

STB FD 32760 (Sub 23) 10-28-97 J 183623

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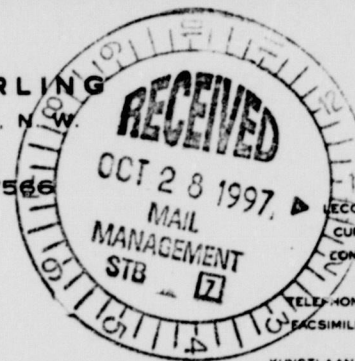
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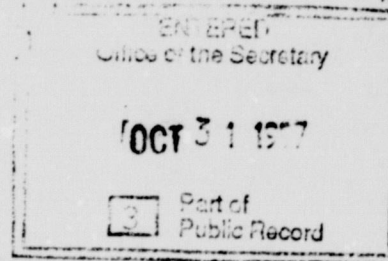
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October 28, 1997

By Hand

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



J

Re: Finance Docket Nos. 32760 & 32760 (Sub-No. 21)

Dear Secretary Williams:

183622

183623

We are in receipt of ESI-28, the Petition of Entergy Services, Inc. and Entergy Arkansas, Inc. for Modification of Decision No. 44 or, In the Alternative, for Additional Condition. Union Pacific intends to respond to the petition within 20 days of its filing, by November 12, 1997.

If you have any questions, please feel free to contact me at the above telephone number.

Thank you for your assistance.

Sincerely,

Timothy C. Hester

cc: O.H. Storey, Esq.
C. Michael Loftus, Esq.

STB FD

32760

(Sub 23)

9-17-97

J

182023

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September 17, 1997

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.

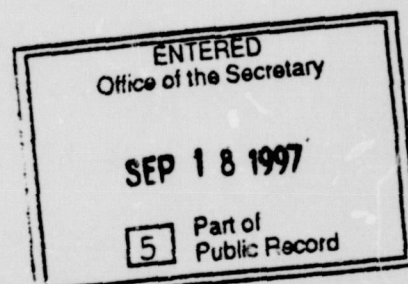
Dear Secretary Williams:

Yesterday we received by mail copies of the "Objections of Respondent Homer Henry" and "Objections of Respondent Joseph P. Guzman" that were filed in the above-captioned docket. Applicants do not believe these pleadings raise any relevant issues that Applicants have not already addressed in responding to the pleadings filed by Benjamin and Donald Zatz.

Sincerely,

Arvid E. Roach II

cc: Fritz R. Kahn, Esq.
John F. McHugh, Esq.



STB FD-32760 (SUB 23) ID-182023 9-17-97 J

182033

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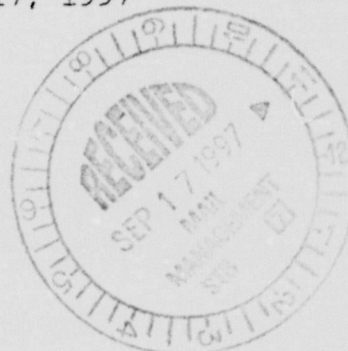
DIRECT FACSIMILE

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September 17, 1997

BY HAND

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



J

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

Dear Secretary Williams:

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Sincerely,

Arvid E. Roach II

cc: Fritz R. Kahn, Esq.
John F. McHugh, Esq.

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5	Part of Public Record

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FD-32760 (SUB 23)

9-12-97

J

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MICHAEL L. ROSENTHAL

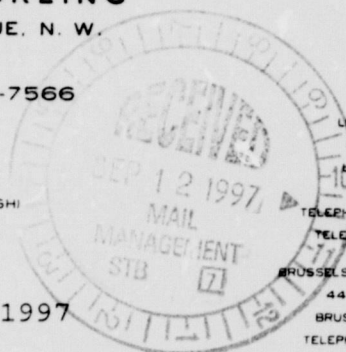
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September 12, 1997



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TELEFAX 32-2-502-1598

BY HAND

Fritz R. Kahn, Esq.
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, N.W.
Washington, D.C. 20005-3934

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

Dear Mr. Kahn:

Our continuing research into issues raised by the
Zatzes' filings in this proceeding has led us to two
additional pieces of information that I am providing in order
to supplement our responses to the Zatzes' discovery requests.
I have enclosed copies of each.

The first is a passage from a book entitled "80
Years of Transportation Progress: A History of the St. Louis
Southwestern Railroad" that discusses Southern Pacific's
acquisition of control of SSW and its purchase of SSW stock.
The second is a Conrail press release containing the text of a
June 5, 1996 letter from David M. LeVan to Drew Lewis
indicating that Conrail might be willing to pay up to \$1.9
billion as part of its "SP East" proposal.

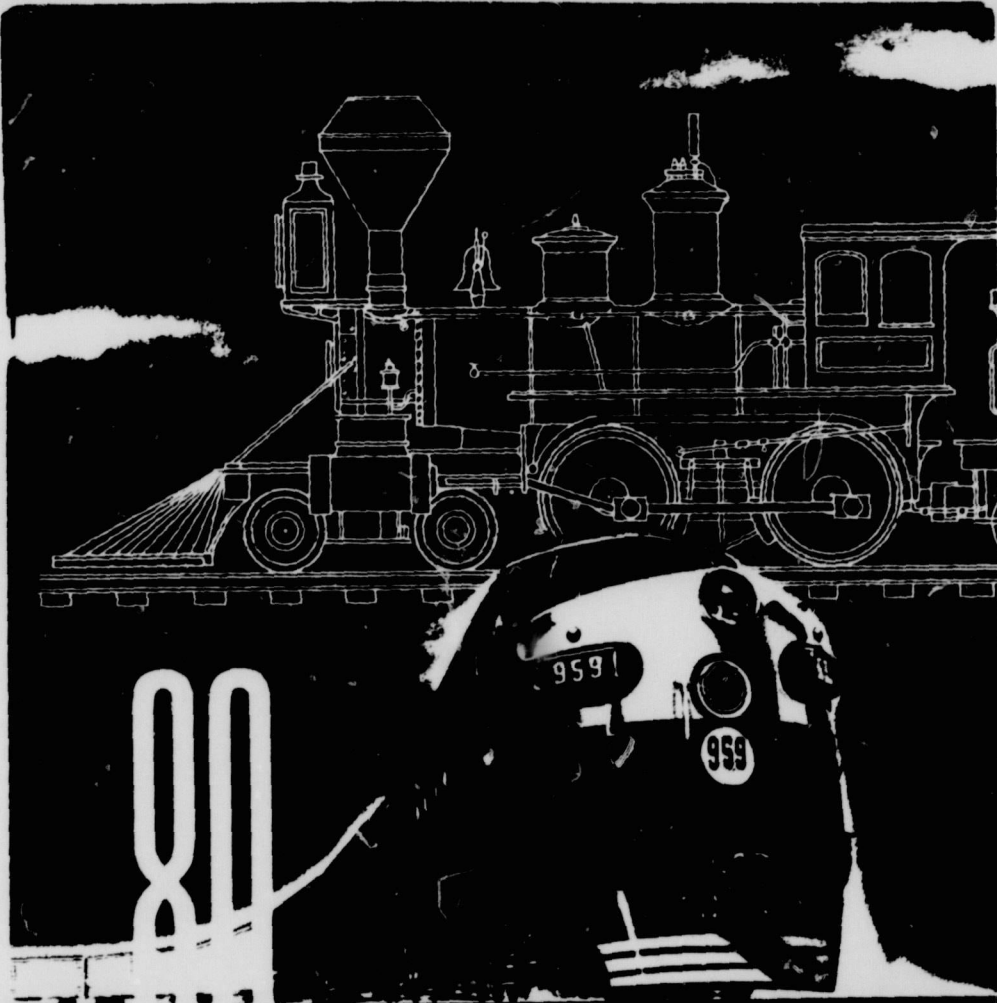
Both of these items are, of course, publicly
available, and could have been obtained by you from public
sources at any time.

Sincerely,

Michael L. Rosenthal

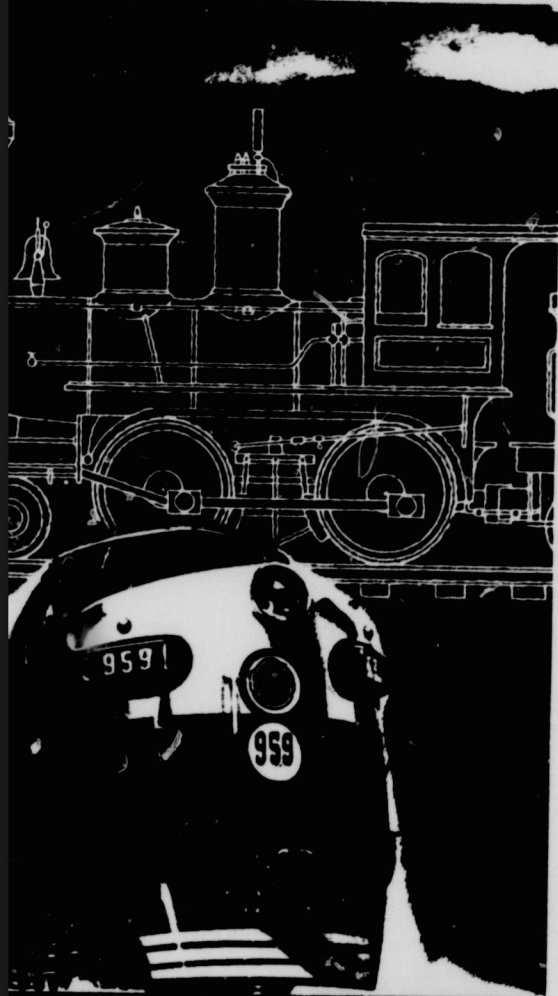
Enclosures

cc: Hon. Vernon A. Williams



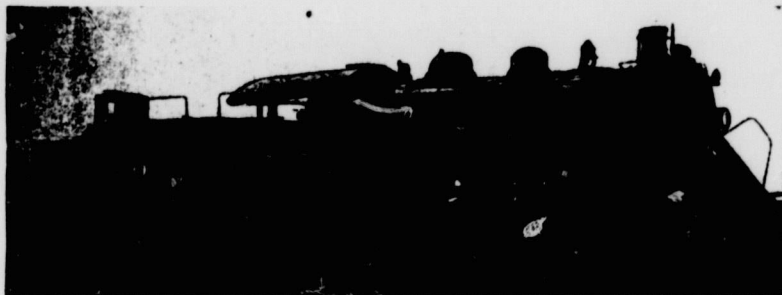
80 YEARS of TRANSPORTATION PROGRESS

*A History of the
St. Louis Southwestern Railway*



TRANSPORTATION PROGRESS

*A History of the
western Railway*



No. 570, Consolidation-type freight locomotive, weighed 151 tons. Built by Baldwin Locomotive Works in 1913. Dismantled in 1950.

Control by the Southern Pacific

Since 1919 the Cotton Belt had been a very important connection of the Southern Pacific system on traffic between points in the East and the Pacific Coast and points in Texas. The consolidation and strengthening of other systems in the Southwest during the decade, 1920-1930, brought the Southern Pacific to a realization that self preservation required a route to this competitive territory.

In July, 1930, the Southern Pacific filed an application with the Interstate Commerce Commission seeking authority to acquire control of the Cotton Belt through ownership of a majority of its capital stock, part of which had been purchased and part of which was under conditional purchase at that time.

The ICC's proposed report, which was favorable to the plan, suggested an offer for the acquisition of minority stock. Acting on this suggestion, the Southern Pacific offered to exchange its stock for St. Louis Southwestern stock in the ratio of one share of Southern Pacific stock for three shares of St. Louis Southwestern common, and three shares of Southern Pacific stock for five shares of St. Louis Southwestern preferred. The offer was conditioned on acceptance by a sufficient number of minority stockholders to increase the Southern Pacific's holding to 85 per cent of the total outstanding shares.

The final order of the ICC approved the plan upon conditions which the Southern Pacific accepted in February, 1932. On April 14, 1932, the Southern Pacific Company purchased the stocks which had been in escrow, and on April 19, the same year, it issued sufficient amounts of its own stock to exchange for deposited St. Louis Southwestern stocks in order to complete its control of the Cotton Belt. By May, 1933, the Southern Pacific had 193,134 shares of St. Louis South-

western preferred and 130,834 shares of St. Louis Southwestern common, or 87.37 per cent of the total outstanding shares of Cotton Belt stock.

Ever since the ICC approved control of the Cotton Belt by the Southern Pacific, the chief executive officer of the latter company has acted as chairman of the board of the Cotton Belt. During the years 1932 to 1939, Hale Holden served in that capacity. Upon Holden's resignation, he was succeeded by A. D. McDonald, who served during the years 1940 and 1941. For the period 1942 to 1951, A. T. Mercier, president of the Southern Pacific, served as chairman of the Cotton Belt's board of directors. Following Mercier's retirement, he was succeeded by Donald J. Russell, who was elected chairman of the board of the Cotton Belt effective January 1, 1952.

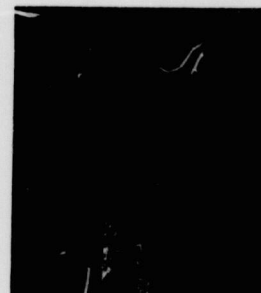
Russell, a native of Denver, Colorado, completed his engineering studies at Stanford University. After a plane crack-up with the R.A.F. in 1918, he took a 50c an hour job as timekeeper with the Southern Pacific Company in 1920. Shortly he found himself working as assistant engineer in the engineering department with a firm conviction that railroading was his career and that for such a career he needed to learn railroading from the ground up. He gave up his well-paid job for an assistant foremanship of a section gang and learned roadbeds. From the bottom he worked upwards through the railroad accumulating details and know-how ("Always inquisitive," an associate puts it. "Wanted to know everything about everything.") Arriving at the presidency of the Southern Pacific on January 1, 1952, he became, at age 52, the road's youngest president.

In August, 1957, Russell was selected to receive the eighth annual National Defense Transportation Association's Award as "the person who has made the most outstanding contribution in the preceding year to the solution of emergency transportation problems affecting National Defense."

Bankruptcy Petition Filed

The business recession of the troubled thirties forced the Cotton Belt, along with other railroads, into bankruptcy.

In the latter part of 1935 the company was faced with some \$25,000,000 of principal maturities and interest obligations, following an accumulation of deficits over a period of six years. Unable to arrange for extension of the maturity of its obligations or to raise additional



D. J. Russell
Chairman of the board
of directors since
January 1, 1952

2ND STORY of Level 1 printed in FULL format.

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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 \$ 1.9 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 M.Y. system, 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

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.

TEXT OF CONRAIL LETTERS TO UNION PACIFIC

Mr. Drew Lewis

Martin Tower
Eighth and Easton Avenue
Bethlehem PA 18018

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 you shareholders, 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 stand 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
Eight 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 S&A 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 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 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, Breau 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 P. insas & 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 execution of a mutually acceptable definitive purchase agreement and other documentation; and (iii) governmental filings and receipt of the necessary regulatory and ~~possible~~ 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 capacity in 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? Notwithstanding 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 described it as follows:

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 terminal and 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.

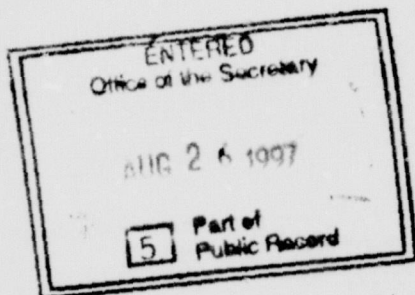
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CONTACT: Robert L. Libkind of Conrail, 215-209-4594

LANGUAGE: ENGLISH

STB FD-32760 (SUB 23) ID-181429 8-22-97 J

181439



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 August 20, 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,^{1/} hereby certify that they have served a copy of that decision, by first-class mail, postage prepaid, on

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

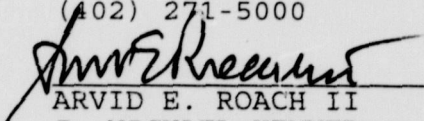
Homer Henry
10510 Tropicana Circle
Sun City, AZ 85351-2218

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

Respectfully submitted,

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

JAMES V. DOLAN
PAUL A. CONLEY, JR.
LOUISE A. RINN
Law Department
Union Pacific Railroad Company
Southern Pacific Transportation
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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

August 22, 1997

STB FD-32760 (SUB 23) 8-20-97 J

28074

SERVICE DATE - JULY 29, 1997

FR-4915-00-P

EB

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

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

Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company

AGENCY: Surface Transportation Board.

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

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



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

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

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

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

SUPPLEMENTARY INFORMATION: In Decision No. 44 in Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SP-SSL Corp., and The Denver and Rio Grande Western Railroad Company (UP/SP)*, we approved the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company)

and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company).¹

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

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

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

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

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

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

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

(continued...)

b-No. 23)

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

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

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

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

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

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

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

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

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

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

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

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

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

Decided: July 22, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

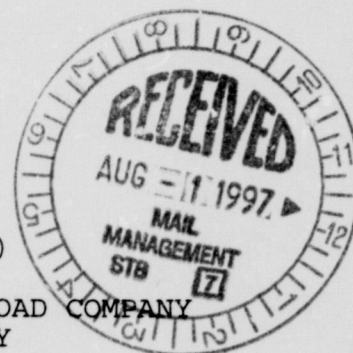
Vernon A. Williams,

Secretary

STB FD-32760 (SUB 23) ID-180933 8-1-97 J

UP/SP-307

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

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

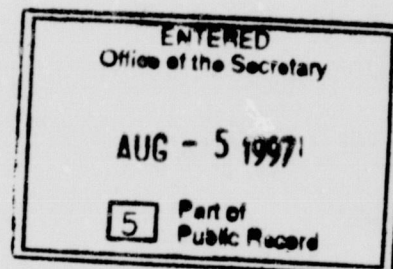
-- CONTROL AND MERGER --

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

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APPLICANTS' CERTIFICATE AND CONFIRMATION OF SERVICE

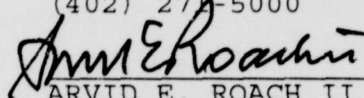
Pursuant to the Surface Transportation Board's decision served July 29, 1997, in the above-captioned matter, Applicants hereby certify that they have served by first-class mail, postage prepaid, a copy of the STB's decision upon the four public SSW shareholders. Applicants further certify that service of UP/SP-306 was made upon the four shareholders in the same manner on the day that Applicants filed UP/SP-306.



Respectfully submitted,

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August 1, 1997