

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 23)

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

Decided: August 20, 1997

By petition (designated UP/SP-306) filed July 17, 1997, applicants<sup>1</sup> seek a determination that the terms of the proposed merger of SSW into SSW Merger Corp., including the \$6,800-per-share price to be paid to the four minority shareholders who own the 61 shares of SSW's common stock that are publicly held, are just and reasonable. See Schwabacher v. United States, 334 U.S. 192 (1948).<sup>2</sup>

By decision served July 29, 1997 (and published that day in the Federal Register at 62 FR 40566), we indicated that, because the UP/SP-306 petition implicates our statutory mandate and involves a matter that requires expedited regulatory action, we would proceed upon the schedule sought by applicants. Accordingly, we set August 28, 1997, as the due date by which interested persons could submit comments respecting whether the terms and conditions of the proposed merger of SSW into SSW Merger Corp. are just and reasonable.

By petition filed August 15, 1997, Benjamin Zatz and Donald Zatz (petitioners) request a 60-day extension of the comment due date. Petitioners indicate: that they are two of the four minority SSW shareholders; that they own 55 of the 61 minority shares; that, since receiving the UP/SP-306 petition, they have devoted considerable time to locating and retaining transportation counsel and a financial analyst; that they have now retained such counsel; that such counsel needs time to familiarize himself with the case; and that it appears unlikely that petitioners will be able to retain a financial analyst sufficiently in advance of the comment due date. Petitioners further indicate that, because they believe that it will be impossible to prepare their comments without first reviewing the workpapers and supporting documents pertaining to applicants' Credit Suisse First Boston appraisal<sup>3</sup> as well as detailed financial statements of SSW, they have already submitted to applicants their first request for the production of documents (a copy of which is attached to their petition).

Applicants, by reply (designated UP/SP-310) filed August 18, 1997, urge the denial of petitioners' request for an extension of the comment due date. Applicants indicate: that copies of the UP/SP-306 petition were served on petitioners on July 14, 1997; that petitioners have been given, in effect, 6 full weeks (from July 14 to August 28) to retain appropriate legal counsel and a financial analyst, and to prepare their comments; and that the sought extension of the comment due date will

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<sup>1</sup> As indicated in the decision served July 29, 1997, slip op. at 4, the word "applicants" now has reference to Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), Southern Pacific Rail Corporation (SPR), Southern Pacific Transportation Company (SPT), and St. Louis Southwestern Railway Company (SSW).

<sup>2</sup> Applicants indicate that the merger of SSW into SSW Merger Corp. will occur prior to and in anticipation of the merger, now scheduled to occur in February 1998, of SPT into UPRR.

<sup>3</sup> See UP/SP-306, Exhibit A.

impose a considerable burden on applicants because, "unless this matter is resolved before September 30, the end of SSW's fiscal third quarter, UP/SP will be required to undertake the expensive and resource-intensive task of preparing financial statements that reflect SSW's operations as a separate company." UP/SP-310 at 2. Applicants add: that they will respond to petitioners' "straightforward" discovery requests "as expeditiously as possible"; and that they have already provided petitioners with a portion of the requested documents. UP/SP-310 at 4.<sup>4</sup>

## DISCUSSION AND CONCLUSIONS

Comment Due Date. Petitioners have failed to justify the 60-day extension they have requested. The central issue posed by the UP/SP-306 petition as regards petitioners concerns the value of the 61 minority SSW shares. This issue does not appear to be overly complex and, given the amount of time petitioners have already had to develop their case, an extension of the length sought by petitioners is clearly excessive. Furthermore, the extension requested by petitioners would make it impossible to issue a final decision on the UP/SP-306 petition prior to September 30, 1997.

Under the circumstances, we find that an extension of 10 days for the comment due date will provide petitioners with sufficient opportunity to develop their submission while preserving our ability to issue a final decision prior to September 30, 1997. Accordingly, we will extend the comment due date for petitioners to September 8, 1997, and we will allow applicants until September 15, 1997, to file a reply to petitioners' comments.

Service of This Decision. Petitioners are two of the four minority SSW shareholders. To assure that the other two minority SSW shareholders are kept informed of the status of this proceeding, we will direct applicants to serve a copy of this decision upon these other two shareholders no later than August 22, 1997, and to certify to us that such service has been made.

Electronic Submissions. As indicated in the decision served July 29, 1997, slip op. at 7-8, in addition to submitting an original and 10 copies of all documents filed with the Board, all parties are requested to submit all pleadings and attachments as computer data contained on 3.5-inch IBM-compatible floppy diskettes formatted for WordPerfect 7.0 (or formatted so that they can be converted by WordPerfect 7.0).<sup>5</sup>

Underlying Data. Attached to the UP/SP-306 petition as Exhibit A is a verified statement of Stephan C. Month of Credit Suisse First Boston. Mr. Month indicates that he performed three analyses (a comparable company analysis, a comparable acquisition analysis, and a discounted cash flow analysis), and that the composite of these analyses resulted in an SSW equity value range of approximately \$4,155 to \$6,809 per common share. Mr. Month's statement, while describing each of the three analytical methods he used and the values he derived therefrom, does not include any supporting data showing how these values were actually calculated. This information may prove to be important in the event that applicants' \$6,800 valuation is subject to challenge. Accordingly, we

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<sup>4</sup> Petitioners, by an additional pleading filed August 19, 1997, have advised that the discovery request attached to their prior pleading was not the only discovery request they will be making; and they have attached to their new pleading a copy of their first set of interrogatories (also dated August 19, 1997). Petitioners' August 19 filing is an impermissible reply to a reply, but, in the interests of development of a complete record, we will accept it. We note, however, that much of the discovery requested by petitioners in their first set of interrogatories is of doubtful relevance.

<sup>5</sup> If, however, any attachment is in the form of a spreadsheet, we would ask that the electronic spreadsheet be in, or convertible by, Lotus 1-2-3 97 Edition. Any party wishing to submit spreadsheets in a format other than Lotus 1-2-3 97 Edition should consult with Julia Farr, (202) 565-1613. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible by Lotus 1-2-3 97 Edition, may nevertheless be useable by our staff.

are directing that applicants submit, by August 27, 1997, any workpapers or other documentation that show the underlying data and calculations that lie behind the values generated by Mr. Month's three analytical methods.<sup>6</sup>

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

It is ordered:

1. Petitioners pleading filed August 19, 1997, is accepted for filing and made part of the record in this proceeding.
2. The procedural schedule established in the decision served July 29, 1997, remains in effect, except as indicated in ordering paragraph 3.
3. Comments by petitioners Benjamin Zatz and Donald Zatz are due by September 8, 1997. Applicants' reply to such comments is due by September 15, 1997.
4. Applicants must serve copies of this decision upon the other two minority SSW shareholders by August 22, 1997, and must certify to us that such service has been made.
5. The parties shall submit all pleadings both in the required paper form and also as computer data contained on 3.5-inch IBM-compatible floppy diskettes.
6. By August 27, 1997, applicants must submit any workpapers or other documentation that show the underlying data and calculations that lie behind the values generated by Mr. Month's three analytical methods.
7. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

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<sup>6</sup> Applicants may, if appropriate, submit some or all of this material under seal, subject to the protective order entered in Decision No. 2 (served September 1, 1995) in the Finance Docket No. 32760 proceeding.