

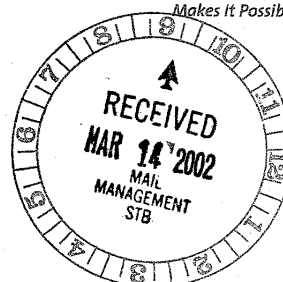
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**American
Chemistry
Council** *Good Chemistry
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Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW, Suite 715
Washington, DC 20036

Re: San Jacinto Rail Limited and the Burlington Northern and Santa Fe Railway
Finance Docket No. 34079

Dear Mr. Williams:

The American Chemistry Council ("the Council") represents the leading companies engaged in the business of chemistry, which is a \$455 billion enterprise and a key element of the nation's economy. The business of chemistry is America's #1 exporter, with \$80.2 billion in exports in 2001. Council members represent more than 90% of the productive capacity of basic industrial chemicals in the United States. The Council was formerly known as the Chemical Manufacturers Association ("CMA").

Although chemicals are transported by various modes, in many instances they must move by rail due to product characteristics, distance, customer preference, shipment size, and other factors. The chemical industry therefore depends on railroads for the safe and efficient delivery of a wide array of raw materials and finished products. Each year, about 150 million tons of chemicals and allied products are shipped by rail, providing railroads with approximately \$5 billion in freight revenue. The Council's members also invest directly in the nation's rail infrastructure by maintaining their own tank car fleets (with an estimated replacement value of \$7 billion) and other specialized facilities and equipment.

Safety is of paramount concern to both the rail and chemical industries. Consistent and reliable service is also vital to the Council's members, who must meet the needs of their customers in extremely competitive domestic, North American and overseas markets.

The Council noted with interest the Surface Transportation Board's news release (dated December 31, 2001) on the unprecedented number of rail line construction proposals then pending before the agency. Three of those projects involve competitive service to facilities of Council members. The Board subsequently approved two of those projects:

- Illinois Central Railroad build-in to East Baton Rouge, LA (F.D. No. 33877); and
- Burlington Northern and Santa Fe Railway ("BNSF") build-in to Seadrift, TX (F.D. No. 34003).



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Still pending before the Board is the San Jacinto Rail Limited ("SJRL") proposal, in which BNSF would build-in to the Bayport chemical complex near Houston, TX. The Council respectfully submits these comments in support of the SJRL project.

SJRL has its roots in the build-in/build-out condition of the settlement agreement between then-CMA and Union Pacific, Southern Pacific and BNSF in the UP/SP merger proceeding. The extensive trackage rights conferred by UP on BNSF, coupled with the build-in/build-out condition, are basic elements in preserving pre-merger competition between UP and SP. The terms of the "CMA Agreement" were accepted and imposed, with certain modifications, as conditions to the Board's 1996 approval of the UP/SP merger.

The proposed SJRL build-in is precisely the kind of project envisioned by the CMA Agreement. Other build-in/build-out projects have been based on UP/SP merger conditions – notably the build-in to Seadrift, TX, and the Entergy build-out from its electric generating plant at White Bluff, AR. Building-in to the multi-plant Bayport industrial complex demonstrates the vigorous competition between the two major Western railroads resulting from substitution of BNSF for SP along the "chemicals coast." The resulting two-carrier service will allow the Bayport producers to maximize their market opportunities throughout the world as BNSF and UP strive to maintain rates at reasonable levels. Further, as the Council has stated in other proceedings, competition provides the best incentive for the railroads to optimize the quality of their services. For these reasons, the Council fully endorses the Bayport build-in project.

The Council is aware of concern in the local community regarding the construction and operation of a new rail line. Some of this concern relates to the handling of hazardous materials. The Council understands that SJRL and BNSF estimate that initially such chemicals will account for approximately 11% of the traffic, growing over time to approximately 30%. The majority of the remaining traffic will be inert plastic resins. As the Board knows, the transportation of hazardous materials by all modes is extensively regulated by the U.S. Department of Transportation.

In addition, the Bayport producers participating in SJRL subscribe to the Responsible Care® initiative as an obligation of their membership in the Council. Responsible Care® responds to public concerns about the manufacture, distribution and use of chemicals. Member companies and Responsible Care® Partners, such as BNSF, are committed to support a continuing effort to improve the industry's responsible management of chemicals. Responsible Care® requires member companies and Partners to continually improve their health, safety and environmental performance; listen and respond to public concerns; assist each other to achieve optimum performance; and report their goals and progress to the public.

Finally, the Council notes that the local community is familiar with transportation infrastructure, including roads, a main line UP track and an active airfield (Ellington Field). Moreover, to the extent that one train per day each of empty and loaded cars traverses the new SJRL track, that traffic will have been removed from the existing UP line running from Bayport to Strang, and then through Deer Park and Pasadena into Houston. Thus the rail traffic running

near (but not through) the Clear Lake area will have the effect of reducing rail traffic along more than twenty miles of UP's right-of-way.

American Chemistry Council appreciates the Board's consideration of the views of the business of chemistry. The Council trusts that the Board will find the SJRL/BNSF Bayport build-in project to be in the public interest and grant approval to the project in timely fashion.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Th E Schick', written in a cursive style.

Thomas E. Schick, Counsel

cc: Honorable Linda J. Morgan
Honorable Wayne O. Burkes
Dana G. White