

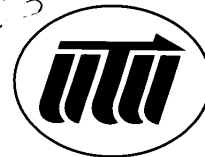
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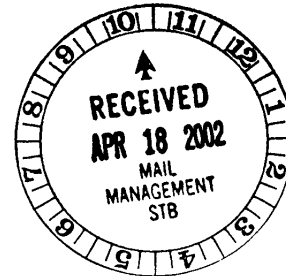
April 17, 2002

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit
STB Finance Docket No. 34079
1925 K Street, N.W.
Washington, DC 20423-0001
(202) 565-1519

**ENTERED
Office of the Secretary**

APR 18 2002

**Part of
Public Record**



Re: Finance Docket No. 34079

Dear Mr. Williams:

Please find enclosed the original and 10 copies of United Transportation Union's Comments for filing in the above-captioned matter. In accordance with prior Board orders we have also enclosed a diskette in WordPerfect format.

Thank you for your cooperation.

Sincerely,

Daniel R. Elliott, III
Associate General Counsel

Enclosures

cc: B. A. Boyd, Jr., International President
P. C. Thompson, Assistant President
J. M. Brunkenhoefer, U.S. National Legislative Director
D. L. Hakey, Vice President-Administration
C. J. Miller, III, General Counsel

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34079

**SAN JACINTO RAIL LIMITED – CONSTRUCTION
EXEMPTION – THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY – OPERATION
EXEMPTION – BUILD-OUT TO THE BAYPORT LOOP,
NEAR HOUSTON, HARRIS COUNTY, TX**

**COMMENTS OF
UNITED TRANSPORTATION UNION**



United Transportation Union ("UTU") respectfully submits its comments in opposition to the above-referenced transaction. Union Pacific Railroad Company's ("UP") Comments previously filed herein highlighted numerous safety concerns, as well as congestion problems, which would occur in the event of this build-out. UP stressed that the petitioners did not propose sufficient investments in the Houston area infrastructure to preserve rail service for customers and to guarantee safe operations. UP observed that BNSF has not invested adequately in Houston-area infrastructure, causing delays for Houston shippers and requiring undesirable operating practices. UP also noted that the Petition significantly understated traffic on the build-out which means that yet additional infrastructure will be needed to avoid new service problems. UP discussed in more detail numerous other operating and safety concerns which may be caused by the build-out.

These concerns brought up by UP in its Comments immediately raised a red flag in the eyes of UTU. UP demonstrated numerous weaknesses in BNSF's plan, which call for the denial of authority for this activity. The safety of the workers on and around any new project is a matter of the highest concern for UTU. A plan which raises so many safety issues, especially considering the

hazardous materials involved, calls for the greatest level of scrutiny.

Moreover, if this transaction is approved, it is not exactly clear who would eventually operate the proposed 12.8 mile rail line. The Burlington Northern and Santa Fe Railway Company (“BNSF”) stated in the Petition that it or its designated operator will operate the new line. With respect to this vague statement, UTU is logically concerned about whether BNSF actually intends to operate the track or to contract the work to a non-union, shortline railroad after construction. It has become an all too common practice for major carriers to contract out work of this nature to non-union carriers.

The operation of this service by a non-union carrier with underpaid, inexperienced workers clearly runs contrary to the rail transportation policy which “encourages fair wages and safe and suitable working conditions in the rail industry.” 49 U.S.C. § 10101(11). *See also* 49 U.S.C. § 10101(8). The operating and safety concerns raised by UP would only be exacerbated by the use of a non-union contractor employing underpaid, inexperienced workers. In addition, it is quite clear that the use of a non-union contractor will result in substandard wages. As a result, the possibility of the use of an inferior carrier to run on this proposed line, which already appears to be unsafe and operationally deficient as planned, causes UTU to be in even stronger opposition to the transaction.

Moreover, with respect to the use of a designated operator by BNSF on the proposed line if the transaction is approved, UTU has additional concerns. As noted below and in UP’s Comments, BNSF is seeking authority for this build-out and related trackage rights based on the UP/SP merger. As a result, BNSF should not be able to get authority to build the line based on the competitive impact of the UP/SP merger and immediately turn around and designate a new operator. BNSF should be required to operate this line, if the transaction is approved, since the pertinent conditions imposed in the UP/SP merger are only applicable to BNSF.

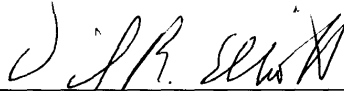
In any event, while UTU understands that 49 U.S.C. § 10901 does not provide for the

discretionary imposition of labor protective conditions as a result of the 1995 amendment thereto, this transaction, if approved, should not be placed in the § 10901 transaction category for labor protection purposes, but should be found to be part of the § 11323 UP/SP merger transaction. BNSF admits that it will access this line through trackage rights which arise from the UP/SP merger. Moreover, the build-out is founded on a condition in the UP/SP merger which allowed BNSF to pursue this type of construction to replicate competition between UP and SP. *Union Pacific Corp., et al. – Control and Merger – Southern Pacific Rail Corp. et al.*, Decision No. 44, 1 STB 233, 420 (1996). As a result, it is clear that the *New York Dock* labor protective conditions imposed in Finance Docket No. 32760 should also be applicable here, if the transaction is approved, since this build out is a part of the UP/SP merger transaction.

CONCLUSION

UTU opposes this transaction and requests that it not be approved. Alternatively, UTU requests the imposition of *New York Dock* labor protective conditions, if the build-out is approved, since the transaction is actually a part of the UP/SP merger.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Comments has been served this 14th day of April, 2002 via first-class, postage pre-paid mail upon the following:

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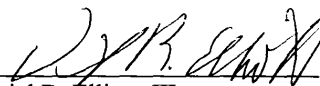
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