badger V.S. at ¶¶ 8 & 12. Furthermore, PPG Industries has stated that it has a

major facility at West Lake Charles that will be affected by the proposed merger. PPG Industries' plant ships via New Orleans and to Mexico. Petruccelli V.S. at 3 & 5.

H. The Error of the Applicants' Analysis is in Looking Solely At Origination Service.

Applicants recognize their responsibility to remedy those situations where competition is eliminated by the merger. Applicants have defined these as "2-to-1" points. However, the Applicants definition of such points is limited to those plants there are served by only the UP and the SP. Applicants have failed to consider as 2-to-1 points those plants where real competition is being eliminated because of the merger even though a third carrier currently serves the plant. As Montell and Olin have graphically pointed out, each is losing its competitive service to Houston, New Orleans and Memphis even though each will still be able to originate traffic on the KCS. This loss of competition has not been addressed by the Applicants. Therefore, the Board must do so for them.

I. The Commission's Prior Decisions Dictate That the West Lake Charles Situation Be Remedied.

Competitive harm is evident when the possible routing options on a rail-bound commodity drop from two originating railroads to one. Burlington Northern Inc. - - Control and Merger - - Santa Fe Pacific Corp. and The Atchison, Topeka and Santa Fe Railway Company, I.C.C. Finance Docket No. 32549, Dec. No. 38, p. 55 (Aug. 23, 1955). The Commission has frequently observed that the loss of competition through the elimination of

a neutral and friendly connection requires remediation. See, Santa Fe Souther Pacific Corp. -- Control -- Souther Pacific Transportation Co., 2 I.C.C. 709, 789-90, 801-02 (1986) Thus, DRGW was provided trackage rights in UP-MP merger "[b]ecause of the loss to the DRGW of a neutral or friendly MP connection at Pueblo due to consolidation, shippers will lose the DRGW-MP competitive alternative to the UP that exists today." Union Pacific Corp., Pacific Rail System, Inc. and Union Pacific Railroad Co. -- Control -- Missouri Pacific Corp. and Missouri Pacific Railroad Co., 366 I.C.C. 462, 576 (1982). See also a "3-to-2" situation at the Grainbelt Corporation ("GNBC"). BNSF, I.C.C. Finance Docket No. 32549, pp. 94. Where, as here, the anticompetitive consequences of the reduction in service is significant, a remedy is required particularly when that remedy has little impact on the proposed merger since the trackage rights have already been established by agreement.

V. THE SURFACE TRANSPORTATION BOARD MUST GRANT MONTELL'S AND OLIN'S REQUEST FOR CONDITIONS TO ELIMINATE THE ANTICOMPETITIVE EFFECTS OF THE PROPOSED MERGER

The anticompetitive effects of the merger on Montell's and Olin's West Lake Charles traffic can be ameliorated with the imposition of protective conditions upon the merger. The necessary conditions are as follows:

- 1) The merged carrier must grant interchange line haul traffic rights at West Lake Charles to the BNSF or whomever obtains trackage rights over the existing rail line owned by the SP between Houston, Texas and New Orleans, Louisiana; and,

- 2) The merged carrier must grant interchange rights with the KCS at Shreveport to the BNSF or whomever obtains trackage rights the existing rail line owned by the SP between Houston, Texas and Memphis, Tennessee.

These conditions are necessary to restore Montell and Olin to their current competitive position by eliminating the adverse horizontal effects of the merger.

VI. A RESPONSIVE APPLICATION IS NOT REQUIRED IN ORDER FOR A NONRAILROAD TO SEEK A TRACKAGE RIGHTS CONDITION

Under the Railroad Consolidation Procedures (49 C.F.R. Part 1180), the requests put forward by Montell and Olin may be properly maintained as a request for protective conditions and need not be asserted in a responsive application. The procedure for filing responsive applications, and any other application related to the Railroad Consolidation Procedures, applies only to railroads and not to shippers or members of the general public who may comment or seek protective conditions as a result of a proposed merger. The statutory authority for the Railroad Consolidation Procedures arises from sections 11343-11345 of the Interstate Commerce Act. See 49 U.S.C. §§ 11343-11345. These provisions pertain only to railroads and not to shippers. Indeed, the Railroad Consolidation Rules specifically provide a procedure for non-railroad parties to respond to merger applications by permitting such parties to file written comments, which shall contain "[a]n initial list of specific protective conditions" if the proceeding involved a major or significant transaction. 49 C.F.R. § 1180.4(d)(1)(iii)(H). The Commission's

rules do not define or limit what may be requested as a protective condition.

Accordingly, based upon the Interstate Commerce Act and the Railroad Consolidation Procedures, and based upon precedent such as the recent BNSF merger decision, it is clear that a non-railroad party need not file a responsive application in order to request trackage rights, but may assert such a request as a protective condition.

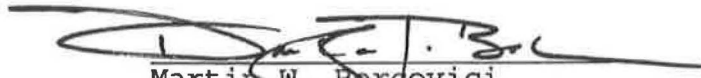
VII. CONCLUSION

If the Commission were to approve the UP/SP merger as proposed, competition for Montell's and Olin's West Lake Charles rail traffic will be extinguished. The Interstate Commerce Act and case precedent prohibit such a result. Accordingly, Montell and Olin respectfully request the Surface Transportation Board, if it approves the merger as proposed, to impose the following as conditions on the merger of the Applicant carriers:

- 1) The merged carrier must grant interchange line haul traffic rights at West Lake Charles to the BNSF or whomever obtains trackage rights over the existing rail line owned by the SP between Houston, Texas and New Orleans, Louisiana; and,

- 2) The merged carrier must grant interchange rights with the KCS at Shreveport to the BNSF or whomever obtains trackage rights the existing rail line owned by the SP between Houston, Texas and Memphis, Tennessee.

Respectfully submitted,



Martin W. Bardovici
Douglas J. Behr

KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Tel: (202) 434-4100
Fax: (202) 434-4646

March 29, 1996

Attorneys for Montell USA,
Inc. and Olin Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Montell USA Inc.'s Request for Conditions and Comments and attached exhibits was served this 29th day of March, 1996, by hand-delivery, on counsel for Applicants, as follows:

Arvid E. Roach II
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

Paul A. Cunningham
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Secretary of Transportation
Suite 10200
400 Seventh Street, S.W.
Washington, D.C. 20590

and, by mail upon the remainder of the Restricted Service List.


Douglas J. Behr

VERIFIED STATEMENTS

VERIFIED STATEMENT
OF
ROBERT W. GRANATELLI

My name is Robert W. Granatelli. I am the Manager of Transportation Operations - North America for Montell USA Inc. ("Montell"). Montell's headquarters is located at Three Little Falls Centre, 2801 Centerville Road, Wilmington, Delaware.

1. I have held my current position for approximately eight years. Previously, I was employed at International Paper Company as Manager of Rail Pricing for six years followed by Manager, Transportation Services for one year. I earned a Bachelor of Science in Transportation in 1969 and a Masters of Science in Transportation in 1976 from the University of Alabama. I am a registered ICC practitioner.

2. Montell was formed on March 31, 1995 through the merger of the majority of the polyolefin interests of the Royal Dutch/Shell Group of companies with those of Montedison S.p.A. including HIMONT Incorporated. Montell is the largest producer of polypropylene resin in the United States. It has four production facilities in the United States including one located at the rail station at West Lake Charles, Louisiana (hereinafter referred to as "West Lake Charles plant") and one at the rail station at Bayport, Texas.

3. The West Lake Charles plant is Montell's largest site in the United States. The plant is located near the coast of the

Gulf of Mexico between New Orleans and Houston. It produces primarily polypropylene and polyethylene. The plant is dependent on rail service for the storage of its output and the delivery of that output to its customers. The quality of rail service at this plant is of concern to Montell in connection with the proposed merger of the Southern Pacific Rail Corp. ("SP") and the Union Pacific Corp. ("UP").

4. Montell's Transportation Operations Group negotiates, implements and oversees all domestic and international transportation agreements relating to Montell's North American distribution operations. As Manager of Transportation Operations - North America, my responsibilities include the analysis of transportation developments and strategies and the implementation of those strategies to maximize distribution service and price options. Thus, my responsibilities include the negotiation of all transportation contracts, the preparation of statements commenting on various carrier positions, and the analysis and interpretation of rules and regulations, both state and Federal, relevant to Montell's transportation matters.

5. Montell maintains a fleet of over 3,800 owned or leased specialty rail cars dedicated solely to the storage and transport of plastic resins that it manufactures. Each such car is worth approximately \$65,000 new. As plastic resin is manufactured by Montell, it is immediately loaded into these specialty rail cars

for storage. Montell's plant is designed to function in this way. The use of rail cars for storage is important to Montell because it reduces capital investment in storage facilities and is a cost effective method of avoiding possible product contamination. Faced with the need to store up to 50 products in a manner that does not lead to the contamination of any of them has resulted in the decision to use rail cars for storage rather than invest in multiple silos capable of meeting the high product integrity standards. Furthermore, one rail car load is the typical quantity of plastic resin ordered by Montell's customers. Finally, most of Montell's customers are set up to receive and store their plastic resin raw materials in rail cars and to input that resin into their operations from rail cars.

6. Montell ships approximately 98% of its plastic resin production from the plant by rail. The remaining transport is emergency truck transport generally arising from a failure in rail delivery or a delay in plant production resulting in too little time for rail delivery to the customer. It takes approximately four trucks to ship one rail car's worth of plastic resin. Because of Montell's dependence on rail, it has a vital concern over the future of the railroads and a particular concern for the need to maintain competitive rail service and routes at our West Lake Charles plant.

7. Montell shipped over 6,300 rail car loads of its products from the West Lake Charles plant in 1995. Fifty-eight

percent (58%) of Montell's outbound shipments from West Lake Charles were shipped through gateways located at Chicago (23% or over 1,450 rail cars), St. Louis (24% or over 1,500 rail cars), Memphis (7% or over 430 rail cars), and New Orleans (4% or over 270 rail cars) (collectively "Eastern Gateways") in 1995. The West Lake Charles plant is currently served by the SP and the Kansas City Southern railroad (KCS). SP offers single line service to the Eastern Gateways. KCS offers single line service only to New Orleans. However, the KCS single line service to New Orleans is 494 miles because it takes a very indirect route through Shreveport. In order to offer competitive service to Montell from West Lake Charles to the Eastern Gateways, KCS needs to interchange with the Missouri Pacific railroad, a part of the UP system. KCS/UP offers service to New Orleans from West Lake Charles via KCS from West Lake Charles to DeQuincy, Louisiana and via UP from DeQuincy to New Orleans. This joint route is 259 miles and is approximately half the distance of KCS's direct route through Shreveport. Movements to the other Eastern Gateways are routed on KCS from West Lake Charles to Texarkana and on UP from Texarkana to Memphis and on north from there to St. Louis and Chicago if necessary.

8. Montell also ships to packaging locations in Houston. Approximately twenty percent (20%) or over 1,400 rail car loads were shipped to Houston in 1995. Montell can currently ship to Houston either on SP direct or via the KCS/UP through DeQuincy.

Although KCS has trackage rights from DeQuincy to Houston that will survive any merger, those trackage rights are only for grain traffic. With the loss of the DeQuincy connection with UP, KCS would have to transport cars from West Lake Charles to Beaumont (74 miles) and interchange with the Burlington Northern - Santa Fe ("BN/SF") from Beaumont to Houston (311 miles) for a total distance of 385 miles. When this route is compared to the SP direct West Lake Charles to Houston route of 146 miles, it is clear that the current KCS/BNSF route is impractical.

9. In 1989, when Montell last put its West Lake Charles traffic up for bid, we received a bid from the SP and a bid from the KCS/UP. Both bids offered discounts from tariff/MFTR rates. The KCS/UP bid contained offers of discounts by each of the participating railroads. Based on my experience, railroads generally do not offer to transport freight at a discount from tariffed rates if there is not competition for those freight movements. Therefore, Montell believes that SP's price for moving freight from the West Lake Charles plant would have been substantially higher were it not for the presence of the KCS/UP competition. In 1992, Montell renegotiated and extended its contract with SP based on unique circumstances existing at the time that allowed for negotiation of through rate discounts. Montell continues to believe that the rates offered in 1992 were influenced by the KCS/UP competition. Montell's current contract expires in 2002.

10. If UP merges with SP, KCS will lose its friendly connection necessary to compete for Montell's West Lake Charles traffic. Post-merger, UP/SP would control traffic coming directly out of the plant as well as traffic shipped via KCS's joint service through DeQuincy and Texarkana. Certainly, UP/SP would have no incentive to discount the rate on its portion of the joint service in order to assist KCS to compete with UP/SP's single line service. Thus, the competitive route KCS to DeQuincy - UP DeQuincy to New Orleans or Houston will be removed by the merger.

11. This loss of competition can be compensated by the imposition of certain conditions on the proposed merger. First, competition will be restored by allowing BNSF, or whomever gets the trackage rights currently covered by the UP/SP - BNSF agreement, the right to interchange linehaul traffic at West Lake Charles thereby allowing it to compete with the SP for Montell's New Orleans and Houston traffic. Further, the proposed merger would remove the KCS to Texarkana - UP Texarkana to Memphis, St. Louis and Chicago as a viable alternative route. To replace that route, BNSF, or such other carrier acquiring the trackage rights, should be allowed to interchange with KCS in Shreveport, thereby creating a KCS West Lake Charles to Shreveport - BN/SF Shreveport to Memphis/St. Louis/Chicago route.

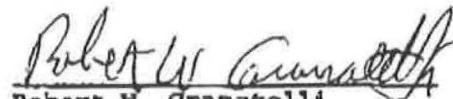
12. While Montell takes no position on the issue of whether the UP/SP merger with the BNSF agreement should be approved as

proposed, Montell requests that if the Application is approved substantially as proposed, the Board impose conditions on this merger that will preserve competitive rail service to Montell's West Lake Charles plant for shipments going to the Eastern gateways and Houston.

13. Montell has considered without success the KCS MidSouth route as an alternative for the delivery of goods to connecting carriers for delivery into the Southeastern United States. Prior to the KCS' purchase of that MidSouth route, Montell attempted to contract certain deliveries over the MidSouth route for delivery within the Southeastern United States rather than using the New Orleans and Memphis gateways. We found that the MidSouth route was not economically feasible. The connecting carriers for these shipments set the same revenue requirements for these shipments whether interchange occurred on the Midsouth Route or at a Mississippi River gateway (New Orleans or Memphis). Under these circumstances, KCS would not price the total movement competitively with a direct move to the gateway, probably because of KCS's length of haul over the MidSouth route. Montell has no reason to believe that the situation has changed. Thus, the KCS MidSouth route is not considered an economically viable alternative to use of the Mississippi gateways of New Orleans and Memphis.

I verify under penalty of perjury pursuant to 28 U.S.C.
§ 1746 that the foregoing is true and correct to the best of my
knowledge and belief. I am authorized to submit this statement.

Executed this 29th day of March, 1996.


Robert W. Granatelli

**VERIFIED STATEMENT
OF
JOHN BADGER**

1. My name is John Badger. I am Vice President-Logistics for Olin Corporation. Olin Corporation's headquarters is located at 501 Merritt 7, Norwalk, Connecticut. I am authorized to make the following statement on behalf of Olin Corporation regarding the proposed merger of the Southern Pacific Railroad (hereinafter "SP") and the Union Pacific Railroad (hereinafter "UP").

2. I have been Olin's Vice President-Logistics since November, 1995. Prior to that date, I held the position of Director, Transportation & Distribution Services for Olin Corporation for approximately eleven years. Before I joined Olin, I spent 16 years with The Dow Chemical Company in a variety of domestic and international transportation positions of increasing responsibility. I hold a B.A. degree in Business from Jacksonville State University and a Masters of Arts degree in Transportation from the University of Alabama. I am a Licensed Practitioner before the Interstate Commerce Commission and a Certified Member of the AST & L.

3. Olin Corporation is a world-wide producer and marketer of a variety of organic, inorganic and specialty chemical products. Olin operates thirteen production facilities in the United States, nine of which are major rail-served sites, dependent upon rail service for both the receipt of raw materials and the shipment of commercial products. In support of these facilities, Olin owns

and/or leases approximately 3,400 specialty tank cars and approximately 180 hopper cars.

4. In my present position, I am responsible for the worldwide movement of Olin's US-produced chemical products. Among my duties are long term planning and analysis of transportation needs, overall transportation strategy and negotiation of long-term major strategic transportation contracts. In my previous position, my responsibilities included the negotiation of all types of transportation contracts including rail.

5. Olin has a major production facility in West Lake Charles, Louisiana. The West Lake Charles plant produces a variety of products including nitric acid, toluene di-isocyanate ("TDI"), aliphatic di-isocyanates ("ADI"), hydrazine, toluene di-amine, hydrochloric acid, and di-nitro toluene. The plant is generally dependent on rail service for delivery of its raw materials such as ammonia and chlorine, for storage of its output and for the delivery of that output to customers. Olin leases 545 specialty tank cars for use in relation to just this facility for in-plant storage and outbound delivery. Approximately 80% of Olin product sales manufactured at our West Lake facility ship via tank car.

6. Presently, Olin's West Lake Charles plant is served by the SP, the Kansas City Southern Railroad (hereinafter "KCS") and the UP. Although the UP does not have direct access to our plant, it has a long standing contractual agreement allowing access over the KCS track. Because of this access, UP has not offered joint

transit with the KCS on movements for Olin. Olin has sought bids from all three railroads for the movement of inbound or outbound freight when they offer reasonable service alternatives. For instance, Olin has traditionally sought bids yearly for the delivery of chlorine to the plant. However, the KCS generally does not offer sufficiently direct service to be competitive with the UP and SP. Therefore, it has been our experience that the realistic competition for Olin's business has been between the UP and the SP. After the proposed merger, our facility would be served by the merged-UP/SP and the KCS.

7. The typical shipment from West Lake Charles is in a 20,000 gallon tank car with a net weight of approximately 200,000 lb. TDI and ADI are the two largest rail shipped products manufactured at our West Lake Charles facility. The major markets for these products are in the Southeast, the Midwest and the Northeastern United States with a small number of customers in Southern California. Our shipments, therefore, primarily move East and North, utilizing two major rail gateways along the Mississippi River: New Orleans and St. Louis. The average length of haul for our TDI fleet is about 1,850 miles (one way) and the average length of haul for our ADI shipments is about 950 miles (one way). Due to the nature of the products, the volumes purchased by our customers and the lack of consignee storage capacity, these chemicals are directly tied to rail service. These products are extremely competitive; as an example, Olin is one of five TDI producers in

the U.S. Delivered cost (product price plus freight) largely determines whether a sale is made. The only alternate mode available is tank truck which is not cost competitive with rail.

8. Approximately eighty percent (80%) of our West Lake Charles -- originated tank car shipments move eastward to the Mississippi River gateways of New Orleans and St. Louis. These shipments represent over 800 carloads a year with an average value of the product in each car of \$250,000. Of the products moving to those gateways, sixty percent move through St. Louis and forty percent move through New Orleans. Single line, direct rail service to these gateways is presently provided by both the SP and the UP. The SP route to New Orleans is 219 rail miles while the UP route is 230 rail miles. The SP route to St. Louis is 863 rail miles while the UP route is 744. The KCS can reach New Orleans directly but only via a circuitous route through Shreveport, a distance of 489 rail miles. KCS does not provide a direct single-line service route to the St. Louis gateway. The KCS can reach St. Louis but only by means of a 2-line haul. The KCS must interchange West Lake-originating traffic with the BNSF at Neosho, MO, for total rail miles of 880 or 118% of the short-line SP rail miles. Olin has found that KCS is not service competitive to St. Louis because of the additional distance and longer transit times. In fact, KCS has not actively pursued Olin's business to this gateway.

9. Olin also recognizes that the KCS offers an interchange on West Lake-originated Eastbound traffic at Birmingham, AL (by way

of operating rights over another carrier). This gateway can physically interchange traffic with the Norfolk Southern (hereinafter "NS") and CSX Transportation (hereinafter "CSXT"). The KCS-Birmingham interchange has not been a service-competitive nor rate-competitive route for Olin shipments. In our experience, the "operating rights" agreement which allows KCS to interchange in Birmingham works poorly. Additionally, cars delivered to CXST, as an example, have been consistently delayed in the Birmingham-Holt area, causing unacceptable transit times. Olin has few customers where it makes geographical or operational sense to try to route a car through Birmingham when both CSXT and NS offer superior interchange through the New Orleans gateway and main-line service beyond. As an example, Olin has a major customer in Richmond, VA, served by CSXT. In addition to lengthy transit times that would result from routing via the KCS over Birmingham to service this customer, the rail miles are greater. The Birmingham route is 1,550 rail miles while the best service route via SP-/New Orleans/-CSXT is 1,316 rail miles. For our South and Southeastern U.S. customers, the New Orleans gateway is a far superior choice. We need to have direct competitive alternatives to the New Orleans gateway. If the merger is approved, Olin will be faced with only one viable carrier -- the merged entity -- to the gateways it utilizes.

10. The proposed merger also presents a threat to Olin's future business in Mexico. While Olin currently has little tank

car business in Mexico, we anticipate that such traffic will increase as NAFTA is implemented. Presently, Olin can originate rail shipments to Mexico via either the SP or the UP. After the merger, as business develops, we will be faced with a non-competitive alternative route to the Mexican gateways. The only alternate to the merged SP-UP we would have would be to originate on the KCS, routing over Dallas to get to the BNSF and their gateway at El Paso - a very circuitous route versus our present, direct service routes via SP-Eagle Pass/Laredo or UP- West Lake Charles/Brownsville/Laredo. As an example, the SP route to El Paso is 955 rail miles, the UP route to El Paso is 1,048 rail miles and the present 2-line route via KCS-/Dallas/-BNSF is 1,238 rail miles. The alternate KCS-BNSF route mileage is 130% greater than the short-line SP route.

11. If the merger is allowed to proceed as structured, Olin will not have a competitive alternative to the merged railroad because of the circuitry of the KCS routings. As mentioned earlier, Olin operates a large private tank car fleet with several hundred of these cars assigned to the West Lake Charles plant. We operate a tight fleet wherein service is vital to assure tank car capacity. We are dependent upon prompt service and fast car turnarounds to maintain our plant operation. Given Olin's traffic flows, the KCS alternative to the merged SP-UP, if used for competitive reasons, would result in a significant increase in tank car mileage to our major markets, resulting in a deterioration of fleet capacity.

