18194

UP/SP-320

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

APPLICANTS' REPLY TO "STATEMENT OF BENJAMIN ZATZ AND DONALD ZATZ"

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"), hereby reply to the "Statement of Benjamin Zatz and Donald Zatz," filed September 10, 1997. This reply is supported by the Reply Verified Statement of Stephan C. Month, Managing Director, Credit Suisse First Boston Corporation ("CS First Boston"), attached as Exhibit A hereto.

With this filing, the record in this proceeding is closed, and Applicants renew their request that the Board find that the terms of Applicants' proposed transaction are just and reasonable and serve a decision to that effect prior to September 30, 1997.

On July 14, 1997, Applicants filed with the Board a petition for a determination that the terms of the proposed merger of SSW into SSW Merger Corp. -- 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 -- are just and reasonable. Applicants explained that the $6,800-per-share price is at the top end of the range of SSW's estimated common equity value, as established in a valuation analysis conducted by CS First Boston, an investment banking firm with extensive expertise in the area of railroad securities and an in-depth knowledge of UP/SP operations.

Applicants' fairness petition was supported by the Verified Statement of Stephan C. Month, Managing Director, CS First Boston. In that statement, Mr. Month explained how CS First Boston arrived at its valuation using three different analytical approaches: a comparable company approach, which compared SSW financial and operating data with financial, operating and stock market information for other companies in the railroad industry; a comparable acquisition analysis, which compared the proposed SSW merger with the financial terms of certain other transactions that have been recently effected or proposed in the railroad industry; and a discounted cash flow analysis, which analyzed SSW's projected cash flow, taking account of the forecast synergies of the UP/SP merger. Based on those analyses, and on the analysis of other relevant information, financial studies, analyses,

investigations and financial, economic and market criteria, CS First Boston concluded that the estimated common equity value of SSW is $4,155 to $6,809 per common share.

The Board and the 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 (finding "persuasive" evidence submitted by CS First Boston, including comparable company analysis, comparable acquisition analysis, and discounted cash flow analysis); Finance Docket No. 32549, Burlington Northern Inc. & Burlington Northern R.R. -- Control & Merger -- Santa Fe Pacific Corp. & The Atchison, Topeka & Santa Fe Ry., Decision served Aug. 16, 1995, p. 106 (evidence submitted by financial advisors included comparable transaction analysis and comparable company analysis); 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., Decision served June 22, 1995, p. 3 (evidence submitted by analysts included projected future earnings, comparable companies analysis, and comparable transactions analysis); Union Pacific Corp., Pacific Rail System, Inc., & Union Pacific R.R. -- Control -- Missouri Pacific Corp. & Missouri Pacific R.R., 366 I.C.C. 462, 633-38 (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) (future earnings and comparable transactions).

The Zatzes do not suggest that there are any errors in CS First Boston's analysis. They were provided with all workpapers underlying that analysis on August 27, and had no further discovery questions with regard to the analysis. Although the Zatzes have on several occasions claimed that they require additional time to prepare their own valuation evidence, they have never once suggested that they needed additional time to address CS First Boston's analysis. CS First Boston's valuation stands unrebutted.

Instead of addressing the valuation methodology employed by CS First Boston, or offering any rational ground for completely disregarding the results of that well-established methodology, the Zatzes suggest two entirely different methods of valuing SSW's common shares. First, they say that an appropriate value can be derived from Conrail's purported "offer" during the UP/SP merger proceeding of $1.9 billion for "SP East." Second, they say that, given adequate time, they would have analyzed SSW traffic flows, and might have proposed determining the value of the SSW to CSX or NS under the assumption that the proposed Conrail carve-up will be approved. Both suggestions are totally meritless.

Conrail's "Offer." During the pendency of the UP/SP merger proceeding, Conrail claimed that it would be willing to purchase what it described as "SP East" for as much as $1.9

billion. The Zatzes' economic consultant, John J. Grocki, relies on the $1.9 billion figure to conclude that the value of SSW to UP must be greater than $13,209 per share. But this analysis rests on fundamental errors.

First, Mr. Grocki misunderstands the scope of Conrail's offer. He says that the offer was to purchase lines that, by his estimate, accounted for "approximately 83% of the SSW." Grocki, p. 3.[1/] He thus inflates the $1.9 billion figure to $2.3 billion and divides that new, higher number by the 173,300 outstanding shares of SSW common stock to arrive at a value of $13,209 per share.

What Mr. Grocki fails to realize is that the Conrail offer included vast amounts of SP track and other assets that are <u>not</u> part of SSW. As Applicants made very plain in their responses to the Zatzes' interrogatories, Conrail's offer encompassed <u>much more</u> than SSW's lines. The SSW system primarily consists of lines between St. Louis, on the one hand, and Memphis, Shreveport and Corsicana, on the other.[2/] The Conrail "offer," although vague in many respects, primarily involved vast, valuable portions of <u>non</u>-SSW lines of SP and other SP affiliates, including SPCSL's line between St.

[1/] Mr. Grocki never explains the basis for this estimate, and Applicants have not received any of Mr. Grocki's workpapers, despite filing a discovery request seeking any workpapers on August 22 (UP/SP-313).

[2/] SSW also operates over UP trackage rights between Topeka and St. Louis.

Louis and Chicago, and SP lines and trackage rights radiating between Houston, on the one hand, and Shreveport, New Orleans, San Antonio, Eagle Pass, El Paso, Brownsville and Galveston, on the other. See UP/SP-316, pp. 10-11; CR-22, pp. 7-8; CR-22, Conway/Passa/Sammon, Att. 1 (Letter from David M. LeVan to Drew Lewis).[3/] The offer also included "an appropriate number of locomotives, rolling stock, and certain other equipment" -- not limited to SSW equipment. See UP/SP-316, pp. 10-11; CR-22, Conway/Passa/Sammon, Att. 1 (Letter from David M. LeVan to Drew Lewis). Mr. Grocki's calculations thus grossly overstate the portion of Conrail's purported "offer" that reflects SSW properties.

Second, the Conrail "offer" was much too vague and contingent to be considered in a valuation analysis:

- Conrail's proposal stated: "Conrail's proposed purchase price is based on our estimate of the operating cash flow of SP East. If our estimate is not correct, our offer would be adjusted accordingly." See CR-22, Conway/Passa/Sammon, Att. 1 (Letter from David M. LeVan to Drew Lewis).[4/]

[3/] The letter from David M. Levan to Drew Lewis dated September 25, 1995 and a press release containing a June 5, 1996 letter from Mr. Levan to Mr. Lewis are attached as Exhibit B hereto.

[4/] Conrail indicated that it had based its proposed purchase price on its estimate of the "operating cash flow" of "SP East." This methodology, which Conrail never applied to actual SP data, appears very similar to the "discounted cash

(continued...)

- Conrail said only that it proposed to buy an undisclosed "appropriate" amount of power and equipment. Id.
- And Conrail's offer was contingent upon, among other things, "receipt of the necessary regulatory and material third-party approvals." Id.

Conrail's "offer" was thus simply too vague and contingent for UP to consider it "bona fide" at the time of the merger. UP/SP-231, Rebensdorf, pp. 30-32. As Mr. Month explains in his reply verified statement, although CS First Boston obtained, as part of its analysis, information regarding the Conrail offer, it concluded that the offer was too vague, too contingent, and too unrelated to SSW itself in its scope to consider it a relevant data point in a valuation of SSW.

SSW's Value To NS-Conrail Or CSX-Conrail. The Zatzes suggest that, had the Board granted them the additional time they sought, they would have performed an analysis to determine the value of the SSW lines to Norfolk Southern or CSX following the successful completion of the proposed Conrail transaction.

Initially, it bears repeating that the Zatzes have no grounds to complain about the amount of time the Board has

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4/ (...continued)
flow" analysis that CS First Boston performed with respect to SSW. CS First Boston's discounted cash flow analysis produced an estimated per share value of between $6,030 and $6,694 for SSW common stock.

allowed them. They had ample time to prepare their comments in this proceeding, and any failure to respond to Applicants' valuation evidence is attributable to their own delays.

Applicants submitted their fairness petition on July 14, 1997, and served copies on Benjamin Zatz and Donald Zatz on that same day. By a decision served July 29, the Board established a procedural schedule that allowed interested parties until August 28 to file comments -- the same amount of time it had allowed in connection with the recently completed UP/CNW fairness determination. Despite this notice, the Zatzes did not even file discovery until August 15 -- more than 30 days after Applicants had served their fairness petition. Moreover, as Applicants have previously noted, the Zatzes evidently did not even begin their search for a consultant until nearly one month after receiving Applicants' fairness petition. And the Zatzes did not submit their Waybill Sample request -- a prerequisite to pursuing their Conrail-merger theory -- until September 3.

The Zatzes' economic consultant now states that it would take "approximately one month" from receipt of the requested data to perform his proposed analysis. Grocki, p. 5. Assuming this is true, had the Zatzes begun this analysis as late as August 11 -- almost a full month after Applicants submitted their fairness petition -- it would have been done today. The Zatzes' claim that the Board is to blame for their failure to prepare the evidence is completely unfounded.

The Board has been more than generous in granting the Zatzes additional time to respond. Even though the procedural schedule the Board initially established provided the Zatzes with sufficient time to comment on Applicants' fairness petition, and even though it was the Zatzes who waited for weeks to become involved in these proceedings, the Board twice extended its initial schedule in response to the Zatzes' requests for additional time. By contrast, the Zatzes have completely failed -- despite three written submissions in which they complained about not having more time -- to explain the reasons for their delay, and the Board can only draw from this conspicuous silence, the inference that their delay was inexcusable.

In any event, the Board has already stated that, even if the Zatzes were able to present the type of evidence they propose about the Conrail merger, it would be rejected as "entirely speculative." Decision served Sept. 5, 1997, p. 3. As the Board correctly points out, this proceeding concerns SSW's present valuation, and any attempt to value SSW based on the possible value that SSW might have following the uncertain future approval of the proposed division of Conrail by NS and CSX, and the equally uncertain assumption that one of the resulting entities would, absent the present transaction, have had an interest in acquiring SSW, would be utterly speculative.

As Mr. Month explains in his reply verified statement, CS First Boston's valuation incorporated a measure of SSW's value as a possible merger partner in its "comparable acquisitions" analysis. But the Zatzes' suggested approach would look not to comparable past acquisitions as an indicator of present value, but to a specific future, hypothetical acquisition to determine a speculative future value. Mr. Grocki admits as much when he states (p. 4) that "if the merger is approved, the value of SSW could be substantially greater than its value today." (Emphasis added.) Moreover, even if the Zatzes planned to discount this hypothetical future value to account for the probability that this hypothetical future acquisition of SSW would never occur, such a discounting would rely on far too speculative a set of facts and far too unproven a methodology to be seriously credited. Cf. Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) (court must act as a "gatekeeper" to ensure that expert testimony rests on a "reliable foundation").

Finally, it is worth noting that, as Mr. Month explains in his reply verified statement, the CS First Boston analyses explicitly considered SSW's value to UP as a merger partner by assigning to SSW its share of merger synergy benefits. The Zatzes present no evidence or argument to suggest that SSW would be more valuable as part of some hypothetical future NS/Conrail/SSW or CSX/Conrail/SSW merger than it is now as part of the actual UP/SP merger. The

evidence in the UP/SP merger proceeding indicated that SSW is much more valuable to UP than it would be to an eastern carrier, because while any railroad merging with SSW might well be able to divert additional SSW traffic to its lines (albeit also at a risk of losing traffic interchanged with SSW competitors), eastern carriers would not be able to take advantage of the synergies to be gained from coordinating SSW's and UP's parallel aspects to create more efficient operations. See UP/SP-231, Peterson, pp. 194-210. Thus, even if the Zatzes were able to calculate SSW's value to NS or CSX, it would surely be less than its value as part of the UP/SP system -- a factor CS First Boston explicitly considered in its valuation.

Respectfully submitted,

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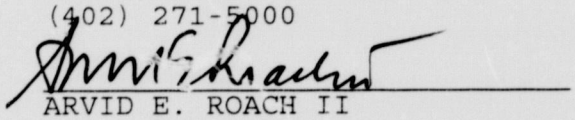

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Attorneys for Union Pacific Corporation, Union Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company and St. Louis Southwestern Railway Company

September 12, 1997

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 12th day of September, 1997, I caused a copy of the foregoing document to be served by hand on Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, D.C. 20005 and by first-class mail, postage prepaid, upon:

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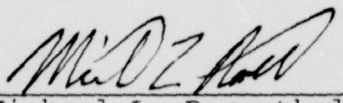

Michael L. Rosenthal

EXHIBIT A

REPLY VERIFIED STATEMENT

OF

STEPHAN C. MONTH

My name is Stephan C. Month. My background and experience are described in the verified statement that I submitted as part of the Applicants' Petition for Determination That Securities Terms Are Just and Reasonable. In that statement, I explained the analyses undertaken by Credit Suisse First Boston Corporation ("CSFB") in arriving at its valuation with respect to the common stock of St. Louis Southwestern Railway Company ("SSW").

In this reply statement, I respond to several points that have been raised by John J. Grocki in his verified statement, which is attached to the "Statement of Benjamin Zatz and Donald Zatz."

Mr. Grocki advances two alternatives for valuing SSW common stock. He first suggests a valuation based on Conrail's proposal to buy various rail lines that Conrail referred to as "SP East," an entity which does not necessarily resemble all or any portion of the SSW. He then suggests a valuation based on the possible strategic value of SSW to Norfolk Southern or CSX, assuming that their proposed division of Conrail is approved. These methodologies have obvious flaws.

First, contrary to Mr. Grocki's assertion, Conrail's proposal was one of the many factors CSFB considered as part of its valuation. However, Conrail's proposal to purchase

something it called "SP East" did not involve only SSW property, as Mr. Grocki claims. Instead, that proposal largely involved track and other property that are not part of the SSW. Moreover, Conrail never proposed a final price. Its proposal was completely contingent on its ability to perform its own, more detailed analysis of SP East's value, and it left open several other issues, including the number of locomotives and the amount of other equipment it sought to purchase. Because the scope of Conrail's proposal involved far more than the SSW, and because of its vague and highly contingent nature, CSFB concluded that Conrail's proposal was not a data point appropriate for inclusion in its valuation.

Second, Mr. Grocki's proposal to value SSW based upon the potential strategic value to a hypothetical acquiror appears to misunderstand the nature of a valuation. The "comparable acquisition analysis" performed by CSFB applies the relationship between purchase prices actually paid (or offered) in strategic transactions and the operating data of the target companies to the operating data of the entity being valued (here the SSW). It does not propose to value companies based on what an acquiror (hypothetical or real) might pay (or offer) for a property.

Moreover, CSFB's analysis does, in fact, attribute the notion of strategic value to the SSW. To be sure, synergy benefits from the UP/SP merger were assigned to the SSW

valuation. While there is no doubt that a combination of SSW with either CSX/Conrail or Norfolk Southern/Conrail would generate strategic synergies, if SSW would be more valuable as part of the Union Pacific system than it would be as part of a Norfolk Southern/Conrail or CSX/Conrail system -- which Union Pacific has informed CSFB would be the case -- then the valuation of SSW's common shares under CSFB's analysis would necessarily exceed any valuation performed under the assumption that SSW was part of either of the two hypothetical rail systems suggested by Mr. Grocki.

In sum, nothing presented by Mr. Grocki offers any reason to question CSFB's valuation of SSW common shares.

VERIFICATION

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

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 12th day of September, 1997.

Notary Public

THERESE KOLER
Notary Public, State of New York
No. 43-4855172
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires March 24, 1998

EXHIBIT B

CONRAIL

DAVID M. LeVAN
PRESIDENT AND
CHIEF EXECUTIVE OFFICER

September 25, 1995

Mr. Drew Lewis
Chairman and Chief Executive Officer
Union Pacific Corporation
Martin Tower
Eighth & Eaton Avenues
Bethlehem, PA 18018

CONFIDENTIAL

Dear Drew:

Jim Hagen and I appreciated the opportunity to meet with you and Dick Davidson to discuss Conrail's acquisition from Union Pacific Corporation ("UP") of certain assets constituting the eastern portion of Southern Pacific Rail Corporation ("SP"). At that meeting, Conrail proposed acquiring the assets of SP East in a transaction that we believe would be in the best interests of all parties involved, and that would solve certain of the competitive issues raised by UP's pending acquisition of SP.

It was our understanding that during the two week period following our meeting our respective staffs would work together. Unfortunately, no progress has occurred. As I expressed to you and Dick Davidson in our telephone conversations this morning, we believe Conrail's interests will not be served by further delay, particularly given our need to reassure our customers that Conrail is serious about providing a solution to certain of the major competitive issues raised by your acquisition of SP.

We believe the most constructive way to proceed is to set forth Conrail's offer, and then to meet and develop a process to negotiate a transaction. Accordingly, below is Conrail's offer to acquire the following assets from UP:

(i) the currently SP-owned lines extending generally south from Chicago, IL to Galveston, TX and Brownsville, TX, and west from New Orleans, LA 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, AK and Indiana, AK, Breaux Bridge, LA and all intermediate Texas points;

CONSOLIDATED RAIL CORPORATION 2001 MARKET STREET PHILADELPHIA, PA 19101-2417 (215) 209-4090 • FAX (215) 209-4074

(ii) trackage, haulage and access rights associated with the acquired lines;

(iii) an ownership interest in the Alton & Southern Railway, Houston Belt & Terminal Railway, Terminal Railroad Association of St. Louis, and other terminal carriers;

(iv) an ownership interest in the Arkansas & Memphis Railway Bridge and Terminal Company, Southern Illinois and Missouri Bridge Company, and any other bridge company integral with the acquired lines;

(v) an appropriate number of locomotives, rolling stock, and certain other equipment (including any related financing obligations); and

(vi) all other assets, options and facilities used or held for use for present and future maintenance and operation of the territory described above.

Conrail proposes to acquire these assets subject to existing mortgages or financing arrangements for $1.5 billion (consisting of cash and assumed debt). We are prepared to discuss other possible acquisition structures, including those with potentially more favorable tax treatment for UP, with appropriate adjustments to the purchase price. We are prepared to begin our due diligence review immediately, and believe we can enter into a contract to acquire SP East within 30 days.

Conrail's proposed purchase price is based on our estimate of the operating cash flow of SP East. If our estimate is not correct, our offer would be adjusted accordingly.

Consummation of the transaction is subject only to a limited number of conditions: (i) satisfactory completion of a customary due diligence review; (ii) negotiation and execution of a mutually acceptable definitive purchase agreement and other documentation; and (iii) governmental filings and receipt of the necessary regulatory and material third-party approvals.

We ask that you respond as soon as possible and look forward to working toward a successful transaction.

Very truly yours,

David M. LeVan

David M. LeVan
President and Chief Executive Officer

cc: D. Davidson

2ND STORY of Level 1 printed in FULL format.

PR Newswire

June 5, 1996, Wednesday

SECTION: Financial News

DISTRIBUTION: TO BUSINESS EDITOR

LENGTH: 2728 words

HEADLINE: CONRAIL INCREASES ITS OFFER FOR EASTERN LINES OF SOUTHERN PACIFIC TO $ 1.[illegible] BILLION

BODY:

Conrail (NYSE: CRR) today increased to $1.9 billion its proposal to acquire the eastern lines of Southern Pacific Transportation Company. Conrail's renewed and increased proposal was made in a letter to Drew Lewis and the other members of the Board of Directors of Union Pacific Corporation, which is seeking federal approval to merge the two railroads. Conrail's proposal is for the Southern Pacific lines from Chicago, through St. Louis and Memphis to Houston, between Houston and New Orleans, and throughout Texas, Louisiana and Arkansas.

When the proposed merger of the Union Pacific and Southern Pacific railroads was first announced last August, numerous parties, including many of the affected shippers in the eastern part of the mY.^stem, immediately raised concerns about its anticompetitive consequences. Conrail said then that it had long been interested in acquiring SP's eastern assets, and that in September, 1995, Conrail had proposed to pay Union Pacific $1.5 billion for them. That proposal was rejected by UP. After UP's rejection, Conrail announced that it would continue to pursue the acquisition as long as it enjoyed the support of the shipping community.

In the intervening months, a broad array of shippers, shipper groups, and federal, state, and local officials -- more than 1,000 in all -- have opposed the merger because of its anticompetitive effects. This is the greatest outpouring of opposition to any rail merger in history. For that reason, Conrail has kept its offer on the table.

PHILADELPHIA, June 5

On Monday, June 3, the Department of Justice announced its opposition to the proposed UP/SP merger because of its anticompetitive effects. Justice asked the Surface Transportation Board, which has responsibility for deciding the merger, to deny it outright, because the parties themselves had "failed to restructure it -- through extensive divestiture." With today's letter to Union Pacific, Conrail took a further step toward achieving the outcome the Justice Department sought.

In renewing and raising its offer today, Conrail recognized UP's outstanding contractual commitments to negotiate with numerous parties should it decide, or be required, to divest the SP East assets, but stressed that its proposal not

only remedies the anticompetitive effects of the merger, but also represents the "best deal" for UP's shareholders, and preserves the benefits of the western half of the proposed merger. As an indication of the fairness of its offer, Conrail noted in its letter that $1.9 billion for SP East represents "a multiple of earnings on a par with UP's purchase of SP as a whole."

Conrail's letter follows on the heels of the announcements of strong opposition to the merger, as currently structured, and support for divestiture and other pro-competitive remedies, not just from the Department of Justice but also from the Departments of Transportation and Agriculture, the National Industrial Transportation League, the Society of the Plastics Industry, the Louisiana Chemical Association, the Governors and/or Attorneys General of Texas, Louisiana, Missouri, Arkansas, and Ohio, and hundreds of individual shippers, including Shell, Procter & Gamble, Weyerhaeuser, Chrysler, Corning, Dow, Union Carbide, Phillips Petroleum, Cargill, and International Paper.

Conrail, with corporate headquarters in Philadelphia, operates an 11,000 mile rail freight network in 12 Northeastern and Midwestern states, the District of Columbia, and the Province of Quebec.

TEXT OF CONRAIL LETTERS TO UNION PACIFIC

Following are the texts of the letter sent today to Drew Lewis and the members of the Union Pacific Board of Directors by Mr. LeVan, and the letter sent September 25, 1995, to Mr. Lewis from Mr. LeVan:

June 5, 1996

Mr. Drew Lewis
180x189 [illegible] Executive Offices

Martin Tower
Eighth and Easton Avenue
Bethlehem PA 18018

Dear Drew:

In my letter to you of September 25, 1995 (attached), I presented Conrail's offer to acquire certain assets from UP. Conrail's offer has three principal virtues: (1) it remedies the anticompetitive deficiencies of the proposed UP-SP merger with respect to the SP East; (2) it preserves for UP the vast majority of the benefits of its proposed merger; and (3) it represents a fair price to UP's shareholders. Our offer allows UP to derive the benefits of its proposed merger at a lower price while quieting the commercial and public interest concerns of others.

We remain interested, as you know, in providing a solution that benefits your shareholders and Conrail's shareholders. The constructive role of our offer is made more apparent by the announcements of the Departments of Transportation, Justice and Agriculture in opposition to the currently proposed UP-SP merger and the continuing opposition of major shippers, shipper groups, and officials in the affected states. We

recognize, however, that your ability and/or willingness to accept a "Conrail solution" may be limited by the regulatory/contractual posture of your proposal. Moreover, we noted with interest and approval the quotation of Dick Davidson in "Traffic World" to the effect that any divested lines would be "auctioned" to the highest bidder. This certainly indicates a willingness in the end to find the best deal for your shareholders. Because we believe that our proposal represents the best deal for youAshareholders, and provided your regulatory/contractual requirements permit you to reach that goal, Conrail wants to reaffirm its proposal to you and your Board of Directors.

The specific assets in which we are interested are detailed in the attached letter. We are prepared to pay a price for these assets that you will find fair -- a multiple of earnings on a par with UP's purchase of SP as a whole. We originally estimated that figure to be $1.5 billion. More detailed analysis leads us to believe a price of $1.9 billion is closer to that standard, which we are willing to pay, subject to the conditions of our prior offer. In addition, we are willing to be flexible in accommodating UP's ability to realize the full benefits of the proposed transactions. In short, we are presenting a constructive alternative for the benefit of our respective shippers and shareholders.

We standing willing to pursue this proposal with you.

Very truly yours,

David M. LeVan
Chairman, President and Chief Executive Officer
(Conrail)

September 25, 1995

Mr. Drew Lewis
Chairman and Chief Executive Officer
Union Pacific Corporation
Martin Tower
Eighth and Easton Avenue
Bethlehem PA 18018

Dear Drew:

Jim Hagen and I appreciated the opportunity to meet with you and Dick Davidson to discuss Conrail's acquisition from Union Pacific corporation ("UP") of certain assets constituting the eastern portion of Southern Pacific Rail Corporation ("SP"). At that meeting, Conrail proposed acquiring the assets of SPAEast in a transaction that we believe would be in the best interests of all parties involved, and that would solve certain of the competitive issues raised by UP's pending acquisition of SP.

It was our understanding that during the two week period following our

meeting our respective staffs would work together. Unfortunately, no progress has occurred. As I expressed to you and Dick Davidson in our telephone conversation this morning, we believe Conrail's interests will not be served by further delay, particularly given our need to reassure our customers that Conrail is serious about providing a solution to certain of the major competitive issues raised by your acquisition of SP.

We believe the most constructive way to proceed is to set forth Conrail's offer, and then to meet and develop a process to negotiate a transaction. Accordingly, below is Conrail's offer to acquire the following assets from UP:

(i) the currently operated lines extending generally south from Chicago, IL to Galveston, TX and Brownsville, TX, and west from New Orleans, LA 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 and Indiana, AR, Brea[illegible] Bridge, LA and all intermediate Texas points;

(ii) trackage, haulage and access rights associated with the acquired lines;

(iii) an ownership interest in the Alton & Southern Railway, Houston Belt & Terminal Railway, Terminal Railroad Association of St. Louis, and other terminal carriers;

(iv) an ownership interest in the Pinsas & Memphis Railway Bridge and Terminal Company, Southern Illinois and Missouri Bridge Company, and any other bridge company integral with the acquired lines.

(v) an appropriate number of locomotives, rolling stock and certain other equipment (including any related financial obligations); and

(vi) all other assets, options and facilities used or held for use for present and future maintenance and operation of the territory described above.

Conrail proposes to acquire these assets subject to existing mortgages or financing arrangements for $1.5 billion (consisting of cash and assumed debt). We are prepared to discuss other possible acquisition structures, including those with potentially more favorable tax treatment for UP, with appropriate adjustments to the purchase price. We are prepared to begin our due diligence review immediately, and believe we can enter into a contract to acquire SP East within 30 days.

Conrail's proposed purchase price is based on our estimate of the operating cash flow of SP East. If our estimate is not correct, our offer would be adjusted accordingly.

Consummation of the transaction is subject only to a limited number of conditions: (i) satisfactory completion of a customer due diligence

review; (ii) negotiation and executive of a mutually acceptable definitive purchase agreement and other documentation; and (iii) governmental filings and receipt of the necessary regulatory and [illegible] as possible and look forward to working

toward a successfully transaction.

Very truly yours,

David M. LeVan
President and Chief Executive Officer
(Conrail)

BACKGROUND ON UNION PACIFIC-SOUTHERN PACIFIC MERGER
AND CONRAIL'S OFFER FOR SOUTHERN PACIFIC EASTERN LINE

The Proposed Union Pacific/Southern Pacific Merger:

On August 3, 1996, the Union Pacific (UP) and Southern Pacific (SP) proposed to merge their two systems, creating what would be the largest rail system in the U.S. The merger is pending before the Surface Transportation Board (STB), which will vote on it in early July.

In order to be approved, the merger must be consistent with the public interest, by creating public benefits and remedying any anticompetitive effects. This merger fails that test.

The proposed UP/SP merger involves two systems which run parallel to, and compete with, each other at many points. The UP/SP acknowledged from the beginning that the merger would dramatically reduce rail competition in the areas they jointly serve. These anticompetitive impacts are likely to be especially severe in the eastern part of the SP system -- Texas, the Mid-South, and the Gulf Coast.

UP's Proposed Trackage Rights Agreement with BNSF:

When the UP announced its merger with SP, it acknowledged that the merger would greatly reduce competition, service and pricing options for thousands of shippers. As proposed, the merger would result in UP control over a reported 90 percent of rail traffic into and out of Mexico, 70 percent of the petrochemical shipments from Texas' Gulf Coast, and 85 percent of the plastics storage capacitK9 the Texas-Louisiana Gulf region. Shippers across Texas, Louisiana, and the Mid-South opposed the merger, arguing that they would be harmed by its anticompetitive effects

In an attempt to deal with the effects, UP proposed to grant the Burlington Northern Santa Fe Railroad (BNSF) 4,000 miles of "trackage rights" -- rights to move its trains over selected UP/SP rail lines. Such rights are unprecedented in scope.

Would it work? Not withstanding several attempts to enhance the rights, most shippers argue that the trackage rights can't offset the anticompetitive effects of the merger. Owners of rail lines have incentives to invest in track and infrastructure, and to work with local communities to attract economic development; tenant carriers don't.

Track owners have control over the service they provide -- its frequency, its reliability, its timeliness. On the other hand, tenants' operations are always subject to someone else's control -- in this case, that of their direct competitor.

More specifically, the particular trackage rights proposed by UP won't preserve competition. The evidence before the STB showed that BNSF would be unable to replicate SP's current competitive role in the SP East region. Its service would take longer, involve multiple carrier handlings, and lack the support structure -- yard space, terminal facilities, and sidings -- that shippers say (and the UP/SP agree) are necessary. Perhaps retiring BNSF Chairman Gerald Grinstein descrt<_^$V180x901Ytrackage ri

track maintenance issues and dispatch issues. It's quite different from owning your own railroad."

Public Benefit:

UP/SP acknowledges that the vast majority of the merger's benefits are in the western half of the merged system. That's where the deal fills gaps in UP's route structure; that's where almost all of the planned capital savings are; and that's where the planned investments would be made. UP/SP claim the merger is needed to allow them to compete with the newly merged BN/SF system, but all the ways and places they cite are also in the West.

Conrail's Proposal: Maintaining Real Competition:

Fortunately, there is an alternative that would preserve real rail competition in Texas, Gulf Coast, and Mid-South markets while allowing UP and SP to preserve the benefits of their proposed merger in the West. Conrail, the nation's fifth largest railroad serving customers in twelve northeastern and midwestern states and the Province of Quebec, has proposed to purchase the eastern part of the SP system ("SP East") -- the lines running from Chicago south through St. Louis and Memphis to Houston, from Houston to New Orleans and throughout Texas, Louisiana and Arkansas -- for $1.5 billion, now increased to $1.9 billion.

Conrail offers the best alternative for shippers, communities, and economic development along the SP East lines. As an owning, not renting, railroad, Conrail is prepared to make a substantial investment in these assets. One of its first initiatives will be to improve operations in the congested Houston terminaAand establish a new division headquarters serving Texas and the Gulf Coast. Conrail's proposal will create the most efficient route to and from the northeast and midwest markets where a large amount of SP East traffic goes today. It will open up greater industrial development opportunities, and it will provide customers with competitive rail service to and from Northeast and Midwest markets on the one hand, and the Gulf Coast, Mid-South, Texas, and Mexico on the other. Shippers and communities on SP East lines do have a choice. Conrail is committed to the development of these lines and is prepared to provide first class rail service to customers now served by SP. The Conrail proposal is a better deal for shippers and communities that need and deserve true competition.

//

CONTACT: Robert L. Libkind of Conrail, 215-209-4594

LANGUAGE: ENGLISH

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ORIGINAL

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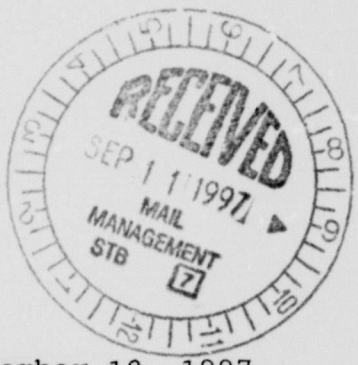
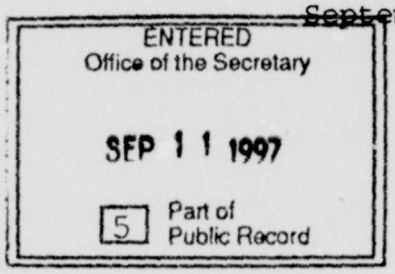


September 10, 1997



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VIA UPS NEXT DAY AIR

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

Enclosed for filing in Finance Docket No. 32760 (Sub-No. 23), Union Pacific Corp., et al.--Control and Merger--Southern Pacific Rail Corp., et al., are the original and ten copies of the Statement of Benjamin Zatz and Donald Zatz.

Also enclosed is a 3.5" diskette in WordPerfect 5.0 format with the text of the Statement; at this time, however, it does not include the text of the appended Verified Statement of John J. Grocki. A diskette will be submitted as soon as practicable.

Extra copies of the Statement and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, service is being effected upon counsel for Applicants.

If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,

Fritz R. Kahn

enc.
cc: Arvid E. Roach II, Esq. (778-5388)
Mr. John J. Grocki
Douglas A. Kellner, Esq.
Mr. Donald Zatz

181823

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

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

UNION PACIFIC CORPORATION, et al.,
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, et al.

STATEMENT
OF
BENJAMIN ZATZ AND DONALD ZATZ

The Cotton Belt[1] long has been the heart of the Southern Pacific[2] railroad system.[3] Hardly a carload of California fruits or vegetables or containerized Pacific Rim freight originated on the Southern Pacific travels to its destination in the central or eastern United States except over the lines of the Cotton Belt.

It is this transcontinental, as well as the increasingly important Gulf Coast, traffic transported over the lines of the Cotton Belt that has made the Southern Pacific such a sought after merger partner -- by the Santa Fe,[4] the Rio Grande[5] and, most

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[1] Formally, the St. Louis Southwestern Railway Company.

[2] Formally, the Southern Pacific Transportation Company.

[3] St. Louis S. W. Ry. Co. Control, 180 I.C.C. 175 (1932).

[4] Santa Fe Southern Pacific Corp.--Control--SPT Co., 2 I.C.C.2d 709 (1986), 3 I.C.C.2d 926 (1987).

recently, the Union Pacific.[6] Indeed, the Union Pacific is on record as having declared in the instant proceeding that it would forgo its $5.4 billion acquisition of the Southern Pacific if it were denied ownership of even a part of the Cotton Belt.

The stock of the Cotton belt was delisted nearly 40 years ago, in 1958; there has been no market for its shares in the meantime. The remaining minority stock holders, if they are to realize their pro rata share of the equity value of the company, must sell their stock to the Union Pacific; they have no practicable alternative. It is the task of this Board, or of an appropriate court, to serve as the surrogate for the market and to establish the fair value for the remaining outstanding shares of stock of the Cotton Belt.[7]

Conrail was reported to be prepared to pay $1.9 billion for only a part of the Cotton Belt.[8] The $1.9 billion purchase price in no way could be rationalized in terms of the capitalized historic income of the Cotton Belt or of any other of the traditional means for calculating the equity value of a railroad.[9] Rather, Conrail's offer to buy the Cotton Belt's lines between the Gulf Coast and St. Louis for the reported $1.9 billion can only be

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[5] Rio Grande Industries, et al.--Control--SPT Co., et al., 4 I.C.C.2d (1988).

[6] Decision herein, Decision No. 44, served August 12, 1996.

[7] Schwabacher v. United States, 344 U.S. 182 (1948).

[8] Applicants' interrogatory response, served September 3, 1997.

[9] See, Applicants' document production, served August 27, 1997.

explained by the earnings-stream generated by the chemicals and other traffic moving over those lines and the significant contribution to its income that Conrail expected it would realize.

In arriving at the paltry $6,800 per share which the applicants propose to pay the remaining minority shareholders of the Cotton Belt, the analyst upon whom applicants rely did not even acknowledge, much less take into account, Conrail's $1.9 billion offer. As Mr. John J. Grocki, the economic consultant engaged by the Messrs. Zatz, notes in the attached Verified Statement, the applicants' rejection of the Conrail offer demonstrates that the value of just the Cotton Belt's lines between the Gulf Coast and St. Louis "must be greater than the $1.9 billion offered by Conrail, and the shareholders' equity interest, greater than $13,209 per share."

The worth of the Cotton Belt to other railroads in terms of the earnings-stream generated by the traffic moving over its lines, far from being the subject of derision, is an altogether appropriate determinant of the equity value of the Cotton Belt.

That was the calculation that Mr. Grocki proposed to undertake and for which the waybill sample data were sought. The abbreviated procedural schedule ordered by the Board, however, renders that impossible; although their use was authorized by the Board's staff last Friday, September 5, 1997, the tapes of the current waybill traffic data won't even be available for Mr. Grocki's use until Thursday, September 11, 1997, the very day on which the Messrs. Zatz's comments are due.

The Messrs. Zatz, accordingly, have been foreclosed from offering meaningful evidence of their stocks' value to counter that presented by the applicants; they have demonstrated, however, that, at a minimum, their interest in the Cotton Belt's equity value is greater than $13,209 per share.

Respectfully submitted,

BENJAMIN ZATZ
DONALD ZATZ

by their attorneys,

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Tel.: (202) 371-8037

Dated: September 10, 1997

CERTIFICATE OF SERVICE

Copies of the foregoing Statement this day were served by me by facsimile transmitting a copy and mailing a copy thereof, with first-class postage prepaid, to counsel for the Applicants.

Dated at Washington, DC, this 10th day of September 1997.

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-023)

UNION PACIFIC CORPORATION, UNION 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

VERIFIED STATEMENT OF JOHN J. GROCKI

INTRODUCTION

My name is John J. Grocki. I am Executive Vice President of GRA, Incorporated (GRA) and in charge of GRA's surface transportation practice. I have over 25 years of experience in railroad management and as a consultant. I have participated in numerous studies on behalf of companies concerned with the valuation of acquisition candidates, particularly in the railroad industry. A copy of my curriculum vitae is attached.

PURPOSE OF THIS VERIFIED STATEMENT

I have been engaged by Messrs. Donald and Benjamin Zatz to prepare an estimate of their interest in the St. Louis Southwestern (SSW-Cotton Belt) Railway Company. The Messrs. Zatz own 55 of the 61 outstanding shares of SSW. This constitutes a 0.04% share of the total equity value of the SSW.

I have had an opportunity to review the Union Pacific's petition and supporting documentation including the Verified Statement and the produced work papers of Mr. Stephan Month, Jr. in support of the UP's offer to purchase the remaining shares of the SSW. After reviewing Mr. Month's statement and the produced work papers, I conclude that Mr. Month's analysis understates the value of the SSW shares. In preparing his valuation recommendation, Mr. Month appears to have relied most heavily on the Comparable Acquisition analysis which, according to Mr. Month, yields an equity value range for the shares of between $5,665 and $6,809 (Month Verified Statement, pp. 4 and 5). However, Mr. Month's Comparative Acquisition analysis utilizes transactions involving the following railroads:

- CSX Corp., Norfolk Southern/Conrail,
- Southern Pacific/Union Pacific,
- Santa Fe Pacific/Burlington Northern,
- Chicago & North Western/Union Pacific,
- Santa Fe Pacific/Union Pacific,
- Kansas City Southern/Illinois Central,
- MidSouth/Kansas City Southern.

In each of these cases, the value of the acquired company relative to its sales or earnings varies dramatically. This is because the value to the acquiring company is dependent on how its profitability is enhanced by the acquisition. This valuation enhancement occurs through acquiring new business, the ability to compete more effectively with other railroads and other modes, and through synergies associated with the transaction.

However, in his analysis Mr. Month neglects the most important transaction of all. During the UP-SP merger proceedings Conrail offered $1.9 billion for the Gulf Coast-to-St. Louis lines of the SSW, which by my estimates account for approximately 83% of the SSW. Spread over the 173,300 shares outstanding, this represents $13,209 per share, a substantial premium over UP's offer of $6,800 per share. In addition, this offer by Conrail was rejected. Therefore, the value of 83% of the SSW to the UP-SP must be greater than the $1.9 billion offered by Conrail, and the shareholders' equity interest, greater than $13,209 per share.

The only reason that Conrail would be willing to pay that sum for the SSW would be because it perceived that the traffic diversion potential and subsequent profitabilty associated with the SSW was sufficient to justify this purchase price. However, the shape of the Eastern railroad picture is about to change again as CSX and Norfolk Southern acquire Conrail. Granted that the Conrail-NS-CSX merger has not been consummated. However, if the application were approved, then the shape of the Eastern railroad network will change dramatically as Conrail is absorbed by CSX and NS. However, if the application were denied, Conrail will remain an independent entity, and the motivations which prompted Conrail's original $1.9 billion offer for the SSW will not have changed.

If, on the other hand, CSX and NS acquire Conrail, then the potential exists for the SSW to be more valuable to those railroads than it would be to Conrail. Therefore, it is necessary to conduct a traffic diversion study for NS and CSX, after the Conrail merger, in order to determine the value of the SSW to those carriers either separately or jointly. This is the only way in which the value of the SSW can be ascertained.

GRA is also concerned about the comments in the STB decision that the economic approach which we propose "..... is entirely speculative." In any market transaction, the value of the acquired company to the acquiring company is based on the acquiring company's perception of the additional income the acquired company will generate. This is of necessity, a speculation on the future earning potential of the acquired company. What GRA proposed to do is to value the SSW based on the realigned Eastern Railroad market after the CSX-NS-Conrail merger. The approval of this merger is not certain at this time. However, if the merger is approved, the value of the SSW could be substantially greater than its value today (which is reflected in Conrail's $1.9 billion offer). It is possible that the Union Pacific's effort to acquire the remaining shares of the SSW is motivated by the fact that they believe that the SSW's value will increase dramatically after the CSX-NS-Conrail transaction is approved.

This analysis is rendered impossible because on September 3, 1997, in a letter to Mr. Leland L. Gardner we requested use of the Carload Waybill Statistics database. On September 5, 1997, this approval was granted by a letter from Mr. Gardner. However, in telephone conversations with ALK, who actually provides the database, ALK indicated that the data we need would not be available until September 11, 1997. This

would make it impossible for us to conduct the analysis necessary to complete our valuation assignment. GRA believes that it will take approximately one month from receipt of the Carload Waybill Statistics database for us to complete our traffic analysis and valuation.

I declare under penalty of perjury that the foregoing ~~assumptions~~ assertions are true and correct to the best of my knowledge.

John J. Grocki

9-10-97
Date

JOHN J. GROCKI

Business and Professional Experience

9/93 -Present Executive Vice President, GRA Incorporated

Mr. Grocki has over 25 years experience in management, executive and consulting roles in the Transportation Industry. He has particular experience in planning, railroad operations and valuation. He has served as President and Chief Executive Officer of a short-line railroad, and he has been a Vice President of two nationally-known transportation consulting firms. A representative sample of projects which he has directed include:

- Analysis of numerous proposed and actual mergers and acquisitions of transportation companies. These analyses were performed for carriers, government agencies, financial institutions and potential acquiring companies. For example, Mr. Grocki directed an evaluation of Conrail for Alleghany Corporation as part of their efforts to acquire Conrail from the Federal Government.

- Evaluation of intermodal transportation systems and programs to reduce shipper and carrier costs and improve efficiency. For example, Mr. Grocki directed a study of use of intermodal transportation for a Fortune 100 company that resulted in a 45% reduction in transportation costs for a key segment of the company's business.

- A variety of specialized economic studies in connection with the transportation industry. These included computer modeling of traffic flows, forensic evaluations of transportation accidents, hazardous material handling, ridership studies, rate and pricing studies, and anti-trust evaluations of mergers.

- Operations, maintenance and valuation studies of short line railroads.

- Valuation studies of transportation company assets, equipment and infrastructure, as part of acquisition, divestiture and abandonment programs. For example, for Merrill Lynch Leasing, Mr. Grocki directed a valuation study of a fleet of 400 covered hopper cars. This study included condition evaluation, recommendations for a revised maintenance program and fair market value assessment.

- Oversight of new construction, rebuilding and upgrading programs of railcar fleets. Assignments included boxcars, container cars, tank cars, high capacity gondola cars, open and covered hopper cars and specialized rapid-discharge cars for bulk material handling. For example, for Sierra Pacific Power, Mr. Grocki directed the design and construction of a fleet of specialized, rapid-discharge hopper cars for a dedicated coal movement.

- Feasibility and design studies of a variety of integrated transportation systems, such as coal transloading facilities, bulk material handling systems and rail container operations.

- Mr. Grocki has testified as an expert witness before the Interstate Commerce Commission and other judicial bodies. He has also served on several Boards of Directors.

1985-1992 Canonie Incorporated, Vice President Eastern Operations, Canonie Atlantic, President and CEO (1985-87)

1985-1987 President and Chief Executive Officer - Eastern Shore Railroad, Norfolk, VA.

1980-1985 Vice President - URS Coverdale and Colpitts, New York, NY

1974-1980 Vice President - Gellman Research Associates, Inc., Jenkintown, PA

1973-1974 Vice President-Manager of Industrial Parks - L. Heller Construction Co. Edison, NJ

1970-1973 General Manager, Marketing and Industrial Development - Central Railroad Company of New Jersey, Newark, NJ

1965-1970 Managerial positions with the Penn Central and the New York Central Railroads

Education

Stanford University, MBA, 1965

California Institute of Technology, M.S., Chemistry, 1964

Worcester Polytechnic Institute, B.S., Chemistry, 1962

181748

UP/SP-318

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

APPLICANTS' CERTIFICATE OF SERVICE

In accordance with the STB's decision served September 5, 1997, in the above-captioned matter, the primary Applicants, Union Pacific Corporation, Union Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company and St. Louis Southwestern Railway Company, hereby certify that they have served a copy of that decision, by first-class mail, postage prepaid, on

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Pasadena, CA 91109-2315

Homer Henry
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Sun City, AZ 85351-2218

Respectfully submitted,

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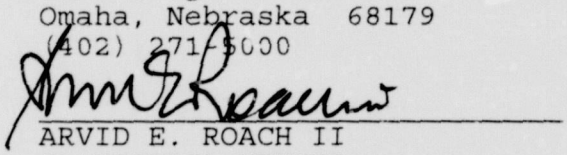

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Attorneys for Union Pacific Corporation, Union Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company and St. Louis Southwestern Railway Company

September 8, 1997

28268 SERVICE DATE - LATE RELEASE SEPTEMBER 5, 1997
EB

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, applicants[1] 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 appraisal[3] 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

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[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, John J. Grocki, needs at least an additional month to analyze the carload waybill statistic base.[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.

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[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.

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[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

181730

UP/SP-317

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

APPLICANTS' REPLY TO PETITION TO REOPEN

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"), hereby reply to the "Petition to Reopen of Benjamin Zatz and Donald Zatz," filed September 4, 1997.

The Board will reopen and reconsider a final decision only upon a showing of material error, new evidence or changed circumstances. 49 C.F.R. § 1115.3(b). One searches the Zatzes' petition in vain for any allegation of material error, new evidence or changed circumstances, and the petition should be denied on this ground alone. See Finance Docket No. 31231, IC Industries, Inc. -- Securities Notice of

Exemption Under 49 CFR 1175, Decision served Apr. 3, 1989, p. 1 n.3.

Even if one assumes that the Zatzes are alleging material error, their allegations do not withstand the strict scrutiny the Board applies to this type of petition. Petitions to reopen final orders are granted "only in the most extraordinary circumstances" so that administrative finality is not undermined. See Docket No. AB-33 (Sub-No. 55), Union Pacific R.R. -- Abandonment -- Between Echo & Park City & Between Keetley Junction & Phoston, In Summit & Wasatch Counties, UT, Decision served July 11, 1990, p. 2. The Zatzes' petition does not show that the Board committed material error; it is merely a reiteration of their prior arguments.

On July 14, 1997, Applicants submitted their request for a determination that the terms of the proposed merger of SSW into SSW Merger Corp. were just and reasonable. Applicants served copies of their request on petitioners Benjamin Zatz and Donald Zatz, who are two of the four minority SSW shareholders, on that same day.[1/] By a decision served July 29, 1997 (the "July 29 Decision") and published in the Federal Register, the Board established a procedural

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1/ Applicants were informed by the Board's staff during a discussion regarding the filing fee for the fairness request that the Zatzes had telephoned the Board upon receiving the request to ask that the Board halt any proceeding.

schedule that allowed interested parties until August 28 to file comments on Applicants' fairness request.

On August 15, more than 30 days after Applicants had served their request and more than two and a half weeks after the Board had established the procedural schedule, the Zatzes sought a 60-day extension of the August 28 deadline for filing comments. In a decision served August 20, 1997 (the "August 20 Decision"), the Board found that the Zatzes had failed to justify the requested extension. The Board noted that the valuation 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." Id., p. 2. The Board, however, did grant the Zatzes a ten-day extension of the comments due date until September 8, 1997, which it found "will provide petitioners with sufficient opportunity to develop their submission." Id.

The Zatzes now restate their request for additional time. Their petition only underscores that any blame for their purported inability to respond within the timeframe the Board has established lies squarely with them.

The Zatzes' first argument (pp. 1-2) -- that the current deadline deprives them of due process -- merely renews the assertion in their initial extension request that they needed additional time for their consultant to conduct his own analysis of SSW's value. The Board responded to that argument

by granting the Zatzes a ten-day extension of the original schedule. With that extension, the Zatzes were allowed eight weeks from the date Applicants' filed their fairness petition to develop comments.

The Zatzes now say that it will be impossible, even with the extension, for their consultant to review Applicants' discovery responses and prepare his own evidence, and that the "Board's decision rendered that impossible" and "effectively denied the Messrs. Zatz the opportunity to offer their own view as to the fair value of their shares of Cotton Belt Common stock." But the Zatzes did not even file discovery until August 15 -- more than 30 days after Applicants had served their fairness petition -- and Applicants responded to the Zatzes' discovery requests in advance of the deadline established by Board rules. Moreover, as Applicants noted in their reply to the Zatzes' initial extension request, the Zatzes evidently did not even begin their search for a consultant until nearly one month after receiving Applicants' fairness petition. If the consultant's task were in fact now "impossible" -- which Applicants deny -- the Zatzes would be to blame, not the Board.

The procedural schedule established by the Board provided the Zatzes a meaningful opportunity to comment on Applicants' fairness petition. The Board even extended its initial schedule, which it had used in the UP/CNW fairness proceeding, to account for the Zatzes' concerns. The Board

has balanced the interests of Applicants and the public in the expedited handling of Applicants' fairness petition against the Zatzes' right to submit comments and their discovery needs, and has promulgated an appropriate schedule. Due process requires no more. See, e.g., Laird v. ICC, 691 F.2d 147, 154 (3d Cir. 1982), cert. denied, 461 U.S. 927 (1983) ("formulation of administrative procedures is a matter left to the discretion of the administrative agency"); Silverman v. Commodity Futures Trading Commission, 562 F.2d 432, 439 (7th Cir. 1977) (expedited hearing and briefing schedule did not violate due process).

The Zatzes' second argument (pp. 2-3) -- a charge that Applicants engaged in "impropriety" by not informing them at some earlier date that a fairness determination would be sought -- is completely unfounded. Applicants had no obligation to inform the Zatzes that they were seeking valuation advice in contemplation of the possible filing of a petition for a fairness determination, and Applicants categorically deny that they timed their fairness request to limit the Zatzes' ability to comment. The timing of Applicants' decision to file their fairness petition, and of the filing of that petition, was determined by the need to resolve various transaction-related issues and to complete the preparation of the petition, not by any tactic of minimizing

notice.[2/] Applicants' fairness petition suggested providing the Zatzes with the same amount of time to comment that the Board found sufficient in the UP/CNW fairness proceeding, and the proposed schedule had enough leeway that the Board was able to extend the schedule by ten days. The delays in this proceeding have been the Zatzes' -- their delay in seeking counsel, their delay in hiring a consultant, and their delay in seeking discovery.

The Zatzes' third argument (pp. 3-4) -- that Applicants have not sufficiently explained the need for a Board decision before September 30, 1997 -- ignores completely Applicants' sworn testimony, accompanying their July 14, 1997 petition, as to the need for expedited action. The Zatzes suggest that preparing SSW financial statements should be no more difficult now than at any time in SSW's history. But they ignore the fact that Applicants have completed the TCS

[2/] Moreover, the Zatzes' claim of surprise that the valuation of SSW might be in issue is hardly credible. They are substantial investors who have held out for many years in the face of offers by SP to repurchase their stock; and they were on notice of the Merger Application in 1995, which specifically noted the possibility of a subsequent merger of SSW into UPRR. Notice of Acceptance of Application, 60 Fed. Reg. 66988, 66990 n.13 (1995) ("At this time, applicants state, they are not requesting a fairness determination pursuant to Schwabacher with respect to the compensation that might be paid to SSW security holders in connection with a merger of SSW into UPRR or MPRR because tax and other considerations need to be resolved before applicants can determine whether such a merger will occur and on what terms. Applicants state that, if they determine to carry out such a merger, they will request a fairness finding from us regarding the fairness of the terms or a declaratory order that no such finding is required.").

cut-over of the SSW system, which has eliminated Applicants' ability to record separately the revenues for SSW traffic in order to prepare financial statements. Applicants explained the difficulties involved in preparing such financial statements in their petition and the verified statement of Joseph E. O'Connor, Jr., accompanying their petition, and the Board recognized that this matter "requires expedited regulatory action." July 29 Decision, p. 6.

In the interest of responding completely to the Zatzes' arguments, Applicants attach the verified statement of Alan Roth, UP's Director-Revenue and Financial Systems, further setting forth the costs associated with preparing SSW financial data if approval is not granted. As Mr. Roth explains, to prepare the data necessary to allocate revenues to SSW would require development of three to five computer programs and 500-1,000 hours of programming time per program at a cost of $65 per hour, which would amount to more than $300,000. And just as significantly, UP would have to pull these programmers away from current, critical merger implementation work to focus on the SSW project, and given the shortage of qualified programmers, these merger implementation projects could well be delayed until the work necessary to support preparation of SSW financial statements has been completed. In addition, two or three full-time revenue clerks would be required to manipulate the data provided by those programs -- reflecting the approximately 100,000 cars per

month originating or terminating on, or moving over SSW lines -- in order to attach revenues to each movement. Moreover, several systems support personnel would be required, at least for the first several months, to troubleshoot and provide other support for the revenue clerks. Finally, UP would be required to develop two additional programs, also requiring approximately 500-1,000 hours each, and devote the time of another clerk, to address car accounting issues.

The Zatzes also suggest (p. 4) that, in light of the Board's approval of the UP/SP merger, a Board valuation decision is not a prerequisite to the merger of SSW into SSW Corp., and ultimately into UP. Indeed, they make the very serious assertion that Applicants "dissemble" in suggesting such a thing. This assertion, devoid of any citation to law, is remarkable. Cases beginning with Schwabacher v. United States, 334 U.S. 192 (1948), indicate that a fairness determination is one of the indispensable elements of the agency approval that the statute requires before a merger can be carried out. Norfolk & Western Ry. v. ATDA, 499 U.S. 117, 131 (1991). In submitting their petition for a fairness determination, Applicants sought to adhere to this established precedent, including the recently completed UP/CNW proceedings, and to their representations to the Board in the Merger Application. Of course, if the Board were to determine that the fairness proceeding need not be completed before SSW is merged into SSW Corp., and that Applicants would

nonetheless enjoy the pre-emption under what is now 49 U.S.C. § 11321(a) that is an incident to Board approval of a merger, then Applicants would not require an expedited decision from the Board.[3/] But it would, even then, still be inappropriate to allow the Zatzes additional time to comment: they have had more than sufficient time, and further delay to accommodate their own lack of diligent pursuit of their case is unwarranted.

The Zatzes also assert (pp. 5-6) that Applicants have not responded to their discovery requests. This is false. As indicated in our reply to the Zatzes' initial extension request, Applicants initially responded to the Zatzes' first request for documents, which sought workpapers related to Stephan Month's testimony in the UP/SP merger proceeding and this proceeding, by producing a substantial volume of documents the next working day after receiving the request. Applicants completed their production on August 27, three days earlier than was required under the Board's rules. And Applicants responded to the Zatzes' interrogatories -- which, as the Board observed (August 20 Decision, p. 2 n.2),

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[3/] The Zatzes' suggestion that general Missouri state law permits a post-merger valuation of course assumes away the very law that governs here -- the exclusive and plenary federal jurisdiction over railroad mergers.

were of "doubtful relevance" -- by hand service[4/] on September 3, 1997, in accordance with the Board's rules.

Finally, the Zatzes say (p. 5) that their consultant needs additional time to review Waybill Sample data because "the optimum way to pursue a valuation study of the Cotton Belt would be to conduct a study of the potential traffic diversions which Norfolk Southern or CSX Transportation could make (after their Conrail merger) through ownership of the Cotton Belt." Letter, Grocki to Kahn, attached to Petition to Reopen. This goes beyond the realm of "doubtful relevance" into the realm of the preposterous. The idea that the "optimum" way to calculate SSW's value depends on a future possible merger that has not yet been approved by this agency, and on assuming a non-existent proposal at some future time to acquire SSW by one of the non-existent resulting merged entities, is ludicrous. Such a "study" has nothing in common with valuation methods the Board has utilized in similar

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4/ In a letter to the Board of today's date, Mr. Kahn, counsel for the Zatzes, acknowledges that he did receive Applicants' interrogatory responses, but asserts that Applicants served the responses by mail. Mr. Kahn also left a voice mail message with Applicants' counsel today, after receiving Applicants' certificate of service by hand, indicating that the certificate is inaccurate because he received the responses by mail. It is unclear why counsel is exercised over this question, but the fact is that the responses were hand delivered by Washington Express (tracking number Q603) and signed for at counsel's building at 8:44 p.m., September 3. The signature on the receipt appears to be by a "Mr. Ricketts."

circumstances.[5/] And the fact that the Zatzes did not even request the data until September 3 -- two working days before their comments were due -- speaks volumes about both their strategy and where the blame for their purported inability to file comments lies.

[5/] See, e.g., UP/SP, Decision No. 44, served Aug. 12, 1996, p. 178; 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., Decision served June 22, 1995, p. 3; Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Missouri-Kansas-Texas R.R., 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); Chicago, Milwaukee, St. Paul & Pacific R.R. -- Reorganization -- Acquisition By Grand Trunk Corp., 2 I.C.C.2d 161, 218 (1984); Union Pacific Corp., Pacific Rail System, Inc., & Union Pacific R.R. -- Control -- Missouri Pacific Corp. & Missouri Pacific R.R., 366 I.C.C. 462, 633-38 (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); 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, 594-95 (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., 354 I.C.C. 885, 899-901 (1979); Illinois Central Gulf R.R. -- Acquisition -- Gulf, Mobile & Ohio R.R., Illinois Central R.R., 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, 192-93 (1963), 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); Erie R.R. Merger, Delaware, Lackawanna & Western R.R., 312 I.C.C. 185, 188 (1960), aff'd sub nom. Fried v. United States, 212 F. Supp. 886 (S.D.N.Y. 1962) (three-judge court); Norfolk & Western Ry. Merger, Virginian Ry., 307 I.C.C. 401, 429 (1959); Louisville & Nashville R.R. Merger, 295 I.C.C. 457, 493-500 (1957), aff'd sub nom. Stott v. United States, 166 F. Supp. 851 (S.D.N.Y. 1958) (three-judge court).

Respectfully submitted,

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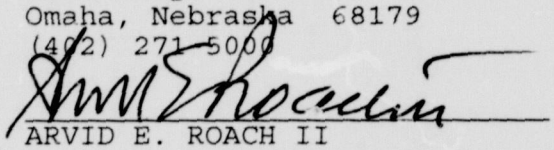

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Attorneys for Union Pacific Corporation, Union Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company and St. Louis Southwestern Railway Company

September 5, 1997

VERIFIED STATEMENT

OF

ALAN L. ROTH

My name is Alan L. Roth. I am Director-Revenue and Financial Systems of Union Pacific Railroad Company.

I have been asked to explain the costs that will be associated with preparing SSW financial data if the SSW merger does not take place by September 30, 1997 as planned.

The primary difficulty in preparing accurate data to reflect SSW's operations arises out of the TCS cut-over of the SSW system in connection with implementing the UP/SP merger. This cut-over, which took place on August 1, has eliminated UP's ability to record separately the revenues and certain expenses for SSW traffic.

In order to provide data comparable to the data previously available, I anticipate that UP would be required to develop between five and seven new computer programs to combine data from various sources to assign revenues and expenses to SSW. I estimate that each computer program would require 500-1,000 hours of programming time at a cost of $65 per hour. UP would have to pull programmers away from current, critical merger implementation projects to focus on the SSW project.

Three to five of the programs would be necessary to calculate SSW revenues. In addition, two or three full-time

revenue clerks would be required to analyze and manipulate the data provided by those programs -- representing approximately 100,000 cars per month originating or terminating on, or moving over SSW lines -- in order to attach revenues to carload movements. Two more programs and another full-time clerk would be required to handle car accounting issues. Moreover, several systems support personnel would be required, at least for the first several months that the new programs were operating, to troubleshoot and provide other support for the revenue clerks.

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, Alan L. Roth, being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.

ALAN L. ROTH

SUBSCRIBED and sworn to before me this 5th day of September, 1997.

Notary Public

My Commission Expires:

GENERAL NOTARY-State of Nebraska
DON F. ROCK
My Comm. Exp. Oct. 27, 2000

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 5th day of September, 1997, I caused a copy of the foregoing document to be served by hand on Fritz R. Kahn, Esq., Suite 750 West, 1100 New York Avenue, N.W., Washington, D.C. 20005, and by first-class mail, postage prepaid, upon Douglas A. Kellner, Esq., Kellner, Chehebar & Deveney, One Madison Avenue, New York, N.Y. 10010.

Michael L. Rosenthal

181723

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September 5, 1997

D

BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, D.C. 20423-0001

Re: Finance Docket No. 32760 (Sub-No. 23), Union Pacific Corp., et. al. -- Control & Merger -- Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

It has come to our attention that the certificate of service that should have been attached to Applicants' Responses to the First Set of Interrogatories of Benjamin Zatz and Donald Zatz (UP/SP-316) was inadvertently omitted from that filing. Enclosed please find an original and ten copies of a certificate of service indicating that the filing was served on the Zatzes' counsel.

Sincerely,

Michael L. Rosenthal

Enclosures

cc: Fritz R. Kahn, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

CERTIFICATE OF SERVICE

I, Michael A. Listgarten, certify that, on the 3rd day of September, 1997, I caused a copy of Applicants' Responses to the First Set of Interrogatories of Benjamin Zatz and Donald Zatz (UP/SP-316) to be served by hand on Fritz R. Kahn, Esq., Suite 750 West, 1100 New York Avenue, N.W., Washington, D.C. 20005.

Michael A. Listgarten

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September 3, 1997

BY HAND

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Twelfth Street and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

Re: Finance Docket No. 32760 (Sub-No.23)

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and ten copies of Applicants' Responses to the First Set of Interrogatories of Benjamin Zatz and Donald Zatz (UP/SP-316). Also enclosed is a 3.5-inch disk containing the text of this filing in WordPerfect 5.1 format.

I would appreciate it if you would date-stamp the enclosed extra copy of the pleading and return it to the messenger for our files.

Sincerely,

Michael A. Listgarten

Enclosure

181647

UP/SP-316

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

APPLICANTS' RESPONSES TO THE FIRST SET OF INTERROGATORIES OF BENJAMIN ZATZ AND DONALD ZATZ

UPC, UPRR, SPR, SPT, and SSW, collectively, "Applicants," hereby respond to the First Set of Interrogatories of Benjamin Zatz and Donald Zatz.

GENERAL RESPONSES

The following general responses are made with respect to all of the interrogatories.

1. Production of documents or information does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any objection stated herein.

2. Many of the interrogatories request information dating as far back as 1932. Applicants have made a reasonable effort to obtain the requested information, but information from 65 years ago is generally not available.

3. In line with past practice in cases of this nature, Applicants have not secured verifications for the

answers to interrogatories herein. Applicants are prepared to discuss the matter with the Zatzes if this is of concern with respect to any particular answer.

GENERAL OBJECTIONS

The following general objections are made with respect to all of the interrogatories. Any additional specific objections are stated at the beginning of the response to each interrogatory.

1. Applicants object to production of, and are not producing, information subject to the attorney-client privilege.

2. Applicants object to production of, and are not producing, information subject to the work product doctrine.

3. Applicants object to the definition of "you," "your," and "Applicants" as overbroad in that, as applied to the interrogatories, it creates requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Applicants have interpreted the words "you," "your" and Applicants in Interrogatories Nos. 1, 4, 6 and 9-13 to refer to "Applicants" as that term has been used throughout this proceeding. Applicants have interpreted the word "you" in Interrogatories Nos. 7 and 8 to refer to SP and its corporate predecessors.

4. Applicants object to the definition of "Cotton Belt" and interpret references to the Cotton Belt to refer to SSW.

5. Applicants object to Instruction No. 11 to the extent that it seeks to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

6. Applicants object to the definition of "relevant time" as and calling for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Interrogatory No. 1

"Your Petition, filed July 14, 1997, at page 1, stated that the Cotton Belt had 173,300 shares of common stock issued and outstanding. The ICC in the acquisition decision, 180 I.C.C. at 178, however, said there were 171,861 shares of common stock issued and outstanding. Please state when the 1,439 additional shares were issued, to whom they were issued, the price at which the shares were issued, and, if no price was paid for them, what value was assigned to the shares at the time they were issued."

Response

Applicants object to this interrogatory as unduly burdensome and in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

Upon reasonable investigation, Applicants have been unable to determine the answer. A list of registered holders indicates that as of April 14, 1976, there were 173,300 shares outstanding, 1,489 of which were held by SSW as treasury stock and 171,811 of which were held by SSW's parent or the public. A notice dated September 17, 1958, of the New York Stock exchange's delisting of SSW shares confirms that as of that date, 171,811 shares were held by SSW's parent or the public.

Interrogatory No. 2

"The ICC, in its acquisition decision, 180 I.C.C. at 178, noted that the Southern Pacific Company previously had purchased 42,600 shares, or approximately 25 percent, of the issued and outstanding shares of the Cotton Belt and that, if authorized, it would acquire an additional 24,700 shares, for a total of approximately 40 percent, of the issued and outstanding common stock of the Cotton Belt. Please state when the additional 24,700 shares were acquired by the Southern Pacific Company, the price at which the shares were purchased, and, if they were acquired by an exchange of Southern Pacific Company stock, what was the ratio of exchange and what value was assigned to the Southern Pacific Company stock at the time the Cotton Belt shares were acquired."

Response

Applicants object to this interrogatory as unduly burdensome and in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

Applicants have been unable to locate records sufficient to answer this Interrogatory. However, available records indicate that the shares were purchased prior to 1958.

Interrogatory No. 3

"The ICC, in its acquisition decision, 180 I.C.C. at 711, stated that the Southern Pacific Company, had obtained options to assure it of 86 percent of the outstanding Cotton Belt stock. Please state the number of common stock for which the Southern Pacific Company had obtained options, whether the options were exercised, how many shares of common stock were acquired by the Southern Pacific Company, the price at which the shares were purchased, and, if they were acquired by an exchange of Southern Pacific Company, what was the ratio of exchange and what value was assigned to the Southern Pacific Company stock at the time the Cotton Belt shares were acquired."

Response

Applicants object to this request as unduly vague and unduly burdensome, and in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

Applicants have been unable to locate records sufficient to answer this Interrogatory.

Interrogatory No. 4

"Subsequent to the consummation of the transactions authorized by the ICC by this acquisition decision, please state when you acquired each of the additional shares, for a total of 173,300 shares, of the issued and outstanding common stock of the Cotton Belt, from whom they were acquired, the price you paid for the shares, and, if they were acquired by an exchange of your stock, what was the ratio of exchange and what value was assigned to your stock at the time the Cotton Belt shares were acquired.

Response

Applicants object to this request as unduly vague and unduly burdensome, and in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

Applicants will produce documents describing repurchases of SSW common stock since 1949, which is the earliest date for which such records are available.

Interrogatory No. 5

"Please state how many shares of today's Southern Pacific Transportation Company common stock equate to a single share of Southern Pacific Company common stock as issued and outstanding in 1932, when the acquisition decision was entered, that is please identify the date and terms of the exchange of stock of Southern Pacific Company for the stock of Southern Pacific Transportation Company, the dates, numbers and details of the Southern Pacific Company common stock splits that occurred before such exchange and the dates, number and details of the Southern Pacific Transportation Company common stock splits that occurred after such exchange."

Response

Applicants object to this request as unduly burdensome and in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

On August 8, 1952, the stock of Southern Pacific Company split two for one. On November 12, 1959, the stock split three for one.

The exchange of Southern Pacific Company stock for stock of Southern Pacific Transportation Company occurred in 1969 on a one-to-one basis. At that time, there were 27,141,366 outstanding shares. There have been no splits of Southern Pacific Transportation Company common stock.

Interrogatory No. 6

"At any time, subsequent to the consummation of the transactions authorized by the ICC by its acquisition decision, did you explore the feasibility of eliminating the remaining minority stockholders of the issued and outstanding common stock of the Cotton Belt by availing yourself of the provisions of the Railroad Modification Act, 49 U.S.C. 20b, when did you consider doing so and, in each instance, why did you conclude not to do so.

Response

Applicants object to this request in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

Applicants have inquired of the persons most likely to have knowledge regarding this issue, and on that basis believe that eliminating the remaining minority stockholders of the issued and outstanding common stock of the Cotton Belt through the provisions of the Railroad Modification Act, 49 U.S.C. § 20b was not considered. However, Applicants are not

in a position to confirm that this possibility was never considered during the past 65 years.

Interrogatory No. 7

"In the negotiations with Mr. John S. Reed and/or any other director, officer, employee, agent or other representative of Santa Fe Industries, Inc., the Atchison, Topeka and Santa Fe Railway Company and/or Santa Fe Southern Pacific Company leading to the proposed transactions submitted for ICC approval in Finance Docket No. 30400, Santa Fe Southern Pacific Corporation--Control--Southern Pacific Transportation Company, please state what value you assigned to the common stock of the Cotton Belt then held by Southern Pacific Transportation Company or its corporate affiliates and what contribution to gross operating revenue and net operating revenue of the Southern Pacific Transportation Company you ascribed to the Cotton Belt."

Response

Applicants object to this request in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

No specific value was assigned to SSW stock, and no contribution to gross operating revenue and net operating revenue was ascribed to SSW.

Interrogatory No. 8

"In the negotiations with Mr. Phillip F. Anschutz, and/or any other director, officer, employee, agent or other representative of Anschutz Corporation, Rio Grande Industries, Inc., and/or the Denver and Rio Grande Western Railroad Company leading to the proposed transactions submitted for ICC approval in Finance Docket No. 32000, Rio Grande Industries, Inc., et al.--Control--Southern Pacific Transportation Company, please state what value you assigned to the common stock of the Cotton Belt then held by the Southern Pacific Transportation Company or its corporate affiliates and what

contribution to gross operating revenue and net operating revenue of the Southern Pacific Transportation Company you ascribed to the Cotton Belt."

Response

Applicants object to this request in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

No specific value was assigned to SSW stock, and no contribution to gross operating revenue and net operating revenue was ascribed to SSW.

Interrogatory No. 9

"In the negotiations with Mr. Andrew L. "Drew" Lewis, Jr., and/or any other director, officer, employees, agent or other representative of Union Pacific Corporation and/or Union Pacific Railroad Company leading to the proposed transactions submitted for ICC approval in the subject proceeding please state what value you assigned to the common stock of the Cotton Belt then held by the Southern Pacific Transportation Company or its corporate affiliates and what contribution to gross operating revenue and net operating revenue of the Southern Pacific Transportation Company you ascribed to the Cotton Belt."

Response

Applicants object to this request in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

No specific value was assigned to SSW stock, and no contribution to gross operating revenue and net operating revenue was ascribed to SSW.

Interrogatory No. 10

"During the pendency of the subject proceeding, please state whether you received a proposal from Conrail, or otherwise learned that Conrail might be prepared to offer a proposal, to acquire the Cotton Belt, and, if so, please state what amount you understood Conrail might be prepared to pay for the Cotton Belt and what amount you believed Conrail would need to pay for the Cotton Belt for you to give serious consideration to the Cotton Belt's sale to Conrail."

Response

Applicants object to this request as unduly vague and in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

UP did not receive a proposal during the pendency of the UP/SP merger proceeding to acquire the Cotton Belt. In a letter sent from David M. LeVan to Drew Lewis on September 25, 1995, Conrail proposed acquiring the following assets from UP:

(i) SP-owned lines from Chicago, IL, and St. Louis, MO, to Galveston, TX, and Brownsville, TX, and from New Orleans, LA, to Spofford, TX, Eagle Pass, TX, and El Paso, TX, including connecting trackage and spur lines serving Alton, IL, New Madrid, MO, Memphis, TN, Little Rock, AR, Indiana, AR, Beaux Bridge, LA and all intermediate Texas points;

(ii) 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.

(iii) an ownership interest in the Alton & Southern Railway, Houston Belt & Terminal Railway, Terminal Railroad Association of St. Louis, and other terminal carriers;

(iv) an ownership interest in the Arkansas & Memphis Railway Bridge and Terminal Company, Southern Illinois and Missouri Bridge Company, and any other bridge company integral with the acquired lines;

(v) an appropriate number of locomotives, rolling stock, and certain other equipment (including any related financing obligations); and

(vi) all other assets, options and facilities used or held for use for present and future maintenance and operation of the territory described above.

The trackage and other property encompassed in Conrail's proposal included large portions of SPT and SPCSL trackage and property. Conrail proposed to acquire those assets, subject to existing mortgages or financing arrangements, for $1.5 billion (consisting of cash and assumed debt). Press reports later indicated that Conrail had increased the amount it was willing to pay to $1.9 billion. Applicants never calculated an amount that they believed Conrail would need to offer for the Cotton Belt in order for Applicants to give serious consideration to the Cotton Belt's sale to Conrail.

Interrogatory No. 11

"During the pendency of the subject proceeding, please state whether you received a proposal from any other railroad or railroad holding company, or otherwise learned that another railroad or railroad holding company might be prepared to offer a proposal, to acquire the Cotton Belt, and, if so, please state what amount you understood the railroad or railroad holding company might be prepared to pay for the

Cotton Belt and what amount you believed the railroad or railroad holding company would need to pay for the Cotton Belt for you to give serious consideration to the Cotton Belt's sale to the railroad or railroad holding company."

Response

Applicants object to this request as unduly vague and in that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

KCS suggested purchasing the Cotton Belt, SP's Houston-New Orleans and Houston-Shreveport lines, as well as UP's former OKT line between Wichita and Fort Worth, and the UP mainline between Fort Worth and Smithville via Taylor. KCS made no specific dollar proposal for those lines or for the Cotton Belt. Applicants never calculated an amount that they believed KCS would need to offer for the Cotton Belt in order for Applicants to give serious consideration to the Cotton Belt's sale to KCS.

Interrogatory No. 12

"In the Applicants' Brief in the subject proceeding, at page 46, you stated that the proponents of the divestiture proposals 'were not prepared to pay for the lines anything remotely approaching their value.' In arriving at that statement, please state what value you assigned to the common stock of the Cotton Belt then held by the Southern Pacific Transportation Company or its corporate affiliates and what contribution to gross operating revenue and net operating revenue of the Southern Pacific Transportation Company you ascribed to the Cotton Belt."

Response

Subject to the General Objections stated above, Applicants respond as follows:

No value was assigned to the Cotton Belt's common stock, and no contribution to gross operating revenue and net operating revenue of SPT was ascribed to the Cotton Belt.

Interrogatory No. 13

"In the Applicants' Brief in the subject proceeding, at page 46, you stated that '[t]he divestiture proposals could well force the Applicants to abandon the merger.' In arriving at that statement, please state the dollar value you believed the Cotton Belt would bring to your railroad system, following the STB's approval of the proposed transaction, and what contribution the Cotton Belt then would make to the gross operating revenue and net operating revenue of your railroad system."

Response

Subject to the General Objections stated above, Applicants respond as follows:

Applicants had no particular dollar value or contribution figure in mind when making the quoted statement.

Respectfully submitted,

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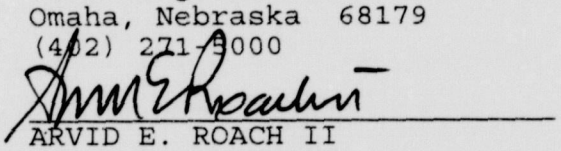

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Attorneys for Union Pacific Corporation, Union Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company and St. Louis Southwestern Railway Company

September 3, 1997

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ORIGINAL

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(202) 371-8037
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August 19, 1997

VIA HAND DELIVERY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

This refers to Finance Docket No. 32760 (Sub-No. 23), Union Pacific Corp., et al.--Control and Merger--Southern Pacific R. Corp., et al., and the Applicants' Reply to Petition for Extension, filed August 18, 1997.

Surely Applicants can't have believed that the document production request, served upon Applicants on August 15, 1997, would be all of the discovery that Messrs. Benjamin Zatz and Donald Zatz would need to pursue in connection with Applicants' valuation of their Cotton Belt common stock; attached is a copy of the first set of interrogatories to Applicants served this day.

As for the Messrs. Benjamin Zatz and Donald Zatz's document production request, although Applicants assert, at page 4 of their Reply, that "they have provided counsel with those documents," all that was made available were excerpts from four documents -- pages 13-50 of CS First Boston's Project Red, pages 1-26 of a February 24, 1995, Rating Agency Update, Southern Pacific's pro formas as of March 31, 1995, and documents Bates stamp numbered HC33-126-129. These can't be all of the documents relating to the Verified Statement of Stephan C. Month attached to the Railroad Merger Application, filed November 30, 1995, much less his Verified Statement attached to Applicants' Petition, filed July 14, 1997, or his letter to Union Pacific Corporation, dated April 14, 1997.

Applicants' contention, at pages 3-4 of their Reply, that the Messrs. Benjamin Zatz and Donald Zatz need not engage an analyst to sponsor testimony in this proceeding in opposition to the Mr. Month's valuation of the minority shareholders' Cotton Belt common stock and that "comments by counsel" should suffice is ludicrous and leaves one wondering why it was that Applicants went to the

time and expense of engaging Mr. Month as an expert witness.

Finally, the reason advanced by Applicants, at pages 5-6 of their Reply, as to why the request of the Messrs. Benjamin Zatz and Donald Zatz for a 60-day extension of the due date for their Comments should be denied, namely, that "Applicants will be required to expend considerable time and resources to prepare financial statements that reflect SSW's operations as a separate identity," is nonsensical, to say the least.

Southern Pacific has held more than 85 percent of the stock of the Cotton Belt for 65 years, since the decision in St. Louis, S. W. Ry. Co. Control, 180 I.C.C. 175 (1932), modified, 180 I.C.C. 710 (1932), and, if it was so important to merge the companies, there was ample opportunity to do so in the meantime. Moreover, for much of that time Southern Pacific has included the Cotton Belt in consolidated financial statements -- as volume 7 of the Railroad Merger Application in the instant proceeding attests -- and Applicants offer no explanation why that practice cannot continue for another couple of months.

If this letter has become an impermissible reply to a reply, the Messrs. Benjamin Zatz and Donald Zatz respectfully ask that, pursuant to 49 C.F.R. 1117.1, they be granted leave to file it.

Ten copies of this letter are enclosed to permit your circulation of it. An additional copy is enclosed for you to stamp to acknowledge your receipt of it and to return to me in the enclosed envelope.

By copy of this letter, service is being effected upon counsel for the Applicants.

Sincerely yours,

Fritz R. Kahn

enc.
cc: Arvid E. Roach II, Esq.
Douglas A. Kellner, Esq.
Mr. Donald Zatz

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August 19, 1997

VIA MAIL AND FAX 662-6291

Arvid E. Roach II, Esq.
Covington & Burling
P. o. Box 7566
Washington, DC 20044

Dear Arvid:

Enclosed is the First Set of Interrogatories of Benjamin Zatz and Donald Zatz to Applicants in Finance Docket No. 32760 (Sub-No. 23), Union Pacific Corp., et al.--Control and Merger--Southern Pacific R. Corp.

If you have any question concerning the interrogatories which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Best regards.

Sincerely yours,

Fritz R. Kahn

enc.
cc: Douglas A. Kellner, Esq.
Mr. Donald Zatz

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

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

UNION PACIFIC CORPORATION, et al.,
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, et al.

FIRST SET OF INTERROGATORIES OF BENJAMIN ZATZ AND DONALD ZATZ TO APPLICANTS

Benjamin Zatz and Donald Zatz, pursuant to 49 C.F.R. 1114.26, propound the following interrogatories to Applicants to be answered within fifteen (15) days of the date of service and request that at such time whatever documents are produced in response to any of the interrogatories be made available for inspection and copying at the offices of Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005-3934.

I.

DEFINITIONS AND INSTRUCTIONS

1. "Application" means the Application filed herein on November 30, 1995, and approved by decision of the Board, Decision No. 44, served August 12, 1996.

2. "You," "your" or "Applicants" means and includes, jointly and severally, Union Pacific Corporation and the companies

controlled by it, including, but not limited to, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Chicago and North Western Railway Company, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPSCL Corp., and The Denver and Rio Grande Western Railroad Company, their current and former parent companies; their current and former subsidiaries; their affiliates and divisions; their predecessors-in-interest; their current and former officers, directors, employees, agents, or attorneys; any person controlling, controlled by, or under common control with them; any person acting on behalf of them or any of their subsidiaries, affiliates, divisions or predecessors-in-interest; and any commercial entities in which the aforesaid holds or held any degree of ownership interest from January 1, 1930, through the date of compliance with these discovery requests.

3. "Document" means and includes any printed, typewritten or handwritten material or writing of whatever kind or nature, including, but not limited to, letters, correspondence, memoranda, notes, studies, desk or other calendars, statements, telegrams, ledgers, journals, balance sheets, income and expense statements, financial statements, personal records, account statements, bank statements, minutes and notes of meetings or conversations, computer print-outs, computer listings, agreements, contracts, drafts, negotiable instruments, checks, receipts, invoices, bills, bills of lading, tariffs, shipping receipts, purchase orders, exhibits to agreements, rough drafts of documents, catalogues, transcripts, photographs, photostats, pictures, all originals in

carbon or photostatic copies or other duplicates of any such document referred to above, including microfilm, microfiche, computer hard drives, computer memories, computer tapes, computer discs or electronically stored documents, and any other documents or writings as such terms are understood in their ordinary sense.

4. "Person" or "persons" as used herein refers to any natural person, corporation, partnership, proprietorship, association, joint venture, governmental or other public entity, or any other form of organization or legal entity, including carrier rate bureaus, and all their officials, officers, employees, representatives and agents.

5. As used herein, "officials," "officers," "employee," "representative," or "agent" includes any natural or corporate person, including attorneys, serving, acting or being in such capacity (by contract or otherwise) at any relevant time even though such person is no longer in such capacity.

6. The term "identify" when used herein with reference to a document or an oral communication or statement means:

(a) If an oral communication or statement, identify the type of communication or statement, state the place(s) where the communication or statement was issued or received, the author or speaker and date thereof, identify all witnesses to the communication or statement, and identify the subject matter and content of the communication or statement.

(b) If a document, state its title or other identifying

date, and (1) the kind of documents; (2) number of pages; (3) present location and custodian; (4) the date it bears; (5) the date prepared; (6) whether the document was sent and, if so, the date it was sent; and (7) the identity of the author, originator, sender, each person who received the document, and each person known to have the document.

7. The term "identify," when used herein with reference to a fact or circumstance, means:

(a) To identify, as defined above in paragraph 6, any occasion and occurrence, oral communication or document, and to describe precisely and fully any other circumstance or manifestation of facts which, in whole or in part, led to or is believed in any way to support a particular allegation, whether or not admissible into evidence or intended to be offered into evidence.

(b) To set forth fully and precisely any inference, construction, interpretation, relation, opinion or contention that relates to the fact or circumstance, or to the application of law to the fact or circumstance, and which in whole or in part led to or is believed in any way to support a particular allegation.

8. The term identify, when used herein with respect to a natural person, means to state:

(a) the full name;

(b) the last known residence;

(c) the last known employer or business affiliation and address;

(d) the last known occupation and business position or title held; and

(e) a phone number at which said person may be contacted.

9. In order to bring within the scope of these

interrogatories all conceivably relevant matters or documents which might otherwise be construed to be outside their scope:

(a) The singular of each word shall be construed to include its plural and vice versa.

(b) "And" as well as "or" shall be construed conjunctively as well as disjunctively.

(c) "Each" shall be construed to include "every" and vice versa.

(d) The present tense shall be construed to include the past tense and vice versa.

(e) The masculine shall be construed to include the feminine and vice versa.

10. If you believe that any of the following interrogatories calls for assertion of a claim of privilege, answer that part of the interrogatory which is not objected to, state that part of each interrogatory as to which you raise objection, and set forth the basis for your claim of privilege with respect to such response as you refuse to make.

11. If, for reasons other than a claim of privilege, you refuse to respond to answer any interrogatory, please state the grounds upon which the refusal is based, whether there are documents in existence responsive to the interrogatory and a description of the document.

12. If any information called for by these interrogatories is not available or accessible in the full detail requested, such interrogatories shall be deemed to call for sufficient explanation of the reasons therefor, as well as for the best information available or accessible, set forth in as detailed a manner as possible.

13. Each of these definitions and instructions shall be fully applicable to each interrogatory, notwithstanding that a definition or instruction above may in whole or in part be reiterated in a particular interrogatory, or a particular interrogatory may incorporate supplemental instructions or definitions.

14. The term "relevant time" as used in these interrogatories is from January 1, 1930, to the date of compliance with these discovery requests.

15. The term "ICC" as used in these interrogatories refers to the Interstate Commerce Commission" and the term "STB," to the Surface Transportation Board.

16. The term "Cotton Belt" refers to the St. Louis Southwestern Railway Company, its current and former parent companies, its current and former subsidiaries, its affiliates and divisions and its predecessors-in-interest, as well as its railroad lines, extending from St. Louis, MO-East St. Louis, IL, on the north, in a southwesterly direction to Sherman, Fort Worth, McGregor and Lufkin, TX, on the north, with intermediate service to Memphis, TN, and Shreveport, LA.

17. The term "Conrail" refers to Consolidated Railroad Corporation, its current and former parent companies, its current and former subsidiaries, its affiliates and divisions and its predecessors-in-interest, its current and former officers, directors, employees, agents or attorneys and any person acting on behalf of it or any of its subsidiaries, affiliates, divisions or predecessors-in-interest.

18. The term "acquisition decision" refers to the decision of the Interstate Commerce Commission, St. Louis S. W. Ry. Co. Control, 180 I.C.C. 175 (1932), modified, 180 I.C.C. 710 (1932).

19. Please note that, pursuant to 49 C.F.R. 1124.26, whenever the answer to an interrogatory may be derived or ascertained from your business records, you may elect to furnish a copy of the document or documents or arrange with counsel for their inspection and copying.

20. Please note, as well, that, pursuant to 49 C.F.R. 1114.29, your obligation to respond to these interrogatories is a continuing one, and you must supplement your responses to keep them current and correct.

INTERROGATORIES

1. Your Petition, filed July 14, 1997, at page 1, stated that the Cotton Belt had 173,300 shares of common stock issued and outstanding. The ICC in the acquisition decision, 180 I.C.C. at 178, however, said there were 171,861 shares of common stock issued and outstanding. Please state when the 1,439 additional shares were issued, to whom they were issued, the price at which the shares were issued, and, if no price was paid for them, what value was assigned to the shares at the time they were issued.

2. The ICC, in its acquisition decision, 180 I.C.C. at 178, noted that the Southern Pacific Company previously had purchased 42,600 shares, or approximately 25 percent, of the issued and outstanding shares of the Cotton Belt and that, if authorized, it would acquire an additional 24,700 shares, for a total of

approximately 40 percent, of the issued and outstanding common stock of the Cotton Belt. Please state when the additional 24,700 shares were acquired by the Southern Pacific Company, the price at which the shares were purchased, and, if they were acquired by an exchange of Southern Pacific Company stock, what was the ratio of exchange and what value was assigned to the Southern Pacific Company stock at the time the Cotton Belt shares were acquired.

3. The ICC, in its acquisition decision, 180 I.C.C. at 711, stated that the Southern Pacific Company, had obtained options to assure it of 86 percent of the outstanding Cotton Belt stock. Please state the number of common stock for which the Southern Pacific Company had obtained options, whether the options were exercised, how many shares of common stock were acquired by the Southern Pacific Company, the price at which the shares were purchased, and, if they were acquired by an exchange of Southern Pacific Company, what was the ratio of exchange and what value was assigned to the Southern Pacific Company stock at the time the Cotton Belt shares were acquired.

4. Subsequent to the consummation of the transactions authorized by the ICC by its acquisition decision, please state when you acquired each of the additional shares, for a total of 173,300 shares, of the issued and outstanding common stock of the Cotton Belt, from whom they were acquired, the price you paid for the shares, and, if they were acquired by an exchange of your stock, what was the ratio of exchange and what value was assigned to your stock at the time the Cotton Belt shares were acquired.

5. Please state how many shares of today's Southern Pacific Transportation Company common stock equate to a single share of Southern Pacific Company common stock as issued and outstanding in 1932, when the acquisition decision was entered, that is, please identify the date and terms of the exchange of stock of Southern Pacific Company for the stock of Southern Pacific Transportation Company, the dates, numbers and details of the Southern Pacific Company common stock splits that occurred before such exchange and the dates, number and details of the Southern Pacific Transportation Company common stock splits that occurred after such exchange.

6. At any time, subsequent to the consummation of the transactions authorized by the ICC by its acquisition decision, did you explore the feasibility of eliminating the remaining minority stockholders of the issued and outstanding common stock of the Cotton Belt by availing yourself of the provisions of the Railroad Modification Act, 49 U.S.C. 20b, when did you consider doing so and, in each instance, why did you conclude not to do so.

7. In the negotiations with Mr. John S. Reed and/or any other director, officer, employee, agent or other representative of Santa Fe Industries, Inc., The Atchison, Topeka and Santa Fe Railway Company and/or Santa Fe Southern Pacific Company leading to the proposed transactions submitted for ICC approval in Finance Docket No. 30400, Santa Fe Southern Pacific Corporation--Control--Southern Pacific Transportation Company, please state what value you assigned to the common stock of the Cotton Belt then held by

Southern Pacific Transportation Company or its corporate affiliates and what contribution to gross operating revenue and net operating revenue of the Southern Pacific Transportation Company you ascribed to the Cotton Belt.

8. In the negotiations with Mr. Phillip F. Anschutz, and/or any other director, officer, employee, agent or other representative of Anschutz Corporation, Rio Grande Industries, Inc., and/or The Denver and Rio Grande Western Railroad Company leading to the proposed transactions submitted for ICC approval in Finance Docket No. 32000, Rio Grande Industries, Inc., et al.--Control--Southern Pacific Transportation Company, please state what value you assigned to the common stock of the Cotton Belt then held by the Southern Pacific Transportation Company or its corporate affiliates and what contribution to gross operating revenue and net operating revenue of the Southern Pacific Transportation Company you ascribed to the Cotton Belt.

9. In the negotiations with Mr. Andrew L. "Drew" Lewis, Jr., and/or any other director, officer, employees, agent or other representative of Union Pacific Corporation and/or Union Pacific Railroad Company leading to the proposed transactions submitted for ICC approval in the subject proceeding please state what value you assigned to the common stock of the Cotton Belt then held by the Southern Pacific Transportation Company or its corporate affiliates and what contribution to gross operating revenue and net operating revenue of the Southern Pacific Transportation Company you ascribed to the Cotton Belt.

10. During the pendency of the subject proceeding, please state whether you received a proposal from Conrail, or otherwise learned that Conrail might be prepared to offer a proposal, to acquire the Cotton Belt, and, if so, please state what amount you understood Conrail might be prepared to pay for the Cotton Belt and what amount you believed Conrail would need to pay for the Cotton Belt for you to give serious consideration to the Cotton Belt's sale to Conrail.

11. During the pendency of the subject proceeding, please state whether you received a proposal from any other railroad or railroad holding company, or otherwise learned that another railroad or railroad holding company might be prepared to offer a proposal, to acquire the Cotton Belt, and, if so, please state what amount you understood the railroad or railroad holding company might be prepared to pay for the Cotton Belt and what amount you believed the railroad or railroad holding company would need to pay for the Cotton belt for you to give serious consideration to the Cotton Belt's sale to the railroad or railroad holding company.

12. In the Applicants' Brief in the subject proceeding, at page 46, you stated that the proponents of the divestiture proposals "were not prepared to pay for the lines anything remotely approaching their value." In arriving at that statement, please state what value you assigned to the common stock of the Cotton Belt then held by the Southern Pacific Transportation Company or its corporate affiliates and what contribution to gross operating revenue and net operating revenue of the Southern Pacific

Transportation Company you ascribed to the Cotton Belt.

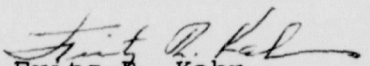
13. In the Applicants' Brief in the subject proceeding, at page 46, you stated that "[t]he divestiture proposals could well force the Applicants to abandon the merger." In arriving at that statement, please state the dollar value you believed the Cotton Belt would bring to your railroad system, following the STB's approval of the proposed transaction, and what contribution the Cotton Belt then would make to the gross operating revenue and net operating revenue of your railroad system.

Respectfully submitted,

BENJAMIN ZATZ
DONALD ZATZ

By their attorneys,

Douglas A. Kellner
Kellner, Chehebar & Deveney
One Madison Avenue
New York, NY 10010
Tel.: (212) 889-2121



Fritz R. Kahn
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Dated: August 19, 1997

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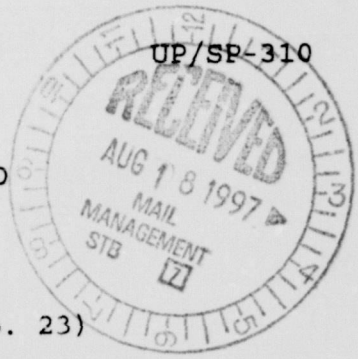
UP/SP-310



BEFORE THE
SURFACE TRANSPORTATION BOARD

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

APPLICANTS' REPLY TO PETITION FOR EXTENSION

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 reply to the "Petition of Benjamin Zatz and Donald Zatz for Extension of Comments Due Date," filed August 15, 1997. Petitioners have not demonstrated good cause for an extension, and their request conflicts with Applicants' recognized need for expedited regulatory action. The Board should thus deny their petition.

On July 14, 1997, the primary Applicants submitted a request, supported by verified statements of Stephan C. Month,

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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.

Managing Director, Credit Suisse First Boston Corporation, and Joseph E. O'Connor, Jr., Vice President and Controller, Union Pacific Corporation, for a determination that the terms of the proposed merger of SSW into SSW Merger Corp., a direct wholly-owned subsidiary of SPT, are just and reasonable. Applicants' served copies of their request on petitioners Benjamin Zatz and Donald Zatz on that same day. Applicants sought expedited handling of their request because, as indicated in Mr. O'Connor's sworn statement, 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.

On July 29, 1997, the Board published notice of Applicants' request for a fairness determination in the Federal Register. 62 Fed. Reg. 40566. Recognizing that Applicants' request "involves a matter that requires expedited regulatory action," the Board established a procedural schedule that allowed interested parties 30 days -- until August 28 -- to file comments on Applicants' fairness request. This gave the Zatzes six full weeks from service on them of the fairness request to prepare their comments.[2/]

2/ Applicants were informed by the Board's staff during a discussion regarding the filing fee for the fairness request that the Zatzes had telephoned the Board upon receiving the request to ask that the Board halt any proceedings.

It was not until Friday afternoon, August 15 -- more than 30 days after Applicants served their request for a fairness determination, and more than two and a half weeks after the Board had published notice in the Federal Register -- that petitioners filed their petition seeking a sixty-day extension of the August 28 deadline for filing comments.

Petitioners base their petition on three grounds, none of which withstands scrutiny. First, petitioners state that they did not retain "commerce counsel" until August 15 -- the same date they filed their petition. However, petitioners have been represented by counsel who has been pursuing this matter for several weeks, as the attachment to petitioners' request -- a letter from their attorney, Douglas A. Kellner -- clearly demonstrates. Petitioners do not indicate what it is about this securities fairness proceeding that required additional "commerce counsel." Moreover, petitioners make no attempt to explain why they have taken so long to retain such counsel. There is no shortage of attorneys familiar with STB precedent and procedure.

Second, petitioners contend that they have been unable to retain a financial analyst willing "to sponsor testimony" in this proceeding. Petitioners make no effort, however, to describe the extent or timing of their search or to demonstrate that they have truly been unable to find a qualified analyst to review Mr. Month's statement. Nor do they point to any particular matter that they require an

analyst to address, and that cannot be covered in comments by counsel. It is also noteworthy that Douglas Kellner's letter suggests that petitioners began looking for an analyst only recently.

Finally, petitioners state that they need additional time in order to pursue discovery. Petitioners served discovery requests on Applicants on August 15 along with their extension request -- again, more than 30 days after Applicants served their petition, and more than two and a half weeks after the Board had published notice in the Federal Register. The discovery requests are straightforward and could have been served immediately after Applicants filed their fairness petition. Applicants will respond to petitioners' requests as expeditiously as possible, as they committed to do in their fairness petition. In fact, counsel for Applicants spoke with counsel for petitioners the same day the discovery requests were received and offered to provide a portion of the requested documents -- documents related to Mr. Month's verified statement in the UP/SP merger proceeding -- as soon as counsel for petitioners provided an executed copy of the Protective Order entered in Finance Docket No. 32760. Applicants received that undertaking today and have provided counsel with those documents. However, petitioners should not be allowed to use their own delay in seeking discovery as reason to delay these entire proceedings.

Petitioners have had more than sufficient notice of this proceeding and more than sufficient time to obtain counsel, retain a financial analyst, and pursue discovery. None of petitioners' reasons for requesting an extension justifies the delay they seek. On the whole, petitioners' only apparent reason for seeking an extension appears to be that they have not made good use of the time available to them. And petitioners completely fail to explain why they need an additional 60 days to file comments, in light of the Board's determination in this proceeding (and the UP/CNW fairness proceeding) that 30 days is sufficient. Instead, it seems likely that petitioners, aware that Applicants will incur significant costs if they do not obtain Board approval by September 30, are pursuing this request in the hope of gaining leverage in order to obtain more than fair market value for their outstanding SSW shares.[3/]

Applicants have previously shown through uncontroverted testimony that it is essential that this proceeding be completed expeditiously. Unless the SSW merger is completed before the end of the fiscal third quarter on September 30, Applicants will be required expend to the

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3/ In their request for a fairness determination, Applicants indicated that they would purchase the publicly held shares of SSW common stock for $6,800 per-share, which is at the top end of SSW's estimated common equity value, as established in a valuation analysis conducted by CS First Boston. Also, after Applicants filed their fairness request, and continuing through last week, Applicants have engaged in discussions with the Zatzes regarding possible settlement of this matter.

considerable time and resources to prepare financial statements that reflect SSW's operations as a separate entity. Petitioners' extension request would make it impossible for the Board to render a decision before September 30. Counsel for Applicants underscored this when the Zatzes' counsel called to seek Applicants' consent to an extension, yet petitioners' extension request does not even attempt to address Applicants' need for expedited action.

Applicants have provided more than sufficient evidence to support their request for a fairness determination, and petitioners' request for an extension, which apparently stems from their own failure to act expeditiously, should be denied.

Respectfully submitted,

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(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

August 18, 1997

CERTIFICATE OF SERVICE

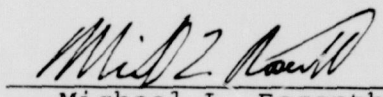
I, Michael L. Rosenthal, certify that, on this 18th day of August, 1997, I caused a copy of the foregoing document to be served by hand on Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, D.C. 20005 and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on the four known shareholders of SSW common stock as follows:

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

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

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

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



Michael L. Rosenthal

181224

ORIGINAL

LAW OFFICES
FRITZ R. KAHN, P.C.
SUITE 750 WEST
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

(202) 371-8037
FAX (202) 371-0900

August 15, 1997

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

SUB 23

Enclosed for filing in Finance Docket No. 32760, Union Pacific Corp., et al.--Control and Merger--Southern Pacific R. Co., et al., are the original and ten copies of the Petition of Benjamin Zatz and Donald Zatz for Extension of Comments Due Date.

Extra copies of the Petition and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, service is being effected upon counsel for Applicants.

If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,

Fritz R. Kahn

enc.
cc: Douglas A. Kellner, Esq.

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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Finance Docket No. 32760 Sub 23

UNION PACIFIC CORPORATION, et al.,
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, et al.

EXPEDITED HANDLING REQUESTED

PETITION OF BENJAMIN ZATZ
AND DONALD ZATZ FOR EXTENSION
OF COMMENTS DUE DATE

Petitioners, Benjamin Zatz and Donald Zats, pursuant to 49 C.F.R. 1117.1, petition for a sixty-day extension of the August 28, 1997, due date for filing Comments, established by the decision of the Board, served July 29, 1997, 62 Fed. Reg. 40567, and in support thereof state, as follows:

1. Petitioners are two of the four minority stockholders of the St. Louis Southwestern Railway Company, whose shares are to be valued pursuant to Applicants' Petition for Determination that Securities Terms are Just and Reasonable, filed July 14, 1997.

2. Petitioners, since being served with a copy of Applicants' Petition, diligently have sought representation by competent commerce counsel and only today retained Fritz R. Kahn, Esq., and he obviously requires time to familiarize himself with the relevant

facts and applicable law.

3. Moreover, Petitioners in the meantime have sought to engage a financial analyst to sponsor testimony to be filed in this proceeding, in response to the Verified Statement of Stephan C. Month, attached to Applicants' Petition, and, as is attested by the attached letter from Douglas A. Kellner, Esq., dated today, the quest is proving to be more difficult than one might have imagined.

4. Finally, Petitioners need to pursue limited discovery, and by their First Request of Benjamin Zatz and Donald Zatz for Production of Documents of Applicants, dated today, a copy of which is attached, they have asked for Mr. Month's work papers and other documents utilized or relied upon by him.

5. Petitioners, through their counsel, have conferred with counsel for the Applicants and regret to advise that Applicants object to the sixty-day extension request, notwithstanding that their reply date would be extended for a similar sixty-day period.

Respectfully submitted,

BENJAMIN ZATZ
DONALD ZATZ

By their attorneys,

Douglas A. Kellner
Kellner, Chehebar & Deveney
One Madison Avenue
New York, NY 10010
Tel.: (212) 889-2121

Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-8037

Dated: August 15, 1997

KELLNER, CHEHEBAR & DEVENEY
ONE MADISON AVENUE
NEW YORK 10010

CHARLES CHEHEBAR
JOHN PATRICK DEVENEY*
DOUGLAS A. KELLNER
ALAN M. FRIEDMAN

CAROL ANNE HERLIHY
EUGENE F. GETTY
STEPHANIE H. GOODMAN
JEANNE-MARIE WILLIAMS

* ALSO MEMBER D.C. BAR

TELEPHONE: (212) 889-2121
FACSIMILE: (212) 684-6224

COUNSEL
LOIS F. PHILLIPS
PETER M. LENOSIS**
JANESSA C. NISLEY

** ALSO MEMBER N.J. BAR

August 15, 1997

By Fax and by Mail
Fritz Kahn, Esq.
Suite 750 West
1100 New York Avenue N.W.
Washington, D.C. 20005

Benjamin Zatz and Donald Zatz

Dear Mr. Kahn:

Our law firm has represented Benjamin Zatz and Donald Zatz on several matters for a number of years. Benjamin Zatz is 95 years old. The Zatzes own 55 of the 61 minority shares of the St. Louis Southwestern Railway.

Shortly after the Zatzes received the petition of Union Pacific Corporation concerning the valuation of their shares, they devoted considerable time to locate and retain an attorney with adequate experience and availability to represent them in this matter. As you know, they have now retained you to represent them in the application pending before the Surface Transportation Board.

The critical issue in this proceeding is the valuation of the equity interests of the St. Louis Southwestern Railway. The only information submitted on valuation was the conclusory, summary appraisal of CS First Boston which does not include any of the supporting documentation. During our effort to retain qualified counsel, we have been also attempting to retain a qualified financial analyst who can review and comment on the CS First Boston appraisal.

I have spent many hours on the task of locating a qualified analyst during the last two weeks. I have spoken with numerous persons from the investment banking and accounting community, so far without any success. The task has been made especially difficult because virtually all of the persons referred to me are on vacation.

You have confirmed that it is essential that a qualified expert respond to the appraisal offered by Union Pacific. It appears unlikely that we will be able to retain such a person in order to meet the August 28 deadline for responses imposed by the STB's order. Therefore, I see no alternative but to request an extension.

I also note that nearly everyone with whom I have discussed this matter indicates that it would be impossible to prepare a response without first reviewing all of the back-up to the CS First Boston appraisal as well as detailed financial statements of St. Louis Southwestern Railway. Therefore, I urge you to obtain this information as quickly as possible from the applicants.

I look forward to working with you on this engagement.

Very truly yours,

Douglas A. Kellner

Douglas A. Kellner

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Finance Docket No. 32760

UNION PACIFIC CORPORATION, et al.,
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, et al.

FIRST REQUEST OF BENJAMIN ZATZ AND DONALD ZATZ FOR PRODUCTION OF DOCUMENTS TO APPLICANTS

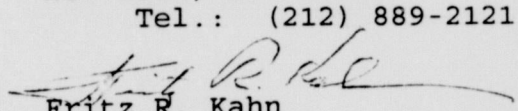
Benjamin Zatz and Donald Zatz, pursuant to 49 C.F.R. 1114.30, request that within fifteeen (15) days' time Applicants produce or make available for copying at the offices of Fritz R. Kahn, Esq., Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005, all documents, including the work papers, any tapes, discs, writings or other compilations of information, whether handwritten, typewritten, printed, recorded or produced or reproduced, whether in draft or final form, which were utilized or relied upon by Stephan C. Month in the preparation of his Verified Statement submitted with the Railroad Merger Application, filed November 30, 1995, and his Verified Statement, Exhibit A, attached to Applicants' Petition for Determination that Securities Terms are Just and Reasonble, filed July 14, 1997, and his letter to Union Pacific Corporation, dated April 14, 1997, and any documents which Applicants provided or made available to Mr. Month.

Respectfully submitted,

BENJAMIN ZATZ
DONALD ZATZ

By their attorneys,

Douglas A. Kellner
Kellner, Chehebar & Deveney
One Madison Avenue
New York, NY 10010
Tel.: (212) 889-2121



Fritz R. Kahn
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Tel.: (202) 371-8037

Dated: August 15, 1997

CERTIFICATE OF SERVICE

Copies of the foregoing Petition this day were served by me by faxing and mailing copies thereof, with first-class postage prepaid, to counsel for Applicants.

Dated at Washington, DC, this 15th day of August 1997.

Fritz R. Kahn