

STB FINANCE DOCKET NO. 32760

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

Decision No. 84

Decided December 16, 1998

The Board reopens this proceeding, grants Reno, NV, and the Union Pacific Railroad Company's joint petition, approves their settlement agreement, and imposes their agreement as a condition to the *UP/SP* merger.

BY THE BOARD:

In *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996) (*Decision No. 44*), we approved the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company) (referred to as the *UP/SP* merger), subject to various conditions, including numerous environmental mitigation conditions. As pertinent here, environmental Condition Nos. 22a-22d required our Section of Environmental Analysis (SEA) to conduct a further, more focused study to arrive at a specific mitigation plan for Reno, NV, so as to assure that localized environmental issues unique to that community are effectively addressed. The Reno mitigation study was to be completed within 18 months of the consummation of the *UP/SP* merger.

3 S.T.B.

SEA issued a Preliminary Mitigation Plan for Reno on September 15, 1997. After comments on it were received, a Final Mitigation Plan for Reno was issued on February 11, 1998, as contemplated by *Decision No. 44*. By letter dated February 24, 1998, counsel for Reno requested that we toll all proceedings in the ongoing Reno mitigation study for a period of 8 months. In support of its request, Reno stated that it was actively pursuing a funding plan to implement a depressed trainway project through downtown Reno and was also engaged in good faith negotiations with UP/SP. By letter dated February 25, 1998, the Union Pacific Railroad Company (UP) advised us that it concurred with Reno's tolling request. Accordingly, we granted Reno's request in *Decision No. 79*, served March 2, 1998. By letter dated November 5, 1998, Reno and UP jointly requested an extension of the tolling period through January 31, 1999, to allow the parties more time for their negotiations, which had intensified and would be completed in coming weeks. We granted the joint request in *Decision No. 83*, served November 16, 1998.

By petition filed December 9, 1998, Reno and UP stated that they have entered into an agreement and jointly request that we approve their agreement¹ and prescribe it as a condition of our approval of the UP/SP merger in lieu of any other mitigation that could be imposed pursuant to *Decision No. 44*, Appendix G, Condition Nos. 22a-22d. We will grant the parties' request and impose their agreement as a condition to the UP/SP merger.

Reno and UP also make two other requests in their joint petition. First, they request that we remove all restrictions on the number of trains (including trains operated by UP, The Burlington Northern and Santa Fe Railway Company (BNSF), Amtrak and any other trackage rights operators) that pass through the City of Reno whether or not set out in Condition No. 22a of Appendix G to *Decision No. 44*. The only restrictions we imposed apply to UP and BNSF as explained in *Decision No. 44*, 1 S.T.B. at 517, n.267. Amtrak is specifically excluded from the restrictions, and no other trackage rights carriers are identified as being subject to Condition No. 22a. Because substitution of the Reno-UP agreement for Condition No. 22a as a condition to the UP/SP merger effectively removes all such restrictions that we have imposed, petitioners' request is unnecessary.

¹ UP and Reno attached to the joint petition a copy of their settlement agreement entered into on December 1, 1998.

Finally, Reno and UP jointly request that we not make this decision effective unless and until the first issuance of bonds for the project covered by their agreement (construction of a depressed trainway through downtown Reno). To facilitate the agreement, we will grant this request, and we will require Reno and UP to notify us in writing that the issuance has occurred.

On December 9, 1998, Reno and UP also filed a request for waiver of copy and service requirements, as follows: (1) waiver of the requirement that 20 copies of the joint petition be filed as ordered by *Decision No. 9*, served December 27, 1995, and in lieu thereof, authorization and acceptance of 10 copies as provided by regulation, 49 CFR 1104.3; and (2) waiver of the requirement that they serve copies of the joint petition on all parties of record, and in lieu thereof, authorization and acceptance of their proposal that they limit their service to BNSF and Amtrak as the only other parties substantially affected by the Reno/UP specific environmental mitigation settlement. Reno and UP's request for waiver of the copy filing requirements for the joint petition filed December 9, 1998, is reasonable and will be granted. The Board accepts the 10 copies of the joint petition as filed. UP and Reno's request for waiver of their service requirements is also granted. Because of the limited scope of this matter, Reno, UP, BNSF, and Amtrak will be required to serve copies of their filings only on one another, and on any other party that submits a request in writing on or after December 17, 1998; service of these filings on all parties of record in Finance Docket No. 32760 would be unduly burdensome and unnecessary. The Board will of course serve copies of this decision and any future decisions on all parties of record in Finance Docket No. 32760.

Our actions in this decision resolve the pending environmental mitigation issues as to Reno.

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

It is ordered:

1. The joint petition by Reno and UP is granted to the extent set forth above.
2. This proceeding is reopened. The settlement agreement on pending environmental mitigation issues entered into on December 1, 1998, between Reno and UP is approved, and the settlement agreement is prescribed as a condition of our approval of the *UP/SP* merger in lieu of any other mitigation that could be imposed pursuant to *Decision No. 44*, Appendix G, Condition Nos. 22a-22d.

3. At the request of UP and the City of Reno, this decision shall be effective on the date of the first issuance of bonds for the project covered by the agreement, and, at that time, the parties to the agreement shall notify the Board in writing that the action has taken place.

4. Reno and UP's request for waiver of the copy and service requirements is granted to the extent set forth in this decision.

By the Board, Chairman Morgan and Vice Chairman Owen.