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SERVICE DATE – DECEMBER 5, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 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

ORAL ARGUMENT

Decision No. 105

Decided: December 3, 2012

The Surface Transportation Board will hold oral argument on Tuesday, January 15, 2013, at 9:30 a.m., in the hearing room at the Board's headquarters located at 395 E Street, S.W., Washington, DC. The argument will address the Amended Joint Petition of BNSF Railway Company (BNSF) and G3 Enterprises (G3) for Enforcement of Decision No. 44 in the above captioned proceeding. In Decision No. 44, the Board approved the merger between Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP), subject to numerous conditions. The oral argument will be open for public observation, but only counsel for the parties will be permitted to present arguments.

G3 is the owner of a facility located at 2612 Crows Landing Road, Modesto, Cal., which it acquired from Proctor and Gamble in June 2001. Prior to the UP/SP merger, the Modesto facility was served by UP, SP, and Modesto and Empire Traction Company (MET), a Class III railroad, which connected to BNSF via UP reciprocal switching. On February 6, 2012, BNSF requested that UP restore competitive service to the G3 facility under the terms of the Omnibus Clause of the Restated and Amended Settlement Agreement between BNSF and UP. The Omnibus Clause was adopted by the Board as a condition of the UP/SP merger in Decision No. 44. It requires the merger applicants to preserve two-carrier competition for all 2-to-1 shipper facilities not explicitly covered by the trackage rights and line sales provided for in the merger agreement. UP denied BNSF's request by letter dated March 1, 2012.

On September 13, 2012, BNSF and G3 filed their Amended Joint Petition asking the Board to restore competitive rail service to the G3 facility. BNSF and G3 argue that UP must adhere to representations made to MET in a December 13, 1995 letter in which UP stated that it

had no intention of diminishing the current switching district of Modesto, Cal.¹ BNSF and G3 further argue that UP's actions are anticompetitive as they have eliminated all competitive service alternatives from the G3 facility. BNSF and G3 assert that this reduction in competition is contrary to the Board's merger concerns.

On September 20, 2012, UP filed a Reply to the Amended Joint Petition, arguing that BNSF and G3 have no right to demand that UP open G3's facility to reciprocal switching. UP asserts that while it has made no representations to G3, it has fulfilled all of its representations to MET. UP describes a switching district as a geographical term of art and argues that the Modesto switching district has not changed. UP also states that G3's status as closed to reciprocal switching is not related to the UP/SP merger. UP maintains that G3 purchased the facility in 2001, after the merger was completed, and that G3's closed status is therefore not a reduction in competition.

By January 2, 2013, each party shall submit to the Board the name of the counsel who will be presenting argument, and the name of the party counsel will be representing. MET is invited to participate in the argument but is not required to do so. BNSF and G3 shall have 20 minutes to present their argument and UP shall have 20 minutes to present its argument. BNSF and G3, in their filings, shall advise the Board how they choose to divide their time and shall address the requested time reserved for rebuttal, if any.

Counsel for the parties shall check in with Board staff in the hearing room prior to the argument.

A video broadcast of the oral argument will be available via the Board's website at <http://www.stb.dot.gov>, under "Information Center"/"Webcast"/"Live Video" on the home page.

Instructions for Attendance at Argument

The STB requests that all persons attending the argument use the Patriots Plaza Building's main entrance at 395 E Street, S.W. (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present oral arguments. The building will be open to the public at 7:00 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the argument must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the argument upon its conclusion.

¹ Decision No. 44 requires that UP adhere to all of its representations.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room or in the building's main lobby.

The Board's hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245-0245 by the close of business on January 14, 2013.

For further information regarding the oral argument, contact Amy Ziehm, (202) 245-0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

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

It is ordered:

1. Oral argument in this proceeding will be held on January 15, 2013, at 9:30 a.m. in the Surface Transportation Board Hearing Room, at 395 E Street, S.W., Washington, DC, as described above.

2. By January 2, 2013, the participants shall submit to the Board the names of the counsel who will be presenting argument and the name of the party counsel will be representing. BNSF and G3, in their filings, also shall advise the Board how they choose to divide their time and address the requested time reserved for rebuttal, if any.

3. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.