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SERVICE DATE - OCTOBER 30, 2001

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. 92

Decided: October 29, 2001

By joint petition (designated BNSF-95/ESI-34) filed September 28, 2001, The Burlington Northern and Santa Fe Railway Company (BNSF) and Entergy Services, Inc., and Entergy Arkansas, Inc. (referred to collectively as Entergy) seek an “order of enforcement” directing Union Pacific Railroad Company (UP) to permit BNSF to connect at Jonesboro, AR, and Hoxie, AR, between BNSF’s Memphis-Kansas City line and UP’s Memphis-Valley Junction lines (over which BNSF has trackage rights) in order to provide rail service to Entergy’s coal-fired electric generating station at White Bluff, AR. UP replied to the joint petition in a letter (undesignated) filed October 5, 2001.

Although the BNSF-95/ESI-34 joint petition seeks relief in the nature of a mandatory injunction, the joint petition makes clear that BNSF and Entergy really seek expedited resolution of their dispute with UP concerning two restrictions (the entry/exit restriction and the Texas/Louisiana restriction) that UP claims are applicable to the Houston-Memphis-St. Louis corridor trackage rights that BNSF acquired in connection with the 1996 UP/SP merger. As the joint petition notes, the details regarding that dispute have been briefed, and the related requests for relief have been made, in pleadings filed in the STB Finance Docket No. 32760 (Sub-No. 21) UP/SP “general oversight” proceeding.

BNSF and Entergy indicate that expedition is required for three reasons. First, BNSF and Entergy indicate that, if the Board finds (as UP contends) that BNSF must route Entergy’s traffic via Memphis, BNSF will either have to construct an interchange at Bridge Junction in West Memphis or rehabilitate and upgrade its West Memphis Branch. BNSF and Entergy add that, although BNSF could handle Entergy’s traffic via Memphis even prior to completion of the necessary interchange connections, this would cause congestion on the single-track bridge across the Mississippi River, and, therefore, work on facilitating the interchange at West Memphis

would need to commence as soon as possible. And, BNSF and Entergy add, either of the two alternative interchange projects will require substantial lead time (it is estimated that the construction of an interchange between BNSF and UP at Bridge Junction would take up to 6 to 9 months to complete, and that the rehabilitation and upgrading of BNSF's West Memphis branch would require as much as 9 to 12 months).

Second, BNSF and Entergy indicate that, even if the Board finds that BNSF can route Entergy's traffic via connections with the trackage rights lines at Jonesboro and Hoxie, BNSF will still need to make the arrangements for those connections. A connection between the UP and BNSF lines at Hoxie, BNSF and Entergy indicate, will require upgrade and other work and could take up to 2 months to complete. And, BNSF and Entergy add, because BNSF must also, regardless of the route, develop and design the specific operating and service plans for the service to Entergy's White Bluff Station, BNSF needs to know as soon as possible which route its unit trains to White Bluff will take so that, to the extent possible, the necessary preparatory work can be completed before the anticipated commencement of service on January 1, 2002.

Third, BNSF and Entergy indicate: that Entergy, under its coal transportation agreement with UP, must provide certain notices in advance of each calendar year regarding its intended coal shipments; that, in this regard, Entergy must factor into its notice to UP the tonnage that it intends to ship to White Bluff via BNSF; that, under the coal transportation agreement with UP, Entergy must make its nomination for 2002 by November 1, 2001; and that, if the routing issue before the Board is not resolved by that time, Entergy "may be forced to forgo BNSF service for much or all of 2002."

In view of the reasons underlying the request for expedited resolution of the dispute concerning the two restrictions that UP claims are applicable to BNSF's Houston-Memphis-St. Louis corridor trackage rights, we will issue a decision resolving this dispute at the earliest possible date. Because the pleadings addressing this dispute were filed in the STB Finance Docket No. 32760 (Sub-No. 21) UP/SP "general oversight" docket, the decision resolving this dispute will be issued in that docket. It is unlikely, however, that we will issue that decision before November 1, 2001, in view of the complexity of the issues, and the fact that the pleading requesting expedited action was filed only a month ago.<sup>1</sup> If not issued by November 1, the decision will be issued as soon after that date as possible.

Because the dispute concerning the two restrictions that UP claims are applicable to BNSF's Houston-Memphis-St. Louis corridor trackage rights will be resolved by the decision

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<sup>1</sup> In this regard, the Board would only note that petitioners' need for expedition appears to have been known by them for quite some time prior to their September 28th filing.

that the Board plans to issue in the STB Finance Docket No. 32760 (Sub-No. 21) UP/SP “general oversight” docket, and because the Board expects that, unless and until that decision is either stayed or overturned (either by the Board or by a court of competent jurisdiction), UP will comply with that decision, the BNSF-95/ESI-34 petition for an “order of enforcement” will be denied. Relief in the nature of a mandatory injunction is unnecessary when relief in the nature of a declaratory order will suffice.

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-95/ESI-34 joint petition is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary