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AUG 30 2001

**SURFACE  
TRANSPORTATION BOARD**

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August 30, 2001

**VIA HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street NW  
Washington, DC 20423-0001

**ENTERED  
Office of the Secretary**

**AUG 31 2001**

**Part of  
Public Record**



Re: Finance Docket No. 34079, San Jacinto Rail Limited -- Authority To Construct --  
And The Burlington Northern And Santa Fe Railway Company -- Authority To  
Operate -- Petition For An Exemption From 49 U.S.C. § 10901 -- Build-Out To  
The Bayport Loop Near Houston, Harris County, Texas

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of San Jacinto Rail Limited and The Burlington Northern and Santa Fe Railway Company's Petition For An Exemption From 49 U.S.C. § 10901 For Authority To Construct And Authority To Operate A Build-Out To The Bayport Loop Near Houston, Harris County, Texas, and supporting verified statements. Also enclosed is a check in the amount of \$51,500 for the filing fee and a 3.5 inch disk containing the text of the pleading in WordPerfect 9 format.

I would appreciate it if you would date-stamp the enclosed extra copy of this submission and return it to the messenger for our files. Thank you for your assistance.

Sincerely,

*Erika Z. Jones/als*

Erika Z. Jones

**FILED**

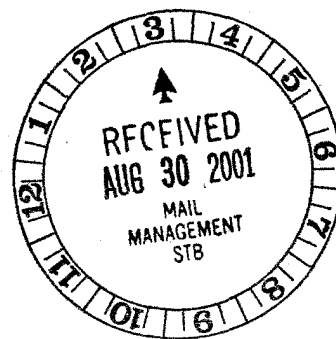
AUG 30 2001

Enclosures

cc: Mr. David M. Konschnik  
Ms. Vicki G. Rutson

**SURFACE  
TRANSPORTATION BOARD**

CHARLOTTE CHICAGO COLOGNE FRANKFURT HOUSTON LONDON  
LOS ANGELES NEW YORK PALO ALTO PARIS WASHINGTON  
INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 34079**

**San Jacinto Rail Limited -- Authority To Construct -- And  
The Burlington Northern And Santa Fe Railway Company --  
Authority To Operate -- Petition For An Exemption From 49 U.S.C. § 10901 --  
Build-Out To The Bayport Loop Near Houston, Harris County, Texas**

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Public Record**

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Date: August 30, 2001

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 34079**

**San Jacinto Rail Limited -- Authority To Construct -- And  
The Burlington Northern And Santa Fe Railway Company --  
Authority To Operate -- Petition For An Exemption From 49 U.S.C. § 10901 --  
Build-Out To The Bayport Loop Near Houston, Harris County, Texas**

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Pursuant to 49 U.S.C. § 10502, San Jacinto Rail Limited ("San Jacinto") and The Burlington Northern and Santa Fe Railway Company ("BNSF") (collectively "Petitioners") hereby petition the Surface Transportation Board ("Board") for an exemption from the prior approval requirements of 49 U.S.C. § 10901 for the construction by San Jacinto and the operation by BNSF of an approximate 12.8 mile rail line that will connect plastics and chemicals production facilities located in the Bayport Industrial District ("Bayport Loop") in southeast Houston, TX, with the former Galveston, Henderson and Houston Railroad ("GH&H") line now owned by Union Pacific Railroad Company ("UP") near the southeast corner of Ellington Field. The purpose of the proposed construction is to provide these Bayport Loop facilities, which are presently served only by UP, with competitive rail service. BNSF will access the proposed line via trackage rights over the GH&H line pursuant to the build-in/build-out condition imposed by the Board on the UP/SP merger.

The exemption would be subject to the completion of environmental review by the Board's Section of Environmental Analysis ("SEA"). Consistent with the Board's established practice, San Jacinto and BNSF request that the Board conditionally grant the requested exemption subject to the entry of a final decision after completion of such environmental review.

This Petition is supported by the attached Verified Statements of Kathryn M. Farmer (“Farmer V.S.”) and Harry P. Mann, Jr. (“Mann V.S.”) of BNSF, Charles R. Carr of ATOFINA Petrochemicals, Inc. (“ATOFINA”) (“Carr V.S.”), Robert W. Granatelli of Basell USA Inc. (“Basell”) (“Granatelli V.S.”), and Larry T. Jenkins of Equistar Chemicals, LP (“Equistar”) and Lyondell Chemical Company (“Lyondell”) (“Jenkins V.S.”).

### **INTRODUCTION**

As established below, the goals of the Rail Transportation Policy will be furthered by exempting the proposed line from regulation under Section 10901. The transaction is clearly limited in scope. It involves the straightforward construction and operation of a 12.8 mile rail line to serve shipper facilities located in the Bayport Loop. Further, regulation is not needed to protect shippers from the abuse of market power. Indeed, as the Board and its predecessor, the Interstate Commerce Commission (“ICC”), have often recognized, the construction of new rail lines enhances competition by expediting the access of affected shippers to service by a second carrier. Accordingly, under the standards for exemption set forth in Section 10502, this Petition should be granted.

### **BACKGROUND**

#### **A. *Petitioners***

San Jacinto is a Delaware limited partnership comprised of BNSF and affiliated entities of BNSF and four core producers at Bayport: ATOFINA, Basell, Equistar, and Lyondell (“Producer Limited Partners”). Farmer V.S. at ¶ 6. BNSF owns or controls collectively a minority of interests in the partnership. BayRail, LLC, a wholly-owned subsidiary of BNSF, is the general partner of San Jacinto. The limited partners of San Jacinto are Basell Impact Holding Company; Bay Junction, Inc.; Equistar Bayport, LLC; Lyondell Bayport, LLC; and BNSF. Ibid.

BNSF is a Class I rail carrier incorporated in Delaware and headquartered in Fort Worth, TX.

Ibid.

**B. *Bayport Loop***

Located in an industrial area in southeast Houston near Galveston Bay, the Bayport Loop is the center of one of the nation's most important areas of chemicals and plastics production. Farmer V.S. at ¶ 8. Numerous domestic and international producers have large petrochemicals production facilities located in the Bayport Loop area, and those facilities rely heavily upon rail transportation, particularly to move their products to market. Carr V.S. at ¶ 7; Granatelli V.S. at ¶ 8; Jenkins V.S. at 2. Further, these producers maintain significant fleets of special purpose hopper and tank cars to transport their products to their customers, and they often utilize those fleets of specialty cars for storage pending delivery to customers. Carr V.S. at ¶ 8; Granatelli V.S. at ¶ 8; Jenkins V.S. at 2-3. Such use of the producers' cars for pre-delivery storage reduces the need for capital investment in alternative storage silos, and any disruption in rail service causes corresponding disruptions of the business of the producers and their customers. Granatelli V.S. at ¶ 8.

In addition, producers seek to meet the inventory requirements of their customers by providing consistent, timely delivery of their products at a competitive transportation rate, and it is, therefore, of critical importance to the producers that they have access to efficient, reliable competitive rail service. Farmer V.S. at ¶ 9. However, the producers are currently served by only

one rail carrier -- UP,<sup>1</sup> and they have expressed an interest in obtaining competitive rail service from BNSF. They seek both more competitive rates as well as improved service.<sup>2</sup>

Concerning service, many of these producers (like numerous other shippers on the Gulf Coast) suffered significant delays and substantial economic damage and customer dissatisfaction (to the point of cancellation of orders and termination of contracts) during UP's service crisis in 1997 and 1998. Carr V.S. at ¶ 11; Granatelli V.S. at ¶ 16. With this project, the producers are seeking access to BNSF service so that, if there are any future service disruptions, they will have a service alternative available to them. *Ibid.* See also Jenkins V.S. at 3. Further, the new line will add infrastructure to the Houston area. Finally, BNSF has an extensive single-line service system which would offer shippers single-line service opportunities in the western two-thirds of the United States in addition to those now offered by UP. Carr V.S. at ¶ 11; Granatelli V.S. at ¶ 16.

In response to these needs, San Jacinto and BNSF have determined that it is logistically and economically feasible to construct and operate a rail line that would provide direct alternative competitive rail service to the producers. As described further below, the proposed line would

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<sup>1/</sup> UP currently serves the Bayport Loop area over a series of lines and tracks which generally form a "loop" and hence the name. UP acquired these lines and tracks (and access to the captive shippers located on the lines and tracks) when it acquired Southern Pacific Transportation Company in 1996, and it has since that time fought aggressively to preclude access by other carriers to Bayport Loop shippers over its lines. See, e.g., *Union Pacific Corp. et al. -- Control and Merger -- Southern Pacific Rail Corp. et al.*, Fin. Dkt. No. 32760 ("UP/SP") (Sub-No. 26) UP's Opposition to Condition Applications, Volume 1 (UP/SP-356) (filed Sept. 18, 1998).

<sup>2/</sup> In addition, as Robert W. Granatelli explains in his Verified Statement, the new line will enable Basell to "de-leverage" its only other large production facility in the United States located at West Lake Charles, LA. That facility, although served by UP, BNSF and The Kansas City Southern Railway Company ("KCS"), is effectively held captive by the captivity of the Bayport Loop Basell facility, and UP is able to dictate the rates and terms of service for both facilities as a result of its market power over the Bayport Loop facility. Granatelli V.S. at ¶ 12.

initially serve the Producer Limited Partners' production facilities located in the Loop area and may serve a number of other present and future facilities as well.

**C. *Description and Purpose of Proposed Line and Planned Operations***

The proposed line would be approximately 12.8 miles in total length. As shown on the map attached as Exhibit 2 to the Mann Verified Statement, the new line would connect with the former GH&H line at an existing siding (Graham Siding) near the southeast corner of Ellington Field, a commercial airport facility. The line would run approximately six miles through mostly undeveloped but largely industrially- or municipally-owned properties before crossing Red Bluff Road via a new grade separation and entering the Bayport Loop area. Mann V.S. at ¶ 11. Exchange tracks located at an existing yard, Bayport Rail Terminal, east of Red Bluff Road will be used to receive inbound trains and to stage outbound trains. Id. at ¶ 10. The line will be built on land either owned by San Jacinto or to which San Jacinto has or intends to secure access for the purpose of constructing the new line. Farmer V.S. at ¶ 10. To the extent possible, all properties required will be acquired by San Jacinto, and all construction will be performed by or on behalf of San Jacinto. Ibid. No residences or recreational lands will be necessary for the construction, and the line is to be located adjacent to existing utility, pipeline and railroad corridors where possible to avoid and minimize environmental and community impacts where possible.<sup>3</sup> Ibid.

Once it enters the Bayport Loop area, the line will proceed for an additional seven miles in and through the Bayport Industrial District and will terminate near the ATOFINA facility located

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<sup>3/</sup> As Exhibit 2 reflects, the Clear Lake residential community, which adjoins the current GH&H line and Ellington Field, is located approximately 1800 feet at the closest point to the southeast of the proposed line.

just east of State Highway 146.<sup>4</sup> Farmer V.S. at ¶ 11. The line will cross the lines of Bayport Rail Terminal, Inc.<sup>5</sup> (“Bayport Rail Terminal”) and UP at a number of locations as it proceeds in the Loop.<sup>6</sup> The line will also cross a number of other public roads and private access roads at grade. All such crossings will be designed in accordance with industry standards and practice and will be closely coordinated with Harris County and the Texas Department of Transportation. Mann V.S. at ¶ 16.

BNSF (or its designated operator), pursuant to contract with San Jacinto, will operate the line exclusively and will assume and bear all common carrier obligations for the line. Farmer V.S. at ¶ 12. BNSF itself and/or through its agent intends to offer common carrier and contract service to all shippers located in the Bayport Loop and adjoining areas that access the new line. Initially, service will be provided to facilities owned by ATOFINA, Basell, Equistar, and Lyondell. Ibid. There are a number of other facilities, such as those owned by LBC Petro United, Zeneca, Celanese

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<sup>4/</sup> The Port of Houston's new intermodal facility is not planned to be connected to the proposed line. In any event, the Port's public reports do not project a need for rail service until at least 2012, and its rail access plans are not dependent upon or related to this new line construction. Further, the new line will only extend as far to the east as the current UP line does, and it will therefore not expand or otherwise alter the rail infrastructure as it relates to the Port.

<sup>5/</sup> Bayport Rail Terminal, Inc. is a locally owned and operated rail enterprise unaffiliated with San Jacinto or BNSF.

<sup>6/</sup> San Jacinto and BNSF have secured permission from Bayport Rail Terminal to cross any Bayport Rail Terminal tracks necessary for the new line, and San Jacinto and BNSF intend to promptly engage in discussions with UP regarding proposed crossings of its lines. Should San Jacinto and BNSF be unsuccessful in reaching an agreement with UP concerning the terms and conditions for the crossings of UP track, San Jacinto and BNSF will seek authority to cross such track pursuant to 49 U.S.C. § 10901(d). See *The Burlington Northern and Santa Fe Railway Co. -- Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights*, Fin. Dkt. Nos. 33740 and 33740 (Sub-No. 1), at 5 (“an existing carrier may not thwart its competitor by refusing to allow its competitor to build across its tracks to serve shippers”) (June 22, 2001).

Corporation, BASF Corporation, and Bay Tank, which could also receive service from BNSF by connecting to the new line. Ibid.

As described in detail in the Mann Verified Statement, BNSF plans to serve the new line by running trains southward from its New South Yard in Houston via trackage rights over the former GH&H line to the turn-out point near Ellington Field where the new line would begin.<sup>7</sup> The addition of a train a day on average in each direction over the former GH&H line can readily be accommodated. Mann V.S. at ¶ 9. Upon traversing the new line for approximately six miles to Red Bluff Road, the BNSF trains will set out the inbound cars on the exchange tracks at Bayport Rail Terminal. Bayport Rail Terminal will then classify and block the traffic for delivery to BNSF's customers in the Loop. A switching locomotive will deliver the traffic to those customers and will pick up outbound traffic. The switcher will deliver the outbound traffic to Bayport Rail Terminal's yard where Bayport Rail Terminal will classify and pre-block the traffic before placing it on the exchange tracks. BNSF's locomotive will pick up that traffic and will return north with it over the former GH&H line via trackage rights to BNSF's rail network in Houston. Id. at ¶¶ 8-10.

The expected traffic over the line will vary, depending on the success BNSF has in marketing its competitive offerings. Currently, it is anticipated that BNSF will run on average one train of approximately 36 to 66 cars each way per day on the proposed line, with a total of approximately 13,000 to 23,000 loaded rail cars per year. Farmer V.S. at ¶ 13. Most of the shipments will consist of non-hazardous plastic pellets moved in covered hopper cars. The remainder will be chemicals

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<sup>7/</sup> As described in further detail in Section D, BNSF has the right to obtain trackage rights over the former GH&H line to reach the point of connection with the proposed line. Should BNSF be unsuccessful in reaching an agreement with UP on the terms of the trackage rights authorized by the Board, BNSF will seek the resolution of the parties' dispute by the Board. In either event, authority for the trackage rights will be sought through a notice of exemption.

traveling in tank cars, of which approximately 1500 to 7000 annually will contain hazardous materials, and, to a lesser extent, other miscellaneous inbound and outbound commodities. Ibid. The majority, if not all, of the cars involved will be private cars owned or leased by the shippers.

**D. *BNSF's Access to the Proposed Line***

As discussed, BNSF will access the proposed line via trackage rights over the former GH&H line between Houston and Galveston. BNSF's right to such trackage rights arises from the conditions imposed on the UP/SP merger. Specifically, the Board imposed the April 18, 1996 settlement agreement between UP/SP, BNSF and the Chemical Manufacturers Association ("CMA"), predecessor to the American Chemistry Council ("ACC"), as that agreement was modified by the Board, as a condition of the UP/SP merger.

Paragraph 13 of the settlement agreement with CMA (hereinafter referred to as the "CMA Agreement") provides that BNSF will be granted any trackage rights that may be necessary for BNSF to reach a build-in/build-out point. In its decision approving the UP/SP merger, the Board modified paragraph 13 of the CMA Agreement in a number of ways. As modified by the Board, paragraph 13 applies to any situation in which a shipper has a facility that, pre-merger, was solely served by UP but could have built out to a point on SP, and vice versa. The Board stated that:

The CMA agreement provides a post-merger procedure by which a CMA member can raise a claim that the merger deprived it of a build-in/build-out option. We require as a condition that this procedure be modified in two ways: first, by making this procedure applicable to all shippers; second, by removing the time limit to which this procedure is subject. These modifications will allow BNSF to replicate the competitive options now provided by the independent operations of UP and SP. We further clarify that a shipper invoking this procedure need not demonstrate economic feasibility; the only test of feasibility is whether the line is actually constructed. Any technical disputes with respect to the implementation of this build-in/build-out remedy may be resolved either by arbitration or by the Board.

*UP/SP*, Decision No. 44 at 146.

In a subsequent decision, the Board confirmed that the build-in/build-out condition would enable BNSF to reach a build-in/build-out point on a UP line which is parallel to a SP line (or vice versa) even though BNSF did not have trackage rights over the UP line. Specifically, the Board noted that:

CMA Paragraph 13 provides that BNSF will be granted any trackage rights that may be necessary for BNSF to reach the build-in/build-out point. . . . [A] build-in/build-out [can] run to a parallel line over which BNSF does not have trackage rights.

*UP/SP*, Decision No. 61 at 14 n. 35. *See also UP/SP*, Decision No. 88 (trackage rights ordered to enable BNSF to access build-out point over line that BNSF did not receive trackage rights on under the BNSF Settlement Agreement in order to serve Entergy Services, Inc.).

Paragraph 13 of the CMA Agreement, as modified by the Board, was designed to preserve competitive rail service for shippers which, prior to the UP/SP merger, received rail service only from UP or SP, but potentially could have received rail service from the other carrier by building out to that carrier. This is exactly the situation faced by Bayport Loop shippers. Therefore, under the CMA Agreement, as modified by the Board, BNSF will have access to the proposed line via trackage rights over UP's GH&H line. With this access, BNSF will be able to serve the Producer Limited Partners' facilities as well as all other present and future facilities that connect to the proposed new line.

#### **E. *Environmental Review***

Representatives of San Jacinto and BNSF have consulted with SEA on the environmental review process. By letter dated July 30, 2001, SEA granted San Jacinto and BNSF's request for a waiver of the requirement that they submit a six-month notice to SEA. San Jacinto and BNSF have also consulted with SEA concerning having the environmental analysis conducted by a third-party

consultant, and ICF Consulting ("ICF") has been appointed by SEA as the third-party consultant.<sup>8</sup> ICF has begun working on the project and has already conducted an initial site visit. Consistent with the desire of neighboring communities and local organizations, BNSF supports their request for the preparation of an Environmental Impact Statement to evaluate the potential environmental impacts of the project.

## DISCUSSION

### **A. THE PROPOSED CONSTRUCTION AND OPERATION ARE PRESUMPTIVELY IN THE PUBLIC INTEREST**

As a result of the liberalization of the "public convenience and necessity" standard by the ICC Termination Act of 1995, the Board has adopted a general presumption that construction projects will be approved. *See Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, 1 S.T.B. 75, 79 (1996); *accord Dakota, Minnesota & Eastern R.R. Corp. Construction into the Powder River Basin*, Fin. Dkt. No. 33407, at 17 (Dec. 10, 1998).

As the Board recently stated:

Finding that a shipper sustained or is likely to sustain injury from an abuse of market power by its present carrier is not a prerequisite for approval of a build-out. On the contrary, in enacting the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, Congress intended to facilitate rail construction by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds the project is inconsistent with the PC&N. Under this new standard, proposed rail construction projects are to be given the benefit of the doubt.

*The Burlington Northern and Santa Fe Railway Co. -- Construction and Operation Exemption -- Seadrift and Kamey, TX*, Fin. Dkt. No. 34003, at 4 (June 19, 2001) (citation omitted).<sup>9</sup>

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<sup>8/</sup> Under 49 C.F.R. § 1105.10(d), the use of a third-party consultant waives the reporting requirements that would otherwise apply under 49 C.F.R. pt. 1105.

<sup>9/</sup> Moreover, the Board has recently reaffirmed that neither "under the exemption criteria of section 10502 nor under the prior approval requirements of section 10901 is there a requirement of

**B. THE PROPOSED CONSTRUCTION AND OPERATION MEET THE § 10502 EXEMPTION CRITERIA FOR LINE CONSTRUCTIONS UNDER § 10901**

Construction and operation of a new rail line require prior Board approval pursuant to 49 U.S.C. § 10901. Under 49 U.S.C. § 10502(a), however, the Board must exempt such construction from the prior approval requirements of Section 10901 if it finds that: (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of the exemption provisions, as well as ICC, Board and court decisions, demonstrate that the Board should apply the exemption provision broadly, and that the proposed line to the Bayport Loop is the type of transaction for which the exemption provision was designed. *See, e.g., American Trucking Ass'ns v. ICC.*, 656 F.2d 1115, 1119 (5<sup>th</sup> Cir. 1981) (the ICC is charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards); H.R. Rep. No. 96-1430, at 105 (1980) (the ICC is charged with removing "as many as possible of the Commission's restrictions . . ."). In addition, approval of this line construction pursuant to exemption authority is consistent with the Board's practice on recent similar competitive build-out proposals. *See, e.g., The Burlington Northern and Santa Fe Railway Co. -- Construction and Operation Exemption -- Seadrift and Kamey, TX, supra; Illinois Central R.R. Co. -- Construction and Operation Exemption -- In East Baton Rouge Parish, LA, supra; Entergy Arkansas and Entergy Rail -- Construction and Operation Exemption -- White Bluff to Pine Bluff, AR*, Fin. Dkt. No. 33782 (May 4, 2000); *Ellis County Rural Rail Transportation*

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a showing of public need for the facilities proposed to be constructed." *Illinois Central R.R. Co. -- Construction and Operation Exemption -- In East Baton Rouge Parish, LA*, Fin. Dkt. No. 33877, at 2 (May 25, 2001).

*District -- Construction and Operation Exemption -- Ellis County, TX*, Fin. Dkt. No. 33731 (Feb. 15, 2000); *Southern Electric R.R. Co. -- Construction and Operation Exemption -- West Jefferson, AL*, Fin. Dkt. No. 33387 (July 16, 1997); *Hastings Industrial Link R.R. -- Construction and Operation Exemption -- Hastings, NE*, Fin. Dkt. No. 32984 (Dec. 10, 1996).

As explained in detail below, the proposed rail line construction and operation comply with the Section 10502 exemption criteria and accordingly should be exempted from the requirements of obtaining Board approval under Section 10901.<sup>10</sup>

**1. An Exemption Will Promote the Rail Transportation Policy**

Regulation of the construction and operation of this approximately 12.8 mile rail line is not necessary to carry out the Rail Transportation Policy expressed in Section 10101. Rather, granting an exemption (as opposed to subjecting the proposed project to burdensome regulation) will promote significant provisions of the Rail Transportation Policy and will not run counter to any of the Rail Transportation Policy's goals.

First, the granting an exemption for the construction of the proposed rail line is consistent with the mandate of Sections 10101(1), 10101(4), and 10101(5) that the Board ensure the

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<sup>10/</sup> The proposed line is in fact in many respects materially similar to the build-in line which UP (through its subsidiary, Missouri Pacific Railroad Company ("MP")) proposed to construct from MP's Baytown Branch to three chemical manufacturing facilities exclusively-served by SP near Mont Belvieu in Harris and Chambers Counties, TX. Over SP's objection that there were more efficient and less costly ways to provide the three shippers with competition, the proposed line was conditionally exempted by the Interstate Commerce Commission in June 1995. *Missouri Pacific R.R. Co. -- Construction and Operation Exemption -- Harris and Chambers Counties, TX*, Fin. Dkt. No. 32571 (June 30, 1995). In so doing, the Commission found that detailed scrutiny under 49 U.S.C. § 10901 was not necessary to carry out the Rail Transportation Policy and that regulation was not necessary to protect shippers from market abuse (particularly since the "impetus for the proposed construction and operation . . . [was] to increase the competitive alternatives.") *Id.* at 4. The Commission also refused to deny the exemption on the ground that MP failed to attempt to negotiate a grant of trackage rights from SP -- the Commission held that MP had no such obligation. *Id.* at 4-5. As the Board is aware, MP's proposed build-in project was terminated upon the execution of the UP/SP merger.

development and continuation of a sound rail transportation system with effective competition and coordination between rail carriers that will allow competition and the demand for service to establish reasonable rates and service terms. Specifically, the proposed line will increase the bargaining power of otherwise captive shippers and provide alternative rail service options to Bayport Loop shippers. Granatelli V.S. at ¶ 12 (the proposed line will enable Basell to “de-leverage” its West Lake Charles, LA facility). It will also enhance the domestic and international market opportunities for the shippers’ products. Carr V.S. at ¶ 4; Granatelli V.S. at ¶ 9. Conversely, the failure to grant the exemption would freeze the current price and service arrangements to Bayport Loop shippers and promote inefficiencies.

Second, consistent with Sections 10101(2) and 10101(7), an exemption will minimize the need for federal regulatory control over the rail transportation system and reduce regulatory barriers to entry. Specifically, an exemption here will promote these policies by minimizing the time and administrative expense associated with the construction and commencement of operations. Regulatory barriers to new capacity and infrastructure improvements in particular should be minimized where possible in order to promote and maintain stable economic growth in this sector of the economy.

The Board and its predecessor the ICC have repeatedly found that rail construction and operation projects promote the Rail Transportation Policy by allowing for competition and encouraging the provision of more efficient transportation service. *See, e.g., The Burlington Northern and Santa Fe Railway Co. -- Construction and Operation Exemption -- Seadrift and Kamey, TX, supra, at 4; Entergy Arkansas and Entergy Rail -- Construction and Operation Exemption -- White Bluff to Pine Bluff, AR, supra; Missouri Pacific R.R. Co. -- Construction and Operation Exemption -- Harris and Chambers Counties, TX, supra, at 4; Gateway Western Ry. Co.*

-- *Construction Exemption -- St. Clair County, IL, Gateway Western Ry. Co. -- Petition Under 49 U.S.C. 10901(d)*, Fin. Dkt. Nos. 32158 and 32158 (Sub-No. 1), at 10 (May 11, 1993) (noting that the Board has "made findings in a series of construction [exemption] cases that the rail transportation policy favors the construction of new rail lines"); accord *Burlington Northern R.R. Co. -- Construction and Operation Exemption -- Macon and Randolph Counties, MO*, 9 I.C.C. 2d 1161, 1166-1169 (1993), *aff'd sub nom. Missouri Mining, Inc. v. ICC*, 33 F.3d 980 (8<sup>th</sup> Cir. 1994).

Additionally, in today's competitive environment, the market adequately determines the value of a potential rail construction project. As a result, there is no need for regulatory oversight to determine if the proposed project is economically sound and meets a transportation need. Further, there is no need for regulatory review to protect an incumbent carrier from the effects of competition. See *Illinois Central R.R. Co. -- Construction and Operation Exemption -- In East Baton Rouge Parish, LA*, *supra*; *Missouri Pacific R.R. Co. -- Construction and Operation Exemption -- Harris and Chambers Counties, TX*, *supra*, at 4.

The proposed project is straightforward and simple. It involves a 12.8 mile build-in to Bayport Loop shippers -- many of whom strongly support the project.<sup>11</sup> Construction and operation of the line raise no concerns which might justify Board scrutiny under Section 10901. As with most construction and operation projects, an exemption from regulatory review (excepting environmental review and regulation) will advance a number of goals of the Rail Transportation Policy, including minimizing the need for federal regulatory control, ensuring the development and continuation of a sound rail transportation system, allowing competition and demand for service to establish

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<sup>11/</sup> Indeed, the four core producers have gone to the extraordinary and unprecedented measure of forming a partnership with BNSF to construct the new line.

transportation rates and service terms, and encouraging the efficient management of railroads. None of the goals of the Rail Transportation Policy will be hindered by the granting of this Petition.

In conclusion, formal and potentially protracted Board approval pursuant to Section 10901 is not necessary to carry out the goals of the Rail Transportation Policy. In fact, to require such approval by means other than exemption, with its attendant expense and risk of delay, will undermine the aims of the Rail Transportation Policy.

2. **The Transaction is Limited in Scope and Regulation is Not Needed to Protect Shippers from the Abuse of Market Power**

The second test for exemption is stated in the alternative -- either the transaction must be of limited scope or the Board must find that regulation of the transaction is not needed to protect shippers from the abuse of market power. Although required to satisfy just one of these alternatives, the proposed new line satisfies both.

First, the proposed construction is limited in scope. The entire rail line to be constructed and operated is approximately 13 miles in total length and approximately six to seven miles to the industrial area as the crow flies. In and around the Loop, the line is in close proximity to existing rail infrastructure. Under Board precedent applying Section 10502(a), a rail line of such length is -- essentially by definition -- limited in scope. *See The Burlington Northern and Santa Fe Railway Co. -- Construction and Operation Exemption -- Seadrift and Kamey, TX, supra* (7.5 miles); *Missouri Pacific R.R. Co. -- Construction and Operation Exemption -- Harris and Chambers Counties, TX, supra* (10.5 miles); *Burlington Northern R.R. Co. -- Construction and Operation Exemption -- Macon and Randolph Counties, MO, supra* (17 miles); *The Elk River R.R. -- Construction and Operation Exemption -- Clay and Karawha Counties, WV, Fin. Dkt. No. 31989* (May 28, 1992) (30 miles); *PSI R.R., Inc. -- Construction Exemption -- Gibson County, IN, Fin. Dk. No. 32010* (Feb. 24, 1992) (13 miles); *Southern Electric Generating Co. -- Petition for Exemption --*

*Construction of a Rail Line in Shelby County, AL*, Fin. Dkt. No. 31498 (Sept. 19, 1989) (7.5 miles); *Louisville & Jefferson County Riverport Auth. and CSX Transp., Inc. -- In Jefferson City, KY*, Fin. Dkt. No. 31136 (Dec. 22, 1987) (6.7 miles).

Second, the proposed line is designed to protect shippers from the abuse of market power, and therefore regulation of the construction and operation is not needed to protect shippers from the abuse of market power. Indeed, the very fact that a majority of the partnership seeking to construct the line is owned by shippers should dispel any notion that shipper protection from abuse of market power is warranted. The proposed line, when completed, will provide shippers located along the Bayport Loop with increased rail transportation options and thus will assist shippers in protecting themselves from market power abuses. *See Entergy Arkansas and Entergy Rail -- Construction and Operation Exemption -- White Bluff to Pine Bluff, AR, supra*, at 7 (“the proposed transaction will provide . . . an additional rail transportation option and thus will enable [the shipper] to realize the benefits of increased railroad competition”); *Southern Electric R.R. Co. -- Construction and Operation Exemption -- West Jefferson, AL, supra*; *Southern Gulf Ry. Co. -- Construction and Operation Exemption -- In Calcasieu Parish, LA*, Fin. Dkt. No. 32321, at 4 (Sept. 9, 1993) (construction and operation of a new rail line to serve a utility coal shipper held not to subject shippers to carrier market power abuses).

### **C. THE EXEMPTION SHOULD BE CONDITIONALLY GRANTED**

San Jacinto and BNSF request that the Board conditionally grant the requested exemption authority subject to completion of the environmental review process. San Jacinto and BNSF 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 exemption petition. As

stated above, a third-party consultant has been appointed by the SEA, and the environmental review is underway.

The conditional approval of the exemption with the effective date to coincide with the completion of the Board's environmental review is necessary for several reasons. For instance, Petitioners must finalize details relating to the engineering of the proposed project, procure equipment and materials for the proposed project, plan and arrange construction contracts, and work towards the completion of the environmental analysis and other related permitting requirements for the proposed project. Farmer V.S. at ¶ 14. Because each of these tasks involves substantial commitment and expenditure of resources by Petitioners, they must be confident that regulatory approval is obtainable before undertaking the tasks. In addition, conditional exemption will also provide BNSF with the certainty to plan for and commit to contractual arrangements with other shippers. Ibid.

A conditional approval of the exemption would also be in accord with the law and Board precedent. See *Illinois Commerce Comm'n v. ICC*, 848 F.2d 1246 (D.C. Cir. 1988); *The Burlington Northern and Santa Fe Railway Co. -- Construction and Operation Exemption -- Seadrift and Kamey, TX*, *supra*, at 3 (The Board has "consistently handled rail construction applications or exemption requests by first considering the transportation issues and later addressing the environmental issues"); *Entergy Arkansas and Entergy Rail -- Construction and Operation Exemption -- White Bluff to Pine Bluff, AR*, *supra*. The Board most recently reaffirmed its policy in this regard in December of last year. See *Great Salt Lake and Southern R.R., L.L.C. -- Construction and Operation -- In Tooele County, UT*, Fin. Dkt. No. 33824, at 5-6 (Dec. 15, 2000).

Accordingly, Petitioners respectfully request the Board to issue an order conditionally granting this Petition, subject to the issuance of a final Board decision after all environmental reviews have been completed.

### CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Board grant this Petition for Exemption to authorize San Jacinto to construct and BNSF to operate the approximately 12.8 mile rail line without the need of a full application pursuant to 49 U.S.C. § 10901 in order to provide the Producer Limited Partners' facilities as well as other present and future facilities that connect with the proposed line with competitive rail service. San Jacinto and BNSF also request that the Petition be conditionally granted subject to the completion of the environmental review process.

Respectfully submitted,

Richard E. Weicher  
Sarah Whitley Bailiff

The Burlington Northern  
and Santa Fe Railway Company  
2500 Lou Menk Drive  
Third Floor  
Fort Worth, Texas 76131-0039  
(817) 352-2354

Erika Z. Jones / als

Erika Z. Jones  
Robert M. Jenkins III  
Adrian L. Steel, Jr.  
Kathryn A. Kusske

Mayer, Brown & Platt  
1909 K Street, NW  
Washington, DC 20006  
(202) 263-3000

Attorneys for San Jacinto Rail Limited and  
The Burlington Northern and Santa Fe Railway Company

Date: August 30, 2001

Certificate of Service

I hereby certify that a copy of the foregoing has been served on the following by hand delivery or first-class mail this 30<sup>th</sup> day of August, 2001:

**By Hand Delivery**

J. Michael Hemmer, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004

Martin W. Bercovici, Esq.  
Keller and Heckman LLP  
1001 G Street, NW, Suite 500 West  
Washington, DC 20001

**By First-Class Mail:**

Mr. Jerry L. Martin  
Director, Rail Division  
Railroad Commission of Texas  
PO Box 12967  
Austin, TX 78711-2967

Mr. John W. Johnson, Chairman  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, TX 78701-2483

  
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Verified Statement  
of  
Kathryn M. Farmer

1. My name is Kathryn M. Farmer. I am General Director, Sales for Chemicals Products at The Burlington Northern and Santa Fe Railway Company ("BNSF"). My office address is 2650 Lou Menk Drive, Marketing Building, 3rd Floor, Fort Worth, Texas 76131.

2. I joined BNSF in 1990. I have held positions ranging from Corporation Management Trainee in Network Operations to various Finance and Revenue Management and Commodity and Account Management positions.

3. As General Director, Sales for Chemical Products at BNSF, I am responsible for the sales function for over \$350 million in transportation revenues in chemicals products, including plastics. I have functional responsibility for account management, for strategic plan development, and for market, economic and forecast analysis.

4. The purpose of this Verified Statement is to describe the new rail line which San Jacinto Rail Limited ("San Jacinto") proposes to construct and BNSF proposes to operate between petrochemical and plastics production facilities in the Bayport Industrial District ("Bayport Loop") southeast of Houston, TX and the former Galveston, Henderson and Houston Railroad ("GH&H") line between Galveston, TX and Houston TX. The point of connection on the former GH&H line (which is now owned by Union Pacific ("UP")) would be near the southeast corner of Ellington Field. BNSF will access the proposed line via trackage rights over the GH&H line pursuant to the build-in/build-out condition imposed by the Board on the UP/SP merger.

5. This statement will also generally describe BNSF's planned operations over the line once the approval of the Surface Transportation Board is received and the line has been constructed. A detailed description of those operations is provided in the Verified Statement of Harry P. Mann, Jr. submitted concurrently herewith.

#### Petitioners

6. San Jacinto is a Delaware limited partnership comprised of BNSF and affiliated entities of BNSF and four core producers at Bayport: ATOFINA Petrochemicals, Inc. (ATOFINA"); Basell USA Inc. ("Basell"); Equistar Chemicals, LP ("Equistar"); and Lyondell Chemical Company ("Lyondell") ("Producer Limited Partners"). BNSF owns or controls collectively a minority of interests in the partnership. BayRail, LLC, a wholly-owned subsidiary of BNSF, is the general partner of San Jacinto. The limited partners of San Jacinto are Basell Impact Holding Company; Bay Junction, Inc.; Equistar Bayport, LLC; Lyondell Bayport, LLC; and BNSF.

7. BNSF is a Class I rail carrier incorporated in Delaware and headquartered in Fort Worth, Texas.

#### Bayport Loop

8. The Bayport Loop -- an industrial area located in southeast Houston near Galveston Bay -- is the center of one of the nation's most important areas of chemicals and plastics production. Numerous domestic and international producers have large facilities located in the Bayport Loop area, and those production facilities rely heavily upon rail transportation to obtain the raw materials they need and to move their products to market. The Bayport Loop is currently served by only UP.

### Purpose and Need for Proposed Line

9. The purpose of the proposed line is to provide the captive Producer Limited Partners and, over time, other shippers that connect to the line with competitive rail service. The Producer Limited Partners seek to meet the inventory requirements of their customers by providing consistent, timely delivery of their products at a competitive transportation rate, and it is, therefore, of critical importance to these shippers that they have access to efficient, reliable competitive rail service. The proposed new line will provide that rail service. The line will also add capacity and infrastructure to the Houston area, will provide shippers with access to BNSF's extensive single line service, and will afford shippers flexibility and alternative routings in the event of future service disruptions. Construction of the proposed line is also consistent with BNSF's intent to expand the scope of its access to petrochemical and plastics facilities on the Gulf Coast as a part of its overall commitment to the Board and the public to provide a fully effective replacement for pre-existing UP-SP competitive conditions.

### Construction of the New Line

10. The proposed line would be approximately 12.8 miles in length. As shown on the map attached as Exhibit 2 to the Mann Verified Statement, the new line would connect with the former GH&H line at a point near the southeast corner of Ellington Field, a commercial airport facility. An existing siding (Graham Siding) will be used to minimize any potential disruption with existing rail traffic. The line would run approximately six miles through mostly undeveloped but largely industrially- or municipally-owned properties before crossing Red Bluff Road and entering the Bayport Loop area. Exchange track at Bayport Rail Terminal will be used for switching and classifying traffic. The line will be built on land either owned by San Jacinto

or to which San Jacinto has or intends to secure access for the purpose of constructing the new line. To the extent possible, all properties required will be acquired by San Jacinto, and all construction will be performed by or on behalf of San Jacinto. No residences or recreational lands will be necessary for the construction, and the line is to be located adjacent to existing utility, pipeline, and railroad corridors where possible to avoid and minimize environmental and community impacts.

11. Once it enters the Bayport Loop area, the line will proceed for an additional seven miles in and through the Bayport Industrial District and will terminate near the ATOFINA facility located just to the east of State Highway 146. The line will cross the lines of Bayport Rail Terminal and UP at a number of locations as it proceeds in the Loop.

#### Operation of the New Line

12. BNSF (or its designated operator), pursuant to contract with San Jacinto, will operate the line exclusively and will assume and bear all common carrier obligations for the line. BNSF itself and/or through its agent intends to offer common carrier and contract service to all shippers located in the Bayport Loop and adjoining areas that access the new line. Initially, service will be provided to facilities owned by ATOFINA, Basell, Equistar, and Lyondell. There are a number of other facilities, such as those owned by LBC Petro United, Zeneca, Celanese Corporation, BASF Corporation, and Bay Tank, which could also receive service from BNSF by connecting to the new line.

13. As described in detail in the Mann Verified Statement, BNSF plans to serve the new line by running trains southward from its yards in Houston via trackage rights over the former GH&H line to the turn-out point near Ellington Field where the new line would begin.

After providing service to the facilities in the Loop, BNSF trains will return north over the former GH&H line via trackage rights to BNSF's rail network in Houston. The expected traffic over the line will vary, depending on the success BNSF has in marketing its competitive service offerings. Currently, it is anticipated that BNSF will run on average one train of approximately 36 to 66 cars each way per day on the proposed line, with a total of approximately 13,000 to 23,000 loaded rail cars per year. Most of the shipments will consist of non-hazardous plastic pellets moved in covered hopper cars with the balance being chemicals moved in tank cars and to a lesser extent other miscellaneous inbound and outbound commodities.

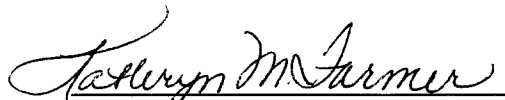
#### Need for Conditional Approval

14. San Jacinto and BNSF must finalize details relating to the engineering of the proposed project, procure equipment and materials for the proposed project, enter into construction contracts, and work towards the completion of the environmental analysis and other related permitting requirements for the proposed project. Each of these tasks involves the substantial commitment and expenditure of resources by San Jacinto and BNSF, and we need to be confident that regulatory approval is obtainable before undertaking these projects. In addition, a conditional exemption will also provide BNSF with the certainty necessary to plan for and commit to contractual arrangements with other shippers. Accordingly, San Jacinto and BNSF need the Board to issue an order conditionally granting their Petition for Exemption, subject to the issuance of a final Board decision after all environmental reviews have been completed.

**VERIFICATION**

I, Kathryn M. Farmer, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on August 28, 2001.

  
Kathryn M. Farmer



**Verified Statement  
of  
Harry P. Mann, Jr.**

1. My name is Harry P. Mann, Jr. I am Assistant Director, Terminal Planning and Operations Analysis, in the Service Design and Performance Department of The Burlington Northern and Santa Fe Railway Company ("BNSF"). My office address is 2600 Lou Menk Drive, 1<sup>st</sup> Floor, Fort Worth, Texas 76131.

2. I have been employed by BNSF since 1994 and have held positions in the Network Operations Center as a Dispatcher, at the BNSF yard at Temple, Texas, as a Terminal Operations Officer (Trainmaster), and as an analyst in the Strategic Studies group of the Finance Department. As the Assistant Director, Terminal Planning and Operations Analysis, I am responsible for rail terminal and rail line capital planning analysis.

3. The purpose of this Verified Statement is to describe the planned operations on the new rail line that San Jacinto Rail Limited ("San Jacinto") proposes to construct to serve the Bayport Industrial District (the "Bayport Loop") southeast of Houston, Texas. Attached as Exhibit 1 is an overview map of the Houston-Galveston area showing the general project location. As shown on the map attached as Exhibit 2, the line will connect on the west with the Galveston Subdivision line of the Union Pacific Railroad ("UP") that runs between Houston and Galveston (the former GH&H line). The new line will run 12.8 miles in a northeasterly direction to and through the Bayport Loop.

4. BNSF will access the new line from BNSF's New South Yard in Houston over a three-mile segment of UP's Glidden Subdivision line between T&NO Junction (Tower 81) and GH&H Junction (Tower 30), where it connects to the former GH&H line. BNSF will seek the necessary authority to operate over these UP lines to reach the connection point, at Graham

Siding approximately MP 16 on the former GH&H line, pursuant to the build-in/build-out condition imposed in the UP/SP merger proceeding. Attached as Exhibit 3 is a map showing the route from BNSF's New South Yard over UP's lines to Graham Siding and into the Bayport Loop over the proposed line.

5. BNSF expects initially to serve five separate shipper facilities in the Bayport Loop – two Equistar facilities, a Basell facility, a Lyondell facility, and an ATOFINA facility. Attached as Exhibit 4 is a map showing the location of those facilities in the Bayport Loop, as well as the locations of other shipper facilities in the area. We estimate that BNSF annually will haul between 13,000 and, over time, 23,000 loaded rail cars per year out of the Bayport Loop, and return a similar number of empties. This equates to an average of two trains per day – one inbound and one outbound – with approximately 36 to 66 cars per train.

6. A majority of the traffic will be non-hazardous plastic pellets moving in covered hopper cars. Aside from relatively infrequent inbound miscellaneous commodities, most of the remaining traffic will be chemicals traveling in tank cars. We estimate that between 1,500 and, over time, 7,000 of the tank cars shipped annually will contain hazardous materials. Most, if not all, of the cars involved will be private cars owned or leased by the shippers.

7. BNSF's New South Yard will be the facility where BNSF both (a) gathers empties (and any loaded cars) into a daily train destined for the Bayport Loop and (b) switches loaded blocks of cars delivered by a daily train from the complex into long-haul trains destined to receivers around the country. New South Yard is a double-ended switching yard that operates 24 hours per day, seven days per week. It has a peak capacity of approximately 800 cars.

8. As shown on Exhibit 3, New South Yard is immediately adjacent to the intersection (T&NO Junction or Tower 81) of BNSF's north-south Mykawa Subdivision line

between Houston and Alvin, Texas, and UP's east-west line Glidden Subdivision line between Houston and Rosenberg, Texas. BNSF currently operates over the UP line on a daily basis to transfer cars from New South Yard east, across T&NO Junction and GH&H Junction, to the Port Terminal Railroad Association ("PTRA") at Pasadena Yard and back. The daily BNSF train carrying empties (and any loads) from New South Yard destined for the Bayport Loop will take the same route as far as GH&H Junction, where the train will move onto the former GH&H line via a connecting track that is already in place. From there, it will move to the existing turnout onto Graham Siding. The daily BNSF train carrying blocks of loaded cars from the Bayport Loop to New South Yard will follow the same route in reverse over UP's lines.

9. Both the Glidden Subdivision line and the former GH&H line are dispatched by UP out of its Spring, Texas dispatching office, which is jointly operated with BNSF. The addition of a train a day on average in each direction over the line segments between Tower 81 and Graham Siding can readily be accommodated.

10. From Graham Siding, the daily inbound BNSF train will move via a new turnout onto the proposed line and directly to exchange tracks that will be located at an existing yard, Bayport Rail Terminal, which is east of Red Bluff Road and west of the Bayport Loop. The exchange tracks will serve both to receive the daily inbound BNSF train and to stage the daily outbound train. The BNSF locomotives that bring in the inbound empties will also take out the outbound loads.

11. Between Graham Siding and the exchange tracks, there will be no traffic on the new line other than the average two daily inbound and outbound trains. The line will travel six miles through largely undeveloped industrially- or municipally-owned land. It will at this point cross only lightly used private access roads, except for its crossing of Red Bluff Road, which will

be entirely grade separated. (Space Center Boulevard is planned for extension, and grade crossing plans for the new extension, when constructed, will be closely coordinated with Harris County and the Texas Department of Transportation.)

12. Bayport Rail Terminal is locally owned and operated rail enterprise unaffiliated with San Jacinto or BNSF. It will be expanded to provide pre-blocking and yard switching services in support of the planned switching operations in the Bayport Loop. Bayport Rail Terminal has a current peak capacity of approximately 600 cars, and can be expanded to a projected peak capacity of 1500 cars.

13. BNSF and Bayport Rail Terminal have agreed on terms for switching outbound cars (delivered from customer facilities in the Bayport Loop to Bayport Rail Terminal by a switch crew and locomotive) into blocks and delivering those blocks to the exchange tracks for consolidation into the daily outbound train. Bayport Rail Terminal will also take inbound cars from the exchange tracks and switch them into customer groups for delivery and spotting at customer facilities by switch crews and locomotives. Bayport Rail Terminal is an experienced terminal operator with a current work force of over 70 personnel at both the Bayport Rail Terminal and the Deer Park Rail Terminal on the Houston Ship Channel. Bayport Rail Terminal's FRA-certified crews are fully trained in safety, hazmat, first aid, and railroad operating rules. Bayport Rail Terminal currently provides rail car storage, rail car switching, pre-trip car inspections, car repair, pre-blocking, inbound staging, outbound blocking, initial brake tests, car cleaning services, intra plant switching and transloading services to several of the shippers in the Bayport Loop and has developed an excellent working relationship with these customers.

14. BNSF expects that one industry roadswitcher will be sufficient to provide service to new customers in the Bayport Loop. In the event that business grows to the point that a second switch job is required, it can readily be added. It is currently planned that the switch crew and locomotives will be based at Bayport Rail Terminal. From there, the crew will deliver and spot cuts of empty cars to customers in the Loop and pick up loaded cars for delivery back to Bayport Rail Terminal.<sup>1</sup>

15. UP currently serves its customers in the Bayport Loop using switch crews and locomotives. There is no signal system on UP's line in the Bayport Loop, nor is there any need for one, since UP's switchers move at very low speeds and can safely operate under "restricted speed" rules that provide for visual confirmation that the track to be occupied is clear and that mandate spacing at the restricted speeds that gives an ample margin of safety. The use of handheld radios provides a further margin of safety by permitting instant communication between members of the same crew or between crews. The planned roadswitcher will operate within the Bayport Loop complex using the same "restricted speed" rules.

16. The proposed line will cross three public streets in the Bayport Loop at grade, Bay Area Boulevard, Port Road, and Old Highway 146 (South Port Road). (UP crosses Bay Area Boulevard and Port Road at grade today.) The new line will be grade-separated where it crosses State Highway 146, but it will cross an on-ramp and an off-ramp for that highway at grade, just as UP does today. Grade crossing plans for these at-grade crossings will meet

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<sup>1</sup> Although BNSF is prepared to provide the industry switching services beyond the exchange tracks and around the loop area, it is possible that third party switching services by a qualified operator may be arranged consistent with the operating plans set forth here. Depending on the nature of those arrangements, any required approvals for trackage rights or other necessary approvals will be pursued.

industry standards and practice and will be closely coordinated with Harris County and the Texas Department of Transportation.

17. Insofar as the proposed switching operations may occur in the same sector of the Bayport Loop at the same time as UP's, there will be a need to closely coordinate those operations with their customers to avoid any conflict. This is true not only because those customers' facilities have not historically accommodated two railroads switching the same facility at the same time, but also because the proposed line will cross UP's track in the Bayport Loop at a number of locations. The necessary coordination is the kind of coordination that railroads operating in a common terminal area should be able to work out cooperatively. Their customers demand it, and they have every right to expect it. In this case, there is ample room for agreement on different schedules for service to different customers at different times of the day to avoid material conflict between the carriers' switching operations.

**VERIFICATION**

I, Harry P. Mann, Jr., verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

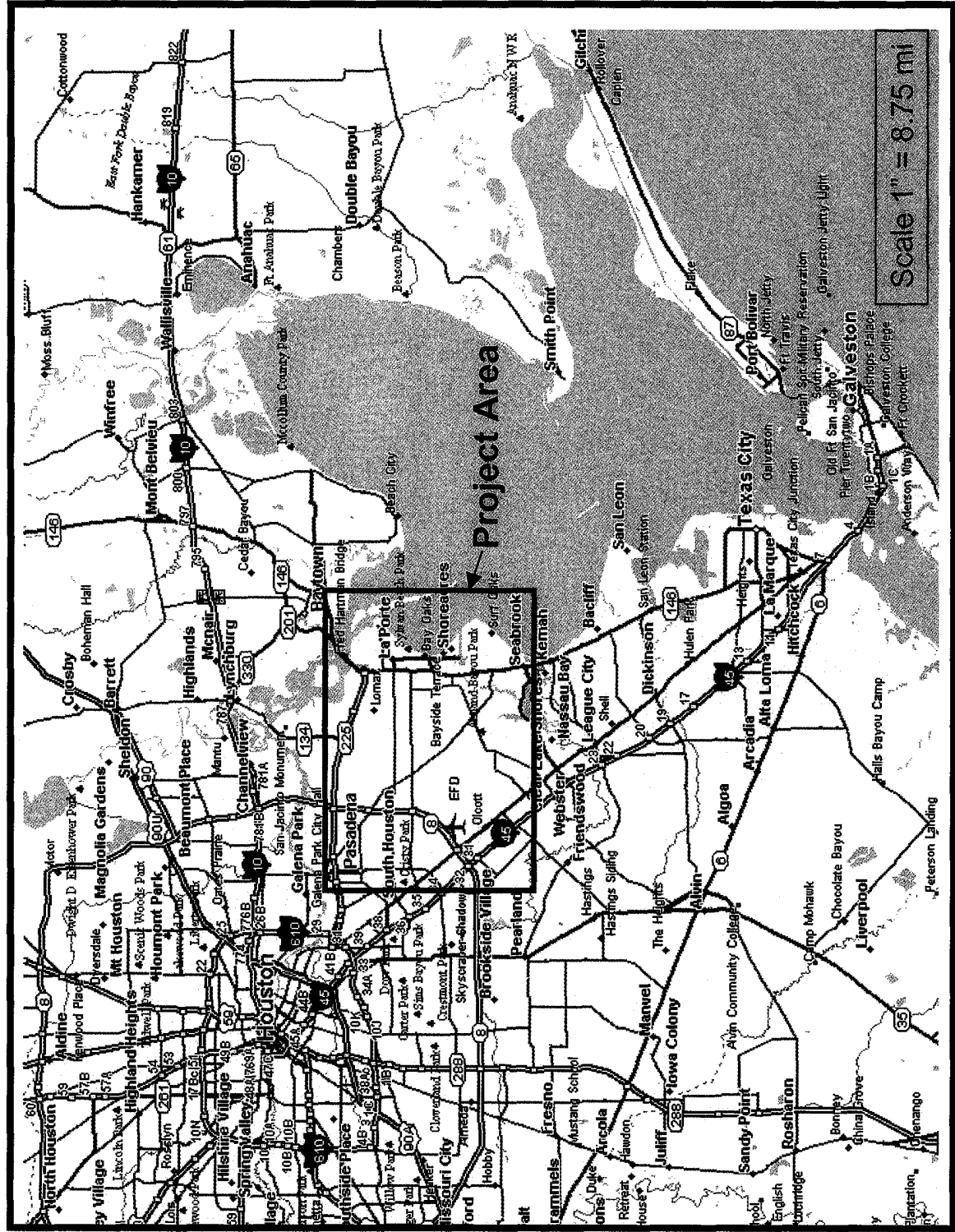
Executed on August 24, 2001.



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Harry P. Mann, Jr.

# GENERAL PROJECT LOCATION

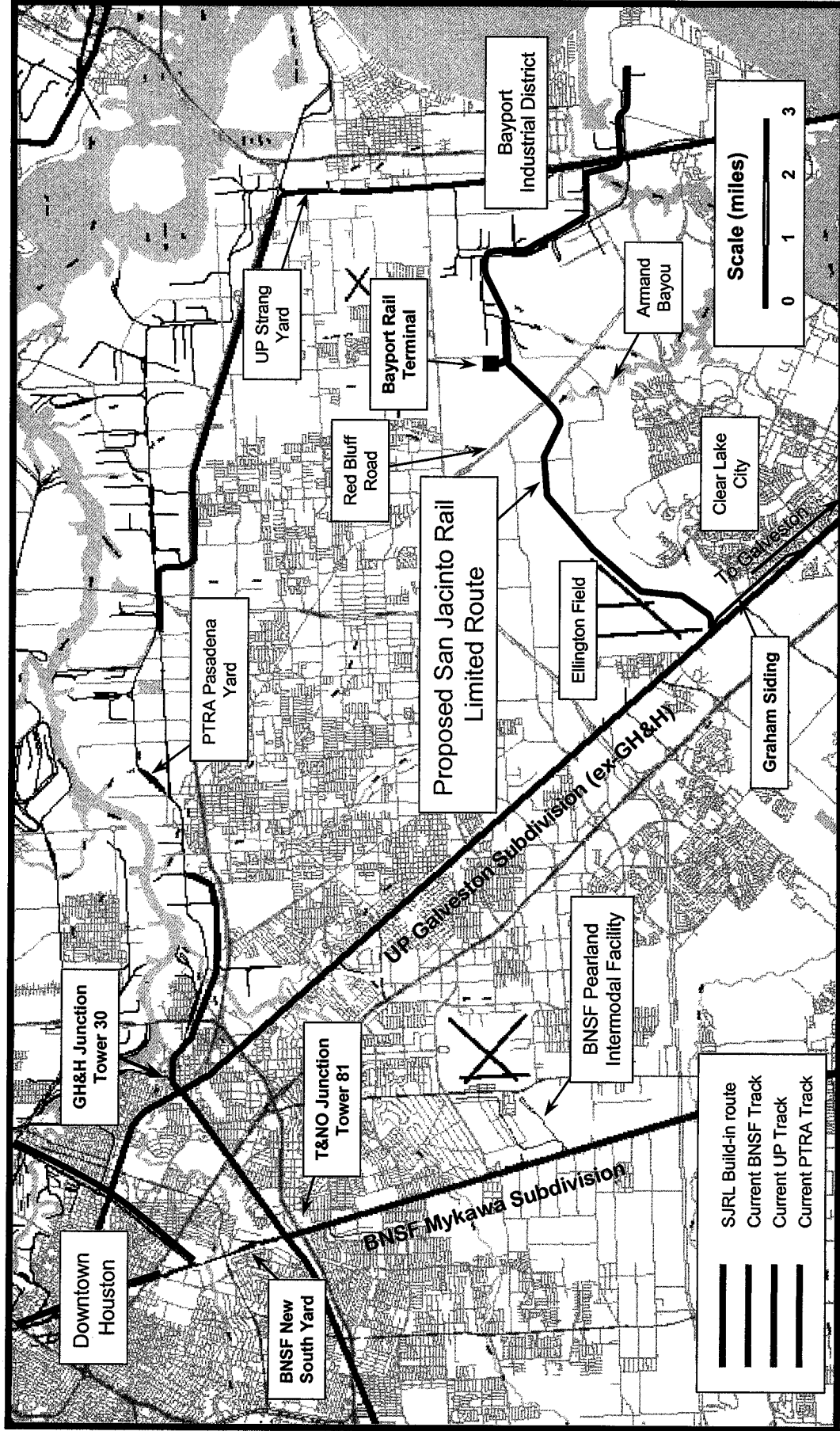


# BAYPORT LOOP INDUSTRIAL BUILD-IN

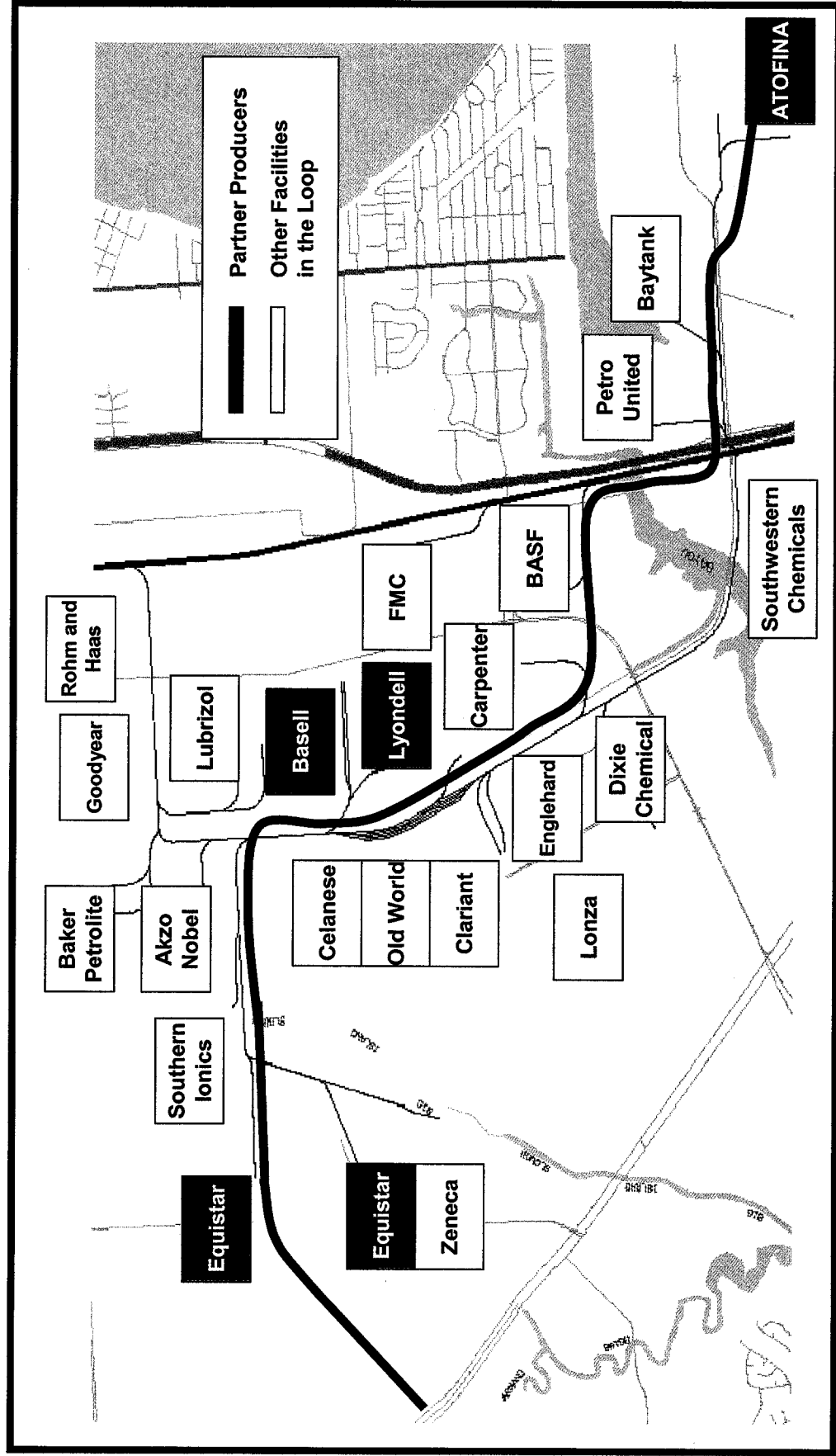


Source: Dec 2000 - Feb 2001 aerial photography from Aerial Viewpoint, Houston, TX

# HOUSTON AREA LINES



# BAYPORT LOOP SHIPPER FACILITIES





**ATOFINA Petrochemicals, Inc.'s Verified Statement**

1. My name is Charles R. Carr and I am employed by ATOFINA Petrochemicals, Inc. (ATOFINA) as Manager, Logistics and Distribution. ATOFINA's corporate office is located at 15710 JFK Blvd, Houston, Texas 77032.
2. I have been employed by ATOFINA (formerly Fina Oil and Chemical Company) since 1985. During this sixteen (16) year period, I have held increasingly responsible positions in manufacturing, business planning, purchasing, and logistics.
3. I am the Manager of ATOFINA's Logistics Department, which includes all transportation activities associated with Products produced at ATOFINA's four (4) U.S. petrochemical plants. The Logistics Department handles all negotiations for product transportation services and monitors the daily operation of the company's distribution network. I am directly responsible for ATOFINA's commercial activities associated with the Burlington Northern Santa Fe's (BNSF) proposed build-in to our Bayport, Texas manufacturing facility, a polyethylene plant.
4. The purpose of this Verified Statement is to describe ATOFINA's polyethylene plant at Bayport, Texas and ATOFINA's need to secure competitive two-carrier rail service. Implementing two-carrier rail service will give ATOFINA's polyethylene plant the ability to better compete in U.S. and international (Mexico and Canada) markets.

**ATOFINA Petrochemicals, Inc.**

5. ATOFINA is an indirectly and wholly owned U.S. subsidiary of TotalFinaElf. ATOFINA owns and operates world-scale petrochemical facilities in the U.S. Gulf

Coast. ATOFINA produces plastic resins (polypropylene, polyethylene, and polystyrene) as well as base chemicals, i.e., styrene, ethylene, propylene and aromatic solvents. The plastic resins are utilized by many other companies, domestic and international, to produce multitudes of products utilized by consumers and industry, such as packaging, containers, film, pipe, medical supplies, carpet, toys, etc.

6. ATOFINA's U.S business model is to have low cost, single site, world-scale production facilities. This can be seen at its production facilities for polypropylene (La Porte, Texas), polystyrene (Carville, Louisiana) and styrene monomer (Carville, Louisiana) which, if not the largest, are among the largest single production sites for these products in the world.

#### **ATOFINA's Bayport Facility**

7. ATOFINA's Bayport, Texas polyethylene plant has a production capacity of approximately 900 million pounds per year of polyethylene plastic resin. The facility is located in the greater Houston area, in the Bayport industrial complex. The majority of polyethylene resin produced at this facility is shipped via rail to various customers located near major population centers in the Northeast, Southeast, Midwest, and Western regions of the United States. Also, feedstocks, catalysts and materials utilized by the facility in production are received via rail.
8. ATOFINA relies on rail transportation to ship in excess of 90% of its polyethylene production to its customers. Only one rail carrier serves ATOFINA's Bayport facility -- the Union Pacific Railroad ("UP"). UP owns the only rail tracks into and

out of ATOFINA's polyethylene plant and the Bayport industrial area. As the majority of ATOFINA's polyethylene customers require delivery by rail car, ATOFINA maintains a significant fleet of special purpose rail cars (Hopper Cars) to transport the polyethylene plastic resins to its customers.

#### **Bayport, Texas Facility History**

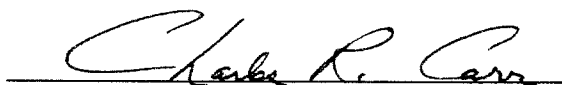
9. ATOFINA purchased the Bayport polyethylene production facility in August 1992 from Hoechst Celanese Corporation. Since that time ATOFINA has doubled the production capacity of the plant and continually upgrades it into a first class facility. In January 2001, ATOFINA announced that it has scaled up its metallocene catalyst technology on what is considered one of the world's largest slurry loop reactors, located at the Bayport polyethylene facility.
10. Prior to 1997, rail service to ATOFINA's Bayport plant was solely by the Southern Pacific Railroad (SP). With the UP/SP merger, the UP now serves the facility. The Bayport area remains one of the few Houston industrial areas without competitive rail service. The build-in by BNSF will allow the ATOFINA's Bayport facility to have competitive rail service.

#### **Need For Two-Carrier Service**

11. The new rail line will provide ATOFINA (and others in the Bayport area) with two-carrier pricing and service competition. This is necessary in order for ATOFINA's polyethylene facility to improve service to its customers, and to improve its competitive position in the market. The new rail line will also provide ATOFINA

with a service alternative in the event there are any future service disruptions caused by strike, natural disaster or other circumstances. An alternative rail line would have alleviated the damage experienced by the company as a result of the UP's service disruption following implementation of the UP/SP merger in 1997 and 1998. BNSF also has extensive single line service to many of ATOFINA's customers in the western and central parts of the United States.

I hereby affirm on penalty of perjury that the foregoing is true and correct based on my knowledge and information.

A handwritten signature in cursive script, reading "Charles R. Carr", is written over a horizontal line.

Charles R. Carr

August 22, 2001



Verified Statement Of Robert W. Granatelli on Behalf of Basell USA Inc.

1. My name is Robert W. Granatelli. Basell USA Inc. ("Basell") employs me as its Supply Manager -- Fleet/Transportation Services. My office is located at Basell's headquarters in Three Little Falls Center, 2801 Centerville Road, Wilmington, Delaware 19808.
2. My educational background includes a Bachelor of Science in Transportation (1969) and a Masters of Science in Transportation (1976). I received both degrees from the University of Alabama.
3. I joined a predecessor to Basell in 1988. Prior to my employment with Basell, I worked for the International Paper Company as its Manager of Rail Pricing for six years and then served as its Manager, Transportation Services for one year. Since my employment with International Paper, continuing through my employment at Basell, I have held positions with increasing responsibility in transportation and logistics, including rates and service administration for rail and truck, import/export and purchasing of terminal services.
4. My current responsibilities as Manager, Transportation Services at Basell include negotiation, implementation and oversight of all domestic and international transportation agreements relating to Basell's North American distribution operations. I am also responsible for monitoring and analyzing transportation developments and strategies and for the implementation of those strategies to maximize the service and price options for the distribution of Basell's products. To fulfill these responsibilities, I must track and interpret market conditions and rules and regulations relevant to Basell's transportation needs.
5. Basell is a participant in a project aimed at bringing competitive rail service to Basell's production facility located on the "Bayport Loop" southeast of Houston, Texas. I have been and

remain, on behalf of Basell, directly responsible for all commercial activities related to the construction of a new rail line that would bring competitive access to Basell's Bayport plant and to other producers on the Bayport Loop.

6. Basell submits this Verified Statement to describe Basell's production facility at Bayport, Texas and to demonstrate its need for competitive rail service to that facility. This statement is also submitted for the purpose of demonstrating how competitive access at Basell's Bayport plant will de-leverage its only other large production facility in the United States, which is located in West Lake Charles, Louisiana.

Basell USA Inc.

7. Basell was created on October 1, 2000, as part of a 50-50 joint venture of BASF AG and the Royal Dutch/Shell Group of Companies. The joint venture was formed when Basell's predecessor, Montell USA Inc., along with the other Montell companies, was contributed to a new group of companies known as Basell Polyolefins. The other two entities contributed to the venture were Targor, BASF's polypropylene business, and Elenac, a manufacturer of polyethylene that had already been owned 50-50 by BASF AG and the Royal Dutch/Shell Group of Companies. As a consequence of this merger, the names of Montell North America Inc. and Montell USA Inc. were changed to Basell North America Inc. and Basell USA Inc. respectively. Basell is the largest producer of polypropylene plastic resin in the United States and its primary production facilities are located at the rail station at Bayport, Texas ("Bayport"), which is solely served by the UP, and the rail station at West Lake Charles, Louisiana ("West Lake Charles"), which is served by the UP, the BNSF and the KCS.

8. Basell ships virtually all (approximately 98%) of its product by rail and maintains a fleet of approximately four thousand three hundred (4,300) owned or leased specialty railcars

dedicated solely to the storage and transport of plastic resin. As Basell manufactures plastic resin, the resin is immediately loaded into these specialty railcars for storage and ultimately for shipment to a customer. In fact, Basell's plants are designed to utilize railcars in this fashion because doing so reduces the capital investment required for proper storage of Basell's various grades of our products, which may not be co-mingled and which must be kept free of contamination. The alternative would be costly construction of multiple silos capable of meeting the high product integrity standards. Moreover, the vast majority of plastic resin consumers are set up to input resin directly from a railcar into their operations and therefore prefer, if not demand, to receive their delivery by railcar. Those shipments not made by rail are primarily emergency bulk-truck shipments required due to a failure in rail delivery or a delay in the production process. Notably, approximately four (4) bulk-trucks are required to move the same amount of resin contained in a single railcar.

9. Simply put, Basell is dependent upon rail service. Because of this dependence, Basell has a vital interest and concern in rail transportation service options and in fostering competitive rail access that will bring much needed improvements to the cost and quality of available service. Indeed, Basell's viability in increasingly competitive world and domestic markets, particularly in the polypropylene arena, depends upon such improvements.

### Basell's Bayport Plant

10. Basell's Bayport Plant is located approximately 20 to 25 miles southeast of Houston, Texas in an area known as the "Bayport Loop". Basell's Bayport plant produces in excess of one (1) billion pounds of plastics a year, accounting for a significant portion of Basell's plastic resin production. The Bayport plant, like Basell's West Lake Charles plant (Basell's largest production facility in North America), is, as described above, dependent upon rail service for the storage of its output and the delivery of that output to customers. The plastics produced at Bayport are shipped to Basell's customers located throughout the United States, Canada and Mexico or are shipped to other Basell facilities in the United States and Canada for further processing. Additionally, Basell's Bayport facility receives certain chemicals by rail.

11. Unfortunately, Bayport is a captive rail facility -- solely served by the Union Pacific Railroad (the "UP") -- and the cost and quality of rail service at this plant is a grave concern to Basell because it is not in line with that of a plants in competitively-served rail markets. Also of great concern is the leverage over Basell's West Lake Charles plant resulting from the captivity of Bayport. The only mechanism, albeit a weak one, at Basell's disposal to temper the monopoly power wielded by the UP at Bayport is to offer the West Lake Charles traffic to the UP.

### De-Leveraging Bayport

12. Because of the leverage held by the UP, the very same cost and quality concerns exist at Basell's largest production facility in North America -- West Lake Charles. In effect, the captivity of Bayport translates into captivity of West Lake Charles, meaning both Basell production facilities in the United States are subject to monopoly rail service. This leveraging power was described in the testimony of Larry D. Ruple, a former Southern Pacific marketing manager, submitted on behalf of The Society of the Plastics Industry, Inc., to the Surface Transportation Board in the UP/Southern Pacific merger proceeding. *See*, SPI-11, STB Finance Docket No. 32760, Verified Statement of Larry D. Ruple at pages 8-10 (March 29, 1996).

### The New Line Into the Bayport Loop

13. After extensive study, The Burlington Northern and Santa Fe Railway Company (the "BNSF") determined that that a build-in to the Bayport Loop from its access over the old GH&H line would be economically and physically feasible. We understand that UP had studied a similar build-in prior to the UP/SP merger. The build-in now proposed implements provisions of the Chemical Manufacturers Agreement (the "CMA Agreement") signed by both the UP and the BNSF. The terms of the CMA Agreement, expanded by the Board, were imposed as conditions of the UP/SP merger approval. Most importantly, however, is the fact that the build-in will afford Basell's Bayport facility access to two rail carriers and will foster much needed competition between the BNSF and the UP.

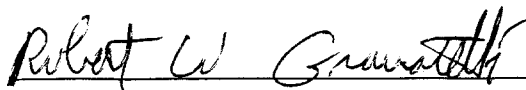
14. In light of the BNSF's determination that it is economically and physically feasible to construct a rail line that would provide direct alternative competitive rail service to the Bayport Loop, Basell, Lyondell Chemical Company, Equistar Chemicals, LP, and ATOFINA Petrochemicals, Inc. have now requested the BNSF to provide service through such a build-in.

### Need For Competitive Rail Service

15. In order for Basell's Bayport plant to remain a viable, competitive production location, improvements in service and competitive rates must be realized. Construction of the new line will provide the competitive alternative required to bring about such changes for Basell and for the other now-captive producers on the Bayport Loop. Just as important is the fact that competitive rail access at Bayport will de-leverage Basell's other production facility in West Lake Charles. Thus, a second line bringing rail competition to Bayport will enable Basell to improve service to its customers and improve its competitive position in its markets from both of its major production facilities in the U.S.

16. The new rail line will constitute a substantial enhancement to the Bayport area rail infrastructure. In addition to establishing a separate route into and out of the area, Basell will be able to take full advantage of BNSF's route system, including direct service to customers local on BNSF and BNSF's yards for storage of our loaded cars. Finally, Basell suffered significantly during UP's service meltdown in 1997 and 1998. The new line will provide Basell with a service alternative if there are any future service disruptions, whether they may be caused by poor management, strikes, or natural disasters.

I hereby affirm on penalty of perjury that the foregoing is true based on my knowledge and information.

A handwritten signature in black ink, reading "Robert W. Granatelli", written over a horizontal line.

Robert W. Granatelli

August 10, 2001



**Verified Statement  
of  
Larry T. Jenkins  
on Behalf of Equistar Chemicals, LP  
and  
Lyondell Chemical Company**

My name is Larry T. Jenkins. I serve as Manager, Global Rail Transportation Strategy, of Equistar Chemicals, LP ("Equistar") and Lyondell Chemical Company ("Lyondell"). My office address is One Houston Center, Suite 1600, 1221 McKinney Street, Houston, Texas, 77010.

I have served in transportation logistics management functions with Equistar and Lyondell and their predecessor companies for over 32 years. Throughout the course of my career, I have had increasing responsibility for the distribution of petrochemical products, including transportation planning and management for all modes of shipment, and rate negotiation. My current responsibilities entail planning for the rail transportation services for Lyondell and Equistar, on a world-wide basis.

**Equistar Chemicals, LP**

Equistar is a joint venture formed by Lyondell, Millennium Chemicals, Inc. and Occidental Petroleum Corporation. Equistar has more than \$6 billion in assets, and is one of the largest producers of ethylene, propylene and polyethylene in the world. Equistar operates 16 manufacturing facilities in the United States

**Lyondell Chemical Company**

Lyondell, a publicly traded company, is a global manufacturer and marketer of basic chemicals and polymers. Lyondell is the leading producer of propylene oxide, and is among the

leaders in production of propylene glycol, toluene diisocyanate, and styrene; and through a joint venture with CITGO Petroleum Corporation, Lyondell operates a refinery that is a leader in the production of clean fuels. Lyondell has operations in fourteen countries throughout the world, including three production facilities in the United States.<sup>1</sup>

#### **Equistar and Lyondell Bayport Facilities**

Equistar and Lyondell together operate three production facilities in the area known as Bayport, Texas,<sup>2</sup> with a combined rated production capacity of 6.3 billion pounds. The Lyondell Bayport facility produces five major products, namely propylene oxide, tertiary butyl alcohol, propylene glycol, isobutylene and propylene glycol ether. Equistar produces polypropylene and low density polyethylene; and in a separate Bayport plant, Equistar produces ethylene oxide, ethylene glycol and ethylene oxide derivatives.

As a producer of basic chemicals and plastics, Equistar and Lyondell are heavily dependent upon rail transportation service. Basic chemicals, in contrast with specialty chemicals, customarily moved in bulk, by either rail, water or pipeline transportation modes. The choice of mode is dependent upon quantity and customer location, the latter entailing whether the customer is served by pipeline or has access to a water terminal. Rail is the mode of necessity for those chemical products where the customer either is not served by water or pipeline, or does not receive product in sufficient quantities to make one of those modes of transportation practical and economical. Plastics resins move almost exclusively in bulk, by rail. Over the last one-half century the plastics industry literally has developed around the rail transportation network.

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<sup>1</sup> For more information concerning Lyondell, see the website at [www.lyondell.com](http://www.lyondell.com).

**Equistar and Lyondell Support the Exemption Application of BNSF and San Jacinto Rail Limited**

The Bayport area receives rail transportation exclusively from the Union Pacific Railroad. The UP obtained rights to serve Bayport through its merger with Southern Pacific. For a substantial period of time, Equistar, Lyondell and their predecessors have sought competitive rail service at Bayport, as well as at our other locations which do not enjoy competitive rail service. Equistar and Lyondell are continuing to explore opportunities to bring competitive rail service to those other production facilities which are sole-served.

Equistar and Lyondell have realized, and the Board has recognized, the substantial benefits of competitive rail service. Not only does competitive service provide for rate discipline, but also carriers which are in a competitive position strive for a higher quality service, with service standards that can be both set and enforced contractually. Considering that Equistar and Lyondell own the hopper and tank cars utilized in the movement of the plastics and chemicals produced at Bayport, rail transit times, from release of the cars for pickup to return of the empty cars, are critical in fleet management. Moreover, consistent and reliable transit schedules are essential to efficient production scheduling, order processing and service to Equistar and Lyondell's customers. Finally, considering that the United States transportation network is dominated by two carriers in the East and West, having dual service offers a significant measure of protection should service degradation be experienced by one railroad, whether due to natural disaster or otherwise.

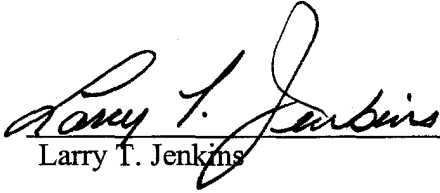
For the reasons set forth in this Verified Statement, Equistar Chemicals, LP, and Lyondell Chemical Company support the build-in proposal of the Burlington Northern and Santa Fe

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<sup>2</sup> Bayport also is referred to as Pasadena, Texas.

Railway Company and San Jacinto Rail Limited, and urge the Surface Transportation Board to expeditiously process the exemption petition.

I hereby affirm on penalty of perjury that the foregoing is true based upon my knowledge and information.

  
Larry T. Jenkins

August 14, 2001