

STB SERVICE ORDER NO. 1518¹

JOINT PETITION FOR SERVICE ORDER

Decided February 25, 1998

The Board extends, until August 2, 1998, the emergency service order after reviewing the extensive railroad operational data submitted in response to prior orders. Finding that shippers need some certainty as to the transportation alternatives that will be available to them in the immediate future, the Board continues emergency relief to the maximum extent permitted by law. Additionally, concluding that the congestion in the West appears to have been caused in large measure by inadequate infrastructure, the Board asks all railroads serving the Houston area to report on needed infrastructure changes in the area, and on how they can appropriately be funded and implemented.

BY THE BOARD:

In these proceedings, we have addressed the transportation emergency in the western part of the United States in several ways. In the Ex Parte No. 573 proceeding, we initiated a general inquiry into the service problems in the West, and we held oral hearings on October 27 and December 3, 1997, at which we received testimony from a broad spectrum of interests. In the Service Order No. 1518 proceeding instituted following the October 27 hearing, we issued two unprecedented emergency service orders that, among other things, made substantial changes to the way in which service is provided in and around the Houston area. Additionally, in the "*UP/SP Oversight*" proceeding,² we reviewed a variety of competitive issues associated with the merger of the Union

¹ This proceeding also embraces Ex Parte 573, *Rail Service in the Western United States*.

² *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*, STB Finance Docket No. 32760 (Sub-No. 21) (*UP/SP Oversight*).

Pacific Railroad Company and the Southern Pacific Transportation Corporation (UP/SP) that some parties view as relevant to the way in which service is provided in the West.

This decision will address three issues: (1) the extension of the service order; (2) other short- or long-term proposals to address service in the West; and (3) the question of the adequacy of the rail infrastructure and capacity in and around the Houston area.

A. *Extension of the Service Order.* Our service orders in these proceedings, which currently run through March 15, 1998, essentially sought to relieve some of the pressure on rail service to Houston in general, and on UP/SP in particular, without interfering with UP/SP's own service recovery efforts or otherwise detrimentally impacting service already being provided to shippers by the other carriers enlisted to help with the service emergency.³ Additionally, we required extensive data reporting by UP/SP and BNSF, designed to help us and affected parties evaluate the progress of the service recovery. To supplement the data reporting by UP/SP and BNSF, we requested, and received, comparable performance reports from shipper groups and others.⁴

The information provided by the shipper groups, which is confirmed by the carrier-supplied data, indicates that, although the service crisis has eased in some areas, it continues to persist in others. Therefore, we have decided to extend the order in *Joint Petition For Service Order*, 2 S.T.B. 744 (1997).

The shipper comments have suggested extending the order, some for the maximum time permissible under the statute, that is, until August 2, 1998. UP/SP has asked that the order be extended for only 60 days, and that we hold a hearing in early May to determine the extent to which the various measures it is undertaking to correct its service problems have produced improvements. We

³ In particular, our orders directed UP/SP to release shippers switched by Houston Belt & Terminal Railroad Company (HBT) or Port Terminal Railroad Association (PTRA) 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. They 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 Line" and to move traffic around Houston rather than going through it. More generally, we required UP/SP to cooperate with other railroads and to accept assistance from other railroads able to handle UP/SP traffic. 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.

⁴ Although not all of the parties responding to our request for information were shipper groups, for convenience, in this decision we will refer to their performance reports and other filings as "shipper comments."

would hope that UP/SP's optimism in requesting only a 60-day extension is borne out. However, shippers must have some certainty as to the transportation alternatives that will be available to them in the immediate future to manage their transportation needs effectively, and a series of short extensions of the service order would not provide this needed certainty. Furthermore, given the gravity of the emergency, which is not yet close to being resolved, we must continue the order for an extended period of time to ensure maximum impact. Thus, we will continue the order until August 2, 1998. If in fact UP/SP's remedial measures relieve the crisis sooner, UP/SP may petition to have the service order terminated.

Some of the shipper comments assert that the emergency measures that we have taken in our service orders have not done enough, and that they ought to be expanded.⁵ Our view is that the impact of our emergency measures -- particularly those allowing movements around problem areas such as Houston and the "Sunset Line" -- has been positive. In *Joint Petition For Service Order*, 3 S.T.B. 28 (1998) (*February 17, 1998 decision*), we found that certain proposals to open up the Houston area to additional service opportunities,⁶ beyond those that the service orders provided for BNSF and Tex Mex, would not likely resolve the emergency in the form in which they were presented, and could interfere with existing railroad efforts to ameliorate the situation. Therefore, we will not modify at this time the substantive terms of the existing service order. Rather, we will continue the service order in effect essentially in its current form until August 2, 1998. The length of this extension will not preclude us from amending the terms of the service order, or taking any other action that may be appropriate, at any time during the duration of the order.

One aspect in which we will change our service order is in terms of the reporting required of UP/SP. Although we have observed, through our review of UP/SP's data, improvements in certain aspects of the carrier's operations

⁵ The Port of Houston suggests that we require a dispatching arrangement that guarantees neutrality for UP/SP, BNSF, Tex Mex, and PTRR throughout the Houston area. However, as part of our service orders in these proceedings, we have already provided for neutrality by giving other carriers access to UP/SP's dispatching center. See note 2. We have not seen any evidence of preferential dispatching decisions adverse to carriers such as Tex Mex, which will continue to have an opportunity to be involved in the proposed UP/SP-BNSF joint dispatching program discussed later in this decision. If in fact that program proves to be unfair to Tex Mex, or if Tex Mex obtains an expanded role as a line-haul carrier and later concludes that it needs a more active role in dispatching that is not permitted by the BNSF-UP/SP joint dispatching program, we will consider appropriate relief at that time.

⁶ These proposals were described as "neutral switching" in the Houston area and a "clear path for Tex Mex" through Houston.

outside of the Houston area, recent setbacks reflected in several of the weekly reporting categories concern us. For example, notwithstanding the apparent increase in locomotive power available on the system, the most recent report indicates reduced levels of performance in several areas. To facilitate our understanding of the progress of the recovery overall, we will require UP/SP, in its future weekly reports, to explain in detail whether, and why, performance as reflected by the following indicators has met, exceeded, or fallen short of UP/SP's expectations: cars offered to UP/SP in interchange which were refused; reported transit time for loaded grain cars from Kansas to the Gulf; number of cars on the UP/SP system; car terminal dwell time; sidings and main lines blocked for the system, and in particular, sidings blocked Kansas City south; trains held for power, crews, and congestion; and finally, congestion in terminals.

B. Other Short- or Long-Term Proposals to Address Service in the West.

Although we will not at this time provide for open access in Houston, we will continue to entertain and examine other options for addressing the service problems in the West. As UP/SP notes in its letter dated February 19, 1998, the carrier is completing its transition to directional running between various points in the Southwest, and it has recently initiated steps to improve local switching and customer service in the Houston/Gulf area. Additionally, UP/SP and BNSF have recently agreed to several important measures -- joint ownership involving the Sunset Line between Avondale (New Orleans), LA and Houston; joint dispatching in the Houston area; and overhead trackage rights for UP/SP over the BNSF line between Beaumont and Navasota, TX, as a way of routing around Houston -- that are designed to relieve the congestion in Houston.⁷ Finally, we are aware of the reported negotiations between BNSF and Tex Mex concerning operational changes that may further facilitate the movement of traffic. We encourage these private sector solutions, and any other private sector solutions that the carriers, hopefully in collaboration with their shippers, can develop.

To the extent that private parties cannot agree on solutions, however, we encourage them to submit their proposals to us for review. In this regard, we note that the Greater Houston Partnership is preparing a report, which is to be submitted around March 5, 1988, providing its assessment of the situation in Houston. We look forward to its submission.

⁷ UP/SP and BNSF should be able to implement much of their agreement without any Board approval, and we urge them to do so expeditiously. We understand that UP/SP and BNSF will soon be seeking the necessary approval to change the ownership of the line between Houston and New Orleans. We anticipate their filing in this regard.

C. Infrastructure and Capacity In and Around Houston. Our February 17, 1998 decision found that the service emergency was not caused by an inadequate competitive climate in the West produced by the UP/SP merger, as some parties had asserted. The decision identified a variety of factors that may have contributed to the emergency, concluding that the emergency was caused in large measure by the inadequate infrastructure in the Houston area: the rail system in Houston has limited capacity, antiquated facilities, and an inefficient configuration unable to cope with surges in demand.⁸ Thus, once the surge in the economy took place and congestion began, UP/SP was unable to stem it, and indeed still has been unable to stem it. Our service orders, along with the private-sector arrangements among railroads, we hope, will continue to be successful in helping to alleviate some of the congestion in Houston, but we are not optimistic that the Houston railroad service problems will be finally resolved for the long term until infrastructure is addressed in a meaningful way.

UP/SP has announced that it intends to make some substantial investments in facilities, and that it is commissioning a study of longer-range infrastructure needs. Those are good first steps. However, given the serious nature of the service problems in and around Houston, we believe that these infrastructure initiatives need to be all-inclusive and pursued in a timely and focused manner. Thus, we direct UP/SP, the railroad with the majority of facilities in the Houston terminal, to immediately convene meetings with involved railroads, principally BNSF and KCS/Tex Mex; involved shippers; and any other interested parties to discuss the upgrading of the Houston facility and the appropriate role in this effort of each group represented. As the necessary infrastructure upgrading in the Houston area will take time, money, planning, and coordination among all affected parties, UP/SP is to report to the Board on May 1, 1998, as to the results of such meetings and as to plans for addressing the Houston infrastructure. In particular, UP/SP should explain what changes are needed; if changes beyond

⁸ Indeed, it appears that the infrastructure throughout the West may be growing increasingly incapable of handling growing traffic volumes. Data reported by class I railroads in their Annual Report Form R-1 submissions indicate that the major western railroads had significantly greater growth in ton-miles than did their eastern counterparts for the 10-year period ending in 1996. And while we cannot say for certain the extent to which the entire UP/SP and BNSF systems are overtaxed -- and whether systemic capacity problems are responsible for the disappointing pace of the service recovery overall -- we do note that ton-mile growth on the SP system over that 10-year period was 71%, while revenue growth was only 18% during the corresponding period. It would appear that this profitless growth contributed heavily to the inadequacy of SP's Houston area infrastructure because there were few funds available to invest in the infrastructure. In any event, although an overall review of infrastructure throughout the West may well be in order in the near future, at this point we will limit our focus to the inadequate infrastructure in the Houston area.

those for which UP/SP has already committed funds will be required, how much the additional changes will likely cost; how the additional changes can and should be funded; how the various shippers can facilitate infrastructure or operational changes that may assist in the movement of traffic; what corresponding rail system capacity changes (e.g., equipment, labor, crews) should be made to ensure maximum utilization of the Houston area infrastructure and improved service; and how implementation of such changes can be undertaken with minimal disruption to the flow of commerce in the Houston area. BNSF and KCS/Tex Mex may, if they choose, file by May 1, 1998, their own proposals for infrastructure improvements in the Houston area as well. Interested parties may respond to these filings by June 1, 1998. After reviewing the filings, we will pursue further action as appropriate.

It is ordered:

1. Service Order No. 1518, as extended by our order in *Joint Petition For Service Order*, 2 S.T.B. 744 (1997), is further extended until August 2, 1998.
2. UP/SP shall, and BNSF and Tex Mex may, file reports addressing infrastructure in Houston by May 1, 1998.
3. Replies to the infrastructure reports may be filed by June 1, 1998.
4. UP/SP will augment its weekly reports by explaining in more detail the indicators identified in this decision.
5. This decision is effective on February 25, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.