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SERVICE DATE - JUNE 13, 2000

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. 42052]

Union Pacific Railroad Company — Petition for Declaratory Order —

Imposed Interchange Charges

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Board is instituting a proceeding under 5 U.S.C. 554(e) to resolve questions concerning the right of a rail carrier to impose charges unilaterally against other carriers for events that may occur when cars are interchanged.

DATES: Comments by or on behalf of all interested parties are due July 12, 2000.

Replies are due August 1, 2000.

ADDRESSES: The original and 10 copies of comments referring to STB Docket No. 42052 must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001, ATTN: STB Docket No. 42052.

In addition, send one copy of comments to: (1) Union Pacific Railroad Company, Robert T. Opal, General Commerce Counsel, 1416 Dodge Street, Room 830, Omaha, Nebraska 68179; (2) Iowa Interstate Railroad, Ltd., Edward J. Krug, Krug & Beckelman, P.L.C., 401 First Street S.E., Suite 330, P.O. Box 186, Cedar Rapids, IA

52406-0186; (3) City of Tacoma Public Utilities, d/b/a Tacoma Rail, Mark Bubenik, Chief Assistant City Attorney, P.O. 11007, Tacoma, WA 98411-0007; (4) Roger A. Serpe, General Counsel, Indiana Harbor Belt Railroad Company, 111 West Jackson Boulevard, Suite 1128, Chicago, Illinois 60604-3502; and (5) William C. Sippel, Thomas J. Litwiler, Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, Illinois 60601-6710.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: On February 14, 2000, Union Pacific Railroad Company (UP or petitioner) filed a petition seeking a declaratory order to resolve a dispute over the right of a rail carrier to impose charges unilaterally against other carriers for events that may occur when cars are interchanged. Replies to the petition have been filed by respondents Indiana Harbor Belt Railroad Company (Indiana Harbor Belt), Iowa Interstate Railroad, Ltd. (Iowa Interstate), and City of Tacoma, Tacoma Public Utilities, d/b/a Tacoma Rail and Tacoma Beltline Railroad (Tacoma Beltline) (collectively, respondents).

Specifically, UP seeks a declaration that, under 49 U.S.C. 11121, a rail carrier may not unilaterally impose charges on another carrier for interchange of cars, either by “tariff” or otherwise, and that interchange-related charges imposed by one carrier on another must be either permitted by agreement of the carriers involved or specifically authorized by the Board. The controversy arises as a consequence of “tariff” provisions issued by respondents, pursuant to which charges may be imposed when cars are not

pulled from interchange within specified times. UP asserts that such interchange matters are subject to the Association of American Railroads' (AAR) Car Service and Car Hire Agreement (Car Hire Agreement), unless the rail carriers enter into agreements that differ from the Car Hire Agreement.

Respondents concur that a declaratory order is warranted, though they disagree with UP as to the substance of such an order. Indiana Harbor Belt assails UP's allegedly "delinquent interchange practices in the Chicago Switching District." Iowa Interstate defends its charges as necessary to protect short line railroads against arbitrary and unfair interchange practices of Class I railroads. Tacoma Beltline asserts that UP's position constitutes anti-competitive conduct in complete disregard of business operations.<sup>1</sup> Iowa Interstate and Tacoma Beltline rely on the decision of the court in Cincinnati, N.O. & T.P. Ry. Co. v. Chesapeake & O. Ry. Co., 441 F.2d 483 (4th Cir. 1971), for the proposition that AAR's car service rules do not prevent a carrier from acting individually through a "tariff" charge to avoid costs related to another railroad's malfeasance.

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission (ICC), have exercised broad authority in handling such requests. In determining whether to entertain such petitions,

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<sup>1</sup> Tacoma Beltline requested that the Board delay any ruling until its lawsuit seeking interchange charges is resolved in City of Tacoma, Tacoma Public Utilities v. Union Pacific Railroad Company, Case No. C00-50548FDB, (W.D. Wash.) This request is moot, because in an order dated April 20, 2000, the court dismissed the case without prejudice, citing the Board's exclusive jurisdiction.

the agency considers a number of factors, including the significance to the industry, the ripeness of the controversy, and whether a proceeding is necessary to terminate an active controversy.

The issues presented raise questions that would appear to have broad and current applicability within the railroad industry, involving significant interpretations of the statutory framework within which that industry operates since enactment of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803. These significant questions deserve resolution on a full record, including the comments of all interested persons, not just the parties already of record.

Accordingly, a declaratory order proceeding is instituted to consider the issues raised in UP's petition and respondents' replies, based on the comments of all interested parties. This proceeding will be handled on the basis of written statements submitted by the parties.

Written comments (an original and 10 copies) by or on behalf of all interested parties (including petitioner and respondents) must be filed with the Board no later than July 12, 2000. Replies (an original and 10 copies) by petitioner and respondents must be filed no later than August 1, 2000.<sup>2</sup> Comments must state the basis for the party's position and must contain the name and address of the commenting party. Petitioner and

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<sup>2</sup> Replies may also be submitted by other commenting parties, if desired, by the same date. Petitioner's and respondents' representatives are directed to assist in providing an appropriate mailing list to other interested parties, upon request.

respondents must be served concurrently with a copy of each comment (and reply); other commenters must be served concurrently with a copy of each reply.

Board decisions and notices are available on our website at “[www.stb.dot.gov](http://www.stb.dot.gov)”.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary