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SERVICE DATE - NOVEMBER 21, 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<sup>1</sup>

Decided: November 20, 1997

We instituted the Ex Parte No. 573 proceeding on October 2, 1997, in response to growing concern, reflected in formal filings, public accounts, and informal complaints to our Office of Compliance and Enforcement, about the deteriorating quality of railroad service in the West. To determine the scope of the problems, and possible solutions, we obtained written statements, and, on October 27, 1997, held an oral hearing. Additionally, to provide benchmarks to measure the overall service conditions in the West, and the extent to which service may be improving, we ordered the Union Pacific Railroad Company and the Southern Pacific Transportation Company (UP/SP), the rail system that was the subject of

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many of the service complaints, to file weekly reports setting out information in 19 operational categories.

At the 12-hour oral hearing, over 60 witnesses testified on the status of rail service in the western United States and on proposals for solving the service problems that exist. After reviewing the testimony and the written statements filed in the proceeding, we concluded that there is a transportation emergency in the West, the principal source of which is congestion in and around the Houston area, and that we must exercise our authority under 49 U.S.C. 11123 to facilitate its resolution. Accordingly, on October 31, 1997, we issued an emergency service order in STB Service Order No. 1518, Joint Petition for Service Order (Service Order).

Service Order No. 1518. Our intent in the service order proceeding was to explore short-term solutions to ongoing operational problems. Consistent with that goal, our Service Order sought to address the severe congestion in the Houston area and to free up facilities throughout the UP/SP system in a number of ways. Among other things, the order authorized the Texas Mexican Railway (Tex Mex), an affiliate of The Kansas City Southern Railroad Company (KCS), to provide expanded service in and around Houston, in order to relieve some of the pressure on UP/SP at Houston, and to help avoid congestion by routing traffic around Houston. It also ordered UP/SP and The Burlington Northern and Santa Fe Railway Company (BNSF) to take specific steps to facilitate the operations of other carriers in and around the Houston area.

Our Service Order was also directed more broadly to the service problems throughout the West. It augmented the reporting by UP/SP, in particular by requiring specific information on movements of certain commodities, including agricultural commodities and coal, and on operations in certain facilities such as the West Colton yard; it directed UP/SP to report on how it has addressed the specific shipper complaints raised during the hearing; it required UP/SP and BNSF to report on their plans for meeting increased shipping demands expected as a result of seasonal traffic and the imminent fall grain harvest; and it required UP/SP to meet with representatives of Amtrak and commuter passenger services in southern California, after which each shall report on the progress made at the meeting, whether unresolved issues remain, and, if so, what type of Board involvement may be required. Finally, the Board stated that it will hold another hearing on December 3, 1997, at which it will review the progress that has been made in relieving the congestion on the UP/SP lines, and after which it will determine what further Board action may be necessary.

Responses by UP/SP and BNSF. UP/SP and BNSF each made timely filings, on November 14, 1997, in response to the directive in the Service Order. In its filing, UP/SP reports that substantial progress is being made in its recovery efforts. It states that it has complied with the remedial measures that we ordered by facilitating the operations of Tex Mex and BNSF in and around the Houston area. It has initiated the augmented reporting that we directed, and, additionally, has responded to requests for additional reports made by

various parties.<sup>2</sup> It has responded to suggestions for assistance made during the proceeding by the Illinois Central Railroad Company, accepting some, rejecting others, and recommending still other procedures that might be workable. It has described its plans for dealing with projected seasonal traffic increases.<sup>3</sup> UP/SP indicates that it has met with the passenger carriers in southern California, and it is optimistic that progress is being made in that regard. Finally, it has filed a verified statement opposing the trackage rights proposal by the Brownsville and Rio Grande International Railroad (BRGI), which has sought authority to switch its cars moving into and out of Mexico itself rather than receiving switching from

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<sup>2</sup> In particular, in a letter dated November 10, 1997, the Society of the Plastics Industry, Inc. (SPI), the National Industrial Transportation League (NITL), and the Chemical Manufacturers Association (CMA) asked us to require UP/SP to provide additional information concerning UP/SP performance at switching yards, and to address operational complaints made by all shippers participating in the proceeding, not simply those that attended the oral hearing. UP/SP indicates that it is complying with those requests, and, in fact, it has provided an extensive summary of its efforts to address the complaints of shippers participating in this proceeding. Another shipper organization, Western Coal Traffic League (WCTL), has asked that UP/SP be required to provide information on unit coal train cycles in a more detailed fashion, broken down over particular identified routes, to facilitate a more accurate evaluation of the recovery effort. UP/SP responded in its November 14 pleading that providing this information publicly could adversely affect its competitive posture; it states that it already provides this sort of information to its individual shippers, and that WCTL, using procedures to prevent improper disclosure, can compile the information from its members.

<sup>3</sup> In this regard, UP/SP notes that it has taken various steps, including arrangements with other railroads, to improve its grain service, but it states that, even if it had no service problems, it would not be able to meet the demand expected this year in a more timely way. We note that UP/SP suggests that it can better serve the grain community if shippers aggregate shipments to accommodate unit train service, but that some smaller grain shippers have suggested during these proceedings that they have concerns with their ability to participate in such arrangements.

UP/SP; UP/SP's position is that separate switching operations by the BRGI would materially interfere with UP/SP's own operations and would aggravate congestion.<sup>4</sup>

In its November 14 statement, BNSF details its plans for handling expected increases in traffic. It notes that the demands already being made across its system are quite high, and that further demands will seriously tax its resources, particularly in handling agricultural commodities.<sup>5</sup> BNSF states that, as its intermodal demands lessen in late November, it should be able to concentrate more resources on filling its grain car orders.<sup>6</sup> It expects to work through the holidays to reduce backlogs, and to complete several capital projects that will improve its operations. BNSF notes that it is interchanging traffic with Tex Mex at Flatonia, TX, as contemplated by the Service Order, and it indicates that it has agreed to

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<sup>4</sup> In a pleading filed on November 14, 1997, BRGI indicates, in support of its proposal, that cross-border cars destined for Brownsville will now be able to be "pre-blocked" in Mexico. If that is so, then we expect UP/SP to switch the pre-blocked cars directly to BRGI at Brownsville, rather than moving them to another location as it has apparently been required to do when the cars were not pre-blocked and there was no room to switch them at Brownsville. Therefore, trackage rights such as those sought by BRGI in its "Request for Reconsideration" appear unnecessary, and indeed could have an adverse effect on UP/SP's operations to and from Mexico. BRGI's Request for Reconsideration" seeking new trackage rights will therefore be denied.

<sup>5</sup> Like UP/SP, BNSF suggests that it too can better serve the agricultural community through unit train or "shuttle train" service, which would maximize equipment utilization and improve cycle times at this critical period. BNSF notes that it is presently about four weeks behind in filling its car orders.

<sup>6</sup> In this regard, BNSF notes that the congestion in Texas has impeded its own services to the Texas Gulf Coast and to Mexico. To ensure that its own trains are not bottled up in Texas, it has imposed a temporary embargo under which it determines on a daily basis the capacity of lines into Laredo and Brownsville and into other Texas Gulf Coast destinations, and, through a permitting system, authorizes only those train movements that can be completed without delay.

UP/SP's proposal to operate over certain of those lines on a directional basis through December 4, 1997.

The December 3 Hearing. As noted, we intend to hold a further oral hearing on December 3, 1997, to determine the progress being made in resolving the emergency in the West, and the extent to which the Board's continued involvement is appropriate. Although we are well aware of the many areas of concern to various segments of the public concerning railroads in the West (and elsewhere), at this hearing, we seek only to determine whether service conditions have improved and what further actions, if any, are needed.

We will hold the hearing in the Board's Hearing Room, beginning at 10:00 a.m. To ensure that we focus directly on the service issues, we are seeking testimony only from shipper-receivers and from a range of organizations that represent affected shippers, as well as from the two largest western rail carriers and Tex Mex.<sup>7</sup> Accordingly, we will limit

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<sup>7</sup> In a pleading filed November 18, 1997, the Railroad Commission of Texas (RCT) has asked to participate in the hearing so that it can introduce an as-yet unspecified plan that it states it is currently formulating to improve service. This hearing is designed to provide us with information directly from providers and users of rail service as to their experience and advice. Nevertheless, we will grant RCT's request to appear at the hearing. We expect RCT to submit its plan by the December 1 submission date discussed later.

In the same vein, we note that the Federal Railroad Administration (FRA), at the October 27 hearing, indicated that it had observed "movement toward getting fluidity into the system," and, while expressing some reservations, it opined that "[w]e think that [UP/SP's service recovery] plan is working." And the United Transportation Union (UTU) testified at the hearing about the capacity constraints in the railroad industry, and about the early progress of UP/SP's recovery effort ("I talked to people throughout the system and the conclusion . . . is that . . . service recovery at the grassroots level . . . is moving forward, is getting better."). We request that FRA and UTU appear at the hearing and present their  
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participation at the December 3 hearing to representatives of the following businesses or organizations, with time allocated for their presentations indicated in parentheses:

1. Railroads: UP/SP (45 minutes); BNSF (15 minutes); and Tex Mex/KCS (10 minutes).
2. General Shipper Organizations: CMA (10 minutes); SPI (10 minutes); NITL (10 minutes); WCTL (10 minutes); National Mining Association (10 minutes); and North American Wholesale Lumber Association (10 minutes).
3. Grain Shipper Organizations: National Corn Growers Association (10 minutes); Nebraska Grain and Feed Association (10 minutes); Farmers Elevator Association of Minnesota (10 minutes); and North Dakota Grain Dealers Association (10 minutes).
4. Individual Shippers: Accu Chem Conversions, Inc. (5 minutes); and C & F Foods (5 minutes).
5. Government Entities and Rail Labor: FRA (10 minutes); UTU (10 minutes); and RCT (10 minutes).<sup>8</sup>

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views as to whether progress is being made in improving service.

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We request that each participant (and any other party wishing to do so) file written statements describing the progress of the recovery effort, and recommending the type, if any, of future Board involvement that would be appropriate. As the duration and scope of the Service Order is tied to its effectiveness in resolving the service problems in the West, we encourage parties to focus their statements on the following:

1. Our Service Order directed certain service assistance from other carriers. Parties should address whether the actions of the Board have helped to alleviate rail service problems in the West, whether these actions should be extended, and whether more has to be done. Any proposals suggesting more extensive intervention should address the benefits of that intervention, the capacity constraints of other railroads, and whether UP/SP's own recovery plan will be adversely affected.
2. UP/SP states that rail service to its customers that testified at the October 27 hearing or that submitted written statements with the October 20, 1997 petition of NITL is improving. Moreover, reports indicate that UP/SP carloadings are down, which suggests that other railroads may be stepping in to handle traffic formerly handled by UP/SP. We seek information from shippers as to whether they are in fact obtaining improved service.
3. The Service Order directed that UP/SP and BNSF report on their plans for meeting increased demands associated with holiday and seasonal traffic, including grain traffic. In response, the information provided by UP/SP was quite general, and both carriers indicate

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that they are not optimistic about handling anticipated traffic increases in a more timely manner. UP/SP and BNSF are directed to address this issue further, and explain in detail specifically how they intend to respond to the service needs of grain shippers, including grain shippers that are unable to aggregate shipments or otherwise to use unit train service. Shippers, for their part, should address how service to grain shippers - particularly those who do not use contracts, guaranteed car delivery programs, or the Certificate of Transportation (COT) program - can be improved without slowing the overall recovery.

4. Our Service Order requested that UP/SP, Amtrak, and the Southern California Regional Rail Authority (SCRRA) file a joint report on the progress made at their joint meeting. UP/SP submitted its assessment. We request that Amtrak and SCRRA inform us as to their view of the progress being made.

We request that such statements be filed, and served on other parties to the proceeding, by Noon, Monday, December 1, 1997.

*It is ordered:*

1. An oral hearing is set for December 3, 1997.
2. Written statements are due by Noon, December 1, 1997.
3. RCT's petition to appear at the hearing is granted.
4. BRGI's request for reconsideration is denied.
5. This decision is effective on November 21, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary

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various parties.<sup>2</sup> It has responded to suggestions for assistance made during the proceeding by the Illinois Central Railroad Company, accepting some, rejecting others, and recommending still other procedures that might be workable. It has described its plans for dealing with projected seasonal traffic increases.<sup>3</sup> UP/SP indicates that it has met with the passenger carriers in southern California, and it is optimistic that progress is being made in that regard. Finally, it has filed a verified statement opposing the trackage rights proposal by the Brownsville and Rio Grande International Railroad (BRGI), which has sought authority to switch its cars moving into and out of Mexico itself rather than receiving switching from

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<sup>2</sup> In particular, in a letter dated November 10, 1997, the Society of the Plastics Industry, Inc. (SPI), the National Industrial Transportation League (NITL), and the Chemical Manufacturers Association (CMA) asked us to require UP/SP to provide additional information concerning UP/SP performance at switching yards, and to address operational complaints made by all shippers participating in the proceeding, not simply those that attended the oral hearing. UP/SP indicates that it is complying with those requests, and, in fact, it has provided an extensive summary of its efforts to address the complaints of shippers participating in this proceeding. Another shipper organization, Western Coal Traffic League (WCTL), has asked that UP/SP be required to provide information on unit coal train cycles in a more detailed fashion, broken down over particular identified routes, to facilitate a more accurate evaluation of the recovery effort. UP/SP responded in its November 14 pleading that providing this information publicly could adversely affect its competitive posture; it states that it already provides this sort of information to its individual shippers, and that WCTL, using procedures to prevent improper disclosure, can compile the information from its members.

<sup>3</sup> In this regard, UP/SP notes that it has taken various steps, including arrangements with other railroads, to improve its grain service, but it states that, even if it had no service problems, it would not be able to meet the demand expected this year in a more timely way. We note that UP/SP suggests that it can better serve the grain community if shippers aggregate shipments to accommodate unit train service, but that some smaller grain shippers have suggested during these proceedings that they have concerns with their ability to participate in such arrangements.

UP/SP; UP/SP's position is that separate switching operations by the BRGI would materially interfere with UP/SP's own operations and would aggravate congestion.<sup>4</sup>

In its November 14 statement, BNSF details its plans for handling expected increases in traffic. It notes that the demands already being made across its system are quite high, and that further demands will seriously tax its resources, particularly in handling agricultural commodities.<sup>5</sup> BNSF states that, as its intermodal demands lessen in late November, it should be able to concentrate more resources on filling its grain car orders.<sup>6</sup> It expects to work through the holidays to reduce backlogs, and to complete several capital projects that will improve its operations. BNSF notes that it is interchanging traffic with Tex Mex at Flatonia, TX, as contemplated by the Service Order, and it indicates that it has agreed to

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<sup>4</sup> In a pleading filed on November 14, 1997, BRGI indicates, in support of its proposal, that cross-border cars destined for Brownsville will now be able to be "pre-blocked" in Mexico. If that is so, then we expect UP/SP to switch the pre-blocked cars directly to BRGI at Brownsville, rather than moving them to another location as it has apparently been required to do when the cars were not pre-blocked and there was no room to switch them at Brownsville. Therefore, trackage rights such as those sought by BRGI in its "Request for Reconsideration" appear unnecessary, and indeed could have an adverse effect on UP/SP's operations to and from Mexico. BRGI's Request for Reconsideration" seeking new trackage rights will therefore be denied.

<sup>5</sup> Like UP/SP, BNSF suggests that it too can better serve the agricultural community through unit train or "shuttle train" service, which would maximize equipment utilization and improve cycle times at this critical period. BNSF notes that it is presently about four weeks behind in filling its car orders.

<sup>6</sup> In this regard, BNSF notes that the congestion in Texas has impeded its own services to the Texas Gulf Coast and to Mexico. To ensure that its own trains are not bottled up in Texas, it has imposed a temporary embargo under which it determines on a daily basis the capacity of lines into Laredo and Brownsville and into other Texas Gulf Coast destinations, and, through a permitting system, authorizes only those train movements that can be completed without delay.

UP/SP's proposal to operate over certain of those lines on a directional basis through December 4, 1997.

The December 3 Hearing. As noted, we intend to hold a further oral hearing on December 3, 1997, to determine the progress being made in resolving the emergency in the West, and the extent to which the Board's continued involvement is appropriate. Although we are well aware of the many areas of concern to various segments of the public concerning railroads in the West (and elsewhere), at this hearing, we seek only to determine whether service conditions have improved and what further actions, if any, are needed.

We will hold the hearing in the Board's Hearing Room, beginning at 10:00 a.m. To ensure that we focus directly on the service issues, we are seeking testimony only from shipper-receivers and from a range of organizations that represent affected shippers, as well as from the two largest western rail carriers and Tex Mex.<sup>7</sup> Accordingly, we will limit

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<sup>7</sup> In a pleading filed November 18, 1997, the Railroad Commission of Texas (RCT) has asked to participate in the hearing so that it can introduce an as-yet unspecified plan that it states it is currently formulating to improve service. This hearing is designed to provide us with information directly from providers and users of rail service as to their experience and advice. Nevertheless, we will grant RCT's request to appear at the hearing. We expect RCT to submit its plan by the December 1 submission date discussed later.

In the same vein, we note that the Federal Railroad Administration (FRA), at the October 27 hearing, indicated that it had observed "movement toward getting fluidity into the system," and, while expressing some reservations, it opined that "[w]e think that [UP/SP's service recovery] plan is working." And the United Transportation Union (UTU) testified at the hearing about the capacity constraints in the railroad industry, and about the early progress of UP/SP's recovery effort ("I talked to people throughout the system and the conclusion . . . is that . . . service recovery at the grassroots level . . . is moving forward, is getting better."). We request that FRA and UTU appear at the hearing and present their  
(continued...)

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participation at the December 3 hearing to representatives of the following businesses or organizations, with time allocated for their presentations indicated in parentheses:

1. Railroads: UP/SP (45 minutes); BNSF (15 minutes); and Tex Mex/KCS (10 minutes).
  
2. General Shipper Organizations: CMA (10 minutes); SPI (10 minutes); NITL (10 minutes); WCTL (10 minutes); National Mining Association (10 minutes); and North American Wholesale Lumber Association (10 minutes).
  
3. Grain Shipper Organizations: National Corn Growers Association (10 minutes); Nebraska Grain and Feed Association (10 minutes); Farmers Elevator Association of Minnesota (10 minutes); and North Dakota Grain Dealers Association (10 minutes).
  
4. Individual Shippers: Accu Chem Conversions, Inc. (5 minutes); and C & F Foods (5 minutes).
  
5. Government Entities and Rail Labor: FRA (10 minutes); UTU (10 minutes); and RCT (10 minutes).<sup>8</sup>

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<sup>7</sup>(...continued)  
views as to whether progress is being made in improving service.

<sup>8</sup> An order providing the specific details of the hearing will be issued shortly.

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We request that each participant (and any other party wishing to do so) file written statements describing the progress of the recovery effort, and recommending the type, if any, of future Board involvement that would be appropriate. As the duration and scope of the Service Order is tied to its effectiveness in resolving the service problems in the West, we encourage parties to focus their statements on the following:

1. Our Service Order directed certain service assistance from other carriers. Parties should address whether the actions of the Board have helped to alleviate rail service problems in the West, whether these actions should be extended, and whether more has to be done. Any proposals suggesting more extensive intervention should address the benefits of that intervention, the capacity constraints of other railroads, and whether UP/SP's own recovery plan will be adversely affected.
2. UP/SP states that rail service to its customers that testified at the October 27 hearing or that submitted written statements with the October 20, 1997 petition of NITL is improving. Moreover, reports indicate that UP/SP carloadings are down, which suggests that other railroads may be stepping in to handle traffic formerly handled by UP/SP. We seek information from shippers as to whether they are in fact obtaining improved service.
3. The Service Order directed that UP/SP and BNSF report on their plans for meeting increased demands associated with holiday and seasonal traffic, including grain traffic. In response, the information provided by UP/SP was quite general, and both carriers indicate

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that they are not optimistic about handling anticipated traffic increases in a more timely manner. UP/SP and BNSF are directed to address this issue further, and explain in detail specifically how they intend to respond to the service needs of grain shippers, including grain shippers that are unable to aggregate shipments or otherwise to use unit train service. Shippers, for their part, should address how service to grain shippers - particularly those who do not use contracts, guaranteed car delivery programs, or the Certificate of Transportation (COT) program - can be improved without slowing the overall recovery.

4. Our Service Order requested that UP/SP, Amtrak, and the Southern California Regional Rail Authority (SCRRA) file a joint report on the progress made at their joint meeting. UP/SP submitted its assessment. We request that Amtrak and SCRRA inform us as to their view of the progress being made.

We request that such statements be filed, and served on other parties to the proceeding, by Noon, Monday, December 1, 1997.

*It is ordered:*

1. An oral hearing is set for December 3, 1997.
2. Written statements are due by Noon, December 1, 1997.
3. RCT's petition to appear at the hearing is granted.
4. BRGI's request for reconsideration is denied.
5. This decision is effective on November 21, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary