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SERVICE DATE - LATE RELEASE NOVEMBER 16, 1998

SURFACE TRANSPORTATION BOARD

DECISION

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. 83]

Decided: November 13, 1998

In Decision No. 44 (served August 12, 1996), we approved the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company) (collectively UP/SP), subject to various conditions, including numerous environmental mitigation conditions. As pertinent here, the environmental conditions imposed in Decision No. 44 called for a further, more focused mitigation study to arrive at a specifically tailored mitigation plan for Reno, NV, in addition to the environmental mitigation already imposed, to assure that localized environmental issues unique to that community are effectively addressed.¹ The mitigation study was to be completed within 18 months of the consummation of the merger.

On September 15, 1997, the Board's Section of Environmental Analysis (SEA) issued the Preliminary Mitigation Plan (PMP) for Reno. After comments on the PMP were received, a Final Mitigation Plan (FMP) for Reno was issued February 11, 1998, as contemplated by Decision No. 44. Comments on the FMP were due to be filed March 12, 1998.

By a letter dated February 24, 1998, however, counsel for Reno requested that we toll all

¹ Decision No. 44 also called for a further mitigation study for Wichita and Sedgwick County, KS. In Decision No. 76 (served December 12, 1997), however, the Board granted a joint request that further proceedings on that mitigation study be tolled. By petition filed June 26, 1998, the City of Wichita, Sedgwick County, and the Union Pacific Railroad Company indicated they had entered into an agreement and requested that we approve the agreement and impose it as a condition to the UP/SP merger in lieu of other mitigation that could have been imposed pursuant to Decision No. 44, Appendix G, Condition Nos 23a-23d. In Decision No. 80, served July 8, 1998, we granted the joint petition and imposed the settlement as a condition.

proceedings in the ongoing Reno mitigation study for a period of 8 months. Specifically, Reno asked that we toll both the current comment period on the FMP and completion of the ongoing mitigation study process (i.e., the preparation of SEA's final recommendations and the issuance of a final decision imposing additional localized mitigation measures we find appropriate, based on our consideration of the PMP, FMP, all public comments, and SEA's final recommendations). In support of its request, Reno stated that it was actively pursuing a funding plan to implement a depressed trainway project through downtown Reno and was also engaged in good faith negotiations with UP/SP. By letter dated February 25, 1998, the Union Pacific Railroad Company (UP) advised us that it concurred with Reno's tolling request. UP also agreed to adhere to the train count limitations and reporting requirements set forth in paragraph 22a and 22b of Appendix G of Decision No. 44 during the period that the Reno mitigation study process was tolled. Accordingly, we granted Reno's request by Decision No. 79, served March 2, 1998.

By letter dated November 5, 1998, Reno and UP have jointly requested an extension of the tolling period and the train cap through January 31, 1999, to allow the parties more time for their negotiations. The parties state that they used the stay period productively for good faith negotiations, which have intensified in recent weeks. The parties add that they believe it would be counterproductive and potentially wasteful for the Board to reinstate the mitigation study process when negotiations are continuing and should reach a conclusion, successful or otherwise, in coming weeks. In order to facilitate the parties' negotiations, we will grant the request for the extension.

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

It is ordered:

1. The stay of the 18-month mitigation study ordered for Reno in Decision No. 44, Appendix G, 22a-22d, and the train cap, with associated reporting requirements, are extended through January 31, 1999.
2. This decision is effective on the date served.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary