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SERVICE DATE - LATE RELEASE NOVEMBER 26, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB EX PARTE NO. 573

RAIL SERVICE IN THE WESTERN UNITED STATES

STB SERVICE ORDER NO. 1518

JOINT PETITION FOR SERVICE ORDER

Decided: November 26, 1997

In a decision issued in these proceedings on November 21, 1997, we announced the details of the hearing that we had earlier indicated would be held on December 3, 1997, to address further the status of railroad service in the West and particularly the service problems associated with the Union Pacific/Southern Pacific railroad system (UP/SP). Our November 21 decision set out a list of witnesses that were asked to testify; it set out a list of issues that we wished to explore; and it directed any party testifying (and any other party wishing to do so) to provide written statements describing the progress of the service recovery effort by Noon, Monday, December 1, 1997.

We have received several requests for modification of that order. This order addresses those requests.

A. Requests to Participate in the Oral Hearing. Several parties that were not named as hearing participants have asked us to allow them to participate in the oral hearing. Before we address each of their requests, we note that our initial list of witnesses was not developed casually or without purpose. Rather, it was designed to provide us, within a reasonably compact hearing schedule, with representative views on the specific issues that we are seeking to explore: whether rail service in the West is improving; whether our service order should be extended or expanded; and what other steps we may need to take to help resolve the rail service emergency. In preparing our witness list, we reviewed the testimony of the more than 60 witnesses that appeared at our prior hearing, with a view toward helping us to determine which witnesses we would need to hear from again in achieving our objective.

We will now address each of the requests for permission to appear at the hearing.

1. Leroy Jones, Vice President and National Legislative Representative of the Brotherhood of Locomotive Engineers (BLE), indicates that he has “visit[ed] a number of sites and talk[ed] extensively with locomotive engineers [about the service problems in the West and about] the potential for improvement.” On behalf of the railroad operating craft that he represents, Mr. Jones wishes to appear and share the observations and conclusions that he has made during his field visits.

BLE’s request will be granted. Mr. Jones, as a result of his interaction with rail employees actually working on the rail system in the West, can provide valuable information from the perspective of employees. His participation will advance the purpose of the hearing. BLE will be granted 10 minutes.

2. The Public Utilities Commission of the State of California (CPUC) indicates that it held its own hearing on November 20, 1997, at which it gathered valuable information on the status of the recovery effort, on continuing difficulties at the West Colton Yard (one of the facilities highlighted in our required reporting from UP/SP), and on the types of problems faced by UP/SP overall in California. It wishes to participate “to assure that these . . . problems impacting the nation’s most populous state receive the urgent attention they deserve.”

CPUC’s request will be granted. CPUC, which provided significant and helpful input on the service problems at the October 27 hearing, clearly has obtained information that may be valuable to us. CPUC will be granted 10 minutes.

3. Brownsville & Rio Grande International Railroad (BRGI) asks that it be permitted to appear to present its views and the views of its shippers and port district regarding its dispute with UP/SP over service at Brownsville, Texas. Although the matter has already been extensively briefed in writing, BRGI alleges that our action in our November 21 decision reflects a misunderstanding of the situation.

We will grant BRGI 5 minutes in which to present its case further. BRGI’s presentation should be made by Larry Cantu, who spoke at the October 27 hearing, or by some other individual with operational experience on the railroad.

4. The United States Department of Agriculture (USDA), which participated in the October 27 hearing, has asked that it be permitted to participate in the December 3 hearing. USDA requests “the opportunity to present our analysis of the data that have been collected

thus far under the [emergency service order] requirement, along with additional data quantifying the persisting rail service problems faced by agricultural shippers and receivers.”

USDA’s request will be granted, and USDA will be granted 10 minutes, during which we expect it to analyze the data that have been submitted thus far.

5. Edison Electric Institute (EEI), in a pleading that was filed as our November 21 decision was being issued, asked that we establish a panel consisting of itself, the Western Coal Traffic League (WCTL), the Western Coal Transportation Association (WCTA), and the National Mining Association (NMA), and that we authorize the four members of the panel to speak for a total of 15 minutes. Our November 21 decision authorized WCTL and NMA to speak for 10 minutes each, but did not provide time for WCTA or EEI. EEI, in a petition for reconsideration, asks that it be given time so that it can present the results of a survey sent out to its members about coal transportation service on UP/SP.

Although EEI’s participation may be largely redundant -- many of EEI’s members that use the railroads in the West are also members of WCTL, which is already appearing at the hearing, and is capable of presenting the results of EEI’s survey -- we will grant EEI 3 minutes in which to present the results of its survey.

6. The International Brotherhood of Teamsters (IBT) has asked to participate in the December 3 hearing so that it can “propose a viable and long lasting solution to this transportation crisis created by the Union Pacific / Southern Pacific Railroad merger.” IBT notes that it participated at the October 27 hearing, at which it testified “about the findings of rail safety deficiencies as published in ‘Hazardous Materials on the Rails’ by the Good Neighbor Project.”

While it discussed safety issues related to UP/SP and other matters pertaining to the Board's approval of the UP/SP merger, IBT did not present specific information about service problems at the October 27 hearing that could, on balance, assist the Board in assessing the true extent of the service problems in the West or in developing the remedies adopted in our October 31 order. IBT's brief request here provides no basis on which we might conclude that its further testimony will advance the objectives of the December 3 hearing. Nevertheless, we will grant IBT 3 minutes, and we direct it to address only the issues that we have raised in our November 21 decision.

7. The International Association of Refrigerated Warehouses (IARW), whose members operate refrigerated facilities, asks to testify on behalf of its members. It has provided draft testimony that expresses the view that recent mergers have reduced the number of refrigerated rail cars operated by the railroad industry. IARW's draft testimony also expresses its members' concerns about the state in which refrigerated cars arrive at destination. Finally, IARW's draft testimony states that service in the West is slower than usual, and that as a result, refrigerated equipment is more likely to fail than it would be during normal operating periods.

We appreciate IARW's concerns; its draft testimony, however, is not precise, or focused on the service recovery issue. Nevertheless, we will grant IARW 3 minutes, and we direct it to address only the issues raised in our November 21 decision.

B. Extension of Time. As noted, our November 21 decision provided for the filing of written comments and testimony by Noon, December 1, 1997. The purpose of the December 1 filing date was to give parties as much time to prepare their testimony, while

giving the Board a day and one-half to review the materials and prepare for the hearing. We note that the October 27 hearing generated hundreds of pages of testimony and argument, all of which we reviewed carefully.

The National Industrial Transportation League (NITL) has requested an extension of the time by which its pleading must be filed until 1:00 p.m., Tuesday, December 2, 1997. NITL states that, on November 24, it faxed to its members a survey on rail service problems; notwithstanding the fact that the December 3 hearing was noticed in our October 31 decision, NITL asserts that, because of the Thanksgiving holidays, it could not request that it receive responses before Monday, December 1.

Given that the hearing is being held on Wednesday morning, we cannot grant NITL an extension until Tuesday afternoon, as that would interfere with our own ability to review the material, in the context of the other filings in the matter, and to prepare for the hearing. The latest that we can accept NITL's filing, even given NITL's unique circumstances, is at 4:30 p.m. on Monday, December 1. That schedule would at least permit us to review NITL's information on Monday night and Tuesday. NITL's request will be granted in part and denied in part.

It is ordered:

1. The requests of BLE, CPUC, BRGI, USDA, EEI, IBT, and IARW to participate in the oral hearing in this matter are granted to the extent noted above.
2. NITL's written statement is due by 4:30 p.m., December 1, 1997.
3. This decision is effective on November 26, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary

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We have received several requests for modification of that order. This order addresses those requests.

A. Requests to Participate in the Oral Hearing. Several parties that were not named as hearing participants have asked us to allow them to participate in the oral hearing. Before we address each of their requests, we note that our initial list of witnesses was not developed casually or without purpose. Rather, it was designed to provide us, within a reasonably compact hearing schedule, with representative views on the specific issues that we are seeking to explore: whether rail service in the West is improving; whether our service order should be extended or expanded; and what other steps we may need to take to help resolve the rail service emergency. In preparing our witness list, we reviewed the testimony of the more than 60 witnesses that appeared at our prior hearing, with a view toward helping us to determine which witnesses we would need to hear from again in achieving our objective.

We will now address each of the requests for permission to appear at the hearing.

1. Leroy Jones, Vice President and National Legislative Representative of the Brotherhood of Locomotive Engineers (BLE), indicates that he has “visit[ed] a number of sites and talk[ed] extensively with locomotive engineers [about the service problems in the West and about] the potential for improvement.” On behalf of the railroad operating craft that he represents, Mr. Jones wishes to appear and share the observations and conclusions that he has made during his field visits.

BLE’s request will be granted. Mr. Jones, as a result of his interaction with rail employees actually working on the rail system in the West, can provide valuable information from the perspective of employees. His participation will advance the purpose of the hearing. BLE will be granted 10 minutes.

2. The Public Utilities Commission of the State of California (CPUC) indicates that it held its own hearing on November 20, 1997, at which it gathered valuable information on the status of the recovery effort, on continuing difficulties at the West Colton Yard (one of the facilities highlighted in our required reporting from UP/SP), and on the types of problems faced by UP/SP overall in California. It wishes to participate “to assure that these . . . problems impacting the nation’s most populous state receive the urgent attention they deserve.”

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3. Brownsville & Rio Grande International Railroad (BRGI) asks that it be permitted to appear to present its views and the views of its shippers and port district regarding its dispute with UP/SP over service at Brownsville, Texas. Although the matter has already been extensively briefed in writing, BRGI alleges that our action in our November 21 decision reflects a misunderstanding of the situation.

We will grant BRGI 5 minutes in which to present its case further. BRGI’s presentation should be made by Larry Cantu, who spoke at the October 27 hearing, or by some other individual with operational experience on the railroad.

4. The United States Department of Agriculture (USDA), which participated in the October 27 hearing, has asked that it be permitted to participate in the December 3 hearing. USDA requests “the opportunity to present our analysis of the data that have been collected

thus far under the [emergency service order] requirement, along with additional data quantifying the persisting rail service problems faced by agricultural shippers and receivers.”

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Although EEI’s participation may be largely redundant -- many of EEI’s members that use the railroads in the West are also members of WCTL, which is already appearing at the hearing, and is capable of presenting the results of EEI’s survey -- we will grant EEI 3 minutes in which to present the results of its survey.

6. The International Brotherhood of Teamsters (IBT) has asked to participate in the December 3 hearing so that it can “propose a viable and long lasting solution to this transportation crisis created by the Union Pacific / Southern Pacific Railroad merger.” IBT notes that it participated at the October 27 hearing, at which it testified “about the findings of rail safety deficiencies as published in ‘Hazardous Materials on the Rails’ by the Good Neighbor Project.”

While it discussed safety issues related to UP/SP and other matters pertaining to the Board's approval of the UP/SP merger, IBT did not present specific information about service problems at the October 27 hearing that could, on balance, assist the Board in assessing the true extent of the service problems in the West or in developing the remedies adopted in our October 31 order. IBT's brief request here provides no basis on which we might conclude that its further testimony will advance the objectives of the December 3 hearing. Nevertheless, we will grant IBT 3 minutes, and we direct it to address only the issues that we have raised in our November 21 decision.

7. The International Association of Refrigerated Warehouses (IARW), whose members operate refrigerated facilities, asks to testify on behalf of its members. It has provided draft testimony that expresses the view that recent mergers have reduced the number of refrigerated rail cars operated by the railroad industry. IARW's draft testimony also expresses its members' concerns about the state in which refrigerated cars arrive at destination. Finally, IARW's draft testimony states that service in the West is slower than usual, and that as a result, refrigerated equipment is more likely to fail than it would be during normal operating periods.

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Given that the hearing is being held on Wednesday morning, we cannot grant NITL an extension until Tuesday afternoon, as that would interfere with our own ability to review the material, in the context of the other filings in the matter, and to prepare for the hearing. The latest that we can accept NITL's filing, even given NITL's unique circumstances, is at 4:30 p.m. on Monday, December 1. That schedule would at least permit us to review NITL's information on Monday night and Tuesday. NITL's request will be granted in part and denied in part.

It is ordered:

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