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UP/SP-278

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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Public Record



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

-- CONTROL AND MERGER --

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

APPLICANTS' OPPOSITION TO REQUEST FOR STAY OF
ENVIRONMENTAL CONDITION IN DECISION NO. 44 PENDING APPEAL

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September 11, 1996

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
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APPLICANTS' OPPOSITION TO REQUEST FOR STAY OF
ENVIRONMENTAL CONDITION IN DECISION NO. 44 PENDING APPEAL

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and
DRGW^{1/} hereby oppose the petition for partial stay pending
review filed by the City of Reno ("Reno").

On September 9, 1996, eight days after the deadline for
filing requests to stay Decision No. 44, Reno filed a petition
("Petition") seeking stay of implementation of environmental
condition 22c, which calls for an eighteen-month mitigation study
in the Reno area. Reno requested expedited consideration. Reno
did not seek leave to file this untimely petition nor does Reno
explain why its assertedly urgent request could not have been
filed at any time during the last month. The Petition should be
dismissed because it was filed inexcusably late. 49 C.F.R.
§ 1115.5(a). Although the Board should not consider the merits
of the Petition, if it did so it would find that Reno fails to
provide a colorable justification for a stay

^{1/} Acronyms used herein have the same meaning as in Appendix B
to Decision No. 44.

BACKGROUND

The Board served Decision No. 44 on August 12, 1996, fixing today, September 11, as its effective date. Decision No. 44, p. 238. At approximately 11:00 a.m. Eastern Daylight Time today, Applicants consummated the merger as authorized by the Board, creating the combined UP/SP system.

Decision No. 4. imposes 108 environmental conditions, in addition to other conditions, on the UP/SP merger. Id., pp. 276-89 (Appendix G). These include a number of systemwide and corridor mitigation measures that will address the impact of the merger on Reno and its surrounding area. E.g., environmental conditions 3-5, 7-18. The Board also concluded that additional mitigation measures may be required to address the impacts of increased rail traffic in the Reno area. In order to ensure that the mitigation measures it selects are sensitive to local needs and requirements, the Board is to conduct "more focused mitigation studies" to identify appropriate ways of accommodating increased rail traffic through Reno. Decision No. 44, pp. 220-21, condition 22c. The Board also protected Reno from any significant merger effects by imposing a freeze on the number of UP/SP and BNSF through freight trains that can operate through Reno during the study period. Condition 22a.

Reno filed what both the Board and UP/SP contend is a premature and jurisdictionally improper complaint challenging the Board's approval of the merger in the United States District Court for the District of Nevada. All parties now agree that

Reno's complaint does not belong in the District Court, and Reno's complaint will either be dismissed or transferred to an appellate court. Reno also filed a timely petition for review of Decision No. 44 in the United States Court of Appeals for the Ninth Circuit on August 21, 1990. The Judicial Panel on Multi-District Litigation then consolidated Reno's petition in the D.C. Circuit with another filed by the City of Wichita and Sedgwick County. On September 9, Reno filed the present Petition, asking for expedited consideration.

I. RENO'S PETITION SHOULD NOT BE CONSIDERED
BECAUSE IT IS UNTIMELY

The Board's regulations authorize parties to petition for stay of a Board action pending judicial review, but such a petition "must be filed not less than 10 days prior to the date the terms of the action take effect." 49 C.F.R. § 1115.5(a). The terms of Decision No. 44 take effect today. A petition to stay Decision No. 44, in whole or in part, pending judicial review was due by September 3.^{2/}

An untimely petition for a stay should be denied. Finance Docket No. 30759, Denver & Rio Grande Western R.R. v. St. Louis Southwestern Ry., Decision served Nov. 6, 1987, p. 1, n.2.

Reno did not seek leave to file its untimely request and offers no explanation for missing the deadline. It is most

^{2/} The last possible due date for such a petition was September 1, a Sunday. September 2 was a holiday, Labor Day.

difficult to imagine what excuse Reno could muster. It is represented by a former Interstate Commerce Commissioner and experienced transportation practitioner who must be deemed to be intimately familiar with rules adopted by the Commission -- and indeed, who joined in deciding the DRGW case just cited. And Reno has already initiated proceedings in two courts attacking Decision No. 44, demonstrating that Reno understood the nature of the decision. Its Petition should be rejected as untimely.

II. ALTHOUGH THE BOARD SHOULD NOT CONSIDER THE MERITS OF RENO'S PETITION, RENO FAILS TO MAKE A PRIMA FACIE SHOWING THAT A STAY WOULD BE APPROPRIATE

Reno invokes the proper standards for considering a stay request, but its one-page discussion of those standards is so cursory as to call into question whether Reno intends for its petition to be taken seriously. As Reno acknowledges, the standards for obtaining a stay of a Board order pending judicial review are as follows:

- (1) that there is a strong likelihood that the movant will prevail on the merits;
- (2) that the movant will suffer irreparable harm in the absence of a stay;
- (3) that other interested parties will not be substantially harmed; and
- (4) that the public interest supports the granting of the stay.

Docket No. 41191, West Texas Utilities Co. v. Burlington Northern R.R., Decision served June 25, 1996, p. 5 (citing Hilton v.

Braunskill, 481 U.S. 770, 776 (1987); Cuomo v. NRC, 772 F.2d 972, 974 (D.C. Cir. 1985); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958)). As the petitioning party, Reno "carries the burden of persuasion on all the elements required for such extraordinary relief." Docket No. AB-167 (Sub-No. 1139), Consolidated Rail Corp. -- Abandonment -- Between Corry & Meadville, In Erie & Crawford Counties, Pa., Decision served Oct. 5, 1995, p. 4, (citing Canal Authorities v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974)). Reno does not carry that burden.

1. Likelihood of Success. Reno asserts that it is likely to succeed "on appeal of the merits of FONSI and EIS issues" (Petition, p. 3), but offers no explanation whatsoever of why it supposedly anticipates success. We suggest that Reno's vague allusion to "the applicable statutes, regulations and a variety of precedent" (*id.*) does not offer sufficient substance to permit us to respond or the Board to act. Reno asserts that the "absence of mitigation" supports its appeal, but the Board imposed numerous mitigation conditions that will affect rail operations through Reno, and its 18-month study is specifically designed to identify additional final mitigation measures during a period when train volumes are capped so as to prevent any material effects on Reno.

In its District Court complaint, Reno argued that the Board must prepare a full Environmental Impact Statement ("EIS")

to gauge the effect of the merger on the Reno area. As the Board argued in seeking dismissal of that complaint, however, neither NEPA nor applicable precedent requires the Board to adopt any particular set of NEPA procedures in order to identify necessary mitigation measures. Baltimore Gas & Electric Co. v. NRDC, 462 U.S. 87, 100 (1983).^{3/}

2. Harm to Movant and Other Parties. Reno ignores the fact that the stay, if granted, would impose severe harm on UP/SP and its customers. In Condition 22a, the Board placed a strict limit on UP/SP and BNSF train operations through Reno for eighteen months. This restriction will limit UP/SP's ability to operate between Northern California and the Midwest via its most direct route, which runs through Reno. It also will curtail UP/SP's ability to exploit one of the important merger benefits, a high-speed intermodal route between Chicago and Northern California, by which UP/SP will compete with the market leader, BNSF. And it will force UP/SP and BNSF to crowd their trains on another route where service may be adversely affected.

The potential harms to transportation efficiency that will result from Condition 22a are mitigated by the fact that UP/SP will need to devote a several months to obtaining New York

^{3/} The only authority cited by Reno on the merits is State of Idaho v. ICC, 35 F.3d 585 (D.C. Cir. 1994), where the court reversed the Commission because it had "deferred not only to the judgments of other agencies, but also to that of Union Pacific." Id. at 596. The Board made no such error here, expressly reserving the final decision regarding the mitigation studies. Decision No. 44, p. 222.

Dock labor implementating agreements and rebuilding the Roseville, California, switching yard, which handles traffic through Reno, before it can mount full operations through Reno. Reno's petition would extend this delay by at least nine months, the minimum amount of time necessary to obtain judicial review of Decision No. 44. If the requested stay were granted, the Board's mitigation study, or an EIS process, could not begin until after that review was completed, prolonging the freeze on new train operations.

Reno's claim that it will be harmed by devoting resources to the mitigation studies is more than a little suspect. Reno wants a reviewing court to order the Board to conduct a formal EIS, which could only -- to the extent its scope exceeded that of the Board's study -- consume even more of Reno's resources. And there is no reason to assume that any effort Reno will devote to the mitigation study will be wasted in the unlikely event that an EIS must be conducted.

3. Public Interest. Reno's one-sentence public interest analysis does not make sense. According to Reno, the Board's freeze demonstrates that an even longer stay and freeze would be in the public interest. Petition, p. 4. On that theory, UP/SP should never be allowed to increase train operations through Reno. The Board -- which endorsed the public benefits of using the route through Reno for new train service -- presumably selected the shortest freeze period that it believed would be consistent with completing its mitigation study. The

public interest will clearly be harmed by further delay of those new services.

*

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*

Reno also argues that a stay is needed until BNSF provides operational data on October 1. Petition, pp. 2-3. This argument is specious. BNSF submitted detailed information during the merger proceeding about its long-range plans for the Reno area in BNSF-1, and those plans formed the basis for the Board's environmental assessment. Further refinements of BNSF's operating plans can be considered in the study process.

CONCLUSION

For the foregoing reasons, Reno's Petition should be rejected.

Respectfully submitted,

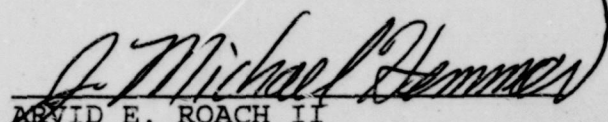
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September 11, 1996

CERTIFICATE OF SERVICE

I, Karen W. Kramer, certify that, on this 11th day of September, 1996, I caused a copy of the foregoing document to be served by hand delivery on:

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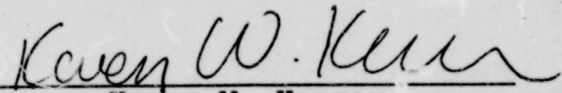
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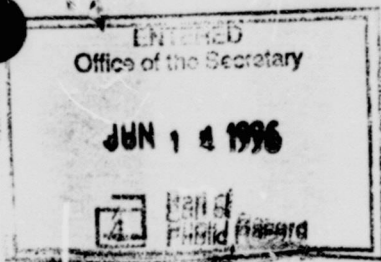
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June 13, 1996



VIA HAND DELIVERY

Vernon A. Williams
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Surface Transportation Board
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Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an original and twenty copies of SPP-17, Opposition of Sierra Pacific Power Company and Idaho Power Company to Applicants' Motion to Strike. Also enclosed is one 3.5" computer disc containing a copy of SPP-17 in Word Perfect 5.1 format.

Item No. _____
Page Count 14
JUNE, 1996 #142

Sincerely,

Jennifer P. Oakley
Richard A. Allen
Jennifer P. Oakley

Attorneys for Sierra Pacific Power
Company and Idaho Power Company

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

OPPOSITION OF SIERRA PACIFIC POWER COMPANY AND
IDAHO POWER COMPANY TO APPLICANTS' MOTION TO STRIKE,
OR, IN THE ALTERNATIVE,
MOTION TO REOPEN RECORD FOR RECEIPT OF ADDITIONAL EVIDENCE

Sierra Pacific Power Company and Idaho Power Company
(collectively "Sierra Pacific") submit that Applicants' motion to
strike certain statements in Sierra Pacific's brief (UP/SP-262,
filed June 10, 1996) is unfounded and should be denied. The
statements consist of statements of fact about basic geography of
which the Board can take official notice and contentions about
those facts which, to the extent they might be disputed, amount
to permissible argument. If the Board nevertheless concludes
that these are statements for which there must be specific
evidence in the record, Sierra Pacific moves in the alternative

to reopen the record to permit it to submit supporting evidence in the form of the attached supplemental verified statement of Thomas D. Crowley.

Discussion

The statements at issue relate to a critical issue with respect to the conditions requested by Sierra Pacific. As explained in Sierra Pacific's brief (SPP-16), Sierra Pacific contends that the BN/Santa Fe Settlement will not preserve the competitive alternatives now available to Sierra Pacific because the Settlement will not enable BN/Santa Fe to deliver coal to North Valmy Station in single-line service from Uinta Basin and Hanna Basin mines, as SP and UP can do now. In their Rebuttal, Applicants disputed Sierra Pacific's contention by asserting that BN/Santa Fe will, in fact, be able to deliver coal in single-line service to North Valmy Station from Uinta Basin mines. They stated that, after the merger, North Valmy Station will be able to receive coal from "BN/Santa Fe direct, sourced from a load-out at Provo or other Utah "2-1" points." UP/SP-230 (Rebuttal Narrative) at 265.^{1/}

^{1/} Applicants also asserted that North Valmy would have two other ways of receiving coal post merger: "(a) single-line from Utah or Colorado mines via UP/SP [and] (b) joint line movements from Utah Railway mines, via Utah Railway-BN/Santa Fe. . . ." (UP/SP-230 at 264-265. In terms of whether North Valmy Station's competitive alternatives will be maintained, however, the third asserted option -- "BN/Santa Fe direct, sourced from a load-out at Provo or other Utah '2-1' points" -- is the critical one. Neither of the first two options will preserve the competition North Valmy Station currently enjoys by virtue of the competing single-line service via either UP or SP from Uinta and Hanna Basin mines. As discussed in SPP-16, joint line service via UTAH (continued...)

After reading these statements in Applicants' rebuttal, Sierra Pacific made inquiries and quickly ascertained that, contrary to Applicants' implication, there are no coal load-outs at Provo, Utah or at any other "2-to-1" point in Utah.^{2/} Sierra Pacific also ascertained that, in view of the distances and the mountains between Provo and the Uinta Basin mines served by SP and UTAH Railway, any coal load-out operation at Provo or other Utah 2-to-1 points would clearly not be a practical competitive alternative for meeting North Valmy Station's coal supply needs.

Under the Board's procedural schedule, Sierra Pacific had no opportunity to file a rebuttal. Sierra Pacific in its brief, however, noticed the deposition of William E. Nock, whose rebuttal verified statement Applicants' had cited in support of their statement about load-outs at Provo and other 2-to-1 points. In his deposition, Mr. Nock confirmed Sierra Pacific's understanding that there are no coal load-outs at Provo or any other 2-to-1 point in Utah. Although he went on to express his opinion that the construction and operation of a load-out at Provo (the closest 2-to-1 point to the Uinta Basin mines) would be feasible, he acknowledged that "there's a mountain range between those coal fields and Provo" and that the route between

^{1/}(...continued)

Railway and BN/Santa Fe from the few mines served by UTAH Railway is not a meaningful substitute for the single-line service now available from the many Uinta and Hanna Basin mines served exclusively by UP and SP. SPP-16 at 19-20.

^{2/} Applicants' reference to "2-to-1" points are to points which the BN/Santa Fe Settlement gives BN/Santa Fe the right to serve.

them would have to traverse Soldier Summit. Nock Deposition of 5/10/96 at 12 (SPP-16, App. A at 3). He also acknowledged that he was unaware of any available location for such a load-out and that UP had never studied the physical, environmental or economic feasibility of such a load-out. Id. at 10-11 (SPP-16, App. A. at 1-2). He also admitted that "[w]hen you get into 20 to 30 mile truck hauls to get to a rail move, it defeats some of that economics." Id. at 86 (SPP-16, App. A at 10).

In its brief, Sierra Pacific cited these statements by Mr. Nock, as well as the altitude of Soldier Summit and the highway distances between Provo and the Uinta Basin mines (between 70 and several hundred miles), in support of Sierra Pacific's contention that "a coal load-out operation out of Provo to North Valmy Station would clearly not be feasible." SPP-16 at 14. Sierra Pacific further contended:

The highway route to Provo from those mines would be difficult, dangerous and prohibitively expensive, especially during the winter months, because the loaded trucks would have to negotiate steep four to six percent grades over Soldier Summit, which rises to 7443 feet above sea level."

SPP-16 at 15 (footnote 8 omitted). Applicants now move to strike the statement indented above and the statement in footnote 7 regarding the highway mileage, on the ground that they present new evidence not in the record.

The motion to strike should be denied. The stated facts regarding the altitude of Soldier Summit, the highway grades and the highway mileage are readily available geographic facts. As

such, the Board may take administrative notice of them. It is well established that courts and agencies may take "judicial" or "administrative" notice of any fact that is "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." De la Llana-Castellon v. INS, 16 F.3d 1093, 1096 (10th Cir. 1994) (quoting from Fed.R.Evid. 201(b)). Indeed, as the court noted in the cited case, "[t]he scope of administrative notice, sometimes referred to as official notice, is broader than judicial notice . . . [due to] the administrative agency's specialized experience in a subject matter area. . . ." Id. See also United States v. Perez, 769 F.2d 1336, 1340 (9th Cir. 1985) (taking judicial notice of the "minimum distance between Rota and Guam"); Viking Starship, Inc. -- Common Carrier Application, No. W-1465 (unpublished ICC decision decided June 1, 1988, slip op. at 2) (noting highway and water mileage between Montauk, N.Y. and New London, Conn.).

Applicants have not disputed these facts, nor could they. On the basis of these facts Sierra Pacific has contended that a load-cut operation out of Provo to North Valmy Station "would clearly not be feasible," and that "[t]he highway route to Provo from those mines would be difficult, dangerous and prohibitively expensive, especially during the winter" Sierra Pacific believes that those propositions are also not subject to reasonable dispute and may be administratively noted by the Board on the basis of its expertise in matters of coal transportation.

In any event, however, to the extent those contentions might be disputed, they are in the nature of permissible argument, not objectively verifiable fact for which specific evidence is required. See, e.g., Burlington Northern, Inc. and Burlington Northern Railroad Co. -- Control and Merger -- Santa Fe Pacific Corp. and the Atchison, Topeka and Santa Fe Railway Co., F.D. No. 32549 (Dec. No. 38, served August 23, 1995) slip op. at 56 (denying UP motion to strike certain statements in applicants' brief on the ground that the challenged statements presented "new arguments . . . , not new evidence."); Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control -- Chicago and North Western Transportation Company and Chicago and North Western Railway Company, F.D. No. 32133 (Dec. No. 20, served September 16, 1994), slip op at 4 (denying UP motion to strike material on the ground that the material was "essentially argument and presents nothing more than what a person would conclude when reading the evidence")

If the Board nevertheless concludes that specific evidence is required to support these statements, it should reopen the evidentiary record for the limited purpose of permitting Sierra Pacific to submit supporting evidence in the form of the attached Supplemental Verified Statement of Thomas D. Crowley. Based on his 25 years experience advising and assisting electric utilities and other coal consuming clients with respect to coal transportation alternatives and his knowledge of the relevant highway and rail routes, Mr. Crowley's statement describes the

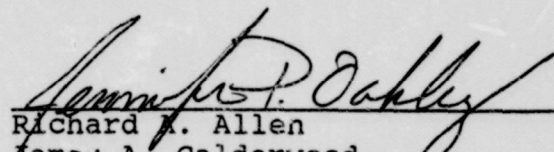
distances and the terrain that coal trucks would have to traverse and the weather conditions they would frequently encounter. His conclusion fully supports the statements in Sierra Pacific's brief. He states that regular truck movements of coal between the Uinta Basin mines and Provo "would not even come close to being a practical competitive option because the cost of moving coal by truck over the mountains for those distances would be significantly greater than the cost of moving the coal by rail." In this regard, Mr. Crowley estimates that the cost of moving coal by truck from the nearest of the Uinta Basin mines to Provo, in terms of mills per ton mile, would be almost eight times what he had estimated in his initial verified statement would be BNSF's variable cost of moving coal from Utah Railway Junction (near Price) and North Valmy Station.

If the Board does not take administrative notice of these propositions or admit them as permissible argument, it should reopen the evidentiary record to ensure a complete and correct evidentiary record on an issue that is critical to Sierra Pacific's contentions and requested conditions in this case. The principal ground on which Applicants have opposed Sierra Pacific's request for conditions -- and, in our submission, the only ground of any substance -- is their claim that BNSF will be able to deliver coal directly to North Valmy Station from nonexistent coal load-outs at Provo or other 2-to-1 points in Utah. Since that claim is not only critical but also simply

untrue, basic due process requires that Sierra Pacific have an opportunity to set the record straight.

Permitting Sierra Pacific to supplement the record in this limited fashion is consistent with the practice of the Board and its predecessor, the ICC. The Board's rules are to be "construed liberally to secure just, speedy and inexpensive determination of the issues presented." 49 C.F.R. § 1100.3. Pursuant to that rule, the ICC frequently permitted parties to supplement the record in similar circumstances. See, e.g., Pennsylvania Public Utilities Commission--Petition For Declaratory Order--Operations of C & K Carriers, Inc., No. MC-C-30215 (unpublished decision served June 3, 1994); Gateway Western Railway Co. -- Construction -- St. Clair County, IL, F.D. No. 31363 (unpublished decision served May 11, 1993). The Board should do the same here.

Respectfully submitted,


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June 13, 1996

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760

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

--CONTROL AND MERGER--

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

**Supplemental
Verified Statement
of
Thomas D. Crowley
President
L. E. Peabody & Associates, Inc.**

**On Behalf of
Sierra Pacific Power Company and Idaho Power Company**

Dated: June 13, 1996

SUPPLEMENTAL
VERIFIED STATEMENT
OF
THOMAS D. CROWLEY

My name is Thomas D. Crowley. I submitted a Verified Statement for Sierra Pacific Power Company and Idaho Power Company (collectively "Sierra Pacific") on March 27, 1996 as part of Sierra Pacific's Request for Conditions and Comments, SPP-10. I have been asked by Sierra Pacific to supplement my statement.

As described more fully in my Statement of Qualifications (Appendix A to my verified statement in SPP-10) I have been an economic consultant for the past 25 years, specializing in solving economic, marketing and transportation problems for clients. Many of my clients have been electric utilities and other consumers of coal. I have frequently advised those clients on coal acquisition questions and have assisted them in negotiating coal supply as well as coal transportation contracts in all parts of the United States. In particular, I have analyzed the competitive feasibility and comparative costs and other characteristics of different kinds of coal movements on behalf of many coal shippers.

As a result of assisting coal users in the western portions of the United States, I have become very familiar with the advantages and disadvantages, in terms of operations and costs, of different transportation modes and routes. Terrain is a major factor affecting the costs and operations of the transportation of coal.

As a general rule, transporting coal by truck is substantially more expensive than transporting coal over the same route by rail, and the cost differential becomes greater as the distance increases. This cost differential is due, in part, to the fact that the average load for trucks ranges between 20 to 35 tons while rail cars can load up to 120 tons per car. The volume movement of coal by truck is also limited in the distance over which the movement is economically feasible. For example, the average haul for coal movements by truck in the western United States is 19 miles^{1/}.

As a result of assisting users of coal produced in the West, I have become very familiar with the topography of the region. The most feasible highway route between the coal mines in the Uinta Basin served by the Southern Pacific Transportation Company ("SP") and Provo, Utah^{2/} is via Highway 6. The highway distance from Provo to Price, around which many of the nearest mines are located, is 80 miles and the distance between Provo and the nearest of those mines, the Skyline mine^{3/}, is 67 miles. I have participated in field studies in this geographic region. The route between Provo and Price, Utah by rail or highway is over extremely mountainous terrain. From Price the highway westward climbs almost 2,000 feet, from 5,547 feet to Soldier Summit at 7,454, from which it eventually descends almost 3,000 feet to Provo. The grades

^{1/} Energy Information Administration, "Energy Policy Act Transportation Rate Study: Interim Report on Coal Transportation", October 1995, Table 48.

^{2/} Under the terms of the proposed settlement agreement in this proceeding, the Burlington Northern Santa Fe Railroad Company ("BNSF") will not directly serve any Uinta Basin coal origins. But, as noted by Union Pacific Railroad Company's ("UP") witness Nock, the BNSF would be able to transload coal at Provo, Utah if facilities become available.

^{3/} The Skyline mine is located in Schofield, Utah. Coal trucks would have to travel 17 miles on Route 96 to get to Highway 6.

(positive and negative) can be as much as 5.5 percent^{4/}, which is extremely steep for a loaded coal truck. Heavy snow and ice, of course, are common hazards from November through April.

In my opinion, given the distances involved from Uinta Basin mines to Provo, the extremely mountainous terrain of the region, and the weather conditions, regular truck movements of substantial volumes of coal would not be a competitively feasible alternative to rail. In fact, such a move would not even come close to being a practical competitive option because the cost of moving coal by truck over the mountains for those distances would be significantly greater than the cost of moving the coal by rail. Based on my model for truck costs, the movement of coal by truck from the Skyline mine to Provo would equal \$7.10 per ton or 106 mills per ton-mile (based on an average load of 30 tons). By way of comparison, BNSF's variable cost for the movement of coal from Utah Railway Junction to the North Valmy station, including the trackage rights fee, would equal approximately 11 mills per ton-mile^{5/}.

^{4/} Source: Utah Department of Transportation.

^{5/} Based on Exhibit __ (TDC-12) to my March 27, 1996 verified statement.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

THOMAS D. CROWLEY, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

Thomas D. Crowley
Thomas D. Crowley

Sworn to and subscribed
before me this 12th day
of June, 1996.

Witness my hand and official seal.

Kimberly D. Conner Boyd
My Commission Expires July 31, 1998

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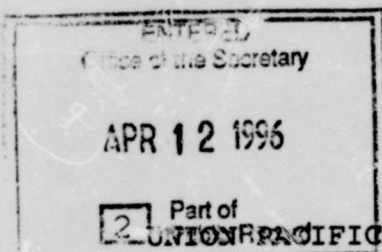
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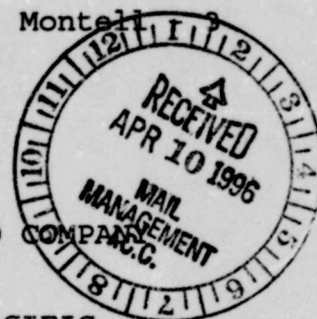
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



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

**MONTELL USA INC.'S
OBJECTIONS TO APPLICANTS'
THIRD SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Montell USA Inc. ("Montell") submits the following objections to the Applicants' Third Set of Interrogatories and Requests for Production of Documents served by Applicants Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"), Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCL") and The Denver and Rio Grande Western Railroad Company ("DRGW") (collectively referred to as the "Applicants") on April 4, 1996. These objections are made pursuant to paragraph 1 of the Discovery Guidelines applicable to this proceeding, which provides that objections to discovery requests shall be made "by means of a written objection containing a general statement of the basis for the objection."

OBJECTION TO INSTRUCTIONS RELATING TO TIME TO RESPOND

Montell objects to the Applicants' Third Set of Interrogatories and Requests for Production of Documents (UP/SP-203) ("discovery") to the extent it seeks to impose as binding on Montell the rulings by Judge Nelson with respect to Conrail's Motion for a Protective Order on March 8, 1996 ("March 8 Rulings"). For instance, Applicants cite the March 8 Rulings in support of their assertions that Montell is required to deliver a response to the discovery "on the sixth calendar day," to restrict the scope of any "burdensome" objections Montell may have to the discovery, and to require production of "privileged" documents in response to the discovery at an April 12, 1996 hearing. See SP/UP-203, pp. 1-2.

Montell is not bound by the March 8 Rulings. At most, the March 8 Rulings are only binding on those parties to this proceeding that received a "first" set of discovery from the Applicants on or about February 26, 1996. See March 8 Rulings Transcript, p. 1950. Those parties, in turn, received the "benefits and the burdens" of Judge Nelson's ruling. Id., Tr., p. 1956.

The Applicants did not serve Montell with a "first" set of discovery on or about February 26, 1996. Thus, Montell did not, nor did it have the opportunity to, raise a "prematurity" objection to that discovery or to otherwise participate in the March 8 hearing. See Tr., pp. 1950-56 (listing parties bound by

March 8 Rulings). Simply put, Montell was not a party to that hearing and thus is not bound by the rulings made during it.

Furthermore, Montell objects to Applicants' attempt to impose unreasonable requirements on Montell and their callous disregard for the religious holidays that occurred immediately upon the service of the challenged discovery. Applicants' served discovery at the close of business on April 4, 1996 seeking to compel substantive responses within six calendar days, that is, by April 10. April 5, 1996 was Good Friday. Montell was closed. April 6 was a Saturday. Montell was closed -- a fact that Applicants and their counsel surely knew. April 7, 1996 was Easter Sunday. Montell was closed -- a fact that Applicants and their counsel surely knew. Thus, Applicants served their discovery in a fashion and with the premeditated intent to require Montell to research and prepare its responses within two days. Such actions by Applicants were truly unreasonable and are unduly burdensome. Judge Nelson surely has not sanctioned such conduct.

Consequently, Montell is objecting and responding to the Applicants' "third" set of discovery in accordance with the Discovery Guidelines entered in this proceeding on December 7, 1995. This submission constitutes Montell's initial objections to the discovery "within five business days from the date of service." See Dec. 7, 1995 Discovery Guidelines, ¶ 1.

GENERAL OBJECTIONS

The following objections are made with respect to all of the discovery requests:

1. Montell objects to production of documents or information subject to the attorney-client privilege.
2. Montell objects to the production of documents or information subject to the work product doctrine.
3. Montell objects to the production of documents or information subject to the privilege concerning communication among counsel involved in a common issue or common defense.
4. Montell objects to the production of documents or information subject to any other privilege.
5. Montell objects to production of public documents that are readily available, including but not limited to, documents on public file at the Interstate Commerce Commission, the Surface Transportation Board, or the Securities and Exchange Commission or clippings from newspapers or other public media.
6. Montell objects to the production of draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such documents have been treated by all parties as protected from production.
7. Montell objects to providing information or documents that are as readily obtainable by the Applicants.
8. Montell objects to the extent that the Discovery Requests seek highly confidential or sensitive commercial

information that is of insufficient relevance to warrant production even under a protective order.

9. Montell objects to the extent that a response to the Discovery Requests would impose an unreasonable burden on Montell.

10. Montell objects to the definition of "identify" insofar as it calls for the production of drafts and it calls for the production of routine operating and accounting documents such as invoices and receipts.

11. Montell objects to the definition of "identify" insofar as it requests home telephone numbers on grounds that such information is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

12. Montell objects to the definitions of "relating to" as unduly vague.

13. Montell objects to the requests as overbroad and unduly burdensome to the extent that they seek documents for periods prior to January 1, 1993.

14. Montell objects to the requests to the extent that they call for the preparation of special studies not already in existence.

15. Montell objects to the requests that Montell promptly contact the Applicants' attorney to discuss its objections. Montell is hereby filing its objections and this document speaks for itself.

16. Montell objects to the requests that they attempt to impose any obligation on Montell beyond those imposed by the General Rules of Practice of the Interstate Commerce Commission ("Commission"), 49 C.F.R. § 1114.21-31, the Commission's scheduling orders in this proceeding, or the Administrative Law Judge assigned to this case.

17. Montell objects to the requests to the extent that they seek information about matters that have not been addressed by Montell in its Comments filed with the Surface Transportation Board on March 29, 1996 because such requests are irrelevant and unduly burdensome.

ADDITIONAL OBJECTIONS TO SPECIFIC INTERROGATORIES

In addition to the General Objections, Applicants make the following objections to the interrogatories.

INTERROGATORIES

1. To the extent not done as part of your prior discovery responses or March 29 filings, identify and describe any agreements or understandings that you have with any other party to this proceeding regarding positions or actions to be taken in or otherwise relating to this proceeding, including any "joint defense" or "common interest" agreement, or any confidentiality agreement on which you rely in objecting to discovery requests or invoking an informers privilege or other privilege. (Routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be identified. If Conrail contends that any aspect of such agreement is privileged, state the parties to, date of, and general subject of the agreement.) [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this interrogatory because it seeks information protected by the "common issue" and "common defense"

privilege, the attorney-client privilege and the work-product doctrine.

2. If you contend in your March 29 filing that reduction from 3-to-2 in the number of railroads serving various shippers or markets as a result of the merger is a reason for denying approval, state whether you contend that two Class I railroads would always compete less vigorously than three Class I railroads would in any given market. [All but CR1 Dow, KCS]

Objection: In addition to its general objections, Montell objects to this interrogatory because it is vague. Applicants clearly did not read Montell's Comments filed on March 29 prior to serving this interrogatory. Thus, Applicants have left it to Montell to define "various shippers or markets" as well as other terms in this interrogatory.

3. The testimony of Richard Peterson on behalf of Applicants describes, at pages 172-75, the views of a number of shippers with respect to competition between a merged UP/SP and BNSF. State whether you believe that those shippers are correct or incorrect in the expectations they have expressed in their statements filed in this proceeding concerning the effects of a UP/SP merger on competition and explain the reasons for that answer. [All but CR, Dow, KCS]

Objection: In addition to its general objections, Montell objects to this interrogatory because it does not seek information relevant to this proceeding and would require a special study.

4. Identify all shippers who you claim have expressed support for your position in this proceeding in your March 29 filings who are presently served at a point of origin or destination by both UP and SP directly. [All but CR, Dow, KCS]

Objection: In addition to its general objections, Montell objects to this interrogatory because the information is equally available to Applicants as it is to Montell. Applicants can read

the Comments filed with the Surface Transportation Board to determine which such comments express support for Montell's position. Certainly, Applicants know better than Montell which parties are served at a point of origin or destination by both UP and SP directly.

5. If you contend that there are significant investments in improvements of its railroad that SP could or should have made, or can and should make, identify them and describe any rates of return, hurdle rates, or like standards you use for determining whether to invest in improvements in your business. [All but Govts, Assns]

Objection: Montell objects to this interrogatory as not seeking relevant information or information that would likely lead to relevant evidence. Applicants have not limited the context for the contention about which they inquire.

6. Describe any agreements or understandings entered into between Conrail and Phillips Petroleum since November 30, 1995, relating to rail transportation rates. [Phillips]

Response: No reply is required.

7. To the extent not done as part of your prior discovery responses or March 29 filings, as to each power plant that your March 29 filings specifically indicate may be affected by the UP/SP merger, or that is referred to in those filings as recent situations where both SPRB and Colorado/Utah coal have been or are being used successfully in the same power plant, and as to each mine used as a source of coal used at such plant, state the tonnage, average minehead price, average delivered price, BTU content, and percentage sulphur content of the coal used by that plant. [CPL, PS Colo., PS, S. Ant, TVA]

Response: No reply is required.

8. To the extent not done as part of your prior discovery responses or March 29 filings, identify the participants in the meeting referred to in the penultimate sentence on p. 16 of the Verified Statement of William L. Gebo in DOW-11. [Dow]

Response: No reply is required.

9. To the extent not done as part of your prior discovery responses or March 29 filings, identify all efforts taken by Dow to pursue the "follow-up discussions" referred to on p. 16 of the Verified Statement of William L. Gebo in DOW11. [Dow]

Response: No reply is required.

10. To the extent not done as part of your prior discovery responses or March 29 filings, summarize the action taken by Dow concerning each item on the agenda for the meeting referred to at p. 14 in the Gebo Verified Statement. (Dow)

Response: No reply is required.

11. To the extent not done as part of your prior discovery responses or March 29 filings, describe all discussions between Dow and other companies about ways to finance the project referred to on p. 14 of the Gebo Verified Statement. [Dow]

Response: No reply is required.

12. When did Dow first consider the possibility that SP might be purchased by the UP. (See Gebo Verified Statement p. 14) [Dow]

Response: No reply is required.

13. To the extent not done as part of your prior discovery responses or March 29 filings, identify the "SP counterpart" referred to in the Verified Statement of Paul Carey et al., at p. 49 and any documents relating to the incident described. [CR]

Response: No reply is required.

14. Identify all persons (other than Hunt and Oderwald) who assisted in the preparation of the study discussed in the Hunt/Oderwald statement. [CR, KCS]

Response: No reply is required.

15. Identify each new location (as compared to the 1994 Waybill Sample) in the Quantanet Intercarrier Routing Model used in the study produced by Hunt and Oderwald where BN/Santa Fe was treated as able to originate and terminate traffic by reason of the BN/Santa Fe Settlement. [CR, KCS]

Response: No reply is required.

16. For each new location identified in response to the preceding question, state whether for purposes of the study

presented by Hunt and Oderwald BN/Santa Fe was treated as able to originate or terminate traffic directly. [CR, KCS]

Response: No reply is necessary.

17. Identify and describe any and all limitations imposed as part of the study prepared by ALK Associates, Inc. on the ability of BN/Santa Fe to originate, terminate, or carry traffic, including without limitation: (a) any geographic limitation; (b) any minimum volume thresholds applied to locations; and (c) any limitations related to voluntary haulage agreements. [CR, KCS]

Response: No reply is required.

18. State whether railroad origins and destinations as referenced in the first full paragraph of page 4 of the verified statement of Hunt and Oderwald were defined on the basis of Business Economic Area (BEA): (a) for intermodal traffic, and (b) for automobile traffic. [CR, KCS]

Response: No reply is required.

19. Identify and describe all adjustments made by ALK Associates, Inc. and used in the study presented by Hunt and Oderwald to the 1994 ICC Waybill Sample or to the network used as part of the ATD model, including, without limitation, adjustments:

- a. to account for changes in railroad ownership, operations, or operating rights that have taken place since 1994.
- b. to account for rebelling of freight traffic.
- c. to model nodes where more than one Standard Point Location Code was assigned to a node.
- d. to account for intermodal traffic to and from truck hub locations. [CR, KCS]

Response: No reply is required.

20. Identify and explain any reassignments of trilevel and intermodal movements to new or different nodes by ALK Associates, Inc. in preparing the study presented by Hunt and Oderwald. [CR, KCS]

Response: No reply is required.

21. Identify and describe the classification of junction types (e.g., run through; through block; daily switching; less than daily switching) that were assigned in the Quantanet

Intercarrier Routing Model used in preparation of the study produced by Hunt and Oderwald, including the basis for those classifications (e.g., average daily volume) and the impedances assigned to each classification in the final calibrated routing model. (CR, KCS]

Response: No reply is required.

22. Identify each new interline junction between BN/Santa Fe and another carrier created as part of the study produced by Hunt and Oderwald. [CR, KCS]

Response: No reply is required.

23. For each new interline junction identified in response to the preceding question, identify the junction classification and impedance values assigned in the Quantanet Intercarrier Routing Model as used in the study produced by Hunt and oderwald. [CR, KCS]

Response: No reply is required.

24. Identify and describe any differences in impedance assigned to the node or nodes representing the Laredo, Texas gateway with Mexico for traffic interchanged with (a) UP and (b) The Texas Mexican Railway. [CR, KCS]

Response: No reply is required.

25. State whether ALK Associates, Inc. had completed its calibration of impedances for the Quantanet Intercarrier Routing Model using the 1994 Waybill (other than the ATD Model Recalibration discussed at pages 8 and 9 of the verified statement of Hunt and Oderwald) prior to its retention by Conrail for this proceeding. [CR, KCS]

Response: No reply is required.

26. Identify all junctions in the waybill sample that were eliminated in the Quantanet Intercarrier Routing Model used in the study presented by Hunt and Oderwald. [CR, KCS]

Response: No reply is required.

27. Identify all measures used by ALK Associates, Inc. to determine whether the Quantanet Intercarrier Routing Model was unbiased as used in the study presented by Hunt and Oderwald. (CR, KCS]

Response: No reply is required.

28. Identify and describe all measurements of the quality of the Quantanet Inter-carrier Routing Model that were performed in preparation of the study presented by Hunt and Oderwald. ECR, KCS]

Response: No reply is required.

29. Identify and describe any comparisons that have been made by ALK Associates, Inc. over the past five years of the impact on traffic flows of a proposed change in the rail network estimated by the "ATD Model" referenced in the verified statement of Hunt and Oderwald and the actual changes in traffic flows that resulted from such change. [CR, KCS]

Response: No reply is required.

30. Identify any screens used by ALK Associates, Inc. as part of its estimation of market shares to eliminate routes that are considered unlikely to attract traffic, including screens applied at the time the origin, origin carrier, termination, termination carrier "quads" are formed for the Quantanet routing model and those applied after routes are generated. (CR, KCS]

Response: No reply is required.

31. Describe any filtering or other process used by ALK Associates, Inc. to divert traffic from base 1994 routes to new routes after estimates were made of the market share each route is likely to attract. [CR, KCS]

Response: No reply is required.

32. Identify all calibrations to the ALK Advanced Traffic Diversion Model ("ATD Model") for each year from 1991 through the present, and produce all documents relating to or setting for the reason(s) for each such calibration. [CR, KCS]

Response: No reply is required.

DOCUMENT REQUESTS

1. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents or data relied upon by any person whose verified statement you submitted in your March 29 filings. [All but CR, Dow, KCS]

2. To the extent not done as part of your prior discovery responses or March 29 filings, produce machine-readable versions, if they exist, of documents or data you submitted as part of your March 29 filings, of documents or data included as work papers,

or of documents or data relied upon by persons whose verified statement you submitted in your March 29 filings. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this interrogatory because it seeks to impose an obligation on Montell that does not exist under the rules governing this proceeding.

3. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, analyses or reports discussing benefits or efficiencies that may result from the UP/SP merger. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this interrogatory because based on Montell's March 29 filing, it does not seek relevant information or information likely to lead to relevant information. Montell further objects to this interrogatory as being unduly burdensome. Montell seeks only conditions on this merger related to one of its plants. Therefore, Montell should not be required to locate all documents discussing the potential benefits of the merger.

4. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, analyses or reports discussing potential traffic impacts of the UP/SP merger. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this interrogatory as being unduly burdensome. Montell seeks only conditions on this merger related to one of its plants. Therefore, Montell should not be required to locate all documents discussing the potential traffic impacts of the merger.

5. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses discussing competitive impacts of the UP/SP merger, including but not limited to effects on the following (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in or build-out options. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this interrogatory as being unduly burdensome. First, this interrogatory is repetitive, in part, of Interrogatories 3 and 4 above. Second, Montell seeks only conditions on this merger related to one of its plants. Therefore, Montell should not be required to locate all documents discussing the potential benefits of the merger.

6. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing the BN/Santa Fe Settlement Agreement, the IC Settlement Agreement, or the Utah Railway Settlement Agreement. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this interrogatory because the IC Settlement Agreement and the Utah Railway Settlement Agreement are irrelevant to the Comments submitted by Montell.

7. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing conditions that might be imposed on approval of the UP/SP merger. [All but CR, Dow, KCS]

8. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would

more likely be found, discussing actual or potential competition between UP and SP. [All but CR, Dow, KCS]

9. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing competition between single-line and interline rail transportation. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this interrogatory because, based on Montell's March 29 filing, it does not seek relevant information or information likely to lead to relevant information.

10. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing the benefits of any prior Class I rail merger or rail mergers generally. (All but CR, Dow, KCS)

Objection: In addition to its General Objections, Montell objects to this interrogatory because, based on Montell's March 29 filing, it does not seek relevant information or information likely to lead to relevant information.

11. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing the financial position or prospects of SP, if those filings discussed that subject. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this interrogatory because, based on Montell's March 29 filing, it does not seek relevant information or information likely to lead to relevant information.

12. To the extent not done as part of your prior discovery responses or March 29 filings, produce all communications with other-parties to this proceeding discussing the UP/SP merger or the BN/Santa Fe Settlement Agreement, and all documents relating to such communications. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this interrogatory because it seeks information protected by the "common interest" and "common defense" doctrine, the attorney-client privilege and the work-product doctrine.

13. To the extent not done as part of your prior discovery responses or March 29 filings, produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from public officials, or any shipper or other party in this proceeding, for a position being taken or proposed or considered by you or any other party in this proceeding. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request to the extent that it seeks information protected by the Noerr-Pennington doctrine and other privileges related to the petitioning of government.

14. To the extent not done as part of your prior discovery responses or March 29 filings, produce all presentations, letters, memoranda, white papers or other documents sent or given to DOJ, DOT, any state Governor's, Attorney Generals or Public Utilities Commission's (or similar agency's) office, any other government official, any consultant, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger. (Even if not producing them, you should identify documents submitted to law enforcement officers under an explicit assurance of confidentiality.) [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request to the extent that it seeks information protected by the Noerr-Pennington doctrine and other privileges related to the petitioning of government. Montell

further objects to this Interrogatory to the extent that it is repetitive of Interrogatory 13.

15. To the extent not done as part of your prior discovery responses or March 29 filings, produce all notes or memoranda of any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any other government official, any consultant, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger. (You should identify but need not produce documents prepared by your counsel.) [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request to the extent that it seeks information protected by the Noerr-Pennington doctrine and other privileges related to the petitioning of government.

16. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, analyses or reports discussing or reflecting shipper surveys or interviews concerning the quality of service or competitiveness of any railroad participating in this proceeding. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request because, based on Montell's Comments, it seeks information that is not relevant nor likely to lead to relevant information. Montell further objects to this request as irrelevant to the extent that it seeks information about railroads that have not submitted an Application as part of this proceeding.

17. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings discussed such a condition or sale, produce all documents discussing the price to be paid for, or the value of, any UP or SP lines that might be sold pursuant to a condition to approval of, or otherwise in connection with, the UP/SP merger. [All but CR, Dow, KCS]

18. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents discussing trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines, or any other line of UP or SP that you believe should or might be the subject of a proposed trackage rights condition in this proceeding. [All but CR, Dow, KCS]

19. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents relating to actual or estimated maintenance-and-operating costs, taxes and return-to-capital costs with respect to any of the BN/Santa Fe Settlement Agreement Lines, or any other line of UP or SP that you believe should or might be the subject of a proposed trackage rights condition in this proceeding. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request because based on Montell's Comments it does not seek relevant information nor documents likely to lead to relevant information.

20. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents relating to any agreement or understanding that is responsive to Interrogatory 1. [All but CR, Dow, KCS]

Objection: Montell repeats the objections raised in response to Interrogatory 1.

21. To the extent not done as part of your prior discovery responses or March 29 filings, produce all communications with Richard C. Levin, Curtis M. Grimm, James M. MacDonald, Clifford M. Winston, Thomas M. Corsi, Carol A. Evans or Steven Salop concerning econometric analyses of rail pricing, and all documents relating to such communications, if those filings cite, rely upon, endorse or purport to agree with analyses by any of those persons. [All but CR, Dow, KCS]

22. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings discuss that subject, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing competition for traffic to or from Mexico (including

but not limited to truck competition) or competition among Mexican gateways. [All but CR, Dow, KCS]

23. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents sufficient to show your financial support for, establishment of, participation in, or relationship with the "Coalition for Competitive Rail Transportation," which made a March 29 filing denominated CCRT-4. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request to the extent that it seeks information protected by the Noerr-Pennington doctrine and other privileges related to the petitioning of government.

24. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings discussed that subject, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing competition in freight transportation services for shipments to or from West Coast ports. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request because, based on Montell's Comments, it seeks irrelevant information and documents not likely to lead to relevant information.

25. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings disagree in any significant way with the description of SP's financial situation in the Application, produce all documents found in the files of officers at the level of Vice President or above, discussing any possible breakup or bankruptcy of SP. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request because, based on Montell's Comments, it seeks irrelevant information and documents not likely to lead to relevant information.

26. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents found in the files of officers at the level of Vice President or above, discussing your reasons for opposing the UP/SP merger or seeking to acquire any portion of SP in connection with the UP/SP merger. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request because, based on Montell's Comments, it seeks irrelevant information and documents not likely to lead to relevant information.

27. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents relating to any proposal you made for possible line sales or trackage rights in your favor or for your benefit as a condition to the UP/SP merger, proposal, including but not limited to (a) documents describing the proposal, (b) any market analysis with respect to the proposal, (c) any operating plan with respect to the proposal, and (d) any pro forma financial statements with respect to the proposal. [All but CR, Dow, KCS]

28. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, analyses or reports discussing the possibility of a build-in by one of the applicants (or build-out to one of the applicants) at any of your facilities referred to in your March 29 filings. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request because, based on Montell's Comments, it seeks irrelevant information and documents not likely to lead to relevant information.

29. Produce all presentations to, and minutes of, your board of directors relating to the UP/SP merger or conditions to be sought by you or any party in this proceeding. [All but CR, Dow, KCS]

30. Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request because, based on Montell's Comments, it seeks irrelevant information and documents not likely to lead to relevant information.

31. Produce all public statements by your President or other executives at the level of Vice President or above relating to the UP/SP merger. [All but CR, Dow, KCS]

32. Produce your annual reports to stockholders for years 1991 through 1995. [All but CR, Dow, KCS]

Objection: In addition to its General Objections, Montell objects to this document request because it does not seek relevant information and is not likely to lead to the discovery of relevant information.

33. To the extent not done as part of your prior discovery responses or March 29 filings, produce all presentations to, and minutes of, your board of directors relating to the UP/SP merger or conditions to be sought by you or any other party in this proceeding. [All but govt's, assns.]

34. To the extent not done as part of your prior discovery responses or March 29 filings, produce all your business plans or strategic plans, if those filings referred to the possible impact of the merger on your future business. [All but govt's, assns]

Objection: In addition to its General Objections, Montell objects to this document request because it does not seek relevant information and is not likely to lead to the discovery of relevant information. Additionally, this request is burdensome in that it seeks information unrelated to the plant locations identified in Montell's Comments.

35. To the extent not done as part of your prior discovery responses or March 29 filings, produce documents relating to the meeting referred to in the penultimate sentence on p. 16 of the Verified Statement of William L. Gebo in DOW-11. [Dow]

Response: No reply is required.

36. To the extent not done as part of your prior discovery responses or March 29 filings, produce your files relating to (a) the BN rail car barge proposal, including any studies relating to it; (b) each build-in or build-out proposal referred to in the Gebo Verified Statement. [Dow]

Response: No reply is required.

37. To the extent not done as part of your prior discovery responses or March 29 filings, produce any documents discussing Mr. Carey's tour of the Harriman Center on November 29, 1994, or relating to the priority table referred to in the Carey Verified Statement at pp. 494-50. [CR]

Response: No reply is required.

38. To the extent not done as part of your prior discovery responses or March 29 filings, if the answer to Interrogatory 21 in applicants, second set is affirmative, produce all documents, including computer tapes, that enable the identification of traffic for which SP is the exclusive serving carrier at the origination or the destination. [KCS]

Response: No reply is required.

39. Produce all geo-coded traffic data from the 1994 Carload Waybill Sample. [CR, KCS]

Response: No reply is required.

40. Produce all statistical analyses undertaken in developing the "trackage/haulage" coefficients reference on pages 8 and 9 of the Hunt/Oderwald Verified Statement. [CR,, KCS]

Response: No reply is required.

41. Produce in both a paper output list and in electronic format the uncompiled computer source code and the executable version of the following software:

a. The two most recent versions of the "pre-recalibration" ATD Model, i.e., the code(s) that would have been executed prior to the "recalibration" effort described in the Hunt/Oderwald Verified Statement, including:

(1) All the hard copy and machine-readable input and output files for original runs of the "precalibration" program that were used to calibrate it against the 1994 Carload Waybill Sample data, and the coefficients determined from those calibrations.

(2) All the hard copy and machine-readable input and output files for original runs of the "precalibration" program that were used by ALK to "test[]" the ATC model against the 1994 ICC Carload Waybill Sample" as described on page 6 of the Hunt/Oderwald Verified Statement, and the coefficients determined from those calibrations.

(3) All the hard copy and machine-readable input and output files for original runs of the "prerecalibration" program that indicated the need for recalibration.

(4) All other computer programs, input files, and output files, in both paper and machine-readable form, that were used to explore the sensitivity of the coefficients in the "market share equation" to various strategies of recalibration.

b. The current version of the recalibrated ATD Model, and all intermediate versions of the ATD Model run by ALK to finalize and "tune" the final recalibrated model, including input, output, and program listings, in both paper and machine-readable form, and all machine readable versions of the input files and output files from these runs.

c. All runs of the recalibrated ATD that form the basis for the opinions expressed by Hunt/Oderwald in their Verified Statement, with these runs specifically identified as such, including input, output, and program listings, in both paper and machine-readable form, and all machine-readable versions of the input files and output files from these runs.

d. The two most recent versions of PC*Rail.

e. The two most recent versions of the Princeton Transportation Network Model and the Graphic Information System ("PTNM/GIS").

f. All programs and files, both input and output, that form the basis of Figures I, Ia, Ib, Ic, Id, II, IIa, IIb, IIc, IID, in the Hunt/Oderwald Verified Statement. [CR, KCS]

Response: No reply is required.

42. To the extent not done as part of your prior discovery responses or March 29 filings, produce studies, analyses, and

reports concerning the blending of coals from different areas.
[PS Colo, PS S. Ant., CP&L, TVA]

Response: No reply is required.

43. Produce studies, analyses, and reports concerning past sales or projections of future sales to Central Power & Light, and the contracts governing current coal movements to that customer. [CP&L]

Response: No reply is required.

44. Produce all studies, analyses or reports discussing coal sources for the blending facility at Coletto Creek, including in particular the 1992 study by Sargent & Lundy. [CP&L]

Response: No reply is required.

45. Produce studies, analyses and reports discussing coal sources for PSC's three Denver area power plants -- the Cherokee, Arapahoe, and Valmont Power Stations. [PS Colo]

Response: No reply is required.

46. Produce a listing of each of the fossil fuel plants owned by the Tennessee Valley Authority, other than the Shawnee and Allen fossil fuel plants, where Western bituminous or sub-bituminous coal has been burned. [TVA]

Response: No reply is required.

47. Produce all studies, analyses or reports discussing the "developments [that] enabled Enterprise to become competitive in new markets involving rail shipments to or from Mont Belvieu" described on page 6 of the verified statement of Rudy A. Nix. [Enterprise]

Response: No reply is required.

48. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings discussed those subjects, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing (a) transport pricing or competition for chemicals or petrochemicals (i.e., any STCC 28 or STCC 29 commodity, or such commodities generally), (b) the handling of such commodities by railroads, (c) the handling of such commodities by other modes, (d) storage-in-transit of such commodities, or (e) source or destination competition, shifting of production or shipments among facilities, modal alternatives or shipper leverage as

constraints on rail rates or service for such commodities.
[Montell, Quantum, Shell Formosa, Geon, Chems.]

Objection: In addition to its General Objections, Montell objects to this document request as being vague and unduly burdensome. Clearly, Applicants drafted this request without first reading Montell's Comments filed on March 29. Thus, Applicants improperly seek to shift the burden to Montell to determine what information is being sought by Applicants. Further, Montell objects to this document request because, based on Montell's Comments, it seeks irrelevant information and documents not likely to lead to relevant information. Finally, given the thrust of Montell's Comments and the world-wide scope of Montell's business, it is unduly burdensome to try to locate and produce the requested documents, to the extent that any may exist.

49. To the extent not done as part of your discovery responses or March 29 filings, produce all plans, studies, and analyses relating to capacity, capacity expansion, or the relocation of capacity for the production of polyethylene or polypropylene. [Montell, Quantum, Shell, Formosa, Geon]

Objection: In addition to its General Objections, Montell objects to this document request because it does not seek relevant information and is not likely to lead to the discovery of relevant information. Additionally, this request is unduly burdensome given the scope of Montell's worldwide operations and the limited nature of Montell's Comments.

50. To the extent not done as part of your discovery responses or March 29 filings, produce all plans, studies and analyses relating to the transload of polyethylene or polypropylene from truck to rail at the rail origin, or from rail

to truck at the rail destination. [Montell, Quantum, Shell, Formosa, Geon]

Objection: In addition to its General Objections, Montell objects to this document request because it does not seek relevant information and is not likely to lead to the discovery of relevant information.

51. With respect to the statement at p. 6 of QCC-2 that, "After that merger [BN-Santa Fe] Quantum noticed that rates for the tended to migrate upwards;"

(a) provide all documents that support, qualify or contradict the statement;

(b) for all contracts for movement by rail to or from Quantum's Strang, Texas facility, entered into since the BN-Santa Fe merger, identify the rates in the winning and each losing bid, the revenues per car mile in the winning and each losing bid, date of contract and period for which the contract was or is in effect, commodity by STCC code, number of carloads, origin and destination, and routing, including the identity of any other railroads participating in the movement.

(c) for the twenty most recent contracts entered into prior to the BN/Santa Fe merger for movement by rail to or from Quantum's Strang, Texas facility, identify the rates in the winning and each losing bid, the revenues per car mile in the winning and each losing bid, date of contract and period for which the contract was or is in effect, commodity by STCC code, number of carloads, origin and destination, and routing, including the identity of any other railroads participating in the movement.

(d) state whether you contend that after the Burlington Northern/Santa Fe merger, the winning bids for rail movements to or from Quantum's Strang, Texas, facility, migrated upwards; and, if so, provide all documents that support, qualify, or contradict that contention, and identify all movements to or from Strang that, Quantum contends, illustrate or support that contention, providing the same information as requested in (b) above. [If all such movements are included in the response to (b), then it will be sufficient to identify such movements by some clear marking in that response.] [Quantum]

Response: No reply is required.

52. To the extent not done as part of your prior discovery responses or March 29 filings, produce any studies, analyses or

reports supporting or discussing the feasibility, cost, or any other aspect of the proposal for "neutral terminal railroads" set forth in RCT-4, e.g., pp. 19-29. [RC Tex]

Response: No reply is required.

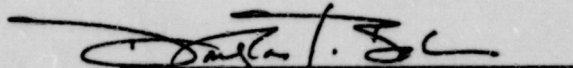
53. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings address a sale of all or part of SP, produce all documents found in the files of officers at the level of Vice President or above, discussing the value or profitability of SSW. [R.C. Tex]

Response: No reply is required.

54. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports, analyses, or plans discussing all or any part of the SP line between Lewisville, Arkansas, and Houston, Texas. [R.C. Tex]

Response: No reply is required.

Respectfully submitted,


Martin W. Bercovici
Douglas J. Behr

KELLER AND HECKMAN
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Tel: (202) 434-4100
Fax: (202) 434-4646

April 10, 1996

Attorneys for Montell
USA, Inc.

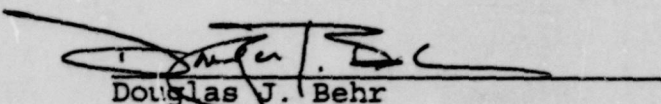
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Montell USA Inc.'s Objections to Applicants' Third Set Of Interrogatories and Requests for Production of Documents was served this 10th day of April, 1996, by hand-delivery, on counsel for Applicants, as follows:

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

Paul A. Cunningham
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and, by mail upon the remainder of the Restricted Service List.


Douglas J. Behr

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Item No. _____

Page Count 8

Mar #275

LAW OFFICES

McFARLAND & HERMAN

20 NORTH WACKER DRIVE - SUITE 1330

CHICAGO, ILLINOIS 60606-2902

TELEPHONE (312) 236-0204

FAX (312) 201-9695

THOMAS F. McFARLAND, JR.

STEPHEN C. HERMAN

March 12, 1996

By UPS Overnight Mail

Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation, Rm. 1324
12th & Constitution Avenue, NW
Washington, DC 20423

Re: Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.*

Dear Mr. Williams:

Enclosed please find an original and 20 copies of Objection To Request For Discovery, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

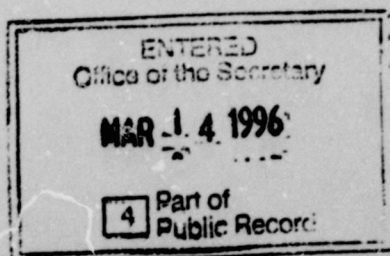
Tom McFarland

Thomas F. McFarland, Jr.

Attorney for Wisconsin Electric Power Company

TMCF:kl:521

cc: Restricted Service List



ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION

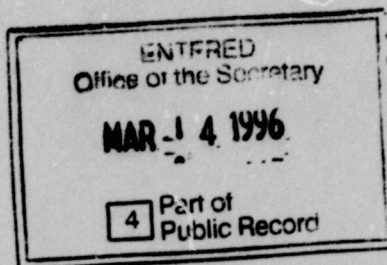
UNION PACIFIC CORPORATION, ET)	
AL. -- CONTROL AND MERGER --	)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL	)	NO. 32760
CORPORATION, ET AL.)	



OBJECTION TO REQUESTS FOR DISCOVERY

WISCONSIN ELECTRIC POWER COMPANY
231 West Michigan Street
P.O. Box 2046
Milwaukee, WI 53201-2046

Protestant



THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive
Suite 1330
Chicago, IL 60606-2902
(312) 236-0204

Attorney for Protestant

Date Filed: March 13, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION

UNION PACIFIC CORPORATION, ET)	
AL. -- CONTROL AND MERGER --	)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL	)	NO. 32760
CORPORATION, ET AL.)	

OBJECTION TO REQUESTS FOR DISCOVERY

WISCONSIN ELECTRIC POWER COMPANY (WEPC) hereby objects to the requests for discovery (interrogatories and production of documents) which were submitted by the Merger Applicants (Document No. UP-SP 135) and which were received on February 27, 1996.

WEPC is a receiver of coal by rail, not a rail carrier. As here pertinent, WEPC receives coal by rail at its Oak Creek power plant at Oak Creek, WI. On January 29, 1996, WEPC filed a description of anticipated inconsistent and responsive application for overhead trackage rights over certain rail lines of Union Pacific Railroad Company (UP) between Chicago and Oak Creek, WI; between those points and Cudahy Shop, Inc. in Milwaukee, WI; and terminal trackage rights in the Milwaukee, WI area. However, WEPC did not, and does not, seek those trackage rights for itself as a rail carrier. Instead, WEPC seeks those trackage rights in behalf of a rail carrier or carriers unaffiliated with the primary merger applicants. Thus, WEPC is a shipper opponent of the merger seeking a condition or conditions to any approval of the merger.

As in the case of shipper opponents of abandonment, shipper opponents of merger need not respond to discovery requests made by merger applicants. *See Illinois Central Railroad Company -- Abandonment -- in Jackson, Hinds County, MS*, Docket No. AB-43 (Sub-No. 162)

(ICC, served September 1, 1995). A copy of that decision is attached to this objection for ready reference. In that case, the ICC denied an abandonment applicant's motion to compel answers to the applicant's interrogatories. That decision was based on the fact that the applicant, rather than shipper opponents, has the burden of proof that public convenience and necessity require or permit abandonment, viz., at page 1:

... In an abandonment proceeding, the applicant bears the burden of proving that the present or future public convenience and necessity require or permit the abandonment. 49 U.S.C. 10904(d)(1). The applicant should have in its possession all the information it needs to meet that burden. We will deny applicant's motion to compel (footnote omitted). To the extent that transportation alternatives available to shippers are placed in issue by the applicant, shippers will have the opportunity to offer their own evidence or information to refute IC's assertions. Rather than requiring shippers to make available specific requested information, it can be left to shippers to present whatever information they believe they need to support their assertions. Applicant then may refute or rebut such assertions and information in its reply statement.

The same principle applies in merger cases in which applicants have the burden of proof.

The ICC also has denied efforts to enforce discovery against shipper opponents of rail abandonment because such discovery discourages public participation and is contrary to the goal of making the abandonment process accessible and straightforward. *Chicago and North Western Transportation Company -- Abandonment -- between Palmer and Laurens in Pocahontas County, IA*, Docket No. AB-1 (Sub-No. 212) (ICC served May 16, 1991, reconsideration denied served August 2, 1991); and *Missouri Pacific Railroad Company -- Abandonment -- in Woodson County, KS (Piqua Industrial Lead)*, Docket No. AB-3 (Sub-No. 112) (ICC served February 16, 1994). That principle also applies equally to merger proceedings.

Consistently with the reasoning supporting those decisions, WEPC objects to Applicants' discovery requests, and will not provide answers to the interrogatories or provide the

documentation requested unless ordered to do so. However, that does not mean that WEPC refuses to furnish relevant information and documentation in support of evidence that it will file on March 29, 1996. WEPC undertakes to furnish workpapers and source documents underlying evidence that it will file on that date. Under the law referred to above, that is all to which applicants are entitled.

WHEREFORE, WEPC objects to the discovery requests proffered by Applicants.

Respectfully submitted,

WISCONSIN ELECTRIC POWER COMPANY
231 West Michigan Street
P.O. Box 2046
Milwaukee, WI 53201-2046

Protestant

Thomas F. McFarland Jr.

THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive
Suite 1330
Chicago, IL 60606-2902
(312) 236-0204

Attorney for Protestant

Date Filed: March 13, 1996

SEP 1 1995

DECISION

Docket No. AB-43 (Sub-No. 162)

ILLINOIS CENTRAL RAILROAD COMPANY--ABANDONMENT--
IN JACKSON, HINDS COUNTY, MS

Decided: September 1, 1995

By application filed June 9, 1995, Illinois Central Railroad Company (IC or applicant) seeks authority under 49 U.S.C. 10903 to abandon a line of railroad from milepost LN-0.20 to milepost LN-6.00, a distance of 5.8 miles of main track, together with 2.14 miles of side track, totalling 7.94 trackmiles, in Jackson, Hinds County, MS. Based on protests and comments received, the Commission instituted an investigation into the proposed abandonment under 49 U.S.C. 10904 and established a procedural schedule by Director Order served July 24, 1995.

On August 11, 1995, IC filed a motion to compel answers to interrogatories from BWI of Jackson, Frierson Building Supply Co., Jackson Oil Mill, Puckett Machinery Co., and Sheppard Building Supply Co. (shippers). The interrogatories attempt to ascertain information regarding shippers' rail and truck shipments and the availability of transportation alternatives. Shippers replied in opposition on August 25, 1995. In an abandonment proceeding, the applicant bears the burden of proving that the present or future public convenience and necessity require or permit the abandonment. 49 U.S.C. 10904(d)(1). The applicant should have in its possession all the information it needs to meet that burden. We will deny applicant's motion to compel.¹ To the extent that transportation alternatives available to shippers are placed in issue by the applicant, shippers will have the opportunity to offer their own evidence or information to refute IC's assertions. Rather than requiring shippers to make available specific requested information, it can be left to shippers to present whatever information they believe they need to support their assertions. Applicant then may refute or rebut such assertions and information in its reply statement.

On August 29, 1995, City of Jackson filed a motion to compel IC to produce documents. City of Jackson seeks documents regarding the title and merchantability of IC's right-of-way, and maintenance and rehabilitation costs for the line. Similarly, we will deny City of Jackson's motion to compel. To the extent that these matters are in issue, applicant has the burden of proving them. Thus, applicant should be permitted to support merchantability of title or not, recognizing that asserted merchantability of title will have to be supported.

The parties are advised that issues they raise, and their claims and allegations, must be supported by testimony and documentation in the course of modified procedure. Commission rules require parties in abandonment proceedings to support and

¹ The Commission looks with disfavor upon an applicant's serving interrogatories on a shipper in an attempt to develop its case or discourage participation. Such action is contrary to the Commission's goal of making the abandonment process accessible and straightforward. Chicago and North Western Transportation Company--Abandonment--Between Palmer and Laurens in Pocahontas County, IA, Docket No. AB-1 (Sub-No. 212) (ICC served May 16, 1991), reconsideration denied, August 3, 1991; see also Missouri Pacific Railroad Company--Abandonment--In Woodson County, KS (Piqua Industrial Lead), Docket No. AB-3 (Sub-No. 112) (ICC served Feb. 16, 1994).

substantiate fully all revenue forecasts, costs, and asset values. See Abandonment Regulations—Costing, 5 I.C.C.2d 133, 133 (1968). In balancing the parties' competing interests, the Commission will consider carefully both the parties' assertions and the nature and strength of their evidence in determining the weight to be accorded to each.

On August 28, 1995, a joint request for extension of time was filed by protestants SWI of Jackson, Frierson Building Supply Co., Jackson Oil Mill, Puckett Machinery Co., Sheppard Building Supply Co., and City of Jackson, MS. Protestants request an additional 10 days in which to file their statements, i.e., from September 5, 1995, to September 15, 1995. IC replied in opposition on August 31, 1995. Protestants' request will be granted in part. The Commission must complete its investigation by October 22, 1995, and render its decision by November 21, 1995. See 49 U.S.C. 10904(c). To provide the parties with additional time to review and analyze the evidence while allowing adequate time to complete our investigation, we will extend the procedural schedule by 6 days: protestants' statements will be due on September 11, 1995, and applicant's reply statement will be due on September 26, 1995.

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

It is ordered:

1. Applicant's motion to compel answers to interrogatories is denied.
2. City of Jackson's motion to compel production of documents is denied.
3. Protestants' joint request for extension of time is granted in part. Protestants' statements are now due on September 11, 1995. Applicant's reply statement is now due on September 26, 1995.
4. This decision is effective on its service date.

By the Commission, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 1996, I served the foregoing document, Objection To Requests For Discovery, by U.P.S. overnight mail on:

Administrative Law Judge Jerome Nelson
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, DC 20426

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, DC 20036

Arvid E. Roach, II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

and on all other parties on the restricted discovery service list by first-class, U.S. mail, postage prepaid.

Thomas F. McFarland Jr.
THOMAS F. McFARLAND, JR.

STB

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Item No. _____

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Page Count 17

Mar. 8 #158

Two Pruden
45th Floor
80 North Stersson Avenue
Chicago, IL 60601-6710

(312) 616-1800
FAX (312) 616-5800

MAR 11 1996

March 7, 1996



Brussels
Chicago
Minneapolis
New York
Paris
Saint Paul
Washington, D.C.

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Avenue, N.W.
Washington, DC 20423

Re: Finance Docket No. 32760
Union Pacific Corporation, Union Pacific Railroad
Company and Missouri Pacific Railroad Company --
Control and Merger -- Southern Pacific Rail Corp.,
Southern Pacific Transportation Company, St. Louis
Southwestern Railway Company, SPCSL Corp. and
The Denver and Rio Grande Western Railroad Company

Dear Secretary Williams:

Enclosed for filing with the Board in the above-captioned proceeding are twenty-one copies of the Objections of Gateway Western Railway Company to Applicants' First Set of Interrogatories and Requests for Production of Documents (GWWR-3), dated March 7, 1996.

The original of these discovery objections has been served on counsel for the Applicants. Copies also have been served on the parties shown on the certificate of service.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance.

Respectfully submitted,

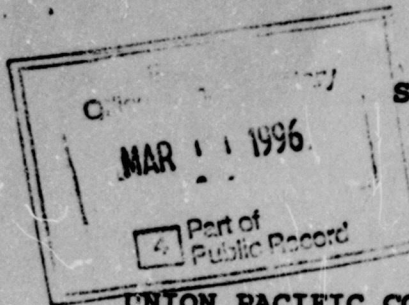
Tom Healey

Thomas J. Healey
Attorney for Gateway Western
Railway Company

TJH:tjl

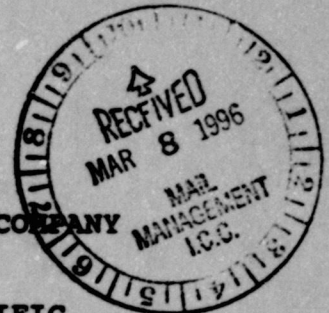
Enclosures

cc: Parties on Certificate of Service



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 32760



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

-- CONTROL AND MERGER --

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

**OBJECTIONS OF GATEWAY WESTERN RAILWAY COMPANY TO
APPLICANTS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

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Chicago, Illinois 60601
(312) 616-1800**

**ATTORNEYS FOR GATEWAY WESTERN
RAILWAY COMPANY**

Dated: March 7, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

-- CONTROL AND MERGER --

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



**OBJECTIONS OF GATEWAY WESTERN RAILWAY COMPANY TO
APPLICANTS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Gateway Western Railway Company ("Gateway") by its counsel, Oppenheimer Wolff & Donnelly, object as follows to the first set of interrogatories and requests for production of documents of Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (collectively, "Applicants"). These objections are being served pursuant to the Discovery Guidelines Order entered by the Administrative Law Judge in this proceeding on December 5, 1995.

Subject to the objections set forth below, and in some instances notwithstanding the objection set forth below, Gateway will produce all relevant, non-privileged documents to Applicants on or before March 12, 1996. However, should the Administrative Law Judge determine that the discovery served by Applicants on numerous parties, including Gateway, on February 26, 1996 was premature, Gateway reserves the right to provide responses to this

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discovery in compliance with said determination. Counsel for Gateway is prepared to discuss and resolve the following objections with counsel for Applicants prior to seeking resolution of these objections with the Administrative Law Judge.

GENERAL OBJECTIONS TO DISCOVERY

Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents on the following grounds, and invokes said objections as to all of Applicants' discovery, whether said objections are specifically referenced in response to particular discovery requests or otherwise:

1. Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents to the extent that they call for the production of documents and information protected by the attorney work product doctrine, the attorney-client privilege, or any other legal privilege.

2. Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents to the extent that they call for the production of documents and information neither relevant in this proceeding nor reasonably calculated to lead to the discovery of admissible information.

3. Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents to the extent that they are vague, overly broad or unduly burdensome.

4. Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents to the extent that they call for the production of documents or

information currently in the public domain, previously provided to Gateway by Applicants, or previously provided to Applicants by Gateway, and any other document or information as easily accessible to Applicants as to Gateway.

5. Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents to the extent that they attempt to impose any obligation on Gateway beyond those imposed by the General Rules of Practice of the Interstate Commerce Commission, 49 C.F.R. § 1114.21-31, the scheduling order in place in this proceeding, or any order of the Administrative Law Judge in this proceeding.

6. Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents to the extent that Applicants define "relating" or "related" to have any meaning beyond "make reference to" or "mention".

7. Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents to the extent that they call for preparation of special studies not already in existence.

8. Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents to the extent that they call for the production of draft verified statements and documents related thereto, which have never been deemed relevant to production in merger proceedings.

9. Gateway objects to Applicants' First Set of Interrogatories and Requests for Production of Documents to the

extent that they are premature prior to any filing which Gateway might make on March 29, 1996.

OBJECTIONS TO INTERROGATORIES

1. Identify and describe in detail any agreements that Gateway has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be identified. If Gateway contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

RESPONSE: Gateway objects to Applicants' Interrogatory No. 1 on the grounds that it seeks information protected by the attorney work product doctrine, the attorney/client privilege and other legal privilege, and further seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

2. Describe in detail the "significant anticompetitive effects for shippers in and around the St. Louis/East St. Louis terminal area and in the Chicago-Springfield-St. Louis Corridor" (GWWR-2, p. 2) that Gateway contends the UP/SP merger would have.

RESPONSE: Gateway objects to Applicants' Interrogatory No. 2 on the grounds that it effectively requires Gateway to submit portions of its Responsive Application and other relevant portions of its case prior to the March 29, 1996 date set by schedule for submission of such information.

OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that Gateway makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts of any witnesses presenting testimony for Gateway on or about March 29, 1996 in this proceeding.

further objects to this discovery request on the grounds that it is vague and overly broad.

5. Produce all documents relating to the BN/Santa Fe Settlement Agreement.

RESPONSE: Gateway objects to Applicant's Request for Production of Documents No. 5 on the grounds that it seeks the production of documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further on the grounds that said discovery is vague, overly broad, and unduly burdensome.

6. Produce all documents relating to the IC Settlement Agreement.

RESPONSE: Gateway objects to Applicant's Request for Production of Documents No. 6 on the grounds that it seeks the production of documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further on the grounds that said discovery is vague, overly broad, and unduly burdensome.

7. Produce all documents relating to the Utah Railway Settlement Agreement.

RESPONSE: Gateway objects to Applicant's Request for Production of Documents No. 7 on the grounds that it seeks the production of documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and further on the grounds that said discovery is vague, overly broad, and unduly burdensome.

8. Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 8 on the grounds that it is overly broad, to the extent that it seeks the discovery of information relating to any conditions not referenced in Gateway's filing of January 29, 1996. Gateway further objects to Applicants' Request for Production of Documents No. 8 on the grounds that it effectively requires Gateway to submit portions of its Responsive Application and other relevant portions of its case prior to the March 29, 1996 date set by schedule for submission of such information.

9. Produce all studies, reports or analyses relating to actual or potential competition between UP and SP.

RESPONSE: Gateway objects to Applicant's Request for Production of Documents No. 9 on the grounds that it is vague and overly broad.

10. Produce all studies, reports or analyses relating to the competition between single-line and interline rail transportation.

RESPONSE: Gateway objects to Applicant's Request for Production of Documents No. 10 on the grounds that it is vague and overly broad.

11. Produce all studies, reports or analyses relating to the benefits of any prior rail merger or rail mergers generally.

RESPONSE: Gateway objects to Applicant's Request for Production of Documents No. 11 on the grounds that it seeks documents which are neither relevant nor reasonably calculated to

lead to the discovery of admissible evidence, and further objects to this discovery request as vague, overly broad, and unduly burdensome.

12. Produce all studies, reports or analyses relating to the financial position or prospects of SP.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 12 on the grounds that it seeks information which is neither relevant in this proceeding nor is reasonably calculated to lead to the discovery of admissible evidence, and further objects on the grounds that the documents sought in this discovery request are as easily accessible to Applicants as to Gateway.

13. Produce all communications with other parties to this proceeding relating to the UP/SP merger or the BN/Santa Fe Settlement Agreement, and all documents relating to such communications. This request excludes documents already served on Applicants.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 13 on the grounds that it seeks information which is neither relevant in this proceeding nor is reasonably calculated to lead to the discovery of admissible evidence, and further is vague and overly broad.

14. Produce all presentation, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of Gateway or any other party in this proceeding.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 14 on the grounds that it is overly broad, to the extent that it seeks the production of documents relating to support for "any other party" to this proceeding.

15. Produce all presentations, letters, memoranda, white papers or other documents sent or given to DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 15 on the grounds that this request is overly broad, unduly burdensome, does not seek documents which are either relevant or reasonably calculated to lead to the discovery of admissible evidence, and seeks to chill constitutionally protected interests.

16. Produce all notes of any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 16 on the grounds that this request is overly broad, unduly burdensome, does not seek documents which are either relevant or reasonably calculated to lead to the discovery of admissible evidence, and seeks to chill constitutionally protected interests.

17. Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 17 on the grounds that this request is vague, overly broad, and unduly burdensome, and further objects on

the grounds that the documents sought are neither relevant or reasonably calculated to lead to the discovery of admissible evidence.

18. Produce all documents relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 18 to the extent that it seeks production of documents relating to the sale of any rail lines not sought for purchase by Gateway in this proceeding.

19. Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 19 to the extent that it seeks the production of documents relating to any rail lines over which Gateway is not seeking trackage rights in this proceeding.

20. Produce all documents relating to actual or estimated maintenance-and-operating costs, taxes and return-to-capital costs with respect to any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 20 to the extent that it seeks production of documents relating to any rail lines over which Gateway is not seeking trackage rights in this proceeding.

21. Produce all documents relating to any agreement or understanding that Gateway has with any other party to this proceeding regarding positions or actions to be taken in this

proceeding. Documents relating to routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be produced.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 21 on the grounds that it seeks information protected by the attorney work product doctrine, the attorney/client privilege and other legal privilege, and further seeks the production of documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

22. Produce all presentations to, and minutes of, the board of directors of Gateway relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 22 to the extent that it seeks the production of documents relating to conditions sought by any party other than Gateway in this proceeding, and further objects to this discovery request as overly broad.

23. Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 23 on the grounds that it is overly broad, susceptible to more than one interpretation, unduly burdensome, and seeks the production of information which is neither relevant in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

24. Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 24 on the grounds that it is overly broad, unduly burdensome, and susceptible to more than one interpretation.

25. Produce all Gateway business plans or strategic plans.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 25 on the grounds that it seeks the production of information which is neither relevant in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

26. Produce all computerized 100% Gateway traffic data for 1994, 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: Gateway objects to Applicants' Request for Production of Documents No. 26 on the grounds that it seeks the production of information which is neither relevant in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and further objects on the grounds that this request is overly broad and unduly burdensome.

27. Produce all documents relating to the acquisition by any person of all or any portion of SP or Gateway's interest in such an acquisition.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 27 on the grounds that it seeks

production of documents or information protected by the attorney work product doctrine, the attorney-client privilege, or any other legal privilege, and further objects to this discovery request to the extent that it seeks the production of documents relating to potential acquisitions by any entity other than Gateway in this proceeding.

28. Produce each current haulage or trackage rights agreement in effect between Gateway and any other railroad.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 28 on the grounds that it seeks the production of information which is neither relevant in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and further objects to this discovery request as overly broad.

29. Produce Gateway's annual reports to stockholders for years 1991 through 1995.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 29 on the grounds that it is vague and seeks the production of information which is neither relevant in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

30. Produce all documents relating to the "significant anticompetitive effects for shippers in and around the St. Louis/East St. Louis terminal area and in the Chicago-Springfield-St. Louis terminal area and in the Chicago-Springfield-St. Louis corridor" (GWWR-2, p. 2) that Gateway contends the UP/SP merger would have.

RESPONSE: Gateway objects to Applicants' Request for Production of Documents No. 30 on the grounds that it effectively

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 1996, a copy of the foregoing objections of Gateway Western Railway Company to Applicants' First Set of Interrogatories and Requests for Production of Documents (GWWR-3) was served by facsimile and overnight delivery upon:

Arvid E. Roach, II
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044

by overnight delivery upon:


Paul A. Cunningham
Harkins Cunningham
1300 19th Street, N.W.
Suite 600
Washington, DC 20036

Louise Ann Rinn
Union Pacific Railroad Company
Law Department, Room 830
1416 Dodge Street
Omaha, NE 68179

Carol A. Harris
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

Hon. Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
888 1st Street, N.E.
Washington, DC 20426

and by first class mail, postage prepaid, upon all other parties on the Restricted Service List in this proceeding.



Thomas J. Healey

STB

FD

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Item No. _____

61477

OPPENHEIMER

Page Count 17

Mar 8 # 159

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ENTERED
Office of the Secretary

MAR 11 1996

Part of
Public Record

March 7, 1996



VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Avenue, N.W.
Washington, DC 20423

Re: **Finance Docket No. 32760**
Union Pacific Corporation, Union Pacific Railroad
Company and Missouri Pacific Railroad Company --
Control and Merger -- Southern Pacific Rail Corp.,
Southern Pacific Transportation Company, St. Louis
Southwestern Railway Company, SPCSL Corp. and
The Denver and Rio Grande Western Railroad Company

Dear Secretary Williams:

Enclosed for filing with the Board in the above-captioned proceeding are twenty-one copies of the Objections of Wisconsin Central Ltd. to Applicants' First Set of Interrogatories and Requests for Production of Documents (WC-4), dated March 7, 1996.

The original of these discovery objections has been served on counsel for Applicants. Copies also have been served on the parties shown on the certificate of service.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Wisconsin Central Ltd.

TJL:tl

Enclosures

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

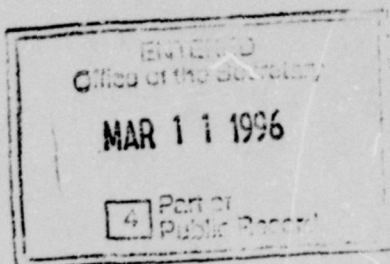
FINANCE DOCKET NO. 32760

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



**OBJECTIONS OF WISCONSIN CENTRAL LTD. TO
APPLICANTS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

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Assistant General Counsel
Wisconsin Central Ltd.
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**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**

Dated: March 7, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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



OBJECTIONS OF WISCONSIN CENTRAL LTD. TO
APPLICANTS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Wisconsin Central Ltd. ("WCL") objects as follows to the first set of interrogatories and requests for production of documents of Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (collectively, "Applicants"). These objections are provided pursuant to the Discovery Guidelines entered by the Administrative Law Judge in this proceeding on December 5, 1995.

Subject to the objections set forth below, and in some instances notwithstanding the objections set forth below, WCL will produce relevant, non-privileged documents to Applicants on or before March 12, 1996. However, should the Administrative Law Judge determine that the discovery served by Applicants on numerous parties, including WCL, on February 26, 1996 was premature, WCL reserves the right to provide responses to this discovery in compliance with said determination. Counsel for WCL is prepared to

discuss and resolve the following objections with counsel for Applicants prior to any presentation of these objections to the Administrative Law Judge.

GENERAL OBJECTIONS TO DISCOVERY

WCL objects to Applicants' First Set of Interrogatories and Requests for Production of Documents on each of the following grounds, regardless of whether such objections are specifically referenced in response to a particular discovery request:

1. WCL objects to the production of documents or information subject to the attorney-client privilege.
2. WCL objects to the production of documents or information subject to the attorney work product doctrine.
3. WCL objects to Applicants' discovery requests to the extent that they seek information or documents that are in the public domain or media, have been previously been filed by WCL in this or any other proceeding, or are as easily accessible to Applicants as to WCL.
4. WCL objects to Applicants' discovery requests to the extent that they attempt to impose any obligation on WCL beyond those imposed by the General Rules of Practice of the Surface Transportation Board, 49 C.F.R. § 1114.21-1114.31, the scheduling orders in place in this proceeding, or any order of the Administrative Law Judge in this proceeding.
5. WCL objects to Applicants' discovery requests to the extent that Applicants define "relating" or "related" to have any meaning beyond "make reference to" or "mention".

5. WCL objects to Applicants' discovery requests to the extent that they call for preparation of special studies not already in existence.

7. WCL objects to Applicants' discovery requests to the extent that they call for the production of draft verified statements and documents related thereto, which have never been deemed relevant to production in merger proceedings.

8. WCL objects to Applicants' discovery requests to the extent that they seek highly confidential, sensitive or proprietary commercial information without a counter-balancing demonstration of the relevance of or need for such information.

9. WCL objects to Applicants' discovery requests as premature, calling for speculation as to what, if anything, WCL will file in comments or a responsive application on March 29, 1996, and inconsistent with Decision Nos. 1 and 6 previously issued by the Interstate Commerce Commission in this proceeding.

OBJECTIONS TO SPECIFIC INTERROGATORIES

Subject and in addition to its General Objections, WCL raises the following specific objections with respect to Applicants' interrogatories:

1. Identify and describe in detail any agreements that WC has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be identified. If WC contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

RESPONSE: WCL objects to Applicants' Interrogatory No. 1 on the grounds that it seeks information protected by the attorney

work product doctrine, the attorney-client privilege and other legal privilege, and further seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTS

Subject and in addition to its General Objections, WCL raises the following specific objections with respect to Applicants' interrogatories:

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that WC makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts of any witnesses presenting testimony for WC on or about March 29, 1996 in this proceeding.

RESPONSE: WCL objects to Applicants' Request No. 1(b) as vague, overly broad, unduly burdensome, and seeking the production of documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

2. Produce all documents relating to benefits or efficiencies that will result from the UP/SP merger.

RESPONSE: WCL objects to Applicants' Request No. 2 as vague, overly broad and irrelevant to any issue raised by WCL in this proceeding.

3. Produce all documents relating to potential traffic impacts of the UP/SP merger.

RESPONSE: WCL objects to Applicants' Request No. 3 as premature and effectively requiring WCL to submit potential portions of its case prior to the March 29, 1996 date set by schedule for submission of such information, and further objects to this request as vague and overly broad.

4. Produce all documents relating to competitive impacts of the UP/SP merger, including but not limited to effects on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options.

RESPONSE: WCL objects to Applicants' Request No. 4 as premature and effectively requiring WCL to submit potential portions of its case prior to the March 29, 1996 date set by schedule for submission of such information, and further objects to this request as overly broad.

5. Produce all documents relating to the BN/Santa Fe Settlement Agreement.

RESPONSE: WCL objects to Applicants' Request No. 5 as premature, effectively requiring WCL to submit potential portions of its case prior to the March 29, 1996 date set by schedule for submission of such information, and not reasonably calculated to lead to discovery of admissible evidence.

6. Produce all documents relating to the IC Settlement Agreement.

RESPONSE: WCL objects to Applicants' Request No. 6 as premature, irrelevant to any issued raised or to be raised by WCL in this proceeding and not reasonably calculated to lead to discovery of admissible evidence.

7. Produce all documents relating to the Utah Railway Settlement Agreement.

RESPONSE: WCL objects to Applicants' Request No. 7 as premature, wholly irrelevant to any issued raised or to be raised by WCL in this proceeding and not reasonably calculated to lead to discovery of admissible evidence.

8. Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

RESPONSE: WCL objects to Applicants' Request No. 8 as premature and effectively requiring WCL to submit potential portions of its case prior to the March 29, 1996 date set by schedule for submission of such information. WCL further objects to this discovery request as irrelevant, overly broad and unduly burdensome to the extent that it seeks the discovery of information relating to any conditions not referenced or sought in WCL's filing, if any, to be made on March 29, 1996.

9. Produce all studies, reports or analyses relating to actual or potential competition between UP and SP.

RESPONSE: WCL objects to Applicants' Request No. 9 as vague, overly broad, premature and effectively requiring WCL to submit potential portions of its case prior to the March 29, 1996 date set by schedule for submission of such information.

10. Produce all studies, reports or analyses relating to the competition between single-line and interline rail transportation.

RESPONSE: WCL objects to Applicants' Request No. 10 as vague, overly broad, irrelevant to any issued raised or to be raised by WCL in this proceeding and not reasonably calculated to lead to discovery of admissible evidence.

11. Produce all studies, reports or analyses relating to the benefits of any prior rail merger or rail mergers generally.

RESPONSE: WCL objects to Applicants' Request No. 11 as vague, overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to discovery of admissible evidence.

12. Produce all studies, reports or analyses relating to the financial position or prospects of SP.

RESPONSE: WCL objects to Applicants' Request No. 12 as irrelevant, not reasonably calculated to lead to discovery of admissible evidence, and seeking documents within Applicants' own possession or as or more easily accessible to Applicants than to WCL.

13. Produce all communications with other parties to this proceeding relating to the UP/SP merger or the BN/Santa Fe Settlement Agreement, and all documents relating to such communications. This request excludes documents already served on Applicants.

RESPONSE: WCL objects to Applicants' Request No. 13 as overly broad and not reasonably calculated to lead to discovery of admissible evidence.

14. Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of WC or any other party in this proceeding.

RESPONSE: WCL objects to Applicants' Request No. 14 as overly broad, unduly burdensome and seeking documents as easily accessible to Applicants as to WCL to the extent that it seeks documents used to support of the position(s) of "any other party."

15. Produce all presentations, letters, memoranda, white papers or other documents sent or given to DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

RESPONSE: WCL objects to Applicants' Request No. 15 as overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

16. Produce all notes of any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

RESPONSE: WCL objects to Applicants' Request No. 16 as overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

17. Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

RESPONSE: WCL objects to Applicants' Request No. 17 as vague, overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

18. Produce all documents relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

RESPONSE: WCL objects to Applicants' Request No. 18 as prelude and effectively requiring WCL to submit potential

portions of its case prior to the March 29, 1996 date set by schedule for submission of such information. WCL further objects to this discovery request as irrelevant, overly broad and unduly burdensome to the extent that it seeks the discovery of information relating to any line sales not referenced or sought in WCL's filing, if any, to be made on March 29, 1996.

19. Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

RESPONSE: WCL objects to Applicants' Request No. 19 as premature and effectively requiring WCL to submit potential portions of its case prior to the March 29, 1996 date set by schedule for submission of such information. WCL further objects to this discovery request as irrelevant, vague, overly broad and unduly burdensome to the extent that it seeks the discovery of information relating to any trackage rights not referenced or sought in WCL's filing, if any, to be made on March 29, 1996.

20. Produce all documents relating to actual or estimated maintenance-and-operating costs, taxes and return-to-capital costs with respect to any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

RESPONSE: WCL objects to Applicants' Request No. 20 as premature and effectively requiring WCL to submit potential portions of its case prior to the March 29, 1996 date set by schedule for submission of such information. WCL further objects to this discovery request as irrelevant, vague, overly broad and unduly burdensome to the extent that it seeks the discovery of

information relating to any trackage rights not referenced or sought in WCL's filing, if any, to be made on March 29, 1996.

21. Produce all documents relating to any agreement or understanding that WC has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Documents relating to routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be produced.

RESPONSE: WCL objects to Applicants' Request No. 21 as vague, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

22. Produce all presentations to, and minutes of, the board of directors of WC relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

RESPONSE: WCL objects to Applicants' Request No. 22 as vague, overly broad and irrelevant. WCL further objects to this discovery request to the extent that it seeks the production of documents relating to conditions sought by any party other than WCL in this proceeding.

23. Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

RESPONSE: WCL objects to Applicants' Request No. 23 as vague, overly broad, susceptible to more than one interpretation, and not reasonably calculated to lead to the discovery of admissible evidence.

24. Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights.

RESPONSE: WCL objects to Applicants' Request No. 24 as vague, susceptible to more than one interpretation, and not

reasonably calculated to lead to the discovery of admissible evidence.

25. Produce all WC business plans or strategic plans.

RESPONSE: WCL objects to Applicants' Request No. 25 on the grounds that it seeks the production of information which is neither relevant in this proceeding nor reasonably calculated to lead to discovery of admissible evidence.

26. Produce all computerized 100% WC traffic data for 1994, 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: WCL objects to Applicants' Request No. 26 as overly broad and unduly burdensome, wholly irrelevant to any issue raised or to be raised by WCL in this proceeding and not reasonably calculated to lead to discovery of admissible evidence.

27. Produce all documents relating to WC's financial support for, establishment of, participation in, or relationship with the "Coalition for Competitive Rail Transportation."

RESPONSE: WCL objects to Applicants' Request No. 27 as vague, irrelevant and not reasonably calculated to lead to discovery of admissible evidence.

28. Produce all documents relating to discussions between WC and Applicants in August or September 1995 concerning possible line sales, trackage rights or other agreements in regard to this proceeding. Except to the extent that Applicants may be required to do so, WC need not produce documents depicting the back-and-forth of negotiations.

RESPONSE: WCL objects to Applicants' Request No. 28 as irrelevant and not reasonably calculated to lead to discovery of admissible evidence. WCL further objects to this discovery request as seeking documents within Applicants' own possession and as easily accessible to Applicants as to WCL.

29. Produce all documents relating to the acquisition by any person of all or any portion of SP or WC's interest in such an acquisition.

RESPONSE: WCL objects to Applicants' Request No. 29 as irrelevant and not reasonably calculated to lead to discovery of admissible evidence to the extent that it seeks information unrelated to conditions sought or to be sought in this proceeding. WCL further objects to this discovery request to the extent it seeks production of documents or information protected by the attorney work product doctrine, the attorney-client privilege, or any other legal privilege, and further objects to this discovery request to the extent that it seeks the production of documents relating to potential acquisitions by any entity other than WCL in this proceeding.

30. Produce all documents relating to possible operations by WC over, or capital investments in, lines of UP or SP.

RESPONSE: WCL objects to Applicants' Request No. 30 as vague, susceptible to more than one interpretation, premature and effectively requiring WCL to submit potential portions of its case prior to the March 29, 1996 date set by schedule for submission of such information. WCL further objects to this discovery request to the extent that it seeks the discovery of information on operations

or investments not related to conditions referenced or sought in WCL's filing, if any, to be made on March 29, 1996.

31. Produce each current haulage or trackage rights agreement in effect between WC and any other railroad.

RESPONSE: WCL objects to Applicants' Request No. 31 as overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to discovery of admissible evidence.

32. Produce all studies, reports or analyses relating to competition in freight transportation services for shipment to or from West Coast ports.

RESPONSE: WCL objects to Applicants' Request No. 32 as overly broad and not reasonably calculated to lead to discovery of admissible evidence.

33. Produce all public statements by WC's President or other top executives relating to the UP/SP merger.

RESPONSE: WCL objects to Applicants' Request No. 33 as overly broad and unduly burdensome. WCL further objects to this discovery request to the extent it seeks information in the public domain and/or media and easily accessible to Applicants.

34. Produce WC's annual reports to stockholders for years 1991 through 1995.

RESPONSE: WCL objects to Applicants' Request No. 34 as seeking publicly available information and not reasonably calculated to lead to the discovery of admissible evidence.

35. Produce all documents relating to any possible breakup or bankruptcy of SP.

RESPONSE: WCL objects to Applicants' Request No. 35 as vague, overly broad and irrelevant. WCL further objects to this

discovery request as seeking documents within Applicants' own possession or more accessible to Applicants than to WCL.

36. Produce all documents relating to WC's reasons for opposing the UP/SP merger or seeking to acquire any portion of SP in connection with the UP/SP merger.

RESPONSE: WCL objects to Applicants' Request No. 36 as premature, assuming facts not in evidence, and effectively requiring WCL to submit potential portions of its case prior to the March 29, 1996 date set by schedule for submission of such information.

Respectfully submitted,

By: 

Janet H. Gilbert
Assistant General Counsel
Wisconsin Central Ltd.
6250 North River Road
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Rosemont, Illinois 60018
(847) 318-4691

Robert H. Wheeler
Kevin M. Sheys
Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-1800

**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**

Dated: March 7, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 1996, a copy of the foregoing Objections of Wisconsin Central Ltd. to Applicants' First Set of Interrogatories and Requests for Production of Documents (WC-4) was served by facsimile and overnight delivery upon:

Arvid Z. Roach, II
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044

by overnight delivery upon:


Paul A. Cunningham
Harkins Cunningham
1300 19th Street, N.W.
Suite 600
Washington, DC 20036

Louise Ann Rinn
Union Pacific Railroad Company
Law Department, Room 830
1416 Dodge Street
Omaha, NE 68179

Carol A. Harris
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

Hon. Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
888 1st Street, N.E.
Washington, DC 20426

and by first class mail, postage prepaid, upon all other parties on the Restricted Service List in this proceeding.



Thomas J. Litwiler

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Item No. _____

Page Count 9

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ial Plaza

etson Avenue
Chicago, Illinois 60601
(312) 616-1800
FAX: (312) 616-5800

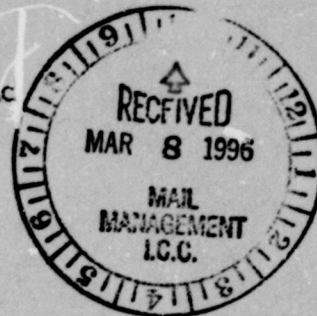
Brussels
Chicago
London
Minneapolis
New York
Paris
St. Paul
Washington, D.C.

Thomas J. Litwiler
(312) 616-5861

MAR 11 1996

4 Part of
Public Record

March 7, 1996



VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Avenue, N.W.
Washington, DC 20423

Re: Finance Docket No. 32760
Union Pacific Corporation, Union Pacific Railroad
Company and Missouri Pacific Railroad Company --
Control and Merger -- Southern Pacific Rail Corp.,
Southern Pacific Transportation Company, St. Louis
Southwestern Railway Company, SPCSL Corp. and
The Denver and Rio Grande Western Railroad Company.

Dear Secretary Williams:

Enclosed for filing with the Board in the above-captioned proceeding are twenty-one copies of the Objections of Wisconsin Central Ltd. to Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company's First Set of Interrogatories and Document Production Requests (WC-3), dated March 7, 1996.

The original of these discovery objections has been served on counsel for BN/Santa Fe. Copies also have been served on the parties shown on the certificate of service.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Wisconsin Central Ltd.

TJL:tl

Enclosures

cc: Parties on Certificate of Service

ENTERED
Office of the Secretary

MAR 11 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

-- CONTROL AND MERGER --

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



OBJECTIONS OF WISCONSIN CENTRAL LTD. TO
BURLINGTON NORTHERN RAILROAD COMPANY AND
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S
FIRST SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

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(312) 616-1800

ATTORNEYS FOR
WISCONSIN CENTRAL LTD.

Dated: March 7, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

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

-- CONTROL AND MERGER --

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



OBJECTIONS OF WISCONSIN CENTRAL LTD. TO
BURLINGTON NORTHERN RAILROAD COMPANY AND
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S
FIRST SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

Wisconsin Central Ltd. ("WCL") objects as follows to the first set of interrogatories and document production requests of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BN/Santa Fe"). These objections are provided pursuant to the Discovery Guidelines entered by the Administrative Law Judge in this proceeding on December 5, 1995.

Subject to the objections set forth below, and in some instances notwithstanding the objections set forth below, WCL will produce relevant, non-privileged documents to BN/Santa Fe on or before March 12, 1996. However, should the Administrative Law Judge determine that the discovery served by Applicants on numerous parties, including WCL, on February 26, 1996 was premature, WCL reserves the right to provide responses to this discovery in compliance with said determination. Counsel for WCL is prepared to discuss and resolve the following objections with counsel for BN/Santa Fe prior to any presentation of these objections to the Administrative Law Judge.

GENERAL OBJECTIONS TO DISCOVERY

WCL objects to BN/Santa Fe's First Set of Interrogatories and Document Production Requests on each of the following grounds, regardless of whether such objections are specifically referenced in response to a particular discovery request:

1. WCL objects to the production of documents or information subject to the attorney-client privilege.
2. WCL objects to the production of documents or information subject to the attorney work product doctrine.
3. WCL objects to BN/Santa Fe's discovery requests to the extent that they seek information or documents that are in the public domain or media, have been previously been filed by WCL in this or any other proceeding, or are as easily accessible to BN/Santa Fe as to WCL.
4. WCL objects to BN/Santa Fe's discovery requests to the extent that they attempt to impose any obligation on WCL beyond those imposed by the General Rules of Practice of the Surface Transportation Board, 49 C.F.R. § 1114.21-1114-31, the scheduling orders in place in this proceeding, or any order of the Administrative Law Judge in this proceeding.
5. WCL objects to BN/Santa Fe's discovery requests to the extent that BN/Santa Fe defines "relating" or "related" to have any meaning beyond "make reference to" or "mention".
6. WCL objects to BN/Santa Fe's discovery requests to the extent that they call for preparation of special studies not already in existence.
7. WCL objects to BN/Santa Fe's discovery requests to the extent that they call for the production of draft verified

statements and documents related thereto, which have never been deemed relevant to production in merger proceedings.

8. WCL objects to BN/Santa Fe's discovery requests to the extent that they seek highly confidential, sensitive or proprietary commercial information without a counter-balancing demonstration of the relevance of or need for such information.

9. WCL objects to BN/Santa Fe's discovery requests to the extent that they are premature prior to any filing which WCL might make on March 29, 1996.

OBJECTIONS TO SPECIFIC INTERROGATORIES AND DOCUMENT REQUESTS

Subject and in addition to its General Objections, WCL raises the following specific objections with respect to BN/Santa Fe's discovery requests:

1. Produce the Wisconsin Central Financial and operating data for 1994 and 1995 most comparable to the data reported by Class I railroads in the R-1 annual report. Specifically, produce the data kept by or available to Wisconsin Central most comparable to Schedules:

- 200-Comparative Statement of Financial Position-Assets
- 210-Results of Operations
- 220-Retained Earnings
- 310-Investments and Advances Affiliated Companies
- 330-Road and Equipment Property and Improvements to Leased Property and Equipment
- 332-Depreciation Base and Rates-Road and Equipment Owned and Used and Leased From Others
- 335-Accumulated Depreciation-Road and Equipment Owned and Used
- 352A-Investment in Railroad Property Used in Transportation Service (By Company)
- 352B-Investment in Railway Property Used in Transportation Service (By Property Accounts)
- 410-Railway Operating Expenses
- 412-Way and Structures
- 414-Rents for Interchanged Freight Train Cars and Other Freight-Carrying Equipment
- 415-Supporting Schedule-Equipment
- 416-Supporting Schedule-Road
- 417-Specialized Service Subschedule-Transportation

418-Supporting Schedule-Capital Leases
 450-Analysis of Taxes
 510-Separation of Debtholdings Between Road Property
 and Equipment
 700-Mileage Operated at Close of Year
 702-Miles of Road at Close of Year-By States and
 Territories (Single Track)
 710-Inventory of Equipment
 710S-Unit Cost of Equipment Installed During the Year-
 Divided Between New and Rebuilt Units
 720-Track and Traffic Conditions
 721-Ties Laid in Replacement
 722-Ties Laid in Additional Tracks and In New Lines and
 Extensions
 723-Rails Laid in Replacement
 724-Rails Laid in Additional Tracks and In New Lines and
 Extensions
 725-Weight of Rail
 726-Summary of Track Replacements
 750-Consumption of Diesel Fuel
 755-Railroad Operating Statistics

If Wisconsin Central believes that the data produced are in any respect not comparable to the data reported by Class I railroads on Form R-1, Wisconsin Central should nevertheless produce the most comparable data in its possession, together with a full explanation (for each Schedule) of the respects in which Wisconsin Central believes that the data are not fully comparable with R-1 data.

RESPONSE: In addition to and without waiving its General Objections outlined above, WCL objects to Request No. 1 as overly broad and unduly burdensome, requiring a special study, wholly irrelevant to any issue raised or to be raised by WCL in this proceeding and not reasonably calculated to lead to discovery of admissible evidence.

2. Produce all 1994 and 1995 car loading reports and unloading reports, shown separately, which identify by location, by commodity, and by car type the traffic handled by Wisconsin Central in those years.

RESPONSE: In addition to and without waiving its General Objections outlined above, WCL objects to Request No. 2 as overly broad and unduly burdensome, requiring a special study, wholly irrelevant to any issue raised or to be raised by WCL in this

proceeding and not reasonably calculated to lead to discovery of admissible evidence.

3. Has Wisconsin Central at any time in or after August 1995 discussed (in a meeting, in person, or by telephone) any of the following subjects with any representative of the United States Department of Justice, the United States Department of Transportation, or any other federal or state agency: the Proposed Transaction; the BN/Santa Fe Agreement; or railroad competition in the Western United States? If so, for each such meeting or discussion, provide the following:

- (a) The federal or state agency involved;
- (b) The date of the meeting or discussion;
- (c) The participants on behalf of Wisconsin Central and the federal or state agency in the meeting or discussion;
- (d) A description of the subject matter of the meeting or discussion;
- (e) All documents provided by Wisconsin Central to the federal or state agency at or during the meeting or discussion;
- (f) All other documents sent or provided to or received from the federal or state agency relating to the meeting or discussion; and
- (g) All other documents relating in any way to the meeting or discussion.

RESPONSE: In addition to and without waiving its General Objections outlined above, WCL objects to Request No. 3 as overly broad, unduly burdensome, wholly irrelevant to any issue raised or to be raised by WCL in this proceeding and not reasonably calculated to lead to discovery of admissible evidence.

4. For each interrogatory and document request (or part thereof), identify by name, address, position and responsibilities each person who assisted or participated in preparing or supplying any of the information or documents given in response to such interrogatory or document request (or part thereof.)

RESPONSE: Subject to its General Objections outlined above, WCL states no further objection to Request No. 4.

Respectfully submitted,

By: 

Janet H. Gilbert
Assistant General Counsel
Wisconsin Central Ltd.
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Suite 9000
Rosemont, Illinois 60018
(847) 318-4691

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Thomas J. Litwiler
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180 North Stetson Avenue
Chicago, Illinois 60601
(312) 666-1800

**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**

Dated: March 7, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 1996, a copy of the foregoing Objections of Wisconsin Central Ltd. to Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company's First Set of Interrogatories and Document Production Requests (WC-3) was served by facsimile and overnight delivery upon:

Erika Z. Jones
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

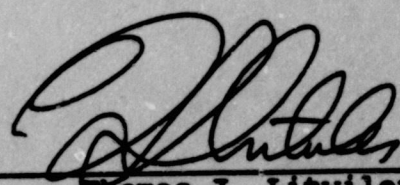
by overnight delivery upon:

Jeffrey R. Moreland
Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102-5384

Richard E. Weicher
The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, IL 60173

Hon. Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
888 1st Street, N.E.
Washington, DC 20426

and by first class mail, postage prepaid, upon all other parties on the Restricted Service List in this proceeding.



Thomas J. Litwiler

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Item No. _____

Page Count 13

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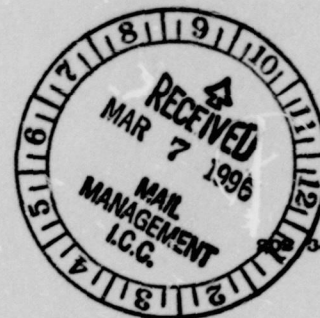
ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

March 4, 1996



* ADMITTED IN PENNSYLVANIA ONLY

VIA TELECOPIER

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

Re: Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Transportation Company, et al.

Dear Arvid:

Enclosed please find the Objections of Arizona Electric Power Cooperative, Inc. to Applicants' First Set of Interrogatories and Requests for Production of Documents ("AEPC-2").

Please do not hesitate to contact us if you have any questions regarding the enclosed.

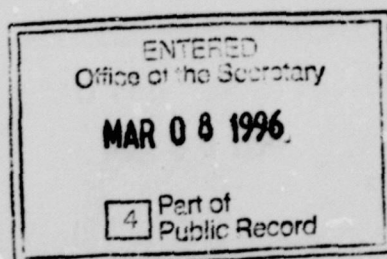
Sincerely,

Andrew B. Kolesar III

Andrew B. Kolesar III

Enclosure

cc: Paul Cunningham, Esq. (via telecopier)
Louise A. Rinn, Esq. (via telecopier)
Carol A. Harris, Esq. (via telecopier)
Restricted Service List (via first class mail)



BEFORE THE
SURFACE TRANSPORTATION BOARD



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

Finance Docket No. 32760

OBJECTIONS OF ARIZONA ELECTRIC POWER
COOPERATIVE, INC. TO APPLICANTS' FIRST SET
OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS

Arizona Electric Power Cooperative, Inc. ("AEPCO")
hereby submits its objections to Applicants' First Set of Inter-
rogatories and Requests for Production of Documents. These
objections are being served pursuant to the Discovery Guidelines
Order entered by the Administrative Law Judge in this proceeding
on December 7, 1995.

Subject to the objections set forth below, AEPCO will
answer each Interrogatory and/or will produce non-privileged
documents responsive to Applicants' Requests. If necessary,
AEPCO is prepared to meet with counsel for Applicants at a
mutually convenient time and place to discuss resolving any
objections asserted herein.

I. GENERAL OBJECTIONS

The following general objections apply to each and every interrogatory and document request:

1. AEPCO objects to Applicants' interrogatories and document requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege, or other legal privilege, including confidentiality restrictions contained in either court orders, regulatory orders, or agreements.

2. AEPCO objects to Applicants' interrogatories and document requests to the extent that they attempt to impose any obligation on AEPCO beyond applicable discovery rules and guidelines.

3. AEPCO objects to Applicants' interrogatories and document requests to the extent that they seek information that is readily available in Applicants' own files or that is readily available from public sources, including but not limited to documents on public file at the Federal Energy Regulatory Commission, any state regulatory agency, or the Securities and Exchange Commission, or any documents or information available in the form of clippings from newspapers or other public media.

4. AEPCO objects to Applicants' interrogatories and document requests to the extent they call for the preparation of special studies not already in existence.

5. AEPCO objects to the production of draft verified statements and documents related thereto. In prior rail consoli-

parties as protected from production.

II. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Subject to and without waiving the foregoing General Objections, AEPCO makes the following specific objections to Applicants' Definitions and Instructions:

1. AEPCO objects to Applicants' definition of "Document" to the extent that it seeks privileged information or information beyond AEPCO's custody and control.

2. AEPCO objects to Applicants' definition of "Identify" on grounds of burden.

3. AEPCO objects to Applicants' definition of "relating to" as unduly vague.

3. AEPCO objects to Applicants' instruction regarding the preparation of a privilege log on the grounds of burden and vagueness and on the grounds that Applicants' themselves have not produced such a privilege log.

4. AEPCO objects to Applicants' instruction number XXXII to the extent that it seeks privileged information.

III. ADDITIONAL OBJECTIONS TO INTERROGATORIES

Subject to and without waiving the foregoing General Objections and Objections to Definitions and Instructions, AEPCO makes the following additional specific objections to Applicants' Interrogatories:

1. Identify and describe in detail any agreements that AEPCO has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be identified. If AEPCO contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

Objection:

No additional objections.

2. For each utility plant operated by AEPCO, separately for each year 1993 through 1995, identify the originating mines for all coal burned at the plant and, as to each such mine, state: (a) the tonnage of coal from that mine burned at the plant; (b) the average delivered price of coal from that mine; (c) the average minehead price of that coal; (d) the rail transportation routings (including origination and interchange points) for all coal shipped from that mine to the plant; and (e) any transportation routings or modes other than rail used in shipping coal to the plant.

Objection:

AEPCO objects to this interrogatory to the extent that it seeks highly confidential and/or sensitive commercial information and on the basis of burden.

IV. ADDITIONAL OBJECTIONS TO DOCUMENT REQUESTS

Subject to and without waiving the foregoing General Objections, Objections to Definitions and Instructions, and Objections to Interrogatories, AEPCO makes the following additional specific objections to Applicants' Document Requests:

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that AEPCO makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for AEPCO on or about March 29, 1996 in this proceeding.

Objection:

AEPCO objects to this request on grounds of overbreadth and that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence. In addition, AEPCO objects to this request to the extent that it seeks documents created before January 1, 1993.

2. Produce all documents relating to benefits or efficiencies that will result from the UP/SP merger.

Objection:

AEPCO objects to this request on the basis of burden, overbreadth and vagueness.

3. Produce all documents relating to potential traffic impacts of the UP/SP merger.

Objection:

AEPCO objects to this request on the basis of burden, overbreadth, and vagueness.

4. Produce all documents relating to competitive impacts of the UP/SP merger, including but not limited to effects on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options.

Objection:

AEPCO objects to this request on the basis of burden and overbreadth and on the basis that the information sought is highly confidential.

5. Produce all documents relating to the BN/Santa Fe Settlement Agreement.

Objection:

No additional objections.

6. Produce all documents relating to the IC Settlement Agreement.

Objection:

No additional objections.

7. Produce all documents relating to the Utah Railway Settlement Agreement.

Objection:

No additional objections.

8. Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

Objection:

AEPCO objects to this request on the basis of burden, overbreadth, vagueness, and to the extent that it calls for speculation.

9. Produce all studies, reports or analyses relating to actual or potential competition between UP and SP.

Objection:

No additional objections.

10. Produce all studies, reports or analyses relating to competition between single-line and interline rail transportation.

Objection:

AEPCO objects to this request on the basis of burden, overbreadth, and vagueness.

11. Produce all studies, reports or analyses relating to the benefits of any prior rail merger or rail mergers generally.

Objection:

AEPCO objects to this request on the basis of burden and overbreadth, and on grounds that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence.

12. Produce all studies, reports or analyses relating to the financial position or prospects of SP.

Objection:

AEPCO objects to this request on the basis of vagueness.

13. Produce all communications with other parties to this proceeding relating to the UP/SP merger or the BN/Santa Fe Settlement Agreement, and all documents relating to such communications. This request excludes documents already served on Applicants.

Objection:

No additional objections.

14. Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of AEPCO or any other party in this proceeding.

Objection:

No additional objections.

15. Produce all presentations, letters, memoranda, white papers, or other documents sent or given to DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any

bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

Objection:

AEPCO objects to this request on the basis of burden and overbreadth, and on grounds that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence.

16. Produce all notes of, or memoranda relating to, any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

Objection:

AEPCO objects to this request on the basis of burden and overbreadth, and on grounds that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence.

17. Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

Objection:

AEPCO objects to this request to the extent that it calls for speculation, and on the basis of overbreadth and vagueness. AEPCO also objects to this request on grounds that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence.

18. Produce all documents relating to the price to be paid for, or the value of, any UP or SP lines that might be sold

as a condition to approval of, or otherwise in connection with, the UP/SP merger.

Objection:

AEPCO objects to this request on the basis of vagueness and to the extent that it calls for speculation.

19. Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

Objection:

AEPCO objects to this request to the extent that it calls for speculation.

20. Produce all documents relating to actual or estimated maintenance-and-operating costs, taxes and return-to-capital costs with respect to any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

Objection:

AEPCO objects to this request to the extent that it calls for speculation.

21. Produce all documents relating to any agreement or understanding that AEPCO has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Documents relating to routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be produced.

Objection:

No additional objections.

22. Produce all presentations to, and minutes of, the board of directors of AEPCO relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

Objection:

AEPCO objects to this request to the extent that it calls for speculation.

23. Produce all documents relating to whether Utah and Colorado coal competes with Powder River Basin or Hanna Basin coals, including but not limited to any studies, reports or analyses of the use by utilities of, solicitation by utilities of bids for, or interchangeability in use of, such coals.

Objection:

AEPCO objects to this request on the basis of overbreadth.

24. Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

Objection:

AEPCO objects to the request on the basis of overbreadth.

25. Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights

Objection:

AEPCO objects to this request on the basis of burden, overbreadth, and vagueness.

26. Produce all documents relating to the effect of the UP/SP merger on coal transportation service, competition or routings to any AEPCO facility.

Objection:

No additional objections.

27. Produce all studies, reports or analyses relating to (a) using a different coal source than is presently used at any AEPCO facility, (b) using a non-coal fuel in lieu of coal at any AEPCO facility, or (c) purchasing power or shifting power generation among facilities as alternatives to consuming coal at any AEPCO facility.

Objections:

AEPCO objects to this request on the basis of burden, overbreadth, and vagueness.

28. Produce all filings made with state utility commissions or state regulatory agencies that discuss sources of fuel.

Objections:

AEPCO objects to this request on the basis of burden, overbreadth, and vagueness. AEPCO also objects to this request on grounds that it requests information that is neither relevant nor likely to lead to the discovery of admissible evidence.

29. Produce all studies, reports, analyses, compilations, calculations or evaluations of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared by L.E. Peabody & Associates, and all workpapers or other documents relating thereto.

Objections:

No additional objections.

Respectfully submitted,

ARIZONA ELECTRIC POWER
COOPERATIVE, INC.

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

By: C. Michael Loftus
Andrew B. Kolesar III *Andrew B. Kolesar III*
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Attorneys for Arizona Electric
Power Cooperative, Inc.

Dated: March 4, 1996

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of March, 1996, I caused a copy of the foregoing Objections to Applicants' First Set of Interrogatories and Requests for Production of Documents to be served by facsimile on the individuals listed below, and by first-class United States mail, postage prepaid, on all other persons on the Restricted Service List in this proceeding.

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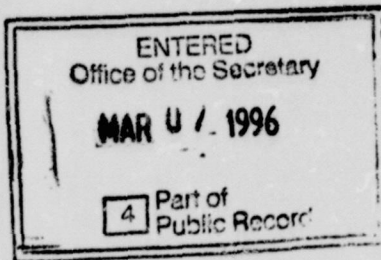
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760



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

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S
OBJECTIONS TO APPLICANTS' FIRST SET
OF INTERROGATORIES AND DATA REQUESTS



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Attorneys for The Society
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March 4, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



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

**THE SOCIETY OF THE PLASTICS INDUSTRY, INC.'S
OBJECTIONS TO APPLICANTS'
FIRST SET OF INTERROGATORIES AND DATA REQUESTS**

The Society of the Plastics Industry, Inc. ("SPI"), submits the following objections to the discovery requests served by Applicants Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"), Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCL") and The Denver and Rio Grande Western Railroad Company ("DRGW") (collectively referred to as the "Applicants") on February 27, 1996. These objections are made pursuant to paragraph 1 of the Discovery Guidelines applicable to this proceeding, which provides that objections to discovery requests shall be made "by means of a written objection containing a general statement of the basis for the objection."

OBJECTION TO TIMELINESS

SPI objects to Applicants' First Set of Interrogatories and Request for Production of Documents to the Society of Plastics Industry ("Applicants' Discovery Requests"), because they are not timely. First, Applicants' Discovery Requests are not timely under Decision 1 of the ICC. In Decision 1, the ICC stated that "[d]iscovery on responsive and inconsistent applications, comments, protests, and requests for conditions shall begin immediately upon their filing." Since SPI has made no such filing, there is no basis for the taking of discovery from it. Second, even if discovery from SPI were appropriate, Applicants failed to serve that discovery timely. The Discovery Guidelines applicable to this proceeding expressly provide that "[n]o written discovery requests shall be served after February 26, 1995 [sic] through March 29, 1995 [sic]." Order Adopting Discovery Guidelines, December 5, 1995, Guideline #5. The Guidelines also provide that discovery requests shall be served "by hand delivery in the Washington, D.C. area." Id. Guideline #1. Applicants' Discovery Requests were not hand delivered until February 27, 1996, outside of the time period provided. While SPI believes the untimely service of the discovery is fully dispositive of SPI's obligation to respond, SPI nonetheless preserves its right to assert other permissible objections.

GENERAL OBJECTIONS

The following objections are made with respect to all of the discovery requests:

1. SPI objects to production of documents or information subject to the attorney-client privilege.
2. SPI objects to the production of documents or information subject to the work product doctrine.
3. SPI objects to the production of documents or information subject to the privilege concerning communication among counsel involved in a common issue or common defense.
4. SPI objects to the production of documents or information subject to any other privilege.
5. SPI objects to the production of documents to the extent that they request information in the possession of "any member of SPI" in that said documents are not in the custody and control of SPI, that SPI members are not participants in this proceeding and further that a response would impose an unreasonable burden on SPI.
6. SPI objects to the production of documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.
7. SPI objects to production of public documents that are readily available, including but not limited to documents on public file at the Interstate Commerce Commission, the Surface

Transportation Board, or the Securities and Exchange Commission or clippings from newspapers or other public media.

8. SPI objects to the production of draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such documents have been treated by all parties as protected from production.

9. SPI objects to providing information or documents that are as readily obtainable by the Applicants.

10. SPI objects to the extent that the Discovery Requests seek highly confidential or sensitive commercial information that is of insufficient relevance to warrant production even under a protective order.

11. SPI objects to the extent that the Discovery Requests to the extent that a response would impose an unreasonable burden on SPI.

12. SPI objects to the definition of "identify" insofar as it calls for the production of drafts and it calls for the production of routine operating and accounting documents such as invoices and receipts.

13. SPI objects to the definition of "identify" insofar as it requests home telephone numbers on grounds that such information is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

14. SPI objects to the definitions of "relating to" as unduly vague.

15. SPI objects to the requests as overbroad and unduly burdensome to the extent that they seek documents for periods prior to January 1, 1993.

16. SPI objects to the requests to the extent that they call for the preparation of special studies not already in existence.

17. SPI objects to the requests that SPI promptly contact the Applicants' attorney to discuss its objections. SPI is hereby filing its objections and this document speaks for itself.

18. SPI objects to the requests that they attempt to impose any obligation on SPI beyond those imposed by the General Rules of Practice of the Interstate Commerce Commission ("Commission"), 49 C.F.R. § 1114.21-31, the Commission's scheduling orders in this proceeding, or the Administrative Law Judge assigned to this case.

ADDITIONAL OBJECTIONS TO SPECIFIC INTERROGATORIES

In addition to the General Objections, Applicants make the following objections to the interrogatories.

Request No. 1. "Identify and describe in detail any agreements that SPI has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be identified. If SPI contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly premature.

ADDITIONAL OBJECTIONS TO SPECIFIC DOCUMENT REQUESTS

In addition to the General Objections, Applicants make the following objections to the document requests.

Request No. 1. "Produce no later than April 1, 1996 (a) all workpapers underlying any submission that SPI makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for SPI on or about March 29, 1996 in this proceeding."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as premature, unduly vague and unduly burdensome.

Request No. 2. "Produce all documents in the possession of SPI or any member of SPI relating to benefits or efficiencies that will result from the UP/SP merger."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 3. "Produce all documents in the possession of SPI or any member of SPI relating to potential traffic impacts of the UP/SP merger."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 4. "Produce all documents relating to competitive impacts of the UP/SP merger, including but not limited to effects

on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 5. "Produce all documents in the possession of SPI or any member of SPI relating to the BN/Santa Fe Settlement Agreement."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 6. "Produce all documents in the possession of SPI or any member of SPI relating to the IC Settlement Agreement."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 7 "Produce all documents in the possession of SPI or any member of SPI relating to the Utah Railway Settlement Agreement."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for

information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 8 "Produce all documents in the possession of SPI or any member of SPI relating to conditions that might be imposed on approval of the UP/SP merger."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome.

Request No. 9 "Produce all studies, reports or analyses in the possession of SPI or any member of SPI relating to actual or potential competition between UP and SP."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome.

Request No. 10. "Produce all studies, reports or analyses in the possession of SPI or any member of SPI relating to competition between single-line and interline rail transportation."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 11. "Produce all studies, reports or analyses in the possession of SPI or any member of SPI relating to the benefits of any prior rail merger or rail mergers generally."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for

information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 12. "Produce all studies, reports or analyses in the possession of SPI or any member of SPI relating to the financial position or prospects of SP."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 13. "Produce all communications between SPI and other parties to this proceeding relating to the UP/SP merger or the BN/Santa Fe Settlement Agreement, and all documents in the possession of SPI or any member of SPI relating to such communications. This request excludes documents already served on Applicants."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome.

Request No. 14. "Produce all presentations, solicitation packages, form verified statements, or other materials used by SPI or any of its members to seek support from shippers, public officials, railroads or others for the position of SPI or any other party in this proceeding."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 15. "Produce all presentations, letters, memoranda, white papers or other documents sent or given by SPI or any of its members to DOJ, DOT, any state Governors, Attorney Generals

or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 16 "Produce all notes of, or memoranda in the possession of SPI or any member of SPI relating to, any meetings with DOJ, DOT, any state Governors, Attorney Generals or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Documents Request No. 17 "Produce all documents in the possession of SPI or any member of SPI relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for

information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 18. "Produce all documents in the possession of SPI or any member of SPI relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 19. "Produce all documents in the possession of SPI or any member of SPI relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding."

Additional Objections: In addition to the general objections set out above, SPI objects to this request to the extent that it calls for production of documents concerning trackage rights in that it is unduly vague and unduly burdensome. This request is also overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 20. "Produce all documents in the possession of SPI or any member of SPI relating to actual or estimated maintenance-and-operating costs, taxes and return-to-capital costs with respect to any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly

burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 21. "Produce all documents in the possession of SPI or any member of SPI relating to any agreement or understanding that SPI has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Documents relating to routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be produced."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome.

Request No. 22. "Produce all presentations to, and minutes of, the board of directors (or other governing body) of SPI relating to the UP/SP merger or conditions to be sought by any party in this proceeding."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome.

Request No. 23. "Produce all studies, reports or analyses in the possession of SPI or any member of SPI relating to collusion among competing railroads or the risk thereof."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 24. "Produce all studies, reports or analyses in the possession of SPI or any member of SPI relating to the terms for or effectiveness of trackage rights."

Additional Objections: In addition to the general objections set out above, SPI objects to this request to the extent that it calls for production of documents concerning trackage rights in that it is unduly vague and unduly burdensome. This request is also overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request No. 25. "Produce the complete plastics transportation files of the following companies: Formosa, Exxon, Quantum, Amoco, Dow, Georgia Gulf, Rexene, Phillips, Shintec, Union Carbide, Mobil, Fina, Eastman Chemical, Chevron, Himont, Lyondell Petrochemical, Westlake Polymers."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome. In particular, SPI objects to this request in that said documents are not in the custody and control of SPI and further that a response would impose an unreasonable burden on SPI.

Request No. 26. "Produce all documents in the possession of SPI or any member of SPI relating to the possibility of (a) a build-in by UP (or build-out to UP) at Bayport, Texas, (b) build-ins by SP (or build-outs to SP) at North Seadrift, Texas, Freeport, Texas, or Taft, Louisiana, or (c) a build-in by BN/Santa Fe (or build-out to BN/Santa Fe) at Chocolate Bayou, Texas."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome.

Request No. 27. "Produce all studies, reports or analyses in the possession of SPI or any member of SPI relating to (a) transport pricing or competition for plastics, (b) the handling of plastics by railroads, (c) the handling of plastics by other

modes (including truck, truck-rail transloading, and water), (d) storage-in-transit of plastics, or (e) source or destination competition, shifting of production or shipments among facilities, "swapping" of product, modal alternatives, or shipper leverage as constraints on rail pricing or service for plastics."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome.

Request No. 28 "Produce all documents in the possession of SPI or any member of SPI relating to (a) the extent to which any particular 7-digit STCC Code within the STCC 28 or STCC 29 range includes different commodities that are not substitutable in use, and (b) the extent to which manufacturers can shift existing production capacity between, or use the same facilities to produce, such commodities (e.g., high-density and linear low-density polyethylene)."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome.

Request No. 29. "Produce all studies, reports, analyses, compilations, calculations or evaluations of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared by L.E. Peabody & Associates, in the possession of SPI or any member of SPI, and all workpapers or other documents in the possession of SPI or any member of SPI relating thereto."

Additional Objections: In addition to the general objections set out above, SPI objects to this request as unduly vague and unduly burdensome.

Respectfully submitted,



Martin W. Bercovici
Douglas J. Behr
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March 4, 1996

Attorneys for The Society
of the Plastics Industry, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing The Society of the Plastics Industry, Inc.'s Objections to the Applicants' First Set of Interrogatories and Data Requests was served this 4th day of March, 1996, by hand-delivery, on counsel for Applicants as follows:

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and, by mail upon the remainder of the Restricted Service List.

Leslie E. Silverman
Leslie E. Silverman

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COVINGTON & BURLING

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J. MICHAEL HENNER

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MAR 07 1996

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March 5, 1996

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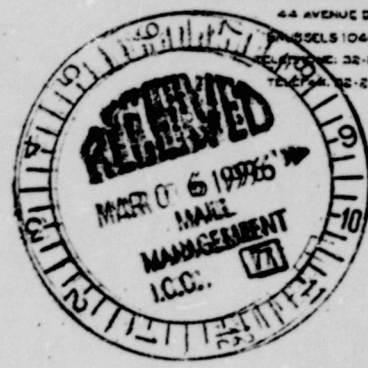
BRUSSELS CORRESPONDENT OFFICE

64 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

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BY FACSIMILE

Hon. Jerome Nelson
Administrative Law Judge
FERC
Room No. 11F21
888 First Street, N.E.
Washington, D.C. 20426

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

Dear Judge Nelson:

Applicants offer this response to WSC's letter
of March 4 requesting a protective order against Applicants'
recent discovery.

WSC's letter is one of the more peculiar legal
documents we have encountered, mixing free speech and civil
rights claims with antitrust defense concepts, sweeping claims
of work product, and vague and unsubstantiated fears of
"retaliation" in an effort to bar discovery -- even though
Applicants' discovery requests are standard fare in merger
cases. WSC seeks sanctions against Applicants for seeking
discovery that other parties not only sought, but that
Applicants provided. Indeed, if WSC's expansive challenge
to the normal discovery process were applied even-handedly,
virtually the entire discovery campaign conducted against
Applicants over the last three months would be unconstitu-
tional and improper.

In this brief reply, we attempt to place WSC's
claims in perspective. We will also suggest certain alter-
natives and interpretations that may avoid conflict. Finally,
we will respond to DOJ's comments on the one issue where it
supports WSC.

Judge Nelson
March 5, 1996
Page 2

OVERVIEW

Much of the discovery about which WSC claims to be "outraged" (emphasis in original, p. 3) essentially replicates discovery that was directed against Applicants and to which Applicants either agreed or were compelled to respond. Parties in this case have engaged in aggressive and wide-ranging discovery designed to explore how Applicants may have attempted to influence other parties and interested publics, including DOJ, and to explore whether the support Applicants received from over a thousand shippers is informed and genuine. (See, e.g., KCS Interrogatory Nos. 3, 4, 5 10 and 23.) Applicants responded to many of those inquiries, and were forced to respond to others.

Thus, through the discovery process, Applicants produced notes of meetings between their lawyers and DOJ, material Applicants provided to the California Attorney General and the Texas Railroad Commission, solicitations to Mexican government officials, and the documentation Applicants sent to shippers across the West seeking their support. Such discovery is conventional in rail merger proceedings and was pursued, and answered by BN and Santa Fe, in the BN/Santa Fe merger proceedings, as it has been here. (Exhibits A through D are pertinent excerpts showing such discovery.) Similarly, Your Honor ordered Applicants to produce for questioning a witness who could address certain contacts with shippers. Transcript, Feb. 29, 1996, p. 1186. You also directed us to supply a list of all 1900 shippers we contacted, with names of the persons we contacted and their telephone numbers. Transcript, Jan. 2, 1996, p. 436.

Now it is Applicants' turn to seek discovery from other parties. WSC claims that discovery of the types we provided, including discovery of the sort Your Honor ordered us to provide, somehow violates the Constitutional rights of its members and is so outrageous as to be sanctionable. But we, too, are entitled to learn how participants in this proceeding have attempted to influence other parties and interested publics and whether those who may support WSC's positions are expressing informed and genuine support and whether WSC is making the same representations to others as to the Board.

Applicants have an additional concern with regard to WSC. WSC has identified itself as a coalition of shippers, all of whom it has identified. However, WSC appears to function quite independently of the interests of some of its

Judge Nelson
March 5, 1996
Page 3

individual members, with whom Applicants have had intermittent communications. Applicants are entitled to know whether WSC is actually a front organization funded by one or more other railroad parties, as has been rumored. Some of our discovery is directed toward that question. For example, in Interrogatory No. 1 Applicants seek agreements between WSC and other parties to this case, and Interrogatory No. 5 seeks to identify financial contributors. WSC's aggressive resistance to both requests strongly supports our belief that such relationships exist.

A. WSC's Constitutional Claims Are Inapplicable in This Proceeding.

Likening itself to individuals who were members of the NAACP in Alabama in the 1950s, WSC claims that much of the discovery sought by Applicants would "chill" its First Amendment rights, because its corporate members fear retaliation from Applicants. WSC offers no explanation of how this "retaliation" might occur, particularly in view of the fact that WSC has already identified its members publicly. But whether or not WSC's members hold such misguided fears, Applicants are entitled to the discovery they seek.

The simple and sufficient solution to WSC's concerns is to use the existing Protective Order. If WSC believes that information and documents sought by Applicants must be held in confidence, it can designate them as "Confidential" or "Highly Confidential." The first designation will limit its use to this proceeding, and the second will keep it entirely out of the hands of Applicants' personnel. (On behalf of Applicants' two outside law firms, we represent that we will not harass anyone for providing discovery in this proceeding.^{1/}) The courts recognize that a protective order limiting disclosure provides sufficient protection against such concerns. Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984); Marshall v. Bramer, 828 F.2d 355 (6th Cir. 1987).

^{1/} WSC argues that Applicants timed their discovery requests to chill WSC's attempt to influence the Utah Legislature's adoption of a resolution opposing the merger. Undersigned counsel hereby represent that the decision to file discovery requests on February 26 had nothing to do with WSC's attempt to influence the Utah Legislature. Applicants' discovery filings were issued on the final day before the discovery moratorium established by Your Honor, and Applicants filed requests on all parties on the same day.

Judge Nelson
 March 5, 1986
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In addition, according to the Supreme Court, discovery may be denied due to fears of harassment where an organization has shown a "pattern of threats or specific manifestations of public hostility." Buckley v. Valeo, 424 U.S. 1, 74 (1976) (per curiam); Bates v. City of Little Rock, 361 U.S. 516 (1960). WSC has not attempted such a showing. Where, as here, parties are unable to show that discovery of membership communications would subject members to reprisals or harassments, courts have found no arguable infringement of the First Amendment. See, e.g., Adolph Coors Co. v. Movement Against Racism & the Klan, 777 F.2d 1538, 1541-42 (11th Cir. 1985).

Third, WSC's concept of the Noerr-Pennington line of cases, protecting the right of parties to petition the Government for relief, would obliterate any right to discovery in this proceeding. The enormous discovery burden experienced by Applicants in this case has certainly been a chilling experience for us. Fortunately for its own discovery pursuits, however, WSC is wrong. The cases clearly hold that the Noerr-Pennington defense to liability under the antitrust laws is not an exemption from discovery. See, e.g., North Carolina Electric Membership Corp. v. Carolina Power & Light Co., 666 F.2d 50, 52-53 (4th Cir. 1981). If the Noerr-Pennington doctrine eliminated the right to discovery, no discovery could occur in any case in an agency proceeding such as this, in which every party is petitioning for relief.

WSC clearly has nothing in common with the NAACP and the individual members on behalf of whom it asserted First Amendment rights in NAACP v. Alabama, 357 U.S. 449 (1958). WSC is admittedly a coalition of sophisticated business corporations, which have voluntarily intervened in this proceeding to protect their commercial interests. WSC acknowledges that it has already released its list of members. WSC Letter, p. 11. In these circumstances, there is no danger that discovery will have an unconstitutional "chilling" effect on the exercise of First Amendment rights.

Applicants and the Board have a wholly legitimate interest in knowing whether there is a hidden that connection between parties supposedly presenting independent evidence to the Board and the identity of those providing the financial backing for that evidence. Nothing in the Constitution bars discovery of these facts.

Judge Nelson
March 5, 1996
Page 5

B. WSC's Claims of Privilege and Work Product Are Premature.

Applicants recognize that WSC counsel may have generated material for WSC's members that is subject to work product protection, and that certain communications between WSC's members and its counsel may be protected under the attorney-client privilege.^{2/} The proper procedure for a discovery respondent, however, is not to seek a broad protective order barring disclosure of all information, including non-confidential material, but instead to produce the non-confidential material and designate privilege or work product only where applicable. That is what we expect WSC to do in this case. There is no reason for Your Honor to consider, prematurely in the abstract and in advance, which documents are subject to such claims and whether WSC's claims are meritorious.

WSC concedes that some information or documents responsive to the disputed discovery requests are not confidential. For example, at page 13, it acknowledges that its factual or non-confidential communications with government officials would not be privileged. WSC should produce such factual or non-confidential communications, like any other party.^{3/}

WSC also raises the "joint defense privilege" as a justification for not revealing its communications with other parties. WSC's assertion of a joint defense agreement as a broad bar to discovery is misplaced and premature. There is no evidence that any such joint defense agreement exists between WSC and any party to this case,^{4/} and WSC refuses to

^{2/} Contrary to repeated WSC assertions, none of Applicants' discovery requests seek communications within WSC.

^{3/} In an excess of litigious exuberance, WSC finds it ironic that Applicants "did not inquire about . . . the Surface Transportation Board!" (Page 2.) We assumed that WSC did not violate prohibitions on ex parte communications and that it served copies of all such communications on Applicants. WSC should inform Your Honor if we are mistaken.

^{4/} One court has described an agreement subject to the joint defense privilege as having the following elements:
(continued...)

Judge Nelson
March 5, 1996
Page 6

produce documents (responsive to Interrogatory No. 1) that would allow inquiry into the existence of such an agreement.

Further, the joint defense privilege exists only if the information is also subject to the attorney-client privilege or the work product doctrine. Griffith v. Davis, 161 F.R.D. 687, 691 (C.D. Cal. 1995). "[B]oth doctrines are extensions of the attorney-client privilege and the work product doctrine, and apply only if the other conditions of those privileges are satisfied." Id.^{1/} WSC's bare reference to communications with other parties in the proceeding in no way indicates either the existence of the claimed joint defense or that every communication between parties is subject to work product or attorney-client protections.

C. The "Informant's Privilege" Is Inapplicable, and DOJ's Concerns Are Satisfied by the Protective Order.

WSC argues that it should not have to disclose its communications with DOJ. Late yesterday afternoon, Applicants received a letter from DOJ objecting to production of information and documents relating to communications with it. In substance, DOJ argues that such discovery would both inhibit frank communications from outside parties and undermine its own preparations. The informant's privilege has no application in a proceeding such as this, and that DOJ's concerns can be satisfied in other ways. (We also note that DOJ did not raise such concerns when Applicants were subject to similar discovery requests, or in the BN/Santa Fe proceedings where the same type of discovery was obtained, although the same policy perspectives should have applied.)

^{1/} (...continued)

"the communications were made in the course of a joint defense effort, (2) the statements were designed to further the effort, and (3) the privilege has not been waived." In re Bevill, Bresler, & Schulman Asset Management Corp., 805 F.2d 120, 126 (3d Cir. 1986).

^{2/} WSC relies on United States v. AT&T, 642 F.2d 1285, 1301 (D.C. Cir. 1980), but the case observes that "evidentiary material [shared] with the Government . . . is of course subject to discovery by those against whom the Government uses it.

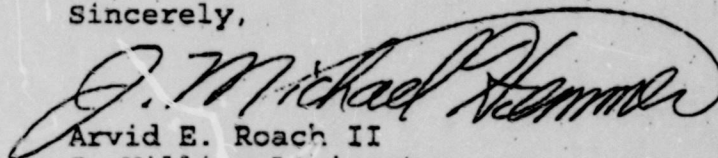
Judge Nelson
March 5, 1996
Page 7

The informant's privilege is designed to protect the identity of the informant, not the information it supplies, so the privilege does not justify refusal to produce information. See Roviato v. United States, 353 U.S. 53 (1957).^{5/} At most, it might justify redaction of names or confidential treatment under the existing Protective Order. In addition, the privilege ceases to apply once the identity of the informant is known. Id. The many parties in this proceeding have already identified themselves, leaving no basis for concern about identifying them.

Contrary to DOJ's assertion, Applicants are not seeking "wholesale disclosure" of the Department's communications with other persons. We have no objection to DOJ invoking applicable privileges (including privileges applicable to inter-governmental communications) using the Protective Order to protect communications when there is an expectation of confidential treatment. Moreover, DOJ does not suggest that its investigation has been constrained by lack of confidentiality protection.

Finally, Applicants recognize that DOJ, like WSC, is conducting internal analyses protected by the work product doctrine. Applicants do not expect disclosure of such material.

Sincerely,



Arvid E. Roach II
S. William Livingston
J. Michael Hemmer

^{5/} "Thus, where the disclosure of the contents of a communication will not tend to reveal the identity of an informer, the contents are not privileged. Likewise, once the identity of the informer has been disclosed to those who would have cause to resent the communication, the privilege is no longer applicable." Id. at 60.

MAR 05 '96 12:20PM HARKINS CUNNINGHAM

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EXHIBIT A

UP-4

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No 32549

BURLINGTON NORTHERN INC. AND BURLINGTON NORTHERN
RAILROAD COMPANY -- CONTROL AND MERGER -- SANTA FE
PACIFIC CORPORATION AND THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY

UP'S FIRST SET OF INTERROGATORIES AND
INFORMAL DOCUMENT REQUESTS TO APPLICANTS

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, Union Pacific Corporation, Union Pacific Railroad Company ("UPRR"), and Missouri Pacific Railroad Company ("MPRR"), collectively, "UP," direct the following interrogatories and informal document requests to the primary applicants.

Responses should be served as soon as possible, and in no event later than 15 days from the date of service hereof. Counsel for the applicants are requested to contact the undersigned immediately to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

DEFINITIONS AND INSTRUCTIONS

I. "Applicants" and "the primary applicants" mean the primary applicants in this proceeding, individually and collectively.

II. "BN" means Burlington Northern Railroad Company.

MAR 05 '96 12:22PM HARKINS CUNNINGHAM

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REQUESTS

1. Produce all written discovery responses provided by the applicants to any person in connection with this proceeding (whether formal or informal, and whether in the form of a pleading, a letter or otherwise), and copies of all documents provided by the applicants to any person in connection with this proceeding. This is a continuing request, effective throughout the pendency of this proceeding.
2. Produce copies of all written communications between the applicants and the U.S. Department of Justice, the Federal Trade Commission, the U.S. Department of Transportation, any state or local governmental body, or any shipper relating to this proceeding.
3. Produce computerized 100% traffic data for the years 1992 through 1994 for (a) all traffic originated or terminated at each of the common points, or at points on the Seagraves, Whiteface and Lubbock Railroad or the Floydada and Plainview Railroad, and (b) all traffic moving to, from or via Denver, CO, and traversing any part of BN's Denver-Lubbock line or Santa Fe's Denver-Sweetwater line. Data should contain all of the elements included in the format statement attached as Exhibit A hereto, unless any particular data element is unavailable.
4. Produce all documents relating to competition between BN and Santa Fe for traffic shares or market

EXHIBIT B

SP-6

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32549

BURLINGTON NORTHERN INC. AND BURLINGTON NORTHERN
RAILROAD COMPANY -- CONTROL AND MERGER --
SANTA FE PACIFIC CORPORATION AND
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

SP'S FIRST SET OF INTERROGATORIES
AND INFORMAL DOCUMENT REQUESTS TO THE APPLICANTS'

Pursuant to 49 C.F.R. §§ 1114.21-1114.31, Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. (collectively, "SP" or "Southern Pacific Lines") direct the following interrogatories and informal document requests to Burlington Northern Inc. ("BNI"), Burlington Northern Railroad Company ("BN"), Santa Fe Pacific Corporation ("SFP"), and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe").²

SP requests that, within 18 days after service of these requests, Applicants serve their responses on SP and make their documents available for inspection and copying by SP or its representatives at the document depository established by

1. The requests contained herein have been organized under subject headings. Those headings are for purposes of convenience only and are not intended to affect the construction of any of the interrogatories or informal document requests.

2. BNI, BN, SFP, and Santa Fe are collectively referred to herein as "Applicants."

to securities analysts, communications to stockholders, and communications distributed to employees; and produce all documents recording, reporting, or containing such statements, but excluding published or broadcast media reports and statements filed with the Commission in this proceeding.

12. Identify and produce all:

(a) letters, memoranda, information packages, or similar documents relating to the Transaction which have been sent to shippers, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Department of Transportation, or any state or local government body or agency including documents relating to the effects of the Transaction on competition; and

(b) talking points or similar documents used in communicating about the transaction with shippers, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Department of Transportation, or any state or local government body or agency.

13. Identify all communications between Applicants and any of their accountants, investment bankers, financial advisers, or consultants relating to the Transaction, including: (1) any benefits, synergies, or efficiencies relating to the Transaction, (2) the fairness to Applicants' shareholders of any agreement relating to the Transaction, (3) the application of pooling or purchase accounting treatment to the Transaction, and (4) the projected effect of the increased cost of the Transaction on the

EXHIBIT C

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32549

BURLINGTON NORTHERN INC. AND BURLINGTON NORTHERN
RAILROAD COMPANY -- CONTROL AND MERGER -- SANTA FE
PACIFIC CORPORATION AND THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY

APPLICANTS' RESPONSES TO
UP'S FIRST SET OF INTERROGATORIES
AND INFORMAL DOCUMENT REQUESTS

Burlington Northern Inc. ("BNI"), Burlington Northern Railroad Company ("BN"), Santa Fe Pacific Corporation ("SFPC"), and The Atchison, Topeka and Santa Fe Railway Company ("ATSF") (collectively, "Applicants") hereby answer and object to the First Set of Interrogatories and Informal Document Requests of Union Pacific Corporation, Union Pacific Railroad Company ("UPRR"), and Missouri Pacific Railroad Company ("MPRR") (collectively, "UP"). By agreement with counsel for Applicants, UP has withdrawn all of its interrogatories and document requests except for numbers 1, 2, 11 and 12, to which Applicants respond below.

I. GENERAL OBJECTIONS

Applicants object to UP's interrogatories and document requests on the following grounds:

1. Privilege. Applicants object to UP's Interrogatories and Document Requests to the extent that they call for

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RESPONSE: Copies of all written discovery responses, formal or informal, and whether in the form of a pleading, a letter or otherwise, will be placed in the Applicants' document depository. Applicants object to producing "copies of all documents provided to any person in connection with this proceeding" other than documents provided in connection with discovery. UP has agreed to construe this request as limited to documents generated in connection with discovery in this proceeding.

2. Produce copies of all written communications between the applicants and the U.S. Department of Justice, the Federal Trade Commission, the U.S. Department of Transportation, any state or local governmental body, or any shipper relating to this proceeding.

RESPONSE: Applicants will place in their depository (1) all written letters and other correspondence between them and the U.S. Department of Justice, the Federal Trade Commission, the U.S. Department of Transportation, and any state or local governmental body concerning this proceeding and (2) all materials produced by Applicants in response to formal or informal discovery propounded by these governmental bodies in connection with this proceeding. Applicants object to this request to the extent that it seeks the production of all correspondence with shippers concerning this proceeding on the ground that this would require an unreasonably burdensome search of all of Applicants' shipper files. Subject to, and without waiving that objection, Applicants will place in their

- 6 -

depository all written materials generated in connection with formal surveys of shippers undertaken by Applicants in respect to this proceeding and any other correspondence that either Applicant had with multiple shippers concerning this proceeding.

11. Produce all documents relating to communications between applicants and any other railroad relating to any aspect of the primary application, any aspect of any possible responsive application in this proceeding, or possible negotiated conditions or other agreements in connection with this proceeding.

RESPONSE: Applicants object to this request on the ground that the information requested bears on settlement matters. To the extent that any agreements have been negotiated or reached between Applicants and any other railroad, or any other party, with respect to possible responsive applications or other matters subject to negotiation, any such documents concern possible settlement of issues that may exist between Applicants and other railroads and are thereby beyond the proper scope of discovery. Without waiving this objection, Applicants state that in the event that Applicants may execute any formal agreement with any other railroad they will, subject to any confidentiality provisions in any such agreement, place a copy of such agreement in their depository provided that the agreement has been filed with the Commission or that a copy of the agreement has otherwise been made public.

MAR 05 '96 12:30PM HARKINS CUNNINGHAM

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EXHIBIT DBEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32549

BURLINGTON NORTHERN INC. AND BURLINGTON NORTHERN
RAILROAD COMPANY -- CONTROL AND MERGER --
SANTA FE PACIFIC CORPORATION AND
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

APPLICANTS' RESPONSES AND OBJECTIONS TO SP'S FIRST SET OF
INTERROGATORIES AND INFORMAL DOCUMENT REQUESTS

Burlington Northern Inc. ("BNI"), Burlington Northern
Railroad Company ("BN"), Santa Fe Pacific Corporation ("SFP"),
and The Atchison, Topeka and Santa Fe Railway Company ("Santa
Fe") (collectively, "Applicants") hereby submit these responses
to the First Set of Interrogatories and Informal Document
Requests submitted by Southern Pacific Transportation Company,
The Denver and Rio Grande Western Railroad Company, St. Louis
Southwestern Railway Company, and SPCSL Corp. (collectively "SP")
on March 8, 1995.

Subject to the objections set forth below, Applicants
will answer each Interrogatory and/or will produce non-privileged
documents responsive to SP's Document Requests by placing copies
of such documents in Applicants' Document Depository. Applicants
remain prepared to meet with counsel for SP at a mutually conven-

12. Identify and produce all:

(b) talking points or similar documents used in communicating about the transaction with shippers, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Department of Transportation, or any state or local government body or agency.

Response: Letters, memoranda, information packages, talking points and any similar documents concerning the Transaction sent to any of the government agencies listed in this interrogatory will be placed in Applicants' document depository. Applicants object to providing copies of all letters that might have been sent to shippers in connection with the Transaction or any of its effects because providing such copies would require an unreasonably burdensome search of all of the thousands of shipper files maintained by Applicants. Without waiving that objection, Applicants have placed in the depository copies of multi-shipper mailings that have been sent by them concerning the Transaction.

COVINGTON & BURLING

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Janice Barber	817-333-5142	817-878-7954
Mark Tobey	512-320-0975	512-463-2185
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ARVID E. ROACH II

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March 5, 1996



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BRUSSELS CORRESPONDENT OFFICE

4-4 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-312-9890

TELEFAX: 32-2-302-1999

BY FACSIMILE

To All Parties on the Restricted Service List:

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

At the request of Judge Nelson, we are notifying
parties on the restricted service list that a discovery
conference schedule for Friday, March 8, will begin at 2:00
pm.

Sincerely,

Arvid E. Roach II

Arvid E. Roach II

cc: Hon. Vernon A. Williams
Hon. Jerome Nelson

STB

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Item No. _____

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March # 132

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

CHEMICAL MANUFACTURERS ASSOCIATION'S
OBJECTIONS TO APPLICANTS' INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS



ENTERED
Office of the Secretary

MAR 07 1996

Part of
Public Record

The Chemical Manufacturers Association ("CMA") submits the following objections to the discovery requests served by Applicants on February 27, 1996. These objections are made pursuant to paragraph 1 of the Discovery Guidelines applicable to this proceedings, which provides that objections to discovery requests shall be made "by means of a written objection containing a general statement of the basis for the objection." CMA intends, however, to file written responses to the discovery requests.

GENERAL OBJECTIONS

The following objections are made with respect to all of the interrogatories and document requests.

1. CMA objects to the interrogatories and document requests as untimely under the discovery schedule in force in this proceeding.
2. CMA objects to production of documents or information subject to the attorney-client privilege.
3. CMA objects to production of documents or information subject to the work product doctrine, except to the extent such documents or information are workpapers in support of testimony presented to the Board.
4. CMA objects to production of public documents that are readily available.
5. CMA objects to the production of draft verified statements and documents related thereto.
6. CMA objects to providing information or documents that are as readily obtainable by Applicants from their own files.
7. CMA objects to the extent that the interrogatories and document requests seek highly confidential or sensitive commercial information that is of insufficient relevance to warrant production even under a protective order.
8. CMA objects to the interrogatories and document requests to the extent that they call for the preparation of special studies not already in existence.
9. Applicants object to the interrogatories and document requests as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1993.
10. CMA objects to the interrogatories and document requests to the extent that they seek information not in the possession of CMA.

ADDITIONAL OBJECTIONS TO SPECIFIC INTERROGATORIES

Interrogatory No. 1: Identify and describe in detail any agreements that CMA has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be identified. If CMA contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

Additional Objection: The interrogatory does not request relevant information and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 2: Identify all members of CMA.

Additional Objection: The interrogatory does not request relevant information and is not reasonably calculated to lead to the discovery of admissible evidence.

ADDITIONAL OBJECTIONS TO SPECIFIC DOCUMENT REQUESTS

Document Request No. 1: Produce no later than April 1, 1996 (a) all workpapers underlying any submission that CMA makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for CMA on or about March 29, 1996 in this proceeding.

Additional Objections: Part (b) of this request is extremely overbroad and burdensome. To the extent any of the documents requested may be relevant, the burden of producing all of the documents outweighs the benefit of the discovery of any relevant materials.

Document Request No. 2: Produce all documents relating to benefits or efficiencies that will result from the UP/SP merger.

Additional Objections: None.

Document Request No. 3: Produce all documents relating to potential traffic impacts of the UP/SP merger.

Additional Objections: None.

Document Request No. 4: Produce all documents relating to competitive impacts of the UP/SP merger, including but not limited to effects on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options.

Additional Objections: None.

Document Request No. 5: Produce all documents relating to the BN/Santa Fe Settlement Agreement.

Additional Objections: None.

Document Request No. 6: Produce all documents relating to the IC Settlement Agreement.

Additional Objections: None.

Document Request No. 7: Produce all documents relating to the Utah Railway Settlement Agreement.

Additional Objections: None.

Document Request No. 8: Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

Additional Objections: None.

Document Request No. 9: Produce all studies, reports or analyses relating to actual or potential competition between UP and SP.

Additional Objections: None.

Document Request No. 10: Produce all studies, reports or analyses relating to competition between single-line and interline rail transportation.

Additional Objections: None.

Document Request No. 11: Produce all studies, reports or analyses relating to the benefits of any prior rail merger or rail mergers generally.

Additional Objections: This request is vague, overbroad and burdensome. To the extent any of the documents requested may be relevant, the burden of producing all of the documents outweighs the benefit of the discovery of any relevant materials.

Document Request No. 12: Produce all studies, reports or analyses relating to the financial position or prospects of SP.

Additional Objections: None.

Document Request No. 13: Produce all communications with other parties to this proceeding relating to the UP/SP merger or the BN/Santa Fe Settlement Agreement, and all documents relating to such communications. This request excludes documents already served on Applicants.

Additional Objections: None.

Document Request No. 14: Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of CMA or any other party in this proceeding.

Additional Objections: The request is unduly burdensome to the extent it requests CMA to produce materials that may have been circulated by other parties seeking support for their positions. Applicants were free to seek such materials from the parties that may have circulated them.

Document Request No. 15: Produce all presentations, letters, memoranda, white papers, or other documents sent or given to DOJ, DOT, any state-Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

Additional Objections: The interrogatory does not request relevant information and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the request seeks to and/or would have the effect of, chilling the exercise of CMA's First Amendment right to petition and engage in dialog with government agencies or officials.

Document Request No. 16: Produce all notes of, or memoranda relating to, any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

Additional Objections: The interrogatory does not request relevant information and is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the request seeks to and/or would have the effect of, chilling the exercise of CMA's First Amendment right to petition and engage in dialog with government agencies or officials.

Document Request No. 17: Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

Additional Objections: None.

Document Request No. 18: Produce all documents relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

Additional Objections: None.

Document Request No. 19: Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement-Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

Additional Objections: None.

Document Request No. 20: Produce all documents relating to actual or estimated maintenance-and-operating costs, taxes and return-to-capital costs with respect to any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

Additional Objections: None.

Document Request No. 21: Produce all documents relating to any agreement or understanding that CMA has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Documents relating to routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be produced.

Additional Objections: The request does not request relevant documents and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 22: Produce all presentations to, and minutes of, the board of directors (or other governing body) of CMA relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

Additional Objections: The request does not request relevant documents and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 23: Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

Additional Objections: The request is nonsensical to the extent it suggests that railroads that collude are "competing railroads."

Document Request No. 24: Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights.

Additional Objections: The request is vague and unclear regarding the meaning of "effectiveness."

Document Request No. 25: Produce all studies, reports, analyses, or surveys or other data compilations in the possession of CMA or any of its members relating to (a) the use of water transportation by Gulf Coast chemicals producers, (b) the use of truck transportation by Gulf Coast chemicals producers, (c) source or destination competition for chemicals produced on the Gulf Coast, (d) the rates of return realized by Gulf Coast chemicals producers on their Gulf Coast chemicals business or their business generally, (e) shipment volumes (in the aggregate and by mode), by chemical and plant, from Gulf Coast chemicals plants, and (f) present production capacity and future expansion plans, by chemical and plant, of Gulf Coast chemicals plants.

Additional Objections: Part (d) of the request does not request relevant documents and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 26: Produce all studies, reports or analyses relating to (a) transport pricing or competition for chemicals or petrochemicals (i.e., any STCC 28 or STCC 29 commodity, or such commodities generally), (b) the handling of such commodities by railroads, (c) the handling of such commodities by other modes, (d) storage-in-transit of such commodities, or (e) source or destination competition, shifting of production or shipments among facilities, modal alternatives or shipper leverage as constraints on rail rates or service for such commodities.

Additional Objections: None.

Document Request No. 27: Produce all documents relating to (a) the extent to which any particular 7-digit STCC Code within the STCC 28 or STCC 29 range includes different commodities that are not substitutable in use, and (b) the extent to which manufacturers can shift existing production capacity between, or use the same facilities to produce, such commodities (e.g., high-density and linear low-density polyethylene).

Additional Objections: None.

Document Request No. 28: Produce all studies, reports, analyses, compilations, calculations or evaluations of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared by L.E. Peabody & Associates, and all workpapers or other documents relating thereto.

Additional Objections: CMA objects to the extent this request seeks to have CMA produce studies, reports, etc. prepared by L.E. Peabody & Associates for parties other than CMA.

Respectfully submitted,



Scott N. Stone
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6335

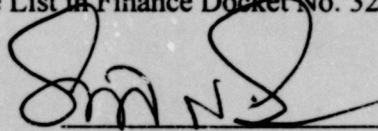
Outside counsel for Chemical
Manufacturers Association

Thomas E. Schick
Chemical Manufacturers Association
Commonwealth Tower
1300 Wilson Boulevard
Arlington, VA 22209
(703) 741-5172

Inside counsel for Chemical
Manufacturers Association

CERTIFICATE OF SERVICE

I hereby certify that copies of Chemical Manufacturers Association's Objections to Applicants' Interrogatories and Requests for the Production of Documents have been served this 15 day of March, 1996, by fax to counsel for Applicants and by first-class mail, postage prepaid on all persons on the Restricted Service List in Finance Docket No. 32760.



Scott N. Stone
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6335

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LAW OFFICES
McFARLAND & HERMAN
20 NORTH WACKER DRIVE - SUITE 1330
CHICAGO, ILLINOIS 60606-2902
TELEPHONE (312) 236-0204
FAX (312) 201-9695

THOMAS F. McFARLAND, JR.

STEPHEN C. HERMAN

March 5, 1996

By UPS Overnight Mail

Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation, Rm. 1324
12th & Constitution Avenue, NW
Washington, DC 20423



Re: Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.*
and
the following related abandonment cases:

- (1) Docket No. AB-3 (Sub-No. 130) & Docket No. AB-8 (Sub-No. 38) - *Towner to NA Junction, CO;*
- (2) Docket No. AB-3 (Sub-No. 131) & Docket No. AB-8 (Sub-No. 37) - *Hope to Bridgeport, KS;*

Dear Mr. Williams:

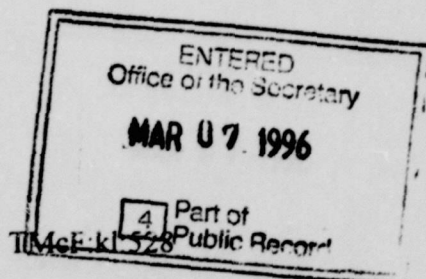
Enclosed please find an original and 20 copies of Objection To Request For Discovery, for filing with the Board in the above referenced matters.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

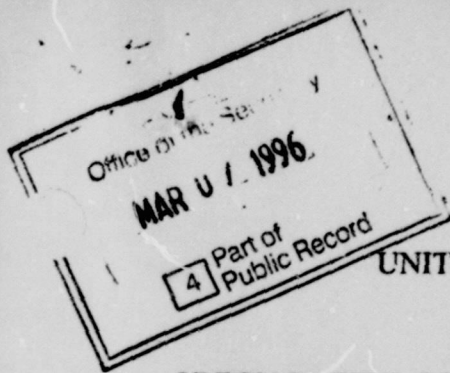
Tom McFarland

Thomas F. McFarland, Jr.
Attorney for Mountain-Plains
Communities & Shippers Coalition

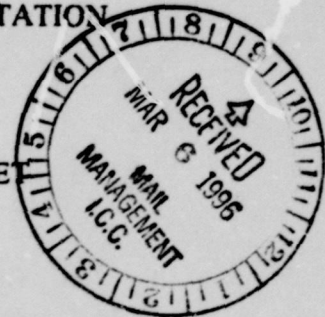


cc: Restricted Service List

ORIGINAL



BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION



UNION PACIFIC CORPORATION, ET AL. -- CONTROL AND MERGER -- SOUTHERN PACIFIC RAIL CORPORATION, ET AL.	)	FINANCE DOCKET NO. 32760
MISSOURI PACIFIC RAILROAD COMPANY -- ABANDONMENT -- TOWNER-NA JUNCTION LINE IN KIOWA, CROWLEY AND PUEBLO COUNTIES, CO	)	DOCKET NO. AB-3 (SUB-NO. 130) ^{1/}
MISSOURI PACIFIC RAILROAD COMPANY -- ABANDONMENT -- HOPE-BRIDGEPORT LINE IN DICKINSON AND SALINE COUNTIES, KS	)	DOCKET NO. AB-3 (SUB-NO. 131) ^{2/}

OBJECTION TO REQUESTS FOR DISCOVERY

MOUNTAIN-PLAINS COMMUNITIES & SHIPPERS COALITION
JUNIOR STRECKER, Chairman
123 North Main Street
Hoisington, KS 67544

THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive, Suite 1330
Chicago, IL 60606-2902
(312) 236-0214

Protestants

Attorney for Protestants

Date Filed: March 6, 1996

^{1/} includes Docket No. AB-8 (Sub-No. 38), *The Denver and Rio Grande Western Railroad Company -- Discontinuance of Trackage Rights -- Towner-NA Junction Line in Kiowa, Crowley and Pueblo Counties, CO*

^{2/} includes Docket No. AB-8 (Sub-No. 37), *The Denver Rio Grande Western Railroad Company -- Discontinuance of Trackage Rights -- Hope-Bridgeport Line in Dickinson and Saline Counties, KS*

BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION

UNION PACIFIC CORPORATION, ET)	
AL. -- CONTROL AND MERGER --	)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL	)	NO. 32760
CORPORATION, ET AL.)	
)	
MISSOURI PACIFIC RAILROAD)	
COMPANY -- ABANDONMENT --	)	DOCKET NO. AB-3
TOWNER-NA JUNCTION LINE IN	)	(SUB-NO. 130)
KIOWA, CROWLEY AND PUEBLO)	
COUNTIES, CO)	
)	
MISSOURI PACIFIC RAILROAD)	
COMPANY -- ABANDONMENT --	)	DOCKET NO. AB-3
HOPE-BRIDGEPORT LINE IN	)	(SUB-NO. 131)
DICKINSON AND SALINE COUNTIES,)	
KS)	

OBJECTION TO REQUESTS FOR DISCOVERY

MOUNTAIN-PLAINS COMMUNITIES & SHIPPERS COALITION (the Coalition)

hereby objects to the requests for discovery (interrogatories and production of documents) which were submitted by the Merger Applicants (Document No. UP-SP 123) and which were received on February 27, 1996.

The Coalition consists of shippers and communities located on the Missouri Pacific rail line between Herington, KS and Pueblo, CO. The Coalition includes shippers and communities located on segments of that line that are proposed for abandonment, i.e., Towner to NA Junction, CO and Hope to Bridgeport, KS. Shipper and community members of the Coalition who are not located on these segments rely on those segments for efficient rail transportation to and from points at which they are located. Those shippers and communities fear that if the Towner-NA

Junction and Hope-Bridgeport segments are abandoned, the rail lines on which they are located also will eventually be abandoned. The primary position of the Coalition is in opposition to the proposed Towner-NA Junction and Hope-Bridgeport abandonments. The Coalition will be seeking a condition to any approval of the proposed merger that would require divestiture of the Herington-Pueblo line (and other lines) to a rail carrier that would own and operate that line (and other lines) in competition with the merged carrier. The Coalition will take the position that in the absence of such independent ownership and operation, public convenience and necessity does not permit abandonment of the Towner-NA Junction and Hope-Bridgeport segments of the Herington-Pueblo line. Thus, the Coalition is a shipper-public opponent of abandonment.

Shipper opponents of abandonment need not respond to discovery requests made by an applicant(s) for abandonment. *See Illinois Central Railroad Company -- Abandonment -- in Jackson, Hinds County, MS*, Docket No. AB-43 (Sub-No. 162) (ICC, served September 1, 1995). A copy of that decision is attached to this objection for ready reference. In that case, the ICC denied an abandonment applicant's motion to compel answers to the applicant's interrogatories. That decision was based on the fact that the applicant, rather than shipper opponents, has the burden of proof that public convenience and necessity require or permit abandonment, viz., at page 1:

... In an abandonment proceeding, the applicant bears the burden of proving that the present or future public convenience and necessity require or permit the abandonment. 49 U.S.C. 10904(d)(1). The applicant should have in its possession all the information it needs to meet that burden. We will deny applicant's motion to compel (footnote omitted). To the extent that transportation alternatives available to shippers are placed in issue by the applicant, shippers will have the opportunity to offer their own evidence or information to refute IC's assertions. Rather than requiring shippers to make available specific requested information, it can be left to shippers to present whatever information they believe

they need to support their assertions. Applicant then may refute or rebut such assertions and information in its reply statement.

The ICC also has denied efforts to enforce discovery against shipper opponents of rail abandonment because such discovery discourages public participation and is contrary to the goal of making the abandonment process accessible and straightforward. *Chicago and North Western Transportation Company -- Abandonment -- between Palmer and Laurens in Pocahontas County, IA*, Docket No. AB-1 (Sub-No. 212) (ICC served May 16, 1991, reconsideration denied served August 2, 1991); and *Missouri Pacific Railroad Company -- Abandonment -- in Woodson County, KS (Piqua Industrial Lead)*, Docket No. AB-3 (Sub-No. 112) (ICC served February 16, 1994)

Consistently with the reasoning supporting those decisions, the Coalition objects to Applicants' discovery requests, and will not provide answers to the interrogatories or provide the documentation requested unless ordered to do so. However, that does not mean that the Coalition refuses to furnish relevant information and documentation in support of evidence that they will file on March 29, 1996. The Coalition undertakes to furnish workpapers and source documents underlying evidence that they will file on that date. Under the law referred to above, that is all to which applicants are entitled.

WHEREFORE, the Coalition objects to the discovery requests proffered by Applicants.

Respectfully submitted,

MOUNTAIN-PLAINS COMMUNITIES &
SHIPPERS COALITION
JUNIOR STRECKER, Chairman
123 North Main Street
Hoisington, KS 67544

Protestants

Date Filed: March 6, 1996

Thomas F. McFarland Jr.

THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive, Suite 1330
Chicago, IL 60606-2902
(312) 236-0204

Attorney for Protestants

SEC

INTERSTATE COMMERCE COMMISSION

DECISION

Docket No. AB-43 (Sub-No. 162)

ILLINOIS CENTRAL RAILROAD COMPANY--ABANDONMENT--
IN JACKSON, HINDS COUNTY, MS

Decided: September 1, 1995

By application filed June 9, 1995, Illinois Central Railroad Company (IC or applicant) seeks authority under 49 U.S.C. 10903 to abandon a line of railroad from milepost LN-0.20 to milepost LN-6.00, a distance of 5.8 miles of main track, together with 2.14 miles of side track, totalling 7.94 trackmiles, in Jackson, Hinds County, MS. Based on protests and comments received, the Commission instituted an investigation into the proposed abandonment under 49 U.S.C. 10904 and established a procedural schedule by Director Order served July 24, 1995.

On August 11, 1995, IC filed a motion to compel answers to interrogatories from BWI of Jackson, Frierson Building Supply Co., Jackson Oil Mill, Puckett Machinery Co., and Sheppard Building Supply Co. (shippers). The interrogatories attempt to ascertain information regarding shippers' rail and truck shipments and the availability of transportation alternatives. Shippers replied in opposition on August 25, 1995. In an abandonment proceeding, the applicant bears the burden of proving that the present or future public convenience and necessity require or permit the abandonment. 49 U.S.C. 10904(d)(1). The applicant should have in its possession all the information it needs to meet that burden. We will deny applicant's motion to compel.¹ To the extent that transportation alternatives available to shippers are placed in issue by the applicant, shippers will have the opportunity to offer their own evidence or information to refute IC's assertions. Rather than requiring shippers to make available specific requested information, it can be left to shippers to present whatever information they believe they need to support their assertions. Applicant then may refute or rebut such assertions and information in its reply statement.

On August 29, 1995, City of Jackson filed a motion to compel IC to produce documents. City of Jackson seeks documents regarding the title and merchantability of IC's right-of-way, and maintenance and rehabilitation costs for the line. Similarly, we will deny City of Jackson's motion to compel. To the extent that these matters are in issue, applicant has the burden of proving them. Thus, applicant should be permitted to support merchantability of title or not, recognizing that asserted merchantability of title will have to be supported.

The parties are advised that issues they raise, and their claims and allegations, must be supported by testimony and documentation in the course of modified procedure. Commission rules require parties in abandonment proceedings to support and

¹ The Commission looks with disfavor upon an applicant's serving interrogatories on a shipper in an attempt to develop its case or discourage participation. Such action is contrary to the Commission's goal of making the abandonment process accessible and straightforward. Chicago and North Western Transportation Company--Abandonment--Between Palmer and Laurens in Pocahontas County, IA, Docket No. AB-1 (Sub-No. 212) (ICC served May 16, 1991), reconsideration denied, August 2, 1991; see also Missouri Pacific Railroad Company--Abandonment--In Woodson County, KS (Piqua Industrial Lead), Docket No. AB-3 (Sub-No. 112) (ICC served Feb. 16, 1994).

SERVICE DATE

SEP 1 1995

substantiate fully all revenue forecasts, costs, and asset values. See Abandonment Regulations--Costing, 5 I.C.C.2d 123, 133 (1988). In balancing the parties' competing interests, the Commission will consider carefully both the parties' assertions and the nature and strength of their evidence in determining the weight to be accorded to each.

On August 28, 1995, a joint request for extension of time was filed by protestants BWI of Jackson, Frierson Building Supply Co., Jackson Oil Mill, Puckett Machinery Co., Sheppard Building Supply Co., and City of Jackson, MS. Protestants request an additional 10 days in which to file their statements, i.e., from September 5, 1995, to September 15, 1995. IC replied in opposition on August 31, 1995. Protestants' request will be granted in part. The Commission must complete its investigation by October 22, 1995, and render its decision by November 21, 1995. See 49 U.S.C. 10904(c). To provide the parties with additional time to review and analyze the evidence while allowing adequate time to complete our investigation, we will extend the procedural schedule by 6 days: protestants' statements will be due on September 11, 1995, and applicant's reply statement will be due on September 26, 1995.

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

It is ordered:

1. Applicant's motion to compel answers to interrogatories is denied.
2. City of Jackson's motion to compel production of documents is denied.
3. Protestants' joint request for extension of time is granted in part. Protestants' statements are now due on September 11, 1995. Applicant's reply statement is now due on September 26, 1995.
4. This decision is effective on its service date.

By the Commission, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 1996, I served the foregoing document, Objection To Requests For Discovery, by U.P.S. overnight mail on:

Administrative Law Judge Jerome Nelson
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, DC 20426

Cannon, Y. Harvey
Louis P. Warchot
Carol A. Harris
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, CA 94105

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, DC 20036

James V. Dolan
Paul A. Conley, Jr.
Louise A. Rinn
Law Department
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Arvid E. Roach, II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

Carl W. Von Bernuth
Richard J. Ressler
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 18018

and on all other parties on the restricted discovery service list by first-class, U.S. mail, postage prepaid.

Thomas F. McFarland, Jr.
THOMAS F. McFARLAND, JR.

STB

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32760

3-6-96

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61649

Item No. _____
Page Count 8
Mar #134

LAW OFFICES
McFARLAND & HERMAN
NORTH WACKER DRIVE - SUITE 1330
CHICAGO, ILLINOIS 60606-2902
TELEPHONE (312) 236-0204
FAX (312) 201-9695

THOMAS F. McFARLAND, JR.

STU PHEN C. HERMAN

March 5, 1996

By UPS Overnight Mail

Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation, Rm. 1324
12th & Constitution Avenue, NW
Washington, DC 20423



Re: Docket No. AB-33 (Sub-No. 96), *Union Pacific Railroad Company -- Abandonment -- Barr-Girard Line in Menard, Sangamon and Macoupin Counties, IL*

and

Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.*

Dear Mr. Williams:

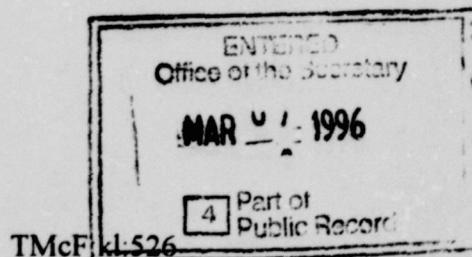
Enclosed please find an original and 20 copies of Objection To Request For Discovery, for filing with the Board in the above referenced matters.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

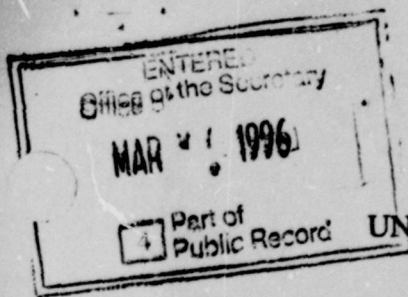
Very truly yours,

Tom McFarland

Thomas F. McFarland, Jr.
*Attorney for Springfield Plastics, Inc. and
Brandt Consolidated, Inc.*



cc: Restricted Service List



ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION



UNION PACIFIC CORPORATION, ET)	
AL. -- CONTROL AND MERGER --	)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL	)	NO. 32760
CORPORATION, ET AL.)	
)	
UNION PACIFIC RAILROAD)	
COMPANY -- ABANDONMENT --	)	DOCKET NO. AB-33
BARR-GIRARD LINE IN MENARD,	)	(SUB-NO. 96)
SANGAMON AND MACOUPIN)	
COUNTIES, IL)	

OBJECTION TO REQUESTS FOR DISCOVERY

SPRINGFIELD PLASTICS, INC.
RR 1, Box 171
Auburn, IL 62615

BRANDT CONSOLIDATED, INC.
R.R. 1
Curran, IL 62670

Protestants

THOMAS F. McFARLAND, JR.
McFARLAND & FIERMAN
20 North Wacker Drive, Suite 1330
Chicago, IL 60606-2902
(312) 236-0204

Attorney for Protestants

Date Filed: March 6, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION

UNION PACIFIC CORPORATION, ET)	
AL. -- CONTROL AND MERGER --	)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL	)	NO. 32760
CORPORATION, ET AL.)	
)	
UNION PACIFIC RAILROAD)	
COMPANY -- ABANDONMENT --	)	DOCKET NO. AB-33
BARR-GIRARD LINE IN MENARD,	)	(SUB-NO. 96)
SANGAMON AND MACOUPIN)	
COUNTIES, IL)	

OBJECTION TO REQUESTS FOR DISCOVERY

SPRINGFIELD PLASTICS, INC. (SPI) and BRANDT CONSOLIDATED, INC. (BCI) hereby object to the requests for discovery (interrogatories and production of documents) which were submitted by the Merger Applicants (Document No. UP-SP 127) and which were received on February 27, 1996.

SPI and BRI are shippers located at Compro, IL, a point on the Barr-Girard rail line that is proposed for abandonment. The primary position of SPI and BRI is in opposition to that proposed abandonment. SPI and BRI are opposed to the proposed merger only because the merger would result in abandonment of the Barr-Girard rail line. Except for the proposed abandonment that would be spawned by the merger, SPI and BRI would not have appeared and taken a position on the proposed merger. Thus, SPI and BRI are shipper opponents of abandonment.

Shipper opponents of abandonment need not respond to discovery requests made by an applicant(s) for abandonment. *See Illinois Central Railroad Company -- Abandonment -- in*

Jackson, Hinds County, MS, Docket No. AB-43 (Sub-No. 162) (ICC, served September 1, 1995). A copy of that decision is attached to this objection for ready reference. In that case, the ICC denied an abandonment applicant's motion to compel answers to the applicant's interrogatories. That decision was based on the fact that the applicant, rather than shipper opponents, has the burden of proof that public convenience and necessity require or permit abandonment, viz., at page 1:

... In an abandonment proceeding, the applicant bears the burden of proving that the present or future public convenience and necessity require or permit the abandonment. 49 U.S.C. 10904(c)(1). The applicant should have in its possession all the information it needs to meet that burden. We will deny applicant's motion to compel (footnote omitted). To the extent that transportation alternatives available to shippers are placed in issue by the applicant, shippers will have the opportunity to offer their own evidence or information to refute IC's assertions. Rather than requiring shippers to make available specific requested information, it can be left to shippers to present whatever information they believe they need to support their assertions. Applicant then may refute or rebut such assertions and information in its reply statement.

The ICC also has denied efforts to enforce discovery against shipper opponents of rail abandonment because such discovery discourages public participation and is contrary to the goal of making the abandonment process accessible and straightforward. *Chicago and North Western Transportation Company -- Abandonment -- between Palmer and Laurens in Pocahontas County, IA*, Docket No. AB-1 (Sub-No. 212) (ICC served May 16, 1991, reconsideration denied served August 2, 1991); and *Missouri Pacific Railroad Company -- Abandonment -- in Woodson County, KS (Piqua Industrial Lead)*, Docket No. AB-3 (Sub-No. 112) (ICC served February 16, 1994).

Consistently with the reasoning supporting those decisions, SPI and BCI object to Applicants' discovery requests, and will not provide answers to the interrogatories or provide the

substantiate fully all revenue forecasts, costs, and asset values. See Abandonment Regulations--Costing, 5 I.C.C.2d 123, 133 (1988). In balancing the parties' competing interests, the Commission will consider carefully both the parties' assertions and the nature and strength of their evidence in determining the weight to be accorded to each.

On August 28, 1995, a joint request for extension of time was filed by protestants BWI of Jackson, Frierson Building Supply Co., Jackson Oil Mill, Puckett Machinery Co., Sheppard Building Supply Co., and City of Jackson, MS. Protestants request an additional 10 days in which to file their statements, i.e., from September 5, 1995, to September 15, 1995. IC replied in opposition on August 31, 1995. Protestants' request will be granted in part. The Commission must complete its investigation by October 22, 1995, and render its decision by November 21, 1995. See 49 U.S.C. 10904(c). To provide the parties with additional time to review and analyze the evidence while allowing adequate time to complete our investigation, we will extend the procedural schedule by 6 days: protestants' statements will be due on September 11, 1995, and applicant's reply statement will be due on September 26, 1995.

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

It is ordered:

1. Applicant's motion to compel answers to interrogatories is denied.
2. City of Jackson's motion to compel production of documents is denied.
3. Protestants' joint request for extension of time is granted in part. Protestants' statements are now due on September 11, 1995. Applicant's reply statement is now due on September 26, 1995.
4. This decision is effective on its service date.

By the Commission, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 1996, I served the foregoing document, Objection To Requests For Discovery, by U.P.S. overnight mail on:

Administrative Law Judge Jerome Nelson
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, DC 20426

Cannon Y. Harvey
Louis P. Warchot
Carol A. Harris
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, CA 94105

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, DC 20036

James V. Dolan
Paul A. Conley, Jr.
Louise A. Rinn
Law Department
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
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Arvid E. Roach, II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

Carl W. Von Bernuth
Richard J. Ressler
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 18018

and on all other parties on the restricted discovery service list by first-class, U.S. mail, postage prepaid.

Thomas F. McFarland Jr.
THOMAS F. MCFARLAND, JR.

STB

FD

32760

3-6-96

B

61648

Item No. _____

Page Count 8

March # 135

61648

LAW OFFICES
FARLAND & HERMAN
20 NORTH WACKER DRIVE - SUITE 1330
CHICAGO, ILLINOIS 60606-2902
TELEPHONE (312) 236-0204
FAX (312) 201-9695

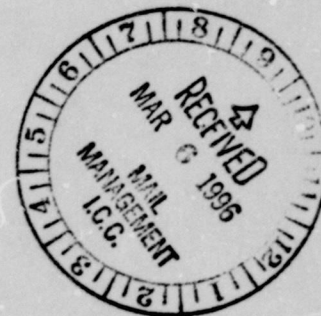
THOMAS F. McFARLAND, JR.

STEPHEN C. HERMAN

March 5, 1996

By U.P.S. Overnight Mail

Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation, Rm. 1324
12th & Constitution Avenue, NW
Washington, DC 20423



Re: Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.*

and

Docket No. AB-33 (Sub-No. 98X), *Union Pacific Railroad Company -- Abandonment -- Edwardsville-Madison Line in Madison County, IL*

Dear Mr. Williams:

Enclosed please find an original and 20 copies of Objection To Request For Discovery, for filing with the Board in the above referenced matters.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

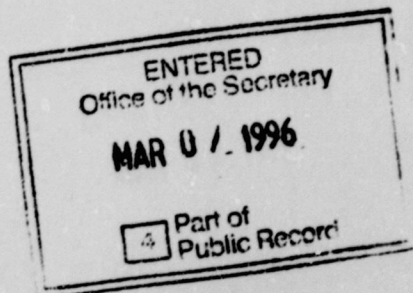
Very truly yours,

Tom McFarland

Thomas F. McFarland, Jr.
Attorney for Illinois Transit Assembly Corp.

TMcF:kl:525

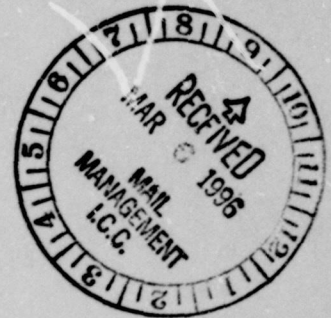
cc: Restricted Service List



ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION

UNION PACIFIC CORPORATION, ET)	
AL. -- CONTROL AND MERGER --	)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL	)	NO. 32760
CORPORATION, ET AL.)	
)	
UNION PACIFIC RAILROAD)	
COMPANY -- ABANDONMENT --	)	DOCKET NO. AB-33
EDWARDSVILLE-MADISON LINE IN	)	(SUB-NO. 98X)
MADISON COUNTY, IL)	



OBJECTION TO REQUESTS FOR DISCOVERY

ILLINOIS TRANSIT ASSEMBLY
CORPORATION
214 South Brown Street
Edwardsville, IL 62025

Protestant

THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive, Suite 1330
Chicago, IL 60606-2902
(312) 236-0204

Attorney for Protestant

Date Filed: March 6, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION

UNION PACIFIC CORPORATION, ET)	
AL. -- CONTROL AND MERGER --	)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL	)	NO. 32760
CORPORATION, ET AL.)	
)	
UNION PACIFIC RAILROAD)	
COMPANY -- ABANDONMENT --	)	DOCKET NO. AB-33
EDWARDSVILLE-MADISON LINE IN	)	(SUB-NO. 98X)
MADISON COUNTY, IL)	

OBJECTION TO REQUESTS FOR DISCOVERY

ILLINOIS TRANSIT ASSEMBLY CORPORATION (ITAC) hereby objects to the requests for discovery (interrogatories and production of documents) which were submitted by the Merger Applicants (Document No. UP-SP 116) and which were received on February 27, 1996.

ITAC is a shipper located at Edwardsville, IL, a point on the Madison-Edwardsville rail line proposed for abandonment. The primary position of ITAC is in opposition to that proposed abandonment. ITAC is opposed to the proposed merger only because the merger would result in abandonment of the Madison-Edwardsville rail line. Except for that proposed abandonment that would be spawned by the merger, ITAC would not have appeared and taken a position on the proposed merger. Thus, ITAC is a shipper opponent of abandonment.

Shipper opponents of abandonment need not respond to discovery requests made by an applicant(s) for abandonment. See *Illinois Central Railroad Company -- Abandonment -- in Jackson, Hinds County, MS*, Docket No. AB-43 (Sub-No. 162) (ICC, served September 1,

1995). A copy of that decision is attached to this objection for ready reference. In that case, the ICC denied an abandonment applicant's motion to compel answers to the applicant's interrogatories. That decision was based on the fact that the applicant, rather than shipper opponents, has the burden of proof that public convenience and necessity require or permit abandonment, viz., at page 1:

... In an abandonment proceeding, the applicant bears the burden of proving that the present or future public convenience and necessity require or permit the abandonment. 49 U.S.C. 10904(d)(1). The applicant should have in its possession all the information it needs to meet that burden. We will deny applicant's motion to compel (footnote omitted). To the extent that transportation alternatives available to shippers are placed in issue by the applicant, shippers will have the opportunity to offer their own evidence or information to refute IC's assertions. Rather than requiring shippers to make available specific requested information, it can be left to shippers to present whatever information they believe they need to support their assertions. Applicant then may refute or rebut such assertions and information in its reply statement.

The ICC also has denied efforts to enforce discovery against shipper opponents of rail abandonment because such discovery discourages public participation and is contrary to the goal of making the abandonment process accessible and straightforward. *Chicago and North Western Transportation Company -- Abandonment -- between Palmer and Laurens in Pocahontas County, IA*, Docket No. AB-1 (Sub-No. 212) (ICC served May 16, 1991, reconsideration denied served August 2, 1991); and *Missouri Pacific Railroad Company -- Abandonment -- in Woodson County, KS (Piqua Industrial Lead)*, Docket No. AB-3 (Sub-No. 112) (ICC served February 16, 1994).

Consistently with the reasoning supporting those decisions, ITAC objects to Applicants' discovery requests, and will not provide answers to the interrogatories or provide the documentation requested unless ordered to do so. However, that does not mean that ITAC

refuses to furnish relevant information and documentation in support of evidence that it will file on March 29, 1996. ITAC undertakes to furnish workpapers and source documents underlying evidence that it will file on that date. Under the law referred to above, that is all to which applicants are entitled.

WHEREFORE, ITAC objects to the discovery requests proffered by Applicants.

Respectfully submitted,

ILLINOIS TRANSIT ASSEMBLY
CORPORATION
214 South Brown Street
Edwardsville, IL 62025

Protestant

Thomas F. McFarland Jr.

THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive, Suite 1330
Chicago, IL 60606-2902
(312) 236-0204

Attorney for Protestant

Date Filed: March 6, 1996

SEC

INTERSTATE COMMERCE COMMISSION

DECISION

Docket No. AB-43 (Sub-No. 162)

ILLINOIS CENTRAL RAILROAD COMPANY--ABANDONMENT--
IN JACKSON, HINDS COUNTY, MS

Decided: September 1, 1995

By application filed June 9, 1995, Illinois Central Railroad Company (IC or applicant) seeks authority under 49 U.S.C. 10903 to abandon a line of railroad from milepost LN-0.20 to milepost LN-6.00, a distance of 5.8 miles of main track, together with 2.14 miles of side track, totalling 7.94 trackmiles, in Jackson, Hinds County, MS. Based on protests and comments received, the Commission instituted an investigation into the proposed abandonment under 49 U.S.C. 10904 and established a procedural schedule by Director Order served July 24, 1995.

On August 11, 1995, IC filed a motion to compel answers to interrogatories from BWI of Jackson, Frierson Building Supply Co., Jackson Oil Mill, Puckett Machinery Co., and Sheppard Building Supply Co. (shippers). The interrogatories attempt to ascertain information regarding shippers' rail and truck shipments and the availability of transportation alternatives. Shippers replied in opposition on August 25, 1995. In an abandonment proceeding, the applicant bears the burden of proving that the present or future public convenience and necessity require or permit the abandonment. 49 U.S.C. 10904(d)(1). The applicant should have in its possession all the information it needs to meet that burden. We will deny applicant's motion to compel.¹ To the extent that transportation alternatives available to shippers are placed in issue by the applicant, shippers will have the opportunity to offer their own evidence or information to refute IC's assertions. Rather than requiring shippers to make available specific requested information, it can be left to shippers to present whatever information they believe they need to support their assertions. Applicant then may refute or rebut such assertions and information in its reply statement.

On August 29, 1995, City of Jackson filed a motion to compel IC to produce documents. City of Jackson seeks documents regarding the title and merchantability of IC's right-of-way, and maintenance and rehabilitation costs for the line. Similarly, we will deny City of Jackson's motion to compel. To the extent that these matters are in issue, applicant has the burden of proving them. Thus, applicant should be permitted to support merchantability of title or not, recognizing that asserted merchantability of title will have to be supported.

The parties are advised that issues they raise, and their claims and allegations, must be supported by testimony and documentation in the course of modified procedure. Commission rules require parties in abandonment proceedings to support and

¹ The Commission looks with disfavor upon an applicant's serving interrogatories on a shipper in an attempt to develop its case or discourage participation. Such action is contrary to the Commission's goal of making the abandonment process accessible and straightforward. Chicago and North Western Transportation Company--Abandonment--Between Palmer and Laurens in Pocahontas County, IA, Docket No. AB-1 (Sub-No. 212) (ICC served May 16, 1991), reconsideration denied, August 2, 1991; see also Missouri Pacific Railroad Company--Abandonment--In Woodson County, KS (Piqua Industrial Lead), Docket No. AB-3 (Sub-No. 112) (ICC served Feb. 16, 1994).

SERVICE DATE

SEP 1 1995

substantiate fully all revenue forecasts, costs, and asset values. See Abandonment Regulations--Costing, 5 I.C.C.2d 123, 133 (1946). In balancing the parties' competing interests, the Commission will consider carefully both the parties' assertions and the nature and strength of their evidence in determining the weight to be accorded to each.

On August 28, 1995, a joint request for extension of time was filed by protestants BWI of Jackson, Frierson Building Supply Co., Jackson Oil Mill, Puckett Machinery Co., Sheppard Building Supply Co., and City of Jackson, MS. Protestants request an additional 10 days in which to file their statements, i.e., from September 5, 1995, to September 15, 1995. IC replied in opposition on August 31, 1995. Protestants' request will be granted in part. The Commission must complete its investigation by October 22, 1995, and render its decision by November 21, 1995. See 49 U.S.C. 10904(c). To provide the parties with additional time to review and analyze the evidence while allowing adequate time to complete our investigation, we will extend the procedural schedule by 6 days: protestants' statements will be due on September 11, 1995, and applicant's reply statement will be due on September 26, 1995.

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

It is ordered:

1. Applicant's motion to compel answers to interrogatories is denied.
2. City of Jackson's motion to compel production of documents is denied.
3. Protestants' joint request for extension of time is granted in part. Protestants' statements are now due on September 11, 1995. Applicant's reply statement is now due on September 26, 1995.
4. This decision is effective on its service date.

By the Commission, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 1996, I served the foregoing document, Objection To Requests For Discovery, by U.P.S. overnight mail on:

Administrative Law Judge Jerome Nelson
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, DC 20426

Cannon Y. Harvey
Louis P. Warchot
Carol A. Harris
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, CA 94105

Paul A. Cunningham
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Louise A. Rinn
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Missouri Pacific Railroad Company
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Omaha, NE 68179

Arvid E. Roach, II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

Carl W. Von Bernuth
Richard J. Ressler
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 18018

and on all other parties on the restricted discovery service list by first-class, U.S. mail, postage prepaid.

Thomas F. McFarland Jr.
THOMAS F. McFARLAND, JR.

STB

FD

32760

3-4-96

B

61602

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 .

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

-- CONTROL AND MERGER --

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

MAR 05 1996

4 Part of
Public RecordAPPLICANTS' OBJECTIONS TO
BROWNSVILLE AND RIO GRANDE INTERNATIONAL'S
SECOND SET OF INTERROGATORIES AND
INFORMAL REQUEST FOR PRODUCTION OF DOCUMENTSCANNON Y. HARVEY
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Southern Pacific
Transportation Company
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San Francisco, California 94105
(415) 541-1000PAUL A. CUNNINGHAM
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1300 Nineteenth Street, N.W.
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(202) 973-7601Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad CompanyCARL W. VON BERNUTH
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(610) 861-3290JAMES V. DOLAN
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J. MICHAEL HEMMER
MICHAEL L. ROSENTHAL
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P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

March 4, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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



APPLICANTS' OBJECTIONS TO
BROWNSVILLE AND RIO GRANDE INTERNATIONAL'S
SECOND SET OF INTERROGATORIES AND
INFORMAL REQUEST FOR PRODUCTION OF DOCUMENTS

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and
DRGW submit the following objections to the Brownsville and
Rio Grande International's Second Set of Interrogatories and
Informal Request for Production of Documents, served February
26, 1996. These objections are made pursuant to paragraph 1
of the Discovery Guidelines applicable to this proceeding,
which provides that objections to discovery requests shall be
made "by means of a written objection containing a general
statement of the basis for the objection."

Applicants intend to file written responses to the
discovery requests. It is necessary and appropriate at this
stage, however, for Applicants to preserve their right to
assert permissible objections.

GENERAL OBJECTIONS

The following objections are made with respect to all of the discovery requests.

1. Applicants object to production of documents or information subject to the attorney-client privilege.

2. Applicants object to production of documents or information subject to the work product doctrine.

3. Applicants object to production of documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

4. Applicants object to production of public documents that are readily available, including but not limited to documents on public file at the Board or the Securities and Exchange Commission or clippings from newspapers or other public media.

5. Applicants object to the production of draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such documents have been treated by all parties as protected from production.

6. Applicants object to providing information or documents that are as readily obtainable by BRGI from its own files.

7. Applicants object to the extent that the discovery requests seek highly confidential or sensitive commercial information (including, inter alia, contracts containing confidentiality clauses prohibiting disclosure of

their terms) that is of insufficient relevance to warrant production even under a protective order.

8. Applicants object to the discovery requests to the extent that they call for the preparation of special studies not already in existence.

9. Applicants object to the discovery requests as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1993.

10. Applicants incorporate by reference their objections to the definitions and instructions set forth in BRGI's first set of interrogatories and informal document request.

ADDITIONAL OBJECTIONS TO SPECIFIC DISCOVERY REQUESTS

In addition to the General Objections, Applicants make the following objections to the discovery requests.

Interrogatory No. 14: "Please provide the following information concerning SP's existing operations to and from the Brownsville area:

- (a) total inbound carloads handled by SP into Brownsville (including traffic delivered to the UP and interchanged to the Mexican rail system) during 1994 and also for 1995;
- (b) total outbound carloads handled by SP out of Brownsville (including traffic delivered to the SP by the UP and traffic interchanged from the Mexican rail system) during 1994 and also for 1995;
- (c) with respect to the carload data requested in interrogatories 14(a) and (b), please identify, by carload quantities, the commodities handled by SP both into and out of Brownsville in 1994 and also in 1995;

- (d) describe the train service SP currently provides to Brownsville, including train frequency, train numbers, and the originating and terminating points of each train."

Additional Objections: Applicants object to this interrogatory as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 15: "By or about April of 1996, BRGI expects to enjoy a direct connection with the SP as a result of the imminent completion of a track relocation project. (This relocation project represents a phase of the work to be undertaken in connection with the 1982 Memorandum of Understanding.) Please provide the following information concerning SP's anticipated operational changes in Brownsville as a result of the new connection between SP and BRGI:

- (a) identify the train(s) that will interchange with BRGI;
- (b) with respect to the trains identified in interrogatory number 15(a), provide the schedules for such trains, as well as origin and destination points; and
- (c) please provide detailed information with respect to any additional operational changes SP plans to undertake upon completion of above-described track relocation project."

Additional Objections: Applicants object to this interrogatory as unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 16: "Please provide the following information concerning UP's existing operations to and from the Brownsville area:

- (a) total inbound carloads handled by UP into Brownsville (including traffic delivered to the and traffic interchanged with the Mexican rail system) during 1994 and also for 1995;
- (b) total outbound carloads handled by UP out of Brownsville (including traffic delivered from th and traffic interchanged from the Mexican rail system) during 1994 and also for 1995;
- (c) with respect to the carload data requested in interrogatories 14(a) and (b), please identify, carload quantities, the commodities handled by U both into and out of Brownsville in 1994 and als 1995;
- (d) describe the train service UP currently provides Brownsville, including train frequency, train numbers, and the originating and terminating poi of each train."

Additional Objections: Applicants object to this interrogatory as unduly burdensome, and overbroad in that includes requests for information that is neither relevant reasonably calculated to lead to the discovery of admissib evidence.

Interrogatory No. 17: "Have the applicants determined tha the proposed merger will have an impact upon of [sic] the scope of the projects and goals contained in the 1982 Memorandum of Understanding? If so, please explain with particularity how the proposed merger will change the proj and goals described in the Memorandum of Understanding. I not, please explain in detail how the proposed merger will affect the projects and goals described in that agreement.

Additional Objections: Applicants object to this interrogatory as unduly vague and unduly burdensome.

Interrogatory No. 18: "Do the Applicants contend that the BNSF should not be made a party to the 1982 Memorandum of Understanding? If so, please explain the grounds for your position."

Additional Objections: None.

Interrogatory No. 19: "If the proposed merger is approved, the Applicants will possess two rail routes to and from Brownsville (one via the former SP from Harlingen to Brownsville, and a parallel route via the former UP from Harlingen to Brownsville). With respect to these two lines, please provide the following information:

- (a) whether the Applicants intend to abandon any portion of either of these two lines after the merger;
- (b) whether, following the merger, the current SP line will be utilized for through train service between Houston and Brownsville;
- (c) whether the SP line between Harlingen and Brownsville will experience a reduction in the frequency of local service and through train service, and if so, the extent of such reductions;
- (d) indicate over which of the two lines BNSF would exercise trackage rights (in the event that BNSF makes such an election)."

Additional Objections: None.

Interrogatory No. 20: "In the event that BNSF should elect to exercise trackage rights between Houston (Algoa) and Brownsville, what capital improvements would be necessary to accommodate BNSF's train operations over Applicant's lines? If no improvements are necessary, please explain why."

Additional Objections: None.

Interrogatory No. 21: "Do Applicants intend to promote or develop intermodal service to and from the Brownsville area? If so, please identify and describe all of the studies and marketing research conducted on this topic, and describe how such service would be implemented following the merger of the UP and SP."

Additional Objections: Applicants object to this interrogatory as unduly burdensome.

Interrogatory No. 22: "Have Applicants undertaken any study which, in whole or in part, concerns the rail service they propose to provide to the various ports they will serve, as a merged system, along the Gulf of Mexico? If so, please identify any documentation prepared in connection with such studies, including any proposed or existing marketing plans or operating strategies resulting therefrom, and identify the

individual or individuals who prepared such studies and related documents."

Additional Objections: Applicants object to this

interrogatory as unduly vague and unduly burdensome.

Interrogatory No. 23: "BRGI understands that SP currently possesses certain rights that enable it to access the Mexican rail system at Brownsville (Matamoros, Mexico). Following completion of the track relocation project described in interrogatory number 15, above, will SP be able to provide switching services for BRGI, which would enable BRGI to route cars for interchange with the Mexican rail system at Brownsville? If SP cannot provide such services for BRGI and its customers, please explain in detail what would prohibit such a service arrangement."

Additional Objections: Applicants object to this

interrogatory as unduly vague and unduly burdensome.

Interrogatory No. 24: "In connection with interrogatory number 23, above, if SP will be able to provide such switching services for BRGI and its customers (following completion of the aforementioned track relocation), will other anticipated track relocations, pursuant to the 1982 Memorandum of Understanding, adversely affect SP's ability to serve as a connection for BRGI to the Mexican rail system at Brownsville? If so, please explain the cause and nature of each such adverse impact which may be occasioned by further projects undertaken pursuant to the 1982 Memorandum of Understanding."

Additional Objections: Applicants object to this

interrogatory as unduly vague and unduly burdensome.

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Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp.
and The Denver and Rio Grande
Western Railroad Company

Respectfully submitted,

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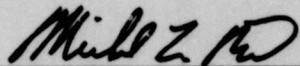
March 4, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 4th day of March, 1996, I caused a copy of the foregoing document to be served by hand on Keith G. O'Brien, counsel for the Brownsville and Rio Grande International Railroad, at Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, D.C. 20036, and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580



Michael L. Rosenthal

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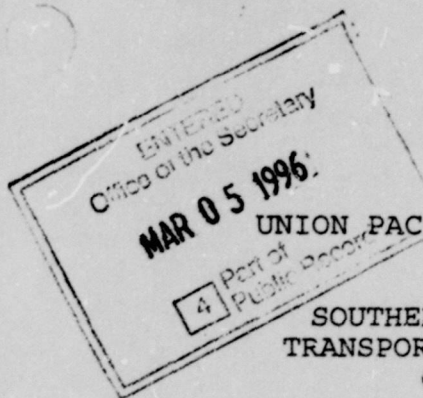
Mar. # 50

61600

UP/SP-159

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



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

-- CONTROL AND MERGER --

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

APPLICANTS' RESPONSES TO THE TEAMSTERS'
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION
OF DOCUMENTS TO PACIFIC MOTOR TRANSPORT AND APPLICANTS

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The Denver and Rio Grande
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March 4, 1996

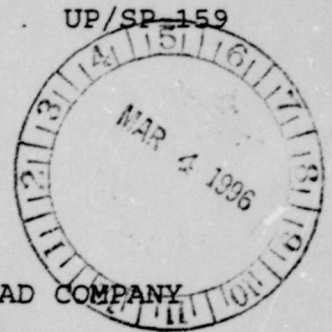
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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



APPLICANTS' RESPONSES TO THE TEAMSTERS'
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION
OF DOCUMENTS TO PACIFIC MOTOR TRANSPORT AND APPLICANTS

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW,
collectively, "Applicants," hereby respond to the discovery
requests served by the International Brotherhood of Teamsters
and directed jointly to Pacific Motor Transport Company and
Applicants.^{1/}

GENERAL RESPONSES

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

1. Applicants have conducted a reasonable search
for documents responsive to the interrogatories and document

^{1/} In these responses, Applicants use acroynms as they have
defined them in the application. However, subject to General
Objection No. 10 below, for purposes of interpreting the
requests, Applicants will attempt to observe Tex Mex's
definitions where they differ from Applicants' (for example,
Tex Mex's definitions of "UP" and "SP," unlike Applicants',
include UPC and SPR, respectively).

requests. Except as objections are noted herein,^{2/} all responsive documents have been or shortly will be made available for inspection and copying in Applicants' document depository, which is located at the offices of Covington & Burling in Washington, D.C. Applicants will be pleased to assist IBT to locate 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.

3. Certain of the documents to be produced contain sensitive shipper-specific and other confidential information. Applicants are producing these documents subject to the protective order that has been entered in this proceeding.

4. In line with past practice in cases of this nature, Applicants have not secured verifications for the answers to interrogatories herein. Applicants are prepared to

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

discuss the matter with IBT if this is of concern with respect to any particular answer.

GENERAL OBJECTIONS

The following objections are made with respect to all of the interrogatories and document requests.

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

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

3. Applicants object to production of, and are not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

4. Applicants object to production of public documents that are readily available, including but not limited to documents on public file at the Board or the Securities and Exchange Commission or clippings from newspapers or other public media.

5. Applicants object to the production of, and are not producing, draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such documents have been treated by all parties as protected from production.

6. Applicants object to providing information or documents that are as readily obtainable by IBT from its own files.

7. Applicants object to the extent that the interrogatories and document requests seek highly confidential or sensitive commercial information (including inter alia, contracts containing confidentiality clauses prohibiting disclosure of their terms) that is of insufficient relevance to warrant production even under a protective order.

8. Applicants object to the definitions of "relating to," "related to" and concerning as unduly vague.

9. Applicants object to Instructions Nos. 2, 3, 5, 6, 7, 8 and 10 to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

10. Applicants object to Instructions Nos. 2, 3, 5, 6, 7, 8, and 10 as unduly burdensome.

11. Applicants object to the interrogatories and document requests to the extent that they call for the preparation of special studies not already in existence.

12. Applicants object to the interrogatories and document requests as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1993.

13. Applicants object to the extent that the discovery requests purport to be directed to the non-applicant

Pacific Motor Transport Company, or to seek information or documents from Pacific Motor.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Interrogatory No. 1

"Identify any studies or analyses conducted by PMT or Applicants concerning whether traffic now carried over the road by PMT will be diverted to intermodal rail as a result of the merger of UP and SP. Identify any documents that relate to such studies or analyses."

Response

Applicants object to this interrogatory as unduly burdensome. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

See the verified statements of Don P. Ainsworth and Paul O. Roberts in Volume 1 of the Application.

Interrogatory No. 2

"Identify any studies or analyses conducted by PMT or Applicants concerning possible changes in the number of over the road drivers employed by PMT as a result of the merger of UP and SP. Identify any documents that relate to such studies or analyses."

Response

Applicants object to this interrogatory as unduly burdensome. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

Applicants have not identified any such studies or analyses.

Interrogatory No. 3

"Identify the factors that PMT considers in determining whether to transport cargoes by intermodal rail as opposed to over the road truck. Describe how such factors are applied to determine by which mode a particular shipment or a class of shipments will be transported. Identify any documents relating to the application of such factors to the decision to transport cargoes by intermodal rail as opposed to over the road truck."

Response

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

This interrogatory is not applicable to Applicants.

Interrogatory No. 4

"Identify all changes in PMT's operational procedures and organization that will result from the UP/SP merger."

Response

Applicants object to this interrogatory in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the

"Identify all communications between SP or UP personnel and representatives of PMT concerning the increased use of intermodal rail service following approval of the UP/SP merger. Identify all documents relating to those communications."

Response

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

Applicants have not identified any such communications.

Document Request No. 1

"Produce all documents identified in response to Interrogatory No. 1."

Response

See Response to Interrogatory No. 1.

Document Request No. 2

"Produce all documents identified in response to Interrogatory No. 2."

Response

See Response to Interrogatory No. 2.

Document Request No. 3

"Produce all documents identified in Interrogatory No. 3."

Response

See Response to Interrogatory No. 3.

General Objections stated above, Applicants respond as follows:

Applicants have not identified any such changes.

Interrogatory No. 5

"Does PMT intend to discontinue operations at any existing terminal if the merger of UP and SP is approved? If so, identify each such terminal."

Response

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

This interrogatory is not applicable to Applicants.

Interrogatory No. 6

"Does PMT expect to alter its service in any manner if the merger of UP and SP is approved? If so, describe how its service will be changed."

Response

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

This interrogatory is not applicable to Applicants.

Interrogatory No. 7

Document Request No. 4

"Identify all documents identified in response to Interrogatory No. 7."

Response

See Response to Interrogatory No. 7.

Respectfully submitted,

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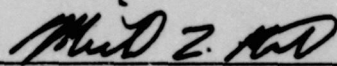
March 4, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 4th March, 1996, I caused a copy of the foregoing document to be served by facsimile and first-class mail on Marc J. Fink, counsel for Teamsters, at Sher & Blackwell, 2000 L Street, N.W., Suite 612, Washington, D.C. 20036, and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premarmer Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580



Michael L. Rosenthal

STB FD 32760

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61599

March 4, 1996

Via Hand Delivery

Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

RECEIVED
Mar 4 1 31 PM '96
OFFICE OF SECRETARY

Re: Union Pacific Corp., Union Pacific RR. Co. and Missouri Pacific RR Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Transp. Co., St. Louis Southwestern Rv. Co., SPCSL Corp. and The Denver and Rio Grande Western RR Co.,
Finance Docket No. 32760

Dear Secretary Williams:

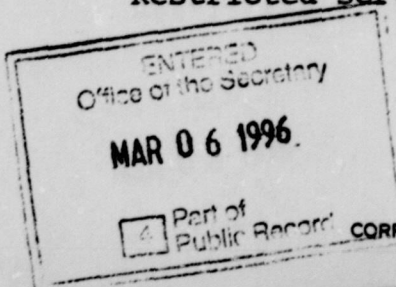
Enclosed are an original and twenty copies of TM-16, Objections of The Texas Mexican Railway Company to Applicants' First Set of Interrogatories and Request for Production of Documents, and TM-17, Objections of The Texas Mexican Railway Company to the First Set of Interrogatories and Request for Production of Documents of the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company. Also enclosed is a 3.5" floppy computer disc containing a copy of each of the filings in Wordperfect 5.1 format.

Sincerely,

John V. Edwards

Enclosures

cc: Honorable Jerome Nelson
Restricted Service List



CORRESPONDENT OFFICES: LONDON, PARIS AND BRUSSELS

STB

FD

32760

3-4-96

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R, HAMILTON & SCHEETZ

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WILMINGTON, DELAWARE

BERWYN, PENNSYLVANIA

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LONDON, ENGLAND

MOSCOW, RUSSIA

Item No. _____

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Mar # 59

PITTSBURGH, PENNSYLVANIA

HARRISBURG, PENNSYLVANIA

WRITER'S DIRECT NUMBER

(202) 828-1220

March 4, 1996



VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20549

Re: Finance Docket No. 32760

Dear Mr. Williams:

Enclosed for filing in the above referenced proceeding are the original and 20 copies of Objections of Illinois Power Company To Applicants' First Set Of Interrogatories and Requests For Production Of Documents (ILP-4). Also enclosed is a stamp and return copy.

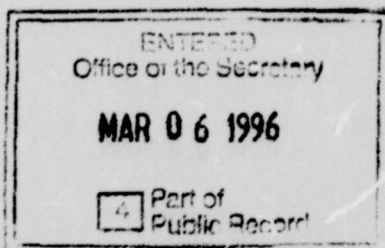
In accordance with Decision No. 15 and 16 in the above-referenced docket, the pleading has a certificate of service indicating that all parties on the restricted service list have been served by telecopier.

Thank you for your attention to this matter.

Sincerely,

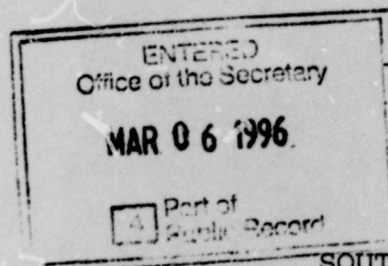
Michelle J. Morris

Michelle J. Morris



ILP-4

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 32760



UNION PACIFIC CORPORATION, ET AL.
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, ET AL.

OBJECTIONS OF ILLINOIS POWER COMPANY
TO APPLICANTS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Joseph L. Lakshmanan
ILLINOIS POWER COMPANY
500 South 27th Street
Decatur, IL 62525

Marc D. Machlin
Michelle J. Morris
PEPPER, HAMILTON & SCHEETZ
1300 19th Street, N.W.
Washington, D.C. 20036
(202) 828-1200

Attorneys for Illinois
Power Company

March 4, 1996

Illinois Power Company ("Illinois Power"), by and through its attorneys, Pepper, Hamilton & Scheetz, hereby submit the following objections to the discovery requests served by the Applicants on February 26, 1996, as provided in the Discovery Guidelines adopted by Judge Nelson in his decision served December 7, 1995.

GENERAL OBJECTIONS

The following general objections are made with respect to Applicants' First Set of Interrogatories And Requests For Production Of Documents.

1. Illinois Power objects to Applicants' First Set of Interrogatories And Requests For Production Of Documents to the extent they call for the production of documents or information subject to the attorney-client privilege, the work product doctrine or any other legal privilege.

2. Illinois Power objects to Applicants' First Set of Interrogatories And Requests For Production Of Documents to the extent they call for the production of documents or information that are readily available, including, but not limited to, documents on public file with state utility commissions or state regulatory agencies.

3. Illinois Power objects to Applicants' First Set of Interrogatories And Requests For Production Of Documents to the extent they call for the production of documents or information that are readily obtainable by Applicants' from their own files.

4. Illinois Power objects to Applicants' First Set of Interrogatories And Requests For Production Of Documents to the

extent they call for the production of documents or information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

5. Illinois Power objects to Applicants' First Set of Interrogatories And Requests For Production Of Documents to the extent they are vague, overbroad and unduly burdensome.

6. Illinois Power objects to Applicants' First Set of Interrogatories And Requests For Production Of Documents to the extent they call for the preparation of special studies not already in existence.

OBJECTIONS TO INTERROGATORIES

In addition to the General Objections, Illinois Power makes the following objections to the interrogatories and requests for production of documents.

Interrogatory No. 1

Identify and describe in detail any agreements that Illinois Power has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be identified. If Illinois Power contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

Response:

Subject to and without waiving the General Objections stated above, in particular that this interrogatory includes requests for information that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence and calls for information subject to the attorney-client privilege or any other legal privilege, Illinois Power states that it has no agreements with any other party regarding positions or actions to be taken in this proceeding.

Interrogatory No. 2

For each utility plant operated by Illinois Power, separately for each year 1993 through 1995, identify the originating mines for all coal burned at the plant and, as to each such mine, state: (a) the tonnage of coal from that mine burned at the plant; (b) the average delivered price of coal from that mine; (c) the average minehead price of that coal; (d) the rail transportation routings (including origination and interchange points) for all coal shipped from that mine to the plant; and (e) any transportation routings or modes other than rail used in shipping coal to the plant.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome.

OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTSDocument Request No. 1

Produce no later than April 1, 1996 (a) all workpapers underlying any submission that Illinois Power makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for Illinois Power on or about March 29, 1996 in this proceeding.

Response: Subject to and without waiving the General Objections stated above, Illinois Power objects to Request No. 1(b) to the extent it is overbroad and unduly burdensome.

Document Request No. 2

Produce all documents relating to benefits or efficiencies that will result from the UP/SP merger.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is vague, overbroad and unduly burdensome.

Document Request No. 3

Produce all documents relating to potential traffic impacts of the UP/SP merger.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the

extent it is vague, overbroad and unduly burdensome and to the extent it calls for the production of documents or information that are readily obtainable by Applicants' from their own files.

Document Request No. 4

Produce all documents relating to competitive impacts of the UP/SP merger, including but not limited to effects on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is vague, overbroad and unduly burdensome and to the extent it calls for the production of documents or information that are readily obtainable by Applicants' from their own files.

Document Request No. 5

Produce all documents relating to the BN/Santa Fe Settlement Agreement.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is vague, overbroad and unduly burdensome and to the extent it calls for the production of documents or information that are readily obtainable by Applicants' from their own files.

Document Request No. 6

Produce all documents relating to the IC Settlement Agreement.

Response:

Subject to and without waiving the General Objections

stated above, Illinois Power objects to this interrogatory to the extent it is vague, overbroad and unduly burdensome and to the extent it calls for the production of documents or information that are readily obtainable by Applicants' from their own files.

Document Request No. 7

Produce all documents relating to the Utah Railway Settlement Agreement.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is vague, overbroad and unduly burdensome and to the extent it calls for the production of documents or information that are readily obtainable by Applicants' from their own files.

Document Request No. 8

Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is vague, overbroad and unduly burdensome and to the extent it calls for the production of documents or information that are readily obtainable by Applicants' from their own files.

Document Request No. 9

Produce all studies, reports or analyses relating to actual or potential competition between UP and SP.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is vague, overbroad and unduly burdensome.

Document Request No. 10

Produce all studies, reports or analyses relating to competition between single-line and interline rail transportation.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome.

Document Request No. 11

Produce all studies, reports or analyses relating to the benefits of any prior rail merger or rail mergers generally.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 12

Produce all studies, reports or analyses relating to the financial position or prospects of SP.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the

extent it is overbroad and unduly burdensome and to the extent it calls for the production of documents or information that are readily obtainable by Applicants' from their own files.

Document Request No. 13

Produce all communications with other parties to this proceeding relating to the UP/SP Merger or the BN/Santa Fe Settlement Agreement, and all documents relating to such communications. This request excludes documents already served on Applicants.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Illinois Power also objects to this interrogatory to the extent it calls for information subject to the attorney-client privilege, the work product doctrine or any other legal privilege.

Document Request No. 14

Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of Illinois Power or any other party in this proceeding.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome.

Document Request No. 15

Produce all presentations, letters, memoranda, white papers or other documents sent or given to DOJ, DOT, any state Governor's Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and burdensome and requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Illinois Power also objects to this interrogatory to the extent it calls for information subject to the attorney-client privilege, the work product doctrine or any other legal privilege.

Document Request No. 16

Produce all notes of, or memoranda relating to, any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government official, any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and burdensome and requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Illinois Power also objects to

this interrogatory to the extent it calls for information subject to the attorney-client privilege, the work product doctrine or any other legal privilege.

Document Request No. 17

Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome and requests information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 18

Produce all documents relating to price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 19

Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 20

Produce all documents relating to actual or estimated maintenance-and-operating costs, taxes and return-to-capital costs with respect to any of the BN/Santa Fe Settlement Agreement Lines or any other lines of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 21

Produce all documents relating to any agreement or understanding that Illinois Power has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Documents relating to routine procedural agreement, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be produced.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it includes requests for information that are neither relevant nor reasonably calculated to lead to the discovery of

admissible evidence. Illinois Power also objects to this interrogatory to the extent it calls for information subject to the attorney-client privilege, the work product doctrine or any other legal privilege.

Document Request No. 22

Produce all presentations to, and minutes of, the boards of directors (or other governing body) of Illinois Power relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome and is not reasonably calculated to lead to the discovery of admissible evidence. Illinois Power also objects to this interrogatory to the extent it calls for information subject to the attorney-client privilege, the work product doctrine or any other legal privilege.

Document Request No. 23

Produce all documents in the possession of Illinois Power or its members relating to whether Utah and Colorado coal competes with Powder River Basin or Hanna Basin coals, including but not limited to any studies, reports or analyses of the use by utilities of, solicitation by utilities of bids for or interchangeability in use of, such coals.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome.

Document Request No. 24

Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome.

Document Request No. 25

Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome.

Document Request No. 26

Produce all documents relating to the effect of the UP/SP merger on coal transportation service, competition or routings to any Illinois Power facility.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome.

Document Request No. 27

Produce all studies, reports or analyses relating to (a) using a different coal source than it presently used at any Illinois Power facility (b) using a non-coal fuel in lieu of coal at any Illinois Power facility, or (c) purchasing power or shifting power generation among facilities as alternatives to consuming coal at any Illinois Power facility.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it is overbroad and unduly burdensome.

Document Request No. 28

Produce all filings made with state utility commissions or state regulatory agencies that discuss sources of fuel.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it includes requests for the production of documents that are readily available, including, but not limited to, documents on public file with state utility commissions or state regulatory agencies.

Document Request No. 29

Produce all studies, reports, analyses, compilation, calculations or evaluations of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared by L. E. Peabody & Associates, and all workpapers or other documents relating thereto.

Response:

Subject to and without waiving the General Objections stated above, Illinois Power objects to this interrogatory to the extent it includes requests for information that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Illinois Power also objects to this interrogatory to the extent it calls for information subject to

the attorney-client privilege, the work product doctrine or any other legal privilege.

Respectfully submitted,

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CERTIFICATE OF SERVICE

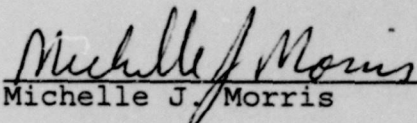
I certify that a copy of the foregoing Objections of Illinois Power Company To Applicant's First Set Of Interrogatories And Requests for Production Of Documents was served on the following persons via telecopier and first class mail:

Paul A. Cunningham
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Arvid E. Roach, II
J. Michael Hemmer
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1201 Pennsylvania Ave. N.W.
Washington, D.C. 20044

Judge Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory
Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426

A copy of the foregoing Objections of Illinois Power Company To Applicant's First Set Of Interrogatories And Requests for Production Of Documents was also sent by telecopier to all parties on the restricted service list.


Michelle J. Morris

March 4, 1996

STB FD 32760

3-4-96

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Item No. _____

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' OBJECTIONS TO CONSOLIDATED RAIL CORPORATION'S
FIRST REQUEST FOR INSPECTION OF APPLICANTS' PROPERTY

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Southern Pacific Transportation
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Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad Company

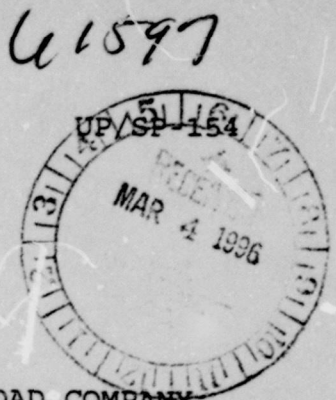
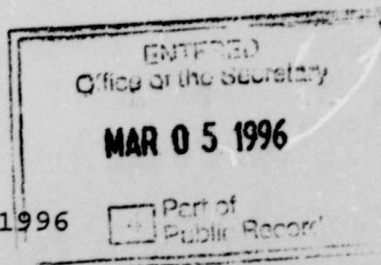
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March 4, 1996

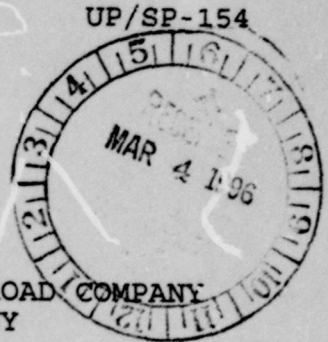


BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --

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



APPLICANTS' OBJECTIONS TO CONSOLIDATED RAIL CORPORATION'S
FIRST REQUEST FOR INSPECTION OF APPLICANTS' PROPERTY

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW submit the following objections to Conrail's First Request for Inspection of Applicants' Property, served February 26, 1996. These objections are made pursuant to paragraph 1 of the Discovery Guidelines applicable to this proceeding, which provides that objections to discovery requests shall be made "by means of a written objection containing a general statement of the basis for the objection."

Applicants intend to file written responses to the discovery requests. It is necessary and appropriate at this stage, however, for Applicants to preserve their right to assert permissible objections.

OBJECTIONS

Applicants object to Conrail's request as unduly burdensome, and overbroad in that it includes requests for

information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

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Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad Company

March 4, 1996

Respectfully submitted,

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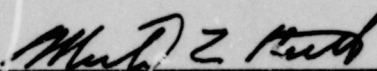
Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 4th day of March, 1996, I caused a copy of the foregoing document to be served by hand on Daniel K. Mayers, counsel for Consolidated Rail Corporation, at Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20005-3934, and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32750, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premarmer Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580



Michael L. Rosenthal

STB FD 32760

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UP/SP-155

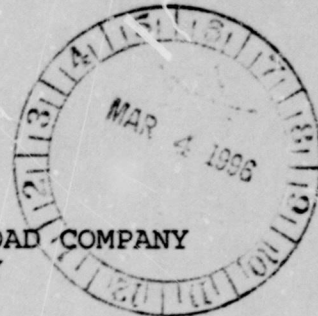
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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



APPLICANTS' OBJECTIONS TO PUBLIC SERVICE COMMISSION
OF NEVADA'S FIRST SET OF INTERROGATORIES
AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

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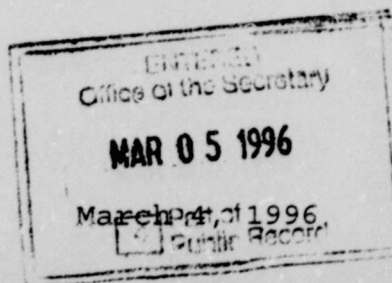
Attorneys for Southern
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Southern Pacific Transportation
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Railway Company, SPCSL Corp. and
The Denver and Rio Grande
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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
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APPLICANTS' OBJECTIONS TO PUBLIC SERVICE COMMISSION
OF NEVADA'S FIRST SET OF INTERROGATORIES
AND FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and
DRGW submit the following objections to Public Service
Commission of Nevada's First Set of Interrogatories and
Requests for Production of Documents, served February 26,
1996. These objections are made pursuant to paragraph 1 of
the Discovery Guidelines applicable to this proceeding, which
provides that objections to discovery requests shall be made
"by means of a written objection containing a general
statement of the basis for the objection."

Applicants intend to file written responses to the
discovery requests. It is necessary and appropriate at this
stage, however, for Applicants to preserve their right to
assert permissible objections.

GENERAL OBJECTIONS

The following objections are made with respect to
all of the discovery requests.

1. Applicants object to production of documents or information subject to the attorney-client privilege.

2. Applicants object to production of documents or information subject to the work product doctrine.

3. Applicants object to production of documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

4. Applicants object to production of public documents that are readily available, including but not limited to documents on public file at the Board or the Securities and Exchange Commission or clippings from newspapers or other public media.

5. Applicants object to the production of draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such documents have been treated by all parties as protected from production.

6. Applicants object to providing information or documents that are as readily obtainable by PSCN from its own files.

7. Applicants object to the extent that the discovery requests seek highly confidential or sensitive commercial information (including, inter alia, contracts containing confidentiality clauses prohibiting disclosure of their terms) that is of insufficient relevance to warrant production even under a protective order.

8. Applicants object to the discovery requests to the extent that they call for the preparation of special studies not already in existence.

9. Applicants object to the definition of "Joint Applicants" as unduly vague and overbroad.

10. Applicants object to the definition of "identify," "identity," and "identification" insofar as it requires home addresses on the grounds that such information is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

11. Applicants object to the definition of "identify," "identity," and "identification" as unduly burdensome and overbroad insofar it requires information is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

12. Applicants object to Instructions Nos. 7 and 11 to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

13. Applicants object to Instructions Nos. 7 and 11 as unduly burdensome.

14. Applicants object to the discovery requests as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1993.

ADDITIONAL OBJECTIONS TO SPECIFIC DISCOVERY REQUESTS

In addition to the General Objections, Applicants make the following objections to the discovery requests.

Interrogatory No. 1: "Please provide any updates to operating plans that would affect operations of the rail system in Nevada."

Additional Objections: None.

Interrogatory No. 2: "Please provide any agreements that have been entered into that may affect coal shipments to utilities in northern or southern Nevada."

Additional Objections: None.

Interrogatory No. 3: "a. In a post-merger environment, will there be an opportunity for third party independent train operators to compete for shipping customers or engage in operations over the merged railroad network (for example, third party operating unit trains between a coal mine and a utility power plant)?"

- b. Would such an agreement be precluded by the trackage rights agreements between the Union Pacific/Southern Pacific and the Burlington Northern/Santa Fe?"

Additional Objections: None.

Interrogatory No. 4: "a. Do the numbers of trains in each direction projected for the Central Corridor (Donner Pass, Reno, Sparks, Winnemucca) include all Burlington Northern/Santa Fe trains operated under the trackage rights agreements?"

- b. If so, please identify them on the time tables.
- c. If not, please provide an estimate of the maximum number of Burlington Northern/Santa Fe, projected Union Pacific/Southern Pacific and AMTRACK trains that could use the route."

Additional Objections: None.

Interrogatory No. 5: "The merger application of Joint Applicants states that the increased number of accidents at crossings would be more than offset by reductions in accidents

on highways and other railroads due to (freight) traffic being diverted. (Vol. 6, Part 1, Page 53).

- a. On what basis is this claim made?
- b. Does that claim incorporate pedestrian accidents?"

Additional Objections: None.

Interrogatory No. 6: "a. What is the maximum speed of trains traveling through Reno, Farnley, Lovelock, and Winnemucca, Nevada?

- b. How are these train speeds determined?"

Additional Objections: None.

Interrogatory No. 7: "What is the average single crossing closure time per train estimated for trains moving through Reno, Nevada?"

Additional Objections: None.

Interrogatory No. 8: "How does the Labor Impact Exhibit (Volume 3, Page 407) affect the status of agencies currently authorized and operated by either the Union Pacific or the Southern Pacific railroad?"

Additional Objections: Applicants object to this interrogatory as unduly vague.

Interrogatory No. 9: "Please describe how Joint Applicants intend to respond to hazardous materials inquiries and/or incidents in a post-merger operating environment."

Additional Objections: None.

Interrogatory No. 10: "a. Are the charges to Burlington Northern/Santa Fe for trackage rights over the Union Pacific/Southern Pacific railroad comparable to costs that the Union Pacific/Southern Pacific charges itself for the same routes?

- b. How can these comparable charges be identified?"

Additional Objections: None.

Interrogatory No. 11: "a. Does a post-merger operating environment include provisions for any kind of an "ombudsman" approach to providing liaison between shippers, the general public, local/state officials, and railroad officials or railroad operating personnel?

- b. If not, how are relations between shippers, the general public, local and state officials, and railroad officials or railroad operating personnel to be maintained?
- c. If so, please describe the functions this approach would cover, and the region an "ombudsman" would be responsible for."

Additional Objections: None.

Document Request No. 12: "a. The application (Volume 3, P. 401) indicates that the New York Dock Ry. --Control-- Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979) was assumed to apply to the employee protective conditions. Is this an assumption, or are the Joint Applicants committing to the provisions contained in that decision?

- b. What are the "standard" labor protections applicable to related trackage rights and abandonment proposals refereed to in Volume 3, p. 401?"

Additional Objections: None.

Document Request No. 13: "Using information in the application (density charts, increased tonnage of shipments), what is the estimated increment of merger benefits associated with post-merger operations along the Central Corridor?"

Additional Objections: None.

Respectfully submitted,

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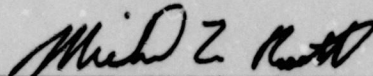
March 4, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 4th day of March, 1996, I caused a copy of the foregoing document to be served by overnight delivery on Timothy Hay, counsel for Public Service Commission of Nevada, 727 Fairview Drive, Carson City, NV 89710, and by first-class mail, postage prepaid or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

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