

SURFACE TRANSPORTATION BOARD

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

Decision No. 100

Decided: March 19, 2003

In Decision No. 98 (served October 22, 2002), the Board directed Union Pacific Railroad Company (UP) and The Burlington Northern and Santa Fe Railway Company (BNSF) to submit, by November 21, 2002, a report respecting: any and all matters pertaining to the implementation of Section 12 of the BNSF Agreement that had been resolved through negotiation or arbitration or that remained outstanding; an analysis of the impact of these changes on the escalation of the fees paid by BNSF for the trackage rights it acquired over the lines of UP in connection with the 1996 UP/SP merger; and proposed revised Section 12 language that incorporated the resolution of these matters. The Board also indicated that interested parties could submit, by December 11, 2002, comments respecting the resolution of these matters and the proposed revision to Section 12.

In Decision No. 99 (served November 12, 2002), a joint UP/BNSF request for a 20-day extension of all applicable filing deadlines with respect to Decision No. 98 was granted. In particular: the deadline for filing petitions for reconsideration of Decision No. 98 was extended to December 2, 2002; the deadline for the submission by UP and BNSF of the Section 12 report was extended to December 11, 2002; and the deadline for the submission by interested parties of comments on the Section 12 report was extended to December 31, 2002.

On December 2, 2002, BNSF filed a petition for reconsideration (designated BNSF-105) of Decision No. 98. BNSF asked that the Board reconsider the weight and effect to be accorded to § 7 of the CMA Agreement¹ and that UP, BNSF, and ACC (the American Chemistry Council, formerly the Chemical Manufacturers Association) be directed to devise an annual adjustment mechanism consistent with the express intent of CMA § 7.

¹ See Decision No. 98, slip op. at 4-8.

On December 11, 2002, UP and BNSF submitted the Section 12 report (designated UP/SP-398 and BNSF-106) called for by Decision No. 98. UP and BNSF indicate, in the Section 12 report, that the five issues regarding the interpretation of Section 12 that were submitted to arbitration in late 2001 have been resolved. One such issue, UP and BNSF advise, was resolved by the Board in Decision No. 98. The other four issues, UP and BNSF further advise, have been resolved by UP and BNSF through negotiations. As respects the issues resolved through negotiations, UP and BNSF indicate that they have agreed: to develop 1995 and 1996 UP/SP URCS costs by weighting UP and SP URCS costs by the trackage rights miles over each carrier's lines; to calculate the fee adjustment by using the URCS cost categories that are covered by the trackage rights fees; to calculate the dispatching expenses component of maintenance and operating costs using URCS costs; and to base the annual fee adjustment on the difference in URCS costs in the two preceding years. UP and BNSF further indicate that, as a result of Decision No. 98 and the parties' agreements, the BNSF Agreement trackage rights fees as of July 1, 2002, are 2.8 mills per ton-mile (applicable to bulk traffic), 2.9 mills per ton-mile (applicable to carload and intermodal traffic), and 3.29 mills per ton-mile (applicable to carload and intermodal traffic on the Keddie-Stockton/Richmond line). UP and BNSF add that they intend to revise Section 12 of the BNSF Agreement by including as an exhibit an attachment to the Section 12 report that illustrates the calculations that UP and BNSF will use to make adjustments to the trackage rights fees.

On December 19, 2002, BNSF advised, by letter (not designated), that, because UP and BNSF had reached an overall resolution of the issues described in the Section 12 report, BNSF was withdrawing its BNSF-105 petition for reconsideration.

In view of BNSF's withdrawal of its BNSF-105 petition for reconsideration, that petition will be dismissed, with prejudice.

No interested party has objected to the resolution of the trackage rights fee adjustment issues described in the Section 12 report (no comments respecting such report were filed by any party). Neither UP nor BNSF has asked the Board to take any action with respect to the matters addressed in the Section 12 report, and the report raises no issue that requires review by the Board on the Board's own initiative. Therefore, no Board action will be taken with respect to the matters addressed in the Section 12 report.

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

It is ordered:

1. The BNSF-105 petition for reconsideration, filed December 2, 2002, is dismissed with prejudice.

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary