

37894
SEC

SERVICE DATE – MAY 7, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760

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

Decided: May 4, 2007

On February 16, 2007, Union Pacific Railroad Company (UP) filed a petition for reformation of the Restated and Amended Settlement Agreement (settlement agreement) between UP and BNSF Railway Company (BNSF).¹ UP seeks to reform section 1(g) of the settlement agreement to reflect the intent of the parties to retain certain restrictions on BNSF's use of trackage over two rail lines extending between Stege and Sacramento, CA, and between Sacramento and Stockton, CA. UP states that these trackage rights were designed and tailored to allow BNSF to compete with the UP/SP rail system only: (1) for transcontinental intermodal and automotive traffic moving over the Central Corridor route between Denver, CO, and Oakland, CA (Central Corridor Route); and (2) for intermodal traffic moving over the I-5 rail route between Seattle, WA, and California (I-5 Route). According to UP, a mutual mistake was made in drafting the settlement agreement, whereby restrictions on BNSF's use of intermodal trackage rights were inadvertently removed by the parties, impliedly allowing intermodal trains that do not operate over the Central Corridor Route or the I-5 Route to use the UP rail lines in Sacramento, CA. UP requests expedited consideration for its petition.

On March 9, 2007, BNSF filed a reply in opposition to UP's petition for reformation. BNSF generally denies UP's allegations that the mistake was mutual and

¹ UP and BNSF jointly submitted a settlement agreement to the Board on March 1, 2002. The settlement agreement amended an agreement reached in connection with the proposed common control and merger of the rail carriers controlled by Union Pacific Corporation and the rail carriers controlled by Southern Pacific Rail Corporation, which was approved by the Board in Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996), and which created what is referred to as the UP/SP rail system.

further denies that UP is entitled to any relief. BNSF requests that the Board establish the procedural schedule proposed by BNSF.

In a reply filed on March 28, 2007, UP advises that UP and BNSF have agreed on a procedural schedule and requests that the Board adopt it. The proposed procedural schedule will be adopted but will be modified to add a due date for comments by any other interested parties.

In addition, the Board will create a separate service list in this proceeding to be used by parties and the Board to serve documents and decisions relating to UP's petition for reformation. Any person who wishes to remain on the service list for this proceeding must notify the Board of its intent by May 22, 2007. Filings may be submitted either in paper format or via the Board's e-filing format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website at <http://www.stb.dot.gov>. Notices of intent to participate and comments are formal filings that will require a login account. Instructions for obtaining a login account are available at the "E-filing" link. Any filing in paper format should be sent to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. The Board will compile and issue the notice for the separate service list in this proceeding as soon as practicable. The separate service list will include parties who have already filed pleadings since February 16, 2007, in connection with UP's petition for reformation.²

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

It is ordered:

1. The procedural schedule agreed upon by UP and BNSF is adopted, as modified.
2. Written discovery must be completed by July 6, 2007. Witness workpapers are due on the latter of (a) the date each witness' verified statement is filed, or (b) by May 17, 2007.
3. BNSF's and UP's briefs, including evidentiary submissions and legal arguments, are due by August 20, 2007.
4. Comments by any other interested parties are also due by August 20, 2007.
5. Written discovery related to any argument, position, or alleged fact not identified or raised, in the case of UP, in BNSF's initial response to UP's petition, or in the case of BNSF, in UP's petition, must be completed by September 10, 2007.

² The Kansas City Southern Railway Company filed its notice of intent to participate as a party of record on February 21, 2007.

6. Simultaneous final briefs are due within 45 days of the latter of (a) the date on which briefs are filed following the initial round of written discovery, or (b) the conclusion of additional discovery related to any argument, position, or alleged fact not identified in the original pleadings.

7. Notices of intent to remain on the service list in this proceeding must be received by May 22, 2007.

8. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary