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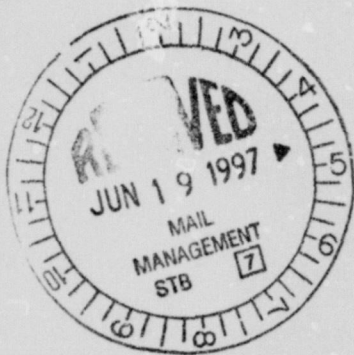
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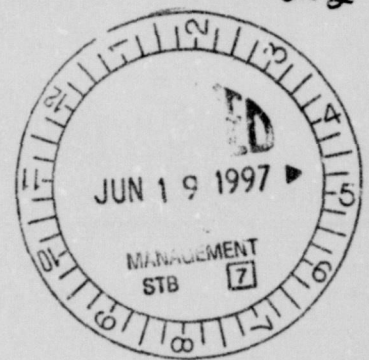
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EXPEDITED HANDLING REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760 (Sub-No. 22)



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

(Arbitration Review)

EMERGENCY PETITION TO VACATE STAY

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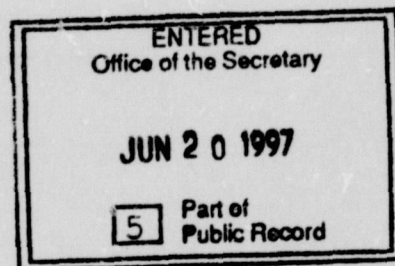
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June 19, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 22)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

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

(Arbitration Review)

EMERGENCY PETITION TO VACATE STAY

Union Pacific Railroad Company and Southern Pacific Transportation Company (collectively, "UP/SP") hereby respectfully petition the Board, on an emergency basis and pursuant to 49 C.F.R. § 1117.1, to vacate the stay in this proceeding as promptly as possible and to notify UP/SP of its decision not later than June 26.¹ The Board's stay of the Yost Arbitration Award, initially to June 11, 1997 (Decision served May 30, 1997) but extended to July 1, 1997 (Decision served June 10, 1997), is not only blocking implementation of the UP/SP merger throughout the Central Corridor from Central Kansas all the way to Eastern Nevada; it is causing increasing disruption and service problems throughout the UP system. The stay prevents UP/SP from effecting significant service improvements for shippers, bars UP from achieving major efficiency gains, costs UP/SP well over \$1,000,000 per month and delays ongoing merger implementation. If the stay continues

¹ June 26 is significant, because UP/SP must implement labor arrangements on either the 1st or 16th of a month for payroll reasons. UP/SP needs several days to prepare such changes.

beyond July 1, the interference with merger implementation will be so severe that the entire timetable for the merger will have to be set back at very substantial cost.

Pursuant to the Board's Notice of Oversight Proceeding in Finance Docket No. 32760 (Sub-No. 21),² UP/SP is required to submit a detailed quarterly report on July 1, 1997 regarding the implementation of the merger. UP/SP had expected to describe, by that date, significant improvements in rail service in the Central Corridor, the first area in which labor implementing arrangements were complete. Because of the stay, however, UP/SP will be unable to report those improvements -- and many improvements outside the Central Corridor -- and shippers will be unable to enjoy them. UP/SP urges the Board to release this stay so that the important public benefits of this merger will not be further delayed.

Background

This proceeding arises out of UP/SP's efforts, using the mandatory procedures of the New York Dock conditions imposed by the Board,³ to obtain labor implementing agreements with labor unions representing the crafts that operate trains. Until labor implementing agreements are reached, merging railroads generally are prohibited by their union contracts from combining their traffic or rerouting shipments from one merged carrier to another. Accordingly, without implementing agreements, merging railroads cannot achieve most of the operational and service benefits of their transaction.

² Decision served May 7, 1997.

³ Decision No. 44, p. 226.

As UP/SP will describe in greater detail in its July 1 report, it is pursuing labor implementing agreements with locomotive and train crews in geographic phases. One of the areas included in the first phase was the Central Corridor between Herington, Kansas, and Ogden, Utah, an area corresponding to the former DRGW and parallel UP lines. This area encompasses two major operating "hubs," at Salt Lake City, Utah, and Denver, Colorado. UP/SP sought agreements in the DRGW area both because it was the most straightforward and because the service improvements and cost reductions from the merger in that area are especially dramatic, as we describe below.

UP/SP obtained voluntary agreements with the Brotherhood of Locomotive Engineers ("BLE") covering this area, but it was unable to reach corresponding agreements with the United Transportation Union ("UTU"), which represents train crew members other than engineers. When negotiations proved unsuccessful, the parties turned to arbitration before Arbitrator Yost, whose decision is on appeal.

The Board's stay of the Yost Arbitration Award was granted to avoid the "disruption associated with implementation" for UTU-represented employees,⁴ but it was issued without detailed consideration of the parties' relative prospects of success on the merits or the traditional equitable balancing of harms to UP/SP and other employees from delaying implementation. In fact, the harms to UP/SP are irreparable and far outweigh those to UTU-represented employees, who can be made whole in the event UTU prevails on the merits.

⁴ Decision served June 10, 1997.

BLE, which entered into a voluntary implementing agreement identical in essential elements (the carrier's selection of a single collective bargaining agreement, seniority arrangements and pool and extra board operations) to the agreement Arbitrator Yost approved for the UTU, has filed an Objection to Further Stays describing the harm to its members. We will not reiterate BLE's concerns, except to note that the UTU will never compensate BLE engineers for their losses either. The applicable equitable criteria therefore call for dissolution of the stay.⁵

The stay is causing far wider disruption than the Board had any reason to expect. This is so because UP/SP's implementation of the merger is a closely coordinated inter-departmental effort in which deployment of major computer systems, development of labor implementing agreements and allocation of operating resources are highly interdependent. The prolonged delay in obtaining essential labor arrangements for the Central Corridor is therefore not only delaying service improvements in that corridor, but also blocking service improvements on other corridors, interfering with information system cutovers across the West and depriving UP/SP of locomotives it needs for service in points as far away as Texas and Chicago. This stay is hurting UP/SP service badly.

⁵ See, e.g., New England Central R.R. -- Acquisition & Operation Exemption -- Lines Between East Alburgh, VT & New London, CT, F.D. No. 32432 (Decision served Dec. 22, 1994) (denying stay of transaction because unions had not met the criteria of Washington Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977)); Akron & Barberton Cluster Ry. -- Acquisition & Operation Exemption -- Certain Lines of Consolidated Rail Corp., F.D. No. 32538 (Decision served Aug. 2, 1994) (same); Burlington Northern, Inc. -- Control & Merger -- Santa Fe Pac. Corp., F.D. No. 32549 (Decision served Sept. 21, 1995) (denying stay of merger because opposing carrier had not met Holiday Tours criteria).

We will first describe the direct impacts of the stay on the Central Corridor, which are severe enough in their own right. Once those effects are understood, we will explain why the stay has even more worrisome effects on merger implementation and service quality across the UP/SP system.

Central Corridor Service Losses Due to the Stay

Under the implementing agreement with BLE and the implementing arrangements approved by Arbitrator Yost, UP/SP planned to offer immediate and substantial service improvements to SP customers in the Central Corridor, speeding most shipments by at least a day and, in many instances, several days. UP/SP planned to achieve these improvements by rerouting through traffic from SP's former DRGW route over Tennessee Pass to UP's route through Wyoming. The mostly single-track SP route is comparatively slow, circuitous and difficult to operate. The UP route is virtually all double-track, high-speed mainline.

The contrast between the two routes and their service capabilities is stark. The SP Tennessee Pass line has scenery to recommend it, but the same scenery is the source of numerous obstacles to efficient train operations. Leaving Salt Lake City, SP trains must surmount two steep mountain grades at Soldier Summit in Utah and over Tennessee Pass itself, each requiring the time-consuming addition and removal of expensive helper locomotives that could be better used serving other customers. Tennessee Pass is the highest mainline railroad summit in the United States, with sustained 3% eastbound grades, and two sets of helpers are often required to reach the top. SP's route then turns almost due south, winding through a series of Arkansas River canyons, including the Royal Gorge, before

reaching Pueblo, Colorado. East of Pueblo, SP trains use UP's comparatively slow Pueblo Line. This line, with long stretches of jointed, light-weight rail, is carrying more traffic than it can handle efficiently, resulting in delays to the heavy traffic on the line. In addition to these obstacles, SP manifest traffic is often delayed for switching at Salt Lake City, Grand Junction, Pueblo and Herington, because SP volumes between many points are insufficient to build solid trains.

Had the implementing arrangements taken effect, the SP trains that are incurring delays on the Tennessee Pass route today would instead be rolling east from Ogden on UP's high-capacity line, where freight trains generally run 60 to 70 miles per hour. They would be reaching the east edge of the Rocky Mountains many hours earlier than an SP train can wind its way to Pueblo. They would be saving miles, and associated costs, as well as time. The UP route between Ogden and Kansas City is 152 miles shorter than the SP line, has 37% less curvature, and imposes 13,500 fewer feet of rise and fall. The mileage advantage of the UP line between Ogden and Chicago is even greater, more than 250 miles.

The UP line also provides superior service, with no en route switching to delay shipments. Were it not for the stay, SP trains would be operating directly from western terminals to North Platte, the world's largest railroad classification yard, where their cars would be distributed into an expanded network of connecting trains for points further east. SP shipments in the Central Corridor would today be reaching their midwestern and

eastern destinations at least a day faster than via Tennessee Pass. Based on actual SP transit times, savings of several days can be expected for most shipments.

With an average of ten manifest trains forced by this stay to remain on the Tennessee Pass route, well over 600 freight cars per day are being delayed. Among the many adversely affected shipments are trainloads of Ford automobiles moving to Northern California unloading facilities, which could reach dealers much faster over the UP line. Also affected is a daily trainload of Oregon lumber shipments from shippers who have raised loud complaints about SP's slow Central Corridor service over the years. Eastbound canned goods from Central California are being delayed as well, as are westbound auto parts from Michigan to a distribution facility near Reno.

Manifest shippers are not alone in suffering adverse effects from the stay. Without the stay, SP intermodal shipments between Denver and Salt Lake City would benefit from hours-faster service via the UP Wyoming line. In addition, as traffic is reduced on the DRGW line, other users of the line would face fewer conflicts with opposing traffic. BNSF uses the former DRGW between Denver and Utah twice each way per day, as do daily Amtrak trains in each direction. Those trains will operate more smoothly when UP/SP trains are rerouted to the UP Wyoming line.

Central Corridor Efficiency Losses Due to the Stay

By requiring UP/SP to continue to route freight over the DRGW line, the stay is costing UP/SP huge sums of money every day. UP/SP estimates the labor costs alone, ignoring major losses associated with other operating parameters, to be at least \$1,000,000 per month. These deadweight losses include the following components:

- Increased crew costs. The SP route between Ogden and Pueblo requires four train crews for each train, not counting helper crews. The UP route between Ogden and Cheyenne, covering approximately the same distance as the crow flies, requires only two or three crews, depending on train type. The stay is costing UP/SP at least a dozen crew starts per day for through trains.
- Unnecessary cross-hauling and congestion. As described in the merger application, UP and SP trains traveling toward the same destinations have for many years moved in opposite directions on the same track between Salt Lake City and Ogden. Westbound UP trains to Oakland run south from Ogden to Salt Lake City before turning west, while westbound SP trains to Oakland run north on the same line. Union agreements require continuation of these wasteful movements, which cause the Salt Lake City-Ogden line to be severely congested and result in major delays for UP, SP and Utah Railway (which handles BNSF's Utah Valley traffic under an agency arrangement). These conflicting movements are unnecessary, and UP/SP would move to eliminate them if the stay were lifted.
- Helper operations. Most trains operating in either direction over Soldier Summit require assistance from helper locomotives. Virtually all eastbound trains tackling Tennessee Pass use helpers, and the heaviest trains use two sets of helpers. This is an inefficient use of expensive, high-horsepower locomotives that could be used elsewhere if the stay were lifted. Every day SP uses as many as a dozen helper crews and a similar number of helper

locomotives that could be redeployed were it not for the stay, as the UP Wyoming line requires no helper locomotives.

- Inefficient use of locomotives and freight cars. Due to the slower speeds and longer transit times on the SP route, UP/SP incurs increased car hire costs and effectively has fewer freight cars available to meet shipper needs. In addition, the SP line consumes in total some fifty extra locomotives, both to haul trains over mountain grades and because of inefficient operations. UP/SP badly needs those locomotives to move other shippers' traffic across the West.
- Separate terminal operations at common points. The stay prevents UP/SP from consolidating terminal operations at points served by both UP and SP, requiring continued use of duplicate facilities. At Denver, UP and SP could handle all manifest traffic at SP's North Yard, but the stay requires UP/SP to keep manifest traffic in two yards. UP/SP would consolidate two intermodal operations at the UP facility in Denver, but the stay prevents that. In Utah, yards could be consolidated at Provo and Salt Lake City were it not for the stay. At all three points, UP and SP are forced to continue to interchange cars between the two railroads, delaying every affected shipment. If the stay were released, the interchanges and associated delays would disappear, locomotives would be released for other duties, and crews would be used more efficiently.

Cascading Disruptions Due to the Stay

The disruptive effects of the stay are spreading like ripples on a pond.

Already, the stay has forced UP/SP to curtail merger-related service improvements that affect

UP/SP operations at points as far flung as Chicago, Los Angeles, the Pacific Northwest and Texas. If it remains in effect, the stay could so severely disrupt merger implementation that UP/SP will not be able to catch up.

- Pacific Northwest - Texas Manifest Service. UP/SP had planned to initiate new manifest freight train service in June between UP's Hinkle, Oregon, classification yard, which gathers and distributes traffic for the Northwest, and Ft. Worth, with continuing service to and from Houston. This service would have saved a day for all shipments on these trains. UP/SP has been forced by the stay to delay this service. The trains would operate via Denver and SP's routes south of Denver to Texas, but UP/SP cannot reroute UP traffic to SP routes while the stay remains in effect.
- Midwest-California Intermodal Service. UP/SP also had planned a June launch of improved intermodal service on SP's routes between Chicago, St. Louis and Kansas City, on the one hand, and intermodal ramps in Southern California and Oakland, on the other. The hub for this improved service was to be SP's freight yard at Herington, Kansas, where trains from the east would be switched and rebuilt as dedicated trains to western intermodal facilities, and vice versa. That plan had to be deferred, because SP's Tennessee Pass trains are still running through Herington, and there is no room for intermodal switching.
- Roseville Yard Disruption. In the UP/SP merger application, applicants proposed to upgrade SP's important Roseville, California, freight yard at

a cost of approximately \$38 million. After the merger, UP/SP concluded that the yard should be completely rebuilt at a cost of almost \$129 million. UP/SP signed a contract requiring work to start on June 16, which means that all the work performed in that yard had to be shifted elsewhere. UP/SP had planned to effect this shift and improve service at the same time by having SP's yards at Stockton, Oakland and Eugene build trains for North Platte, Nebraska, and vice versa. That plan is now in shreds, due to the stay. As a result, UP/SP is being forced to reopen the closed Grand Junction, Colorado, yard to switch eastbound SP traffic and to use Roper Yard in Salt Lake City to switch westbound SP traffic. These alternative arrangements will be expensive and may cause additional delays.

- Systemwide Locomotive Shortages. UP/SP had counted on using the 50 locomotives that would have become available had the stay not been imposed. Because those locomotives are not available, the number of trains held for lack of power is rising across the UP/SP system. Trains are being delayed, for example, at Proviso Yard in Chicago, and aggregates shipments in Texas have been adversely affected.
- Delays to Future Merger Implementation. If the stay is released by July 1, future merger implementation activities, including critical rollouts of information systems, can be returned to the planned schedule. If the stay continues beyond July 1, however, UP/SP will face a rolling delay of merger implementation activities. First affected will be UP/SP operations along the Gulf Coast,

where SP has long had operational difficulties. Those problems were exacerbated at the end of 1996 when BNSF acquired the SP mainline between Iowa Junction and New Orleans. BNSF promptly reduced speed limits and imposed major curfews for maintenance work, which are hurting UP/SP service. UP/SP must integrate its Gulf Coast operations to circumvent these problems. UP/SP already has labor agreements with BLE for this corridor, and it has an agreement with UTU that has not yet been ratified. However, UP/SP technology experts and training teams will be occupied in the West if the stay is not released, and they will not be available to support integrated operations in the Gulf Coast corridor as planned.

Beyond all these adverse impacts, there is an element of unfairness to UP/SP in any stay of labor implementing arrangements. When BNSF began trackage rights operations over UP/SP lines, it had no difficulty obtaining labor agreements because it was offering new jobs. BNSF therefore has an uninhibited ability to compete, while stays delay UP/SP's ability to respond, or even to plan its competitive responses.

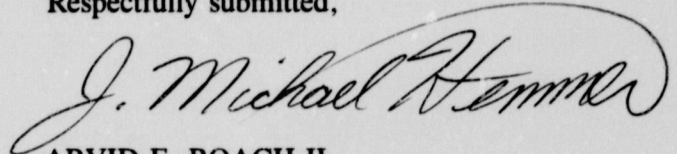
Conclusion

It bears repeating that UTU will never make UP/SP and its shippers whole for the losses they are suffering. In contrast, UTU-represented employees are fully protected under the New York Dock conditions, and may have make-whole remedies under the Railway Labor Act's minor dispute procedures if, as UTU claims, the collective bargaining modifications approved by Arbitrator Yost are not authorized by New York Dock. Furthermore, as UP/SP demonstrated in its Opposition to UTU's petition, the carrier is far

more likely to prevail on the merits, in light of the recently affirmed Commission decision that fully supports Arbitrator Yost's Award. CSX Corp. -- Control -- Chessie System, Inc. & Seaboard Coast Line Industries, Inc., Finance Docket No. 28905 (Sub-No. 27) (Decision served Dec. 7, 1995), aff'd sub nom. UTU v. STB, 108 F.3d 1425 (D.C. Cir. 1997). Both the facts and the law call for dissolution of this stay.

For the foregoing reasons, UP/SP urges the Board to complete its consideration of the record in this proceeding and release the stay as promptly as possible, and to notify UP/SP of its decision not later than June 26.

Respectfully submitted,



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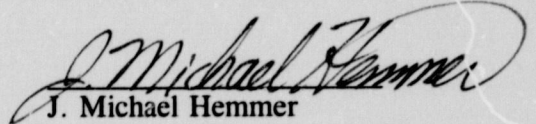
*Attorneys for Union Pacific
Railroad Company*

June 19, 1997

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of June, 1997, a copy of the foregoing "Emergency Petition to Vacate Stay" was delivered by facsimile and overnight mail to:

Clinton J. Miller, III
General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107


J. Michael Hemmer

STB FD 32760 (Sub 22) 5-21-97 I 179878

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May 20, 1997

179878

FEDERAL EXPRESS (priority)

Vernon A. Williams, Secretary
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Washington, D.C. 20423-0001



Re: Union Pacific Corp. -- Control and Merger -- Southern
Pacific Transportation Co., Finance Docket No. 32760
(Sub-No. 1) (Arbitration Review)

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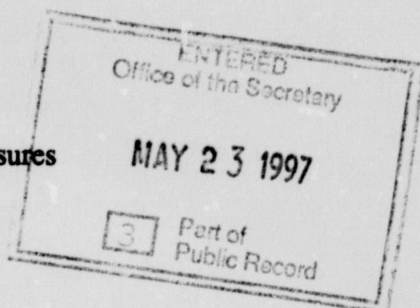
Dear Mr. Williams:

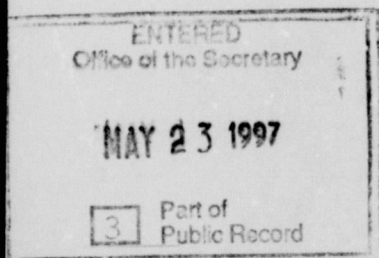
Please find enclosed for filing 11 copies each of United Transportation Union's Motion for Leave to Supplement United Transportation Union's Petition to Review Arbitration Award and Request for Stay of its Implementation and Supplementation of United Transportation Union's Petition to Review Arbitration Award and Request for Stay of its Implementation in subject matter. A diskette is enclosed for the Board's use.

Very truly yours,

Daniel R. Elliott, III
Assistant General Counsel

Enclosures





**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 1)



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

(Arbitration Review)

**SUPPLEMENTATION OF UNITED TRANSPORTATION UNION'S
PETITION TO REVIEW ARBITRATION AWARD AND
REQUEST FOR STAY OF ITS IMPLEMENTATION**

This will serve to supplement United Transportation Union's ("UTU") petition to review the arbitration award of James Yost dated April 14, 1997, rendered pursuant to Article I, Section 4 of the New York Dock conditions and the February 26, 1996 letter of commitment of Union Pacific ("UP") Assistant Vice President-Labor Relations John Marchant ("Marchant Commitment Letter") as to how those conditions would be implemented and its request for stay of implementation of that award. At the time that document was prepared for transmission May 2, 1997, the involved UTU General Chairpersons had not advised undersigned counsel of receipt of any notice of implementation from UP.

On May 1, 1997, UP sent certified mail notice to the involved UTU General Chairpersons in the form of two letters from UP General Director-Labor Relations W. S. Hinckley advising of implementation of the April 14, 1997 arbitration award adopting UP's proposals for service

in the Salt Lake City and Denver "Hub" operations, as required by the 30-day notice provision contained in Article VII(B) of the Salt Lake City proposal and Article VIII(B) of the Denver proposal adopted by the arbitrator (copies attached hereto). The impending implementation of the award sharply focuses the need for a stay thereof until the Board has the opportunity to pass upon the merits of UTU's petition for review.

The four points contained in UTU's review petition raise, in varying degrees, substantial fair ground for litigation, and demonstrate, again in varying degrees, the presence of irreparable harm if implementation goes forward now, a balance of hardships that tips decidedly in favor of UTU and the employees it represents, and the public interest in staying implementation until the merits of the review petition are decided, thus entitling UTU to the stay it requests. See *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977); *Union Pacific Corp. -- Control -- Chicago and North Western Transp. Co.*, STB Fin. Dkt. No. 32133 (Sub-No. 4), *et al.*, Arbitration Review, May 6, 1996 (Service Date).

1. Reference in the Award to the "Eastern District General Chairman."

The Yost award's references to UP dealing with the "Eastern District General Chairman," argued at pages 18-19 of the petition for review and request for stay, are more than untoward. They are clearly beyond the arbitrator's and the Board's jurisdiction because they raise a representation issue. For present purposes, they create confusion as to whom UP must treat with regarding implementation of the award. UTU as the duly designated representative for the involved crafts or classes under the railway Labor Act (45 U.S.C. § 151, *et seq.*) must be declared to be the party UP must treat with regarding implementation issues, and be permitted to make its own internal and constitutional judgments as to what person(s) UP must resolve those

issues with. In the absence of such a declaration, such uncertainty would exist so as to bar any meaningful exchange between the parties in the implementation process.

2. The Issue of Fringe Benefits.

While the Board has opined about application of Article I, Section 2 of the New York Dock conditions in the O'Brien Award at issue in *UTU v. STB*, D.C. Cir. No. 95-1621 (March 21, 1997) with respect to "fringe benefits," it has not defined them. That creates problems now with respect to the essentially unnegotiated immediate transfer of employees from the DRGW Hospital Association to the UP Hospital Association without giving the involved employees the choice given to other employees (discussed at pages 20-22 of the petition for review and request for stay) and other "fringe benefits" (*id.*; see also Second Thompson Declaration (Appendix B to petition and stay request, ¶ 6) involved herein that are sure to be involved in negotiations regarding other "Hubs." *Id.*

3. Carrier's Unilateral Selection of Applicable Single Agreement.

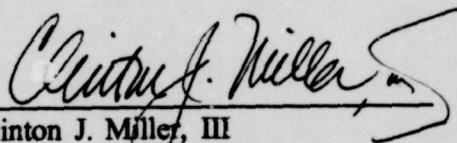
Lest there be any doubt as to UTU's position on this issue, it is simply that, assuming that the Board erroneously finds that UP has made a case for the "necessity" of having a single collective bargaining agreement in each "Hub," the language in the Yost Award overstates the ability of a carrier to choose which agreement applies. Admittedly, assuming a "necessity" showing, UTU's alternative proposal in arbitration was that its Salt Lake City Hub Proposal (Organization's Exhibit 9 contained in Attachment A to Second Declaration of Paul C. Thompson) should be adopted, and the Denver "Hub" should be governed by its principles (Attachment A to Second Thompson Declaration Organization's Submission at 48). In consideration of the UP's articulated needs at Salt Lake City, the UTU's proposal offered the UP

Eastern District Agreement. Second Thompson Declaration, ¶ 5. UTU's position that the Denver "Hub" should be resolved in accordance with the same principles included adoption of the UP Eastern District Agreement there, whether its assumption that such agreement was predominant in the area was correct or not. *Id.* UTU's point on this matter is that unless an objective standard such as use of the factually predominant agreement in the absence of agreement of the parties is enunciated, UP will have no incentive to bargain, assuming it can demonstrate "necessity" in the other "hubs."

4. Seniority Modifications Permitted By The Arbitrator Are Not Necessary To Implement The Merger In The Salt Lake And Denver "Hubs."

The most compelling attribute of irreparable harm that will occur unless the UP's planned June 1, 1997 implementation is stayed by the Board pending resolution of UTU's Petition for Review is the devastating impact that UP's unjustifiable changes to seniority will have on the employees represented by UTU, more completely described at pages 24-26 of the UTU Petition and Request for Stay.

Respectfully submitted,

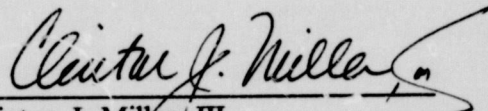

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Attorney for
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Supplementation of United Transportation Union's Petition To Review Arbitration Award And Request For Stay Of Its Implementation to be served by Federal Express, airbill prepaid, on this 20th day of May, 1997, upon the following:

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General Director--
Employee Relations Planning
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Omaha, NE 68179
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Clinton J. Miller, III

UNION PACIFIC RAILROAD COMPANY



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May 1, 1997
Salt Lake City Hub

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Mr. J.P. Kurtz
General Chairman UTU
1675 Carr, Suite 200N
Denver, CO 80215-3139

Mr. J. Previsich
General Chairman
1860 El Camino Real, Suite 201
Burlingame, CA 94010

Mr. N.J. Lucas
General Chairman UTU
112 J Street Suite 202
Sacramento CA 95814

Dear Sirs:

This will serve as the 30 day notice as provided in Article VII(B) of the Salt Lake Hub merger implementing award dated April 14, 1997 for implementing that award effective 12:01 am on June 1, 1997. Due to the fact that some crews will be on duty at that time they will finish their tour of duty under the agreement that covered them when they went on duty.

In addition to the single collective bargaining agreement and new seniority roster, initial changes that will take place are as follows:

1. Carlin will no longer be a crew change point. Carlin pools shall run Ogden-Elko, Sparks-Elko and Elko-Wendel.
2. The Salt Lake, Ogden and Provo terminals will become three consolidated terminals.

Initially, extra boards will continue to function as they currently do and no pools will be consolidated. Thereafter, pool and extra board consolidations will be in accordance with the merger award. After June 1, 1997, pools will be adjusted based on previous regulation history and the UPED agreement, and yard, local and road switcher abolishments and additions will be in accordance with the Union Pacific Eastern District CBA.

Yours truly,

W.S. Hinckley
General Director Labor Relations

UNION PACIFIC RAILROAD COMPANY



May 1, 1997
Denver Hub

1416 DOODE STREET
OMAHA, NEBRASKA 68179

Certified Mail - return receipt requested

Mr. G.A. Eickmann
General Chairman UTU
2933 SW Woodside Drive Suite F
Topeka, KS 66614

Mr. J. G. Pollard
General Chairman UTU
1675 Carr, Suite 200N
Denver, CO 80215-3139

Mr. J.K. Spear
General Chairman UTU
2870 East 3300 South, Suite 5
Salt Lake City, Utah 84109

Mr. D.A. Hogan
General Chairman UTU
1721 Elfindale Drive, Suite 309
Springfield, MO 65807

Mr. J.P. Kurtz
General Chairman UTU
1676 Carr, Suite 200N
Denver, CO 80215-3139

Dear Sirs:

This will serve as the 30 day notice as provided in Article VIII (B) of the Denver Hub merger implementing award dated April 14, 1997, for implementing that award effective 12:01 am on June 1, 1997. Due to the fact that some crews will be on duty at that time they will finish their tour of duty under the agreement that covered them when they went on duty.

In addition to the single collective bargaining agreement and new seniority roster, initial changes that will take place are as follows:

1. Oakley will no longer be a crew change point and the pool will now be Denver-Sharon Springs. The Salina-Sharon Springs ID run will be activated.
2. The Denver Terminal will be consolidated.
3. The Denver Phippsburg/Bond pool shall be created.
4. The Grand Junction Bond/Minturn/Denver pool shall be created.
5. The Denver-Pueblo pool shall be discontinued June 15, 1997 at 11:59 pm and the Pueblo-Denver pool shall be started at 12:01 am on June 16, 1997.

Initially, other extra boards and pools will continue to function as they currently do. Thereafter, pool and extra board consolidations will be in accordance with the merger award. After June 1, 1997, pools will be adjusted based on previous regulation history and the UPED agreement yard, local and road switcher abolishments and additions will be in accordance with the UTU Eastern District CBA.

Yours truly,

W.S. Hincley
General Director Labor Relations

STB FD 32760 (Sub 22) 5-21-97 I 179877

179877

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (SUB-NO. 22)



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

ENTERED
Office of the Secretary

MAY 23 1997

(Arbitration Review)

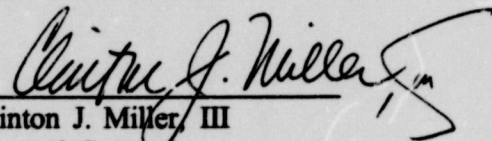
3 Part of
Public Record

**MOTION FOR LEAVE TO SUPPLEMENT UNITED
TRANSPORTATION UNION'S PETITION TO REVIEW ARBITRATION
AWARD AND REQUEST FOR STAY OF ITS IMPLEMENTATION**

On May 2, 1997, United Transportation Union ("UTU"), by its undersigned counsel, prepared and transmitted to the Surface Transportation Board ("STB" or "Board"), pursuant to 49 C.F.R. § 1115.8, a petition to review an arbitration award, dated April 14, 1997, under Article I, Section 4 of the New York Dock conditions and the terms of a commitment letter as to how those conditions would be applied dated February 26, 1996 from Union Pacific ("UP") Assistant Vice President-Labor Relations John Marchant. UTU also requested a stay of implementation of the award in the same document. At the time of preparation and transmission of the petition to view and request for stay, UTU had not received any notice from the UP as to its intentions regarding implementation of the award. The award permitted implementation by the UP of its proposed "Denver Hub" and "Salt Lake City Hub" operations.

In a notice dated May 1, 1997, sent via certified mail, UP notified the involved UTU General Chairpersons of its intention to implement the award June 1, 1997. Because of the impending implementation, UTU respectfully request the STB's leave to supplement its petition to review and request for stay to include the May 1, 1997 UP notice not available at the time of transmission of same and to discuss the continuing necessity for a stay in light thereof.

Respectfully submitted,



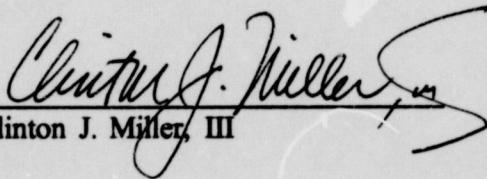
Clinton J. Miller, III
General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107
(216) 228-9400
FAX (216) 228-0937

Attorney for United
Transportation Union

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Motion For Leave To Supplement United Transportation Union's Petition To Review Arbitration Award And Request For Stay Of Its Implementation to be served by Federal Express, airbill prepaid, on this 20th day of May, 1997, upon the following:

R. D. Meredith
General Director--
Employee Relations Planning
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179
(402) 271-2111


Clinton J. Miller, III

STB FD 32760 (Sub 22) 5-5-97 I 179605

CHARLES L. LITTLE
International President

BYRON A. BOYD, JR.
Assistant President

ROGER D. GRIFFETH
General Secretary and Treasurer

**united
transportation
union**

179605

14600 DETROIT AVENUE
CLEVELAND, OHIO 44107-4250
PHONE: 216-228-9400
FAX: 216-228-5755

Paul C. Thompson - Vice President • 1035 West 48th Street • Shawnee Mission, KS 66203 • Phone: (913) 631-4536
FAX: (913) 631-2756

May 2, 1997

Express Delivery

Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001
(202) 565-1558

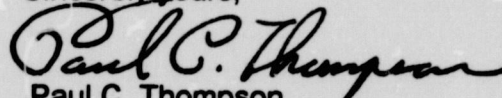


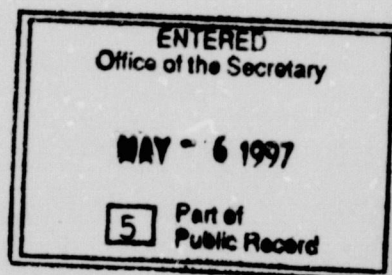
**Re: Union Pacific Corp. - Control and
Merger - Southern Pacific Transportation Co.,
Finance Docket No. 32760 (Sub. No. 4)
(Arbitration Review)** 22

Dear Mr. Williams:

Please find enclosed the original of my declaration for filing with the Petition for Review and Request for Stay being filed this date by United Transportation Union in the above-captioned matter under separate cover, which includes copies of my declaration.

Sincerely yours,


Paul C. Thompson
Vice President



SECOND DECLARATION OF PAUL C. THOMPSON

I, Paul C. Thompson, pursuant to 28 U.S.C. § 1746, declare that the following facts are true and correct.

1. I am a Vice President of the United Transportation Union ("UTU"), and in such capacity was one of the officers assigned to the Union Pacific ("UP")-Southern Pacific ("SP") merger approved by the Surface Transportation Board ("STB") in Finance Docket No. 32760 on August 12, 1996 (Service Date) in Decision No. 44, and particularly with respect to implementing agreement negotiations pursuant to Article I, Section 4 of the *New York Dock* conditions put on the merger by the STB in that docket.

2. Included as a separately bound Attachment A hereto are the UTU Submissions (one as to UP's non-compliance with the Marchant Commitment Letter and one as to the UP's Article I, Section 4 *New York Dock* notices covering the Denver and Salt Lake City "hubs"), the Organization's Appendix of Exhibits 1 through 9, and the Organization's Exhibits 10 through 16 submitted at the hearing before Arbitrator James Yost March 25, 1997 in Salt Lake City.

3. Included as a separately bound Attachment B hereto are the UP's Submissions regarding the same arbitration hearing and Carrier Exhibits 24 through 34 submitted therewith.

4. As to the issue of which collective bargaining agreement with UTU will apply in an Article I, Section 4 *New York Dock* arbitration, the Yost Award dated April 14, 1997 adopts the UP's proposals permitting UP's selection of the UP Eastern District agreement without delineating any standards for the selection. If standards are not set forth as to how to determine which collective bargaining agreement will be applicable in the absence of agreement, then a carrier will never have to bargain because it will pick the most desirable agreement from its standpoint, and that cannot be permitted as "necessary" or under Section 11326. In all of the

mergers involving the Union Pacific Railroad to date, there has always been one common denominator so far as which collective bargaining agreement will apply. That common denominator has been the predominate collective bargaining agreements in effect in the territory comprehended by the Carrier's Operating Plan. That standard was followed in the UP/MOP Merger (ICC Finance Docket No. 30,000), the UPMKT Merger (ICC Finance Docket No. 30,800) and the UP/C&NW Merger (ICC Finance Docket No. 32,133).

5. In the Denver Hub, the UP Eastern District Agreement would be the predominate collective bargaining agreement. In the Salt Lake City Hub, UTU, with the involved General Chairpersons, made a proposal (Organization's Exhibit 9) that offered the UP Eastern District Agreement in that area as a result of trying to address the Carrier's needs at that location. While the UP Eastern District Agreement is not the predominate agreement in the Salt Lake City Hub, it was the Agreement agreed upon by all of the General Chairpersons. Arbitrator Yost gave no consideration to the history of the negotiations leading up to this Arbitration, because he accepted the proposals offered by the Carrier that the Organization had never seen prior to the Arbitration Hearing. The proposals were different from the Carrier's earlier proposals. But the important point is that the standard of applying the predominate agreement in the absence of agreement must be stated as an objective factor to meet the requirements of the law.

6. Concerning fringe benefits, the Award and the Carrier's proposals are silent concerning several fringe benefits currently enjoyed by the Southern Pacific employees, including disability insurance and an additional week of vacation. No doubt based upon the language of the Award, the Carrier will now take the position that these items no longer exist because the employees are working under the UP Eastern District Agreement. This flies directly in the face

of the language contained in Article I, Section 2 of the *New York Dock* conditions relating to fringe benefits at a minimum, as was stated in this Board's determination in the *UTU v. STB* case cited in the enclosed petition to review decided by the D.C. Circuit last March concerning the O'Brien Award on CSX, and what have always been considered "fringe benefits" in the industry, indicated by the annual fringe benefit sheet UTU has been providing since I've been a Vice President, the January, 1997 sheet being attached hereto as Attachment C.

7. On page 12 of the Carrier's proposal on both the Denver Hub and the Salt Lake City Hub, the issue of firemen is addressed. It should be noted that in UP's Article I, Section 4 Notice under *New York Dock* there never was a mention of firemen issues, nor did UP ever include such a provision in any of its proposals. The Carrier in its BLE Implementing Agreement in this merger is attempting to change the following language contained in Article XIII, Section 1 (7) of the October 31, 1985 UTU National Agreement:

(7) Change Article III, Section 4 to read as follows:
"Section 4(a) - All firemen (helpers) whose seniority as such was established prior to November 1, 1985 will be provided employment in accordance with the provisions of this Article until they retire, resign, are discharged for cause, or are otherwise severed by nature attrition; provided, however, that such firemen (helpers) may be furloughed if no assignment working without a fireman (helper) exists on their seniority district which would have been available to firemen (helpers) under the National Diesel Agreement of 1950 (as in effect on January 24, 1964), and if no position on an extra list as required in Section 3 above exists on their seniority district subject to Section 5 of this Article."
(emphasis added)

8. By taking away the firemen's existing seniority rights both in the Hub and outside it, and then applying paragraph F, page 13 of the BLE Agreement, the Carrier has circumvented the provisions of the UTU National Agreement without having to show any "necessity." The

BLE provision reads as follows:

"During the interim period, at locations outside the Hub where shortages exists and an insufficient number of applications are received for vacant positions, the junior engineer holding a surplus position in either Hub not having an application accepted to a shortage location shall be forced to the vacancy."

9. These same junior engineers may very well be senior train service employees or pre-1985 Firemen. This has the effect of forcing UTU train and engine service members to undesirable positions and/or locations, thereby restricting their currently earned seniority rights. Forcing them outside of areas where they hold firemen and/or train service seniority should be restricted until such time as all such positions are filled.

10. In Article VII, Section D of the UP Proposals adopted, not only can the Carrier force employees outside of the Hub after taking away their current system seniority rights, they can also, within one (1) year, force the junior employees outside of the Hub, then take away their seniority inside the Hub, and then require these same employees to establish a new seniority date outside of the Hub. This is nothing more than an unnecessary manipulation of employees seniority rights, as well as an infringement on Crew Consist agreement provisions that allow employees to work blankable positions on their existing seniority districts providing that they cannot hold a must-fill position.

11. In the Denver Hub proposal, in Article II E on page 3, the Carrier explains the advantage of having Zones, and then completely reverses itself from the purpose stated in Section E by the language contained in Article VIII, Section D on page 10 of the proposal.

I declare under penalty of perjury that the foregoing facts are true and correct. Executed
on May 2, 1997.

Paul C. Thompson
PAUL C. THOMPSON

FRINGE BENEFITS

The following breakdown represents the estimated value of so-called fringe benefits accruing to operating employees with annual wages of \$65,400/\$48,600 * or more during the calendar year of 1997. The money values set forth are computed on costs actually known as of January 1997.

	PAID BY THE CARRIER	PER YEAR	# DURING MONTH
	Railroad Retirement Tier 1 (6.20%)	\$4,054.80	\$ 337.90
	Railroad Retirement Tier 2 (16.10%)	7,824.60	652.05
	Supplemental Pension	730.80	60.90
1/	Unemployment (RULA)	592.80	49.40
4/	Health Plan (GA-23000)	5,879.76	489.98
	Health Plan - Retiree (GA-46000)	212.04	17.67
	Dental Plan	353.28	29.44
2/	Vacations	3,008.00	250.67
2/	Holidays	1,569.52	130.79
3/	Other	<u>662.55</u>	<u>55.21</u>
		\$24,888.15	\$2,074.01
	RAILROAD RETIREMENT TAX Tier 1 (6.2%)	\$ 4,054.80	\$ 337.90
	PAID BY EMPLOYEE Tier 2 (4.9%)	<u>\$ 2,381.40</u>	<u>\$ 198.45</u>
		\$ 6,436.20	\$ 536.35

* \$65,400 represents the minimum annual wage subject to a maximum railroad retirement Tier 1 tax.
 \$48,600 represents the minimum annual wage subject to the maximum railroad retirement Tier 2 tax.
 Medicare is taxed at a rate of 1.45% with no annual maximum applicable.

Per year total divided on a pro-rata basis per calendar month and rounded to the nearest 1 cent equivalent.

1/ This tax requirement will vary from year to year based upon the individual railroad's experience rating. The amount shown here is based on the Tax Rate of 5.55% and based on employee earnings of not more than \$890.00 per month and \$10,680.00 per year. The maximum rate is 12%.

2/ Taxable to employee as income.

3/ Includes jury duty pay, bereavement pay, \$150,000 AD&D and liability insurance as part of the Off-Track Vehicle Accident provisions, along with other miscellaneous items attributable to fringe benefits.

4/ Employee contribution to Health Plan is \$76.68 covering the period January, 1996 to July, 1998.

NOTE: Current information on Vacations, Holidays and Other no longer available.
 Information from 1987.



PRESTON GATES ELLIS &
ROUVELAS MEEDS LLP
ATTORNEYS

May 23, 1997

VIA HAND DELIVERY

Vernon Williams
Secretary
Surface Transportation Board
1925 K Street
Washington D.C. 20423-0001



179898

Re: Caddo Antoine and Little Missouri Railroad Company—Feeder Line
Acquisition—Arkansas Midland Railroad Company Line Between Gurdon and
Birds Mill, AR, **Finance Docket No. 32479**

Dear Mr. Williams:

Enclosed for filing in the above-referenced docket are an original and ten copies of
Arkansas Midland Railroad Company's Motion to Modify Procedural Schedule.

Copies of this pleading are being served today to persons listed on the Certificate of
Service. Please contact me if you have any questions.

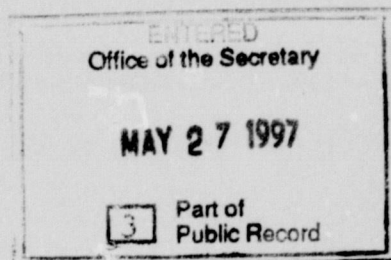
Very Truly Yours,

PRESTON GATES ELLIS
& ROUVELAS MEEDS LLP

By:

Lisa M. Helpert

Enclosures



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

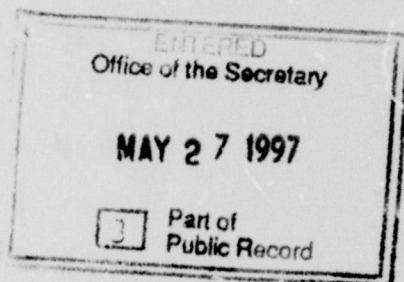
FINANCE DOCKET NO. 32479



**CADDO ANTOINE AND LITTLE MISSOURI RAILROAD COMPANY
—FEEDER LINE ACQUISITION—
ARKANSAS MIDLAND RAILROAD COMPANY LINE BETWEEN
GURDON AND BIRDS MILL, AR**

MOTION TO MODIFY PROCEDURAL SCHEDULE

178898



Laurence R. Latourette
Lisa M. Helpert
PRESTON GATES ELLIS
& ROUVELAS MEEDS LLP
Suite 500
1735 New York Avenue, N.W.
Washington, D.C. 20006-4759
Tel: (202) 628-1700
Fax: (202) 331-1024

Attorneys for Arkansas Midland
Railroad Company, Inc.

Dated: May 23, 1997

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32479

**CADDO ANTOINE AND LITTLE MISSOURI RAILROAD COMPANY
—FEEDER LINE ACQUISITION—
ARKANSAS MIDLAND RAILROAD COMPANY LINE BETWEEN
GURDON AND BIRDS MILL, AR**

MOTION TO MODIFY PROCEDURAL SCHEDULE

Arkansas Midland Railroad Company, Inc. ("AMR") hereby moves to modify the procedural schedule in this proceeding to allow the parties additional time to submit their initial statements and argument. In its decision served May 14, 1997, the Surface Transportation Board ("Board") established a procedural schedule, directing the parties to submit initial statements and argument by June 13, 1997 and replies by June 30, 1997. As explained below, AMR requests a two-week extension of both the initial submission and the reply due dates. AMR proposes that initial submissions be filed by June 27, 1997 and that replies be filed by July 14, 1997. Counsel for the feeder line applicants have indicated that the feeder line applicants do not object to this two-week extension.

In the May 14, 1997 decision, the Board directed the parties to submit additional evidence to ensure that the Board has the information it needs to determine on remand whether the public convenience and necessity requires or permits the sale of the entire Norman Branch under the feeder line statute, 49 U.S.C. § 10907(c)(1). *Caddo Antoine and Little Missouri R.R. Co.—Feeder Line Acquisition—Arkansas Midland R.R. Co. Line*

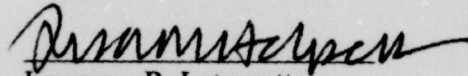
Between Gurdon and Birds Mill, AR, Fin. Docket No. 32479 (served May 14, 1997), slip op. at 1.

As the Board acknowledged in its May 14 decision, the record in the feeder line case may well be stale. Slip op. at 4. The Board specifically invited further evidence as to whether the impact of the loss of International Paper's traffic would be mitigated by receiving the proceeds from the sale of the line; the question of the financial responsibility of East Texas Central Railroad Company; and, most significantly for purposes of this motion, the valuation of the line. As the Board recognized, "it is almost certain that the line has a [going concern value], since it is being actively used to serve IP (and, indeed, the Shippers as well)." Slip op. at 5. A determination of the current going concern value of the line will most likely require an expert's opinion on financial and other information that may not be available by June 13, 1997, the date set for the submission of evidence.

The Board has in the past granted similar requests for extensions of time. For example, in the Norman Branch trackage rights compensation proceeding, the Board granted a request by the Dardanelle & Russellville Railroad Company and the Caddo Antoine and Little Missouri Railroad to extend the deadline for the submission of supplemental evidence. *Dardanelle & Russellville R.R. Co.—Trackage Rights Compensation—Arkansas Midland R.R. Co.*, Fin. Docket No. 32625 (served Sept. 29, 1995). AMR requests similar treatment here.

WHEREFORE, AMR respectfully requests that the Board extend the time period established in the procedural schedule to allow the parties to submit their initial statements and argument by June 27, 1997 and their replies by July 14, 1997.

Respectfully submitted,



Laurence R. Latourette

Lisa M. Helpert

PRESTON GATES ELLIS

& ROUVELAS MEEDS LLP

1735 New York Avenue, N.W.

Suite 500

Washington, D.C. 20006-4759

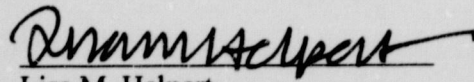
Attorneys for Arkansas Midland
Railroad Company, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, this 23rd day of May 1997 copies of the foregoing MOTION TO MODIFY PROCEDURAL SCHEDULE were sent via messenger or U.S. Mail, as indicated below, to the following:

Richard H. Streeter (via messenger)
Barnes & Thornburg
1401 Eye Street N.W. Suite 500
Washington, D.C. 20006

Robert S. Hargraves
Hargraves & McCrary
300 Exchange, Suite A
P.O. Box 519
Hot Springs, AR 71902-0519


Lisa M. Helpert