Longer transit times via circuitous routes diminishes fleet capacity thereby forcing Olin to face the expenditure of hundreds of thousands of dollars leasing additional tank car capacity in order to maintain our existing business levels and fleet capacity.

12. The West Lake Charles facility is dependent on raw materials delivered by rail. Specifically, we expect to receive about 2,000 carloads of chlorine at West Lake Charles, delivered from our McIntosh, Alabama facility. This movement utilizes the New Orleans gateway and enjoys competition between the SP and the UP between New Orleans and West Lake Charles. After the proposed merger, our only alternative to the merged-UP/SP will be a routing utilizing the KCS through Shreveport, LA. As noted above, the rail mileage via the SP is 219 and via the UP is 230, while the alternate KCS routing over Shreveport is 489 miles - a difference against the SP of 223%. Obviously, the KCS alternative will cause our loaded and empty transit times to be much greater, requiring Olin to invest in many additional tank cars, if we are to consider the KCS routing as the "competition".

13. Because the KCS does not offer a viable, competitive alternative to the areas of the country where our principle traffic moves, Olin requires the imposition of conditions on the proposed merger to maintain the competition in rail service that it currently enjoys. The obvious solution is to provide interchange line haul traffic rights to the BNSF or whomever is awarded trackage rights over the New Orleans - Houston corridor. For Olin,

the long-term survival of our Lake Charles plant is directly tied to the rate levels, short-mileage routes and service levels of our rail carriers. To eliminate the SP competition to the UP that Olin currently enjoys without providing an alternative threatens the long-term viability of this facility. We urge that the Board place appropriate conditions on the merger, if it is approved to assure that Olin's West L.C. facility has the highest level of rail to rail competition.

I verify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 20th day of March, 1996.


John Sadger

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

CONTROL AND MERGER

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

VERIFIED STATEMENT OF

PPG INDUSTRIES, INC
ONE PPG PLACE
PITTSBURGH, PA 15272

BY: M. E. PETRUCCELLI
DIRECTOR OF DISTRIBUTION AND
TRANSPORTATION.

MARCH 26, 1996

VERIFIED STATEMENT
OF
MICHAEL E. PETRUCCELLI

My name is Michael E. Petruccelli. I am the Director of Distribution and Transportation Chemicals for PPG Industries Inc., One PPG Place, Pittsburgh, PA 15272 ("PPG") I have been employed by PPG for 31 years in various capacities, including 23 years in rail distribution of its products. My duties include responsibility for the rail, highway and water needs of PPG Chemicals throughout North America. I am authorized to make this statement on behalf of PPG.

PPG is a multi-division, multi plant corporation with manufacturing plants and other interests throughout much of the free world. In 1995 world wide sales were in excess of seven billion dollars, of which approximately 4.7 billion was generated in the United States. Worldwide in 1995, PPG had approximately 31,000 employees. PPG owns and leases approximately 2800 rail cars to transport various commodities including rail dependent commodities such as chlorine and vinyl chloride

As a major manufacturer and consumer of bulk chemicals, PPG is very dependent on competitive rail transportation services and costs. We are concerned that the pending acquisition of the Southern Pacific Railroad ("SP") by the Union Pacific Railroad ("UP"), including the agreement with the Burlington Northern/Santa Fe Railroad ("BNSF"), effectively eliminates competition in several key corridors.

While the merger may offer significant operating efficiencies to the railroads, the expectation that these benefits would accrue to customers is only a possibility if competition is preserved. Productivity and cost improvement are primarily driven by competition and are reflected in freight rates only when competition is present. Approval of the UP/SP merger without conditions creates a duopoly in the western part of the United States and eliminates genuine competition.

One of our major production facilities is located at Westlake, LA. Today this facility is jointly served by the SP and Kansas City Southern Railroad ("KCS") with the UP gaining access through reciprocal switching. If the merger is approved as proposed, PPG would have only two carriers providing service to the Westlake plant.

Presently we have three railroads providing such service. Thus competition would be reduced even though we would still have two carriers. There are several lanes in which we are able to negotiate with all three carriers to obtain competitive pricing and service. A major area of concern is shipments to the southeast moving over the New Orleans Gateway. PPG is able to maintain competition with all three carriers. However, because of the KCS's circuitous route the UP and SP provide the most effective competition. Combining the two carriers would obviously eliminate this.

Rather than resolve this competitive concern the trackage rights agreement between the UP and BNSF actually exacerbates it. Competition would be preserved by having the BNSF serve PPG's Westlake facility. However, we have been advised that because of the agreement the BNSF would not seek such access nor would the UP grant it.

This is but one example that trackage rights are no substitute for ownership since they are selectively controlled by the track owner. Trackage rights do not provide for access to shippers or receivers along the lines. In fact Mr. Grinstein prior to retiring from the BNSF stated "that trackage rights do not provide true competition".

Maintaining physical connections with other railroads or the establishment of reasonable proportional rates to junctions or gateways is one way to retain reasonable competition. A more effective solution to ensuring rail competition is for the Surface Transportation Board ("Board") to require divestiture of parallel lines in the Texas and Louisiana region and the SP eastern lines.

As part of the merger, PPG would ask the Board to give consideration to two similar issues that are of concern. The first is a PPG plant located at Bacon, TX. This facility is currently served by the Wichita, Tillman & Jackson Railway (Wichita, Tillman"). Service to our plant is restricted to an interchange with the UP even though the BNSF has a physical connection with the Wichita, Tillman. A similar situation exists at two of our customers located in Lebanon and Corvallis, Or. Lebanon is served by the Willamette Valley Railroad and Corvallis by the Willamette Pacific Railroad. To reach these two destinations, it is our understanding that the interchange is restricted to the SP, although a physical connection exists with the BNSF. PPG realizes that we are restricted to one carrier today. Approval of the merger would not change that. However, because of the merger, consideration should be given to require an interchange with both the UP and BNSF.

Shipments from and to Mexico could also be monopolized by the merged railroad. Both the SP and UP provide competitive service into Mexico. In conjunction with the Tex-Mex Railroad ("Tex-Mex") the SP provided a viable competitor to the UP at Laredo, TX. Approval of the merger would surely jeopardize the Tex-Mex's existence. PPG exports goods into Mexico, and is building a new facility in Mexico that could be exporting to the United States. It is imperative that competition be retained. We believe Tex-Mex should be granted authority to extend their operation to connect with other railroads. Further a physical interchange should be required and maintained between the Tex-Mex and the new railroad.

PPG feels that the Board has the duty and responsibility to preserve the competitive environment. The feasibility of divestiture of track segments to other carriers with competitive access, maintaining interchanges or proportional rates should be evaluated and where appropriate, required as conditional to approval of the merger.

Without imposing the conditions requested in PPG's statement and maintaining other competition as required by other rail users, the proposed UP/SP merger should be denied.

VERIFICATION

Michael E. Petruccelli, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true and correct.

Michael E. Petruccelli

Subscribed and sworn to before me by

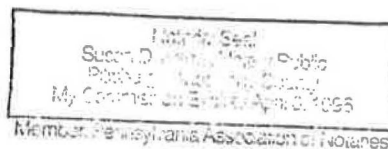
Michael E. Petruccelli this 22nd

day of March, 1996

Witness my hand and official seal.

My commission expires 4-8-96

Susan D. Harris
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing PPG's Industry, Inc,
VERIFIED STATEMENT OF MICHAEL E. PETRUCCELLI, on all parties of record
on the service list in this proceeding, Finance Docket No. 32760, and an original plus five
copies on the Secretary of the Surface Transportation Board by first class mail,
postage prepaid this 26th day of March 1996.


Michael E. Petruccelli
Director Distribution and Transportation
Chemicals