

STB FD 32760 (Sub 21) 3-31-98 C 29029

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SERVICE DATE - MARCH 31, 1998

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32760 (Sub-No. 21)¹]

Union Pacific Corporation, Union Pacific Railroad Company,
and Missouri Pacific Railroad Company--Control and Merger--

Southern Pacific Rail Corporation, Southern Pacific

Transportation Company, St. Louis Southwestern Railway

Company, SPCSL Corp., and The Denver and Rio Grande

Western Railroad Company

[OVERSIGHT]

AGENCY: Surface Transportation Board

ACTION: Decision No. 12; Notice of Oversight Proceeding. Requests for Additional
Conditions to the UP/SP Merger for the Houston, Texas/Gulf Coast Area.

SUMMARY: Pursuant to a petition filed February 12, 1998, by the Texas Mexican Railway
Company and the Kansas City Southern Railway Company (Tex Mex/KCS) and a request
filed March 6, 1998, by the Greater Houston Partnership (GHP), the Board is instituting a
proceeding as part of the 5-year oversight condition that it imposed in *Union Pacific*

¹ This decision embraces the proceeding in Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company.*

Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SCPSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (UP/SP Merger), Decision No. 44 (STB served Aug. 12, 1996), to examine their requests, and others that may be made, for additional remedial conditions to the UP/SP merger as they pertain to rail service in the Houston, Texas/Gulf Coast region. The Board is establishing a procedural schedule (attached) for the submission of evidence, replies, and rebuttal. The Board requests that persons intending to participate in this oversight proceeding notify the agency of that intent. A separate service list will be issued based on the notices of intent to participate that the Board receives.

DATES: The proceeding will commence on June 8, 1998. On that date, all interested parties must file requests for new remedial conditions to the UP/SP merger regarding the Houston/Gulf Coast area, along with all supporting evidence. The Board will publish a notice of acceptance of requests for new conditions in the Federal Register by July 8, 1998. Notices of intent to participate in the oversight proceeding are due July 22, 1998. All comments, evidence, and argument opposing the requested new conditions are due August 10, 1998. Rebuttal in support of the requested conditions is due September 8, 1998. The full procedural schedule is set forth at the end of this decision.

ADDRESSES: An original plus 25 copies² of all documents, referring to STB Finance

² In order for a document to be considered a formal filing, the Board must receive an original plus 25 copies of the document, which must show that it has been properly served.

Docket No. 32760 (Sub-No. 21), must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 32760 (Sub-No. 21), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

Electronic Submissions. In addition to an original and 25 copies of all paper documents filed with the Board, the parties shall also submit, on 3.5 inch IBM-compatible diskettes or compact discs, copies all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual material must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0.

The data contained on the diskettes or compact discs submitted to the Board may be submitted under seal (to the extent that the corresponding paper copies are submitted under seal), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data is necessary for efficient review of these materials by the Board and its staff. The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No.

As in the past, documents transmitted by facsimile (FAX) will not be considered formal filings and thus are not acceptable.

527, 61 FR 52710, 711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).³

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600.

[TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: In UP/SP Merger, Decision No. 44, served August 12, 1996, the Board approved the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company) (collectively UP/SP), subject to various conditions. Common control was consummated on September 11, 1996. The Board imposed a 5-year oversight condition to examine whether the conditions imposed on the merger effectively addressed the competitive concerns they were intended to remedy, and retained jurisdiction to impose, as necessary, additional remedial conditions if the Board determined that the conditions already imposed were shown to be insufficient. In its initial oversight proceeding, the Board concluded that, while it was still too early to tell, there was no evidence at the time that the merger, with the conditions that the agency had imposed, had caused any adverse competitive consequences.⁴ Nevertheless,

³ A copy of each diskette or compact disc submitted to the Board should be provided to any other party upon request.

⁴ *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company— Control and Merger— Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760 (Sub-No. 21), Decision No. 10 (STB served Oct. 27, 1997) (UP/SP

the Board indicated that its oversight would be ongoing, and that it would continue vigilant monitoring.⁵

UP/SP has experienced serious service difficulties since the merger, and the Board has issued a series of orders under 49 U.S.C. 11123, effective through August 2, 1998, to mitigate a rail service crisis in the western United States caused, in large measure, by severely congested UP/SP lines in the Houston/Gulf Coast region.⁶ In acting to relieve some of the congestion, the Board made substantial temporary changes to the way in which service is provided in and around Houston.⁷ The Board found that, although merger implementation issues were involved, a key factor in bringing about the service emergency was the inadequate rail facilities and infrastructure in the region, and, as such, also ordered UP/SP,

Oversight).

⁵ UP/SP Oversight, Decision No. 10, at 2-3.

⁶ STB Service Order No. 1518, *Joint Petition for Service Order* (Service Order No. 1518) (STB served Oct. 31 and Dec. 4, 1997, and Feb. 17 and 25, 1998).

⁷ The Board directed UP/SP to release shippers switched by the Houston Belt & Terminal Railway Company (HB&T) or the Port Terminal Railroad Association (PTRA) from their contracts so that they could immediately route traffic over the Burlington Northern and Santa Fe Railway Company (BNSF) or Tex Mex, in addition to UP/SP. The agency also directed UP/SP to permit BNSF and Tex Mex to modify their operations over UP/SP lines to minimize congestion over UP/SP's "Sunset Line," to move traffic around Houston rather than going through it, and to have full access to UP/SP's Spring, TX dispatching facility as neutral observers. More generally, the Board required UP/SP to cooperate with other railroads and to accept assistance from other railroads able to handle UP/SP traffic.

UP/SP and BNSF recently have agreed to make other changes designed to improve service. In particular, the carriers have agreed to joint ownership of the Sunset Line between Avondale (New Orleans), LA and Houston; joint dispatching in the Houston area; and overhead trackage rights for UP/SP over the BNSF line between Beaumont and Navasota, TX.

BNSF, and other involved railroads to submit to the Board their plans to remedy these inadequacies.⁸

Recognizing the limitations on its authority under the emergency service provisions of the law, the Board rejected proposals offered by certain shipper, carrier, and governmental interests in the Service Order No. 1518 proceeding to force UP/SP to transfer some of its lines to other rail carriers and effect a permanent alteration of the competitive situation in the Houston region; it adopted instead only those measures designed to facilitate short-term solutions to the crisis that did not further aggravate congestion in the area or create additional service disruptions. The Board declared, however, that interested persons could present proposals for longer-term solutions to the service situation — including those seeking structural industry changes based on perceived competitive inadequacies — in formal proceedings outside of section 11123, particularly in the UP/SP merger oversight process.⁹ Tex Mex/KCS has now requested that we invoke our oversight jurisdiction over the merger for the purpose of considering such proposals, including the transfer to it of various UP/SP lines and yards in Texas.¹⁰ GHP has also requested the Board's intervention to provide for Houston's long-term rail service needs, including the establishment of a neutral switching operation.

⁸ Service Order No. 1518, Feb. 17, 1998 decision, at 5-7; Feb. 25, 1998 decision, at 5. The railroads' plans are due May 1, 1998; replies are due June 1.

⁹ Service Order No. 1518, Feb. 17, 1998 decision, at 8; see also Feb. 25, 1998 decision, at 4.

¹⁰ The Railroad Commission of Texas (RCT) has previously announced its intent to seek similar relief. See Service Order No. 1518, Feb. 17, 1998 decision, at 8.

That the service emergency in the Houston/Gulf Coast region remains ongoing is well known.¹¹ Given these circumstances, the Board will invoke its oversight jurisdiction over the UP/SP merger to consider new conditions to the merger of the kind proposed here, and others that may be made. We note that no party as yet has seriously suggested that SP's inadequate infrastructure would not have produced severe service problems in the Houston/Gulf Coast area even if there had been no merger. Nonetheless, the Board believes that, given the gravity of the service situation, it should thoroughly explore anew the legitimacy and viability of longer-term proposals for new conditions to the merger as they pertain to service and competition in that region.

UP/SP and BNSF argue that Tex Mex/KCS' request for conditions that have been previously rejected, without any new evidentiary justification, is insufficient grounds for the Board to begin a new oversight proceeding. We disagree. Our 5-year oversight of the UP/SP merger is not a static process, but a continuing one, so that the Board's prior rejection of Tex Mex/KCS' or any other party's requested conditions — whether in the Board's approval of the merger or in a subsequent oversight proceeding — does not preclude their fresh consideration now. Through our oversight condition, we have retained jurisdiction to monitor the competitive consequences of this merger; to re-examine whether our imposed conditions have effectively addressed the consequences they were intended to remedy; and to

¹¹ In its progress report of March 9, 1998, UP/SP announced that it would take drastic action in 30 days — including the refusal of new business and the transfer of existing business to its competitors — if the steps it has taken to deal with the emergency are not successful. On March 24, 1998, the carrier announced an embargo of a significant portion of its southbound traffic destined for the Laredo, TX gateway to clear a backlog of 5,500 cars waiting to cross into Mexico.

impose additional remedial conditions if those previously afforded prove insufficient, including, if necessary, divestiture of certain of the merged carriers' property.

The virtual shutdown of rail service in the Houston/Gulf Coast area that occurred after the UP/SP merger — and which, after many months, has yet to be normalized — is unprecedented. In our judgment, those circumstances alone are sufficient for the Board to commence this proceeding now. Clearly, our 5-year oversight jurisdiction permits us to examine — and, if necessary, re-examine at any time during this period — whether there is any relationship between the market power gained by UP/SP through the merger and the failure of service that has occurred here, and, if so, whether the situation should be addressed through additional remedial conditions. UP/SP Merger, Decision No. 44, at 100.

We caution, however, that we will not impose conditions requiring UP/SP to divest property that would substantially change the configuration and operations of its existing network in the region in the absence of the type of presentation and evidence required for “inconsistent applications” in a merger proceeding; *i.e.*, parties must present probative evidence that discloses “the full effects of their proposals.” UP/SP Merger, Decision No. 44, at 157. Divestiture is only available “when no other less intrusive remedy would suffice,” and we will impose it only upon sufficient evidentiary justification. *Id.*

The Board will confine this proceeding under its continuing oversight jurisdiction to examining requests for new conditions to the merger relating to rail service in the Houston/Gulf Coast area. As we have noted, the service crisis in this region, and its significant impact on the regional economy, clearly warrant our discrete treatment of these matters now. As a result, the procedures set forth here will be separate from those in the

more general oversight proceeding that, pursuant to UP/SP Oversight, Decision No. 10, will begin July 1, 1998.¹²

As set forth in the attached schedule, parties that wish to request new remedial conditions to the UP/SP merger as they pertain to the Houston/Gulf Coast region must file them, along with their supporting evidence, by June 8, 1998.¹³ The Board will publish a notice in the Federal Register accepting such requests by July 8, 1998. Any person who intends to participate actively in this facet of oversight as a "party of record" (POR) must notify us of this intent by July 22, 1998. In order to be designated a POR, a person must satisfy the filing requirements discussed above in the ADDRESSES section. We will then compile and issue a final service list.

¹² In Decision No. 10, at 18-19, the Board provided that general oversight would commence July 1 upon the filing by UP/SP and BNSF of their quarterly merger progress reports accompanied by comprehensive summary presentations. We provided that, as part of that proceeding, UP/SP and BNSF must make their 100% traffic tapes available by July 15, 1998; that comments of interested parties concerning oversight issues are due August 14, 1998; and that replies are due September 1, 1998. The general oversight proceeding will continue as planned.

¹³ Tex Mex/KCS stated that it would file its supporting evidence 45 days after its petition. Petition at 5. If it does so, it need not file its evidence anew on June 8th, although it may supplement its filing as appropriate. We decline, however, petitioner's request (Petition at 11 n.6) to incorporate by reference its pleadings in Finance Docket Nos. 33507, 33461, 33462, and 33463 (titles omitted). In those proceedings, Tex Mex/KCS has complained that, after the merger, UP/SP (either singly or jointly with BNSF) unlawfully acquired control of HB&T in violation of 49 U.S.C. 11323, and has petitioned that a series of exemptions the carriers filed to restructure HB&T's operations leading to that control should be voided and/or revoked. We will proceed to consider the discrete matters in those cases — including Tex Mex/KCS' petition for consolidation and motion to compel discovery, and UP/SP's motion to dismiss — separately from our consideration in the oversight proceeding of requests by Tex Mex/KCS and others for new remedial conditions to the merger.

Copies of decisions, orders, and notices will be served only on those persons designated as POR, MOC (Members of Congress), and GOV (Governors) on the official service list. Copies of filings must be served on all persons who are designated as POR. We note that Members of the United States Congress and Governors who are designated MOC and GOV are *not* parties of record and they need *not* be served with copies of filings; however, those who are designated as a POR must be served with copies of filings. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions to persons who request this service. The telephone number for DC News is: (202) 289-4357.

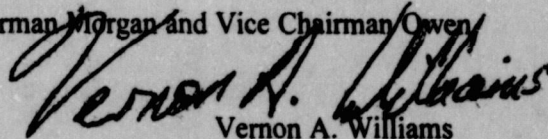
A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in Finance Docket No. 32760 (Sub-No. 21). This decision will serve as notice that persons who were parties of record in the previous oversight proceeding (leading to Decision No. 10) will not automatically be placed on the service list as parties of record for this facet of oversight unless they notify us of their intent to participate further.

Finally, while the requested remedial conditions (and those reasonably anticipated from other parties) could, if imposed, result in a transfer of ownership of certain UP/SP rail property or changes in the way that such properties are operated, they appear unlikely to produce the kind of significant operational changes that, under 49 CFR 1105.6(b)(4), requires the filing of a preliminary draft environmental assessment (PDEA).

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

Decided: March 30, 1998

By the Board, Chairman Morgan and Vice Chairman Owen

A handwritten signature in dark ink, appearing to read "Vernon A. Williams", is written over the printed name.

Vernon A. Williams
Secretary

PROCEDURAL SCHEDULE

June 8, 1998	Requests for new remedial conditions (with supporting evidence) filed.
July 8, 1998	Board notice of acceptance of requests for new conditions published in the Federal Register.
July 22, 1998	Notice of intent to participate in proceeding due.
August 10, 1998	All comments, evidence, and argument opposing requests for new remedial conditions to the merger due. Comments by U.S. Department of Justice and U.S. Department of Transportation due.
September 8, 1998	Rebuttal evidence and argument in support of requests for new conditions due.

The necessity of briefing, oral argument, and voting conference will be determined after the Board's review of the pleadings.

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SERVICE DATE - LATE RELEASE JANUARY 23, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND
MISSOURI PACIFIC RAILROAD COMPANY—CONTROL AND MERGER—SOUTHERN
PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION
COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND
THE DENVER AND RIO GRANDE WESTERN RAILWAY COMPANY

[OVERSIGHT]

(Decision No. 11)

Decided: January 21, 1998

In Finance Docket No. 32760, Decision No. 44, served August 12, 1997 (UP/SP), we approved, subject to various conditions, the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company). Our conditions to the UP/SP merger included a 5-year oversight condition "to examine whether the conditions we have imposed have effectively addressed the competitive issues they were intended to remedy." Id. at 146. We also specifically reserved the authority to impose additional conditions as necessary to alleviate competitive harm, if the trackage rights granted to The Burlington Northern and Santa Fe Railway Company (BNSF) or the other specific conditions were shown to be ineffective. Id.

As part of the oversight condition, UP and BNSF have filed quarterly reports beginning October 1, 1996. More recently, we instituted the instant oversight proceeding in which UP, BNSF, and numerous parties filed comments regarding the competitive effects of the merger and the conditions. See STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 1, served May 7, 1997, and published that day in the Federal Register at 62 FR 25014. After reviewing those comments, we concluded that the present record did not demonstrate that the merger, with the conditions we imposed, has caused any substantial competitive harm. We also concluded, nevertheless, that certain additional requirements and directives were warranted to ensure that the conditions we imposed were implemented more effectively. See Decision No. 10, served October 27, 1997. One of the additional measures we imposed in Decision No. 10 was the requirement that UP and BNSF establish a protocol for resolving the status of particular shipper facilities at 2-to-1 points, i.e., points where shippers' post-merger options declined from two

railroads to one, and for deciding whether BNSF is entitled to serve such facilities under the terms of the BNSF settlement agreement.¹

In submissions filed November 26, 1997, UP and BNSF indicate that, while they agree on most provisions of a 2-to-1 facilities protocol,² they continue to disagree with respect to two provisions. The disagreement concerns burden of proof and the ability of BNSF to provide service while a dispute is pending before an arbitrator or before us. BNSF argues that UP's insistence that it must approve a facility's 2-to-1 status before the facility gains competitive access unfairly places the evidentiary burden of proof on BNSF and inhibits shippers' ability to take advantage of BNSF's new service capability. BNSF contends that, as a result of UP's gatekeeper role, there should be a presumption that BNSF is entitled to serve a particular shipper facility at 2-to-1 points, unless UP can provide specific evidence that the facility was not open to both UP and SP before the merger. BNSF maintains that UP should have the evidentiary burden of establishing the status of a facility because UP had the pre-merger relationship with the shipper and retains control over the records necessary to make the required factual determination.³

UP contends that, because BNSF's proposed presumption would inappropriately require that UP prove a negative with "specific evidence," the correct resolution for a protocol is for there to be no presumption in favor of any particular outcome. UP indicates that, in previous 2-to-1 access requests by BNSF, UP has addressed the requests in good faith and has not insisted that BNSF present some quantum of "specific" documentary evidence before access is granted. According to UP, its good faith in reviewing BNSF's requests for access to 2-to-1 points is

¹ See Decision No. 44, slip op. at 12 n.15 (description of the BNSF agreement).

² UP and BNSF have reached substantial agreement on an access protocol. See BNSF's revised draft protocol, dated November 25, 1997, and UP's response dated that same day (both documents are attached to the parties' November 26, 1997 submissions). As pertinent, UP and BNSF have agreed that UP will respond within 5 business days to any BNSF request for access to a 2-to-1 facility. If BNSF makes more than five requests in a single day, UP may respond within 10 business days to those requests in excess of five. If UP fails to respond by the deadline, BNSF is then entitled to serve the facility, with no UP right to appeal. If UP denies a request, BNSF can submit the matter to the Board or, by agreement of the parties, to an arbitrator.

³ In its January 2, 1998 quarterly progress report filed in Finance Docket No. 32760, BNSF asserts that UP has been unresponsive during the time the protocol dispute has been pending, a contention that UP disputes in its January 15, 1998 reply to BNSF's quarterly progress report. Both parties' concerns should be resolved by the protocol we are adopting here.

reflected in the fact that, in the year since merger consummation, the Board has not been asked to resolve any 2-to-1 dispute.

The second disagreement concerns BNSF's proposal that it be permitted to serve a facility pending resolution of any dispute over the status of a particular facility. BNSF contends that, if its proposal is not accepted, the involved shippers will be deprived of competitive service during the adjudication period, and BNSF will be deprived of the additional traffic. UP responds that BNSF's proposal unfairly places the onus on UP to appeal from its own denial of a BNSF request. UP also maintains that railroad operations and shipper business activities would be unduly disrupted by BNSF's absolute right to serve a facility during the review process, and that nothing in the record indicates that future 2-to-1 disputes cannot be resolved expeditiously.

DISCUSSION AND CONCLUSIONS

Although two issues remain in dispute, we commend UP and BNSF for their substantial agreement thus far on a 2-to-1 facilities protocol. Under the draft agreement, UP has agreed to respond within 5 business days to any BNSF request for access to a 2-to-1 facility, and within 10 business days to BNSF service requests in excess of five. Under the agreement, BNSF will gain access to the facility if UP fails to respond by the deadline. UP's responsiveness under the agreement, the availability of arbitration, and our continued availability to resolve 2-to-1 disputes expeditiously⁴ make it unnecessary that BNSF be permitted to serve shipper facilities pending resolution of disputes. BNSF has not shown that there have previously been problems resolving such disputes, nor has it shown that UP has a track record of arbitrarily refusing to admit that particular shippers are 2-to-1 shippers. Accordingly, BNSF's proposal for interim service will not be adopted. If it turns out that, under this protocol, UP is consistently refusing to grant access to shippers that are 2-to-1 shippers by invoking arbitration or our adjudication as a delaying tactic, then we will further consider BNSF's proposal.

We also reject BNSF's proposal that, unless UP provides specific evidence that a facility was not open to both UP and SP prior to the merger, there should be a presumption that BNSF is entitled to serve the shipper's facility. Rather, we believe that there should be no presumption in favor of any particular party or result, and that all the involved parties, including shippers supporting BNSF's competitive access, should be able to draw upon any and all available information to resolve the status of a particular facility. Although we recognize that UP retains the right initially to determine a facility's status, we disagree with BNSF that such a procedure is unfair. Pertinent 2-to-1 information should be available to BNSF through its supporting shipper, which should be eager to gain access to an additional rail carrier. Thus, we will adopt the draft

⁴ Although we remain available to resolve such disputes, we encourage the parties to submit to arbitration as provided for in ¶9 of their draft agreement.

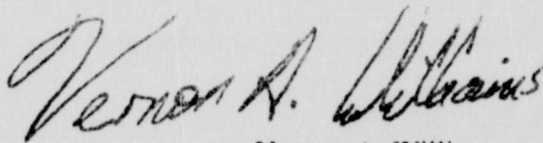
protocol agreed to by UP and BNSF with the modifications proposed by UP regarding the two issues in dispute as discussed above.

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

It is ordered:

1. BNSF's protocol proposals, as discussed in this decision, are not adopted.
2. The draft protocol agreed to by UP and BNSF, as modified by the revisions of UP, is adopted for the purposes of this proceeding.
3. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is fluid and cursive, with the first name "Vernon" being the most prominent.

Vernon A. Williams
Secretary

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STB FD 32760 (Sub 21) 10-27-97 C 28463

SERVICE DATE - OCTOBER 27, 1997

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STB Finance Docket No. 32760 (Sub-No.21)

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AND MISSOURI PACIFIC RAILROAD COMPANY - CONTROL AND MERGER -
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILWAY COMPANY

[OVERSIGHT]

(Decision No. 10)

Decided: October 24, 1997

INTRODUCTION

Oversight Condition. In a decision in a related proceeding [Decision No. 44, served August 12, 1996, in Finance Docket No. 32760 (UP/SP)], we approved the common control and merger of Union Pacific and Southern Pacific Rail Corporation.¹ Because an unconditioned merger raised serious competitive issues in various transportation corridors, our approval was subject to numerous conditions addressing the competitive harm that the merger would otherwise have produced. In addition to the specific mitigation measures we imposed, one of our conditions provided for a 5-year oversight process. As explained in the decision authorizing the merger, the oversight condition was intended to "examine whether the conditions we have imposed have effectively addressed the competitive issues they were intended to remedy." See UP/SP, Decision No. 44, slip op. at 146.

The key competitive condition that we imposed required UP to grant extensive trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF). In light of the breadth of the trackage rights condition imposed, we indicated that we would closely monitor BNSF's operations, particularly in certain corridors. We also specifically reserved the authority to impose additional remedial conditions as necessary to alleviate unanticipated competitive harm, if the trackage rights or the other specific conditions were shown to be ineffective.

¹ We gave authority for merger and common control of all of the carriers controlled by Union Pacific Corporation and by Southern Pacific Transportation Company. Where we are discussing pre-merger service, references to "UP" include only service by carriers controlled by Union Pacific Corporation. Otherwise "UP" refers to all of the carriers to which we gave merger authority. "SP" refers to all of the railroads formerly controlled by Southern Pacific Rail Corporation.

As part of this oversight condition, UP and BNSF have filed quarterly reports beginning October 1, 1996. More recently, the Board, on May 7, 1997, initiated a specific oversight proceeding in which UP and BNSF filed extensive progress reports on July 1, 1997, to which 34 parties filed comments, and to which, in turn, UP, BNSF, and certain other parties replied. This decision represents the Board's findings and recommendations based on the record compiled in this first formal oversight proceeding regarding the competitive conditions imposed by the Board.

Summary of Findings. The record indicates that thus far the merger, with the conditions we imposed, has not caused any substantial competitive harm. The record also shows that, after a somewhat slow start with regard to certain lines, BNSF had already initiated by July 15, 1997, what appear to be viable competitive operations over each of its key trackage rights lines. We emphasize that these conclusions are preliminary, and that our oversight is continuing. As numerous commenters have pointed out, it is too early in the process to determine with certainty just how vigorous the competition between UP and BNSF will be over the long term, and whether BNSF's operations will be efficient and responsive to shipper needs.

While the record to date does not reflect any serious competitive problems, commenters have raised concerns, which applicants readily acknowledge, about UP's service and safety performance during the period following the consummation of this transaction.² These service and safety deficiencies are quite serious and disturbing, and in response, we are taking the unusual step of convening a special hearing so that parties may address these problems and discuss proposals to resolve them.³ However, the oversight record does not indicate that these service problems have resulted from any new market power conferred by our approval of the underlying merger. Thus, the evidence submitted does not indicate any reduction in competition in the markets that UP serves, which is the focus of the oversight condition imposed by the Board in its approval of the merger. Rather, the record reflects that disruptions have been caused by a variety of factors, including UP's efforts to rehabilitate the deteriorating SP system and establish facilities that will ultimately benefit shippers with improved service, and by other system integration efforts that have not proceeded as they should have.

Board Action. As explained in more detail below, nothing presented on this record indicates to us that any major adjustments in the conditions we have imposed to assure continued competition are necessary, although we will impose certain additional requirements and include certain directives to ensure

² Common control of the railroads was consummated on September 11, 1996.

³ Rail Service in the Western United States, STB Ex Parte No. 573, served Oct. 2, 1997.

that the existing conditions are implemented more efficiently. Several parties have claimed reduced competition in their efforts to reargue, or to assert for the first time, an entitlement to special protective conditions, but we have examined those arguments carefully, and find them to be without merit. See section V below. However, our oversight will remain vigilant: we will require both UP and BNSF to continue to report on their progress; we will continue to assess the evidence in those reports, and any other evidence that we may seek; and we will make any adjustments to the conditions that we find necessary.

I.

ARE THERE COMPETITIVE PROBLEMS?

The UP/SP railroad merger is unprecedented in scope, encompassing most of the western United States. If this merger had been effectuated without the settlement agreements and additional conditions that we imposed, it would have led to substantial competitive harm. While several parties that opposed the merger predicted that the merger would result in substantial competitive harm even with the BNSF trackage rights proposed by applicants, so far, we have seen no evidence of the major and pervasive rate increases that various parties predicted.

Thus, although some of the commenters imply that competitive problems might result from the merger, in fact, the record shows impressive systemwide rate reductions on the UP since the transaction was consummated. UP's July 1 progress report (UP/SP-304, Confidential Appendix E) indicates rate reductions in each of the following categories: Utah and Colorado coal traffic, Gulf Coast plastics traffic, all 3-to-2 traffic, all 2-to-1 traffic,⁴ Gulf Coast chemicals, and grain traffic. This systemwide evidence is confirmed by a substantial amount of evidence of particular rate reductions both on the UP system and on the BNSF trackage rights segments.

Not surprisingly, there have been several requests by individual shippers for additional competitive conditions. None, however, has been justified, and there has been no complaint by shippers of rate increases on the UP lines. Notwithstanding the speculation and concern reflected in some of the comments, as the Department of Justice (DOJ) notes, it is too early to tell whether any competitive problems will emerge, and we will therefore continue to monitor the situation.

⁴In Decision No. 44, we awarded BNSF access to shippers located along its trackage rights only where, as a result of the merger, shippers previously served by two carriers would now be served by only one carrier (2-to-1 points). We did not give BNSF access to shippers that had previously been served by only SP or UP (1-to-1 points), or where shippers previously served by three carriers would now be served by only two (3-to-2 points).

II.

ARE THE BNSF TRACKAGE RIGHTS CONDITIONS WORKING?

BNSF Activities. In approving this merger, we stated that the competition provided by the BNSF trackage rights would be one of the key matters to be considered in our oversight proceedings. We directed BNSF to begin trackage rights operations over the essential corridors between Houston, TX, and New Orleans, LA; between Houston, TX, and Memphis, TN; and in the Central Corridor. We warned that a failure by BNSF to do so could result in a termination of these trackage rights and substitution of (or even divestiture to) another carrier.

In this regard, BNSF noted in its July 1, 1997 progress report that, since the merger transaction was consummated, it has implemented direct train service through trackage rights over all of the routes to which it received access, with the exception of the 150-mile segment between Corpus Christi and Brownsville, TX, and the I-5 Corridor on the west coast. Subsequent to the filing of that report, however, service over the I-5 Corridor began on July 15, 1997. BNSF also indicated that it increased the total number of trackage rights trains in operation over the various corridors from 392 trains in May to 468 trains in July. As of June 30, 1997, BNSF had instituted the following train service: daily intermodal and daily manifest service between Houston and New Orleans; daily manifest service between Houston and Memphis, and Temple and Corpus Christi, TX; 5-day-a-week service between Denver, CO, and Provo, UT; 3-day-a-week service between Provo, UT, and Stockton, CA, and over the Eagle Pass corridor, a gateway into Mexico. BNSF-PR-4, v.s. Rickershauser at 4. It is evident that BNSF has been able to garner a significant amount of traffic already, and both BNSF and UP anticipate that BNSF's traffic levels will continue to grow.⁵

In the crucial corridor between New Orleans and Houston, BNSF has purchased the segment between Iowa Junction and Avondale, LA, and has made significant capital improvements to upgrade this line. (UP has retained trackage rights over this line segment.) As explained below, operational problems have greatly hampered both BNSF and UP service over this corridor, which will be further explored in the service proceeding initiated by the Board. However, BNSF's commitment to providing competitive service in this corridor appears solid.⁶

⁵ Some parties have argued that BNSF has "inflated its traffic figures by including traffic that BNSF handled before the merger and has now rerouted over the trackage rights lines." As DOJ notes, however, such rerouted traffic does contribute to the density necessary to make competitive service possible. DOJ-2 at 7, n.1.

⁶ BNSF has raised concerns that UP service problems are adversely affecting BNSF's competitiveness, see BNSF-2 at 9-12, and UP has responded, see UP/SP-314. BNSF has not requested that

The only corridor on which BNSF's emergence as a competitive force has been somewhat slow developing — as confirmed by the comments by the California Public Utility Commission (CPUC), National Industrial Transportation League (NITL), and Sierra Pacific Power Company (SPP) — is the Central Corridor.⁷ CPUC claims that BNSF has made little use of the Central Corridor to handle intermodal trains. But on July 14, 1997, BNSF did institute 7-day-a-week manifest service on the Central Corridor, which seems to be a sufficient service frequency to give BNSF a competitive presence over this corridor. In addition, UP notes that now BNSF handles a substantial amount of intermodal traffic from Salt Lake City, UT, on a daily basis. Although we are somewhat concerned that much of the traffic that BNSF is hauling in these trains consists of empty cars, BNSF's opening of its brand new I-5 Corridor⁸ service should make available additional traffic flows for this line.

One commenter, Kansas City Southern Railway Company (KCS), argues that the BNSF trackage rights should not ultimately be considered successful unless BNSF is able to capture the same share of the market as SP enjoyed prior to the merger. We disagree with this approach, and agree with the assessment of the Department of Transportation (DOT) in its submission that "BNSF market share . . . should not be the decisive criterion by which the level of competition is judged. BNSF must have sufficient traffic to sustain service levels that allow it to be a realistic choice for shippers, but the traffic level could be far less than that of an independent SP." DOT notes in its comments that: "the most important indicator of the impact of the trackage rights conditions is the effect BNSF's presence in the market has on the rates offered by UPSP."

we take any action, but instead has explained that it is reviewing these issues with UP and will seek recourse from us only if workable operating procedures are not adopted.

⁷ Because of concerns raised by various parties that UP's plans to route both its own and BNSF's central corridor traffic over its Moffat Tunnel line might lead to undue congestion and delay, we permitted UP to discontinue service over its alternative route (the Tennessee Pass line), but we withheld our approval for abandonment. The Public Service Company of Colorado asks that we continue oversight on the question of whether the Central Corridor traffic can be adequately served by the Moffat Tunnel route. We agree with that commenter that it is too early to tell whether the Moffat Tunnel is capable of handling traffic diverted from the Tennessee Pass line.

⁸ As part of the BNSF Settlement Agreement imposed by the Board as a condition of the merger, both BNSF and UP were able to offer for the first time a single-line service along the west coast.

Another commenter, the United States Department of Agriculture (USDA), conducted "Listening Sessions" in Dodge City and Wichita, KS, concerning the impacts of the merger. Based on those sessions, USDA contends that BNSF is not providing effective competition on grain movements from points in Kansas, Oklahoma, and Texas to the Gulf of Mexico. In particular, USDA notes that both BNSF and UP increased their rates \$200 per car on September 1, 1997. USDA further claims that the Texas Mexican Railway Company (Tex Mex) has been receiving inferior haulage rights service from UP connecting KCS with Tex Mex; it argues that we erred in permitting abandonment of the "Pueblo line" in Colorado; and it raises concerns about the car supply practices of all of the western railroads.

The one concrete example of a rate increase that USDA provides as support for its argument that BNSF is not providing effective competition is a seasonal adjustment that the grain-hauling carriers have been making each year in anticipation of the heavy demand during the harvest season. This increase does not appear to be anything out of the ordinary. Indeed, UP points out that, systemwide, grain rates have decreased since the merger, and there is no evidence presented by any grain shipper of increased rates on this record.

Regarding its other arguments, we note first that USDA is mistaken about the nature of the rights that Tex Mex received between Beaumont and Corpus Christi. Tex Mex received trackage rights, not haulage rights, and there has been no showing that those rights are inadequate, or that there is any other basis on this record to revisit the extent of the access granted to Tex Mex.

Second, USDA seeks to reargue the merits of the abandonment permitted by the Board between NA Junction and Towner Junction, CO. We granted that abandonment based upon a substantial record in UP/SP, Decision No. 44, slip op. at 204-206. There, we found that traffic on the line was extremely light and that the carrier was experiencing a yearly loss on the line of over \$2.6 million. USDA has presented no evidence to cast doubt on those findings.

Finally, the issues that USDA raises about the car supply practices of railroads in general are not related to this merger oversight proceeding.

Another commenter, International Paper Company (IP), argues that BNSF is not an effective competitor over the trackage rights lines. Notwithstanding the fact that it has tendered substantial traffic to BNSF at Camden and Pine Bluff, AR, IP asserts that it cannot tender a greater percentage of its traffic to BNSF because that carrier has failed to supply the equipment the shipper desires. BNSF responds that it has met with IP representatives, and has agreed to work to meet IP's equipment and service needs. BNSF has also indicated that IP has agreed to make additional traffic available to BNSF. We see no basis on which to intervene in this matter now.

Summary. The record to date indicates that BNSF has actively pursued its trackage rights, and there is no evidence that UP has deliberately hampered BNSF's ability to provide service over its trackage rights. There is also no evidence that to date BNSF has not been working hard to become the effective competitor envisioned by the trackage rights condition. Nevertheless, as part of our ongoing oversight condition, we will continue to monitor carefully the efficacy of the BNSF trackage rights.

III.

ARE THERE DETAILS ABOUT IMPLEMENTATION
OF THE CONDITIONS IMPOSED BY THE BOARD THAT
NEED TO BE FURTHER WORKED OUT?

a. Definition of 2-to-1 points. BNSF has noted that it and UP still have not agreed upon a definitive list of 2-to-1 shipper facilities to which BNSF is entitled to access under our merger conditions. It suggests that we establish a presumption that all shippers at 2-to-1 points were served by both UP and SP prior to the merger, and thus that UP bears the burden of showing that this was not the case in particular instances. Arguing that all questions about which shippers at 2-to-1 points may be served by BNSF should have been resolved by now, DOJ and DOT suggest that BNSF should be given access to all shippers at 2-to-1 points regardless of whether those shippers had access to both UP and SP service prior to the merger. Their view is that ensuring BNSF access to additional traffic will enhance BNSF's potential traffic base and hence its ability to be an effective competitor. As a result, they conclude that, even if some shippers obtain a windfall, no shipper that is entitled to BNSF service would be deprived of it.

UP claims that BNSF has greatly overstated any difficulties that the two railroads are having in identifying 2-to-1 points. UP notes that, after the merger was approved, it provided BNSF with an initial listing of 2-to-1 points and 2-to-1 shortlines, and that the carriers have been engaged in an ongoing process of refining that list. UP asserts that, when BNSF has inquired concerning a particular shipper that it is prepared to serve, UP has responded promptly. UP also notes that BNSF has requested confirmation of the 2-to-1 status of a long list of shipper facilities that BNSF research indicates received two-carrier service through reciprocal switching at some time in the past. UP states that it is in the process of answering this request, and that fewer than 20 of the 250 facilities at issue moved any rail traffic this year, which it suggests makes this dispute more theoretical than real.

The possibility that BNSF may be unable to obtain a prompt determination of whether BNSF is entitled to serve a particular shipper facility is unacceptable. If BNSF has traffic that it would like to be able to move, then it would be inexcusable for

UP not to give a prompt reply indicating whether UP believes that shipper may be served. We suggest that UP and BNSF establish a protocol for resolving such issues. For example, UP could be given 5 business days to respond. If it does not so respond, then BNSF would be authorized to provide service. If UP objects, then the issue could be resolved through arbitration or by us. UP and BNSF will have 30 days to decide on a protocol for resolving these issues and report back to us. If they are unable to agree, each carrier shall set forth the precise protocol it believes we should adopt and a brief argument in support of its position. We then will adopt a protocol for resolving 2-to-1 disputes.

We stand ready to resolve promptly all disputes concerning issues of whether BNSF may serve a particular shipper. It does not now appear, however, that we need to redefine 2-to-1 shippers just to give BNSF additional traffic. There is no evidence that BNSF lacks access to sufficient traffic to be an effective competitor, or that UP has unreasonably impeded BNSF's access to shippers. We should note that, so far, we have been asked to resolve only two disputes about whether a particular shipper could be served under our conditions, neither of which involved a simple determination of 2-to-1 shipper status. We quickly resolved one of these concerning an existing shipper that asked for an expedited ruling to move traffic immediately.⁹ The other dispute concerns a shipper contemplating rehabilitating a facility located on the trackage rights lines, which we are resolving in another decision issued today.¹⁰ BNSF has pointed to no circumstance where it has come to UP with a request for a clarification with respect to an actual shipper that desired to tender traffic to BNSF concerning which UP did not promptly respond.

It is understandable that there is a healthy tension between UP and BNSF about the exact parameters of our various conditions. These carriers are direct competitors, and as we predicted our approval of the merger has led to continued rivalry rather than collusion. If a dispute threatens to impede the ability of BNSF to provide competitive service — and that appears not to have been the case so far — we will take appropriate action.

b. Contract reopener condition and related traffic density concerns. Several parties have asked that we reinterpret and broaden the contract reopener provision. That provision requires UP to modify its contracts with shippers at 2-to-1 points so that BNSF will have access to at least 50% of the volume of each 2-to-1 shipper that was under contract with either UP or SP. The purpose of the contract reopener condition was to increase BNSF's

⁹ See Decision No. 73 in UP/SP, served August 14, 1997.

¹⁰ See BNSF-81 (UP/SP, Decision No. 75, ruling on the joint petition of BNSF and R.R. Donnelley & Sons Company filed August 12, 1997).

potential traffic base during the early months of its trackage rights operations.¹¹

At the same time, we recognized that, in at least some cases, shippers were given favorable contract terms only because UP could obtain efficiencies by virtue of it being able to handle the shipper's entire volume. To give BNSF the benefits of the contract reopener provision while also providing UP with the right to extricate itself from contracts that would be unfavorable at 50% volume levels, we adopted Guideline No. 9. Guideline No. 9 permits UP to release the entire volume under contract if a shipper elects to use the contract modification provision. See UP/SP, Decision No. 57 (STB served Nov. 20, 1996) slip op. at 12. Under Guideline No. 9, if UP notifies the shipper that it would release the entire contract, then the shipper has the choice of either enforcing its existing UP contract in its entirety, or negotiating a contract with BNSF for whatever volume of traffic the shipper chooses.

Certain parties have asked us to eliminate Guideline No. 9, on the ground that it has somehow impeded the use of the contract reopener provision and that little use has been made of this provision.¹² BNSF notes that it has been able to contract with fewer than 10 shippers whose traffic would otherwise have been under contract with UP.

We will not revisit the contract reopener provision and Guideline No. 9 at this time. In Decision No. 44, we broadened the contract reopener provision in response to arguments that, prior to the merger, UP and SP had locked up much of the traffic at 2-to-1 points in contracts. Certain parties argued that, because of this pre-merger contracting, BNSF would not have adequate traffic densities to provide competitive service over its trackage rights segments. We imposed the contract reopener condition to assure that BNSF would not be foreclosed from competing for sufficient traffic to allow it to provide efficient service, especially in the period immediately after the merger.

We never viewed the contract reopener provision as the linchpin of BNSF's ability to compete over these routes. Rather, as noted earlier, the most important role of the condition was to

¹¹ The contract reopener provision was initially proposed in an agreement between the Chemical Manufacturers Association (CMA) and the UP. As initially structured, the provision was limited to CMA members in Louisiana and Texas. We broadened it to all 2-to-1 shippers.

¹² The suggestion of the CMA and the Society of the Plastics Industry, Inc. (CMA/SPI) that Guideline No. 9 is unlawful because the Board lacks authority to override a contract is without merit because the shipper retains the option of enforcing its entire contract. Moreover, if Guideline No. 9 were unlawful, the contract reopener provision would suffer from the same defect.

assure that the new entrant, BNSF, was not foreclosed from competing for adequate traffic during the early months of BNSF's operations.¹³ The contract reopener provision, in fact, has enabled BNSF to obtain at least some additional traffic that would not otherwise have been available.¹⁴ If the record had shown that BNSF has not been able to capture sufficient traffic for viable operations, then we would have been more disposed to modify the contract reopener provision or find some other means of giving BNSF additional traffic. No such showing, however, has been made.

In short, the contract reopener provision, with Guideline No. 9, has given BNSF additional competitive opportunities; it has protected UP; and it has guaranteed that shippers will be no worse off -- and may well be better off -- than they were before the merger, when they had UP/SP competition. We will not revisit this matter.

In addition to the parties that have suggested that we should modify the contract reopener provision by eliminating Guideline No. 9, DOT contends that, even when all of UP's and SP's pre-merger contracts have expired, BNSF may continue to be hampered in its ability to contract for traffic because of its inability to offer discounts for serving all of a shipper's traffic at several different points. DOT argues that this problem stems from the fact that BNSF is only able to serve 2-to-1 shippers, not all of the shippers that UP serves. DOT is concerned that BNSF may not be able to amass sufficient traffic to provide competitive service over its trackage rights. Although they do not propose any remedy, CMA and SPI also express concern that UP's merger-enhanced "leveraging power" may impede BNSF's ability to build traffic densities sufficient to compete successfully via its trackage rights. Similarly, BNSF has argued that it should be given access to any exclusively served UP traffic that UP "bundles" with 2-to-1 traffic.

There is no basis on this record for us to conclude that the economies UP could achieve by serving several of a shipper's plants along BNSF's trackage rights routes are so substantial as to impair unduly BNSF's ability to compete for 2-to-1 traffic. To the contrary, it is just as likely -- indeed, probably much more likely -- that BNSF will be able to attract substantial traffic through the economies of scale that can be realized by

¹³ Moreover, UP and SP submitted evidence in the merger proceeding, which they also cite here, indicating that the majority of the relevant UP and SP contracts were of short duration (expiring in 1996), and that 94% of these existing UP/SP contracts would expire by their own terms by the end of 1997. None of the parties has challenged this evidence. Under those circumstances, BNSF's limited use of the provision is not surprising.

¹⁴ At the same time, the record shows that shippers in many cases have been able to obtain lower contract rates, either from BNSF or from UP, because of the contract reopener provision.

serving all of a shipper's requirements at a single location. Therefore, while we will remain vigilant in assuring the effectiveness of BNSF's trackage rights, at this point and on this record, there is no reason to believe that BNSF will be unable to provide a competitive presence through its trackage rights service. Thus, no changes in our remedial conditions are needed at this time.

c. New facilities and transloading condition. The new facilities and transloading condition originated in the BNSF and CMA agreements. The condition gave BNSF the right to serve any facilities that are established after the merger on SP-owned lines over which BNSF receives trackage rights. We expanded the condition in Decision No. 44 by giving BNSF the right to serve new facilities established on both UP-owned and SP-owned lines over which BNSF obtained trackage rights, and by specifying that new facilities would be defined to include new transload facilities, including those owned or operated by BNSF.

The purpose of this condition was to replicate indirect competition that was available prior to the merger to shippers considering new operations at locations defined as 1-to-1 points. Those shippers were not protected by BNSF's ability to serve 2-to-1 shippers via its trackage rights. This and other similar conditions addressing the preservation of direct and indirect competition made divestiture unnecessary.¹⁵ It was not our intention to open up UP's and SP's existing exclusively served traffic to direct BNSF service through this condition. That would have been a substantial overreach, and would have gone beyond remedying the competitive harm that was at issue.

Ordinarily, shippers can lock in the competitive benefits of their ability to locate new facilities on the lines of two or more independent railroads by negotiating a long-term contract with the railroad on which they ultimately will locate. Permitting BNSF to serve new facilities was intended to replace competition that was lost by shippers who before the merger had a choice to locate facilities at points served by UP or SP.

One aspect of the new facilities condition, on which some commenters have focused here, involves transloading facilities. In authorizing the merger, the Board permitted BNSF to serve new transloading facilities, in order to preserve the role that transloading played before the merger in limiting UP's and SP's market power at exclusively served points. For example, it protected shippers that were exclusively served by only one of the merging railroads (either UP or SP) but whose rates would have been constrained by their ability to transload to or from the other nearby railroad. With this condition in place, such shippers at 1-to-1 points have the opportunity to initiate transloading operations served by BNSF over its trackage rights.

¹⁵ We also saw this condition as another way to assure adequate traffic for BNSF on its trackage rights lines.

UP and BNSF have been unable to reach agreement on a protocol for determining exactly when and how shippers will be able to take advantage of the important new facilities condition, and each has agreed that it might well be desirable for this dispute to be resolved by the Board. Particularly, they seem to be unable to agree on what constitutes a "new facility" or a "new transloading facility." With regard to new facilities, we noted in Decision No. 61 (STB served Nov. 20, 1996) slip op. at 9, merely that "new facilities" was defined in the CMA agreement, from which this condition originated, to exclude expansions of or additions to existing facilities. BNSF now asks that we determine that new facilities include:

- (1) vacant or existing rail-served facilities that undergo a change of ownership or lessee and (a) change the product shipped from or received at the facility, or (b) have not shipped or received by rail for at least 12 months prior to the resumption or proposed resumption of rail service;
- (2) existing facilities constructing trackage for accessing rail service for the first time; and
- (3) newly constructed rail-served facilities.

UP submits that only the third item in BNSF's proposed definition is appropriate, but concedes that, in an offer at compromise that has since been withdrawn, it had been willing to incorporate the second item as well.

We do not believe that it is necessary or appropriate for us to determine, in advance, the exact parameters of the new facilities condition. As we have noted, the underlying purpose of the condition is to replace competition that would have been lost pursuant to the merger. A determination of whether a new facility such as a transload facility addresses the loss of competition that this condition was intended to remedy, or whether it instead amounts to an overreach, however, is fact-specific; it cannot be made in a vacuum, nor can it be broadly defined. Rather, each determination will no doubt be unique, given the expected differences in each shipper's circumstances. Thus, in each case, we must examine the particular circumstances to determine whether the condition has been met. See, e.g., our decision issued today in UP/SP, Decision No. 75 (STB served Oct. 27, 1997) (Donnelley). In Donnelley, we determined that a particular facility was covered by the "new facilities condition" because (a) prior to the merger, SP would have been able to offer a transloading alternative in competition with a direct UP movement into the shipper's plant; (b) the facility had not been served by rail for four to five years; and (c) the transloading operation will be entirely different in nature and purpose from that of the facility's prior use.

There are, of course, situations in which broad rules, policy guidelines, or agency declarations are necessary and appropriate to provide expedition or predictability in individual

cases. Here, however, we do not believe that broadly applicable rules or declarations are warranted. There has not been a flood of new facility controversies; to the contrary, the condition has been in place for over a year, and to date, only one controversy has been brought to our attention. Moreover, we are confident that we can resolve any controversies that are brought before us quickly. We note that, in the only controversy that we have been asked to resolve, we were able to act in just over two months. See Donnelley, supra.¹⁶ We understand the parties' desire for predictability, and indeed, we believe that our decision in Donnelley should provide substantial guidance for the future. A rule or guideline to cover all possible fact patterns, however, is simply not feasible or appropriate now.¹⁷

IV.

WHAT ABOUT SAFETY AND SERVICE PROBLEMS?

Several commenters are understandably concerned about the significant post-merger service deterioration on UP's lines. They note problems in all segments of UP's system,¹⁸ in terms of poor transit times and inadequate car supply and delivery performance. UP has also experienced three tragic train accidents in recent months, which have triggered concern and action by the Federal Railroad Administration (FRA).

UP acknowledges that operating problems have proven to be more severe than originally anticipated, and that they are creating significant difficulties for its customers. UP maintains, however, that its current post-merger service and safety problems are for the most part unrelated to the merger of the operations of its rail carriers.

In discussing the operational problems that it is experiencing, UP points to several causes. First, UP notes the poor condition of SP's plant. Also, because the labor agreements needed to implement the merger were not finalized until recently, UP has been largely precluded until now from even beginning its workforce integration. In addition, the new system-wide computerized control network needed to operate the merged system has not been fully in place; it is being implemented in phases, with the final implementation expected by March 1, 1998 (instead of the earlier projection of May 1998). Finally, UP cites

¹⁶ Indeed, we would have acted more quickly in Donnelley had we not had to consider the broader request for relief being sought here by BNSF.

¹⁷ Cf. the comments of DOJ and DOT, suggesting that the definition of "new facility" should be functional, in that it should turn on whether new service is being established rather than whether existing structures are being served.

¹⁸ In particular, the Houston/Gulf Coast, the SSW Corridor, the Central Corridor, the I-5 Corridor, and the Powder River Basin area.

several unrelated events that have exacerbated its operating and service problems. These events include delays for traffic moving to and from Mexico related to the recent privatization of that country's rail lines; a dramatic increase in the volume of plastics shipments requiring storage in transit; CSX problems east of New Orleans caused by hurricane Danny; a major flood in the nation's largest coal mine in the Powder River Basin; and the hiring of a number of former SP crew members by BNSF to staff its new operations, leaving UP with a shortage of skilled workers.

UP's July 1 progress report in this oversight proceeding outlines its implementation or planned implementation of a number of measures that will reduce the current operational difficulties. More recently, on August 29, 1997, UP issued a press release indicating that it has stepped up the measures outlined on July 1, which it has further modified in its October 1 progress report. As we would expect, UP has indicated that the prompt resolution of its service and safety problems is its highest corporate priority.

As noted above, we have instituted a proceeding to look into what should be done about the very real rail service problems in the western United States. With regard to safety, UP appears to be fully cooperating with FRA, the federal agency with responsibility for rail safety enforcement, in addressing concerns identified by that agency.

The essential point for the purposes of this oversight proceeding, however, is that the service and safety matters we have just discussed do not appear to be the result of a lack of adequate competition or the anticompetitive acts of the merging carriers, or, most specifically, the ineffectiveness of the competitive conditions imposed by the Board on the merger. Nevertheless, we will continue to monitor closely the competitive situation resulting from our approval of this merger.

V.

ARE ANY NEW CONDITIONS REQUIRED?

Our review of the record indicates that no major new conditions are required to assure the preservation of vigorous competition in the markets affected by the merger. Several parties have requested new conditions or have renewed condition requests that we previously denied. It is not the purpose of this oversight proceeding to give the parties an opportunity to relitigate our merger decision, and in the absence of a competitive problem, it would not be appropriate for us to reopen the merger and impose additional conditions. Our resolution of various requests for additional conditions and our examination of specific concerns follows.

a. Tex Mex's contention that the trackage rights condition that we imposed may not be accomplishing its intended purpose is without support. Tex Mex is essentially rearguing the Board's decision to limit the trackage rights granted to it to traffic

having a prior or subsequent movement over Tex Mex's lines. The Board granted these trackage rights to Tex Mex to assure that the merger would not erode its traffic base and undermine its ability to provide an alternative route to the Laredo gateway for traffic to and from Mexico. Tex Mex concedes, however, that the trackage rights have permitted it to increase its traffic since the merger. Thus, the condition we imposed is working as anticipated.

b. Sierra Pacific Power Company and Idaho Power Company (SPP) contend that UP and BNSF/Utah Railway (UR) competition for their coal traffic to the North Valmy Station in Nevada has been inadequate. SPP seeks essentially the same broad relief that it sought, and we denied, in the merger proceeding. SPP argued there, as it continues to argue here, that BNSF will not be able to provide an adequate substitute for SP's service and that SPP should be given the authority to choose another carrier to operate at reduced trackage rights fees (i.e., fees lower than those now paid by BNSF) from all coal mines in Utah and Colorado served by SP.

SPP has not justified the broad relief it seeks, nor has it justified narrower relief directed to the situation at the North Valmy facility. The short answer to SPP's claims is that competition has not decreased because of the merger. UP proposed contract rates on SPP's traffic that were lower than those that prevailed before the merger, but SPP declined the offer. Subsequently, BNSF contracted with SPP to carry some coal to North Valmy. These events do not show any decrease in competition since the merger.

We are aware that SPP has filed a rate complaint against UP's rates between the loadout facilities at Sharp, UT, serving the Southern Utah Fuel Company (SUFCO) mine and the North Valmy station;¹⁹ as part of that proceeding, SPP must show that UP is market dominant over SPP's traffic. We do not intend to prejudge that complaint here. We conclude, however, that, on this record, no basis has been provided to disturb our original finding in UP/SP, Decision No. 44, that SPP's competitive alternatives at North Valmy are not impaired by the merger. Id., slip op. at 187.

UP notes that the principal source of coal for the North Valmy facility is the SUFCO coal mine, which is served only by truck. SUFCO coal moves by truck 81 miles to the Sharp transloading facility on the UP lines, and then 460 miles by rail to Valmy. SUFCO coal can also move by truck 94 miles to the Savage transloading facility, and then 491 miles by rail to

¹⁹ UP is now moving SUFCO coal from the Sharp load-out to North Valmy under a newly established common carrier rate. SPP has challenged the reasonableness of that rate in Sierra Pacific Power Company, et al. v. Union Pacific Railroad Company, STB Docket No. 42012, filed Aug. 1, 1997.

Valmy, using a UR/BNSF movement.²⁰ The availability of these apparently comparable routings indicates that there continues to be competitive rail service to allow SPP to receive its coal requirements from the SUFCO mine. Moreover, as UP notes, there are other BNSF/UR-served mines even closer to Savage than the SUFCO mine that could be used to meet North Valmy's needs, at least to the extent that they exceed its minimum contractual commitment to receive coal from SUFCO. The service SPP is now receiving from BNSF to move coal to North Valmy under contract is but one of the options that we observed in UP/SP Decision No. 44.

In short, SPP has not shown that we should impose conditions to create additional competition for its traffic.

c. Railco operates a coal transloading facility near the Savage transloading facility in Utah. UP reached a settlement agreement with UR giving that carrier access to the Savage facility for the first time. The agreement did not give UR access to the Railco facility. This issue was decided in UP/SP, Decision in No. 44, and again in Decision No. 66 (STB served Dec. 31, 1996), where we explained that:

We realize that the [UR] agreement, by providing an increased rail option for one shipper but not for another, may disadvantage the one for whom the increased option has not been provided. That, however, is not the kind of harm that should be rectified under the 49 U.S.C. 11344(c) conditioning power, which was not used by the ICC and will not be used by us to equalize rates and service among competing shippers.

(Id., slip op. at 14). Railco has presented no reason here to disturb that determination.

d. Cyprus Amax is in the process of shifting production from the Plateau Mine to its new facility at Willow Creek, where UR, as the sole originating carrier, will provide equal competitive access to UP and BNSF. Cyprus Amax argues that BNSF's trackage rights for movements of coal from Utah origins to Los Angeles, CA, for export should be expanded. It maintains that BNSF should be granted trackage rights over UP's route to Los Angeles through Las Vegas, NV, or by some other means. Before the merger, Cyprus Amax used SP to haul coal, even though its route was 470 miles longer than UP's. Although BNSF service is available over the same route that SP previously used, Cyprus Amax claims that BNSF's rates are significantly higher than were SP's rates.

Given UP's substantial geographic advantage, it is not surprising that UP has been able to offer a lower rate on these movements than BNSF can. Although SP was evidently offering a low rate for these movements, BNSF has explained that SP's

²⁰ As we explained in UP/SP, Decision No. 44, joint-line movements of unit-train coal are not inherently less efficient than single-line movements.

pricing package apparently reflected equipment backhauls that made the movement for Cyprus Amax economically viable, and UP states that BNSF has every opportunity and incentive to establish similar backhauls with shippers in the Utah Valley. Indeed, Cyprus Amax quotes approvingly from UP's original merger application that the export coal market "is intensely competitive with lower cost Australian coal(,) the leading contender in end-markets...." UP submitted evidence in its July 1, 1997 report indicating that its systemwide rates for export coal declined 4-5% over the last year. Thus, Cyprus Amax has shown no evidence here of competitive harm resulting from the merger that is sufficient to justify additional conditions.

e. New Orleans. In its July progress report and its August 1st filing, BNSF asserts that access by BNSF to former UP or SP customers at New Orleans through reciprocal switching has not been permitted by UP, allegedly disadvantaging shippers of westbound traffic out of New Orleans by denying them access to the competitive two-carrier service they enjoyed prior to this merger. BNSF indicates that it plans to file a separate petition concerning this matter. BNSF-PR-4 at. 12, BNSF-1 at 18. DOT urges us to inquire into this problem and to take whatever remedial action is necessary. DOT-1 at 6.

UP responds that this condition request by BNSF is (a) untimely, (b) contrary to the BNSF settlement agreement, and (c) wholly unjustified. UP argues that the request is unjustified because the relatively few shippers in New Orleans that are served by it and open to reciprocal switching are also open to KCS and Illinois Central Railway (IC), and thus those shippers did not lose rail competition as a result of the merger. UP notes that, contrary to DOT's statement, KCS and IC are free to handle traffic of these shippers that is bound to or from points west of New Orleans. It notes that no New Orleans shipper has shown that the merger left it without any rail competition.²¹

BNSF has not presented any basis on this record for us to conclude that an additional condition is warranted at New Orleans. If BNSF files a petition concerning this matter, we will examine it in more detail:

f. North American Logistics Services (NALS) has attempted to reargue its request for direct BNSF service for its Wunotoo, NV, plant near Reno, NV, which was denied in UP/SP, Decision No. 44, slip op. at 192. That plant was an exclusively served site before the merger, and continues to be exclusively served by UP. NALS has presented no new evidence or changed circumstances sufficient to support its request for direct BNSF service.

²¹ UP indicates that it will offer a full response when and if BNSF's petition is filed.

VI.

LABOR ISSUES

The United Transportation Union (UTU) alleges that there have been instances where UP has made certain labor changes prior to negotiating an implementing agreement to permit those changes. UP admits that there have been a handful of occasions where this has occurred, but states that when these matters have been brought to its attention, it has taken prompt corrective action. UP has now negotiated or arbitrated most of the necessary new agreements as contemplated by the New York Dock²² conditions. While no further labor protective conditions have been justified, we admonish UP scrupulously to observe its New York Dock obligations.

VII.

ARE WE GETTING ENOUGH INFORMATION?

Although the information that UP and BNSF submitted in their first three quarterly reports lacked sufficient detail, the reports that were filed on July 1, 1997, were much more comprehensive. We believe that we are now getting the appropriate type and amount of information.²³ UP and BNSF have proposed, and we agree, that the existing quarterly reporting schedule, with comprehensive summary presentations to be filed in the July 1, 1998 progress reports, should be continued. With respect to the July 1 reports, interested parties will then have 45 days from July 1, 1998, to comment on oversight issues, and replies by UP and BNSF will be due 15 days later. We will continuously monitor the quarterly reports, and we anticipate issuing another report concerning oversight issues following a review of the July 1 submissions and the comments. Of course, we always reserve the right to alter the reporting schedule or intensify the monitoring. Any parties seeking immediate, merger-related relief should use our ordinary formal complaint or declaratory order procedures.

²² New York Dock Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979) (standard labor protective conditions for mergers, consolidations, and control proceedings).

²³ DOT and the National Railroad Passenger Corporation (Amtrak) have requested that UP provide detailed information in its quarterly reports on the effect that the merger has had on on-time passenger train performance. By statute, Amtrak is required to negotiate contractual incentives and penalties for on-time performance. UP and Amtrak are apparently in the midst of renegotiating their contracts. Except to the extent that we are required to do so under 49 U.S.C. 24308, we see no reason to interpose ourselves in this process, which is unrelated to the issue of competitive service for shippers, the focus of this oversight proceeding.

There is no reason to open this proceeding for formal discovery procedures as some parties have suggested. Rather, the Board hereby directs that UP and BNSF shall make available their 100% traffic tapes by July 15, 1998. The type of data that would then be available for traffic from July 1 of the previous year to June 30 of the reporting year would permit interested persons to address whether the competitive conditions imposed by the Board are working as envisioned. Formal discovery procedures would add no new relevant information on competition and would complicate this oversight process unnecessarily.

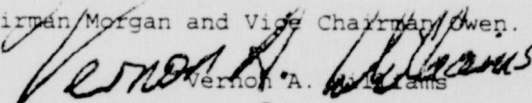
We note that, on October 16, 1997, we issued an order prescribing the type of information that UP must file periodically in the proceeding involving service in the western United States. We will continue to examine that information, as well as any filings that shippers and others make in that proceeding. In addition, shippers may continue the existing informal process of bringing individual rail service complaints to our Office of Compliance and Enforcement.

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

It is ordered:

1. UP and BNSF shall submit their proposed protocol(s) concerning identification of 2-to-1 points within 30 days.
2. UP and BNSF shall continue to report quarterly, with comprehensive summary presentations included in their progress reports due on July 1, 1998.
3. UP and BNSF shall make their 100% traffic tapes available by July 15, 1998.
4. Comments of interested parties concerning oversight will be due on August 14, 1998.
5. Replies will be due September 1, 1998.
6. This decision is effective immediately.

By the Board, Chairman Morgan and Vice Chairman Owen.


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Records: 81

STB FD 32760 (Sub 21) 6-19-97 C

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SEC

SERVICE DATE - JUNE 19, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-No. 21)

**UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY**

[OVERSIGHT]

(Decision No. 2)

Dated: June 19, 1997

NOTICE TO THE PARTIES:

In Decision No. 1, served and published in the *Federal Register* on May 7, 1997 (62 FR 20514), the Surface Transportation Board instituted a proceeding to implement the oversight condition imposed in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (UP/SP)*, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996), and to set dates for comments and replies from interested parties on the effects of the merger on competition and the implementation of the conditions to address competitive harms. The Board also requested that parties intending to participate in the oversight proceeding notify the Board of their intent to participate by May 27, 1997.

The attached service list has been compiled from the notices of intent to participate submitted in accordance with the requirements of Decision No. 1. Copies of decisions, orders, and notices will be served only on those persons who are designated as Party of Record (POR), Member of Congress, or Governor on the official service list. Copies of filings must be served on all parties who are designated as POR.

Interested persons may obtain copies of filings without being on the service list, pursuant to 49 CFR 1180.4(a)(3), which provides that "[a]ny document filed with the [Board] (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." In addition, the Board's copy contractor,

STB Finance Docket No. 32760 (Sub-No. 21)

DC News & Data, Inc. (DC News), will also provide copies of filings and served Board decisions, orders, and notices, upon request. DC News will handle the collection of charges and the mailing and/or faxing of documents to persons who request this service. For persons wishing to obtain further information regarding these procedures, the telephone number for DC News is (202) 289-4357.

An original plus 25 copies¹ of all documents, referring to STB Finance Docket No. 32760 (Sub-No. 21), must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 32760 (Sub-No. 21), Surface Transportation Board, Mercury Building, 1925 K Street, N.W., Washington, DC 20423-0001. All future filings must each have a certificate of service indicating that all PORs have been properly served with a copy of the filing. Parties are requested also to submit all pleadings, and any attachments, on a 3.5-inch diskette that is formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. See 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 2, *UP/SP*, Finance Docket No. 32760 (ICC served Sept. 1, 1995).

As the Board indicated in Decision No. 1, the applicants--Union Pacific Corporation, Union Pacific Railroad Company (UPRR), Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company²--and The Burlington Northern and Santa Fe Railway Company (BNSF), are required to serve their July 1, 1997 progress report on all PORs on the attached service list, and any other interested person who submits a written request to applicants and/or BNSF.

As explained in further detail in Decision No. 1, the oversight effort is intended to allow the Board to determine whether any problems have developed with respect to implementation of the merger conditions addressing competitive harms that require the Board to take further action. The Board fully expects that the information presented by applicants in their July 1 progress report will be more extensive than their prior filings, and include specific details as to how each

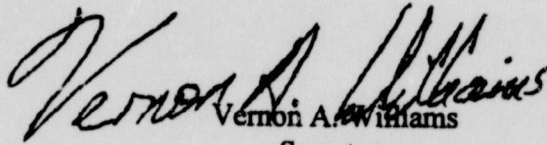
¹ In order for a document to be considered a formal filing, the Board must receive an original plus 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX), as in the past, will not be considered formal filings and thus are not encouraged because they will result in unnecessarily burdensome, duplicative processing.

² On January 1, 1997, applicant Missouri Pacific Railroad Company merged into applicant UPRR.

STB Finance Docket No. 32760 (Sub-No. 21)

condition has been met. Regarding BNSF's July 1 progress report, the Board expects BNSF to provide more detailed information regarding its efforts to be an effective competitor to the applicants. The due date for parties to submit comments on effects of the merger on competition and implementation of the conditions imposed to address competitive harms is August 1, 1997. Replies are due on August 20, 1997. The Board will review the comments and replies, and will then determine what further action is appropriate.

Parties may submit filings, as appropriate, under seal marked "Confidential" or "Highly Confidential" pursuant to the protective order granted in Decision No. 2, *UP/SP*, Finance Docket No. 32760 (ICC served Sept. 1, 1995).


Vernon A. Williams
Secretary

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PARTY OF RECORD
REBECCA FISHER
ASST ATTY GENERAL
PO BOX 12548
AUSTIN TX 78711-2548 US

Represents: OFFICE OF DAN MORALES, ATTORNEY GENERAL OF TEXAS

MEMBER OF CONGRESS
HONORABLE THOMAS M. FOGLIETTA
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3801 US

Represents:

MEMBER OF CONGRESS
HON. HAROLD E. FORD, JR
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

GOVERNOR
HON M J "MIKE" FOSTER JR
GOVERNOR
P O BOX 94004
BATON ROUGE LA 70804 US

Represents:

MEMBER OF CONGRESS
HONORABLE GEORGE GEKAS
ATTN: TOM SANTANIELLO
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

GOVERNOR

HON. JIM GERINGER
GOVERNOR
STATE CAPITOL BUILDING
CHEYENNE WY 82002 US

Represents:

MEMBER OF CONGRESS

HON JOHN GLENN
UNITED STATES SENATE
WASHINGTON DC 20510 US

Represents:

PARTY OF RECORD

ROBERT K. GLYNN
HOISINGTON CHAM. OF COMM.
123 NORTH MAIN STREET
HOISINGTON KS 67544-2594 US

Represents: HOISINGTON CHAMBER OF COMMERCE KANSAS

PARTY OF RECORD

ANDREW P. GOLDSTEIN
MCCARTHY, SWEENEY ET AL.
1750 PENNSYLVANIA AVE NW
WASHINGTON DC 20006 US

Represents: AG PROCESSING, INC.

MEMBER OF CONGRESS

HON. HENRY B. GONZALEZ
HOUSE OF REPRESENTATIVES

WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HON. PHIL GRAMM
UNITED STATES SENATE
WASHINGTON DC 20510 US

Represents:

MEMBER OF CONGRESS

HONORABLE CHARLES E. GRASSLEY
UNITED STATES SENATE
WASHINGTON DC 20510-1501 US

Represents:

MEMBER OF CONGRESS

HONORABLE GENE GREEN
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

EDWARD D. GREENBERG
GALLAND, KHARASCH, MORSE & GARFINKLE
1054 THIRTY-FIRST STREET NW
WASHINGTON DC 20007-4492 US

Represents: THE INTERNATIONAL PAPER COMPANY

PARTY OF RECORD

F MARK HANSEN
F MARK HANSEN, P.C.
624 NORTH 300 WEST SUITE 200
SALT LAKE CITY UT 84103 US

Represents: RAILCO INC

PARTY OF RECORD

JAMES S HANSON
2020 DOW CENTER
MIDLAND MI 48674 US

Represents: THE DOW CHEMICAL COMPANY

MEMBER OF CONGRESS

HONORABLE WALLY HERGER
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HON DAVID L HOBSON
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HONORABLE TIM HOLDEN
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HONORABLE JOHN HOSTETTLER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

CLAUDIA L HOWELLS
OREGON, DEPT. OF TRANS.
MILL CREEK OFC BLDG
555 13TH STREET NE
SALEM OR 97310 US

Represents: OREGON DEPARTMENT OF TRANSPORTATION

MEMBER OF CONGRESS

HONORABLE EDDIE BERNICE JOHNSON
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4330 US

Represents:

MEMBER OF CONGRESS

HONORABLE TIM JOHNSON
UNITED STATES SENATE
WASHINGTON DC 20510 US

Represents:

PARTY OF RECORD

BARRY JOHNSON, SENIOR ENGINEER
SOUTHWESTERN PUBLIC SERVICE COMPANY
P. O. BOX 1261
AMARILLO TX 79170 US

Represents:

PARTY OF RECORD

ERIKA Z. JONES
MAYER, BROWN & PLATT
2000 PENNSYLVANIA AVE N W SUITE 6500
WASHINGTON DC 20006 US

Represents: BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

PARTY OF RECORD

TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

Represents: NORTH AMERICAN LOGISTIC SERVICES DIVISION OF MARS INC

MEMBER OF CONGRESS

HON. PAUL KANJORSKI
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HON MARCY KAPTUR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HONORABLE J. ROBERT KERRY
UNITED STATES SENATE
WASH DC 20510 US

Represents: ---

MEMBER OF CONGRESS
HONORABLE JAY KIM
HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD
CARL E. KINGSTON
RAILCO, INC.
3212 SOUTH STATE STREET
SALT LAKE CITY UT 84115 US

Represents:

GOVERNOR
HONORABLE JOHN KITZHABER
GOVERNOR OF OREGON
STATE CAPITOL
SALEM OR 97310-0370 US

Represents:

PARTY OF RECORD
PAUL H. LAMBOLEY
OPPENHEIMER WOLFF & DONNELLY
1020 19TH STREET, N.W., SUITE 400
WASHINGTON DC 20036 US

Represents: CITY OF RENO NEVADA

MEMBER OF CONGRESS
HONORABLE TOM LANTOS
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD
JOHN P. LARUE, EXECUTIVE DIRECTOR
THE PORT OF CORPUS CHRISTI
P O BOX 1541
222 POWER STREET
CORPUS CHRISTI TX 78403 US

Represents:

GOVERNOR
HONORABLE MICHAEL O. LEAVITT
ATTN: ROBIN L. RIGGS, GC TO GOVERNOR
210 STATE CAPITOL
SALT LAKE CITY UT 84114 US

Represents:

MEMBER OF CONGRESS
HONORABLE SHEILA JACKSON LEE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4318 US

Represents: ---

PARTY OF RECORD

JOHN H. LESEUR
SLOVER & LOFTUS
1224 17TH STREET NW
WASHINGTON DC 20036-3081 US

Represents: TEXAS UTILITIES ELECTRIC COMPANY
THE CITY PUBLIC SERVICE BOARD OF SAN ANTONIO

MEMBER OF CONGRESS

HON. JERRY LEWIS
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HONORABLE RON LEWIS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HONORABLE ZOE LOFGREN
US HOUSE OF REPRESENTATIVE
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

C MICHAEL LOFTUS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

Represents: LOWER COLORADO RIVER AUTHORITY AND THE CITY OF AUSTIN TEXAS
WESTERN COAL TRAFFIC LEAGUE

PARTY OF RECORD

WRENNIE LOVE
1601 W LBJ FREEWAY
DALLAS TX 75234 US

Represents: HOECHST CELANESE CHEMICAL GROUP LTD

MEMBER OF CONGRESS

HON. FRANK D. LUCAS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3606 US

Represents:

MEMBER OF CONGRESS

HONORABLE RICHARD LUGAR
UNITED STATES SENATE
WASHINGTON DC 20510 US

Represents:

PARTY OF RECORD

PATRICIA A LYNCH
CITY ATTORNEY - RENO CITY HALL
490 SOUTH CITY STREET
RENO NV 89501 US

Represents:

PARTY OF RECORD

GORDON P. MACDOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

Represents: JOHN D FITZGERALD-CHARLES W DOWNEY-CHARLES D BOLAM AND
JOSEPH C SZABO

MEMBER OF CONGRESS

HONORABLE FRANK MASCARA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

MICHAEL F. MCBRIDE
LEBOEUF LAMB GREENE & MACRAE, L. L. P.
1875 CONNECTICUT AVE N W, STE 1200
WASHINGTON DC 20009 US

Represents: FARMLAND INDUSTRIES INC

MEMBER OF CONGRESS

HONORABLE KAREN MCCARTHY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HON. JIM MCCRERY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1805 US

Represents:

MEMBER OF CONGRESS

HONORABLE PAUL MCHALE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

CHARLES E. MCHUGH, MANAGER TRANSP. PROCUREMENT
THE INTERNATIONAL PAPER CO.

6400 POPLAR AVENUE
MEMPHIS TN 38197 US

Represents:

MEMBER OF CONGRESS
HONORABLE SCOTT MCINNIS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-0603 US

Represents:

MEMBER OF CONGRESS
HONORABLE HOWARD P. BUCK MCKEON,
US HSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD
C A MENNELL, PRESIDENT
LACKLAND WESTERN RR CO
31 OAK TERRACE
WEBSTER GROVES MO 63119 US

Represents: LACKLAND WESTERN RAILROAD COMPANY

GOVERNOR
HON. BOB MILLER
GOVERNOR
STATE OF NEVADA
CARSON CITY NV 89710 US

Represents:

MEMBER OF CONGRESS
HONORABLE GEORGE MILLER
ATT: GARY BLAND
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2307 US

Represents:

PARTY OF RECORD
CHRISTOPHER A. MILLS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

Represents: PUBLIC SERVICE COMPANY OF COLORADO

MEMBER OF CONGRESS
HONOPABLE DAVID MINGE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD
WILLIAM A. MULLINS
TROUTMAN SANDERS LLP

1300 I STREET NW SUITE 500 EAST
WASHINGTON DC 20005-3314 US

Represents: OCCIDENTAL CHEMICAL CORPORATION
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

MEMBER OF CONGRESS
HONORABLE JOHN MURTA
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

GOVERNOR
HONORABLE E. BENJAMIN NELSON
GOV., STATE OF NEBRASKA
P O BOX 94848
LINCOLN NE 68509 US

Represents:

MEMBER OF CONGRESS
HON. DON NICKLES
UNITED STATES SENATE

WASHINGTON DC 20510 US

Represents:

GOVERNOR
HON. FRANK O'BANNON
GOVERNOR STATE OF INDIANA
STATE CAPITOL
INDIANAPOLIS IN 46204 US

Represents:

MEMBER OF CONGRESS
HON. JAMES L. OBERSTAR
US HSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD
JOHN WILL ONGMAN
PEPPER HAMILTON SCHEETZ
1300 NINETEENTH STREET N W
WASHINGTON DC 20036-1685 US

Represents: GENEVA STEEL COMPANY

MEMBER OF CONGRESS
HON. MICHAEL OXLEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS
HONORABLE RON PACKARD

US HSE OF REPRESENTATIVES
WASHINGTON DC-20515 US

Represents:

PARTY OF RECORD
MONICA J. PALKO
BRACEWELL & PATTERSON
2000 K STREET NW STE 500
WASHINGTON DC 20006 US

Represents: CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

MEMBER OF CONGRESS
HONORABLE DONALD M. PAYNE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS
HONORABLE NANCY PELOSI
US HSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS
HONORABLE RICHARD W. POMBO,
US HSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS
HON. EARL POMEROY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD
JOSEPH R. POMPONIO
FEDERAL RAILROAD ADMIN.
400 7TH ST SW RCC-20
WASHINGTON DC 20590 US

Represents:

PARTY OF RECORD
BURUNDA PRINCE-JONES
ROHM AND HASS CO
INDEPENDENCE MALL WEST
PHILADELPHIA PA 19106-2399 US

Represents: ROHM AND HASS COMPANY

PARTY OF RECORD
LARRY R. PRUDEN

TRANS. COMM. INTL UNION
3 RESFARCH PLACE
ROCKVILLE MD 20850 US

Represents: TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION

PARTY OF RECORD

JAMES T. QUINN
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO CA 94102-3298 US

Represents: PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GOVERNOR

HONORABLE MARC RACICOT
GOV'S OFFICE, STATE CAP.
P O BOX 200801
HELENA MT 59620-0801 US

Represents:

MEMBER OF CONGRESS

HONORABLE HARRY REID
UNITED STATES SENATE
WASHINGTON DC 20510-0001 US

Represents:

MEMBER OF CONGRESS

HONORABLE FRANK D. RIGGS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

LOUISE A. RINN
UNION PACIFIC RR CO.
1416 DODGE STREET ROOM 830
OMAHA NE 68179 US

Represents: UNION PACIFIC RAILROAD COMPANY

PARTY OF RECORD

ARVID E. ROACH II
COVINGTON & BURLING
PO BOX 7566
1201 PENNSYLVANIA AVE N W
WASHINGTON DC 20044-7566 US

Represents: UNION PACIFIC CORPORATION ET AL
UNION PACIFIC CORPORATION-UNION PACIFIC RAILROAD
COMPANY-MISSOURI PACIFIC RAILROAD COMPANY

MEMBER OF CONGRESS

HONORABLE PAT ROBERTS
UNITED STATES SENATE
WASHINGTON DC 20510 US

Represents:

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY, AND MISSOURI PACIFIC RAILROAD
COMPANY--CONTROL AND MERGER--SOUTHERN PACIFIC RAIL
CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP.,
AND THE DENVER RIO GRANDE WESTERN RAILROAD COMPANY

MEMBER OF CONGRESS

HONORABLE DANA ROHRBACHER
US HSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

GOVERNOR

HONORABLE ROY ROMER
GOVERNOR
136 STATE CAPITOL
DENVER CO 80203 US

Represents:

MEMBER OF CONGRESS

HONORABLE LUCILLE ROYAL-ALLARD
US HSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HONORABLE EDWARD R. ROYCE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HON. MARTIN OLAV SABO
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HON. THOMAS C SAWYER
HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

THOMAS E. SCHICK
CHEMICAL MANUF. ASSOC.
1300 WILSON BOULEVARD
ARLINGTON VA 22209 US

Represents:

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY, AND MISSOURI PACIFIC RAILROAD
COJPNY--CONTROL AND MERGER--SOUTHERN PACIFIC RAIL
CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP.,
AND THE DENVER RIO GRANDE WESTERN RAILROAD COMPANY

PARTY OF RECORD

DAVID W SHERROD
PNWR FIRST INTERSTATE CENTER
999 3RD AVENUE SUITE 1060
SEATTLE WA 98104 US

Represents: PACIFIC NORTHWEST ECONOMIC REGION

PARTY OF RECORD

KENNETH E. SIEGEL
AMERICAN TRUCKING ASSOC.
2200 MILL ROAD
ALEXANDRIA VA 22314-4677 US

Represents: AMERICAN TRUCKING ASSOCIATIONS

MEMBER OF CONGRESS

HON. IKE SKELTON
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

Represents: NATIONAL RAILROAD PASSENGER CORP

PARTY OF RECORD

PAUL SAMUEL SMITH
U. S. DEPT OF TRANSP
400 7TH ST SW , ROOM 4102 C-30
WASHINGTON DC 20590 US

Represents: U S DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD

MIKE SPAHIS
FINA OIL & CHEMICAL CO.
PO BOX 2159
DALLAS TX 75221 US

Represents: FINA OIL AND CHEMICAL COMPANY

PARTY OF RECORD

CHARLES A. SPITULNIK
HOPKINS & SUTTER
888 16TH STREET N W
WASHINGTON DC 20006 US

Represents: INTERMOUNTAIN POWER AGENCY

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY, AND MISSOURI PACIFIC RAILROAD
COMPANY--CONTROL AND MERGER--SOUTHERN PACIFIC RAIL
CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP.,
AND THE DENVER RIO GRANDE WESTERN RAILROAD COMPANY

MEMBER OF CONGRESS

HONORABLE PETE STARK
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HONORABLE CHARLES W. STENHOLM
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

EILEEN S. STOMMES, DIRECTOR, T&M DIVISION
AGRICULTURAL MARKETING SERVICE, USDA
P. O. BOX 96456
WASHINGTON DC 20090-6456 US

Represents:

PARTY OF RECORD

SCOTT N. STONE
PATTON BOGGS L.L.P.
2550 M STREET NW 7TH FLOOR
WASHINGTON DC 20037-1346 US

Represents: CHEMICAL MANUFACTURERS ASSOCIATION

PARTY OF RECORD

JUNIOR STRECKER, CHAIRMAN
MOUNTAIN-PLAINS COMMUNITIES & SHIPPERS COALITION
123 NORTH MAIN ST
HOISINGTON KS 67544 US

Represents: MOUNTAIN-PLAINS COMMUNITIES AND SHIPPERS COALITION

MEMBER OF CONGRESS

HON. BOB STUMP
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HON JOHN TANNER
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY, AND MISSOURI PACIFIC RAILROAD
COJPNY--CONTROL AND MERGER--SOUTHERN PACIFIC RAIL
CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP.,
AND THE DENVER RIO GRANDE WESTERN RAILROAD COMPANY

MEMBER OF CONGRESS

HON W J (BILLY) TAUZIN
ATTN: ROY WILLIS
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2601 US

Represents:

MEMBER OF CONGRESS

HONORABLE WILLIAM M (MAC) THORNBERRY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4313 US

Represents:

MEMBER OF CONGRESS

HONORABLE TODD TIAHRT
HOUSE OF REPRESENTATIVE
WASHINGTON DC 20515-1004 US

Represents:

PARTY OF RECORD

ERIC W. TIBBETTS
P O BOX 3766
1301 MCKINNEY ST
HOUSTON TX 77253 US

Represents: CHEVRON CHEMICAL COMPANY

MEMBER OF CONGRESS

HON. ESTEBAN E TORRES
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

MEMBER OF CONGRESS

HON. JAMES A. TRAFICANT, JR.
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

PARTY OF RECORD

ROBERT P. VOM EIGEN
HOPKINS AND SUTTER
888 16TH STREET N W STE 700
WASHINGTON DC 20006 US

Represents: CANADIAN NATIONAL RAILWAY COMPANY

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY, AND MISSOURI PACIFIC RAILROAD
COMPANY--CONTROL AND MERGER--SOUTHERN PACIFIC RAIL
CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP.,
AND THE DENVER RIO GRANDE WESTERN RAILROAD COMPANY

PARTY OF RECORD

TERRY J VOSS - VICE PRESIDENT
AG PROCESSING, INC.
PO BOX 2047
OMAHA NE 68103-2047 US

Represents:

MEMBER OF CONGRESS

HONORABLE CURT WELDON
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3807 US

Represents:

PARTY OF RECORD

CHARLES H. WHITE, JR.
GALLAND, KHARASCH & GARFINKLE, P. C.
1054 THIRTY-FIRST STREET NW
WASHINGTON DC 20007-4492 US

Represents: UTAH RAILWAY COMPANY

PARTY OF RECORD

THOMAS W. WILCOX
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVE NW STE 750
WASHINGTON DC 20005-3934 US

Represents: SIERRA PACIFIC POWER COMPANY AND IDAHO POWER COMPANY

PARTY OF RECORD

ROBERT A. WIMBISH, ESQ.
REA, CROSS & AUCHINCLOSS
1920 N STREET NW SUITE 420
WASHINGTON DC 20036 US

Represents: BROWNSVILLE AND RIO GRANDE INTERNATIONAL RAILROAD
BROWNSVILLE NAVIGATION DISTRICT

PARTY OF RECORD

FREDERIC L. WOOD
DONELAN, CLEARY, WOOD & MASER, P. C.
1100 NEW YORK AVE NW STE 750
WASHINGTON DC 20005-3934 US

Represents: THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

MEMBER OF CONGRESS

HONORABLE LYNN WOOLSEY
US HSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

Represents:

STB FD-32760 (SUB 21) ID-28151 8-7-97 C

28151
SEC

SERVICE DATE - AUGUST 7, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

[OVERSIGHT]

(Decision No. 9)

Dated: August 5, 1997

NOTICE TO THE PARTIES:

The Surface Transportation Board (Board) on June 19, 1997, served a Notice to the Parties (Decision No. 2). The service list, attached to the Notice, was compiled from the notices of intent to participate submitted in accordance with the requirements of Decision No. 1, served and published in the *Federal Register* on May 7, 1997 (62 FR 25014-15). By Notices served June 30, 1997 (Decision No. 3), July 16, 1997 (Decision No. 4), and July 29, 1997 (Decision No. 7), the Board added, corrected, and/or deleted names of parties on the service list. The Board has received three more late-filed requests to participate in this oversight proceeding. The requests are granted, and the following parties of record [POR] have been added to the service list representing the entities, as shown:

[POR] C. Michael Loftus, Esq.
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

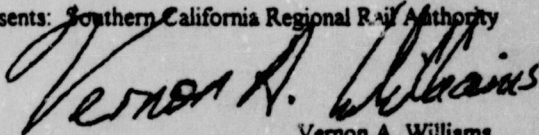
Represents: The Empire District Electric Company

[POR] Jerry L. Martin
Director, Rail Division
Railroad Commission of Texas
P.O. Box 12967
Austin, TX 78711-2967

Represents: Railroad Commission of Texas

[POR] Charles A. Spitulnik
Hopkins & Sutter
888 16th Street, N.W.
Washington, D.C. 20006

Represents: Southern California Regional Rail Authority



Vernon A. Williams
Secretary

TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

MARTIN W. BERCOVICI
KELLER & HECKMAN
1001 G ST NW SUITE 500 WEST
WASHINGTON DC 20001 US

RICHARD G SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

WILLIAM A. MULLINS
TROUTMAN SANDERS LLP
1300 I STREET NW SUITE 500 EAST
WASHINGTON DC 20005-3314 US

FREDERIC L. WOOD
DONELAN, CLEARY, WOOD & MASER, P. C.
1100 NEW YORK AVE NW STE 750
WASHINGTON DC 20005-3934 US

THOMAS W. WILCOX
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVE NW STE 750
WASHINGTON DC 20005-3934 US

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DONELAN, CLEARY, ET AL.
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WASHINGTON DC 20005-3934 US

ANDREW P. GOLDSTEIN
MCCARTHY, SWEENEY ET AL.
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STB FD-32760 (SUB 21) ID-28136 8-1-97 C

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STB Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
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TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

[OVERSIGHT]

(Decision No. 8)

Decided: August 1, 1997

Comments respecting the competitive effects of the UP/SP merger and the implementation of the conditions imposed to address competitive harms are due on August 1, 1997, and replies to such comments are due on August 20, 1997. See Decision No. 1 (served May 7, 1997, and published that day in the *Federal Register* at 62 FR 25014).¹

By letter dated July 23, 1997, the Oregon Department of Transportation (Or/DOT), claiming that it did not receive applicants' third quarter 1997 progress report (dated July 1, 1997) until July 22, 1997, has asked that the due date for its comments be extended to August 15, 1997.²

By letter dated and filed August 1, 1997, applicants, acknowledging that Or/DOT did not receive applicants' third quarter progress report until July 22, indicate that they take no position on Or/DOT's request.

Decision No. 1 was served and published on May 7, 1997, giving Or/DOT and all other interested persons 12-weeks' notice that comments were due on August 1, 1997, and allowing them more than sufficient time either to prepare their comments or to seek an extension of time well in advance of the comment due date. Nevertheless, because applicants do not formally oppose Or/DOT's extension request, it will be granted, and applicants will likewise be granted an extension of time for filing a reply to Or/DOT's comments.

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

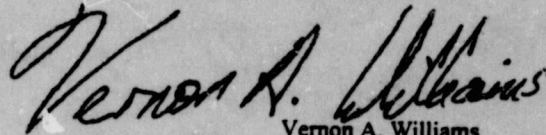
¹ The UP/SP merger was approved, subject to certain conditions, in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996).

² At the present time, the term "applicants" refers to Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), Southern Pacific Rail Corporation (SPR), Southern Pacific Transportation Company (SPT), and St. Louis Southwestern Railway Company (SSW). The term "applicants" previously embraced, in addition to the foregoing, Missouri Pacific Railroad Company (which was merged into UPRR on January 1, 1997) and SPCSL Corp. and The Denver and Rio Grande Western Railroad Company (which were merged into UPRR on June 30, 1997).

It is ordered:

1. The procedural schedule established in Decision No. 1, as modified in Decision No. 5, remains in effect, except as indicated in ordering paragraph 2.
2. Comments by Or/DOT are due on August 15, 1997. Applicants' reply to Or/DOT's comments is due on September 3, 1997.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.


Vernon A. Williams
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STB FD-32760 (SUB 21) ID-28124 7-29-97 C

28124
SEC

SERVICE DATE - JULY 29, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

[OVERSIGHT]

(Decision No. 7)

Dated July 28, 1997

NOTICE TO THE PARTIES

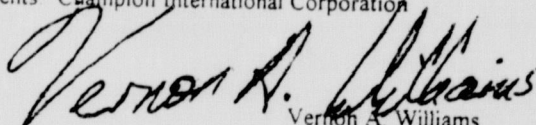
On June 19, 1997, the Surface Transportation Board (Board) served a Notice to the Parties (Decision No. 2). The service list was attached to the Notice, and was compiled from the notices of intent to participate submitted in accordance with the requirements of Decision No. 1, served and published in the *Federal Register* on May 7, 1997 (62 FR 25014-15). By Notices served June 30, 1997 (Decision No. 3), and July 16, 1997 (Decision No. 4), respectively, the Board added, corrected, and/or deleted names of parties on the service list. The Board has received two late-filed requests to participate in this oversight proceeding. The requests are granted, and the following parties of record [POR] have been added to the service list:

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Records: 178

STB FD-32760 (SUB 21) ID-28109 7-25-97 C

SERVICE DATE - LATE RELEASE JULY 25, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

[OVERSIGHT]

(Decision No. 6)

Decided: July 25, 1997

In Decision No. 1, which was served May 7, 1997, and published that day in the *Federal Register* at 62 FR 25014, the Board instituted a proceeding to implement the oversight condition imposed in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996). In instituting this oversight proceeding, the Board ordered that any comments on the competitive effects of the merger and the implementation of the conditions imposed to address competitive harms would be due on August 1, 1997, and that any replies to such comments would be due on August 20, 1997. See Decision No. 1, slip op. at 2, 62 FR at 25014.

In Decision No. 5, served on July 23, 1997, upon request of the United States Department of Agriculture (USDA), we modified the procedural schedule by setting August 15, 1997, as the due date for USDA's comments, and by setting September 3, 1997, as the due date for applicants' reply to USDA's comments. We noted that USDA had indicated that the 14-day extension it sought would benefit the oversight process by allowing USDA to receive, at a series of "shipper and community listening sessions in Kansas," input on the competitive effects of the UP/SP merger on agricultural shippers and communities.

By letter dated and filed July 22, 1997, six additional parties (AG Processing, Inc., The National Industrial Transportation League, Public Service Company of Colorado, Kansas City Southern Ry. Co., Southwest Grain Co., Inc., and Texas Mexican Ry. Co., hereinafter referred to collectively as "petitioners") have requested a similar 14-day extension of time for filing their comments. Petitioners indicate: that petitioners are participants "in an ongoing process of obtaining information from the railroads involved about the implementation of the merger and its conditions"; that this process apparently will not be completed in time to allow the information developed to be included in the comments, if such comments must be filed on August 1; and that "several" of the petitioners expect to be participants in the hearings referred to in the USDA request.¹

¹ USDA noted in its own extension request that the first two listening sessions are scheduled for the week of July 27, 1997.

By letter dated and filed July 24, 1997, applicants² have advised that they view petitioners' extension request as completely unwarranted. Applicants state that only two of the petitioners have even visited applicants' document depository, and that applicants are unaware of any "ongoing process of obtaining information from the railroads" respecting merger implementation.

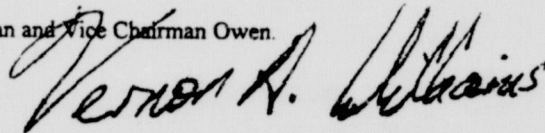
We will deny the extension request made by petitioners. Petitioners have been on notice since May 7, 1997, as to the timetable for filings. As applicants note, whereas USDA justified its extension request by reference to a specific need, petitioners have neither pointed to any specific reason why they need more time nor explained just what they hope to accomplish in the additional time. The fact that some petitioners may be participating in USDA's field hearings does not explain why these petitioners cannot submit their own comments by August 1.

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

It is ordered:

1. The extension request filed by petitioners is denied.
2. The procedural schedule established in Decision No. 1 remains in effect, except as indicated in Decision No. 5.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.



Vernon A. Williams
Secretary

² At the present time, the term "applicants" refers to Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), Southern Pacific Rail Corporation (SPR), Southern Pacific Transportation Company (SPT), and St. Louis Southwestern Railway Company (SSW). The term "applicants" previously embraced, in addition to the foregoing, Missouri Pacific Railroad Company (which was merged into UPRR on January 1, 1997) and SPCSL Corp. and The Denver and Rio Grande Western Railroad Company (which were merged into UPRR on June 30, 1997).

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Records: 178

STB FD-32760 (SUB 21) ID-28080 7-23-97 C

SERVICE DATE - JULY 23, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

[OVERSIGHT]

(Decision No. 5)

Dated: July 22, 1997

In Decision No. 1, served on May 7, 1997, and published that day in the *Federal Register* at 62 FR 25014, the Board instituted a proceeding to implement the oversight condition imposed in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996). In instituting this oversight proceeding, we emphasized that any comments on the competitive effects of the merger and the implementation of the conditions imposed to address competitive harms would be due on August 1, 1997, and that any replies to such comments would be due on August 20, 1997. See Decision No. 1, slip op. at 2, 62 FR at 25014.

By letter dated July 16, 1997 (filed July 17, 1997), the United States Department of Agriculture (USDA)¹ has asked that the due date for its comments be extended to August 15, 1997. USDA indicates that the extension it seeks will benefit the oversight process by allowing USDA to receive, at a series of "shipper and community listening sessions in Kansas," input on the competitive effects of the UP/SP merger on agricultural shippers and communities.

By letter dated July 18, 1997 (filed July 18, 1997), applicants² have advised that they will not formally oppose USDA's extension request, provided that they are granted an additional 2 weeks to respond to any comments filed by USDA.

Decision No. 1 was served and published on May 7, 1997, giving USDA and all other interested persons 12-weeks' notice that comments were due on August 1, 1997, and allowing them more than sufficient time either to prepare their comments or to seek an extension of time well in advance of the comment due date. Nevertheless, because applicants do not formally oppose USDA's extension request, it will be granted, and applicants will likewise be granted an extension of time for filing a reply to USDA's comments. We reiterate, however, the importance of adhering to any schedule adopted for this proceeding.

¹ The letter is signed by Eileen S. Stommes, Director, Transportation and Marketing Division, Agricultural Marketing Service, United States Department of Agriculture.

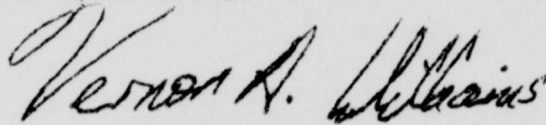
² At the present time, the term "applicants" refers to Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), Southern Pacific Rail Corporation (SPR), Southern Pacific Transportation Company (SPT), and St. Louis Southwestern Railway Company (SSW). The term "applicants" previously embraced, in addition to the foregoing, Missouri Pacific Railroad Company (which was merged into UPRR on January 1, 1997) and SPCSL Corp. and The Denver and Rio Grande Western Railroad Company (which were merged into UPRR on June 30, 1997).

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

It is ordered:

1. The procedural schedule established in Decision No. 1 remains in effect, except as indicated in ordering paragraph 2.
2. Comments by USDA are due on August 15, 1997. Applicants' reply to USDA's comments is due on September 3, 1997.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is fluid and cursive, with the first name "Vernon" being the most prominent.

Vernon A. Williams
Secretary

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Records: 178

STB FD-32760 (SUB 21) ID-28047 7-16-97 C

28047
SEC

SERVICE DATE - JULY 16, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

[OVERSIGHT]

(Decision No. 4)

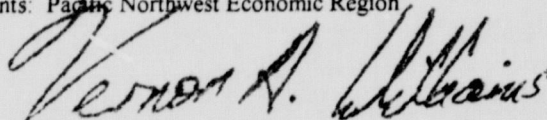
Dated: July 11, 1997

NOTICE TO THE PARTIES:

The Surface Transportation Board (Board) on June 19, 1997, served a Notice to the Parties (Decision No. 2). The service list was attached to the Notice, and was compiled from the notices of intent to participate submitted in accordance with the requirements of Decision No. 1, served and published in the *Federal Register* on May 7, 1997 (62 FR 25014-15). The Board has been notified by David W. Sherrod of the Pacific Northwest Economic Region (PNWER), that PNWER will not actively participate in this oversight proceeding as a party of record [POR]. Mr. Sherrod was shown as a POR on the service list attached to Decision No. 2. Therefore, the following party will be deleted from the service list as a POR:

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