STB FINANCE DOCKET NO. 32760 (SUB-NO. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, ANDMISSOURI 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 (GENERAL OVERSIGHT)

Decision No. 16

Decided December 13, 2000

This decision addresses the issues raised in the fourth annual round of the UP/SP general oversight proceeding. Upon reviewing the record, we find that there have been no demonstrable competitive problems resulting from the merger. We will continue to monitor the situation.

BY THE BOARD:

BACKGROUND

UP/SP Merger Proceeding. In our August 12, 1996,[1] decision, we approved the common control and merger of the rail carriers controlled by Union Pacific Corporation and the rail carriers controlled by Southern Pacific Rail Corporation, subject to various conditions, including a 5-year oversight condition and the terms of the BNSF agreement as supplemented by the CMA agreement and further expanded by the Board.[2]

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[1] *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233 (1996) (*UP/SP Merger*), *aff'd, Western Coal Traffic League v. STB*, 169 F.3d 775 (D.C. Cir. 1999) (*WCTL*).

[2] BNSF refers to The Burlington Northern and Santa Fe Railway Company and its corporate predecessors. *See also UP/SP Merger*, 1 S.T.B. at 247 n.15 (description of the BNSF agreement). CMA refers to the Chemical Manufacturers Association, which is now called the American Chemistry Council.

First Annual Round Of General Oversight Proceeding. In a decision served October 27, 1997, we addressed the issues that had been raised in the first annual round of the general oversight proceeding. We concluded that the UP/SP merger, subject to the conditions we had imposed, had not caused any substantial competitive problems, and that there was no need for adjustments in the general conditions imposed.[3]

In view of UP's increasing service problems in the Houston area, however, we undertook a range of actions, including holding public hearings to address proposals for solving UP's service problems and instituting a "Houston/Gulf Coast" oversight proceeding to consider long-term proposals for additional remedial conditions pertaining to rail service in the Houston/Gulf Coast region.[4] Although we did impose a series of service orders to ease the service crisis and directed other actions to improve the operations in the Houston area, we ultimately found no competitive problems in that region stemming from the merger.

Second Annual Round Of General Oversight Proceeding. By decision served December 21, 1998, we addressed the issues that had been raised in the second annual round of the general oversight proceeding. We concluded that the UP/SP merger, though it had not been implemented operationally as smoothly as we had anticipated, had not thus far caused any substantial competitive harm, and that there was no need for any adjustment in the general conditions imposed in connection with the merger.[5]

Third Annual Round Of General Oversight Proceeding. By decision served November 30, 1999, we considered the issues raised in the third annual round of the general oversight proceeding and concluded that the record continued to

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[3] *Union Pacific/Southern Pacific Merger*, 2 S.T.B. 703 (1997) Decision No. 10 (*General Oversight Dec. No. 10*).

[4] *See 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 [Houston/Gulf Coast Oversight]*, STB Finance Docket No. 32760 (Sub-No. 26), Decision No. 1 (STB served May 19, 1998), and Decision No. 10, *Union Pacific/Southern Pacific Merger*, 3 S.T.B. 1030 (1998) (*Houston/Gulf Coast Oversight*).

[5] *Union Pacific/Southern Pacific Merger*, 3 S.T.B. 987 (1998) (*General Oversight Dec. No. 13*).

show no competitive problems resulting from the merger. We also found that the UP/SP service crisis was over.[6]

This Decision. We discuss the issues raised in the following pleadings: the UP/SP-378 "Applicants' Fourth Annual Report on Merger and Condition Implementation" filed July 3, 2000, by UP; the BNSF-PR-16 "Quarterly Progress Report," filed July 3, 2000, by BNSF; the comments filed August 18, 2000, by Edison Electric Institute (EEI), the California Public Utilities Commission (CPUC), and The Kansas City Southern Railway Company (in KCS-16); the comments filed August 21, 2000, by Arkansas Electric Cooperative Corporation (in AECC-1); the LYON-1\MONT-15 reply filed September 5, 2000, by Lyondell Chemical Company and Montell USA, Inc., to the comments of KCS; the UP/SP-380 reply and highly confidential appendix filed September 5, 2000; the BNSF-9 reply filed September 5, 2000; the DOT-5 reply comments filed September 5, 2000, by the United States Department of Transportation (DOT); the letter filed September 5, 2000, by The National Industrial Transportation League (NITL); the letter filed September 13, 2000, by UP; and the letter filed September 19, 2000, by EEI. The UP/SP-378 and BNSF-PR-16 progress reports are summarized in the appendix to this decision.

COMMENTS AND REPLIES

Arkansas Electric Cooperative Corporation (AECC) owns a 35% interest in the White Bluff, AR generating plant operated by Entergy Arkansas, Inc. (Entergy), and similar minority shares of other plants controlled by Entergy and other companies in Arkansas. AECC contends that BNSF's trackage rights fee of 2.5 mills per ton-mile that we approved in the merger under the BNSF settlement agreement is too high to permit BNSF to compete effectively with UP. AECC anticipates that BNSF's upcoming rate proposals, which must include fees for trackage rights over 145 miles of UP lines to serve Entergy's proposed build-out of a rail line from the White Bluff plant, will be too high. AECC asks us to reevaluate the trackage rights fee and to reduce it to preserve pre-merger competition.

In reply, UP contends that the BNSF trackage rights fee is at the low end of the range of comparable fees, that BNSF already competes strongly against UP hauling coal under the BNSF settlement agreement over comparable distances

[6] *Union Pacific/Southern Pacific Merger*, 4 S.T.B. 438 (1999) (*General Oversight Dec. No. 15*).

on UP track. Conversely, UP notes that it has competed successfully moving unit-train coal using trackage rights over BNSF subject to higher trackage rights fees. UP also points out that the reasonableness of the fee has been previously litigated and resolved in the UP/SP merger case. In its reply, BNSF outlines the service initiatives it has undertaken to compete with UP, and states that AECC's argument that BNSF cannot compete effectively for coal movements over trackage rights lines is further undercut by the fact that BNSF has used its trackage rights to move coal to the Lower Colorado River Authority (LCRA) facility at Halsted, TX, the Texas Utilities Electric Company (TUE) facility at Martin Lake, TX, and the City Public Service Board of San Antonio (CPSB) facility at Elmendorf, TX.

The Kansas City Southern Railway Company (KSC) contends that UP's fourth annual report fails to show that BNSF provides strong competition in the Central Corridor or in the Houston market. It claims that either the trackage rights fee is too high to permit BNSF to compete there or that BNSF is only making a token effort to operate in the Central Corridor so that we do not give these trackage rights to one of its competitors. KCS asks the Board to: initiate a special rate study to evaluate BNSF's impact in Houston; order UP to sell its 150-mile Victoria to Rosenberg, TX, line to Tex Mex; reconsider BNSF's access to Lake Charles, LA shippers that are also served by UP and KCS; and require UP and BNSF to disclose the details of their Houston — New Orleans line swap agreement.

In reply, Lyondell Chemical Company and Montell USA Inc., two West Lake Charles, LA shippers, maintain that KCS has produced no new evidence or grounds to support its latest attempt to reverse our Lake Charles access condition. In reply, UP contends that KCS raises its own parochial interests and that KCS wants to revisit issues that have been long settled in the proceeding.

California Public Utilities Commission (CPUC) notes that it is pleased to see that the merger has resulted in new services being provided in California by both UP and BNSF. CPUC states that "BNSF and UP have made substantial improvements to their rail infrastructure which should improve existing service levels and intensify competition." It also notes that the severe implementation problems that followed the merger have disappeared. Nevertheless, CPUC argues that the progress reports submitted by UP and BNSF fail to provide a basis to compare the carriers' post-merger competition in the I-5 Corridor, on the

Central Corridor, or at 2-to-1 points[7] with the competition that SP provided before the merger. CPUC asks the Board to require the carriers, in their upcoming fifth and final oversight reports, to provide corresponding "benchmarks" with respect to market share, cost savings, service capacity, and capital improvements or service downgrades in each of the above markets. CPUC asks the Board to consider, in light of its proposed merger guidelines, expanding BNSF's access to California shippers through new trackage rights over UP or via rate quotations to UP shippers. While indicating that no shippers have filed complaints with it suggesting anticompetitive behavior by UP or BNSF, CPUC recommends that the Board undertake a survey of 2-to-1 shippers to assess their views on the level of competition between the two carriers.

UP replies that CPUC's Central Corridor concerns are the same ones CPUC raised last year that were rejected by us. UP contends that CPUC's new informational request would be too burdensome and costly without producing useful data. According to UP, CPUC produces no evidence to support its request for expanded BNSF access in California and that its request for a new condition promoting competition is outside the scope of this oversight proceeding.

Edison Electric Institute (EEI) claims that the annual reports fail to show that BNSF competes with UP for Utah and Colorado coal in the Central Corridor. Because of this lack of information, EEI asks us to require UP and BNSF to submit specific evidence of rate reductions, competitive bidding, and traffic levels for Utah and Colorado coal traffic.

UP replies that BNSF is a strong competitor for Central Corridor coal traffic and that, as a result, Colorado and Utah coal originations, as measured by the revenue per ton-mile UP receives for this traffic, declined fractionally last year, and that these rates have not changed appreciably since the merger, despite railroad cost increases. BNSF outlines its service improvements in the Central Corridor in competition with UP. BNSF also states that EEI and AECC have mischaracterized the purpose of the Board's conditions as they relate to transportation of coal from Utah and Colorado mines in the Central Corridor, and seriously overstated the role the Board anticipated BNSF would fulfill post-merger. The majority of the Utah/Colorado coal mines (including all of the former SP Central Corridor Colorado mines) were exclusively served by SP, and the Board determined that competition for the transportation of coal from those

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[7] Plants that, prior to the merger of UP and SP, had access, either directly or through reciprocal switching, to both UP and SP and no other carrier, were designated as 2-to-1 points. BNSF was granted access to these plants via trackage rights as a replacement carrier for SP.

mines would be unaffected by the merger. BNSF states that the competition the Board sought to preserve through imposition of the Utah Railway Company (URC) Agreement was limited to the existing level of competition for those few western coal shippers who were dependent on Utah/Colorado coal and who had access to URC. BNSF further states that it has adequately fulfilled its responsibilities to serve as a joint-line partner with URC to provide a competitive alternative to such facilities as the North Valmy, NV power plant owned jointly by Sierra Pacific Power and Idaho Power Company.

United States Department of Transportation (DOT), in reply, doubts that a study of UP and BNSF market share at 2-to-1 points would yield meaningful insight about the level of competition at those points. In view, however, of the competitive concerns of other commenters, DOT recommends that BNSF should be required to report the number of post-merger carloads it originates and terminates by major commodity in the Central Corridor and that this information should then be compared to the total number of pre-merger carloads SP handled at 2-to-1 locations in the corridor. DOT states that BNSF should provide data showing the number of carloads of Utah and Colorado coal it handles. DOT also asks UP to address its Southern Corridor capacity constraints in more detail in the next annual report.

The National Industrial Transportation League (NITL) argues that the comments raise serious concerns over BNSF's ability to compete with UP in the Central Corridor. NITL asks us to conduct a comprehensive review of the competitive situation in the corridor and, if warranted, remove any obstacles to more effective rail-to-rail competition there.

DISCUSSION AND CONCLUSIONS

OVERVIEW. The pleadings submitted here reaffirm our conclusions in last year's oversight decision that UP's service crisis is over and that the UP/SP merger has not produced any demonstrable competitive problems.[8] In fact, the

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[8] DOT, in its comments, states that "the record shows that the Board's conditions have proven effective as a general matter," that the "substantial problems in these areas [of safety of railroad operations and adequacy of service levels] * * * have now been essentially resolved" and that "[n]o party challenges the reality of vigorous competition between UP and BNSF generally." DOT-5 at 2-4. *See also* CPUC's comments, at 5, stating that it "has not received any complaints from shippers suggestive of anti-competitive behavior by UP or BNSF to date." EEI presents no basis (continued...)

record indicates vigorous competition and improved service in the West. Our conclusion that competition has not been undermined by this and other recent mergers in the West is also confirmed by a comprehensive rate study recently released by STB staff. This study shows that rail rates in the West continued to decline rather sharply during the period from 1996 to 1999 when this merger was being implemented. In this 3-year period, western rail rates fell 9.0%, or 3.1% per year on an inflation-adjusted basis. Rail rates on coal movements in the West declined even faster, falling 14.2% in inflation-adjusted dollars, or 5.0% per year.[9] Rate decreases of this magnitude could not have been realized if the UP/SP and BNSF mergers had substantially decreased rail competition in the region.

Based on all of the evidence submitted here, it appears that BNSF has become a strong competitor to UP where it provides service under trackage rights as a result of the merger. Moreover, claims by various parties that the trackage rights compensation BNSF pays could be an impediment to its ability to compete are unsupported.

Central Corridor Traffic. Although the comments include arguments by CPUC, NITL, KCS, and EEI about the level of post-merger competition in the Central Corridor, no shipper has complained about UP's rates or services. Rather, the arguments raised here concern either the volume of BNSF's traffic using its trackage rights or BNSF's market share as compared to UP's (post-merger) or SP's (pre-merger) market share. As we explained in *Houston/Gulf Coast Oversight Decision No. 10*, at 1035, BNSF has access only to those shippers that were served by both UP and SP prior to the merger, and most of SP's shippers were served only by SP. Thus, market share cannot be the decisive criterion by which to judge the degree to which BNSF replicates the competition that would have otherwise been lost through the merger. We have also explained that BNSF must have sufficient traffic to sustain service levels that will allow its Central Corridor route to be a realistic choice for those relatively few shippers that it may serve under the trackage rights granted in this proceeding.

[8](...continued)
whatsoever for its surmise that shippers may not have participated here because of "fears of retaliation" from UP.

[9] In fact, of the 30 commodities tracked by the Board's Office of Economics, Environmental Analysis, and Administration, the declines in western coal rates exceeded those of every commodity group except for western movements of transportation equipment, which fell nearly 22% over the 3-year period.

And it appears that BNSF has in fact been able to meet its pre-merger projections for traffic using its Central Corridor trackage rights, and that the projections made by KCS witness Crowley during the UP/SP merger proceeding have proven to be overly pessimistic. As we noted in *UP/SP*, BNSF projected that it would handle 2-5 trains a day through the Central Corridor, while Crowley predicted only 1.08 trains a day. BNSF operated 103 through trains in May 2000 over the Central Corridor, which equates to about 3.3 trains per day.[10]

EEI and DOT argue that we need to obtain more evidence about BNSF service and competitive rate offerings for coal shippers in Utah and Colorado. As a threshold matter, we note that BNSF did not obtain authority in the merger proceeding to provide service to any coal shippers in Colorado. Indeed, we rejected requests that we should give BNSF trackage rights to serve the coal mines that were solely served by SP in Colorado as a way of preserving source competition between those mines and Powder River Basin (PRB) mines.[11] Accordingly, the only coal shippers that BNSF may serve using the Central Corridor trackage rights are those few mines and load-outs located on URC, in the northwestern part of Utah.

We continue to believe that the most important indicator of the impact of BNSF's Central Corridor trackage rights is the effect that BNSF's presence in the market has on the rates offered by UP at points where it formerly competed with SP. In last year's decision, we found that BNSF's presence in the Central Corridor required UP to compete vigorously for BNSF-accessible traffic. *See General Oversight Decision No. 15*, at 445. Because UP had submitted positive and unrebutted rate results covering several years of experience since the merger, we took no action on CPUC's contention that pre-merger competition in the Central Corridor had not been effectively replicated by post-merger competition between UP and BNSF. Although UP has submitted no comprehensive rate evidence of its own during this the fourth year of oversight, our staff's recently

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[10] BNSF also reports that its overall traffic on all its new trackage rights lines meets or exceeds its expectations to "grow the traffic associated with its rights from zero to the size and scale of a new Class I railroad."

[11] The court specifically affirmed our determination in *UP/SP Merger*, 1 S.T.B. at 396-98, that "there is little meaningful competition today between those mines and PRB mines." *WCTL*, 169 F.3d at 780-81. AECC's witness Nelson now argues that this argument is rebutted by the fact that many plants that once used relatively high-sulphur Utah and Colorado coal "have been converted in part or entirely to PRB coal." We have always acknowledged, as did the court that "an increasing number of utilities are making capital investments allowing them to burn PRB coal." *WCTL*, 169 F.3d at 780. Having made this investment, however, these companies will not return to Utah and Colorado coal.

released rate study shows that western rail rates continued their significant overall decline through year-end 1999, and while we have made UP's confidential 100% traffic tapes available for this purpose, no shipper or other party has submitted any indication that the positive trends we have noted in our last three oversight decisions have not continued.[12]

BNSF argues, and UP confirms, that BNSF has aggressively competed with UP in the Central Corridor, and that it provides daily merchandise service in this corridor. Given that level of presence, it should not be difficult for BNSF to provide single-car, multi-car, or unit-train[13] service to coal or other shippers as needed. BNSF also notes that, over the past few years, it has made twenty bids for coal sourced in Utah, and it has been successful on a number of occasions, including service to the North Valmy, NV utility plant.

In its most recent comments, DOT indicates that it continues to believe that BNSF is an important competitive constraint on UP in the Central Corridor. DOT states that BNSF has maintained or even increased the operating frequency of its merchandise train service in the Central Corridor and that no shippers in California have complained of a lack of rail-to-rail competition. We agree with DOT's assessment of these issues.

Moreover, we continue to believe that a study of UP and BNSF market shares at 2-to-1 points in the corridor, or elsewhere that BNSF has trackage rights, would not provide any useful insight about the level of competition between the two carriers.[14] As we explained in our initial annual oversight decision in this proceeding:

> We * * * agree with the assessment of the Department of Transportation (DOT) in its submission that "BNSF market share * * * should not be the decisive criterion by which the level of competition is judged. BNSF must have sufficient traffic to sustain service levels that allow it to be a realistic choice for shippers, but the traffic level could be far less than that of an independent SP." DOT notes in its comments that: "the most important indicator of the impact of the trackage rights conditions is the effect BNSF's presence in the market has on the rates offered by UPSP."

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[12] NITL asserts in its three page letter comment that "UP has been able to establish higher rate levels, lower service levels and more onerous contract terms and conditions for Central Corridor coal shippers and receivers," but it presents no specificity concerning the movements it is talking about, and no evidence to support any of these allegations. As NITL knows, this kind of vague evidence is of very little assistance to us in our oversight proceedings.

[13] Most coal is moved in unit-trains of 100 cars or more that are shuttled between coal mines and generating plants. No other traffic is moved with these coal shipments.

[14] DOT points out that, due to the nature and length of contracts, one carrier could manage to obtain the entirety of a shipper's business for a number of years and that a yearly market share analysis would show no participation in these moves from the unsuccessful but still competing carrier.

General Oversight Decision No. 10, at 708.

We also think that UP has persuasively rebutted claims by AECC that, since the merger, it has deemphasized Utah and Colorado coal. UP notes that it has rebuilt its 565-mile line between Denver, CO, and Topeka, KS, to serve this traffic. In the merger application, it predicted that it would spend $86 million for this purpose, but it has already invested more than $230 million, a greater sum than SP invested on its whole system in a typical year prior to the merger. UP has also obtained a large number of new locomotives and railcars to provide this service. UP notes that its coal volumes from this market have continued to grow over the last 3 years despite a substantial decline in the demand for export coal.

Trackage Rights Fees. AECC and KCS have argued that the level of the trackage rights fee that BNSF must pay to provide service over UP's lines prevents BNSF from competing effectively for either PRB coal or for Colorado/Utah coal. Arguments about both the level and the structure of the payments, raised by KCS and others in the merger proceeding, were carefully examined by us and rejected in *UP/SP Merger*, 1 S.T.B. at 413-16. Our decision was affirmed by the United States Court of Appeals for the District of Columbia Circuit against challenges to the trackage rights fees and other issues in *WCTL*, 169 F.3d at 781.

The commenters have now presented some theoretical arguments that the trackage rights fee should be analyzed differently, but no real evidence that the trackage rights fee has hindered BNSF from competing. As a threshold matter, we would stress that this is the fourth year of oversight in this case, and that the time for presenting theoretical arguments has long passed. If some party believes that competition in the Central Corridor or elsewhere has been impaired by the merger, that party should be able to present concrete evidence that UP has been able to charge shippers sharply increased rates without losing the traffic. No shipper, indeed, no party, has come forward to allege that kind of evidence. To the contrary, UP's representation that its average coal rate for Colorado and Utah coal origins in dollars per ton-mile have not changed appreciably since the merger despite railroad cost increases is unrebutted. As UP points out, no party has found it necessary to obtain and study UP's confidential 100% traffic tapes that are available in this proceeding.

Moreover, the theoretical arguments that have been presented here concerning the level of the trackage rights fee are simply not persuasive. KCS does no more than again point to the statement of its witness Crowley that was submitted in the merger proceeding, and which the Board, affirmed by the D.C. Circuit, found to be deeply flawed. *WCTL*, 169 F.3d at 781.

AECC argues that the trackage rights fee that BNSF pays will not permit BNSF to compete at the White Bluff plant in which it owns a minority interest.[15] It also claims that the trackage rights fee in general is too high, and it presents a statement by an analyst, Michael Nelson, who argues that we need to set trackage rights fees in merger proceedings based on what he describes as "marketplace economics." These arguments are without merit. As a preliminary matter, recent developments[16] involving rail service to White Bluff demonstrate that BNSF can compete effectively there using the fee that we approved. The actual shipper at White Bluff, Entergy, apparently has no problem with either BNSF's service or the trackage rights fee, and it has not participated in this oversight proceeding. AECC, the minority owner, does not pay the freight or negotiate rates, and it professes no first-hand knowledge of the specifics of coal transport to this plant. It does not even indicate in its pleading what coal the White Bluff plant uses.

AECC's main argument regarding BNSF's inability to compete for coal traffic moving to the White Bluff plant is that "competitive" coal movements out of the PRB are priced as low as 8 mills per net ton-mile, and that, because BNSF has to pay a trackage rights fee of 2.5 mills per net ton-mile, it will be unable to compete with UP using these trackage rights. There are significant problems with this analysis. AECC does not even attempt to explain why a trackage rights fee of 2.5 mills for a 145-mile segment of a much longer route would necessarily preclude BNSF from matching competitive rate offers for PRB coal movements. AECC has submitted no analysis or work papers to support this contention. With regard to movements of Utah coal, the 8 mill rates are simply not a valid measure of comparison. As UP notes, those low rates apply only to very long, downhill movements out of the PRB. In sharp contrast, movements east from Utah have to move up and down steep slopes with significant curvatures, and, between Utah and Denver, move in shorter trains with twice the locomotive power. There is no evidence that the cost characteristics of these movements are at all similar, much less that either UP or SP was able to offer unit-train coal rates out of Utah at this extremely low level before the merger.

AECC witness Nelson also attacks our longstanding, court-approved requirement that a trackage rights tenant should be required to pay its pro rata share of a cost of capital rental of the facilities it uses. *St. Louis S.W. Ry.*

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[15] Entergy Corporation is the majority owner of this plant.

[16] Because of a protective order in another proceeding, UP provided details of those developments in a highly confidential appendix filed under seal.

Compensation — Trackage Rights, 4 I.C.C.2d 668 (1988); 5 I.C.C.2d 525 (1989); 8 I.C.C.2d 80 (1991); 8 I.C.C.2d 213 (1991) (*SSW Compensation*), *aff'd, Union Pacific Corp. et al. v. ICC*, No. 88-1186 (D.C. Cir. Oct. 30, 1992) (unpublished), *cert. denied*, 113 U.S. 2442 (1993). Put simply, his argument is that a host carrier should be permitted only a very marginal return above its out-of-pocket costs on these assets, not its cost of capital, to permit the tenant to replicate the "low" returns that he argues that rail carriers receive for moving coal in unit trains where they compete head-to-head. The Board and the ICC have long held that the tenant needs to pay its fair, usage-based portion of the cost of capital in order to "put the tenant on an equal footing with the landlord." *WCTL*, 169 F.3d at 781. Otherwise, the landlord would end up subsidizing the tenant, it would not receive an adequate return, and there would be no economic incentive for it to maintain or replace the line as necessary to continue efficient service. *See SSW*, 8 I.C.C.2d at 86; *Missouri Pac. R. Co. v. ICC*, 23 F.3d 531, 534 (D.C. Cir. 1994).

Moreover, AECC's theories are directly contradicted by substantial evidence presented by UP and BNSF of successful competitive trackage rights movements of unit-train coal using these same fees or higher ones. For example, BNSF states that it has successfully used its trackage rights to move coal to such shippers as LCRA at Halsted, TX, TUE's Martin Lake, TX facility, and CPSB's Elmendorf, TX plant.

KCS Arguments. We are also denying various specific requests of KCS. It has presented no support from shippers or others to justify requiring UP to initiate a special rate study for Houston. KCS has presented no new evidence to undermine our specific finding in *Houston/Gulf Coast Oversight Proceeding*, Decision No. 10, at 1046-1047, that UP has competed vigorously with BNSF to serve Houston shippers and that it has provided them with rate reductions and other competitive benefits. We agree with UP's characterization that this would be little more than a fishing expedition funded by UP. If KCS or Houston shippers truly believed that Houston rates were a problem, we would expect them to present more than bald allegations or speculation. As UP notes, no shipper has complained here of UP rates. Again, the 100% traffic tapes are available to KCS, and its counsel is free to use them (subject to the usual confidentiality agreement) to develop its presentation in these oversight proceedings.

KCS also asks that we require divestiture of UP's Victoria to Rosenberg line to KCS' 49%-owned affiliate, Tex Mex.[17] But, as UP notes, UP has already agreed to sell that line to Tex Mex, making KCS' request moot. Indeed, we recently granted Tex Mex's request for an exemption for its purchase of this line from UP. *Texas Mexican Railway Company — Purchase Exemption — Union Pacific Railroad Company*, STB Finance Docket No. 33914 (STB served Dec. 11, 2000).

KCS also asks that we reconsider our merger condition granting BNSF's access to Lake Charles, LA. KCS presents no new evidence or changed circumstances, but merely argues that we erred in granting that condition. This request really has nothing to do with oversight; it is an extremely tardy claim that we committed material error by granting these rights in our 1996 decision, and one that is vigorously opposed by shippers at Lake Charles, who benefit from the access granted to BNSF. We continue to believe that our ruling on this issue in *UP/SP* was correct, and we see no need to consider this issue further here.

Finally, KCS asks that we force UP and BNSF to disclose the details of their line swap agreement concerning the former line between Houston and New Orleans. UP and BNSF filed a petition for exemption for joint ownership of this line and, despite *Federal Register* notice, KCS did not participate in this proceeding. We granted this exemption in September 1998. This matter has already been resolved and KCS has presented no valid reason for revisiting issues pertaining to that administratively final decision here. Moreover, KCS has failed to show that this request is within the scope of this oversight proceeding.

CPUC Issues. CPUC makes a number of suggestions, and raises a list of issues that it believes should be studied in next year's oversight proceeding. It calls for a study of competition on the I-5 corridor over which the merger has enabled both UP and BNSF to operate. As we explained in our previous oversight decision, this is all new competition that did not exist before the merger, and CPUC has not shown that there could be any merger-related harm in this corridor.

CPUC has suggested that we should impose additional conditions to improve competition in California in light of our notice of proposed rulemaking in *Major Rail Consolidation Procedures,* 5 S.T.B. 1 (2000). But, as we have noted on several occasions, we have retained oversight jurisdiction only to impose additional conditions where those that we have already imposed have

[17] KCS has frequently asserted that it does not control Tex Mex. Tex Mex has not joined in KCS' request.

proven inadequate to remedy competitive harms caused by the merger. Thus, CPUC's suggestion to apply retroactively our newly proposed merger guidelines to mergers that have already received our approval is clearly inappropriate.

CPUC requests that we study whether UP realized all projected merger benefits and whether these have been passed on to shippers. Given that the annual oversight proceedings have provided shippers and shipper organizations with ample opportunities to comment if UP has failed to pass on projected merger benefits to the shippers, we find it unnecessarily burdensome to undertake such a study. Moreover, we have verified, through our staff study discussed above, that the western railroads have achieved significant efficiency gains over the past several years, and that they have indeed passed along many of those gains to their shippers in terms of reduced rates.

CPUC also asks that we hold UP to its commitments to upgrade the Donner Pass and to increase capacity on the Sunset Route between El Paso and Los Angeles. We note that there is no requirement that a merger applicant actually make investments in the exact places or at the precise dollar amount that it predicts it will spend in its application. That being said, we note that, in its merger application, UP predicted that it would undertake a massive capital infusion to rehabilitate the lines of SP, whose deteriorating infrastructure was but one sign of the serious financial difficulties faced by that carrier. This projected investment by UP was a major factor in our decision finding that the transaction would be in the public interest and should be approved. *UP/SP,* 1 S.T.B. at 381-84. We noted specifically UP's plans to spend approximately $1.3 billion over the next 4 years to upgrade SP facilities, assemble more direct routes, build new terminals and yards, and improve service. *Id.* at 381. In its Fourth Annual Report, UP notes that it will have spent $1.25 billion by the end of this year, indicating that it is on target in making the investments it projected. As CPUC itself notes, these investments are clearly benefitting California shippers.

CPUC's request that we study positive train separation will be denied because it has nothing to do with this merger or with oversight.

Issues for the Next Round of Oversight. We imposed, as a condition to our approval of this merger, oversight for 5 years to examine whether the conditions we imposed have effectively addressed the competitive issues they were intended to remedy. We retained jurisdiction to impose additional remedial conditions if, and to the extent, we determined that the conditions already imposed were not effectively addressing competitive harms caused by the merger.

Next year's oversight is scheduled to be the final round of this formal oversight process. To that end, we expect UP to submit sufficient information for us to make a determination that oversight should end as scheduled. The UP July 2001 submission should contain rate and other relevant information for the fifth oversight year, as well as a summation of rate and other relevant information pertaining to the entire 5-year oversight period. The BNSF July 2001 submission should also contain both information for the fifth oversight year and a summation pertaining to the entire 5-year oversight process.

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

It is ordered:

1. The requests for conditions or measures beyond the relief granted in this decision are denied.
2. UP and BNSF, respectively, must file their fifth annual progress reports by July 2, 2001, and must make their 100% traffic waybill tapes available to interested persons by July 16, 2001.
3. Comments of interested parties concerning oversight will be due on August 17, 2001.
4. Replies will be due on September 4, 2001.
5. This decision is effective on December 15, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

APPENDIX

THE UP/SP-378 REPORT. Service Recovery. UP maintains that, except for a temporary setback in June 2000, it provided better service during the past year than at any previous time. According to UP, its improvement in the movement of western coal has been especially noteworthy. UP states that its systemwide average train speed, which fell as low as 12 m.p.h. during the service crisis, stood at 18.7 m.p.h. when it filed its annual oversight report last July and that its average train speed reached 20.0 m.p.h., its fastest average speed since September 1996.

UP indicates that its locomotive productivity, measured in gross ton-miles per horsepower-day, increased from 93.7 to 127.7 last year. In March 2000, UP's locomotive productivity reached a record level of 133.5. In addition, UP compares its freight car dwell time — the amount of time freight cars spend in a defined geographic terminal area — of 26.2 hours in April, a record low for UP, to its dwell time of 43.9 hours during the service crisis. UP states that, in early 1998, it used a second crew on 20% to 25% of its trains and that, last year, it reported that its "recrew rate" had fallen to about 10%. This year, UP states that its recrew rate has dropped below 5%. UP also indicates that its origin train departing performance reached a record 82% in May, that locomotive terminal dwell time dropped to 13.5 hours, and that there are no car shortages on UP, due in part to weak demand for grain transportation.

UP states that, through May, it successfully moved an average of ten to eleven coal trains per day from Colorado and Utah mines within service parameters. UP states that this volume should increase significantly as the West Elk mine in Colorado resumes production. UP also indicates that shippers such as Toyota, General Electric, Air Products, Daimler Chrysler, and ExxonMobil recognized it for outstanding performance last year.

UP concedes that its service deteriorated in June 2000. Among the reasons given by UP are that floods closed UP's St. Louis-Kansas City mainline for a week in May. UP also states that it had several disruptive derailments, including an incident at Eunice, LA, that blocked UP's mainline to Livonia Yard for a week. In addition, UP indicates that it was engaged in extensive projects to upgrade its tracks during the summer. According to UP, all of these recent events adversely affected its performance and caused locomotive imbalances across the system. During May, UP states that it experienced 13 major service interruptions on mainlines serving Texas and Louisiana, including the Eunice derailment. As a result, UP found itself short of locomotives for aggregates service in Texas.

UP states that service to aggregates shippers improved during the latter part of June. It indicates that it recently leased 47 more locomotives, now arriving, all of which will go to Texas for rock and chemical service. UP also states that it will receive 90 high-horsepower locomotives over the next month and that this influx of 4,000- to 6,000-horsepower units will satisfy UP's demands for locomotives across its system.

Additional Service Improvements. According to UP, it is cooperating with CSX and four Northern California shortline railroads in offering a new joint service from California to Chicago, New York City, and Boston that is diverting perishable shipments from trucks to the railroads. UP explains that it gathers farm produce, wine, and other commodities along its line from Bakersfield to Roseville while California shortlines originate additional shipments from the Central Valley and the San Francisco Bay area. UP's Express Lane train then operates from Fresno via Roseville to North Platte on a combination of SP and UP routes in 51 hours. At North Platte, shipments make a positive connection to a train assembled for CSX to run through to Selkirk Yard near Albany, NY. Shipments are then moved to the New York and Boston markets. UP adds Oregon and Idaho potatoes to the CSX-bound train at North Platte. Other shipments make connection there to Chicago and St. Louis. UP states that the cooperating railroads offer service to New York City in 8 days and to Boston in 9 days and that customers may obtain guaranteed service for a slightly higher rate. According to UP, most customers do not take the guaranteed option because the service has often been faster than advertised. As a result, UP states that it is now handling shipments that have not moved by rail for many years.

UP states that it is now providing significantly faster intermodal service between Chicago and Northern California and between Memphis and Southern California. Before the service crisis, UP explains that it implemented expedited intermodal service over combined UP/SP routes, but then slowed or canceled the trains to conserve capacity and locomotives. UP states that it not only has reinstated the fast schedules for the original trains but also added additional premium intermodal trains on even faster schedules. For the Memphis-Southern California movement, all four trains operate over the parallel UP and SP routes in Arkansas and northeastern Texas with the flow of directional running, over UP's former Texas & Pacific line from Dallas to El Paso, and over the SP Sunset Route between El Paso and Los Angeles.

UP indicates that it has completed the process of improving SP's interline service for manifest traffic. Before the UP/SP merger, SP delivered unblocked trains to interchange partners at most gateways, requiring the connecting carrier to switch the train and causing delays. Now shipments from former SP points move in pre-blocked run-through trains that bypass interchange points and intermediate switching. UP states that it has implemented numerous additional improvements in interline service that benefit shippers at former SP locations through merger synergies.

Cooperative arrangements among UP, Tex Mex, TFM, and the U.S. and Mexican governments are allowing traffic through the Laredo Gateway to grow. UP indicates that its northbound traffic is running approximately 30% above volumes during the comparable period of 1999. Southbound volumes have increased by approximately 15% to 20%. UP states that it is working with U.S. Customs to develop improved pre-clearance procedures for export traffic and that the first test will take place on the Canadian border at Eastport, ID. Once these processes are tested, UP plans to use them at gateways to Mexico to reduce staging of shipments for customs clearance.

Merger Implementation. According to UP, it continues to achieve significant improvements in safety, continuing a consistent trend since the merger. UP states that its rate of reportable injuries in 2000 improved by 24.9% from the same period in 1999. The rate of injuries involving lost work days declined by 25.6% compared to 1999. The number of grade crossing accidents declined by approximately 8%. UP indicates that it is working with the Federal Railroad Administration on derailment prevention.

With only three exceptions, UP reports that it has completed merger implementing agreements covering all labor union crafts and territories. UP states that the United Transportation Union and the Brotherhood of Locomotive Engineers are still negotiating with it concerning the second phase of the Portland consolidation, that the Brotherhood of Maintenance of Way Employes and Sheet Metal Workers International Association are still negotiating consolidation of work and territories, and the International Brotherhood of Electrical Workers is still negotiating the consolidation of seniority in the engineering services department.

Based on current projections, UP estimates that it will have spent approximately $1.25 billion to implement the UP/SP merger by the end of this year. This investment by UP includes over $400 million in capacity expansion, almost $500 million in rail line upgrades, over $100 million in information technology, and almost $45 million to upgrade SP locomotives. According to UP, it has spent $143.5 million on merger projects this year (through May 31) and expects to spend a total of over $260 million by December 31. In its report, UP outlines its recent infrastructure upgrades in the Kansas City-Denver Corridor, the Golden State and Sunset Routes, and specific terminals throughout its system.

UP states that it continues to improve and expand its facilities in Texas and Louisiana where the carrier's service crisis arose in 1997. During 2000, UP expects to invest $192.7 million to upgrade rail lines and $72.9 million to expand capacity in this region. For the 3-year period between 1998 and 2000, UP reports that it expects to have spent a total of $607.8 million, and additional projects are planned for 2001 and beyond.

Competition. According to UP, the merger and the competitive conditions imposed by the Board are promoting rail competition in the West. UP states that its system provides shippers with single-line and shorter routings that were not available prior to the merger, as well as improved equipment supply and reduced switching fees. UP maintains that the competitive conditions, particularly the extensive trackage and haulage rights granted to BNSF, have been effective and that shippers are benefitting from BNSF's strong competition, as reflected in both the large volumes of traffic they are awarding to BNSF and the rate and service initiatives that UP has taken to meet BNSF's competition.

Competitive Benefits of the Merger. UP indicates that the synergies of the combined UP and SP system have produced expanded single-line service and shorter routes in many important corridors and that these improvements have attracted new business to the merged system. Among the shippers named by UP that are taking advantage of the single-line opportunities are: UP grain producers moving shipments to SP destinations such as the Imperial Valley and Nogales gateway; SP Pacific Northwest and California lumber producers reaching new markets at UP points and via UP junctions; UP-served South Central lumber producers reaching SP destinations; UP-served and SP-served Gulf Coast chemical manufacturers shipping their products to destinations and junctions on the other merging railroad; and SP aggregate producers reaching new destinations served by UP in the Houston area. UP specifies other shippers enjoying new shorter routes: UP-served shippers using SP's Sunset Route across the Southern Corridor; SP-served Utah coal producers that cut 300 miles off their routes to export facilities and industrial coal users in Southern California; SP-served rock shippers in Texas; SP-served Louisiana shippers moving goods to Memphis and beyond; and intermodal shippers moving traffic between Memphis and Los Angeles that cut 200 miles off their route.

UP presents examples of shippers benefitting from combining UP and SP fleets as a single source of car supply. Some of UP's examples are: the use of UP's mechanical reefer fleet by SP shippers in California; the acquisition of centerbeam flatcars for Pacific Northwest and California lumber shippers; and the repositioning of intermodal equipment between UP and SP facilities on the West Coast and elsewhere.

UP maintains that the elimination and reduction of switch fees has also enhanced competition. When the merger was consummated, switch fees between UP and SP were eliminated. UP claims that these fees, frequently $495 per car, were a major obstacle to the use of the most efficient routes and to competition for shorter-haul movements against truck and alternate product sources. It indicates that switch fees between UP and SP amounted to more than $16 million, for over 50,000 cars, in the year prior to the merger. In the first full year following the merger, UP states that the reductions in the BNSF-SP switch fees amounted to more than $11 million on over 65,000 cars. UP estimates that the elimination and reduction of reciprocal switching charges as a result of the merger and settlement agreements will exceed $100 million during the first 4 years following the merger. In addition, in February 1998, UP reports that it entered into a new systemwide reciprocal switch fee agreement with BNSF that produced further overall reductions in switch fees and simplified switch fee administration on both railroads.

Effectiveness of Competition-Preserving Conditions. As conditions to its approval of the merger, the Board imposed the settlement agreements entered into between the primary applicants and BNSF and CMA and augmented them in a number of ways. The Board also granted in part Tex Mex's trackage rights application and imposed as a condition the applicants' settlement agreement with URC. UP states that it continues to devote substantial resources in complying with all merger conditions and that all of the conditions have been effective during the past year.

UP maintains that it has fully complied with the BNSF and CMA agreements. During the past year, the Board has resolved three disputes between BNSF and UP regarding the scope of merger conditions. In Decision No. 86, 4 S.T.B. 303 (1999), the Board addressed a request by BNSF for a determination whether it was entitled to access Four Star Sugar in El Paso, TX, by providing additional clarification regarding the scope of its new facilities condition but leaving the parties to arbitrate their specific dispute. UP subsequently reached an agreement with BNSF regarding access to Four Star Sugar. In Decision No. 88, 4 S.T.B. 560 (2000), the Board found that Entergy is entitled to pursue a proposed build-out, ruling that Entergy had demonstrated that it could have pursued identical plans for a build-out to SP prior to the merger. In Decision No. 89, 4 S.T.B. 879 (2000), the Board found that AmerenUE's Labadie, Missouri power plant is a "2-to-1" shipper entitled to BNSF service under the BNSF agreement's omnibus clause, but that the contract modification condition does not apply to AmerenUE's contract with UP.[18] UP has offered BNSF interim haulage between St. Louis and Labadie and also agreed to allow shortline Missouri Central Railroad to carry coal to Labadie. UP and BNSF are negotiating a permanent trackage rights agreement between Pacific, MO, and the Labadie plant.

UP reports that, in 1998, Tex Mex and its affiliate KCS proposed to acquire and rehabilitate UP's line between Rosenberg and Victoria, TX, in order to shorten Tex Mex's route between Laredo and Houston. UP states that the parties have now reached agreement for Tex Mex to acquire the portion of this line between mileposts 2.5 and 87.8, and to receive overhead trackage rights over the remaining segments of the line (near Rosenberg and Victoria) permitting Tex Mex to connect to the UP lines over which Tex Mex already has trackage rights. Consummation of the sale and trackage rights grant is contingent on the Board's authorization or exemption. UP expects Tex Mex to submit a petition seeking such an exemption in the near future. UP states that Tex Mex will be able to use its new trackage rights both for traffic having a prior or subsequent movement on Tex Mex's original Laredo-Robstown-Corpus Christi line as well as traffic originating or terminating at shipper facilities located on the portion of the Rosenberg Line that Tex Mex will acquire. In this regard, UP has agreed, upon completion of the sale of the Rosenberg Line, to modify the terms of Tex Mex's existing trackage rights to permit Tex Mex to handle traffic to/from Rosenberg Line shipper facilities. When Tex Mex begins freight operations over the Rosenberg Line, it will relinquish its existing trackage rights over UP's other lines between these points.[19]

UP maintains that BNSF continues to provide vigorous and effective competition using the rights it received as a condition to the merger. According to UP, BNSF rapidly made the transition from interim haulage, which had gone into effect immediately following the merger, to full trackage rights operations in all major corridors, and BNSF is operating trackage rights trains over virtually all the lines where it has the right to do so. The sole exception, UP explains, is that BNSF has not used its rights to St. Louis, except for occasional movements, because it has preferred to work with IC to move traffic between Memphis and connections with eastern carriers.

UP indicates that it continues to handle BNSF traffic in haulage service between Houston and Brownsville, as provided for in the settlement agreement, as well as at several other locations. UP also continues to provide haulage for traffic moved by BNSF to and from "omnibus" points — *i.e.*, "2-to-1" points not located on BNSF trackage rights corridors — pursuant to UP's June 1997 offer to provide service to and from all such points via haulage pending any request by BNSF for an alternative form of access. UP states that significant BNSF haulage movements were handled to or from the following "omnibus" points during the past year: Livermore CA (haulage to/from Warm Springs, CA); Trevarno, CA (haulage to/from Warm Springs, CA); Dickinson, TX (on the former Galveston, Houston and Henderson Railroad) (haulage to/from Houston, TX); and Great Southwest, TX (haulage to/from Ft. Worth, TX).

UP indicates that the volume of traffic handled by BNSF pursuant to its trackage rights continued to increase this year: Through May 2000, BNSF operated a total of 26,943 through freight trains over the trackage rights lines since the commencement of operations in October 1996. *See* UP/SP-378, Exhibits 1, 2 and 3, depicting, by month, the numbers of BNSF through trackage rights freight trains and the number of cars and tons on those trains.

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[18] In Decision No. 90, 5 S.T.B. 304 (2000), we denied AmerenUE's petition seeking reconsideration of this portion of the decision.

[19] As previously noted, in *Tex Mex Railway Co. — Pur. Exem. — Union Pacific Railroad Co.*, 5 S.T.B. 379 (2000), the Board granted Tex Mex's exemption request to purchase the Rosenberg to Victoria line from UP.

According to UP, the exhibits show that: (1) the monthly number of BNSF trackage rights trains had grown to 875 in May 2000 — greater than the 751 trackage rights trains that BNSF operated a year earlier, in May 1999, and greater than the 703 trackage rights trains that BNSF operated in May 1998; (2) BNSF tonnages have increased, reaching 4.8 million gross tons in May 2000, compared with 3.8 million gross tons in May 1999, and 3.3 million gross tons in May 1998; (3) cars moving in through trackage rights trains increased, reaching 59,777 (30,330 loads and 29,447 empties) in May 2000, compared with 47,176 (25,401 loads and 21,775 empties) in May 1999, and 40,802 (21,889 loads and 18,913 empties) in May 1998; and (4) the tonnage and number of cars per train increased to 5,539 gross tons per train in May 2000, from 5,000 in May 1999, and 4,630 in May 1998, while cars per train were 68 in May 2000, compared with 63 in May 1999, and 58 in May 1998.

According to UP, these figures do not include BNSF's local trackage rights trains that connect directly with BNSF's through trains at BNSF's own terminals, rather than connecting with trackage rights trains — and thus represents still further traffic secured by BNSF because of the merger conditions. UP adds that BNSF continues to move appreciable volumes via haulage, though more and more of BNSF's operations have shifted to trackage rights over time. In May 2000, loaded and empty haulage cars totaled nearly 3,100. Almost half of these moved to and from Brownsville, with the remainder spread among such other locations as Lake Charles, LA; Orange, TX; the Northern California area; and the "Paired Track" in Nevada.

UP claims that BNSF's through train frequencies in major corridors, generally two or even three trains per day in each direction, demonstrate BNSF's competitiveness. In the Central Corridor, BNSF operated 103 through trains in May 2000, carrying 440,836 gross tons. The totals in May 1999 were 153 through trains and 500,234 gross tons. The totals in May 1998 were 168 through trains and 497,557 gross tons. According to UP, the decline between May 1999 and May 2000 resulted from a change in the methodology and data source that UP uses to count Central Corridor trackage rights trains, not any actual change in BNSF operations or volumes. UP notes that, if the old methodology were applied to the recent data, BNSF volumes would have remained approximately the same. BNSF's service in the Central Corridor consists of approximately two trains per day westbound from Denver to Stockton via Salt Lake City, one train per day eastbound from Stockton to Denver via Salt Lake City, and one train per day eastbound from Salt Lake City to Denver.

Also, in the Central Corridor, UP reports that BNSF's average monthly trains have grown from 62 in the first period, to 138 in the second, declined slightly to 122 in the third, and then declined to 93 in the most recent period; and average monthly tons have grown from 92,656 in the first period, to 412,999 in the second, declined slightly to 373,370 in the third, and then declined slightly to 362,394 in the most recent period.

In the Houston — Memphis Corridor, UP indicates that BNSF operated 185 through trains in May 2000, carrying 916,131 gross tons, compared to May 1999 when BNSF operated 115 through trains and 692,946 gross tons. The totals in May 1998 were 116 through trains and 609,058 gross tons. BNSF is running at least two trains per day in each direction in this corridor.

In the Houston — New Orleans Corridor, UP reports that BNSF operated 239 through trains in May 2000 carrying 1,372,779 gross tons. The totals in May 1999 were 166 through trains carrying 781,727 gross tons. The totals in May 1998 were 164 through trains carrying 812,718 gross tons. A portion of the increase from May 1999 to May 2000 is attributable to traffic moving in manifest trains that had previously moved in local trains. BNSF service in this corridor remains at a level of approximately three trains per day, one of them an intermodal train, in each direction. According to UP, these data show BNSF's continued strength in all three major corridors.

UP states that BNSF now offers a competing single-line alternative from Western Canadian gateways and jointly served points in Washington and Oregon to jointly served points in California and Arizona and western Mexican gateways and that BNSF has increased its lumber shipments in the I-5 Corridor by moving traffic from the Pacific Northwest to California points on its new single-line routes, by greatly expanding the volumes at its reload facilities in the Los Angeles Basin, and by developing new reload facilities in Arizona. According to UP, BNSF is operating approximately six trains per day in each direction in the I-5 Corridor.

UP states that its Utah and Colorado coal shippers continue to benefit from UP's investment in a new export terminal in Los Angeles, which has led to significant reductions in cycle time, and from UP's investment in the Kansas Pacific line to improve the handling of eastbound Utah and Colorado coal movements. UP states that it continues to market Utah and Colorado coal aggressively, as shown by its new contracts for Colorado coal movements to Arizona Electric Power, Empire District Authority, Alliant Energy, Nebraska Public Power District, and Dairyland.

The BNSF-PR-16 Report. BNSF maintains that it aggressively continues to compete with UP on the UP/SP lines and continues to be effective in marketing its services over those lines. Throughout the past year, BNSF states that it has continued its efforts to provide reliable, dependable and consistent service over its trackage rights lines and that, as a result of these efforts, many customers are benefitting from BNSF's new access. BNSF states that it will continue to work to ensure that UP and BNSF live up to the competitive terms and conditions imposed by the Board on UP/SP merger.

BNSF summarizes its changes in operations along the UP/SP lines during the past year. In April 2000, BNSF implemented several changes to its Transportation Service Plan (TSP) for the Gulf Coast region designed to reduce terminal dwell times and improve connections for merchandise business moving through terminals at New Orleans, Lafayette, Silsbee, Houston, Temple and Fort Worth. As part of this plan, BNSF introduced two new trains to handle merchandise business between Houston, TX, and Lafayette, LA.

BNSF reports: that on April 20, 2000, it began to offer intermodal service between points in the United States and Monterrey, Queretaro, and Mexico City, Mexico in conjunction with the Texas Mexican Railway Company (Tex Mex) and Transportacion Ferroviaria Mexicana (TFM); that it commenced a new six day per week southbound train service to handle this new intermodal business to Mexico, as well as merchandise traffic that was previously handled on BNSF's Fort Worth to Corpus Christi merchandise train; that in the northbound direction, BNSF added a new daily train to handle intermodal business, as well as merchandise business that previously moved on BNSF's Corpus Christi to Somerville, TX merchandise train; and that both new trains utilize BNSF's trackage rights over UP between Angleton, TX, and Robstown, TX, where a connection is made with Tex Mex.

BNSF states that it continues to operate regularly scheduled, daily merchandise train service eastbound and westbound on the Central Corridor between Denver, CO, and Stockton, CA. During June 2000, BNSF increased the operating frequency of its eastbound merchandise train service from Riverbank, CA, to Denver, CO, from 4 days per week to daily operation. BNSF maintains that it continues to offer vigorous and effective competition to shippers located on its Central Corridor trackage rights between Denver, CO, and Stockton, CA.

In the I-5 Corridor, BNSF states that it increased the operating frequency of its northbound Riverbank, CA, to Vancouver, WA, merchandise service to daily service. With this change, BNSF now operates four regularly scheduled merchandise trains over the I-5 Corridor. According to BNSF, its I-5 team, comprised of representatives from BNSF's marketing, operations, service design and performance, customer service, and equipment management groups, has continued its efforts to improve transit time and service consistency for merchandise business moving over the I-5 Corridor. BNSF states that, during the second quarter of 2000, it created a new position – Director of I-5 Business Development – to lead BNSF's growth initiatives involving the I-5 Corridor.

BNSF indicates that, in December 1999, it established a new crew change point at Kremmling, CO, between Grand Junction and Denver, CO, on BNSF's Central Corridor trackage rights line. Due to mountainous terrain and difficult operating conditions on the 275-mile Denver-Grand Junction route, BNSF states that a high percentage of its crews had been unable to complete their trips within the Federal hours-of-service law. With assistance from its unions, BNSF implemented the new crew change at Kremmling in an effort to improve quality of life for its crews, to reduce operating costs, and to improve train performance and service consistency on the Central Corridor. Under the new arrangement, the former Grand Junction to Denver pool is divided into two segments: a Denver-to-Kremmling pool (103 miles) and a Grand Junction-to-Kremmling pool (172 miles). BNSF reports that the new crew change at Kremmling has increased operational efficiency.

Effective in September 1999, BNSF implemented improved blocking of traffic originating in the Pacific Northwest destined to locations on the Central Corridor, primarily in Nevada. The Nevada block is built at the Pasco classification yard in Eastern Washington for southbound movement on the Pasco-Stockton merchandise train. According to BNSF, this service design improvement has resulted in reduced numbers of car handlings, improved transit time, and service consistency.

BNSF states that, in August 1999, it continued to upgrade its I-5 Corridor services when the frequency of its southbound merchandise train from Vancouver, WA, to Barstow, CA, was increased from 6 days per week to daily operation. Its merchandise train now departs Vancouver, WA, and arrives at Barstow, CA, 62 hours later, allowing time for this business to be processed for connection to outbound trains on the same day. This service, in conjunction with the existing merchandise train service connecting with trains in the corridor, is designed to handle existing carload growth in the I-5 Corridor and to encourage further growth by improving transit time, speed and consistency.

BNSF states that it continued a cooperative, joint project with UP to measure and monitor the service performance of BNSF trains operating over UP routes and of UP trains operating over BNSF routes. The two carriers developed and agreed upon measurement procedures and performance standards for over 90 combinations of route, direction and train type, including 46 performance standards applicable to the UP/SP lines. The performance measurements allow side-by-side, month-to-month comparisons of BNSF and UP transit times for similar train types operating in the same direction on a given route. By comparing BNSF and UP train performance and measuring performance against the agreed-upon standards, the carriers' management can identify potential areas of concern and develop corrective actions. BNSF reports that development of the measurement procedures and performance standards is an ongoing process and that the carriers have agreed to continue working to resolve data integrity issues and develop standards for line segments that do not yet have such standards.

During the past year, BNSF states that it continued its intensive marketing activities with respect to "2-to-1" customers and new facilities on UP/SP trackage rights lines. These efforts include field surveys, face-to-face customer contacts, and follow through designed to acquaint customers with BNSF's services and capabilities, as well as to acquaint BNSF with the customers' transportation needs. BNSF continues to issue service updates to its customers that are faxed directly to customer locations and posted on the BNSF Internet site.

BNSF maintains that its traffic volumes over the lines to which it received access as a result of the merger have continued to grow. *See* BNSF-PR-16, Attachment 2. According to BNSF, the charts attached to its report (Attachments 3 to 12) reflect the volumes of traffic for each of the major traffic lanes to which BNSF received access. BNSF's Attachment 13 shows the breakdown by general commodity groups of this traffic.