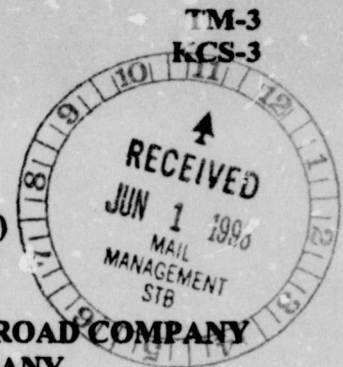


STB FD-32760 (SUB26) 6-1-98 I ID-188059

188059

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 26)



**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**

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

I

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Office of the Secretary

JUN 04 1998

Part of
Public Record

**MOTION TO COMPEL DISCOVERY
FROM BURLINGTON NORTHERN AND SANTA FE RAILWAY**

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**Attorneys for The Texas Mexican Railway
Company**

**Attorneys for The Kansas City Southern
Railway Company**

May 26, 1998

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 26)

**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**

HOUSTON/GULF COAST CVERSIGHT PROCEEDING

**MOTION TO COMPEL DISCOVERY
FROM BURLINGTON NORTHERN AND SANTA FE RAILWAY**

Pursuant to 49 CFR § 1114.31, The Texas Mexican Railway Company ("Tex Mex") and The Kansas City Southern Railway Company ("KCS") request The Honorable Stephen Grossman, Administrative Law Judge ("ALJ") assigned by the Surface Transportation Board (the "Board" or "STB"), to issue an order compelling BNSF to provide the information requested in discovery requests propounded to BNSF on April 29, 1998. BNSF should be required to fully answer the one Request for Production of Documents, and produce, through discovery, a reasonable amount of readily available information.

PROCEDURAL HISTORY AND SUMMARY

On April 29, 1998, Tex Mex and KCS jointly served discovery on BNSF with regard to the Houston/Gulf Coast oversight proceeding¹ and the February 12, 1998 Joint Petition.² (TM-12/KCS-13, attached as Exhibit A.) On May 14, 1998 BNSF served its Responses and Objections to KCS/Tex Mex's Second Set of Discovery. (Attached as Exhibit B.)

DISCUSSION

Tex Mex/KCS incorporate by reference its arguments on behalf of discovery for this proceeding as contained in Tex Mex/KCS's first and second Motions to Compel discovery from UP. Tex Mex/KCS's sole discovery request to BNSF was:

Produce all computerized 100% BNSF traffic data for 1997, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets, together with documentation explaining the record layout and the content of the fields. To the extent particular items are unavailable in machine-readable form, (a) provide them in hard-copy form, and (b) provide any similar machine-readable data.

BNSF responds to this discovery request by stating that:

Subject to and without waiving the General Objections stated above, BNSF objects to Document Request No. 1 (including Attachment A) to the extent it is vague, overly broad, unduly burdensome. Notwithstanding these objections, BNSF will make available on June 1, 1998, its 100% traffic data for 1997 in the same record layout and fields as BNSF has previously made available in Finance Docket No. 32760.

¹ This proceeding was previously docketed STB Finance Docket No. 32760 (Sub-No. 21) and has now been re-designated STB Finance Docket No. 32760 (Sub-No. 26) ("Houston/Gulf Coast Oversight").

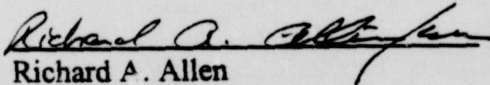
² The "Joint Petition" refers to TM-5/KCS-5, the Joint Petition of the Texas Mexican Railway Company and the Kansas City Southern Railway Company for Imposition of Additional Remedial Conditions Pursuant to the Board's Retained Oversight Jurisdiction.

As addressed Tex Mex/KCS's Motion to Compel UP's responses, filed contemporaneously with this motion, Tex Mex/KCS will accept traffic tapes that are in a comparable format to the those produced in previous proceedings as long as they contain substantially the information requested in Document Request No. 1. However, Tex Mex/KCS must be assured by BNSF that either (1) this format includes all adjustments later made to the traffic or (2) that BNSF waives its right to later object to the traffic tape data because it does not include adjustments, as BNSF has done in the past.

CONCLUSION

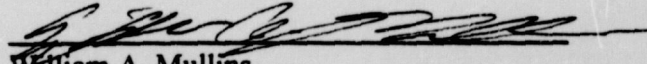
For the foregoing reasons, BNSF should be compelled to provide information in response to the discovery requested by Tex Mex and KCS.

Respectfully submitted,


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Attorneys for The Kansas City Southern
Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 21)

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

-CONTROL AND MERGER -

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

OVERSIGHT PROCEEDING

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE
KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF
ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED
OVERSIGHT JURISDICTION**

**FIRST DOCUMENT PRODUCTION REQUESTS DIRECTED TO THE
BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY**

**Richard P. Bruening
Robert K. Dreiling
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**Attorneys for The Kansas City Southern
Railway Company**

April 29, 1998

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 21)

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

OVERSIGHT PROCEEDING

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE
KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF
ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED
OVERSIGHT JURISDICTION**

**FIRST DOCUMENT PRODUCTION REQUESTS DIRECTED TO THE
BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY**

INTRODUCTION AND RATIONALE

Pursuant to 49 C.F.R. §§ 1114.21 — 1114.31, The Kansas City Southern Railway Company ("KCS") and The Texas Mexican Railway Company ("Tex Mex") direct the following document requests to The Burlington Northern Santa Fe Railway Company ("BNSF").

THE RAILROAD ENTITIES

1. "BNSF" means The Burlington Northern and Santa Fe Railway Company.
2. "HBT" means Houston Belt & Terminal Railway Company.
3. "KCS" means The Kansas City Southern Railway Company.

4. "Tex Mex" means The Texas Mexican Railway Company.
5. "The Undersigned Parties" means The Texas Mexican Railway Company and Kansas City Southern Railway Company.
6. "UP" means Union Pacific Railroad Company and its predecessors, including but not limited to Missouri Pacific Railroad Company, Southern Pacific Rail Corporation and Southern Pacific Transportation Company, individually and collectively.

DEFINITIONS

1. "Board" or "STB" means the Surface Transportation Board (or its predecessor agency, the Interstate Commerce Commission, if applicable).
2. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.
3. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs, charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts;

financial statements; accounting records; and workpapers and worksheets. Further the term "document" includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect from original version, including notes.

4. "Identify,"

- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
- b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;
- c. when used in relation to a document, means to:
 - (1) state the type of document (*e.g.*, letter, memorandum, report, chart);
 - (2) identify the author, each addressee, and each recipient; and
 - (3) state the number of pages, title, and date of the document;
- d. when used in relation to an oral communication or statement, means to:
 - (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
 - (2) state the date and place of the communication or statement;
 - (3) describe in detail the contents of the communication or statement; and

- (4) identify all documents that refer to, relate to or evidence the communication or statement;
- e. when used in any other context means to describe or explain in detail.
5. "Including" means including without limitation.
6. "Person" means an individual, company, partnership, or other entity of any kind.
7. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.
8. "Produce" means to make available to the Undersigned Parties for copying and viewing.
9. "Relating to" a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.
10. "Shipper" means a user of rail services, including a consignor, a consignee, or a receiver.
11. "Studies, analyses and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.
12. References to railroads, shippers, and other companies (including BNSF) include: subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities.
13. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

INSTRUCTIONS

1. Any delay in production of requested documents is certain to prejudice the Undersigned Parties' ability to present to the Board the type of evidence sought by the Board in the new

oversight proceeding. Accordingly, responsive documents should be produced to the undersigned counsel at Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005-3314, not later than fifteen (15) days after the date of service. Serial production of relevant documents during that fifteen-day period is encouraged and requested. Objections, if any, should be made as soon as possible, and not later than fifteen (15) days after the date of service of the requests.

2. BNSF should contact William A. Mullins or Alan E. Rubel at (202) 274-2950 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these discovery requests cover the period beginning June 1, 1997 and ending with the date of the response.

4. If BNSF has information that would permit a partial answer to any document request, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that request, and if the burden of conducting such special study would be greater for BNSF than for KCS or Tex Mex:

- a. state that fact;
- b. provide the partial answer that may be made with information available to BNSF;
- c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer; and
- d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer.

5. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,

- a. identify the information or document (in the manner provided in Definition 5 *supra*); and
 - b. state the basis for the claim that it is privileged or otherwise not discoverable.
6. Pursuant to 49 C.F.R. § 1114.29, BNSF is under a duty to seasonably supplement its responses with respect to any question, including if BNSF knows or later learns that its response to any document request is incorrect.

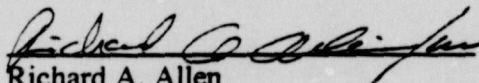
DOCUMENT REQUEST

Request No. 1

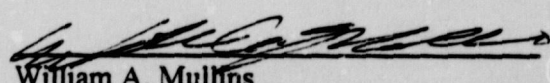
Produce all computerized 100% BNSF traffic data for 1997, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets, together with documentation explaining the record layout and the content of the fields. To the extent particular items are unavailable in machine-readable form, (a) provide them in hard-copy form, and (b) provide any similar machine-readable data.

Respectfully submitted this 29th day of April, 1998.

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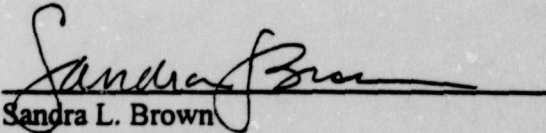
Attachment A

Commodity Code (STCC)
Hazardous Commodity Code
Shipper Name
Origin City
Origin State
Origin SPLC
Origin FSAC
Receiver Name
Destination City
Destination State
Destination SPLC
Destination FSAC
Car Initial
Car Number
Waybill Number
Waybill Date (yy/mm/dd)
Type Move Indicator
AAR Car Type
Origin Railroad
Railroad From
Railroad To
Destination Railroad
On Junction
Off Junction
Net Tons
Freight Revenue
Unit Count
Carload Count
Trailer/Container Count
First Railroad -- RR Code
First Railroad - Alpha
Interchange Received Junction #1
First Railroad - Split Revenue
First Railroad Distance
Second Railroad -- RR Code
Second Railroad - Alpha
Interchange Received Junction #2
Second Railroad - Split Revenue
Second Railroad Distance
Third Railroad -- RR Code
Third Railroad - Alpha
Car Ownership Code
Mechanical Designation
Tare Weight
Railroad System Revenue
Railroad System Miles
Railroad Ton Miles

Interchange Received Junction #3
Third Railroad - Split Revenue
Third Railroad Distance
Fourth Railroad -- RR Code
Fourth Railroad - Alpha
Interchange Received Junction #4
Fourth Railroad - Split Revenue
Fourth Railroad Distance
Fifth Railroad -- RR Code
Fifth Railroad - Alpha
Interchange Received Junction #5
Fifth Railroad - Split Revenue
Fifth Railroad Distance
Sixth Railroad -- RR Code
Sixth Railroad - Alpha
Interchange Received Junction #6
Sixth Railroad - Split Revenue
Sixth Railroad Distance
Seventh Railroad -- RR Code
Seventh Railroad - Alpha
Interchange Received Junction #7
Seventh Railroad - Split Revenue
Seventh Railroad Distance
Eighth Railroad -- RR Code
Eighth Railroad - Alpha
Interchange Received Junction #8
Eighth Railroad - Split Revenue
Eighth Railroad Distance
Ninth Railroad -- RR Code
Ninth Railroad - Alpha
Interchange Received Junction #9
Ninth Railroad - Split Revenue
Ninth Railroad Distance
Tenth Railroad -- RR Code
Tenth Railroad - Alpha
Interchange Received Junction #10
Tenth Railroad - Split Revenue
Tenth Railroad Distance
Eleventh Railroad -- RR Code
Eleventh Railroad - Alpha
Interchange Received Junction #11
Eleventh Railroad - Split Revenue
Eleventh Railroad Distance

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "First Document Production Requests Directed To The Burlington Northern Santa Fe Railway Company" was served this 29th day of April, 1998, by hand delivery to counsel for Burlington Northern and counsel for Union Pacific, and by first class mail upon other parties of record.


Sandra L. Brown
Attorney for The Kansas City Southern
Railway Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

OBJECTIONS AND RESPONSE OF THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY TO KCS/TEX MEX'S FIRST SET OF DOCUMENT
PRODUCTION REQUESTS

The Burlington Northern and Santa Fe Railway Company ("BNSF") objects and responds as follows to The Kansas City Southern Railway Company ("KCS") and The Texas Mexican Railway Company's ("Tex Mex") First Set of Document Production Requests to BNSF.

GENERAL OBJECTIONS

BNSF objects to KCS and Tex Mex's First Set of Document Production Requests on the following grounds:

1. Discovery Is Premature. BNSF objects to KCS and Tex Mex's First Set of Document Production Requests on the ground that discovery is premature because the Surface Transportation Board ("Board") has provided that this "proceeding will commence on June 8, 1998." Decision No. 12 at 2, served March 31, 1998. Under

the Board's regulations, parties may only obtain discovery "in a proceeding." 49 C.F.R. § 1114.21(a). This proceeding is to commence on June 8, 1998.

2. Protective Order, Discovery Guidelines and ALJ Matters Are Pending.

BNSF further objects to the extent that the subjects of protective order, discovery guidelines and appointment of an ALJ have been raised in this proceeding in a Motion filed by KCS and Tex Mex and are still pending before the Board.

3. Discovery Sought Is Already Covered By STB Order. BNSF objects to KCS and Tex Mex's First Set of Document Production Requests on the ground that they seek information or documents that BNSF is already required to be make available pursuant to the Board's prior Decisions. Pursuant to Decision No. 10 at 19, served Oct. 27, 1997, BNSF is required to make available by July 15, 1998 its 100% traffic tape for the period from July 1, 1997 to June 30, 1998. See also Decision No. 12 at 9, fn. 12. Since the Board has already established the specific time period and scope of traffic information BNSF is required to make available in this proceeding, BNSF objects to KCS and Tex Mex's First Set of Document Production Requests to the extent it seeks information or documents that differs in any way from what the Board has already required.

3. Privilege. BNSF objects to Tex Mex and KCS' First Set of Document Requests to the extent that they call for information subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.

4. Scope. BNSF objects to Tex Mex and KCS' First Set of Document Requests to the extent that they attempt to impose any obligation on BNSF beyond those imposed by the Rules of Practice of the Board, 49 C.F.R. § 1114.21-31.

5. Confidentiality/Privilege. BNSF objects to Tex Mex and KCS' First Set of Document Requests to the extent that they call for information that is confidential or proprietary.

6. Definitions. BNSF makes the following objections to Tex Mex and KCS' definitions:

3. "Document." BNSF objects to the definition of "Document" as overly broad and unduly burdensome to the extent that (i) it calls for the production of materials and documents that are as readily, or more readily, available to Tex Mex and KCS as to BNSF; (ii) it calls for the production of drafts; and (iii) it calls for the production of routine operating and accounting documents such as invoices and receipts.

9. "Relating to." BNSF objects to the definition of "Relating to" in that it requires subjective judgment to determine what is requested and, further, that it potentially calls for the production of documents that are not directly relevant to this proceeding.

11. "Studies, analyses and reports." BNSF objects to the definition of "Studies, analyses and reports" in that it requires subjective judgment to determine what is requested and, further, it is overly broad and unduly burdensome.

DOCUMENT REQUEST

Request No. 1

Produce all computerized 100% BNSF traffic data for 1997, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets together with documentation explaining the record layout and the content of the fields. To the extent particular items are unavailable in machine-readable form, (a) provide them in hard-copy form, and (b) provide any similar machine-readable data.

Response: Subject to and without waiving the General Objections stated above, BNSF objects to Document Request No. 1 (including Attachment A) to the extent it is vague, overly broad and unduly burdensome. Notwithstanding these objections, BNSF will make available on June 1, 1998, its 100% traffic data for 1997 in the same record layout and fields as BNSF has previously made available in Finance Docket No. 32760.

Jeffrey R. Moreland
Richard E. Weicher
Michael E. Roper
Sidney L. Strickland, Jr.

The Burlington Northern
and Santa Fe Railway Company
3017 Lou Menk Drive
P.O. Box 961039
Ft. Worth, Texas 76161-0039
(817) 352-2353

and

1700 East Golf Road
Schaumburg, Illinois 60173
(847) 995-6887

Respectfully submitted,

Erika Z. Jones / KKK
Erika Z. Jones
Adrian L. Steel, Jr.
Kathryn A. Kusske
Kelley E. O'Brien

Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 463-2000

Attorneys for The Burlington Northern and Santa Fe Railway Company

Dated: May 14, 1998

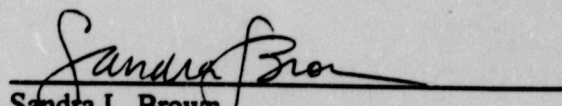
CERTIFICATE OF SERVICE

I hereby certify that a copies of the foregoing Objections and Response were served this 14th day of May, 1998, on Counsel for the Kansas City Southern Railway Company and the Texas Mexican Railway Company.

Kathryn A. Kusske
Kathryn A. Kusske

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the "Motion To Compel Discovery From Burlington Northern And Santa Fe Railway" was served this 26th day of May, 1998, by hand delivery to counsel for Union Pacific and to the Honorable Stephen Crossman and by first class mail upon all other parties of record of the Houston/Gulf Coast oversight proceeding.


Sandra L. Brown
Attorney for The Kansas City Southern
Railway Company

STB FD-32760 (SUB26) 6-1-98 I ID-188058

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
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WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

168058

William A. Mullins

May 26, 1998

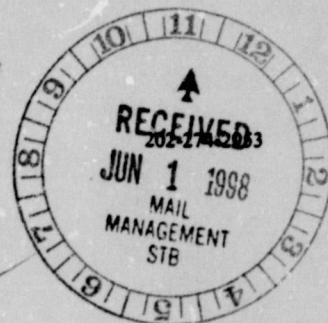
HAND DELIVERY

The Honorable Stephen Grossman
Federal Energy Regulatory Commission
888 First Street, N.E.
Suite 11F
Washington, DC 20426

ENTERED
Office of the Secretary

JUN 04 1998

Part of
Public Record



RE: Finance Docket 32760 (Sub-No. 26)
*Union Pacific Corp., et al. - Control and Merge - Southern Pacific Rail Corp., et al. -
Houston/Gulf Coast Oversight*

Dear Judge Grossman:

Enclosed please find an original and one extra copy of each of the following documents in this proceeding: Motion to Compel Second Set of Discovery from Union Pacific Railroad Company (TM-2/KCS-2) and Motion to Compel Discovery from Burlington Northern and Santa Fe Railway (TM-3/KCS-3).

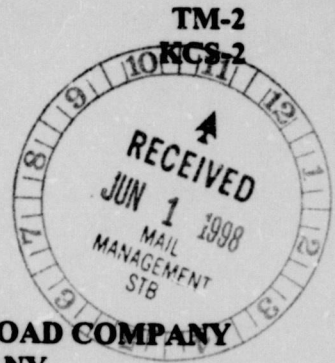
Sincerely,

William A. Mullins
Attorney for The Kansas City Southern
Railway Company

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 26)



**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**

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

**MOTION TO COMPEL SECOND SET OF DISCOVERY
FROM UNION PACIFIC RAILROAD COMPANY**

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May 26, 1998

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 26)

**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**

HOUSTON/GULF COAST OVERSIGHT PROCEEDING

**MOTION TO COMPEL SECOND SET OF DISCOVERY
FROM UNION PACIFIC RAILROAD**

Pursuant to 49 CFR § § 1114.31, The Texas Mexican Railway Company ("Tex Mex") and The Kansas City Southern Railway Company ("KCS") request The Honorable Stephen Grossman, Administrative Law Judge ("ALJ") assigned by the Surface Transportation Board (the "Board" or "STB"), to issue an order compelling UP to provide the information requested in discovery requests propounded to UP on April 29, 1998. UP should be required to fully answer Interrogatories, respond to Request for Admissions, and produce, through discovery, a reasonable amount of readily available information for several reasons, which are set forth below.

PROCEDURAL HISTORY AND SUMMARY

On April 29, 1998, Tex Mex and KCS jointly served a second set of discovery on UP with regard to the Houston/Gulf Coast Oversight Proceeding¹ and the February 12, 1998 Joint Petition.² (TM-11/KCS-12, attached as Exhibit A.) On May 14, 1998 UP served its Responses and Objections to KCS/Tex Mex's Second Set of Discovery. (UP/SP-340, attached as Exhibit B.)

It is important to note that Tex Mex/KCS first served discovery in this proceeding on UP on March 12, 1998. (TM-6/KCS-6.) On March 27, 1998, UP filed a Motion for Protective Order in which UP refused to respond to any discovery whatsoever because, according to UP, there was no "proceeding" for discovery. (UP/SP-334.) Then, on March 31, 1998, the Board served Decision No. 12 in Sub-No. 21, which clarified the status of the proceeding and set forth a procedural schedule. This proceeding is now known as the Houston/Gulf Coast Oversight Proceeding. As a result, even though the discovery was proper when originally served on March 12, 1998, Tex Mex/KCS re-served the previous document requests upon UP on April 8, 1998 in order to avoid any procedural objection and to make it an official part of the Houston/Gulf Coast Oversight Proceeding.³ (The Re-served Document Production Requests were labeled TM-8/KCS-8).

¹ This proceeding was previously docketed STB Finance Docket No. 32760 (Sub-No. 21) and has now been re-designated STB Finance Docket No. 32760 (Sub-No. 26) ("Houston/Gulf Coast Oversight").

² The "Joint Petition" refers to TM-5/KCS-5, the Joint Petition of the Texas Mexican Railway Company and the Kansas City Southern Railway Company for Imposition of Additional Remedial Conditions Pursuant to the Board's Retained Oversight Jurisdiction.

³ Contrary to UP's assertion, Tex Mex/KCS never "withdrew" their earlier requests, but instead were trying to be conciliatory in light of UP's Motion for Protective Order and provide UP with another chance to respond to the discovery requests.

Notably, on April 15, 1998, by letter to the Board, UP withdrew its Motion for Protective Order and indicated that it would respond to the first requests by April 23, 1998. Nevertheless, in its April 23rd "Responses and Objections" (UP/SP-336), UP again objected to the discovery requests and again refused to produce anything but a minimal number of documents. In addition, UP denied that the Board had any authority to allow discovery in the Houston/Gulf Coast Oversight Proceeding and stated that the responses, as minimal as they were, were only being provided voluntarily.⁵

UP's offer to "voluntarily" provide discovery has proved insufficient and illusory. UP has in essence refused to respond to any discovery undertaken by Tex Mex/KCS.⁶ Furthermore, UP's repeated claims, in their May 22, 1998 letter to Your Honor, that they have produced "a considerable amount of responsive information," and have "produc[ed] several hundred pages of responsive materials" are spurious. Of the alleged hundreds of pages produced in response to Tex Mex/KCS's first and second discovery requests, only **nine** pages are even close to being called responsive. Every other page or document allegedly produced in response to the Tex Mex/KCS discovery are either UP's previous filings in the various UP/SP proceedings; materials which UP would have known were already in Tex Mex's possession since Tex Mex was a

⁴ Interestingly, although UP admits having withdrawn its Motion for Protective Order, UP directs this Court to use the Motion for Protective Order as the basis for UP's arguments opposing discovery by Tex Mex/KCS. See May 22, 1998, Letter from counsel for UP to The Honorable Stephen Grossman at 2.

⁵ This position is inconsistent with the position taken by UP in its April 15, 1998 letter, to the effect that the re-serving of the discovery requests in the Houston/Gulf Coast Oversight Proceeding mooted the procedural impediments UP asserted in UP/SP-334, the March 27, 1998 Motion for a Protective Order.

⁶ Due to UP's failure to comply with Tex Mex/KCS's first discovery requests, Tex Mex/KCS filed on May 4, 1998 with the Board a Motion to Compel discovery. Upon your appointment, this filing has been re-filed with you on May 20, 1998.

signatory to those documents; or materials from the original UP/SP merger document depository, copies of which have been in Tex Mex/KCS's possession for almost two years. Obviously, these so called "responsive documents" are materials that Tex Mex/KCS had access to before drafting their narrowly tailored discovery for the Houston/Gulf Coast Oversight Proceeding. The documents produced by UP do not include basic information called for by the requests, which information is readily available to UP. The objections UP assert are not justified by fact or by law, and UP must be compelled to respond to the discovery requests put to it, both for the first and second discovery requests. Tex Mex/KCS seek to compel discovery responses to the discovery requests addressed in this motion, as well as the discovery disputes addressed in the motion to compel previously filed with this Court and still pending.

DISCUSSION

Initially, Tex Mex/KCS would like to point out that they served their first discovery requests on UP back on March 12, 1998, nearly two and a half months ago. Nevertheless, UP has continually delayed and stonewalled Tex Mex/KCS's discovery efforts, forcing Tex Mex/KCS to file both this Motion to Compel and the Motion to Compel filed May 4, 1998 with the Board and May 20, 1998 with this Court. As a result of UP's stonewalling, UP has only produced nine pages of marginally responsive material to both the first and second set of discovery propounded by Tex Mex/KCS.⁷ In addition, UP's delay tactics have left Tex Mex/KCS less than two weeks before the June 8, 1998⁸ filing date in this proceeding within

⁷ Tex Mex/KCS incorporate by reference the reasoning against UP's objections based upon procedural and burden grounds which are addressed in the Tex Mex/KCS motion to compel filed with the Board on May 4, 1998 and with this Court on May 20, 1998.

⁸ On May 20, 1998, a multi-party motion for Extension of Time was filed with the Board seeking a 30 day extension of time for the June 8th filing. The motion, if granted, would extend

which Tex Mex/KCS must continue to try and obtain the relevant discovery and then incorporate it into an evidentiary filing. Clearly, UP's delay tactics will have protected them from all discovery unless UP is immediately compelled to respond to discovery.

The Board's rules of evidence and discovery are plainly set out in 49 C.F.R. part 1114. Discovery is authorized in this proceeding pursuant to 49 C.F.R. § 1114.21(a), as well as the new rules adopted by this Board.⁹ The Board's modification to 49 C.F.R. § 1114.21 (1997) of its Rules of Practice provides in pertinent part:

- (a) When discovery is available.
 - (1) Parties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding . . .
 - (2) It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

These modifications eliminated "the requirement that Board approval be sought for discovery procedures other than written interrogatories and requests for admission." *FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company*, STB Docket No. 42022, at 3 (STB served Feb. 5, 1998). In this recent decision, the Board noted that the overall goal of the modifications was to expedite the discovery process, acknowledging that the

the June 8th deadline until July 8, 1998. Nevertheless, Tex Mex/KCS need a speedy ruling on both of its Motions to Compel since not only has the Board not ruled on the Motion for Extension of Time, even if it is granted, Tex Mex/KCS are still under a limited time frame in which to compile its evidentiary submission for the Houston/Gulf Coast Oversight proceeding.

⁹ These modifications were adopted by the Board in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527 (STB served Oct. 1 and Nov. 15, 1996) (*Expedited Procedures*), *aff'd sub nom. United Transp. Union-Ill. Legis. Bd. v. STB*, No. 97-1027 (D.C. Cir. Jan. 6, 1998).

prior discovery rules "had the potential to impede expeditious discovery and [] generated too much paperwork." *Id.* at n.8.

Of course, the scope of discovery authorized by the Board's Rules of Practice is modeled on the scope of discovery under the Federal Rules of Civil Procedure.¹⁰ The Federal Rules of Civil Procedure "allow broad scope to discovery and this has been well recognized by the courts." Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d, § 2007 (1994) (citations omitted). In addition, the standard for permissible discovery is that the requests seek information relevant to the subject matter of the case. The relevancy of discovery has been broadly construed to encompass any matter that might lead to the discovery of admissible evidence even though it may not be admissible as evidence. *Hickman v. Taylor*, 329 U.S. 495, 91 L.Ed. 451 (1947). The guidelines for the federal rule, which applies to all forms of discovery, encompasses the broad standard against which Tex Mex/KCS's discovery requests must be evaluated.

I. UP should be compelled to produce responses to Interrogatory Nos. 3, 4, 5, and 6; Request for Production of Documents Nos. 5, 6, 7, 8, 9, 10, 11, 12 and 13; Request for Admissions Nos. 3, 4, 5, and 8.

UP makes the same or similar objection to almost three-fourths of the Interrogatories, Requests for Production of Documents and Requests for Admissions propounded on UP in the

¹⁰ The Federal Rules of Civil Procedure, in language virtually identical to the Board's Rules of Practice, provide that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1).

Tex Mex/KCS second set of discovery. See Exhibit A. Specifically, UP makes the objection that Tex Mex/KCS are not entitled to any discovery with respect to Interrogatory Nos. 3, 4, 5, and 6; Request for Production of Documents Nos. 5, 6, 7, 8, 9, 10, 11, 12 and 13; and Request for Admissions Nos. 3, 4, 5, and 8 because there are ongoing negotiations regarding the topic of the discovery.¹¹ These discovery requests seek various information on the Rosenberg to Victoria via Wharton line which Tex Mex/KCS have proposed re-constructing, by filing a construction application with the Board as part of its March 30, 1998 filing, in order to add infrastructure to the Houston area. UP asserts that Tex Mex/KCS's attempt to obtain discovery on this issue indicates Tex Mex/KCS's bad faith in negotiations. In addition, UP alleges that Tex Mex/KCS's intention is to abuse the discovery process in order to advance their negotiating position. UP is wrong on all counts.

The discovery requests propounded by Tex Mex/KCS regarding the Rosenberg to Victoria via Wharton line simply seek factual information best found in the possession of the UP. Tex Mex/KCS are not seeking information that would in any way undercut UP's negotiating position or otherwise divulge confidential information to UP's detriment. UP should be required to produce factual information, for example, such as what type of rail is currently in place on the line, what type of rail has been removed, how many acres does the total line include, or how many acres does UP own in fee. These and other issues are the subject of the discovery requests and are not, in any way, intended to provide Tex Mex/KCS with unlawful negotiating leverage. Rather these issues go directly to the scope of and analysis of the construction petition that has

¹¹ UP also raises the same objection to Interrogatory Nos. 1 and 2; Request for Production of Document No 4; and Request for Admission Nos. 1, 2, 6, and 7. However, UP provides a sufficient enough response to these discovery requests so that Tex Mex/KCS do not seek to compel additional discovery on these requests.

been filed.

Importantly, UP does not raise an objection based upon privilege or relevance or even burden. Tex Mex/KCS have already shown that the information is relevant based upon the fact that the construction application has been filed for this line. Instead, UP flat out refuses to respond to any of these discovery requests because in UP's belief Tex Mex/KCS are not entitled to discovery on the Rosenberg to Victoria line since there are ongoing negotiations. This novel objection is not supported by any legal authority.¹²

Besides the fact that UP seems to ignore that Tex Mex/KCS must have this information to support their construction application, UP also fails to acknowledge that discovery can also pave the way for settlement in every type of litigation. In fact, discovery and settlement discussions often occur simultaneously. *See e.g. EEOC v. Hiram Walker & Sons*, 768 F.2d 884 at 886 (1985). Furthermore, in class action suits, a settlement will only be accepted by the Court after discovery since "extensive discovery is an important indicia of the propriety of settlement negotiations." *Weinberger v. Kendrick*, 698 F.2d 61 at 74 (1982), *see also In re Continental Inv. Corp.*, 637 F.2d 8 (1980), *Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54 (1997). Therefore, UP's objections can only be seen as improperly attempting to delay permissible discovery.

II. UP should be compelled to produce a response to Interrogatory No. 7

Interrogatory No. 7 simply states "Describe in detail, and identify all documents sufficient to evidence, the standing car capacity of all UP yards in the Houston area." UP's

¹² In fact, the only objection available on the basis of settlement is found in Federal Rule of Evidence 408. However, this rule prevents the admission into evidence any offer to compromise and does not even prohibit the discovery of such information. More importantly, this rule was not enacted to obstruct discovery on relevant facts with which to determine the appropriateness of any settlement.

response includes objections on the basis of being vague, ambiguous, overbroad, unduly burdensome and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP also asserts that it would require a burdensome special study to respond.¹³ UP then states that it will produce in essence a response to whatever it chooses. Specifically, UP provides a response to this simple and easily understood request to only 4 of the 22 yards in the Houston area.

As your Honor will note in Tex Mex/KCS's evidentiary filing made March 30, 1998, one of the requests for new remedial conditions which Tex Mex/KCS intend to renew and provide additional support for, is a request to be permitted to purchase Booth yard in Houston. As a result, Tex Mex/KCS seek in this discovery response to ascertain UP's total yard capacity for Houston and for each yard in order to determine whether this request is supportable by the evidence or whether another Houston yard would serve the same purpose as Booth yard. The discovery sought is thus plainly relevant and narrowly tailored to the relief Tex Mex/KCS seek in their March 30 filing. Therefore, Tex Mex/KCS request that Your Honor compel UP to respond to this request for Dallerup, Basin, Booth, Eureka, Hardy, City, M.K., Pierce, Congress, Glass Track, Dayton, Navigation, Lloyd, Durham, Dayton Plastic Storage, Passenger Deport Yard, Baytown, Mt. Belvieu and Coady Yards.

III. UP should be compelled to produce a response to Interrogatory No. 9

Interrogatory No. 9 states "Describe in detail, and identify all documents created between January 1, 1996 and the present evidencing UP's plans for capital projects for the Houston area."

¹³ Tex Mex/KCS believe that UP may have already done or should have already done a study on the standing car capacity of the yards in Houston in light of the congestion problems that have occurred over the last year and in light of the fact that UP must produce a weekly report detailing the weekly capacity of the major yards in Houston.

UP again responds by objecting on the basis of being vague, ambiguous, overbroad, unduly burdensome and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP then directs Tex Mex/KCS to its May 1, 1998 infrastructure report filed with the Board. UP's response is non-responsive. At the very least, UP must be compelled to produce the underlying engineering report which was the basis for the May 1 report as well as any other engineering report such as the one completed by DMJM. The production of a self-serving document such as UP's May 1 filing is not responsive nor is it a sufficient response to discovery.

The Houston/Gulf Coast Oversight Proceeding will among other things look at whether the SP's infrastructure would have produced the same severe service problems if it had never merged with UP. *See Union Pacific Corporation, et al. --Control And Merger -- Southern Pacific Rail Corporation, et al. (Houston/Gulf Coast Oversight Proceeding)*, STB Finance Docket No. 32760 (Sub-No. 26) Decision No. 1 at 5 (STB served May 19, 1998). The capital plans documents, requested by Tex Mex/KCS, will assist Tex Mex/KCS in addressing this issue to the Board. Therefore, UP must be compelled to produce these documents.

IV. UP should be compelled to produce a response to Interrogatory No. 10

Interrogatory No. 10 states "Describe in detail, and identify all documents evidencing, the number of trains, train symbols, and operating times for all trains in Texas which have operated against the flow on UP directional operation lines from January 30, 1998 to the present." UP objects to the discovery on the basis of it being unduly burdensome and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, UP states that certain identification information will be placed in the depository. To date, no responsive documents have been placed in the depository for this Interrogatory.

Therefore, Tex Mex/KCS reserve the right to address additional argument if the documents are not produced prior to the discovery conference.

V. **UP should be compelled to produce a response to Request for Production of Document No. 2**

Document Request No. 2 states:

Produce all computerized 100% Union Pacific Railroad traffic data for 1997, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets, together with documentation explaining the record layout and the content of the fields. To the extent particular items are unavailable in machine-readable form, (a) provide them in hard-copy form, and (b) provide any similar machine-readable data.

UP responds to this discovery request by objecting on the basis of it being overbroad, unduly burdensome and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP then states that it will produce 1997 traffic tapes in a comparable format to those previously produced in the oversight proceeding. In addition, UP demands that before it produces any tapes to Tex Mex/KCS, Tex Mex/KCS must contemporaneously produce its traffic tapes.

Tex Mex/KCS will accept traffic tapes that are in a comparable format to the those produced in the oversight proceeding as long as they contain substantially the information requested in Document Request No. 2. However, Tex Mex/KCS must be assured by UP that either (1) this format includes all adjustments later made to the traffic or (2) that UP waives its right to later object to the traffic tape data because it does not include adjustments, as UP has done in the past. Furthermore, although Tex Mex/KCS are in the process of responding to UP's discovery and plan to make their traffic tapes available, UP should be admonished for attempting to delay their discovery further. Tex Mex/KCS's discovery request for UP's traffic tapes was served 2 full weeks before UP's discovery was propounded on Tex Mex/KCS. In addition, as

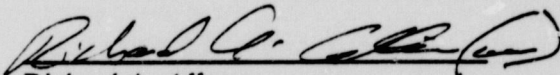
noted previously, Tex Mex/KCS's evidentiary filing is due on June 8th. However, UP's response to said filing would not be due until August 10, 1998. Therefore, it is completely inequitable base Tex Mex/KCS's right to this discovery on UP's demand that the tapes be produced contemporaneously.

CONCLUSION

For the foregoing reasons, UP should be compelled to provide information in response to the second set of discovery requested by Tex Mex and KCS.

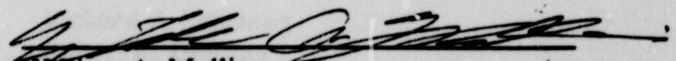
Respectfully submitted,

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FINANCE DOCKET NO. 32760 (Sub-No. 21)

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COMPANY, SPCSL CORP. AND THE DENVER
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OVERSIGHT PROCEEDING

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE
KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF
ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED
OVERSIGHT JURISDICTION**

**SECOND SET OF DISCOVERY DIRECTED TO UNION
PACIFIC RAILROAD COMPANY**

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April 29, 1998

**BEFORE THE
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FINANCE DOCKET NO. 32760 (Sub-No. 21)

**UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
—CONTROL AND MERGER—
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
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**SECOND SET OF DISCOVERY DIRECTED TO UNION
PACIFIC RAILROAD COMPANY**

Pursuant to 49 C.F.R. §§ 1114.21 — 1114.31, The Kansas City Southern Railway Company ("KCS") and The Texas Mexican Railway Company ("Tex Mex") direct the following interrogatories, document requests and requests for admission to Union Pacific Railroad Company.

THE RAILROAD ENTITIES

1. "BNSF" means The Burlington Northern and Santa Fe Railway Company.
2. "HBT" means Houston Belt & Terminal Railway Company.
3. "KCS" means The Kansas City Southern Railway Company.

4. "Tex Mex" means The Texas Mexican Railway Company.
5. "The Undersigned Parties" means The Texas Mexican Railway Company and Kansas City Southern Railway Company.
6. "UP" means Union Pacific Railroad Company and its predecessors, including but not limited to Missouri Pacific Railroad Company, Southern Pacific Rail Corporation and Southern Pacific Transportation Company, individually and collectively.

DEFINITIONS

1. "Board" or "STB" means the Surface Transportation Board (or its predecessor agency, the Interstate Commerce Commission, if applicable).
2. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.
3. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs, charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts;

financial statements; accounting records; and workpapers and worksheets. Further the term "document" includes:

- a. both basic records and summaries of such records (including computer runs); and
 - b. both original versions and copies that differ in any respect from original version, including notes.
4. "Houston area" means the 35 mile radius extending from the BT Union Station in downtown Houston located at 501 Crawford Street.
5. "Identify,"
 - a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
 - b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;
 - c. when used in relation to a document, means to:
 - (1) state the type of document (*e.g.*, letter, memorandum, report, chart);
 - (2) identify the author, each addressee, and each recipient; and
 - (3) state the number of pages, title, and date of the document;
 - d. when used in relation to an oral communication or statement, means to:
 - (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;

- (2) state the date and place of the communication or statement;
 - (3) describe in detail the contents of the communication or statement; and
 - (4) identify all documents that refer to, relate to or evidence the communication or statement;
- e. when used in any other context means to describe or explain in detail.
- 6. "Including" means including without limitation.
 - 7. "Person" means an individual, company, partnership, or other entity of any kind.
 - 8. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.
 - 9. "Produce" means to make available to the Undersigned Parties for copying and viewing.
 - 10. "Relating to" a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.
 - 11. "Shipper" means a user of rail services, including a consignor, a consignee, or a receiver.
 - 12. "Studies, analyses and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.
 - 13. References to railroads, shippers, and other companies (including BNSF) include: subsidiaries; connected, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities.
 - 14. References to the "former SP line" includes any part of or all of the rail line extending in a southwesternly direction from Rosenberg, Texas to Victoria, Texas, including, but not limited to the land, rights of way, ballast, ties, switches, signals, signage, and grade crossing warnings.

14. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

INSTRUCTIONS

1. Any delay in production of requested documents is certain to prejudice the Undersigned Parties' ability to present to the Board the type of evidence sought by the Board in the new oversight proceeding. Accordingly, responsive documents should be produced to the undersigned counsel at Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005-3314, not later than fifteen (15) days after the date of service. Serial production of relevant documents during that fifteen-day period is encouraged and requested. Objections, if any, should be made as soon as possible, and not later than fifteen (15) days after the date of service of the requests.

2. UP should contact William A. Mullins or Alan E. Lubel at (202) 274-2950 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these discovery requests cover the period beginning June 1, 1997 and ending with the date of the response.

4. If UP has information that would permit a partial answer to any document request, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that request, and if the burden of conducting such special study would be greater for UP than for KCS or Tex Mex:

- a. state that fact;
- b. provide the partial answer that may be made with information available to UP;

- c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer; and
 - d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer.
- 5. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,
 - a. identify the information or document (in the manner provided in Definition 5 *supra*); and
 - b. state the basis for the claim that it is privileged or otherwise not discoverable.
- 6. Pursuant to 49 C.F.R. § 1114.29, UP is under a duty to seasonably supplement its responses with respect to any question, including if UP knows or later learns that its response to any document request is incorrect.

INTERROGATORIES

- 1. Has the abandonment that has been authorized for the Wharton Branch line between SP milepost 2.5, near Rosenberg, Texas and SP milepost 25.8, near Wharton, Texas been consummated for any portion of or all of that line? If the answer to this interrogatory is in the affirmative, for each portion for which abandonment was consummated, please describe the portion of the line by listing relevant mileposts, state the date on which the abandonment was consummated, and identify documents sufficient to demonstrate the fact that the abandonment has been consummated.
- 2. Has the abandonment that has been authorized for the Wharton Branch line between SP milepost 25.8, near Wharton, Texas and SP milepost 87.8 near Victoria, Texas been consummated for any portion of or all of that line? If the answer to this interrogatory is in the affirmative, for each portion for which abandonment was consummated, please describe the

portion of the line by listing relevant mileposts, state the date on which the abandonment was consummated, and identify documents sufficient to demonstrate the fact that the abandonment has been consummated.

3. Describe in detail, and identify all documents sufficient to evidence, UP ownership and/or property interests, including, but not limited to easements and covenants, for the land underlying the former SP line called the Wharton Branch between Rosenberg, Texas and Wharton, Texas.

4. Describe in detail, and identify all documents sufficient to evidence, UP ownership and/or property interests, including, but not limited to easements and covenants, for the land underlying the former SP line called the Wharton Branch between Wharton, Texas and Victoria, Texas.

5. Describe in detail, and identify all documents sufficient to evidence, non-UP ownership and/or property interests, including, but not limited to easements and covenants, for the land underlying the former SP line called the Wharton Branch between Rosenberg, Texas and Wharton, Texas.

6. Describe in detail, and identify all documents sufficient to evidence, non-UP ownership and/or property interests, including but not limited to easements and covenants, for the land underlying the former SP line called the Wharton Branch between Wharton, Texas and Victoria, Texas.

7. Describe in detail, and identify all documents sufficient to evidence, the standing car capacity of all UP yards in the Houston area.

8. Describe in detail, and identify all documents sufficient to evidence, UP's track miles and road miles of all running tracks in the Houston area.

9. Describe in detail, and identify all documents created between January 1, 1996 and the present evidencing UP's plans for capital projects for the Houston area.

10. Describe in detail, and identify all documents evidencing, the number of trains, train symbols, and operating times for all trains in Texas which have operated against the flow on UP directional operation lines from January 30, 1998 to the present.
11. Describe in detail, and identify all documents evidencing, the number of times the siding at Laward, Texas has been used, and the duration of stay of any train using said siding at Laward, Texas.
12. Is it still your intention to seek Board approval of the ownership "swap", of the Houston-Iowa Junction and Iowa Junction-Avondale lines, by filing an "appropriate joint request" as referenced in your February 18, 1998 letter to the Board regarding Service Order No. 1518. If your answer to this interrogatory is in the affirmative, please state when you plan to file such joint request.

DOCUMENT REQUESTS

Request No. 1: Produce all documents identified, or which should be identified, in response to Interrogatories Nos. 1-11.

Request No. 2: Produce all computerized 100% Union Pacific Railroad traffic data for 1997, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets, together with documentation explaining the record layout and the content of the fields. To the extent particular items are unavailable in machine-readable form, (a) provide them in hard-copy form, and (b) provide any similar machine-readable data.

Request No. 3: Produce documents sufficient to show the terminal dwell times of rail cars in all of UP's Houston yards since January 1, 1998.

Request No. 4: Produce all line profiles, line maps, track charts, traffic charts, SPINS (SP Industry Number System) Charts Industry Locations, and traffic histories prepared and maintained by SP with respect to the former SP line between Rosenberg and Victoria, Texas, from January 1, 1990 to the present.

Request No. 5: Produce all bid invitation documents prepared by UP with respect to the sale of any and all track structure for any portion of the former SP line between Rosenberg and Victoria, Texas, from January 1, 1990 to the present.

Request No. 6: Produce all bids received by UP for the purchase or salvage of any and all track structures on the former SP line between Rosenberg and Victoria, Texas from January 1, 1990 and the present.

Request No. 7: Produce all documents reflecting the sale of any or all track structures on the former SP line between Rosenberg and Victoria, Texas from January 1, 1990 to the present.

Request No. 8: Produce all bids received by UP for the purchase of any part or all of the former SP line between Rosenberg and Victoria, Texas, with or without other line segments, at any time between January 1, 1990 and the present.

Request No. 9: Produce all documents relating to the potential sale of any part or all of the former SP line between Rosenberg and Victoria, Texas, with or without other line segments, at any time between January 1, 1990 and the present, whether or not such sale was consummated.

Request No. 10: Produce all documents relating to a valuation of any part or all of the former SP line between Rosenberg and Victoria, Texas, with or without other line segments.

Request No. 11: Produce all documents evidencing UP's title or right of use and possession of all portions of the right of way of the former SP line between Rosenberg and Victoria, Texas.

including extra width right of way, and of any and all parcels of land currently owned or possessed by UP with adjoin the right of way of the line.

Request No. 12: Produce all correspondence relating to the former SP line between Rosenberg and Victoria, Texas, exchanged between UP and the El Campo Economic Development Department at any time between January 1, 1990 and the present.

Request No. 13: Produce all correspondence relating to the former SP line between Rosenberg and Victoria, Texas, exchanged between UP and Rail-Tex Services Company, Inc. at any time between January 1, 1990 and the present.

REQUESTS FOR ADMISSION

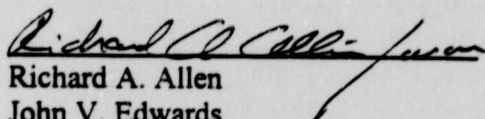
For each Request for Admission set forth below which is denied in your response, please state the reason for your denial and the information or modification which would render the statement in the request correct as required under 49 C.F.R. § 1114.27(a).

1. Admit or Deny: SP filed for and was subsequently granted abandonment authority for the SP line between Rosenberg, Texas (MP 2.5) and Wharton, Texas (MP 25.8).
2. Admit or Deny: SP filed for and was subsequently granted abandonment authority for the SP line between Wharton, Texas (MP 25.8) and Victoria, Texas (MP 87.8).
3. Admit or Deny: The line between Rosenberg, Texas (MP 2.5) and Victoria, Texas (MP 87.8) consists of 1,191.3 acres of which UP holds fee title to 352.2 acres.
4. Admit or Deny: The weight of the rail line, at the time they were each granted abandonment authority were respectively: 113 pound rail for Rosenberg, Texas to Wharton, Texas; and 90 pound rail for Wharton, Texas to Victoria, Texas.

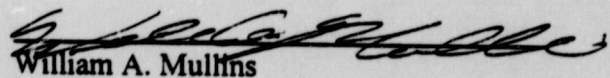
5. Admit or Deny: In April 1994, UP valued the line between Rosenberg and Victoria, Texas, with much of the track in place, plus the 13.5 mile segment between Wharton and New Gulf, Texas which had 132 pound rail in place, at \$9,579,000.
6. Admit or Deny: No traffic has traversed the entire route between Rosenberg and Victoria, Texas since April 1994.
7. Admit or Deny: Since April 1994, no traffic has originated or terminated on the portion of line between Wharton (MP 25.8) and Victoria (MP 87.8).
8. Admit or Deny: The track between Wharton, Texas (MP 25.8) and Victoria, Texas (MP 87.8) has been removed and sold for salvage.

Respectfully submitted this 29th day of April, 1998.

Richard P. Bruening
Robert K. Dreiling
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
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Kansas City, Missouri 64105
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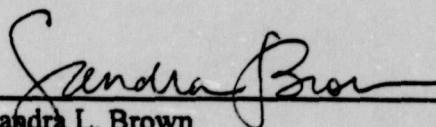
Attachment A

Commodity Code (STCC)
Hazardous Commodity Code
Shipper Name
Origin City
Origin State
Origin SPLC
Origin FSAC
Receiver Name
Destination City
Destination State
Destination SPLC
Destination FSAC
Car Initial
Car Number
Waybill Number
Waybill Date (yy/mm/dd)
Type Move Indicator
AAR Car Type
Origin Railroad
Railroad From
Railroad To
Destination Railroad
On Junction
Off Junction
Net Tons
Freight Revenue
Unit Count
Carload Count
Trailer/Container Count
First Railroad -- RR Code
First Railroad - Alpha
Interchange Received Junction #1
First Railroad - Split Revenue
First Railroad Distance
Second Railroad -- RR Code
Second Railroad - Alpha
Interchange Received Junction #2
Second Railroad - Split Revenue
Second Railroad Distance
Third Railroad -- RR Code
Third Railroad - Alpha
Eleventh Railroad Distance
Car Ownership Code
Mechanical Designation
Tare Weight
Railroad System Revenue
Railroad System Miles
Railroad Ton Miles

Interchange Received Junction #3
Third Railroad - Split Revenue
Third Railroad Distance
Fourth Railroad -- RR Code
Fourth Railroad - Alpha
Interchange Received Junction #4
Fourth Railroad - Split Revenue
Fourth Railroad Distance
Fifth Railroad -- RR Code
Fifth Railroad - Alpha
Interchange Received Junction #5
Fifth Railroad - Split Revenue
Fifth Railroad Distance
Sixth Railroad -- RR Code
Sixth Railroad - Alpha
Interchange Received Junction #6
Sixth Railroad - Split Revenue
Sixth Railroad Distance
Seventh Railroad -- RR Code
Seventh Railroad - Alpha
Interchange Received Junction #7
Seventh Railroad - Split Revenue
Seventh Railroad Distance
Eighth Railroad -- RR Code
Eighth Railroad - Alpha
Interchange Received Junction #8
Eighth Railroad - Split Revenue
Eighth Railroad Distance
Ninth Railroad -- RR Code
Ninth Railroad - Alpha
Interchange Received Junction #9
Ninth Railroad - Split Revenue
Ninth Railroad Distance
Tenth Railroad -- RR Code
Tenth Railroad - Alpha
Interchange Received Junction #10
Tenth Railroad - Split Revenue
Tenth Railroad Distance
Eleventh Railroad -- RR Code
Eleventh Railroad - Alpha
Interchange Received Junction #11
Eleventh Railroad - Split Revenue

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Second Document Production Requests Directed To Union Pacific Railroad Company" was served this 29th day of April, 1998, by hand delivery to counsel for Union Pacific and counsel for Burlington Northern, and by first class mail upon other parties of record.

A handwritten signature in cursive script, appearing to read "Sandra L. Brown", is written over a horizontal line.

Sandra L. Brown
Attorney for The Kansas City Southern
Railway Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

UNION PACIFIC'S RESPONSES AND OBJECTIONS
TO KCS/TEX MEX'S SECOND SET OF DISCOVERY

Union Pacific Railroad Company ("UP") hereby responds to the
"Second Set of Discovery Directed to Union Pacific Railroad Company" served by
Kansas City Southern Railway Company ("KCS") and Texas Mexican Railway
Company ("Tex Mex") (collectively, "KCS/Tex Mex") on April 29, 1998
(TM-11/KCS-12).

These responses are being provided voluntarily. UP does not agree that
parties are entitled to any discovery at this time, or to general discovery at any time
in this and future merger oversight proceedings, which are not intended as a forum to
relitigate the UP/SP merger.

GENERAL RESPONSES

The following general responses are made with respect to all of the document requests, interrogatories and requests for admission (collectively, the "requests").

1. UP has conducted a reasonable search for information and documents responsive to the requests. Except as objections are noted herein,^{1/} all responsive documents shortly will be made available for inspection and copying in UP's document depository, which is located at the offices of Covington & Burling in Washington, D.C. UP will be pleased to assist KCS/Tex Mex in locating particular responsive documents to the extent that the index to the depository does not suffice for this purpose. Copies of documents will be supplied upon payment of duplicating costs (including, in the case of computer tapes, costs for programming, tapes and processing time).

2. 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.

^{1/} Thus, any response that states that responsive information or documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine (General Objection No. 2) are not being produced.

3. To the extent any of the documents or information to be produced contain sensitive shipper-specific and other confidential information, UP will produce such documents or information only upon the express agreement of counsel for KCS/Tex Mex that the production will be subject to the protective order that was entered in the merger proceeding.

GENERAL OBJECTIONS

UP asserts the following general objections with respect to all of the requests. Additional specific objections are stated at the beginning of the response to each request.

1. UP objects to all of the requests on the ground that, as set forth in Decision No. 12, served March 31, 1998, this "proceeding will commence on June 8, 1998." Accordingly, until June 8, all discovery is premature. Nevertheless, as set forth below, UP will respond voluntarily in advance of June 8 to reasonable discovery requests that address issues relevant to the forthcoming oversight proceeding relating to Houston/Gulf Coast service problems.

2. UP objects to the production of, and is not producing, documents or information that are protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.

3. UP objects to the production of, and is not producing, documents or information prepared in connection with, or containing information relating to, possible settlement of this or any other proceeding.

4. UP objects to the requests to the extent they seek the production of documents or information that are confidential or proprietary. Any such documents or information will only be produced subject to the protective order that was entered in the merger proceeding.

5. UP objects to the requests to the extent that they seek the production of documents or information that are not in UP's possession, custody, or control, or cannot be found in the course of a reasonable search.

6. UP objects to the requests to the extent that they seek the production of public documents or information that are readily available, including but not limited to documents on public file at the Board or the SEC or clippings from newspapers or other public media, to KCS/Tex Mex. Notwithstanding this objection, UP will be producing some responsive materials of this kind, but UP will not attempt to produce all responsive material of this kind.

7. UP objects to the requests to the extent that they seek the production of documents or information that are as readily obtainable by KCS and/or Tex Mex from their own files. Notwithstanding this objection, UP will be producing

some responsive materials of this kind, but UP will not attempt to produce all responsive material of this kind.

8. UP objects to the production of, and is not producing, draft submissions to the Board and documents or information related thereto.

9. UP objects to Definition No. 3 ("document") as overbroad and unduly burdensome.

10. UP objects to Definition No. 4 ("Houston area") as vague, overbroad and unduly burdensome.

11. UP objects to Definition No. 5 ("identify") as overbroad and unduly burdensome.

12. UP objects to Instruction No. 1 as unduly burdensome.

13. UP objects to Instruction No. 3 as overbroad, unduly burdensome, and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

14. UP objects to Instruction No. 4 as unduly burdensome.

15. UP objects to the requests, including the Definitions and Instructions, to the extent they purport to impose any burden or obligation that exceeds that imposed by the Board's Rules of Practice and applicable precedents.

16. Because all of the documents and information that might be viewed as responsive to KCS/Tex Mex's Requests have not yet been located and

identified, UP reserves the right to assert additional objections as appropriate and to supplement the objections stated herein.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

INTERROGATORIES

Interrogatory No. 1

"Has the abandonment that has been authorized for the Wharton Branch line between SP milepost 2.5, near Rosenberg, Texas and SP milepost 25.8, near Wharton, Texas been consummated for any portion of or all of that line? If the answer to this interrogatory is in the affirmative, for each portion for which abandonment was consummated, please describe the portion of the line by listing relevant mileposts, state the date on which the abandonment was consummated, and identify documents sufficient to demonstrate the fact that the abandonment has been consummated."

Response:

UP objects to this interrogatory as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

UP further objects to this interrogatory as an improper use of discovery in an effort by KCS/Tex Mex to gain advantage in ongoing negotiations with UP over the sale of the Wharton Branch. UP has responded to KCS/Tex Mex's expression of interest in purchasing the Wharton Branch by making a reasonable offer to sell the line.

KCS/Tex Mex summarily rejected UP's reasonable offer and have not responded with a counteroffer of their own. Instead of negotiating in good faith, KCS/Tex Mex's discovery requests reflect an intention to abuse the discovery process to advance their negotiating position and/or improperly inject the Board into commercial negotiations.

KCS/Tex Mex should seek information about the Wharton Branch through the negotiating process, not through formal Board discovery. Subject to and without waiver of the foregoing objections, UP states that it has not abandoned the former SP Wharton Branch between SP milepost 2.5, near Rosenberg and McHattie, Texas, and SP milepost 25.8, near Wharton, Texas.

Interrogatory No. 2

"Has the abandonment that has been authorized for the Wharton Branch line between SP milepost 25.8, near Wharton, Texas and SP milepost 87.8 near Victoria, Texas been consummated for any portion of or all of that line? If the answer to this interrogatory is in the affirmative, for each portion for which abandonment was consummated, please describe the portion of the line by listing relevant mileposts, state the date on which the abandonment was consummated, and identify documents sufficient to demonstrate the fact that the abandonment has been consummated."

Response:

See objections stated in Response to Interrogatory No. 1. Subject to and without waiver of the foregoing objections, UP states that it has not abandoned the portion of the former SP Wharton Branch between SP milepost 25.8, near Wharton, Texas and SP milepost 87.8, near Victoria, Texas.

Interrogatory No. 3

"Describe in detail, and identify all documents sufficient to evidence, UP ownership and/or property interests, including, but not limited to easements and covenants, for the land underlying the former SP line called the Wharton Branch between Rosenberg, Texas and Wharton, Texas."

Response:

UP objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this interrogatory as an improper use of discovery in an effort by KCS/Tex Mex to gain advantage in ongoing negotiations with UP over the sale of the Wharton Branch. UP has responded to KCS/Tex Mex's expression of interest in purchasing the Wharton Branch by making a reasonable offer to sell the line. KCS/Tex Mex summarily rejected UP's reasonable offer and have not responded with a counteroffer of their own. Instead of negotiating in good faith, KCS/Tex Mex's discovery requests reflect an intention to abuse the discovery process to advance their negotiating position and/or improperly inject the Board into commercial negotiations. KCS/Tex Mex should seek information about the Wharton Branch through the negotiating process, not through formal Board discovery.

Interrogatory No. 4

"Describe in detail, and identify all documents sufficient to evidence, UP ownership and/or property interests, including, but not limited to easements and covenants, for the land underlying the former SP line called the Wharton Branch between Wharton, Texas and Victoria, Texas."

Response:

See Response to Interrogatory No. 3.

Interrogatory No. 5

"Describe in detail, and identify all documents sufficient to evidence, non-UP ownership and/or property interests, including, but not limited to easements and covenants, for the land underlying the former SP line called the Wharton Branch between Rosenberg, Texas and Wharton, Texas."

Response:

See Response to Interrogatory No. 3.

Interrogatory No. 6

"Describe in detail, and identify all documents sufficient to evidence, non-UP ownership and/or property interests, including but not limited to easements and covenants, for the land underlying the former SP line called the Wharton Branch between Wharton, Texas and Victoria, Texas.

Response:

See Response to Interrogatory No. 3.

Interrogatory No. 7

"Describe in detail, and identify all documents sufficient to evidence, the standing car capacity of all UP yards in the Houston area."

Response:

UP objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request as requiring a burdensome special study. Subject to and without waiver of the foregoing objections, the standing car capacity, as UP understands that term, of

UP's yards in the Houston area for which such data are reasonably available is set forth in documents that will be placed in UP's document depository.

Interrogatory No. 8

"Describe in detail, and identify all documents sufficient to evidence, UP's track miles and road miles of all running tracks in the Houston area."

Response:

UP objects to this interrogatory as vague, and as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, the mileage of UP trackage in and around Houston can be determined from track charts in UP's document depository.

Interrogatory No. 9

"Describe in detail, and identify all documents created between January 1, 1996 and the present evidencing UP's plans for capital projects for the Houston area."

Response:

UP objects to this interrogatory as vague, ambiguous, overbroad, unduly burdensome, and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, UP's plans for capital expansion projects in and around Houston are set forth in UP's May 1, 1998 Report on Houston and Gulf Coast

Infrastructure in Ex Parte No. 573, a copy of which will be placed in UP's document depository.

Interrogatory No. 10

"Describe in detail, and identify all documents evidencing, the number of trains, train symbols, and operating times for all trains in Texas which have operated against the flow on UP directional operation lines from January 30, 1998 to the present."

Response:

UP objects to this interrogatory as unduly burdensome, and as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request as requiring a burdensome special study. Subject to and without waiver of the foregoing objections, certain trains are for various reasons scheduled to operate against the current of flow on UP directionally-operated lines over which Tex Mex has trackage rights. An identification of such trains is set forth in documents that will be placed in UP's document depository.

Interrogatory No. 11

"Describe in detail, and identify all documents evidencing, the number of times the siding at Laward, Texas has been used, and the duration of stay of any train using said siding at Laward, Texas."

Response:

UP objects to this interrogatory as vague, unduly burdensome, and seeking information that is neither relevant nor reasonably calculated to lead to the

discovery of admissible evidence. UP further objects to this request as requiring a burdensome special study involving, inter alia, the downloading and study of voluminous computerized dispatching records. Subject to and without waiver of the foregoing objections, the siding at Laward is in regular use as a mainline passing siding. See STB Service Order No. 1518, UP/SP's Reply in Opposition to KCS/Tex Mex Petition for Expedited Enforcement of Emergency Service Order No. 1518, Feb. 9, 1998, Steele V.S., pp. 7-8, placed in UP's document depository.

Interrogatory No. 12

"Is it still your intention to seek Board approval of the ownership 'swap,' of the Houston-Iowa Junction and Iowa Junction-Avondale lines, by filing an 'appropriate joint request' as referenced in your February 18, 1998 letter to the Board regarding Service Order No. 1518. If your answer to this interrogatory is in the affirmative, please state when you plan to file such joint request."

Response:

UP and BNSF intend shortly to file a joint request for appropriate Board action with respect to the "ownership 'swap'" described in the February 18, 1998 letter from Arvid E. Roach II to Secretary Williams.

DOCUMENT REQUESTS

Request No. 1

"Produce all documents identified, or which should be identified, in response to Interrogatories Nos. 1-11."

Response:

UP incorporates by reference herein its objections and responses to Interrogatories Nos. 1-11.

Request No. 2

"Produce all computerized 100% Union Pacific Railroad traffic data for 1997, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets, together with documentation explaining the record layout and the content of the fields. To the extent particular items are unavailable in machine-readable form, (a) provide them in hard-copy form, and (b) provide any similar machine-readable data."

Response:

UP objects to this request as overbroad, unduly burdensome, and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, and further subject to the conditions described below, UP is prepared to produce traffic tapes for 1997 comparable to the tapes previously supplied in the oversight proceeding and those that UP is required to produce on July 15, 1998 pursuant to Decision No. 10, served Oct. 24, 1997, p. 19. UP is working on such tapes and is prepared to produce them as soon as they can be prepared, and significantly in advance of the July 15, 1998 due date established in Decision No. 10, on condition that KCS/Tex Mex make contemporaneous production of the traffic data requested in Applicants' First Requests for the Production of Documents to Kansas

City Southern Railway Company and The Texas Mexican Railway Company (UP/SP-338), served May 13, 1998.

Request No. 3

"Produce documents sufficient to show the terminal dwell times of rail cars in all of UP's Houston yards since January 1, 1998."

Response:

UP objects to this request as unduly burdensome, and as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, UP will be producing documents reflecting terminal dwell time statistics for the Houston-area yards for which UP has compiled such statistics.

Request No. 4

"Produce all line profiles, line maps, track charts, traffic charts, SPINS (SP Industry Number System) Charts Industry Locations, and traffic histories prepared and maintained by SP with respect to the former SP line between Rosenberg and Victoria, Texas, from January 1, 1990 to the present."

Response:

UP objects to this request as vague, ambiguous, overbroad, unduly burdensome and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request as an improper use of discovery in an effort by KCS/Tex Mex to gain advantage in ongoing negotiations with UP over the sale of the Wharton Branch. UP has

responded to KCS/Tex Mex's expression of interest in purchasing the Wharton Branch by making a reasonable offer to sell the line. KCS/Tex Mex summarily rejected UP's reasonable offer and have not responded with a counteroffer of their own. Instead of negotiating in good faith, KCS/Tex Mex's discovery requests reflect an intention to abuse the discovery process to advance their negotiating position and/or improperly inject the Board into commercial negotiations. KCS/Tex Mex should seek information about the Wharton Branch through the negotiating process, not through formal Board discovery. Subject to and without waiver of the foregoing objections, track charts and maps covering the former-SP line between Rosenberg and Victoria are in UP's document depository.

Request No. 5

"Produce all bid invitation documents prepared by UP with respect to the sale of any and all track structure for any portion of the former SP line between Rosenberg and Victoria, Texas, from January 1, 1990 to the present."

Response:

UP objects to this request as unduly burdensome, and as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request as an improper use of discovery in an effort by KCS/Tex Mex to gain advantage in ongoing negotiations with UP over the sale of the Wharton Branch. UP has responded to KCS/Tex Mex's expression of interest in purchasing the Wharton Branch by making a reasonable offer

to sell the line. KCS/Tex Mex summarily rejected UP's reasonable offer and have not responded with a counteroffer of their own. Instead of negotiating in good faith, KCS/Tex Mex's discovery requests reflect an intention to abuse the discovery process to advance their negotiating position and/or improperly inject the Board into commercial negotiations. KCS/Tex Mex should seek information about the Wharton Branch through the negotiating process, not through formal Board discovery.

Request No. 6

"Produce all bids received by UP for the purpose or salvage of any and all track structures on the former SP line between Rosenberg and Victoria, Texas from January 1, 1990 and the present."

Response:

See Response to Request No. 5.

Request No. 7

"Produce all documents reflecting the sale of any or all track structures on the former SP line between Rosenberg and Victoria, Texas from January 1, 1990 to the present."

Response:

See Response to Request No. 5.

Request No. 8

"Produce all bids received by UP for the purchase of any part or all of the former SP line between Rosenberg and Victoria, Texas, with or without other line segments, at any time between January 1, 1990 and the present."

Response:

See Response to Request No. 5.

Request No. 9

"Produce all documents relating to the potential sale of any part or all of the former SP line between Rosenberg and Victoria, Texas, with or without other line segments, at any time between January 1, 1990 and the present, whether or not such sale was consummated."

Response:

See Response to Request No. 5.

Request No. 10

"Produce all documents relating to a valuation of any part or all of the former SP line between Rosenberg and Victoria, Texas, with or without other line segments."

Response:

See Response to Request No. 5.

Request No. 11

"Produce all documents evidencing UP's title or right of use and possession of all portions of the right of way of the former SP line between Rosenberg and Victoria, Texas, including extra width right of way, and of any and all parcels of land currently owned or possessed by UP with adjoin the right of way of the line."

Response:

See Response to Request No. 5.

Request No. 12

"Produce all correspondence relating to the former SP line between Rosenberg and Victoria, Texas, exchanged between UP and the El Campo Economic Development Department at any time between January 1, 1990 and the present."

Response:

See Response to Request No. 5.

Request No. 13

"Produce all correspondence relating to the former SP line between Rosenberg and Victoria, Texas, exchanged between UP and Rail-Tex Services Company, Inc. at any time between January 1, 1990 and the present."

Response:

See Response to Request No. 5.

REQUESTS FOR ADMISSION

Request for Admission No. 1

"Admit or Deny: SP filed for and was subsequently granted abandonment authority for the SP line between Rosenberg, Texas (MP 2.5) and Wharton, Texas (MP 25.8).

Response:

UP objects to this request for admission as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request for admission as an improper use of discovery in an effort by KCS/Tex Mex to gain advantage in ongoing negotiations with UP over the sale of the Wharton Branch. UP has responded to KCS/Tex Mex's

expression of interest in purchasing the Wharton Branch by making a reasonable offer to sell the line. KCS/Tex Mex summarily rejected UP's reasonable offer and have not have not responded with a counteroffer of their own. Instead of negotiating in good faith, KCS/Tex Mex's discovery requests reflect an intention to abuse the discovery process to advance their negotiating position and/or improperly inject the Board into commercial negotiations. KCS/Tex Mex should seek information about the Wharton Branch through the negotiating process, not through formal Board discovery. Subject to and without waiver of the foregoing objections, UP admits that SP filed for and was granted authority to abandon its line between SP milepost 2.5 near McHattie, Texas, and SP milepost 25.8, near Wharton, Texas. See Docket No. AB-12 (Sub-No. 166X), Decision served Mar. 8, 1995.

Request for Admission No. 2

"Admit or Deny: SP filed for and was subsequently granted abandonment authority for the SP line between Wharton, Texas (MP 25.8) and Victoria, Texas (MP 87.8).

Response:

See objections stated in Response to Request for Admission No. 1. Subject to and without waiver of the foregoing objections, UP admits that SP filed for and was granted authority to abandon its line between SP milepost 25.8 near Wharton, Texas, and SP milepost 87.8, near Victoria, Texas. See Docket No. AB-12 (Sub-No. 162X), Decisions served Nov. 1, 1993 and May 12, 1995.

Request for Admission No. 3

"Admit or Deny: The line between Rosenberg, Texas (MP 2.5) and Victoria, Texas (MP 87.8) consists of 1,191.3 acres of which UP holds fee title to 352.2 acres."

Response:

See objections stated in Response to Request for Admission No. 1.

Subject to and without waiver of the foregoing objections, UP denies this request for admission.

Request for Admission No. 4

"Admit or Deny: The weight of the rail line, at the time they were each granted abandonment authority were respectively: 113 pound rail for Rosenberg, Texas to Wharton, Texas; and 90 pound rail for Wharton, Texas to Victoria, Texas."

Response:

See objections stated in Response to Request for Admission No. 1.

Subject to and without waiver of the foregoing objections, UP denies this request for admission.

Request for Admission No. 5

"Admit or Deny: In April 1994, UP valued the line between Rosenberg and Victoria, Texas, with much of the track in place, plus the 13.5 mile segment between Wharton and New Gulf, Texas which had 132 pound rail in place, at \$9,579,000."

Response:

See objections stated in Response to Request for Admission No. 1.

Subject to and without waiver of the foregoing objections, UP states that it has made a reasonable inquiry, but the information presently known and readily obtainable by UP is insufficient to enable UP to admit or deny this request for admission.

Request for Admission No. 6

"Admit or Deny: No traffic has traversed the entire route between Rosenberg and Victoria, Texas since April 1994."

Response:

See objections stated in Response to Request for Admission No. 1.

Subject to and without waiver of the foregoing objections, UP admits that no traffic has traversed the entire route between Rosenberg and Victoria (via Wharton) since April 1994.

Request for Admission No. 7

"Admit or Deny: Since April 1994, no traffic has originated or terminated on the portion of line between Wharton (MP 25.8) and Victoria (MP 87.8)."

Response:

See objections stated in Response to Request for Admission No. 1.

Subject to and without waiver of the foregoing objections, UP admits this request for admission.

Request for Admission No. 8

"Admit or Deny: The track between Wharton, Texas (MP 25.8) and Victoria, Texas (MP 87.8) has been removed and sold for salvage."

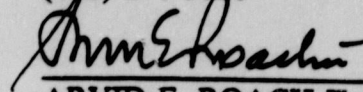
Response:

See objections stated in Response to Request for Admission No. 1.

Subject to and without waiver of the foregoing objections, UP admits that the track between SP milepost 25.8 near Wharton, Texas and SP milepost 87.8 near Victoria, Texas, has been removed, and UP states that it has made a reasonable inquiry, but the information presently known and readily obtainable by UP is insufficient to enable UP to admit or deny whether the track was sold for salvage.

Respectfully submitted,

JAMES V. DOLAN
PAUL A. CONLEY, JR.
LAWRENCE E. WZOREK
Law Department
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000



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1201 Pennsylvania Avenue, N.W.
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*Attorneys for Union Pacific
Railroad Company*

May 14, 1998

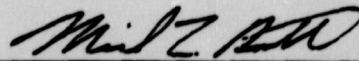
CERTIFICATE OF SERVICE

I, Michael L. Rosenthal hereby certify that on this 14th day of May, 1998, I served a copy of Union Pacific's Responses and Objections to KCS/Tex Mex's Second Set of Discovery by hand on:

Richard A. Allen
John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939

William A. Mullins
Sandra L. Brown
David C. Reeves
Troutman Sanders LLP
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005-3314

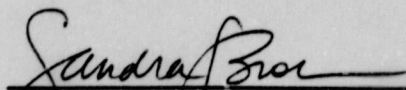
and by first-class mail, postage prepaid, on all other parties of record.



Michael L. Rosenthal

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the "Motion to Compel Second Set Of Discovery From Union Pacific Railroad Company" was served this 26th day of May, 1998, by hand delivery to counsel for Union Pacific and to the Honorable Stephen Grossman and by first class mail upon all other parties of record of the Houston/Gulf Coast oversight proceeding.



Sandra L. Brown
Attorney for The Kansas City Southern
Railway Company

STB

FD-32760 (SUB26)

5-18-98

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ENTERED
Office of the Secretary

MAY 19 1998

Part of
Public Record

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.

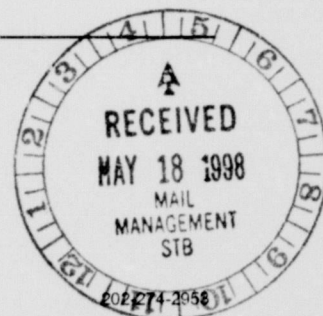
SUITE 500 EAST

WASHINGTON, D.C. 20005-3314

TELEPHONE: 202-274-2950

FACSIMILE: 202-274-2917

INTERNET: william.mullins@troutmansanders.com



William A. Mullins

May 18, 1998

VIA HAND DELIVERY

Mr. Vernon A. Williams

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

Surface Transportation Board

1925 K Street, N.W., Suite 700

Washington, D.C. 20006

Re: Finance Docket No. 33507, *Texas Mexican Railway et al v. Houston Belt & Terminal Railway et al.*; Finance Docket Nos. 33461, 33462, 33463, *Trackage Rights Exemption -- Houston Belt & Terminal Railway Co.*

Dear Secretary Williams:

On October 31, 1997, The Texas Mexican Railway Company ("Tex Mex") and The Kansas City Southern Railway Company ("KCS") filed a Petition for Emergency Cease and Desist Order and Complaint with the Surface Transportation Board ("Board"). This complaint is still pending at the Board. On February 3, 1998, Tex Mex and KCS also filed a Petition for Consolidation, To Declare Exemptions Void Ab Initio, and To Revoke Exemptions which is also still pending at this time.

We recently received a copy of the attached letter from the Port Terminal Railroad Association to all the tenants in the Union Station building located in Houston, Texas. HBT is the lessee of this building and PTRR is a subtenant. Importantly, the point of PTRR's letter is to notify all other tenants **"that on or about June 30, 1998, the HBT will cease operations and have no presence in the building."** Therefore, we submit this letter to the Board because we believe it is relevant to the Board's determination of the issues addressed in the Complaint and the Petition to Revoke.

Sincerely yours,

William A. Mullins

Attorney for The Kansas City Southern
Railway Company

cc: Richard A. Allen, Esquire
Arvid E. Roach, Esquire
Erika Z. Jones, Esquire



Tom W. Parker
Controller / Treasurer

PORT TERMINAL RAILROAD ASSOCIATION
501 CRAWFORD - UNION STATION - HOUSTON - TEXAS - 77002

(713) 546-3320
(713) 546-3211 Fax

April 29, 1998

All Union Station Building Tenants:

Bill Mathis of the Houston Belt & Terminal (HB&T) has informed the Harris County - Harris Sports Authority (HC-HSA, the Union Station Building owner and our landlord) that on or about June 30, 1998, the HB&T will cease operations and have no presence in the building.

The Port Terminal Railroad Association (PTRA) is a named subtenant in the lease between HB&T and the HC-HSA. The PTRA can occupy the building through the termination of the lease (November 8, 1998); the PTRA's plans for continued occupancy are not yet known. At Bill Mathis's request, effective May 1, 1998, I will be the (PTRA's) Union Station Building Manager.

Should plumbing, electrical or heating/cooling issues arise regarding the Union Station Building, please call Paul Perez at 546-3315 to report them. The PTRA will be using the same service providers the HB&T has been engaging.

Should you have any questions about this matter or should you have Union Station Building concerns requiring attention, please feel free to let me know.

Thanks!

STB

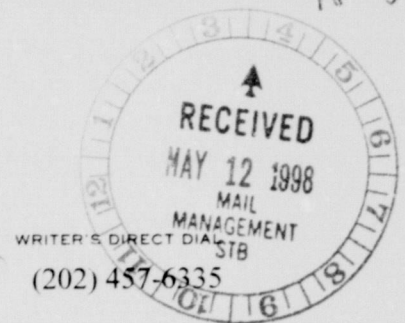
FD-32760 (SUB26)

5-12-98

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ID-187521

PATTON BOGGS, L.L.P.
2550 M STREET, N.W.
WASHINGTON, D.C. 20037-1350
(202) 457-6000
FACSIMILE: (202) 457-6315



May 12, 1998

The Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 32760 (Sub No. ²⁶~~34~~), Union Pacific Corporation,
et al. -- Control and Merger -- Southern Pacific Rail Corporation et al.
-- Oversight Proceeding

Dear Secretary Williams:

I submit with this letter an original and 25 copies of the Highly Confidential and Public versions of the Petition of the Arkansas, Louisiana & Mississippi Railroad Company for an Additional Remedial Condition, and the accompanying Verified Statement of Larry J. Ahlers. Please date-stamp the additional copy of each for return by our messenger.

I also enclose copies of both versions of the Petition and Verified Statement on a diskette in Word Perfect 6.0, which is translatable to Word Perfect 7.0.

As stated on our certificate of service, we have served the Public version on all parties of record. I have also served the Highly Confidential version upon outside counsel for Union Pacific by hand today, and the Public version upon inside counsel for UP by FedEx. We will serve the Highly Confidential version on outside counsel for any party of record in the oversight proceeding who so requests and who provides evidence of execution of the highly confidential undertaking required under the protective order in force in this merger case. Please let me know if we should follow some different procedure regarding service of the Highly Confidential version.

Sincerely,

Scott N. Stone

ENTERED
Office of the Secretary

MAY 13 1998

Part of
Public Record

Counsel for the Arkansas, Louisiana
and Mississippi Railroad Company

ENTERED
Office of the Secretary

MAY 13 1998

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. ²⁶~~34~~)



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

-- CONTROL AND MERGER --

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

OVERSIGHT PROCEEDING

PETITION OF THE ARKANSAS, LOUISIANA AND
MISSISSIPPI RAILROAD COMPANY FOR
AN ADDITIONAL REMEDIAL CONDITION

The Arkansas Louisiana & Mississippi Railroad Company ("AL&M") respectfully submits this petition to the Board under its general oversight jurisdiction in this case.¹ The merger of the Union Pacific ("UP") and Southern Pacific ("SP") systems has had a dramatic negative effect on the service and rates provided by the merged UP system to the AL&M, because it eliminated the vigorous competition that previously existed between the UP and SP. Since the merger, AL&M shippers have had only the much more limited choice of shipping via the merged UP system or via connections over the Kansas City Southern Railway ("KCS"). This

¹ The petition is not submitted in response to Decision No. 12 regarding proposed new conditions to remedy traffic congestion and other problems in the Houston area, as it does not address that subject.

PUBLIC VERSION

competition has been insufficient to prevent the UP from raising its rates up to % where contract rates have expired.²

To remedy the lack of effective competition for its traffic, the AL&M respectfully requests the Board to add one additional remedial condition to those imposed in Decision No. 44 -- namely, to permit the Burlington Northern and Santa Fe Railway Company ("BNSF") to interchange traffic with the AL&M at Fordyce, AR, on a line over which the BNSF already has overhead trackage rights. AL&M would exclude from the traffic open to BNSF all traffic which can be handled by the KCS direct to destination or from origin. The condition is thus limited to ensuring that AL&M and its customers have access to two rail systems (UP and BNSF) able to compete for AL&M traffic which the KCS cannot directly serve.

This condition replicates the Lake Charles condition applicable to points that were served before the merger by UP, SP and KCS. As is the case at Lake Charles, the KCS, although theoretically constituting a second carrier (such that points on the AL&M are not "2-to-1" points as the Board has used that term in this proceeding), offers direct service to only a fraction of the destinations required by AL&M's customers. Permitting access by the BNSF to AL&M traffic would therefore be squarely within the Lake Charles precedent. Unlike the Lake Charles condition, however, it would not require any access by BNSF to KCS facilities, but would simply grant BNSF, which already has the right, pursuant to Decision No. 44, to run its trains over the Houston-Memphis-St. Louis corridor, the additional right to stop at Fordyce, AR and pick up and set off cars originating or terminating on the AL&M.

² In the Highly Confidential version of this petition, Attachment 1 to the accompanying Verified Statement of AL&M President Larry J. Ahlers details the substantial rate increases that have been put into effect so far by the UP.

PUBLIC VERSION

I. Factual Background

A. Identity and Interest of AL&M

The AL&M is a class III short line rail carrier serving customers in southern Arkansas and northern Louisiana. As shown on the accompanying map (Attachment A), the AL&M operates over 109 miles of track from a northern terminus at Fordyce, AK, south through Crossett, AR and Bastrop, LA, to its southerly terminus at Monroe, LA.³

The AL&M today interchanges traffic with the UP both at Fordyce, located on the former SP mainline between Houston and Memphis, and at Monroe, which is located on UP's north-south line between Little Rock and Pine Bluff, AR and Lake Charles, LA. The UP can also serve Bastrop, LA, which is located on a branch of the UP's Little Rock-Lake Charles line and can be served by a Monroe switch crew. The AL&M interchanges traffic with the KCS at Monroe, LA, located on KCS's east-west line from Shreveport, LA to Meridian, MS.

The AL&M's principal customers are (1) Georgia-Pacific, whose facilities in Fordyce and Crossett, AR produce pulp, paper, paperboard, lumber, plywood, other wood products, and chemical resins;⁴ (2) International Paper, whose plant in Bastrop, LA produces paper; (3) Geo Chemical Company, (4) the Ouachita Fertilizer Company; (5) the Shops Warehouse; (6) Century

³ North of Crossett, AR, the AL&M operates, by means of a haulage agreement, over track owned by its sister railroad, the Fordyce & Princeton Railroad.

⁴ The AL&M and the Fordyce & Princeton Railroad are wholly owned by Georgia-Pacific Corporation. Georgia-Pacific acquired what is now the Fordyce & Princeton in 1981 from the bankrupt Rock Island line, investing some \$7 million to acquire and reconstruct the line with the express purpose of ensuring access to the St. Louis Southwestern (subsequently SP, now UP) line at Fordyce. Similarly, Georgia-Pacific in 1991 spent approximately \$6.3 million to purchase and rehabilitate the line from Crossett, AR to Monroe, LA (then owned by the Arkansas, Louisiana and Missouri Railway) to ensure access at Monroe to the UP line and to the line now owned by Kansas City Southern.

Redi-Mix, a cement plant and (7) the Coating & Laminating Company. These companies' products move in various types of cars (owned by either AL&M or the line-haul carriers) to destinations throughout the United States. See the attached verified statement of the President of the AL&M, Larry J. Ahlers, at 2-3 (hereinafter "Ahlers V.S.").

B. AL&M's Participation in the UP/SP Merger Proceeding

The AL&M previously raised its concerns about the current lack of effective competition for its traffic in the UP oversight proceedings⁵ and in Ex Parte No. 573, Rail Service in the Western United States.⁶ In both proceedings, the AL&M reported to the Board that the merger has had serious detrimental effects on the AL&M and its shippers (see below). It has become increasingly clear that the limited competition offered by the KCS at Monroe is ineffective to prevent UP's unresponsive service and rate increases.

In the original UP/SP merger case the AL&M did not request the condition it is now seeking because there appeared to be no precedent for remedial access by a third carrier where a merger would reduce the available carriers from 3 to 2. In Decision No. 44, however, the Board provided a clear precedent for AL&M's requested condition by granting the BNSF access to Lake Charles area shippers, even though Lake Charles is served for some routings by the KCS. The Lake Charles area remedy of access by the BNSF should be provided to the AL&M and its customers as well.

⁵ Letter from S. Russell Tedder to The Hon. Vernon A. Williams, July 31, 1997 in Fin. Dkt. No. 32760.

⁶ Statement of Larry J. Ahlers, President of AL&M, at the Board's hearing October 27, 1997; Report in Response to Board's January 13 Order, filed February 12, 1998.

C. Detrimental Competitive Effects of the UP/SP Merger on the AL&M

The AL&M and its shippers have been seriously and adversely affected by the UP/SP merger. These problems, which are described in detail in the attached verified statement of Mr. Ahlers, include:

- UP rate increases of up to % (Ahlers V.S. at 6-7);
- threatened further increases in UP rates (Ahlers V.S. at 6-7);
- a severe reduction in the frequency of car pickups and setouts by the UP, from five or six days per week to once a week or even zero on more than one occasion (Ahlers V.S. at 4-5);
- the very late return of cars, necessitating the acquisition of 350 additional cars by the AL&M (Ahlers V.S. at 4-5);
- increased line-haul transit times (up to 132% greater) for movements via the UP (Ahlers V.S. at 8);
- the necessity of AL&M's customers shipping products by truck or intermodal, at substantially increased costs, in order to meet delivery schedules (Ahlers V.S. at 8-9);
- the consequent reduction of carloadings on the AL&M by 32% during the since July 1997 (Ahlers V.S. at 8-9); and
- the need to comply with the changing service dictates of UP concerning where empty cars are received and where loaded cars are tendered, for example, requiring AL&M during parts of February-April 1998 to receive all empty cars at Fordyce, AR at AL&M's northern terminus, and to tender all loaded cars at Monroe, LA, at the southern end of AL&M's 109-mile system (Ahlers V.S. at 7-8).

1. Poor Service

These problems are not simply by-products of UP's "service melt-down." Instead, they reflect a lack of competitively-driven incentives for UP to offer good service and reasonable

PUBLIC VERSION

rates. The rate increases, of course, are not driven by any physical service limitation such as system congestion. Nor are the service problems the necessary result of UP's congestion problems. There are no physical or system limitations preventing UP from providing better service. In fact, UP has twice improved its service -- both times immediately after AL&M appeared before the Board to complain of the reduction of competition. Following the testimony of Mr. Ahlers at the Board's October 27, 1997 hearing in Ex Parte No. 573, Rail Service in the Western United States, the Board required the UP to meet with each of the parties that had appeared at the hearing to address their concerns. As a result, the UP met with AL&M on November 4, 1997 and offered a service plan that temporarily improved UP service. Ahlers V.S. at 5.

UP's service worsened again in January 1998. By the last week in January, the UP was missing 27% of the scheduled pickups and setouts. During the first week in February it was making less than half (45%) of the scheduled interchanges, and in the first week of March, it made only 55% of pickups and setouts. Ahlers V.S. at 5. At the same time, UP was requiring AL&M to respond to shifting service patterns, first requiring that empty cars be received by the AL&M at Bastrop, LA, and loaded cars tendered to the UP at Fordyce, and then reversing course and requiring that empties be received at Fordyce and loaded cars be delivered by the AL&M at Monroe. Ahlers V.S. at 7-8. The UP suddenly became "responsive", however, following the filing of AL&M President Ahlers' March 26, 1998 written statement in Ex Parte No. 575, Review of Rail Access and Competition Issues. In a letter to the Board following the hearing in that proceeding, the UP wrote that in light of "the much improved condition of the SP line

through Fordyce," UP would make set-offs and pick-ups at Fordyce if the AL&M wished.⁷ The previous day, however, the UP had written the Board to say that allowing BNSF to pick up and set off cars at Fordyce would worsen congestion on this line.⁸

2. Rate Increases and Threatened Further Rate Increases

On May 1, the UP implemented rate increases of up to % under a series of contracts for the movement of to various destinations. These are listed in Attachment 1 to the accompanying verified statement of Mr. Ahlers.⁹

The UP in discussions with AL&M customers has stated an intent to increase rates further, on the ground that rates charged by SP were "too low." See Attachment 3 to the accompanying verified statement of Mr. Ahlers, a copy of an October 6, 1997 letter from G.W. Courtwright of Georgia-Pacific to various UP marketing managers.

3. Ineffective KCS Competition

UP poor service and rate increases came despite the fact that AL&M and its customers theoretically enjoyed competition from the KCS. The fact is that although the AL&M following the merger made increased use of the KCS where possible, the KCS directly reaches only a handful of the hundreds of destinations to which AL&M traffic was shipped in 1997.¹⁰ Although

⁷ Letter from Arvid E. Roach II to the Hon. Vernon A. Williams, April 9, 1998 re Ex Parte No. 575. A copy of this letter is Attachment B hereto.

⁸ Letter from Arvid E. Roach II to the Hon. Vernon A. Williams, April 8, 1998 re Ex Parte No. 575. A copy of this letter is Attachment C hereto.

⁹ Details of the rate increases and products are included only in the highly confidential version of this filing. The highly confidential version will be made available upon request to outside counsel who have signed the appropriate confidentiality undertaking in this proceeding.

¹⁰ The KCS-served destinations to which AL&M-originated traffic was shipped in 1997 were: New Orleans, Lake Charles, De Ridder, Springhill, and West Monroe, LA; Hatfield, AR;

PUBLIC VERSION

the KCS is able to interline traffic to reach other destinations, these routings add circuitry and cost, and rates for KCS movements are typically higher than comparable UP rates. Ahlers V.S. at 9. In any event, what little competition the KCS is able to provide has proven inadequate to constrain UP from increasing its rates very substantially.

II. Argument

A. The Applicable Legal Standard for Imposing Conditions

The Board in the Conrail merger case recently summarized the legal standard for imposing remedial conditions in a merger case:

The criteria for imposing conditions to remedy anticompetitive effects were set out in Union Pacific--Control--Missouri Pacific; Western Pacific, 366 I.C.C. 462, 562-65 (1982). There, the Interstate Commerce Commission (ICC) stated that it would not impose conditions on a railroad consolidation unless it found that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger.¹¹

As the Board has stated many times in the UP oversight proceeding, it has retained the authority to impose additional conditions if the facts warrant. For example, the Board, in addressing a BNSF petition relating to reciprocal switching in New Orleans, reiterated that it was exercising

Brandon and Louisville, MS; Korf and Garland, TX; and some points in the Kansas City, MO area. Ahlers V.S. at 9.

¹¹ STB Finance Docket No. 33388, 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, Decision No. 40 (October 1, 1997) at 2.

five years of oversight "to ensure that merger-related competitive problems do not develop."

Decision No. 77 (January 2, 1998) at 7. Although in that decision the Board concluded that the facts did not justify relief because no shipper had shown competitive harm, the Board stated that it would "continue, however, to monitor this situation and others as part of our oversight program." Id.

The UP, for its part, acknowledges the Board's power to impose additional conditions if appropriate facts are shown. See, e.g., UP/SP-333, Applicants' Opposition to KCS/Tex Mex Petition for Imposition of Additional Conditions (filed March 2, 1998) at 2.

B. The Lake Charles Conditions Provide a Clear Precedent

The Board in Decision No. 44, in order to provide Lake Charles area shippers with a choice of two fully competitive rail carriers following the UP/SP merger, ordered as a condition of the merger that BNSF have access to (1) shippers at Lake Charles and Westlake, LA who prior to the merger were served by UP, SP, and KCS, (2) shippers at West Lake Charles who prior to the merger were served by SP and KCS, and (3) interchange traffic from these shippers received by BNSF from the KCS (or delivered by the BNSF to the KCS) at Shreveport, LA and Texarkana, TX. The latter interchange traffic would be handled by the BNSF on UP/SP lines over which BNSF otherwise had only overhead trackage rights.¹²

The KCS challenged these conditions (which will be referred to herein as the "Lake Charles conditions"), and the Board in denying KCS' challenge explained the need for the conditions as follows:

In spite of its service to the Lake Charles area, KCS lacks a sufficient route structure to be competitive with UP/SP in many corridors on a single-line

¹² Decision No. 44, slip op. at 152-54.

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basis. As KCS now acknowledges, it needs to interline traffic destined to New Orleans, Houston, and Laredo. Moreover, as various Lake Charles area shippers (Montell, Olin, and PPG) point out, and as we discussed in Decision No. 44, KCS must interline to offer competitive service to the St. Louis gateway.

The competitive loss to Lake Charles area shippers was stressed by several parties in their original comments, including Montell, Olin, PPG, SPI, and KCS. KCS specifically noted that this area should be deemed, not a "3-to-2" point, but a "2-to-1" point due to the routing limitations faced by KCS in getting to Houston and New Orleans. Now that we have chosen BNSF to correct this, KCS argues that the problem of which it complained earlier is not really so severe, and that our solution is overly intrusive. We must reject KCS' efforts to retract its prior testimony that the merger would cause a significant competitive problem for these shippers. Moreover, we continue to believe that the conditions we imposed, by building upon a privately negotiated settlement agreement, as endorsed by all relevant shippers, offer a better competitive solution than KCS has offered.¹³

The limitations on KCS routings from Lake Charles are present in almost identical form in the case of routings from the AL&M's interchange with KCS at Monroe, LA. The principal difference is that the KCS routing from Monroe to New Orleans, although 40.3% longer than the UP route, is slightly less circuitous relative to the UP route than is the case for the KCS routing from Lake Charles to New Orleans.¹⁴

Otherwise, the situation is virtually identical to that of Lake Charles -- KCS must interline traffic to virtually every point that AL&M customers ship to and from. Of the hundreds of destinations to which traffic originating on the AL&M was shipped in 1997, the KCS was able to directly reach only a handful. The AL&M is willing to limit its requested relief so that the

¹³ Decision No. 63, slip op. at 7-8.

¹⁴ The KCS route from Monroe to New Orleans, which is via Shreveport, is approximately 407 miles long, or 40.3% longer than the UP routing from Monroe to New Orleans. The Lake Charles-New Orleans route for KCS is 487 miles, 109.9% longer than the UP's 232 miles.

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BNSF would not be given access at Fordyce to AL&M traffic moving to or from points directly served by the KCS, including KCS-served points in New Orleans, Shreveport, Lake Charles, and Kansas City.

In particular, as was the case in the Lake Charles situation (see quote above), the KCS must interline traffic to reach Houston and the St. Louis area gateways. The UP and SP acknowledged in their merger application that in the critical Houston to Memphis corridor (where the AL&M is located), the UP and SP were the only two competitive carriers, despite the presence of other carriers with circuitous routes.¹⁵ For this reason, from the outset UP and SP conceded that BNSF would have to be given trackage rights over the Houston-Memphis corridor.¹⁶ Subsequently, in the CMA Agreement, the BNSF trackage rights were extended to the St. Louis gateway.¹⁷ The presence of the KCS does not provide the AL&M an effective alternative to the efficient UP routing to St. Louis gateways.¹⁸

¹⁵ UP/SP-23, Railroad Merger Application, Vol. 2, page 165: "[W]e concluded that in two corridors, Houston-New Orleans and Houston-Memphis -- and only those two corridors -- UP and SP had the only genuinely competitive rail routes, and that traffic in those corridors should therefore be treated as "2-to-1" as well. This was clearly a conservative approach, since in both of these corridors other railroads had routes which, though circuitous, carried appreciable amounts of traffic."

¹⁶ Id. and id. at 19-20.

¹⁷ Decision No. 44, slip op. at 135-36.

¹⁸ Although the KCS acquired the Gateway Western and Gateway Eastern railroads after the Board's relevant decisions in the UP/SP case, and connections provided to KCS by those carriers might in theory allow KCS to reach East St. Louis, the routing would be highly circuitous, and KCS has not even marketed this routing to the AL&M. Not surprisingly, even though KCS' acquisition of Gateway was completed on May 5, 1997, the KCS and Gateway were not involved in any 1997 movements of AL&M traffic to St. Louis or over St. Louis to points in the Northeast.

In at least one significant respect, potential KCS service is even less competitive for AL&M shippers than was the case for shippers in the Lake Charles area. While the Lake Charles area is relatively compact, making access to the KCS comparatively straightforward, the connection between AL&M and KCS at Monroe, LA is at the southern end of the AL&M's 109-mile system. Traffic from the northern end of the AL&M, e.g., from Georgia-Pacific's Fordyce, AR plant, requires a 109-mile haul south over the AL&M before the cars can even reach the KCS. For northbound shipments, the same 109 miles has to be made up going north, such that routing northbound shipments via the KCS automatically builds in 218+ miles of circuitry, plus the circuitry resulting from the need to travel on KCS segments from Monroe west to Shreveport or east to Jackson before reaching a northbound line.

In sum, KCS is not competitive for the vast majority of movements from the AL&M because of KCS' limited reach and its dependence upon interlining traffic with other carriers, including UP, to reach destination markets. The lack of effective competition from the KCS is made plain by UP's rate increases and poor service.

C. AL&M and Its Shippers Have Been Competitively Harmed

As described in this petition and in the attached verified statement of Mr. Ahlers, there is ample evidence of the competitive harms suffered by the AL&M and its customers as a result of the merger, including UP rate increases of up to % and statements that further increases are anticipated. Ahlers V.S. at 6-7 and Attachment 1. Not coincidentally, some rail transportation experts have stated to the Board and in public that there is a differential of 15% to 30% between rates to competitively served points and those to captive points.¹⁹ The rate increases imposed by

¹⁹ See, e.g., the FieldNOTES newsletter published by the Fieldston Company for March-April 1998: "competitively served rail points enjoy as much as a 30% rate advantage over

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the UP correspond with the rate increases that would be expected where formerly competitive traffic becomes effectively captive.

The problems experienced by the AL&M and its shippers are not simply attributable to the service crisis in the Houston area, which has been the subject of the Board's attention in Ex Parte No. 573, Rail Service in the Western United States and the proceeding involving Service Order No. 1518. Operational problems did not bring about the rate increases that have been imposed by UP. Nor did the service crisis prevent UP from improving its service when it felt under threat from regulatory prodding, as discussed in the factual exposition above. The relief the AL&M seeks is designed to ensure that the UP will have market incentives to provide good service -- and to refrain from further substantial rate increases -- long after the Board's oversight jurisdiction in this case has ended.

D. The Requested Conditions Are Operationally Feasible

In discussions with the BNSF, AL&M has been assured by the BNSF that interchange service at Fordyce would be operationally feasible, either running local trains to and from Fordyce from the Pine Bluff, AR yard, or attaching the cars to BNSF's through train that runs from Memphis to Longview, TX, and thence routing the cars to their destination. Ahlers V.S. at 10. AL&M has adequate tracks, sidings and crews to position cars for two pick-ups and set-offs per day at Fordyce, one by UP and one by BNSF. Ahlers V.S. at 10.

captive points." (See copy at Attachment D hereto.) See also the Written Statement of the Dow Chemical Company by William L. Gebo, March 26, 1998, p. 3, filed in Ex Parte No. 575, Review of Rail Access and Competition Issues: "Captive chemical shippers tend to pay freight rates 15-30% higher than those with competitively served facilities."

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III. Conclusion and Request for Conditions

In sum, AL&M requests that the Board permit the BNSF to interchange traffic to and from the AL&M at Fordyce, AR, except AL&M traffic that the KCS can handle directly to destination (or from origin, where the traffic terminates on the AL&M). This condition is justified by the competitive harm suffered by AL&M and its customers, and is operationally feasible.

The requested condition replicates the Lake Charles condition applicable to points that were served before the merger by UP, SP and KCS. Unlike the Lake Charles condition, however, it would not require any access by BNSF to KCS facilities, but would simply grant BNSF, which already has the right to run its trains over the Houston-Memphis-St. Louis corridor, the additional right to stop at Fordyce, AR and pick up and set off cars originating/terminating on the AL&M.

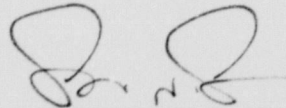
Before asking the Board to intervene in this matter, the AL&M first repeatedly requested the UP to permit BNSF access to AL&M traffic at Fordyce. Not only has UP not agreed²⁰ -- it has threatened, in the words of one UP representative, to fight AL&M "all the way to the Supreme Court" before it gives in on the point. Ahlers V.S. at 10. Given UP's refusal to offer competitive rates and service, and its refusal to permit BNSF access, the Board should extend the Lake Charles precedent to permit traffic to be interchanged between the AL&M and the BNSF at Fordyce, AR. This condition is necessary to remedy the competitive harm caused by the UP/SP

²⁰ UP also refused to allow BNSF to carry AL&M traffic, even at the height of its service crisis, despite its public statements that it would spin off traffic to other carriers who could help UP out of its congestion problems.

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merger and restore to AL&M and its shippers the vigorous and effective competition that existed before the merger.

Respectfully submitted,



John L. Oberdorfer
Scott N. Stone
Patton Boggs, L.L.P.
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Washington, DC 20037
(202) 457-6335

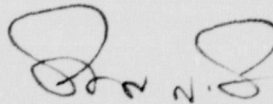
Counsel for the Arkansas Louisiana
& Mississippi Railroad Company

Dated: May 12, 1998

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that copies of the PUBLIC version of the foregoing petition have been served this 12th day of May, 1998, by first-class mail, postage prepaid upon all parties of record in the oversight proceeding. Copies of the HIGHLY CONFIDENTIAL version will be served upon outside counsel who have signed the appropriate confidentiality undertaking and who request a copy.



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Attachment B

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April 9, 1998

BY HAND

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

Re: Ex Parte No. 575

Dear Secretary Williams:

We have obtained additional information regarding UP's service to CEMEX at New Braunfels, Texas, and its interchange with the Arkansas, Louisiana and Mississippi Railroad, which may be of use to the Board. Accordingly, we supplement our letter delivered yesterday.

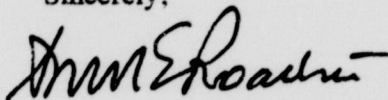
CEMEX. As the backlog of cars destined for the Laredo gateway eases, UP is better able to serve shippers such as CEMEX located on its Austin Subdivision. As of yesterday morning, CEMEX had less than a trainload of loaded cars (approximately 40) on hand. UP and CEMEX have agreed on mutual actions to improve service to CEMEX. For example, UP has committed to move nine trains per week for CEMEX. For its part, CEMEX will assemble full-sized trains, rather than asking UP to move short trains of 30-40 cars that consume more capacity.

UP and CEMEX have also agreed to meet in the near future to discuss capital investments. For example, one of the reasons UP has difficulty serving CEMEX when its Austin Subdivision is heavily congested is that the switch leading into the CEMEX facility is manually operated. A train serving CEMEX must block the main track for a substantial period of time because of the need to walk to and from this switch. Under conditions of heavy congestion, it is very harmful to operations to give up the mainline for lengthy switching activities. Obviously, the situation would be worse if a second railroad attempted to switch the same facility every day. UP and CEMEX will discuss installing a power switch to make the operation more efficient. They will also consider capital investments at unloading facilities in Houston to allow those facilities to handle larger trains.

Secretary Williams
April 9, 1998
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AL&M. One of AL&M's concerns is that, due to congestion, UP preferred to receive cars from AL&M at Bastrop and Monroe, Louisiana, requiring AL&M to incur extra transportation costs. UP's operating personnel have now determined that the much-improved condition of the SP line through Fordyce will allow UP to interchange all cars at Fordyce, Arkansas, if AL&M prefers.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arvid E. Roach II". The signature is fluid and cursive, with a long horizontal stroke at the end.

Arvid E. Roach II

cc: Hon. Linda J. Morgan (courtesy copy)
Hon. Gus A. Owen (courtesy copy)
All Parties of Record

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April 8, 1998

BY HAND

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

Re: Ex Parte No. 575

Dear Secretary Williams:

Union Pacific was listening carefully to the two days of hearings last Thursday and Friday, and strongly concurs with the statements of the AAR panel that railroads must become more customer-responsive and that there are areas where regulation can be reformed and strengthened. We respectfully offer these brief further comments on points made at the hearings and in the written submissions.

Comments Specific to Union Pacific

CEMEX. UP is acutely aware of the shipping backlogs being experienced by CEMEX at New Braunfels, Texas, and other aggregates shippers in the Austin-San Antonio area. UP's Austin Subdivision, where CEMEX's facility is located, is the single most congested line on the UP system, because, as well as being affected by the congestion problems in and around San Antonio, it is where most Mexican traffic has been backed up. As the Board knows, UP was forced to declare an embargo of certain Mexico-bound traffic because of backups that were preventing us from serving shippers on this and other lines in Texas. After careful study of a BNSF proposal to operate trains to and from CEMEX, UP concluded that such operations would only worsen the severe congestion on the Austin Subdivision and make it harder for the business of CEMEX and other shippers to move on this line. New capital plans have just been adopted to construct some 17 miles of additional

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track on this line. As the Laredo congestion eases, UP is working intensively to move more shipments for CEMEX and other aggregates shippers. UP held a conference call with CEMEX on Monday to discuss steps to improve its service.

AL&M. The Arkansas, Louisiana and Mississippi Railroad renews, in Ex Parte No. 575, the request it made in the Service Order No. 1518 proceeding for the right to interchange with BNSF on UP's Houston-Memphis line. As UP explained in the Service Order No. 1518 proceeding, creating this interchange would worsen congestion on a line that is crucial to the success of directional running, and would delay shipments for all customers using the line. AL&M has an interchange with KCS as well as with UP. While its car supply and car turn times have clearly been affected by UP congestion, its situation is not materially different from that of many shippers and shortlines so affected. UP has steadily worked with AL&M to design the best interchange operations and facilitate the movement of more cars to this railroad, and will continue to do so. UP has made significant progress in the past three weeks in moving empties to AL&M, and UP management consults with Pine Bluff yard personnel on a daily basis to ensure that AL&M receives good service.

EEL. The Edison Electric Institute, in its comments, reiterates a proposal that was made in the UP/SP merger case by other parties represented by its counsel, such as the Western Shippers Coalition, and, after careful consideration, rejected by the Board: that UP be forced to divest the former DRGW and SP lines between Kansas and Oakland. EEI suggests that this should be done to promote coal shipments. In fact, UP has been effectively handling Utah and Colorado coal, with only intermittent congestion-related disruptions. Overall, Utah/Colorado coal volumes have been up. New movements have been developed for customers such as TVA. To handle more of this coal, UP has invested in new capacity on the "KP" line, where substantial new capacity is now coming on-line, and in West Coast export facilities. Moreover, by virtue of a condition that the Board imposed in its decision approving the merger, the Tennessee Pass line cannot be abandoned until and unless UP clearly demonstrates that coal traffic is being efficiently handled via the Moffat Tunnel route. EEI has made no case for the forced divestiture of these lines.

Grain Car Supply. UP very much concurs with BNSF's CEO, Mr. Krebs, as to the need to communicate better with agricultural customers and find better ways to harmonize their

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 April 8, 1998
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varying car supply needs. To this end, UP is in the course of reexamining its grain car ordering system, with an eye to possible improvements to go into effect next year.

Enterprise Products. The Board held in the UP/SP merger case that Enterprise's Mont Belvieu, Texas, facility was not entitled to "2-to-1" treatment. Recently, as a result of a voluntary agreement between UP and BNSF, BNSF was granted access to this facility. Enterprise asks that the Board mandate that agreed access in Ex Parte No. 575. There is no need or authority for such a directive. Enterprise now has the access it had sought, and no Board directive is necessary to provide it. The Board was correct in its holding in UP/SP, and the negotiated agreement between UP and BNSF does not change that fact.

Illinois Central. IC claims that the consolidation into UP facilities of certain north-south SP intermodal traffic that IC had handled in haulage before the UP/SP merger demonstrates that railroads sometimes foreclose efficient routes. UP respectfully takes issue with this claim. Substantial efficiencies and cost savings (IC imposed a high haulage charge) were achieved by combining UP and SP intermodal traffic in the pertinent corridors. This operating change, and the attendant savings, were set forth in the UP/SP merger application. The consolidation of this traffic continues to make sense, though UP's congestion problems have caused interim disruptions in the relevant north-south intermodal flows.

Embargo. Several parties commented on UP's recent embargo of certain traffic moving to Mexico via Laredo, and moving to Laredo itself. As we have reported to the Board in our submissions in Ex Parte No. 573, this embargo was imposed as a last resort to deal with severe and growing backlogs of Mexico-bound traffic that could not be crossed in sufficient volumes at Laredo. While UP has certainly not been without fault in handling trains to the International Bridge, we believe, contrary to the assertions of the Mayor of Laredo, that the principal causes of the problem have been a new practice, recently changed, of Mexican agricultural officials of inspecting trains on the International Bridge, congestion on TFM in Mexico, and Tex Mex's administration of crossing windows at the Bridge. The cause certainly has not been, as the Mayor suggested, any UP "monopoly" at Laredo. There is no such UP monopoly, and rail service at Laredo did not change as a result of the UP/SP merger. Tex Mex controls the International Bridge, competes vigorously for the business,

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and has, by its own statements, been steadily gaining market share in recent months. The statement by Mr. Matthews of the Texas Railroad Commission at Thursday's hearing that the embargo is costing Texas \$500 million per month is utterly fantastic: at most, the embargo has involved declining to accept some 200 cars per day of new traffic, and the net effect has been to benefit, not harm, Texas. The embargo is successfully allowing UP to clear up the backlog, and is taking pressure off lines and facilities in Texas that are essential for other business, such as coal to Texas utilities and aggregates from Texas producers. UP appreciates the willingness of USDA to work to alleviate customs impediments to moving the largest possible volumes of rail traffic across the International Bridge, and we are hopeful that it will be possible to lift the embargo soon.

General Comments

Rate Decreases. The Alliance for Rail Competition argues that the continuing, major declines in rail revenues per ton-mile since Staggers are no indication of the success of deregulation, because similar declines occurred in two earlier periods that ARC selected (1932-47 and 1953-68). But what these comparisons ignore is that in these earlier periods, railroads were losing tremendous volumes of high-rated traffic to trucks, causing the overall average revenue per ton-mile for all traffic to drop even as rates were held stagnant by the rate bureau process and DT&I conditions. By contrast, as the AAR's filing documents, rates have sharply declined in every commodity group following Staggers, and the railroads have been gaining back higher-rated traffic such as autos over this period. ARC also argues that the declines were driven by longer hauls and larger shipment sizes, but (a) indexes that correct for such factors also show sharp declines, and (b) the fact that the railroads have been able to offer wider single-line service and introduce more cost-effective, heavier-loading equipment has redounded to the clear benefit of shippers.

Professor Kahn's Argument on "Destructive Competition." Professor Kahn's basic argument for universal "open access" was that railroads competing head-to-head from origin to destination will not compete "destructively" -- that is, will not drive rates down to at or near variable cost -- but rather will collude to hold rates up. One might ask: If this is true, why do the shippers who are advocating "open access" want it? And what would the Justice Department say about relying on collusion as the path to revenue adequacy?

Hon. Vernon A. Williams
 April 8, 1998
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But in fact, the data presented in the Bottleneck case showed that where railroads compete head-to-head from origin to destination, rates are driven down to barely 106% of variable cost. The UP/SP record resoundingly disproved claims of "collusion," showing both that collusion is not possible in the railroad industry and that rates where two railroads compete are in fact lower than rates where three compete. (We would also note that the McDonald article cited by Mr. Dunn of USDA was extensively criticized in the UP/SP record.) Professor Kahn makes no attempt to show that the structural or demand characteristics of industries such as telecommunications and electric power are comparable to those of the railroads. And even then, he concedes that the "open access" he favors would require government regulation of the monopoly prices charged by a monopoly roadbed owner. We doubt that even the shippers seeking reregulation of the industry would favor this approach if they fully understood its implications.

Claims. Some parties, such as Formosa Plastics, suggest that the law for the handling of shipper claims should be changed. Pursuant to the Carmack Amendment and the Board's standard form bill of lading, the procedures and governing law for the handling of shipper claims are well settled. 49 U.S.C. § 11706; 49 C.F.R. pt. 1035, App. B, § 2; 49 C.F.R. pt. 1005. It is clear that, if the usual railroad claims review process is not fruitful and litigation is needed, the forum is a court, not the Board. 49 U.S.C. § 11706(d)(1). These remedies have worked well for many decades, and no showing has been made that it would be desirable to change them.

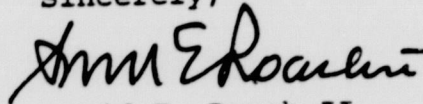
Segment Contracts. Some parties, such as Consumers Energy and CURE, assert that the "contract" exception to the Bottleneck holding is of no significance because the railroads have refused to enter into "segment" contracts with shippers. In fact, a number of recent Board proceedings illustrate that railroads do enter into such contracts. See, e.g., Docket No. 33467, FMC Wyoming Corp. v. Union Pacific R.R., Decision served Dec. 12, 1997, appeal pending, No. 98-1058 (D.C. Cir., filed Feb. 8, 1998) (Eastern railroads provided segment contracts for soda ash); Docket No. 42027, Northern Indiana Public Service Co. v. Consolidated Rail Corp., Complaint, Mar. 11, 1998 (UP provided segment contract for coal).

Standards for Emergency Orders. UP believes that the Board has ample emergency powers under 49 U.S.C. § 11123 (although legislation extending the statutory time limit might be appropriate), and that the Board has not imposed any unduly

Hon. Vernon A. Williams
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onerous requirements for the entry of such orders. The question should be whether a particular emergency measure will promote recovery from the emergency -- and that is the test that we understand the Board to have applied in its deliberations in the Service Order No. 1518 proceeding.

Sincerely,



Arvid E. Roach II

Attorney for Union Pacific
Railroad Company

cc: Hon. Linda J. Morgan (courtesy copy)
Hon. Gus Owen (courtesy copy)
All Parties of Record

FieldNOTES

A Message from the President

Long before my time in this industry, attempts were made to create an exchange where coal prices would be posted and coal could be bought and sold like other commodities. For many reasons this idea never took root, and over the years little progress was made in establishing such a market, the idea only serving as cocktail discussion for the cognoscenti.

But times have changed. Electricity deregulation is underway, and electricity generators are the primary consumers of coal produced in the U.S. Oil and natural gas trade as commodities, sulfur dioxide emission allowance trading has become broadly accepted, and electricity futures are expanding beyond the COB and Palo Verde hubs into other parts of the country.



Yet despite the New York Mercantile Exchange's (NYMEX) efforts to launch a coal future, nothing is in place.

The objections to coal trading most frequently raised are that:

- Coal prices aren't volatile enough to support a futures market
- Coal qualities are too variable to support the creation of standard products suitable for trading
- The price of Powder River Basin coal represents too small a portion of the delivered price to be worth trading

While there's some truth in all of these statements, one important fact stands out: the market is demanding better information about coal prices, and new financial products which can support innovative ways of buying and selling coal.

Consider the following examples, as reported in our newsletter *COAL Daily*:

- ARCO's options for puts and calls on its western coals were well-received. Obviously, it makes more sense to monetize volume flexibility options in coal contracts than to stick with the traditional volume flexibility percentages, and include the value of the options implicitly in the base price of the coal.
- Peabody's decision to post spot coal prices on its Web page and make them available to selected customers was an attempt to bring some price transparency into the market. The dramatic improvement in the quality of coal cash price data in industry publications (particularly in *COAL Daily*) over the past year also is a response to increasing demand for price transparency.
- Companies like Vitol, Enron and other energy marketers are now responding to tenders for coal with complex offers involving gas, coal swaps and replacement power.
- The Dakota, Minnesota & Eastern Railroad is posturing itself to sell transportation in a manner that may increase capacity from transportation. That would allow markets to develop which actually trade rail transportation.

The upshot is that while NYMEX continues to doggedly pursue launching a coal futures market, a more transparent and financially sophisticated coal and transportation market already is under development — and we're helping our clients and subscribers understand and take advantage of it.

For example, *COAL Daily* raised the bar on cash price information for coal, and *Rail Business* pioneered "Hot Spot" reporting to help shippers quickly locate and resolve problems on specific rail segments and markets.

Fieldston Consulting and Fieldston Transportation Services both have various efforts underway to help clients take advantage of price transparency and market changes to decrease costs.

My advice is that it's important to consider how these new tools can be used to work for you. Don't miss out on the opportunities at hand.

As always, if you have any questions please give us a call.

Jamie Heller
Jamie Heller, President

Multi-Shipper Buildouts

Rail shippers and receivers know that the single factor most influencing the level of rail rates at any facility, and the responsiveness of carriers to service requirements, is location. Namely, whether that location is competitively served by at least two rail carriers or whether it's captive to a single rail carrier.

In fact, Conrail produced information in the UP-SP merger proceeding that confirming this common understanding within the rail shipper community: competitively served rail points enjoy as much as a 30% rate advantage over captive points.

This fact alone with decreasing rail competition is leading shippers to think "outside the box" and be receptive to such creative ideas. As a result, Fieldston has been commissioned by a group of shippers to evaluate the economic, strategic, operational and legal issues of a multi-shipper buildout opportunity.

These shippers have adjacent plants, all of which depend on rail transportation service and all of which are captive. Together they're analyzing new and innovative methods to circumvent the captive nature of their plants, including a joint buildout.

Collectively securing competitive rail service in this way decreases the rail line construction costs borne by individual companies while enhancing present and future market shares and netbacks.

How To Do It

To ensure maximum leverage with the railroads, negotiations must encompass volumes from all companies at all facilities.

Because of this approach, in the above case a competing railroad has offered the shippers capital for the spur and rate reductions at other facilities in exchange for volume guarantees on the spur. This significantly reduces the capital outlay and the overall transportation expenses for all the shippers.

Although it looks like these shippers will be able to effectively exploit dual-carrier rail service, the group still must develop a strategy which will optimize the results from that competition. Then they have to decide whether to: 1) go ahead with the rail line construction; or 2) sign new, reduced-rate contracts with the incumbent carrier and save the capital cost and time associated with the construction process.

To arrive at an optimal strategy, Fieldston's multi-shipper buildout analysis encompasses rate and cycle time negotiations, contracting, track financing, spur operation and ownership, the

effects of all of this on the internal economics of all of the shippers involved, and other key factors. In addition, with so many companies and variables involved, Fieldston serves an important role as neutral third party.

In this case, Fieldston is reviewing the economics of the proposed spur, developing joint negotiating strategies for the shippers to take to the competing carriers, developing individual negotiating strategies with connecting carriers, and assessing the potential for carrier retaliation that could offset the rail spur economics.

Identifying the key variables which will drive the railroads' (and shippers') decision-making relating to the spur buildout is instrumental to create a working tool that can provide the type of real-time sensitivity analysis — of changing negotiating parameters and counteroffers — that will produce optimal results.

Get Out of the Box

Continuation of captivity for rail shippers and receivers only sacrifices the long-term strategic flexibility needed to optimize transportation rates. We applaud multi-shipper buildouts as an example of "out-of-the-box" efforts to counter railroad consolidation, the resulting reduced competition, and their effects on shipper rates and service.

As shipper leverage over the railroads wanes, you'll probably ask yourself, "How high can my transportation rates go?" The answer is, "Only as high as your next-highest alternative."

For more information on multi-shipper buildouts and other out-of-the-box ways to optimize your transportation rates and service, please call Tom Schmitz at (202) 775-0240 x325.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub No. 21)

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

-- CONTROL AND MERGER --

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

OVERSIGHT PROCEEDING

VERIFIED STATEMENT OF LARRY J. AHLERS

My name is Larry J. Ahlers. I am President of the Arkansas, Louisiana and Mississippi Railroad Company, which I will refer to in this statement as the AL&M. I submit this statement in support of the AL&M's petition to the Board to grant an additional condition to the UP/SP merger to permit the BNSF to interchange traffic to and from the AL&M at Fordyce, Arkansas.

In support of this condition, I describe below the developments following the UP/SP merger which show the absence of any meaningful competitive pressure constraining UP rates and inducing UP to offer acceptable service. I would like to emphasize that, while some part of UP's extremely poor service may be related to UP's operational problems in the Gulf, the recent UP rate increases of up to % on AL&M traffic are not related to UP's service crisis. In addition, the UP, despite its operational difficulties elsewhere, has managed to improve its

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service when AL&M has brought public pressure to do so. The new condition is needed to provide direct marketplace competition between BNSF and UP so that UP, without regulatory prodding, has the incentive to offer better rates and service, and so that BNSF can provide an alternative to the UP when the UP does not provide acceptable rates and service. If the KCS -- the only current rail alternative to the UP for AL&M and its customers -- were fully competitive, the AL&M would not be filing this petition seeking BNSF access, because the KCS competition would have induced UP to offer better service and to refrain from its substantial rate increases. The inability of KCS to do so, because of its geographic limitations, shows the necessity of the AL&M's having access to the BNSF -- the only carrier with the system reach to compete effectively with the merged UP/SP system.

I. The AL&M's System and Customers

The AL&M is a Class III short line rail carrier serving customers in southern Arkansas and northern Louisiana. As shown on the accompanying map, the AL&M operates over 109 miles of track from a northern terminus at Fordyce, AR, south through Crossett, AR and Bastrop, LA, to its southerly terminus at Monroe, LA. North of Crossett, the AL&M operates, by means of a haulage agreement, over track owned by our sister railroad, the Fordyce & Princeton.¹ Our principal customers are Georgia-Pacific Corporation and International Paper Company, which produce pulp and paper, lumber and other forest products, as well as chemicals, at several facilities on the AL&M. Among the AL&M's other customers are the Ouachita Fertilizer Company, Geo Chemical, the Shops Warehouse, Century Redi-Mix, and Coating & Laminating

¹ Both the AL&M and the Fordyce & Princeton Railroad are wholly owned by Georgia-Pacific Corporation.

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Company. These companies' products move in various types of cars (owned by either AL&M or the line-haul carriers) to destinations throughout the United States.

Today the AL&M can interchange traffic with the UP at Fordyce, which is located on the former SP mainline between Houston and Memphis and at Monroe, on UP's north-south line between Little Rock, AR and Lake Charles, LA. The UP can also serve Bastrop, which is located on a branch of the UP's Little Rock-Lake Charles line and can be served by a Monroe switch crew. The AL&M interchanges traffic with the KCS at Monroe, located on KCS's east-west line between Shreveport, LA and Meridian, MS.

Prior to the UP/SP merger, the AL&M's customers had a choice of service and rates from either of two major systems, the UP or the SP, and from the KCS, which offered more limited regional service. This choice of service was the major goal when the AL&M's sister line, the Fordyce & Princeton Railroad, spent some \$7 million in 1982 to purchase and upgrade a portion of the former Rock Island system that expanded the Fordyce & Princeton (over which the AL&M now operates between Crossett, AR and Fordyce). Georgia-Pacific has facilities on the AL&M at Crossett, and Fordyce, AR, and the acquisition of the then out-of-service line north of Crossett guaranteed access to the St. Louis Southwestern line (which became the Southern Pacific, and now UP). Preserving a choice of carriers was also the goal when AL&M's parent in 1991 spent \$6.3 million to purchase and rehabilitate the former Arkansas Louisiana and Missouri Railway running from Crossett south to Monroe. This line assured access to the UP, and to the line now owned by the KCS, at Monroe. Today, the benefit of those investments has largely been lost as the UP/SP merger has reduced the choice of service rates to one major carrier, UP.

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II. Effects of Lack of Competition Constraining UP Service and Prices

The reduction in our choices brought about by the UP/SP merger has had a serious impact on the interchange service and rates provided to us by the UP and on the service provided to our customers to their ultimate destination. The merger caused the following problems:

- Excessive delays in the return of AL&M equipment, requiring AL&M to acquire an additional 350 cars;
- Increased UP freight rates;
- Being subject to UP's changing dictates about where they will pick up and deliver loaded and empty cars, forcing the AL&M to make operational changes for its interchange traffic and causing additional expense to AL&M;
- Increased UP line-haul transit times (up to 132% greater) for almost all movements;
- The necessity, because of UP's poor service, for AL&M's customers to ship products by truck or intermodal, at substantially increased cost, in order to meet delivery schedules; and
- As a result of customers' shift to non-rail modes, the reduction of carloadings on the AL&M by 32% since July 1997.

A. Excessive Delays in Return of Cars and Need to Add to AL&M's Fleet

Following the merger, the UP has on more than one occasion gone for a week without interchanging any cars with the AL&M at Fordyce, AR. The table in Attachment 2 shows the number of interchanges per week at Fordyce and Monroe that were scheduled, versus the interchanges actually made. The table also shows, on a current and cumulative basis, the deficit in the number of cars returned to the AL&M versus those tendered to the UP since November 1997. (Note that prior to November 1997, these statistics were not kept on a regular basis. It was during the pre-November period, however, that the worst UP service occurred.)

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As a result of the failure of UP to promptly return cars, and the increased transit times to destinations using the UP, the AL&M was forced to acquire 350 additional cars for its fleet.

UP return of AL&M cars has improved on two occasions, but only under regulatory threat. The first occasion came after the Board, in its October 31, 1997 Service Order No. 1518, required the UP to meet with each of the parties that had appeared at the October 27, 1997 hearing to address their concerns. As a result, the UP met with AL&M on November 4, 1997 and proposed a service plan that would provide daily pickups and setouts for the AL&M at Fordyce, AR and 5-days-a-week pickups and setouts at Monroe, LA. Following the November 4 meeting, UP service temporarily improved, but it worsened again in January. By the last week in January, the UP was missing 27% of the scheduled pickups and setouts. During the first week in February UP was missing over half (55%) of the scheduled interchanges. In the first week of March, it missed 45% of pickups and setouts. During the period March 14-19, the UP delivered no empty cars at Fordyce, even though there were ample empty AL&M boxcars in UP's nearby Pine Bluff, AR yard.

Service again improved following the filing of AL&M's March 26, 1998 comments in Ex Parte No. 575, Review of Rail Competition and Service Issues, in which AL&M reiterated its intention to file a petition seeking AL&M access to the BNSF. Yet even this improvement came at a price -- the need to comply with new UP dictates in terms of where UP would pick up loaded cars and deliver empty cars (see discussion below).

The fact that UP service improved somewhat on these two occasions shows that UP is capable of improving its service. Yet UP's failure to maintain service, and UP's rate increases, indicate that UP does not feel constrained to respond to competition. Whatever competition may

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be offered by the KCS does not provide sufficient incentive to induce UP to offer acceptable service or stable rates.

B. Increase in UP Freight Rates

Much of the traffic originating and terminating on the AL&M moves under contract.

Several of the major contracts, for Georgia-Pacific bound to various points, expire in

. Rate changes on these contracts were made effective on

. As of , UP increased its revenue for its portions of the movements by amounts ranging from to %. The details of the UP rate increases are set out in Attachment 1.

At the Board's hearing in Ex Parte No. 575, the major railroads repeatedly stated that rail rates are going down. UP's merger application to the ICC/Board promised reduced costs and greater efficiency. It seems clear to me that the only explanation for the UP rate increases of up to % is a reduction in competition caused by the merger.

I fully expect that the UP will, as additional contracts with AL&M shippers expire, increase the rates by amounts comparable to the increases imposed on , unless the AL&M is allowed access to BNSF to provide competition with UP. The UP in discussions with AL&M customers has in fact said that they intend to increase rates on the basis that rates charged by SP were "too low." See Attachment 3, a copy of an October 6, 1997 letter from G.W. Courtwright of Georgia-Pacific to various UP marketing managers. To me, these statements by UP representatives are proof that the loss of the SP has had, and will continue to have, a direct adverse effect on the competitive choices available to AL&M and its customers. UP's ability to

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unilaterally decide to increase rates that are "too low" shows conclusively that the limited rail competition offered by the KCS is inadequate to constrain UP pricing.

As I discuss below, the UP has also imposed "hidden" rate increases by transferring operating costs from itself to the AL&M and its customers.

C. Increased Costs of Complying with UP Operational Changes

In February and March UP twice proposed drastic changes in the way empty and loaded cars would be exchanged, first requiring that empty cars be received by the AL&M at Bastrop, LA, and loaded cars tendered to the UP at Fordyce, and then reversing course and requiring that empties be received at Fordyce and loaded cars be delivered by the AL&M at Monroe.

When the UP wrote to me on February 17, 1998 with the first of these changes, I responded to the UP the following day, advising the UP that the AL&M tracks at Bastrop were not sufficient to handle the number of incoming empties required by AL&M. Thus for the UP to tender inbound cars to the AL&M at Bastrop would have required AL&M to coordinate crews at Bastrop to receive the empties and move them to an appropriate AL&M siding or to customers' sidings. See Attachments 4 and 5.

Within days, UP had reversed course, and decided that because of the southbound directional operation of the former SP line through Fordyce, it would provide all empties to the AL&M at Fordyce, and pick up all loaded cars at Monroe. This shift necessitated a fundamental change in the way AL&M conducted its operations. Complying with UP's operational changes imposed additional costs on the AL&M. For example, in order to move outbound loaded cars

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from the Georgia-Pacific plant in Fordyce, the northern terminus of the AL&M, to be tendered as required by UP at Monroe, at the AL&M's southern terminus, requires a trip of 109 miles.

Following the AL&M's recent appearance in the Ex Parte No. 575 hearing, the UP on April 9, 1998 notified the Board that UP would now be able to tender AL&M's empty cars and receive loaded cars at either Fordyce or Monroe, although one day earlier UP wrote to the Board to say that it would be operationally infeasible for the BNSF to interchange cars at Fordyce. Again, while the AL&M welcomes UP's change of heart on this point, the change is directly related to the Board's regulatory involvement. The Board cannot remain the overseer of the UP forever, and it is critical that access to the BNSF be granted so that UP will have a continuing competitive incentive to maintain good rates and service.

D. Increased Transit Times

AL&M, like others who are dependent on UP service, has seen the transit times of its movements increase drastically following the UP/SP merger. Attachment 6 is a copy of the statistics submitted to the Board on February 12, 1998 in response to the Board's January 13, 1998 decision in this oversight proceeding, showing the increase in transit times for the period 10/97-1/98 as compared with the period 10/96-1/97. As shown, the UP transit times increased up to 132% as between those two periods.

E. Lost Business From AL&M Customer Modal Shifts

Since July 1997, the AL&M has experienced a 32% reduction in car loadings, because of the UP's poor service. This resulted from AL&M's customers converting from rail to truck

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whenever possible, because of UP-caused service problems and UP's inability to provide empty equipment.

For example, because of an increase in rail transit time from Crossett, AR to Eugene, OR from 15 days to 28 days, one AL&M customer was forced to convert many loads to truck at an additional freight cost of \$58,796. AL&M's customers have faced business closings and/or interrupted production schedules as a result of the UP problems. They have also experienced a truck shortage from the conversion of rail business to truck.

F. Inability of KCS to Offer Competitive Rates and Service

Because of the service breakdown on much of UP's system, the AL&M and its customers have attempted wherever possible to shift traffic to the KCS. Unfortunately, the KCS does not directly serve more than a handful of destinations to which AL&M shippers move traffic. For 1997, these were New Orleans, Lake Charles, De Ridder, Springhill, and West Monroe, LA; Hatfield, AR; Kansas City, MO; Brandon and Louisville, MS; and Korf and Garland, TX.

In all other cases, the KCS must interline traffic to reach AL&M customer destinations. For example, the KCS cannot reach the Houston and St. Louis area gateways without interlining. The UP and SP acknowledged in their merger application that in the Houston-Memphis corridor (where the AL&M is located), the UP and SP were the only two competitive carriers.

Although KCS can offer service over joint routings, the rates for these joint routes have typically been higher than the UP rates to the same points. No doubt this is because of the inherent additional costs involved in interlining traffic.

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Without rail-to-rail competition provided by BNSF, the only railroad that can compete equally with UP, the UP's service will remain poor and rates will increase. The KCS clearly cannot fully compete with the UP, and the only other option -- truck or intermodal -- is prohibitively expensive except in emergency situations.

I would like the Board to know that I have done everything I know how to do to try to obtain good service from the UP for the AL&M, and I know my customers are doing the best they can to bargain for acceptable rates. I have also attempted to get UP to agree voluntarily to allow AL&M access to BNSF. This has been to no avail. At a recent public meeting in Arkansas, representatives of the UP told me they would fight me "all the way to the Supreme Court" before allowing BNSF access.

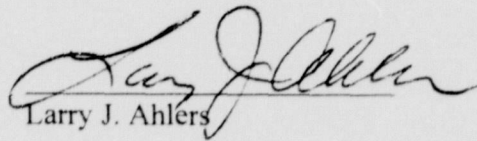
BNSF access would clearly be feasible from an operating standpoint. BNSF already has the authority to run trains on the UP line through Fordyce, and is doing so daily. I have been assured by BNSF personnel that it would be feasible to serve Fordyce either by running local trains to and from Fordyce from the Pine Bluff, AR yard, or attaching the cars to BNSF's through train that runs from Memphis to Longview, TX, and routing the cars to their destination from Longview. AL&M has adequate tracks, sidings and crews to position cars for two pick-ups and set-offs per day at Fordyce, one by UP and one by BNSF.

CONCLUSION

For all the reasons stated above and in AL&M's accompanying petition, the Board should grant the AL&M the right to interchange traffic with the BNSF at Fordyce, AR.

VERIFICATION

I, Larry J. Ahlers, swear under penalty of perjury under the laws of the United States that I have read the foregoing statement and that the statement is true and correct to the best of my knowledge.


Larry J. Ahlers

UP RATE INCREASES
ON _____ SHIPMENTS
FROM THE AL&M

[REDACTED]

Attachment 2

UP Fordyce, AR:

Interchange %	100%	83%	100%	100%	100%	100%	100%	100%	100%	100%	100%	83%	83%	50%
Scheduled Interchanges	6	6	6	4	6	6	6	4	5	6	6	6	6	6
Missed	0	1	0	0	0	0	0	0	0	0	0	1	1	3
Scheduled Service: Monday through Saturday														
Outbound Cars	na	81	46	44	59	62	47	36	79	63	64	58	47	42
Inbound Empty Cars	na	41	39	21	41	64	32	50	82	21	47	48	42	23
Week's Car Difference	0	-40	-7	-23	-18	2	-15	14	3	-42	-17	-10	-5	-19
Accumulated Car Difference	0	-40	-47	-23	-18	-16	-31	-17	-14	-56	-73	-83	-88	-107

Interchange %	80%	80%	100%	75%	80%	100%	100%	67%	100%	40%	100%	60%	60%	40%
Scheduled Interchanges	5	5	5	4	5	5	5	3	4	5	5	5	5	5
Missed	1	1	0	1	1	0	0	1	0	3	0	2	2	3
Scheduled Service: Monday through Friday														
Outbound Cars	na	63	56	39	70	70	71	27	52	71	64	48	50	64
Inbound Empty Cars	na	54	61	50	52	43	51	35	43	44	57	60	56	28
Week's Car Difference	0	-9	5	11	-18	-27	-20	8	-9	-27	-7	12	6	-36
Accumulated Car Difference	0	-9	-4	11	-18	-45	-65	-57	-66	-93	-100	-88	-82	-118

Combined Car Difference	0	-49	-51	-12	-36	-61	-96	-74	-80	-149	-173	-171	-170	-225
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Attachment 2 (page 2 of 2)
INTERCHANGE FREQUENCY: ALM/UP

Week 14-Feb 21-Feb 28-Feb 7-Mar 14-Mar 21-Mar 28-Mar 4-Apr 11-Apr 18-Apr 25-Apr

UP Fordyce, AR:

Interchange %	50%	83%	83%	67%	67%	33%	100%	100%	100%	100%	100%
Scheduled Interchanges	6	6	6	6	6	6	6	6	6	6	6
Missed	3	1	1	2	2	4	0	0	0	0	0
Scheduled Service: Monday through Saturday											
Outbound Cars	52	40	25	0	0	0	0	0	0	0	0
Inbound Empty Cars	15	44	41	58	72	67	65	100	87	89	87
Week's Car Difference	-37	4	16	58	72	67	65	100	87	89	87
Accumulated Car Difference	-144	-140	-124	-66	6	73	138	238	325	414	501

UP Monroe, LA:

Interchange %	60%	80%	60%	40%	40%	60%	60%	80%	60%	80%	60%
Scheduled Interchanges	5	5	5	5	5	5	5	5	5	5	5
Missed	2	1	2	3	3	2	2	1	2	1	2
Scheduled Service: Monday through Friday											
Outbound Cars	46	78	112	80	87	95	65	99	112	67	148
Inbound Empty Cars	38	57	40	24	10	14	22	37	29	29	25
Week's Car Difference	-8	-21	-72	-56	-77	-81	-43	-62	-83	-38	-123
Accumulated Car Difference	-126	-147	-219	-275	-352	-433	-476	-538	-621	-659	-782

Combined Car Difference	-270	-287	-343	-341	-346	-360	-338	-300	-296	-245	-281
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Georgia-Pacific Corporation

133 Peachtree Street NE (30303)
 P.O. Box 105605
 Atlanta, Georgia 30348-5605
 Telephone (404) 652-4000

October 6, 1997

Mr. Brian McDonald
 Assistant Vice President / Business Dir.
 Lumber & Building Products
 Union Pacific Railroad
 1416 Dodge St., Room 520
 Omaha, NE 68179

Mr. Rich Forrest
 Business Manager
 Lumber & Building Products
 Union Pacific Railroad
 1794 Windcrest Drive
 Lilburn, GA 30247

Mr. Don Danauskas
 Business Manager
 Industrial Products
 Union Pacific Railroad
 1416 Dodge St., Room 511
 Omaha, NE 68179

Mr. Ed Sims
 Vice President & Gen. Manager
 Chemicals
 Union Pacific Railroad
 1416 Dodge St., Room 530
 Omaha, NE 68179

Mr. Rick Kingson
 Business Manager
 Chemicals
 Union Pacific Railroad
 5607 Mollys Place
 Charlotte, NC 28212

Gentlemen,

With increasing frequency Georgia-Pacific is being advised by the Union Pacific Railroad of their intent to implement increases in the rail rates contained in contractual agreements or public documents. The rationale given for the continuing upward adjustment in our rates are increasing rail operating costs and the inadequate revenues associated with former Southern Pacific and Chicago North Western pricing policies and practices.

Georgia-Pacific and the Union Pacific Railroad have enjoyed a long and mutually beneficial relationship. G-P has actively supported the railroad mergers and acquisitions the UP has requested and implemented. However we now find ourselves in a conflicting position relative to the Union Pacific's current operational status and your demands for increasing revenues.

With the operational and car supply dilemmas on the UP today we find it unconscionable that increases in freight rates and service pricing would be considered or justifiable. Until such time as Georgia-Pacific receives the service and equipment supply levels that we previously experienced from the Union Pacific Railroad we will not entertain any increases in our building products freight rates or for associated service expenses.

Georgia-Pacific is sympathetic to the current state of affairs on the Union Pacific and remains confident that given time, and the continuing efforts of the UP management and employees, the Union Pacific will restore the high level of service once associated with the UP system and by which the rest of the rail industry was measured. When the former operational status of the UP is restored, G-P will review our position relative to pricing adjustments and will willingly discuss amendments to existing contracts which the UP believes are necessary to remain a profitable and viable option for the transportation of Georgia-Pacific's products.

Sincerely,



G. W. Courtwright
Group Manager, Rail Logistics
Building Products Group

cc: M. O. Blackwell, Georgia-Pacific, Atlanta, GA
N. J. Langberg, Georgia-Pacific, Atlanta, GA
T. L. Gould, Georgia-Pacific, Atlanta, GA

UNION PACIFIC RAILROAD COMPANY

MARKETING & SALES

1416 DODGE STREET
OMAHA, NEBRASKA 68179

February 17, 1998

Mr. Larry J. Ahlers
President, G.P. Railroads
Georgia Pacific Corporation
55 Park Place 15 th Floor
Atlanta, GA 30303

Dear Larry:

In an effort to more effectively serve GP's need on the Fordyce & Princeton (FP) and Arkansas, Louisiana, and Mississippi (ALM) Railroads, U.P.'s operating department is proposing the following changes.

All empty cars will interchanged to ALM at Bastrop.

All loaded cars will be received from and delivered to FP at Fordyce.

Making these changes should result in more efficient interchange between our two railroads.

I am currently in the process of evaluating the change in service cycle time experienced by your railroads over the last several months to determine where we are improving and where there is still work to be done. I will share this with you when it becomes available. I hope this helps.

Sincerely,

Wes Parker
Project Coordinator
Rail Line Planning

Acknowledged:
Georgia Pacific Corporation

BY _____

Title



Arkansas Louisiana & Mississippi Railroad

136 Plywood Road - P O Box 757 - Crossett, Arkansas 71635

Tele: 870-364-9000 / Fax: 870-364-4521

February 18, 1998

Mr. Wes Parker
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

Dear Wes:

I appreciate your prompt response to the current debacle facing the Arkansas, Louisiana & Mississippi and the Fordyce & Princeton Railroads (ALM).

The operating department proposal provided me does not address the issues that we are incurring on the ALM. Note the following issues:

A.) All empty cars will be interchanged to ALM at Bastrop

- We only receive scheduled service three days a week at best
- Our tracks are not sufficient to handle the number of cars that should be returned to us, which equates to having our train crews meet your train in Bastrop; in light of current service, I sure don't want to have the ALM crews waiting on a UP train to arrive

B.) All loaded cars will be received from and delivered to Fordyce

- This is the same interchange where we provided railcars from the last week of January and the first week of February, and have a significant number moved only a short distance to the Camden area, where they sat as recently as yesterday; how does this help us?

C.) Making these changes should result in more efficient interchange between our two railroads

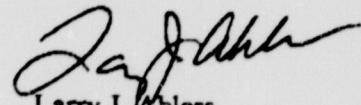
- This would require us to significantly change our operations, without any understanding of why this would result in any different service then that with which we currently receive

Wes, we do want to cooperate in resolving these severe service problems. However, the plan you have presented does not present any explanation as to why or how the results would be any different. We had an agreement with the Union Pacific on scheduled service that worked fine for approximately 6 to 8 weeks. I believe the basis for that success was directly related to having the responsible parties in a face-to-face meeting.

If Union Pacific is sincere in their desire to resolve the problems being caused for the ALM, then we would like to have a similar meeting with the appropriate UP operating people, including the Superintendent(s) responsible for the Monroe, Bastrop, and Fordyce interchange locations. I want them to understand how we operate, and give the ALM operations people the opportunity to understand what UP is proposing. Obviously, we would like the meeting to be scheduled ASAP. Crossett, AR would be a desirable location, but we are open to suggestions.

Also, am I correct in assuming that the Union Pacific has in effect, denied my formal request for access to the BN Santa Fe at Fordyce, AR?

Sincerely,

A handwritten signature in dark ink, appearing to read "Larry J. Ahlers". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Larry J. Ahlers
President

UNION PACIFIC SERVICE PERFORMANCE:
Traffic to/from Fordyce, AR and Monroe, AL
Oct 96 - Jan 97 versus Oct 97 - Jan 98

<u>Destination:</u>	<u>96-97 Average Transit Days</u>	<u>97-98 Average Transit Days</u>	<u>% increase In Delays</u>
Ft Smith, AR	10.35	11.25	9%
Fresno, CA	13.75	29.08	111%
Clearfield, UT	13.05	18.60	43%
Butler, WI	8.53	11.62	36%
Berkely, IL	7.98	9.46	19%
Covington, TN	7.20	10.21	42%
Mansfield, MA	12.22	16.76	37%
Independence, MO	8.83	11.93	35%
Hazelton, PA	12.24	12.89	5%
St Albans, VT	18.40	19.03	3%
Springfield, MO	8.38	14.30	71%
Philadelphia, PA	8.33	19.35	132%
Owings Mills, MD	14.39	21.72	51%
Northwales, PA	11.66	14.69	26%
Newark, NJ	13.23	13.53	2%
Mitchell, SD	14.19	22.03	55%
Oxmoor, AL	10.49	12.44	19%
Centralla, IL	18.27	17.87	-2%
Chicago, IL	11.96	13.82	16%
Carson, CA	13.47	21.25	58%

STB

FD-32760 (SUB26)

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ENTERED
Office of the Secretary

William A. Mullins MAY 04 1998

Part of
Public Record

May 4, 1998

HAND DELIVERY

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

RE: Finance Docket No. 32760 (Sub-No. 21),
*Union Pacific Corp., et al. - Control & Merger - Southern Pacific Rail Corp.,
et al. - Oversight Proceeding*

Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding are the original and twenty-six copies of Motion to Compel Discovery from Union Pacific Railroad Company.

Please date and time stamp one copy of the Motion to Compel enclosed herewith and return it to the courier for return to our offices. Included with this filing is a 3.5-inch diskette with the text of the pleading.

Sincerely,



William A. Mullins
Attorney for the Kansas City
Southern Railway Company

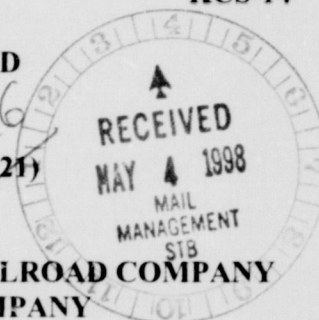
cc: Parties of Record



202-274-2953

BEFORE THE
SURFACE TRANSPORTATION BOARD

26
FINANCE DOCKET NO. 32760 (Sub-No. 21)



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

--CONTROL AND MERGER--

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

OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF
ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED
OVERSIGHT JURISDICTION

MOTION TO COMPEL DISCOVERY
FROM UNION PACIFIC RAILROAD COMPANY

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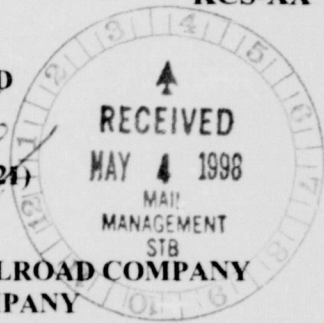
Attorneys for The Kansas City Southern
Railway Company

May 4, 1998

TM-XX
KCS-XX

BEFORE THE
SURFACE TRANSPORTATION BOARD

26
FINANCE DOCKET NO. 32760 (Sub-No. 21)



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

-- CONTROL AND MERGER --

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

NEW OVERSIGHT PROCEEDING

MOTION TO COMPEL DISCOVERY
FROM UNION PACIFIC RAILROAD

Pursuant to 49 CFR § 1114.31, The Texas Mexican Railway Company ("Tex Mex") and the Kansas City Southern Railway Company ("KCS") request the Surface Transportation Board (the "Board" or "STB") to issue an order compelling UP to provide the information requested in the four document requests propounded to date on UP. UP should be required to produce, through discovery, a reasonable amount of readily available information for several reasons, which are set forth below. In addition, the Board should enter the Protective Order and Discovery Guidelines and appoint an Administrative law Judge ("ALJ") to oversee discovery in this proceeding as requested in the Joint Petition Tex Mex and KCS filed on April 22, 1998 (TM-9/KCS-9). As an alternative, the Board could refer this matter for determination in the first instance to the ALJ appointed pursuant to TM-9/KCS-9.

PROCEDURAL HISTORY AND SUMMARY

On March 12, 1998, Tex Mex and KCS jointly served discovery, consisting of four document requests, on UP with regard to the ongoing oversight proceeding and the February 12, 1998 Joint Petition.¹ (TM-6/KCS-6.) On March 27, 1998, UP filed a Motion for Protective Order in which UP refused to respond to any discovery whatsoever. (UP/SP-334.) On March 30, 1998, Tex Mex and KCS filed their Evidentiary Submission regarding the Joint Petition.

The next day, March 31, 1998, the STB issued Decision No. 12, Notice of Oversight Proceeding, Requests for Additional Conditions to the UP/SP Merger for the Houston, Texas/Gulf Coast Area. Even though the discovery was proper when originally served on March 12, 1998, to avoid any procedural objection, the document requests were re-served upon UP on April 8, 1998 as part of the new oversight proceeding instituted by the Board in its March 31, 1998. (The Re-served Document Production Request, TM-8/KCS-8, is attached as Exhibit A.)

On April 15, 1998, by letter to the Board, UP withdrew its Motion for Protective Order and indicated that it would respond to the requests by April 23, 1998. (Letter attached as Exhibit B.) Nevertheless, in its April 23rd "Responses and Objections" (UP/SP-336), UP again objected to each discovery request and has again refused to produce anything but a minimal number of documents. In addition, UP denied that the Board had any authority to allow discovery in the New Oversight Proceeding and stated that the responses, as minimal as they were, were only being provided voluntarily.²

¹ The "Joint Petition" refers to TM-5/KCS-5, the Joint Petition of the Texas Mexican Railway Company and the Kansas City Southern Railway Company for Imposition of Additional Remedial Conditions Pursuant to the Board's Retained Oversight Jurisdiction

² This position is inconsistent with the position taken by UP in its April 15, 1998 letter, to the effect that the reserving of the discovery requests in the New Oversight Proceeding mooted

UP's offer to "voluntarily" provide discovery has proved insufficient and illusory. UP refused to respond to Requests No. 1, 3 and 4. Furthermore, UP produced limited documents in response to Request No. 2. (See Exhibit C for a listing of the documents UP placed in its document depository.) The documents do not include basic information called for by the requests, which information is readily available to UP. The objections UP asserts are not justified by fact or by law. UP must be compelled to respond to the discovery requests put to it.

DISCUSSION

In the March 12/April 8, 1998 discovery, Tex Mex and KCS served only four document requests on UP to which, in substance, UP refuses to respond at all. Those requests, reproduced herein, seek generally documents and computer records regarding Houston-area dispatching (Request 1), UP policy statements and internal directives concerning UP-claimed non-discriminatory dispatching in Houston (Request 2), and documents and communications involving UP's requests for neutral third-party dispatching or switching to protect its own interests (Request 3 and 4). None of the grounds for UP's objections provide a basis for not responding.

Specifically, UP's "Responses and Objections to discovery" (UP/SP-336) contains three basic objections to discovery, none of which are legally sound.³

the procedural impediments UP asserted in UP/SP-334, the March 27, 1998 Motion for a Protective Order.

³ UP has submitted several "general objections" which apply to each of the Tex Mex/KCS discovery requests and several specific objections which apply to particular discovery requests. To the extent not addressed here, Tex Mex/KCS will address the "general objections" below.

1. **Procedural:** UP claims that Tex Mex and KCS have no right to conduct discovery at all,⁴ and specifically, no right to discovery with regard to any dispatching because, in UP's view, cooperative oversight by Tex Mex and KCS is preferable to conducting discovery. (General Objection 2, UP/SP-336 at 3-4. ("Cooperative oversight of the dispatching process offers a far more constructive means of ensuring 'non-discriminatory dispatching than any effort to dissect all of the detailed facts surrounding past dispatching decisions.") This latter objection, if made as an argument of law, is baseless, and if made as a matter of equity, is irrational. To the extent any documents are being withheld on the basis of this objection, those documents must be produced.
2. **Relevance:** UP claims as to Requests 1 and 2, that Tex Mex/KCS have "made no effort to tie the request to any specific or colorable claim of discrimination with respect to any particular train movement," and UP claims as to Requests 3 and 4 that there is no "nexus." Putting aside that this "pre-showing" is not the standard for discovery, the requests are directly related to the subject matter of this proceeding and Tex Mex and KCS have made a substantial showing of actual instances of discrimination against Tex Mex traffic in the Houston area.

⁴ Although UP states it is voluntarily engaging in discovery, UP still raises the objection that no discovery is authorized in the new oversight proceeding until after June 8. In light of the fact that UP bases part of its objection on its belief that Tex Mex/KCS are not procedurally entitled to undertake discovery and because Tex Mex/KCS have recently served a second set of discovery on UP which will most likely be objected to again, Tex Mex/KCS also address the issue of their procedural right to conduct discovery in the new oversight proceeding.

3. **Burden:** UP claims that all of the document requests are overbroad and unduly burdensome. This simply is not so, particularly in light of the highly relevant nature of the information sought. Moreover, UP seeks to avoid producing readily available information, just because the outer reaches of the scope of the requests may include information on computer that is more difficult to obtain. Nevertheless, Tex Mex and KCS discuss below ways to address UP's specific concerns regarding the alleged "burden" of the four document requests.

The discovery requests which UP so adamantly objects to and their corresponding responses are as follows:

Document Request No. 1: Produce all documents, including corridor managers' reports, that reflect, discuss, analyze, refer to, or evaluate the dispatching of the trains of UP, Tex Mex, BNSF or any combination of them, for movement to, from , between or through points in the Houston, TX area, along with copies of all non-publicly available computer programs necessary to view, review or analyze such of the documents as are in computer-readable form.

UP's Response to Request No. 1: UP objects to this request as overbroad, unduly burdensome, and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP claims that this "request purports to impose on UP the overwhelmingly burdensome task of gathering and producing a vast amount of computer records and other documents reflecting all of the innumerable circumstances underlying each and every one of the thousands of dispatching decisions made every day with respect to train movements on lines used by Tex Mex and/or KCS." UP calls the discovery request "the purest of 'fishing expeditions,' in that Tex Mex/KCS have made no effort to tie the request to any specific or colorable claim of discrimination with respect to any particular train movement." UP argues that the request "is especially inappropriate in light of the ample opportunities that Tex Mex/KCS have had to oversee, review and participate in dispatching decisions affecting UP lines over which they operate, as further described in General Objection No. 2."⁵

⁵ In addition, UP argues that computerized records will not answer the question of why a particular dispatching decision was made (UP Response and Objections, pp. 3-4, ¶ 2.) In doing so UP seeks immunity for its dispatching decisions. UP argues that it is impossible to reconstruct through documents why any particular dispatching decision was made, and, therefore its dispatching decisions can never be questioned. This argument ignores the Board's September

Document Request No. 2: Produce all documents (including, but not limited to, policy statements, policy directives, procedures, or memos that mention KCS or Tex Mex) that UP contends prove that KCS and Tex Mex have not received adverse, discriminatory treatment in dispatching of their trains moving to, from, between or through points in the Houston, TX area.

UP's Response to Request No. 2: UP makes the same response as to Request No. 1 with the limited addition that "UP will be producing responsive in the nature of 'policy statements, policy directives and memoranda' that reflect UP's policy of dispatching lines used by KCS/Tex Mex in a non-discriminatory manner, including documents disseminated to UP train management personnel (including dispatchers) and used in the training of such personnel." (UP/SP-336 at 8.) This "concession" defines the documents UP is willing to produce for evidence as only documents supporting its position that UP does not discriminate against KCS and Tex Mex traffic. Regardless of whether UP has an official policy drafted on paper against discrimination against KCS and Tex Mex, a very relevant question in this proceeding is whether such an official policy is being followed in practice.

Document Request No. 3: In all instances where UP conducts trains operations but does not currently dispatch the operations of those UP trains, produce all documents (including, but not limited to, corridor managers' reports, internal memos, or reports that reflect communications between UP and the carrier that controls the dispatching of the UP train operations) that reflect, discuss, analyze, show, or refer to, instances where UP has expressed a desire to have its trains dispatched by UP, a neutral dispatcher, or a dispatcher selected by UP and any other carrier that may conduct operations over, or in, the same trackage area.

UP's Response to Request No. 3: UP objects to this request as overbroad, unduly burdensome, and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP also objects to this request as "seeking information having no nexus with issues relating to rail service in the Houston/Gulf Coast area, as to which the Board has stated it intends to limit the forthcoming oversight proceeding," (citing Decision No. 12, p. 8) and instead seeks documents pertaining to UP's system as a whole. As is explained below, UP mistakenly believes that the issues to be determined during this proceeding is exactly coextensive of the scope of discovery which may lead to admissible evidence relevant to those issues. The latter necessarily is much

10, 1996 decision which stated that "computerized records of UP's dispatching are capable of being retrieved in the event of a dispute over particular dispatching episode."

broader than the former. It is black-letter law that matters discoverable need only be likely to lead to admissible evidence, not that the matter itself be admissible.

Document Request No. 4. In all instances where UP receives cars through reciprocal switching from another Class I carrier or a switching carrier, owned (either in whole or in part) by a Class I carrier, produce all documents (including, but not limited to, corridor managers' reports, internal memos, or reports that reflect communications between UP and the carrier that performs the switching of the UP trains or cars) that reflect, discuss, analyze, show or refer to, instances where UP has expressed a desire to perform such reciprocal switching for itself or its desire to have such reciprocal switching performed by another switching carrier other than the existing switching carrier.

UP's Response to Request No. 4: Same response as to Request No. 3.

I. UP's Procedural Objections Are Without Basis

UP claims that Tex Mex and KCS have no right to conduct discovery as part of the current oversight proceeding until after June 8. UP/SP-336 at 3. However, Tex Mex/KCS assert that any procedural impediment to the right to conduct discovery has been rendered moot by the Board's March 31, 1998 decision instituting an additional oversight proceeding to address the Tex Mex/KCS and Greater Houston Partnership requests in the Houston area. In instituting the New Oversight Proceeding, in its Order of March 31, 1998, the Board set out requirements for the parties to present evidence to justify the additional conditions sought. The very purpose of allowing discovery is to afford the parties their due process right to gather such information from the other parties, such as UP, that control the information.⁶ Without such right to discovery in

⁶ Notably, UP itself has argued to this Board in support of the need for discovery in a recent, but separate proceeding with arguments that are applicable here: The "purpose of [discovery is to] obtain[] evidence to support its case and to prepare for rebuttal." UP's Motion to Compel Production of Documents and Information, Docket No. NOR-42022, *FMC Corporation and FMC Wyoming Corporation v. Union Pacific Railroad Company and Missouri Pacific Railroad Company* (filed Dec. 15, 1997 at 1). In addition, UP states that "[p]roceedings before the Board are not one-sided trials by ambush on relevant issues" and "[t]he filing of this

this oversight proceeding, the Board's own procedures and the right to present evidence are rendered substantially less meaningful.

As previously mentioned, Tex Mex and KCS maintain that the discovery was proper when originally served on March 12, 1998. Notwithstanding, Tex Mex and KCS re-served the document requests upon UP on April 8, 1998 as part of the new oversight proceeding in an consolatory manner and in an effort order to avoid any further objection. However, UP's response to this consolatory action has only been to cause delay.

The Board's rules of evidence and discovery are plainly set out in 49 C.F.R. part 1114. Discovery is authorized in this proceeding pursuant to 49 C.F.R. § 1114.21(a), as well as the new rules adopted by this Board.⁷ The Board's modification to 49 C.F.R. § 1114.21 (1997) of its Rules of Practice provides in pertinent part:

- (a) When discovery is available.
 - (1) Parties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding . . .
 - (2) It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

These modifications eliminated "the requirement that Board approval be sought for discovery procedures other than written interrogatories and requests for admission." *FMC*

Motion to Compel is the only method available to UP to obtain the discovery to which it is entitled if there is to be a fair hearing on this case." *Id.* at 2.

⁷ These modifications were adopted by the Board in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527 (STB served Oct. 1 and Nov. 15, 1996) (*Expedited Procedures*), *aff'd sub nom. United Transp. Union-Ill. Legis. Bd. v. STB*, No. 97-1027 (D.C. Cir. Jan. 6, 1998).

Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Docket No. 42022, at 3 (STB served Feb. 5, 1998). In this recent decision, the Board noted that the overall goal of the modifications was to expedite the discovery process, acknowledging that the prior discovery rules "had the potential to impede expeditious discovery and [] generated too much paperwork." *Id.* at n.8.

Of course, the scope of discovery authorized by the Board's Rules of Practice is modeled on the scope of discovery under the Federal Rules of Civil Procedure.⁸ The Federal Rules of Civil Procedure "allow broad scope to discovery and this has been well recognized by the courts." Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d, § 2007 (1994) (citations omitted). The federal rule, which applies to all forms of discovery, encompasses the broad standard against which Petitioners' discovery requests must be evaluated.

In addition, UP argues that Tex Mex/KCS have no right to conduct discovery on dispatching issues because Tex Mex and KCS have the been afforded cooperative oversight in the Spring, Texas dispatching center. The fact that UP has recently offered to permit Tex Mex or KCS to place an observer in the UP/BNSF joint dispatching center in Spring is hollow and illusory. The Tex Mex or KCS "observer" would have no right to participate in decisions or to have access to the type of information and documents sought in discovery. The reason for why

⁸ The Federal Rules of Civil Procedure, in language virtually identical to the Board's Rules of Practice, provide that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1).

the placement of such an observer is illusory is stated in greater detail in the Verified Statement of Patrick L. Watts in Tex Mex-7/KCS-7 at pp. 163-168. But in any event, this is not a proper basis to deny discovery. Even if Tex Mex/KCS had been present, this does not mean that they would have had the right to the information now being requested in discovery. The mere presence of an observer does not guarantee access to the computer records underlying the numerous dispatching decisions that are made outside the scope of the observer's direct observation. UP must be compelled to produce the requested information.

II. UP's Relevance Objections Are Without Basis

The present oversight proceeding concerns the very subjects about which Tex Mex and KCS seek discovery. The four document requests at issue relate directly to the issue of whether neutral switching and dispatching is needed in the Houston area, one of the subjects of the Board's proceeding instituted March 31, 1998. Tex Mex and KCS seek specific discovery in order to demonstrate that additional remedial conditions are necessary to remedy competitive consequences of the merger.

Tex Mex and KCS have provided evidence demonstrating discriminatory treatment in switching and dispatching in and around the Houston area. The Verified Statement of Pat Watts, submitted with TM-7/KCS-7 discusses several specific instances of such discriminatory treatment. If UP were correct -- which it is not -- that the Board imposes a prerequisite showing before discovery could be conducted, Tex Mex and KCS have far surpassed that showing.

Under the standards of this Board, as well as the Federal Rules of the Civil Procedure, discovery does not have to be "justified" by showing in advance that the specific information requested exists. Specifically, the Federal Rules regarding discovery "expressly allows a party to

learn by discovery of the 'existence, description, nature, custody, condition and location of any books, documents, or other tangible things.'" Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d, § 2012 (1994) *citing* Fed. R. Civ. Proc. 26(b)(1).

Rather the standard for permissible discovery is that the requests seek information relevant to the subject matter of the case. The relevancy of discovery has been broadly construed to encompass any matter that might lead to the discovery of admissible evidence even though it may not be admissible as evidence. *Hickman v. Taylor*, 329 U.S. 495, 91 L.Ed. 451 (1947). If UP's position were correct, then hardly any party in any proceeding could ever justify discovery, because, by definition, discovery is an attempt to discover what evidence the other side has. Conversely, if a party knew and were aware of the facts contained in the documents sought from the other side, then that party would not need discovery at all since it would already have the information sought. UP's prerequisite showing argument simply is not sustainable.

Request Number 2 seeks various policy statements, directives, procedures and memos that mention dispatching, Tex Mex or KCS. The relevance of such documents is obvious. UP itself touts the fact that it has a "formal" policy and that there should be neutral dispatching and no favoritism. The parties to this proceeding and the Board are entitled to have a copy not only of that "formal" policy, but also of any other internal policies or procedures which show how dispatching is actually conducted in practice. Notably, UP has, by definition, only agreed to produce documents "reflect[ing] UP's policy of dispatching lines by KCS/Tex Mex in a **non-discriminatory** manner." UP/SP-336 at 8 (emphasis added). This definition exposes that UP's intention is only to produce those documents which **support** UP's position. This is an inappropriate restriction on discovery and UP must be required to search for and produce all responsive documents, including those that might be against UP's interest.

Furthermore, Counsel for KCS has reviewed the documents "voluntarily" provided by UP in response to Request 2. Of the 740 pages that UP credits to its response, all but 7 (seven) pages are simply copies of pleadings recently filed with the Board, or the Tex Mex trackage rights agreements with UP and HBT. The other seven pages could not possibly be all of the responsive documents to Request 2 in UP's possession. If there are only seven pages of responsive documents, then the objection that the request is overbroad and unduly burdensome is misplaced. Whether the limited response is because of UP's restrictive definition or other objections, UP must be compelled to produce all responsive documents to Request 2.

III. UP's Burden Objections Are Without Basis

UP's arguments regarding burden also are not tenable. Tex Mex and KCS present sworn testimony in support of this Motion to Compel that refutes UP's assessment of the burden involved in responding to Document Request No. 1. *See* Verified Statement of Patrick L. Watts, attached as Exhibit D. Specifically, Mr. Watts gives two simple examples of how UP could begin to easily comply with the Tex Mex/KCS discovery. Mr. Watts notes that UP should have various easily producible correspondence regarding dispatching decisions. In addition, Mr. Watts points out that UP could arrange a time for Tex Mex/KCS personnel to view replays of the Digicon system and accompanying voice tapes from the dispatching centers. Notably, as Mr. Tom O'Connor states in his attached verified statement, UP has engaged in this identical method of discovery in the past. As Mr. O'Connor notes, UP requested and was granted access through discovery to another railroad's computer model and related database in order to conduct studies via replaying of the system. *See* Verified Statement of Tom O'Connor, attached as Exhibit E.

In addition, it is important to note that Document Request No. 1 asks for, among other things, Corridor Manager's Report, which are daily logs kept by corridor managers where they

report on a daily basis about various movements through their terminals. Such Corridor Manager Reports, which are readily available for the last several months, would provide revealing insights as to the decisions of managers as to which trains to move and which trains UP held up. *See* V.S. Watts at 2. Nevertheless, in all its argumentation about the difficulty of assembling computerized records, UP does not assert that there would be any difficulty, or burden, in copying and producing its "corridor manager reports" that were specifically asked for in Request No. 1, or other memos or internal communications concerning dispatching in Houston. Likewise, there may be other memos or correspondence with local managers, or at higher levels of the UP organization, which talk about dispatching trains and whose trains should be brought through a given terminal. These obviously would be relevant to the question of whether neutral dispatching is necessary. Therefore, this Board should conclude that there is no burden to producing those records and grant the Motion to Compel as to those type of records.

The standard for discovery is not merely that it creates a burden on the litigant. All discovery entails some burden. The courts and the Board's ALJs carefully scrutinize objections made for burdensomeness. The mere fact that compliance with discovery will cause great labor and expense to the party from which discovery is sought does not of itself require denial of discovery. Rule 26(c) speaks of "undue burden or expense" and discovery should be allowed unless the hardship is unreasonable in the light of the benefits to be secured from the discovery. 8 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2214 at 647-48 (1970); *see also Snowden by and Through Victor v. Connaught Lab.*, 137 F.R.D. at 332-33. Even though the opposing party may be burdened, the balance favors the right to discovery when the information is particularly relevant. *Rich v. Martin Marietta Corporation*, 522 F. 2d 333, 343 (10th Cir. 1975).

As a result, the standard is whether the discovery is overly broad and burdensome, and UP has not met this standard. The proper relief for UP's concerns, if indeed any relief is warranted, is to narrow or modify the response required and relieve UP of the overly burdensome, if any, aspects of the requests. *See Tiberi v. Cigna Ins. Co.*, 40 F. 3d 110, 112 (5th Cir. 1994) ("Modification of a subpoena is preferable, however, to quashing it."); accord *Linder v. National Sec. Agency*, 320 U. S. App. D.C. 359, 94 F. 3d 693, 698 (D.C. Cir. 1996) ("modification of a subpoena is generally preferred to outright quashing"). Tex Mex and KCS offered to discuss appropriate distinctions and/or narrowing of its requests, but UP has not shown any interest. Therefore, Tex Mex and KCS have been forced to come to the Board. Nevertheless, even if the requests might encompass a "large" volume of computerized records that might be difficult to assemble, as claimed by UP, this still does not relieve UP of its obligation to respond to discovery. *See LaChemise LaCoste v. Alligator Company, Inc.*, 60 F.R.D. at 171 (Although defendant "should not be required to enter upon extensive independent research in order to acquire [requested] information", defendant is obligated to provide "by way of answers to interrogatories the relevant facts readily available to it . . .") and *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. at 297, (Defendant is obligated to provide discovery even if answering the interrogatories will require the objecting party to expend some time, effort and expense.)

Through the Third and Fourth requests, Tex Mex and KCS seek to gather evidence to demonstrate to the Board that when the "shoe is on the other foot", when UP is subject to traveling on lines owned by another carrier, UP is not content to allow the other carrier to control dispatching, but rather tries to protect itself from discrimination by asking for neutral dispatching. The point of this request is to establish that UP itself recognizes the value of neutral dispatching and switching and to support petitioners request for the same treatment in Houston

that UP requests when it is in the same position in other areas. UP admits that there will be numerous examples of these requests. Petitioners know of at least one instance of such a request by UP, as this instance has been brought to the Board's attention in pleadings in the Conrail case. Certainly there are more of which UP is well aware. If UP is willing to stipulate that neutral switching and/or dispatching is preferable to operating as a tenant via trackage rights, Tex Mex/KCS might be able to withdraw this request.

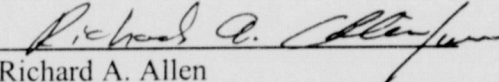
UP makes two claims with respect to responding to these requests. UP responds with the standard boilerplate objection that they are 1) overbroad, unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and 2) that they seek information with no nexus with issues relating to rail service in the Houston/Gulf Coast area. Those objections should be rejected out of hand. First, UP is well aware of the major traffic junctures where it does not own the track and has sought to either control the dispatching or for neutral dispatching. It would be astounding if UP management and executives stated that they were unaware of such situations.

Next, this issue, a desire to control dispatching (or not be subject to control by another carrier) cuts across geographical lines. If, for example, UP, where it currently operates via trackage rights in the Chicago area, has made a request for neutral dispatching over the lines of other carriers in the greater Chicago, Illinois area in order to avoid being subjected to discrimination by another carrier, then this is relevant to the validity of petitioner's request for such neutral treatment in Houston. The use of the information is not to discuss the impact of the UP/SP merger on Chicago, but to shed light for the Board's benefit on the issue of neutral dispatching.

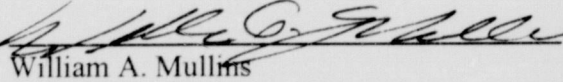
CONCLUSION

For the foregoing alternative reasons, UP should be compelled to provide information in response to the discovery requested by Tex Mex and KCS. The Board should enter the Protective Order and Discovery Guidelines and appoint an Administrative Law Judge to rule on any further discovery disputes, if necessary.

Respectfully submitted,


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Attorneys for The Texas
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William A. Mullins

202-274-2953

April 8, 1998

Arvid E. Roach II, Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-7566

RE: Re-Service of Oversight Discovery

Dear Arvid:

In light of the Surface Transportation Board's March 31, 1998 decision in Finance Docket No. 32760 (Sub-No. 21) establishing a procedural schedule for consideration of the Tex Mex/KCS petition, I am re-serving the discovery served on March 12, 1998, which was entitled "TM-6/KCS-6." For ease of discussion, this set of discovery, which is identical in substance to that served on March 12th, is captioned "TM-8/KCS-8."

As a result of this re-served discovery, a new 15 day period in which to respond is triggered. This is ample time for UP to gather and respond to the four simple document requests, particularly in light of the fact that you have had knowledge of the requests since March 12, 1998.

Given the Board's order setting forth a procedural schedule, UP can no longer claim that there is not a pending proceeding and that Tex Mex/KCS are not entitled to discovery. As such, I would hope that you would withdraw your Motion For Protective Order and that we could discuss any objections that UP may have with a view toward resolving those concerns. If you do not withdraw the Motion, Tex Mex/KCS will be responding on April 16 and filing a Motion To Compel.

Sincerely yours,



William A. Mullins

cc: Richard A. Allen
Robert K. Dreiling

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 21)

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

--CONTROL AND MERGER --

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

OVERSIGHT PROCEEDING

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE
KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF
ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED
OVERSIGHT JURISDICTION**

**DOCUMENT PRODUCTION REQUESTS DIRECTED TO UNION PACIFIC
RAILROAD COMPANY**

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Robert K. Dreiling
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Attorneys for The Kansas City Southern
Railway Company

April 8, 1998

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 21)

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

OVERSIGHT PROCEEDING

**JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE
KANSAS CITY SOUTHERN RAILWAY COMPANY FOR IMPOSITION OF
ADDITIONAL REMEDIAL CONDITIONS PURSUANT TO THE BOARD'S RETAINED
OVERSIGHT JURISDICTION**

**DOCUMENT PRODUCTION REQUESTS DIRECTED TO UNION PACIFIC
RAILROAD COMPANY**

INTRODUCTION AND RATIONALE

On February 12, 1998, The Kansas City Southern Railway Company ("KCS") and The Texas Mexican Railway Company ("Tex Mex") notified the Surface Transportation Board ("STB" or "Board") of their intent to file, on March 30, 1998, a plan for operations in south Texas which calls for neutral dispatching and switching in Houston to replace Union Pacific Railroad Company ("UP")-run Houston dispatching and switching. On March 30, 1998, Tex Mex and KCS filed their intended plan, complete with supporting documentation. See TM-7/KCS-7. Then, on March 31, 1998, the Board officially instituted a proceeding as part of its 5-year oversight of the UP/SP Merger. *Union Pacific Corp. et al. - Control and Merger -*

Southern Pacific Corp. et al., Finance Docket No. 32760 (Sub-No. 21), Decision No. 12 (STB served March 31, 1998)(UP/SP Oversight).

Neutral dispatching and switching are necessary because the trains of KCS and Tex Mex have experienced severe delay in attempting to operate in and through Houston, delay that cannot be solely attributable to the general congestion in Houston. This additional delay to KCS and Tex Mex, which has made it even more difficult for Tex Mex and KCS to cope with the crisis, has been caused by UP's dispatching and switching practices, which have favored the movement and switching of UP's trains in preference to the movement of KCS/Tex Mex trains.

In Footnote 4 to its February 25, 1998, decision served in *Joint Petition for Service Order*, STB Service Order No. 1518, and *Rail Service in the Western United States*, STB Ex Parte No. 573 ("ESO"), the Board stated in part "We have not seen any evidence of preferential dispatching decisions adverse to carriers such as Tex-Mex." Furthermore, UP has previously claimed that neutral dispatching is not necessary. Because neither Tex Mex nor KCS have in their possession records relevant to UP's past and present dispatching practices, it is necessary to seek this information from UP. UP has previously assured the Board, the public, Tex Mex, and KCS that "computerized records of UP's dispatching are capable of being retrieved in the event of a dispute over a particular dispatching episode."¹ In addition, the positions taken by UP on the need for neutral dispatching and/or neutral switching when "the shoe is on the other foot," i.e. when UP's trains or cars are being dispatched or switched

¹ *Union Pacific Corporation, et al. - Control and Merger - Southern Pacific Rail Corporation, et al.*, Finance Docket No. 32760, Decision No. 47 (STB, served September 10, 1996), at 23, n. 6, citing UP/SP-272 at 21, n. 25.

by another carrier or entity, would be relevant to the Board's determination of the need for such neutral switching and dispatching in the Houston area. Accordingly, pursuant to 49 C.F.R. §§ 1114.21 — 1114.31, Tex Mex and KCS direct the following document requests to Union Pacific Railroad Company.

THE RAILROAD ENTITIES

1. "BNSF" means The Burlington Northern and Santa Fe Railway Company.
2. "HBT" means Houston Belt & Terminal Railway Company.
3. "KCS" means The Kansas City Southern Railway Company.
4. "Tex Mex" means The Texas Mexican Railway Company.
5. "The Undersigned Parties" means The Texas Mexican Railway Company and Kansas City Southern Railway Company.
6. "UP" means Union Pacific Railroad Company and its predecessors, including but not limited to Missouri Pacific Railroad Company, Southern Pacific Rail Corporation and Southern Pacific Transportation Company, individually and collectively.

DEFINITIONS

1. "Board" or "STB" means the Surface Transportation Board (or its predecessor agency, the Interstate Commerce Commission, if applicable).
2. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.

3. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs, charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further the term "document" includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect from original version, including notes.

4. "Identify,"

- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
- b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;

- c. when used in relation to a document, means to:
 - (1) state the type of document (*e.g.*, letter, memorandum, report, chart);
 - (2) identify the author, each addressee, and each recipient; and
 - (3) state the number of pages, title, and date of the document;
 - d. when used in relation to an oral communication or statement, means to:
 - (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
 - (2) state the date and place of the communication or statement;
 - (3) describe in detail the contents of the communication or statement; and
 - (4) identify all documents that refer to, relate to or evidence the communication or statement;
 - e. when used in any other context means to describe or explain in detail.
- 5. "Including" means including without limitation.
 - 6. "Person" means an individual, company, partnership, or other entity of any kind.
 - 7. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.
 - 8. "Produce" means to make available to the Undersigned Parties for copying and viewing.
 - 9. "Relating to" a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.

10. "Shipper" means a user of rail services, including a consignor, a consignee, or a receiver.
11. "Studies, analyses and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.
12. References to railroads, shippers, and other companies (including UP) include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
13. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

INSTRUCTIONS

1. Any delay in production of requested documents is certain to prejudice the Undersigned Parties' ability to present to the Board the type of evidence sought by the Board and discussed in the Board's February 25, 1998 *ESO* order. Accordingly, responsive documents should be produced to the undersigned counsel at Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005-3314, not later than fifteen (15) days after the date of service. Serial production of relevant documents during that fifteen-day period is encouraged and requested. Objections, if any, should be made as soon as possible, and not later than fifteen (15) days after the date of service of the requests.
2. UP should contact William A. Mullins or Alan E. Lubel at (202) 274-2950 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these discovery requests cover the period beginning June 1, 1997 and ending with the date of the response.
4. If UP has information that would permit a partial answer to any document request, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that request, and if the burden of conducting such special study would be greater for UP than for KCS or Tex Mex:
 - a. state that fact;
 - b. provide the partial answer that may be made with information available to UP;
 - c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer; and
 - d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer.
5. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,
 - a. identify the information or document (in the manner provided in Definition 5 *supra*); and
 - b. state the basis for the claim that it is privileged or otherwise not discoverable.
6. If UP knows or later learns that its response to any document request is incorrect, it is under a duty seasonably to correct that response.
7. Pursuant to 49 C.F.R. § 1114.29, UP is under a duty seasonably to supplement its responses with respect to any question.

DOCUMENT REQUESTS

Request No. 1

Produce all documents, including corridor managers' reports, that reflect, discuss, analyze, refer to, or evaluate the dispatching of the trains of UP, Tex Mex, BNSF or any combination of them, for movement to, from, between or through points in the Houston, TX area, along with copies of all non-publicly available computer programs necessary to view, review or analyze such of the documents as are in computer-readable form.

Request No. 2

Produce all documents (including, but not limited to, policy statements, policy directives, procedures, or memos that mention KCS or Tex Mex) that UP contends prove that KCS and Tex Mex have not received adverse, discriminatory treatment in dispatching of their trains moving to, from between or through points in the Houston, TX area.

Request No. 3

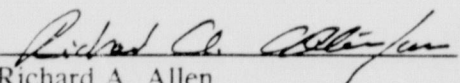
In all instances where UP conducts trains operations but does not currently dispatch the operations of those UP trains, produce all documents (including, but not limited to, corridor managers' reports, internal memos, or reports that reflect communications between UP and the carrier that controls the dispatching of the UP train operations) that reflect, discuss, analyze, show, or refer to, instances where UP has expressed a desire to have its trains dispatched by UP, a neutral dispatcher, or a dispatcher selected by UP and any other carrier that may conduct operations over, or in, the same trackage or area.

Request No. 4


In all instances where UP receives cars through reciprocal switching from another Class I carrier or a switching carrier, owned (either in whole or in part) by a Class I carrier, produce all documents (including, but not limited to, corridor managers' reports, internal memos, or reports that reflect communications between UP and the carrier that performs the switching of the UP trains or cars) that reflect, discuss, analyze, show, or refer to, instances where UP has expressed a desire to perform such reciprocal switching for itself or its desire to have such reciprocal switching performed by another switching carrier other than the existing switching carrier.

Respectfully submitted this 8th day of April, 1998.

Richard P. Bruening
Robert K. Dreiling
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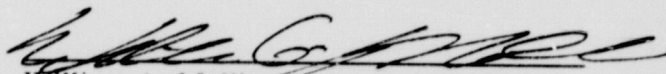
Attorneys for The Texas
Mexican Railway Company


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Attorneys for The Kansas City Southern
Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Document Production Requests Directed To Union Pacific Railroad Company" was served this 8th day of , 1998, by hand delivery to Arvid E. Roach, counsel for Union Pacific, and by first class mail upon other parties of record.



William A. Mullins
Attorney for The Kansas City Southern
Railway Company

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

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WASHINGTON, D.C. 20044-7566

(202) 662-6000

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EXHIBIT B

DAVID L. MEYER

DIRECT DIAL NUMBER

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April 15, 1998

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BY HAND

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

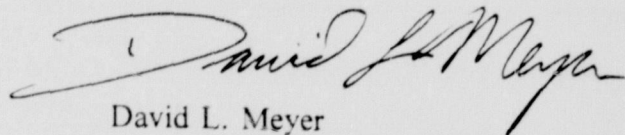
**Re: Finance Docket No. 32760 (Sub-No. 21),
Union Pacific Corp., et al. -- Control & Merger --
Southern Pacific Rail Corp., et al. -- Oversight**

Dear Secretary Williams:

On March 27, 1998, UP filed a motion for a protective order relating to discovery requests (styled TM-6/KCS-6) that KCS/Tex Mex had served on March 12 in Finance Docket No. 32760 (Sub-No. 21). On April 8, we received a letter from KCS's counsel stating that KCS/Tex Mex were withdrawing their March 12 discovery requests and re-serving an identical set of requests with a new pleading number (now TM-8/KCS-8) in light of the Board's March 31 decision in the above-captioned docket.

In light of this development, we believe that UP's motion regarding KCS/Tex Mex's March 12 discovery has become moot, and UP is therefore withdrawing that motion. UP intends to respond to KCS/Tex Mex's new discovery requests on April 23, as KCS/Tex Mex have requested.

Sincerely,



David L. Meyer

Attorney for Union Pacific Railroad
Company

cc: William A. Mullins, Esq.
Richard A. Allen, Esq.

ITEMS PRODUCED TO TM/KCS FROM UNION PACIFIC

Confidential document: Meeting notes dated March 27, 1998. (one page)

Memo from Steve Barkley and attached dispatching protocol to "Train Management Personnel" dated November 6, 1997 (3 pages)

Memo from Steve Barkley with attached UP letter dated May 24, 1997 to employees and BNSF letter dated June 9, 1997 to employees on UP/BNSF joint dispatch. (3 pages)

* * *

"Terms for Texas Mexican Railway Company Trackage Rights" for the trackage rights over MP/SP obtained as a result of the STB's August 12, 1996 decision in the UP/SP merger.

"Terms for Texas Mexican Railway Company Trackage Rights" for the trackage rights over HBT obtained as a result of the STB's August 12, 1996 and September 10, 1996 decisions in the UP/SP merger.

"Union Pacific's Response to Petition" for Emergency Service Order, filed in Service Order No. 1518 on October 24, 1997.

UP's October 30, 1997 letter to Melvin Clemens at the STB on the restructuring of the HBT.

"UP/SP's Opposition to Petition for Cease and Desist Order" filed in FD No. 33507, *Tex Mex, et al v. HBT, et al.* on October 31, 1997.

"UP/SP Response to RCT Letter-Petition for Reconsideration" filed in Ex Parte No. 573, Service Order No. 1518 on January 6, 1998.

UP's February 18, 1998 letter to the STB in Service Order No. 1518 on the agreement between UP and BNSF on the ownership and operation of lines in and around Houston, Texas.

"UP's Reply in Opposition to KCS/Tex Mex Petition for Consolidation, To Declare Exemptions Void Ab Initio, and To Revoke Exemptions" filed in FD Nos. 33461-33463 on Feb. 23, 1998.

UP's March 2, 1998 letter to the STB in Service Order No. 1518 in response to February 25th letter from William Mullins to STB and enclosing letter from Dick Davidson to Mike Haverty and Larry Fields on TM/KCS plan.

"Applicants' Opposition to KCS/Tex Mex Petition for Imposition of Additional Conditions," UP/SP-333, filed in FD No. 32760 (Sub-No. 21) on March 2, 1998.

"Motion for Protective Order," (UP/SP-334), filed in FD No. 32760 (Sub-No. 21) on March 31, 1998.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 21)

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

NEW OVERSIGHT PROCEEDING

**MOTION TO COMPEL DISCOVERY
FROM UNION PACIFIC RAILROAD**

VERIFIED STATEMENT

OF

PATRICK L. WATTS

VERIFIED STATEMENT

OF

PATRICK L. WATTS

My name is Patrick L. Watts and I am Vice President - Transportation for The Texas Mexican Railway Company. I am located at Tex Mex's offices at 501 Crawford Street, Room 317, Houston, Texas. In my current position as Vice President - Transportation, I am responsible for directing all of Tex Mex's train operations across its line between Laredo and Beaumont, Texas, and within and through Corpus Christi and Houston, Texas terminals. My qualifications have been stated in previous Verified Statements filed before the Surface Transportation Board ("STB").

I have reviewed the discovery sent to Union Pacific Railroad ("UP") on March 12 and then again on April 8, 1998. I have also reviewed UP's responses to this discovery. Contrary to UP's assertions, there are various responsive documents and records which can be easily produced in response to the discovery requests. For example, UP should be able to easily produce correspondence between UP, the bridge owners at Memphis, and the rail carriers with operating rights over the bridge, regarding UP's expanding control over the bridge crossing the Mississippi River; correspondence between UP and TRRA regarding operations in St. Louis; and correspondence between UP and SP regarding the transfer of dispatching control prior to implementing the merger. This list is not an exhaustive list and I offer it only as a quick recitation of just three simple examples of correspondence which would be responsive to the Tex Mex/KCS Discovery Request No. 3.

More importantly, contrary to UP's assertions of burden, UP could easily permit Tex Mex and KCS to replay and view dispatching records and train movements contained in the

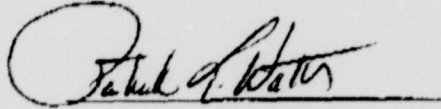
Digicon system. This would merely require arranging a time for Tex Mex/KCS personnel to meet with UP personnel in the Spring, Texas dispatching center and replay the system. In addition, we would need to listen to relevant portions of the dispatcher's voice tapes as requested when viewing the Digicon replay. This would aid in the discovery process and would also be very simply to make available.

At a minimum, the affected areas, where Tex Mex/KCS personnel should be permitted to replay and view the Digicon system, include: SP Lafayette Subdivision between Beaumont and Houston; all routes through Houston; West Jct., Texas to Flatonia, Texas; and Flatonia, Texas to Placedo, Texas.

Finally, UP could easily produce the Corridor Manager's Report, which are daily logs kept by the corridor managers. The managers prepare these report on a daily basis and describe the various movements of the trains through their terminals. Such Corridor Manager Reports, which are kept for several years and are readily available for the last several months, would provide revealing insights as to the decisions of managers as to which trains to move and which trains UP held up.

VERIFICATION

I, Patrick L. Watts, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on May 4, 1998.

A handwritten signature in cursive script, appearing to read "Patrick L. Watts", is written over a horizontal line.

Patrick L. Watts

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760 (Sub-No. 21)

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

NEW OVERSIGHT PROCEEDING

**MOTION TO COMPEL DISCOVERY
FROM UNION PACIFIC RAILROAD**

VERIFIED STATEMENT

OF

TOM O'CONNOR

**Vice President
Snively King Majoros O'Connor & Lee, Inc.
1220 L St NW
Washington DC 20005**

VERIFIED STATEMENT

OF

TOM O'CONNOR

Introduction

My name is Tom O'Connor. I am Vice President of Snavelly King Majoros O'Connor & Lee, an economic and management consulting company. The purpose of this statement is to describe for the Surface Transportation Board, (STB) an instance in which access to a computer model and data base developed by one party was granted to and used by another party. This was done to produce evidence submitted to the Interstate Commerce Commission (ICC), the predecessor agency to the STB.

Experience

I have been engaged in the business of transportation for more than twenty five years. My professional career began in 1973 with the Interstate Commerce Commission as an economist. In 1974, I became Manager of Local Rail Services Planning for the United States Railway Association, responsible for developing, implementing and defending the methodology used to define much of the line structure of Conrail. After consulting on railroad issues for two years, primarily in Canada, I joined Conrail as Assistant Director of Costs and Economics, responsible for all costing input to all Conrail regulatory and management decisions. In 1979, I joined the Association of American Railroads as Assistant Vice President Economics, responsible for economic aspects of a wide range of industry issues, producing input to policy decisions and providing evidence in proceedings before regulatory agencies, Congress and the courts.

In 1982, I became Vice President of DNS Associates serving a wide range of railroad, shipper and government clients. In 1988, I became Vice President of Snavelly King and Associates. The firm changed its name to Snavelly King Majoros O'Connor & Lee shortly thereafter. Additional information on my qualifications is included as Attachment A.

An example of Use of a Computer System by Parties to an ICC Case

During the time I was Vice President of DNS Associates, DNS was engaged by Atchison Topeka and Santa Fe Railway (SF) and Southern Pacific Transportation Company (SP) to perform traffic analyses. The results of these analyses were entered into evidence in Finance Docket No. 30400 **Santa Fe Southern Pacific Corporation – Control – Southern Pacific Transportation Company**, decided July 24, 1986.

The results of the computer model were analyzed during the course of hearings at the ICC. One of the protestant railroads, Union Pacific (UP) requested and was granted access to the DNS computer model and related data base for the purpose of conducting similar studies under its direction.¹ This access to the DNS computer model and related database permitted UP to replay the scenarios. UP requested the access to the model and the request was granted for several reasons, including:

- The computer system produced data essential to key issues in the case
- It was not technically feasible to develop the requested information without access to the computer model and related data base.

¹ See 2 ICC 2d 709, 883

VERIFICATION

I, Tom O'Connor, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on May 4, 1998.

Tom O'Connor

Tom O'Connor

Subscribed and sworn to before me this 4th day of May, 1998 *in the*
District of Columbia.

[Signature]

Notary Public

My Commission expires
March 30, 2003

QUALIFICATIONS OF TOM O'CONNOR

Experience

**Snavelly King Majoros O'Connor & Lee, Inc., Washington, DC
Vice President (1988-Present)**

Mr. O'Connor has more than twenty five years experience in the transportation industry. His experience includes key and increasingly responsible management and policy positions with government agencies and private industry.

Mr. O'Connor, in recent years has conducted analyses for the Government of Canada used to shape policy for freight transportation and studies for the U.S. Government used to shape Passenger Transport Policy. He is currently developing a strategic plan for Management information systems and computer facilities to measure, manage and monitor both rail freight and rail passenger transportation in the Balkan Peninsula. He has created and managed numerous computerized transport management and regulatory systems and is a widely recognized expert on costing and economics.

Mr. O'Connor has analyzed more than 45 rail merger scenarios and cases. He has provided expert testimony before state and federal courts and commissions in the U.S. and Canada on economic and policy issues. He has also testified as an expert on computerized transportation analytical systems, rail operations, anti trust issues and transportation costing. Mr. O'Connor has served as an impartial and expert monitor of data and processes at issue in litigation on transportation.

Within the litigation arena, Mr. O'Connor has also conducted management audits of railroads, focused on identifying the cause and effect relationships underlying claimed cost incidence. The management audits were directed toward testing the cost basis of bills submitted by major railroads.

DNS Associates Inc., Washington, DC
Vice President (1982-1988)

Mr. O'Connor directed and participated in numerous projects including merger analyses, transportation infra-structure analyses, plant and network rationalization and feasibility studies. He designed and implemented mainframe and microcomputerized systems for analyzing rail, truck and barge logistics. The computerized cost systems Mr. O'Connor created are in widespread use throughout the United States and Canada.

Mr. O'Connor also advised the U.S. Rail Accounting Principles Board on the costing aspects of regulatory reform policies. He also provided expert testimony on rail cost issues before the Interstate Commerce Commission.

Association of American Railroads, Washington, DC
Assistant Vice President, Economics (1979-1982)

Mr. O'Connor designed and managed major economic analysis projects. He helped formulate industry economic policy positions culminating in the Staggers Rail Act of 1980. He submitted expert testimony on behalf of the railroad industry in numerous cases before the Interstate Commerce Commission and state regulatory commissions. He also appeared regularly in national forums on economic issues.

Mr. O'Connor directed the most significant computerized industry Costing System project in 40 years, URCS, the cost system now used by all major US railroads. He also conducted industry seminars on URCS and related economic issues.

Mr. O'Connor also testified before the Interstate Commerce Commission on the design and application of this pathbreaking rail cost system since adopted by the Commission and the rail industry. He also directed development and installation of a computerized economic and market analysis system now used by virtually all major US railroads.

Consolidated Rail Corporation, PA
Assistant Director, Cost & Economics (1977-1979)

Mr. O'Connor was responsible for all Conrail management and regulatory cost analyses in both freight and passenger areas. He testified before the ICC on the development of subsidy standards now widely used in the US railroad industry. He also finalized the design, and implemented and managed Contribution Simulator and Calculator (COSAC), a computerized internal management economic analysis system at Conrail. The COSAC system uses specific management accounting data to develop economic costs. COSAC replaced earlier systems and was used to guide virtually all transportation management decisions.

Mr. O'Connor also participated in cost allocation negotiations between Amtrak and Conrail on cost sharing of joint facilities on the North East corridor. He initiated and directed profit maximization and plant rationalization programs. He also designed and implemented computerization and improvement of a wide range of economic and cost analysis systems used to manage this multi-billion dollar corporation.

R.L. Banks & Associates Inc., Washington, DC
Consultant (1976-1977)

Mr. O'Connor conducted and directed numerous transportation-related projects in the U.S. and Canada ranging from national logistics analyses to site-specific studies. He specialized in costing systems and appeared as an expert witness on such systems in an precedent setting proceeding before a Canadian Crown Commission.

U.S. Railway Association, Washington, DC
Manager, Local Rail Service Planning (1974-1976)

Mr. O'Connor developed, computerized and implemented the light density lines cost analysis system which defined Conrail. He served as liaison with congressional staffs and shipper groups, as well as federal, state, and local governments, and planning agencies. The system he created was a major element in the design and implementation of the streamlined Midwest-Northeast regional rail system. Mr. O'Connor subsequently appeared as an expert witness to present and defend the operation of the USRA costing system.

Interstate Commerce Commission,

Economist, Washington, DC (1973-1974)

Mr. O'Connor served as a staff economist and authored a report analyzing industry investment patterns and ICC regulatory policy, including ICC use of cost evidence.

Education

University of Massachusetts, Amherst, B.A. Economics

University of Wisconsin, Graduate Course Work, Economics

University of Delaware, Graduate Course Work, Business Management

The American University, Graduate Course Work, Computer Science

Professional Organizations

Transportation Research Board

Chairman of the Surface Freight Transportation Regulation Committee

Transportation Research Forum

Past President of the Cost Analysis Chapter

National Defense Transportation Association

Member of Board of Directors, National Capital Chapter

Phi Beta Kappa academic honors society

Phi Kappa Phi academic honors society

Military

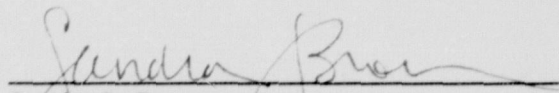
U.S. Army; Sergeant, Combat Engineers, 1963-1966

Security Clearance

Secret

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the "Motion to Compel" was served this 4th day of May, 1998, by hand delivery to counsel for Union Pacific and by first class mail upon all other parties of record of the new oversight proceeding.


Sandra L. Brown
Attorney for The Kansas City Southern
Railway Company

STB

FD-32760 (SUB26)

4-27-98

I

ID-187268

TROUTMAN SANDERS LLP

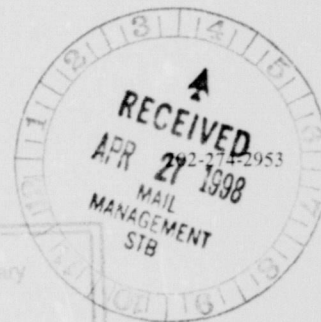
ATTORNEYS AT LAW
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TELEPHONE 202-274-2950
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William A. Mullins

187268

April 27, 1998



HAND DELIVERED

Mr. Vernon A. Williams

Case Control Unit

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

Surface Transportation Board

Suite 700

1925 K Street, N.W.

Washington, D.C. 20006

26



I

Re: Finance Docket No. 32760 (Sub-No. 21) (New Oversight Proceeding) *Union Pacific Corporation, et al. -- Control & Merger -- Southern Pacific Rail Corporation, et al. Oversight Proceeding*

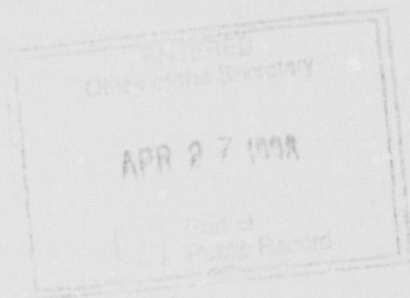
Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding are the original and twenty-six copies of TM-10/KCS-11, Errata To Joint Petition Of The Texas Mexican Railway Company And The Kansas City Southern Railway Company For Imposition Of Additional Remedial Conditions Pursuant To The Board's Retained Oversight Jurisdiction.

Please date and time stamp one of the copies for return to our offices. Included with this filing is a 3.5 inch Word Perfect, Version 5.1 diskette with the text of the pleading.

Sincerely yours,

William A. Mullins
Attorney for The Kansas City Southern
Railway Company

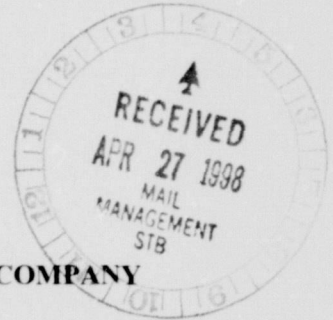


cc: Parties of Record

BEFORE THE

SURFACE TRANSPORTATION BOARD

26
FINANCE DOCKET NO. 32760 (Sub-No. 21)



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

NEW OVERSIGHT PROCEEDING

ERRATA TO JOINT PETITION OF THE TEXAS MEXICAN RAILWAY
COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY
FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT
TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION

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April 27, 1998

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TM-10
KCS-11

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

26
FINANCE DOCKET NO. 32760 (Sub-No. 21)

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

--CONTROL AND MERGER --

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

NEW OVERSIGHT PROCEEDING

**ERRATA TO JOINT PETITION OF THE TEXAS MEXICAN RAILWAY
COMPANY AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY
FOR IMPOSITION OF ADDITIONAL REMEDIAL CONDITIONS PURSUANT
TO THE BOARD'S RETAINED OVERSIGHT JURISDICTION**

Tex Mex and KCS hereby submit the following errata to the Joint Petition For Imposition Of Additional Remedial Conditions Pursuant To The Board's Retained Oversight Jurisdiction filed in this proceeding on March 30, 1998 (TM-7/KCS-7). These errata do not change, in any substantive way, the conclusions or analysis set forth in TM-7/KCS-7.

ERRATA

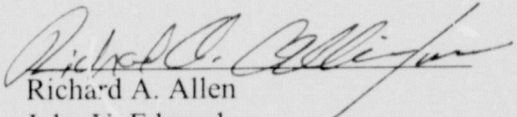
Page 12 line 7:	:	Delete "between" and change "108 employees" to "131 employees"
Page 49, line 6	:	Change "\$4,386,000" to "\$4,384,000"
Page 49, line 8	:	Change "\$7,107,000" to "\$9,138,000"
Page 51, line 16	:	Change "\$4,386,000" to "\$4,384,000"
Page 52, line 2	:	Change "\$7,107,000" to "\$9,138,000"

Page 126, line 23	:	Change "\$9.7 million" to "\$9.5 million"
Page 127, Table 1	:	Change Expenses: "\$4,387" to "\$4,389"
Page 127, Table 1	:	Change Net Oper. Inc.: "\$4,386" to "\$4,384"
Page 127, Table 1	:	Change Expenses: "\$28,520" to "\$26,488"
Page 127, Table 1	:	Change Net Oper. Inc.: "\$7,107" to "\$9,138"
Page 128, line 4	:	Change "\$4.4 million" to "\$972 thousand"
Page 128, line 5	:	Change "\$7.1 million" to "\$4.4 million"
Page 129, line 7	:	Change "\$7.1 million" to "\$9.1 million"
Page 129, Table 3	:	Change Expenses: "\$4,387" to "\$4,389"
Page 129, Table 3	:	Change Net Oper. Inc.: "\$4,386" to "\$4,384"
Page 129, Table 3	:	Change Expenses: "\$28,520" to "\$26,488"
Page 129, Table 3	:	Change Net Oper. Inc.: "\$7,107" to "\$9,138"
Page 131, line 3	:	Change "351%" to "377%"
Page 142, Exhibit JJP-2	:	Insert "Exhibit No. JJP-2 REVISED"
Page 142a, Exhibit JJP-2	:	Insert new page "Exhibit No. JJP-2 Reconcile Errata"
Page 143, Exhibit JJP-3	:	Insert "Exhibit No. JJP-3 REVISED"
Page 143a, Exhibit JJP-3	:	Insert new page "Exhibit No. JJP-3 Reconcile Errata"
Page 144, Exhibit JJP-4	:	Insert "Exhibit No. JJP-4 REVISED"
Page 144a, Exhibit JJP-4	:	Insert new page "Exhibit No. JJP-4 Reconcile Errata"
Page 145, Exhibit JJP-5	:	Insert "Exhibit No. JJP-5 REVISED"
Page 145a, Exhibit JJP-5	:	Insert new page "Exhibit No. JJP-5 Reconcile Errata"
Page 146, Exhibit JJP-6	:	Insert "Exhibit No. JJP-6 REVISED"

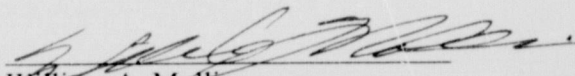
Page 146a, Exhibit JJP-6 : Insert new page "Exhibit No. JJP-6 Reconcile Errata"
 Page 147, Exhibit JJP-7 : Insert "Exhibit No. JJP-7 REVISED"
 Page 147a, Exhibit JJP-7 : Insert new page "Exhibit No. JJP-7 Reconcile Errata"
 Page 148, Exhibit JJP-8 : Insert "Exhibit No. JJP-8 REVISED"
 Page 148a, Exhibit JJP-8 : Insert new page "Exhibit No. JJP-8 Reconcile Errata"
 Page 281, line 23 : Change "\$7.1 million" to "\$9.1 million"

Respectfully Submitted, this 27th day of April, 1998.

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 Robert K. Dreiling
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 Fax: (202) 274-2994

Attorneys for The Kansas City Southern Railway Company

Tex Mex / KCS Plan
Statement of Benefits^{1/}
Errata

Exhibit No. JJP-2
REVISED

The Texas Mexican Railway Company

Description	Year 1 (000s) (a)	Year 2 (000s) (b)	Year 3 (000s) (c)	Normal Year (000s) (d)
Incremental Revenue ^{2/}				
1 Freight	\$ 5,344	\$ 32,064	\$ 35,627	\$ 35,627
Incremental Operating:				
Non - Labor				
2 Way and Structures	\$ 384	\$ 529	\$ 529	\$ 529
3 Equipment	621	3,568	4,033	4,033
4 Transportation	718	4,305	4,784	4,784
5 URCS related	1,194	7,162	7,958	7,958
Labor				
6 Train & Engine	1,444	8,845	9,747	7,722
7 General & Administrative	129	939	1,068	1,068
8 Yard & Maintenance	184	394	394	394
9 Total Operating Costs	\$ 4,674	\$ 25,742	\$ 28,514	\$ 26,489
10 Total Benefits	\$ 670	\$ 6,322	\$ 7,113	\$ 9,138

^{1/} See text for capital investment:

V.S. Fields at 86, 87; V.S. Brookings at 295; V.S. Lewis at 298

^{2/} Other incremental revenues (switching, demurrage and incidental revenues) were \$0.5 million, \$3.0 million and \$3.4 million in years 1, 2 and 3 respectively. Including other revenue increases Total Benefits to \$1.174 million, \$9.346 million and \$10.473 million in years 1, 2 and 3 respectively.

Tex Mex / KCS Plan
Statement of Benefits1/
Reconcile Original to Errata

Exhibit No. JJP-2
Reconcile Errata

The Texas Mexican Railway Company

Description	Year 1 (000s) (a)	Year 2 (000s) (b)	Year 3 (000s) (c)	Normal Year (000s) (d)
Incremental Revenue 2/				
1 Freight	\$ 5,344	\$ 32,064	\$ 35,627	\$ 35,627
Original as filed March 30, 1998	5,344	32,064	35,627	35,627
Increase (Decrease) in Revenues	-	-	-	-
Incremental Operating: Non - Labor				
2 Way and Structures	\$ 384	\$ 529	\$ 529	\$ 529
Original as filed March 30, 1998	275	275	275	275
Increase (Decrease) in Expense	109	254	254	254
3 Equipment	621	3,568	4,033	4,033
Original as filed March 30, 1998	685	3,630	4,033	4,113
Increase (Decrease) in Expense	(64)	(62)	-	(80)
4 Transportation	718	4,305	4,784	4,784
Original as filed March 30, 1998	902	4,305	4,784	4,968
Increase (Decrease) in Expense	(184)	-	-	(184)
5 URCS related	1,194	7,162	7,958	7,958
Original as filed March 30, 1998	1,194	7,162	7,958	7,722
Increase (Decrease) in Expense	-	-	-	236
Labor				
6 Train & Engine	1,444	8,845	9,747	7,722
Original as filed March 30, 1998	1,462	8,772	9,747	7,958
Increase (Decrease) in Expense	(18)	73	-	(236)
7 General & Administrative	129	939	1,068	1,068
Original as filed March 30, 1998	218	1,311	1,456	1,456
Increase (Decrease) in Expense	(89)	(372)	(388)	(388)
8 Yard & Maintenance	184	394	394	394
Original as filed March 30, 1998	-	-	-	-
Increase (Decrease) in Expense	184	394	394	394
9 Total Operating Costs	\$ 4,674	\$ 25,742	\$ 28,514	\$ 26,489
Original as filed March 30, 1998	4,736	25,456	28,254	26,493
Increase (Decrease) in Expense	(62)	286	260	(4)
10 Total Benefits	\$ 670	\$ 6,322	\$ 7,113	\$ 9,138
Original as filed March 30, 1998	608	6,609	7,373	9,134
Increase (Decrease)	62	(287)	(260)	4

**Base Case
Balance Sheet
Errata**

Exhibit No. JJP-3
Revised

The Texas Mexican Railway Company

Description	December 31, 1996 Audited (000s) (a)	Adjustment Amount (000s) (b)	Adjusted Base Period Amount (000s) (c)
<u>Assets</u>			
Current Assets:			
1 Cash and cash equivalents	\$ 392	\$ 2,110	\$ 2,502
2 Investments	572		572
3 Net Accounts and Notes Receivable	6,663	168	6,831
4 Inventory	1,562		1,562
5 Due from Parent and Other related parties	912		912
6 Current deferred income taxes	984		984
7 Other	590		590
8 Total Current Assets	<u>\$ 11,675</u>	<u>\$ 2,278</u>	<u>\$ 13,953</u>
Properties:			
9 Equipment	23,481		23,481
10 Land, Buildings & improvements	18,931	13,643	32,574
11 Less accumulated depreciation	(17,870)	(222)	(18,092)
12 Net Properties	<u>\$ 24,542</u>	<u>\$ 13,421</u>	<u>\$ 37,963</u>
Other Assets:			
13 Investments in other partnership	3,889		3,889
14 Net other assets	1,099		1,099
15 Total Other Assets	<u>\$ 4,988</u>	<u>\$ -</u>	<u>\$ 4,988</u>
16 Total Assets	<u>\$ 41,205</u>	<u>\$ 15,699</u>	<u>\$ 56,904</u>
<u>Liabilities & Equities</u>			
17 Accounts Payable	\$ 1,912	\$ 444	\$ 2,356
18 Due to Parent and other related parties	410		410
19 Other accrued liabilities	4,344	1,195	5,539
20 Total current liabilities	<u>\$ 6,666</u>	<u>\$ 1,639</u>	<u>\$ 8,305</u>
21 Long Term Debt	3,800	11,524	15,324
22 Deferred Income Taxes	5,203		5,203
23 Total liabilities	<u>\$ 15,669</u>	<u>\$ 13,163</u>	<u>\$ 28,832</u>
Stockholder's equity:			
24 Common Stock	2,500		2,500
25 Additional paid in capital	981		981
26 Retained earnings	22,055	2,535	24,590
27 Total Stockholder's equity	<u>\$ 25,536</u>	<u>\$ 2,535</u>	<u>\$ 28,071</u>
28 Total Liabilities & Equity	<u>\$ 41,205</u>	<u>\$ 15,699</u>	<u>\$ 56,904</u>

**Tex Mex / KCS Plan
Balance Sheet
Reconcile Original to Errata**

Exhibit No. JJP-3
Reconcile Errata

The Texas Mexican Railway Company

Description	December 31, 1996 Audited (000s) (a)	Adjustment Amount (000s) (b)	Adjusted Base Period Amount (000s) (c)
1 Cash and cash equivalents	\$ 392	\$ 2,110	\$ 2,502
Original as filed March 30, 1998	392	3,718	4,110
Increase (Decrease) in Cash	-	(1,608)	(1,608)
3 Net Accounts and Notes Receivable	6,663	168	6,831
Original as filed March 30, 1998	6,663	172	6,835
Increase (Decrease) in Current Assets	-	(4)	(4)
10 Land, Buildings & improvements	18,931	13,643	32,574
Original as filed March 30, 1998	18,931	9,700	28,631
Increase (Decrease) in Land Buildings & Imp	-	3,943	3,943
11 Less accumulated depreciation	(17,870)	(222)	(18,092)
Original as filed March 30, 1998	(17,870)	(158)	(18,028)
Increase (Decrease) in Current Assets	-	(64)	(64)
17 Accounts Payable	\$ 1,912	\$ 444	\$ 2,356
Original as filed March 30, 1998	1,912	478	2,390
Increase (Decrease) in Current Liabilities	-	(34)	(34)
19 Other Accrued Liabilities	4,344	1,195	5,539
Original as filed March 30, 1998	4,344	1,345	5,689
Increase (Decrease) in Current Liabilities	-	(150)	(150)
21 Long Term Debt	3,800	11,524	15,324
Original as filed March 30, 1998	3,800	9,000	12,800
Increase (Decrease) in LT Debt	-	2,524	2,524
26 Retained Earnings	22,055	2,535	24,590
Original as filed March 30, 1998	22,055	2,610	24,665
Increase (Decrease) in LT Debt	-	(75)	(75)

**Base Case
Income Statement
Errata**

Exhibit No. JJP-4
Revised

The Texas Mexican Railway Company

Description	December 31, 1996 Audited (000s) (a)	Reformatting Adjustments (000s) (b)	Audited Amount Reformatted (000s) (c)	Adjustment Amount (000s) (d)	Adjusted Base Period Amount (000s) (e)
Operating Revenues:					
1 Freight	\$ 18,107		\$ 18,107	9,032	\$ 27,139
2 Switching	554		554	276	830
3 Demurrage	550		550	274	824
4 Incidental	603		603	301	904
5 Uncollectible Accounts	-	(480)	(480)	(239)	(719)
6 Total Operating Revenues	\$ 19,814	(480)	19,334	9,644	28,978
Operating Expenses:					
7 Maintenance of Way & Structures	3,032	(738)	2,294	-	2,294
8 Maintenance of Equipment	2,559	(839)	1,720	931	2,651
9 Transportation	9,403		9,403	3,520	12,923
10 General & Administrative	3,823	(480)	3,343	388	3,731
11 Depreciation Expense	-	1,577	1,577	222	1,799
12 Loss (Gain) On Sale of Fixed Assets	25		25	(25)	-
13 Total Operating Expenses	\$ 18,842	\$ (480)	\$ 18,362	\$ 5,036	\$ 23,398
14 Income (Loss) From Operations	\$ 972	\$ -	\$ 972	\$ 4,609	\$ 5,580
15 Other Income & Expense Net	636	-	636	(878)	(242)
16 Income (Loss) before Income Taxes	1,608	-	1,608	3,730	5,338
17 Income Tax Rate					34%
18 Income Taxes	620	-	620	1,195	1,815
19 Net Income (Loss)	\$ 988	\$ -	\$ 988	\$ 2,535	\$ 3,523

**Tex Mex / KCS Plan
Income Statement
Reconcile Original to Errata**

Exhibit No. JJP-4
Reconcile Errata

The Texas Mexican Railway Company

Description	December 31, 1996 Audited (000s) (a)	Reformatting Adjustment (000s) (b)	Audited Amount Reformatted (000s) (c)	Adjustment Amount (000s) (d)	Adjusted Base Period Amount (000s) (e)
5 Uncollectible Accounts	\$ -	(480)	(480)	(239)	(719)
Original as filed March 30, 1998	-	-	-	-	-
Increase (Decrease) in Revenues	\$ -	(480)	(480)	(239)	(719)
6 Total Operating Revenues	19,814	(480)	19,334	9,644	28,978
Original as filed March 30, 1998	19,814	-	19,814	9,884	29,698
Increase (Decrease) in Revenues	-	(480)	(480)	(240)	(720)
7 Maintenance of Way & Structures	3,032	(738)	2,294	-	2,294
Original as filed March 30, 1998	3,032	-	3,032	158	3,190
Increase (Decrease) in Expense	-	(738)	(738)	(158)	(896)
8 Maintenance of Equipment	2,559	(839)	1,720	931	2,651
Original as filed March 30, 1998	2,559	-	2,559	931	3,490
Increase (Decrease) in Expense	-	(839)	(839)	-	(839)
9 Transportation	9,403	-	9,403	3,520	12,923
Original as filed March 30, 1998	9,403	-	9,403	3,518	12,921
Increase (Decrease) in Expense	-	-	-	2	2
10 General & Administrative	3,823	(480)	3,343	388	3,731
Original as filed March 30, 1998	3,823	-	3,823	628	4,451
Increase (Decrease) in Expense	-	(480)	(480)	(240)	(720)
11 Depreciation Expense	-	1,577	1,577	222	1,799
Original as filed March 30, 1998	-	-	-	-	-
Increase (Decrease) in Expense	-	1,577	1,577	222	1,799
15 Other Income & Expense Net	636	-	636	(878)	\$ (242)
Original as filed March 30, 1998	636	-	636	(720)	(84)
Increase (Decrease) in Expense	-	-	-	(158)	(158)
16 Income (Loss) before Income Taxes	1,608	-	1,608	3,730	5,338
Original as filed March 30, 1998	1,608	-	1,608	3,955	5,563
Increase (Decrease) in Income	-	-	(0)	(225)	(225)
18 Income Taxes	620	-	620	1,195	1,815
Original as filed March 30, 1998	620	-	620	1,345	1,891
Increase (Decrease) in Income Tax	-	-	-	(150)	(76)
19 Net Income (Loss)	\$ 988	\$ -	\$ 988	\$ 2,535	\$ 3,523
Original as filed March 30, 1998	\$ 988	-	988	2,610	3,671
Increase (Decrease) in Expense	\$ -	-	-	(75)	(148)

Base Case
Sources and Applications of Funds
Errata

Exhibit No. JJP-5
Revised

The Texas Mexican Railway Company

Description	December 31, 1996 Audited (000s) (a)	Adjustment Amount (000s) (b)	Base Period Adjusted (000s) (c)
<u>From Operating Activities:</u>			
1 Net Income (Loss)	\$ 988	2,535	3,523
2 Depreciation	1,577	222	1,799
3 Deferred Income Taxes	620	-	620
4 Equity Earnings - Partnership Investment	(477)		(477)
5 Dividend Distribution - Partnership Investment	556		556
6 Change in current assets - (Increase) or Decrease	(899)	(168)	(1,067)
7 Change in current liabilities - Increase or (Decrease)	(988)	1,639	651
8 Change in amounts due to/from parent and other related parties -Increase or (Decrease)	498		498
9 Net Cash Provided by Operating Activities	1,875	4,228	\$ 6,103
<u>From Investing Activities:</u>			
10 Purchases of Equipment & Improvements, net of gain or loss on disposition of fixed assets	(2,011)	(13,643)	\$ (15,654)
11 Proceeds from sale of investments	1,224		1,224
12 Investment in Long Term Assets	(1,099)		(1,099)
13 Net Cash Used by Investing Activities	\$ (1,886)	\$ (13,643)	\$ (15,529)
<u>From Financing Activities:</u>			
14 Long Term Debt Borrowings	-	11,524	11,524
15 Net Cash Provided by Financing Activities	-	\$ 11,524	\$ 11,524
16 Increase (Decrease) in Cash & Cash Equivalents	\$ (11)	\$ 2,110	\$ 2,099
17 Cash & Cash Equivalents at Beginning of Year	403		403
18 Cash & Cash Equivalents at End of Year	\$ 392	\$ 2,110	\$ 2,502

Tex Mex / KCS Plan
Sources and Applications of Funds
Reconcile Original to Errata

Exhibit No. JJP-5
Reconcile Errata

The Texas Mexican Railway Company

Description	December 31, 1996 Audited		Base Period Adjusted
	(000s)		(000s)
	(a)		(a)
From Operating Activities:			
1 Net Income (Loss)	\$	988	3,523
Original as filed March 30, 1998		988	3,671
Increase (Decrease) in Sources of Funds		-	(148)
2 Depreciation		1,577	1,799
Original as filed March 30, 1998		1,577	1,735
Increase (Decrease) in Sources of Funds		-	64
6 Change in current assets - (Increase) or Decrease		(899)	(1,067)
Original as filed March 30, 1998		(899)	(1,071)
Increase (Decrease) in Sources of Funds		-	4
7 Change in current liabilities - Increase or (Decrease)		(988)	651
Original as filed March 30, 1998		(988)	834
Increase (Decrease) in Sources of Funds		-	(183)
10 Purchases of Equipment & Improvements, net of gain or loss on disposition of fixed assets	(2,011)	\$	(15,654)
Original as filed March 30, 1998	(2,011)		(11,711)
(Increase) Decrease in Applications of Funds	-		(3,943)
14 Long Term Debt Borrowings	-		11,524
Original as filed March 30, 1998	-		9,000
Increase (Decrease) in Sources of Funds	-		2,524
16 Increase (Decrease) in Cash & Cash Equivalents	\$	(11)	\$ 2,099
Original as filed March 30, 1998		(11)	3,780
Increase (Decrease) in Cash		-	(1,681)
17 Cash & Cash Equivalents at Beginning of Year		403	403
18 Cash & Cash Equivalents at End of Year	\$	392	\$ 2,502
17 Original as filed March 30, 1998		403	403
18 Original as filed March 30, 1998	\$	392	\$ 4,183
Increase (Decrease) in Cash at Year End	\$	-	\$ (1,681)

**Tex Mex / KCS Plan
Balance Sheet
Errata**

Exhibit No. JJP-6

Revised

The Texas Mexican Railway Company

Description	Adjusted Base Period Amount (000s)	Adjustment Amount (000s)	Year 1 After Change in Operations (000s)	Adjustment Amount (000s)	Year 2 After Change in Operations (000s)	Adjustment Amount (000s)	Year 3 After Change in Operations (000s)	Adjustment Amount (000s)	Normal Year After Change in Operations (000s)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Assets									
Current Assets:									
1 Cash and cash equivalents	\$ 2,502	\$ (2,353)	\$ 149	\$ 11,402	\$ 11,551	\$ 9,064	\$ 20,615	\$ 10,457	\$ 31,072
2 Investments	572		572		572		572		572
3 Net Accounts and Notes Receivable	6,831	100	6,931	499	7,430	66	7,496	-	7,496
4 Inventory	1,562		1,562		1,562		1,562		1,562
5 Due from Parent and Other related parties	912		912		912		912		912
6 Current deferred income taxes	984		984		984		984		984
7 Other	590		590		590		590		590
8 Total Current Assets	\$ 13,953	\$ (2,253)	\$ 11,700	\$ 11,901	\$ 23,601	\$ 9,131	\$ 32,731	\$ 10,457	\$ 43,188
Properties:									
9 Equipment	23,481		23,481		23,481		23,481		23,481
10 Land, Buildings & improvements	32,574	68,772	101,346	-	101,346	-	101,346	-	101,346
11 Less accumulated depreciation	(18,092)	(2,787)	(20,878)	(3,774)	(24,653)	(3,774)	(28,427)	(3,774)	(32,201)
12 Net Properties	\$ 37,963	\$ 65,985	\$ 103,948	\$ (3,774)	\$ 100,174	\$ (3,774)	\$ 96,400	\$ (3,774)	\$ 92,626
Other Assets:									
13 Investments in other partnership	3,889		3,889		3,889		3,889		3,889
14 Net other assets	1,099		1,099		1,099		1,099		1,099
15 Total Other Assets	\$ 4,988	\$ -	\$ 4,988	\$ -	\$ 4,988	\$ -	\$ 4,988	\$ -	\$ 4,988
16 Total Assets	\$ 56,904	\$ 63,732	\$ 120,636	\$ 8,127	\$ 128,763	\$ 5,356	\$ 134,119	\$ 6,683	\$ 140,802
Liabilities & Equities									
17 Accounts Payable	\$ 2,356	\$ 429	\$ 2,785	\$ 1,933	\$ 4,717	\$ 254	\$ 4,971	\$ (186)	\$ 4,786
18 Due to Parent and other related parties	410		410		410		410		410
19 Other accrued liabilities	5,539	(1,706)	3,833	2,292	6,125	428	6,553	737	7,290
20 Total current liabilities	\$ 8,305	\$ (1,277)	\$ 7,027	\$ 4,224	\$ 11,252	\$ 683	\$ 11,934	\$ 551	\$ 12,486
21 Long Term Debt	15,324	64,799	80,123	(757)	79,366	(818)	78,548	(791)	77,757
22 Deferred Income Taxes	5,203		5,203		5,203		5,203		5,203
23 Total liabilities	\$ 28,832	\$ 63,521	\$ 92,354	\$ 3,467	\$ 95,821	\$ (135)	\$ 95,685	\$ (239)	\$ 95,446
Stockholder's equity:									
24 Common Stock	2,500		2,500		2,500		2,500		2,500
25 Additional paid in capital	981		981		981		981		981
26 Retained earnings	24,590	211	24,802	4,660	29,461	5,491	34,953	6,922	41,875
27 Total Stockholder's equity	\$ 28,071	\$ 211	\$ 28,283	\$ 4,660	\$ 32,942	\$ 5,491	\$ 38,434	\$ 6,922	\$ 45,356
28 Total Liabilities & Equity	\$ 56,904	\$ 63,732	\$ 120,636	\$ 8,127	\$ 128,763	\$ 5,356	\$ 134,119	\$ 6,683	\$ 140,802

Tex Mex / KCS Plan
Balance Sheet
Reconcile Original to Errata

Exhibit No. JJP-6
Reconcile Errata

The Texas Mexican Railway Company

Description	Adjusted Base Period Amount (000s) (a)	Adjustment Amount (000s) (b)	Year 1 After Change in Operations (000s) (c)	Adjustment Amount (000s) (d)	Year 2 After Change in Operations (000s) (e)	Adjustment Amount (000s) (f)	Year 3 After Change in Operations (000s) (g)	Adjustment Amount (000s) (h)	Normal Year After Change in Operations (000s) (h)
1 Cash and cash equivalents	\$ 2,502	\$ (2,353)	\$ 149	\$ 11,402	\$ 11,551	\$ 9,064	\$ 20,615	\$ 10,457	\$ 31,072
Original as filed March 30, 1998	4,110	1,184	5,294	11,515	16,809	8,900	25,709	10,185	35,894
Increase (Decrease) in Cash	(1,608)	(3,537)	(5,145)	(113)	(5,258)	164	(5,094)	272	(4,822)
3 Net Accounts and Notes Receivable	6,831	100	6,931	499	7,430	66	7,496	-	7,496
Original as filed March 30, 1998	6,835	102	6,937	510	7,447	68	7,515	-	7,515
Increase (Decrease) in Current Assets	(4)	(2)	(6)	(11)	(17)	(2)	(19)	-	(19)
10 Land, Buildings & improvements	32,574	68,772	101,346	-	101,346	-	101,346	-	101,346
Original as filed March 30, 1998	28,631	65,500	94,131	-	94,131	-	94,131	-	94,131
Increase (Decrease) in Land Buildings & Imprc	3,943	3,272	7,215	-	7,215	-	7,215	-	7,215
11 Less accumulated depreciation	(18,092)	(2,787)	(20,878)	(3,774)	(24,653)	(3,774)	(28,427)	(3,774)	(32,201)
Original as filed March 30, 1998	(18,028)	(2,669)	(20,697)	(3,603)	(24,300)	(3,603)	(27,903)	(3,603)	(31,506)
Increase (Decrease) in Current Assets	(64)	(118)	(181)	(171)	(353)	(171)	(524)	(171)	(695)
17 Accounts Payable	\$ 2,356	\$ 429	\$ 2,785	\$ 1,933	\$ 4,717	\$ 254	\$ 4,971	\$ (186)	\$ 4,785
Original as filed March 30, 1998	2,390	518	2,908	2,082	4,990	266	5,256	(186)	5,070
Increase (Decrease) in Current Liabilities	(34)	(89)	(123)	(149)	(273)	(12)	(285)	-	(284)
19 Other Accrued Liabilities	5,539	(1,706)	3,833	2,292	6,125	428	6,553	737	7,290
Original as filed March 30, 1998	5,616	(1,707)	3,909	2,237	6,146	355	6,501	707	7,208
Increase (Decrease) in Current Liabilities	(77)	1	(76)	55	(21)	73	53	30	83
21 Long Term Debt	15,324	64,799	80,123	(757)	79,366	(818)	78,548	(791)	77,757
Original as filed March 30, 1998	12,800	64,947	77,747	(598)	77,149	(648)	76,501	(701)	75,800
Increase (Decrease) in LT Debt	2,524	(148)	2,376	(159)	2,217	(170)	2,047	(90)	1,957
26 Retained Earnings	24,590	211	24,802	4,660	29,461	5,491	34,953	6,922	41,875
Original as filed March 30, 1998	24,739	359	25,097	4,701	29,798	5,391	35,189	6,762	41,951
Increase (Decrease) in LT Debt	(149)	(147)	(295)	(41)	(336)	100	(236)	160	(76)

**Tex Mex / KCS Plan
Income Statement
Errata**

Exhibit No. JJP-7
Revised

The Texas Mexican Railway Company

Description	Adjusted Base Period Amount (000s)	Adjustment Amount (000s)	Year 1 After Change in Operations (000s)	Adjustment Amount (000s)	Year 2 After Change in Operations (000s)	Adjustment Amount (000s)	Year 3 After Change in Operations (000s)	Adjustment Amount (000s)	Normal Year After Change in Operations (000s)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Operating Revenues:									
1 Freight	\$ 27,139	\$ 5,344	\$ 32,483	\$ 26,720	\$ 59,204	\$ 3,563	\$ 62,766	\$ -	\$ 62,766
2 Switching	830	164	994	818	1,811	109	1,920	-	1,920
3 Demurrage	824	162	987	812	1,798	108	1,907	-	1,907
4 Incidental	904	178	1,082	890	1,972	119	2,090	-	2,090
5 Uncollectible Accounts	(719)	(129)	(849)	(647)	(1,496)	(86)	(1,583)	-	(1,583)
6 Total Operating Revenues	28,978	5,718	34,697	28,592	63,289	3,812	67,101	-	67,101
Operating Expenses:									
7 Maintenance of Way & Structures	2,294	384	2,678	355	3,033	-	3,033	-	3,033
8 Maintenance of Equipment	2,651	621	3,271	2,947	6,219	465	6,684	-	6,684
9 Transportation	12,923	3,540	16,463	16,957	33,420	2,177	35,596	(2,025)	33,571
10 General & Administrative	3,731	129	3,861	809	4,670	129	4,799	-	4,799
11 Depreciation Expense	1,799	988	2,787	988	3,774	-	3,774	-	3,774
12 Loss (Gain) On Sale of Fixed Assets	-	-	-	-	-	-	-	-	-
13 Total Operating Expenses	\$ 23,398	\$ 5,661	\$ 29,059	\$ 22,056	\$ 51,115	\$ 2,772	\$ 53,887	\$ (2,025)	\$ 51,862
14 Income (Loss) From Operations	\$ 5,580	\$ 57	\$ 5,638	\$ 6,536	\$ 12,174	\$ 1,041	\$ 13,214	\$ 2,025	\$ 15,239
15 Other Income & Expense Net	\$ (242)	\$ (5,075)	\$ (5,318)	\$ 204	\$ (5,113)	\$ 219	\$ (4,894)	\$ 143	\$ (4,751)
16 Income (Loss) before Income Taxes	5,338	(5,018)	320	6,740	7,060	1,260	8,320	2,168	10,488
17 Income Tax Rate	34%		34%		34%		34%		34%
18 Income Taxes	1,815	(1,706)	109	2,292	2,401	428	2,829	737	3,566
19 Net Income (Loss)	\$ 3,523	\$ (3,312)	\$ 211	\$ 4,449	\$ 4,660	\$ 832	\$ 5,491	\$ 1,431	\$ 6,922

**Tex Mex / KCS Plan
Income Statement
Reconcile Original to Errata**

Exhibit No. JJP-7
Reconcile Errata

The Texas Mexican Railway Company

Description	Adjusted Base Period Amount (000s) (a)	Adjustment Amount (000s) (b)	Year 1 After Change in Operations (000s) (c)	Adjustment Amount (000s) (d)	Year 2 After Change in Operations (000s) (e)	Adjustment Amount (000s) (f)	Year 3 After Change in Operations (000s) (g)	Adjustment Amount (000s) (h)	Normal Year After Change in Operations (000s) (i)
5 Uncollectible Accounts	(719)	(129)	(849)	(647)	(1,496)	(86)	(1,583)	-	(1,583)
6 Total Operating Revenues	28,978	5,718	34,697	28,592	63,289	3,812	67,101	-	67,101
Original as filed March 30, 1998	29,698	5,848	35,546	29,239	64,785	3,899	68,684	-	68,684
Increase (Decrease) in Revenues	(720)	(130)	(849)	(647)	(1,496)	(87)	(1,583)	-	(1,583)
7 Maintenance of Way & Structures	2,294	384	2,678	355	3,033	-	3,033	-	3,033
Original as filed March 30, 1998	3,190	1,289	4,479	934	5,413	-	5,413	-	5,413
Increase (Decrease) in Expense	(896)	(905)	(1,801)	(579)	(2,380)	-	(2,380)	-	(2,380)
8 Maintenance of Equipment	2,651	621	3,271	2,947	6,219	465	6,684	-	6,684
Original as filed March 30, 1998	3,490	605	4,095	3,025	7,120	403	7,523	-	7,523
Increase (Decrease) in Expense	(839)	16	(824)	(78)	(901)	62	(839)	-	(839)
9 Transportation	12,923	3,540	16,463	16,957	33,420	2,177	35,596	(2,025)	33,571
Original as filed March 30, 1998	12,921	3,401	16,322	17,007	33,329	2,268	35,597	(2,025)	33,572
Increase (Decrease) in Expense	2	139	141	(50)	91	(91)	(1)	-	(1)
10 General & Administrative	3,731	129	3,861	809	4,670	129	4,799	-	4,799
Original as filed March 30, 1998	4,451	348	4,799	1,740	6,538	232	6,770	-	6,770
Increase (Decrease) in Expense	(720)	(218)	(938)	(931)	(1,868)	(103)	(1,971)	-	(1,971)
11 Depreciation Expense	1,799	988	2,787	988	3,774	-	3,774	-	3,774
Original as filed March 30, 1998	-	-	-	-	-	-	-	-	-
Increase (Decrease) in Expense	1,799	988	2,787	988	3,774	-	3,774	-	3,774
15 Other Income & Expense Net	\$ (242)	\$ (5,075)	\$ (5,318)	\$ 204	\$ (5,113)	\$ 219	\$ (4,894)	\$ 143	\$ (4,751)
Original as filed March 30, 1998	(84)	(5,224)	(5,308)	46	(5,262)	49	(5,213)	53	(5,159)
Increase (Decrease) in Expense	(158)	149	(10)	158	149	170	319	89	408
16 Income (Loss) before Income Taxes	5,338	(5,018)	320	6,740	7,060	1,260	8,320	2,168	10,488
Original as filed March 30, 1998	5,563	(5,019)	544	6,579	7,123	1,045	8,168	2,078	10,246
Increase (Decrease) in Income	(225)	1	(224)	161	(63)	215	152	90	242
18 Income Taxes	1,815	(1,706)	109	2,292	2,401	428	2,829	737	3,566
Original as filed March 30, 1998	1,891	(1,707)	185	2,237	2,422	355	2,777	707	3,484
Increase (Decrease) in Income Tax	(76)	1	(76)	55	(21)	73	52	30	82
19 Net Income (Loss)	\$ 3,523	\$ (3,312)	\$ 211	\$ 4,449	\$ 4,660	\$ 832	\$ 5,491	\$ 1,431	\$ 6,922
Original as filed March 30, 1998	3,671	(3,313)	358	4,342	4,701	690	5,390	1,372	6,762
Increase (Decrease) in Expense	(148)	1	(147)	106	(41)	142	101	59	160

Tex Mex / KCS Plan
Sources and Applications of Funds
Errata

Exhibit No. JJP-8
Revised

The Texas Mexican Railway Company

Description	Base Period Adjusted (000s) (a)	Year 1 After Change in Operations (000s) (b)	Year 2 After Change in Operations (000s) (c)	Year 3 After Change in Operations (000s) (d)	Normal Year After Change in Operations (000s) (e)
From Operating Activities:					
1 Net Income (Loss)	3,523	211	4,660	5,491	6,922
2 Depreciation	1,799	2,787	3,774	3,774	3,774
3 Deferred Income Taxes	620	-	-	-	-
4 Equity Earnings - Partnership Investment	(477)	-	-	-	-
5 Dividend Distribution - Partnership Investment	556	-	-	-	-
6 Change in current assets - (Increase) or Decrease	(1,067)	(100)	(499)	(66)	-
7 Change in current liabilities - Increase or (Decrease)	651	(1,277)	4,224	683	551
8 Change in amounts due to/from parent and other related parties -Increase or (Decrease)	498	-	-	-	-
9 Net Cash Provided by Operating Activities	<u>\$ 6,103</u>	<u>\$ 1,621</u>	<u>\$ 12,160</u>	<u>\$ 9,882</u>	<u>\$ 11,248</u>
From Investing Activities:					
10 Purchases of Equipment & Improvements, net of gain or loss on disposition of fixed assets	\$ (15,654)	\$ (68,772)	\$ -	\$ -	\$ -
11 Proceeds from sale of investments	1,224	-	-	-	-
12 Investment in Long Term Assets	(1,099)	-	-	-	-
13 Net Cash Used by Investing Activities	<u>\$ (15,529)</u>	<u>\$ (68,772)</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
From Financing Activities:					
14 Long Term Debt Borrowings	11,524	64,799	(757)	(818)	(791)
15 Net Cash Provided by Financing Activities	<u>\$ 11,524</u>	<u>\$ 64,799</u>	<u>\$ (757)</u>	<u>\$ (818)</u>	<u>\$ (791)</u>
16 Increase (Decrease) in Cash & Cash Equivalents	\$ 2,099	\$ (2,353)	\$ 11,402	\$ 9,064	\$ 10,457
17 Cash & Cash Equivalents at Beginning of Year	403	2,502	149	11,551	20,615
18 Cash & Cash Equivalents at End of Year	<u>\$ 2,502</u>	<u>\$ 149</u>	<u>\$ 11,551</u>	<u>\$ 20,615</u>	<u>\$ 31,073</u>

Tex Mex / KCS Plan
Sources and Applications of Funds
Reconcile Original to Errata

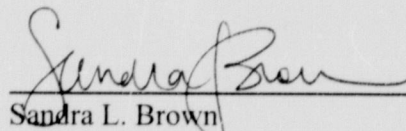
Exhibit No. JJP-8
Reconcile Errata

The Texas Mexican Railway Company

Description	Base Period Adjusted (000s)	Year 1 After Change in Operations (000s)	Year 2 After Change in Operations (000s)	Year 3 After Change in Operations (000s)	Normal Year After Change in Operations (000s)
	(a)	(b)	(c)	(d)	(e)
From Operating Activities:					
1 Net Income (Loss)	3,523	211	4,660	5,491	6,922
Original as filed March 30, 1998	3,671	359	4,701	5,391	6,762
Increase (Decrease) in Sources of Funds	(148)	(148)	(41)	100	160
2 Depreciation	1,799	2,787	3,774	3,774	3,774
Original as filed March 30, 1998	1,735	2,669	3,603	3,603	3,603
Increase (Decrease) in Sources of Funds	64	118	171	171	171
6 Change in current assets - (Increase) or Decrease	(1,067)	(100)	(499)	(66)	-
Original as filed March 30, 1998	(1,071)	(102)	(510)	(68)	-
Increase (Decrease) in Sources of Funds	4	2	11	2	-
7 Change in current liabilities - Increase or (Decrease)	651	(1,277)	4,224	683	551
Original as filed March 30, 1998	761	(1,189)	4,320	622	521
Increase (Decrease) in Sources of Funds	(110)	(88)	(96)	61	30
10 Purchases of Equipment & Improvements, net of gain or loss on disposition of fixed assets	\$ (15,654)	\$ (68,772)	\$ -	\$ -	\$ -
Original as filed March 30, 1998	(11,711)	(65,500)	-	-	-
(Increase) Decrease in Applications of Funds	(3,943)	(3,272)	-	-	-
14 Long Term Debt Borrowings	11,524	64,799	(757)	(818)	(791)
Original as filed March 30, 1998	9,000	64,947	(598)	(648)	(701)
Increase (Decrease) in Sources of Funds	2,524	(148)	(159)	(170)	(90)
16 Increase (Decrease) in Cash & Cash Equivalents	\$ 2,099	\$ (2,353)	\$ 11,402	\$ 9,064	\$ 10,457
Original as filed March 30, 1998	3,707	1,184	11,515	8,900	10,185
Increase (Decrease) in Cash	(1,608)	(3,537)	(113)	164	272
17 Cash & Cash Equivalents at Beginning of Year	403	2,502	149	11,551	20,615
18 Cash & Cash Equivalents at End of Year	\$ 2,502	\$ 149	\$ 11,551	\$ 20,615	\$ 31,073
17 Original as filed March 30, 1998	403	4,110	5,294	16,809	25,709
18 Original as filed March 30, 1998	\$ 4,110	\$ 5,294	\$ 16,809	\$ 25,709	\$ 35,894
Increase (Decrease) in Cash at Year End	\$ (1,608)	\$ (5,145)	\$ (5,258)	\$ (5,094)	\$ (4,821)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Errata To Joint Petition Of The Texas Mexican Railway Company And The Kansas City Southern Railway Company For Imposition Of Additional Remedial Conditions Pursuant To The Board's Retained Oversight Jurisdiction" was served this 27th day of April, 1998, by hand delivery to counsel for UP and BNSF and by first class mail to all parties of record in this proceeding.

A handwritten signature in cursive script, appearing to read "Sandra L. Brown", is written over a horizontal line.

Sandra L. Brown
Attorney for the Kansas City Southern
Railway Company

STB

FD-32760 (SUB26)

4-22-98

I

ID-187224

187224

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE 202-274-2950
FACSIMILE 202-274-2994

William A. Mullins

April 22, 1998

HAND DELIVERED

Mr. Vernon A. Williams
Case Control Unit
ATTN: STB Finance Docket No. 32760 (Sub-No. 21)
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20006

ENTERED
Office of the Secretary

APR 23 1998

Part of
Public Record

26
Re: Finance Docket No. 32760 (Sub-No. 21) (New oversight proceeding), *Union Pacific Corporation, et al. -- Control & Merger -- Southern Pacific Rail Corporation, et al. Oversight Proceeding*

Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding are the original and twenty-six copies of TM/KCS-9, Joint Petition Of The Texas Mexican Railway Company And The Kansas City Southern Railway Company For Protective Order, Discovery Guidelines And Appointment Of Administrative Law Judge. Please date and time stamp one of the copies for return to our offices. Included with this filing is a 3.5 inch Word Perfect, Version 5.1 diskette with the text of the pleading.

Sincerely yours,



William A. Mullins
Attorney for The Kansas City Southern
Railway Company

cc: Robert K. Dreiling, Esquire
Richard A. Allen, Esquire
Arvid E. Roach II, Esquire

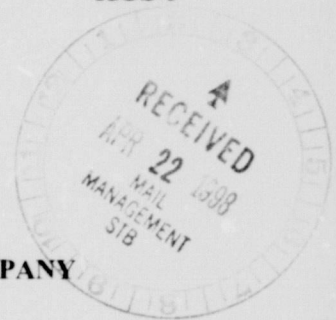
APR 23 1998

Part of
Public Record

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (Sub-No. 21) ²⁶



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

NEW OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS
CITY SOUTHERN RAILWAY COMPANY FOR PROTECTIVE ORDER, DISCOVERY
GUIDELINES AND APPOINTMENT OF ADMINISTRATIVE LAW JUDGE

Richard P. Bruening
Robert K. Dreiling
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 983-1392
Fax: (816) 983-1227

Richard A. Allen
John V. Edwards
ZUCKERT, SCOUTT & RASENBERGER, LLP
Suite 600
888 17th Street, N.W.
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Tel: (202) 298-8660
Fax: (202) 342-0683

Attorneys for The Texas Mexican Railway
Company

William A. Mullins
David C. Reeves
Sandra L. Brown
TROUTMAN SANDERS LLP
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005-3314
Tel: (202) 274-2950
Fax: (202) 274-2994

Attorneys for The Kansas City Southern
Railway Company

April 22, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

26
FINANCE DOCKET NO. 32760 (Sub-No. 21)



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

--CONTROL AND MERGER--

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

NEW OVERSIGHT PROCEEDING

JOINT PETITION OF THE TEXAS MEXICAN RAILWAY COMPANY AND THE KANSAS
CITY SOUTHERN RAILWAY COMPANY TO INSTITUTE A PROTECTIVE ORDER,
DISCOVERY GUIDELINES AND APPOINTMENT OF ADMINISTRATIVE LAW JUDGE

The Texas Mexican Railway Company ("Tex Mex") and The Kansas City Southern Railway Company ("KCS") (jointly, "Tex Mex/KCS") hereby request that the Surface Transportation Board ("Board") adopt the protective order outlined in Appendix A and the discovery guidelines outlined in Appendix B, both attached hereto, to govern disposition of this proceeding. In addition, Tex Mex/KCS request that the Board assign an Administrative Law Judge to handle all discovery matters and initial resolution of all discovery disputes which the parties cannot mutually agree.

On March 31, 1998, the Board instituted a new proceeding under its oversight authority retained in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and*

The Denver and Rio Grande Western Railroad Company ("UP/SP"), Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996). *UP/SP*, Finance Docket No. 32760 (Sub-No. 21) (Oversight), Decision No. 12 (STB served March 31, 1998). This new proceeding was instituted to examine the requests for additional remedial conditions to the *UP/SP* merger. All interested parties must file their requests, along with all supporting evidence, by June 8, 1998. There will then be later dates for opposition comments, evidence, and argument and rebuttal. *Id.* at slip op 1-2. The Board further stated that it "retained jurisdiction to monitor the competitive consequences of this merger; to re-examine whether our imposed conditions have effectively addressed the consequences they were intended to remedy; and to impose additional remedial conditions if those previously afforded prove insufficient, including, if necessary, divestiture of certain of the merged carriers' property." *Id.* at slip op 7-8.

Importantly, any plans or requests under this retained jurisdiction, submitted to the Board, must include **all supporting evidence**. Therefore, discovery similar to that undertaken in the *UP/SP* merger proceeding must be undertaken in this new oversight proceeding in order to permit parties to "monitor", "re-examine" and then request appropriate "additional remedial conditions" if necessary. *Id.* Since discovery will be undertaken,¹ a protective order should be put in place to protect confidential and/or proprietary information. In addition, discovery guidelines and an Administrative Law Judge will facilitate quick and smooth discovery.

Specifically, a protective order is needed in this new oversight proceeding in order to facilitate any necessary discovery and protect the confidentiality of materials reflecting the terms of contracts, shipper-specific traffic, data and other confidential and/or proprietary information in

¹ UP has acknowledged that discovery is appropriate in this new proceeding and has indicated its intent to respond to discovery in its April 15, 1998 letter to the Board withdrawing its Motion for Protective Order from discovery.

the event that parties seek or produce such materials. This protective order includes a provision governing the production of certain highly confidential competitive information and restricts such information to use by outside counsel or outside consultants for the parties.

The protective order and provisions contained in Appendix A are substantial similar to those contained and ordered in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company* ("UP/SP"), Finance Docket No. 32760, Decision No. 2 (ICC served Sept. 1, 1995). Similar protective order conditions were also imposed in *CSX Corporation and CSA Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation*, Finance Docket No. 33388, Decision No. 1 (STB served April 16, 1997).

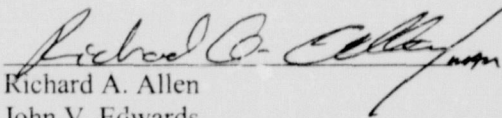
In addition, Tex Mex/KCS propose that discovery guidelines be adopted in this proceeding in order to facilitate any necessary discovery. The proposed discovery guidelines, attached as Appendix B, are substantially similar to the guidelines used in the initial UP/SP proceeding and therefore, should be acceptable to all parties. See UP/SP, Finance Docket No. 32760 (ICC served Dec. 7, 1995). Any discovery issues that cannot be mutually agreed upon between the parties should be resolved by an Administrative Law Judge (ALJ) appointed by the Board to preside over discovery issues and Tex Mex/KCS specifically request that the Board assign an ALJ to this new oversight proceeding.

(..continued)

WHEREFORE, Tex Mex/KCS respectfully request that the Board adopt the proposed protective order set out in Appendix A and discovery guidelines in Appendix B attached hereto, and assign an Administrative Law Judge to govern and assist in the disposition of this proceeding.


Respectfully Submitted,

Richard P. Bruening
Robert K. Dreiling
THE KANSAS CITY SOUTHERN RAILWAY
COMPANY
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 983-1392
Fax: (816) 983-1227



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Washington, D.C. 20006-3939
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Attorneys for The Texas Mexican Railway
Company



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Washington, D.C. 20005-3314
Tel: (202) 274-2950
Fax: (202) 274-2994

Attorneys for The Kansas City Southern
Railway Company

APPENDIX A

PROTECTIVE ORDER

1. For purposes of this Protective Order, "confidential information and data" means traffic data (including but not limited to waybills, abstracts, study movement sheets and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets and cost workpapers), the identification of shippers and receivers in conjunction with shipper-specification traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information.

2. Personnel of Union Pacific Corporation ("UPC") and Union Pacific Railroad Company (UPRR) and their affiliates, (collectively, "Union Pacific"), Kansas City Southern Railway Company, and their affiliates (collectively, "KCS"), and The Texas Mexican Railway Company ("Tex Mex"), or any other party to this proceeding, including outside consultants and attorneys, may exchange confidential information and data for the purpose of this and any related proceedings, but not for any other business, commercial or other competitive purpose.

3. If the Requests for Additional Conditions are ultimately denied or approved all confidential information and data exchanged by any party with another party or by their representatives, in preparing in the course of this and any related proceedings will be returned to the originating party or destroyed. However, outside counsel for a party are permitted to retain file copies of all pleadings filed with the Board.

4. To the extent that materials reflecting the terms of contracts, shipper-specific traffic data, or traffic data or other confidential or proprietary information are produced pursuant to a request for discovery by any party to this or any related proceedings, or are submitted in pleadings, such materials must be treated as confidential. Such materials, any copies, and any data derived therefrom:

(a) Shall be designated and stamped as "CONFIDENTIAL" and shall be used solely for the purpose of this and any related proceedings, and any judicial review proceeding arising therefrom, and not for any other business, commercial or competitive purpose.

(b) Shall not be disclosed in any way or to any person without the written consent of the party producing the materials or an order of the Board or the Administrative Law Judge presiding in this and any related proceedings, except: (i) to employees, counsel or agents of the party requesting such materials, solely for use in connection with this and any related proceedings, and any judicial review proceeding arising therefrom, provided that such employee, counsel or agent has been given and has read a copy of this Protective Order and agrees to be bound by its terms prior to receiving access to such materials; and (ii) to any

agrees to be bound by its terms prior to receiving access to such materials; and (ii) to any participant in this or any related proceedings who is not an employee, counsel or agent of the requesting party, only in the course of public hearings in such proceedings.

(c) If produced through discovery, must be destroyed, and notice of such destruction served on the Board and the presiding Administrative Law Judge and the party producing the materials, at such time as the party receiving the materials withdraws from this or any related proceedings, or at the complete of this and any related proceedings and any judicial review proceeding arising therefrom, whichever comes first. However, outside counsel for a party are permitted to retain file copies of all pleadings filed with the Board.

(d) If contained in any pleading filed with the Board, shall, in order to be kept confidential, be filed only in pleadings submitted in a package clearly marked on the outside "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14.

5. Any party producing material in discovery to another party to this or any related proceedings, or submitting material in pleadings, may in good faith designate and stamp particular material, such as material containing shipper-specific rate or cost data or other competitively sensitive information, as "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY." If any party wishes to challenge such designation, the party may bring such matter to the attention of the Administrative Law Judge presiding in this and any related proceedings. Material that is so designated shall not be disclosed except to outside counsel or outside consultants of the party requesting such materials, solely for use in connection with this and any related proceedings, and any judicial review proceeding arising therefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order and agree to be bound by its terms prior to receiving access to such materials. Material designated as "HIGHLY CONFIDENTIAL" and produced in discovery under this provision shall be subject to all of the other provisions of this Protective Order, including without limitation paragraph 4. However, this paragraph shall not apply to exchanges of information pursuant to paragraph 1 of this Protective Order.

6. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material at hearings in this or any related proceedings, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material to the Administrative Law Judge, the Board or the reviewing court, as appropriate, under seal, and shall accompany such submission with a written request to the Administrative Law Judge, the Commission or the court to (a) restrict attendance at the hearings during discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material, and (b) restrict access to the portion of the record or briefs reflecting discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with this Protective Order.

7. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in the course of any deposition in this or any related proceedings, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent and all other counsel attending the deposition, and all portions of the deposition at which any such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" materials is used shall be restricted to persons who may review that material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material shall be kept under seal and treated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.

8. To the extent that materials reflecting the terms of contracts, shipper-specific traffic data, other traffic data or other proprietary information are produced by a party in this or any related proceedings and held and used by the receiving person in compliance with paragraphs 1, 2 or 4 above, such production, disclosure and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11323 or 11904.

9. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING
(CONFIDENTIAL MATERIAL)

I, _____, have read the Protective Order served on _____, 1998 governing the production of confidential documents in STB Finance Docket No. 32760 (Sub-No. 21) (New Oversight Proceeding), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in Finance Docket No. 3270 (Sub-No. 21) (New Oversight Proceeding) or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of the Order and has not executed an Undertaking in the form thereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Date: _____

UNDERTAKING
(HIGHLY CONFIDENTIAL MATERIAL)

As outside (counsel) (consultant) for _____, for which I am acting in this proceeding, I have read the Protective Order served on _____, 1998 governing the production of confidential documents in STB Finance Docket No. 32760 (Sub-No. 21) (New Oversight Proceeding), understand the same, and agree to be bound by its terms. I also understand and agree that, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY," I will limit my use of those documents and the information they contain to this proceeding and any judicial review thereof, that I will take all necessary steps to assure that said documents and information will be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said documents or information by personnel of my client, its subsidiaries, affiliates, or owners, that at the conclusion of this proceeding, I will promptly return or destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me to counsel for the originating party, provided, however, that outside counsel may retain file copies of pleadings filed with the Board. I further understand that I must destroy all other notes or other documents containing such highly confidential information in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL/OUTSIDE

CONSULTANTS ONLY" by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE (COUNSEL) (CONSULTANT)

Dated: _____

APPENDIX B

DISCOVERY GUIDELINES

1. In consideration of the expedited procedural schedule that has been adopted by the Board for this proceeding, all discovery requests must be tailored to be consistent with the procedural schedule in this proceeding. The parties shall avoid any duplicative discovery requests. All objections to discovery requests shall be made within five business days from the date of service of the discovery request by means of written objection containing a general statement of the basis for the objection. Unless objected to, all discovery requests shall be answered within fifteen days after service of the requests. *See* 49 CFR. § § 1114.26(a), 1114.27(a). The responding party shall endeavor, to the greatest extent possible, to produce documents with its written discovery responses within the fifteen-day response period. If the responding party is not able to produce such documents within its written discovery responses, it shall contract the propounding party at the earliest possible time within the fifteen-day response period and indicate its best judgment as to the date the documents will be provided. Upon request by the propounding party, the responding party shall produce documents on an "as available" basis rather than in lump-sum production. In framing document requests, parties should keep in mind the fact that the Board has required each party to place all documents relevant to an evidentiary filing in a depository open to all parties on the date of the evidentiary filing. All discovery requests, responses and objections shall be served in the most expeditious manner possible, by hand delivery in the Washington, D.C. area and by overnight mail outside the Washington, D.C. area, or by facsimile. Written discovery requests and responses shall be labeled and numbered in a manner consistent with the labeling/numbering requirement for filings (e.g. UP/SP-1).

2. Discovery disputes shall be resolved among the parties whenever possible; otherwise, counsel for the party seeking discovery shall contact the assigned Administrative Law Judge's office, by 4:00 p.m. each Monday to request a prehearing discovery conference to be held at 9:00 am on Wednesday of the same week at a hearing room at 888 First Street, N.W., Washington, D.C. Written notice specifically identifying the discovery request in dispute shall be served by the party requesting the conference by facsimile or hand delivery on all parties on the restricted service list no later than Monday at 6:00 p.m.; in addition, good faith efforts shall be made to give telephone notice prior to 4:00 pm on Monday to the party objecting to the discovery request. If there is no request for a conference, there will be no conference. At any discovery conference, those parties seeing and resisting discovery are expected to be represented by counsel authorized to speak for the party on the matter at issue. If discovery is ordered, the ALJ shall require its production as soon as production can practicable be accomplished.

3. Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (i.e., workpapers supporting the filing and documents relied upon by the witnesses), other than documents that are privileged or otherwise protected from

discovery, in a depository open to all parties. Parties maintaining depositories shall provide suitable indices which identify the general classes of documents in their depositories and which identify with specificity documents relating to each witness statement contained in their evidentiary filings. Such indices shall be made available to any party utilizing the depository. When a party responds to a discovery request by referring to documents in a document depository, the responding party must provide a description that is reasonable in the circumstances of the document's location within the depository.

4. All depositories shall be maintained in the Washington, D.C. area, unless a party requests and receives written permission from the ALJ, after notice to all other parties and for good cause shown, to maintain its depository outside of the Washington, D.C. area. All depositories shall be open to any other party during normal business hours on weekdays and, on notice of a request to visit, Saturdays, and the party operating the depository shall provide staffing assistance reasonable in the circumstances. The party maintaining the depository shall establish reasonable procedures for the operation of the document depository, which may include requirements that notice be provided in advance of a planned visit and must provide that persons reviewing documents marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" first execute an appropriate undertaking pursuant to the protective order entered in Finance Docket No. 32760 (Sub-No. 21) (New Oversight Proceeding). Parties maintaining depositories shall provide services for making copies of all documents contained therein, may charge a reasonable amount for reimbursement of duplication expenses, and shall use their best efforts to provide copies of depository documents within two (2) business days of receiving a request from a party for such documents.

5. No written discovery requests shall be served after fifteen days before the close of evidence in this proceeding, a date which will be determined after a determination on whether briefing, oral argument, and voting conference are necessary.

6. A person who has submitted written testimony in this proceeding shall be made available for deposition upon request. Depositions of other persons or of parties on a specified subject matter may be taken on reasonable written notice. Any party objecting to such deposition shall follow the procedures set forth in Paragraph 2 above. Absent agreement among all parties or prior approval from the ALJ, all depositions of persons submitting verified statements shall be conducted in the Washington, D.C. area. Absent agreement among all interested parties or prior approval from the ALJ for good cause shown, no witness shall be deposed more than one time as to each written statement (initial or rebuttal) submitted by that witness in this proceeding, and no other person shall be deposed more than one time, and parties shall use their best efforts to complete depositions as promptly as practicable, and if possible within two days. If a deposition is noticed, the party seeking the deposition testimony shall to the extent reasonably practicable advise the party being deposed at least twenty-four hours prior to the scheduled deposition of the documents the questions will concern.

7. Any discovery response containing confidential information or data as defined in the protective order issued in Finance Docket No. 32760 (Sub-No. 21) (New Oversight Proceeding) shall be designated and stamped "CONFIDENTIAL" or "HIGHLY

CONFIDENTIAL – OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY” and shall be handled pursuant to the procedures contained in the applicable protective order. Discovery responses containing information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be served only in redacted form on parties who have not executed the protective order.

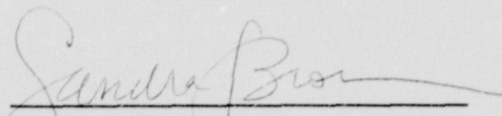
8. Discovery requests are to be served on all parties on the restricted service list, and discovery responses need only be served on the party propounded the discovery and any party requesting copies of such responses in writing, except that documents produced by a party in response to discovery request shall be placed in the depository in lieu of being served unless the party propounding the discovery or any other party requests copies, which shall be supplied at a reasonable cost. All discovery responses shall immediately be placed in the depository of the responding party, and that party shall simultaneously provide written notice to all parties on the restricted service list that it has responded to a particular discovery request of another party (which shall be identified in the notice) and that it has placed its responses in its depository.

9. Within 10 day after service of the decision adopting these guidelines, any party wishing to participate in discovery or to receive service of all discovery requests in the proceeding shall notify William A. Mullins, counsel for KCS, at 1300 I Street, N.W., Washington, D.C. 20005-3314, of its wish to be placed on a restricted service list. Within 5 days thereafter, counsel for KCS shall compile and serve the restricted service list on all parties.

10. The Board’s discovery rules set forth at 49 CFR pt. 1114 apply to this proceeding except as modified by Board decision or by these discovery guidelines. Any of the discovery guidelines contained herein may be varied by agreement between any two or more parties (except if such a variance would adversely affect any third party), and the ALJ may vary any discovery guideline contained herein for good cause.

CERTIFICATE OF SERVICE

I have this 22nd day of April, 1998, served a copy of the foregoing Joint Petition Of The Texas Mexican Railway Company And The Kansas City Southern Railway Company For Protective Order, Discovery Guidelines And Appointment Of Administrative Law Judge upon counsel for Union Pacific and upon all parties of record in the general oversight proceeding by hand-delivery or United States mail in a properly addressed envelope with adequate postage thereon.

A handwritten signature in cursive script, appearing to read "Sandra Brown", written over a horizontal line.

Sandra L. Brown
Attorney for the Kansas City Southern
Railway Company

STB

FD-32760 (SUB26)

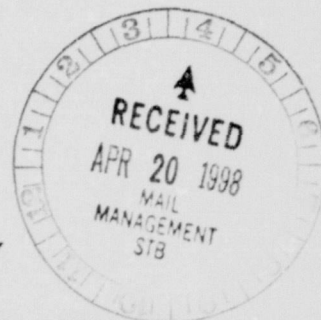
4-20-98

I

ID-187201

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



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

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

PETITION FOR RECONSIDERATION

ENTERED
Office of the Secretary

APR 21 1998

Part of
Public Record

FILED

APR 20 1998

SURFACE
TRANSPORTATION BOARD

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington, DC 20036

FEE RECEIVED

APR 20 1998

SURFACE
TRANSPORTATION BOARD

Attorney for United Transportation
Union-General Committee of Adjust-
ment (GO-386, GO-401, ALS) and
Illinois Legislative Board.

Due Date: April 20, 1998

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. ²⁶21)

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

PETITION FOR RECONSIDERATION

United Transportation Union-General Committee of Adjustment
(GO-386), ^{1/} United Transportation Union-General Committee of
Adjustment (GO-401), ^{2/} United Transportation Union-General Com-
mittee of Adjustment (ALS), ^{3/} and United Transportation Union-
Illinois Legislative Board (UTU-IL), ^{4/} petition the Surface
Transportation Board (STB or Board) for reconsideration of the
Board's Decision No. 12 (Decision), dated March 30 and served
March 31, 1998, 63 Fed. Reg. 16628 (Apr. 3, 1998), insofar as the
Board requires all parties to submit their textual materials on

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98660. (Burlington Northern and Santa Fe Railway Company).

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(SPCSL Corp., Gateway Western Railway Company, Illinois Central Ra-
ilroad Company).

^{3/} Charles D. Bolam, 1400 20th Street, Granite City, IL 62040.
(Alton and Southern Railway Company).

^{4/} Joseph C. Szabo, 8 So. Michigan Ave.-#2006, Chicago, IL 60603.

3.5 inch IBM-compatible diskettes or compact discs in, or convertible by and into, WordPerfect 7.0.

The Board's March 31, 1998 decision supersedes the otherwise applicable diskette requirements which apply only to textual materials in excess of 19 pages. (Decision, 3-4; 63 Fed. Reg. 16628, 16629). 49 CFR 1104.3(a) (1997 ed.). The decision states (Decision, 3-4):

The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See: 49 CFR 1104.3(a), as amended in Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No., 527, 61 FR 52710, 711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

The Board in Decision No. 12 serves to preclude meaningful participation in the proceeding by railroad employees and, we believe, by the public as well. The STB should reconsider its imposition of a mandatory diskette rule for all filings of whatever nature in this proceeding, and restore application of the normal diskette rule.

ARGUMENT

The STB's action in requiring that all textual material be filed on diskettes constitutes material error. 49 CFR 1115.3(b).

1. This is the second proceeding since issuance of the reviewing court's mandate on March 12, 1998 concerning the STB's ordinary diskette rule,^{5/} where the Board has vacated the very

^{5/} United Transp. Union v. Surface Transp. Bd., 132 F.3d 71 (D.C. Cir. 1998).

diskette rule passed upon by the court, in favor of a different rule. The first instance was Finance Docket No. 33356, Canadian National Railway Company, Grand Trunk Western Corporation, and Grand Trunk Western Railroad Incorporated-Control-Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (Decision No. 2) (served Mar. 13, 1998).

The ordinary diskette rule requires submission of diskettes with the filing of textual material only if the text exceeds 19 pages. Here, the STB would require diskettes for all filings, including those of a single page. The 20-page rule was recently established over the objection of UTU-IL as being too severe. The 20-page rule, 49 CFR 1104.3(a) (1997 ed.), provides:

The original and 10 copies of every pleading document or paper...must be furnished for the use of the Board..... In addition to the paper copies required to be filed with the Board, 3 copies of:

- (1) Textual submissions of 20 or more pages; and
- (2) All electronic spreadsheets should be submitted on 3.5 inch, IBM compatible formatted diskettes or QIC-80 tapes. Textual materials must be in WordPerfect 5.1 format....One copy of each such computer diskette...should, if possible, be provided to any other party requesting a copy.

The 20-page diskette rule was first imposed as a general requirement in Ex Parte No. 527, Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, at 2-3, 17 (served Oct. 1, 1996); Ibid., at 2-4, App. (served Nov. 15, 1996). 61 Fed. Reg. 52710, 52711 (Oct. 8, 1996); 61 Fed. Reg. 58490, 58491 (Nov. 15, 1996). The 20-page

diskette rule was upheld on judicial review only last month,
supra 2, n.5.

The court's approval of the 20-page diskette rule was based upon its ruling that it is "eminently reasonable" to require that "lengthy pleadings" be on disks to permit STB staff to use a computer to search for key information, supra 2, n.5, 132 F.3d at 74. The court opined the 20-page rule is not likely to impose a significant burden on any party, first, because the paper version of every document (which is the official version) would be readily available, and the diskette would provide no more information--and perhaps less--than the paper version. 132 F.3d at 75:

Because the STB permits public access to the paper documents, which include everything stored on the disks, its failure to provide public access to the disks themselves is not arbitrary and capricious.

132 F.3d at 74:

Therefore, an interested person who does not have a computer will still have access to the official record and to all information therein, as at present.

Second, the court dealt directly with the UTU-IL challenge to the hardship of requiring railroad employees to submit any 20-page filings on diskettes. The panel relied upon the waiver provisions to the STB's general rules, 49 CFR 1110.9, to ameliorate any hardship to carrier employees. 132 F.3d at 75:

Second, if submitting a disk does impose a hardship upon a party, then it may obtain waiver of the rule. See: 49 C.F.R. § 1110.9 (general waiver rule.)

.....
Second, the UTU complains that the waiver rule denies due process to the union and to rail employees who do not have the necessary computer equipment or expertise to submit a disk to the

Board in proceedings to which they are parties. The UTU contends that the due date for a pleading would generally pass before the STB could rule upon a request that it waive the disk rule. As noted above, however, the STB stated in the preamble to the modified final rule that if a party submits its waiver request along with the paper version of its pleading, then the STB will rule upon the request even after the due date. We do not doubt, therefore, that the availability of the waiver provision adequately protects a party from whom compliance with the rule would be burdensome.

The two premises for the court's refusal to set aside the mandatory 20-page diskette rule are inapplicable to the present situation involving this expanded Union Pacific-Southern Pacific Oversight proceeding. First, the diskettes to be filed by the carriers and by other parties will contain more, rather than less, information that on the paper copies available to the public in the public file. Second, and more important for railroad employees, the absolute diskette rule in this proceeding will not merely be required for lengthy filings (in excess of 19 pages), but will be imposed upon railroad employees for all of their filings, of any length, for even one page--without exception.

2. These United Transportation Union units seeking reconsideration are parties to the lead docket, Finance Docket No. 32760, and participated in the proceedings leading up to the Board's approval in the lead proceeding, in Decision No. 44, on August 12, 1996. There was no special diskette rule imposed in that proceeding. These same parties on May 27, 1997, filed their

notice of intent to participate in the instant Sub-No. 21 proceeding, and are parties of record.^{6/} Again, no special diskette rule was imposed. These same units intend to remain parties by filing notice of intent on or before July 22, 1998, as required by the Board's March 31, 1998 decision. (Decision, 2).

3. Imposition of a compulsory diskette rule for all textual material, even that consisting of a single page, as mandated by Decision No. 12, would cause a very real hardship for railroad employees, and for these units, all of whom do not have diskette capability and, moreover, would be unable to serve individual diskettes upon the many parties expected to become involved in this proceeding. In short, the result would be non-participation and denial of due process.^{7/} The diskette rule in this proceeding makes a mockery of the court's understanding that persons would be required to furnish diskettes only for "lengthy" pleadings.

4. The waiver provision, 49 CFR 1110.9, advanced by the STB in defense of the general 20-page diskette rule and relied upon by the reviewing court, is inapplicable here. The waiver provision relates to the STB's general rules, not to individual decisions, and is set forth in 49 CFR Part 1110, "Procedures Governing Informal Rulemaking Proceedings." Moreover, it is the Board which has "waived" or removed the "lengthy" 20-page compo-

^{6/} See: Finance Docket No. 32760 (Sub-No. 21), Decision No. 2, served June 19, 1997.

^{7/} Two of these units, GO-401 and ALS, represent persons employed by Union Pacific-Southern Pacific or their affiliates, and have a special interest in remaining on the service list and with an ability to participate.

ment of the diskette rule, in favor of a requirement that all textual material be furnished on a diskette, regardless of length. Nevertheless, to the extent one may seek waiver of the March 31, 1998 Decision No. 12, these participants ask that the STB waive compliance with the diskette provisions of the March 31, 1998 decision, and that the ordinary diskette rule be reinstated. 49 CFR 1104.3(a).

5. The purported justification for the absolute diskette rule in this proceeding is based upon asserted necessity for efficient review by Board staff, and will be for the exclusive use of Board employees. (Decision, 3). Such purported justification is bogus. STB staff has worked for many years without any mandatory diskette rule, much less a rule to embrace filings of a single page. This is simply an effort to curry favor with carriers, and to inhibit employee participation.^{8/} It would actually prevent any participation by some interested persons and parties, and deny due process.

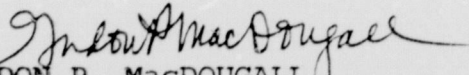
6. It is becoming apparent that the Board all along may have intended an absolute diskette rule, such that the 20-page rule may have been merely an interim scheme to promote such a result.

7. The Board should reconsider its March 31, 1998 decision (Decision No. 12), so as to vacate its special diskette

^{8/} The mandatory diskette rule would, we believe, also harm other public parties. For example, in recent hearings, a majority of the public parties did not submit diskettes. Ex Parte No. 575, Review of Rail Access and Competition Issues. (April 2-3, 1998).

requirement, and thus reinstate the newly-established 20-page rule.^{2/}

Respectfully submitted,


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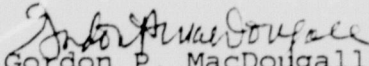
Attorney for United Transportation
Union-General Committee of Adjust-
ment (GO-386, GO-401, ALS) and
Illinois Legislative Board.

April 20, 1998

Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall

^{2/} Decision No. 12, unlike Decision No. 2 in Finance Docket No. 33256, supra 3, does not have an ordering paragraph; we assume this to be ministerial error, and unintended.