

SURFACE TRANSPORTATION BOARD¹

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. 67]²

Decided: January 14, 1997

In Decision No. 44, the Board imposed a condition (referred to as the CMTA condition) that requires that BNSF be granted the right to interchange traffic with the operator of the Giddings-Llano line either at Elgin or at Giddings. The Board directed the interested parties (CMTA, Longhorn, UP/SP, and BNSF) to submit, by December 10, 1996, either agreed-upon terms or separate proposals respecting implementation of the CMTA condition. The Board added, however, that one implementation detail (the choice between Elgin and Giddings) could be decided unilaterally by CMTA. Decision No. 44, slip op. at 182-83 and 233 (ordering paragraph 31).³

¹ Proceedings before the Interstate Commerce Commission (ICC) that remained pending on January 1, 1996, must be decided under the law in effect prior to that date if they involve functions retained by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803. This proceeding was pending with the ICC prior to January 1, 1996, and relates to functions retained under Surface Transportation Board (Board) jurisdiction pursuant to new 49 U.S.C. 11323-27. Citations are to the former sections of the statute, unless otherwise indicated.

² This decision embraces: Finance Docket No. 32760 (Sub-No. 1), Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company--Trackage Rights Exemption--Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company; Finance Docket No. 32760 (Sub-No. 2), Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company--Petition for Exemption--Acquisition and Operation of Trackage in California, Texas, and Louisiana; Finance Docket No. 32760 (Sub-No. 10), Responsive Application--Capital Metropolitan Transportation Authority; Finance Docket No. 32760 (Sub-No. 19), Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company--Trackage Rights Exemption--Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., The Denver and Rio Grande Western Railroad Company, and The Southern Illinois & Missouri Bridge Company; and STB Finance Docket No. 32760 (Sub-No. 20), The Atchison, Topeka and Santa Fe Railway Company--Trackage Rights Exemption--Southern Pacific Transportation Company.

³ Capital Metropolitan Transportation Authority, which
(continued...)

In Decision No. 65, the December 10th deadline was extended to January 9, 1997.

The interested parties have now filed several pleadings: CMTA and BNSF have filed a joint submission (designated CMTA-14 and BN/SF-75, and referred to herein simply as CMTA-14); UP/SP has filed its own submission (UP/SP-292); and Longhorn has filed a request for an extension of time.

BACKGROUND

CMTA indicates: that UP refused to approve CMTA's request for interchange at both Elgin and Giddings; that, for this reason, CMTA was required to choose one or the other; that CMTA chose Elgin; and that CMTA's choice was influenced by several factors, including the level of service BNSF intends to provide through Elgin and the proximity of Elgin to the majority of shippers on the Giddings-Llano line. CMTA adds that the parties will carry out the interchange under the terms provided for in the BNSF agreement, and, as between BNSF and the Giddings-Llano operator, under the terms provided for in the BNSF Operating Plan submitted to the Board on October 1, 1996, and an interchange agreement between those two parties. CMTA further indicates that UP has agreed, as an additional term of the interchange, (1) that the Giddings-Llano operator and BNSF may use the existing interchange facilities at Elgin, and (2) that BNSF trains can interchange Giddings-Llano cars by using a UP-owned siding located approximately a mile south of Elgin on the UP mainline (hereinafter referred to as the UP siding), in coordination with UP's dispatcher and as train operations permit, for running around the trains, so long as the siding is left free of cars and equipment except while a BNSF train is at Elgin. CMTA adds that

³(...continued)

holds a mass transit easement over a segment of the Giddings-Llano line, and which indicated that it intended to purchase the line by the end of 1996, is referred to as CMTA. The new operator of the line, Central of Tennessee Railway & Navigation Company Incorporated, d/b/a The Longhorn Railway Company, is referred to as Longhorn. Union Pacific Railroad Company (UPRR) and Missouri Pacific Railroad Company (MPRR) were formerly referred to collectively as UP. On January 1, 1997, MPRR merged into UPRR, see UP/SP-292 at 1 n.1; and, for the sake of consistency, for the period beginning January 1, 1997, the acronym "UP," as used in this decision, shall be understood to refer to the post-merger UPRR. Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company are referred to collectively as SP. Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (SF) were formerly referred to collectively as BNSF. On December 31, 1996, SF merged into BN, and the surviving corporation was renamed The Burlington Northern and Santa Fe Railway Company, see CMTA-14 at 1 n.2; and, for the sake of consistency, for the period beginning December 31, 1996, the acronym "BNSF," as used in this decision, shall be understood to refer to the surviving corporation. See also Decision No. 44, slip op. at 12 n.15 (description of the BNSF agreement).

UP has agreed to cooperate fully to facilitate use of the existing interchange facilities at Elgin and the UP siding south of Elgin.

Longhorn argues that an Elgin interchange would not satisfy the purposes of the CMTA condition. Longhorn claims: that a Longhorn-BNSF routing to Houston could not be achieved with an Elgin interchange, but could be achieved with a Giddings interchange; that the volumes of inbound freight received by one shipper at McNeil are such that an Elgin interchange would not be adequate; and that, in general, various practical matters affecting the shipping public have not been given appropriate consideration by the other parties. Longhorn therefore requests a 30-day extension to file a brief describing the terms that it believes are required to satisfy the CMTA condition.

BNSF indicates that it is not entirely certain that the existing interchange facilities at Elgin, even when combined with the use of the UP siding south of Elgin, are adequate for BNSF to interchange with Giddings-Llano cars. BNSF adds that, after it reviews UP/SP's filing (i.e., UP/SP-292), it may file a further submission on this issue within 14 days (i.e., on or before January 23rd).

UP urges that the Board not delay in implementing the CMTA condition on the terms to which UP has already agreed. (1) As respects the choice of Elgin as opposed to Giddings, UP contends that this choice takes into consideration several factors: that BNSF, under its existing trackage rights, will not be serving Giddings, but will be conducting through-train operations through Elgin; that shippers on the Giddings-Llano line are located west of Elgin, and thus are closer to Elgin than to Giddings; and that the portion of the Giddings-Llano line between Elgin and Giddings remains out of service. (2) As respects the adequacy of the interchange arrangements at Elgin, UP contends: that the existing interchange facilities at Elgin are adequate to meet the needs of a Longhorn-BNSF interchange; that, even if existing facilities are inadequate, the BNSF agreement and implementing trackage rights agreements provide BNSF the right to build any new facilities (including connections and sidings) it might need to facilitate an Elgin interchange; and that, to assure the adequacy of the Elgin interchange, UP has committed to allow BNSF to make limited use of the UP siding located approximately a mile south of Elgin. UP warns that BNSF has in mind expanded rights to use the UP siding and the UP mainline in order to improve the ease with which BNSF can interchange with Longhorn at Elgin, without having to make any of its own improvements to the Elgin facilities. UP claims that BNSF has indicated that it may insist both that it have the right to leave cars resting on the UP siding for later pick-up by Longhorn and that Longhorn have the right to operate over the UP mainline to reach the UP siding to pick-up BNSF's deliveries and/or to leave cars on the UP siding for later pick-up by BNSF. UP fears that use of the UP siding in the fashion supposedly envisioned by BNSF would lead to unacceptable interference with train operations on the UP mainline.

DISCUSSION AND CONCLUSIONS

In Decision No. 44, slip op. at 183, the Board explicitly stated that the choice between Elgin and Giddings could be decided unilaterally by CMTA. Neither Longhorn nor any other party sought reconsideration of this aspect of Decision No. 44, and the time for seeking reconsideration has long since expired. It necessarily follows that the Elgin vs. Giddings issue is no longer subject to administrative review.

The other issue raised in the pleadings, the adequacy of the interchange arrangements at Elgin agreed to by CMTA and UP (and apparently agreed to, in part, by BNSF), has not previously been decided by the Board. Longhorn and BNSF will therefore be allowed an opportunity to submit, in accordance with the procedural schedule set out below, evidence and arguments respecting the alleged deficiencies in these arrangements. All parties will then have an opportunity to reply to any such submissions.

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

It is ordered:

1. Submissions respecting the arrangements agreed to by CMTA and UP are due by January 21, 1997.
2. Replies thereto are due by January 28, 1997.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary