

FD-30400

EC
PR-7035-01

SERVICE DATE

APR 20 1954

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 30400

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

Finance Docket No. 30400 (Sub-No. 1)

SOUTHERN PACIFIC TRANSPORTATION COMPANY - MERGER EXEMPTION -
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

Finance Docket No. 30400 (Sub-No. 2)

SOUTHERN PACIFIC AND SANTA FE RAILWAY COMPANY - CONTROL
EXEMPTION - SUNSET RAILWAY COMPANY

Finance Docket No. 30400 (Sub-No. 3)

SOUTHERN PACIFIC AND SANTA FE RAILWAY COMPANY - CONTROL
EXEMPTION - CENTRAL CALIFORNIA TRACTION COMPANY

Finance Docket No. 30400 (Sub-No. 4)

SOUTHERN PACIFIC AND SANTA FE RAILWAY COMPANY - EXEMPTION -
MERGER RELATED ABANDONMENTS

Finance Docket No. 30400 (Sub-No. 5)

SOUTHERN PACIFIC AND SANTA FE RAILWAY COMPANY - JOINT USE OF
TERMINAL FACILITIES - UNION PACIFIC RAILROAD COMPANY

Finance Docket No. 30400 (Sub-No. 6)

SOUTHERN PACIFIC AND SANTA FE RAILWAY COMPANY - CONSTRUCTION
EXEMPTION - LOS ANGELES, CA

Finance Docket No. 30400 (Sub-No. 7)

SOUTHERN PACIFIC AND SANTA FE RAILWAY COMPANY - ASSUMPTION OF
OBLIGATIONS AND LIABILITIES

DECISION NO. 7

AGENCY: Interstate Commerce Commission.

ACTION: Applications accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application for Santa Fe Southern Pacific Corporation to control Southern Pacific Transportation Company and for the merger of the Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Transportation Company. The Commission is also accepting for consideration applications by these parties for joint use of terminal facilities with the Union Pacific Railroad Company, and for assumption of obligations and liabilities, petitions for exemptions to control carriers in which partial interests are held, to construct a track connection, and for merger-related abandonments, and a notice of exemption for the merger of the St. Louis Southwestern Railway Company into the Southern Pacific Transportation Company.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than June 4, 1954.

Responsive applications must be filed no later than
July 19, 1984.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer
(202) 275-7245

Ellen A. Goldstein
(202) 275-7969

ADDRESS: Unless otherwise indicated, an original and 20 copies
of all documents should be sent to:

Office of the Secretary
Interstate Commerce Commission
Washington, DC 20423

In addition, one copy of all documents in this
proceeding should be sent to:

Rail Section
Interstate Commerce Commission
Washington, DC 20423

SUPPLEMENTAL INFORMATION:

On March 22, 1984, the Santa Fe Southern Pacific Corporation (SFSP) filed an application pursuant to 49 U.S.C. 11343 for authority to control Southern Pacific Transportation Company (SPT) and its transportation subsidiaries. SFSP currently controls Santa Fe Industries (SFI), which owns and controls the Atchison, Topeka and Santa Fe Railway Company (ATSF), Santa Fe Trail Transportation Company (a motor carrier), and other rail and non-rail companies. SFSP also controls the Southern Pacific Company (SPC), which controls SPT and other companies. SPT controls, through ownership of 99.8 percent of its stock, the St. Louis Southwestern Railway Company (SSW), and owns or controls three motor carriers, and controls or has an interest in other rail carriers. All of SPC's stock in SPT has been placed in an irrevocable independent voting trust (Finance Docket No. 30400, Decision No. 2, Santa Fe Southern Pacific Corporation - Control - Southern Pacific Transportation Company; Merger - The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Transportation Company (not printed), served December 23, 1983). Authority is also sought to merge ATSF and SPT into a newly-formed corporation, the Southern Pacific and Santa Fe Railway Company (SPSF Railway), a wholly-owned subsidiary of SFSP.

Also filed on March 22, 1984, and published elsewhere today in the Federal Register, is a related motor carrier application, MC-F-15628, Santa Fe Southern Pacific Corporation - Control - Pacific Motor Trucking Company, Pacific Motor Transport Company and Louis Heller Incorporated.

Also on March 22, 1984, SPT and SSW filed a notice of an exempt transaction for the merger of SSW into SPT prior to the merger of SPT and ATSF. This exemption is contingent upon approval of the merger of SPT and ATSF. Applicants note (verified statement of D.K. McNear, p. 16) that SPT is subject to the Central Pacific (CP) conditions [Control of Central Pacific by Southern Pacific, 76 I.C.C. 508 (1923); modified at 328 I.C.C. 345 (1966)]. They state that applicants will, "in due course," petition the Commission for the removal of these conditions, and that the rail traffic diversion study was conducted as if the CP conditions were no longer in effect. We note that a merger of SSW into SPT would result in subjecting SSW to the CP conditions, absent their removal.

Applicants also filed petitions for exemptions for SPSF Railway to control, under 49 U.S.C. 11343, the Sunset Railway Company and the Central California Traction Company, and for exemption of prior approval, under 49 U.S.C. 10901, for the construction of a new connection between track known as the Third District, Los Angeles Division Main Line of the ATSF and Union Pacific Railroad Company's (UP) San Pedro Branch, California Division at Hobart, in Los Angeles, CA.

Approval is sought, under 49 U.S.C. 11103, for the joint use of terminal facilities owned by UP in Los Angeles, CA. Approval is also sought, under 49 U.S.C. 11301, for authority of SPSF Railway to assume obligations and liabilities on securities issued or guaranteed by SPT and ATSF.

Applicants also filed a petition for exemption for the following merger-related abandonments:

<u>ATSF</u>	<u>Miles</u>
a. Collier (MP 1179.1) - Maltby (MP 1166.9), CA	12.2
b. Figarden (MP 1007.0) - Hammond (MP 1001.0), CA	6.0
c. Corcoran (MP 1.0) - Visalia (MP 23.0), CA	22.0
d. Visalia (MP 26.0) - Cairn (MP 36.0), CA	10.0
e. Wharton (MP 42.7) - Rayner Junction (MP 19.9), TX	22.8
f. Eagle Lake (MP 16.0) - Sealy (MP 1.0), TX	15.0

SPT

a. Goshen Jct. (MP 240) - Hanford (MP 251.5), CA	11.5
b. Colton (MP 538.9) - Riverside (MP 545.4), CA	6.5
c. Texas City (MP 46.8 to MP 56.6), TX	7.6
d. Wharton Jct. (MP 2.0) - Bay City (MP 35.0), TX	33.0

Discontinuance of service over the former ATSF line between milepost 1124.4 near Gillis and milepost 1145.5 near Oakley, CA is also sought.

These applications were filed under 49 C.F.R. 1180.

We are accepting these applications for consideration because they substantially comply with the applicable regulations, the waivers, supplemental information request, and the clarification notice that we issued.

If the application in Finance Docket No. 30400 is approved, the voting trust will be dissolved, and SPT and ATSF will be merged into SPSF Railway, a wholly owned subsidiary of SPSP. Immediately prior to that merger, SSW will be merged into SPT. The shares of both preferred and common stock of SSW issued and outstanding on the effective date of the agreement will be canceled, and any shares held by a stockholder other than SPT shall be converted into a right to receive cash. Each share of Series A and Series B Preference shares, held by the United States pursuant to 45 U.S.C. 825(d), will be converted into a Series A or Series B Preference Share of SPT, and following that will be converted into issued and outstanding redeemable Preference Shares of SPSF Railway. Under the merger agreement, all property of SPT and ATSF will be vested in SPSF Railway, which will assume all liabilities and obligations of SPT and ATSF. All issued and outstanding common stock of SPT and

ATSF will be canceled, and no other new securities will be issued.

Rail carrier subsidiaries of ATSF include: Clinton & Oklahoma Western, Dodge City & Cimarron Valley, Fresno Interurban, Garden City Gulf & Northern, Gulf & Inter State of Texas, Kansas Southwestern, Los Angeles Junction, Rio Grande, El Paso & Santa Fe, and Star Lake Railroad.

Rail carrier subsidiaries of SPT include: SSW, Holton Inter-Urban Railway Company, Los Angeles Union Terminal, Inc., Northwestern Pacific Railroad Company, Petaluma and Santa Rosa Railroad Company, and Dallas Terminal Ry. and Union Depot Co.

ATSF operates over 12,319 miles of railroad in the following states: Arizona, California, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma and Texas. Its principal routes include: Southern Transcontinental route: Chicago area and Kansas City gateways to both northern and southern California; Northern Transcontinental route: branches from the southern route between Emporia, KS, and just north of Albuquerque, NM, and also serves Denver and Pueblo, CO; North-South route: Chicago area and Kansas City gateways to Houston and Dallas/Ft. Worth; East-west route: Houston and Texas gateways to both northern and southern California, joining the southern transcontinental route near Clovis, NM.

SPT, including SSW, operates over 13,270 miles of railroad in the following states: Arizona, Arkansas, California, Illinois, Kansas, Louisiana, Missouri, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas and Utah. Its principal routes include: West Coast route: Los Angeles Basin to Portland; Sunset route: Los Angeles to Houston and New Orleans; Golden State route: Los Angeles Basin to Kansas City and East St. Louis via Tucumcari, NM which joins the Sunset route at El Paso; Overland route: Northern California and Oregon to the east via the Ogden, UT gateway; Cotton Belt route: Gulf of Mexico points to Memphis and East St. Louis via Pine Bluff, AR with California service joining at Flatonia, TX.

Principal terminals for ATSF include those located at Los Angeles, Barstow, CA, Kansas City, and Chicago. The principal points of interchange for ATSF include Kansas City, Chicago, Pueblo, Ft. Worth, Streator, IL, Dallas, Stockton, CA and Avard, OK.

Principal terminals for SPT include those located at Eugene, OR, Roseville, OR, Los Angeles, West Colton, CA, Houston, Pine Bluff, AR and Kansas City. SPT's principal points of interchange include Ogden, UT, New Orleans, Shreveport, Portland, OR, Dallas/Ft. Worth, Los Angeles, Caldwell, TX and Deming, NM.

Applicants petition for exemption from the requirements of 49 U.S.C. 10903 through 10906, governing abandonment and discontinuance of service. They seek exemptions to abandon and to discontinue service as stated above. Applicants describe the lines and indicate that no traffic has originated or terminated on them during the last 2 years, with the exception of one line on which approximately 10 shipments of local traffic moved during that period. Upon approval of the merger, the overhead traffic moving on these lines would be rerouted onto other lines. Applicants request that the Commission exempt these transactions upon approval of the merger and of control of SPSF by Santa Fe Southern Pacific Corporation.

We will not dispose of the requests for exemption at this time. The general criteria for exemptions of all kinds are found in 49 U.S.C. 10505. In addition, 49 C.F.R. 1152.50

exempts particular abandonments if no local traffic has moved over a line for at least 2 years, any overhead traffic can be rerouted over other lines, and no user of mail service or State or local government entity has filed a complaint about cessation of service within 2 years. However, the lines would not actually be abandoned, or service discontinued, unless the proposed merger is approved. The criteria of rule 1152.50 create exemptions only immediately following a 2-year period in which no local service has been provided or required, and we cannot now determine whether such a 2-year period will occur prior to the effective date of the exemptions.

Applicants have presented evidence relating to the general exemption criteria of section 10505. Normally, if the Commission determines that no significant adverse effects on competitors, shippers, employees, or the environment are likely to result from the proposed exemption, a decision granting the exemption is issued and published in the Federal Register to be effective in 30 days. This procedure permits an opportunity for objection to the exemption. Because we will evaluate whether the criteria for exemption have been met in light of the merger, we will rule on the exemption requests in our decision disposing of the control and merger issues. No publication of any grant of the exemptions in the Federal Register should be necessary at that time because there will be sufficient opportunity during the course of this proceeding for interested parties to indicate their position with regard to individual exemptions, as well as the entire transaction. We will require applicants immediately to serve copies of this decision on any industries and shippers located on the lines involved in this request, to assure those persons an opportunity to state their position.

The Commission's Section of Energy and Environment (SEE) has reviewed applicants' energy and environmental reports, and found them generally to comport with our reporting requirements. The applicants have identified areas where minor adverse effects of limited extent may occur. SEE intends to prepare a Threshold Assessment to determine if further environmental analysis is required.

The applications and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested persons may participate in this proceeding by submitting written comments regarding the applications. Comments must be filed no later than June 4, 1984. An original and 10 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Written comments shall be concurrently served by first-class mail on the United States Secretary of Transportation, the Attorney General of the United States, and the applicants' representatives:

R. K. Knowlton
Vice President-Law
Santa Fe Southern Pacific Corp.
224 South Michigan Ave.
Chicago, IL 60604

Milton E. Nelson, Jr.
General Counsel
The Atchison, Topeka and
Santa Fe Railway Co.
224 South Michigan Ave.
Chicago, IL 60604

Douglas E. Stephenson
General Attorney
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, CA 94105

Written comments must also be served upon all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by June 14, 1984. Any person who files timely written comments shall be considered a party of record if they so indicate in their comments. In this event no petition for leave to intervene need be filed.

Written comments must contain:

- (1) the docket number and title of the proceeding;
- (2) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made;
- (3) the commenting party's position, *i.e.*, whether it supports or opposes the proposed transactions;
- (4) a statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;
- (5) a list of all information sought to be discovered from applicant carriers;
- (6) an initial list of specific protective conditions sought; and
- (7) an analysis of the issues the Commission must consider in this proceeding. Particular attention should be given to our General Policy Statement for the merger or control of at least two class I railroads, 49 C.F.R. 1180.1, the statutory criteria, and antitrust policy.

Because we have determined that this proceeding constitutes a major transaction within the meaning of our General Acquisition Procedures, 49 CFR 1180, railroads filing written comments must, in addition to the above information, submit a statement of whether the commenting railroad intends to file inconsistent applications, petitions for inclusion, trackage rights, or any other affirmative relief requiring an application to be filed with the Commission. THIS WILL BE CONSIDERED A PREFILING NOTICE WITHOUT WHICH THE COMMISSION WILL NOT ENTERTAIN APPLICATIONS FOR THIS TYPE OF RELIEF.

Preliminary comments from the Secretary of Transportation and Attorney General must be filed by June 19, 1984.

Parties seeking to modify any of their requested specific protective conditions must file a second list of protective conditions no later than July 3, 1984. Parties shall not be permitted to seek any protective conditions other than those requested in either their first or second list of protective conditions.

Parties seeking to file responsive applications must do so no later than July 19, 1984. Responsive applications include inconsistent applications, petitions for inclusion, and any other affirmative relief that requires an application to be filed with the Commission (such as trackage rights, purchase, purchase of a portion, acquisition, extension, construction, operation, pooling, terminal operations, abandonment, etc.). Parties should contact Ellen A. Goldstein, 202-275-7969, to obtain docket numbers for their responsive applications.

Petitions for waiver, clarification, or leave to file an incomplete application shall be filed no later than June 4,

1984. Each responsive application filed and accepted will be consolidated with the primary applications in this proceeding.

Discovery may begin immediately. The Commission will not tolerate dilatory tactics in response to reasonable discovery requests designed to elicit relevant evidence. A refusal to voluntarily supply information will be treated as an objection to request for discovery. Responses should be served upon all parties of record, and five copies of those responses should be concurrently filed with the Commission.

One copy of all documents in this proceeding should be filed directly with the Rail Section, Office of Proceedings, Room 5417, Interstate Commerce Commission, Washington DC 20423.

We will hold an oral evidentiary hearing in this proceeding. Administrative Law Judge James E. Hopkins has been designated to manage and conduct the evidentiary portion of these proceedings.

Any interlocutory appeals from rulings by the Judge will be considered by Division 2. Such appeals must be filed within 5 days after the date on which the ruling appealed from was made. Replies must be filed within 3 days after the appeal is filed.

By statute, the evidentiary phase of the proceeding must be concluded by April 20, 1986. The initial decision will be waived, and the determination of the merits of the applications will be made in the first instance by the entire Commission under 49 U.S.C. 11345.

PROTESTANTS' EVIDENCE

Any traffic studies and data submitted in opposition to the primary application shall use calendar year 1982 data and, where relevant, make use of retirement-replacement-betterment accounting, in order to be comparable with the evidence submitted by applicants. Evidence supporting protestants' responsive applications should use 1983 as the base year, and the depreciation accounting system, and applicants' evidence in opposition to the responsive applications should use 1983 and depreciation accounting.

In calculating the cost savings protestants expect as a result of traffic diverted to applicants' system, protestants should use an avoidable cost approach rather than a Rail Form A approach. [See Burlington Northern, Inc. - Control & Merger - St. L., 360 I.C.C. 784, 1106 (1986).]

We advise protestants that if they seek to have the proposed merger denied, or seek conditions if approved, because they contend their ability to provide essential service and/or competitive service will be harmed, they must present substantial evidence in support of their positions. See Lamoille Valley Railroad v. ICC, 711 F.2d 295 (D.C. Cir. 1983).

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

It is ordered:

1. The applications in Finance Dockets 30400 and 30400 (Sub-Nos. 1-7) are accepted for consideration.
2. The parties shall comply with all provisions as stated above.
3. This decision is effective on the date served.

Decided: April 18, 1984

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison did not participate.

(SEAL)

James H. Bayne
Acting Secretary