

STB SERVICE ORDER NO. 1518

JOINT PETITION FOR SERVICE ORDER

Decided October 31, 1997

The Board issues an emergency service order upon finding a rail service emergency in the western United States. The service order permits additional railroads to provide certain services in the Houston area to mitigate congestion.

BY THE BOARD:

This emergency service order is being issued as an outgrowth of our proceeding in STB Ex Parte No. 573, *Rail Service in the Western United States (Service in the West)*. In that proceeding, we held a 12-hour oral hearing on October 27, 1997, at which 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 have concluded that there is a transportation emergency in the West, and that we must exercise our authority under 49 U.S.C. 11123 to facilitate its resolution, specifically with respect to the Houston area and operations of the Union Pacific Railroad Company and the Southern Pacific Transportation Corporation (UP/SP).

Summary of the Measures Required. To facilitate resolution of the emergency in the West:

1. *Tex Mex to Serve Houston Through HBT and PTR.* The Texas Mexican Railway (Tex Mex) will be authorized to accept traffic routed to it by Houston shippers that are switched by the Houston Belt Terminal Railroad's (HBT)

successors¹ and the Port Terminal Railroad Association (PTRA). UP/SP, which agreed at the oral hearing "to suspend contract obligations * * * where it could be shown that it would benefit the customer and would not add to the problems," shall release from their contracts all shippers capable of being switched by HBT and PTRA at Houston that desire to be served by Tex Mex. All rates and charges applicable to shipments routed to Tex Mex under this authority will be those agreed upon between Tex Mex and the individual shipper.

2. *Tex Mex Trackage Rights.* To mitigate congestion over UP/SP's "Sunset Route," Tex Mex is authorized to utilize trackage rights over the Algoa route south of Houston, between Placedo, TX (Milepost 224.3) and Algoa, TX (Milepost 343.1) (a distance of 118.8 miles), to the extent it chooses to do so. In this connection, we will require BNSF to grant Tex Mex trackage rights over its portion of the Algoa route between Alvin (Milepost 28.6) and Algoa (Milepost 24.4) (Galveston Subdivision) and between Alvin (Milepost 0.0) and T&NO Junction (Milepost 19.4) (Houston Subdivision), a total distance of 23.6 miles.

3. *The Caldwell to Flatonia Line.* To facilitate rerouting of traffic around Houston, UP/SP is required to maintain in effect its temporary grant of trackage rights to BNSF via the Caldwell-Flatonia-Eagle Pass line, and to permit BNSF to interchange Laredo run-through traffic with Tex Mex at Flatonia if it desires to do so.

4. *Track Access.* In accordance with the more detailed explanation below, UP/SP shall facilitate the existing operations of BNSF and Tex Mex in the Houston area, and shall maintain open use of mainlines and sidings on the Houston-to-Memphis and Houston-to-Iowa Junction routes.

5. *Augmented Reporting.* UP/SP will augment its current reporting by providing several categories of additional information, including information on movements of grain and coal, and terminal information for West Colton Yard in the Los Angeles area.

¹ We have just learned that HBT is to be dissolved by its owners (BNSF-UP/SP) effective November 1, 1997. The HBT switching operations and yard facilities are to be divided between Burlington Northern and Santa Fe Railway Company (BNSF) and UP/SP. On October 30, 1997, Tex Mex and The Kansas City Southern Railway Company (KCS) filed a petition for an emergency cease and desist order and complaint regarding the dissolution of HBT. We will address that petition in the near future; for now, we direct HBT's successors (hereinafter referred to as HBT) to perform HBT's switching operations in a manner that will facilitate the implementation of this service order.

6. *Illinois Central.* UP/SP shall respond, by November 14, 1997, to the suggestions made to it by Illinois Central Railroad (IC) as to IC's suggested measures to assist UP/SP's service recovery.
7. *Specific Shipper Complaints.* UP/SP shall, by November 14, 1997, report on what it has done to address the specific service concerns raised by each of the participants in the October 27 hearing.
8. *Anticipated Traffic Increases.* UP/SP and BNSF shall, separately by November 14, 1997, report on their respective plans for meeting increased demands for the movement of intermodal and manifest traffic associated with holiday and other seasonal demands, and with the increased service demands associated with the imminent grain harvest.
9. *Passenger Issues.* UP/SP, Amtrak, and the Southern California Regional Rail Authority (SCRRA) shall file a joint report on the progress made at their scheduled meeting, and each shall indicate its view of whether, in light of the meeting, unresolved issues remain, and if so, what type of Board involvement, if any, each suggests.
10. *BRGI.* Assuming that the Transportacion Ferroviaria Mexicana (TFM) is willing to switch and block trains prior to delivery at Brownsville, TX, pursuant to an agreement with the Brownsville and Rio Grande International Railroad (BRGI), UP/SP shall facilitate the prompt handling of those shipments by the BRGI.
11. *Further Actions.* The Board will hold a hearing on December 3, 1997, at which UP/SP will address the progress it has made in relieving the service problems on its lines, and on whether any additional actions are necessary.

BACKGROUND

We instituted the *Service in the West* 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, which we followed with the oral hearing on October 27. Additionally, to provide benchmarks to measure the overall service conditions in the West, and the extent to which service is improving, we ordered UP/SP, the carrier that was the subject of many of the service complaints, to file weekly reports setting out information in 19 operational categories.

THE SERVICE PROBLEMS IN THE WEST

The written and oral testimony outline in vivid detail the rail transportation problems in the West, principally involving -- although not limited to -- the services provided by UP/SP. Shippers from California to Oregon and the Midwest to the Texas Gulf testified about the difficulties they have had in moving, and sometimes even locating, their freight. Operators of rail passenger services testified about the difficulties they were facing in their efforts to achieve on-time performance in California and the Gulf region. Short line railroads testified about the difficulties they have had in moving their cars over UP/SP and in recovering empty cars already in the UP system. And state and local government agencies testified as to the commercial problems that have accompanied the service failures of the railroads serving the western part of the country. Some commenters also expressed concerns about the linkage between service and rail safety.

UP/SP recognizes its service failures, but it asserts that government intervention is not necessary. Rather, its position is that its own "service recovery plan" that it recently initiated has begun to take effect, and that the crisis is beginning to abate. UP/SP fears that government intervention could only interfere with its own efforts to resolve the service problems, and could aggravate rather than ameliorate the crisis. Many of the shipper interests commenting in connection with this hearing share UP/SP's view on this issue.² Additionally, at the hearing, the United Transportation Union (UTU) and the Federal Railroad Administration (FRA) supported UP/SP's statement that the situation was improving, and expressed concern that injecting new carriers into the mix in the West could reverse that improvement and could pose potential safety concerns.³ Therefore, UTU and FRA, like many of the shippers that participated in the hearing process, urged the Board to devise contingency plans, but also to give UP/SP an additional period of time (30 to 60 days) to see if its service recovery plan in fact produced tangible results.

² Some of the shippers indicated that their service had improved since UP/SP instituted its service recovery plan, while others stated that they had not noticed any improvement.

³ We should point out that the FRA has just dispatched approximately 80 safety inspectors to the Houston area. In a related matter, we understand that UP/SP has introduced a "guaranteed" time off program for employees in Texas. Our intent here is to facilitate resolution of the service problems in Texas.

Many other shipper and railroad interests suggested plans for immediate Board intervention. The suggestions ranged from short-term rerouting measures designed to relieve the pressure on particular lines or yards, to more expansive plans for replacing UP with other carriers to operate various services, to more long-term "open access"-type proposals that would fundamentally alter the way in which railroad service is currently provided.

On October 21, 1997, three shipper groups — The Society of the Plastics Industry, Inc. (SPI), The National Industrial Transportation League (NITL), and the Chemical Manufacturers Association (CMA) — filed a petition asking us to issue an emergency service order. Although these petitioners did not propose a specific plan, they asked, in general, that we provide increased access by other railroads in congested areas through devices such as removal of restrictions on existing trackage rights, awarding of additional trackage rights, and implementation of "neutral switching" (equal access by shippers to all line haul carriers serving a particular location, *e.g.*, Houston, designed to ensure fair and equitable switching services in terminals).⁴ Petitioners also asked the Board to consider intervening in UP/SP's dispatching operations at various points. One railroad, BNSF, which had already suggested remedial action under which it would handle some traffic currently handled by UP/SP, and whose own service was called into question by several shippers, filed papers in support of the SPI/NITL/CMA proposal.

DISCUSSION AND CONCLUSIONS

The provisions of 49 U.S.C. 11123 authorize us to issue emergency service orders whenever we determine that any "failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States." Service orders, which may not exceed 30 days initially, but which may be extended for an additional 240 days, authorize us, among other things, to (1) "direct the handling, routing, and movement of the traffic of a rail carrier and its

⁴ Petitioners' witness Henson elaborated on the service order request by explaining that, "[f]irst, and foremost, a successful recovery plan must squarely address the congestion in the Houston and Gulf Coast area * * *. [A]ll efforts must be focused on moving cars out of the Houston area and off the UP/SP system."

distribution over its own or other railroad lines; (2) require joint or common use of railroad facilities; [or] (3) prescribe temporary through routes.”

The comments and testimony that we have received clearly demonstrate that an emergency exists, and that it has had substantial adverse effects on shippers and on rail service in a broad region of the United States. Therefore, we have decided that we must take action to facilitate the resolution of the emergency.

At the outset, we want to point out that we recognize that government cannot, as a general rule, operate private businesses as well as private businesses can operate themselves. Rather, in our view, government should promote appropriate private-sector initiatives and private-sector solutions to problems, and should intervene only as a last resort. However, sometimes government must intervene; here, the extent of the rail service problems in the West, and the negative impact on shippers, indicate that we must intervene now.

Several of the shippers at the hearing indicated that they have seen no improvement in recent weeks. We are sure that the effects of UP/SP's plan will not be felt by all shippers evenly; thus, notwithstanding the experience of some shippers, we have no reason to doubt UP/SP's statement that its service recovery plan is beginning to take hold. For that reason, and given that other shippers have indicated that they have noticed recent improvements, we see no basis on which to supplant UP's services, or its managerial control, with those of another carrier or group of carriers. However, even if UP/SP's plan is gradually breaking the logjam, surges in grain and seasonal traffic will impose new strains on the carrier's services. Therefore, we have concluded that the recovery effort must be more aggressive than that proposed by UP/SP.

At the same time, we share UP/SP's concern that any remedy that we direct involving other carriers should not unreasonably impede UP/SP's own efforts to mitigate the crisis. For that reason, we have decided not to impose many of the more intrusive measures that were suggested, but instead to use Tex Mex to divert some traffic off of UP/SP and away from Houston. Additionally, given the concerns expressed by many of the participants in the hearing about BNSF's own service inadequacies, we have sought to impose remedies that would not materially tax BNSF's resources. Finally, as the intent of the *Service in the West* proceeding was to explore short-term solutions to operational problems, we will not at this time consider long-term, open access-type proposals.

Following is a discussion of each of the remedies that we are imposing:

1. *Tex Mex to Serve Houston Through HBT and PTRA.* It is evident from the record that the genesis of the problems in the West is the congestion at Houston. Any assistance that we can provide in alleviating the congestion at Houston would likely have a salutary effect on UP/SP's service generally. At the same time, as we have noted, we would not want to interfere with UP/SP's own efforts in Houston, or heighten potential safety risks, by injecting into this relief process new carrier operations over lines that they do not now operate in Houston, or that would unnecessarily add density to already crowded lines.

Tex Mex currently has trackage rights in the Houston area, but those rights are restricted to the transportation of freight having a prior or subsequent movement on Tex Mex. Thus, Tex Mex is limited as to the service it may provide to shippers in Houston.

HBT and PTRA provide substantial switching services for line haul carriers serving shippers located within the Houston terminal area, for which they pick up and classify freight cars for the line haul movement. We will temporarily suspend the restriction on Tex Mex's services so as to allow Tex Mex to accept any traffic routed to it by Houston shippers that are switched by HBT and PTRA. This modification will provide shippers that now route traffic over UP/SP with alternate routing options. At the same time, it will not inject a new carrier into the Houston area, and thus, should enhance rather than interfere with UP's efforts to reduce congestion in Houston.

Finally, based on its offer to do so, UP/SP shall suspend the transportation service contract obligations of all shippers at Houston that wish to route shipments over the Tex Mex instead. All rates and charges applicable to shipments routed to Tex Mex under this authority will be those agreed upon between Tex Mex and the individual shipper.

2. *Tex Mex Trackage Rights.* One of UP's most congested routes in Texas is the "Sunset Route." To minimize congestion over this route, Tex Mex has suggested that it be authorized trackage rights south of Houston over the Algoa route, which Tex Mex now operates pursuant to a haulage agreement involving UP/SP traffic. Tex Mex also suggests that it be given authority to serve UP/SP shippers directly. Tex Mex's proposal has promise, as it may alleviate congestion over the Sunset Route without adversely affecting UP/SP's recovery plan or materially increasing congestion elsewhere.

Therefore, Tex Mex is authorized to initiate trackage rights operations, to the extent it chooses to do so, over the Algoa route south of Houston, between Placedo, TX and Algoa, TX (a distance of 118.8 miles), and we will require BNSF to grant Tex Mex trackage rights over its portion of the Algoa route between Alvin, TX and Algoa, TX, and between Alvin and T&NO Junction, TX, a total distance of 23.6 miles. Because this line will not accommodate switching by multiple carriers, we can not authorize Tex Mex to serve UP/SP shippers that are not in the Houston switching district without UP/SP's concurrence. However, we expect UP/SP to work with Tex Mex and to allow Tex Mex to serve UP/SP shippers directly where it is operationally feasible. Tex Mex, of course, may handle any traffic within the switching area of Houston served by HBT and PTR A that is designated by the shipper to move over Tex Mex in lieu of UP/SP.

3. *The Caldwell to Flatonia Line.* Tex Mex has suggested that traffic can be diverted from Houston through some minor modifications to the trackage rights on the Caldwell-Flatonia-Eagle Pass line. UP/SP argues that it would be counterproductive to run more BNSF or Tex Mex trains on the Caldwell-to-Flatonia line. UP/SP states that this 66.6-mile line is the core of SP's system in Texas, carrying all trains between the West Coast and the Mexican border, on the one hand, and Dallas-Fort Worth, Memphis and St. Louis, on the other. UP/SP itself has recently added more trains to this fast, single-track line to circumvent Houston.

We understand UP/SP's concerns, but it is clear to us that one way to reduce congestion on UP/SP lines in Houston is by temporarily diverting certain traffic flows away from Houston. To facilitate traffic movement around Houston, we will require UP/SP to maintain in effect its temporary grant of trackage rights to BNSF on the Caldwell-Flatonia-Eagle Pass line, and to permit BNSF to interchange Laredo run-through traffic with Tex Mex at Flatonia if BNSF desires to do so.

4. *Track Access.* In its filings, BNSF has indicated that certain of its operations have been impeded because UP/SP has been blocking track with cars in storage. UP/SP and BNSF have apparently worked out arrangements that are suitable to both. We appreciate the efforts of the parties to work out these matters themselves. We direct UP/SP and BNSF to continue to facilitate the operations of Tex Mex in the Houston area by providing clear access to the HBT yard and by providing switching for shipper-designated traffic for Tex Mex. We also

direct UP/SP to continue to keep its tracks open on the Houston-to-Memphis and Houston-to-Iowa Junction routes.

5. *Reporting.* In our October 15, 1997 decision, we required UP/SP to file periodic reports so that the performance improvements it projects can be followed. At the hearing, some parties asked us to require more detailed information in these reports. These requests are reasonable and necessary. In a letter filed by UP/SP on October 30, 1997, UP/SP has agreed to augment its reports by: (a) providing specific information on the placement of empty grain cars in each of an eleven-state grain producing area; by providing shipment times for wheat from Kansas to the Gulf Coast; and by providing shipment times for corn shipments from Nebraska to Pacific Northwest ports; (b) showing the number of cars processed by each terminal during the reporting period (switched and run through); and (c) providing an expansion of daily crew starts and train starts, and the number of trains held each day at the major terminals for crews, power, or congestion.

We appreciate UP/SP's cooperation in this regard. Additionally, because of the significant concern raised about rail service affecting Southern California, UP/SP will also supplement its major terminal report by adding the information previously required and described above for West Colton Yard in the Los Angeles area. Finally, we will also require UP/SP to provide information in its reports on unit train cycle time for coal train operations. All of the above reporting will be required beginning November 3, 1997.

6. *Illinois Central.* At the hearing, IC indicated that it had made several suggestions to UP/SP to assist their service recovery, many of which could be effected without Board involvement. Among other things, it noted that UP/SP had resumed control over intermodal service that, prior to our approval of the UP/SP merger, had previously been handled under contract by IC for SP; later, after its operational problems developed, UP/SP canceled the intermodal service, rather than redirecting it to IC. When questioned at the hearing, IC stated that UP/SP did not respond to IC about any of its suggestions. UP/SP shall respond to each of the suggestions made to it by IC, other than the suggestion about using IC as a neutral terminal carrier at Houston, by November 14, 1997, and shall furnish the Board with a copy of its response.

7. *Specific Shipper Complaints.* During the hearing, many of the shipper participants raised complaints about specific aspects of UP/SP's service. UP/SP shall, by November 14, 1997, report on what it has done to address these specific shipper service concerns.

8. *Anticipated Traffic Increases.* During the hearing, several participants expressed concern about whether UP/SP and BNSF would be able to handle expected surges in demand for the movement of intermodal and manifest traffic along with the increased demand resulting from seasonal traffic and the imminent fall grain harvest. UP/SP and BNSF shall, separately, by November 14, 1997, report on their respective plans for meeting these increased shipping demands.

9. *Passenger Issues.* During the hearing, Amtrak and the SCRRA expressed concern about the on-time performance of their passenger trains dispatched by UP/SP. UP/SP reports that it is setting up meetings with those parties. UP/SP, Amtrak, and the SCRRA shall file a joint report on the progress made at their scheduled meeting, and each shall indicate its view of whether, in light of the meeting, unresolved issues remain, and, if so, what type of Board involvement, if any, each suggests.

10. *BRGI.* At the hearing, the Brownsville and Rio Grande International Railroad (BRGI) asserted that the movement of traffic between BRGI and the Mexican carrier TFM is made inefficient because it requires a switch by UP/SP at Brownsville. In response, UP/SP asserted that, pursuant to an agreement between BRGI and TFM, such traffic is to be blocked by TFM prior to delivery to UP/SP at Brownsville, and that any delay to BRGI traffic is the result of TFM's failure to block the movements in advance. Assuming that TFM is willing and able to block trains prior to delivery at Brownsville, TX, UP/SP shall facilitate the prompt handling of those shipments to BRGI.

11. *Further Actions.* Finally, we note that this service order, by its terms, will expire in 30 days. The Board will hold a hearing on December 3, 1997, at which UP/SP will address the progress it has made in relieving the congestion in the West, and, after which, the Board will determine whether extension of the service order is required and whether any additional actions are necessary.

It is ordered:

1. All parties shall abide by the terms of this decision.
2. This decision is effective on November 5, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.