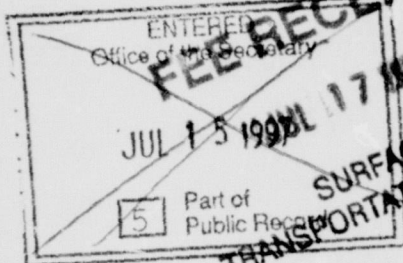


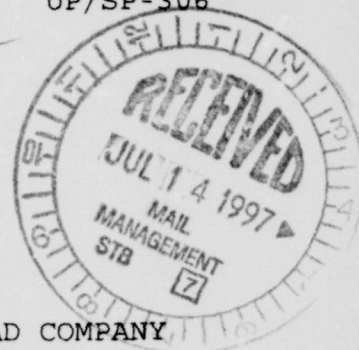
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EXPEDITED CONSIDERATION REQUESTED

UP/SP-306



BEFORE THE
SURFACE TRANSPORTATION BOARD

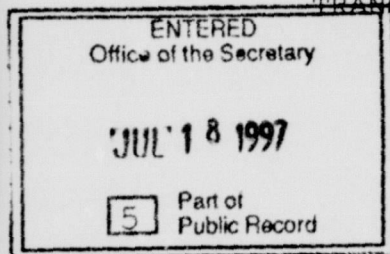


Finance Docket No. 32760-SUB 23

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



FILED

JUL 17 1997

APPLICANTS' PETITION FOR DETERMINATION THAT
SECURITIES TERMS ARE JUST AND REASONABLE

**SURFACE
TRANSPORTATION BOARD**

The primary Applicants, 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")^{1/} hereby submit this petition for a
determination that the terms of the proposed merger of SSW
into SSW Merger Corp., a direct wholly-owned subsidiary of SPT
-- and in specific, the \$6,800-per-share price to be paid to
the four shareholders who own the 4/100 of 1% of SSW's common
stock that is publicly held (61 shares out of 173,300 common
shares) -- are just and reasonable.^{2/}

^{1/} On January 1, 1997, Applicant Missouri Pacific Railroad
Company ("MPRR") merged into Applicant UPRR. On June 30,
1997, Applicant SPCSL Corp. ("SPCSL") and Applicant The Denver
and Rio Grande Western Railroad Company ("DRGW") merged into
Applicant UPRR.

^{2/} Prior to and independent of the SSW Merger, the existing
publicly held shares of SSW preferred stock will be redeemed
(continued...)

This petition is supported by the verified statements of Stephan C. Month, Managing Director, Credit Suisse First Boston Corporation ("CS First Boston"), attached as Exhibit A hereto, and Joseph E. O'Connor, Jr., Vice President and Controller, Union Pacific Corporation, attached as Exhibit B hereto.

BACKGROUND

The Board authorized common control and merger of the rail carriers controlled by UPC and SPR in Decision No. 44 in Finance Docket No. 32760, served August 12, 1996. The Applicants consummated the UP/SP control transaction on September 11, 1996, when SPR was merged with and into UP Holding Company, Inc., a direct wholly-owned subsidiary of UPC.

In their application in Finance Docket No. 32760, the Applicants requested, pursuant to Schwabacher v. United States, 334 U.S. 182 (1948), that the ICC determine that the terms provided in the merger agreement for the purchase of SPR common stock were fair to both the stockholders of UPC and the stockholders of SPR. See UP/SP-22, p. 10, Nov. 30, 1995. The STB found that the terms were fair in its decision approving the merger. See Decision No. 44, pp. 177-78.

^{2/}(...continued)

at par value pursuant to their terms, following a vote of holders as required by state law. O'Connor V.S., p. 1 n.1.

In the application, the Applicants explained that they intended to merge all of SPR's rail subsidiaries, SPT, SSW, SPCSL and DRGW, into UPRR.^{3/} The Applicants noted that SSW had a small number of minority equityholders, but indicated that they were not requesting a fairness determination with respect to the compensation that might be paid to SSW securityholders in the event of a merger of SSW into another member of the UP/SP corporate family because tax and other considerations, including the existence of FRA redeemable preference shares, needed to be resolved before it could be determined whether such a merger would occur, and if so on what terms.^{4/} The Applicants stated that, should they later decide to carry out such a merger, they would either request a finding from the Board regarding the fairness of the terms, or request a declaratory order that no such finding was required. See UP/SP-22, pp. 9-10, Nov. 30, 1995. The Board acknowledged the Applicants' intentions with respect to the SPR rail subsidiaries, including SSW, in both the decision accepting the merger application and the decision approving

^{3/} The Applicants noted that these subsidiaries might retain their separate existence for a period of time, and that it was possible that, in lieu of merger into UPRR, some or all of the rail subsidiaries might be merged into, or their assets leased to, MPRR, or that other means might be used to accomplish their consolidation into the merged system. UP/SP-22, Nov. 30, 1995, p. 2.

^{4/} Applicants have reached an agreement with FRA regarding the treatment of the FRA preference shares, which will remain in existence as obligations of the merged company. O'Connor V.S., p. 1 n.1.

common control. See UP/SP, Decision No. 9, served Dec. 27, 1995, p. 6 n.13, & Decision No. 44, served Aug. 12, 1996, p. 8 n.6.^{5/}

Applicants have already merged SPCSL and DRGW into UPRR, and they have now determined that it would be beneficial to merge SSW into UPRR. The merger of SSW into SSW Merger Corp. (the "SSW Merger") is an intermediate step in this process. The mergers of the SP rail carriers and UPRR, concluding with a merger between SPT and UPRR, will facilitate the achievement of the benefits of the UP/SP merger by allowing UP/SP customers to enjoy the full benefits of single-line and single-system service, and by allowing UP/SP to take advantage of administrative efficiencies of operating as a single company. The SSW Merger is the next step in this overall plan. O'Connor V.S., p. 1.^{6/}

As a result of the mergers of the SP rail carriers and UPRR, customers will be able to deal with UP/SP as a single railroad. Until the separate companies are merged, UP/SP must allocate revenues and costs to each UP/SP subsidiary because it must prepare and report financial

^{5/} Applicants thus believe that no additional approval or exemption is required for the proposed SSW Merger to take place. As described below, this is the same process that occurred in connection with the approval of Union Pacific control of Chicago and North Western, followed later by the merger of the two companies.

^{6/} The merger of MPRR into UPRR was also a part of this process. The corporate restructuring of the UP/SP system will be completed in February 1998 with the merger of UPRR and SPT.

results for each company. As a result of the need to maintain the distinction between subsidiaries, shippers using the UP/SP system are required to specify which UP/SP subsidiary will handle each part of a movement. And shippers receive price quotes and billing statements that reflect the particular routing. After the mergers, this process will be dramatically simplified. For example, a customer shipping freight from Chicago to Phoenix will no longer need to specify a routing of SPCSL-Kansas City-SSW-Santa Rosa-SP or face potential delays from lack of detailed routing instructions or misrouting. Moreover, that customer will no longer receive a complex bill that details separate prices for each UP/SP subsidiary for each portion of the route. O'Connor V.S., p. 2.

The mergers will also facilitate the achievement of important efficiency benefits of the UP/SP merger. UP/SP will no longer be required to maintain the recordkeeping systems necessary to record costs and revenues associated with each separate company in order to report separate financial results for each subsidiary -- a process that becomes more difficult as UP/SP takes advantage of routing options created by the UP/SP merger. This benefit is especially relevant to the SSW Merger, because unless that merger is completed before the end of the fiscal third quarter on September 30, UP/SP will be required to go to the considerable time, expense and difficulty of preparing financial statements that reflect the operations of SSW as a separate entity. O'Connor V.S., p. 2.

THIS PETITION

By this petition, the Applicants are requesting that the Board determine that the \$6,800-per-share price to be paid to the four public SSW shareholders for their 4/100 of 1% minority ownership interest in SSW (61 shares out of 173,300 common shares) as part of the SSW Merger is just and reasonable. Because effectuation of the SSW Merger is one important step toward fully realizing the substantial service and efficiency benefits of the UP/SP merger, and because UP/SP will incur significant costs if it is unable to complete the SSW Merger before September 30, Applicants are requesting that the Board give this petition expedited consideration under the modified procedure (49 C.F.R. pt. 1112). A suggested procedural schedule is set forth at pages 13-15 below.

The present petition is nearly identical to the one presented to the ICC in connection with the merger of Union Pacific and the Chicago and North Western. In the UP/CNW proceeding, the applicants sought, and the ICC granted, authority for the common control of UP and CNW before it was known whether UP would increase its approximately 30% stake in CNW or what the terms of any such securities acquisition would be. See Finance Docket No. 32133, Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Chicago & North Western Transportation Co. & Chicago & North Western Ry. ("UP/CNW"), Decision served Mar. 7, 1995. In their control application, UP and CNW had noted that should UP seek to

acquire additional CNW stock through a means that would involve the elimination of minority shareholders, it would request a finding from the Commission regarding the fairness of the terms of such transaction or a declaratory order that no such finding was required. See UP/CNW-6, Jan. 29, 1993, p. 14. After the Commission issued its decision authorizing common control of UP and CNW, UP and CNW did agree to merge, and they requested that the Commission exercise its authority to make a finding that the compensation to be paid to CNW shareholders was just and reasonable through a supplemental decision in the merger proceeding. See UP/CNW-134, Apr. 4, 1995, p. 4. The Commission so found. See UP/CNW, Decision No. 28 ("UP/CNW Fairness"), served June 22, 1995, p. 3.

The situation here is essentially the same. As described above, the UP/SP merger application contemplated, and the Board recognized, the very real possibility of a subsequent SSW merger and the need for a Board fairness determination under those circumstances. See UP/SP-22, pp. 9-10, Nov. 30, 1995, noted in Decision No. 9, served Dec. 27, 1995, p. 6 n.13, & Decision No. 44, served Aug. 12, 1996, p. 8 n.6. That possibility has now come to pass.

The Board's authority -- and indeed obligation -- to determine whether the securities terms of a railroad control transaction are just and reasonable is well-established. See UP/CNW Fairness, p. 3. The U.S. Supreme Court held in Schwabacher v. United States, 334 U.S. 182, 197-99 (1948),

that the Board must decide the fairness of the securities terms of a control transaction that falls within its jurisdiction.^{7/} Any other remedies to which securityholders might otherwise have been entitled, such as state-law appraisal rights, are pre-empted pursuant to 49 U.S.C. § 11321(a). Schwabacher, 334 U.S. at 201; Norfolk & Western Ry. v. AFDA, 499 U.S. 117, 130-31 (1991).^{8/}

The Schwabacher Court noted that the focus, in determining whether the securities terms of a control transaction are just and reasonable, is "to see that minority interests are protected." 334 U.S. at 201. The ICC often

^{7/} See also, e.g., Finance Docket No. 31035, Merger -- Baltimore & Ohio R.R. & Chesapeake & Ohio Ry. ("B&O/C&O"), Decision served Mar. 2, 1988, p. 3 ("where the Commission exercises its jurisdiction to approve and authorize a railroad merger, pursuant to sections 11343-11348, it has an obligation to pass upon all aspects of the transaction relating to capital liabilities"). Since the enactment of the Staggers Act, this requirement has applied only to transactions that, as here, involve two or more Class I carriers. See Norfolk & Western Ry. -- Purchase -- Illinois Terminal R.R., 363 I.C.C. 882, 890-92 (1981). SSW, which has annual carrier operating revenues exceeding \$250 million after applying the railroad revenue deflator, is a Class I railroad, and SSW Merger Corp. is a wholly-owned subsidiary of SPT, also a Class I railroad, established for the sole purpose of effecting this transaction and ensuing consolidations in the UP/SP corporate family in order to create a single railroad entity.

^{8/} See also, e.g., Bruno v. Western Pacific R.R., 498 A.2d 171 (Del. Ch. 1985), aff'd mem., 508 A.2d 72 (Del. 1986), cert. denied, 482 U.S. 927 (1987); Altman v. Central of Georgia Ry., 488 F.2d 1302 (D.C. Cir. 1973); Suffin v. Pennsylvania R.R., 276 F. Supp. 549 (D. Del. 1967), aff'd, 396 F.2d 75 (3d Cir. 1968), cert. denied, 393 U.S. 1062 (1969); Manufacturers Life Insurance Co. v. Missouri Pacific R.R., Civ. No. 91-126-SLR, 1992 U.S. Dist. LEXIS 19612 (D. Del. Dec. 10, 1992).

made this same point. See, e.g., UP/SP, Decision No. 44, p. 177 ("The 'just and reasonable' standard requires, among other things, that we determine, in an appropriate case, that the transaction is just and reasonable with respect to minority stockholders."); Union Pacific Corp., Pacific Rail System, Inc., & Union Pacific R.R. -- Control -- Missouri Pacific Corp. & Missouri Pacific R.R. ("UP/MP/WP"), 366 I.C.C. 462, 635 (1982), aff'd in relevant part sub nom. Southern Pacific Transportation Co. v. ICC, 736 F.2d 708, 725-27 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985) ("In appraising any transaction affecting the rights of stockholders, it is incumbent upon us to see that the interests of the minority stockholders are protected and that the overall proposal is just and reasonable to those stockholders"); Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Missouri-Kansas-Texas R.R. ("UP/MKT"), 4 I.C.C.2d 409, 515-16 (1988), petition for review dismissed sub nom. RLEA v. ICC, 883 F.2d 1079 (D.C. Cir. 1989); Missouri Pacific R.R. -- Merger -- Missouri Pacific R.R. ("MP Merger"), 360 I.C.C. 6, 16 (1978).

It has also repeatedly been emphasized that Schwabacher stands for the proposition that the existence of minority shareholders who may prefer to "hold out" rather than exchange their shares for the offered price does not entitle them to any premium. E.g., MP Merger, 360 I.C.C. at 30; Fried v. United States, 212 F. Supp. 886, 890 (S.D.N.Y. 1962)

(three-judge court), aff'g Erie R.R. Merger, Delaware, Lackawanna & Western R.R. ("Erie Lackawanna"), 312 I.C.C. 185 (1960); Stott v. United States, 166 F. Supp. 851, 859 (S.D.N.Y. 1958) (three-judge court), aff'g Louisville & Nashville R.R. Merger ("L&N"), 295 I.C.C. 457 (1957).

Generally, the ICC addressed the issue of whether the securities terms of a merger or other control transaction are just and reasonable at the same time as it determined whether the transaction itself is in the public interest. E.g., UP/MP/WP; UP/MKT; MP Merger. The UP/CNW Fairness decision, however, made it clear the agency would exercise its authority to make a just and reasonable determination through a supplemental decision following control approval.^{2/}

THE BASIS FOR A JUST AND REASONABLE DETERMINATION

The facts overwhelmingly support a determination that the \$6,800-per-share purchase price for SSW common stock is just and reasonable. Those facts are set forth at length in the verified statement of Mr. Month. Briefly, the following are among the key considerations:

- The \$6,800-per-share price is at the top end of the range of SSW's estimated common equity value, as

^{2/} Cf., e.g., Syf. In, supra, 276 F. Supp. at 553 (Commission had exclusive authority to determine whether the terms of an exchange of securities undertaken, following control approval, to satisfy a commission-imposed condition to approval were just and reasonable).

established in a valuation analysis conducted by CS First Boston.

● In developing the per-share price to be paid to SSW shareholders, UPC received the advice of, and a written valuation from, CS First Boston. CS First Boston is an investment banking firm with extensive expertise in the area of railroad securities and an in-depth knowledge of UP/SP operations based on, among other things, its provision of advice to UP in connection with the UP/SP, UP/CNW, UP/MKT and UP/MP/WP mergers. See Month V.S., p. 2. CS First Boston's formal valuation letter to UPC is attached to Mr. Month's verified statement. Such analyses and opinions of financial experts have repeatedly been cited by the Board and the Commission as important in concluding that the securities terms of a transaction are just and reasonable. See, e.g., UP/SP, Decision No. 44, p. 178 (noting CS First Boston's fairness evidence); UP/CNW, Decision No. 28, p. 3; UP/MKT, 4 I.C.C.2d at 515-16; UP/MP/WP, 366 I.C.C. at 633-34; Norfolk Southern Corp. -- Control -- Norfolk & Western Ry. & Southern Ry., 366 I.C.C. 171, 232 (1982); CSX Corp. -- Control -- Chessie System, Inc., & Seaboard Coast Line Industries, Inc., 363 I.C.C. 518, 595 (1980), aff'd sub nom. Brotherhood of Maintenance of Way Employees v. ICC, 698 F.2d 315 (7th Cir. 1983); Newrail Co. -- Purchase -- Western Pacific R.R. ("Newrail"), 354 I.C.C. 885, 901 (1979); Illinois Central Gulf R.R. -- Acquisition -- Gulf Mobile & Ohio R.R., Illinois

Central R.R. ("ICG"), 338 I.C.C. 805, 816 (1971), aff'd sub nom. Missouri Pacific R.R. v. United States, 346 F. Supp. 1193 (E.D. Mo. 1972) (three-judge court), & sub nom. Kansas City Southern Ry. v. United States, 346 F. Supp. 1211 (W.D. Mo. 1972) (three-judge court), aff'd mem., 409 U.S. 1094 (1973); Seaboard Air Line R.R. -- Merger -- Atlantic Coast Line R.R., 320 I.C.C. 122, 192, aff'd sub nom. Florida East Coast Ry. v. United States, 259 F. Supp. 993 (M.D. Fla. 1966) (three-judge court), aff'd mem., 386 U.S. 544 (1967); Norfolk & Western Ry. Merger, Virginian Ry., 307 I.C.C. 401, 429 (1959).

● As Mr. Month explains in his verified statement, CS First Boston considered, in arriving at its valuation of SSW stock, a range of pertinent factors, including: SSW financial and operating data as compared with financial, operating and stock market information for other companies in the railroad industry; financial terms of certain other transactions that have recently been effected or proposed in the railroad industry; projected SSW cash flow, taking account of the forecast synergies of the UP/SP merger; and other relevant information, financial studies, analyses, investigations and financial, economic and market criteria. First Boston also considered the compensation SSW shareholders have received in exchange for their shares in several older sale transactions. The Board and Commission have found in many past cases that it is proper to analyze just such factors in order to arrive at a conclusion that the securities terms

of a transaction are just and reasonable. See, e.g., UP/SP, Decision No. 44, p. 178; UP/CNW, Decision No. 28, p. 3; UP/MKT, 4 I.C.C.2d at 515-16; UP/MP/WP, 366 I.C.C. at 633-38; Newrail, 354 I.C.C. at 901; ICG, 338 I.C.C. at 816-17; Erie Lackawanna, 312 I.C.C. at 188; L&N, 295 I.C.C. at 493-500.

SUGGESTED PROCEDURAL SCHEDULE

Applicants would suggest that the Board employ the modified procedure (49 C.F.R. pt. 1112) for this follow-on proceeding. The modified procedure has been used in similar proceedings, including the UP/CNW fairness proceeding, and its use has been upheld by the courts. Finance Docket No. 29594, Kansas City Southern Ry. -- Stock, Decision served Feb. 8, 1982, p. 1, aff'd sub nom. Laird v. ICC, 691 F.2d 147, 154-55 (3d Cir. 1982), cert. denied, 461 U.S. 927 (1983).

Applicants would suggest that, as in UP/CNW,^{10/} a notice of this proceeding be published in the Federal Register. Federal Register publication is the standard means by which public notice is normally given of all aspects of proposed Class I railroad control transactions, and it is clear that such publication provides notice to all interested persons as a matter of law. See, e.g., Friends of Sierra R.R. v. ICC, 881 F.2d 663, 667-68 (9th Cir. 1989), cert. denied, 493 U.S. 1093 (1990); Finance Docket No. 31058, Mendocino Coast Ry. -- Acquisition Exemption -- Assets of California

^{10/} See 60 Fed. Reg. 21216 (1995) (attached as Exhibit C hereto).

Western R.R., Decision served Dec. 28, 1987, p. 5. Applicants are also serving a copy of this petition on all active parties in this proceeding and will serve a copy on any known SSW shareholders.

The Federal Register notice would provide a summary of this petition, advise interested persons that they could obtain a copy of the full petition from Applicants' attorneys, and set forth a schedule for written submissions. The following schedule, which the ICC used in UP/CNW, appears appropriate:

30 days from Federal Register publication

Submission of written comments by any interested person

45 days from Federal Register publication
(or such earlier date as they may submit them)

Submission of reply by Applicants

The matter could then be decided promptly thereafter.

Applicants doubt that there will be any need or justification for appreciable discovery. If interested parties do appear and seek discovery, Applicants will respond expeditiously, attempt to resolve any disputes informally, and present to the Board for prompt decision any disputes that cannot be resolved informally.

Expedited handling of this matter is in keeping with the Board's policy throughout the UP/SP proceeding and Congress' mandate that rail control transactions are to be handled without unnecessary delay. The SSW Merger is an

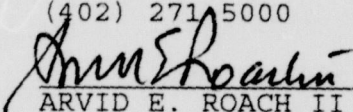
important step in achieving the complete integration of the UP/SP system and the attendant enhancement of competition and reduction in costs and overheads. Based on a very full record built over a year-long period, which included extensive evidence concerning the benefits of a full integration of the railroads, the Board found that the consolidation of these railroads is clearly in the public interest. Moreover, unless this matter is resolved before September 30, the end of SSW's fiscal third quarter, UP/SP will be required to undertake the expensive and resource-intensive task of preparing financial statements that reflect the operations of SSW as a separate company. O'Connor V.S., p. 2.

The present matter should be brought to a conclusion expeditiously so that there will be no unnecessary delay in achieving the major public benefits of the UP/SP combination and no unnecessary waste of resources associated with the need to maintain a formal distinction between SSW and other rail carriers that have already been merged into the UP/SP rail family.

Respectfully submitted,

CARL W. VON BERNUTH
RICHARD J. RESSLER
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018
(610) 861-3290

JAMES V. DOLAN
PAUL A. CONLEY, JR.
LOUISE A. RINN
Law Department
Union Pacific Railroad Company
Southern Pacific Transportation
Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000


ARVID E. ROACH II
J. MICHAEL HEMMER
MICHAEL L. ROSENTHAL
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company, Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company and St. Louis
Southwestern Railway Company

July 14, 1997

CERTIFICATE OF SERVICE

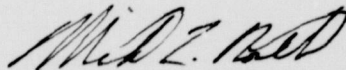
I, Michael L. Rosenthal, certify that, on this 14th day of July, 1997. I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760 (Sub-No. 21), and on all known shareholders of SSW common stock as follows:

Joseph S. Guzman
P.O. Box 92315
Pasadena, CA 91109-2315

Benjamin Zatz
62-27 108th Street
Apt. 1-8E
Forest Hills, NY 11375-1140

Homer Henry
10510 Tropicana Circle
Sun City, AZ 85351-2218

Donald Zatz
P.O. Box 854
Forest Hills, NY 11375-0854



Michael L. Rosenthal

EXHIBIT A

VERIFIED STATEMENT

OF

STEPHAN C. MONTH

My name is Stephan C. Month. I am a Managing Director in the Mergers and Acquisitions department of Credit Suisse First Boston Corporation ("CSFB"), located at 11 Madison Avenue, New York, New York. I received both a J.D. and M.B.A. degree from Harvard University in 1986.

I joined CSFB's Mergers and Acquisitions department in September 1986 and have been with CSFB since then, except for the period September 1991 to July 1993 when I was a Vice President at Lazard Freres. During the past three years, I have been CSFB's account officer for railroad mergers and acquisitions.

I have been personally involved in the following matters involving railroad clients for which CSFB has acted as financial advisor: the Union Pacific Corporation ("UP")/ Southern Pacific Rail Corporation ("SPR") merger; UP's acquisition of Chicago and North Western Transportation Company ("CNW"); UP's offer to acquire Santa Fe Pacific Corporation; Kansas City Southern's terminated sale to Illinois Central; various financing and advisory assignments for other railroad clients such as CSX and Canadian National; and various railroad privatizations worldwide, including the Mexican railroad.

CSFB is an internationally recognized investment banking firm that regularly performs valuations of businesses and securities in connection with mergers and acquisitions, leveraged buyouts, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes.

Credit Suisse First Boston's Railroad Industry Expertise

CSFB has broad experience in performing financial services for the railroad industry, including the following:

- Lead underwriter of railroad debt worldwide lead-managing over US\$9.1 billion in private and public debt from 1982 through 1996.
- Lead managed \$500 million of Notes and Debentures for Union Pacific Corporation in January 1996.
- Structured and lead-managed the first railroad medium-term receivables-backed debt securities transaction, raising \$200 million for CSX Transportation in 1993.
- Co-manager on a \$225 million common stock offering of Illinois Central; the transaction involved dual U.S. and European tranches (1992).

- Co-manager on \$1.6 billion initial public equity offering of Conrail; the transaction involved dual U.S. and European tranches (1988).
- Provided expert testimony at legal and congressional hearings related to the railroad industry.
- Over the past 15 years, CSFB has been one of the leading investment banks in providing merger and acquisition, financial advisory and valuation services to the railroad industry.

CSFB's recent investment banking experience includes assignments involving virtually all of the Class I and many regional railroads. We have worked extensively with UP and are particularly familiar with UP's financial structure, operations and prospects. The following are examples of matters in which CSFB had been or is presently engaged to act as financial advisor to UP and other railroad companies:

- UP: Advised UP on the merger with SPR in a transaction valued at \$5.4 billion (1996); advised UP on its acquisition of CNWT in a transaction valued at \$2.3 billion (1995); advised UP in its bid to acquire Santa Fe Pacific Corporation in a transaction valued at \$3.9 billion (1994-1995); advised UP on various assignments involving its interest in CNWT (1989); advised UP in its acquisition of the Missouri-Kansas-Texas Railroad for \$102 million (1980-1982); advised UP on its \$1.06 billion acquisition of Missouri Pacific Corp. (1979-1981).
- North Carolina Railroad Special Committee (Fending): Advising the North Carolina Railroad Special Committee with respect to strategic alternatives for the minority shareholders.
- Ferrocarriles Nacionales de Mexico (FNM): Currently advising the Mexico transport ministry on the privatization of the state-owned railroad FNM. The Government of Mexico has completed the sale of one concession and has announced the second of three concessions being sold.
- Kansas City Southern Industries: Advised and assisted Kansas City Southern Industries in the (1994) proposed spin-off of its financial service division and the merger of Kansas City Southern Industry into Illinois Central (terminated).
- Major Railroads: Advised on stock-split strategies for two major railroads in 1992-1993.
- Chrysler Financial Corp.: Advised and assisted in the 1991 sale of Chrysler Rail Leasing to GE Capital in a transaction valued at \$125 million.
- CSX Corp.: Advised and assisted in the divestiture of CSX Energy Company (pipeline business) (1983); also advised and assisted CSX in its \$1.07 billion acquisition of Texas Gas Resources Corp. (1983); and advised and assisted Chessie System in its acquisition of the Western Maryland Railway.

- Norfolk Southern Corp.: Advised Norfolk Southern in connection with its 1988 acquisition of the Wheeling & Lake Erie Railway.
- Henley Group, Inc.: Acted as advisor to Henley in 1988 on its \$9.4 billion attempted acquisition of Santa Fe Southern Pacific Corp.

Credit Suisse First Boston's Assignment and its Valuation of St. Louis Southwestern Railway Company

UP retained CSFB to act as financial advisor with respect to its acquisition of SPR. Following the UP/SPR merger, UP requested CSFB to perform certain valuation services with respect to the common stock of St. Louis Southwestern Railway Company ("SSW"), an indirect subsidiary of UP with a minority ownership interest of 0.04% (61 shares out of 173,300 common shares) (the "Minority Shares").

CSFB provided to UP a valuation letter dated April 14, 1997 as to the estimated common equity value of SSW, as of that date and based upon and subject to certain matters stated in such valuation letter. A copy of the valuation letter is attached.

Credit Suisse First Boston's Analysis

In arriving at its valuation, CSFB, among other things, (i) reviewed certain business and financial information relating to SSW, including financial forecasts, provided to CSFB by UP, (ii) met with the management of UP to discuss the capital structure and business and prospects of SSW, (iii) considered certain financial data of SSW and compared those data with similar data for publicly held companies in businesses similar to SSW, (iv) considered, to the extent publicly available, the financial terms of certain other transactions which have recently been effected in the railroad industry, and (v) considered such other information, financial studies, analyses and investigations and financial, economic and market criteria as CSFB deemed relevant.

CSFB's valuation was subject to certain assumptions and limitations set forth in the valuation letter, and was necessarily based on information available to it and on financial, stock market and other conditions and circumstances as they existed and could be evaluated as of the date of the valuation letter.

In preparing its valuation, CSFB performed a variety of financial and comparative analyses, including those described below. A valuation is a complex analytic process involving various determinations as to the most appropriate and relevant methods of financial analyses and the application of those methods to the particular circumstances and, therefore, such valuation is not readily susceptible to summary description. In preparing its valuation, CSFB made qualitative judgments as to the relevance, significance and weight of each analysis and factor considered. The following is a brief summary of the analyses underlying CSFB's valuation:

Comparable Company Analysis

CSFB reviewed financial and operating data for SSW and compared those data with financial, operating and stock market information for UP and the following selected companies in the railroad industry: Burlington Northern Santa Fe Corporation, Consolidated Rail Corporation, CSX Corporation, Norfolk Southern Corporation, Canadian National Railway Company, Canadian Pacific Limited, Genesee & Wyoming Inc., Illinois Central Corporation, Kansas City Southern Industries Inc., Tranz Rail Holdings Limited, RailTex Inc. and Wisconsin Central Transportation Corp. (the "Comparable Companies"). Such an analysis of Comparable Companies is not entirely a mathematical exercise; it involves complex considerations and judgments concerning a variety of factors, including differences in financial and operating characteristics and other factors of the Comparable Companies that could affect the acquisition, public trading or other values of the companies being compared.

CSFB compared equity market values of the Comparable Companies as a multiple of each company's net income for the latest available 12 months and estimated for 1997 and 1998. We performed a similar analysis comparing adjusted market values (defined as equity market value plus total debt and preferred stock, less cash and cash equivalents) of the Comparable Companies as a multiple of their revenues, operating cash flow and operating income for the latest available 12 months and for estimated corresponding results for 1997 and 1998. All multiples were based on closing stock prices as of April 8, 1997. This valuation analysis was based upon the Comparable Companies' multiples discussed above and incorporates both a premium (to reflect similar premiums paid for the purchase of minority shares in other transactions) and an illiquidity discount (to account for the limited trading characteristics of the SSW common stock). This analysis resulted in a SSW equity value range of approximately \$4,155 to \$4,905 per common share or an aggregate value of approximately \$253,433 to \$299,192 for the Minority Shares.

Comparable Acquisition Analysis

Using publicly available information, CSFB also analyzed the purchase prices and multiples paid or proposed to be paid in selected acquisition transactions in the railroad industry, including: CSX Corporation, Norfolk Southern Corporation/Consolidated Rail Corporation; UP/SPR; UP/CNWT; Burlington Northern Inc./Santa Fe Pacific Corporation; UP/Santa Fe Pacific Corporation; Illinois Central Corporation/Kansas City Southern Industries, Inc. (Railway Division); and Kansas City Southern Industries, Inc./MidSouth Corporation (the "Comparable Acquisitions"). As with the analysis of Comparable Companies described above, such an analysis of Comparable Acquisitions is not entirely a mathematical exercise; it also requires complex considerations and

judgments concerning a variety of factors, including differences in financial and operating characteristics of the companies involved in the transactions that could affect the acquisition, public trading or other values of the companies and transactions being compared.

CSFB compared equity purchase prices in the Comparable Acquisitions as a multiple of book value and as a multiple of the latest available 12 months' net income. We also compared adjusted purchase prices in the Comparable Acquisitions (defined as equity purchase price plus total debt and preferred stock, less cash and cash equivalents) as a multiple of the companies' latest available 12 months' revenues, operating cash flow and operating income. All multiples for the Comparable Acquisitions were derived from information that was available at the time of announcement of each transaction. This analysis resulted in a SSW equity value range of approximately \$5,655 to \$6,809 per common share or an aggregate value of approximately \$344,951 to \$415,349 for the Minority Shares.

Discounted Cash Flow Analysis

In addition, CSFB performed discounted cash flow analyses of the projected unlevered free cash flow of SSW (i.e., cash flow before payment of debt) on a stand-alone basis (i.e., excluding any benefits or costs as a result of the UP/SPR merger) for fiscal years 1997 through 2001, based on operating and financial forecasts provided by the management of UP (the "UP Forecasts") to CSFB. Based on the UP Forecasts, CSFB also performed a discounted cash flow analysis of the projected net revenue enhancements and cost savings ("Synergies") anticipated to result from the UP/SPC merger for fiscal years 1997 through 2001, taking into account estimates of UP's management as to the anticipated costs of implementing programs to realize such Synergies. For purposes of these analyses, CSFB utilized discount rates of between 11.5% and 13%, based on an analysis of the weighted average cost of capital for the railroad industry. We also applied terminal year operating cash flow multiples between 6.0x and 8.0x, based on the trading multiples of railroad companies.

This analysis resulted in a SSW stand-alone equity value range of approximately \$3,118 to \$3,291 per common share or an aggregate value of approximately \$190,183 to \$200,741 for the Minority Shares and a Synergies value of approximately \$2,912 to \$3,403 per common share or an aggregate value of approximately \$177,647 to \$207,565 for the Minority Shares. The total discounted cash flow value of UP Forecasts, including both stand-alone SSW and Synergies, resulted in an SSW equity value range of approximately \$6,030 to \$6,694 per common share or an aggregate value of approximately \$367,830 to \$408,309 for the Minority Shares.

Conclusion

The composite of the analyses described above resulted in a SSW equity value range of approximately \$4,155 to \$6,809 per common share or an aggregate value of approximately

\$253,433 to \$415,349 for the Minority Shares. In arriving at its valuation, CSFB did not rely on any single analysis. Rather, we considered all analyses taken as a whole, which together supported the conclusions we reached.

CSFB has been advised by UP that, on a limited number of occasions between 1976 and 1992, a small number of SSW common shares were reacquired from public shareholders for cash or SPR stock worth between \$1,960 per share and \$2,617 per share. Based on the foregoing, CSFB does not believe that such transactions are necessarily determinative of value and, thus, does not consider such transactions relevant to its valuation. CSFB's view in this regard is based, among other things, on the fact that such transactions are not recent transactions and, thus, do not reflect subsequent changes that have occurred in SSW and its affiliates and in the railroad industry generally.

It should be noted that any valuation is only an approximation, subject to uncertainties and contingencies, all of which are difficult to predict and beyond the control of the firm preparing such valuation and, accordingly, a valuation is not intended to be, and should not be construed as, a guaranty of value. Our views as to the estimated value of SSW do not represent an opinion as to the price at which SSW, or any interest in SSW, could be sold.

CONFIDENTIAL

April 14, 1997

Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018

Ladies and Gentlemen:

You have requested our view as to the estimated value of St. Louis Southwestern Railway Company ("SSW"), an indirect subsidiary of Union Pacific Corporation ("Union Pacific").

In arriving at our valuation, we have reviewed certain business and financial information relating to SSW, including financial forecasts, provided to us by Union Pacific, and have met with the management of Union Pacific to discuss the capital structure and business and prospects of SSW. We also have considered certain financial data of SSW and we have compared those data with similar data for publicly held companies in businesses similar to SSW, and we have considered, to the extent publicly available, the financial terms of certain other transactions which have recently been effected in the railroad industry. We also considered such other information, financial studies, analyses and investigations and financial, economic and market criteria which we deemed relevant.

In connection with our review, we have not assumed any responsibility for independent verification of any of the foregoing information and have relied on such information being complete and accurate in all material respects. With respect to the financial forecasts, we have assumed that such forecasts were reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of Union Pacific as to the future financial performance of SSW. The articles of association of SSW provide that the outstanding preferred stock of SSW (the "SSW Preferred Stock") has a par value of \$100, with a right to the payment of dividends if and when declared by the Board of Directors of SSW. We have been informed by the management of Union Pacific that no such dividends have been declared and paid since 1992 and that, to the best knowledge of the management of Union Pacific, there are no other material terms relating to the SSW Preferred Stock. Accordingly, to the extent relevant to our analysis, we have assumed, on the basis of the foregoing and with your consent, an estimated value for the SSW Preferred Stock equal to its par value. In addition, we have not been requested to make, and have not made, an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of SSW, nor have we been furnished with any such evaluations or appraisals. Our valuation is necessarily based upon information available, and financial, economic, market and other conditions as they exist and can be evaluated, on the date hereof. We were not requested to, and did not, solicit third party indications of interest in acquiring all or any part of SSW.

Based upon and subject to the foregoing, it is our view that, as of the date hereof, the estimated common equity value of SSW is approximately \$720 million to \$1.18 billion, or approximately \$4,155 to \$6,809 per common share of SSW.

Union Pacific Corporation

April 14, 1997

Page 2

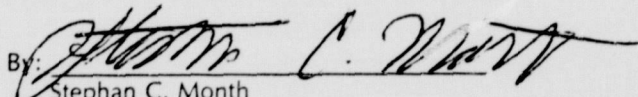
It should be noted that any valuation is only an approximation, subject to uncertainties and contingencies, all of which are difficult to predict and beyond the control of the firm preparing such valuation and, accordingly, a valuation is not intended to be, and should not be construed as, a guaranty of value. Our views as to the estimated value of SSW do not represent an opinion as to the price at which SSW, or any interest in SSW, could be sold.

Credit Suisse First Boston is an internationally recognized investment banking firm and is actively engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, leveraged buy-outs, negotiated underwritings, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes. We have in the past provided financial advisory and investment banking services to Union Pacific unrelated to this valuation, for which services we have received compensation.

It is understood that this letter is for the information of Union Pacific in connection with its evaluation of SSW and is not to be quoted or referred to, in whole or in part, in any registration statement, prospectus or proxy statement, or in any other document used in connection with the offering or sale of securities, nor shall this letter be used for any other purposes, without our prior written consent.

Very truly yours,

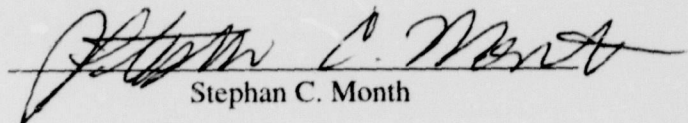
CREDIT SUISSE FIRST BOSTON CORPORATION

By: 
Stephan C. Month
Managing Director

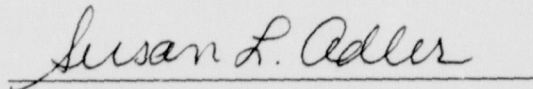
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss:

I, Stephan C. Month, being duly sworn, state that I have read the foregoing statement, that I know its contents, and that those contents are true as stated.


Stephan C. Month

SUBSCRIBED and sworn to before
me this 11 day of July, 1997.



Notary Public

SUSAN L. ADLER
Notary Public, State of New York
No. 31-4988260
Qualified in New York County
Commission Expires Nov. 4, 1997

EXHIBIT B

VERIFIED STATEMENT
OF
JOSEPH E. O'CONNOR, JR.

My name is Joseph E. O'Connor, JR. I am Vice President and Controller of Union Pacific Corporation.

The merger of St. Louis Southwestern Railway Company ("SSW") into SSW Merger Corp., and the subsequent merger of SSW Merger Corp. into Union Pacific Railroad Company ("UPRR"), are important steps in the corporate restructuring of the UP/SP railroad family.^{1/} These two mergers, in conjunction with the mergers between the other SP rail carriers and UPRR, including the ultimate merger between SPT and UPRR, will facilitate the achievement of the benefits of the UP/SP merger by allowing UP/SP customers to enjoy the full benefits of single-line service, and by allowing UP/SP to take full advantage of efficiencies of operating as a single company.

These corporate mergers are important because they will allow UP/SP to maintain and report key financial information on a consolidated basis, rather than subsidiary-by-subsidary. These recordkeeping requirements are costly and time-consuming, and it is becoming more difficult to allocate revenues and costs accurately among subsidiaries as

^{1/} Prior to and independent of the merger of SSW into SSW Merger Corp., the existing publicly held shares of SSW preferred stock will be redeemed at par value pursuant to their terms, following a vote of holders as required by state law. In addition, Applicants have reached an agreement with FRA regarding the treatment of certain SSW preference shares that the FRA holds, which will remain in existence as obligations of the merged company.

the UP/SP system takes advantage of the routing flexibility the UP/SP merger made possible. Moreover, the separate existence of SSW and other carriers in the UP/SP system affects the way customers must route traffic -- they now must designate the individual UP/SP subsidiaries involved in each particular movement -- and the way customers are billed, generating unnecessary complications.

UP/SP is asking the Board for expedited consideration in order to ensure that the merger of SSW into SSW Merger Corp. and the subsequent merger of SSW Merger Corp. into UPRR can be completed in advance of September 30, 1997. Unless the mergers are completed before that date, which is the end of SSW's fiscal third quarter, UP/SP will be required to undertake the expensive and resource-intensive task of preparing financial statements that reflect SSW's operations as a separate company.

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF LEHIGH)

I, Joseph E. O'Connor, Jr., being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.

JOSEPH E. O'CONNOR, JR.

SUBSCRIBED and sworn to before
me this 11th day of July, 1997.

Kashner L. Owens
Notary Public

My Commission Expires:

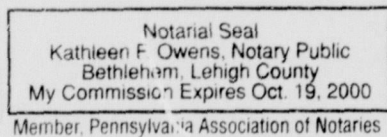


EXHIBIT C

approximately 15,750 acres of land bordering Lake Pleasant Regional Park north of Phoenix, Arizona.

SUPPLEMENTARY INFORMATION: Copies of the Environmental Assessment are available from the Bureau of Land Management's Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027. Public comments on the Environmental Assessment will be accepted for a period of thirty (30) days following publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gail Acheson, Phoenix Resource Area Manager, 2015 West Deer Valley Road, Phoenix, AZ 85027 or telephone (602) 780-8090.

Dated: April 25, 1995.

David J. Miller,

Associate District Manager.

[FR Doc. 95-10630 Filed 4-28-95; 8:45 am]

BILLING CODE 4310-32-P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32685]

Chicago & North Western Railway Co., Soo Line Railroad Co., d/b/a CP Rail System, Wisconsin & Southern Railroad Company, Wisconsin Department of Transportation—Joint Relocation Project Exemption—in Dane County, WI

On March 31, 1995, Chicago and North Western Railway Company (CNW), Soo Line Railroad Company, d/b/a CP Rail System (Soo), and Wisconsin and Southern Railroad Company (WSOR), and the Wisconsin Department of Transportation jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad in Madison, Dane County, WI. The proposed transaction was expected to be consummated on or after April 7, 1995.

The line relocation project is to facilitate construction of the new Monona Terrace Convention Center in Madison, WI. CNW and WSOR¹ currently operate two closely parallel rail lines in a rail corridor running at the base of a bluff under the planned convention center site. The convention design will require supporting piers for the structure to be placed on the site of the current CNW track.

The joint project involves: (1) The incidental construction of connecting

tracks between existing CNW and WSOR tracks, which would involve the moving of all rail operations a distance of approximately 2,090 feet to the current WSOR line; (2) the transfer of WSOR's ownership of track within the relocation limits to CNW, which CNW will rehabilitate, and CNW will grant trackage rights over the track to WSOR and Soo; and (3) the removal of CNW's track within the relocation limits. The notice states that service to shippers will not be disrupted.

The Commission will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. See *City of Detroit v. Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. See *D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage right's agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert T. Opal, Chicago and North Western Railway Company, 165 North Canal Street, Chicago, IL 60606; Larry D. Starns, Soo Line Railroad Company, Suite 1000, Soo Line Building, Box 530, Minneapolis, MN, 55440; John D. Heffner, 1920 N Street, NW, Suite 420, Washington, DC 20036; and James S. Thiel, Wisconsin Department of Transportation, Room 115B, Hill Farms State Transportation Building, P.O. Box 7910, Madison, WI 53707.

Decided: April 24, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95-10595 Filed 4-28-95; 8:45 am]

BILLING CODE 7038-01-P

[Finance Docket No. 32133]

Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 27; notice that the Commission has been requested to issue a finding that the terms and conditions of the proposed merger of UP Rail, Inc., into Chicago and North Western Transportation Company are just and reasonable.

SUMMARY: UP Rail, Inc. (a subsidiary of Union Pacific Corporation) is to be merged into Chicago and North Western Transportation Company (the holding company parent of Chicago and North Western Railway Company), assuming the success of a tender offer that was commenced on March 23, 1995. The merger envisions, among other things, a tender offer to stockholders of \$35 per share and a "cashing out" of all non-tendering stockholders at a price of \$35 per share. The Commission has been requested to issue a finding that the terms and conditions of the merger are just and reasonable.

DATES: Comments must be filed by May 31, 1995. Replies must be filed by June 15, 1995.

ADDRESSES: All pleadings should refer to Finance Docket No. 32133. Comments (an original and 10 copies) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. Comments should also be served (one copy each) on: (1) Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20044-7566; and (2) L. John Osborn, Suite 600, East Tower, 1301 K Street, NW., Washington, DC 20005. Replies (an original and 10 copies) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423. Replies should also be served (one copy each) on all active parties in this proceeding, counsel for the plaintiffs in the Delaware shareholder suits referenced

¹ Soo has trackage rights on the WSOR line and Soo formerly owned the WSOR line. See *Wisconsin & Southern Railroad Co.—Purchase, Lease and Operation Exemption—Canadian Pacific Rail Services*, Finance Docket No. 32546, (ICC served Aug. 16, 1994).

below, and any known shareholders of Chicago and North Western Transportation Company who have not tendered their shares in the tender offer commenced March 23, 1995, by UP Rail, Inc.

FOR FURTHER INFORMATION CONTACT:

Beryl Gordon, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION:

In our UP/CNW Decision No. 25 (served March 7, 1995), we approved common control of UP (class I railroads Union Pacific Railroad Company and Missouri Pacific Railroad Company) and CNW (class I railroad Chicago and North Western Railway Company). Union Pacific Railroad Company (UPRR) and Missouri Pacific Railroad Company (MPRR) are indirect wholly owned subsidiaries of Union Pacific Corporation (UPC), a non-carrier holding company. CNW is a direct wholly owned subsidiary of Chicago and North Western Transportation Company (CNWT), another non-carrier holding company. UPC, UPRR, MPRR, CNWT, and CNW are referred to herein as the primary applicants. The UP/CNW common control that we approved envisioned that UP and CNW would come under common control with the conversion, from non-voting status to voting status, of the approximately 29.5% of the CNWT common stock held by non-carrier UP Rail, Inc. (UPR), another indirect wholly owned UPC subsidiary. Our UP/CNW Decision No. 25 became effective on April 6, 1995.

On March 16, 1995, UPC and CNWT entered into an Agreement and Plan of Merger (the Merger Agreement) that provides, among other things, (1) that UPR will make a tender offer for 100% of CNWT's common stock at a price of \$35 per share in cash, and (2) that all non-tendering CNWT shareholders will also receive \$35 per share in cash following the UPR/CNWT merger. The tender offer was commenced on March 23, 1995, and is scheduled to expire on April 24, 1995.

By petition (UP/CNW-134) filed April 4, 1995, the primary applicants have requested that we issue a determination that the terms and conditions of the proposed UPR/CNWT merger (in particular, the \$35-per-share price to be paid to CNWT shareholders) are just and reasonable. The primary applicants seek this determination (1) because they believe the Commission is required by *Schwabacher v. United States*, 334 U.S. 182 (1948), to make such a determination to protect minority shareholders and (2) in order to immunize the UPR/CNWT merger from the otherwise applicable state law

rights, particularly the otherwise applicable state law appraisal rights, of dissenting CNWT shareholders. 49 U.S.C. 11341(a). A copy of the Merger Agreement can be found in UP/CNW-134, Exhibit B, Annex I.

The primary applicants indicate that they have served a copy of their UP/CNW-134 petition on all active parties in the Finance Docket No. 32133 proceeding and on counsel for plaintiffs in certain Delaware shareholder suits challenging various aspects of the Merger Agreement. The primary applicants have also pledged to serve a copy of their petition on any known CNWT shareholders who do not tender their shares in response to the tender offer. The primary applicants urge expedited handling of their petition (in particular: that we publish notice of their petition in the **Federal Register**; that we allow interested persons 30 days to file comments; that we further allow the primary applicants an additional 15 days to file a reply; and that we proceed promptly to a decision thereafter).

Our statutory mandate, 49 U.S.C. 11344(c), requires, among other things, that we determine, in appropriate cases, that the terms and conditions of certain transactions affecting stockholders are just and reasonable. See, e.g., *Union Pacific Corp. et al.—Cont.—MO-KS-TX Co. et al.*, 4 I.C.C.2d 409, 515 (1988) ("In appraising this transaction affecting the rights of stockholders, it is incumbent upon us to see that the interests of minority stockholders are protected and that the overall proposal is just and reasonable to those stockholders. *Schwabacher v. United States*, 344 U.S. at 198, 201."). Because the UP/CNW-134 petition implicates our statutory mandate and involves a matter that requires expedited regulatory action, we will proceed upon the schedule urged by the primary applicants.

Accordingly, we solicit comments from all interested persons respecting whether the terms and conditions of the proposed UPR/CNWT merger are just and reasonable. Such comments must be submitted by May 31, 1995. The primary applicants may file replies to such comments by June 15, 1995.

Any interested person who has not received copies of the UP/CNW-134 petition and the primary applicants' letter dated April 17, 1995 (announcing a settlement of the Delaware litigation) may request copies, in writing or by telephone, from Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044-7566 (telephone: 202-662-5388).

In addition to submitting an original and 10 copies of all documents filed

with the Commission, the primary applicants and any commenters are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 5.1 (or formatted so that it can be converted by WordPerfect 5.1). The primary applicants are also encouraged to submit their UP/CNW-134 petition (including Exhibits A and B thereto), and their letter dated April 17, 1995 (including Exhibits A and B thereto), on such a diskette.

Decided: April 19, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95-10633 Filed 4-28-95; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States v. Metropolitan Dade County, et al.*, Case No. Civ-93-1109-Moreno, was lodged on April 19, 1995, with the United States District Court for the Southern District of Florida. The consent decree settles all claims for injunctive relief and civil penalties brought against Metropolitan Dade County and the Miami-Dade Water and Sewer Authority Department under Sections 301, 309 (b) and (d), and 402 of the Clean Water Act, 33 U.S.C. 1311, 1319 (b) and (d), and 1342, and sets forth remedial measures, supplemental environmental projects, and a civil penalty.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Metropolitan Dade County, et al.*, DOJ Ref. #90-5-1-1-4022.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Florida, 99 N.E. 4th Street, Miami, Florida 33132; the Region IV Office of the United States Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G

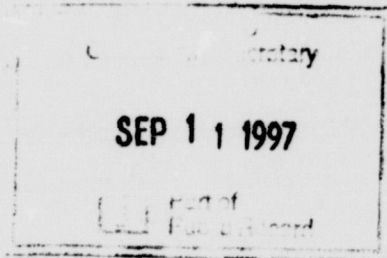
STB FD-32760 (SUB 23) ID-181906 9-11-97 B

181906

MCHUGH & SHERMAN
ATTORNEYS AT LAW
20 EXCHANGE PLACE, 51ST FLOOR
NEW YORK, N.Y. 10005
(212) 483-0875
FACSIMILE (212) 483-0876

JOHN F. MCHUGH*
DEBORAH SHERMAN
TINA SACHELI

*ALSO ADMITTED IN OHIO



September 11, 1997

B

Secretary
Surface Transportation Board
1925 K Street, N.W. Suite 715
Washington, D.C. 20423

re: 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 23

Dear Sir or Madam:

Enclosed please find the original and twenty five copies of the objections of Respondent Joseph Guzman to the petition as well as of a certification of service.

Thank you for your attention to this matter

Very truly yours

John F. McHugh

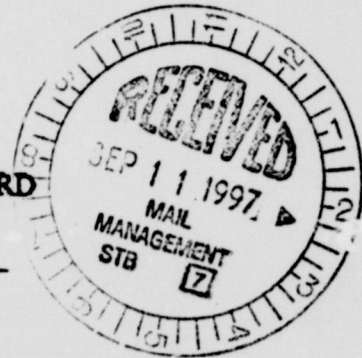
cc: Carl W. Von Bernuth
Union Pacific Corporation
Martin Tower
Eight and Eaton Avenues
Bethlehem, Pennsylvania 18018

James V. Dolan
Law Department
Union Pacific Railroad Company
Southern Pacific Transportation Company
1416 Dodge Street
Omaha, Nebraska 68179

Homer Henry
10510 Tropicana Circle
Sun City, Az. 85351-2218

Donald and Benjamin Zatz
62-27 108th Street Apt 1-8E
Forest Hills, N.Y. 11375-1140

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

OBJECTIONS OF RESPONDENT JOSEPH S. GUZMAN

Respondent, Joseph S. Guzman, is the owner of five of the 61 outstanding privately held common shares of the St. Louis Southwestern Railway Company (SSW). He is 79 years old and has been retired for fifteen years. He has no expertise in railroad valuations or finance. His sole railroad experience was in the track department of the Pacific Electric Railway immediately after World War Two. He has no ability to respond quickly to the petition as he has no friends or professional associates who know who to contact to evaluate a railroad's worth.

Respondent strongly objects to the expedited schedule of this matter as it denies him the time a person of his circumstances requires to find and retain the needed expertise. Respondent hereby joins and adopts the objections and comments of Co-Respondents Donald Zatz, Benjamin Zatz and Homer Henry.

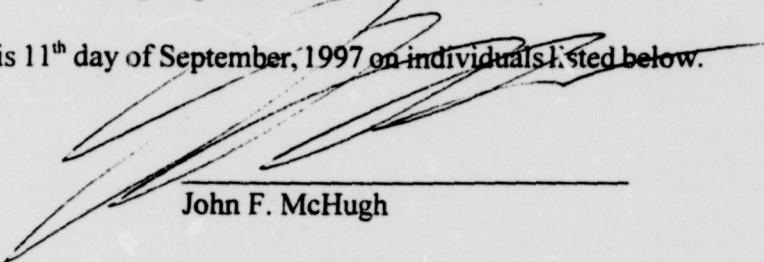
Dated, New York, N.Y.
September 11, 1997

Respectfully submitted
McHugh & Sherman
Attorneys for Respondent
Homer Henry

By _____
John F. McHugh
20 Exchange Place
New York, N.Y. 10005
212-483-0875

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "OBJECTIONS OF RESPONDENT
JOSEPH S. GUZMAN" was served this 11th day of September, 1997 on individuals listed below.



John F. McHugh

Carl W. Von Bernuth
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018

James V. Dolan
Law Department
Union Pacific Railroad Company
Southern Pacific Transportation Company
1416 Dodge Street
Omaha, Nebraska 68179

Joseph S. Guzman
P.O. Box 92315
Pasadena, California 91109-2315

Donald and Benjamin Zatz
62-27 108th Street
Apartment 1-8E
Forest Hills, New York 11375-1140

Homer Henry
10510 Tropicana Circle
Sun City, Arizona 85351-2218

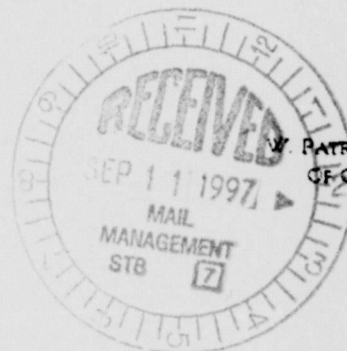
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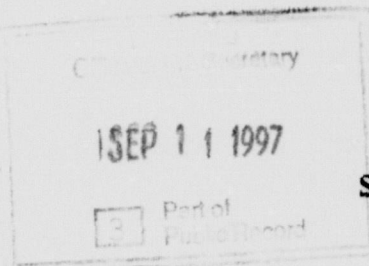
MCHUGH & SHERMAN
ATTORNEYS AT LAW
20 EXCHANGE PLACE, 51ST FLOOR
NEW YORK, N.Y. 10005
(212) 483-0875
FACSIMILE (212) 483-0876

JOHN P. MCHUGH*
DEBORAH SHERMAN
TINA SACHELI

*ALSO ADMITTED IN OHIO



W. PATRICK QUAST
OF COUNSEL



September 11, 1997

B

Secretary
Surface Transportation Board
1925 K Street, N.W. Suite 715
Washington, D.C. 20423

re: 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

Dear Sir or Madam:

Enclosed please find the original and twenty five copies of the objections of Respondent Joseph Guzman to the petition as well as of a certification of service.

Thank you for your attention to this matter

Very truly yours

John F. McHugh

cc: Carl W. Von Bernuth
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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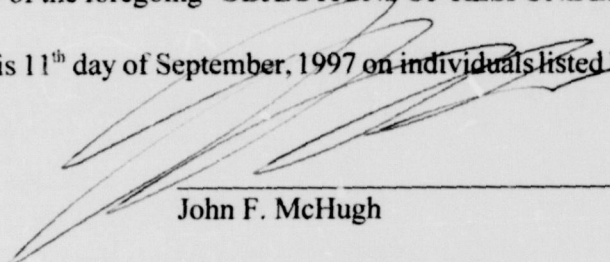
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By

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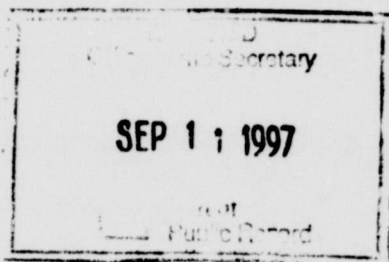
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B

JOHN F. MCHUGH*
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W. PATRICK QUAS
OF COUNSEL

September 10, 1997

Secretary
Surface Transportation Board
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Washington, D.C. 20423

re: 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 23*

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Thank you for your attention to this matter

Very truly yours

[Signature]
John F. McHugh

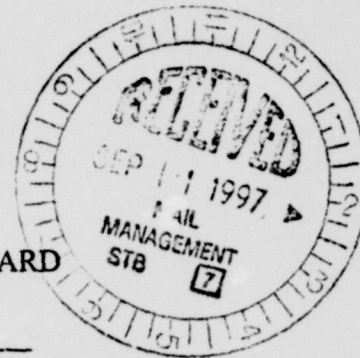
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BEFORE THE
SURFACE TRANSPORTATION BOARD



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
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OBJECTIONS OF RESPONDENT
HOMER HENRY

Respondent, Homer Henry, is the owner of one of the 61 outstanding privately held common shares of the St. Louis Southwestern Railway Company (SSW). Respondent opposes the petition as being: 1. inconsistent with the public interest, 2. inconsistent with the prior order of the Surface Transportation Board approving the merger between the Union Pacific and Southern Pacific controlled corporations and, 3. because the petition seeks to impose an unfair price for the shares in issue without giving the respondent adequate time to respond.

FACTS

The material fact which must be considered in this matter is that three holders of the shares in question are individual investors of advanced age, one is 95 years of age. This respondent is retired, 87 years of age, and in extremely poor health. Yet he has been asked to respond to this petition on an expedited basis. Respondent does not have counsel on his staff. He has no expert knowledge of railroad finance, nor does he have any knowledge which would allow him to quickly obtain such expertise. He has no means of reacting quickly with the expertise needed to respond to the petition. Yet, here, in response to the petition for additional time filed by fellow respondent, Donald Zatz, these elderly respondents, including this Respondent, have been held to an expedited schedule and to the standards of expertise which would be required of a mega-railroad, indeed, to higher standards. While it took Union Pacific, a major corporation with a huge staff of resident experts and unlimited funds for consultants, over a year to get to the point where it could file this petition, this Board has given these old men less than two months to respond.

I

BY ALLOWING EXPEDITED CONSIDERATION OF THIS PETITION THE BOARD DENIES RESPONDENT

DUE PROCESS OF LAW

Petitioner demanded, and the Board has granted, expedited consideration of this Petition. Had this case been before any Court in the land, sufficient time for discovery and to form an adequate response, would have been provided on these facts. Thus, the Board's continuing on an expedited schedule with this petition is a denial of

due process to the respondents and assures that no finding of the Board can be fair and reasonable.

The standards applicable to the review of the petition are whether the merger proposed "will be consistent with the public interest," whether the terms of the merger are "just and reasonable" and whether the merger is undertaken with the consent of the majority of the shareholders of the merging companies. Schwabacher v. United States, 334 U.S. 182, 196 (1948). The petition here in issue attempts to deal only with the second of these considerations, the fairness of the price. It does that summarily and seeks to stampede this Board into granting the petition without mandated consideration. It is submitted that the schedule imposed by the Board and the denial of the respondents' request for sufficient time to respond, eliminates any possibility that the Board can meet the standard of care imposed by law on such determinations.

II

THE PRICE PRESENTED FOR THE SHARES IS NOT FAIR AND REASONABLE

Shares of the St. Louis Southwestern Railroad (SSW) are not publicly traded and have not been for over twenty years. The only method of determining the fair value of the shares is by detailed analysis of the railroad's value based upon its revenues and/or its value to other carriers based upon its traffic. As is set forth in the affidavit of Jack Grocki, submitted in support of the Response of Donald Zatz and Benjamin Zatz, which affidavit is adopted herein by reference, that analysis cannot be done on this record as the documentation needed to do that analysis was not made available to the

respondents in timely fashion, due to the Board's refusal to grant respondents time to analyze the documents.

SSW is one of two rail systems serving a major share of the nation's petrochemical industry, the other being the petitioner's Missouri Pacific Railroad Company. The Board, in allowing the merger of the Union Pacific system with that of the Southern Pacific system, acknowledged the possible anti-competitive effect of including the SSW within the merged company. It granted the petition retaining jurisdiction to review the anti-competitive effects of the merger of the SSW into the UP system over a five year period.

Should an anti-competitive effect be shown during this period, the Board has retained the option to then determine what remedial steps are required to relieve the situation. Only two such remedies are available, granting increased access to the line's customers by other carriers or divestiture, including, perhaps, adding the SSW to some other major operator's property. The possibility that SSW may be the subject of a bidding war between the remaining major railroads, all of which connect with SSW and all of which could materially benefit from ownership of the SSW in the future, has a direct effect on the market value of SSW. This future is not considered in the Petitioner's price. Indeed, the only information available relating to the possible value of the SSW to another operator is the price offered by Conrail for a major portion of, but not all of, the SSW, \$1.9 Billion. That price is \$10.900 per share. That price is substantially more than the Union Pacific figure. That price provides the Board with a clear indication that the price offered by Union Pacific is neither fair or reasonable. The only way to determine the fair and reasonable price of the shares is to determine the value of the line to other possible bidders and that can only be done by expert analysis of traffic. Such analysis

cannot be done on this record as the Board has denied the respondents the required time to do so.

In addition to failing to address the significance of the Conrail offer, which Union Pacific management rejected (indicating that the offer was insufficient), the justification for the current application is incredible, a fact which alone should cast doubt on the fairness of the price offered. The Petition is filed, and expedition is sought, allegedly, to relieve the Union Pacific Corporation from keeping separate books for the SSW. It seeks to terminate such bookkeeping, not at the end of the fiscal year, but at the beginning of the fourth quarter. Casting further doubt on that justification, the merger is not with UP or any of its existing corporate entities, a step which would allegedly eliminate the bookkeeping in question. Rather, it is with the SSW Merger Corp., a new separate entity. How such a merger, creating simply another separate entity, to be completed in mid year, avoids maintaining separate books is simply not explained and, of course, cannot be justified. Nor is the avoidable cost of maintaining those books set forth. Thus, it would appear on this record that the bookkeeping argument is merely a ruse to force expedited consideration of this petition, an excuse to avoid the full analysis of the offer required by law. See Schwabacher v. United States, 334 U.S. 182, 195 (1948).

Respondents, in Mr. Grocki's affidavit, have provided expert analysis of the price offer for the 61 outstanding common shares of SSW and have established that the support for the price submitted by the Petitioner is internally inconsistent. Respondent's expert has established that based on the Conrail offer of \$1.9 billion, made to the Petitioner one year ago, there is reason to believe that the offered price is significantly below the fair market value of the SSW shares today. In the face of the

glaring deficiencies in the Petition and in light of the fact that Conrail offered \$1.9 Billion one year ago, which offer was refused by the petitioner as insufficient, the refusal of the Board to grant the respondents sufficient time to gain the expertise required to review this offer and then to prepare an adequate response is an abuse of discretion. The actions of the Board fly in the face of the requirements of law. See U.S. v. F.C.C. 652 F.2d 72, 126 (D.C. Cir. 1980). The petition should, therefore, be rejected.

III

THE PETITION IS PREMATURE

The need for some action by the Board to relieve anti-competitive effects, a possibility which significantly enhances the current value of an ownership interest in SSW, is not a remote possibility. One of the effects of monopoly is poor service. Since this merger and that of the BN-SF were approved, transcontinental carload transit times have deteriorated, car service from the mega-merger western carriers to the existing smaller eastern lines has deteriorated. Thus, the mega-mergers have not enhanced efficiency. Profitability has also not been enhanced. Further, rerouting of traffic which allows the abandonment of disfavored lines, such as that rerouting which is a stated objective of this merger application, is resulting in a continuation of the destruction of rail capacity, restricting the ability of the railroad industry to respond to either increased market demand or to national emergencies. These effects are not in the public interest and stand as warnings that the Board should not allow itself to be rushed in its consideration of merger applications, particularly those presented for expedited consideration for incomprehensible reasons such as the instant application.

Toward the end of trimming its system, the Petitioner gives as its second justification the need to control the routing of cars shipped over its lines. This part of the

petition materially increases the chance of the merger having a marked anti-competitive effect as well as a generally detrimental effect on the national interest. UP will use its routing ability (now controlled by shippers due to the distinctions between component companies which Petitioner seeks to eliminate) to route all traffic on the few main lines UP chooses to maintain. These lines will be selected which generally serve markets at the least cost to UP or which provide its competitors with the least access to UP shippers. These lines will not be selected because they are the routes which will provide the shippers with the most efficient service

Where, as here, Petitioner controls one half of all railroad trackage west of the Mississippi, i.e. in two thirds of the Continental United States, the consequences of downgrading of the railroad's physical plant must be considered. This control of routing, to be accomplished by divesting the component segments of the UP-SP system of their semi-separate identity, will deny the shippers any ability to determine what services are most favorable for their needs.

It must also be noted that cars released by shippers without specific routing instructions are routed by the originating railroad. Shippers who are concerned with their costs or with the arrival time of shipped goods routinely insist on specific routes for their cargo. The shippers who are exercising this right are apparently choosing routes which UP does not favor. They do so because it is to their economic advantage to do so. Thus, it is submitted that the Petition will adversely effect the viability of thousands of shippers, none of whom have received notice of this petition.

In the instant application, the effect of routing control will be that lines drained of traffic by the exercise of such control will be quickly downgraded, (action which requires no Board approval), or broken (action requiring Board approval). Either

action by UP will make restoration of full service, or, indeed, any service, on the effected lines extraordinarily expensive.

Requiring UP to divest itself of lines which cannot be used without substantial capital investment may be a futile exercise. The five year review of anti competitive effects of this merger is, thus, rendered superfluous. By maneuvering traffic UP can reduce track capacity, without further action by this Board. Track capacity can be reduced to the point that Petitioner will be able to argue that the plant remaining, after five years, can not accommodate the additional traffic. Granting trackage rights, which, by that time, may be the Board's only option to restore some measure of competition in the effected region, will be rendered impossible. This application is thus, aimed at frustrating the Board's ability to carry out its mandate of assuring the adequacy and efficiency of the nation's railway system.

Consideration of this Petition should be denied until the end of the five year moratorium in order to fairly determine the value of the petitioner's shares at the only time when their purchase by anyone may become necessary to carry out national transportation policy.

CONCLUSION

The instant application is premature and unnecessary. The expedition of this petition simply prevents the Board from fulfilling its legal mandate. A decision based

upon this record cannot be justified as no opportunity to determine the fair and reasonable value of the shares in question has been afforded to the Respondents.

Dated: New York, New York
September 10, 1997

Respectfully submitted

McHugh & Sherman
Attorneys for Respondent
Homer Henry
20 Exchange Place
New York, N.Y. 10005
212-483-0875

By: 

John E. McHugh

CERTIFICATE OF SERVICE

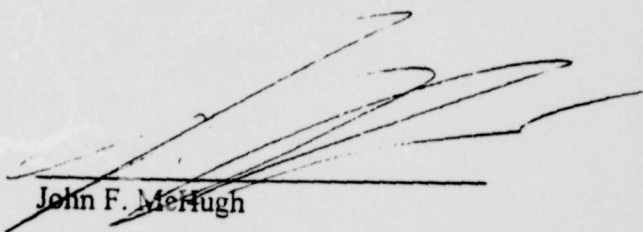
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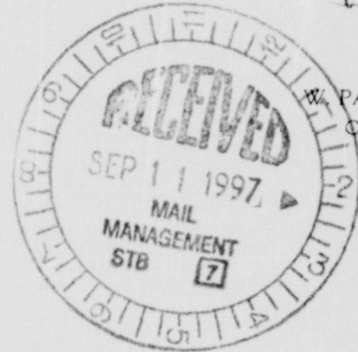
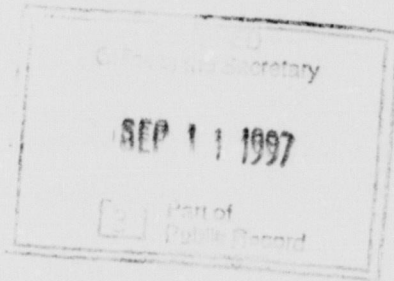
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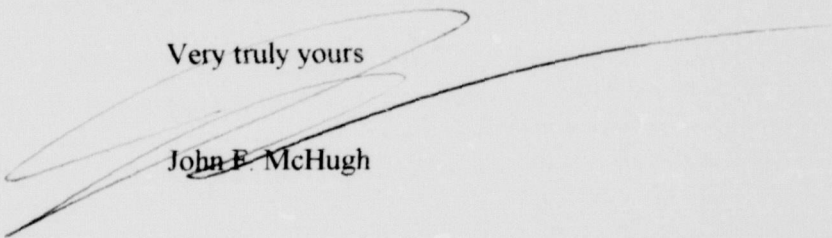
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SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
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In addition to failing to address the significance of the Conrail offer, which Union Pacific management rejected (indicating that the offer was insufficient), the justification for the current application is incredible, a fact which alone should cast doubt on the fairness of the price offered. The Petition is filed, and expedition is sought, allegedly, to relieve the Union Pacific Corporation from keeping separate books for the SSW. It seeks to terminate such bookkeeping, not at the end of the fiscal year, but at the beginning of the fourth quarter. Casting further doubt on that justification, the merger is not with UP or any of its existing corporate entities, a step which would allegedly eliminate the bookkeeping in question. Rather, it is with the SSW Merger Corp., a new separate entity. How such a merger, creating simply another separate entity, to be completed in mid year, avoids maintaining separate books is simply not explained and, of course, cannot be justified. Nor is the avoidable cost of maintaining those books set forth. Thus, it would appear on this record that the bookkeeping argument is merely a ruse to force expedited consideration of this petition, an excuse to avoid the full analysis of the offer required by law. See Schwabacher v. United States, 334 U.S. 182, 196 (1948).

Respondents, in Mr. Grocki's affidavit, have provided expert analysis of the price offer for the 61 outstanding common shares of SSW and have established that the support for the price submitted by the Petitioner is internally inconsistent. Respondent's expert has established that based on the Conrail offer of \$1.9 billion, made to the Petitioner one year ago, there is reason to believe that the offered price is significantly below the fair market value of the SSW shares today. In the face of the

glaring deficiencies in the Petition and in light of the fact that Conrail offered \$1.9 Billion one year ago, which offer was refused by the petitioner as insufficient, the refusal of the Board to grant the respondents sufficient time to gain the expertise required to review this offer and then to prepare an adequate response is an abuse of discretion. The actions of the Board fly in the face of the requirements of law. See U.S. v. F.C.C. 652 F.2d 72, 126 (D.C. Cir. 1980). The petition should, therefore, be rejected.

III

THE PETITION IS PREMATURE

The need for some action by the Board to relieve anti-competitive effects, a possibility which significantly enhances the current value of an ownership interest in SSW, is not a remote possibility. One of the effects of monopoly is poor service. Since this merger and that of the BN-SF were approved, transcontinental carload transit times have deteriorated, car service from the mega-merger western carriers to the existing smaller eastern lines has deteriorated. Thus, the mega-mergers have not enhanced efficiency. Profitability has also not been enhanced. Further, rerouting of traffic which allows the abandonment of disfavored lines, such as that rerouting which is a stated objective of this merger application, is resulting in a continuation of the destruction of rail capacity, restricting the ability of the railroad industry to respond to either increased market demand or to national emergencies. These effects are not in the public interest and stand as warnings that the Board should not allow itself to be rushed in its consideration of merger applications, particularly those presented for expedited consideration for incomprehensible reasons such as the instant application.

Toward the end of trimming its system, the Petitioner gives as its second justification the need to control the routing of cars shipped over its lines. This part of the

petition materially increases the chance of the merger having a marked anti-competitive effect as well as a generally detrimental effect on the national interest. UP will use its routing ability (now controlled by shippers due to the distinctions between component companies which Petitioner seeks to eliminate) to route all traffic on the few main lines UP chooses to maintain. These lines will be selected which generally serve markets at the least cost to UP or which provide its competitors with the least access to UP shippers. These lines will not be selected because they are the routes which will provide the shippers with the most efficient service

Where, as here, Petitioner controls one half of all railroad trackage west of the Mississippi, i.e. in two thirds of the Continental United States, the consequences of downgrading of the railroad's physical plant must be considered. This control of routing, to be accomplished by divesting the component segments of the UP-SP system of their semi-separate identity, will deny the shippers any ability to determine what services are most favorable for their needs.

It must also be noted that cars released by shippers without specific routing instructions are routed by the originating railroad. Shippers who are concerned with their costs or with the arrival time of shipped goods routinely insist on specific routes for their cargo. The shippers who are exercising this right are apparently choosing routes which UP does not favor. They do so because it is to their economic advantage to do so. Thus, it is submitted that the Petition will adversely effect the viability of thousands of shippers, none of whom have received notice of this petition.

In the instant application, the effect of routing control will be that lines drained of traffic by the exercise of such control will be quickly downgraded, (action which requires no Board approval), or broken (action requiring Board approval). Either

action by UP will make restoration of full service, or, indeed, any service, on the effected lines extraordinarily expensive.

Requiring UP to divest itself of lines which cannot be used without substantial capital investment may be a futile exercise. The five year review of anti competitive effects of this merger is, thus, rendered superfluous. By maneuvering traffic UP can reduce track capacity, without further action by this Board. Track capacity can be reduced to the point that Petitioner will be able to argue that the plant remaining, after five years, can not accommodate the additional traffic. Granting trackage rights, which, by that time, may be the Board's only option to restore some measure of competition in the effected region, will be rendered impossible. This application is thus, aimed at frustrating the Board's ability to carry out its mandate of assuring the adequacy and efficiency of the nation's railway system.

Consideration of this Petition should be denied until the end of the five year moratorium in order to fairly determine the value of the petitioner's shares at the only time when their purchase by anyone may become necessary to carry out national transportation policy.

CONCLUSION

The instant application is premature and unnecessary. The expedition of this petition simply prevents the Board from fulfilling its legal mandate. A decision based

upon this record cannot be justified as no opportunity to determine the fair and reasonable value of the shares in question has been afforded to the Respondents.

Dated: New York, New York
September 10, 1997

Respectfully submitted

McHugh & Sherman
Attorneys for Respondent
Homer Henry
20 Exchange Place
New York, N.Y. 10005
212-483-0875

By: _____

John E. McHugh

CERTIFICATE OF SERVICE

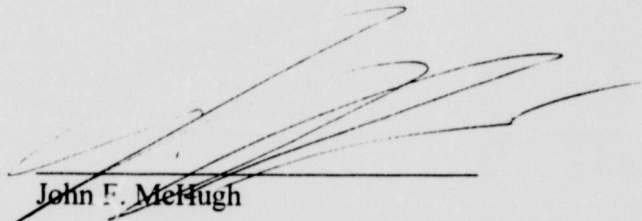
I hereby certify that a true copy of the foregoing "OBJECTIONS OF RESPONDENT HOMER HENRY" was served this 11th day of September, 1997 on individuals listed below.

Carl W. Von Bernuth
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018

James V. Dolan
Law Department
Union Pacific Railroad Company
Southern Pacific Transportation Company
1416 Dodge Street
Omaha, Nebraska 68179

Josph S. Guzman
P.O. Box 92315
Pasadena, California 91109-2315

Donald and Benjamin Zatz
62-27 108th Street
Apartment 1-8E
Forest Hills, New York 11375-1140



John F. McHugh

STB FD

32760

(Sub 23)

10-6-97

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SEC

SERVICE DATE - OCTOBER 6, 1997

SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

October 1, 1997

STB Finance Docket No. 32760 (Sub-No. 23)

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

NOTICE

A court action, entitled as shown below,
was instituted on or about September 29, 1997,
involving the above-entitled proceeding:

No. 97-4287

Donald Zatz, Benjamin Zatz, Homer Henry and Joseph Guzman

v.

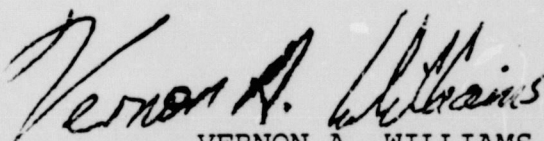
Surface Transportation Board

United States of America

before the

United States Court of Appeals for the

Second Circuit



VERNON A. WILLIAMS
Secretary

FRITZ R KAHN
1100 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-3934 US

CHARLES A SPITULNIK
HOPKINS & SUTTER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006 US

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

ERIC M. HOCKY
GOLLATZ, GRIFFIN, EWING
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

Records: 4

STB

FD

32760

(Sub 23)

10-1-97

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28419

28419
SEC

SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
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VERNON A. WILLIAMS
Secretary

STB FD-32760 (SUB 23) ID-28358 9-26-97 C

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 23)

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

Decided: September 26, 1997

This decision addresses whether the terms of the proposed merger of St. Louis Southwestern Railway Company (SSW) into SSW Merger Corp., including without limitation the \$6,800 per share price to be paid to the four minority shareholders who own the 61 shares of SSW's common stock that are publicly held, are just and reasonable.

BACKGROUND

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) (UP/SP Dec. No. 44), we 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).¹

The common control authorized in UP/SP Dec. No. 44 was consummated on September 11, 1996, with the merger of SPR with and into UP Holding Company, Inc., a direct wholly owned subsidiary of UPC.

In the application filed on November 30, 1995, applicants had noted, among other things, that, in effectuating UP/SP common control, they intended to merge SPT, SSW, SPCSL, and DRGW into UPRR, although they added that these companies might retain their separate existence for some time. See UP/SP Dec. No. 44, slip op. at 8. With respect to SSW, applicants had specifically noted that, although SSW had a small number of minority equity holders and although the Federal Railroad Administration (FRA) held certain SSW redeemable preference shares, the application did not include a request for a Schwabacher determination² with respect to the compensation that might be paid to SSW security holders in connection with a merger of SSW

¹ In UP/SP Dec. No. 44: Union Pacific Corporation was referred to as UPC; Union Pacific Railroad Company was referred to as UPRR; Missouri Pacific Railroad Company was referred to as MPRR; UPRR and MPRR were referred to collectively as UP; Southern Pacific Rail Corporation was referred to as SPR; Southern Pacific Transportation Company was referred to as SPT; St. Louis Southwestern Railway Company was referred to as SSW; SPCSL Corp. was referred to as SPCSL; The Denver and Rio Grande Western Railroad Company was referred to as DRGW; SPT, SSW, SPCSL, and DRGW were referred to collectively as SP; UPC, UP, SPR, and SP were referred to collectively as "applicants"; and the application that had been filed by applicants on November 30, 1995, was variously referred to as "the application" and "the primary application."

² The reference is to Schwabacher v. United States, 334 U.S. 192 (1948).

into UPRR. Applicants added, however, that, if they later determined to carry out such a merger, they would request either a Schwabacher determination respecting the terms of the merger or a declaratory order that no such determination was required. See UP/SP Dec. No. 44, slip op. at 8 n.6 (second paragraph).

By petition (designated UP/SP-306) filed July 17, 1997, the remaining applicants (UPC, UPRR, SPR, SPT, and SSW, hereinafter referred to simply as "applicants") indicate: that MPRR was merged into UPRR on January 1, 1997; that SPCSL and DRGW were merged into UPRR on June 30, 1997; that the corporate restructuring of the UP/SP system will be completed in February 1998 with the merger of SPT into UPRR; and that, prior to and in anticipation of the merger of SPT into UPRR, SSW (more than 99.96% of the common stock of which is owned by SPT)³ is to be merged into SSW Merger Corp. (100% of the common stock of which is owned by SPT), and SSW Merger Corp. is then to be merged into UPRR. Applicants have requested, in the UP/SP-306 petition, that we issue a determination that the terms of the proposed merger of SSW into SSW Merger Corp. (in particular, the \$6,800 per share price to be paid to the four shareholders who own the 61 shares of SSW's common stock that are publicly held) are just and reasonable.⁴ Applicants seek this determination (1) because they believe the Board is required by Schwabacher to make such a determination to protect minority shareholders, and (2) in order to immunize the merger of SSW into SSW Merger Corp. from the otherwise applicable state law rights, particularly the otherwise applicable state law appraisal rights, of the four remaining public shareholders. 49 U.S.C. 11321(a).

Our statutory mandate, 49 U.S.C. 11324(c), requires, among other things, that we determine, in appropriate cases, that the terms and conditions of certain transactions affecting stockholders are just and reasonable. See, e.g., UP/SP Dec. No. 44, slip op. at 177; Union Pacific Corp. et al. --Cont. --MO-KS-TX Co. et al., 4 I.C.C.2d 409, 515 (1988) ("In appraising this transaction affecting the rights of stockholders, it is incumbent upon us to see that the interests of minority stockholders are protected and that the overall proposal is just and reasonable to those stockholders. Schwabacher v. United States, 344 U.S. 182, 198, 201 (1948)."). Acting in compliance with this statutory mandate, we announced, in a decision served July 29, 1997, and published that day in the Federal Register at 62 FR 40566, that we had been asked to issue a finding that, and we were therefore soliciting comments from all interested persons respecting whether, the terms and conditions of the proposed merger of SSW into SSW Merger Corp. were just and reasonable. We requested that any comments be filed by August 28, 1997.

By decisions served August 20, 1997, and September 5, 1997, the due date for filing comments was extended, first to September 8, 1997, and then to September 11, 1997.

Comments objecting to the determination sought in the UP/SP-306 petition have been filed by the four public shareholders: Benjamin Zatz, Donald Zatz, Joseph S. Guzman, and Homer Henry.⁵

³ SPT owns 173,239 of the 173,300 shares of SSW common stock.

⁴ Applicants indicate that, prior to and independent of the merger, the shares of SSW preferred stock that are publicly held will be redeemed at par value pursuant to their terms. See UP/SP-306 at 1 n.2. Applicants further indicate that they have reached an agreement with FRA regarding the treatment of the FRA preference shares, which will remain in existence as obligations of the merged company (i.e., UPRR). See UP/SP-306 at 3 n.4.

⁵ Of the 61 publicly held shares: the Zatzes own 55; Mr. Guzman owns 5; and Mr. Henry owns 1.

DISCUSSION AND CONCLUSIONS

In developing the \$6,800 per share price, applicants received the advice of, and a written valuation from, Credit Suisse First Boston (CSFB), an investment banking firm with both extensive expertise in the area of railroad securities and an in-depth knowledge of UP/SP operations. CSFB considered, in arriving at its valuation of SSW stock, a range of pertinent factors, including: SSW financial and operating data as compared with financial, operating, and stock market information for other companies in the railroad industry; financial terms of certain other recently effected or proposed railroad transactions; projected SSW cash flow, taking account of the forecast synergies of the UP/SP merger; and other relevant information, financial studies, and analyses. CSFB also considered the compensation SSW shareholders have received in exchange for their shares in several older sale transactions. The factors that CSFB considered are factors that we have found to be acceptable in determining whether the securities terms of a transaction are, or are not, just and reasonable. See, e.g., UP/SP Dec. No. 44, slip op. at 177-78; Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company, Finance Docket No. 32133, Decision No. 28, slip op. at 3 (ICC served June 22, 1995).

CSFB, in arriving at the \$6,800 per share valuation, used three different valuation analyses: a comparable company analysis; a discounted cash flow analysis; and a comparable acquisition analysis. Each of these methods produced a different range of values per share, ranging from a low of \$4,155 per share to a high of \$6,809 per share. The comparable company analysis, which compared financial and operating data for SSW with similar data for major Class I and Class II railroads, resulted in an SSW equity value range of approximately \$4,155 to \$4,905 per share. The discounted cash flow analysis, which used various discount rates and cash flow projections, resulted in an SSW equity value range of approximately \$6,030 to \$6,694 per share. The comparable acquisition analysis, which compared purchase prices and multiples paid or proposed to be paid in selected railroad acquisitions, resulted in an SSW equity value range of approximately \$5,655 to \$6,809 per share.

Because the CSFB appraisal considered factors that we have found to be acceptable, because the calculations contained therein appear to be correct, and because the \$6,800 per share valuation urged by applicants is at the top end of the range of SSW's common equity value as calculated by CSFB, we find that the \$6,800 per share valuation is just and reasonable.

The four public shareholders have challenged the \$6,800 per share valuation, but their arguments are not persuasive.

(1) It is argued that the \$6,800 per share valuation fails to reflect the \$1.9 billion SSW purchase "offer" made by Consolidated Rail Corporation (Conrail) during the course of the UP/SP control proceeding, see UP/SP Dec. No. 44, slip op. at 26 n.36. Mr. Henry contends that the \$1.9 billion "offer" translates into a \$10,900 per share valuation. The Zatzes contend that this "offer" translates into a \$13,209 per share valuation.⁶

The \$10,900 and \$13,209 calculations are flawed in two distinct and significant ways. First, the \$1.9 billion "offer" was not firm, and thus could not be relied on by UPC, since Conrail explained that its proposed purchase price was based on its estimate of the operating cash flow of

⁶ The \$10,900 calculation appears to have been arrived at by dividing \$1.9 billion by the 173,300 SSW shares, and then rounding off the \$10,963 quotient. The \$13,209 calculation, which is premised upon the notion that the \$1.9 billion "offer" was for only 83% of the SSW, was arrived at: (a) by dividing \$1.9 billion by 83%, which works out to a \$2,289,156,627 "offer" for 100% of the SSW; and then (b) by dividing \$2,289,156,627 by the 173,300 SSW shares, which works out to \$13,209 per share.

the properties to be acquired, and that the offer would be adjusted accordingly if the estimate proved not to be correct.⁷ Further, only a part of the "offer" represented cash that would be available for equity shareholders, with the remainder an undisclosed amount of assumed debt.

Second, the \$10,900 and \$13,209 calculations, by making no adjustment for the fact that the Conrail "offer" encompassed a large part of SPCSL and important pieces of SPT, significantly overstate the portion of the "offer" that reflected SSW properties. The \$1.9 billion "offer" was not for SSW as such, but rather was for a collection of assets that Conrail referred to as the "SP East," by which was meant SP's properties in Texas, Louisiana, and Arkansas, SP's eastern main line in Missouri and Illinois, all access rights associated with these lines, and all other assets held by SP or its affiliates and used or useful for the maintenance and operation of these lines.⁸ The SSW, however, constituted only a portion of the SP East.⁹ Further, the "offer" also included "an appropriate number" of locomotives, rolling stock, and other equipment, which, as applicants have explained, was not limited to SSW equipment. Even assuming that the \$1.9 billion "offer" was firm, there is really no way to determine what, if anything, Conrail would have offered for the SSW alone, or even for that part of the SSW that was embraced within the SP East. All that can be said with certainty is that any such offer would have been for substantially less than \$1.9 billion.

(2) It is argued, in essence, that the \$1,178,440,000 total valuation proposed by applicants¹⁰ reflects the past but makes no allowance for the future. The value of the SSW franchise, this argument runs, may be on the verge of a dramatic increase, in view of the proposed acquisition of Conrail by CSX Corporation (CSX) and Norfolk Southern Corporation (NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 12 (STB served July 23, 1997, and published that day in the Federal Register at 62 FR 39577). It may well be,

⁷ Applicants have explained that this valuation method, which Conrail never applied to actual SP data, appears very similar to the un rebutted "discounted cash flow" analysis that CSFB performed with respect to SSW, and which, after taking into account the forecast synergies of the UP/SP merger, produced an estimated per share value range of \$6,030 to \$6,694.

⁸ To be precise, the term "SP East" was intended to encompass: (1) SP's lines from Chicago and St. Louis to Galveston, TX, and Brownsville, TX, and from New Orleans to Spofford, TX, Eagle Pass, TX, and El Paso, TX, including all connecting trackage and spur lines serving Alton, IL, New Madrid, MO, Memphis, TN, Little Rock, AR, Indiana, AR, Breaux Bridge, LA, and all intermediate Texas points; (2) all trackage, haulage, and access rights associated with these lines and SP's ownership of, and rights in, the jointly used UP-SP line extending from East St. Louis to Jonesboro, AR; (3) SP's interest in the Alton & Southern Railway Company and the Terminal Railroad Association of St. Louis, and any other terminal railroad serving traffic originating/terminating on the acquired lines; (4) SP's interest in various bridge companies necessary to the effective operation of the acquired lines; and (5) all other assets (including yards, storage facilities, and sidings), options for same, or other facilities used or held by SP or its affiliates for the maintenance, operation, and efficient use of the acquired lines and assets. See UP/SP Dec. No. 44, slip op. at 23.

⁹ See UP/SP Dec. No. 44, slip op. at 15: "SSW operates approximately 2,200 miles of main line and branch line in the Central United States. SSW's main line runs from Santa Rosa, NM, to Kansas City and St. Louis. Operations between Topeka, KS, and St. Louis are over trackage rights on UP. SSW main lines extend from St. Louis south to Shreveport, LA, and Corsicana, TX."

¹⁰ This figure is derived by multiplying the \$6,800 per share valuation by the 173,300 shares.

this argument continues, that SSW someday will be worth much more to, and therefore might be subject to acquisition by, either a post-merger CSX/Conrail or a post-merger NS/Conrail.¹¹

This approach, which is premised upon the notion that certain traffic realignments might be expected to follow in the wake of the proposed division of Conrail by and between CSX and NS, is totally speculative in that it is entirely directed to SSW's future valuation (under an as yet undetermined future rail realignment) and not to SSW's present valuation. The unusual and speculative nature of this approach is highlighted by the Zatzes' witness, Mr. Grocki, who states that "if the [CSX-NS-Conrail] merger is approved, the value of the SSW could be substantially greater than its value today." John J. Grocki statement dated September 10, 1997, at 4 (emphasis added).¹² The recently filed Conrail merger application is now pending before us, and our final written decision on the merits of that application will not be issued until June 8, 1998. It suffices to say that even if (a) the Conrail merger application is ultimately approved, and (b) the UP/SP oversight process ultimately results in the forced divestiture of the SSW lines, any sale of those lines will not occur in the reasonably foreseeable future, and the purchaser of SSW will not necessarily be either a post-merger CSX/Conrail or a post-merger NS/Conrail. The crucial issue we must resolve now, however, is what SSW is worth today, not what SSW might be worth at some uncertain time in the future.¹³

(3) It is argued, in essence, that, in requiring that comments be filed no later than September 11, we have not accorded the four public shareholders, who are not skilled in matters of railroad finance, sufficient time to participate effectively in this proceeding, and have thereby violated the most basic principles of due process.

This argument fails both because the four public shareholders have been afforded sufficient time to participate effectively in this proceeding¹⁴ and also because there is no reason to believe that they could participate any more effectively no matter how much more time they were allowed. There are essentially only two approaches (one financial, the other econometric) that could be taken in seeking a valuation higher than \$6,800 per share, and there is no reason to believe that the results of either such approach might cause us to conclude that the \$6,800 per share valuation is too low. The financial approach would entail an analysis of the CSFB appraisal and/or the preparation of a similar appraisal (with a higher per share bottom line). However, in

¹¹ There is no reason to think that UP would willingly sell off SSW, but, in at least one conceivable circumstance, such a sale could occur without UP's concurrence. See UP/SP Dec. No. 44, slip op. at 146 (emphasis in original): "We impose as a condition to approval of this merger oversight for 5 years to examine whether the conditions we have imposed have effectively addressed the competitive issues they were intended to remedy. We retain jurisdiction to impose additional remedial conditions if, and to the extent, we determine that the conditions already imposed have not effectively addressed the competitive harms caused by the merger." Divestiture is one of the additional remedial conditions we can impose. See UP/SP Dec. No. 44, slip op. at 231, ordering paragraph 6.

¹² This statement is attached to the statement of Benjamin Zatz and Donald Zatz, filed September 11, 1997.

¹³ The same result holds even if it is assumed that the Conrail merger application will ultimately be denied, and that the UP/SP oversight process will ultimately result in the acquisition of the SSW lines by a still independent Conrail. Any such acquisition will not occur in the reasonably foreseeable future.

¹⁴ The four public shareholders could have sought counsel at any time after receiving their copies of the UP/SP-306 petition (which, applicants state, were served on the four public shareholders on July 14, 1997), and they are now represented by counsel. They have had eight full weeks (from July 14 to September 11) to analyze, or to have others skilled in railroad finance analyze, the matters addressed in the UP/SP-306 petition.

our opinion, the CSFB appraisal is entirely persuasive, and thus another financial analysis would not lead to a different result. The econometric approach, which might be based upon an analysis of the Carload Waybill Statistics database, would focus upon the traffic realignments that might be expected to occur if and when Conrail is divided by and between CSX and NS. The econometric approach also would fail because, as noted above, that approach addresses the future, not the present.¹⁵

(4) It is argued by Mr. Henry that the merger of SSW into SSW Merger Corp. will itself have anticompetitive effects, and will not be in the public interest, in that this merger (and, more broadly, the merger of all of the SP railroads into UPRR) will give UP/SP increased routing power and will allow it to downgrade, and perhaps to abandon, certain lines. It is therefore requested that the UP/SP-306 petition be held in abeyance until the end of the oversight period.

This argument fails because it amounts to a collateral attack upon UP/SP Dec. No. 44; it was that decision, not the decision issued today, that allowed applicants to merge SSW (indeed, all of the SP railroads) into UPRR. Moreover, UP/SP cannot, by downgrading or abandoning certain lines, undermine our oversight jurisdiction, and any future abandonments remain subject to our prior approval.

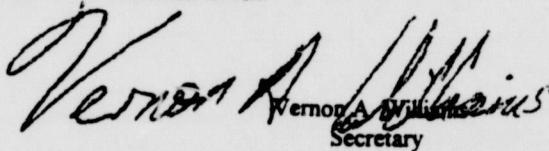
Finding. We find, based upon the evidence of record in this proceeding, that the terms of the proposed merger of SSW into SSW Merger Corp., including without limitation the \$6,800 per share price to be paid to the four minority shareholders, are just and reasonable.

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

It is ordered:

1. This proceeding is discontinued.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.


Vernon A. Williams
Secretary

¹⁵ The due process argument is accompanied by an argument to the effect that a delay in issuing a final decision in this proceeding would not harm any of applicants' legitimate interests. We reject this argument because we agree with applicants: that the merger of SSW into SSW Merger Corp. is an intermediate step in the process of merging all of the SP railroads into UPRR, with the ultimate merger of SPT into UPRR now scheduled to occur in February 1998; that the merger of all of the SP railroads into UPRR will facilitate the achievement of the benefits of the UP/SP merger by allowing UP/SP customers to enjoy the full benefits of single-line and single-system service, and by allowing UP/SP to take advantage of the administrative efficiencies of operating as a single company; that, with the merger of all of the SP railroads into UPRR, UP/SP will no longer be required to maintain the recordkeeping systems necessary to record costs and revenues associated with each separate company; and that, if the merger of SSW into SSW Merger Corp., and the subsequent merger of SSW Merger Corp. into UPRR, cannot be completed before the end of the fiscal third quarter on September 30, 1997, UP/SP will be required to incur considerable expenses in connection with the preparation of separate SSW financial statements.

SERVICE LIST FOR: 26-sep-1997 STB FD 32760 23 UNION PACIFIC CORPORATION ET AL

FRITZ R KAHN
1100 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-3934 US

CHARLES A SPITULNIK
HOPKINS & SUTTER
818 SIXTEENTH STREET NW
WASHINGTON DC 20006 US

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

Records: 3

STB FD-32760 (SUB 23) ID-28268 9-5-97 C

SERVICE DATE - LATE RELEASE SEPTEMBER 5, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 23)

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

Decided: September 5, 1997

By petition (designated UP/SP-306) filed July 17, 1997, applicants¹ seek a determination that the terms of the proposed merger of SSW into SSW Merger Corp., including the \$6,800-per-share price to be paid to the four minority shareholders who own the 61 shares of SSW's common stock that are publicly held, are just and reasonable. See Schwabacher v. United States, 334 U.S. 192 (1948).²

By decision served July 29, 1997 (and published that day in the Federal Register at 62 FR 40566), we set August 28, 1997, as the due date by which interested persons could submit comments respecting whether the terms and conditions of the proposed merger of SSW into SSW Merger Corp. are just and reasonable. We set that due date to make possible the issuance of a final decision prior to September 30, 1997, in view of applicants' claim that, unless they were able to merge SSW into SSW Merger Corp. prior to the end of the fiscal third quarter, they would be required to go to the considerable time, expense, and difficulty of preparing financial statements that reflect the operations of SSW as a separate entity.

By petition filed August 15, 1997, Benjamin Zatz and Donald Zatz (petitioners) requested a 60-day extension of the comment due date. Petitioners indicated that they are two of the four minority SSW shareholders, and own 55 of the 61 minority shares; that they had devoted considerable time to locating and retaining transportation counsel and a financial analyst; that they had retained such counsel, but that such counsel needed time to familiarize himself with the case; and that it appeared unlikely that they would be able to retain a financial analyst sufficiently in advance of the comment due date. Petitioners further indicated that, because they believed that it would be impossible to prepare their comments without first reviewing the workpapers and supporting documents pertaining to applicants' Credit Suisse First Boston appraisal³ as well as detailed financial statements of SSW, they had already submitted to applicants their first request for the production of documents.

In our decision served August 20, 1997, we noted that, in our opinion, petitioners had failed to justify the 60-day extension they had requested. We stated that the central issue posed by the UP/SP-306 petition as regards petitioners concerns the value of the 61 minority SSW shares; that this issue does not appear to be overly complex; that, given the amount of time

¹ As indicated in the decision served July 29, 1997, slip op. at 4, the word "applicants" now has reference 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).

² Applicants indicate that the merger of SSW into SSW Merger Corp. will occur prior to and in anticipation of the merger, now scheduled to occur in February 1998, of SPT into UPRR.

³ See UP/SP-306, Exhibit A.

petitioners had already had to develop their case, an extension of the length sought by petitioners was clearly excessive; and that, furthermore, the extension requested by petitioners would make it impossible to issue a final decision on the UP/SP-306 petition prior to September 30, 1997. We found, however, that, under the circumstances, an extension of 10 days for the comment due date would provide petitioners with sufficient opportunity to develop their submission while preserving our ability to issue a final decision prior to September 30, 1997. Accordingly, we extended the comment due date for petitioners to September 8, 1997.

By "petition to reopen" filed September 4, 1997, petitioners now seek reconsideration of our denial of their request for a 60-day extension of the comment due date. Contending that they will not have, with the September 8 due date, a meaningful opportunity to offer their own view as to the fair value of their SSW shares, petitioners note that the Credit Suisse First Boston workpapers were not produced by applicants until August 27, 1997; that, because applicants have still not responded to petitioners' first set of interrogatories (served August 19, 1997), petitioners will have to file a motion to compel;⁴ and that their newly retained economic consultant, Mr. John J. Grocki, needs at least an additional month to analyze the carload waybill statistics database.⁵ Petitioners add that, because the Credit Suisse First Boston appraisal was available to applicants on April 14, 1997, but was not made available to petitioners until July 14, 1997, any delay (up to the first three months, anyway) in issuing a final decision is attributable to applicants; that, in view of the fact that SPT has held at least an 85% ownership interest in SSW for a great many years, the notion that substantial resources will be wasted unless SSW is quickly merged out of existence is simply implausible, and that, in any event, the merger of SSW into SSW Merger Corp. can take place prior to our issuance of a decision on the valuation of the SSW shares.⁶

By reply (designated UP/SP-317) filed September 5, 1997, applicants urge the denial of the petition to reopen.

⁴ Applicants' UP/SP-316 pleading (applicants' responses to petitioners' first set of interrogatories) is dated September 3, 1997. We assume that petitioners had not yet received their copy of the UP/SP-316 pleading at the time they filed their petition to reopen. We note, in this respect, that we received our copies of the UP/SP-316 pleading on September 4, 1997 (the date of filing of the petition to reopen). See also UP/SP-317 at 10 n.4 (applicants insist that the UP/SP-316 pleading was hand delivered by a courier service "and signed for at [petitioners'] counsel's building at 8:44 p.m., September 3").

⁵ Petitioners appear to be suggesting that any valuation of SSW should reflect the proposed acquisition of control of Conrail Inc. (Conrail) by CSX Corporation (CSX) and Norfolk Southern Corporation (NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 12 (STB served July 23, 1997, and published that day in the Federal Register at 62 FR 39577). Petitioners apparently envision that a detailed study of the carload waybill statistics would enable them to determine what potential traffic diversions could be made by a post-merger CSX/Conrail or a post-merger NS/Conrail if either such post-merger entity were also to acquire ownership of SSW.

⁶ Petitioners apparently do not concede that a post-merger valuation would be governed by federal law (49 U.S.C. 11321 and 11324) and not by state law (the remedies available to dissenting shareholders under the laws of the state in which SSW is incorporated).

DISCUSSION AND CONCLUSIONS

Petitioners' arguments are without merit. Petitioners received the UP/SP-306 petition on or about July 14,⁷ but inexplicably waited until August 15 to enter a formal appearance in this proceeding. In their petition (filed August 15) for an extension of the comment due date, petitioners indicated that they needed an extension in order to locate and retain a financial analyst, and, largely for this reason, we granted an 11-day extension of the comment due date. Now, however, petitioners evidently will not be retaining a financial analyst (there is no indication in the petition to reopen that petitioners have retained or any longer expect to retain such an analyst). Petitioners now indicate, however, that they have retained an economic consultant, and that he needs more time to analyze the carload waybill statistics.

The econometric approach, upon which petitioners have now embarked, will involve an analysis of the traffic realignments that might be expected to follow in the wake of the division of Conrail by and between CSX and NS. Petitioners will evidently seek to argue that, following a rail realignment in the Eastern United States, the SSW franchise will be worth substantially more (either under its present UPC ownership, or pursuant to a sale to either CSX/Conrail or NS/Conrail) than it is worth today. This approach, however, is entirely speculative. The Conrail merger application is a recently filed, pending case, and our final written decision on the merits of that application will not even be issued until June 8, 1998. Moreover, this approach is, for the same reason, entirely directed to SSW's future valuation, not to SSW's present valuation.

We conclude that petitioners have failed to provide any relevant basis for finding that the extension they seek would in any way improve their chances of receiving a valuation higher than the \$6,800-per-share valuation offered by applicants. We will therefore adhere to our determination to issue a final decision by September 30,⁸ and we will deny the petition to reopen. In the interest of allowing petitioners the maximum possible opportunity to present their case, however, we will extend by three days the comment due date.⁹

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

It is ordered:

1. The petition to reopen, filed September 4, 1997, by petitioners Benjamin Zatz and Donald Zatz, is denied.

⁷ Petitioners indicate that they received the UP/SP-306 petition "some time after" July 14, see the petition to reopen at 2, but the context suggests that this receipt must have occurred within a few days after July 14.

⁸ Applicants are correct in their assertion that, unless they are able to merge SSW into SSW Merger Corp. prior to the end of the fiscal third quarter, they will be required to go to the considerable time, expense, and difficulty of preparing financial statements that reflect the operations of SSW as a separate entity. See UP/SP-317 at 7 (applicants note that, in view of already accomplished integration of SSW accounting functions, they would incur costs in excess of \$300,000 if they were required to prepare the data necessary to allocate revenues to SSW).

⁹ Petitioners are two of the four minority SSW shareholders. To assure that the other two minority SSW shareholders are kept informed of the status of this proceeding, we will direct applicants to serve a copy of this decision upon these other two shareholders no later than September 11, 1997, and to certify to us that such service has been made.

2. The procedural schedule established in the decision served July 29, 1997, as modified in the decision served August 20, 1997, remains in effect, except as indicated in ordering paragraph 3.

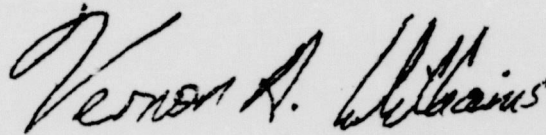
3. Comments by petitioners Benjamin Zatz and Donald Zatz are due by September 11, 1997.

4. Applicants' reply to any comments filed by petitioners Benjamin Zatz and Donald Zatz remains due by September 15, 1997.

5. Applicants must serve copies of this decision upon the other two minority SSW shareholders by September 11, 1997, and must certify to us that such service has been made.

6. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.



Vernon A. Williams
Secretary

FRITZ R KAHN
1100 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-3934 US

CHARLES A SPITULNIK
HOPKINS & SUTTER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006 US

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

Records: 3

STB FD-32760 (SUB 23) ID-28213 8-20-97 C

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 23)

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

Decided: August 20, 1997

By petition (designated UP/SP-306) filed July 17, 1997, applicants¹ seek a determination that the terms of the proposed merger of SSW into SSW Merger Corp., including the \$6,800-per-share price to be paid to the four minority shareholders who own the 61 shares of SSW's common stock that are publicly held, are just and reasonable. See Schwabacher v. United States, 334 U.S. 192 (1948).²

By decision served July 29, 1997 (and published that day in the Federal Register at 62 FR 40566), we indicated that, because the UP/SP-306 petition implicates our statutory mandate and involves a matter that requires expedited regulatory action, we would proceed upon the schedule sought by applicants. Accordingly, we set August 28, 1997, as the due date by which interested persons could submit comments respecting whether the terms and conditions of the proposed merger of SSW into SSW Merger Corp. are just and reasonable.

By petition filed August 15, 1997, Benjamin Zatz and Donald Zatz (petitioners) request a 60-day extension of the comment due date. Petitioners indicate that they are two of the four minority SSW shareholders; that they own 55 of the 61 minority shares; that, since receiving the UP/SP-306 petition, they have devoted considerable time to locating and retaining transportation counsel and a financial analyst; that they have now retained such counsel; that such counsel needs time to familiarize himself with the case, and that it appears unlikely that petitioners will be able to retain a financial analyst sufficiently in advance of the comment due date. Petitioners further indicate that, because they believe that it will be impossible to prepare their comments without first reviewing the workpapers and supporting documents pertaining to applicants' Credit Suisse First Boston appraisal³ as well as detailed financial statements of SSW, they have already submitted to applicants their first request for the production of documents (a copy of which is attached to their petition).

Applicants, by reply (designated UP/SP-310) filed August 18, 1997, urge the denial of petitioners' request for an extension of the comment due date. Applicants indicate that copies of the UP/SP-306 petition were served on petitioners on July 14, 1997; that petitioners have been given, in effect, 6 full weeks (from July 14 to August 28) to retain appropriate legal counsel and a financial analyst, and to prepare their comments, and that the sought extension of the comment

¹ As indicated in the decision served July 29, 1997, slip op. at 4, the word "applicants" now has reference 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).

² Applicants indicate that the merger of SSW into SSW Merger Corp. will occur prior to and in anticipation of the merger, now scheduled to occur in February 1998, of SPT into UPRR.

³ See UP/SP-306, Exhibit A

due date will impose a considerable burden on applicants because, "unless this matter is resolved before September 30, the end of SSW's fiscal third quarter, UP/SP will be required to undertake the expensive and resource-intensive task of preparing financial statements that reflect SSW's operations as a separate company." UP/SP-310 at 2. Applicants add: that they will respond to petitioners' "straightforward" discovery requests "as expeditiously as possible"; and that they have already provided petitioners with a portion of the requested documents. UP/SP-310 at 4.⁴

DISCUSSION AND CONCLUSIONS

Comment Due Date. Petitioners have failed to justify the 60-day extension they have requested. The central issue posed by the UP/SP-306 petition as regards petitioners concerns the value of the 61 minority SSW shares. This issue does not appear to be overly complex and, given the amount of time petitioners have already had to develop their case, an extension of the length sought by petitioners is clearly excessive. Furthermore, the extension requested by petitioners would make it impossible to issue a final decision on the UP/SP-306 petition prior to September 30, 1997.

Under the circumstances, we find that an extension of 10 days for the comment due date will provide petitioners with sufficient opportunity to develop their submission while preserving our ability to issue a final decision prior to September 30, 1997. Accordingly, we will extend the comment due date for petitioners to September 8, 1997, and we will allow applicants until September 15, 1997, to file a reply to petitioners' comments.

Service of This Decision. Petitioners are two of the four minority SSW shareholders. To assure that the other two minority SSW shareholders are kept informed of the status of this proceeding, we will direct applicants to serve a copy of this decision upon these other two shareholders no later than August 22, 1997, and to certify to us that such service has been made.

Electronic Submissions. As indicated in the decision served July 29, 1997, slip op. at 7-8, in addition to submitting an original and 10 copies of all documents filed with the Board, all parties are requested to submit all pleadings and attachments as computer data contained on 3.5-inch IBM-compatible floppy diskettes formatted for WordPerfect 7.0 (or formatted so that they can be converted by WordPerfect 7.0).⁵

Underlying Data. Attached to the UP/SP-306 petition as Exhibit A is a verified statement of Stephan C. Month of Credit Suisse First Boston. Mr. Month indicates that he performed three analyses (a comparable company analysis, a comparable acquisition analysis, and a discounted cash flow analysis), and that the composite of these analyses resulted in an SSW equity value range of approximately \$4,155 to \$6,809 per common share. Mr. Month's statement, while describing each of the three analytical methods he used and the values he derived therefrom, does

⁴ Petitioners, by an additional pleading filed August 19, 1997, have advised that the discovery request attached to their prior pleading was not the only discovery request they will be making; and they have attached to their new pleading a copy of their first set of interrogatories (also dated August 19, 1997). Petitioners' August 19 filing is an impermissible reply to a reply, but, in the interests of development of a complete record, we will accept it. We note, however, that much of the discovery requested by petitioners in their first set of interrogatories is of doubtful relevance.

⁵ If, however, any attachment is in the form of a spreadsheet, we would ask that the electronic spreadsheet be in, or convertible by, Lotus 1-2-3 97 Edition. Any party wishing to submit spreadsheets in a format other than Lotus 1-2-3 97 Edition should consult with Julia Farr, (202) 565-1613. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible by Lotus 1-2-3 97 Edition, may nevertheless be useable by our staff.

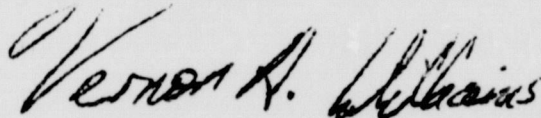
not include any supporting data showing how these values were actually calculated. This information may prove to be important in the event that applicants' \$6,800 valuation is subject to challenge. Accordingly, we are directing that applicants submit, by August 27, 1997, any workpapers or other documentation that show the underlying data and calculations that lie behind the values generated by Mr. Month's three analytical methods.⁶

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

It is ordered:

1. Petitioners pleading filed August 19, 1997, is accepted for filing and made part of the record in this proceeding.
2. The procedural schedule established in the decision served July 29, 1997, remains in effect, except as indicated in ordering paragraph 3.
3. Comments by petitioners Benjamin Zatz and Donald Zatz are due by September 8, 1997. Applicants' reply to such comments is due by September 15, 1997.
4. Applicants must serve copies of this decision upon the other two minority SSW shareholders by August 22, 1997 and must certify to us that such service has been made.
5. The parties shall submit all pleadings both in the required paper form and also as computer data contained on 3.5-inch IBM-compatible floppy diskettes.
6. By August 27, 1997, applicants must submit any workpapers or other documentation that show the underlying data and calculations that lie behind the values generated by Mr. Month's three analytical methods.
7. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.



Vernon A. Williams
Secretary

⁶ Applicants may, if appropriate, submit some or all of this material under seal, subject to the protective order entered in Decision No. 2 (served September 1, 1995) in the Finance Docket No. 32760 proceeding.

FRITZ R KAHN
1100 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-3934 US

CHARLES A SPITULNIK
HOPKINS & SUTTER
888 SIXTEENTH STREET NW
WASHINGTON DC 20006 US

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

Records: 3

STB FD-32760 (SUB 23) ID-28074 7-29-97 C

28074

SERVICE DATE - JULY 29, 1997

FR-4915-00-P

EB

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32760 (Sub-No. 23)]

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

AGENCY: Surface Transportation Board.

ACTION: Notice that the Board has been requested to issue a finding that the terms and conditions of the proposed merger of St. Louis Southwestern Railway Company into SSW Merger Corp. are just and reasonable.

SUMMARY: St. Louis Southwestern Railway Company, approximately 99.96% of the common stock of which is owned by Southern Pacific Transportation Company, is to be merged into SSW Merger Corp., 100% of the common stock of which is owned by Southern Pacific Transportation Company. The merger envisions, among other things, a "cashing out," at a price of \$6,800 per share, of the four shareholders who own the approximately 0.04% of the common stock of St. Louis Southwestern Railway Company that is publicly held (61 out of 173,300 shares). The Board has been requested to issue a finding that the terms and conditions of the merger are just and reasonable.

STB Finance Docket No. 32760 (Sub-No. 23)

DATES: Comments must be filed by August 28, 1997. Replies must be filed by September 12, 1997.

ADDRESSES: All pleadings should refer to STB Finance Docket No. 32760 (Sub-No. 23). Comments (an original and 10 copies) and replies (an original and 10 copies) should be sent to the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 32760 (Sub-No. 23), 1925 K Street, N.W., Washington, DC 20423-0001. Comments should also be served (one copy each) on Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044-7566. Replies should also be served (one copy each) on the four shareholders who own the 61 publicly held shares of the common stock of St. Louis Southwestern Railway Company and on any other persons filing comments.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613.

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

SUPPLEMENTARY INFORMATION: In Decision No. 44 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 (UP/SP)*, we 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).¹

The common control authorized in *UP/SP*, Decision No. 44, was consummated on September 11, 1996, with the merger of SPR with and into UP Holding Company, Inc., a direct wholly owned subsidiary of UPC.

In the application filed on November 30, 1995, applicants had noted, among other things, that, in effectuating *UP/SP* common control, they intended to merge SPT, SSW, SPCSL, and DRGW into UPRR, although they added that these companies might retain their separate existence for some time. See *UP/SP*, Decision No. 44, slip op. at 8. With respect to SSW, applicants specifically noted that, although SSW had a small number of minority equity holders and although the Federal Railroad Administration (FRA) held certain SSW redeemable preference shares, the application did not include a request for a

¹ In *UP/SP*, Decision No. 44: Union Pacific Corporation was referred to as UPC; Union Pacific Railroad Company was referred to as UPRR; Missouri Pacific Railroad Company was referred to as MPRR; UPRR and MPRR were referred to collectively as UP; Southern Pacific Rail Corporation was referred to as SPR; Southern Pacific Transportation Company was referred to as SPT; St. Louis Southwestern Railway Company was referred to as SSW; SPCSL Corp. was referred to as SPCSL; The Denver and Rio Grande Western Railroad Company was referred to as DRGW; SPT, SSW, SPCSL, and DRGW were referred to collectively as SP; UPC, UP, SPR, and SP were referred to collectively as "applicants"; and the application that had been filed by applicants on November 30, 1995, was variously referred to as "the application" and "the primary application."

Schwabacher determination² with respect to the compensation that might be paid to SSW security holders in connection with a merger of SSW into UPRR. Applicants added, however, that, if they later determined to carry out such a merger, they would request either a *Schwabacher* determination respecting the terms of the merger or a declaratory order that no such determination was required. *See UP/SP*, Decision No. 44, slip op. at 8 n.6 (second paragraph).

By petition (designated UP/SP-306) filed July 17, 1997, the remaining applicants (UPC, UPRR, SPR, SPT, and SSW, hereinafter referred to simply as "applicants") indicate: that MPRR was merged into UPRR on January 1, 1997; that SPCSL and DRGW were merged into UPRR on June 30, 1997; that the corporate restructuring of the UP/SP system will be completed in February 1998 with the merger of SPT into UPRR; and that, prior to and in anticipation of the merger of SPT into UPRR, SSW will be merged into SSW Merger Corp. Applicants seek, in the UP/SP-306 petition, a determination that the terms of the proposed merger of SSW into SSW Merger Corp. (in particular, the \$6,800-per-share price to be paid to the four shareholders who own the 61 shares of SSW's common stock that are publicly held) are just and reasonable.³

² The reference is to *Schwabacher v. United States*, 334 U.S. 192 (1948).

³ Applicants indicate that, prior to and independent of the merger, the shares of SSW preferred stock that are publicly held will be redeemed at par value pursuant to their terms. *See UP/SP-306* at 1 n.2. Applicants further indicate that they have reached an agreement with FRA regarding the treatment of the FRA preference shares, which will
(continued...)

Applicants seek this determination (1) because they believe the Board is required by *Schwabacher* to make such a determination to protect minority shareholders, and (2) in order to immunize the merger of SSW into SSW Merger Corp. from the otherwise applicable state law rights, particularly the otherwise applicable state law appraisal rights, of the four remaining public shareholders. 49 U.S.C. 11321(a).

Applicants urge expedited handling of their petition (in particular: that we publish notice of their petition in the *Federal Register*; that we allow interested persons 30 days to file comments; that we further allow applicants an additional 15 days to file a reply; and that we proceed promptly to a decision thereafter). Expedited handling is sought so that there will be, among other things, no unnecessary waste of resources associated with the need to maintain a formal distinction between SSW and the other rail carriers that have already been merged into UPRR. Applicants indicate that UP/SP will incur significant costs if it is unable to merge SSW into SSW Merger Corp. before September 30, 1997; unless that merger is completed before the end of the fiscal third quarter, applicants note, UP/SP will be required to go to the considerable time, expense, and difficulty of preparing financial statements that reflect the operations of SSW as a separate entity.

³(...continued)

remain in existence as obligations of the merged company. See UP/SP-306 at 3 n.4.

Applicants indicate that they are serving a copy of their UP/SP-306 petition "on all active parties in this proceeding," UP/SP-306 at 14 (lines 2-3),⁴ and that they will serve a copy "on any known SSW shareholders," UP/SP-306 at 14 (lines 3-4).⁵

Our statutory mandate, 49 U.S.C. 11324(c), requires, among other things, that we determine, in appropriate cases, that the terms and conditions of certain transactions affecting stockholders are just and reasonable. *See, e.g., Union Pacific Corp. et al.--Cont.--MO-KS-TX Co. et al.*, 4 I.C.C.2d 409, 515 (1988) ("In appraising this transaction affecting the rights of stockholders, it is incumbent upon us to see that the interests of minority stockholders are protected and that the overall proposal is just and reasonable to those stockholders. *Schwabacher v. United States*, 344 U.S. at 198, 201."). Because the UP/SP-306 petition implicates our statutory mandate and involves a matter that requires expedited regulatory action, we will proceed upon the schedule urged by applicants.

⁴ This apparently has reference to the parties of record in the UP/SP oversight proceeding. *See* the UP/SP-306 certificate of service (on the unnumbered page following p. 16). *See also* *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Railroad Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, STB Finance Docket No. 32760 (Sub-No. 21) (Decision No. 2, served June 19, 1997; Decision No. 3, served June 30, 1997; Decision No. 4, served July 16, 1997) (these decisions list the parties of record in the oversight proceeding).

⁵ We assume that this refers to the four persons listed on the UP/SP-306 certificate of service (on the unnumbered page following p. 16).

Accordingly, we solicit comments from all interested persons respecting whether the terms and conditions of the proposed merger of SSW into SSW Merger Corp. are just and reasonable. Such comments must be submitted by August 28, 1997. Applicants may file replies to such comments by September 12, 1997.

Any interested person who has not received a copy of the UP/SP-306 petition may request a copy, in writing or by telephone, from Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044-7566 (telephone: 202-662-5388).

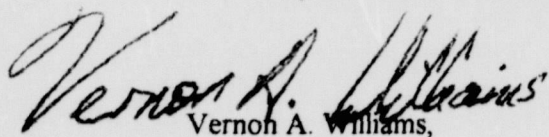
Not later than the fifth day after the date of publication of this decision, applicants should serve a copy of this decision upon the four public SSW shareholders and should certify to us: that service of this decision upon those four persons has been made; and that service of the UP/SP-306 petition upon such persons, to the extent such service was not made prior to the date of publication of this decision, has been made no later than the fifth day after the date of publication of this decision.

In addition to submitting an original and 10 copies of all documents filed with the Board, applicants and any commenters are requested to submit all pleadings and

attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted by WordPerfect 7.0).

Decided: July 22, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.


Vernon A. Williams,

Secretary

SERVICE LIST FOR: 30-jul-1997 STB FD 32760 23 UNION PACIFIC CORPORATION ET AL

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

Records: 1