

29559
SEC

SERVICE DATE - AUGUST 27, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB FINANCE DOCKET NO. 32760 (SUB-NO. 21)

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

STB FINANCE DOCKET NO. 32760 (SUB-NO. 26)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND
MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--SOUTHERN
PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION
COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP.,
AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
[HOUSTON/GULF COAST OVERSIGHT]

Decided: August 27, 1998

In a decision in STB Finance Docket No. 32760 (Sub-No. 21) (the Sub-No. 21 proceeding) served on October 27, 1997, the Board established a procedural schedule providing that comments relating to general merger oversight would be due on August 14, 1998, with replies due on September 1, 1998. Subsequently, the Board initiated the proceeding in STB Finance Docket No. 32760 (Sub-No. 26) (the Sub-No. 26 proceeding or the Houston/Gulf Coast Oversight proceeding), and in a decision issued in the Sub-No. 26 proceeding on August 4, 1998, accepting requests for additional merger conditions, the Board provided that responses to proposed remedial conditions for the Houston/Gulf Coast area would be due on September 18, 1998, with rebuttal due on October 16, 1998. Finally, in the August 4 decision issued in the Houston/Gulf Coast Oversight proceeding, the Board indicated that a condition sought by the Western Coal Traffic League (WCTL), which was not specifically Houston/Gulf Coast-related, would be considered in the Sub-No. 21 proceeding.

Since those orders were issued, we have received a petition from WCTL, and letters from counsel for Union Pacific Railroad Company (UP). In its petition filed August 19, 1998, WCTL expresses concern that, by deciding to handle its request in the general oversight proceeding (in which rebuttal is not being permitted) rather than the Houston/Gulf Coast Oversight proceeding (in which rebuttal is being permitted), the Board deprived WCTL of the opportunity to make a complete case. WCTL states that, because it filed its request in the Sub-No. 26 proceeding, it "had no reason to augment its filing with anticipatory rebuttal of arguments that UP might, or might not,

advance.” Petition at 3. Arguing that it ought to be permitted to open and close in order to meet its burden of proof, WCTL requests an opportunity to file rebuttal 30 days after UP’s reply.

In its letter dated August 19, 1998, UP expresses its view that one of the requests for conditions that is being handled in the Sub-No. 21 proceeding — that of Cemex USA Management (Cemex) — should be handled in the Houston/Gulf Coast proceeding, and it states that it intends to address Cemex’s request in Sub. No. 26 unless the Board indicates otherwise.¹ In its letter dated August 20, 1998, UP opposes WCTL’s request for rebuttal, noting that parties seeking remedial conditions in merger proceedings typically are not entitled to rebuttal unless the conditions involve what is essentially a responsive application.

We understand UP’s position that the Cemex request should be heard as part of the Houston/Gulf Coast Oversight proceeding. However, although Cemex’s facilities are located in Texas (not particularly close to the Houston area on which most of the Houston/Gulf Coast Oversight proposals focus), the types of issues that Cemex’s request raises are similar to those raised by other parties that are already being considered in the Sub-No. 21 proceeding. Therefore, Cemex’s request will be considered in the context of general oversight, rather than the Houston/Gulf Coast Oversight proceeding.

We agree with UP that WCTL should not be entitled to rebuttal. Although it filed its request in the Houston/Gulf Coast Oversight proceeding, the accounting issues that WCTL raised clearly are general oversight rather than Houston/Gulf Coast oversight issues. It is well established that parties seeking these types of conditions are not entitled to rebuttal.

Nevertheless, we understand WCTL’s position that it would have filed a more complete case had it known that its request would be considered in the Sub-No. 21 rather than the Sub-No. 26 proceeding. In the interest of developing as complete a record as possible, we are therefore establishing a revised procedural schedule in the Sub-No. 21 proceeding, under which WCTL will have until September 9, 1998, to supplement its initial filing with its “anticipatory rebuttal.” In order to avoid conflict with the filings in the Houston/Gulf Coast Oversight proceeding, all of UP’s responses in the Sub-No. 21 proceeding will now be due on September 30, 1998.

¹ In this letter, UP also states that it intends to address on September 18, 1998, those portions of Burlington Northern Santa Fe Railway Company’s (BNSF) August 14 filing that cover the same ground as BNSF’s condition application in the Houston/Gulf Coast Oversight proceeding, and to reply to all other points in BNSF’s August 14 filing in its response in the Sub-No. 21 proceeding. We do not object to UP’s proposed approach in this regard.

It is ordered:

1. WCTL may supplement its filing in the Sub-No. 21 proceeding by September 9, 1998.
2. UP's response to comments filed in the Sub-No. 21 proceeding is now due on September 30, 1998.
3. This decision is effective on August 26, 1998.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary