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SERVICE DATE - JULY 29, 1997

FR-4915-00-P

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32760 (Sub-No. 23)]

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

AGENCY: Surface Transportation Board.

ACTION: Notice that the Board has been requested to issue a finding that the terms and conditions of the proposed merger of St. Louis Southwestern Railway Company into SSW Merger Corp. are just and reasonable.

SUMMARY: St. Louis Southwestern Railway Company, approximately 99.96% of the common stock of which is owned by Southern Pacific Transportation Company, is to be merged into SSW Merger Corp., 100% of the common stock of which is owned by Southern Pacific Transportation Company. The merger envisions, among other things, a "cashing out," at a price of \$6,800 per share, of the four shareholders who own the approximately 0.04% of the common stock of St. Louis Southwestern Railway Company that is publicly held (61 out of 173,300 shares). The Board has been requested to issue a finding that the terms and conditions of the merger are just and reasonable.

STB Finance Docket No. 32760 (Sub-No. 23)

DATES: Comments must be filed by August 28, 1997. Replies must be filed by September 12, 1997.

ADDRESSES: All pleadings should refer to STB Finance Docket No. 32760 (Sub-No. 23). Comments (an original and 10 copies) and replies (an original and 10 copies) should be sent to the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 32760 (Sub-No. 23), 1925 K Street, N.W., Washington, DC 20423-0001. Comments should also be served (one copy each) on Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044-7566. Replies should also be served (one copy each) on the four shareholders who own the 61 publicly held shares of the common stock of St. Louis Southwestern Railway Company and on any other persons filing comments.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: In Decision No. 44 in 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 (UP/SP)*, we approved the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company)

and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company).¹

The common control authorized in *UP/SP*, Decision No. 44, was consummated on September 11, 1996, with the merger of SPR with and into UP Holding Company, Inc., a direct wholly owned subsidiary of UPC.

In the application filed on November 30, 1995, applicants had noted, among other things, that, in effectuating *UP/SP* common control, they intended to merge SPT, SSW, SPCSL, and DRGW into UPRR, although they added that these companies might retain their separate existence for some time. *See UP/SP*, Decision No. 44, slip op. at 8. With respect to SSW, applicants specifically noted that, although SSW had a small number of minority equity holders and although the Federal Railroad Administration (FRA) held certain SSW redeemable preference shares, the application did not include a request for a

¹ In *UP/SP*, Decision No. 44: Union Pacific Corporation was referred to as UPC; Union Pacific Railroad Company was referred to as UPRR; Missouri Pacific Railroad Company was referred to as MPRR; UPRR and MPRR were referred to collectively as UP; Southern Pacific Rail Corporation was referred to as SPR; Southern Pacific Transportation Company was referred to as SPT; St. Louis Southwestern Railway Company was referred to as SSW; SPCSL Corp. was referred to as SPCSL; The Denver and Rio Grande Western Railroad Company was referred to as DRGW; SPT, SSW, SPCSL, and DRGW were referred to collectively as SP; UPC, UP, SPR, and SP were referred to collectively as “applicants”; and the application that had been filed by applicants on November 30, 1995, was variously referred to as “the application” and “the primary application.”

Schwabacher determination² with respect to the compensation that might be paid to SSW security holders in connection with a merger of SSW into UPRR. Applicants added, however, that, if they later determined to carry out such a merger, they would request either a *Schwabacher* determination respecting the terms of the merger or a declaratory order that no such determination was required. *See UP/SP*, Decision No. 44, slip op. at 8 n.6 (second paragraph).

By petition (designated UP/SP-306) filed July 17, 1997, the remaining applicants (UPC, UPRR, SPR, SPT, and SSW, hereinafter referred to simply as “applicants”) indicate: that MPRR was merged into UPRR on January 1, 1997; that SPCSL and DRGW were merged into UPRR on June 30, 1997; that the corporate restructuring of the UP/SP system will be completed in February 1998 with the merger of SPT into UPRR; and that, prior to and in anticipation of the merger of SPT into UPRR, SSW will be merged into SSW Merger Corp. Applicants seek, in the UP/SP-306 petition, a determination that the terms of the proposed merger of SSW into SSW Merger Corp. (in particular, the \$6,800-per-share price to be paid to the four shareholders who own the 61 shares of SSW's common stock that are publicly held) are just and reasonable.^{3/} Applicants seek this determination (1) because they

² The reference is to *Schwabacher v. United States*, 334 U.S. 192 (1948).

³ Applicants indicate that, prior to and independent of the merger, the shares of SSW preferred stock that are publicly held will be redeemed at par value pursuant to their terms. *See UP/SP-306* at 1 n.2. Applicants further indicate that they have reached an agreement with FRA regarding the treatment of the FRA preference shares, which will remain in existence as obligations of the merged company. *See UP/SP-306* at 3 n.4.

believe the Board is required by *Schwabacher* to make such a determination to protect minority shareholders, and (2) in order to immunize the merger of SSW into SSW Merger Corp. from the otherwise applicable state law rights, particularly the otherwise applicable state law appraisal rights, of the four remaining public shareholders. 49 U.S.C. 11321(a).

Applicants urge expedited handling of their petition (in particular: that we publish notice of their petition in the *Federal Register*; that we allow interested persons 30 days to file comments; that we further allow applicants an additional 15 days to file a reply; and that we proceed promptly to a decision thereafter). Expedited handling is sought so that there will be, among other things, no unnecessary waste of resources associated with the need to maintain a formal distinction between SSW and the other rail carriers that have already been merged into UPRR. Applicants indicate that UP/SP will incur significant costs if it is unable to merge SSW into SSW Merger Corp. before September 30, 1997; unless that merger is completed before the end of the fiscal third quarter, applicants note, UP/SP will be required to go to the considerable time, expense, and difficulty of preparing financial statements that reflect the operations of SSW as a separate entity.

Applicants indicate that they are serving a copy of their UP/SP-306 petition “on all active parties in this proceeding,” UP/SP-306 at 14 (lines 2-3),⁴ and that they will serve a copy “on any known SSW shareholders,” UP/SP-306 at 14 (lines 3-4).⁵

Our statutory mandate, 49 U.S.C. 11324(c), requires, among other things, that we determine, in appropriate cases, that the terms and conditions of certain transactions affecting stockholders are just and reasonable. *See, e.g., Union Pacific Corp. et al.--Cont.--MO-KS-TX Co. et al.*, 4 I.C.C.2d 409, 515 (1988) (“In appraising this transaction affecting the rights of stockholders, it is incumbent upon us to see that the interests of minority stockholders are protected and that the overall proposal is just and reasonable to those stockholders. *Schwabacher v. United States*, 344 U.S. at 198, 201.”). Because the UP/SP-306 petition implicates our statutory mandate and involves a matter that requires expedited regulatory action, we will proceed upon the schedule urged by applicants.

Accordingly, we solicit comments from all interested persons respecting whether the terms and conditions of the proposed merger of SSW into SSW Merger Corp. are just and

⁴ This apparently has reference to the parties of record in the UP/SP oversight proceeding. *See* the UP/SP-306 certificate of service (on the unnumbered page following p. 16). *See also 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*, STB Finance Docket No. 32760 (Sub-No. 21) (Decision No. 2, served June 19, 1997; Decision No. 3, served June 30, 1997; Decision No. 4, served July 16, 1997) (these decisions list the parties of record in the oversight proceeding).

⁵ We assume that this refers to the four persons listed on the UP/SP-306 certificate of service (on the unnumbered page following p. 16).

reasonable. Such comments must be submitted by August 28, 1997. Applicants may file replies to such comments by September 12, 1997.

Any interested person who has not received a copy of the UP/SP-306 petition may request a copy, in writing or by telephone, from Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044-7566 (telephone: 202-662-5388).

Not later than the fifth day after the date of publication of this decision, applicants should serve a copy of this decision upon the four public SSW shareholders and should certify to us: that service of this decision upon those four persons has been made; and that service of the UP/SP-306 petition upon such persons, to the extent such service was not made prior to the date of publication of this decision, has been made no later than the fifth day after the date of publication of this decision.

In addition to submitting an original and 10 copies of all documents filed with the Board, applicants and any commenters are requested to submit all pleadings and attachments

as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted by WordPerfect 7.0).

Decided: July 22, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary