

Supplemental Order No. 1 to
STB SERVICE ORDER NO. 1518

JOINT PETITION FOR SERVICE ORDER

Decided December 4, 1997

The Board modifies and extends, until March 15, 1998, the emergency service order in *Joint Petition For Service Order*, 2 S.T.B. 725 (1997), after finding that, while rail service in the western United States is improving, the service recovery is not broad enough in scope. The service order continues to focus on particularly congested geographic areas, such as Houston, and particular commodity groups that have been adversely affected, such as agricultural commodities. The order continues and expands railroad data reporting requirements.

BY THE BOARD:

BACKGROUND

The service order in *Joint Petition For Service Order*, 2 S.T.B. 725 (1997), grew out of our proceeding in STB Ex Parte No. 573, *Rail Service in the Western United States*. In that proceeding, after reviewing the testimony of hundreds of witnesses, including over 60 that appeared at our October 27 public hearing, we concluded that there is a rail transportation emergency in the western United States, and we exercised 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).¹ Among the several measures that we required were the following:

¹ The provisions of 49 U.S.C. 11123 authorize us to issue 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 distribution over its own or other railroad lines; (2) require joint or common use of railroad facilities; [or] (3) prescribe temporary through routes."

1. We authorized the Texas Mexican Railway Company (Tex Mex) to accept traffic routed to it by Houston shippers that are switched by the Port Terminal Railroad Association (PTRA) or the successors to the Houston Belt and Terminal Railroad Company (HBT). In connection with this authorization, we directed UP/SP to release from their contracts all shippers capable of being switched by PTRA at Houston that desire to be served by Tex Mex.
2. We authorized Tex Mex to utilize trackage rights over the Algoa route south of Houston to mitigate congestion over UP/SP's "Sunset Route."
3. To facilitate rerouting of traffic around Houston, we required UP/SP to continue to permit Burlington Northern and Santa Fe Railway Company (BNSF) to operate over the Caldwell-Flatonia-Eagle Pass line, and to permit BNSF to interchange Laredo run-through traffic with Tex Mex at Flatonia if it desired to do so.
4. We required that UP/SP continue to file reports including information on its performance in general, and to report more specific information on movements of grain and coal, and terminal information for West Colton Yard in the Los Angeles area.
5. We required that UP/SP and BNSF, by November 14, 1997, file papers detailing their plans for handling movements associated with the imminent grain harvest and the seasonal traffic.

We stated that we would hold a hearing on December 3, 1997, at which we would review the current state of rail service in the West, address the progress that has been made in relieving the existing service problems, and determine whether additional remedial measures are necessary. Subsequently, we directed interested parties to file comments addressing these matters by December 1, 1997.

On December 1, UP/SP and other interested parties filed their pleadings expressing their views on the current state of rail service in the West, and on changes that have occurred since the Board's October 31 decision. Yesterday, we held our hearing to review the comments and the progress that has been made in improving service in the West, and to determine what further action may be necessary. We are now issuing this decision extending and modifying the service order.

DISCUSSION

Under the law, we can extend the service order only if we conclude that the emergency that we found in the October 31 order continues to exist. We find that it does. Although UP/SP acknowledges that its service is not yet what it should be, it asserts that continuation of the order is not necessary, because operations have improved to the point where they are nearly back to normal. According to the testimony of a multitude of shippers, however, notwithstanding improvements in some areas, substantial service problems continue to exist. After reviewing the testimony of all of the parties, and the data that UP/SP has submitted to facilitate measurement of performance, we conclude that while service is showing signs of improvement, the service recovery to date is not broad enough in scope. Given the improvement that is still needed, we have concluded that the emergency is not yet over.

A number of the participants at the hearing testified that, although the emergency continues to exist, the service order has had a positive effect on UP/SP's service recovery and that, to continue moving in the right direction, the service order should be extended. We agree, and we have therefore decided to extend it, and to continue the terms of the service order requiring data filing and requiring UP/SP to provide certain access to Tex Mex and BNSF in and around Houston. We have also decided that, to facilitate further the service recovery in a more timely manner, we must amend the original service order in several respects to address four basic service concerns: Texas; California; western coal service; and service to midwest agricultural shippers. We will address each in turn. Before we do, however, we will address three threshold issues.

First, we note that we have carefully reviewed and considered the oral and written statements of all of the participants. As our service order expires at midnight tonight (one day after completion of the oral hearing), time constraints preclude us from addressing every one of those statements in detail. We can say in general, however, that this order will build on the remedies that we adopted previously, and will advance the objective that we have followed throughout this proceeding: that of facilitating the service recovery in a timely manner without substantially impeding UP/SP's own recovery efforts and without unduly taxing the resources of other carriers that have their own capacity limitations. Some of the remedies that we decided not to adopt, by contrast, would have overreached, or would not have facilitated the resolution of the emergency. Additionally, some of the remedies that we did not adopt could not have been lawfully

prescribed in a section 11123 proceeding because they represent long-term proposals directed at competitive issues rather than short-term solutions to the current service emergency. Our choice of remedies reflects our view that government cannot, as a general rule, operate private businesses as well as private businesses can operate themselves and that government should promote appropriate private-sector initiatives and private-sector solutions to problems among private parties, but that government must intervene in a focused and constructive way if and to the extent necessary to resolve a given problem.

Second, and consistent with our view that government should facilitate private-sector business solutions, in our October 31 decision, we directed UP/SP to respond to specific suggestions for assistance made by the Illinois Central Railroad Company (IC). Consistent with this requirement, UP/SP assured us at yesterday's hearing that it would continue vigorously to work with all other railroads, including IC, to find assistance wherever it could to help restore service levels. IC, for its part, has written us a letter contradicting UP/SP's statement that IC had refused two midwestern coal shipments. Indeed, IC indicates that it currently has excess capacity and is willing to provide assistance. We fully expect that UP/SP will follow through on its commitment, and that further action from us in this regard will not be necessary. In a similar vein, we expect that BNSF, whose levels of performance regarding grain, coal, and other commodities have been seriously questioned by numerous shippers and Congressional interests, will participate in earnest in similar discussions with other carriers. Cooperation among all rail carriers is necessary to assure a timely resolution of service problems in the West, and is, in our view, and presumably in the railroads' view as well, far preferable to the intrusive Board intervention that may otherwise be required.

Finally, we believe that more focused reporting will help us to evaluate the progress of the service recovery. Accordingly, we will require UP/SP to expand its informational reporting in the following respects: (1) the siding report shall include sidings blocked between Houston and Beaumont, TX, and between Los Angeles, CA, and Tucson, AZ; (2) car terminal dwell time shall be reported individually for each major terminal; (3) the interchange reports shall include Laredo, TX, and Stockton, CA; (4) UP/SP shall show the number of containers

and trailers at the major ports awaiting rail equipment²; and (5) UP/SP shall add the East Yard (Los Angeles) to the major terminal report and the Port of Long Beach/Los Angeles to the Port Intermodal Terminal Report. Finally, we note that additional reporting requirements for coal and agricultural shipments will be addressed later in this decision.

We will now address our modifications to the service order in the context of the four service concerns identified above.

1. *Texas*. As noted, our prior service order directed UP/SP to release from their contracts shippers switched by PTRA or HBT at Houston so that they would be free to route traffic over Tex Mex. The service order did not, however, provide similar relief for shippers to use BNSF. To provide an additional means to clear out traffic in the Houston area, which continues to be congested, we direct UP/SP to release fully from their contracts all shippers capable of being switched by PTRA and HBT, and which desire to route traffic over either BNSF or Tex Mex.³

Some of the participants at the hearing expressed concern about UP/SP's ability to favor its own traffic in its dispatching operations. To assure that the other carriers operating in the Houston area are in a position to become involved in or at least fully aware of the circumstances surrounding UP/SP's various decisions about prioritizing the movements of trains, we direct UP/SP to permit representatives of BNSF and Tex Mex full access to the Spring, TX, dispatching facility as neutral observers.

UP/SP determined that directional running on certain of its lines, including the Algoa route and the Caldwell-Flatonia-Eagle Pass line over which BNSF and Tex Mex perform trackage rights operations, would substantially enhance the efficiency of its operations in the Houston area. Tex Mex, however, at least initially, did not participate in the directional running, and in fact ran against the flow of traffic, apparently out of concern that participation in the directional running would violate the terms of our earlier service order. We hereby find that directional running does not violate our earlier service order, and, indeed may

² In the reports already being submitted, UP/SP is using January 1997 as a baseline. Parties point out that the corresponding week of the previous year would be a more appropriate benchmark. We direct UP/SP to include that benchmark as well in its weekly reports.

³ We are aware that several shippers in the West and Midwest have asked us not to adopt remedies that will tax BNSF's resources, given BNSF's own service inadequacies. As the opportunities that we are giving BNSF here simply complement operations that BNSF already performs, we do not believe that our action will impair BNSF service to any other shipper groups.

advance it by helping to divert traffic around Houston. We expect all parties to cooperate in diverting traffic around Houston, and to the extent that Tex Mex operates over UP/SP lines that are run directionally, it shall participate in the directional running in order to facilitate the flow of traffic in and around the Houston area. In this regard, we note that, in letters received today, BNSF and UP/SP have agreed that UP/SP will allow BNSF to operate, pursuant to trackage rights, southbound from Caldwell through Flatonia to Bloomington to facilitate directional running. As this routing will help to promote smooth traffic flows in and around Houston, we expect UP/SP to follow through on its holding out.

In its December 1 filing, BNSF asked us to direct UP/SP to deliver all BNSF interchange cars from the Strang/Bayport area to BNSF at the Strang Yard, in order to bypass the highly congested Englewood Yard. UP/SP has not responded to this suggestion, nor has BNSF indicated how it would access this facility to receive the traffic. We direct UP/SP and BNSF to discuss this matter and to address it, on the record in these proceedings, by December 12, 1997.

In its December 1 filing, Tex Mex asked that it be authorized to route its trains away from the heavily used HBT East Belt Line and instead over the HBT West Belt Line, which assertedly is less congested. Neither BNSF nor UP/SP specifically addressed Tex Mex's use of the West Belt Line at the hearing. BNSF and UP/SP shall respond to Tex Mex's request, on the record in these proceedings, by December 12, 1997.⁴

⁴ Throughout these proceedings, the Brownsville and Rio Grande International Railroad (BRGI) has filed a variety of papers seeking trackage rights over UP/SP so that it can switch its own traffic rather than relying on UP/SP. Its complaint appears to be that the movement of traffic between BRGI and the Mexican carrier TFM is made inefficient because it requires a switch by UP/SP; given the congestion at Brownsville, BRGI has claimed, UP/SP must haul BRGI's cars to Harlingen, block them there, and then return them to Brownsville for delivery to BRGI. Noting that BRGI's traffic is now to be blocked by TFM prior to delivery to UP/SP in Mexico, our service order found no basis for awarding BRGI trackage rights into Mexico, as the blocked cars could be promptly delivered to BRGI on arrival at Brownsville without requiring a movement to Harlingen for classification. Therefore, our decision in this matter issued on November 21, 1997, found no reason for BRGI's participation in the hearing.

BRGI, nonetheless, insisted that it participate in the hearing to explain why it needed the relief it had sought. Instead of demonstrating why delivery by UP/SP of blocked cars at Brownsville was not adequate, however, BRGI's pleading filed December 1, and its testimony at the oral hearing, focused primarily on a new plan which it has pursued, and which it now wants us to approve, under which it would not only switch its own cars, but would also act as the switching agent for BNSF at Brownsville. Consistent with UP/SP's holding out at the hearing, and with our general
(continued...)

2. *California.* One of the areas in which UP/SP acknowledged that the recovery has been slow is in southern California, and in particular, at West Colton Yard. At the hearing, no participant was able to provide a specific means of assisting in relieving congestion at West Colton Yard. However, the California Public Utilities Commission (CPUC) suggested that expanded reporting requirements for California would enhance our ability to pinpoint problems and perhaps develop solutions. We agree, and as we have noted earlier, we are expanding our reporting requirements in several respects.

3. *Coal.* Mining and power plant representatives indicated that, in the recent past, service had actually deteriorated notwithstanding UP/SP's service recovery plan. At the hearing, however, those interests appeared to acknowledge that some progress was being made, although the recovery was not proceeding quickly enough. UP/SP, at the hearing, stated that its coal service was now moving 26 coal unit trains per day from the Powder River basin, which, according to its testimony, is near its normal capacity.

It may be that UP/SP's coal service is improving, but that the improvement simply is not yet being felt by its customers. What concerns us, however, is that representatives of coal users have stated that supplies of coal for electric generating purposes are at dangerously low levels. Therefore, to provide for more effective evaluation of the service recovery effort as to coal traffic, we direct UP/SP, essentially as requested by Western Coal Traffic League, to augment its informational reporting by separately stating the actual number of cars loaded of coal, the average number of unit train sets in coal service, and the average total round trip cycle time for the following categories of traffic: (1) movements over routes from each principal coal origin region (Powder River Basin, Utah, Colorado, and Southern Illinois) to (a) northern tier destinations, and (b) southern tier destinations; and (2) movements over routes from each principal coal origin region to Texas, Arkansas, Louisiana, and Oklahoma.

4. *Agricultural Commodities.* Testimony by shippers and by the United States Department of Agriculture (USDA) in this proceeding and in recent Congressional hearings clearly indicates that rail service to agricultural shippers by both UP/SP and BNSF is inadequate. Both UP/SP and BNSF acknowledge

⁴(...continued)

admonition as to railroad cooperation, we expect UP/SP to discuss this new proposal with BNSF and BRGI, and to report back to us by December 12, 1997.

their shortcomings in this area, and state that they are in the process of catching up with their respective backlogs. However, what became clear at the hearing is that there is a lot of grain on the ground that is at risk of spoiling, and that there appears to have been no clear prioritization among grain shipments to ensure that those grain stocks that need to move first in fact receive priority service.

UP/SP states that it has in fact contacted various agricultural associations to seek to work out a prioritization plan, but the associations participating at the hearing stated that they had not been contacted in this regard. Because we view prioritization as crucial to ensuring that existing grain supplies in on-ground storage do not spoil, we direct UP/SP and BNSF to establish prioritization programs in consultation with shippers. The railroads may work directly with the agricultural associations of each of the grain-producing states in which they operate, or they may work indirectly with each such association through the use of intermediaries such as the National Grain and Feed Association and the National Corn Growers Association. In either event, we will require both BNSF and UP/SP to file a report with us by December 12, 1997, to which a representative of the agricultural association of each of the Nation's grain-producing states is a signatory, establishing priorities for the shipping of grain. We stress that, by requiring prioritization within the universe of agricultural shipments, we do not mean to suggest that either UP/SP or BNSF may shortchange the agricultural community in general in favor of service to other shippers.

Indeed, to ensure that the agricultural community is receiving its fair share of railroad service, we will require that both UP/SP and BNSF shall file weekly reports demonstrating their performance in providing agricultural transportation for their principal grain loading states. The reports shall contain the information that we have been requiring from UP/SP. Additionally, for purposes of reference, to achieve the objective raised by USDA, we will require each carrier to provide comparable information for the previous year.

5. Duration of the Service Order. Finally, we are extending the service order until March 15, 1998. UP/SP argued at the hearing that, at most, a 30-day extension would be appropriate, while some of the shippers argued that a full 240-day extension is needed. We conclude that the most appropriate extension is between those two extremes.

Many shippers pointed out that they were unable to take advantage of new access to other carriers because the 30-day effective period of the initial service

order was too short. We understand that concern, and we conclude that a continuation of the service order until March 15 should provide adequate incentives for all parties wishing to do so to make alternative arrangements. Moreover, as some of the participants in the hearing noted, by the March 15 date, the UP/SP computer system and, hopefully, the UP/SP labor agreements related to merger implementation should be fully in place. For those reasons, and given the level of progress we have seen to date, we would hope that an extension until March 15 will provide enough time for necessary service improvements to be realized.

Chairman Morgan, *commenting*:

The rail service problems that have occurred in the West are unprecedented and have led to the Board's unprecedented involvement. I commend UP/SP and its employees on their commitment to resolving the rail service crisis. While I in no way question their ongoing dedication to resolving their company's service problems, I believe that the Board must remain actively involved in this matter to help facilitate a more timely resolution of these problems. Our intervention is to assist UP/SP, as well as BNSF and Tex Mex, in their efforts to resolve the transportation emergency in the West and to restore acceptable service levels there. Indeed, I view our continued involvement in this process as being in the best interests of the involved carriers and their employees, the rail industry as a whole, affected shippers, receivers, and localities, and all other components of the transportation sector. And as part of our ongoing oversight in this matter, the Board fully expects cooperation among all railroads in working toward a timely resolution of the rail service problems in the West. The Board has made a commitment to being involved constructively in this matter until it is resolved; the rail industry should do no less.

It is ordered:

1. All parties shall abide by the terms of this decision.
2. This decision is effective at 11:59 p.m., December 4, 1997.
3. The provisions of this order expire at 11:59 p.m. on March 15, 1998, unless otherwise ordered by the Board.

By the Board, Chairman Morgan and Vice Chairman Owen. Chairman Morgan commented with a separate expression.