

STB SERVICE ORDER NO. 1518

JOINT PETITION FOR SERVICE ORDER

Decided February 17, 1998

This decision addresses the letter filed by the Railroad Commission of Texas (RCT) on December 17, 1997, asking us to reconsider and substantially revise, before the currently scheduled termination date of March 15, 1998, our service orders issued in the Service Order No. 1518 proceedings. RCT's request will be denied.

BY THE BOARD:

BACKGROUND

The service orders in this proceeding have been issued under 49 U.S.C. 11123¹ to mitigate the rail transportation emergency in the western United States. The orders have been broad in scope and have been directed at a variety of service issues. As pertinent here, however, the orders concluded that the emergency began as a result of the congestion in and around the Houston area being experienced by the Union Pacific Railroad Company and the Southern Pacific Transportation Company (UP/SP), and they therefore sought to address the overall problem in the West by focusing on operational and service issues involving Houston.

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."

Thus, our orders, issued after two extensive public hearings, made some substantial changes to the way in which rail transportation is provided in the Houston area. We directed UP/SP to release shippers switched by HBT² or PTR³ from their contracts so that they could immediately route traffic over Burlington Northern and Santa Fe Railway Company (BNSF) or The Texas Mexican Railway Company (Tex Mex), in addition to UP/SP. We directed UP/SP to permit BNSF and Tex Mex to modify their operations over UP/SP lines to minimize congestion over UP/SP's "Sunset Route" and to permit the two carriers to route traffic around Houston rather than going through it.⁴ To assure that carriers in the Houston area with additional service responsibilities will be in a position to have input into decisions about the movement of their trains, we directed UP/SP to provide representatives of BNSF and Tex Mex full access to UP/SP's Spring, TX, dispatching facility as neutral observers. Finally, we required extensive data reporting, designed to help us and affected parties evaluate the progress of the service recovery.

However, we recognized that our authority in these proceedings is limited to temporary measures under the emergency provisions of section 11123, and that relief beyond that necessary to ameliorate the emergency would exceed our authority under those provisions. We also recognized that government cannot operate private businesses as well as private businesses can operate themselves, and that it would be counterproductive for us to impose a remedy that might unreasonably impede UP/SP's own efforts to mitigate the emergency, or that might unduly tax, to the detriment of shippers, the resources of other carriers that have their own capacity limitations. Thus, we focused our remedies on those areas where we could clearly do good, without doing harm. Our *December 4 order* (2 S.T.B. 744 (1997)) expanding the initial service order and extending it until March 15, 1998, declined to adopt RCT's proposal formally submitted on December 1, 1997, because it would have overreached in a number of ways, because it would not have facilitated the resolution of the emergency, and because it contemplated long-term restructuring directed at perceived competitive issues rather than short-term solutions to the current service emergency.

² Houston Belt & Terminal Railroad Company.

³ Port Terminal Railroad Association.

⁴ More generally, we required UP/SP to cooperate with other railroads and to accept assistance from other railroads able to handle UP/SP traffic.

RCT'S PROPOSAL

RCT's proposal is premised on the notion that the service emergency was caused by UP/SP's control of too much of the rail plant in Houston, and that shippers in Houston would be better served if there were more equally positioned competitors providing service. The proposal was patterned after the recommendations that RCT submitted to the Board in the *UP/SP* merger proceeding.⁵ There, RCT had argued, among other things, that the merger should be used as a means of injecting additional competitors into broad sectors of the western United States by ordering UP to divest, that is, give up through forced sale to other carriers, substantial segments of UP and SP property. Noting that any shipper that had competitive service provided by the merging carriers before the merger would continue to have it after the merger, the Board rejected RCT's divestiture proposal.

After the service emergency began, RCT repackaged the portions of its original proposal that related to Houston and presented them to the Board as a solution to the service crisis. Essentially, the proposal, as presented, would have us force UP/SP to transfer various of its yards and substantial portions of its track to Tex Mex and to a switching railroad such as PTRR, basically dictating on a broad scale by government fiat how privately run railroads should operate their businesses.⁶ We rejected RCT's proposal in our decisions issued in this matter on October 31 (2 S.T.B. 725 (1997)) and December 4, 1997 (2 S.T.B. 744 (1997)).

⁵ *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996) (*UP/SP*).

⁶ The proposal would (1) require that UP/SP transfer all port area trackage in Houston (including Strang Yard; the UP line from Houston to Baytown; the former SP line from Baytown to Dayton; the SP line from Englewood Yard to Bayport; and the UP line from Houston to Galveston) to a switching carrier such as PTRR, which would then operate as a neutral switching carrier distributing traffic to the three line-haul carriers serving Houston. It would (2) establish a new Tex Mex route through Houston by giving Tex Mex operating control over parts of the lines of SP from Victoria, TX, to Houston, and over the HBT line in Houston, and authorize Tex Mex to undertake other construction to link its new route with its existing routes. It would (3) give Tex Mex operating control over the UP line from Houston to Beaumont. To facilitate the transfer of control away from UP/SP, it would (4) have Tex Mex employees provide dispatching out of UP/SP's dispatching center until Tex Mex builds its own "Centralized Traffic Control System" for its new routes. And finally, it would (5) release all shippers from contracts with UP/SP so that they could use any of the three carriers serving Houston.

DISCUSSION AND CONCLUSIONS

RCT's request for reconsideration presents nothing new that the Board has not heard, and addressed, before. RCT claims, without specific proof, that UP/SP's service problems were caused by a lack of competition, and that breaking up the UP/SP system around Houston and transferring parts of it to other railroads would facilitate the flow of commerce. *See, e.g.*, RCT's request for reconsideration at 2: "In our view, common sense indicates that there is just too heavy a concentration of UP control in the Houston and Gulf Coast area."⁷

RCT's unsupported proposal must be rejected because it does violence to every one of the guiding principles that we have appropriately followed throughout these emergency service proceedings. First, its forced transfer of a significant amount of private property without any guarantee of a resolution to the service problems would constitute an overreach. Second, its intended alteration of the competitive balance would represent a long-term proposal directed at perceived competitive issues rather than a short-term solution to the current service emergency. And finally, the new structure that it would establish would likely result in downgraded rather than improved infrastructure in Houston; it would not facilitate resolution of the emergency; and in fact, it could cause far more operational trouble than it would fix. We will address each point in turn.

1. *The RCT's Forced Transfer of Private Property Would Overreach.* Although RCT asserts that there is a "short-term" element to its proposal, and indeed suggests that a transfer of control without a transfer of title could meet the limitations of section 11123, it concedes that its only real objective is to take several UP/SP yards and several hundred miles of UP/SP track and permanently give the property to other carriers to achieve what it views as a more suitable competitive balance. We cannot conceive of how a restructuring of this magnitude, even with compensation for UP/SP, could possibly be permissible under section 11123, which authorizes us to issue emergency orders concerning the movement of traffic for a limited time, but does not permit us to order a carrier to permanently give its property to other carriers.

Notwithstanding its failure to show a link between the competitive issues that it raises and the service emergency, RCT concludes that the radical relief it

⁷ RCT states further, again without support (*id.*): "The [RCT] is convinced that the UP service crisis is primarily attributable to the extraordinary degree of control over the complex Houston rail network and its domination of the petrochemical and plastics industries in the Houston/Gulf Coast area[;] the great majority of our freight eggs have been put in UP's basket, and this concentration of market power and control is both unwise and contrary to the public interest."

is seeking is appropriate here because the Board's action in approving the *UP/SP* merger, by refusing to alter the competitive balance in the way in which RCT has suggested, was the "cause" of the service emergency.⁸ Even if it were correct that improvident government action did cause the service problems in the West, a redistribution of private property of the sort envisioned by RCT could never be a permissible solution under section 11123. But in fact, the evidence does not lead to the conclusion that the Board is responsible for the emergency.

A. Board Action Did Not Cause the Emergency. The testimony at the Board's hearings did not establish a single, specific cause of the emergency. At a minimum, however, the evidence indicates that the Board's action approving the *UP/SP* merger without ordering divestiture was plainly not the principal cause, and that merger-related operational integration issues may have played a role, but not the only role. The merger had not yet been implemented in Texas at the time the emergency began. Rather, as of last summer, *UP*'s and *SP*'s railroad systems were operated separately in Texas, and the operations of the two carriers have only recently and gradually begun to be integrated. That Texas had not as of last summer, and indeed has not as of yet, realized the benefits of the merger is understandable. Notwithstanding the simplistic assertions by some parties that opposed the merger that it has failed because its benefits have not yet materialized, the fact is that merger integration is and should be time-consuming and complex.⁹

It is well known that *SP*'s physical plant in general was in a state of disrepair when *UP* took it over. It is also well known that two particular pieces of *SP* property were involved with the initial traffic slowdowns that ultimately mushroomed into the full-blown emergency: (1) the *SP* line running between Houston and New Orleans, which was being rehabilitated by *UP/SP* and *BNSF*,

⁸ Perhaps concerned over the precedent that RCT's proposal could have with respect to other businesses in Texas, a representative of the Texas aggregates industry, in a letter to the RTC, questioned whether it would be a good idea for the government to force the sale of *UP/SP*'s property. RCT Chairman Charles Matthews, in a letter to Mr. Michael K. Stewart, Vice President, Government Affairs, Texas Aggregates & Concrete Association, justified the proposed forced property transfer on the ground that the Board caused the emergency by approving the merger.

⁹ A common misperception, which is apparently shared by RCT, is that once a railroad merger is approved, it is quickly and simply implemented. See, written statement of RCT Chairman Charles Matthews, filed October 23, 1997, at 3: "*UP* in its merger application identified transit time, frequency, and reliability as the primary factors in service competition. Clearly, these objectives have not been achieved." But in reality, it can take years before two large carriers can negotiate and implement labor agreements with employees, and can put into place a coordinated information and management control system. Indeed, even the *BNSF* merger took nearly two (some might say difficult) years before it was finally in place. Thus, the fact that the *UP/SP* merger has still not been completed, and that its benefits have not yet been fully realized, is not surprising or unexpected.

and which was thus unable to handle traffic at full capacity during the summer and fall of 1997; and (2) Englewood Yard, which was, and continues to be, an inadequate facility that, along with other parts of the system at Houston, will need substantial rehabilitation if it is to be a fully productive component of any modern railroad system. When traffic began to back up at the beginning of the emergency as a result of traffic surges and other circumstances,¹⁰ neither the Houston-New Orleans line nor the facility at Englewood Yard was able to perform adequately in moving traffic (and locomotives) into or out of the area.

It is true that UP had begun managing SP's Texas operations by the time congestion began to develop, and it is common knowledge that UP's management systems were quite different from those of SP. It is possible that with SP's management systems, facilities such as Englewood Yard may have responded differently -- perhaps better, perhaps worse -- during that time. And as SP had performed virtually no rehabilitation, it is certain that, but for the merger, the SP line between Houston and New Orleans would not have been in the process of being rehabilitated when the congestion became serious. But the fact that the Houston-to-New Orleans line was running slow due to rehabilitation, or that UP was not able to squeeze more out of Englewood Yard and other parts of the Houston facility when the congestion became serious, does not mean that our order approving the merger is "responsible" for the emergency. To the contrary, given the fact that many of the events that produced the initial congestion involved the inadequate SP plant, the service emergency may well have occurred even if the *UP/SP* merger had not been pursued. In any event, regardless of whether this particular emergency would have occurred had there been no merger, it is almost certain that some other service crisis, perhaps far more serious, would have developed from the continuing deterioration of the SP plant and the likely demise of the SP itself.

The service emergency represents a convenient opportunity for parties unhappy with the merger decision to seek changes in its terms and conditions. But the evidence does not lead to the conclusion that approval of the merger was

¹⁰ UP/SP assigns responsibility for the initial congestion to several events: a surge in Gulf Coast traffic, and in private cars held in UP/SP yards, in April and May; severe washouts on SP mainlines in Texas and Arkansas, and damaging derailments on SP lines in Texas and Englewood Yard; the need to interrupt traffic flows to conduct urgent maintenance on SP lines in Texas and in the Houston-to-New Orleans Corridor; traffic backups in Texas as a result of the impact of Hurricane Danny on the CSX Transportation System in the Southeast; and backups of Mexico-bound traffic resulting from the privatization of the Mexican railroad system. Although certain of the participants in our proceedings have suggested that the emergency was caused by the merger, none has even sought to rebut UP/SP's explanation with specific facts.

the cause of the service emergency, and there is no reason to believe that rail mergers, in and of themselves, result in systemic service problems.

B. *Capital Improvements and Upgraded Infrastructure Are Needed.* As we have noted, the evidence shows that this emergency was caused in large measure by a transportation infrastructure in and around Houston that is not adequately equipped to deal with natural surges in a growing economy, or with temporary reductions in railroad capacity caused by derailments, weather, and so forth. To protect against future crises, and indeed to provide adequate service during "normal" periods, the physical plant in Houston will require major upgrading in order to meet the needs of shippers. In the *UP/SP* merger oversight proceeding, UP testified before the Board that its most recent capital spending plan calls for expenditures of more than \$1.5 billion over 5 years (above and beyond what the carriers would have spent individually had the merger not occurred) to upgrade SP facilities, assemble more direct routes, build new terminals and yards, buy new locomotives, and improve service.¹¹

In approving the *UP/SP* merger, we found that these and other planned improvements would be in the public interest. While no one can predict with certainty whether there might be another service crisis, the operating plan submitted by UP in connection with implementation of the merger is concrete and focuses on infrastructure needs that must be met for there to be any hope of averting future service problems; and *UP/SP* is in a position to invest in infrastructure so that service can be improved.¹² RCT's proposal, by contrast, contains no operating plan and no plan for investment in physical plant, and will plainly act as a disincentive to *UP/SP*'s investment in the Houston area. Thus, even if some variant of RCT's proposed transfer of *UP/SP*'s property could, in theory, result in better service -- and there has been no showing that it might -- RCT's proposal as currently structured would not. Government action that would discourage private investment in infrastructure without providing alternative funding would degrade rather than improve service, and plainly would be irresponsible.

Requiring the type of extensive and disruptive divestiture that the RCT proposal would envision is a draconian measure that may be pursued only if it is based on the right premise and is the only way to reach the intended result.

¹¹ In a news release issued on February 11, 1998, *UP/SP* indicates that it will spend more than \$570 million in Texas and Louisiana in 1998 and 1999 for capacity expansion, track upgrade, and new facilities, and that it has engaged an outside consulting firm to assist it in evaluating operations and infrastructure requirements in the Southwest.

¹² The inadequate infrastructure in Houston is clearly one factor associated with the sluggishness of the service recovery in Houston, as compared to other portions of the *UP/SP* system.

The RCT proposal meets neither criterion: it is based on the unproven assumption that the service problems were caused by inadequate competition, and at least in its present form, it would undermine, rather than promote, the intended result of improved service.

2. *RCT's Proposal Is Not a Short-Term Solution to the Service Crisis.* In its request for reconsideration, RCT chides the Board for refusing to focus, in these proceedings, on the long-term structural changes that it asserts are necessary to promote more competition, and, it says, to avert service problems a year, or 5 years, or 10 years down the road. The language of the emergency service order provisions of the statute, however, does not permit the Board, in a section 11123 proceeding, to order the types of permanent changes to the railroad industry envisioned by RCT, even at Houston, in order to produce what RCT might characterize as a "better" railroad system. Rather, the statute permits remedies that are temporary and designed to ameliorate a particular emergency. RCT can seek, in a formal proceeding, the types of structural industry changes that it advances here, and indeed, it tells us that it intends to do just that in the context of the UP/SP merger oversight process. In this emergency proceeding, however, we can adopt only temporary remedies that will advance resolution of the immediate service crisis.

RCT states in its request for reconsideration that, in fact, "key elements" of its proposal "can be instituted on a 'short-term' basis." However, it is obvious that the so-called short-term elements of RCT's proposal -- (1) the "expansion of neutral switching in the Houston area" and (2) the "establish[ment of] a through route to be controlled by TexMex through Houston and on to Beaumont"¹³ (Transcript of December 3 hearing at 328-29) -- could not be implemented quickly enough to have an impact in the short term. As UP/SP points out in its response to RCT's request for reconsideration, to carry out RCT's proposal, PTRR would need to increase its locomotive fleet by at least 50%, and would need to upgrade its plant and technology to manage its new role. Moreover, in addition to the line improvements and connections that would be required to make the Tex Mex "clear path" workable, Tex Mex would likely need to establish an entirely new facility in Houston for dispatching, operations, crew control, and so forth. Even if Tex Mex and PTRR were able to do so -- and there is nothing in this record indicating that they are -- there is no reason to believe that Tex Mex could make such fundamental changes to its capabilities quickly, and PTRR could not possibly put itself into position to

¹³ RCT describes this second aspect of its proposal as the "clear path for Tex Mex" proposal.

safely and efficiently carry out its new duties anytime in the reasonably near future.

Indeed, it is clear that the proposal to expand PTRA could not be safely implemented on a short-term basis. One of the products of the RCT proposal will be the termination of most single-carrier service in the Houston area, and the substitution of multiple-carrier service for a majority of the movements. In its opposition to RCT's proposal, the United Transportation Union (UTU), which represents most of the affected employees, states that, even to perform its existing operations safely, UP/SP will need to conduct substantial hiring, and that each of the new hires will need extensive training. Under the RCT proposal, however, UTU states that PTRA would have to more than double its workforce, and train its new employees to perform switching,¹⁴ which UTU characterizes as the most difficult and dangerous of all railroad operations.¹⁵ RCT's proposal is clearly unworkable on a short-term basis: the necessary hiring and training could not possibly be completed, and thus the proposal, if instituted as a short-term fix -- particularly given the amount of hazardous materials moving through Houston -- would compromise safety.

In summary, RCT's proposal is not intended to be short-term in nature and cannot be implemented safely or effectively in the short-term. Thus, we cannot adopt it under our emergency service order authority.

3. *RCT Has Not Shown How Its Proposal Will Enhance Service.* We do not see how the terminal railroad proposal or the "clear path for Tex Mex" outlined by the RCT, without more planning, financing, and execution details, could produce good service in Houston. By contrast, UP/SP's own operating plan, as presented in the merger proceeding, overall is in the public interest. We recognize that UP/SP has not yet been able to put its program fully into place, and, therefore, it has still not been completely tested. However, at least UP/SP's plan is on the table; generally it is theoretically sound; it is adequately financed; it is in the process of being implemented; and it is governed by service parameters whose benefits we can see. By contrast, RCT has not shown with

¹⁴ RCT suggests that PTRA would simply upgrade its capacity and capabilities by taking equipment and personnel from BNSF, Tex Mex, and, mostly, from UP/SP. Apart from the safety issues associated with amalgamating the crews of three different railroads under the direction of PTRA, RCT has made no showing that Tex Mex, BNSF, or UP/SP would be willing or able to satisfy PTRA's needs on an immediate, temporary basis, or that affected employees are prepared to terminate their current employment.

¹⁵ UTU states that "[m]ore accidents happen while performing switching operations than at any other time. This would present a tremendous safety hazard on [PTRA] that would exceed anything faced on the [UP/SP] to date."

concrete evidence how forcing a terminal railroad configuration over the entire Houston area, and fragmenting the rail system in Houston by setting aside a clear path for Tex Mex, will improve service. For that reason -- and because implementation of RCT's plan would substantially interfere with UP/SP's service recovery, would significantly reshuffle the provision of service in the Houston area without clear evidence that service would be improved, and hence would run the risk of further eroding the quality of service for shippers -- it is unlikely that the RCT's plan, as presented, will enhance service.

Before the merger, the substantial majority of facilities in the Houston terminal area were owned by SP. Most line-haul service in the Houston area was performed by UP or SP, or, to a lesser extent, by BNSF. Many shipments were handled in single-line service, the major exceptions being those switched by PTRA or by the HBT.¹⁶ After UP assumed control over the SP lines as a result of the merger, it became possible for one carrier to handle most Houston traffic in single-line service, and the need for intermediate switching diminished substantially. In addition, as part of our merger decision, BNSF was given access to shippers that were previously served by both UP and SP, and that, as a result of the merger, would have otherwise lost their only competitive rail option as a result of the merger.¹⁷

Thus, as of now, much of Houston can be served in single-carrier service by either UP/SP, BNSF, or both. RCT's PTRA proposal would defeat most single-carrier service, while its Tex Mex "clear path" proposal would seriously disrupt whatever remaining operations UP/SP and BNSF could perform.

A. *Transferring UP/SP's Property To PTRA.* It is undisputed within both the railroad and shipping communities that single-carrier service provided directly to shipper locations tends to be more efficient and safer to perform than service involving switching by multiple carriers. Most shippers in the Houston area, as we have noted, can now be served in single-line service by UP/SP or BNSF.

Notwithstanding the almost universal preference for single-line over multiple-carrier service, in some cities -- most notably, Chicago, Kansas City, and New Orleans -- the serving carriers got together many years ago to form what are commonly known as "belt" or "terminal" railroads. These cities were historically at the center of a confluence of rail lines operated by numerous line-

¹⁶ Both PTRA and HBT are owned jointly by UP/SP and BNSF.

¹⁷ Thus, any shipper that was served by the two merging carriers before the merger continued to have competitive service by two carriers after the merger. By the same token, any shipper served by only one carrier today was served by only one carrier before the merger.

haul carriers, which found it operationally infeasible to actually operate over each of the limited number of lines available in the city. Thus, to guarantee operational efficiency and safety -- not for competitive reasons, or to establish any sort of "neutrality" -- they jointly created terminal carriers to handle their switching responsibilities.

These "belt" operations can be conducted over more or less circular railroad configurations that run around all or part of the outskirts of a city center. The belt line or terminal carrier switches local shippers and then delivers their traffic to (or receives it from) one of the respective line-haul carriers with which it connects; alternatively, it facilitates interchange between two line-haul carriers by allowing them to route through traffic outside of the congested city terminal facilities. Typically, belt and terminal carriers provide a way in which line-haul carriers can maintain access to shippers and to each other without overburdening the railroad infrastructure.

Because Houston's infrastructure and topography are different from most other cities that lend themselves to a belt railroad arrangement, RCT's proposal to give UP/SP's property to PTR A, and expand PTR A's operations, would not facilitate safety or efficiency. In Houston, there is no existing track along the outskirts of the city that could be fed by a large number of line-haul carriers, and indeed, there is, and for many years has been, only a small number of line-haul carriers serving Houston. The former HBT track is "belt-like" in nature, but it does not encircle the city or the traffic-generating areas in which the majority of shippers are located. Nor would the expanded PTR A system that RCT envisions serve like a belt railroad either. Rather, it would simply operate over a series of discrete lines to serve Houston's industries, most of which are located in coastal areas just outside of the city, on stub-ended UP/SP lines -- essentially a series of dead-end streets -- each of which has only a single connection to the congested Houston rail complex.

Thus, RCT's proposal to give substantial UP/SP properties to PTR A would not produce a switching arrangement that would give line-haul carriers access to shippers in a way that relieves the burden on Houston's already limited railroad capacity. Rather, RCT's proposal would simply give to PTR A UP/SP's lines serving Houston's industries, so that PTR A could then handle the same traffic that UP/SP currently handles, using the same lines over which UP/SP currently operates, into the same congested Houston infrastructure that UP/SP currently uses. The main difference between the RTC plan and UP/SP's current plan is that RCT's approach would require an additional, and, we believe, unnecessary carrier interface for most Houston shipments. As we have noted, turning single-carrier operations into multiple-carrier operations would not promote improved service.

Moreover, by frustrating implementation of the merger around Houston, as it is obviously intended to do, RCT's plan would undermine better service in other ways. The main benefit of any merger found to be in the public interest is transportation efficiency, resulting from the opportunity to join two systems. The *UP/SP* merger, the *BNSF* merger, and every other approved railroad merger in recent history have sought such efficiencies: the establishment of single-line service; the elimination of unnecessary interchanges; and the centralization of traffic management, crew management, dispatching, equipment control, and customer service functions. The *UP/SP*'s operating plan for its merger anticipated, over a period of time, many of these efficiency-enhancing operational changes. Notwithstanding the fact that *UP/SP*'s attention and resources have been focused on addressing the service crisis, some such changes have been accomplished, while, as noted, many have not as yet. However, taking away critical *UP/SP* lines, and giving them to *PTRA*, or to *Tex Mex*, would nullify the planned improvements in these critical operational areas.

Additionally, although RCT has presented no details about how its plan would work, given the concept it envisions, it would inevitably result in more switching, additional interaction between carriers, and increased handling time for each shipment. It would also require a high degree of coordination due to multiple hand-offs between dispatchers, all of which would have to be handled manually instead of electronically, thereby adversely affecting safety. These are areas of concern that *UP/SP* has already addressed with the establishment of its new dispatching facility for Houston at Spring, Texas. The RCT proposal, however, provides no basis on which we can even hope that the efficiencies already implemented will be sustained, or that those yet to be implemented will ever be realized. Indeed, although it asserts that the impact on *UP/SP*'s ability to provide service would be minimal, RCT does not explain whether, or how, *UP/SP* could continue to provide service over whatever routes would be left for it. Thus, from the standpoint of improved service, it appears that the RCT proposal would substantially degrade present service.

RCT states that an expanded *PTRA* is necessary because *UP/SP*'s "dominance of the rail infrastructure in Houston" caused the service crisis. RCT's Supplemental Petition filed December 1, 1997, at 15. Injecting more carriers into the middle of a traffic jam, it asserts (*id.* at 14), will solve the current emergency and avert future emergencies: "As soon as a shipper realizes he is being hurt by a particular carrier's inability to perform, he will simply divert his shipments to a competing carrier." While this assumption sounds plausible, it ignores operational reality. We do not mean to suggest that *UP/SP* was an uninvolved bystander with no role or responsibility as to the service crisis. But *UP/SP* did not manufacture the crisis to exploit some sort of

dominant position in the market, or to obtain some sort of competitive advantage. To the contrary -- and we do not by this statement mean to sound insensitive to the financial losses that the crisis may have produced throughout the economy -- UP/SP's bottom line has suffered dramatically as a result of the crisis. If it could have broken the bottleneck by using different yards, or by routing traffic to a different part of the inadequate infrastructure, we presume that it would have done so. The fact is, however, that until the infrastructure is upgraded, regardless of which carrier operates what lines, the threat of a further crisis will continue.¹⁸

UP indicated, in its statements in connection with the merger, that it will infuse substantial capital into the Houston area to improve infrastructure and capacity. There is no way that it will do so, however, if its yards and many of its tracks are given to other carriers. Unless PTRA has sources of capital of which we have not been made aware, taking UP/SP's property and giving it to PTRA will downgrade rather than improve infrastructure and capacity in the Houston area. Rather than averting future service crises, the RCT plan could help provoke them.

B. *Transferring UP/SP's Property To Tex Mex.* As noted, RCT has proposed taking UP/SP's property and giving it to Tex Mex to achieve its "clear path" through Houston proposal, a portion of which would involve the transfer of the Houston to Beaumont line.¹⁹ We do not understand how the proposal as presented would alleviate congestion in the Houston area.

1. *The Clear Path.* The basic proposal -- to give Tex Mex what RCT calls a "clear path through Houston" -- is apparently based on the same notion that we have just discussed, namely, that the service emergency was caused by UP/SP's control over most of the rail lines and yards in the Houston area. By taking some of those properties away from UP/SP and giving them to Tex Mex, RCT apparently reasons, Tex Mex can simply roll right past any congestion that might develop elsewhere in Houston, and provide its shippers with timely

¹⁸ One point that should be remembered is that one of the main causes of the recent rail service crisis was a surge in traffic. In today's economy, traffic surges can be expected, although they cannot necessarily be predicted. Giving UP/SP's property to an expanded PTRA will have no effect on future surges in traffic and will not provide the infrastructure with a better way to respond to the service needs caused by such surges.

¹⁹ Under its "clear path through Houston" proposal, RCT would give Tex Mex control over the SP Harrisburg Line from West Junction to Katy Neck; the UP Houston Subdivision Line from Katy Neck to Congress Avenue Yard; and HBT West Belt Line from Congress Avenue Yard to Belt Junction. A portion of the "clear path" proposal, which we address separately as the "Beaumont Subdivision" proposal, would give Tex Mex control of the UP Beaumont Subdivision from Gulf Coast Junction to Beaumont.

service even though other lines and other shippers in the Houston area may be in gridlock. Thus, RCT states (Supplemental Petition at 15), "it is unlikely there will ever again be a situation where train operations in the Houston area become congested to the point of near immobility." The adverse effect on UP/SP, RCT asserts, would be minimal, because the properties that UP/SP would have to give up "appear to be of marginal value to UP." *Id.* at 16.

As we have just discussed, the basis of the proposal -- that UP/SP's "dominance" caused the emergency -- has not been supported in the record. UP/SP may control the majority of the routes into Houston, but the rail network in Houston cannot be relegated to a series of separate lines that have no connection to each other and instead are divided by "clear paths." If the line that RCT would construct for Tex Mex -- presuming that Tex Mex were able to invest in the necessary connections for such a line -- could be used to breeze right by the congestion without compounding the situation at Houston, then UP/SP would be using it in that manner itself to help end the service crisis. Unfortunately, the fixed physical plant available for Houston's railroad operations does not lend itself to such easy fixes. Rather, a new rail "super highway" could be created through Houston only by slicing away important pieces of other lines.

Thus, RCT's assumption that this particular forced transfer of private property would be inconsequential to UP/SP is completely unfounded. As UP/SP has pointed out, while the "clear path through Houston" proposal might aid Tex Mex, it would interfere with UP/SP's (and possibly BNSF's) ability to provide service for far more traffic, and thus would ultimately degrade service for many Texas shippers. Moreover, the clear path proposal, along with the proposal for an expanded PTR, would replace a centralized, state-of-the-art traffic control center for Houston, including lines into and out of Houston, with a system in which the train movements of PTR, UP/SP, BNSF, and Tex Mex would be required to compete for line space access throughout the complex Houston terminal area by the use of a fragmented dispatching control system. Such a patchwork system would be grossly inefficient (and potentially unsafe) in comparison to the centralized system now being employed by UP/SP for all of Houston.

2. *The Beaumont Subdivision.* RCT notes that UP/SP now controls two routes that can be used between Houston and Beaumont: the SP's "Sunset Route" from Houston to Beaumont and then to New Orleans, and the UP route from Houston to Beaumont and then to Baton Rouge and New Orleans. Therefore, it reasons, we ought to force UP/SP to simply give one of those routes to Tex Mex so that it can become part of the "clear path" for Tex Mex. By combining its "Beaumont Subdivision" proposal with its "clear path"

proposal, RCT would give Tex Mex its own route connecting its Mexican owner²⁰ on the south with its American owner²¹ on the north.

RCT's assumption that implementing this portion of the clear path proposal "should have no negative operational impacts on the UP" (Supplemental Petition at 19) is shortsighted. The two lines, as part of UP/SP's planned merger-related efficiencies, are being used by UP/SP for its directional running program. The directional running program is one of UP/SP's more important planned improvements for the merged system, and one that the carrier is using to improve the flow of traffic to and from Houston. Handing one of the lines over to Tex Mex would defeat directional running, and would reduce operational flexibility, adversely affecting the operation of the remaining line and the movement of BNSF, UP/SP, and even Amtrak trains.²²

RCT presents us with no valid service reason for dismantling the UP/SP directional running system, and depriving UP/SP and the shipping public of planned efficiencies, at Houston or elsewhere.

C. RCT Has Not Shown How Its Proposal Can Work. Although it calls its plan a "proposal," in fact RCT has given us nothing but a general idea of how the Houston railroad map might look. It has not shown us, however, that its proposed configuration -- even if it would somehow produce operational benefits -- could practically be put into place. It has not demonstrated that PTRa and Tex Mex will be able (financially or operationally) to manage their new and substantially expanded roles. It has not demonstrated where the capital necessary to improve the Houston infrastructure will come from, once UP/SP is taken largely out of the picture. It has not demonstrated how BNSF will handle its new role, which may be expanded in some ways, but which also will be diminished in others by its being required to give up track and traffic access, along with locomotives and crew, to PTRa. In short, RCT has presented a kind of a theory, but no clear demonstration of how that theory could be put into operation.

²⁰ Transportacion Maritima Mexicana S.A. de C.V., 51% ownership of Tex Mex's parent company, Mexrail.

²¹ Kansas City Southern Railway Company, 49% ownership of Mexrail.

²² RCT suggests that UP/SP could take the proceeds from the line it would be forced to sell to Tex Mex and use them to double-track its remaining property so as to permit directional running. Even if RCT had shown that this trade-off were feasible -- and it has not made such a showing -- a program involving many miles of new track construction is plainly long-term in nature. Thus, even if RCT had shown that its clear path is needed for competitive reasons -- and, again, RCT has not made such a showing -- it could not be implemented as part of the service order.

RCT tells us that its proposal, which it concedes is really directed at perceived competitive rather than service issues, will be reintroduced in the context of the *UP/SP* merger oversight proceeding. In the *UP/SP* merger proceeding, various parties, including RCT, introduced divestiture proposals involving extensive UP and SP lines, without explaining in detail how the proposals would work, and what their effects would be. We rejected those proposals as overreaching in *UP/SP*, 1 S.T.B. at 433, also finding that traffic studies, operating plans, and pro forma financial statements demonstrating the effects of major restructuring plans were necessary before we could consider adopting them. If RCT has a concrete plan, it should present it to us in a manner that will demonstrate how it will work and what its effects will be.

Summary. In our prior decisions, we rejected RCT's proposal because it would have overreached in a number of ways, because it would not have facilitated the resolution of the emergency, and because it contemplated long-term restructuring directed at perceived competitive issues rather than short-term solutions to the current service emergency. RCT's request for reconsideration presents nothing new that would change our view. Therefore, the request will be denied.

It is ordered:

1. RCT's petition for reconsideration is denied.
2. This decision is effective on February 17, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.