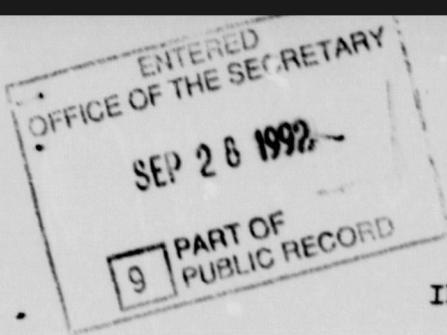


FD-30400

SUB NO. 21

I



BEFORE THE INTERSTATE COMMERCE COMMISSION

SANTA FE SOUTHERN PACIFIC : Finance Docket No. 30400
CORPORATION--CONTROL--SOUTHERN : (Sub-No. 21)
PACIFIC TRANSPORTATION COMPANY :

RESPONSE OF BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES TO SANTA FE PACIFIC CORPORATION'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

The Brotherhood of Maintenance of Way Employes ("BMWE"), respectfully submits the following response to the first set of interrogatories and requests for production of documents served by the Santa Fe Pacific Corporation ("SFP").

INTERROGATORY NO. 1:

(A) Identify and produce each response (including attachments) to the questionnaire of the form included as Attachment A hereto, or to any other questionnaire or survey the purpose of which was to obtain from BMWE or IAMAW members information concerning the possible adverse effect on employees resulting from the proposed ATSF/SPT merger, from alleged SFSP control of SPT or from actions taken in anticipation of the proposed ATSF/SPT merger, completed by any present or former member of BMWE or IAMAW.

(B) Identify and produce all correspondence, memoranda, instructions and other documents concerning the questionnaires and questionnaire responses identified in response to Interrogatory No. 1(A).

RESPONSE TO INTERROGATORY NO. 1:

(A) BMWWE will produce the requested questionnaires.

(B) OBJECTION: BMWWE objects to the request to the extent that it seeks the production of privileged materials. Without a waiver of that objection, BMWWE will produce relevant, non-privileged documents, if such exist.

INTERROGATORY NO. 2:

(A) Identify and produce a copy of each collective bargaining agreement or other written contract or agreement entered into between BMWWE and SPT or between IAMAW and SPT, in effect at any time during the period from December 23, 1983 until August 4, 1987, providing for the payment of monetary or other employment-related benefits to SPT employees in the event of any action by SPT involving the termination, separation, lay-off, furlough, relocation or transfer of any employees covered by such contract or agreement.

(B) Identify and produce a copy of each written unilateral severance offer, voluntary resignation program or other employee separation program offered or implemented by SPT during the period from December 23, 1983 until August 4, 1987 and affecting members of BMWWE or IAMAW, and all documents concerning any such offer or program.

RESPONSE TO INTERROGATORY NO. 2:

(A) The only agreement in question is the agreement settling Mediation Case No. A-7128, dated February 7, 1965. BMWWE will produce the requested agreement.

(B) After a diligent search of its records, BMWWE cannot identify any "written unilateral severance offer, voluntary resignation program or other employee separation program" offered to BMWWE represented employees of the Southern Pacific Transportation Company ("SPT") during the period requested in the interrogatory.

INTERROGATORY NO. 3:

Identify and produce all documents supporting or otherwise concerning any claim, by BMWWE and IAMAW or other employee representatives, that rail carrier employees were adversely affected by actions taken or orders issued by SFSP (a) in anticipation of the proposed ATSF/SPT merger, (b) in alleged violation of the SPT Voting Trust Agreement or (c) in alleged violation of the carrier merger, consolidation and control provisions of the Interstate Commerce Act (49 U.S.C. §§ 11341-11351).

RESPONSE TO INTERROGATORY NO. 3:

Other than the instant proceeding, BMWWE has not presented a "claim" before any forum regarding the matters set forth in (a), (b) and (c) in Interrogatory No. 3, above.

INTERROGATORY NO. 4:

(A) Identify, separately for each calendar year from 1983 until the present and separately for each United States Class I rail carrier that employed persons represented for collective bargaining purposes by BMWWE, the total number of BMWWE members who were terminated, separated, laid off or furloughed, who accepted

early retirement or who otherwise ceased their employment with such rail carrier due to the closing or downsizing of facilities, lack of work, consolidation of work, rail line sales, transfers or abandonments or other workforce reductions.

(B) Identify, separately for each calendar month from December 1, 1983 until the present and separately for each United States Class I rail carrier that employed persons represented for collective bargaining purposes by BMWWE, the total number of BMWWE members who were employed by each such rail carrier at mid-month (or at such other time during each calendar month for which the requested information is available).

RESPONSE TO INTERROGATORY NO. 4:

(A) OBJECTION: BMWWE objects to the interrogatory as overly broad in that it seeks information beyond the date SPT was sold to Rio Grande Industries, Inc ("RGI"). BMWWE also objects to the interrogatory as excessively burdensome and not reasonably likely to lead to the discovery of relevant evidence. In this proceeding, the Commission has framed the issue presented to the employee representatives thus:

we are reopening this proceeding to give SPT employees (as a class) an opportunity to demonstrate that they were adversely affected as a direct consequence of actions taken or orders issued by SFSP in contemplation of the proposed ATSF-SPT merger. We seek specific evidence from the parties with respect to those actions or orders issued by SFSP which may have affected SPT operations and work-related assignments.

Finance Docket No. 30400 (Sub-No. 21), Santa Fe Southern Pacific Corp.--Control--Southern Pacific Trans. Co., at 3, served June 18, 1992 (not published). Accordingly, BMWWE submits that

employment levels on other Class I railroads is irrelevant to the determination of the issue presented by the Commission in this proceeding.

(B) See the Objection to Interrogatory No. 4 (A) above. Without a waiver of the foregoing objection, BMWWE also notes that, during the period December 1, 1983 to date of the sale of SPT to RGI, such information was filed by Class I rail carriers at the Commission's Bureau of Accounts pursuant to 49 C.F.R. § 1246.1 and is available at that location.

INTERROGATORY NO. 5:

(A) Identify, separately for each calendar year from 1983 until the present and separately for each United States Class I rail carrier that employed persons represented for collective bargaining purposes by IAMAW, the total number of IAMAW members who were terminated, separated, laid off or furloughed, who accepted early retirement or who otherwise ceased their employment with such rail carrier due to the closing or downsizing of facilities, lack of work, consolidation of work, rail line sales, transfers or abandonments or other workforce reductions.

(B) Identify, separately for each calendar month from December 1, 1983 until the present and separately for each United States Class I rail carrier that employed persons represented for collective bargaining purposes by IAMAW, the total number of IAMAW members who were employed by each such rail carrier at mid-

month (or at such other time during each calendar month for which the requested information is available).

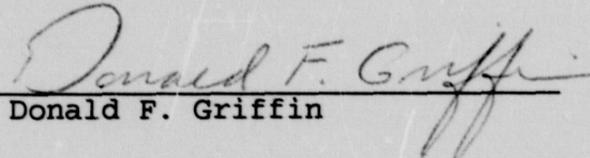
RESPONSE TO INTERROGATORY NO. 5

(A) and (B) BMW cannot answer Interrogatory No. 5 because it concerns another, independent labor organization.

Objections presented by:

HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W. - Suite 210  
Washington, DC 20036  
(202) 296-8500

By:

  
Donald F. Griffin

Attorneys for BMW

7

**VERIFICATION**

I, William A. Bon, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Response of Brotherhood of Maintenance of Way Employees to First Set of Interrogatories and Requests for Production of Documents by Santa Fe Pacific Corporation. Executed on September 25, 1992.



---

William A. Bon

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing "Response of Brotherhood of Maintenance of Way Employees to First Set of Interrogatories and Informal Request for Production of Documents by Santa Fe Pacific Corporation" upon the following by overnight mail delivery to:

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
1700 East Golf Road  
Schaumburg, IL 60173

Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

and by hand delivery to:

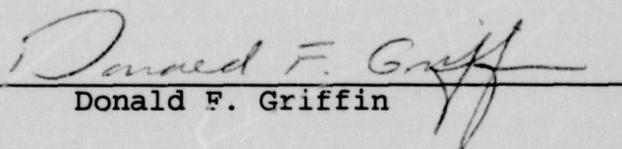
Kathryn Kusske, Esq.  
MAYER, BROWN & PLATT  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006

first class mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93305

Vincent Prada, Esq.  
SIDLEY & AUSTIN  
1722 Eye Street, N.W.  
Washington, DC 20006

  
Donald F. Griffin

Dated: September 25, 1992

ENTERED  
OFFICE OF THE SECRETARY  
SEP 28 1992  
9 PART OF  
PUBLIC RECORD

BEFORE THE  
INTERSTATE COMMERCE COMMISSION



SANTA FE SOUTHERN PACIFIC CORPORATION--  
CONTROL--SOUTHERN PACIFIC  
TRANSPORTATION COMPANY

: Finance Docket  
: No. 30400 (Sub-No. 21)  
:  
:

**BMWE/IAMAWS'S FIRST SET OF INTERROGATORIES  
AND INFORMAL REQUEST FOR PRODUCTION OF DOCUMENTS  
TO SOUTHERN PACIFIC TRANSPORTATION COMPANY**

The Brotherhood of Maintenance of Way Employees ("BMWE") and the International Association of Machinists and Aerospace Workers ("IAMAW") respectfully serve through counsel, pursuant to 49 C.F.R. §1114.26, the following interrogatories upon the Southern Pacific Transportation Company. Responses to these interrogatories and informal document requests should be served upon counsel for BMWE and IAMAW: HIGHSAW, MAHONEY & CLARKE, P.C., 1050 17th Street, N.W., Suite 210; Washington, DC 20036; fifteen (15) days after service of the foregoing. BMWE and IAMAW are willing to agree to the imposition of a reasonable protective order, similar to that imposed by the Commission in this proceeding in an order served September 3, 1992.

**DEFINITIONS**

- (1) **Communication:** The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
- (2) **Document:** The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in

Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

- (3) **Identify (With Respect to Persons):** When referring to a person, "to identify" means to give, to the extent known, the person's full name, title, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with the subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.
- (4) **Identify (With Respect to Documents):** When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).
- (5) **Identify (With Respect to Communications):** When referring to communications, "to identify" means to give, to the extent known, the (i) type of communication; (ii) general subject matter; (iii) date of the communication; (iv) the person communicating and the person communicated to.
- (6) **Person:** The term "person" is defined as any natural person or any business, legal or governmental entity or association.
- (7) **Concerning:** The term "concerning" means relating to, referring to, describing, evidencing or constituting.

- (8) **ATSF:** The term "ATSF" means the Atchison, Topeka and Santa Fe Railway Company, its officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliate and predecessors.
- (9) **SPT:** The term "SPT" means the Southern Pacific Transportation Company and the St. Louis Southwestern Railway Company, their officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliates and predecessors.
- (10) **SFSP:** The term "SFSP" means the Santa Fe Southern Pacific Corporation, its officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliates and successors.
- (11) **EMWE:** The term "EMWE" means the Brotherhood of Maintenance of Way Employes, its officers, directors, employees and agents.
- (12) **IAMAW:** The term "IAMAW" means the International Association of Machinists and Aerospace Workers, its officers, directors, employees and agents.
- (13) **ICC:** The term "ICC" means the Interstate Commerce Commission.
- (14) **Maintenance of Way Department:** The term "maintenance of way department" means that subdivision of either the SPT or ATSF concerned with the construction, repair and other maintenance of the track, roadbed, appurtenant structures and bridges of each carrier.

- (15) **Maintenance of Way Employee(s):** The term "maintenance of way employee(s)" means those employees working in the maintenance of way department.
- (16) **Maintenance of Equipment Department:** The term "maintenance of equipment department" means that subdivision of either the SPT or ATSF concerned with the construction, rebuilding, repair and maintenance of locomotives and rolling stock of each of the carriers.
- (17) **Maintenance of Equipment Facilities:** The term "maintenance of equipment facilities" means those locations where the construction, rebuilding, repair and maintenance of locomotives and other rolling stock are or were performed on a regular and recurring basis.
- (18) **Maintenance of Equipment Employee(s):** The term "maintenance of equipment employee(s)" means those employees working in the maintenance of equipment department.
- (19) **SPT - ATSF Merger:** The term "SPT - ATSF merger" means the transaction that was the subject of the primary application in ICC Finance Docket No. 30400.
- (20) **Rules of Construction:** The following rules of construction apply to all discovery requests:
- (a) **All/Each;** the terms "all" and "each" shall be construed as all and each;
  - (b) **And/Or;** the terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the

interrogatory all responses that might otherwise be construed to be outside of its scope.

(c) **Number**; the use of the singular form of any word includes the plural and vice versa.

- (21) **Time Period Covered By Interrogatories:** The time period covered by these interrogatories runs from December 23, 1983 until October 13, 1988.
- (22) **Trustee of the Voting Trust:** means the Valley National Bank of Arizona.

#### INSTRUCTIONS

- A. If exact data cannot be supplied in answering any Interrogatory that calls for a numerical response, SPT should provide its best estimate of the data requested, indicate that this has been done by notation ("est.") in conjunction with the response, and describe the basis upon which the estimate was derived. In addition, state where the precise information can be found, including identification of each knowledgeable person and of all documents which contain the precise information or from which it can be derived.
- B. If SPT cannot answer any part of any Interrogatory in full, after exercising due diligence to secure the information to do so, SPT should so state and answer to the extent possible, specifying its inability to answer the remainder, and stating whatever information or knowledge they have of each unanswered part.

- C. Should SPT assert a privilege or work product protection for any documents or communications about which information is requested by any of the following Interrogatories and Document Requests, SPT shall identify such documents and communications (including a brief description of the subject matter of any such document or communication), state the ground on which the asserted privilege rests, and state facts establishing the foundation of the asserted privilege.
- D. These Interrogatories and Document Requests are continuing in character, so as to require SPT to file supplementary answers under the circumstances described in 49 C.F.R. § 1114.29(a)-(b). Where knowledge or information in the possession of SPT is requested, such requests include the knowledge of its employees, agents, representatives and consultants.
- E. Where these Interrogatories seek information as to the existence or content of any document, the furnishing of a true and legible copy of such document will be accepted as an adequate reply to the Interrogatory.
- F. BMW and IAMAW reserve the right to serve further discovery requests in this proceeding.

**INTERROGATORIES AND INFORMAL DOCUMENT  
PRODUCTION REQUESTS ADDRESSED TO SPT**

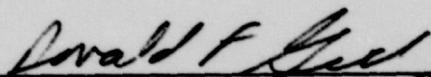
1. Were any of the "over two thousand agreement personnel" eliminated from SPT payrolls through voluntary separations referenced on Page 3 of a letter dated October 1, 1986 from

D. K. McNear to John J. Schmidt represented by either BMWWE or IAMAW?

- a. If the answer is yes, identify by number and location those BMWWE or IAMAW represented employees eliminated from SPT payrolls.
  - b. Identify the terms of the separations offered to the BMWWE or IAMAW employees.
  - c. What entity provided the monies used to pay for the separation of these employees?
2. Identify by number and location those machinist positions of the 465 Maintenance of Equipment employees positions reduced by SPT during April and May, 1985 referenced on page 2 of the memo dated June 18, 1985 from D. K. McNear addressed to J. J. Schmidt.
  3. Identify by number and location those 150 Maintenance of Way maintenance forces reduced by SPT during the first quarter of 1985 referenced on page 3 of the memo dated June 18, 1985 from D. K. McNear addressed to J. J. Schmidt.
  4. Identify the "core routes" of the SPT referenced on page 3 of the memo dated June 18, 1985 from D. K. McNear addressed to J. J. Schmidt.
  5. Identify by name and last known address, those BMWWE represented Maintenance of Way personnel working on the Northwestern Pacific Railroad whose positions were abolished during March and April of 1985.

6. Produce all documents prepared by, produced for or reviewed by SPT, its officers, agents, and employees, in connection with the preparation of answers to questions framed by SFSP and transmitted to SPT via the Voting Trust Trustee in 1985.

Respectfully submitted,

  
\_\_\_\_\_  
William G. Mahoney  
John O'B. Clarke, Jr. (KFE)  
Richard S. Edelman  
Donald F. Griffin

HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, D.C. 20036

Attorneys for BMW and IAMAW

Dated: September 25, 1992

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing upon the following by overnight mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

and by first class mail delivery to:

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
1700 East Golf Road  
Schaumburg, IL 60173

Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

Kathryn Kusske, Esq.  
MAYER, BROWN & PLATT  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Vincent Prada, Esq.  
SIDLEY & AUSTIN  
1722 Eye Street, N.W.  
Washington, DC 20006

  
Donald F. Griffin

Dated: September 25, 1992

FD-30400

SUB NO. 21

I

# Southern Pacific Transportation Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

(415) 541-1000

CANNON Y. HARVEY  
VICE PRESIDENT AND GENERAL COUNSEL

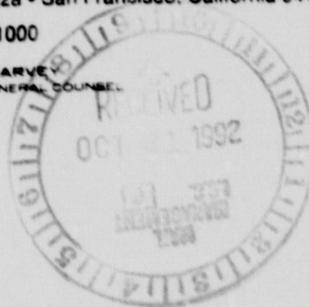
JOHN J. CORRIGAN  
GENERAL COUNSEL-LITIGATION

LOUIS P. WARCHOT  
ASSISTANT GENERAL COUNSEL

JOHN MACDONALD SMITH  
SENIOR GENERAL ATTORNEY

FACSIMILE  
GENERAL (415) 495-5436  
LITIGATION (415) 541-1734

WRITER'S DIRECT DIAL NUMBER



ROBERT S. SOGASON  
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GARY A. LAAKSO  
STEPHEN A. ROBERTS  
JAMES M. EASTMAN  
WAYNE M. BOLIO  
JOHN D. FEENEY  
GENERAL ATTORNEYS

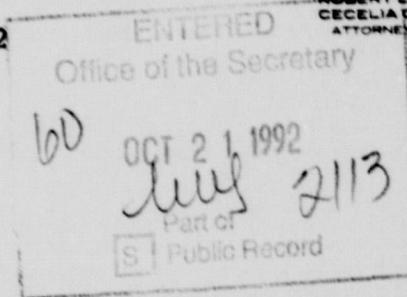
BARBARA A. SPRUNG  
ASSISTANT GENERAL ATTORNEY

ROBERTE PATTERSON  
CECELIA C. FUBICH  
ATTORNEYS

October 20, 1992

BY FEDERAL EXPRESS  
(415) 541-2057

The Honorable Paul Cross  
Administrative Law Judge  
The Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423



Re: Finance Docket Number 30,400 (Sub-No. 21),  
Santa Fe Pacific Corp. -- Control -- Southern  
Pacific Transportation Company

To The Honorable Judge Cross:

Southern Pacific Transportation Company hereby responds to the letter and Motion dated October 19, 1992 from Donald Griffin, attorney for BMW and IAMAW (hereinafter "Unions"). In light of the arguments made by the Unions in support of the Motion to Allow Discovery, and in preparation for the conference call scheduled for October 21, 1992 at 1:00 p.m. (Eastern Time) Southern Pacific believes its position should be clearly stated for the record.

Initially, Southern Pacific is not claiming that it is not within the jurisdiction of the ICC as suggested in the Union's moving papers. Rather, Southern Pacific's position is that, up until the present, the overwhelming majority of activity directed in this proceeding was with reference to Santa Fe. Southern Pacific's October 12, 1992 correspondence in no way asserted that it was not subject to the jurisdiction of the ICC. Rather, the carrier merely questioned the Unions' attempt to embroil Southern Pacific in a proceeding with which it previously had little contact or activity. Given that Southern Pacific believed the focus and intent of the ICC proceeding was directed at Santa Fe, it has refused to engage in informal discovery pending ICC consideration of the matter.

Southern Pacific respectfully suggests that the BMW and IAMAW anticipated this argument. For example, the Unions' September 25,

The Honorable Paul Cross  
Administrative Law Judge  
The Interstate Commerce Commission  
October 20, 1992  
Page 2

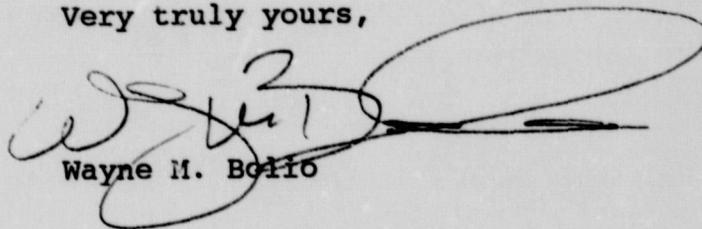
1992 correspondence asks Southern Pacific to "agree" to "informal" discovery requests. Clearly, if Southern Pacific had been an active participant in the sub proceeding no such request would have been made. Rather, it would seem more likely the Unions would have directly engaged in discovery without any "informal" requests or without seeking an Order of the ICC.

Should the ICC compel Southern Pacific to respond to the Union's outstanding discovery requests, the carrier will respectfully request an additional amount of time beyond the seven days currently demanded by the Unions. An additional amount of time is necessary to consider the following issues:

1. Retention of outside counsel if necessary;
2. Consideration and possible revision of any protective Order governing discovery;
3. Consideration of any legal and proper objections which may be made to the discovery sought by the Unions or the scope of that discovery;
4. Adequate time in which to assemble the information sought by the Unions, keeping in mind the massive number of cut-backs in employment levels which have occurred since the mid-1980s at Southern Pacific and in light of the acquisition of Southern Pacific Transportation Company by Rio Grande Industries.

I look forward to discussing this matter with all parties concerned during the conference call currently scheduled for October 21. A copy of this letter is being sent by fax to counsel of record in this case.

Very truly yours,



Wayne M. Bellio

cc: Donald F. Griffin  
Highsaw, Mahoney & Clarke, P.C.  
Suite 210  
1050 Seventeenth Street N.W.  
Washington, D.C. 20036

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
1700 East Golf Road  
Schaumburg, IL 60173

Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

Adrian Steele, Esq.  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Vincent Prada, Esq.  
Sidley & Austin  
1722 Eye Street, N.W.  
Washington, D.C. 20006

STB

FD-30400

(SUB 21)

12-23-92

I

38407

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

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FINANCE DOCKET NO. 30400 (SUB-NO. 21)

---

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

---

MOTION OF SANTA FE PACIFIC CORPORATION  
FOR APPLICATION OF PROTECTIVE ORDER

Pursuant to 49 C.F.R. § 1104.14(b) of the Commission's Rules, Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation) ("SFP") files this motion seeking that the Evidence and Argument and the Declaration of Barbara Boutourlin filed by Lee Kubby on behalf of Sieu Mieu Tu in the above-captioned proceeding on or about December 18, 1992, be kept confidential pursuant to the Protective Order served by the Commission in this matter on September 3, 1992. (A copy of the Protective Order is appended hereto as Exhibit A.)

Mr. Kubby's filing, which appears not to have been made under seal, contains discussion of and attaches copies of several confidential documents which SFP produced in discovery to Mr. Kubby subject to the Protective Order in this proceeding. As required by the Protective Order, each of the documents to be afforded confidential treatment was clearly marked by SFP as "confidential". Prior to receipt of the subject documents, Mr. Kubby agreed to abide by the terms and conditions of the Protective Order and

signed an affidavit to that effect. (A copy of Mr. Kubby's confidentiality affidavit is appended hereto as Exhibit B.)

Paragraph 12 of the Protective Order unambiguously provides that all confidential information filed with the Commission that contains or discloses confidential information "shall be filed under seal and kept under seal until further order of the Commission". Mr. Kubby's filing violates not only this paragraph of the Protective Order, but fails to comply with the Commission's rules that confidential information be segregated as a separate package, clearly marked with a request for confidential treatment. 49 C.F.R. § 1104.14.

Despite repeated attempts by telephone to inform Mr. Kubby that his filing did not comply with the Protective Order, counsel for SFP were unsuccessful in reaching him. SFP, therefore, cannot represent whether Mr. Kubby consents to confidential treatment of his filing.<sup>1/</sup> Because of the competitive harm and commercial injury which could occur if confidential information produced in discovery is disclosed to the public, SFP requests that the Commission act upon this motion expeditiously. SFP further seeks that the Commission advise Mr. Kubby that he must in the future abide by the terms and conditions of the Protective Order in this proceeding.

---

<sup>1/</sup> If Mr. Kubby objects to the placement of his filing or segregating portions of his filing under seal, SFP reserves its right to file with the Commission a motion to reject or strike his filing in its entirety.

For each of the foregoing reasons, SFP respectfully requests that the Commission grant its motion for application of the protective order and treat Mr. Kubby's filing as confidential.

Respectfully submitted,

Erika J. Jones / KAK

Erika Z. Jones  
Adrian L. Steel, Jr.  
Kathryn A. Kusske  
MAYER, BROWN & PLATT  
2000 Pennsylvania Avenue, N.W.  
Suite 6500  
Washington, D.C. 20006-1882  
(202) 463-2000

Attorneys for Santa Fe Pacific Corporation

DATED: December 22, 1992

INTERSTATE COMMERCE COMMISSION

ORDER

Finance Docket No. 30400 (Sub-No. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

Pursuant to the Motion Of Santa Fe Pacific Corporation For Application Of Protective Order dated December 22, 1992, it is hereby ordered that the Evidence and Argument and the Declaration of Barbara Boutourlin filed by Lee Kubby on behalf of Sieu Mei Tu on or around December 18, 1992 be treated as confidential pursuant to the Protective Order served by the Commission in this matter on September 3, 1992. Mr. Kubby is advised that he must in the future abide by the terms and conditions of the Protective Order in this proceeding.

By Paul S. Cross, Chief Administrative Law Judge, on the \_\_\_  
day of December, 1992.

Sidney L. Strickland, Jr.  
Secretary

(Seal)

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of December, 1992, I served the foregoing "Motion of Santa Se Pacific Corporation For Application Of Protective Order" by causing a copy thereof to be delivered to each of the following in the manner indicated:

Lee J. Kubby  
Lee J. Kubby, Inc.  
Box 60485  
Sunnyvale, California 94086-0485  
(By Express Mail)

William G. Mahoney  
Donald F. Griffin  
Highsaw, Mahoney & Clarke, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, D.C. 20036  
(By Messenger)

Wayne M. Bolio  
Southern Pacific Transportation Company  
819 Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105  
(By Federal Express)

Kathryn Kuske



FL14  
SERVICE DATE

SEP 3 1992

OH

INTERSTATE COMMERCE COMMISSION

ORDER

Finance Docket No. 30400 (Sub-No. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

By motion filed August 27, 1992, Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation) ("SFP") requests issuance of a protective order to govern the disclosure and use of confidential, proprietary or commercially sensitive information and data that may be produced during discovery or otherwise divulged by any party to another during the course of this proceeding. A reply to the motion of SFP was filed on August 28, 1992 by "rail labor." A telephone conference with the parties then was held August 31, 1992.

There is good cause shown for the motion to be granted at this time. Unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause serious competitive or commercial injury to the parties. Issuance of the requested protective order would ensure that such information and data produced by any party in response to a discovery request or otherwise unless upon further order will be used solely for purposes of this proceeding and not for any other business or commercial use. The requested protective order would also facilitate the prompt and efficient resolution of this proceeding by minimizing potential discovery disputes. The subject may be revisited at a later date upon appropriate request.

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

It is ordered:

1. The motion for protective order is granted, and the Protective Order reproduced in the Appendix to this order is adopted as an order of the Commission.
2. This order is effective on the date served.

*Paul S. Cross*  
By the Commission, Paul S. Cross, Chief Administrative Law Judge, on August 31, 1992.

Sidney L. Strickland, Jr.  
Secretary

(SEAL)

APPENDIX

PROTECTIVE ORDER

On the motion of Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation) ("SFP"), and for the purpose of protecting against improper use or disclosure of confidential, proprietary or commercially sensitive business information and data obtained or to be obtained by any party or person through discovery or otherwise during the course of this proceeding,

It is ordered that:

1. The term "Proceeding," as used in this Protective Order, shall mean the proceeding of the Interstate Commerce Commission (the "Commission") designated as Finance Docket No. 30400 (Sub-No. 21), as well as any subsequent Commission proceeding concerning the interpretation or application of any labor protective conditions imposed by the Commission in connection with the transaction(s) at issue in Finance Docket No. 30400 and all related sub-dockets.
2. This Protective Order shall apply: (a) to all documents, information and other products of discovery obtained by any party to this Proceeding pursuant to discovery requests, whether directed to another party or to a person not a party to this Proceeding; and (b) to all documents and information contained in any materials filed with the Interstate Commerce Commission (the "Commission") by any party during the course of this Proceeding (including transcripts of oral testimony and hearings before the Commission).
3. Any party or person responding to a discovery request may designate as "Confidential Information" any response (including production of documents) or portion thereof that it in good faith contends contains confidential, proprietary or commercially sensitive information. Except as provided by Paragraph 6 below, "Confidential Information" as used herein includes all such designated responses, any copies, extracts, abstracts or summaries of such responses, and all information contained in or obtained from such responses.
4. Responses to discovery requests (including documents produced in response to discovery requests) may be designated as "Confidential Information" in the following manner:

(a) Responses or portions of responses to interrogatories, written deposition interrogatories, and requests for admission may be designated by stamping or printing "Confidential" or "Confidential Information" in the front thereof and, if only portions of the response are to be so designated, clearly marking the confidential portions.

(b) Prior to the production of copies to the requesting party, documents may be designated by separating them from other documents and informing the requesting party that they are "Confidential Information." Copies of documents or portions of documents produced to the parties may be designated by producing such documents in separate containers clearly marked as containing "Confidential Information" or stamping "Confidential" or "Confidential Information" on each page (and all copies thereof) containing "Confidential Information" and, if only portions of a document page are to be so designated, clearly marking the confidential portions.

(c) A witness or the attorney for a witness may designate the witness's entire testimony and the transcript thereof to be treated as "Confidential Information" by so requesting on the record prior to the conclusion of the hearing at which such testimony is taken. Such designation shall be effective only until 15 days after the availability of the transcript of the hearing, after which portions of the witness testimony may be designated "Confidential Information" only by informing each party in writing of the pages, and the portions thereof, that contain "Confidential Information."

5. If a party or person inadvertently fails to designate discovery or other material as "Confidential Information," that party subsequently may notify the receiving party within one week following delivery of the discovery or other material to the receiving party that the material is "Confidential Information." After receipt of such notification, such materials and information shall be treated as if they had been designated in a timely fashion.

6. Any party at any time may by written notice request that the producing party or person cancel the "Confidential Information" designation of any transcript, document or discovery response or portion thereof. Such request should particularly

identify the designated responses which the requesting party contends should not be treated as "Confidential Information," provide the reasons therefor, and explicitly state that the request is made pursuant to this paragraph. Such request shall be deemed granted ten days after receipt of the request, unless the producing party or person, prior to the end of the ten-day period, denies the request by written notice to the requesting party. If such request is denied in whole or in part, the requesting party may file a motion with the Commission to have the "Confidential Information" designation removed as to the discovery responses listed in the request.

7. Other than as provided in Paragraph 8 below, "Confidential Information" may only be disclosed to "Authorized Persons." An "Authorized Person" is a person who, prior to the receipt of any "Confidential Information," has signed an affidavit (in the form included as Attachment A to this Order) in which he or she states his or her identity, title and employer and further states that he or she has read this Protective Order and agrees to abide by its terms, and is:

(a) an attorney actively involved in this Proceeding on behalf of a party (or a legal assistant under such attorney's supervision);

(b) a person who is not a permanent employee of a party but who has been employed by any of the parties to provide advice, expertise or assistance in this Proceeding;

(c) a person who is a permanent employee of a party (including an employee or official of the Brotherhood of Maintenance of Way Employees or the International Association of Machinists and Aerospace Workers) and who has been assigned direct responsibility in connection with this Proceeding;

(d) a person who is or was once employed by one of the rail carrier parties and is presently or was formerly represented for collective bargaining purposes by the Brotherhood of Maintenance of Way Employees or the International Association of Machinists and Aerospace Workers, but only if and to the extent that such person reasonably requires access to particular "Confidential Information" in order to prepare written or oral testimony to be submitted in this Proceeding; or

(e) a reporter employed to record oral testimony or other hearings.

Each such affidavit by an "Authorized Person" shall be kept for the duration of this Proceeding and any related court litigation or judicial appeals by the party with which such "Authorized Person" is affiliated or associated, and a copy of each such affidavit shall be served upon counsel of record for each party no later than ten days after such affidavit is executed.

8. "Confidential Information" may also be disclosed to:

(a) an employee of the producing party during oral testimony of such employee;

(b) a witness employed by an organization that also employs the person who produced the "Confidential Information" to be disclosed to the witness;

(c) an assistant or clerical employee under the supervision of any "Authorized Person"; or

(d) any person so authorized either (i) in writing by the party or person that produced the "Confidential Information" to be disclosed to such person or (ii) by the Commission upon motion by any party for good cause.

9. Storage, transmission or communication of "Confidential Information" must be such as to reasonably ensure that the "Confidential Information" will not be disclosed, accidentally or otherwise, to non-authorized persons.

10. No person may be present at a hearing during the discussion of "Confidential Information" who has not been authorized by this Protective Order to review the "Confidential Information" to be discussed.

11. "Confidential Information" may be used by the receiving party, and by any "Authorized Person", solely for purposes of this Proceeding and any related court litigation, and not for any other purpose whatsoever (including any business or commercial purpose).

12. All "Confidential Information" filed with the Commission, and any pleading, motion, or other paper filed with the Commission that contains or discloses "Confidential Information"

shall be filed under seal and kept under seal until further order of the Commission.

13. All documents containing "Confidential Information" shall, at the option of the party or person that produced such "Confidential Information," be destroyed or returned to the producing party/person at the termination of this Proceeding, including any related court litigation or judicial appeals. In the event that the producing party/person requests the destruction of such "Confidential Information" pursuant to this Paragraph, the producing party/person shall notify the receiving party in writing of this request, and the receiving party within 30 days after such written notice shall destroy the "Confidential Information" and shall certify to the producing party/person in writing that all "Confidential Information" produced to the receiving party during the course of this Proceeding has been destroyed. In the event that the producing party/person requests the return of such "Confidential Information" pursuant to this Paragraph, the producing party/person shall notify the receiving party in writing of this request, and the receiving party within 30 days after such written notice shall return the "Confidential Information" to the producing party/person and shall also certify to the producing party/person in writing that all "Confidential Information" produced to the receiving party during the course of this Proceeding has been returned.

14. The provisions of this Protective Order that restrict the handling, communication and use of "Confidential Information" shall continue to be binding after the termination of this Proceeding, including any related court litigation or judicial appeals, unless the Commission or the producing party/person authorizes in writing alternative handling, communication or use of such "Confidential Information".

15. This Protective Order shall not bar or otherwise restrict:

(a) an "Authorized Person" from making copies, abstracts, digests and analyses of "Confidential Information" for use in connection with this Proceedings, subject to the requirement that all such copies, abstracts, digests and analyses be treated as "Confidential Information" and clearly marked as such;

(b) an "Authorized Person" from rendering advice or opinions with respect to this Proceeding to his or her client or employer based upon his or her examination of "Confidential Information" itself to a person

not authorized by this Protective Order to have access to the "Confidential Information";

(c) a party from using any "Confidential Information" during hearings in this Proceeding, subject to any further order of the Commission;

(d) a party or producing person from using its own "Confidential Information" in any manner it sees fit, or from revealing such "Confidential Information" to whomever it chooses, without the prior consent of any other party or of the Commission; and

(e) a party or producing person from applying to the Commission at any time for additional protection, or to relax or rescind the restrictions of this Protective Order, when convenience or necessity requires.

16. If "Confidential Information" in the possession of any party is subpoenaed by any court, administrative or legislative body, or any other person purporting to have authority to subpoena such information, the party to whom the subpoena is directed will not produce such information without first giving written notice (including the delivery of a copy thereof) to the producing party/person or the attorneys for the producing party/-person, within 24 hours after receipt of the subpoena. If a subpoena purports to require production of such "Confidential Information" on less than four business days' notice, the party to whom the subpoena is directed shall also give immediate notice by telephone of the receipt of such subpoena.

17. To the extent that "Confidential Information" is produced by a party or other person in this Proceeding and held and used by the receiving party in compliance with the terms of this Protective Order, such production, disclosure and use of such "Confidential Information" are deemed essential for the disposition of this Proceeding and shall not be deemed a violation of 49 U.S.C. § 11343 or § 11910.

18. The terms of this Protective Order are imposed without prejudice to the right of affected rail carrier employees to request, for good cause shown, modification of the terms of this Protective Order to authorize use of Confidential Information by individual employees as reasonably necessary to prosecute individual claim and arbitration proceedings required under any labor protective conditions that may be imposed by the Commission in this case.

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

\_\_\_\_\_  
FINANCE DOCKET NO. 30400 (SUB-NO. 21)  
\_\_\_\_\_

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY  
\_\_\_\_\_

COUNTY OF \_\_\_\_\_ )  
STATE OF \_\_\_\_\_ ) ss:

CONFIDENTIALITY AFFIDAVIT

I, \_\_\_\_\_ [Name], being duly sworn, do hereby depose and state that I am \_\_\_\_\_ [Position or Job Title] of \_\_\_\_\_ [Name of Employer or Firm]; that my offices are located at \_\_\_\_\_ [Address]; that [I am an attorney actively involved in the above-captioned proceeding on behalf of \_\_\_\_\_ [Name of Party Represented]] or [I am a legal assistant under the supervision of attorneys actively involved in the above-captioned proceeding on behalf of \_\_\_\_\_ [Name of Party Represented]] or [I have been employed by \_\_\_\_\_ [Name of Party Represented] to provide advice, expertise and assistance in connection with the above-captioned proceeding] or [I am a permanent employee of \_\_\_\_\_ [Name of Party Represented] and have been assigned direct responsibility in connection with the above-captioned proceeding]

or [I was/am employed by \_\_\_\_\_ [Name of Rail Carrier Party],  
am presently or was formerly represented for collective bargain-  
ing purposes by the \_\_\_\_\_ [Brotherhood of Maintenance of Way  
Employees or International Association of Machinists and Aerospace  
Workers], and intend to submit testimony in the above-  
captioned proceeding] or [I am a reporter employed to record oral  
testimony or other hearings in the above-captioned proceeding];  
and that I have read, understand and agree to abide by the terms  
of the Protective Order entered in the above-captioned proceed-  
ings by order served August \_\_, 1992.

\_\_\_\_\_  
[Name]

Subscribed and Sworn to  
Before Me This \_\_\_\_ Day  
of \_\_\_\_\_, 1992.

\_\_\_\_\_  
Notary Public

My Commission expires:

LAW OFFICES

**LEE J. KUBBY, INC.**  
A PROFESSIONAL CORPORATION

BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

November 5, 1992

Adrian L. Steel, Jr.  
Mayer, Brown, & Platt  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company  
Your letter 11-4-92

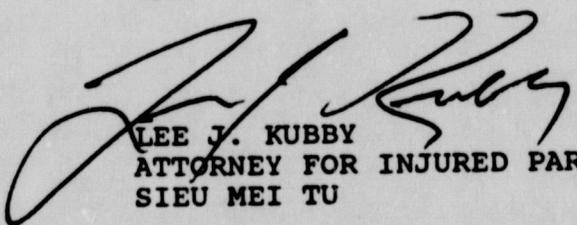
Dear Mr. Steel:

Enclosed please find your requested Confidentiality Affidavit.

Please provide the requested discovery. I agree to pay the cost of copying not to exceed \$213.39. Please forward the invoice of the copier.

Very truly yours,

LEE J. KUBBY, INC.  
A Professional Corporation  
By:

  
LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

LJK:me  
Encl.

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

---

FINANCE DOCKET NO. 30400 (SUB-NO. 21)

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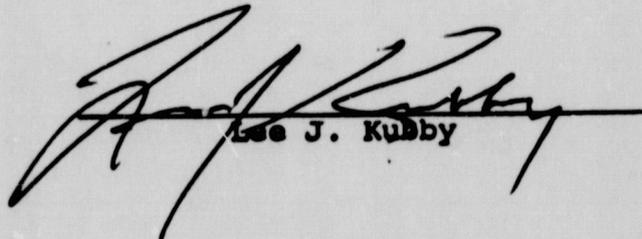
SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

---

COUNTY OF SANTA CLARA        )  
                                  )    ss:  
STATE OF CALIFORNIA         )

CONFIDENTIALITY AFFIDAVIT

I, Lee J. Kubby, being duly sworn, do hereby depose and state that I am \_\_\_\_\_ of Lee J. Kubby, Inc.; that my offices are located at 231 Acalanes, No. 5, Sunnyvale, California 94086; that I am an attorney actively involved in the above-captioned proceeding on behalf of Sieu Mei Tu and Joseph Z. Tu; and that I have read, understand and agree to abide by the terms of the Protective Order entered in the above-captioned proceedings by order served September, 3, 1992.

  
Lee J. Kubby

Subscribed and Sworn to  
Before Me This \_\_\_\_ Day  
of November, 1992.

---

Notary Public

My Commission expires:

STB

FD-30400

(SUB 21)

12-22-92

I

38406

# Southern Pacific Transportation Company

38406

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

(415) 541-1000

CANNON Y. HARVEY  
VICE PRESIDENT AND GENERAL COUNSEL

JOHN J. CORRIGAN  
GENERAL COUNSEL LITIGATION

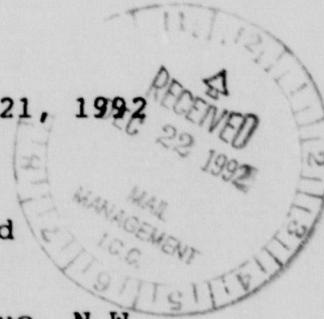
LOUIS P. WARCHOT  
ASSISTANT GENERAL COUNSEL

JOHN MACDONALD SMITH  
SENIOR GENERAL ATTORNEY

FACSIMILE  
GENERAL (415) 495-5436  
LITIGATION (415) 541-1734

WRITER'S DIRECT DIAL NUMBER  
(415) 541-2057

December 21, 1992



ROBERT S. BOGASON  
DAVID W. LONG  
CAROL A. HARRIS  
LELANDE BUTLER  
GARY A. LAAKSO  
STEPHEN A. ROBERTS  
JAMES M. EASTMAN  
WAYNE M. BOLIO  
JOHN D. FEENEY  
GENERAL ATTORNEYS

BARBARA A. SPRUNG  
ASSISTANT GENERAL ATTORNEY

ROBERT E. PATTERSON  
CECELIA C. FUBICH  
ATTORNEYS

The Honorable Sidney L. Strickland  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Finance Docket No. 30400 (Sub-No. 21)  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Secretary Strickland:

Enclosed for your consideration please find an original and eleven copies of the Motion of Southern Pacific Transportation Company and Pacific Fruit Express Company to strike certain materials. Because of the sensitivity of the matters contained within this Motion, Southern Pacific Transportation Company and Pacific Fruit Express hereby request that this be filed pursuant to the Protective Order served by the Commission in this matter on or about September 3, 1992.

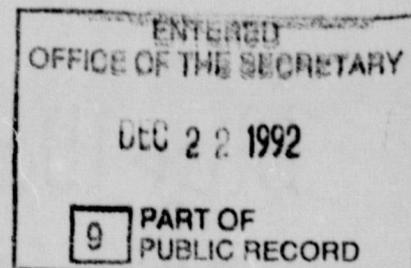
If you have any questions, feel free to contact me. Thank you for your attention to this matter.

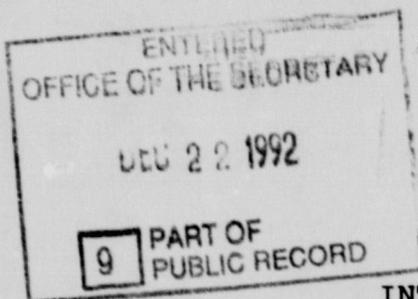
Very truly yours,

Wayne M. Bolio

Enclosure  
cc:

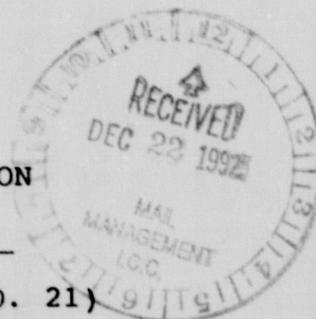
The Honorable Paul S. Cross  
Chief Administrative Law Judge  
Office of Hearings  
Interstate Commerce Commission  
Erika Z. Jones, Esquire  
Adrian L. Steel, Jr., Esquire  
Lee J. Kubby  
William G. Mahoney, Esquire  
Donald F. Griffin, Esquire





Finance Docket No. 30400 (Sub.No. 21)

BEFORE THE  
INTERSTATE COMMERCE COMMISSION



FINANCE DOCKET NO. 30400 (SUB-NO. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

MOTION TO STRIKE AND REQUEST FOR RETURN OF MATERIALS IMPROPERLY  
INCLUDED IN THE RECORD

COMES NOW Southern Pacific Transportation Company ("SPT") and  
Pacific Fruit Express Company ("PFE") and hereby files its Motion  
to Strike and for the Return of Materials improperly disseminated  
by Sue Mei Tu and Joseph Tu (hereinafter "Tu").

1. STATEMENT OF FACTS

On or about December 14, 1992 SPT and PFE, by overnight  
delivery, complied with a Discovery Request filed by Tu. That  
Request for Production of Document sought, among other things, a  
copy of a report entitled "The Future of the Perishables Business  
and PFE". (See Tu Request For Production of Documents Number 4)  
SPT and PFE responded to said Request and produced a copy of that  
Report. However, the materials sent by SPT and PFE from this  
office had been redacted to reflect the attorney/client privilege,

including certain exhibits that were originally part of that report, on the basis said attachments constituted attorney/client communications. (See SPT and PFE Response to Request For Production of Documents Number 4). Copies of the redacted report were served on all parties to this action and on the ICC by overnight mail on December 14, 1992.

On Friday, December 18, 1992 at approximately 3:00 p.m. I received by overnight mail the submission filed by Tu in this matter. Included in those materials was a Declaration of an individual named as Barbara Boutourlin. Ms. Boutourlin, in a Declaration, identifies numerous documents which purport to be internal PFE correspondence and documents. Several serious matters are raised by this filing which require the immediate attention of the ICC:

1. Ms. Boutourlin has not, to SPT and PFE's knowledge, ever executed a Confidentiality and Protective Order. Therefore, while Ms. Boutourlin purports to authenticate and review numerous documents in connection with the Tu filing, she did not execute a Confidentiality Order as required by the Commission;

2. The materials filed by Mr. Lee J. Kubby, on behalf of Tu, were not filed under seal or subject to the Protective Order;

3. Most importantly, Mr. Kubby, on behalf of Tu, has filed numerous PFE and/or SPT documents which were not produced by PFE/SPT pursuant to normal discovery procedures employed in this case as authorized by the ICC. In particular, attached to the Declaration of Ms. Boutourlin is a copy of the report requested by

Tu in its request for Production of Documents on the "The Future of the Perishables Business and PFE." That document produced by Tu is not the redacted version produced by SPT/PFE and, as attachments contains various letters between attorneys in the SPT Law Department and at least one legal opinion of outside counsel. Those documents were specifically redacted by SPT and PFE when it responded to Tu's Request for Production of Documents. It is thus apparent that Tu has, by means presently unknown, obtained copies of internal PFE and/or SPT documents. Unlike the documents legitimately produced by SPT and PFE pursuant to the Request for Production in this matter, the documents produced by Tu, via Mr. Kubby, contained privileged and highly sensitive information which Tu has somehow acquired through her own efforts. Said actions not only constitute a breach of the Protective Order entered in this case, but likewise raise potential issues of liability against Tu, her attorney, and any other person who improperly obtained said documents.

On the afternoon of December 18, 1992, I composed a letter to Mr. Kubby on the subject of his filing. Mr. Kubby has no Fax machine, and SPT/PFE was required to send a letter by overnight mail. SPT/PFE informed Mr. Kubby that his production of the documents, pursuant to the Declaration of Barbara Boutourlin, was improper and contained numerous information of a privileged and confidential manner. (Attached as Exhibit 1 to this filing is a copy of that letter). As of 4:00 p.m. (PDT) on December 21, 1992, Mr. Kubby has not responded to counsel for SPT/PFE. As of this

date, SPT/PFE have no knowledge or idea how Tu and her attorney obtained these documents. Because of the sensitivity of this matter, and the unavailability of the parties and the ICC because of the impending holidays, SPT/PFE has filed this Motion.

## 2. ARGUMENT

It is clear that Tu has not complied with the proper Discovery procedures applicable to this matter. Tu's materials were not filed pursuant to the Confidentiality and Protective Order, thus making it highly likely that these materials will be filed where numerous individuals may view the materials. Equally important, Tu has shown various privileged documents to at least one individual who has not executed any Confidentiality Order; at a minimum, Ms. Boutourlin has had access to and reviewed numerous documents which were produced by SPT/PFE pursuant to the Protective Order.<sup>1</sup> More critically, Tu obviously has obtained access to and subsequently disclosed numerous PFE and/or SPT privileged and confidential documents through her own means and outside the normal discovery processes.

Upon receipt of the filing by Tu, counsel for PFE/SPT contacted counsel for Santa Fe Southern Pacific Company and the Unions. Both counsel for Santa Fe Southern Pacific Company and the Unions confirmed that the documents served by PFE/SPT, in response to Tu's Request for Production, contained a redacted version of the report entitled "The Future of the Perishables Business and PFE."

---

<sup>1</sup> Indeed, all of SPT/PFE's Answers to Interrogatories and Response to Request for Production of Documents were expressly subject to the Protective Order.

Counsel for SPT/PFE's office copy of the documents produced likewise contained the redacted version of the Report. Therefore, the copy of that Report served by Tu on the parties, and filed with the ICC not under seal, is not the copy of the Report produced by PFE/SPT.

The critical nature of Tu's filing is apparent. She has, without authority or justification, obtained and disclosed privileged documents, including numerous internal opinions of the SPT Law Department generated in response to a request from a client. Those materials have been provided by Tu to the Unions, counsel for the Unions, Santa Fe Southern Pacific Corporation, and, possibly, the general public. Those materials contained sensitive attorney/client information which are protected by law. Further, Tu's action in acquiring these documents could breach other civil, and possibly criminal, statutes.

SPT and PFE hereby seek, on an emergency basis, some or all of the following relief:

1. That the materials filed by Tu, on or about December 18, 1992, be treated as confidential pursuant to the Protective Order until further action of the ICC and/or Judge Cross;

2. That the copy of the Report entitled "The Future of the Perishables Business and PFE", and all exhibits and attachments, filed by Tu in support of her Petition be treated as confidential by the ICC and all parties, immediately returned by all parties to SPT/PFE and that no copies be maintained by any party, and that no copies of that Report be disseminated to any other parties or

persons. To the extent that this Report must be used in this proceeding, that copy produced by SPT/PFE and subject to the Protective Order can be utilized.

3. That all other materials relating to SPT/PFE which have been obtained by Tu outside the Discovery process in this case be immediately returned by all parties to SPT/PFE, and that no such copies be maintained; and

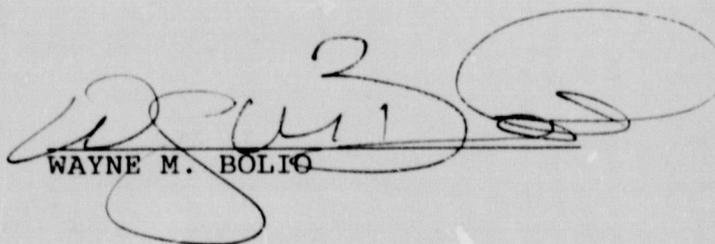
4. That SPT and PFE be allowed to conduct Discovery as to the manner and circumstances by which Tu obtained said documents.

5. For such other relief as may be appropriate upon further investigation.

CONCLUSION

For the foregoing reasons it is respectfully requested that the Commission grant the relief prayed for in whole or in part.

Dated: 12/21/92

  
WAYNE M. BOLIO

CERTIFICATE OF SERVICE

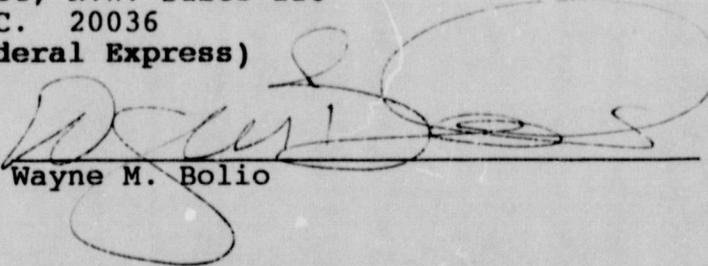
I, hereby certify that on this 21st day of December, 1992 I served the foregoing MOTION TO STRIKE AND REQUEST FOR RETURN OF MATERIALS IMPROPERLY INCLUDED IN THE RECORD by causing a copy thereof to be delivered to each of the following the manner set forth below:

The Honorable Sidney L. Strickland  
Secretary  
The Honorable Paul S. Cross  
Chief Administrative Law Judge  
Office of Hearings  
Interstate Commerce Commission, Room 4117  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423  
(By Federal Express)

Erika Z. Jones  
Adrian L. Steel, Jr.  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W., Suite 6500  
Washington, D.C. 20006  
(By Fax and Federal Express)

Lee J. Kubby  
Lee J. Kubby, Inc.  
P.O. Box 60485  
Sunnyvale, CA 94086-0485  
(By Express Mail)

William G. Mahoney  
Donald F. Griffin  
Highsaw, Mahoney & Clarke, P.C.  
1050 17th Street, N.W. Suite 210  
Washington, D.C. 20036  
(By Fax and Federal Express)

  
Wayne M. Bolio

# Southern Pacific Transportation Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

(415) 541-1000

CANNON Y. HARVEY  
VICE PRESIDENT AND GENERAL COUNSEL

JOHN J. CORRIGAN  
GENERAL COUNSEL, LITIGATION

LOUIS P. WARCHOT  
ASSISTANT GENERAL COUNSEL

JOHN MACDONALD SMITH  
SENIOR GENERAL ATTORNEY

FACSIMILE  
GENERAL (415) 495-5436  
LITIGATION (415) 541-1734

WRITER'S DIRECT DIAL NUMBER

ROBERT S. BOGASON  
DAVID W. LONG  
CAROL A. HARRIS  
LELAND E. BUTLER  
GARY A. LAAKSO  
STEPHEN A. ROBERTS  
JAMES M. EASTMAN  
WAYNE M. BOLIO  
JOHN D. FEENEY  
GENERAL ATTORNEYS

BARBARA A. SPRUNG  
ASSISTANT GENERAL ATTORNEY

ROBERT E. PATTERSON  
CECELIA C. FUSICH  
ATTORNEYS

December 18, 1992

(415) 541-2057

## EXPRESS MAIL

Lee J. Kubby, Inc.  
A Professional Corporation  
P.O. Box 60485  
Sunnyvale, CA 94086-0485

Re: Santa Fe Southern Pacific Company -- Control -- Southern  
Pacific Transportation Company

Dear Mr. Kubby:

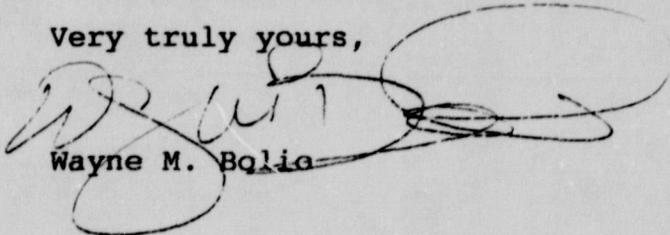
I received your submission to the ICC on Friday, December 18, 1992 at approximately 3:00 p.m. Contained within that submission was a copy of a report prepared by Tom Ellen entitled "The Future of The Perishable Business and PFE." That report contained various attachments, including attorney/client communications and documents protected by the attorney work-product doctrine. In the report I produced to you pursuant to the ICC's discovery procedures, those letters and communications were specifically redacted on the basis that they were protected by the attorney/client and attorney work-product doctrine. (See response to Request for Production No. 4.) However, the report you submitted in your materials to the ICC contained those attachments, which were obviously not produced by Southern Pacific Transportation Company. Accordingly, SPT and PFE hereby demand that you inform them as to how you obtained attorney/client communications.

I wish to point out to you that this is a very grave matter. SPT and PFE will be filing a request with the ICC for the return of all copies of those documents. Moreover, you are hereby requested to respond to me in writing by no later than December 22, 1992 as to how and by what means you obtained those attachments to the report of Tom Ellen entitled "The Future Of The Perishable Business" which are obviously opinion letters of attorneys employed by SPT and/or PFE.

Lee J. Kubby, Inc.  
December 18, 1992  
Page 2

In the event you refuse to explain how you obtained these documents, please be advised that SPT and PFE are prepared to pursue all legal means to compel the return of the documents and to discover how you or your client came into the possession of said documents.

Very truly yours,



Wayne M. Bolia

WMB:cmt

STB

FD-30400

(SUB 21)

11-23-92

I

38395

LAW OFFICES

LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION

38395  
BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

November 20, 1992

Secretary  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423  
Fin Doc 30400 Sub 21



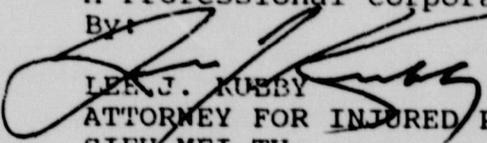
Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company  
Interrogatories and Request Production.

Dear Gentle People:

Enclosed please find original and 8 copies of Interrogatories and Request for Production by Tu in the above matter. Please file and return the enclosed face sheet endorsed filed in the enclosed self addressed and stamped envelope.

Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:

  
LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

LJK:me  
Encls.



LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331

Attorney for Sieu Mei Tu



INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

INTERROGATORIES AND INFORMAL REQUEST FOR PRODUCTION OF DOCUMENTS

PROPOUNDING PARTY:

SIEU MEI TU

RESPONDING PARTY:

SOUTHERN PACIFIC TRANSPORTATION COMPANY;  
ATCHISON, TOPEKA, SANTA FE RAILROAD COMPANY;  
PACIFIC FRUIT EXPRESS COMPANY;  
SANTA FE SOUTHERN PACIFIC CORP.

Applicants  
Interested Parties

SET NUMBER: ONE OF INTERROGATORIES

SET NUMBER: TWO PRODUCTION OF DOCUMENTS

DATED: November 20, 1992



TO APPLICANTS--INTERESTED PARTIES AND EACH OF THEM AND TO THEIR ATTORNEYS OF RECORD:

Pursuant to 49 C.F.R. Sections 1114.21 and 114.26 Sieu Mei Tu hereby submits the following interrogatories and informal requests for production addressed individually to Applicants-Interested parties and each of them.

These interrogatories and informal document requests are to be answered separately by officers or agents of Applicants and each of them competent to testify on their behalf, separately and fully in writing. Answers to these interrogatories and document requests should be served on the undersigned counsel for Sieu Mei Tu within 15 days after service of this document.

►DOCUMENT PRODUCTION

1. Please produce all of the specified documents which are in your possession, or available to you or to which you may gain access through reasonable effort, including information in the possession of your attorneys, accountants, advisors or other persons directly or indirectly employed by you, or connected with you, or anyone else otherwise subject to your control.
2. Unless specific arrangements to the contrary are expressly made by attorney for injured parties, you are to produce the originals together with all non-identical copies of each document requested.
3. In responding to this request for production, you must make a diligent search of your records and of other papers and materials in your possession or available to you or your rep-

representatives.

#### DEFINITIONS

For the purposes of this request for production of documents, and interrogators the following terms shall have the following meanings:

1. As used herein the term "document" refers to an and includes each and every printed, written, typewritten, graphic, photographic, electronically recorded or sound-recorded matter, however produced or reproduced, of every kind and description including, but not limited to, files, books, correspondence, letters, memoranda, telegraphs, papers, notes, records, resolutions, drafts, evaluations, entries, minutes, calendars, reports, appointment records, diaries, studies, working papers, financial records, summaries and charts, whether the original, or any carbon or photographic or other copy, reproduction or facsimile thereof, other than exact duplications. Any copy or excerpt of a document which bears any notes, additions, inserts, or other markings of any kind is to be considered a separate document for purposes of responding to the requests herein.

Document further means any writing or other compilation of information, whether handwritten, typewritten, printed, recorded, or produced by any process, including but not limited to: intra-company or other communications' business records; files; agreements; statements; pleadings; contracts; correspondence; letters; messages; telex messages; telegrams; facsimile

transmissions; memoranda; studies; directives; manuals; printed forms; bulletins; tabulations; projections; summaries or records of telephone or personal conversations or interviews; reports; calendars; scrapbooks; journals; diaries; log books; notes; notebooks; forecasts; photographs; photographic negatives; maps; tape recordings; wire recordings; computer tapes; computer discs; computer programs; computer printouts; data processing cards; all other photographic and retrievable data (whether encoded, taped or coded electronically, electromagnetically or otherwise); computer models; statistical or financial statements; accounts; data sheets; forms; graphs; charts; sketches; note charts; plans; drawings; tracings; blue prints; minutes or records or summaries of meetings or conferences; expressions or statements of policy; lists of persons attending meetings or conferences; opinions or reports or summaries of negotiations or investigations; brochures; newspapers; newsletters; magazines; periodicals; books; opinions or reports of consultants; pamphlets; advertisements; circulars; trade or other letters; press releases; . comments; catalogues; drafts; revisions of drafts; invoices; vouchers; receipts; orders; and, original or preliminary notes and any marginal notes or comments on any of the forgoing items.

Further, the term "document" includes:

(a) Basic records and summaries of such records (including computer runs);

(b) original versions and copies that differ in any respect from original versions; and

(c) Documents in the possession of applicants or documents in the possession of consultants or other persons that have assisted applicants in connection with this proceeding.

2. As used herein, "you" refers to each of the applicants who are noticed herein, to each of their agents, employees, representatives, accountants or attorneys, who with respect to the subject matters of this request, was or is acting on their behalf.

3. As used herein, "Tu" refers to Sieu Mei Tu.

4. As used herein, "SFSP" refers to applicant SANTA FE SOUTHERN PACIFIC CORP., and to each of its officers, agents, employees, representatives or attorneys who, with respect to the subject matter of the request, was or is acting on SFSP's behalf.

5. As used herein, "SPTC" refers to the applicant Southern Pacific Transportation Company and/or Santa Fe Pacific Corporation, their directors, officers, agents, employees, representatives, accountants or attorneys, who with respect to the subject matter of the request, was or is acting on SPTC's behalf.

6. As used herein, "PFE" refers to Pacific Fruit Express their directors, officers, agents, employees, representatives, accountants or attorneys, who with respect to the subject matter of the request, was or is acting on PFE's behalf.

7. As used herein "ATSF" refers to the applicant Atchison, Topeka, Santa Fe Railroad Company and to each of its agents, employees, representatives, accountants or attorneys, who with respect to the subject matter of the request, was or is acting on ATSF's behalf.

8. As used herein, "person" refers to and includes natural persons, as well as businesses (whether partnership, association, cooperative, proprietorship or corporation), and any government entity, department, administration, agency, bureau or political subdivision thereof and every other type of organization or ent-

ity, and all other artificial entities, unless otherwise limited herein.

9. As used herein, "MERGER" means the merger of SPTC and ATSF as originally petitioned in this matter.

10. As used herein, "identify" or "state the identity of" means:

(A) When used with respect to a person (whether as part of an identification of a document or oral communication or otherwise) refers to and includes identification by full name, business and residence address and telephone number, job title and employer, and a description of his or her duties and responsibilities..

It also includes identification by affiliation or connection in any way with any and each of ATSF, SPT, PFE, SFSP in any capacity, stating each such capacity and the dates of that affiliation, capacity, or connection.

(B). When used with respect to a corporation or other legal entity, to state the full name, address and State of incorporation or formation, and the identity of the person (s) who acted on behalf of such entity with respect to the subject matter of the Interrogatory;

(C). When used with respect to a document, to state (1) the type of document (e.g., letter, memorandum, telex, contract, calendar pad, report), (2) the number of pages, title, author, all addressees and actual recipients (including "cc:" and "bcc:" recipients), date, subject line or "re:" line, and (3) a description of the subject matter and content of the document.

(D) When used with respect to a document:

i. Known to have existed but no longer existing, to state the identity of its last know custodian, and the date on

and circumstances under which the document was lost, destroyed or otherwise became unavailable;

ii. Once but no longer in the possession, custody and control of ATSF, SPT, PFE, SPSF, or any of them, to state the date on and circumstances under which the document was disposed of, destroyed, surrendered by or otherwise left the possession, custody and control of ATSF, SPT, PFE, SPSF or any of them, the identity of its present (or last known) custodian and the location of such document, if known:

(E). When used with respect to documents, to provide information in sufficient detail to enable a party or person to whom a subpoena is directed to identify fully the document to be produced, and to enable Tu to determine that such document, when produced, in fact the document so described;

(F). When used with respect to oral communications, to state the date of such communications, the identity of each party to the communication, the place at which each party was located, the substance thereof and the method of such communication (eg, in person or by telephone).

13. "Define" means to explain in reference to the use of a word on the document referred to by a SFP designation (e.g. SFP 00001) by SFSP in its response to Tu's first request for production.

14. Unless otherwise stated, the time period for these interrogatories is and or request shall be from January 1, 1980 to December 30, 1988.

15. "Produce" means to make legible, complete and exact copies of all responsive documents which are to be mailed to the under-

signed counsel for Tu. Any request to produce is without prejudice to the right to request an order requiring production of documents.

#### INSTRUCTIONS

1. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa. Pronouns shall be construed as gender-neutral. Dates are inclusive unless stated otherwise. Each interrogatory shall be accorded a separate answer, and each subpart of an interrogatory shall be accorded a separate answer. Interrogatories or subparts thereof shall not be combined for the purpose of supplying a common answer thereto.
2. Answers must be verified by the person or persons responding to the specific interrogatory.
3. If exact data cannot be supplied in answering any interrogatory that calls for a numerical response, each of you should provide your best estimate of the data requested, indicate that this has been done by notation ("est.") in conjunction with the response, and describe the basis upon which the estimate was derived. In addition, state where the precise information can be found, including identification of each knowledgeable person and of all documents which contain the precise information or from which it can be derived.
4. If you or any of you cannot answer any part of any interrogatory in full, after exercising due diligence to secure the information to do so, you should so state and answer to the extent possible, specifying your inability to answer the remainder and

stating whatever information or knowledge you have of each unanswered part.

5. Should you assert a privilege or work product protection for any documents or communications about which information is requested by any of the following interrogatories and document requests you shall identify such documents and communications (including a brief description of the subject matter of any such document or communication), state the ground on which the asserted privilege rests, and state facts establishing the foundation of the asserted privilege.

6. These interrogatories and document requests are continuing in character, so as to require you to file supplementary answers under the circumstances described in 49 C. F. R. Section 1114.29(a)-(b). Where knowledge or information in the possession of you is requested, such requests include knowledge of your employees, agents, representatives and consultants.

7. Where these interrogatories seek information as to the existence or content of any document, the furnishing of a true and legible copy of such document will be accepted as an adequate reply to the Interrogatory.

8. Sieu Mei Tu reserves the right to serve further discovery requests in this proceeding.

INTERROGATORIES AND PRODUCTION REQUESTS

1. SFP 00001

Identify Directors

Alibrandi, Biaggini, Flamson, Furth, Gilmore,  
Krebs, Miller, Morphy, Parker, Reed, Runnells,  
Schmidt, Sisco, Swartz, Swift, West, Woelfle,  
and Wriston.

2. SFP 00002

(A) Did any of the rail merger related writedowns include writing down of refrigerated cars?

(B) If so what entity was record owner of those cars?

(C) Did any of the estimated rail merger writedowns and separation charges on income, include payments to any persons who had been employees of PFE on or before October 1, 1985?

(D) If so state the amount of such estimate.

(E) If so state how the figure was arrived at (including but not limited to what records were used to arrive at the figure).

(3) SFP 00004

Identify Munroe

(4) SFP 00009

(A) Identify Adam, Denton, Donohoe, Dodd, Keever, J.R. McKenzie, J. A. McMullen, J.A. Eidam, J. L. Steffan.

(B) By what Board(S) was this Audit Committee appointed and/or formed?

(5) SFP 00022-00090

(A) By whom was this document prepared? (B) For what purpose? (C) Whose initials appear on 00022? (D) What is the hand written date on page 00022? (E) Whose handwriting appears on pages 00084-00088? (F) What words and numbers appear on each of said pages (00084-00088)?

(6) SFP 00042

Identify SSW

(7) SFP 00085

What clerks are included in the designation clerks on this page?

(8) SFP 00248

(A) Identify T. J. Booth

Mr. Adam

Mr. Moreland

Mr. McNear

Mr. Dodd

(B) Define "big bang"

(9) SFP 00249

(A) Do revenues listed include income from refrigerated cars?

(B) Does Swift, Wesated statement include PFE?

(10) SFP 00246

Define "Settlement Case"

(11) SFP 00242

Define "Kirby"

(12) SFP 00240

Identify W. J. Taylor  
J. R. Fitzgerald  
J. P. Frestel, Jr.

(13) SFP 00232

Identify D. K. McNear

(14) SFP 00234

Identify what subsidiary companies are included in Statements of consolidated income.

(15) SFP 00237

Identify John J. Schmidt  
Messrs. Swartz, Adam, Donohoe

(16) SFP 00223

Identify (A) subsidiaries

(B) major subsidiaries

(17) SFP 00213

Identify Messrs. Krebs, Furth, Swartz, Adam, Davis, Denton, Dodd, Grossman, Hayes Knowlton, McLean, Cena

(18) SFP 00348

Identify J. R. Fitzgerald

Q. W. Torpin

(19) SFP 00344

Identify Schmidt,

F. N. Grossman

Krebs

Swartz

Knowlton

(20) SFP 00324

(A) What is make up of 40,000 employment?

(B) What is make up of 1,130 jobs net reduction?

(21) SFP 00334-335

Define (A) agreement employess

(B) operating employment

(C) non-operating crafts

(22) SFP 00332

Produce Labor Impact Exhibit Volume I Railroad Merger  
Application Section 1180.6

(23) SFP 00509

Define Audit Committee of the Board

(24) SFP 00513-514

Identify J. R. Fitzgerald

R. L. Banion

L. G. Simpson

R. O. Bredenberg

T. D. Mason

(25) SFP 00516

Define Santa Fe/Southern Pacific Five Year Plan

(26) SFP 00521

Identify Subsidiary Companies

(27) SFP 00522

Identify R. D. Krebs

Swartz

Cena

Booth

(28) SFP 01091

Identify Gary A. Kent

Mr. Booth

(29) SFP 01094

- (A) Are refrigerated cars discussed in this section?
- (B) If so what is written?

(30) SFP 01095

Identify Subsidiary companies (RDK)

(31) SFP 01249

Identify R. M. Champion, Jr.

(32) SFP 01257

Identify Subsidiary Companies

(33) SFP 01275

Identify Subsidiary companies

(34) SFP 01303

Identify (A) Mr. Booth

(B) "core" railroad

(C) OR-85 objective

(D) Define and identify "a peer group"

(35) SFP 01345

(A) Was a like letter mailed to the Brotherhood of Railway, Airline and Steamship Clerks Union? (B) If so, to whom was it addressed? (c) When was it mailed? (d) If so produce a copy.

(36) SFP 01347

Identify Mr. Kent

Mr. Conley

(37) SFP 01349

(A) Was further detail regarding the clerks categories (and of the specific Departments involved) thereafter developed?

(B) If so identify by whom. (C) Were clerks involved in clerical duties connected with handling refrigerated cars and or perishable goods included?

(38) SFP 01365

Were clerks involved in clerical duties concerning servicing refrigerated cars and or perishable goods included in Div 212, 213, 214 and or 215?

(39) SFP 01496

Identify SFSP

SP & SF

(40) SFP 01625

Define (A) Refrigerator Mechanical

(B) Refrigerator Non-Mechanical

(C) Identify who prepared this document. When was

it prepared?

(D) For what purpose was it prepared?

(41) SFP 01682-01693

Do any of the categories in this document include any maintenance of Way and Engineering forces that had been employed by PFE at Roseville and or Tucson on or before October 1, 1985?

(42) SFP 01954

Define "off in force reduction employees"

(43) SFP 01955-01956

Identify (A) who prepared this document.

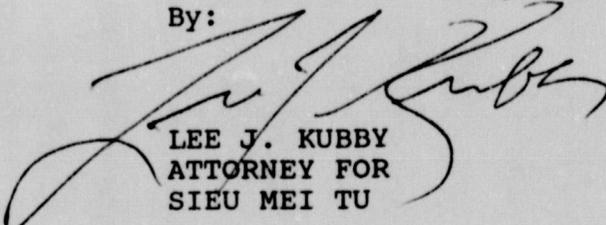
(B) SMW, BM's, and BS's

(C) For what purpose was it prepared?

(D) When was it prepared?

DATED November 20, 1992

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:

  
LEE J. KUBBY  
ATTORNEY FOR  
SIEU MEI TU

PROOF OF SERVICE BY MAIL

State of California  
County of Santa Clara

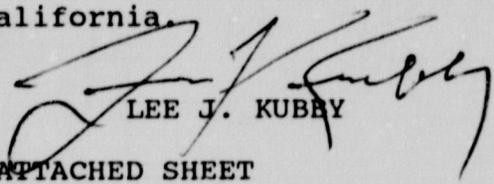
I am and at the time of the service hereinafter mentioned was a resident of the State of California, County of Santa Clara, and at least 18 years old. I am not a party to the within entitled action. I am an attorney licensed to practice in the State of California.

My business address is Box 60485, Sunnyvale, California 94086-0485. On 11-20-92 I deposited in the United States mail at Sunnyvale, California, enclosed in a sealed envelope and with the postage prepaid the attached

INTERROGATORIES AND INFORMAL REQUEST FOR PRODUCTION OF DOCUMENTS

addressed to the persons listed on the attached sheet:

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on 11-20-92 at Sunnyvale, California.

  
LEE J. KUBBY

ATTACHED SHEET

Honorable Paul S. Cross  
Interstate Commerce Commission  
12th & Constitution Aves. NW  
Washington, DC 20423

Adrian L. Steel, Jr.  
Mayer, Brown, & Platt  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Wayne M. Bolio  
Southern Pacific Transportation Company  
Southern Pacific Building  
1 Market Plaza #846  
San Francisco, CA 94105-1001

Donald F. Griffin, Esq.  
Highsaw, Mahoney & Clarke, P.C.  
Suite 210  
1050 Seventeenth Street, N.W.  
Washington, D.C. 20036

STB

FD-30400

(SUB 21)

1-11-93

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38409

LAW OFFICES

LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION

38409  
BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

January 09, 1993

Secretary  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423  
Fin Doc 30400 Sub 21

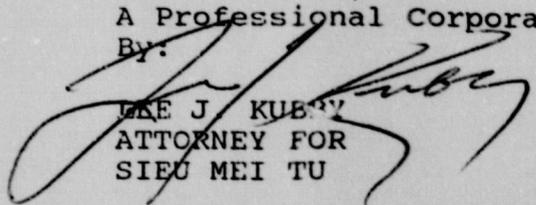
Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company  
Supplement to Motions of SIEU MEI TU COMPELLING DISCOVERY

Dear Gentle People:

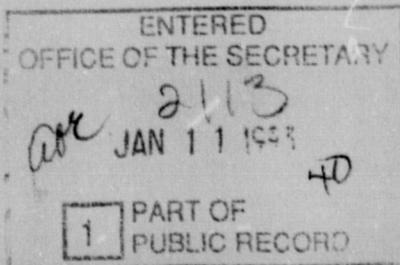
Enclosed please find original and 8 copies of  
Supplement to Motions of Sieu Mei Tu compelling discovery.  
Please file and return the enclosed face sheet endorsed  
filed in the enclosed self addressed and stamped envelope.

Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:

  
LEE J. KUBBY  
ATTORNEY FOR  
SIEU MEI TU

LJK:me  
Encls.



LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331

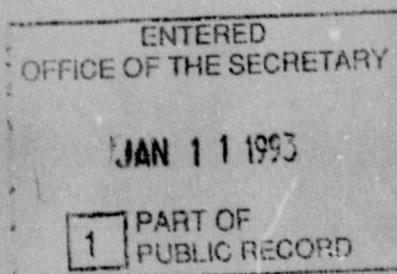
Attorney for Employee Party Sieu Mei Tu

INTERSTATE COMMERCE COMMISSION

SIEU MEI TU	)	
	)	
Employee Party	)	Finance Docket
	)	NO. 30400
	)	(Sub-No. 21)
	)	
VS	)	
	)	SUPPLEMENT TO
	)	MOTIONS OF
SOUTHERN PACIFIC TRANSPORTATION	)	SIEU MEI TU FOR
COMPANY; ATCHISON, TOPEKA, SANTA FE	)	ORDER COMPELLING
RAILROAD COMPANY; PACIFIC FRUIT	)	INSPECTION AND
EXPRESS COMPANY; SANTA FE SOUTHERN	)	PRODUCTION; AND
PACIFIC CORP.	)	RESPONSE TO
	)	INTEROGATORIES
	)	EXTENSION TIME
	)	TO COMPLETE
Applicants	)	DISCOVERY
Interested Parties	)	AND SUBMIT EVI-
	)	DENCE AND
	)	ARGUMENT

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

(A CLAIM OF CONFIDENTIALITY WAS BEEN MADE AS TO SOME OF THE  
INFORMATION CONTAINED HEREIN)



TO APPLICANTS AND INTERESTED PARTIES AND EACH OF THEM AND TO THEIR ATTORNEYS OF RECORD:

EMPLOYEE PARTY SIEU MEI TU RESPECTFULLY SUPPLEMENTS HER MOTION TO THE COMMISSION FOR AN ORDER COMPELLING APPLICANTS AND INTERESTED PARTIES AND EACH OF THEM TO PRODUCE FOR INSPECTION AND COPYING OF DOCUMENTS AND TO RESPOND TO INTERROGATORIES, pursuant to two "Demand for Inspection and Production" (1) served September 26, 1992, and motion thereon served October 16, and received by the commission on October 19, 1992, and (2) served November 20, 1992, and received by the commission on November 23, 1992, a copy of which is attached to her motion served as Exhibit A. Said motion served and submitted for filing on December 3, 1992, and received by the commission on December 4, 1992.

In support of her motions Sieu Mei Tu states the following:

MOTION SERVED OCTOBER 16, 1992

By order dated November 4, 1992, SPT was ordered to produce items (1) through (10) listed on the attached Appendix hereto. As to item (1) of said Appendix:

"All documents produced to the plaintiffs in Kraus v. Santa Fe Southern Pacific Corporation et al."

SPT produced no documents relative thereto.

As to item (2):

"Minutes of all meetings attended by SPTC, ATSF, and/or SPSF wherein any discussion took place concerning the proposed merger between ATSF and SPTC."

SPT produced no documents in response thereto.

As to item (3):

"All editions of the Southern Pacific Update, from January 1, 1980 to December 31, 1989." SPT produced no documents in response thereto.

As to item (4):

"Document entitled "The Future of the Perishable Business and PFE" and all exhibits and addenda thereto prepared by Thomas D. Ellen, Vice President & General Manager, on or about June 7, 1985." SPT by document dated 12/9/92 produced a document which redacted exhibits and addenda thereto without description of the redacted material, claiming attorney -client privilege and/or attorney work product doctrine without elaboration or description.

As to item (5):

"All memorandum, minutes, notes, regarding personnel to be moved to SPTC offices from PFE, of all meetings wherein said subject was discussed from January 1, 1981 to October 30, 1985." SPT by document dated 12/9/92 produced correspondence with the clerks union, but as to other documents referred to its response to item (4) in apparently some cryptic claim of privilege without description or elaboration, of what those documents are.

As to item (6) SPT responded by document dated December 9, 1992 that no such documents have been located.

As to item (7):

"Minutes of all special and regular Board of Directors Meetings of PFE from January 1, 1985, to October 30, 1985." SPT responded by document dated December 9, 1992, by enclosing a portion of minutes dated July 2, 1985, and claiming attorney client privilege and work product privilege as to

the remainder of those minutes and all other minutes included in the order to produce.

As to item (8) :

"Document from T. D. Ellen to D. K. McNear and D. M. Mohan dated April 2, 1984."  
By document dated December 9, 1992, SPT produced a redacted version of said document claiming that SPT had excluded matters not relevant to this matter and protected by the attorney client. attorney work product doctrine.

As to item (9) by document dated December 9, 1992, SPT claimed they had not located such document.

As to item (10):

"All documents produced to any other party to these proceedings."  
SPT has to date made no response to this portion of the order of the commission, other than a letter dated December 1, 1992, alleging transmission of the discovery responses of SPT to BMW and IAMAW.

MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND PRODUCTION  
OF DOCUMENTS SERVED DECEMBER 3, 1992.

SIEU MEI TU served on November 20, 1992, the Interrogatories and Informal Request for Production of Documents attached as Exhibit A to its motion served December 3, 1992 on SPT, PFE, ATSF, SPSF. By letter dated December 1, 1992, Santa Fe advised they did not intend to respond to the interrogatories and production submitted on November 20, 1992, on the basis that the requests were untimely, despite the fact that the submissions did not become due until

December 18, 1992, more than 20 days after November 20, 1992. By document asserting service on December 11, 1992, Sieu Mei Tu received Ex B to its motion from SPT. By document dated December 11, 1992, SFSP served objections and responses to Second Set of interrogatories and Request for Production of Documents of Sieu Mei Tu.

Sieu Mei Tu's motion requested that each responder:

10. As used herein, "identify" or "state the identity of" means: (A) When used with respect to a person (whether as part of an identification of a document or oral communication or otherwise) refers to and includes identification by full name, business and residence address and telephone number, job title and employer, and a description of his or her duties and responsibilities..

It also includes identification by affiliation or connection in any way with any and each of ATSF, SPT, PFE, SFSP in any capacity, stating each such capacity and the dates of that affiliation, capacity, or connection.

Interrogatories (1), (3), (4), (8), (12), (13), (15), (17), (18), (19), (24), (27), (28), (31), (34), (36) asked each responder to identify specific individuals as mentioned in specific documents produced by SFSP. As to each interrogatory no identification was made as to business and residence address and telephone number, job title and employer, nor a description of his or her duties and responsibilities, nor by affiliation in any way with any and each of ATSF, SPT, PFE, SFSP and or the capacity and the date dates of that affiliation, capacity, or connection.

As to interrogatories (3), (12), (15), (17), (18), (19), (28), (31), (34), (36) Neither responder gave any information concerning the persons they were requested to

identify.

As to interrogatory (1) SPT partially identified directors Biaginni, Furth, and Krebs, but neither responder identified in any way the remaining directors; as to interrogatory (4) SPT partially identified Denton, but neither responder identified any other person whose identity was requested; as to interrogatory (8) SPT partially identified Mr. Mc Near, but neither responder identified any other person whose identity was requested; as to interrogatory (24) SPT partially identified L. G. Simpson, and R. O. Bredenberg, but neither responder in any way identified the remaining persons; (27) SPT partially identified R.D. Krebs, but neither responder identified the remaining persons.

As to the following interrogatories, SPT claimed it had no knowledge because it had not produced the particular document referenced, and SFSP failed to answer :

(2), (3), (10), (11), (15), (16), (17), (18), (19), (23), (25), (28), (31), (34), (36), (37), (40), (42), (43),

As to the following interrogatories, both responders failed to answer:

(7), (8) (B), (20), (38), (41).

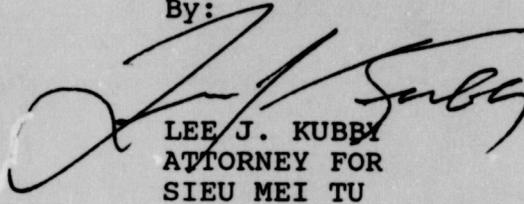
As to the following interrogatories, SFSP claimed the document was generated by SPT, so that SFSP would not respond, and SPT failed to answer:

(5) and (20).

Further the motion seeks an order that answers must be verified by the person or persons responding to the specific interrogatory. The responses of Santa Fe are not verified.

DATED January 11, 1993

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:



LEE J. KUBBY  
ATTORNEY FOR  
SIEU MEI TU

APPENDIX

(1) All documents produced to the plaintiffs in Kraus v. Santa Fe Southern Pacific Corp. et al.

(2) Minutes of all meetings attended by SPTC., ATSF, and/or SPSF CORP. wherein any discussion took place concerning the proposed merger between ATSF and SPTC.

(3) All editions of the Southern Pacific Update, from January 1, 1980 to December 31, 1989.

(4) Document entitled "The Future of the Perishable Business and PFE" and all exhibits and addenda thereto prepared by Thomas D. Ellen, Vice President & General Manager, on or about June 7, 1985.

(5) All memorandum, minutes, notes, regarding personnel to be moved to SPTC offices from PFE, of all meetings held wherein said subject was discussed from January 1, 1981 to October 30, 1985.

(6) All memos from E. E. Clark to T. D. Ellen from January 1, 1985 to October 30, 1985.

(7) Minutes of all special and regular Board of Directors meetings of PFE from January 1, 1981 to October 30, 1985.

(8) Document from T. D. Ellen to D. K. McNear and D. M. Mohan dated April 2, 1984.

(9) Memorandum to T. R. Ashton, from T. C. Wilson, Re: SP's Revenue Estimation Process w/P& L implications received by T. D. Ellen on or about June 29, 1984.

(10) All documents produced to any other party to these proceedings.

PROOF OF SERVICE BY MAIL

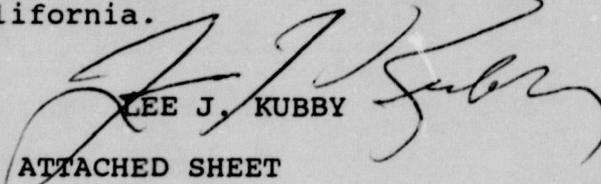
State of California  
County of Santa Clara

I am and at the time of the service hereinafter mentioned was a resident of the State of California, County of Santa Clara, and at least 18 years old. I am not a party to the within entitled action. I am an attorney licensed to practice in the State of California.

My business address is Box 60485, Sunnyvale, California 94086-0485. On 1-09-93 I deposited with Federal Express overnight mail at Sunnyvale, California, enclosed in a sealed envelope per instructions Hon. Paul Cross the attached

Supplement to Motions of Seiu Mei Tu Compelling Discovery addressed to the persons listed on the attached sheet:

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on 1-09-93 at Sunnyvale, California.

  
LEE J. KUBBY

ATTACHED SHEET

Honorable Paul S. Cross  
Interstate Commerce Commission  
12th & Constitution Aves. NW  
Washington, DC 20423

Adrian L. Steel, Jr.  
Mayer, Brown, & Platt  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Wayne M. Bolio  
Southern Pacific Transportation Company  
Southern Pacific Building  
1 Market Plaza #846  
San Francisco, CA 94105-1001

Donald F. Griffin, Esq.  
Highsaw, Mahoney & Clarke, P.C.  
Suite 210  
1050 Seventeenth Street, N.W.  
Washington, D.C. 20036

STB

FD-30400

(SUB 21)

1-11-93

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38411

# Southern Pacific Transportation Company

38411

Southern Pacific Building • One Market Plaza • San Francisco, California 94105  
(415) 541-1000

CANNON Y. HARVEY  
VICE PRESIDENT AND GENERAL COUNSEL

JOHN J. CORRIGAN  
GENERAL COUNSEL LITIGATION

LOUIS P. WARCHOT  
ASSISTANT GENERAL COUNSEL

JOHN MACDONALD SMITH  
SENIOR GENERAL ATTORNEY

FACSIMILE  
GENERAL (415) 495-5436  
LITIGATION (415) 541-1734  
WRITER & DIRECT DIAL NUMBER

ROBERT S. SOGASON  
DAVID W. LONG  
CAROL A. HARRIS  
LELAND E. BUTLER  
GARY A. LAAKSO  
STEPHEN A. ROBERTS  
JAMES M. EASTMAN  
WAYNE M. BOLIO  
JOHN D. FEENEY  
GENERAL ATTORNEYS

BARBARA A. SPRUNG  
ASSISTANT GENERAL ATTORNEY

ROBERT E. PATTERSON  
CECELIA C. FUSICH  
ATTORNEYS

January 8, 1992

VIA FEDERAL EXPRESS

The Honorable Sidney L. Strickland  
Secretary  
Office of Hearings  
Interstate Commerce Commission, Room 4117  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

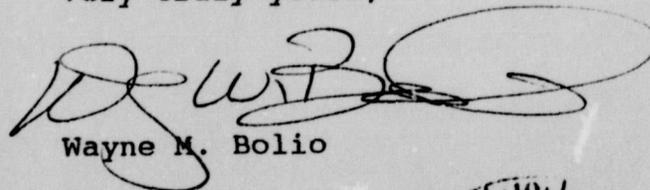
ENTERED  
Office of the Secretary  
91 JAN 11 1993  
llly 2108 2113

Dear Mr. Strickland:

Enclosed please find an original and 11 copies of SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO STRIKE MATERIALS IMPROPERLY INCLUDED IN THE RECORD AND TO COMPEL THE RETURN OF DOCUMENTS. Please note that these materials are subject to a confidentiality and protective order and we request they be filed accordingly.

If you have any questions, feel free to contact me. Thank you for your attention to these matters.

Very truly yours,

  
Wayne M. Bolio

Enclosure  
cc: All parties of record

g:\wmb\santa\p\sup.bri

CONFIDENTIAL MATERIAL  
Not Available for Public Inspection  
11 copies included with this filing sent to working office. Original copy is in the Office of the Secretary  
UNDER SEAL. llly 1/11/93

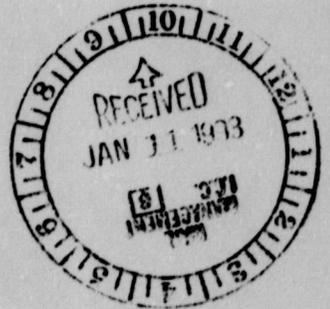


MATERIALS SUBJECT TO CONFIDENTIALITY AND PROTECTIVE ORDER

Finance Docket No. 30400 (Sub.No. 21)

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 30400 (SUB-NO. 21)



SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

ENTERED  
Office of the Secretary  
91 JAN 11 1993  
*lilly* 2108  
2113

CONFIDENTIAL MATERIAL  
Not Available for Public Inspection  
11 copies included with this filing sent  
to working office. Original copy is in the  
Office of the Secretary  
UNDER SEAL. *lilly*  
1/11/93

STB

FD-30400

(SUB 21)

12-4-92

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38399

LAW OFFICES  
**LEE J. KUBBY, INC.**  
A PROFESSIONAL CORPORATION

38399  
BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

December 03, 1992

**Secretary**  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423  
Fin Doc 30400 Sub 21

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company  
MOTION TO COMPEL DISCOVERY

ENTERED  
Office of the Secretary  
DEC 4 1992  
90 4 Part of Public Record 213

FED EX 2567775560

Dear Gentle People:

Enclosed please find original and 8 copies of  
MOTION TO COMPEL DISCOVERY by Tu in the above matter.  
Please file and return the enclosed face sheet endorsed  
filed in the enclosed self addressed and stamped envelope.

Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:

*Lee J. Kubby*  
LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

LJK:me  
Encls.



LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331

Attorney for Employee Party Sieu Mei Tu

INTERSTATE COMMERCE COMMISSION

SIEU MEI TU )

Employee Party )

VS )

SOUTHERN PACIFIC TRANSPORTATION )  
COMPANY; ATCHISON, TOPEKA, SANTA FE )  
RAILROAD COMPANY; PACIFIC FRUIT )  
EXPRESS COMPANY; SANTA FE SOUTHERN )  
PACIFIC CORP. )

Applicants )  
Interested Parties )

Finance Docket )  
NO. 30400 )  
(Sub-No. 21) )

MOTION OF )  
EMPLOYEE PARTY )  
SIEU MEI TU FOR )  
ORDER COMPELLING )  
INSPECTION AND )  
PRODUCTION; AND )  
RESPONSE TO )  
INTEROGATORIES )  
EXTENTION TIME )  
TO COMPLETE )  
DISCOVERY )  
AND SUBMIT EVI- )  
DENCE AND )  
ARGUMENT )

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company



LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331

Attorney for Employee Party Sieu Mei Tu

INTERSTATE COMMERCE COMMISSION

ENTERED  
Office of the Secretary  
90 DEC 4 1992  
Part of Public Record 213  
4

SIEU MEI TU )

Employee Party )

VS )

SOUTHERN PACIFIC TRANSPORTATION )  
COMPANY; ATCHISON, TOPEKA, SANTA FE )  
RAILROAD COMPANY; PACIFIC FRUIT )  
EXPRESS COMPANY; SANTA FE SOUTHERN )  
PACIFIC CORP. )

Applicants )  
Interested Parties )

Finance Docket  
NO. 30400  
(Sub-No. 21)

MOTION OF  
EMPLOYEE PARTY  
SIEU MEI TU FOR  
ORDER COMPELLING  
INSPECTION AND  
PRODUCTION; AND  
RESPONSE TO  
INTEROGATORIES  
EXTENTION TIME  
TO COMPLETE  
DISCOVERY  
AND SUBMIT EVI-  
DENCE AND  
ARGUMENT

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company



TO APPLICANTS AND INTERESTED PARTIES AND EACH OF THEM AND TO THEIR ATTORNEYS OF RECORD:

EMPLOYEE PARTY SIEU MEI TU RESPECTFULLY MOVES THE COMMISSION FOR AN ORDER COMPELLING APPLICANTS AND EACH OF THEM TO PRODUCE FOR INSPECTION AND COPYING OF DOCUMENTS AND TO RESPOND TO INTERROGATORIES, pursuant to "Demand for Inspection and Production" served and filed herein on November 20, 1992, a copy of which is attached hereto as Exhibit A.

Good cause exists for the discovery requested.

This motion is made under 49 CFR 1114.30 Rules of Practice.

In support of her motions Sieu Mei Tu states the following:

Petitioner served the attached Ex. A Interrogatories and Informal Request for Production of Documents on SPT, PFE, ATSF, SPSF, on November 20, 1992. On December 2, 1992, Sieu Mei Tu received the attached Ex B from SPT in response. No response has been received from ATSF or SPSF.

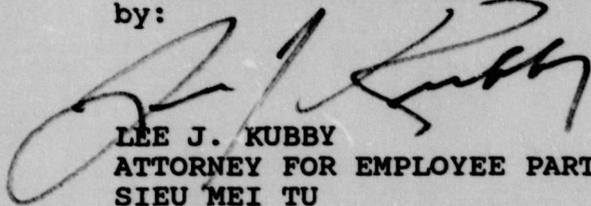
The refusal of SPT and SPSF to give discovery is without just cause. Under these circumstances, Sieu Mei Tu is unable to meet the pending schedule of submission of evidence and arguments by December 7, 1992, and requests that the submission of further evidence and argument on her behalf be continued to a reasonable date after compliance by the applicants with interrogatories and pending production requests and orders by the applicants, and that the applicants SPT and SPSF be ordered to respond to the pending

interrogatories and produce the documents requested.

To have the petitioner file and then petition to reopen when further evidence is available seems to be a waste of the commissions time, and not in the best interest of the public or the parties. Further, consideration of the BMWWE and IAMAW evidence and argument separate and apart from the Tu evidence and argument, also appears to place an undue burden on the commission, which has previously kept a uniform schedule.

DATED: December 2, 1992

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
by:



LEE J. KUBBY  
ATTORNEY FOR EMPLOYEE PARTY  
SIEU MEI TU

LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331

Attorney for Sieu Mei Tu

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

INTERROGATORIES AND INFORMAL REQUEST FOR PRODUCTION OF DOCUMENTS

PROPOUNDING PARTY:

SIEU MEI TU

RESPONDING PARTY:

SOUTHERN PACIFIC TRANSPORTATION COMPANY;  
ATCHISON, TOPEKA, SANTA FE RAILROAD COMPANY;  
PACIFIC FRUIT EXPRESS COMPANY;  
SANTA FE SOUTHERN PACIFIC CORP.

Applicants  
Interested Parties

SET NUMBER: ONE OF INTERROGATORIES  
SET NUMBER: TWO PRODUCTION OF DOCUMENTS

DATED: November 20, 1992

EXHIBIT A

TO APPLICANTS--INTERESTED PARTIES AND EACH OF THEM AND TO  
THEIR ATTORNEYS OF RECORD:

Pursuant to 49 C.F.R. Sections 1114.21 and 114.26 Sieu Mei Tu hereby submits the following interrogatories and informal requests for production addressed individually to Applicants-Interested parties and each of them.

These interrogatories and informal document requests are to be answered separately by officers or agents of Applicants and each of them competent to testify on their behalf, separately and fully in writing. Answers to these interrogatories and document requests should be served on the undersigned counsel for Sieu Mei Tu within 15 days after service of this document.

►DOCUMENT PRODUCTION

1. Please produce all of the specified documents which are in your possession, or available to you or to which you may gain access through reasonable effort, including information in the possession of your attorneys, accountants, advisors or other persons directly or indirectly employed by you, or connected with you, or anyone else otherwise subject to your control.
2. Unless specific arrangements to the contrary are expressly made by attorney for injured parties, you are to produce the originals together with all non-identical copies of each document requested.
3. In responding to this request for production, you must make a diligent search of your records and of other papers and materials in your possession or available to you or your rep-

representatives.

#### DEFINITIONS

For the purposes of this request for production of documents, and interrogators the following terms shall have the following meanings:

1. As used herein the term "document" refers to an and includes each and every printed, written, typewritten, graphic, photographic, electronically recorded or sound-recorded matter, however produced or reproduced, of every kind and description including, but not limited to, files, books, correspondence, letters, memoranda, telegraphs, papers, notes, records, resolutions, drafts, evaluations, entries, minutes, calendars, reports, appointment records, diaries, studies, working papers, financial records, summaries and charts, whether the original, or any carbon or photographic or other copy, reproduction or facsimile thereof, other than exact duplications. Any copy or excerpt of a document which bears any notes, additions, inserts, or other markings of any kind is to be considered a separate document for purposes of responding to the requests herein.

Document further means any writing or other compilation of information, whether handwritten, typewritten, printed, recorded, or produced by any process, including but not limited to: intra-company or other communications' business records; files; agreements; statements; pleadings; contracts; correspondence; letters; messages; telex messages; telegrams; facsimile

transmissions; memoranda; studies; directives; manuals; printed forms; bulletins; tabulations; projections; summaries or records of telephone or personal conversations or interviews; reports; calendars; scrapbooks; journals; diaries; log books; notes; notebooks; forecasts; photographs; photographic negatives; maps; tape recordings; wire recordings; computer tapes; computer discs; computer programs; computer printouts; data processing cards; all other photographic and retrievable data (whether encoded, taped or coded electronically, electromagnetically or otherwise); computer models; statistical or financial statements; accounts; data sheets; forms; graphs; charts; sketches; note charts; plans; drawings; tracings; blue prints; minutes or records or summaries of meetings or conferences; expressions or statements of policy; lists of persons attending meetings or conferences; opinions or reports or summaries of negotiations or investigations; brochures; newspapers; newsletters; magazines; periodicals; books; opinions or reports of consultants; pamphlets; advertisements; circulars; trade or other letters; press releases;. comments; catalogues; drafts; revisions of drafts; invoices; vouchers; receipts; orders; and, original or preliminary notes and any marginal notes or comments on any of the forgoing items.

Further, the term "document" includes:

(a) Basic records and summaries of such records (including computer runs);

(b) original versions and copies that differ in any respect from original versions; and

(c) Documents in the possession of applicants or documents in the possession of consultants or other persons that have assisted applicants in connection with this proceeding.

2. As used herein, "you" refers to each of the applicants who are noticed herein, to each of their agents, employees, representatives, accountants or attorneys, who with respect to the subject matters of this request, was or is acting on their behalf.

3. As used herein, "Tu" refers to Sieu Mei Tu.

4. As used herein, "SFSP" refers to applicant SANTA FE SOUTHERN PACIFIC CORP., and to each of its officers, agents, employees, representatives or attorneys who, with respect to the subject matter of the request, was or is acting on SFSP's behalf.

5. As used herein, "SPTC" refers to the applicant Southern Pacific Transportation Company and/or Santa Fe Pacific Corporation, their directors, officers, agents, employees, representatives, accountants or attorneys, who with respect to the subject matter of the request, was or is acting on SPTC's behalf.

6. As used herein, "PFE" refers to Pacific Fruit Express their directors, officers, agents, employees, representatives, accountants or attorneys, who with respect to the subject matter of the request, was or is acting on PFE's behalf.

7. As used herein "ATSF" refers to the applicant Atchison, Topeka, Santa Fe Railroad Company and to each of its agents, employees, representatives, accountants or attorneys, who with respect to the subject matter of the request, was or is acting on ATSF's behalf.

8. As used herein, "person" refers to and includes natural persons, as well as businesses (whether partnership, association, cooperative, proprietorship or corporation), and any government entity, department, administration, agency, bureau or political subdivision thereof and every other type of organization or ent-

ity, and all other artificial entities, unless otherwise limited herein.

9. As used herein, "MERGER" means the merger of SPTC and ATSF as originally petitioned in this matter.

10. As used herein, "identify" or "state the identity of" means:

(A) When used with respect to a person (whether as part of an identification of a document or oral communication or otherwise) refers to and includes identification by full name, business and residence address and telephone number, job title and employer, and a description of his or her duties and responsibilities..

It also includes identification by affiliation or connection in any way with any and each of ATSF, SPT, PFE, SFSP in any capacity, stating each such capacity and the dates of that affiliation, capacity, or connection.

(B). When used with respect to a corporation or other legal entity, to state the full name, address and State of incorporation or formation, and the identity of the person (s) who acted on behalf of such entity with respect to the subject matter of the Interrogatory;

(C). When used with respect to a document, to state (1) the type of document (e.g., letter, memorandum, telex, contract, calendar pad, report), (2) the number of pages, title, author, all addressees and actual recipients (including "cc:" and "bcc:" recipients), date, subject line or "re:" line, and (3) a description of the subject matter and content of the document.

(D) When used with respect to a document:

1. Known to have existed but no longer existing, to state the identity of its last know custodian, and the date on

and circumstances under which the document was lost, destroyed or otherwise became unavailable;

ii. Once but no longer in the possession , custody and control of ATSF, SPT, PFE, SPSF, or any of them, to state the date on and circumstances under which the document was disposed of, destroyed, surrendered by or otherwise left the possession, custody and control of ATSF, SPT, PFE, SPSF or any of them, the identity of its present ( or last known) custodian and the location of such document, if known:

(E). When used with respect to documents, to provide information in sufficient detail to enable a party or person to whom a subpoena is directed to identify fully the document to be produced, and to enable Tu to determine that such document, when produced, in fact the document so described;

(F). When used with respect to oral communications, to state the date of such communications, the identity of each party to the communication, the place at which each party was located, the substance thereof and the method of such communication (eg, in person or by telephone).

13. "Define" means to explain in reference to the use of a word on the document referred to by a SFP designation (e.g. SFP 00001) by SFSP in its response to Tu's first request for production.

14. Unless otherwise stated, the time period for these interrogatories is and or request shall be from January 1, 1980 to December 30, 1988.

15. "Produce" means to make legible, complete and exact copies of all responsive documents which are to be mailed to the under-

signed counsel for Tu. Any request to produce is without prejudice to the right to request an order requiring production of documents.

#### INSTRUCTIONS

1. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa. Pronouns shall be construed as gender-neutral. Dates are inclusive unless stated otherwise. Each interrogatory shall be accorded a separate answer, and each subpart of an interrogatory shall be accorded a separate answer. Interrogatories or subparts thereof shall not be combined for the purpose of supplying a common answer thereto.
2. Answers must be verified by the person or persons responding to the specific interrogatory.
3. If exact data cannot be supplied in answering any interrogatory that calls for a numerical response, each of you should provide your best estimate of the data requested, indicate that this has been done by notation ("est.") in conjunction with the response, and describe the basis upon which the estimate was derived. In addition, state where the precise information can be found, including identification of each knowledgeable person and of all documents which contain the precise information or from which it can be derived.
4. If you or any of you cannot answer any part of any interrogatory in full, after exercising due diligence to secure the information to do so, you should so state and answer to the extent possible, specifying your inability to answer the remainder, and

stating whatever information or knowledge you have of each unanswered part.

5. Should you assert a privilege or work product protection for any documents or communications about which information is requested by any of the following interrogatories and document requests you shall identify such documents and communications (including a brief description of the subject matter of any such document or communication), state the ground on which the asserted privilege rests, and state facts establishing the foundation of the asserted privilege.

6. These interrogatories and document requests are continuing in character, so as to require you to file supplementary answers under the circumstances described in 49 C. F. R. Section 1114.29(a)-(b). Where knowledge or information in the possession of you is requested, such requests include knowledge of your employees, agents, representatives and consultants.

7. Where these interrogatories seek information as to the existence or content of any document, the furnishing of a true and legible copy of such document will be accepted as an adequate reply to the Interrogatory.

8. Sieu Mei Tu reserves the right to serve further discovery requests in this proceeding.

INTERROGATORIES AND PRODUCTION REQUESTS

1. SFP 00001

Identify Directors

Alibrandi, Biaggini, Flamson, Furth, Gilmore,  
Krebs, Miller, Morphy, Parker, Reed, Runnells,  
Schmidt, Sisco, Swartz, Swift, West, Woelfle,  
and Wriston.

2. SFP 00002

(A) Did any of the rail merger related writedowns  
include writing down of refrigerated cars?

(B) If so what entity was record owner of those cars?

(C) Did any of the estimated rail merger writedowns and  
separation charges on income, include payments to any persons who  
had been employees of PFE on or before October 1, 1985?

(D) If so state the amount of such estimate.

(E) If so state how the figure was arrived at (including  
but not limited to what records were used to arrive at the  
figure).

(3) SFP 00004

Identify Munroe

(4) SFP 00009

(A) Identify Adam, Denton, Donohoe, Dodd, Keever, J.R.  
McKenzie, J. A. McMullen, J.A. Eidam, J. L. Steffan.

(B) By what Board(S) was this Audit Committee appointed and/or formed?

(5) SFP 00022-00090

(A) By whom was this document prepared? (B) For what purpose? (C) Whose initials appear on 00022? (D) What is the hand written date on page 00022? (E) Whose handwriting appears on pages 00084-00088? (F) What words and numbers appear on each of said pages (00084-00088)?

(6) SFP 00042

Identify SSW

(7) SFP 00085

What clerks are included in the designation clerks on this page?

(8) SFP 00248

(A) Identify T. J. Booth

Mr. Adam

Mr. Moreland

Mr. McNear

Mr. Dodd

(B) Define "big bang"

(9) SFP 00249

(A) Do revenues listed include income from refrigerated cars?

(B) Does Swift, Wesated statement include PFE?

(10) SFP 00246

Define "Settlement Case"

(11) SFP 00242

Define "Kirby"

(12) SFP 00240

Identify W. J. Taylor

J. R. Fitzgerald

J. P. Frestel, Jr.

(13) SFP 00232

Identify D. K. McNear

(14) SFP 00234

Identify what subsidiary companies are included in Statements of consolidated income.

(15) SFP 00237

Identify John J. Schmidt

Messrs. Swartz, Adam, Donohoe

(16) SFP 00223

Identify (A) subsidiaries

(B) major subsidiaries

(17) SFP 00213

Identify Messrs. Krebs, Furth, Swartz, Adam, Davis, Denton, Dodd, Grossman, Hayes Knowlton, McLean, Cena

(18) SFP 00348

Identify J. R. Fitzgerald

Q. W. Torpin

(19) SFP 00344

Identify Schmidt,

F. N. Grossman

Krebs

Swartz

Knowlton

(20) SFP 00324

(A) What is make up of 40,000 employment?

(B) What is make up of 1,130 jobs net reduction?

(21) SFP 00334-335

Define (A) agreement employess

(B) operating employment

(C) non-operating crafts

(22) SFP 00332

Produce Labor Impact Exhibit Volume I Railroad Merger  
Application Section 1180.6

(23) SFP 00509

Define Audit Committee of the Board

(24) SFP 00513-514

Identify J. R. Fitzgerald

R. L. Banion

L. G. Simpson

R. O. Bredenberg

T. D. Mason

(25) SFP 00516

Define Santa Fe/Southern Pacific Five Year Plan

(26) SFP 00521

Identify Subsidiary Companies

(27) SFP 00522

Identify R. D. Krebs

Swartz

Cena

Booth

(28) SFP 01091

Identify Gary A. Kent

Mr. Booth

(29) SFP 01094

(A) Are refrigerated cars discussed in this section?

(B) If so what is written?

(30) SFP 01095

Identify Subsidiary companies (RDK)

(31) SFP 01249

Identify R. M. Champion, Jr.

(32) SFP 01257

Identify Subsidiary Companies

(33) SFP 01275

Identify Subsidiary companies

(34) SFP 01303

Identify (A) Mr. Booth

(B) "core" railroad

(C) OR-85 objective

(D) Define and identify "a peer group"

(35) SFP 01345

(A) Was a like letter mailed to the Brotherhood of Railway, Airline and Steamship Clerks Union? (B) If so, to whom was it addressed? (c) When was it mailed? (d) If so produce a copy.

(36) SFP 01347

Identify Mr. Kent

Mr. Conley

(37) SFP 01349

(A) Was further detail regarding the clerks categories (and of the specific Departments involved) thereafter developed?

(B) If so identify by whom. (C) Were clerks involved in clerical duties connected with handling refrigerated cars and or perishable goods included?

(38) SFP 01365

Were clerks involved in clerical duties concerning servicing refrigerated cars and or perishable goods included in Div 212, 213, 214 and or 215?

(39) SFP 01496

Identify SFSP

SP & SF

(40) SFP 01625

Define (A) Refrigerator Mechanical

(B) Refrigerator Non-Mechanical

(C) Identify who prepared this document. When was

it prepared?

(D) For what purpose was it prepared?

(41) SFP 01682-01693

Do any of the categories in this document include any maintenance of Way and Engineering forces that had been employed by PFE at Roseville and or Tucson on or before October 1, 1985?

(42) SFP 01954

Define "off in force reduction employees"

(43) SFP 01955-01956

Identify (A) who prepared this document.

(B) SMW, BM's, and BS's

(C) For what purpose was it prepared?

(D) When was it prepared?

DATED November 20, 1992

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:

LEE J. KUBBY  
ATTORNEY FOR  
SIEU MEI TU

# Southern Pacific Transportation Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

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November 25, 1992

(415) 541-1752

Lee Cubby, Esq.  
P.O. Box 60485  
Sunnyvale, CA 94086-0485

Re: Santa Fe Southern Pacific Corporation -- Control --  
Southern Pacific Transportation Company

Dear Mr. Cubby:

Please be advised that in view of the Supplemental Order issued by Judge Cross on November 16, 1992, Southern Pacific will await the resolution of the appeal from the November 4 discovery order before responding to Tu's discovery requests.

Very truly yours,

*Wayne Bolio (by BAS)*

Wayne M. Bolio

WMB:cmt

EXHIBIT B

PROOF OF SERVICE BY MAIL

State of California  
County of Santa Clara

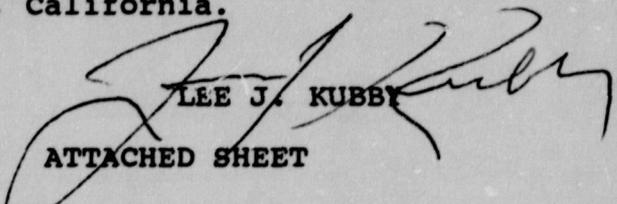
I am and at the time of the service hereinafter mentioned was a resident of the State of California, County of Santa Clara, and at least 18 years old. I am not a party to the within entitled action. I am an attorney licensed to practice in the State of California.

My business address is Box 60485, Sunnyvale, California 94086-0485. On 12-03-92 I deposited in the United States mail at Sunnyvale, California, enclosed in a sealed envelope and with the postage prepaid the attached

MOTION OF EMPLOYEE PARTY TO COMPEL DISCOVERY

addressed to the persons listed on the attached sheet:

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on 12-03-92 at Sunnyvale, California.

  
LEE J. KUBBY

ATTACHED SHEET

Honorable Paul S. Cross  
Interstate Commerce Commission  
12th & Constitution Aves. NW  
Washington, DC 20423

Adrian L. Steel, Jr.  
Mayer, Brown, & Platt  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Wayne M. Bolio  
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San Francisco, CA 94105-1001

Donald F. Griffin, Esq.  
Highsaw, Mahoney & Clarke, P.C.  
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1050 Seventeenth Street, N.W.  
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STB

FD-30400 (SUB 21)

8-27-92

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38370

28370

**SIDLEY & AUSTIN**  
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WRITER'S DIRECT NUMBER  
(202) 736-8252

125<sup>th</sup>  
Anniversary  
1866-1991

August 27, 1992

**BY MESSENGER**

Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Finance Docket No. 30400 (Sub-No. 21), Santa Fe  
Southern Pacific Corp. -- Control -- Southern  
Pacific Transportation Co.

Dear Mr. Strickland:

Enclosed for filing on behalf of Santa Fe Pacific Corporation in the above-referenced proceeding are a signed original and 11 copies of a "Motion for Entry of Protective Order" and a transmittal letter to Honorable Paul S. Cross.

Please acknowledge receipt of these papers for filing by date-stamping the enclosed duplicate copy and returning it with our messenger. Thank you for your attention to this matter.

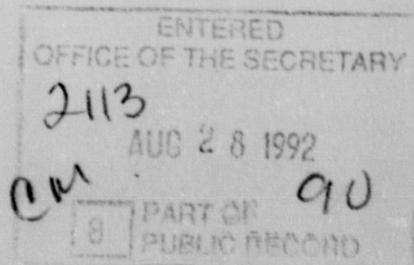
Very truly yours,

*Vincent F. Prada*

G. Paul Moates  
Vincent F. Prada

Enclosures

cc: Honorable Paul S. Cross (w/encls.)  
All Parties of Record



BEFORE THE  
INTERSTATE COMMERCE COMMISSION

---

FINANCE DOCKET NO. 30400 (SUB-NO. 21)

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SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

---

MOTION FOR ENTRY OF PROTECTIVE ORDER

ORIGINAL



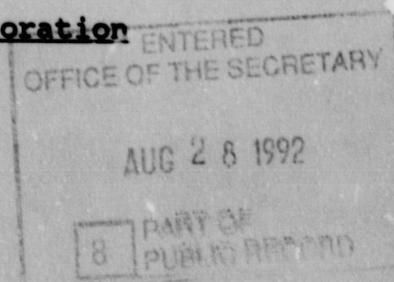
G. Paul Moates  
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Washington, D.C. 20006  
(202) 463-2000

Attorneys for Santa Fe Pacific Corporation

DATED: August 27, 1992



BEFORE THE  
INTERSTATE COMMERCE COMMISSION

---

FINANCE DOCKET NO. 30400 (SUB-NO. 21)

---

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

---

MOTION FOR ENTRY OF PROTECTIVE ORDER

Pursuant to 49 C.F.R. § 1114.21(c), Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation) ("SFP") hereby moves for entry of a protective order to safeguard the confidentiality of proprietary and commercially sensitive information and data that may be produced to any party during discovery or otherwise divulged during the course of this proceeding.

As explained below, SFP has submitted the proposed Protective Order to counsel for the Brotherhood of Maintenance of Way Employes ("BMWE") and the International Association of Machinists and Aerospace Workers ("IAMAW") for their review and, with the exception of one issue, the parties have reached agreement on the terms of an appropriate Protective Order. SFP requests that the Commission expeditiously resolve the one outstanding issue dividing the parties, and promptly enter the requested Protective Order on or before September 1, 1992 -- the agreed due date for service of SFP's responses and objections to BMWE/IAMAW's document production requests -- so that SFP's production of confidential documents in response to BMWE/IAMAW's

discovery requests may proceed without further delay in the progress of this proceeding.

This proceeding, recently reopened by the Commission following judicial remand by the U.S. Court of Appeals for the Ninth Circuit,<sup>1</sup> involves claims by two labor organizations (BMWE and IAMAW) that the Commission should exercise discretionary authority to award labor protection conditions for the benefit of former Southern Pacific Transportation Company ("SPT") employees who allegedly may have been adversely affected by orders issued or actions taken by SFP in contemplation of the proposed but subsequently disapproved merger of SPT and The Atchison, Topeka and Santa Fe Railway Company ("ATSF").<sup>2</sup>

BMWE and IAMAW have recently served on SFP interrogatories and document requests seeking production of various types of proprietary internal records and information of SFP and its wholly-owned rail carrier subsidiary, ATSF. On August 17, 1992, SFP served partial responses and objections to BMWE/IAMAW's interrogatories. In accordance with the Commission's procedural order served August 18, 1992, SFP's final answers to interrogatories and responses to BMWE/IAMAW's document production requests are due on September 1, 1992.

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<sup>1</sup> See Railway Labor Executives' Association v. ICC, 958 F.2d 252 (9th Cir. 1992).

<sup>2</sup> One former employee of an SPT subsidiary (Sieu Mei Tu) has also submitted comments requesting relief in response the Commission's June 18, 1992 order reopening this proceeding.

Certain of BMWI/IAMAW's discovery requests seek information or documents that may be highly confidential and commercially sensitive including, inter alia, information revealing SFP's methodology and procedures for evaluating proposed changes in rail operations and the costs of Commission-mandated labor protection conditions, the assessment of operating and customer service requirements on the ATSF or SPT systems, internal financial and accounting practices and strategies, or other sensitive information. Improper disclosure and use of such information could cause commercial injury to SFP and ATSF, and possibly to SPT as well. In addition, to the extent that the requested information and documents includes shipper-specific traffic or service information, such production, absent entry of an appropriate protective order, arguably could violate the provisions of 49 U.S.C. § 11910.<sup>3</sup>

In order to ensure that any such confidential, proprietary or commercially sensitive information requested or produced during discovery in this proceeding is used solely for purposes of the instant proceeding and not for any other purpose, and in order to minimize potential discovery disputes, SFP requests the Commission to enter a protective order in the form attached as Exhibit A this motion. The proposed Protective Order provides that discovery materials designated by a producing party as

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<sup>3</sup> See, e.g., Docket No. 37063, Increased Rates on Coal, L&N RR, October 31, 1978 (served December 11, 1990), at 3-4; Docket No. 37021, Annual Volume Rates on Coal -- Rawhide Junction, WY to Sergeant, IA (served April 1, 1985), at 5.

confidential may be used solely for purposes of this Commission proceeding and not for any commercial, business or other purpose. It further provides that such confidential materials produced by one party may be disclosed only to authorized representatives of the recipient party who have read the Protective Order and agree in writing to be bound by its terms prior to their receipt of any such confidential materials.

The proposed Protective Order also sets forth procedures for appropriate handling of confidential information and data that may be included in any materials filed with the Commission. Finally, the proposed Order recites that exchange of confidential materials in accordance with the restrictions contained in the order will not result in a violation of 49 U.S.C. §§ 11343 or 11910.<sup>4</sup>

The proposed Protective Order contains provisions substantially similar to those which the Commission has included in protective orders entered in other recent proceedings.<sup>5</sup> As

---

<sup>4</sup> Under the terms of the Protective Order, however, each party would have the right to apply to the Commission for an order granting additional or different protective conditions to govern the disclosure and use of particular materials produced during discovery or otherwise divulged during the course of this proceeding.

<sup>5</sup> See, e.g., Finance Docket No. 32133, Union Pacific Corp. -- Control -- Chicago & North Western Holdings Corp. (served August 24, 1992); Finance Docket No. 31979, CSX Corp. & American Commercial Lines, Inc. -- Control & Merger -- Valley Line Acquisition Corp. (served December 19, 1991); Finance Docket No. 31802 (Sub-No. 1), South Kansas & Oklahoma Railroad, Inc. -- Acquisition & Operation Exemption -- The Atchison, Topeka & Santa Fe Railway Co. (served September 6, 1991); Docket No. 40581, Georgia Power Co. v. Southern Railway Co. (served June 25, 1991); Finance (continued...)

the Commission has recognized in adopting protective orders in these and other cases, the proposed Protective Order would preserve the confidentiality of commercially sensitive or competitively significant information and data while at the same time minimizing potential discovery disputes and facilitating the efficient resolution of this case.<sup>6</sup>

Pursuant to the commitment stated in the joint letter of SFP and BMW/IAMAW to Chief Judge Cross dated August 11, 1992, SFP has worked with counsel for BMW/IAMAW in an attempt to reach agreement on the terms of an appropriate protective order to safeguard confidential proprietary and commercial information produced during discovery. By letter dated August 14, 1992, SFP submitted for BMW/IAMAW counsel's review a draft protective order virtually identical to the protective orders issued in several recent Commission proceedings.<sup>7</sup> BMW/IAMAW responded by

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<sup>5</sup>(...continued)

Docket No. 31801, Illinois Central Corp. & Illinois Central Railroad Co. -- Control -- Midsouth Corp. (served March 28, 1991); Docket No. 40131 (Sub-No. 1), Ashley Creek Phosphate Co. v. Chevron Pipe Line Co. (served January 14, 1991);

<sup>6</sup> See, e.g., Finance Docket No. 32133, Union Pacific Corp. -- Control -- Chicago & North Western Holdings Corp. (served August 24, 1992); Finance Docket No. 31730, Rio Grande Industries, Inc., et al. -- Trackage Rights -- Burlington Northern Railroad Co. Lines Between Kansas City, MO & Chicago, IL (served September 28, 1990), at 1; Finance Docket No. 31562, Union Pacific Railroad Co. & Missouri Pacific Railroad Co. -- Trackage Rights Over Lines of Chicago & North Western Transportation Co. Between Fremont, NE/Council Bluffs, IA, & Chicago, IL (served November 30, 1989), at 2.

<sup>7</sup> The draft Protective Order contained provisions virtually identical to those of the protective orders issued in Docket No. 40581, Georgia Power Co. v. Southern Railway Co. (served  
(continued...))

letter dated August 17, 1992, proposing several changes in SFP's draft Protective Order. Following discussions between counsel, SFP by letter dated August 20, 1992 agreed to most of the revisions requested by BMW/IAMAW. In a letter dated August 25, 1992 (included as Exhibit B hereto), counsel for BMW/IAMAW accepted these revisions, but objected to SFP's proposed language in Paragraphs 1 and 7 of the proposed Protective Order.

BMW/IAMAW's objection to the proposed language of Paragraphs 1 and 7 of SFP's proposed Protective Order raises a single issue, which the parties have agreed to submit for resolution by the Commission. The issue is whether the requested Protective Order should restrict the use of confidential discovery materials to the instant Commission proceeding (a restriction that is commonly imposed in most Commission proceedings) or whether the Protective Order should expressly authorize the dissemination and use of confidential materials in connection with other proceedings. The unions seek in Paragraph 1 to define the "Proceeding" to which the Protective Order restrictions apply to include not only the instant Commission proceeding (and any other Commission proceedings involving the interpretation or application of any labor protective conditions that the Commission may ultimately impose in this proceeding), but also any other non-ICC proceeding. Specifically, BMW and IAMAW seek the right to permit any one of the thousands of their individual

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<sup>7</sup>(...continued)

June 25, 1991), and Docket No. 40424, Exxon Coal USA, Inc. v. Norfolk Southern Corp. (served August 1, 1990).

members to obtain access to and use confidential discovery materials produced by SFP in this Commission proceeding in any subsequent arbitration proceeding involving individual employee claims for benefits under any labor protective conditions that might ultimately be imposed.<sup>8</sup>

For several different reasons, BMW/IAMAW's request for authorization under the Protective Order to disseminate and use in individual employee arbitration and other non-ICC proceedings confidential discovery materials that have been produced in the instant proceeding is unwarranted and, if granted, would largely eviscerate the purposes of the Protective Order to safeguard the confidentiality of SFP's proprietary and commercially sensitive information.<sup>9</sup>

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<sup>8</sup> In prior submissions, a different organization representing labor interests (the Railway Labor Executives' Association) argued that the Commission in this proceeding should award labor protective conditions similar to the so-called New York Dock labor protective conditions typically imposed in connection with railroad merger, consolidation and control transactions approved by the Commission under 49 U.S.C. § 11343. The New York Dock conditions require that disputes over an individual employee's eligibility for employee protective benefits must be submitted to binding arbitration.

<sup>9</sup> BMW/IAMAW's requested revisions to Paragraph 1 of the Protective Order would not only authorize individual employees the extraordinary right to use in other proceedings (including arbitrations) confidential SFP discovery materials produced in this proceeding, but would also impermissibly broaden the scope of the employees and rail carriers at issue. BMW/IAMAW's proposed language in Paragraph 1 defines the "proceeding" to which the Protective Order applies as including "claims to a rail carrier party." To the extent that this language could be construed to include ATSF (which technically is not a party to this proceeding), such language would plainly exceed the proper scope of this proceeding. The Commission's June 18, 1992 order reopening this proceeding (at 3) makes clear that the issue of  
(continued...)

First, acceptance of BMW/IAMAW's proposed revisions would seriously undermine the purpose and effectiveness of the confidentiality restrictions contained in the Protective Order. The fundamental purpose of any discovery protective order, as in this case, is to restrict the dissemination and use of confidential, proprietary and commercial information to a limited number of persons who have a genuine need for access to such information in order to participate meaningfully in a specific proceeding. Under the textual revisions to the Protective Order sought by BMW/IAMAW, however, there would be no meaningful limitations on the disclosure of SFP's confidential discovery materials. Such confidential information could be released to any one of the thousands of individual BMW/IAMAW members who are former employees of SPT and who might conceivably want to consider making a claim for employee protective benefits. SFP submits that, even with the other restrictions contained in the Protective Order, allowing such widespread disclosure of confidential discovery materials to a multitude of individuals (many of whom may not be represented by counsel) would be impossible to police and would thoroughly undermine the important purposes of the Protective Order.

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<sup>9</sup>(...continued)

possible labor protective conditions is limited to former SPT employees who may have been adversely affected by actions taken or orders issued by SFSP in contemplation of the disapproved ATSF/SPT merger. The order therefore invited evidence and argument only on behalf of former SPT employees. Because this proceeding is confined to the issue of possible labor protective conditions in favor of SPT employees, the terms of the proposed Protective Order should be similarly limited.

Second, BMW/IAMAW's requested revisions in the proposed Protective Order should be rejected because they are not necessary at this time. Because the Commission has not imposed and, in SFP's view, should not impose any labor protective conditions in this case, BMW/IAMAW's claimed need for the use of confidential discovery materials in individual employee arbitration proceedings is entirely speculative. Even if the Commission were to impose protective conditions and even if confidential discovery materials produced in this proceeding were essential to an individual employee's ability to prove his or her entitlement to relief under those conditions, the proper course of action would be for the particular employee to seek modification of the Protective Order at the time such a claim for protective benefits is made, when the specific facts concerning the individual employee's need for particular confidential discovery materials could be evaluated. The Commission on numerous occasions has granted requests to modify protective orders, and would clearly have the authority on a proper showing to modify the requested Protective Order so as to allow individual claimants access to specific confidential discovery materials for uses not authorized by the Protective Order.

SFP thus believes that the issue whether individual employees should be allowed access to confidential discovery materials to be used in prosecuting arbitrations under Commission-imposed labor protective conditions should be decided only if and when the Commission should award labor protective condi-

tions and an individual employee should assert a claim for benefits and demonstrate actual need for access to confidential discovery materials in order to prove his or her claim.

Third, BMW/IAMAW's extraordinary request for express authorization to use in one proceeding confidential discovery materials produced by a party in an entirely separate proceeding before a different tribunal represents an attempt to circumvent the normal rules restricting the availability of discovery in individual arbitration proceedings. As BMW/IAMAW is aware, discovery generally is limited or unavailable in individual arbitrations conducted under the New York Dock and other Commission-imposed standard labor protective conditions. By seeking permission to disclose confidential SFP discovery materials to individual employees for use in prosecuting arbitration claims, BMW/IAMAW is improperly seeking to obtain through discovery in this proceeding information to be used in arbitral forums in which discovery is restricted. The Commission should not allow the availability of discovery in this proceeding to be used to evade and undermine the normal procedural rules governing arbitration proceedings.<sup>10</sup>

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<sup>10</sup> As noted above, the Commission has entered protective orders similar to the Protective Order requested here in numerous proceedings in which New York Dock or other standard labor protective conditions were imposed. SFP is unaware of any instance in which these protective orders have authorized the use of confidential discovery materials in connection with the preparation of individual claims or prosecution of individual arbitration proceedings under the labor protective conditions.

Accordingly, the Commission should reject BMW/IAMAW's request to exploit the instant proceeding in order to obtain impermissible discovery for use in individual employee arbitration proceedings, and should instead promptly enter the Protective Order proposed by SFP.

CONCLUSION

For the foregoing reasons, the Commission should grant the motion for a protective order and should issue the proposed Protective Order attached hereto.

Respectfully submitted,

*Vincent Prada*

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Vincent F. Prada  
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Of Counsel

Attorneys for Santa Fe Pacific Corporation

DATED: August 27, 1992

EXHIBIT A

**PROPOSED PROTECTIVE ORDER**

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 30400 (Sub-No. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

Decided: August \_\_, 1992

By motion filed August 27, 1992, Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation) ("SFP") requests issuance of a protective order to govern the disclosure and use of confidential, proprietary or commercially sensitive information and data that may be produced during discovery or otherwise divulged by any party to another during the course of this proceeding.

There is good cause shown for the motion to be granted. Unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause serious competitive or commercial injury to the parties. Issuance of the requested protective order would ensure that such information and data produced by any party in response to a discovery request or otherwise will be used solely for purposes of this proceeding and not for any other business or commercial use. The requested protective order would also facilitate the prompt and efficient resolution of this proceeding by minimizing potential discovery disputes.

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

It is ordered:

1. The motion for protective order is granted, and the Protective Order reproduced in the Appendix to this order is adopted as an order of the Commission.
2. This order is effective on the date served.

By the Commission, Paul S. Cross, Chief Administrative Law Judge, on August \_\_, 1992.

Sidney L. Strickland, Jr.  
Secretary

(SEAL)

APPENDIX

PROTECTIVE ORDER

On the motion of Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation) ("SFP"), and for the purpose of protecting against improper use or disclosure of confidential, proprietary or commercially sensitive business information and data obtained or to be obtained by any party or person through discovery or otherwise during the course of this proceeding,

It is ordered that:

1. The term "Proceeding," as used in this Protective Order, shall mean the proceeding of the Interstate Commerce Commission (the "Commission") designated as Finance Docket No. 30400 (Sub-No. 21), as well as any subsequent Commission proceeding concerning the interpretation or application of any labor protective conditions imposed by the Commission in connection with the transaction(s) at issue in Finance Docket No. 30400 and all related sub-dockets.

2. This Protective Order shall apply: (a) to all documents, information and other products of discovery obtained by any party to this Proceeding pursuant to discovery requests, whether directed to another party or to a person not a party to this Proceeding; and (b) to all documents and information contained in any materials filed with the Interstate Commerce Commission (the "Commission") by any party during the course of this Proceeding (including transcripts of oral testimony and hearings before the Commission).

3. Any party or person responding to a discovery request may designate as "Confidential Information" any response (including production of documents) or portion thereof that it in good faith contends contains confidential, proprietary or commercially sensitive information. Except as provided by Paragraph 6 below, "Confidential Information" as used herein includes all such designated responses, any copies, extracts, abstracts or summaries of such responses, and all information contained in or obtained from such responses.

4. Responses to discovery requests (including documents produced in response to discovery requests) may be designated as "Confidential Information" in the following manner:

(a) Responses or portions of responses to interrogatories, written deposition interrogatories, and requests for admission may be designated by stamping or printing "Confidential" or "Confidential Information" in the front thereof and, if only portions of the response are to be so designated, clearly marking the confidential portions.

(b) Prior to the production of copies to the requesting party, documents may be designated by separating them from other documents and informing the requesting party that they are "Confidential Information." Copies of documents or portions of documents produced to the parties may be designated by producing such documents in separate containers clearly marked as containing "Confidential Information" or stamping "Confidential" or "Confidential Information" on each page (and all copies thereof) containing "Confidential Information" and, if only portions of a document page are to be so designated, clearly marking the confidential portions.

(c) A witness or the attorney for a witness may designate the witness's entire testimony and the transcript thereof to be treated as "Confidential Information" by so requesting on the record prior to the conclusion of the hearing at which such testimony is taken. Such designation shall be effective only until 15 days after the availability of the transcript of the hearing, after which portions of the witness testimony may be designated "Confidential Information" only by informing each party in writing of the pages, and the portions thereof, that contain "Confidential Information."

5. If a party or person inadvertently fails to designate discovery or other material as "Confidential Information," that party subsequently may notify the receiving party within one week following delivery of the discovery or other material to the receiving party that the material is "Confidential Information." After receipt of such notification, such materials and information shall be treated as if they had been designated in a timely fashion.

6. Any party at any time may by written notice request that the producing party or person cancel the "Confidential Information" designation of any transcript, document or discovery response or portion thereof. Such request should particular-

ly identify the designated responses which the requesting party contends should not be treated as "Confidential Information," provide the reasons therefor, and explicitly state that the request is made pursuant to this paragraph. Such request shall be deemed granted ten days after receipt of the request, unless the producing party or person, prior to the end of the ten-day period, denies the request by written notice to the requesting party. If such request is denied in whole or in part, the requesting party may file a motion with the Commission to have the "Confidential Information" designation removed as to the discovery responses listed in the request.

7. Other than as provided in Paragraph 8 below, "Confidential Information" may only be disclosed to "Authorized Persons." An "Authorized Person" is a person who, prior to the receipt of any "Confidential Information," has signed an affidavit (in the form included as Attachment A to this Order) in which he or she states his or her identity, title and employer and further states that he or she has read this Protective Order and agrees to abide by its terms, and is:

(a) an attorney actively involved in this Proceeding on behalf of a party (or a legal assistant under such attorney's supervision);

(b) a person who is not a permanent employee of a party but who has been employed by any of the parties to provide advice, expertise or assistance in this Proceeding;

(c) a person who is a permanent employee of a party (including an employee or official of the Brotherhood of Maintenance of Way Employees or the International Association of Machinists and Aerospace Workers) and who has been assigned direct responsibility in connection with this Proceeding;

(d) a person who is or was once employed by one of the rail carrier parties and is presently or was formerly represented for collective bargaining purposes by the Brotherhood of Maintenance of Way Employees or the International Association of Machinists and Aerospace Workers, but only if and to the extent that such person reasonably requires access to particular "Confidential Information" in order to prepare written or oral testimony to be submitted in this Proceeding; or

(e) a reporter employed to record oral testimony or other hearings.

Each such affidavit by an "Authorized Person" shall be kept for the duration of this Proceeding and any related court litigation or judicial appeals by the party with which such "Authorized Person" is affiliated or associated, and a copy of each such affidavit shall be served upon counsel of record for each party no later than ten days after such affidavit is executed.

8. "Confidential Information" may also be disclosed to:

(a) an employee of the producing party during oral testimony of such employee;

(b) a witness employed by an organization that also employs the person who produced the "Confidential Information" to be disclosed to the witness;

(c) an assistant or clerical employee under the supervision of any "Authorized Person"; or

(d) any person so authorized either (i) in writing by the party or person that produced the "Confidential Information" to be disclosed to such person or (ii) by the Commission upon motion by any party for good cause.

9. Storage, transmission or communication of "Confidential Information" must be such as to reasonably ensure that the "Confidential Information" will not be disclosed, accidentally or otherwise, to non-authorized persons.

10. No person may be present at a hearing during the discussion of "Confidential Information" who has not been authorized by this Protective Order to review the "Confidential Information" to be discussed.

11. "Confidential Information" may be used by the receiving party, and by any "Authorized Person", solely for purposes of this Proceeding and any related court litigation, and not for any other purpose whatsoever (including any business or commercial purpose).

12. All "Confidential Information" filed with the Commission, and any pleading, motion, or other paper filed with the Commission that contains or discloses "Confidential Information"

shall be filed under seal and kept under seal until further order of the Commission.

13. All documents containing "Confidential Information" shall, at the option of the party or person that produced such "Confidential Information," be destroyed or returned to the producing party/person at the termination of this Proceeding, including any related court litigation or judicial appeals. In the event that the producing party/person requests the destruction of such "Confidential Information" pursuant to this Paragraph, the producing party/person shall notify the receiving party in writing of this request, and the receiving party within 30 days after such written notice shall destroy the "Confidential Information" and shall certify to the producing party/person in writing that all "Confidential Information" produced to the receiving party during the course of this Proceeding has been destroyed. In the event that the producing party/person requests the return of such "Confidential Information" pursuant to this Paragraph, the producing party/person shall notify the receiving party in writing of this request, and the receiving party within 30 days after such written notice shall return the "Confidential Information" to the producing party/person and shall also certify to the producing party/person in writing that all "Confidential Information" produced to the receiving party during the course of this Proceeding has been returned.

14. The provisions of this Protective Order that restrict the handling, communication and use of "Confidential Information" shall continue to be binding after the termination of this Proceeding, including any related court litigation or judicial appeals, unless the Commission or the producing party/person authorizes in writing alternative handling, communication or use of such "Confidential Information".

15. This Protective Order shall not bar or otherwise restrict:

(a) an "Authorized Person" from making copies, abstracts, digests and analyses of "Confidential Information" for use in connection with this Proceedings, subject to the requirement that all such copies, abstracts, digests and analyses be treated as "Confidential Information" and clearly marked as such;

(b) an "Authorized Person" from rendering advice or opinions with respect to this Proceeding to his or her client or employer based upon his or her examination of "Confidential Information" itself to a person

not authorized by this Protective Order to have access to the "Confidential Information";

(c) a party from using any "Confidential Information" during hearings in this Proceeding, subject to any further order of the Commission;

(d) a party or producing person from using its own "Confidential Information" in any manner it sees fit, or from revealing such "Confidential Information" to whomever it chooses, without the prior consent of any other party or of the Commission; and

(e) a party or producing person from applying to the Commission at any time for additional protection, or to relax or rescind the restrictions of this Protective Order, when convenience or necessity requires.

16. If "Confidential Information" in the possession of any party is subpoenaed by any court, administrative or legislative body, or any other person purporting to have authority to subpoena such information, the party to whom the subpoena is directed will not produce such information without first giving written notice (including the delivery of a copy thereof) to the producing party/person or the attorneys for the producing party/-person, within 24 hours after receipt of the subpoena. If a subpoena purports to require production of such "Confidential Information" on less than four business days' notice, the party to whom the subpoena is directed shall also give immediate notice by telephone of the receipt of such subpoena.

17. To the extent that "Confidential Information" is produced by a party or other person in this Proceeding and held and used by the receiving party in compliance with the terms of this Protective Order, such production, disclosure and use of such "Confidential Information" are deemed essential for the disposition of this Proceeding and shall not be deemed a violation of 49 U.S.C. § 11343 or § 11910.

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

\_\_\_\_\_  
FINANCE DOCKET NO. 30400 (SUB-NO. 21)  
\_\_\_\_\_

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY  
\_\_\_\_\_

COUNTY OF \_\_\_\_\_ )  
STATE OF \_\_\_\_\_ ) ss:

CONFIDENTIALITY AFFIDAVIT

I, \_\_\_\_\_ [Name], being duly sworn, do hereby depose and state that I am \_\_\_\_\_ [Position or Job Title] of \_\_\_\_\_ [Name of Employer or Firm]; that my offices are located at \_\_\_\_\_ [Address]; that [I am an attorney actively involved in the above-captioned proceeding on behalf of \_\_\_\_\_ [Name of Party Represented]] or [I am a legal assistant under the supervision of attorneys actively involved in the above-captioned proceeding on behalf of \_\_\_\_\_ [Name of Party Represented]] or [I have been employed by \_\_\_\_\_ [Name of Party Represented] to provide advice, expertise and assistance in connection with the above-captioned proceeding] or [I am a permanent employee of \_\_\_\_\_ [Name of Party Represented] and have been assigned direct responsibility in connection with the above-captioned proceeding]

or [I was/am employed by \_\_\_\_\_ [Name of Rail Carrier Party] \_\_\_\_\_,  
am presently or was formerly represented for collective bargain-  
ing purposes by the \_\_\_\_\_ [Brotherhood of Maintenance of Way  
Employes or International Association of Machinists and Aero-  
space Workers] \_\_\_\_\_, and intend to submit testimony in the above-  
captioned proceeding] or [I am a reporter employed to record oral  
testimony or other hearings in the above-captioned proceeding];  
and that I have read, understand and agree to abide by the terms  
of the Protective Order entered in the above-captioned proceed-  
ings by order served August \_\_, 1992.

\_\_\_\_\_  
[Name]

Subscribed and Sworn to  
Before Me This \_\_\_\_ Day  
of \_\_\_\_\_, 1992.

\_\_\_\_\_  
Notary Public

My Commission expires:

EXHIBIT B

LETTER FROM DONALD F. GRIFFIN TO VINCENT F. PRADA,  
DATED AUGUST 25, 1992

LAW OFFICES  
**HIGHSAW, MAHONEY & CLARKE, P.C.**

SUITE 310  
1050 SEVENTEENTH STREET, N.W.  
WASHINGTON, D.C. 20036  
202.298.8800  
TELECOPIER (BOS) 896-7143

WILLIAM S. MAHONEY  
JOHN O'S. CLARKE, JR.  
RICHARD S. EDELMAN  
L. PAT WYNN  
DAVID J. STROM  
DONALD P. GRYVIN  
ELIZABETH A. HASEAU

OF COUNSEL:  
JAMES L. HIGSBY

August 25, 1992

\*ADMITTED BY REG. & BARR. ONLY

via tele-facsimile

Vincent F. Prada, Esq.  
SIDLEY & AUSTIN  
1722 Eye Street, N.W.  
Washington, DC 20008

Re: ICC Finance Docket No. 30400(Sub-No. 21), Santa Fe Southern  
Pacific Corp.—Control—Southern Pacific Trans. Co.

Dear Mr. Prada:

I am sorry I was unable to speak with you today, when I had the time to return your call I was informed that you had left the office for the day. Accordingly, I have prepared the following for "fax" transmittal to you regarding the proposed Protective Order from the Santa Fe Pacific Corporation ("SFP"), dated August 20, 1992.

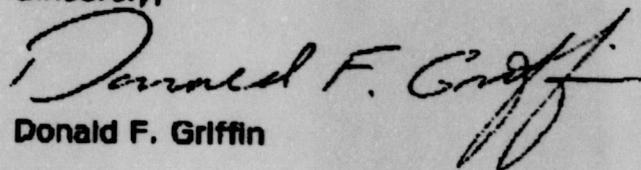
Initially, the proposed language contained in Paragraph 5 is acceptable to the BMW and IAMAW, as is the revised Paragraph 15.

After a careful review of SFP's proposed Paragraphs 1 and 7, the BMW and IAMAW cannot accept those paragraphs as written. As I stated to you during our telephone conversation of August 19, 1992, the BMW and IAMAW cannot voluntarily agree to terms in a protective order that arguably would prohibit their members from using information obtained by the organizations that could be relevant to the proof of a claim under protective conditions the ICC may impose in the above captioned proceeding. I realize SFP's concern regarding the publication of what it deems confidential information during the claim and arbitration process, however I believe that the proposed Protective Order, if applied to the claim and arbitration process, would provide SFP with the necessary guarantees of confidentiality.

Mr. Vincent F. Prada, Esq.  
Re: ICC Finance Docket No. 30400 (Sub-No. 21)  
August 25, 1992  
Page 2

Accordingly, I have suggested revisions for Paragraphs 1 and 7. The deletions are ~~XXXXXX~~ and the additions are in boldface. Please call me at your earliest convenience regarding this proposed language.

Sincerely,

  
Donald F. Griffin

**BMW AND IAMAW PROPOSED REVISIONS 8/25/92**

1. The term "Proceeding," as used in this Protective Order, shall mean the proceeding of the Interstate Commerce Commission ("the Commission") designated as Finance Docket No. 30400 (Sub-No. 21), as well as any subsequent ~~proceeding~~ proceeding (including claims to a rail carrier party) concerning the interpretation, enforcement or application of any labor protective conditions imposed by the Commission in connection with the transaction(s) at issue in Finance Docket No. 30400 and all related sub-dockets.

7. . . . (d) a person who is or was once employed by one of the rail carrier parties and is presently or was formerly represented for collective bargaining purposes by the Brotherhood of Maintenance of Way Employees or International Association of Machinists and Aerospace Workers, but only if and to the extent that such person reasonably requires access to particular "Confidential Information" in order to prepare written or oral testimony to be submitted in this Proceeding~~s~~ or in order to prepare a claim for any labor protective conditions imposed by the Commission in this Proceeding; or

CERTIFICATE OF SERVICE

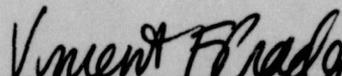
I hereby certify that, on this 27th day of August, 1992, I served the foregoing "Motion for Entry of Protective Order" by causing a copy thereof to be delivered to each of the following in the manner indicated:

William G. Mahoney  
Donald F. Griffin  
Highsaw, Mahoney & Clarke, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, D.C. 20036  
(By Messenger)

John MacDonald Smith  
Southern Pacific Transportation Company  
819 Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105  
(By Federal Express)

Charles Kcng  
1017 Brown Street  
Bakersfield, California 93305  
(By First-Class Mail)

Lee J. Kubby  
Lee J. Kubby, Inc.  
Box 60485  
Sunnyvale, California 94086-0485  
(By First-Class Mail)

  
\_\_\_\_\_  
Vincent F. Prada

# SIDLEY & AUSTIN

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1722 EYE STREET, N.W.  
WASHINGTON, D.C. 20006  
TELEPHONE 202: 736-8000  
TELEX 89-463  
FACSIMILE 202: 736-8711

CHICAGO  
LOS ANGELES  
NEW YORK

LONDON  
SINGAPORE  
TOKYO

125<sup>th</sup>  
Anniversary  
1866-1991

WRITER'S DIRECT NUMBER

(202) 736-8252

August 27, 1992

## BY MESSENGER

Honorable Paul S. Cross  
Chief Administrative Law Judge  
Interstate Commerce Commission  
Room 4117  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423



Re: Finance Docket No. 30400 (Sub-No. 21), Santa Fe  
Southern Pacific Corp. -- Control -- Southern  
Pacific Transportation Co.

Dear Chief Judge Cross:

In a joint letter to you dated August 11, 1992, counsel for Santa Fe Pacific Corporation ("SFP") and counsel for the Brotherhood of Maintenance of Way Employees and the International Association of Machinists and Aerospace Workers ("BMWE/IAMAW") requested entry of an agreed order specifying procedures for SFP's responses to BMWE/IAMAW's pending discovery requests. The letter also indicated that the two parties would work together in an attempt to reach agreement on the terms of a protective order to govern the disclosure and use of confidential information and data produced during discovery.

Since then, we have exchanged several drafts of a Protective Order with counsel for BMWE/IAMAW, and have negotiated a proposed Protective Order that, with the exception of one issue, the parties find mutually acceptable. The parties have been unable to agree on one issue relating to the terms of the proposed Protective Order, and have agreed that this matter should be submitted to you for decision.

Accordingly, we are today filing the enclosed motion for entry of a protective order. The motion identifies the outstanding issue and explains the basis for SFP's position. To facilitate prompt entry of the protective order, we are also enclosing herewith a computer disk containing a copy of the proposed Protective Order in WordPerfect 5.0 format.

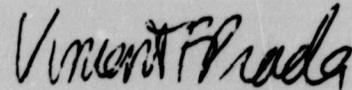
Honorable Paul S. Cross  
August 27, 1992  
Page 2

As you know, the agreed procedural order served August 18, 1992 provides that SFP's final responses to BMW/IAMAW's interrogatories and responses to BMW/IAMAW's document production requests are to be served September 1, 1992. Because confidential discovery materials responsive to these pending requests cannot be produced until an appropriate Protective Order has been entered, we request that you resolve the parties' sole dispute over the proposed Protective Order and enter the order on or before September 1, so that the protective order issue will not delay the production of discovery materials or the further progress of this case.

If it is convenient with you, we would suggest the desirability of a telephone conference call with you and with counsel for BMW/IAMAW to discuss and resolve the issues raised by our motion.

We appreciate your attention to this matter.

Very truly yours,



Vincent F. Prada

Counsel for Santa Fe  
Pacific Corporation

Enclosures

cc: All Parties of Record  
Erika Z. Jones  
Guy Vitello

STB

FD-30400 (SUB 21)

7-27-92

I

38363

38363

ENTERED  
Office of the Secretary  
JUL 28 1992  
Part of  
7 Public Record



BEFORE THE  
INTERSTATE COMMERCE COMMISSION

SANTA FE SOUTHERN PACIFIC CORPORATION--  
CONTROL--SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

Finance Docket  
No. 3040 (Sub-No. 21)

**INTERROGATORIES**

The Brotherhood of Maintenance of Way Employees ("BMWE") and the International Association of Machinists and Aerospace Workers ("IAMAW") respectfully serve through counsel, pursuant to 49 C.F.R. §1114.26, the following interrogatories upon the Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation). Answers to these interrogatories should be served upon counsel for BMWE and IAMAW: HIGHSAW, MAHONEY & CLARKE, P.C., 1050 17th Street, N.W., Suite 210; Washington, DC 20036; fifteen (15) days after service of these interrogatories.

**DEFINITIONS**

- (1) **Communication:** The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
- (2) **Document:** The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.
- (3) **Identify (With Respect to Persons):** When referring to a person, "to identify" means to give, to the extent known, the person's full name, title, present or last known

address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with the subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

- (4) **Identify (With Respect to Documents):** When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).
- (5) **Identify (With Respect to Communications):** When referring to communications, "to identify" means to give, to the extent known, the (i) type of communication; (ii) general subject matter; (iii) date of the communication; (iv) the person communicating and the person communicated to.
- (6) **Person:** The term "person" is defined as any natural person or any business, legal or governmental entity or association.
- (7) **Concerning:** The term "concerning" means relating to, referring to, describing, evidencing or constituting.
- (8) **ATSF:** The term "ATSF" means the Atchison, Topeka and Santa Fe Railway Company, its officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliate and predecessors.
- (9) **SPT:** The term "SPT" means the Southern Pacific Transportation Company and the St. Louis Southwestern Railway Company, their officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliates and predecessors.

address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with the subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

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- (6) **Person:** The term "person" is defined as any natural person or any business, legal or governmental entity or association.
- (7) **Concerning:** The term "concerning" means relating to, referring to, describing, evidencing or constituting.
- (8) **ATSF:** The term "ATSF" means the Atchison, Topeka and Santa Fe Railway Company, its officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliate and predecessors.
- (9) **SPT:** The term "SPT" means the Southern Pacific Transportation Company and the St. Louis Southwestern Railway Company, their officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliates and predecessors.

- (10) **SFSP:** The term "SFSP" means the Santa Fe Southern Pacific Corporation, its officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliates and successors.
- (11) **BMWE:** The term "BMWE" means the Brotherhood of Maintenance of Way Employees, its officers, directors, employees and agents.
- (12) **IAMAW:** The term "IAMAW" means the International Association of Machinists and Aerospace Workers, its officers, directors, employees and agents.
- (13) **ICC:** The term "ICC" means the Interstate Commerce Commission.
- (14) **Maintenance of Way Department:** The term "maintenance of way department" means that subdivision of either the SPT or ATSF concerned with the construction, repair and other maintenance of the track, roadbed, appurtenant structures and bridges of each carrier.
- (15) **Maintenance of Way Employee(s):** The term "maintenance of way employee(s)" means those employees working in the maintenance of way department.
- (16) **Maintenance of Equipment Department:** The term "maintenance of equipment department" means that subdivision of either the SPT or ATSF concerned with the construction, rebuilding, repair and maintenance of locomotives and rolling stock of each of the carriers.
- (17) **Maintenance of Equipment Facilities:** The term "maintenance of equipment facilities" means those locations where the construction, rebuilding, repair and maintenance of locomotives and other rolling stock are or were performed on a regular and recurring basis.

- (18) **Maintenance of Equipment Employee(s):** The term "maintenance of equipment employee(s)" means those employees working in the maintenance of equipment department.
- (19) **SPT - ATSF Merger:** The term "SPT - ATSF merger" means the transaction that was the subject of the primary application in ICC Finance Docket No. 30400.
- (20) **Rules of Construction:** The following rules of construction apply to all discovery requests:
- (a) **All/Each;** the terms "all" and "each" shall be construed as all and each;
  - (b) **And/Or;** the terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise be construed to be outside of its scope.
  - (c) **Number;** the use of the singular form of any word includes the plural and vice versa.
- (21) **Time Period Covered By Interrogatories:** The time period covered by these interrogatories runs from January 1, 1982 until Rio Grande Industries, Inc. assumed control of SPT.

#### **Interrogatories**

1. Identify those persons at SFSP concerned with plans or proposals, communicated in any fashion, involving the utilization of maintenance of way employees on the combined SPT - ATSF system created by the proposed SPT - ATSF merger.
2. Identify those documents concerning the proposed utilization of maintenance of way employees on the merged SPT - ATSF system.

- (18) **Maintenance of Equipment Employee(s):** The term "maintenance of equipment employee(s)" means those employees working in the maintenance of equipment department.
- (19) **SPT - ATSF Merger:** The term "SPT - ATSF merger" means the transaction that was the subject of the primary application in ICC Finance Docket No. 30400.
- (20) **Rules of Construction:** The following rules of construction apply to all discovery requests:
- (a) **All/Each:** the terms "all" and "each" shall be construed as all and each;
  - (b) **And/Or:** the terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise be construed to be outside of its scope.
  - (c) **Number:** the use of the singular form of any word includes the plural and vice versa.
- (21) **Time Period Covered By Interrogatories:** The time period covered by these interrogatories runs from January 1, 1982 until Rio Grande Industries, Inc. assumed control of SPT.

#### **Interrogatories**

1. Identify those persons at SFSP concerned with plans or proposals, communicated in any fashion, involving the utilization of maintenance of way employees on the combined SPT - ATSF system created by the proposed SPT - ATSF merger.
2. Identify those documents concerning the proposed utilization of maintenance of way employees on the merged SPT - ATSF system.

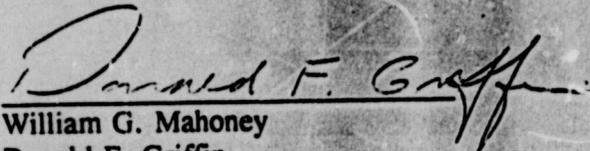
3. Identify those persons at SFSP concerned with plans or proposals, communicated in any fashion, involving the utilization of maintenance of equipment employees on the combined SPT - ATSF system created by the proposed SPT - ATSF merger.
4. Identify those documents concerning the proposed utilization of maintenance of equipment employees on the merged SPT - ATSF system.
5. Identify those persons at SFSP concerned with plans or proposals, communicated in any fashion, involving the utilization of maintenance of equipment facilities on the combined SPT - ATSF system created by the proposed SPT - ATSF merger.
6. Identify those documents concerning the proposed utilization of maintenance of equipment facilities on the merged SPT - ATSF system.
7. Identify those documents prepared by or for SFSP concerning staffing levels in the maintenance of way department on SPT.
8. Identify those documents prepared by or for SFSP concerning staffing levels in the maintenance of equipment department on SPT.
9. Identify those SPT locomotive and car repair facilities which SFSP intended to close or reduce operations at following ICC approval of the SPT - ATSF merger.
10. Identify those documents concerning the matters set forth in Interrogatory Number 9.
11. Identify those documents sent either by SFSP to SPT or by SPT to SFSP, regarding staffing levels in the maintenance of way department on SPT.
12. Identify any communication either by SFSP to SPT or by SPT to SFSP, regarding staffing levels in the maintenance of way department on SPT.

13. Identify those documents either sent by SFSP to SPT or by SPT to SFSP, regarding staffing levels in the maintenance of equipment department considered desirable by SFSP.
14. Identify any communication either by SFSP to SPT or by SPT to SFSP regarding staffing levels in the maintenance of equipment department considered desirable by SFSP.
15. Identify any documents prepared by SFSP regarding the impact, implementation, effect, etc. of Interstate Commerce Act mandated employee protective conditions upon the SPT - ATSF merger.
16. Identify any documents either sent by SFSP to SPT or sent by SPT to SFSP, regarding the impact, implementation, effect, etc. of Interstate Commerce Act mandated employee protective conditions upon the SPT - ATSF merger.
17. Identify any communication either by SFSP to SPT or by SPT to SFSP, regarding the impact, implementation, effect, etc. of Interstate Commerce Act mandated employee protective conditions upon the SPT - ATSF merger.
18. Identify by date and location and reason for service, those locomotives owned or operated by SPT that were repaired, rebuilt or maintained at ATSF maintenance of equipment facilities.
19. Identify by date, location and reason for service, that non-locomotive rolling stock owned or operated by SPT that was repaired, rebuilt or maintained at ATSF maintenance of equipment facilities.

13. Identify those documents either sent by SFSP to SPT or by SPT to SFSP, regarding staffing levels in the maintenance of equipment department considered desirable by SFSP.
14. Identify any communication either by SFSP to SPT or by SPT to SFSP regarding staffing levels in the maintenance of equipment department considered desirable by SFSP.
15. Identify any documents prepared by SFSP regarding the impact, implementation, effect, etc. of Interstate Commerce Act mandated employee protective conditions upon the SPT - ATSF merger.
16. Identify any documents either sent by SFSP to SPT or sent by SPT to SFSP, regarding the impact, implementation, effect, etc. of Interstate Commerce Act mandated employee protective conditions upon the SPT - ATSF merger.
17. Identify any communication either by SFSP to SPT or by SPT to SFSP, regarding the impact, implementation, effect, etc. of Interstate Commerce Act mandated employee protective conditions upon the SPT - ATSF merger.
18. Identify by date and location and reason for service, those locomotives owned or operated by SPT that were repaired, rebuilt or maintained at ATSF maintenance of equipment facilities.
19. Identify by date, location and reason for service, that non-locomotive rolling stock owned or operated by SPT that was repaired, rebuilt or maintained at ATSF maintenance of equipment facilities.

20. Identify any documents either from SFSP to SPT or from SPT to SFSP, relating to the subject matter of Interrogatories Numbered 18 and 19, above.
21. Identify any communications either between SFSP and SPT or from SPT to SFSP, relating to the subject matter of Interrogatories Numbered 18 and 19, above.

Respectfully submitted,

  
\_\_\_\_\_  
William G. Mahoney  
Donald F. Griffin

HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, DC 20036  
(202) 296-8500

Attorneys for BMW and IAMAW

Dated: July 24, 1992

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing "Interrogatories" upon the following by overnight mail delivery to:

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
224 South Michigan Avenue  
Chicago, IL 60604

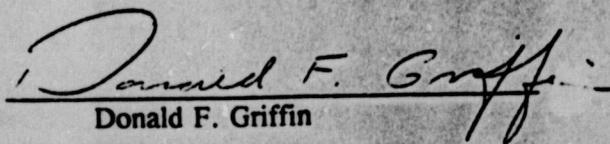
Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

and by first class mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93305

E. R. Straatsma  
P.O. Box 214  
Folsom, CA 95630

  
Donald F. Griffin

Dated: July 24, 1992

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing "Interrogatories" upon the following by overnight mail delivery to:

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
224 South Michigan Avenue  
Chicago, IL 60604

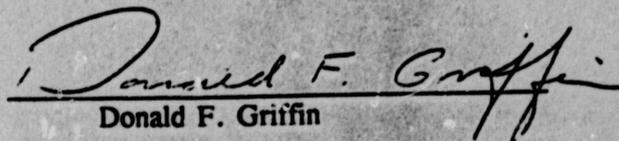
Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

and by first class mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93305

E. R. Straatsma  
P.O. Box 214  
Folsom, CA 95630

  
Donald F. Griffin

Dated: July 24, 1992

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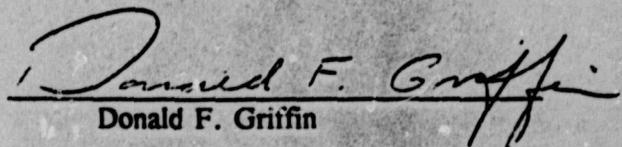
Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

and by first class mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93305

E. R. Straatsma  
P.O. Box 214  
Folsom, CA 95630

  
Donald F. Griffin

Dated: July 24, 1992

STB

FD-30400 (SUB 21)

7-27-92

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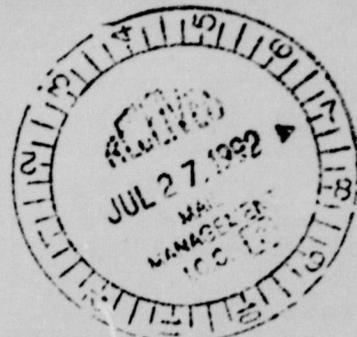
38364

Office of the Secretary

JUL 26 1992

7 Part of Public Record

BEFORE THE INTERSTATE COMMERCE COMMISSION



SANTA FE SOUTHERN PACIFIC CORPORATION--  
CONTROL--SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

Finance Docket  
No. 30400 (Sub-No. 21)

**PETITION FOR LEAVE TO SERVE  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

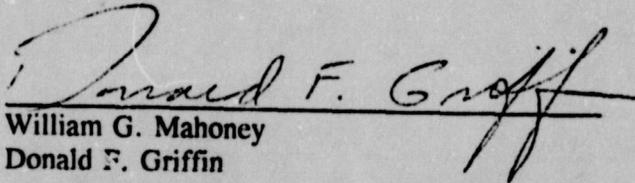
The Brotherhood of Maintenance of Way Employees ("BMWE") and International Association of Machinists and Aerospace Workers ("IAMAW") respectfully submit to the Commission, pursuant to 49 C.F.R. § 1114.21(b)(2), the following petition seeking permission to serve requests for production of documents upon the Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation "SFSP"). (A copy of the document request is attached hereto as Attachment "A".)

On July 24, 1992, the BMWE and IAMAW served interrogatories upon SFSP pursuant to the authority provided in 49 C.F.R. §§ 1114.21 and 1114.26. (A copy of the interrogatories is attached hereto as Attachment "B".) The interrogatories are designed to elicit information from SFSP concerning "actions taken or orders issued by SFSP in contemplation of the proposed [Atchison, Topeka & Santa Fe Railway Co. - Southern Pacific Trans. Co. ("SPT")] merger." June 18, 1992 slip op. at 3. The document requests attached hereto seek those documents reviewed and identified by SFSP in its responses to the interrogatories as well those documents previously presented to the Commission's Office of

Compliance and Consumer Assistance as part of its informal investigation of SFSP's contacts with SPT during the voting trust.

The BMW and IAMAW respectfully submit that these discovery requests, as well as the previously served interrogatories, seek evidence relevant to the question of SFSP's relationship to SPT during the time SPT was held in a voting trust. The information sought is in the possession of SFSP and is necessary to develop a full and adequate record in this proceeding. Accordingly, BMW and IAMAW request that the Commission grant their request to serve document requests upon SFSP.

Respectfully submitted,

  
\_\_\_\_\_  
William G. Mahoney  
Donald F. Griffin

HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, DC 20036  
(202) 296-8500

Attorneys for BMW and IAMAW

Dated: July 27, 1992

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing "Petition for Leave to Serve Requests for Production of Documents" upon the following by overnight mail delivery to:

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
1700 East Golf Road  
Schaumburg, IL 60173

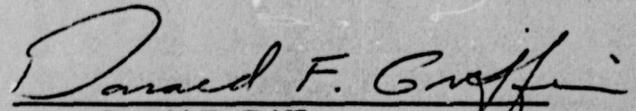
Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

and by first class mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93305

E. R. Straatsma  
P.O. Box 214  
Folsom, CA 95630

  
Donald F. Griffin

Dated: July 27, 1992

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing "Petition for Leave to Serve Requests for Production of Documents" upon the following by overnight mail delivery to:

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
1700 East Golf Road  
Schaumburg, IL 60173

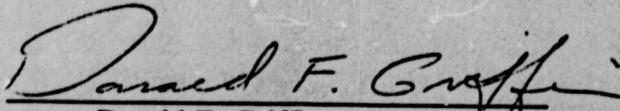
Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

and by first class mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93305

E. R. Straatsma  
P.O. Box 214  
Folsom, CA 95630

  
Donald F. Griffin

Dated: July 27, 1992

STB

FD-30400 (SUB 21)

8-10-92

I

38366

LAW OFFICES  
**LEE J. KUBBY, INC.**  
A PROFESSIONAL CORPORATION

BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

38366

August 08, 1992

Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423



Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

Dear Gentle People:

Fed Ex 2567775626

Enclosed please find Petition to Revise Demonstration  
of SPT employees etc with declaration of service and nine  
(9) copies.

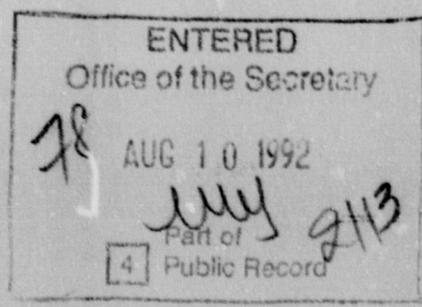
Please file original and return endorse file ccopy to  
the undersigned in the enclosed self addressed stamped  
envelope.

Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:

LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

LJK:me  
Encls.



LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331



Attorney for Injured Party Sieu Mei Tu

INTERSTATE COMMERCE COMMISSION

SIEU MEI TU AND JOSEPH Z. TU )

Injured Parties )

VS )

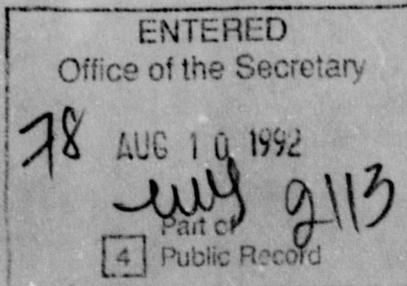
SOUTHERN PACIFIC TRANSPORTATION )  
COMPANY; ATCHISON, TOPEKA, SANTA FE )  
RAILROAD COMPANY; PACIFIC FRUIT )  
EXPRESS COMPANY; SANTA FE SOUTHERN )  
PACIFIC CORP. )

Applicants )  
Interested Parties )

Finance Docket No.  
30400  
(Sub-No. 21)

PETITION TO REVISE  
Demonstration of  
SPT Employees  
Adversely Affected  
as a Direct Conse-  
quence of Actions  
Taken or Orders  
Issued By SFSP In  
Contemplation of the  
Proposed ATSF  
SPT Merger.  
Evidence and Argu-  
ment in Support  
Thereof

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company



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*Original*

1 Petitioner learned of the decision of this Commission in this  
2 matter approximately July 7, 1992. Petitioner then sought to get  
3 representation by counsel familiar with ICC proceedings involv-  
4 ing railroads, but did not find anyone who did not represent  
5 railroads and would have a conflict in representing injured  
6 party, or who did not represent other national entities who were  
7 unwilling to undertake representation of petitioner.

8 Petitioner's counsel, who is unfamiliar with ICC railroad  
9 hearings and procedures, then set about to get Petitioners demon-  
10 stration before the Commission, within the time limits set forth  
11 in the June 12, 1992, decision. Petitioner filed with the Com-  
12 mission on August 3, 1992, the petition in letter form as set  
13 forth in Exhibit A hereto, together with appendices as follows:  
14 Appendix one is Volume 1 of Injured party's Preliminary Evidence  
15 and Argument which is the same as Volume 1 of Excerpts of Record  
16 in the following Appeal:

17 UNITED STATES COURT OF APPEALS

18 FOR THE NINTH CIRCUIT

19 SIEU MEI TU AND JOSEPH Z. TU ) NO: 89-16186  
20 )  
21 Plaintiffs )  
22 Appellants )  
23 )  
24 VS )  
25 )  
26 SOUTHERN PACIFIC TRANSPORTATION )  
27 COMPANY; ATCHISON, TOPEKA, SANTA FE )  
28 RAILROAD COMPANY; SANTA FE SOUTHERN )  
PACIFIC CORP. ET AL )  
Defendants )  
Appellees )

hereafter referred to as the appeal,

Appendix Two is Volume 2 of Injured party's Preliminary Evidence

1 and Argument which is the same as Volume 2 of Excerpts of Record  
2 in the Appeal; Appendix three is Appellants Brief in the  
3 appeal; Appendix four is Appellants Answering Brief in the  
4 appeal.

5 Mrs. Tu is a former employee of Pacific Fruit Express, a  
6 wholly owned subsidiary of Southern Pacific Transportation Com-  
7 pany, who was terminated ("furloughed") in October, 1985, without  
8 benefits, after 23 years of continuous faithful service. Her  
9 termination was without just cause and was the result of the  
10 wrongful actions systematically taken by STSP, ATSF, and SPTC  
11 beginning in 1982 in anticipation of and in aide of their merger.  
12 These actions as they continued through 1984 and 1985 were in  
13 violation of the orders of the ICC. Every principal of equity  
14 requires your agency to impose labor protective conditions here.

15 The appenda previously lodged with the commission on August  
16 3, 1992 are Mrs. Tu's preliminary evidence and argument concern-  
17 ing what has befallen her in these circumstances.

18 Other employees of Pacific Fruit Express were also termi-  
19 nated in anticipation of the merger, and labor protective condi-  
20 tions are also appropriate for their protection. ( See declaration  
21 Richard Fend page 527 lines 9 through page 528 line 13 Appendix  
22 two.

23 The recent case of Kraus v. Santa Fe Southern Pacific Corp.,  
24 878 F2d 1193 (9th Cir. 1989) is res judicata that the intention  
25 to merge Southern Pacific and ATSF commenced in 1980, and that  
26 Santa Fe Southern Pacific Corporation, SPTC, and ATSF conspired  
27 to avoid giving terminated employees New York Dock conditions on  
28 the merger. (See discussion in Appendix Four, Appellants Answer-

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ing Reply Brief pages 3, 26, 27, 28).

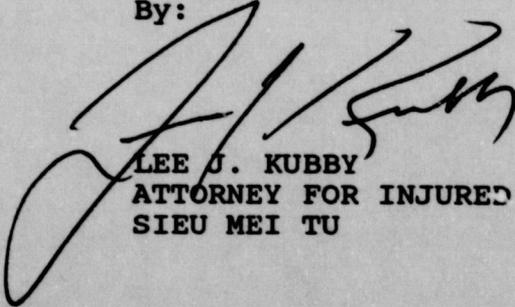
Mrs. Tu's depositions ([a] 5/11/87, page 33 Appendix One, Vol I Preliminary Evidence; [b] 9/8/88 Appendix One. page 321 Vol I Preliminary Evidence); declaraticn (page 733 ; Appendix Two, Vol II Preliminary Evidence); and Answers to Defendants Second Set of Interrogatories (Appendix One page 309 Vol I Preliminary Evidence) reinforce and graphically describe how the railroads went about achieving their goals in contradiction to the conditions imposed by the ICC of no control over SPTC .

Clearly Mrs. Tu and others were adversely affected by employer actions taken in anticipation of the merger. Clearly labor protective conditions are gravely required for all those adversely affected.

Appendices One through Four are incorporated herein by this reference as if set forth in full.

Petitioner seeks permission to revise her petition as filed on August 3, 1992, to more artfully set forth her evidence and argument as invited by the Commission in its June 12, 1992 Decision.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:



LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

APPENDICES

(1) Appendix one is Volume 1 of Injured party's Preliminary Evidence and Argument which is the same as Volume 1 of Excerpts of Record in the following Appeal:

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

SIEU MEI TU AND JOSEPH Z. TU	)	NO: 89-16186
	)	
Plaintiffs	)	
Appellants	)	
	)	
VS	)	
	)	
SOUTHERN PACIFIC TRANSPORTATION	)	
COMPANY; ATCHISON, TOPEKA, SANTA FE	)	
RAILROAD COMPANY; SANTA FE SOUTHERN	)	
PACIFIC CORP. ET AL	)	
	)	
Defendants	)	
Appellees	)	

hereafter referred to as the appeal,

(2) Appendix Two is Volume 2 of Injured party's Preliminary Evidence and Argument which is the same as Volume 2 of Excerpts of Record in the Appeal;

(3) Appendix three is Appellants Brief in the appeal;

(4) Appendix four is Appellants Answering Brief in the appeal.

Please note that copies of the appendices are available at the offices of the attorney for Injured Party Sieu Mei Tu on written request:

LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331

Attorney for Injured Party Sieu Mei Tu

LAW OFFICES

**LEE J. KUBBY, INC.**  
A PROFESSIONAL CORPORATION

BOX 60485  
SUNNYVALE, CALIFORNIA 94086-0485  
(415) 691-9331

July 27, 1992

Secretary  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423

COPY

Fed Ex 2567775641

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

Dear Gentle People:

Please add the name of  
Sieu Mei Tu  
1697 Hickory Ave.  
San Leandro, CA 94579  
and that of the undersigned as her attorney to your mailing  
list in the above entitled matter.

Mrs. Tu is a former employee of Pacific Fruit Express, a wholly owned subsidiary of Southern Pacific Transportation Company, who was terminated ("furloughed") in October, 1985, without benefits, after 23 years of continuous faithful service. Her termination was without just cause and was the result of the wrongful actions systematically taken by STSP, ATSF, and SPTC beginning in 1982 in anticipation of and in aid of their merger. These actions as they continued through 1984 and 1985 were in violation of the orders of the ICC. Every principal of equity requires your agency to impose labor protective conditions here.

Enclosed pursuant to paragraph 2 of your order of decision effective June 18, 1992, is Mrs. Tu's preliminary evidence and argument concerning what has befallen her in these circumstances. It should be noted that other employees of Pacific Fruit Express were also terminated in anticipation of the merger, and labor protective conditions are also appropriate for their protection. ( See declaration Richard Fend page 527 lines 9 through page 528 line 13

Exh. 4 + A

Page Two  
July 27, 1992  
Secretary ICC

COPY

Volume II Preliminary Evidence and argument).

The recent case of Kraus v. Santa Fe Southern Pacific Corp., 878 F2d 1193 (9th Cir. 1989) is res judicata that the intention to merge Southern Pacific and ATSF commenced in 1980, and that Santa Fe Southern Pacific Corporation, SPTC, and ATSF conspired to avoid giving terminated employees New York Dock conditions on the merger. (See discussion in Appellants Answering Reply Brief pages 3, 26, 27, 28 enclosed).

Mrs. Tu's depositions 5/11/87, page 33 Vol I Preliminary Evidence; 9/8/88 page 321 Vol I Preliminary Evidence; declaration page 733 Vol II Preliminary Evidence; and Answers to Defendants Second Set of Interrogatories page 309 Vol I Preliminary Evidence reinforce and graphically describe how the railroads went about achieving their goals. Clearly Mrs. Tu and others were adversely affected by employer actions taken in anticipation of the merger. Clearly labor protective conditions are gravely required for all those adversely affected.

Please call and advise receipt, and return an endorsed filed copy of this letter in the enclosed self addressed stamped envelope.

Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:

LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

LJK:me  
Encls.  
Appellants Brief  
Appellants Answering Brief  
Injured Parties Initial Evidence and Argument

PROOF OF SERVICE BY MAIL

State of California  
County of Santa Clara

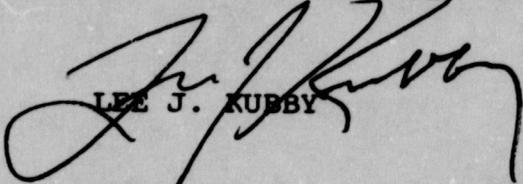
I am and at the time of the service hereinafter mentioned was a resident of the State of California, County of Santa Clara, and at least 18 years old. I am not a party to the within entitled action. I am an attorney licensed to practice in the State of California.

My business address is Box 60485, Sunnyvale, California 94086-0485. On 8-08-92 I deposited in the United States mail at Sunnyvale, California, enclosed in a sealed envelope and with the postage prepaid the attached

PETITION TO REVISE  
DEMONSTRATION OF SPT EMPLOYEES ADVERSELY AFFECTED AS A DIRECT CONSEQUENCE OF ACTIONS TAKEN OR ORDERS ISSUED BY SFSP IN CONTEMPLATION OF THE PROPOSED ATSF-SPT MERGER. EVIDENCE AND ARGUMENT IN SUPPORT THEREOF,

addressed to the persons listed on the attached sheet:

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on 8-08-92 at Sunnyvale, California.

  
LEE J. KUBBY

ATTACHED SHEET

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**Applicant**  
Santa Fe Pacific Corporation Company  
1700 East Golf Rd.  
Schaumburg, Ill. 60173-5560

**Applicant Representative**  
Jerome F. Donohoe  
224 South Michigan Ave  
Chicago, Ill 60604-2507

Southern Pacific Transportaition Company  
Southern Pacific Building  
1 Market Plaza #846  
San Francisco, CA 94105-1001

Atchison Topeka & Santa Fe Railroad Co.  
1700 E. Golf  
Schaumburg, Ill 60173-5860

Mitchell M. Kraus, General Counsel  
Transportation Communications Int'l Union  
3 Research Place  
Rockville, MD 20850

Donald F. Griffin, Esq.  
Highsaw, Mahoney & Clarke, P.C.  
Suite 210  
1050 Seventeenth Street, N.W.  
Washington, D.C. 20036

STB

FD-30400 (SUB 21)

10-19-92

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LAW OFFICES

LEE J. KUBBY, INC.

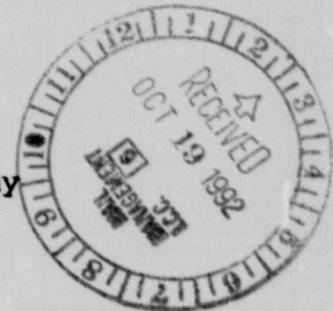
A PROFESSIONAL CORPORATION

BOX 60485  
SUNNYVALE, CALIFORNIA 94088 0485  
(415) 691-9331

October 16, 1992

Secretary  
Interstate Commerce Commission  
12th and Constitution Aves. N.W.  
Washington, D.C. 20423

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company  
DEMAND FOR INSPECTION AND COPYING

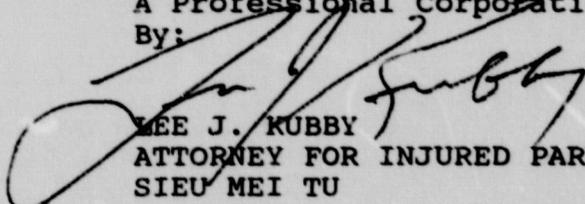


Dear Gentle People:

Enclosed please find original and 11 copies of Motion for Production in the above matter. Please file and return one of the enclosed endorsed filed in the enclosed self addressed and stamped envelope.

Thank you for your courtesies.

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:

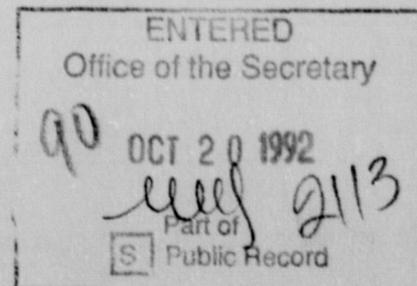
  
LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

LJK:me

Encls.

cc: Hon. Paul Cross

All parties on attached sheet



ATTACHED SHEET

Honorable Paul S. Cross  
Interstate Commerce Commission  
12th & Constitution Aves. NW  
Washington, DC 20423

Adrian L. Steel, Jr.  
Mayer, Brown, & Platt  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Southern Pacific Transportation Company  
Southern Pacific Building  
1 Market Plaza #846  
San Francisco, CA 94105-1001

Atchison Topeka & Santa Fe Railroad Co.  
1700 E. Golf  
Schaumburg, Ill 60173-5860

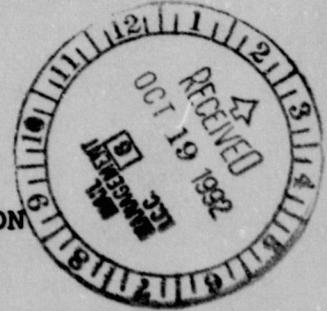
Donald F. Griffin, Esq.  
Highsaw, Mahoney & Clarke, P.C.  
Suite 210  
1050 Seventeenth Street, N.W.  
Washington, D.C. 20036

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93005

LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331

Attorney for Injured Party Sieu Mei Tu

INTERSTATE COMMERCE COMMISSION



SIEU MEI TU AND JOSEPH Z. TU	)	
	)	
Injured Parties	)	Finance Docket No.
	)	30400
	)	(Sub-No. 21)
VS	)	
	)	MOTION OF INJURED
	)	PARTY
SOUTHERN PACIFIC TRANSPORTATION	)	SIEU MEI TU FOR
COMPANY; ATCHISON, TOPEKA, SANTA FE	)	ORDER COMPELLING
RAILROAD COMPANY; PACIFIC FRUIT	)	INSPECTION AND
EXPRESS COMPANY; SANTA FE SOUTHERN	)	PRODUCTION;
PACIFIC CORP.	)	SANCTIONS FOR
	)	FAILURE TO GIVE
	)	DISCOVERY; EXTEN-
	)	TION TIME TO COM-
	)	plete DISCOVERY
Applicants	)	AND SUBMIT EVI-
Interested Parties	)	DENCE
	)	

Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

ENTERED  
Office of the Secretary  
90 OCT 20 1992  
Part of  
[S] Public Record 2113

TO DEFENDANTS AND EACH OF THEM AND TO THEIR ATTORNEYS OF RECORD:

INJURED PARTY SIEU MEI TU RESPECTFULLY MOVES THE COMMISSION FOR AN ORDER COMPELLING APPLICANTS AND EACH OF THEM TO PRODUCE FOR INSPECTION AND COPYING OF DOCUMENTS pursuant to "Demand for Inspection and Production" served and filed herein on September 30, 1992, a copy of which is attached hereto as Exhibit A.

The documents sought to be produced are the following:

- (1) All documents produced to the plaintiffs in Kraus v. Santa Fe Southern Pacific Corp. et al.
- (2) Minutes of all meetings attended by SPTC., ATSF, and SPSF CORP. wherein any discussion took place concerning the proposed merger between ATSF and SPTC.
- (3) All editions of the Southern Pacific Update, from January 1, 1980 to December 31, 1989.
- (4) Document entitled "The Future of the Perishable Business and PFE" and all exhibits and addenda thereto prepared by Thomas D. Ellen, Vice President & General Manager, on or about June 7, 1985.
- (5) All memorandum, minutes, notes, regarding personnel to be moved to SPTC offices from PFE, of all meetings held wherein said subject was discussed from January 1, 1981 to October 30, 1985.
- (6) All memos from E. E. Clark to T.D. Ellen from January 1, 1985 to October 30, 1985.

- (7) All discovery produced to any other party herein.
- (8) Minutes of all special and regular Board of Directors meetings of PFE from January 1, 1981 to October 30, 1985.
- (9) Document from T. D. Ellen to D. K. McNear and D. M. Mohan dated April 2, 1984.
- (10) Memorandum to T. R. Ashton, from T. C. Wilson, Re: SP's Revenue Estimation Process w/P& L implications received by T. D. Ellen on or about June 29, 1984.
- (11) The documents described in Kraus v. Santa Fe Southern Pacific Corp. et al. 878 F2d 1193, as follows:

The document evidencing the July 1984 telephone conference concerning the Santa Fe people's belief in a leaner staff."

The personal and confidential letter written by Denman McNear to Larry Cena,

The personal and confidential memo from the SFSP vice president to John Schmitt of May, 1985.

The June 1985 memorandum from Santa Fe management to Larry Cena.

Good cause exists for the discovery requested.

This motion is made under 49 CFR 1114.30, Rules of Practice.

In support of her motions injured party Sieu Mei Tu states the following:

Petitioner learned of the decision of this Commission in this matter approximately July 7, 1992. Petitioner then sought to get representation by counsel familiar with ICC proceedings

involving railroads, but did not find anyone who did not represent railroads and would have a conflict in representing injured party, or who did not represent other national entities who were unwilling to undertake representation of petitioner. Petitioner sought the protection of her Union (Transportation Communications International Union) to represent her interests in this proceeding. On September 23, 1992, the Union sent notice that it had "determined not to pursue this matter further with the Interstate Commerce Commission." The legal counsel for the Union advised counsel for this injured party:

"TCU does not act as the employee's exclusive representative before the ICC, and you are free to represent your client's interest before that body."

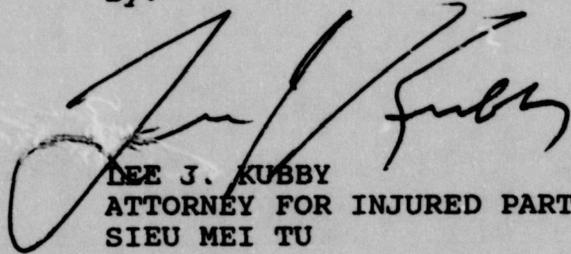
Injured party thereupon served and filed Exhibit A hereto on all the known parties hereto. No response to the Demand for Inspection and Production until one day after the scheduled production date, when Exhibit B hereto was received from SFSP corporation. No response at all has been received from Santa Fe nor SPTC. On the date set for the Inspection, no party appeared at the time and place set with any documents. Counsel for injured party expects that once its present demand is satisfied, it will take at least another 30 days to complete the discovery engendered by the matters produced.

A reasonable time and place for production is October 29, 1992, at 231 Acalanes #5, Sunnyvale, California, at 10:00 AM.

Mrs. Tu is a former employee of Pacific Fruit Express, a wholly owned subsidiary of Southern Pacific Transportation Company, who was terminated ("furloughed") in October, 1985, without benefits, after 23 years of continuous faithful service. Her termination was without just cause and was the result of the wrongful actions systematically taken by STSP, ATSF, and SPTC beginning in 1982 in anticipation of and in aid of their merger. These actions as they continued through 1984 and 1985 were in violation of the orders of the ICC.

DATED: OCTOBER 16, 1992

Respectfully submitted,  
LEE J. KUBBY, INC.  
A Professional Corporation  
By:



LEE J. KUBBY  
ATTORNEY FOR INJURED PARTY  
SIEU MEI TU

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LEE J. KUBBY, INC.  
A PROFESSIONAL CORPORATION  
BOX 60485  
Sunnyvale, CA 94086-0485  
(415) 691-9331

Attorney for Injured Party Sieu Mei Tu

INTERSTATE COMMERCE COMMISSION

SIEU MEI TU AND JOSEPH Z. TU	)	
	)	
Injured Parties	)	Finance Docket No.
	)	30400
	)	(Sub-No. 21)
VS	)	
	)	Demand for
	)	Inspection and
	)	Production
SOUTHERN PACIFIC TRANSPORTATION	)	
COMPANY; ATCHISON, TOPEKA, SANTA FE	)	
RAILROAD COMPANY; PACIFIC FRUIT	)	
EXPRESS COMPANY; SANTA FE SOUTHERN	)	
PACIFIC CORP.	)	
	)	
	)	
Applicants	)	
Interested Parties	)	
	)	

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Re: Interstate Commerce Commission  
Decision  
Finance Docket No. 30400  
(Sub-No. 21)  
Santa Fe Southern Pacific Corporation  
Control  
Southern Pacific Transportation Company

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DEMANDING PARTY:  
Injured Parties Tu

RESPONDING PARTY:  
SOUTHERN PACIFIC TRANSPORTATION COMPANY;  
ATCHISON, TOPEKA, SANTA FE RAILROAD COMPANY;  
PACIFIC FRUIT EXPRESS COMPANY;  
SANTA FE SOUTHERN PACIFIC CORP.

Applicants  
Interested Parties

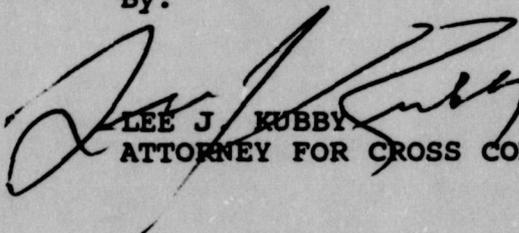
SET NUMBER: ONE

TO APPLICANTS--INTERESTED PARTIES AND EACH OF THEM AND TO  
THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that INJURED PARTIES TU demand, that  
APPLICANTS AND EACH OF YOU, produce the documents described  
on Exhibit A hereto which is incorporated herein by this  
reference as if set forth in full, for inspection and copying  
by INJURED PARTIES TU on October 15, 1992 at 231 Acalanes,  
Suite 5, Sunnyvale, California, 94086, at 10:00 A.M.

Dated: September 25, 1992.

LEE J. KUBBY, INC.  
A Professional Corporation  
By:



LEE J. KUBBY  
ATTORNEY FOR CROSS COMPLAINANTS

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EXHIBIT A

1. Please produce all of the specified documents which are in your possession, or available to you or to which you may gain access through reasonable effort, including information in the possession of your attorneys, accountants, advisors or other persons directly or indirectly employed by you, or connected with you, or anyone else otherwise subject to your control.

2. Unless specific arrangements to the contrary are expressly made by attorney for injured parties, you are to produce the originals together with all non-identical copies of each document requested.

3. In responding to this request for production, you must make a diligent search of your records and of other papers and materials in your possession or available to you or your representatives.

DEFINITIONS

For the purposes of this request for production of documents, the following terms shall have the following meanings:

1. As used herein the term "document" refers to an and includes each and every printed, written, typewritten,

1 graphic, photographic, electronically recorded or sound-  
2 recorded matter, however produced or reproduced, of every kind  
3 and description including, but not limited to, files, books,  
4 correspondence, letters, memoranda, telegraphs, papers,  
5 notes, records, resolutions, drafts, evaluations, entries,  
6 minutes, calendars, reports, appointment records, diaries,  
7 studies, working papers, financial records, summaries and  
8 charts, whether the original, or any carbon or photographic or  
9 other copy, reproduction or facsimile thereof, other than  
10 exact duplications. Any copy or excerpt of a document which  
11 bears any notes, additions, inserts, or other markings of any  
12 kind is to be considered a separate document for purposes of  
13 responding to the requests herein.

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15 2. As used herein, "you" refers to each of the applicants who  
16 are noticed herein, to each of their agents, employees,  
17 representatives, accountants or attorneys, who with respect to  
18 the subject matters of this request, was or is acting on their  
19 behalf.

20  
21 3. As used herein, "Tus" refers to the injured parties herein,  
22 Sieu Mei Tu and Joseph Z. Tu

23  
24 4. As used herein, "SFSP" refers to applicant SANTA FE SOUTH-  
25 ERN PACIFIC CORP., and to each of its officers, agents  
26 employees, representatives or attorneys who, with respect to  
27 the subject matter of the request, was or is acting on  
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SFSP's behalf.

5. As used herein, "SPTC" refers to the applicant Southern Pacific Transportation Company their directors, officers, agents, employees, representatives, accountants or attorneys, who with respect to the subject matter of the request, was or is acting on SPTC's behalf.

6. As used herein, "PFE" refers to the applicant Pacific Fruit Express their directors, officers, agents, employees, representatives, accountants or attorneys, who with respect to the subject matter of the request, was or is acting on PFE's behalf.

7. As used herein "ATSF" refers to the applicant Atchison, Topeka, Santa Fe Railroad Company and to each of its agents, employees, representatives, accountants or attorneys, who with respect to the subject matter of the request, was or is acting on ATSF's behalf.

8. As used herein, "person" refers to and includes natural persons, as well as businesses and all other artificial entities, unless otherwise limited herein.

9. As used herein, "MERGER" means the merger of SPTC and ATSF as originally petitioned in this matter.

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10. As used herein, "identify" refers to and includes identification by name, business and residence address and telephone number, job title and employer.

13. Unless otherwise stated, the time period for this request shall be from January 1, 1980 to December 30, 1985.

1  
2 DOCUMENTS TO BE PRODUCED  
3

4 (1) All documents produced to the plaintiffs in Kraus v.  
5 Santa Fe Southern Pacific Corp. et al.  
6

7 (2) Minutes of all meetings attended by SPTC., ATSF, and SPSF  
8 CORP. wherein any discussion took place concerning the pro-  
9 posed merger between ATSF and SPTC.  
10

11 (3) All editions of the Southern Pacific Update, from  
12 January 1, 1980 to December 31, 1989.  
13

14 (4) Document entitled "The Future of the Perishable Busi-  
15 ness and PFE" and all exhibits and addenda thereto pre-  
16 pared by Thomas D. Ellen, Vice President & General Manager,  
17 on or about June 7, 1985.  
18

19 (5) All memorandum, minutes, notes, regarding personnel to  
20 be moved to SPTC offices from PFE, of all meetings held  
21 wherein said subject was discussed from January 1, 1981 to  
22 October 30, 1985.  
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24 (6) All memos from E. E. Clark to T.D. Ellen from January  
25 1, 1985 to October 30, 1985.  
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(7) Minutes of all special and regular Board of Directors meetings of PFE from January 1, 1981 to October 30, 1985.

(8) Document from T. D. Ellen to D. K. McNear and D. M. Mohan dated April 2, 1984.

(9) Memorandum to T. R. Ashton, from T. C. Wilson, Re: SP's Revenue Estimation Process w/P& L implications received by T. D. Ellen on or about June 29, 1984.

PROOF OF SERVICE BY MAIL

1 State of California  
2 County of Santa Clara

3 I am and at the time of the service hereinafter men-  
4 tioned was a resident of the State of California, County of  
5 Santa Clara, and at least 18 years old. I am not a party to  
6 the within entitled action. I am an attorney licensed to prac-  
7 tice in the State of California.

8 My business address is Box 60485, Sunnyvale, Califor-  
9 nia 94086-0485. On 9-26-92 I deposited in the United States  
10 mail at Sunnyvale, California, enclosed in a sealed envelope  
11 and with the postage prepaid the attached

12 DEMAND FOR INSPECTION AND PRODUCTION

13 addressed to the persons listed on the attached sheet:

14 I declare under penalty of perjury that the foregoing is true  
15 and correct, and that this declaration was executed on 9-26-92  
16 at Sunnyvale, California.

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LEE J. KUBBY

ATTACHED SHEET

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Applicant  
Santa Fe Pacific Corporation Company  
1700 East Golf Rd.  
Schaumburg, Ill. 60173-5560

Applicant Representative  
Jerome F. Donohoe  
224 South Michigan Ave  
Chicago, Ill 60604-2507

Southern Pacific Transportaition Company  
Southern Pacific Building  
1 Market Plaza #846  
San Francisco, CA 94105-1001

Atchison Topeka & Santa Fe Railroad Co.  
1700 E. Golf  
Schaumburg, Ill 60173-5860

Mitchell M. Kraus, General Counsel  
Transportation Communications Int'l Union  
3 Research Place  
Rockville, MD 20850

Donald F. Griffin, Esq.  
Highsaw, Mahoney & Clarke, P.C.  
Suite 210  
1050 Seventeenth Street, N.W.  
Washington, D.C. 20036

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

---

FINANCE DOCKET NO. 30400 (SUB-NO. 21)

---

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

---

RESPONSES AND OBJECTIONS OF  
SANTA FE PACIFIC CORPORATION TO REQUEST  
FOR PRODUCTION OF DOCUMENTS OF SIEU MEI TU AND JOSEPH Z. TU

G. Paul Moates  
Vincent F. Prada  
SIDLEY & AUSTIN  
1722 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 736-8000

Of Counsel

Erika Z. Jones  
Adrian L. Steel, Jr.  
Kathryn A. Kusske  
MAYER, BROWN & PLATT  
2000 Pennsylvania Avenue, N.W.  
Suite 6500  
Washington, D.C. 20006-1882  
(202) 463-2000

Attorneys for Santa Fe Pacific Corporation

DATED: October 15, 1992

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

---

FINANCE DOCKET NO. 30400 (SUB-NO. 21)

---

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

---

RESPONSES AND OBJECTIONS OF  
SANTA FE PACIFIC CORPORATION TO REQUEST  
FOR PRODUCTION OF DOCUMENTS OF SIEU MEI TU AND JOSEPH Z. TU

Pursuant to the Commission's Rules of Practice (49 C.F.R. § 1114), Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation) ("SFP") hereby submits the following responses and objections to the "Demand for Inspection and Production" dated September 25, 1992, filed by Sieu Mei Tu and Joseph Z. Tu (jointly referred to herein as the "Tus").

GENERAL OBJECTIONS

The following general objections are asserted as to each document request propounded by the Tus and are incorporated by reference in the responses to each document request below. The fact that SFP responds to all or part of any document request is not intended to, and shall not be construed to be, a waiver of any general or specific objection made by SFP to any document request.

1. SFP objects to the Tus's document requests on the ground that the Tus have not complied with the Commission's rules for serving document requests on a party. See 49 C.F.R. § 1114.21(b). The Tus have not contacted counsel for SFP to secure an informal

agreement concerning their document requests, and, in the absence of such an agreement, have not obtained a decision from the Commission approving document requests as required by 49 C.F.R. § 1114.21(b)(2).

2. SFP objects to the Tus's document requests on the ground that Sieu Mei Tu's participation in this proceeding is improper because the Commission's order reopening the proceeding specifically states that it is not "at this time seeking personal statements from individual employees who believe they were adversely affected by SPT actions", but that the proceeding would encompass only "SPT employees (as a class)". Commission's June 12, 1992 Order at 3 (emphasis added). Sieu Mei Tu is apparently a former clerical employee of Pacific Fruit Express Company ("PFE"), a wholly-owned subsidiary of SPT until its merger with SPT in 1985.

3. SFP objects to the Tus's document requests insofar as they request SFP to provide responsive information on behalf of The Atchison, Topeka and Santa Fe Railway Company ("ATSF") (a wholly-owned subsidiary of SFP). ATSF is not now, and has never been, a party to this sub-docket proceeding.

4. SFP objects to the Tus's document requests to the extent they seek documents and information for the time period prior to December 23, 1983 (the service date of the Commission's decision approving the SPT voting trust) or subsequent to August 4, 1987 (the service date of the Commission's order denying the Applicants' petition for reconsideration). Actions taken or omitted by SFP

prior to December 23, 1983 or subsequent to August 4, 1987 are beyond the scope of the issues raised by this reopened proceeding, and the Tus's requests are not therefore reasonably calculated to lead to the discovery of admissible evidence.

5. SFP objects to the Tus's document requests insofar as they seek the production of documents protected against disclosure by the attorney-client privilege or by the attorney work product doctrine.

6. SFP objects to the Tus's document requests insofar as they seek the production of proprietary or confidential business information of SFP. Without waiving this objection, SFP will agree to produce any proprietary or confidential information responsive to the Tus's document requests pursuant to an appropriately framed Protective Order that safeguards the confidentiality and commercially sensitive nature of the requested information.

7. Subject to and without waiving the foregoing objections and subject to SFP's other objections, SFP will respond below to the Tus's document requests.

#### RESPONSES AND OBJECTIONS TO SPECIFIC DOCUMENT REQUESTS

##### Document Request No. 1

All documents produced to the plaintiffs in Kraus v. Santa Fe Southern Pacific Corp. et al.

##### Response to Document Request No. 1

SFP objects to this document request to the extent that it seeks the production of documents not relating to PFE, the former employer of Sieu Mei Tu, on the ground that it seeks the production

of documents irrelevant to any matter involving the Tus in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and its other objections, SFP states that it has located no documents responsive to this document request which relate to PFE.

Document Request No. 2

Minutes of all meetings attended by SPTC., ATSF, and SPSF CORP. wherein any discussion took place concerning the proposed merger between ATSF and SPTC.

Response to Document Request No. 2

SFP objects to this document request to the extent that it seeks the production of documents not relating to PFE on the grounds that it is overly broad and unduly burdensome and that it seeks the production of documents irrelevant to any matter involving the Tus in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections and its other objections, SFP states that it has located no documents responsive to this document request which relate to PFE.

Document Request No. 3

All editions of the Southern Pacific Update, from January 1, 1980 to December 31, 1989.

Response to Document Request No. 3

Subject to its objections, SFP states that it has located no documents responsive to this document request.

Document Request No. 4

Document entitled "The Future of the Perishable Business and PFE" and all exhibits and addenda thereto prepared by Thomas D. Ellen, Vice President & General Manager, on or about June 7, 1985.

Response to Document Request No. 4

Subject to its objections, SFP states that it has located no documents responsive to this document request.

Document Request No. 5

All memorandum, minutes, notes, regarding personnel to be moved to SPTC offices from PFE, of all meetings held wherein said subject was discussed from January 1, 1981 to October 30, 1985.

Response to Document Request No. 5

SFP objects to this document request on the ground that it is overly broad and unduly burdensome. Subject to this objection and its other objections, SFP states that it has located no documents responsive to this document request.

Document Request No. 6

All memos from E. E. Clark to T.D. Ellen from January 1, 1985 to October 30, 1985.

Response to Document Request No. 6

Subject to its objections, SFP states that it has located no documents responsive to this document request.

Document Request No. 7

Minutes of all special and regular Board of Directors meetings of PFE from January 1, 1981 to October 30, 1985.

Response to Document Request No. 7

Subject to its objections, SFP states that it has located no documents responsive to this document request.

Document Request No. 8

Document from T. D. Ellen to D. K. McNear and D. M. Mchan dated April 2, 1984.

Response to Document Request No. 8

Subject to its objections, SFP states that it has located no documents responsive to this document request.

Document Request No. 9

Memorandum to T. R. Ashton, from T. C. Wilson, Re: SP's Revenue Estimation Process w/P& L implications received by T. D. Ellen on or about June 29, 1984.

Response to Document Request No. 9

Subject to its objections, SFP states that it has located no documents responsive to this document request.

Respectfully submitted,

*Adrian L. Steel, Jr.*

G. Paul Moates  
Vincent F. Prada  
SIDLEY & AUSTIN  
1722 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 736-8000

Of Counsel

Erika Z. Jones  
Adrian L. Steel, Jr.  
Kathryn A. Kusske  
MAYER, BROWN & PLATT  
2000 Pennsylvania Avenue, N.W.  
Suite 6500  
Washington, D.C. 20006-1882  
(202) 463-2000

Attorneys for Santa Fe Pacific Corporation

DATED: October 15, 1992



PROOF OF SERVICE BY MAIL

State of California  
County of Santa Clara

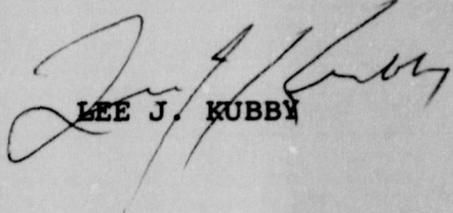
I am and at the time of the service hereinafter mentioned was a resident of the State of California, County of Santa Clara, and at least 18 years old. I am not a party to the within entitled action. I am an attorney licensed to practice in the State of California.

My business address is Box 60485, Sunnyvale, California 94086-0485. On 10-16-92 I deposited in the United States mail at Sunnyvale, California, enclosed in a sealed envelope and with the postage prepaid the attached

MOTION OF INJURED PARTY SIEU MEI TU FOR ORDER COMPELLING INSPECTION AND PRODUCTION; EXTENTION TIME TO COMPLETE DISCOVERY AND SUBMIT EVIDENCE.

addressed to the persons listed on the attached sheet:

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on 10-16-92 at Sunnyvale, California.

  
LEE J. KUBBY

ATTACHED SHEET

Honorable Paul S. Cross  
Interstate Commerce Commission  
12th & Constitution Aves. NW  
Washington, DC 20423

Adrian L. Steel, Jr.  
Mayer, Brown, & Platt  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

Southern Pacific Transportation Company  
Southern Pacific Building  
1 Market Plaza #846  
San Francisco, CA 94105-1001

Atchison Topeka & Santa Fe Railroad Co.  
1700 E. Golf  
Schaumburg, Ill 60173-5860

Donald F. Griffin, Esq.  
Highsaw, Mahoney & Clarke, P.C.  
Suite 210  
1050 Seventeenth Street, N.W.  
Washington, D.C. 20036

Charles Kong  
1017 Brown Street  
Bakersfield, CA 93005

STB

FD-30400 (SUB 21)

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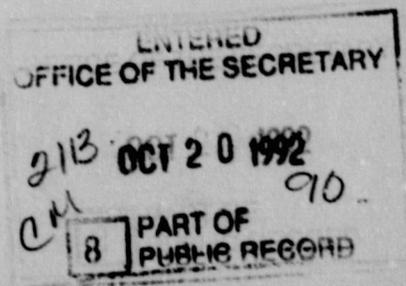
BEFORE THE  
INTERSTATE COMMERCE COMMISSION



SANTA FE SOUTHERN PACIFIC CORPORATION--  
CONTROL--SOUTHERN PACIFIC  
TRANSPORTATION COMPANY

Finance Docket  
No. 30400 (Sub-No. 21)

**CONSOLIDATED MOTION OF BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYES AND INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS TO COMPEL ANSWERS  
TO INTERROGATORIES AND TO OBTAIN PERMISSION TO SERVE  
REQUESTS FOR PRODUCTION OF DOCUMENTS AND OBTAIN EXPEDITED  
RESPONSES THERETO**



William G. Mahoney  
Richard S. Edelman  
Donald F. Griffin

HIGHSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, DC 20036  
(202) 296-8500

Attorneys for BMW and IAMAW

Dated: October 19, 1992

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

---

SANTA FE SOUTHERN PACIFIC CORPORATION-- : Finance Docket  
CONTROL--SOUTHERN PACIFIC : No. 30400 (Sub-No. 21)  
TRANSPORTATION COMPANY :  
:

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**CONSOLIDATED MOTION OF BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYEES AND INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS TO COMPEL ANSWERS  
TO INTERROGATORIES AND TO OBTAIN PERMISSION TO SERVE  
REQUESTS FOR PRODUCTION OF DOCUMENTS AND OBTAIN EXPEDITED  
RESPONSES THERETO**

On September 25, 1992, the Brotherhood of Maintenance of Way Employees ("BMWE") and International Association of Machinists and Aerospace Workers ("IAMAW") served by overnight delivery and filed their first set of interrogatories and informal request for production of documents upon the Southern Pacific Transportation Company ("SPT"). These discovery requests were accompanied by a transmittal letter to SPT's counsel requesting him to respond to BMWE's and IAMAW's counsel during the week of September 28 - October 2, 1992 if SPT would not agree to respond to the informal request for production of documents.<sup>1</sup> SPT's counsel did not respond to the transmittal letter during that week. On October 16, 1992, counsel for BMWE and IAMAW received a letter dated October 12, 1992 from SPT's counsel stating that SPT "will not participate in informal discovery in this matter."<sup>2</sup> The letter

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<sup>1</sup> A copy of the September 25, 1992 transmittal letter is attached hereto as Exhibit 1.

<sup>2</sup> A copy of SPT's letter of October 12, 1992 is attached hereto as Exhibit 2.

added that if BMW and IAMAW persisted in seeking discovery against SPT, the carrier would "strenuously object" to such action. In response to SPT's illegal refusal to respond to properly served discovery requests, BMW and IAMAW respectfully submit the following consolidated motion.

**I. SPT IS A PARTY TO THIS PROCEEDING AND MUST RESPOND TO THE DISCOVERY REQUESTS SERVED BY BMW AND IAMAW**

SPT suggests in its October 12, 1992 letter that it is not a party to this proceeding because "[t]he sub 21 proceeding is clearly directed at the Santa Fe parties . . ." SPT's contention that it is not a party to this proceeding is frivolous.

SPT is a party to the Finance Docket No. 30400 proceeding. Official Service List for FD 30400 at 41, dated May 30, 1990.<sup>3</sup> SPT also is a party to this sub-numbered proceeding, both through its participation in the lead docket, Ry. Labor Executives' Ass'n. v. I.C.C., 958 F.2d 252, 256 (9th Cir. 1992) as well as its own participation through the filing of comments on October 28, 1988 and reply comments on November 17, 1988 in this sub-numbered proceeding. Indeed, in its motion for leave to intervene before the Ninth Circuit in RLEA v. ICC, SPT based its grounds for intervention on the fact that it was a party to this proceeding.<sup>4</sup>

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<sup>3</sup> Relevant portions of the May 30, 1990 service list are attached hereto as Exhibit 3.

<sup>4</sup> A copy of SPT's motion for leave to intervene in RLEA v. ICC is attached hereto as Exhibit 4.

Pursuant to the Commission's discovery procedures, a party may serve written interrogatories upon another party without leave of the Commission. 49 C.F.R. § 1114.26(a). As demonstrated above, SPT is a party to this proceeding. BMW and IAMAW, as designated representatives of SPT's employees, are also parties to this proceeding by virtue of their absolute right to intervene and participate in any Commission proceeding that affects those employees. 49 U.S.C. § 10328; Bhd. of R.R. Trainmen v. Baltimore & O.R.R., 331 U.S. 519, 520 (1947). Accordingly, because SPT is a party to this proceeding and has been served written interrogatories by parties to this proceeding, it is under a legal obligation to either answer the interrogatories or object to them. SPT cannot claim that it is somehow a "third party" to this proceeding that has no legal obligation to respond to discovery requests.

**II. SPT MUST BE COMPELLED TO RESPOND TO THE REQUESTS FOR PRODUCTION OF DOCUMENTS AND WRITTEN INTERROGATORIES SERVED BY BMW AND IAMAW**

SPT's only substantive objection to the discovery requests served by BMW and IAMAW is that the requests are in some unspecified way "oppressive and burdensome". BMW and IAMAW respectfully submit that by failing to come forward with any specific evidence regarding that assertion, SPT has failed utterly to demonstrate the "oppressive and burdensome" nature of the discovery requests and an order compelling responses should issue. Moreover, in light of SPT's flat refusal to even provide specific objections to BMW's and IAMAW's interrogatories,

coupled with the time constraints in this proceeding, SPT should be compelled to answer the interrogatories within 7 days of the service date of the order compelling answers.

BMWE and IAMAW submit that their narrowly drawn discovery requests are not "cpressive and burdensome". Instead they are directed at the acquisition of relevant, admissible evidence or, at least, are likely to lead to the discovery of relevant, admissible evidence. 49 C.F.R. § 1114.21(a).

In a decision served June 18, 1992, the Commission reopened this proceeding "to give SPT employees (as a class) an opportunity to demonstrate that they were adversely affected as a direct consequence of actions taken or orders issued by SFSP in contemplation of the proposed [Atchison, Topeka & Santa Fe Railway Company] ATSF-SPT merger." June 18, 1992 Decision at 3. BMWE and IAMAW served interrogatories and requests for the production of documents upon Santa Fe Pacific Corporation ("SFP"), the successor in interest to Santa Fe Southern Pacific Corporation ("SFSP"). Some of the documents produced showed a written communication between SPT and SFSP regarding the manner in which SPT could best prepare itself for a merger with the ATSF. Accordingly, on September 25, 1992, BMWE and IAMAW served discovery requests upon SPT seeking information held only by SPT regarding the aforementioned written communications.

"Discovery should result in an adequate exchange of relevant data." SP/SSW Switching Charges on Carloads of Grain at Kansas City, No. 40178, 1989 ICC LEXIS 286 at {\*5}, June 5, 1989.

Moreover, the scope of discovery allowed is based, at least in part, on the novelty of the issues presented. Id. at {\*4}. In this proceeding, the Commission seeks evidence of adverse affect upon SPT employees caused by SFSP.<sup>5</sup> In order to develop an adequate factual record, BMW and IAMAW need information related to SPT actions that appear related to written communications between SPT and SFSP. BMW's and IAMAW's carefully drawn discovery requests clearly perform that function.

Interrogatory Number 1 relates to a written communication between the CEO of SPT, Mr. McNear and the CEO of SFSP, Mr. Schmidt, that raises the inference that the force reductions taken by SPT were designed to facilitate the impending SPT-ATSF merger. The interrogatory seeks to determine if any of the separated employees were represented by either BMW or IAMAW, where those employees were located, the terms of their separation and the entity that funded the separation. If BMW or IAMAW represented employees were in this group, the terms of their separations are important so that they can be measured against standard Commission-imposed protective conditions in discretionary protection proceedings. Moreover, the entity that paid the separations is relevant to a determination of SFSP involvement in the implementation of the separation offers. Accordingly, Interrogatory Number 1 meets the relevance standards

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<sup>5</sup> Collusion between SPT and SFSP regarding the elimination of non-agreement positions in anticipation of the proposed SPT-ATSF already has been established. Kraus v. Santa Fe Southern Pacific Corp., 878 F.2d 1193 (9th Cir. 1989).

of 49 C.F.R. § 1114.21(a). Moreover the interrogatory is neither oppressive nor burdensome because it seeks information that should be kept as a matter of course in SPT's personnel records and does not require SPT to create a new data base solely to respond to the interrogatory. See, San Antonio, Texas v. Burlington Northern R.R., No. 36180, 1986 ICC LEXIS 56 at {\*19}, November 24, 1986.

Interrogatory Number 2 seeks the identity and location of those IAMAW represented employees laid off in April and May, 1985. Interrogatory Number 3 seeks similar information regarding BMWV represented employees laid off in the first quarter of 1985. Interrogatory Number 4 seeks the identification of those routes SPT sought to emphasize in anticipation of the proposed merger. These requests are related to the assertion contained in Mr. McNear's letter of June 18, 1985 addressed to Mr. Schmidt regarding steps taken by SPT to enhance its value as a merger partner with ATSF. BMWV and IAMAW submit that this information is relevant to the issue regarding SFSP's direction of SPT's operations during the pendency of the voting trust.

Interrogatory Number 5 is relevant because the abolishments in question appear to have been undertaken in response to an SFSP inquiry regarding ways in which to reduce the financial drain of the Northwestern Pacific Railroad ("NWP") on SPT's operations.<sup>6</sup> Again, this interrogatory is related to the issue of SFSP's

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<sup>6</sup> NWP is a wholly owned subsidiary of SPT. Southern Pacific Trans. Co.--Merger Exemption--Northwestern Pacific R.R., Finance Docket No. 32156, served October 8, 1992.

direction of SPT's operations during the pendency of the merger application.

Finally, BMW and IAMAW also informally requested that SPT produce those "workpapers" used in the preparation of SPT's response to questions prepared by SFSP and transmitted to SPT via the Trustee. BMW and IAMAW asked SPT to promptly notify them if the carrier would not voluntarily comply with the request, however SPT delayed giving any response to the request until 15 days after service and then responded in a non-expeditious manner. In light of the procedural schedule implemented in this proceeding, a schedule known to SPT, its dilatory method of responding to the discovery requests is outrageous and unsupported by an Commission rule or precedent. Therefore, BMW and IAMAW respectfully move the Commission for leave to file the already served request and further request the Commission to order SPT to respond within 7 days of service of the order permitting leave to file.<sup>7</sup> Moreover, in light of the time constraints in this proceeding, BMW and IAMAW respectfully request that the Commission order SPT to produce the documents at the offices of counsel for BMW and IAMAW.

The documents requested are directly related to the answers given by SPT to the Trustee in response to those questions posed

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<sup>7</sup> BMW and IAMAW also note that it could be argued that no such motion for leave to serve requests for production of documents is necessary since unlimited discovery previously was approved by the Commission in the lead docket. However, in an abundance of caution, BMW and IAMAW are making a specific request for leave to serve requests for production of documents here.

by SFSP and transmitted to SPT by the Trustee. Therefore, the documents used to prepare answers to those questions clearly are relevant to the issue of SFSP direction of SPT operations during the pendency of the merger application.

BMW and IAMAW respectfully submit that the foregoing demonstrates the relevance of the discovery requests served by them upon SPT. The requests are based on materials produced earlier by SFP in response to discovery requests. These new requests upon SPT are tightly drawn, related to relevant areas of inquiry and cannot be considered "oppressive and burdensome" under any circumstance. Accordingly, SPT must be compelled to response to these discovery requests in an expedited manner.

### **III. THE COMMISSION HAS JURISDICTION OVER SPT IN THIS PROCEEDING**

SPT also contends that there is no legal basis for an order from the Commission compelling SPT to respond to BMW's and IAMAW's discovery requests. Again, that contention is frivolous. There can be no doubt that SPT is a rail carrier over which the Commission has jurisdiction. 49 U.S.C. § 10501. Moreover, there can be no dispute that this proceeding is a continuation of the lead docket, a docket where the Commission not only had jurisdiction over SPT, but SPT was a party of record. Finally, in comments filed in this proceeding on October 28, 1988, SPT stated(Comments at 3-4, emphasis added):

SPT believes that any fact issues concerning alleged violation of the voting trust or the Commission's orders and regulations pertaining thereto, may properly be reviewed by the Commission. SPT agrees that this Commission has retained jurisdiction to

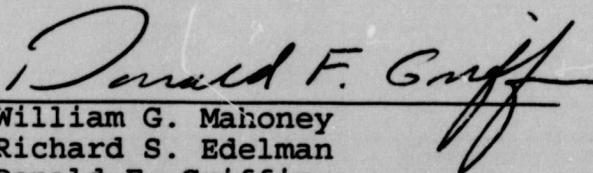
examine such claims by virtue of its orders previously entered.

When the Railway Labor Executives Association ("RLEA") subsequently filed a petition to review the Commission's decision of February 9, 1989 in this proceeding, SPT intervened in the proceedings at the Ninth Circuit. SPT did not raise any challenge to the Commission's jurisdiction over it in this proceeding. Simply put, it is now the law of the case that the Commission has jurisdiction over SPT in this proceeding. City of Cleveland v. Federal Power Comm., 344, 346 (D.C. Cir. 1977).

#### CONCLUSION

Based upon the foregoing, BMWF and IAMAW respectfully request that the Commission order: (1) SPT to answer the interrogatories previously served upon it within 7 days of the service date of the order compelling answers; (2) grant BMWF and IAMAW leave to serve requests for production of documents; and (3) order SPT to respond to the requests for production of documents within 7 days of the service date of the order granting leave to serve the requests for production of documents.

Respectfully submitted,

  
William G. Mahoney  
Richard S. Edelman  
Donald F. Griffin  
HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, DC 20036  
(202) 296-8500

Dated: October 19, 1992

Attorneys for BMWF and IAMAW

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing upon the following by overnight mail delivery to:

Wayne Bolio, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Lee J. Kubby, Esq.  
P.O. Box 60485  
Sunnyvale, CA 94086-0485

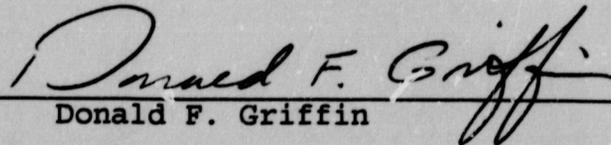
Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
1700 East Golf Road  
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Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
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and by hand delivery to:

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Vincent Prada, Esq.  
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Donald F. Griffin

Dated: October 19, 1992

**EXHIBIT 1**

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ELIZABETH A. NADEAU\*

OF COUNSEL:  
JAMES L. HIGSAW

September 25, 1992

\*ADMITTED IN MICH. & MAINE ONLY

via overnight delivery

John MacDonald Smith, Esq.  
SOUTHERN PACIFIC TRANSPORTATION COMPANY  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

Re: Finance Docket No. 30400 (Sub-No. 21), Santa Fe Southern Pacific  
Corp.--Control--Southern Pacific Trans. Co.

Dear Mr. Smith:

Enclosed are interrogatories and informal requests for the production of documents served by the Brotherhood of Maintenance of Way Employees (BMW) and International Association of Machinists and Aerospace Workers (IAMAW). If Southern Pacific Transportation Company will not agree to respond to the informal document requests, please contact my colleague, Richard S. Edelman, as soon as possible next week so that BMW and IAMAW may present a motion seeking leave to serve document production requests to Judge Cross as expeditiously as possible.

Sincerely,

HIGSAW, MAHONEY & CLARKE, P.C.

By: Donald F. Griffin  
Donald F. Griffin

**EXHIBIT 2**

# Southern Pacific Transportation Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

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GENERAL COUNSEL LITIGATION

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October 12, 1992

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Richard S. Edelman, Esq.  
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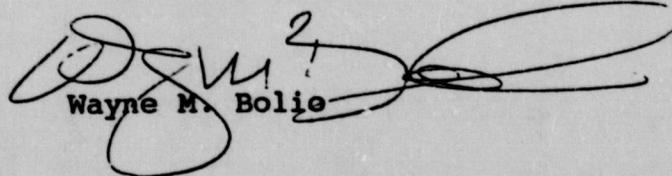
Re: Finance Docket No. 30400 (Sub-No. 21), Santa Fe  
Pacific Corp.--Control-- Southern Pacific Trans. Co.

Dear Mr. Edelman:

Your letter dated September 25, 1992 to John MacDonald Smith has been referred to me for reply. The sub 21 proceeding is clearly directed at the Santa Fe parties, and Southern Pacific will not participate in informal discovery in this matter.

I should also add that if you should endeavor to seek a formal discovery order against Southern Pacific, we shall at that time strenuously object to the request on various grounds including both the legal basis for an Order against Southern Pacific and the oppressive and burdensome scope of the inquiry you propose.

Very truly yours,

  
Wayne M. Bolie

**EXHIBIT 3**

Interstate Commerce Commission  
Washington, D.C. 20423

I, NORETA R. MCGEE, Secretary of the INTERSTATE  
COMMERCE COMMISSION, do hereby certify that the attached is  
a true and correct copy of the Parties to the Proceeding in Finance Docket  
No. 400, Santa Fe Southern Pacific Corporation -- Control-  
ling Interest in Southern Pacific Transportation Company, as of May 22,  
1990, the original of which is now on file and of record in  
the Office of said Commission.



IN WITNESS WHEREOF I have  
hereunto set my hand and  
affixed the Seal of said  
Commission this 30<sup>th</sup> day  
of May, A.D., 1990

*Noreta R. McGee*  
SECRETARY OF THE INTERSTATE  
COMMERCE COMMISSION

FINANCE DOCKET NO 30400  
PARTIES TO THE PROCEEDING  
MAY 22, 1990

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Represents: SIMMONS INDUSTRIES INC

[POR] JERRY SIMMS  
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[POR] D J SIMPSON  
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SAN FRANCISCO CA 94102

[POR] STANLEY D SIMPSON  
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[POR] MAX S SIMS  
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HAYDEN CO 81638  
Represents: THE TOWN OF HAYDEN, CO

[POR] EMMETT I SINDK  
SUITE 926  
INTERNATIONAL TRADE MART BLDG  
NEW ORLEANS LA 70130  
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[PRP] WILLIAM C. SIPPEL  
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Represents: CHICAGO MILW SP & PACIFIC RR CO

[POR] MARK SKRABANEK  
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[POR] BILL SLADE  
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PLYMOUTH MI 48170

[POR] HON. JAMES C. SLATTERY  
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U. S. STATE OF REPRESENTATIVES  
WASHINGTON DC 20515

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[POR] M A SMITH  
S. PACIFIC TRANSP CO  
ONE MARKET PLAZA  
SAN FRANCISCO CA 94105

[POR] MARK S SMITH  
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[POR] VIRGIL SMITH  
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MARION IN 46952  
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[POR] WILLIAM H. SMITH  
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Represents: MID-STATES WHOLESAL LUMBER

[POR] PAUL H. SNATERRE  
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BAKERSFIELD CA 93307

[POR] DARWIN E SODERMAN  
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Represents: CA DEPT OF TRNSPT

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Represents: ERNESTO EDVARDO GUTIERREZ

[POR] DONALD N SOSIN  
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Represents: CHI-CAN FREIGHT FORWARDING

[POR] SOUTHERN PACIFIC TRANSPORTATION  
COMPANY AND  
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ONE MARKET PLAZA  
SAN FRANCISCO CA 94105

**EXHIBIT 4**

C. Y. HARVEY  
JOHN MacDONALD SMITH  
ROBERT S. BOGASON  
Southern Pacific Building  
One Market Plaza  
San Francisco, CA 94105  
(415)541-1756

Attorneys for Southern Pacific  
Transportation Company

UNITED STATES COURT OF APPEAL  
FOR THE NINTH CIRCUIT

RAILWAY LABOR EXECUTIVES' ASSOCIATION, )  
)  
INTERNATIONAL ASSOCIATION OF MACHINISTS )  
AND AEROSPACE WORKERS, )  
District Lodge No. 19 )

and )

UNITED TRANSPORTATION UNION, )  
General Committee of Adjustment GO-887 )

Petitioners, )

v. )

No. 89 70134 )

INTERSTATE COMMERCE COMMISSION, )

and )

UNITED STATES OF AMERICA, )

Respondents. )

MOTION FOR LEAVE TO INTERVENE

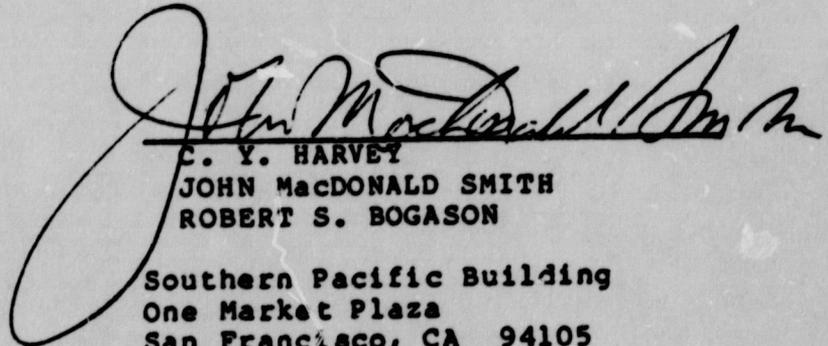
Southern Pacific Transportation Company ("SPT") hereby moves  
this court for leave to intervene in the captioned proceeding in  
which review is sought of a decision served by the Interstate  
Commerce Commission ("ICC") on February 9, 1989, in Santa Fe

Southern Pacific Corporation--Control--Southern Pacific  
Transportation Company, Finance Docket No. 30400 (Sub-No. 21).

In support of this motion SPT avers that it was a party to the proceedings in ICC Finance Docket No. 30400 (Sub-No. 21). An order of court setting aside or modifying the ICC decision under review could have the potential for adversely affecting the SPT. SPT is, therefore, entitled to intervene as of right pursuant to 28 U.S.C. § 2348.

For the foregoing reasons, SPT respectfully prays that this Court grant leave to intervene in this review proceeding.

Respectfully submitted,



C. Y. HARVEY  
JOHN MacDONALD SMITH  
ROBERT S. BOGASON

Southern Pacific Building  
One Market Plaza  
San Francisco, CA 94105  
(415)541-1756

Attorneys for Southern Pacific  
Transportation Company

Certificate of Service

John MacDonald Smith, an attorney, hereby certifies that he caused to be mailed by prepaid first class postage a copy of the foregoing Motion for Leave to Intervene to each of the following:

Hon. Richard Thornburgh  
Attorney General  
Department of Justice  
Constitution Avenue between 9th & 10th  
Streets, N.W.  
Washington, D.C. 20530

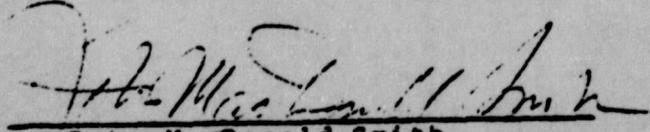
Hon. Samuel Skinner  
Secretary of Transportation  
400 7th Street, N.W.  
Washington, D.C. 20590

William G. Mahoney  
John O'B. Clarke, Jr.  
Donald F. Griffin  
Highway & Mahoney, P.C.  
1050 17th Street, N.W.  
Washington, D.C. 20036

Jermone F. Donohoe  
Gary L. Crosby  
Richard E. Weicher  
Michael A. Smith  
John J. Fleps  
Santa Fe Southern Pacific Corp.  
224 South Michigan Avenue  
Chicago, IL 60604

Robert S. Burk  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dated this 2nd day of May, 1989, at San Francisco, California.

  
\_\_\_\_\_  
John MacDonald Smith

STB

FD-30400 (SUB 21)

9-25-92

I

38378

ENTERED  
OFFICE OF THE SECRETARY  
SEP 28 1992  
9 PART OF  
PUBLIC RECORD

*From Files* 38378?  
BEFORE THE  
INTERSTATE COMMERCE COMMISSION



SANTA FE SOUTHERN PACIFIC CORPORATION-- : Finance Docket  
CONTROL--SOUTHERN PACIFIC : No. 30400 (Sub-No. 21)  
TRANSPORTATION COMPANY :

**BMW/IAMAW'S FIRST SET OF INTERROGATORIES  
AND INFORMAL REQUEST FOR PRODUCTION OF DOCUMENTS  
TO SOUTHERN PACIFIC TRANSPORTATION COMPANY**

The Brotherhood of Maintenance of Way Employees ("BMWE") and the International Association of Machinists and Aerospace Workers ("IAMAW") respectfully serve through counsel, pursuant to 49 C.F.R. §1114.26, the following interrogatories upon the Southern Pacific Transportation Company. Responses to these interrogatories and informal document requests should be served upon counsel for BMWE and IAMAW: HIGHSAW, MAHONEY & CLARKE, P.C., 1050 17th Street, N.W., Suite 210; Washington, DC 20036; fifteen - (15) days after service of the foregoing. BMWE and IAMAW are willing to agree to the imposition of a reasonable protective order, similar to that imposed by the Commission in this proceeding in an order served September 3, 1992.

**DEFINITIONS**

- (1) **Communication:** The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
- (2) **Document:** The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in

Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

- (3) **Identify (With Respect to Persons):** When referring to a person, "to identify" means to give, to the extent known, the person's full name, title, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with the subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.
- (4) **Identify (With Respect to Documents):** When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).
- (5) **Identify (With Respect to Communications):** When referring to communications, "to identify" means to give, to the extent known, the (i) type of communication; (ii) general subject matter; (iii) date of the communication; (iv) the person communicating and the person communicated to.
- (6) **Person:** The term "person" is defined as any natural person or any business, legal or governmental entity or association.
- (7) **Concerning:** The term "concerning" means relating to, referring to, describing, evidencing or constituting.

- (8) **ATSF:** The term "ATSF" means the Atchafson, Topeka and Santa Fe Railway Company, its officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliate and predecessors.
- (9) **SPT:** The term "SPT" means the Southern Pacific Transportation Company and the St. Louis Southwestern Railway Company, their officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliates and predecessors.
- (10) **SFSP:** The term "SFSP" means the Santa Fe Southern Pacific Corporation, its officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliates and successors.
- (11) **BMWE:** The term "BMWE" means the Brotherhood of Maintenance of Way Employes, its officers, directors, employees and agents.
- (12) **IAMAW:** The term "IAMAW" means the International Association of Machinists and Aerospace Workers, its officers, directors, employees and agents.
- (13) **ICC:** The term "ICC" means the Interstate Commerce Commission.
- (14) **Maintenance of Way Department:** The term "maintenance of way department" means that subdivision of either the SPT or ATSF concerned with the construction, repair and other maintenance of the track, roadbed, appurtenant structures and bridges of each carrier.

- (8) **ATSF:** The term "ATSF" means the Atchafalaya, Topeka and Santa Fe Railway Company, its officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliate and predecessors.
- (9) **SPT:** The term "SPT" means the Southern Pacific Transportation Company and the St. Louis Southwestern Railway Company, their officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliates and predecessors.
- (10) **SFSP:** The term "SFSP" means the Santa Fe Southern Pacific Corporation, its officers, directors, employees, agents, partners, corporate parent, subsidiaries, affiliates and successors.
- (11) **BMWE:** The term "BMWE" means the Brotherhood of Maintenance of Way Employees, its officers, directors, employees and agents.
- (12) **IAMAW:** The term "IAMAW" means the International Association of Machinists and Aerospace Workers, its officers, directors, employees and agents.
- (13) **ICC:** The term "ICC" means the Interstate Commerce Commission.
- (14) **Maintenance of Way Department:** The term "maintenance of way department" means that subdivision of either the SPT or ATSF concerned with the construction, repair and other maintenance of the track, roadbed, appurtenant structures and bridges of each carrier.

- (15) **Maintenance of Way Employee(s):** The term "maintenance of way employee(s) means those employees working in the maintenance of way department.
- (16) **Maintenance of Equipment Department:** The term "maintenance of equipment department" means that subdivision of either the SPT or ATSF concerned with the construction, rebuilding, repair and maintenance of locomotives and rolling stock of each of the carriers.
- (17) **Maintenance of Equipment Facilities:** The term "maintenance of equipment facilities" means those locations where the construction, rebuilding, repair and maintenance of locomotives and other rolling stock are or were performed on a regular and recurring basis.
- (18) **Maintenance of Equipment Employee(s):** The term "maintenance of equipment employee(s)" means those employees working in the maintenance of equipment department.
- (19) **SPT - ATSF Merger:** The term "SPT - ATSF merger" means the transaction that was the subject of the primary application in ICC Finance Docket No. 30400.
- (20) **Rules of Construction:** The following rules of construction apply to all discovery requests:
- (a) **All/Each;** the terms "all" and "each" shall be construed as all and each;
  - (b) **And/Or;** the terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the

interrogatory all responses that might otherwise be construed to be outside of its scope.

(c) **Number;** the use of the singular form of any word includes the plural and vice versa.

- (21) **Time Period Covered By Interrogatories:** The time period covered by these interrogatories runs from December 23, 1983 until October 13, 1988.
- (22) **Trustee of the Voting Trust:** means the Valley National Bank of Arizona.

#### INSTRUCTIONS

- A. If exact data cannot be supplied in answering any Interrogatory that calls for a numerical response, SPT should provide its best estimate of the data requested, indicate that this has been done by notation ("est.") in conjunction with the response, and describe the basis upon which the estimate was derived. In addition, state where the precise information can be found, including identification of each knowledgeable person and of all documents which contain the precise information or from which it can be derived.
- B. If SPT cannot answer any part of any Interrogatory in full, after exercising due diligence to secure the information to do so, SPT should so state and answer to the extent possible, specifying its inability to answer the remainder, and stating whatever information or knowledge they have of each unanswered part.

interrogatory all responses that might otherwise be construed to be outside of its scope.

(c) **Number;** the use of the singular form of any word includes the plural and vice versa.

- (21) **Time Period Covered By Interrogatories:** The time period covered by these interrogatories runs from December 23, 1983 until October 13, 1988.
- (22) **Trustee of the Voting Trust:** means the Valley National Bank of Arizona.

#### INSTRUCTIONS

- A. If exact data cannot be supplied in answering any Interrogatory that calls for a numerical response, SPT should provide its best estimate of the data requested, indicate that this has been done by notation ("est.") in conjunction with the response, and describe the basis upon which the estimate was derived. In addition, state where the precise information can be found, including identification of each knowledgeable person and of all documents which contain the precise information or from which it can be derived.
- B. If SPT cannot answer any part of any Interrogatory in full, after exercising due diligence to secure the information to do so, SPT should so state and answer to the extent possible, specifying its inability to answer the remainder, and stating whatever information or knowledge they have of each unanswered part.

- C. Should SPT assert a privilege or work product protection for any documents or communications about which information is requested by any of the following Interrogatories and Document Requests, SPT shall identify such documents and communications (including a brief description of the subject matter of any such document or communication), state the ground on which the asserted privilege rests, and state facts establishing the foundation of the asserted privilege.
- D. These Interrogatories and Document Requests are continuing in character, so as to require SPT to file supplementary answers under the circumstances described in 49 C.F.R. § 1114.29(a)-(b). Where knowledge or information in the possession of SPT is requested, such requests include the knowledge of its employees, agents, representatives and consultants.
- E. Where these Interrogatories seek information as to the existence or content of any document, the furnishing of a true and legible copy of such document will be accepted as an adequate reply to the Interrogatory.
- F. BMW and IAMAW reserve the right to serve further discovery requests in this proceeding.

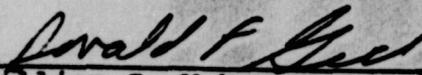
**INTERROGATORIES AND INFORMAL DOCUMENT  
PRODUCTION REQUESTS ADDRESSED TO SPT**

1. Were any of the "over two thousand agreement personnel" eliminated from SPT payrolls through voluntary separations referenced on Page 3 of a letter dated October 1, 1986 from

- D. K. McNear to John J. Schmidt represented by either BMW or IAMAW?
- a. If the answer is yes, identify by number and location those BMW or IAMAW represented employees eliminated from SPT payrolls.
  - b. Identify the terms of the separations offered to the BMW or IAMAW employees.
  - c. What entity provided the monies used to pay for the separation of these employees?
2. Identify by number and location those machinist positions of the 465 Maintenance of Equipment employees positions reduced by SPT during April and May, 1985 referenced on page 2 of the memo dated June 18, 1985 from D. K. McNear addressed to J. J. Schmidt.
  3. Identify by number and location those 150 Maintenance of Way maintenance forces reduced by SPT during the first quarter of 1985 referenced on page 3 of the memo dated June 18, 1985 from D. K. McNear addressed to J. J. Schmidt.
  4. Identify the "core routes" of the SPT referenced on page 3 of the memo dated June 18, 1985 from D. K. McNear addressed to J. J. Schmidt.
  5. Identify by name and last known address, those BMW represented Maintenance of Way personnel working on the Northwestern Pacific Railroad whose positions were abolished during March and April of 1985.

6. Produce all documents prepared by, produced for or reviewed by SPT, its officers, agents, and employees, in connection with the preparation of answers to questions framed by SFSP and transmitted to SPT via the Voting Trust Trustee in 1985.

Respectfully submitted,

  
William G. Mahoney  
John O'B. Clarke, Jr. (J.O.C.)  
Richard S. Edelman  
Donald F. Griffin

HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, D.C. 20036

Attorneys for BMW and IAMAW

Dated: September 25, 1992

**CERTIFICATE OF SERVICE**

I hereby certify that today I served copies of the foregoing upon the following by overnight mail delivery to:

John MacDonald Smith, Esq.  
Southern Pacific Transportation Company  
819 Southern Pacific Bldg.  
One Market Plaza  
San Francisco, CA 94105

and by first class mail delivery to:

Jerome F. Donohoe, Esq.  
Santa Fe Pacific Corporation  
1700 East Golf Road  
Schaumburg, IL 60173

Guy Vitello, Esq.  
The Atchison, Topeka & Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

Kathryn Kusske, Esq.  
MAYER, BROWN & PLATT  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Vincent Prada, Esq.  
SIDLEY & AUSTIN  
1722 Eye Street, N.W.  
Washington, DC 20006

  
Donald F. Griffin

Dated: September 25, 1992

STB

FD-30400 (SUB 21)

9-1-92

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38373

38 373

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

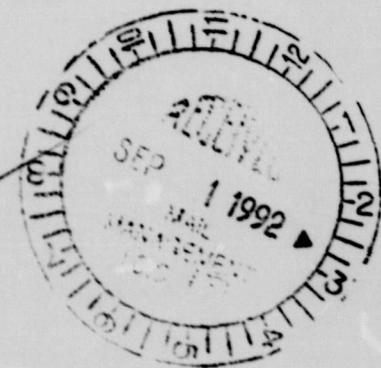
WASHINGTON, D.C. 20006-1882

202-463-2000  
TELEX 892603  
FACSIMILE:  
202-861-0473

CHICAGO  
LONDON  
NEW YORK  
HOUSTON  
LOS ANGELES  
TOKYO  
BRUSSELS

September 1, 1992

ERIKA Z. JONES  
202-778-0642



By Hand

The Honorable Sidney L. Strickland  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Finance Docket No. 30400 (Sub-No. 21),  
Santa Fe Southern Pacific Corporation --  
Control -- Southern Pacific Transportation Company

Dear Secretary Strickland:

Enclosed please find, for filing with the Commission, the originals and eleven copies of (i) the Responses and Objections of Santa Fe Pacific Corporation to Request for Production of Documents of BMWE and IAMAW and (ii) Santa Fe Pacific Corporation's First Set of Interrogatories, and Informal Requests for Production of Documents Addressed to BMWE and IAMAW in the above-referenced matter. Please time and date stamp one copy of each and return it to our messenger. 38373

Please call me if you have any questions regarding the enclosed materials. Thank you for your assistance.

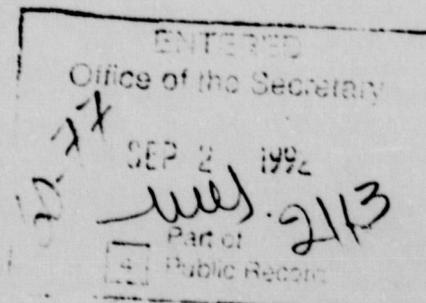
Sincerely yours,

Erika Z Jones/dls

Erika Z. Jones  
Counsel for Santa Fe Pacific  
Corporation

Enclosures

cc: Honorable Paul S. Cross  
Donald F. Griffin, Esq.



38373

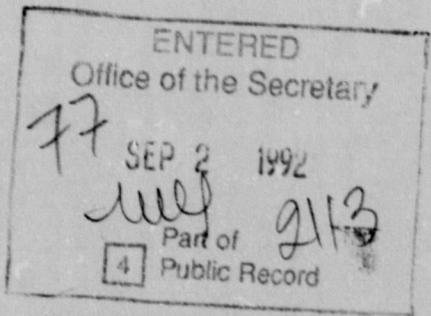
BEFORE THE  
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 30400 (SUB-NO. 21)

SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY



SANTA FE PACIFIC CORPORATION'S FIRST SET  
OF INTERROGATORIES AND INFORMAL REQUESTS FOR  
PRODUCTION OF DOCUMENTS ADDRESSED TO BMW AND IAMAW



G. Paul Moates  
Vincent F. Prada  
SIDLEY & AUSTIN  
1722 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 738-8000

Erika Z. Jones  
Adrian L. Steel, Jr.  
Kathryn A. Kusske  
MAYER, BROWN & PLATT  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
(202) 463-2000

Of Counsel

Attorneys for Santa Fe Pacific Corporation

DATED: September 1, 1992

BEFORE THE  
INTERSTATE COMMERCE COMMISSION

---

FINANCE DOCKET NO. 30400 (SUB-NO. 21)

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SANTA FE SOUTHERN PACIFIC CORPORATION --  
CONTROL -- SOUTHERN PACIFIC TRANSPORTATION COMPANY

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SANTA FE PACIFIC CORPORATION'S FIRST SET  
OF INTERROGATORIES AND INFORMAL REQUESTS FOR  
PRODUCTION OF DOCUMENTS ADDRESSED TO BMWWE AND IAMAW

Pursuant to 49 C.F.R. §§ 1114.21 and 1114.26, Santa Fe Pacific Corporation (formerly Santa Fe Southern Pacific Corporation) ("SFP") hereby submits the following interrogatories and informal requests for production of documents addressed individually and jointly to the Brotherhood of Maintenance of Way Employees ("BMWWE") and the International Association of Machinists and Aerospace Workers ("IAMAW") (jointly referred to herein as "BMWWE/IAMAW").

These interrogatories and informal document requests are to be answered separately by officers or agents of BMWWE and IAMAW competent to testify on their behalf, separately and fully in writing. Answers to these interrogatories and document requests should be served on the undersigned counsel for SFP within 15 days after service of this document.

## DEFINITIONS

I. "ATSF" means The Atchison, Topeka and Santa Fe Railway Company and any of its affiliates, subsidiaries or predecessors.

II. "BMWE" means the Brotherhood of Maintenance of Way Employes and any of its affiliates, locals, subsidiaries, officers, directors, agents, representatives, employees or members.

III. "Concerning" a subject means making a statement about, discussing, describing, reflecting, relating to, referring to, dealing with, consisting of, constituting, comprising, or in any way concerning, in whole or in part, the subject.

IV. "Date" means the exact day, month and year, if ascertainable, or, if not, the best approximation (including relationship to other events).

V. "Document" means any writing or other compilation of information, whether handwritten, typewritten, printed, recorded, or produced or reproduced by any process, including but not limited to: intra-company or other communications; business records; files; agreements; statements; pleadings; contracts; correspondence; letters; messages; telex messages; telegrams; facsimile transmissions; memoranda; studies; directives; manuals; printed forms; bulletins; tabulations; projections; summaries or records of telephone or personal conversations or interviews; reports; calendars; scrapbooks; journals; diaries; log books; notes; notebooks; forecasts; photocopies; photographs; photographic negatives; maps; tape recordings; wire recordings; com-

puter tapes; computer discs; computer programs; computer print-outs; data processing cards; all other photographic and retrievable data (whether encoded, taped or coded electronically, electromagnetically or otherwise); computer models; statistical or financial statements; accounts; data sheets; forms; graphs; charts; sketches; note charts; plans; drawings; tracings; blueprints; minutes or records or summaries of meetings or conferences; expressions or statements of policy; lists of persons attending meetings or conferences; opinions or reports or summaries of negotiations or investigations; brochures; newspapers; newsletters; magazines; periodicals; books; opinions or reports of consultants; pamphlets; advertisements; circulars; trade or other letters; press releases; comments; catalogues; drafts; revisions of drafts; invoices; vouchers; receipts; orders; and, original or preliminary notes and any marginal notes or comments on any of the foregoing items.

Further, the term "document" includes:

- (a) Basic records and summaries of such records (including computer runs);
- (b) Original versions and copies that differ in any respect from original versions; and
- (c) Documents in the possession of BMW and/or IAMAW and documents in the possession of consultants or other persons that have assisted BMW and/or IAMAW in connection with this proceeding.

VI. "IAMAW" means the International Association of Machinists and Aerospace Workers and any of its affiliates, locals, subsidiaries, officers, directors, agents, representatives, employees or members.

VII. "Identify" or "state the identity of" means:

A. When used with respect to a person (whether as part of an identification of a document or oral communication or otherwise), to state his or her full name, job title and business address and a description of his or her duties and responsibilities;

B. When used with respect to a corporation or other legal entity, to state the full name, address and State of incorporation or formation, and the identity of the person(s) who acted on behalf of such entity with respect to the subject matter of the Interrogatory;

C. When used with respect to a document, to state (i) the type of document (e.g., letter, memorandum, telex, contract, calendar pad, report), (ii) the number of pages, title, author, all addressees and actual recipients (including "cc:" and "bcc:" recipients), date, subject line or "re:" line, and (iii) a description of the subject matter and content of the document;

D. When used with respect to a document:

1. Known to have existed but no longer existing, to state the identity of its last known custodian, and

the date on and circumstances under which the document was lost, destroyed or otherwise became unavailable;

2. Once but no longer in the possession, custody and control of BMW and/or IAMAW, to state the date on and circumstances under which the document was disposed of, destroyed, surrendered by or otherwise left the possession, custody and control of BMW and/or IAMAW, the identity of its present (or last known) custodian and the location of such document, if known;

E. When used with respect to documents, to provide information in sufficient detail to enable a party or person to whom a subpoena is directed to identify fully the document to be produced, and to enable SFP to determine that such document, when produced, is in fact the document so described;

F. When used with respect to oral communications, to state the date of such communications, the identity of each party to the communication, the place at which each party was located, the substance thereof and the method of such communication (e.g., in person or by telephone).

VIII. "Person" means any natural person, any business entity (whether partnership, association, cooperative, proprietorship or corporation), and any government entity, department, administration, agency, bureau or political subdivision thereof and every other type of organization or entity.

IX. "Produce" means to make legible, complete and exact copies of all responsive documents which are to be sent, via first-class mail or messenger, to the undersigned counsel for SFP. Any request to produce is without prejudice to the right to request an order requiring production of documents.

X. "SFP" means Santa Fe Pacific Corporation and any of its affiliates, subsidiaries or predecessors (including Santa Fe Southern Pacific Corporation).

XI. "SFSP" means Santa Fe Southern Pacific Corporation and any of its affiliates, subsidiaries or predecessors.

XII. "SPT" means Southern Pacific Transportation Company and any of its affiliates, subsidiaries or predecessors.

XIII. "SPT Voting Trust Agreement" means the Voting Trust Agreement, dated as of November 22, 1983, by and between Southern Pacific Company and The Valley National Bank of Arizona, and any amendments thereto, relating to the independent voting trust established to hold the voting stock of SPT during the pendency of the proceedings in Interstate Commerce Commission Finance Docket No. 30400.

#### INSTRUCTIONS

XIV. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa. Pronouns shall be construed as gender-neutral. Dates are inclusive unless stated otherwise. Each Interrogatory shall be accorded a separate answer, and each subpart of an

Interrogatory shall be accorded a separate answer. Interrogatories or subparts thereof shall not be combined for the purpose of supplying a common answer thereto.

XV. Answers must be verified by the person or persons responding to the specific Interrogatory.

XVI. If exact data cannot be supplied in answering any Interrogatory that calls for a numerical response, BMW and IAMAW should provide their best estimate of the data requested, indicate that this has been done by notation ("est.") in conjunction with the response, and describe the basis upon which the estimate was derived. In addition, state where the precise information can be found, including identification of each knowledgeable person and of all documents which contain the precise information or from which it can be derived.

XVII. If BMW and/or IAMAW cannot answer any part of any Interrogatory in full, after exercising due diligence to secure the information to do so, BMW and/or IAMAW should so state and answer to the extent possible, specifying their inability to answer the remainder, and stating whatever information or knowledge they have of each unanswered part.

XVIII. Should BMW and/or IAMAW assert a privilege or work product protection for any documents or communications about which information is requested by any of the following Interrogatories and Document Requests, BMW and/or IAMAW shall identify such documents and communications (including a brief description of the subject matter of any such document or communication),

state the ground on which the asserted privilege rests, and state facts establishing the foundation of the asserted privilege.

XIX. These Interrogatories and Document Requests are continuing in character, so as to require BMW and IAMAW to file supplementary answers under the circumstances described in 49 C.F.R. § 1114.29(a)-(b). Where knowledge or information in the possession of BMW and/or IAMAW is requested, such requests include knowledge of its employees, agents, representatives and consultants.

XX. Where these Interrogatories seek information as to the existence or content of any document, the furnishing of a true and legible copy of such document will be accepted as an adequate reply to the Interrogatory.

XXI. SFP reserves the right to serve further discovery requests in this proceeding.

INTERROGATORIES AND INFORMAL DOCUMENT  
PRODUCTION REQUESTS ADDRESSED TO BMW AND IAMAW

1. (A) Identify and produce each response (including attachments) to the questionnaire of the form included as Attachment A hereto, or to any other questionnaire or survey the purpose of which was to obtain from BMW or IAMAW members information concerning the possible adverse effect on employees resulting from the proposed ATSF/SPT merger, from alleged SFSP control of SPT or from actions taken in anticipation of the proposed

ATSF/SPT merger, completed by any present or former member of BMW or IAMAW.

- (B) Identify and produce all correspondence, memoranda, instructions and other documents concerning the questionnaires and questionnaire responses identified in response to Interrogatory No. 1(A).
2. (A) Identify and produce a copy of each collective bargaining agreement or other written contract or agreement, entered into between BMW and SPT or between IAMAW and SPT, in effect at any time during the period from December 23, 1983 until August 4, 1987, providing for the payment of monetary or other employment-related benefits to SPT employees in the event of any action by SPT involving the termination, separation, lay-off, furlough, relocation or transfer of any employees covered by such contract or agreement.
- (B) Identify and produce a copy of each written unilateral severance offer, voluntary resignation program or other employee separation program offered or implemented by SPT during the period from December 23, 1983 until August 4, 1987 and affecting members of BMW or IAMAW, and all documents concerning any such offer or program.
3. Identify and produce all documents supporting or otherwise concerning any claim, by BMW and IAMAW or other employee representatives, that rail carrier employees were adversely affected by actions taken or orders issued by SFSP (a) in

anticipation of the proposed ATSF/SPT merger, (b) in alleged violation of the SPT Voting Trust Agreement or (c) in alleged violation of the carrier merger, consolidation and control provisions of the Interstate Commerce Act (49 U.S.C. §§ 11341-11351).

4. (A) Identify, separately for each calendar year from 1983 until the present and separately for each United States Class I rail carrier that employed persons represented for collective bargaining purposes by BMWWE, the total number of BMWWE members who were terminated, separated, laid off or furloughed, who accepted early retirement or who otherwise ceased their employment with such rail carrier due to the closing or downsizing of facilities, lack of work, consolidation of work, rail line sales, transfers or abandonments or other workforce reductions.
- (B) Identify, separately for each calendar month from December 1, 1983 until the present and separately for each United States Class I rail carrier that employed persons represented for collective bargaining purposes by BMWWE, the total number of BMWWE members who were employed by each such rail carrier at mid-month (or at such other time during each calendar month for which the requested information is available).
5. (A) Identify, separately for each calendar year from 1983 until the present and separately for each United States

Class I rail carrier that employed persons represented for collective bargaining purposes by IAMAW, the total number of IAMAW members who were terminated, separated, laid off or furloughed, who accepted early retirement or who otherwise ceased their employment with such rail carrier due to the closing or downsizing of facilities, lack of work, consolidation of work, rail line sales, transfers or abandonments or other workforce reductions.

- (B) Identify, separately for each calendar month from December 1, 1983 until the present and separately for each United States Class I rail carrier that employed persons represented for collective bargaining purposes by IAMAW, the total number of IAMAW members who were employed by each such rail carrier at mid-month (or at such other time during each calendar month for which the requested information is available).

Respectfully submitted,

Erika Z. Jones/als

G. Paul Moates  
Vincent F. Prada  
SIDLEY & AUSTIN  
1722 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 736-8000

Erika Z. Jones  
Adrian L. Steel, Jr.  
Kathryn A. Kusske  
MAYER, BROWN & PLATT  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
(202) 463-2000

Of Counsel

Attorneys for Santa Fe Pacific Corporation

DATED: September 1, 1992

ATTACHMENT A

## QUESTIONNAIRE

Dear Brother or Sister:

The following is a questionnaire developed by your union to obtain information about the failed Santa Fe-Southern Pacific merger. A recent decision by the Interstate Commerce Commission ("ICC") raised the possibility that individuals adversely affected by actions taken in anticipation of that failed merger may have an action for damages against the Santa Fe Southern Pacific Corporation ("SFSP"). It is important to remember that the ICC did not authorize protective payments in this case, the decision merely raised the possibility that we can bring a court action for damages arising from SFSP's possible violation of the voting trust established for Southern Pacific stock. This questionnaire will enable your union to better assess the impact of the ICC's decision on the membership. Please be as precise in your answers as possible because this information will be given to the union's lawyers to help us decide what steps if any, we can take against Santa Fe, Southern Pacific or SFSP.

1. Name: Tommy C. Franklin
2. Address: 507 Sabine st
3. City, State, zip: Celbume, Ia 76031
4. Home Telephone: 817-645-5571
5. Employing carrier during the period 1983-1988:  
 Southern Pacific Transportation Co.  
 Atchison, Topeka & Santa Fe Railway Co.

6. Are you currently employed by that carrier:

[ ] Yes [✓] No

7. If you are no longer employed, were you:

[ ] Dismissed for cause

[ ] Resigned

[✓] Furloughed

8. State the date you ceased employment: March 22, 1989

9. Union affiliation: I. B. F. O

10. Date you claim you were adversely affected: yes

11. Your work location at the time of adverse affect:

Clburne shops in Clburne, Texas

12. Your position title at the time of adverse affect:

Labour

13. The reason you believe you were adversely affected (please be as detailed as possible particularly regarding any reasons for believing the adverse effect was caused by SFSP control of SP, - use separate sheet of paper if necessary):

The last of my job has <sup>cause</sup> mental distress and financial difficulties because I cannot provide for my family properly. I can't pay my bills. I cannot find a job. My credit has also be affected. It has also cause mental Depression. For just don't have longing make it.

14. Your approximate money damages suffered from the adverse affect (include any "out-of-pocket" expenses for health care, etc.):

About Sixteen Hundred Dollars per month,

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of September, 1992, I served the foregoing "Santa Fe Pacific Corporation's First Set of Interrogatories and Informal Requests for Production of Documents Addressed to BMW and IAMAW" by causing a copy thereof to be delivered to each of the following in the manner indicated:

William G. Mahoney  
Donald F. Griffin  
Highsaw, Mahoney & Clarke, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, D.C. 20036  
(By Messenger)

John MacDonald Smith  
Southern Pacific Transportation Company  
819 Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105  
(By Federal Express)

Charles Kong  
1017 Brown Street  
Bakersfield, California 93305  
(By First-Class Mail)

Lee J. Kubby  
Lee J. Kubby, Inc.  
Box 60485  
Sunnyvale, California 94086-0485  
(By First-Class Mail)

Donna J. Hall