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SERVICE DATE - JANUARY 14, 1998

SURFACE TRANSPORTATION BOARD

DECISION

Supplement No. 1 to
STB SERVICE ORDER NO. 1518

JOINT PETITION FOR SERVICE ORDER

Decided: January 13, 1998

In our order decided and served December 4, 1997, we found that a transportation emergency in the western part of the United States continues to exist, and, as a result, we extended, and modified in certain respects, the service order entered in this proceeding on October 31, 1997. As here pertinent, the supplement to the service order required the Union Pacific Railroad Company and the Southern Pacific Transportation Corporation (UP/SP) to provide, as part of its weekly reporting, detailed information on its coal transportation movements.

In a letter dated December 18, 1997, the Western Coal Traffic League (WCTL) states that UP/SP's weekly coal reports do not comply with our December 4 order. WCTL recognizes that UP/SP has in fact generally compiled the information called for in our December 4 order, and has submitted it to the Board. Indeed, WCTL concedes that it too has, through its counsel, received the requested data. December 18 Letter at 3. Its concern, however, is that UP/SP has submitted what the carrier considers to be proprietary data under seal, and has agreed to release the information only to individuals willing to sign a confidentiality agreement. Asserting that the information at issue is not particularly confidential, WCTL asks us to explicitly require that UP/SP disclose the information to the public at large, without requiring that it be treated as confidential. UP/SP has responded in opposition to WCTL's request, and WCTL has replied to UP/SP's response.

WCTL's request will be denied. Our order found that the production of more specific performance data concerning coal movements would help us, and users of UP/SP's service, to determine the current status of the transportation emergency. UP/SP has cooperated with our order and has produced the information. We are able to review the information, as is any individual willing to enter into the confidentiality agreement. Therefore, no one is being prevented from accessing the data as alleged by WCTL, and the objective of our December 4 order has been met. That UP/SP identified the information as confidential and produced it under seal is neither surprising nor unreasonable. Indeed, in its December 18 letter (at 2), WCTL concedes that, from a business perspective, it is understandable that UP/SP would want to limit access to the data. Moreover, UP/SP initially objected to the request that it produce the data on the ground that it would result in

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publication of proprietary information. Our goal here is to resolve the crisis, but requiring the public dissemination of confidential information would be an unnecessary intrusion that would not facilitate resolution of the emergency, that could damage UP/SP commercially, and that would not be in the public interest.

WCTL also requests that we require UP/SP to provide more historical data than it provided in its December 15 coal report. UP/SP, in its response to WCTL's letter, indicates that it will endeavor to comply with WCTL's request. We appreciate UP/SP's response to WCTL's request for historical data, and we expect that the carrier will be able to produce the type of information that will be helpful to WCTL and other interested parties willing to abide by a confidentiality agreement.

It is ordered:

1. WCTL's request that we require UP/SP to file its weekly coal reports in an unrestricted public format is denied.
2. This decision is effective immediately.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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