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Office of the Secretary

JAN 22 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

BN/SF-6 61012

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO CONSOLIDATED RAIL CORPORATION'S
FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS

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

Burlington Northern
Railroad Company
3800 Continental Plaza
777 Main Street
Ft Worth, Texas 76102-5384
(817) 333-7954

and

The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173
(708) 995-6887

Attorneys for Burlington Northern Railroad Company
and The Atchison, Topeka and Santa Fe Railway Company

January 19, 1996



Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske

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

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TO CONSOLIDATED RAIL CORPORATION'S
FIRST REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe") answer and object as follows to Consolidated Rail Corporation's ("Conrail") "First Requests for the Production of Documents to BNSF Corporation", as modified by counsel's agreement. These responses and objections

are being served pursuant to the Discovery Guidelines Order entered by the Administrative Law Judge in this proceeding on December 5, 1995 ("Discovery Guidelines").

Subject to the objections set forth below, BN/Santa Fe will produce non-privileged documents responsive to Conrail's First Requests for the Production of Documents. If necessary, BN/Santa Fe is prepared to meet with counsel for Conrail at a mutually convenient time and place to discuss informally resolving these objections.

GENERAL OBJECTIONS

BN/Santa Fe objects to Conrail's First Requests for the Production of Documents on the following grounds:

1. Parties. BN/Santa Fe objects to Conrail's First Requests for the Production of Documents to the extent that they are directed to BNSF Corporation (now, Burlington Northern Santa Fe Corporation) rather than BN and Santa Fe. Burlington Northern Santa Fe Corporation is not a party to and has not appeared or intervened in this proceeding. Notwithstanding this objection, BN/Santa Fe will include as a part of its responses to Conrail's Requests any non-privileged, responsive documents in the possession of Burlington Northern Santa Fe Corporation.

2. Privilege. BN/Santa Fe objects to Conrail's First Requests for the Production of Documents to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.

3. Relevance/Burden. BN/Santa Fe objects to Conrail's First Requests for the Production of Documents to the extent that they seek information or documents that are not

directly relevant to this proceeding and to the extent that a response would impose an unreasonable burden on BN/Santa Fe.

4. Settlement Negotiations. BN/Santa Fe objects to Conrail's First Requests for the Production of Documents to the extent that they seek information or documents prepared in connection with, or related to, the negotiations leading to the Agreement entered into on September 25, 1995, by BN/Santa Fe with Union Pacific and Southern Pacific, as supplemented on November 18, 1995.

5. Scope. BN/Santa Fe objects to Conrail's First Requests for the Production of Documents to the extent that they attempt to impose any obligation on BN/Santa Fe 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.

6. Definitions. BN/Santa Fe makes the following objections to Conrail's definitions:

9. "Document" means any and all writings and recordings as defined in Rule 1001 of the Federal Rules of Evidence, including drafts, typings, printings, minutes or copies or reproductions thereof in the possession, custody or control of BNSF Corporation.

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

14. "Relating" or "related" to a given subject matter means constitutes, contains, comprises, consists of, embodies, reflects, identifies, states, refers to, deals with, sets forth, proposes, shows, evidences, discloses, describes, discusses.

explains, summarizes, concerns, authorizes, contradicts or is any way pertinent to that subject, including, without limitation, documents concerning the presentation of other documents.

BN/Santa Fe objects to the definition of "Relating or related to" in that it requires subjective judgment to determine what is requested and, further, that it potentially calls for the production of documents that are not directly relevant to this proceeding. Notwithstanding this objection, BN/Santa Fe will, for the purposes of responding to Conrail's Requests, construe "Relating or related to" to mean "make reference to" or "mention".

16. "Analyses or Analysis" include any analyses, studies, evaluations, discussions, or reports in whatever form, including letters, memoranda, tabulations, measurements, electronic mail, notes, diary notations, journals, and computer printouts of data selected from a database.

BN/Santa Fe objects to the definition of "Analyses or Analysis" in that, as defined to include "discussions or reports", it requires subjective judgment to determine what is requested and, further, it is overly broad and unduly burdensome. Notwithstanding this objection, BN/Santa Fe will, for the purposes of responding to Conrail's Requests, construe "Analyses or Analysis" to mean analyses, studies or evaluations in whatever form.

17. References to railroads, shippers, and other companies (including Applicants) include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

BN/Santa Fe objects to this instruction to the extent that it requests documents to be produced by partnerships and joint ventures in which BN or Santa Fe are members. Notwithstanding this objection, BN/Santa Fe will produce any non-privileged, responsive documents in the possession of BN, Santa Fe, or Burlington Northern Santa Fe Corporation.

7. Instructions. BN/Santa Fe makes the following objections to Conrail's instructions:

5. All documents that respond, in whole or part, to any paragraph of a Request shall be produced in their entirety. Documents that in their original condition were stapled, clipped, or otherwise fastened together, shall be produced in such form. In addition, all documents are to be produced in the file folders or jackets in which they are maintained.

BN/Santa Fe objects to this instruction to the extent that it requests documents to be produced in the file folders or jackets in which they are maintained on the grounds that such manner of production is unduly burdensome and would interfere with BN/Santa Fe's operations and activities, particularly in light of the requirement under the Discovery Guidelines that all document depositories be maintained in the Washington D.C. area.

7. All documents should be grouped together according to the individual paragraphs and sub-paragraphs of the Request to which they are responsive.

BN/Santa Fe objects to this instruction to the extent that it seeks to impose an obligation on BN/Santa Fe to segregate or index the responsive documents it will produce beyond any such obligations imposed by the Discovery Guidelines.

RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents, dating from January 1, 1992, to the present, comprising or relating to Analyses concerning trackage rights, including, but not limited to, the suitability of trackage rights as a remedy for anticompetitive effects asserted to result from a rail transaction including a merger or acquisition (including any comparison of a trackage-rights remedy to the sale of a line or lines for such remedial purpose).

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Document Request No. 1 to the extent it calls for the production of, without limitation, all documents comprising or relating to Analyses concerning trackage rights

on the grounds (i) that it is overly broad and unduly burdensome; and (ii) that it is not relevant to this proceeding and not calculated to lead to the discovery of admissible evidence. BN/Santa Fe further objects to this request to the extent that it calls for the production of documents created before January 1, 1993, on the ground that it is not relevant to this proceeding and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe will produce non-privileged, responsive documents concerning the suitability of the trackage rights granted to BN/Santa Fe pursuant to the BN/SF Agreement as a remedy for anticompetitive effects asserted to result from the UP/SP merger.

2. All documents relating to the statements ascribed to Gerald Grinstein in the December 18, 1995, issue of Forbes, whether contained in direct quotations or otherwise.

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden, scope and settlement negotiations objections, as modified by counsel's agreement, BN/Santa Fe states that it is unaware of any responsive documents.

3. All documents relating to the extent to which the BN/SF Agreement might (or might not) obviate imposition by the ICC of other conditions to the UP/SP merger (or reduce or change such other conditions).

Response: Subject to and without waiving the General Objections stated above, in particular the settlement negotiations objection, as modified by counsel's agreement, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

4. All documents relating to any Analyses of any proposal by Conrail to purchase SP lines in the Gulf/Eastern Area, including, but not limited to, documents relating to the effect

of any such possible purchase on competition in the Gulf/Eastern Area after consummation of the Proposed Transaction.

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden and scope objections, as modified by counsel's agreement, BN/Santa Fe states that it is unaware of any responsive documents.

5. All documents relating to negotiations between BN/Santa Fe and Applicants concerning (a) the BN/SF Agreement, and (b) the BN/Santa Fe Merger or the Proposed Transaction.

Response: Subject to and without waiving the General Objections, in particular the settlement negotiations objection, BN/Santa Fe objects to Document Request No. 5 to the extent that it calls for the production of documents relating to the BN/Santa Fe merger on the ground that it is not relevant to this proceeding and not calculated to lead to the discovery of admissible evidence.

6. All documents analyzing, discussing, or relating to any of the following specific provisions, aspects, or terms of the BN/SF Agreement:

(a) access to industries now served only by both UP and SP and no other railroad; (see, e.g., Sections 4(b), 5(b) and 6(c)).

(b) the type of rights obtained by BN/Santa Fe (see, e.g., Sections 4(b), 5(b) and 6(c) ("bridge rights for movement of overhead traffic only");

(c) geographic limitations on access by BN/Santa Fe to new business (see, e.g., Sections 4(c), 5(c) and 6(d) ("territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP, either directly or through reciprocal switch");

(d) provision by Applicants pursuant to Section 8(j) of alternative routes or means of access of commercially equivalent utility at the same level of cost to BN/Santa Fe in the event any of the trackage rights under the BN/SF Agreement cannot be implemented because of the lack of sufficient legal authority;

(e) any capital expenditures on the lines over which BN/Santa Fe has been granted trackage rights pursuant to the BN/SF Agreement (see, e.g., Section 9(c));

(f) the "presumptive weight" to be given to the Operating Plan "in determining what capacity improvements are necessary" pursuant to Section 9(c)(i);

(g) the "shar[ing]" of capacity improvements between the parties to the BN/SF Agreement pursuant to Section 9(c)(ii);

(h) the unrestricted power of the owning carrier to change management and operations of joint trackage pursuant to Section 9(d);

(i) all documents relating to the pricing of the trackage rights under the BN/SF Agreement, including, but not limited to, whether the rates will permit the Applicants to earn a "reasonable return," as that phrase is used in the Verified Statement of John H. Rebensdorf ("Rebensdorf V.S.") (see, e.g., page 301), or a return that is only "marginally" sufficient, as asserted at page 307 of the Rebensdorf V.S.; and

(j) all documents relating to the obligations under Section 11 of the BN/SF Agreement if, in a Final Order, the Application has been denied or approved on terms "unacceptable to the applicants."

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden, scope and settlement negotiations objections, BN/Santa Fe objects to Document Request No. 6 to the extent that it is vague.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe will produce non-privileged, post-BN/SF Agreement, responsive documents in accordance with the Discovery Guidelines.

7. All documents relating to BN/Santa Fe's interline service with Conrail lines, including, but not limited to, documents discussing BN/Santa Fe's interline service with Conrail lines pursuant to the BN/SF Agreement.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Document Request No. 7 to the extent that it calls for the production of, without limitation, all documents relating to BN/Santa Fe's interline service with Conrail

lines and, as such, is overly broad and unduly burdensome. BN/Santa Fe further objects to Document Request No. 7 to the extent that it is not relevant to this proceeding and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that it is unaware of any responsive documents.

8. All documents relating to any decision by Applicants not to provide trackage rights to BN/Santa Fe on any particular line or routes pursuant to the BN/SF Agreement, where the provision of such trackage rights may have been sought by BN/Santa Fe, under consideration by Applicants, or the subject of discussion between Applicants and BN/Santa Fe.

Response: Subject to and without waiving the General Objections stated above, in particular the settlement negotiations objection, as modified by counsel's agreement, BN/Santa Fe states that it is unaware of any responsive documents.

9. All documents relating to the competition that will be provided by BN/Santa Fe in the Gulf/Eastern Area as a result of the BN/SF Agreement, including, but not limited to:

(a) Analyses of the traffic volume or associated revenue that may or could be diverted to BN/Santa Fe under trackage rights on Gulf/Eastern Area lines;

(b) Analyses or discussions of yard or terminal facilities available for use by BN/Santa Fe in providing service in the Gulf/Eastern Area under trackage rights or line sales provided in the BN/SF Agreement pursuant to Section 9(i) of the BN/SF Agreement or otherwise; and

(c) Analyses of the adequacy in "preserv[ing] rail competition" (see *Rebensdorf V.S.*, at page 297) of the BN/Santa Fe route structure (including, but not limited to, sidings, storage facilities, passing tracks, and similar facilities) in the Gulf/Eastern Area.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Document Request No. 9 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1),

filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Document Request No. 9 to the extent that it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe will produce non-privileged, responsive documents in accordance with the Discovery Guidelines.

10. All documents relating to operating plans of BN/Santa Fe or UP/SP on lines in the Gulf/Eastern Area where BN/Santa Fe will have trackage rights or that will be purchased under the BN/SF Agreement, including, but not limited to, Analyses of or communications concerning:

(a) dispatching, scheduling, traffic priorities, terminal congestion, density, track capacity, or other matters that could affect or relate to operating efficiency;

(b) operation of BN/Santa Fe's trackage rights on lines in the Gulf/Eastern Area designated in the Operating Plan for primarily directional flows, including but not limited to density charts or other documents showing BN/Santa Fe volumes added for such lines; and

(c) the extent of operational control by BN/Santa Fe on such lines.

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden and scope objections, BN/Santa Fe responds as follows: Assuming that Document Request No. 10 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Document Request No. 10 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the BN/SF Agreement imposed a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

11. All documents, dating from January 1, 1990, to the present, relating to complaints or concerns about implementation of trackage rights by UP, including, but not limited to:

(a) complaints or concerns expressed by BN/Santa Fe (whether relating to trackage rights under the BN/SF Agreement or otherwise) or by other railroads possessing such rights over any segment of UP track;

(b) complaints or concerns by Shippers served by railroads having such rights;

(c) complaints or concerns about priorities given to UP and foreign trains on UP's computerized dispatching system.

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden and scope objections, BN/Santa Fe objects to Document Request No. 11 to the extent that it calls for the production of documents created before January 1, 1993, on the ground that it is not relevant to this proceeding and not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that it is unaware of any responsive documents.

12. All documents relating to communications with any Shipper concerning the directional traffic flows as described in the King/Ongerth V.S. and the Operating Plan.

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden and scope objections, BN/Santa Fe objects to Document Request No. 12 to the extent that it is vague.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that it is unaware of any responsive documents.

13. All documents relating to any agreements with any labor organization required or anticipated in connection with BN/Santa Fe operations under trackage rights or line sales in the Gulf/Eastern Area, including the costs and timing of such agreements and any possible difficulties in reaching such agreement.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Document Request No. 13 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the BN/SF Agreement imposed a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that it is unaware of any responsive documents.

14. All documents relating to any Analyses of competition provided by SP on Gulf/Eastern Area routes, including, but not limited to, any Analyses of SP's service or performance in the Gulf/Eastern Area, and customer surveys, letters, comments, or complaints of or from Shippers in the Gulf/Eastern Area.

Response: Subject to and without waiving the General Objections stated above, in particular the settlement negotiations objection, BN/Santa Fe objects to Document Request No. 14 to the extent that it is overly broad, unduly burdensome and vague.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe will produce non-privileged, responsive documents in accordance with the Discovery Guidelines.

15. All documents relating to the effects of the Proposed Transaction on service to and from Mexican gateways, including, but not limited to, any interrelationship or connections between such effects and privatization of Mexican railroads.

Response: Subject to and without waiving the General Objections stated above, in particular the settlement negotiations objection, BN/Santa Fe responds as follows: Assuming that Document Request No. 15 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Document Request No. 15 to the extent that it is overly broad, unduly burdensome and vague.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe will produce non-privileged, responsive documents in accordance with the Discovery Guidelines.

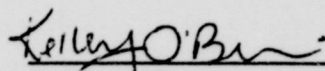
16. All documents relating to any Analyses of possible effects on competition in the Gulf/Eastern Area as a result of the Proposed Transaction, including, but not limited to, documents that discuss possible remedies or solutions thereto.

Response: Subject to and without waiving the General Objections stated above, in particular the settlement negotiations objection, BN/Santa Fe responds as follows: Assuming that Document Request No. 16 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Document Request No. 16 to the extent that it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe will produce non-privileged, responsive documents in accordance with the Discovery Guidelines.

CERTIFICATE OF SERVICE

I hereby certify that copies of Responses and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to Consolidated Rail Corporation's First Requests for the Production of Documents (BN/SF-6) have been served this 19th day of January, 1996, by fax and by first-class mail, postage prepaid on all persons on the Restricted Service List in Finance Docket No. 32760.


Kelley O'Brien

Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Suite 6500
Washington, D.C. 20006
(202) 778-0607

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BN/SF-5

Office of the Secretary

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JAN 22 1996

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AND MISSOURI PACIFIC RAILROAD COMPANY

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COMPANY, SPCSL CORP. AND THE DENVER AND
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RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO INTERNATIONAL PAPER COMPANY'S FIRST INTERROGATORIES AND
REQUEST FOR DOCUMENTS

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

Burlington Northern
Railroad Company
3800 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102-5384
(817) 333-7954

Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske

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

and

The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173
(708) 995-6887

Attorneys for Burlington Northern Railroad Company
and The Atchison, Topeka and Santa Fe Railway Company

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TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
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RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD
COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO INTERNATIONAL PAPER COMPANY'S FIRST INTERROGATORIES AND
REQUEST FOR DOCUMENTS

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe") answer and object as follows to International Paper Company's ("IP") "First Interrogatories and Request for Documents to Burlington Northern Railroad Company", as modified by counsel's agreement. These responses and objections are being served pursuant to the Discovery Guidelines Order entered

by the Administrative Law Judge in this proceeding on December 5, 1995 ("Discovery Guidelines").

If necessary, BN/Santa Fe is prepared to meet with counsel for IP at a mutually convenient time and place to discuss informally resolving these objections.

Consistent with prior practice, BN/Santa Fe has not secured verifications for the interrogatory responses herein, but is willing to discuss with counsel for IP any particular response in this regard.

GENERAL OBJECTIONS

BN/Santa Fe objects to IP's First Interrogatories and Request for Documents on the following grounds:

1. Privilege. BN/Santa Fe objects to IP's First Interrogatories and Request for Documents to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.

2. Relevance/Burden. BN/Santa Fe objects to IP's First Interrogatories and Request for Documents to the extent that they seek information or documents that are not directly relevant to this proceeding and to the extent that a response would impose an unreasonable burden on BN/Santa Fe.

3. Settlement Negotiations. BN/Santa Fe objects to IP's First Interrogatories and Request for Documents to the extent that they seek information or documents prepared in connection with, or related to, the negotiations leading to the Agreement entered into on September 25, 1995, by BN/Santa Fe with Union Pacific and Southern Pacific, as supplemented on November 18, 1995.

4. Scope. BN/Santa Fe objects to IP's First Interrogatories and Request for Documents to the extent that they attempt to impose any obligation on BN/Santa Fe 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.

5. Definitions. BN/Santa Fe makes the following objections to IP's definitions:

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

- a. both basic records and summaries of such records (including computer runs);
- b. both original versions and copies that differ in any respect from original versions, including notes; and
- c. both documents in the possession, custody, or control of Applicants and documents in the possession, custody, or control of consultants or others who have assisted Applicants in connection with the Transaction.

BN/Santa Fe objects to the definition of "Document" as overly broad and unduly burdensome to the extent that (i) it calls for the production of materials and documents that are as readily, or more readily, available to IP as to BN/Santa Fe; and (ii) it calls for the production of routine operating and accounting documents such as invoices and receipts.

6. Instructions. BN makes the following objections to IP's instructions:

7. In responding to any request for data regarding intermodal traffic, indicate separately data for trailers and for containers.

BN/Santa Fe objects to this instruction to the extent that BN/Santa Fe's records kept in the ordinary course of business do not differentiate data regarding intermodal traffic by trailers and by containers.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

1. Identify all officers and managers employed by BN who have or will have upon consummation of the proposed merger marketing and operational responsibility for IP rail shipments originating or terminating in Pine Bluff and Camden AR.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 1 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that, if the proposed merger were consummated today, marketing decisions made with respect to IP would be coordinated by Fred Malesa, General Director Sales and Marketing (East), and his direct report David A. Kiehn, Senior Account Manager who recently was named as IP's account leader. John Hovis, Vice President Forest Products, would be responsible for the entire Forest Products business unit. Further, BN/Santa Fe states that, if the proposed merger were consummated today, Ronald Shelton, Director

Operations and Logistics, would be the primary operations person responsible for interfacing with the Forest Products business unit for IP rail shipments. Local operating personnel would report to David Dealy, Vice President Santa Fe Lines, who has operational responsibility for a geographic region that includes Arkansas.

2. Describe BN's operating plan for handling shipments originating or terminating in Pine Bluff and Camden AR if the proposed merger is consummated. Identify all studies, analyses and reports or other documents, including work papers, relating to that plan.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 2 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 2 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that, at this time, it has no operating plans for handling shipments originating or terminating in Pine Bluff and Camden, AR other than those contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statement of Neal D. Owen, and in his related workpapers numbered BN/SF-02500-03238 in BN/Santa Fe's document depository.

3. Describe BN's operating plan for movements in the corridor between Memphis, TN and Houston, TX if the proposed merger is consummated. Identify all studies, analyses and reports or other documents, including work papers, relating to that plan.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 3 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 3 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that, at this time, it is not aware of specific operating plans developed to date for the corridor between Memphis, TN and Houston, TX other than those contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statement of Neal D. Owen, and in his related workpapers numbered BN/SF-02500-03238 in BN/Santa Fe's document depository.

4. Identify all BN employees who have communicated with employees of Applicants concerning the trackage rights between Houston, TX and Memphis, TN granted to BN under the Settlement Agreement. Identify all documents relating to any such communications.

Response: Subject to and without waiving the General Objections stated above, in particular the burden, scope and settlement negotiations objections, BN/Santa Fe objects to Interrogatory No. 4 to the extent that it is overly broad and vague.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that Carl R. Ice, Vice President and Chief Mechanical Officer of Burlington Northern Santa Fe Corporation, and Richard E. Weicher, Vice President-Law and General Counsel of Burlington Northern Santa Fe Corporation, were responsible for the negotiation of the Settlement Agreement and had communications with Union Pacific/Southern Pacific employees relating to the trackage rights between Houston, TX and Memphis, TN granted to BN/Santa Fe by the Settlement Agreement.

Subsequent to the Settlement Agreement, BN/Santa Fe states that Mr. Weicher, Michael E. Roper, Senior General Attorney, Mr. Dealy, Mr. Malesa, Robert Edwards, and Mr. Hovis have had communications with employees of Applicants concerning the trackage rights between Houston, TX and Memphis, TN granted to BN/Santa Fe by the Settlement Agreement. BN/Santa Fe will produce non-privileged, responsive documents, relating to post-Settlement Agreement communications in accordance with the Discovery Guidelines.

5. Describe BN's operating plan for IP traffic to and from Pine Bluff and Camden, AR if the proposed merger is consummated. Identify all studies, analyses and reports or other documents, including work papers, relating to that plan. Also identify all persons participating in the creation of that plan.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 5 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 5 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the Settlement Agreement imposed as a condition to such approval, it would undertake

certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, and assuming the proposed consolidation of Union Pacific and Southern Pacific were approved and the Settlement Agreement imposed as a condition to such approval, BN/Santa Fe states that, at this time, it has no operating plans for IP traffic to and from Pine Bluff and Camden, AR other than those contained in other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statement of Neal D. Owen, and in his related workpapers numbered BN/SF-02500-03238 in BN/Santa Fe's document depository.

6. Describe how BN determined the fees it will pay to Applicants for trackage rights under the Settlement Agreement. Identify all studies, analyses and reports or other documents, including work papers, relating to that determination. Also identify all persons participating in that determination.

Response: Subject to and without waiving the General Objections stated above, in particular the settlement negotiations objection, BN/Santa Fe objects to Interrogatory No. 6 to the extent that it asks for information other than that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statement of Carl R. Ice, and in his related workpapers numbered BN/SF-04000-04427 in BN/Santa Fe's document depository, it has no other documents responsive to this interrogatory. BN/Santa Fe

further states that Mr. Ice was primarily responsible for the negotiation of the trackage rights fees BN/Santa Fe agreed to pay under the Settlement Agreement, and based his determinations on his experience in the industry and on general information that is routinely made available to him in the ordinary course of business.

7. State the average number of daily train movements BN projects it will have in each direction for the first and second full years of operation after consummation of the proposed merger for each of the following railroad line segments:

- (a) Pine Bluff, AR - Memphis, TN
- (b) Pine Bluff, AR - Shreveport, LA
- (c) Shreveport, LA - Houston, TX
- (d) Pine Bluff, AR - Little Rock, AR

Identify all documents consulted with in responding to this interrogatory.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 7 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 7 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving these objections, as modified by counsel's agreement, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statement of Neal D. Owen, and in his related workpapers numbered BN/SF-02500-03238 in BN/Santa Fe's

document depository, it has no other information or documents responsive to this interrogatory. As stated in Mr. Owen's statement, and assuming the proposed consolidation of Union Pacific and Southern Pacific were approved and the Settlement Agreement imposed as a condition to such approval. BN/Santa Fe projects that, between Pine Bluff, AR and Memphis, TN; Pine Bluff, AR and Shreveport, LA; and Shreveport, LA and Houston, TX, BN/Santa Fe will average 2 daily trains in each direction during the first full year of operation after consummation of the proposed merger and 2 or more daily trains in each direction during the second full year of operation after consummation of the proposed merger depending on the volume of traffic. Further, with respect to Pine Bluff, AR - Little Rock, AR, BN/Santa Fe states that it initially intends to operate under a haulage arrangement, and therefore, the number of daily trains in each direction will be dependent on the volume of traffic. During the second full year of operation, BN/Santa Fe states that it may use its own trains and crews if the volume of traffic warrants such service.

8. State the amount of traffic originating or terminating at IP's facilities in Pine Bluff and Camden AR that BN expects to handle annually after consummation of the proposed merger. Identify all studies, analyses and reports or other documents, including work papers, relating to that predicted [gained] traffic. Also identify all persons who participated in that determination.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 8 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 8 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved

and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving these objections, as modified by counsel's agreement, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statements of Neal D. Owen and Larry M. Lawrence, and in Mr. Owen's related workpapers numbered BN/SF-02500-03238 and in Mr. Lawrence's related workpapers numbered BN/SF-00050--01065 in BN/Santa Fe's document depository, it has no other actual figures or concrete estimates as to the amount of traffic originating or terminating at IP's facilities in Pine Bluff and Camden AR that BN/Santa Fe expects to handle annually after consummation of the proposed merger. BN/Santa Fe further states that it will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines relating to predicted gained traffic.

9. Describe in detail the operational control BN will have in determining the movement of traffic over the lines in the Houston-Memphis corridor for which BN has been granted trackage rights under the Settlement Agreement. Identify all studies, analyses and reports or other documents, including work papers, relating to that operational control. Also identify all persons primarily responsible for the preparation of the documents identified in response to this interrogatory.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 9 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 9 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved

and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving these objections, as modified by counsel's agreement, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statements of Carl R. Ice and Neal D. Owen, and in Mr. Ice's related workpapers numbered BN/SF-04000-04427 and in Mr. Owen's related workpapers numbered BN/SF-02500-03238 in BN/Santa Fe's document depository, it has no other information or documents pertaining to a specific operating plan. However, non-privileged, responsive documents, if any, relating to discussions with IP and UP regarding the operational control BN/Santa Fe will have in determining the movement of traffic over the lines in the Houston-Memphis corridor for which BN/Santa Fe has been granted trackage rights under the Settlement Agreement will be produced in accordance with the Discovery Guidelines.

10. State what investment in facilities, equipment and labor BN plans to make in order to operate over the lines in the Houston, TX - Memphis, TN corridor for which BN has been granted trackage rights under the Settlement Agreement, including but not limited to investment in cars, yards, locomotives, signaling systems, dispatching facilities and station facilities. Identify all documents relating to such investment.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 10 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 10 to the extent that it would require BN/Santa Fe to speculate

as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving these objections, as modified by counsel's agreement, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statements of Carl R. Ice and Neal D. Owen, and in Mr. Ice's related workpapers numbered BN/SF-04000-04427 and in Mr. Owen's related workpapers numbered BN/SF-02500-03238 in BN/Santa Fe's document depository, it has no other information or documents responsive to this interrogatory.

11. State the track capacities for all line segments for which BN has received trackage rights under the Settlement Agreement. Identify all documents consulted with in responding to this interrogatory.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 11 to the extent that it is overly broad and vague and asks for information that is not in BN/Santa Fe's possession.

Subject to and without waiving these objections, as modified by counsel's agreement, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statement of Neal D. Owen, and in his related workpapers numbered BN/SF-02500-03238 in BN/Santa Fe's document depository, it has no other information or documents responsive to this interrogatory.

12. State the track capacities for all line segments for which Applicants have been granted trackage rights by BN under the Settlement Agreement. Identify all documents consulted with in responding to this interrogatory.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 12 to the extent that it is overly broad and vague.

Subject to and without waiving the foregoing interrogatories, as modified by counsel's agreement, BN/Santa Fe states that the track capacity for the line segments for which Applicants have been granted trackage rights by BN/Santa Fe under the Settlement Agreement can be determined from the timetables and track charts BN/Santa Fe is placing in its document depository.

13. State whether BN maintains documents relating to the reliability of its performance, as that term is used by, *inter alia*, Witness Peterson at page 62 of Volume 2 of the Application (UP/SP-23). If so, describe how such information is developed, who are the responsible persons for recording that information, whether such information is developed on a shipper specific basis, and identify all such documents.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 13 to the extent that it is overly broad and vague and asks BN/Santa Fe to speculate regarding the use of the term "reliability" by Witness Peterson, who is not a BN/Santa Fe employee.

14. Identify all paper company facilities in California, Oregon and Washington that ship linerboard (STCC 26 311 17) via rail and state which rail carrier serves each facility. For each such company, state:

(a) Whether service is provided by other than direct access (*e.g.*, via reciprocal switching, voluntary coordination agreement, etc.) and, if so, describe such arrangements including whether any switching charges are absorbed; and

(b) Whether any such facilities will have competitive rail service if the merger is consummated and, if so, describe the nature of the competitive service that would be provided.

Response: Subject to and without waiving the General Objections stated above, in particular the relevance, burden and scope objections, BN/Santa Fe objects to Interrogatory No. 14 to the extent that it is overly broad and vague and does not define the term "competitive rail service".

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that the 1994 BN and Santa Fe traffic tapes included in BN/Santa Fe's document depository contain responsive information. BN/Santa Fe further states that it is aware of the following paper company facilities in California, Oregon and Washington that ship linerboard (STCC 26 311 17) via rail:

<u>Company:</u>	<u>Location:</u>	<u>Serving Carrier:</u>
Gaylord Container	Antioch, CA	ATSF
Longview Fibre	Longview, WA	BN, UP
Simpson Tacoma Paper	Tacoma, WA	BN
Potlatch Corporation	Lewiston, Idaho	Camas Prairie Railroad (BN; UP)

15. State the number of "paper grade" boxcars in BN's carfleet, by size and type, that are available to service shipments tendered by paper companies in 1995.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 15 to the extent that it is vague and does not define the term "paper grade" boxcars.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that BN has approximately 2,867 "paper grade" boxcars (i.e., cars of sufficient quality and cleanliness to carry paper); Santa Fe has approximately 1,056

"paper grade" boxcars; and that there are approximately 548 Montana Rail Link "paper grade" boxcars assigned to paper loading on BN. Further, BN/Santa Fe states that the following is a breakdown of the size and type of these "paper grade" boxcars:

BN Cars Assigned to Paper Loading:

<u>Amount</u>	<u>AAR Code</u>	<u>Inside Length</u>	<u>Capacity</u>
943	A405	50 foot	70 ton
290	A406	50 foot	70 ton
55	A402	50 foot	70 ton
500	A405	50 foot	100 ton
969	A406	50 foot	100 ton
<u>110</u>	A606	60 foot	100 ton
2,867			

Santa Fe Cars Assigned to Paper Loading:

<u>Amount</u>	<u>AAR Code</u>	<u>Inside Height</u>
470	A406	13 Feet
<u>586</u>	A406	11 Feet
1,056		

Montana Rail Link Cars Assigned to Paper Loading on BN:

<u>Amount</u>	<u>AAR Code</u>	<u>Inside Length</u>	<u>Capacity</u>
98	A406	50 foot	70 ton
250	A405	50 foot	100 ton
<u>200</u>	A406	50 foot	100 ton
548			

16. State the number of "paper grade" boxcars BN intends to acquire if the Settlement Agreement is approved.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 16 to the extent that it is vague and does not define the term "paper grade" boxcars. BN/Santa Fe further objects to Interrogatory No. 16 to the

extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that it has not yet determined the number of "paper grade" boxcars it intends to acquire, if any, if the proposed consolidation of Union Pacific and Southern Pacific is approved and the Settlement Agreement is imposed as a condition to such approval.

17. State BN's plan for obtaining access through the Shreveport yard for purposes of providing service between Houston, TX and Memphis TN on lines over which it has been provided trackage rights under the Settlement Agreement. Identify all documents relating to that plan.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 17 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 17 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved and the Settlement Agreement imposed as a condition to such approval, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position.

Subject to and without waiving the foregoing objections, as modified by counsel's agreement, BN/Santa Fe states that it plans to bypass the Shreveport yard and to gain the

required access under the terminal trackage rights application filed in Finance Docket No. 32760 (Sub-No. 9).

OBJECTIONS TO DOCUMENT REQUESTS

1. All documents identified in response to Interrogatory No. 2.

Response: Subject to the response and objections to Interrogatory No. 2, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

2. All documents identified in response to Interrogatory No. 3.

Response: Subject to the response and objections to Interrogatory No. 3, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

3. All documents identified in response to Interrogatory No. 4.

Response: Subject to the response and objections to Interrogatory No. 4, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

4. All documents identified in response to Interrogatory No. 5.

Response: Subject to the response and objections to Interrogatory No. 5, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

5. All documents identified in response to Interrogatory No. 6.

Response: Subject to the response and objections to Interrogatory No. 6, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

6. All documents identified in response to Interrogatory No. 7.

Response: Subject to the response and objections to Interrogatory No. 7, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

7. All documents identified in response to Interrogatory No. 8.

Response: Subject to the response and objections to Interrogatory No. 8, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

8. All documents identified in response to Interrogatory No. 9.

Response: Subject to the response and objections to Interrogatory No. 9, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

9. All documents identified in response to Interrogatory No. 10.

Response: Subject to the response and objections to Interrogatory No. 10, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

10. All documents identified in response to Interrogatory No. 11.

Response: Subject to the response and objections to Interrogatory No. 11, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

11. All documents identified in response to Interrogatory No. 12.

Response: Subject to the response and objections to Interrogatory No. 12, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

12. All documents identified in response to Interrogatory No. 13 for the period of January 1, 1993 through the most current period for which such documents are available.

Response: Subject to the response and objections to Interrogatory No. 13, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

13. All documents identified in response to Interrogatory No. 17.

Response: Subject to the response and objections to Interrogatory No. 17, BN/Santa Fe will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

14. All traffic studies performed by BN relating to the proposed merger.

Response: Subject to and without waiving the General Objections stated above, in particular the settlement negotiations objection, BN/Santa Fe states that it did not perform any traffic studies relating to the proposed merger.

15. All documents referring or relating to complaints from paper company, shippers concerning the quantity or quality of "paper grade" boxcars used by BN during the period of January 1, 1993 to the present.

Response: Subject to the response and objections to Interrogatory No. 15, as modified by counsel's agreement, BN/Santa Fe state that they have been unable to identify any complaints concerning the quantity or quality of "paper grade" boxcars used by BN during the period of January 1, 1993 to the present.

Respectfully submitted,

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

Burlington Northern
Railroad Company,
3800 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102-5384
(817) 333-7954

and

The Atchison, Topeka and Santa Fe
Railway Company,
1700 East Golf Road
Schaumburg, Illinois 60173
(708) 995-6887

Attorneys for Burlington Northern Railroad Company,
and The Atchison, Topeka and Santa Fe Railway Company

January 19, 1996

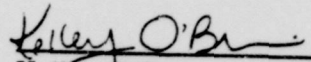
Erika Z. Jones *WR*

Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske

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

CERTIFICATE OF SERVICE

I hereby certify that copies of Responses and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to International Paper Company's First Interrogatories and Request for Documents (BN/SF-5) have been served this 19th day of January, 1996, by fax and by first-class mail, postage prepaid on all persons on the Restricted Service List in Finance Docket No. 32760.



Kelley O'Brien

Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Suite 6500
Washington, D.C. 20006
(202) 778-0607

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Office of the Secretary

JAN 17 1996

☒ Part of
Public Record

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

**NOTICE OF INTENT TO PARTICIPATE**

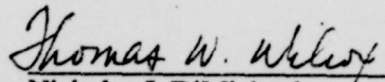
On September 8, 1994, Western Resources, Inc. ("Western") filed with the Secretary of the Interstate Commerce Commission a letter labelled WSTR-1, which requested that Western be placed on the list of all parties of record in this proceeding, and identified "WSTR-x" as the acronym Western would use on its filings in accordance with Commission regulations. The purpose of WSTR-1 was to notify the Commission of Western's intent to participate in this proceeding. However, to ensure that Western is in compliance with orders issued in this proceeding subsequent to WSTR-1, particularly Decision No. 9 which required parties to file a "notice of intent to participate" Western hereby submits this Notice of Intent to Participate. Western respectfully renews its request that its representatives, as listed below (as in WSTR-1), be included in the service list maintained by the Board in this proceeding so that the listed representatives receive copies of all orders, notices, and other pleadings in this proceeding. Further, Western requests that Applicants and other parties of record serve copies of all pleadings

filed in this proceeding directly upon the indicated representatives as listed below:

Nicholas J. DiMichael
Thomas W. Wilcox
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934

T.L. Green
Legal Department
Western Resources, Inc.
818 Kansas Avenue
P.O. Box 889
Topeka, Kansas 66612

Respectfully submitted,



Nicholas J. DiMichael
Thomas W. Wilcox
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

T.L. Green
Legal Department
WESTERN RESOURCES, INC.
818 Kansas Avenue
P.O. Box 889
Topeka, Kansas 66612
(913) 575-6300

Attorneys for Western Resources, Inc.

January 16, 1996

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D

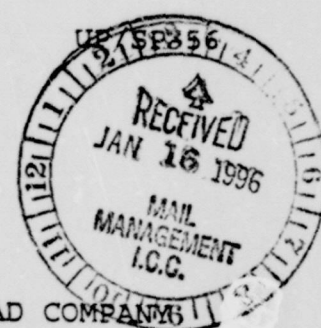
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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' RESPONSES TO SCRRRA'S FIRST SET OF INTERROGATORIES

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20035
(202) 973-7601

Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad Company

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

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

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

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

January 15, 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 SCRRRA'S FIRST SET OF INTERROGATORIES

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW,
collectively, "Applicants," hereby respond to SCRRRA's First
Set of Interrogatories to Applicants.^{1/}

GENERAL RESPONSES

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

1. Applicants have conducted a reasonable search
for documents responsive to the interrogatories. 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

^{1/} In these responses, Applicants use acroynms as they have
defined them in the application. However, subject to General
Objection No. 6 below, for purposes of interpreting the
requests, Applicants will attempt to observe SCRRRA's
definitions where they differ from Applicants' (for example,
SCRRRA's definitions of "UP" and "SP," unlike Applicants',
include UPC and SPR, respectively).

^{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.

at the offices of Covington & Burling in Washington, D.C. Applicants will be pleased to assist SCRRA 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 discuss the matter with SCRRA if this is of concern with respect to any particular answer.

GENERAL OBJECTIONS

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

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

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

3. Applicants object to production of public documents and information that are readily available, including but not limited to documents on public file at the Board or the SEC or clippings from newspapers or other public media.

4. Applicants object to providing information that is as readily obtainable by SCRRA from its own files.

5. Applicants object to the extent that the interrogatories 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.

6. Applicants object to to the definition of "Applicants" to the extent it includes "affiliated business entities," "partners," and various other persons who are not applicants in this case, as unduly vague and not susceptible of meaningful application.

7. Applicants object to the interrogatories to the extent that they call for the preparation of special studies not already in existence.

8. Applicants object to the interrogatories as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1993.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Interrogatory No. 1

"Please identify or describe the train identification number and the scheduled times after consummation of the merger (or 'Post-Merger') as that term is used by Applicants in their density charts, Attachments 13-5 and 13-6 to the Operating Plan (UP/SP-24) for each train operating into and out of the Los Angeles Basin by route segment (as defined by Applicants in their train density charts) as follows: Yermo CA to Colton CA (p. 378), Colton CA to Riverside CA (p. 378), Riverside CA to City of Industry CA (p. 378), City of Industry CA to Los Angeles CA (via UP) (p. 385), City of Industry CA to Bartolo CA (via UP) (p. 385), Bartolo CA to Los Nietos CA (p. 385), Los Nietos CA to Slauson Jct CA (p. 385), City of Industry CA to Los Angeles CA (via SP) (p. 385), Los Angeles CA to Slauson Jct CA (p. 385), Burbank Jct CA to Oxnard CA (p. 385)."

Response

By letter dated January 8, 1996, Applicants provided counsel for SCRRA with copies of documents from Applicants' document depository showing the train identifications and schedules of all "Post-Merger" UP/SP trains operating from, to or within the Los Angeles Basin. These schedules allow SCRRA to identify schedules of each train over the segments listed in the interrogatory. Applicants are also producing an exhibit containing the same information arranged in a different format, which allows SCRRA to determine the number of trains proposed to be operated over any line segment. Note that Applicants did not develop schedule information for the point identified as Bartolo, California, because it is only 5.6 miles from City of Industry, California.

UP/SP intends to use alternate routes throughout the Los Angeles Basin and beyond to ensure operating flexibility and schedule reliability. This ability will, of course, be used to ensure timely movement of SCRRA trains. Accordingly, the numbers of trains operating over individual line segments may vary substantially from day to day. In particular, UP/SP would use the UP and SP lines between City of Industry and Los Angeles as alternative routes without assigning individual freight trains to either route.

Applicants did not perform any additional simulations to respond to this Interrogatory.

Interrogatory No. 2

"For each train identified or described in response to Interrogatory No. 1, state the anticipated actual or average train length and horsepower per ton."

Response

By letter dated January 5, 1996, Applicants provided to counsel for SCRRA a chart from Applicants' document depository listing average train sizes and horsepower for each proposed UP/SP train. Other documents in Applicants' workpapers show train data by individual line segment, which would likely differ from the average data for a train's entire run which are shown on that document.

Interrogatory No. 3

"With regard to the creation of 100 miles of additional double track along the SP Sunset Route identified by Applicants (see Verified Statement of King and Ongerth ('King and Ongerth V.S.[]'), at p. 23), please describe with greater specificity the exact location, providing milepost numbers where appropriate, of such proposed double track."

Response

By letter dated January 5, 1996, Applicants provided counsel for SCRRA a chart from Applicants' workpapers containing the requested information.

Interrogatory No. 4

"Applicants have referred to upgrades necessary to enhance service along the I-5 corridor from the ports of Seattle and Tacoma to Los Angeles, one of which is the removal of impediments to the use of high-cube doublestack shipments in the 22 tunnels and 4 bridge portals located in the Cascades and Northern California. See King and Ongerth V.S. at 25. State whether Applicants intend to make similar upgrades to the bridges and tunnels owned or operated by SCRRA on the SCRRA Saugus Line and the SP Coast Line in Southern California to allow for such high-cube doublestack shipments or whether Applicants intend to reroute such shipments to other lines. If Applicants do intend to reroute such shipments, identify and describe the route Applicants intend to use."

Response

Applicants do not plan to increase clearances on the Saugus Line or the Coast Line, both of which can accommodate low-cube doublestacks. High-cube doublestack shipments in the I-5 Corridor will be routed via West Colton.

Interrogatory No. 5

"State whether the Burlington Northern Santa Fe Corporation and/or any of its operating subsidiaries have been granted any rights (trackage or haulage) on SCRRA owned or operated lines. If so, state the authority under which such rights were granted and identify or describe the proposed schedules and lengths of the additional trains operating pursuant to such grant of rights."

Response

BN/Santa Fe received rights, contingent on consummation of the UP/SP merger, over the UP line between Ontario and Riverside. As owner of the first main track and sidings on that line, UP has authority to grant such rights.

UP's agreements with SCRRA do not restrict UP's ability to make such grants, nor do they restrict UP's ability to make such grants over tracks constructed by SCRRA over which UP has operating rights.

According to its recent filing with the Commission, BN/Santa Fe expects to serve Ontario by using UP/SP reciprocal switching, so BN/Santa Fe would not operate any additional trains over this line segment.

Interrogatory No. 6

"Identify or describe the precise location(s) chosen or under consideration for the new Inland Empire Terminal that Applicants propose to construct in the Los Angeles Basin. See King and Ongerth V.S., at 78. Identify the current UP or SP line segment on which Applicants propose to locate the terminal. If no line segment has yet been designated, identify or describe the line segments that are now under consideration as possible locations for the proposed terminal."

Response

Applicants do not have a specific site under consideration for the Inland Empire intermodal ramp, but they expect to locate the facility in San Bernardino County, probably along the SP line between Ontario and Redlands, California.

Interrogatory No. 7

"State whether Applicants intend to change the dispatching districts currently serving the Los Angeles Basin. In other words, state whether Applicants' dispatchers in the Los Angeles Basin will have the same, lesser or greater territory to manage after the proposed merger is consummated."

Response

Applicants have not made decisions regarding restructuring of dispatching districts, but are likely to

combine dispatching of UP and SP line segments in the Los Angeles Basin into one or more terminal dispatching districts.

Interrogatory No. 8

"State whether Applicants will develop a dispatching technology after consummation of the proposed merger that will allow SCRRA, as it does currently on the SP Digicon system, to view incoming trains on SCRRA managed property."

Response

Both UP and SP already have dispatching technology that will allow SCRRA to view incoming trains on SCRRA managed property.

Interrogatory No. 9

"State whether after consummation of the proposed merger, there will be increased traffic on SCRRA's Orange County Line (between Fullerton Junction, CA and Oceanside, CA) in order to serve the southern end of UP's Anaheim Branch via SP's LaHabra Branch."

Response

This interrogatory has been withdrawn by SCRRA.

Interrogatory No. 10

"With regard to the increased traffic across Colton Crossing (see Attachment 13-6, Operating Plan at p. 385 citing an increase of 11 trains per day on the Yuma to West Colton segment), identify or describe the steps that Applicants will take to mitigate the impact of such increased traffic on passenger trains at the Crossing."

Response

A number of UP/SP trains between Colton and Barstow will use the new Keenbrook connection. These trains will not use Colton Crossing, reducing the number of train movements over the crossing. In addition, the total number of trains operating to and from Barstow will decline by four per day. Of the eleven additional movements on the SP line east of

Colton, seven will be turning in the southeast quadrant of Colton Crossing to or from the BN/Santa Fe line to Riverside (over which UP has trackage rights). SCRRA trains on the BN/Santa Fe line, as elsewhere, have priority over such freight movements.

In addition, UP recently agreed with BN/Santa Fe to conduct a detailed engineering study of a physical grade separation between the SP and BN/Santa Fe main lines at Colton, which would eliminate the crossing. Although UP is not familiar with the terms of SCRRA's agreements with BN/Santa Fe, UP personnel understand that those parties may have an agreement to construct such a grade separation in connection with expansion of SCRRA passenger service to San Bernardino.

Interrogatory No. 11

"Identify or describe the current traffic flows into and out of SP's Gemco and Oxnard yards. Identify or describe the traffic flows into and out of these yards after consummation of the proposed merger."

Response

Gemco receives about 75-150 cars daily from West Colton and Warm Springs. Approximately half these cars are placed in the Gemco service area, which encompasses the area between Taylor Yard and Honby on the Saugus Line and Chatsworth on the Coast Line. The balance of the traffic processed through Gemco is destined for the Oxnard and Guadalupe/Surf areas on the Coast Line and is blocked at Gemco for movement. Traffic to Oxnard is forwarded on a Gemco-based local freight. Traffic for Guadalupe/Surf is

forwarded on through trains operating to the Bay Area. Gemco has no clerical assignments and six road switcher/local freight assignments. The UP/SP merger will not significantly affect this operation, except that through trains on the Coast Line will carry blocks of traffic directly to and from Roseville Yard to improve service. In addition, a hauler will operate from City of Industry to Gemco, delivering cars from the East; it will return to West Colton Yard, connecting to eastbound trains. This operation will avoid the problems of today's SP operation, in which a hauler makes a round-trip from West Colton but sometimes fails to complete its work within the Hours of Service Law.

Oxnard is responsible for the area from Santa Susana to Ventura on the Coast Line, including the Santa Paula Branch and interchange with the Ventura Country Railroad at Oxnard. Approximately 30-50 cars are received per day for this area. One local freight assignment works from Oxnard; there are no clerical assignments. Traffic is forwarded from Gemco, although Warm Springs occasionally makes an Oxnard block. Applicants do not expect to change this local operation.

Interrogatory No. 12

"Identify all individuals who have assisted counsel for Applicants in responding to this First Set of Interrogatories."

Response

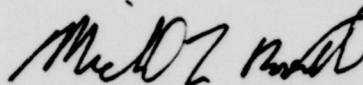
Ken Bosanko, G.R. Fetty, Ron Naro and Dale Salzman.

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 16th day of January, 1996, I caused a copy of the foregoing document to be served by hand on Charles A. Spitulnik, counsel for SCRRA, at Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, D.C. 20006, 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
Room 9104-TEA
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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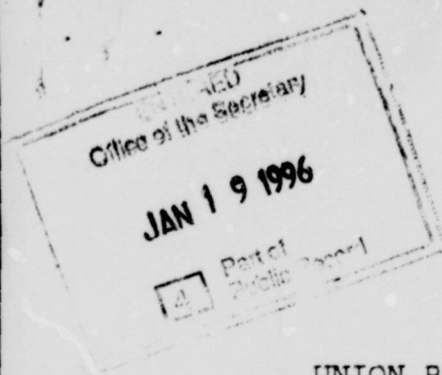
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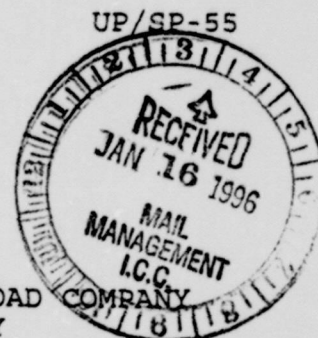
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BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
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' RESPONSES TO TCU'S FIRST SET OF INTERROGATORIES

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7601

Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad Company

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

JAMES V. DOLAN
PAUL A. CONLEY, JR.
LOUISE A. RINN
Law Department
Union Pacific Railroad Company
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1416 Dodge Street
Omaha, Nebraska 68179
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ARVID E. ROACH II
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Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
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(202) 662-5388

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January 15, 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
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APPLICANTS' RESPONSES TO TCU'S FIRST SET OF INTERROGATORIES

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW,
collectively, "Applicants," hereby respond to TCU's First Set
of Interrogatories.

GENERAL RESPONSES

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

1. Applicants have conducted a reasonable search
for documents responsive to the interrogatories. Except as
objections are noted herein,^{1/} 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 TCU to locate particular
responsive documents to the extent that the index to the
depository does not suffice for this purpose. Copies of

^{1/} 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.

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 discuss the matter with TCU if this is of concern with respect to any particular answer.

GENERAL OBJECTIONS

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

1. Applicants object to production of, and are not producing, 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 SEC or clippings from newspapers or other public media. Notwithstanding this objection, Applicants have produced some responsive materials of this kind, but Applicants have not attempted to produce all responsive materials of this kind.

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 TCU from TCU's members.

7. Applicants object to the extent that the interrogatories 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 inclusion of Philip F. Anschutz and The Anschutz Corporation in the definition of "Applicants" as overbroad.

9. Applicants object to the definition of "Applicants" as unduly vague and not susceptible of meaningful application.

10. Applicants object to the definition of "concerning" as unduly vague.

11. Applicants object to Instructions Nos. 1, 2, 3, 4, 12, 13, 14 and 15 to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

12. Applicants object to Instructions Nos. 1, 2, 3, 4, 12, 13 and 14 as unduly burdensome.

13. Applicants object to the interrogatories to the extent that they call for the preparation of special studies not already in existence.

14. Applicants object to the interrogatories as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1993.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Interrogatory No. 1

"Applicants' Labor Impact Statement lists 202 positions in the carman craft which Applicants intend to abolish in the event the merger is approved (Application, Volume III, page 408).

- a. Please identify these positions by Applicant (UPRR, MPRR, SPT, SSW, SPCSL and DRGW).
- b. Please identify the incumbent of each position slated for abolishment.

- c. Please identify whether any of the incumbents are currently covered by any job stabilization or protective agreements and, if so, identify the agreement(s).
- d. Where these positions are slated for transfer, please identify each Transfer Location by Applicant (UPRR, MPRR, SPT, SSW, SPCSL or DRGW).
- e. Where positions are slated for abolishment and not slated for transfer, please identify how the remaining work of the abolished positions will be accomplished and, if to be assigned to another position, identify that position."

Response

This information cannot be provided prior to the completion of the process of negotiating implementing agreements, and possibly carrying out arbitrations, pursuant to New York Dock. Also, subpart (e) appears to be based on a misconception that the work of abolished positions is somehow "reallocated" to other employees. The merger will cause changes in the nature of the work to be done on the combined system and allow work to be performed more efficiently, with attendant impacts on the number and locations of jobs. Pre-merger work will not be reallocated in the manner described.

Interrogatory No. 2

"Applicants Labor Impact Statement lists 732 positions in the clerical craft which Applicants intend to abolish in the event the merger is approved (Application, Volume III, pages 408-410).

- a. Please identify these positions by Applicant (UPRR, MPRR, SPT, SSW, SPCSL or DRGW).
- b. Please identify the incumbent of each position slated for abolishment.
- c. Please identify each position slated for abolishment by its job title.

- d. Please identify whether any of the incumbents are currently covered by any job stabilization or protective agreements and, if so, identify the agreement(s).
- e. Where these positions are slated for transfer, please identify each Transfer Location by Applicant (UPRR, MPRR, SPT, SSW, SPCSL or DRGW).
- f. Where positions are slated for abolishment and not slated for transfer, please identify how the remaining work or the abolished positions will be accomplished and, if to be assigned to another position, identify that position."

Response

(a), (b), (d)-(f) This information cannot be provided prior to the completion of the process of negotiating implementing agreements, and possibly carrying out arbitrations, pursuant to New York Dock. Also, subpart (f) appears to be based on a misconception that the work of abolished positions is somehow "reallocated" to other employees. The merger will cause changes in the nature of the work to be done on the combined system and allow work to be performed more efficiently, with attendant impacts on the number and locations of jobs. Pre-merger work will not be reallocated in the manner described.

(c) To the extent this information can be known prior to the completion of the New York Dock process, it is contained in the Labor Impact Exhibit in Volume 3 of the application.

Interrogatory No. 3

"Applicants' Labor Impact Statement lists 43 positions in the Railway Supervisors craft which Applicants intend to abolish in the event the merger is approved (Application, Volume III, pages 417-418).

Interrogatory No. 7

"Finance Docket No. 32760 (Sub-No. 6) is a petition for exemption for control of the Portland Terminal Railroad Company.

- a. Please state whether Applicants will institute any transactions which may affect employees of the Portland Terminal Railroad Company, identifying the employees to be affected by job title and name.
- b. Please state whether Applicants will offer labor protection to any employees of the Portland Terminal Railroad Company affected by transactions instituted pursuant to any control authority granted."

Response

See Volume 5 of the application, p. 98 n.2.

Respectfully submitted,

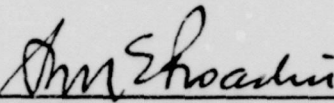
CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
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PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7601

Attorneys for Southern
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Union Pacific Corporation
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Attorneys for Union Pacific
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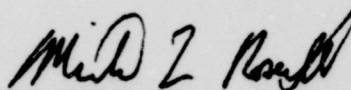
January 15, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 16th day of January, 1996, I caused a copy of the foregoing document to be served by hand on Mitchell M. Kraus and Larry R. Pruden, counsel for TCU, at Transportation•Communications International Union, 3 Research Plaza, Rockville, Maryland 20850, 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
Room 9104-TEA
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

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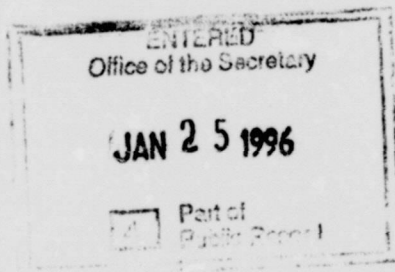
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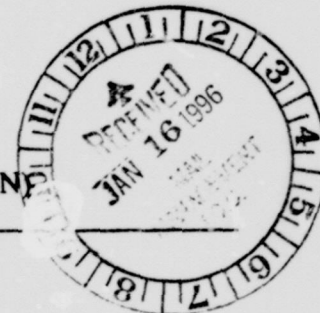
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January 11, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD
DEPARTMENT OF TRANSPORTATION
(FORMERLY INTERSTATE COMMERCE COMMISSION)



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

NOTICE OF INTENT TO PARTICIPATE

Pursuant to Decision No. 6 in this proceeding, and in accordance with 49 C.F.R. §1180.4 (a)(4), Interstate Power Company hereby submits its Notice of Intent to Participate. We respectfully request that our representatives, as listed below, be included in the service list maintained by the Board in this proceeding so that the listed representatives receive copies of all orders, notices, and other pleadings in this proceeding. Further, we request that Applicants and other parties of record serve copies of all pleadings filed in this proceeding directly upon the indicated representatives as listed below:

Edwin C. Jertson
Director - Fuel & Statistics
Interstate Power Company
P.O. Box 769
Dubuque, Iowa 52004-0769

Kent M. Ragsdale
Staff Attorney
Interstate Power Company
P.O. Box 769
Dubuque, Iowa 52004-0769

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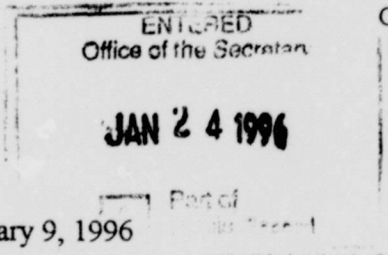
60815

LSBC Holdings, Inc.

121 West First Street
Geneseo, Illinois 61254

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January 9, 1996



Mr. Vernon A. Williams, Secretary
Interstate Commerce Commission
1201 Constitution Avenue
Washington, DC 20423

RE: Finance Docket #32760
Docket #AB-8 (Sub-No. 36X)
#AB-12 (Sub-No. 189X)
Denver and Rio Grande Western Railroad Co.
Southern Pacific Transportation Company
--Discontinuance Exemption--
--Abandonment Exemption--

Mr. Williams:

LSBC Holdings, Inc., a Delaware Corporation, has invited the Southern Pacific Transportation Company to enter into negotiations for the sale to *LSBC Holdings, Inc.*, all of the assets of their Denver and Rio Grande Western Railroad subsidiary (DRGW). A copy of our letter of invitation is enclosed.

The principals of *LSBC Holdings, Inc.* believe that the sale of the DRGW to our group could substantially reduce or eliminate current opposition to the proposed merger between the Union Pacific and Southern Pacific railroads.

Because our invitation to negotiate includes trackage that has been filed for abandonment under the proposed merger and pursuant to the Interstate Commerce Commission procedural schedule adopted by Decision No. 6 in the above-outlined three (3) Dockets, please accept this as *LSBC Holdings, Inc.*'s official "Notice of Intent to Participate" in all three (3) Subject Dockets as listed above.

Please direct all future correspondence with respect to the Subject Dockets to:

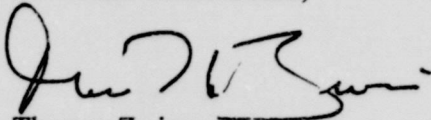
LSBC Holdings, Incorporated
121 West First Street
Geneseo, Illinois 61254
ATTN: Thomas Zwica, Executive Vice-President

We are aware of the schedule of dates applicable for the filing of subsequent "comments, protests, requests for conditions and any other opposition evidence and argument due", and will meet those required deadlines.

Please advise if any changes occur in these proceedings.

The principals of *LSBC Holdings, Inc.* believe our offer would represent the best long-term interests of the many parties affected by the proposed merger, and therefore, we would ask the ICC to consider their final approval of this merger process to be contingent upon the successful completion of our negotiations with the Southern Pacific Railroad for the aforementioned properties.

On Behalf of the Board,

A handwritten signature in dark ink, appearing to read "Thomas Zwica", with a stylized flourish at the end.

Thomas Zwica
Executive Vice-President

LSBC Holdings, Inc.

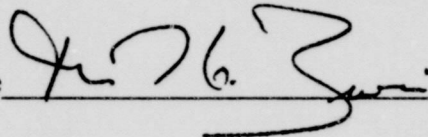
121 West First Street
Geneseo, Illinois 61254

Certificate of Service

I hereby certify that I have this day served the foregoing documents upon Applicant's Representative, Mr. Gary Laakso, General Attorney. Additionally, these documents have also been served upon Mr. Phil Anschutz, Chairman of the Board. These documents were served at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, by Prepaid, First Class, Certified Return Receipt Requested, United States Postal Service.

Dated at Geneseo, Illinois, this 9th day of January, 1996.

Signature



LSBC Holdings, Inc.

121 West First Street
Geneseo, Illinois 61254

January 9, 1996

Mr. Phil Anschutz, Chairman
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

Dear Mr. Anschutz:

LSBC Holdings, Inc., a Delaware Corporation, is interested in entering into negotiations with the Southern Pacific Transportation Company for the purchase of all of the assets of the former Denver and Rio Grande Western Railroad (DRGW), including the railroad and all associated trackage, all operating, trackage and haulage rights, all associated buildings and real estate, signals and dispatching facilities, equipment, parts, patents, trademarks and namesakes, and any and all motive power specifically configured to operate on the DRGW.


The principals of **LSBC Holdings, Inc.** believe that the sale of the DRGW to our group could substantially reduce or completely eliminate the current opposition to the proposed merger between the UP/SP, and thus allow the UP/SP management the opportunity to focus on longer-term strategic corporate goals.

Additionally, the principals of **LSBC Holdings, Inc.** have identified a number of other attractive opportunities that can enable this transaction to be a positive situation for all parties involved.

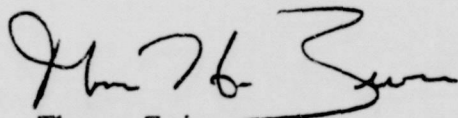
Because our invitation to negotiate includes trackage that has been filed for abandonment, **LSBC Holdings, Inc.** has filed a "Notice of Intent to Participate" with the Interstate Commerce Commission.

Thank you for your consideration. We look forward to your reply.

On behalf of the Board,



Timothy C. Eklund
President



Thomas Zwica
Executive Vice-President

LSBC Holdings, Inc.

121 West First Street
Geneseo, Illinois 61254

January 9, 1996

Mr. Gary Laakso, General Attorney
Southern Pacific Transportation Company
One Market Plaza
Room 846
San Francisco, CA 94105

Dear Mr. Laakso:

LSBC Holdings, Inc., a Delaware Corporation, is interested in entering into negotiations with the Southern Pacific Transportation Company for the purchase of all of the assets of the former Denver and Rio Grande Western Railroad (DRGW), including the railroad and all associated trackage, all operating, trackage and haulage rights, all associated buildings and real estate, signals and dispatching facilities, equipment, parts, patents, trademarks and namesakes, and any and all motive power specifically configured to operate on the DRGW.

The principals of **LSBC Holdings, Inc.** believe that the sale of the DRGW to our group could substantially reduce or completely eliminate the current opposition to the proposed merger between the UP/SP, and thus allow the UP/SP management the opportunity to focus on longer-term strategic corporate goals.

Additionally, the principals of **LSBC Holdings, Inc.** have identified a number of other attractive opportunities that can enable this transaction to be a positive situation for all parties involved.

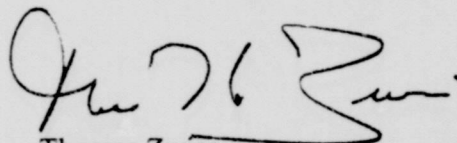
Because our invitation to negotiate includes trackage that has been filed for abandonment, **LSBC Holdings, Inc.** has filed a "Notice of Intent to Participate" with the Interstate Commerce Commission.

Thank you for your consideration. We look forward to your reply.

On behalf of the Board,



Timothy C. Eklund
President



Thomas Zwica
Executive Vice-President

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RRCT-2

BEFORE THE
INTERSTATE COMMERCE COMMISSION

ENTERED
Office of the Secretary

JAN 18 1996

☒ Part of
Public Record

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

**NOTICE OF INTENT TO PARTICIPATE, SUBSTITUTION OF COUNSEL, AND
REQUEST TO BE PLACED ON RESTRICTED SERVICE LIST**

I.
NOTICE OF INTENT TO PARTICIPATE

Notice is hereby provided that the Railroad Commission of Texas (the Railroad Commission) intends to participate in the above-styled and numbered proceeding either through submitting comments and/or through the filing of pleadings in favor of or in opposition to the application for merger.

Accordingly, please place the Railroad Commission and its representatives indicated as follows on the list of all parties of record prepared and issued under the provision of 49 C.F.R. §1180.4(a)(4):

Jerry L. Martin
Director, Rail Division
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

Debra Ravel, Staff Attorney
General Law Section
Office of General Counsel
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

In accordance with 49 C.F.R. §1180.4(a)(2), the Railroad Commission has selected the acronym "RRCT" for identifying all documents and pleadings it submits.

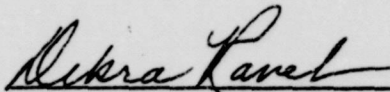
II.
NOTICE OF SUBSTITUTION OF COUNSEL

Please enter the appearance of the undersigned counsel on behalf of the Railroad Commission and remove Ann Coffin as counsel of record (as originally requested in Ms. Coffin's letter to you dated September 8, 1995, designated "RRCT-1") on the list of all parties of record because Ms. Coffin is no longer in the employ of the Railroad Commission.

III.
REQUEST TO BE PLACED ON RESTRICTED SERVICE LIST

The Railroad Commission does not wish to engage in discovery in this proceeding at this time. To ensure the Railroad Commission and/or its experts are made fully aware of and have access to all information made available through the discovery process, however, the Railroad Commission requests that it be placed on the Restricted Service List, for information purposes only, in accordance with Paragraph 8 of the "Order Adopting Discovery Guidelines," issued by Administrative Law Judge Nelson on December 5, 1995, effective the date of the filing of this pleading.

Respectfully Submitted,



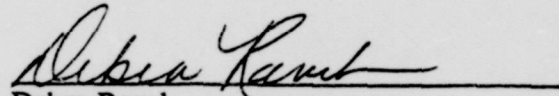
Debra Ravel, Staff Attorney
General Law Section
Office of General Counsel

RAILROAD COMMISSION OF TEXAS
P.O. Box 12967
Austin, Texas 78711-2967
(512) 463-6932

In-House Counsel for the
Railroad Commission of Texas

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 1996, a copy of the foregoing "NOTICE OF INTENT TO PARTICIPATE, SUBSTITUTION OF COUNSEL, AND REQUEST TO BE PLACED ON RESTRICTED SERVICE LIST" was served by first-class U.S. mail, postage prepaid, on Administrative Law Judge Jerome Nelson and all parties of record in this proceeding.


Debra Ravel

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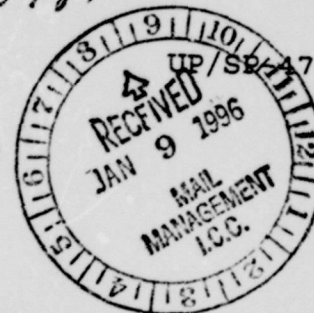
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Other Secretary

JAN 9 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 IAM'S FIRST SET OF INTERROGATORIES

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7601

Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad Company

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

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

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

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

January 9, 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 IAM'S FIRST SET OF INTERROGATORIES

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCL and DRGW submit the following objections to the discovery requests served by the IAM on January 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."

Applicants intend to file written responses to the discovery requests. These responses will provide information in response to many of the requests, notwithstanding the fact that objections to the requests are noted herein. It is necessary and appropriate at this stage, however, for Applicants to preserve their right to assert permissible objections.

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

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 IAM from its own files.
7. Applicants object to the extent that the interrogatories 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 definition of "identify" to the extent that it requests home telephone

Respectfully submitted,

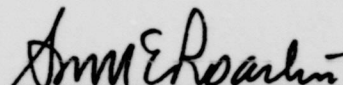
CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7601

Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp.
and The Denver and Rio Grande
Western Railroad Company

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1416 Dodge Street
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P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

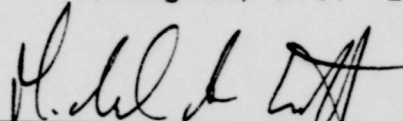
January 11, 1996

CERTIFICATE OF SERVICE

I, Michael A. Listgarten, certify that, on this 9th day of January 1996, I caused a copy of the foregoing document to be served by fax and by hand upon Joseph Guerrieri, Jr., counsel for International Association of Machinists and Aerospace Workers, at Guerrieri, Edmond & Clayman, P.C., 1331 F Street, N.W., Washington, D.C. 20004 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
Room 9104-TEA
Department of Justice
Washington, D.C. 20530

Premarmer Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580



Michael A. Listgarten

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COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P O BOX 7566

WASHINGTON D.C. 20044-7566

(202) 662-6000

TELEFAX 202 662-6291

TELEX 89-593 COVING WSH

CABLE COVING

ARVID E. ROACH II

DIRECT DIAL NUMBER

202 662-5388

DIRECT TELEFAX NUMBER

202 778-5388

Office
JAN 16 1996

RECEIVED-FOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE 44-71-495 5655

TELEFAX 44-71-495 3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE 32-2-512 9890

TELEFAX 32-2-502 598

January 2, 1996

BY HAND

Honorable 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
Corp., et al.

Dear Judge Nelson:

Applicants appreciate the opportunity to make this written submission with regard to KCS' requests for discovery into the content of the settlement negotiations between Applicants and other railroads which culminated in the September 25, 1995 settlement agreement with BN/Santa Fe. We shall strive to be as brief as possible in this letter, and will be pleased to elaborate as Your Honor may find appropriate at today's hearing.

KCS already has all the information about the settlement process that is relevant in this proceeding. Volume 1 of the application contains the Verified Statement of John H. Rebensdorf, to which is attached a copy of the September 25 settlement agreement between the Applicants and BN/Santa Fe (and a subsequent agreement of November 18 which clarified and corrected errata in the September 25 agreement). For Your Honor's convenience, a copy of Mr. Rebensdorf's statement is attached hereto as Exhibit A. Mr. Rebensdorf's statement discusses the settlement agreement in great detail, and explains the policies that the Applicants followed in negotiating with BN/Santa Fe, KCS and a number of other railroads to arrive at a settlement that would preserve rail competition at all locations that would go from two serving railroads to one in an unconditioned UP/SP merger.

What Mr. Rebensdorf's statement does not disclose, and what Applicants should not be required to provide in

Honorable Judge Nelson
January 2, 1996
Page 2

discovery, is the "back-and-forth" of the particular settlement negotiations with more than ten railroads. This is of no relevance to whether the settlement agreement with BN/Santa Fe will provide vigorous competition. Mr. Rebensdorf's statement and the verified statements of a number of other witnesses in the application demonstrate that it will -- and those witnesses can be cross-examined at deposition by KCS. KCS is also free to pursue a wide range of document discovery and interrogatories into the effects of the settlement. But to test the effectiveness of the settlement agreement with BN/Santa Fe in preserving and enhancing competition, it is completely unnecessary to inquire into this or that proposal which may have been made and rejected by BN/Santa Fe and the Applicants, or by other railroads and the Applicants, in the course of the various negotiations that took place. As KCS well knows from its own negotiations with Applicants, such negotiations range over a variety of topics and proposals, many of them quite unrelated to the competitive impacts of the merger transaction. One of the great virtues of voluntary settlements is that they can include exchanges of additional items of consideration that are unrelated to any elimination of competition caused by the merger but allow the parties to reach an agreement that is mutually acceptable and advances the public interest. If all the "back-and-forth" of confidential settlement negotiations were subject to disclosure to hostile parties, voluntary settlements would be severely chilled and deterred.

As KCS also knows, confidential settlement negotiations have never been discovered into in ICC merger cases. The Commission's policy in this regard dates back at least to the UP/MP/WP merger case, one of the first post-Staggers Act merger proceedings. In that case, in a decision served April 27, 1981, the Commission denied an appeal by SP from a decision of Administrative Law Judge Paul S. Cross refusing to allow discovery into settlement negotiations. The Commission stated (p. 10):

"Confidential material related to settlement negotiations clearly should not be discoverable in order to encourage private settlement of disputes."

(Emphasis added.) A copy of this decision is attached hereto as Exhibit B.

In the same case, KCS itself subsequently sought to revisit the issue, seeking discovery into the negotiations that led to a settlement between the merger applicants and the

Honorable Judge Nelson
January 2, 1996
Page 3

Chicago and North Western Transportation Company. KCS, relying on federal court precedent, argued that the settlement privilege was a mere rule of evidence, and did not apply to discovery. See Exhibit C hereto (Finance Docket No. 30000, KCS-41, Sept. 11, 1981, pp. 10-11). Judge Cross rejected KCS' arguments in a decision served October 2, 1981 (copy attached hereto as Exhibit D), and the Commission upheld him in a decision served November 9, 1981 (copy attached hereto as Exhibit E). In the latter decision, the Commission noted (p. 1): "Claims of privilege were made on the basis of attorney-client communication, attorney work product, and confidential settlement negotiations. . . . Judge Cross . . . held that primary applicants and CNW had established their claims of privilege and had reasonably responded to unprivileged requests." (Emphasis added.)

The uniform practice in the ensuing fifteen years of virtually continual ICC rail merger litigation has been for parties to object to discovery into settlement negotiations on the basis of the Commission doctrine articulated in UP/MP/WP. In the most recent merger case, BN/Santa Fe, KCS resisted discovery by Illinois Central Railroad Company ("IC") into the negotiations that led to a settlement between KCS and the merger applicants, and the Commission rejected requests by IC for additional time to address the settlement (which came a number of months into the proceeding), holding that disclosure of the terms of the settlement agreement told IC all that it needed to know in order to address its effects (see decisions attached as Exhibits F and G).^{1/}

The ICC's recognition of settlement privilege goes beyond that of the federal courts. As the Commission explained in Finance Docket No. 31438, Sandusky County-Seneca County-City of Tiffin Port Authority -- Feeder Line Application -- Consolidated Rail Corp. Carrothers Secondary In Sandusky & Seneca Counties, OH, 1990 ICC LEXIS 50, at *29-*30 (copy attached as Exhibit H), the ICC is "not bound by the Federal Rules" in this area, "but rather by our own policies

^{1/} The doctrine articulated in UP/MP/WP clearly remains applicable to this case now that the Surface Transportation Board has succeeded to the ICC. On December 29, 1995, the President signed H.R. 2539, the ICC Termination Act of 1995. Under the Act's savings provision, Section 204, proceedings that were pending upon enactment are to be continued by the new Board under the provisions of law in effect prior to enactment of the Act.

Honorable Judge Nelson
January 2, 1996
Page 4

and procedures." "Our policy," the Commission stressed, "is strongly to encourage the resolution of . . . issues by agreements between parties rather than by administrative action, and to discourage action that would chill the negotiation of agreements. A narrow view of the prohibition against disclosing the contents of settlement negotiations would not further our policy of fostering settlements, and we will not adopt that view"2/

Even the federal courts, while not adopting the absolute discovery privilege of the ICC, impose a heavy burden on parties seeking to discover into settlement negotiations -- a burden that KCS cannot, and has not even attempted to, meet here. The proponent of discovery into settlement negotiations must make a "particularized showing" that the documents sought are relevant, and the court "must balance against [that party's] asserted interest and need for the documents, the effects that may flow from their discovery," in terms of discouraging settlements and undermining the settlement process. Lesal Interiors, Inc. v. Resolution Trust Corp., 153 F.R.D. 552, 563-64 (D.N.J. 1994); see also, e.g., Bottaro v. Hatton Associates, 96 F.R.D. 158 (E.D.N.Y. 1982); Fidelity Federal Savings & Loan Association v. Felicetti, 148 F.R.D. 532, 534 (E.D. Pa. 1993). KCS has made no "particularized showing" of any need to go on a fishing expedition into Applicants' settlement negotiations, nor has it acknowledged the devastating effect on settlements that allowing such free-ranging discovery would have.

At the hearing on December 20, KCS did not deny the ICC law with regard to settlement privilege. Rather, KCS tried to evade this doctrine by arguing that Applicants' settlement negotiations with BN/Santa Fe, KCS and others are not covered by the privilege. KCS based this argument on the claim that there was no "proceeding" to settle because the settlement negotiations occurred before the full merger

2/ The ICC has repeatedly emphasized that it strongly encourages settlements in rail merger cases and other proceedings. See, e.g., Union Pacific Corp., Pacific Rail System, Inc., & Union Pacific R.R. -- Control -- Missouri Pacific Corp. & Missouri Pacific R.R., 366 I.C.C. 459, 601 (1982), aff'd in part & remanded in part sub nom. Southern Pacific Transportation Co. v. ICC, 736 F.2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985) ("We favor the negotiation of settlements by parties to a consolidation proceeding.").

Honorable Judge Nelson
 January 2, 1996
 Page 5

application was filed, and on the further claim that the settlement agreement did not settle a "dispute" because BN/Santa Fe had not yet announced its position in the case. Transcript, Dec. 20, 1995, pp. 191-92. These arguments are entirely without merit. This proceeding was commenced on August 4, 1995, when the Applicants filed a number of pleadings, including a petition for the entry of a protective order, a petition for the adoption of a procedural schedule and discovery guidelines, and a petition for the waiver and clarification of various rules in 49 C.F.R. pt. 1180 that govern merger applications, and the Commission assigned a docket number to the proceeding. BN/Santa Fe, KCS and others promptly entered appearances, filed various pleadings including replies to the Applicants' petitions, and engaged in extensive public efforts to generate opposition to the application, or support for responsive applications, among shippers, government officials and others. By the time the settlement with BN/Santa Fe was entered into, the Commission had already issued five decisions in the case. Thus, there was clearly a proceeding, and there was clearly adversity,^{1/} when Applicants and BN/Santa Fe entered into their settlement. And in any case, the protection of settlement negotiations does not turn on the formal existence of litigation between adverse parties; to impose such a requirement would actually encourage litigation, whereas the policy behind the protection of settlement negotiations is to encourage the agreed resolution of potential disputes at the earliest possible time. See, e.g., Affiliated Manufacturers, Inc. v. Aluminum Co. of America, 56 F.3d 521, 526-28 (3d Cir. 1995); Alpex Computer Corp. v. Nintendo Co., 770 F. Supp. 161, 164 (S.D.N.Y. 1991); Eskofot A/S v. E.I. DuPont de Nemours & Co., 872 F. Supp. 81, 93 (S.D.N.Y. 1995).

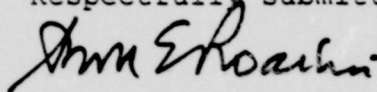
Finally, there has been no waiver of the settlement privilege by Applicants. Applicants have submitted their settlement agreement with BN/Santa Fe for entry as a condition to approval of the merger, and Mr. Rebensdorf discusses

^{1/} Settlements in rail merger cases are often reached, as here, before the deadline for parties to state their formal positions in their comments, which is not until several months into the procedural schedule. Contrary to KCS' argument (Transcript, pp. 191-92), BN/Santa Fe's position on the merger before the settlement was signed was not non-opposition. BN/Santa Fe's position of non-opposition was taken pursuant to the settlement, as specifically required by Section 14 of the agreement.

Honorable Judge Nelson
January 2, 1996
Page 6

Applicants' policy, which was publicly announced when the merger was announced in August 1995, of preserving vigorous two-railroad competition and doing so through a voluntary settlement if at all possible. Applicants have not put in issue the confidential content of their settlement negotiations with BN/Santa Fe or any other party.

Respectfully submitted,



Arvid E. Roach II

On Behalf of Applicants

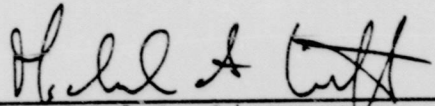
cc: Honorable Vernon A. Williams
Restricted Service List

CERTIFICATE OF SERVICE

I, Michael A. Listgarten, certify that, on this 2d day of January, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties 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
Room 9104-TEA
Department of Justice
Washington, D.C. 20530

Premarmer Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580



Michael A. Listgarten

VERIFIED STATEMENT
OF
JOHN H. REBENS DORF

My name is John H. Rebensdorf. I am Vice President-Strategic Planning for Union Pacific Railroad Company. I hold a Bachelor's Degree in Civil Engineering from the University of Nebraska and a Master's Degree in Business Administration from Harvard University. Before coming to Union Pacific, I was employed as a management consultant by Temple, Barker and Sloane. I have worked in the Mechanical Department of the Chicago, Burlington & Quincy Railroad and in the Operating and Engineering Department of the Chicago, Rock Island and Pacific Railroad. I joined Union Pacific in 1971 as Manager of Budget Research. I became Assistant Controller in 1976, Assistant Vice President-Planning & Analysis in 1980, Assistant Vice President-Finance in 1984 and was appointed to my present position in 1987.

The purpose of my statement is to describe the settlement agreement that was reached between UP and SP, on the one hand, and BN/Santa Fe, on the other hand, on September 25, 1995. I will review the background of the settlement agreement and the underlying negotiations and describe the key provisions of the agreement, including the rights granted and the compensation terms.

because doing so would destroy the benefits of the merger. We conducted all the negotiations in accordance with these guidelines.

The first carrier we met with was KCS. That meeting took place on August 15. Over the next several weeks, we met or spoke with all of the other interested parties. While we felt that many of these parties could put together a credible proposal, only three, BN/Santa Fe, RailTex and OmniTRAX, expressed interest in providing an alternative at all "2-to-1" points. More importantly, we began to hear that customers would insist on a Class I railroad because of their belief that only a major carrier would have the resources necessary to meet their transportation needs. BN/Santa Fe appeared to be the leading candidate in the minds of most customers because of its geographic reach and financial resources. Nevertheless, we remained open to consider whether a combination of carriers might be able to meet customers' needs as effectively as BN/Santa Fe standing alone.

Another consideration in BN/Santa Fe's favor was that KCS and Conrail insisted on rights that were unrelated to any competitive impact of the merger and that would have deprived us of key facilities necessary to achieve and maximize the competitive and efficiency benefits of consolidation. Specifically, KCS suggested purchasing not only the Cotton Belt (SSW) and SP's Houston-New Orleans and Houston-Shreveport lines, but also UP's former OKT line between Wichita and Fort Worth, as well as the UP mainline between Fort Worth and Smithville via Taylor. Conrail pushed its proposal to purchase the Cotton Belt as well as SP's Gulf Coast lines extending all the way to Mexico and El Paso.

Another change in the supplemental agreement is to delete the requirement in the original settlement agreement that the financial terms of the transaction be kept confidential. We determined to delete the confidentiality restriction because of the interest that a number of our customers had in reviewing the settlement agreement and its financial terms. We decided to dispel any possible suspicion by authorizing disclosure to interested parties.

As negotiations progressed with all parties, BN/Santa Fe emerged as the first choice to provide a competitive alternative. However, we continued to negotiate in good faith with other carriers against the possibility that no agreement could be reached with BN/Santa Fe. Once we arrived at an agreement with BN/Santa Fe, we contacted the other interested railroads to inform them that we had reached agreement with BN/Santa Fe and to thank them for their interest and any efforts they had devoted to developing a proposal. Of all the parties we dealt with, only one, KCS, has asserted publicly that it was not treated fairly by UP. KCS has assumed that BN/Santa Fe possessed more information than did KCS. That is, in fact, a misperception. We endeavored to provide traffic information to all interested parties. However, no party was given UP traffic data until September 19, and because of difficulties SP encountered developing its traffic data, we did not provide anyone with the SP portion of the "2-to-1" traffic. In fact, KCS was given more information than anyone else, including extensive hi-rail inspections of the Gulf Coast lines and a review of SP joint facility agreements pertinent to the line segments in question.

It is ironic that KCS, the first railroad we met with, is the only railroad raising these charges. Frankly, given the interest shown by KCS at the outset, we initially felt it would end up with significant rights. As I mentioned earlier, it was ultimately the

competitive service. In the case of Dexter and Paragould, the parties would most likely utilize a haulage arrangement to preserve competitive alternatives for "2-to-1" customers at those points.

Section 8i of the settlement agreement reflects this commitment. We refer to it as the "omnibus" clause because it ensures that steps will be taken to preserve competition for all "2-to-1" customers. With one exception, it identifies all "2-to-1" points of which we are aware that are not reached by BN/Santa Fe trackage rights or line sales.¹

In addition to preserving competition for all "2-to-1" customers, the settlement agreement also preserves a two-railroad interchange with all short-lines that interchanged with both UP and SP and no other railroad prior to merger. Those expressly noted in the Settlement Agreement include Georgetown Railway, Utah Railway, Nevada Northern, Salt Lake, Garfield and Western, New Orleans Public Belt, Tex Mex, Little Rock & Western Railway, Little Rock Port Authority, and Utah Central. The "omnibus" clause also ensures that any additional "2-to-1" shortlines not expressly referred to in the settlement agreement will have the right to interchange with BN/Santa Fe.

Witnesses Peterson and Barber, who deal with the competitive implications of the merger, describe in their testimony how the rights granted in the settlement

¹ The one exception is Labadie, Missouri, where we are working directly with the "2-to-1" shipper, Union Electric, to negotiate an arrangement to preserve two-railroad competition. BN/Santa Fe has agreed not to object to UP/SP seeking an arrangement, even with another railroad, to preserve rail competition for Union Electric. Nonetheless, even though the "omnibus" clause does not expressly mention Labadie, Labadie is covered by the clause, which expresses the parties' commitment to preserve two-railroad competition for all 2-to-1 customers, including those at points not specifically listed in the settlement agreement.

order to reach an agreement, we ended up exchanging rights that will unquestionably lead to enhanced competition in this corridor, which runs north-south along the West Coast of the United States. Specifically, UP/SP granted to BN/Santa Fe the right to purchase UP's line between Bieber and Keddle, California. This sale, in conjunction with trackage rights that BN/Santa Fe will receive between Keddle and Stockton, will give BN/Santa Fe a single-line route along the entire West Coast and fill in a major gap in BN/Santa Fe's system. To enhance the competitiveness of UP/SP and preserve options for PNW customers now using SP, we negotiated a direct marketing/proportional rate agreement which is reflected in Exhibit B to the settlement agreement. This rate agreement will enable UP/SP to quote rates directly to customers for traffic moving between (a) BN/Santa Fe-served points in Washington, Oregon north of Portland, Idaho and Western Montana, including interchanges with Canadian and regional railroads, and (b) points in Oregon, California, Arizona, New Mexico, Colorado, Utah, and West Texas, including Mexican junctions. While traffic subject to this direct marketing/proportional rate agreement will continue to move in interline service with BN/Santa Fe over the Portland gateway, the rate agreement will provide UP/SP with a significant marketing tool. In addition, UP/SP received trackage rights over BN/Santa Fe's line between Bend and Chemult, Oregon. These rights will improve UP/SP's single-line route for traffic moving between (a) points in Northern Idaho, Eastern Washington, Eastern Oregon, and the Canadian interchange at Eastport, Idaho, and (b) points in California and the Southwest.

To further enhance UP/SP's competitiveness in the important California markets, we negotiated trackage rights on BN/Santa Fe's line between Barstow and

overhead trackage rights on BN/Santa Fe's line between West Memphis and Presley Junction in Arkansas.

Finally, some provisions of the Agreement resolved outstanding issues of concern that have no connection with the merger -- also adding to competition in the process. These included operating rights in Northern Wisconsin for UP/SP to resolve access to the MERC dock at Superior as well as direct access to the DWP and DMIR at Pokegama, Wisconsin. BN/Santa Fe, on the other hand, was granted the right to purchase UP's line between Dallas and Waxahachie, Texas, in order to consolidate maintenance and operating responsibility on this track which is part of BN/Santa Fe's main line between Houston and Dallas.

III. Compensation Terms

My objective in negotiating the trackage rights compensation terms was to ensure that Union Pacific would be fairly reimbursed for the maintenance and operating expense associated with BN/Santa Fe's trackage rights operations, and would receive a reasonable return on the capital tied up in the lines whose capacity BN/Santa Fe would be partially using. It was my intent that the trackage rights rate place both carriers on a level playing field with neither subsidizing the other. I am confident these goals were reached.

The rates ultimately agreed to were the result of arm's-length negotiation with a considerable give and take between the parties. There were several possible starting points for the rate negotiation.

maintaining a particular line segment will be greater than systemwide costs, and in other cases it may be lower. However, several of the line segments in question involve some of the highest-maintenance portions of UP's and SP's systems. These include the UP and SP lines along the Gulf Coast, SP's line through the Rocky Mountains between Denver and Salt Lake City, SP's line through the Sierra Nevada Mountains over Donner Pass, and the former WP line through the Feather River Canyon in California.

The Gulf Coast lines are prone to flooding from hurricanes and other tropical storms. The terrain they cover is low lying and wet, requiring numerous bridges and shortening the life of wooden cross ties. In the Rockies and Sierra Nevadas, the grades and curvature inherent to mountain railroading increase wear and tear on the track structure. Tunnels, snowsheds, cuts and fills must also be maintained. Weather also leads to higher costs. For example, 24-hour-a-day snow removal is occasionally a necessity on Donner Pass. The Feather River Canyon is also subject to floods and slides. In fact, at certain times hi-rail vehicles must precede all trains in the Feather River Canyon to check for rock slides.

The settlement agreement does not restrict the traffic BN/Santa Fe can handle over these rights. BN/Santa Fe can - and likely will - choose to route quite a bit of east-west traffic over the Central Corridor rights. For example, the rights will shorten BN/Santa Fe's mileages in numerous corridors as described in Mr. Peterson's statement. These mileage savings (e.g., 387 miles between Oakland and Denver; 664 miles between Oakland and the Twin Cities) will likely lead to the rerouting over these lines of substantial

2. The intermodal and carload rate is higher for the Keddie-Stockton/Richmond segment than for other lines. The rate for the rights between Keddie-Stockton/Richmond were set at 3.48 mills per ton-mile because this line segment is unquestionably a very high maintenance area and will handle BN/Santa Fe's north-south traffic in the so-called "I-5 Corridor" as well as some transcontinental business of both railroads. Accordingly, in this one instance, we negotiated a higher rate for a territory we felt would clearly incur high levels of traffic requiring correspondingly high levels of maintenance and expense.

3. The rate is based on ton-miles rather than car-miles. We used gross ton-miles as the basis for assessing the charges because it most accurately reflects the actual use made of the facility, and therefore the resulting expense.

Turning back to the rates themselves, they are not only cost-based, but reflect rates recently negotiated between SP and BN/Santa Fe as well as rates found in other recently negotiated joint facility agreements between UP and parties other than BN/Santa Fe.

Table 2 lists recent flat rate agreements involving UP, SP and BN/Santa Fe. Included in *italics* in Table 2 is the 3.0-3.1 mill per ton-mile rate applicable to the settlement agreement, which has been converted to a car-mile rate for ease of comparison.² Also converted to a car-mile rate is the mill-per-gross-ton-mile charge from

² The conversion was based on a 100-ton load and 100% empty return. The actual rate will depend on the lading weight and the empty return associated with a given move. The 3.48 mill per ton-mile rate applicable to the Keddie-Stockton/Richmond line segment produces a higher car-mile rate, in the \$0.28 range. It applies to only a small percentage of the overall trackage rights. Even this rate is not out of line with the recent agreements.

URCS variable cost includes only a percentage of all the costs associated with maintaining and operating the track. The balance of these costs is treated by URCS as fixed in the short term. However, given the permanent nature of these rights, I believe the coverage of full costs is important because over the long-run, as will be the case with these rights, all costs become variable. UP/SP must recover these costs to avoid subsidizing BN/Santa Fe's operations. Moreover, the URCS variable cost computation includes only 50% of the book value of the assets involved, and reflects no return on the other half of the book value, or on the difference between the book value and the current value of the assets. An economic return on the current value of assets must ultimately be earned if a railroad is to continue replacing its plant and stay in business and even URCS fully allocated cost includes only return to capital on the basis of 100% of the book value of the assets, not replacement cost. Looking at these rates on the basis of URCS fully allocated costs, again on a weighted average basis, the ratio of the trackage rights fee to our expense drops to 75% (at the 3.0 mill rate) and 77% (at the 3.1 mill rate).⁴ I believe these rates will be sufficient, but only marginally so, for UP/SP to receive a sufficient return from BN/Santa Fe's trackage rights fees to ensure that UP/SP is not investing its capital to subsidize BN/Santa Fe's operations.

The rates are also subject to adjustment, upward or downward. The adjustment will be undertaken annually by applying 70% of the Unadjusted Rail Cost Adjustment Factor (RCAF-U) to the rates. RCAF-U is the most commonly utilized index for measuring railroad inflation. The RCAF-U Index is developed by the Association of

⁴ At the 3.48 mill per ton-mile rate the coverage of fully allocated costs is 87%.

BN/Santa Fe's responsibility for capacity-related improvements is also quite limited. However, there is no limitation on BN/Santa Fe's right to use capacity-related improvements for which it bears no financial responsibility. Specifically, BN/Santa Fe has no responsibility for capacity improvements related to the merger, or for any capacity improvement, whether merger-related or not, made during the first 18 months of operation. Finally, BN/Santa Fe will have no responsibility for the first \$25 million worth of capital expenditures for which it would otherwise have shared responsibility. The settlement agreement calls for establishing a capacity-related capital reserve fund to be drawn down to cover those first \$25 million of capacity-related capital expenditures. Accordingly, it will not be until 18 months after BN/Santa Fe has begun trackage rights operations that it will begin to fund any capacity-related improvements and even the first \$25 million of those will be funded out of a capital reserve fund. This total relief from capital expenditures at the inception of trackage rights operations will be a real advantage to BN/Santa Fe in building its trackage rights traffic base.

The sorts of capital projects that BN/Santa Fe ultimately will be responsible for will include its usage share of projects such as upgrading a signal system from automatic block signals to centralized traffic control; adding CTC and universal crossovers to double track; constructing new sidings; and lengthening existing sidings. However, as I have stated above, BN/Santa Fe will only be responsible for these expenses if they (a) are not merger-related, (b) take place more than 18 months after implementation of trackage rights operations and (c) exceed the \$25 million capital reserve fund.

In conclusion, the trackage rights charges are fair. They are cost-based and also reflective of rates in similar agreements. They will ensure that UP/SP can cover the costs attributable to BN/Santa Fe's operations and will not result in either carrier's subsidizing the other.

IV. Line Sale Purchase Prices

The Settlement Agreement calls for three line sales. They are: (1) UP's line between Keddie and Bieber, California; (2) UP's line between Dallas and Waxahachie, Texas; and (3) SP's line between Iowa Junction and Avondale, Louisiana, including terminal facilities in the New Orleans area. The purchase prices for these segments are \$30 million, \$20 million, and \$100 million, respectively. As with the trackage rights compensation, these purchase prices were the subject of arm's-length negotiation. They simply reflect what a willing buyer, BN/Santa Fe, would pay a willing seller, UP/SP, for these properties.

In the case of the Dallas-Waxahachie and Avondale-Iowa Junction sales, UP/SP retained trackage rights over those lines. The trackage rights will be subject to the same terms as applied to BN/Santa Fe operations over the rights it was granted by UP/SP. BN/Santa Fe can also elect not to purchase these lines and operate instead via trackage rights. In the case of the Avondale-Iowa Junction and Dallas-Waxahachie segments, trackage rights would be covered by the compensation terms applicable to other trackage rights line segments. The Keddie-Bieber trackage rights charges would, however, be allocated "on a typical joint facility basis." Since BN/Santa Fe will become the sole user of this line should it choose not to purchase the line, we felt it reasonable that BN/Santa

however, if a fee cannot be negotiated, the settlement agreement calls for resolution of disputes through binding arbitration.

Second, Section 9h of the settlement agreement specifies that UP/SP will provide BN/Santa Fe with switching services at "2-to-1" points if BN/Santa Fe elects to serve particular shippers in that manner, and that the rates for those services will "fully reimburse UP/SP for its costs plus a reasonable return." Here, I think the language of the agreement speaks for itself. Again, any dispute over the rate would be subject to binding arbitration.

Third, in Section 1h of the agreement, UP/SP have agreed to provide BN/Santa Fe with crews to handle trains operating between Salt Lake City, Stockton and Oakland. BN/Santa Fe would be charged the costs incurred by UP to supply these crews plus reasonable additives. The incremental costs incurred for lodging and crew transportation would also be billed to BN/Santa Fe. UP has supplied crews to SP on the same terms for SP's operations between Pueblo, Colorado and Kansas City, and that arrangement has worked satisfactorily for both parties. Accordingly, I see no reason to anticipate any disputes in this area. However, if disputes did arise, they would be subject to arbitration.

Fourth, in Section 9i of the agreement, we have agreed to provide terminal support services for "normal and customary charges." The parties will need to review other arrangements where one railroad provides similar services to another railroad for a fee as guidance for what constitutes "normal and customary." Also cost recovery will be a requirement. Failing agreement, binding arbitration would be used to resolve a dispute.

VII. Implementation Details

I have mentioned some implementation details that we will need to attend to such as negotiating haulage and other fees. There are a number of other details that we will need to resolve before trackage rights operations commence. These include (a) negotiating arrangements as needed to provide service to each of the "2-to-1" customers described in the "omnibus" clause;⁵ (b) developing formal agreements covering each trackage rights grant, line sale and haulage arrangement contemplated by the agreement (which, under the agreement, is to be done by June 1 of next year), and (c) defining the precise areas at "2-to-1" points which will be open to competitive service. In this regard, any industry that was open to service by both UP and SP before merger will be open to BN/Santa Fe service after merger. In addition, new facilities can be located by either carrier and open to service by both in that area where, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP. Here again, should any dispute arise, binding arbitration would be the means used to resolve the impasse.

VIII. Conclusion

I believe that UP and SP have fully lived up to their commitment to preserve competition at "2-to-1" points. The process of arm's-length negotiation has led to an agreement with the most powerful rail competitor in the West. The agreement gives BN/Santa Fe the tools to provide a stronger competitive alternative than exists today for

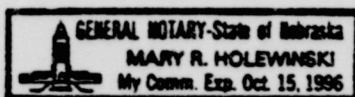
⁵ There may conceivably be minor "2-to-1" points where the customers has no desire for two-railroad service -- but our intent is to arrange for competitive service at those "2-to-1" points where customers wish to have it.

VERIFICATION

COUNTY OF DOUGLAS

)
) SS.
)

John H. Rebensdorf, being duly sworn, deposes and says that he is the Vice President of Strategic Planning of Union Pacific Railroad Company and Missouri Pacific Railroad Company, and has read the foregoing statement, knows the contents thereof, and that the same is true and correct.



John H. Rebensdorf.

Subscribed and sworn to before me by John H. Rebensdorf this 11th day of November, 1995.

Notary Public

- SP's line between Weso, Nevada and Oakland, California via SP's line between Sacramento and Oakland referred to as the "Cal-P" (subject to traffic restrictions as set forth in Section 1g);
- UP's line between Weso, Nevada and Stockton, California; and
- SP's line between Oakland and San Jose, California.

b) The trackage rights granted under this section herein shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to industries which are presently served (either directly or by reciprocal switch) only by both UP and SP and by no other railroad at points listed on Exhibit A to this Agreement. BNSF shall also receive the right to interchange with the Nevada Northern at Shafter, Nevada; with the Utah Railway Company at the Utah Railway Junction and Provo; and with the Salt Lake, Garfield and Western at Salt Lake City.

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which new industries shall be open to BNSF service shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP, either directly or through reciprocal switch. In negotiating the trackage rights agreements pursuant to Section 9f of this Agreement, the parties shall agree on the mileposts defining these geographic limitations. Where switching districts have been established they shall be presumed to establish these geographic limitations.

d) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads.

reasonable advance notice of its need for employees in order to allow UP/SP time to have adequate trained crews available. All UP/SP employees engaged in or connected with the operation of BNSF's trains shall, solely for purposes of standard joint facility liability, be deemed to be "sole employees" of BNSF. If UP/SP adds to its labor force to comply with a request or requests from BNSF to provide employees, then BNSF shall be responsible for any labor protection, guarantees or reserve board payments for such incremental employees resulting from any change in BNSF operations or traffic levels.

i) UP/SP agree that their affiliate Central California Traction Company shall be managed and operated so as to provide non-discriminatory access to industries on its line on the same and no less favorable basis as provided UP and SP.

j) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF if UP/SP subsequently decides to begin moving domestic high cube double stacks over this route. If UP/SP initiates and funds the clearance program, then BNSF shall pay one half of the original cost at such time as BNSF begins to use the line for domestic high cube double stacks.

k) BNSF agrees to waive its right under Section 9 of the Agreement dated April 13, 1995, and agreements implementing that agreement to renegotiate certain compensation terms of such agreement in the event of a merger, consolidation or common control of SP by UP. BNSF also agrees to waive any restrictions on assignment in the 1990 BN-SP agreement covering trackage rights between Kansas City and Chicago.

d) BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow and Mojave, California for rail traffic of all kinds, carload and intermodal for all commodities.

e) UP/SP shall work with BNSF to facilitate access by BNSF to the Ports of Los Angeles and Long Beach. Other than as legally precluded, UP/SP shall (a) extend the term of the present agreement dated November 21, 1981, to continue until completion of Alameda Corridor, (b) amend that agreement to apply to all carload and intermodal traffic, and (c) grant BNSF the right to invoke such agreement to provide loop service utilizing UP's and Santa Fe's lines to the Ports at BNSF's option to allow for additional operating capacity. UP/SP's commitment is subject to available capacity. Any incremental capacity related projects necessary to accommodate BNSF traffic shall be the sole responsibility of BNSF.

4. South Texas Trackage Rights and Purchase

a) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Ajax and San Antonio;
- UP's line between Houston (Algoa) and Brownsville;
- UP's line between Odem and Corpus Christi;
- UP's line between Ajax and Sealy;
- SP's line between San Antonio and Eagle Pass (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Kerr (connection to Georgetown RR) and Taylor;
- UP's line between Temple and Waco;
- UP's line between Temple and Taylor;
- UP's line between Taylor and Smithville; and
- SP's line between El Paso and Sierra Blanca.

b) The trackage rights granted under this section shall be bridge rights for movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such

g) UP/SP shall sell to BNSF UP's line between Dallas and Waxahachie with UP retaining trackage rights to exclusively serve local industries on the Dallas-Waxahachie line.

h) Upon the effectiveness of the trackage rights to Eagle Pass under this section, BNSF's right to obtain haulage services from UP/SP to and from Eagle Pass pursuant to the agreement between BNSF and SP dated April 13, 1995 and subsequent haulage agreement between those parties shall no longer apply, provided BNSF shall continue to have the right to use trackage at or near Eagle Pass as specified in that agreement for use in connection with trackage rights under this Agreement.

5. **Eastern Texas - Louisiana Trackage Rights and Purchase**

a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston, Texas and Iowa Junction in Louisiana; and
- UP's and SP's lines near Avondale (SP MP 16.9) and West Bridge Junction (SP MP 10.5).

b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to industries which are presently served (either directly or by reciprocal switch) only by both UP and SP and by no other railroad at points listed on Exhibit A to this Agreement.

c) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which new industries shall be open to BNSF service shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP, either directly or through reciprocal switch. In negotiating the trackage rights agreements pursuant to Section 9f of this Agreement the parties shall define mileposts defining these geographic limitations

- UP's line between Fair Oaks and Bridge Junction:
- SP's line between Brinkley and Briark, Arkansas; and
- UP's line between Pine Bluff and North Little Rock, Arkansas.

b) In lieu of conducting actual operations between Pine Bluff and North Little Rock, Arkansas, UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for a reasonable fee.

c) The trackage rights granted herein shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to industries which are presently served (either directly or by reciprocal switch) only by both UP and SP and by no other railroad at points listed on Exhibit A to this Agreement. BNSF shall also have the right to interchange with the Little Rock and Western Railway at Little Rock.

d) Access to industries at points open to BNSF shall be direct or through reciprocal switch. New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF. The geographic limits within which new industries shall be open to BNSF service shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP, either directly or through reciprocal switch. In negotiating the trackage rights agreements pursuant to Section 9f of this Agreement the parties shall agree on the mileposts defining these geographic limitations. Where switching districts have been established they shall be presumed to establish these geographic limitations.

e) Forty-five (45) days before initiating service to a customer, BNSF must elect whether its service shall be (i) direct, (ii) through reciprocal switch, or (iii) with UP/SP's prior agreement, using a third party contractor to perform switching for itself or both railroads.

d) UP/SP and BNSF agree to provide each other reciprocal detour rights between Bridge Junction-West Memphis and St. Louis in the event of flooding, subject to the availability of sufficient capacity to accommodate the detour.

8. **Additional Rights**

a) UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, California for rail traffic of all kinds, carload and intermodal, for all commodities to enable BNSF to connect via SP's line with the Oakland Terminal Railroad ("OTR") and to access the Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built. BNSF shall pay 50% of the cost (up to \$2,000,000 maximum) for upgrading to mainline standards and reverse signaling of SP's No. 1 track between Emeryville (MP 8) and Stege (MP 13.1). Compensation for these trackage rights shall be at the rate of 3.48 mills per ton mile for business moving in the "I-5 Corridor" and 3.1 mills per ton mile on all other carload and intermodal business and 3.0 mills per ton mile for bulk business escalated in accordance with the provisions of Section 12 of this Agreement. UP/SP shall assess no additional charges against BNSF for access to the JIT and the OTR.

b) BNSF shall waive any payment by UP/SP of the Seattle Terminal 5 access charge.

c) BNSF shall grant to UP overhead trackage rights on BN's line between Saunders, Wisconsin and access to the MERC dock in Superior, Wisconsin.

d) BNSF shall grant UP the right to use the Pokegama connection at Saunders, Wisconsin (i.e., the southwest quadrant connection at Saunders).

e) BNSF shall waive SP's requirement to pay any portion of the Tehachapi tunnels clearance improvements pursuant to the 1993 Agreement between Santa Fe and SP.

j) In the event, for any reason, any of the trackage rights granted under this Agreement cannot be implemented because of the lack of sufficient legal authority to carry out such grant, then UP/SP shall be obligated to provide an alternative route routes, or means of access of commercially equivalent utility at the same level of cost to BNSF as would have been provided by the originally contemplated rights.

9. **Trackage Rights - General Provisions**

a) The compensation for operations under this Agreement shall be set at the levels shown in the following table:

Table I
Trackage Rights Compensation
(mills per ton-mile)

	<u>Keddie-Stockton/Richmond</u>	<u>All Other Lines</u>
Intermodal and Carload	3.48	3.1
Bulk (67 cars or more of one commodity in one car type)	3.0	3.0

These rates shall apply to all equipment moving in a train consist including locomotives. The rates shall be escalated in accordance with the procedures described in Section 12 of this Agreement. The owning line shall be responsible for maintenance of its line in the ordinary course including rail relay and tie replacement. The compensation for such maintenance shall be included in the mills per ton mile rates received by such owning line under this Agreement.

b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such

d) The management and operation of the trackage rights line shall be under the exclusive direction and control of the owning carrier. The owning carrier shall have the unrestricted power to change the management and operations on and over joint trackage as in its judgement may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing joint trackage shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable UP/SP traffic.

Owner shall keep and maintain the trackage rights lines at no less than the track standard designated in the current timetable for the applicable lines subject to the separate trackage rights agreement. The parties agree to establish a joint service committee to regularly review operations over the trackage rights lines.

e) Each party shall be responsible for any and all costs relating to providing employee protection benefits, if any, to its employees prescribed by law, governmental authority or employee protective agreements where such costs and expenses are attributable to or arise by reason of that party's operation of trains over joint trackage. To the extent that it does not violate existing agreements, for a period of three years following acquisition of control of SP by UP, BNSF and UP/SP shall give preference to each other's employees when hiring employees needed to carry out trackage rights operations or operate lines being purchased. The parties shall provide each other with lists of available employees by craft or class to whom such preference shall be granted. Nothing in this Section 9.e) is intended to create an obligation to hire any specific employee.

f) The trackage rights grants described in this Agreement, and the purchase and sale of line segments shall be included in separate trackage rights and line sale agreement documents respectively of the kind and containing such provisions as are normally and customarily utilized by the parties, including exhibits depicting specific rail line segments, and other provisions dealing with maintenance, improvements, and liability, subject to more specific provisions described for each grant and sale contained in this Agreement and the general provisions described in this section. BNSF and UP/SP shall elect which of their constituent railroads shall be a party to each such trackage rights

j) BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the trackage rights lines.

k) BNSF shall have the right to inspect the UP and SP lines over which it obtains trackage rights under this agreement and require UP/SP to make such improvements under this section as BNSF deems necessary to facilitate its operations at BNSF's sole expense. Any such inspection must be completed and improvements identified to UP/SP within one year of the effectiveness of the trackage rights.

l) BNSF shall have the right to connect for movement in all directions with the trackage rights lines where its present lines (including existing trackage rights), lines to be purchased under this Agreement, and the trackage rights lines intersect.

10. Compensation for Sale of Line Segments

a) BNSF shall pay UP/SP the following amounts for the lines it is purchasing pursuant to this Agreement:

<u>Line Segment</u>	<u>Purchase Price</u>
Keddie-Bieber	\$ 30 million
Dallas-Waxahachie	20 million
Iowa Jct.-Avondale MP 16.9 (includes UP's Westwego intermodal yard; SP's Avondale "New" yard; and SP's Lafayette yard)	100 million

b) The purchase shall be subject to the following terms:

- (i) the condition of the lines at closing shall be at least as good as their current conditions as reflected in the current timetable and slow orders (slow orders to be measured by total mileage at each level of speed restrictions).
- (ii) includes track and associated structures together with right-of-way and facilities needed for operations.

shall have no further force or effect. This Agreement and all agreements entered into pursuant or in relation hereto shall terminate, and all rights conferred pursuant thereto shall be cancelled and deemed void ab initio, if, in a Final Order, the application for authority for UP to control SP has been denied or has been approved on terms unacceptable to the applicants, provided, however, that if this Agreement becomes effective and is later terminated, any liabilities arising from the exercise of rights under Sections 1 through 8 during the period of its effectiveness shall survive such termination. For purposes of this Section 11, "Final Order" shall mean an order of the Interstate Commerce Commission, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

12. Adjustment of Charges

All trackage rights charges under this Agreement shall be subject to adjustment annually beginning as of the effective date of this Agreement to reflect seventy percent (70%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the ICC or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration under Section 15 of this Agreement. The parties will agree on an appropriate adjustment factor for switching, haulage and other charges.

Upon every fifth anniversary of the effective date of this Agreement, either party may request on ninety (90) days notice that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 15 of this Agreement. It is the intention of the parties that rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

the ICC to impose this Agreement as a condition to approval of the control case. During the pendency of the control case, UP and SP shall not, without BNSF's written consent, enter into agreements with other parties which would grant rights to other parties granted to BNSF or inconsistent with those granted to BNSF under this Agreement which would substantially impair the overall economic value of rights to BNSF under this Agreement.

15. **Arbitration**

Unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

16. **Further Assurances**

The parties agree to execute such other and further documents and to undertake such acts as shall be reasonable and necessary to carry out the intent and purposes of this Agreement.

17. **No Third Party Beneficiaries**

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.

18. **Confidentiality**

The parties may make all other terms of this Agreement known to the public through a press release previously reviewed and approved by the other parties, and may address it in subsequent communications to the ICC or others. The parties agree, however, that the financial terms of this Agreement are confidential and shall not be disclosed, without the consent of the other party, to individuals not employed by or acting as counsel for or consultants to UP/SP or BNSF, except as

EXHIBIT A

Points Referred to in Section 1b

Provo UT
Salt Lake City UT
Ogden UT
Ironton UT
Gatex UT
Pioneer UT
Garfield/Smelter/Magna UT (access to Kennecott private railway)
Geneva UT
Clearfield UT
Woods Cross UT
Relico UT
Evona UT
Little Mountain UT
Weber Industrial Park UT
Points on paired track from Weso NV to Alazon NV
Reno NV (intermodal and automotive only -
 BNSF must establish its own automotive facility)
Points between Oakland CA and San Jose CA
San Jose CA
Warm Springs CA
Fremont CA
Points in the Livermore CA area (including Pleasanton CA,
 Radum CA, and Trevarno CA)
West Sacramento CA
Melrose Drill Track near Oakland CA

Points Referred to in Section 3a

Ontario CA
La Habra CA
Fullerton CA

EXHIBIT B
TERM SHEET FOR
UP/SP-BNSF PROPORTIONAL RATE
AGREEMENT COVERING
I-5 CORRIDOR

Concept

BNSF trackage rights in the "I-5" corridor will allow BNSF to handle traffic on a single line basis that currently moves via joint BN-SP routes. This Agreement will enable UPSP to compete with BNSF for that traffic and to make rates, using the proportional rates, to and from all points UP/SP serves in the covered territory described below.

Covered Territory

Traffic moving between the following areas north of Portland, Oregon and west of Billings and Havre, Montana:

- Canadian interchanges in Vancouver area
- Points north of Seattle and west of Cascades
- Points south of and including Seattle and west of Cascades
- Washington points east of Cascades and west of and including Spokane
- Points east of Spokane and west of Billings and Havre

and points in

- Arizona,
- California,
- Colorado,
- New Mexico,
- Nevada,
- Oregon,
- Utah,
- Texas west of Monahans and Sanderson, and
- connections to Mexico at El Paso and to the west.

Traffic Covered

Traffic covered will be all commodities (carload, intermodal and bulk) moving both southbound and northbound. All cars loaded or made empty on BNSF lines in the Covered Territory (including reloads) and cars received in interchange.

Service

BNSF shall accept, handle, switch and deliver traffic moving under this Agreement without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in BNSF's account. UP/SP has the right to provide equipment. BNSF will work with UP/SP to establish and provide trackage for strategically located car distribution points in BN territory. To the extent justified by business volumes, BNSF will continue operating Vancouver, BC-Portland (SP interchange) trains comparable to BN Nos. 111 and 112. BNSF will cooperate with UP/SP to establish necessary blocks to provide efficient and competitive service on traffic moving under the proportional rate.

Third Party Consultant

The third party consultant shall be jointly employed by UP/SP and BNSF. The parties will share equally in the expense of employing such third party consultant. Both UP/SP and BNSF shall have the right to audit the work of the third party consultant and agree to share in any irregularities found in this work and cooperate to work with the third party consultant to establish procedures to promptly correct those deficiencies. The third party consultant shall be required to remain impartial between UP/SP and BNSF. Any breach of the impartiality requirement shall result in the termination of such third party consultant and the selection of a new consultant by the parties.

6660 2082
 512 2530

S.P. Avondale Yard

310

P.01/01
 PAGE.001

593 TO 82715955

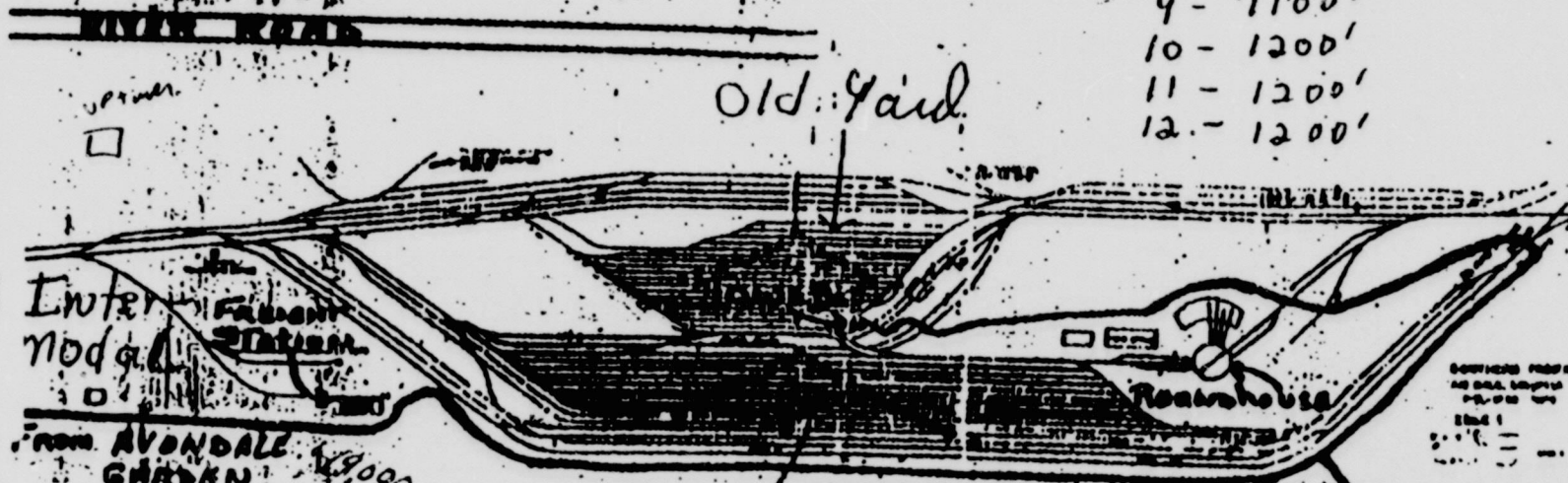
347

SEP 24 '95 11:21 FR UP SPR
 SEP 24 '95 9:22 FROM L

TOTAL PAGE.001

needs Rehab

Old Yard Capacity	
4-	7900' (Thru X-over)
5-	7800' (" ")
6-	1900'
7-	2500'
8-	2100'
9-	1100'
10-	1200'
11-	1200'
12-	1200'



From AVONDALE GARDEN ROAD

2 intermodal
 1640' each

New Yard

Trk. 40-	5300'
37-39-	4000'
30-36-	2000'
29 -	1500'
28 -	1200'
27 -	1150'
26 -	1100'
25 -	900'

Old Yard

13.	1300'
14.	1400'
15.	1800'
16.	1700'
17.	1600'
18.	1500'
19.	1400'
20.	1300'
21.	1200'
22.	1100'

From US 90

23.) 1000'
 24.) 900'

Not to scale
 not entirely correct

1. **Amendment to Section 1.**

a) Section 1b is amended by (i) inserting the phrase "with the Utah Central Railway Company at Ogden" between the phrases "Provo;" and "and with the Salt" in the second to last line, and (ii) adding at its conclusion the following language:

"BNSF shall also receive the right to utilize in common with UP/SP, for normal and customary charges, SP's soda ash transload facilities in Ogden and Salt Lake City. BNSF shall also have the right to access any shipper-owned soda ash transload facilities in Ogden and Salt Lake City and to establish its own soda ash transload facilities along the trackage rights granted under this section."

b) Section 1d is amended by adding at its conclusion the following language:

"BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such changed election."

c) Section 1g is amended by (i) revising the third and fourth sentences to read as follows:

"Manifest trains shall be carload business and shall be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP trains. Helpers shall not be used unless comparable UP/SP manifest trains use helpers in which case BNSF trains may be operated in the same fashion provided that BNSF furnishes the necessary helper service."

and (ii) by deleting the comma in the last sentence after the word "helpers."

d) Section 1i is amended by inserting the term "BNSF" between the words "provide" and "non-discriminatory" in the second line.

4. **Amendment to Section 5.**

a) Section 5a is amended as follows in order to add an additional grant of trackage rights.

"a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston, Texas and Iowa Junction in Louisiana;
- SP's line between Dayton, Texas and Baytown, Texas;
- UP's and SP's lines near Avondale (SP MP 16.9) and West Bridge Junction (SP MP 10.5); and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, Louisiana intermodal facility (approximately UP MP 9.2)."

b) Section 5b is amended by adding at its conclusion the following sentence:

"BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction."

c) The last sentence in Section 5c is amended by inserting a period after the word "limitations" and by beginning a new sentence immediately thereafter with the word "where."

d) Section 5d is amended by adding at its conclusion the following language:

"BNSF shall have the right, upon 180 days prior written notice to UP/SP, to change its election; provided, however, that BNSF shall (x) not change its election more often than once every five years and (y) shall reimburse UP/SP for any costs incurred by UP/SP in connection with such change of election."

trackage rights and line sales contemplated by this Agreement. For example, 2-to-1 customers located at points between Niles Junction and the end of the joint track near Midway (including Livermore, CA, Pleasanton, CA, Radum, CA, and Trevarno, CA), Turlock, CA, South Gate, CA, Tyler, TX, Defense, TX, College Station, TX, Great Southwest, TX, Victoria, TX, Sugar Land, TX, points on the former Galveston, Houston & Henderson Railroad served only by UP and SP, Opelousas, LA, Paragould, AR, Dexter, MO, and Herington, KS, are not accessible under the trackage rights and line sales covered by this Agreement. Accordingly, UP/SP and BNSF agree to enter into arrangements under which, through trackage rights, haulage, ratemaking authority or other mutually acceptable means, BNSF will be able to provide competitive service to 2-to-1 customers at the foregoing points and to any 2-to-1 customers who are not located at points expressly referred to in this Agreement or Exhibit A to this Agreement.

BNSF shall have the right to interchange with any short-line railroad which, prior to the date of this Agreement could interchange with both UP and SP and no other railroad."

d) Section 8j, is modified by adding the word "or" between the words "route" and "routes."

7. Amendment to Section 9.

a) The third sentence of Section 9d is amended by deleting the phrase "UP/SP traffic" and inserting the phrase in place thereof "traffic of the owning carrier."

b) Delete the reference to "Victoria, TX" in the section captioned "Points Referred to in Section 4b." Add "Sinton, TX" in place thereof.

c) Add the phrase "(Amoco, Exxon and Chevron plants)" after the reference to Mont Belvieu, TX in the section captioned "Points Referred to in Section 5b." Add the points "Eldon, TX (Bayer plant)" and "Harbor, LA" at the end of this section.

d) Delete the reference to "Paragould, AR" in the section captioned "Points Referred to in Section 6c." Add "Forrest City, AR" in place thereof.

For ease of reference, a revised Exhibit A incorporating the foregoing changes is attached.

10. **Amendment to Exhibit B.** The third sentence in the last section (captioned "Third Party Consultant") of Exhibit B shall be modified by amending the phrase "share in any" to "share any."

This Supplemental Agreement makes no other changes to the Agreement and the Agreement's terms shall remain in full force and effect except as modified above.

**BURLINGTON NORTHERN
RAILROAD COMPANY**

By

Tide VF

**THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY**

By:

Trade

Points Referred to in Section 4b

Brownsville TX
Port of Brownsville TX
Port of Corpus Christi
Harlingen TX
Corpus Christi TX
Sinton, TX
San Antonio TX
Halsted TX (LCRA plant)
Waco TX
Points on Sierra Blanca-El Paso line

Points Referred to in Section 5b

Baytown TX
Amelia TX
Orange TX
Mont Belvieu TX (Amoco, Exxon, Chevron plants)
Eldon, TX (Bayer plant)
Harbor, LA

Points Referred to in Section 6c

Camden AR
Pine Bluff AR
Fair Oaks AR
Baldwin AR
Little Rock AR
North Little Rock AR
East Little Rock AR
Forrest City, AR

INTERSTATE COMMERCE COMMISSION

DECISION

SERVICE DATE

APR 27 1981

Finance Docket No. 30,000^{1/}

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
- CONTROL - MISSOURI PACIFIC CORPORATION AND MISSOURI
PACIFIC RAILROAD COMPANY

DECISION ON DISCOVERY APPEALS

Decided: April 22, 1981

On March 10, 1981, Southern Pacific Transportation Company and its affiliate St. Louis Southwestern Railway Company (collectively SPT) filed interlocutory appeals to four rulings of Administrative Law Judge Paul Cross denying various SPT discovery requests. Applicants (collectively UP) replied on March 12, 1981. Our jurisdiction to hear this appeal was established in the decision served October 15, 1980 in this proceeding.

SPT has appealed the following four specific rulings made on March 3, 1981:

(1) denial of SPT's oral motion to compel production of pre-1979 documents pertaining to internal discussions or analyses of the possibility or desirability of a Union Pacific/Missouri Pacific consolidation;

(2) denial of SPT's oral motion to compel production of certain studies prepared prior to consideration of the Union Pacific/Missouri Pacific consolidations by the Union Pacific board of directors;

(3) denial of SPT's Motion to Compel Answers to Interrogatories and Production of Documents (SPT-19) dated February 2, 1981; and

(4) denial of SPT's Motion to Compel Production of Requested Data and Documents (SPT-20) dated February 6, 1981.

We will address each request in turn.

Oral Motion to Compel Production
of pre-1979 Documents

By oral motion on March 3, 1981, SPT sought production of internal discussions or analyses by Union Pacific staff

^{1/} Embraces F.D. No. 30,000 (Sub-Nos. 1-10, 14-17) and Nos. MC-W-14448 and MC-F-14449.

Discussion of possible consolidation of Union Pacific and Missouri Pacific prior to 1979 technically may not pertain to the development of the specific consolidation proposal before us. Nonetheless, consideration of merger with the same partner, a very short period of time prior to the actual consolidation proposal, must necessarily have provided background for negotiating the final proposal. Discovery of documents related to these discussions or analyses may very well lead to introduction of evidence relevant to the Commission's consideration of the public interest in this proceeding, particularly in the area of expected benefits of the transactions.

For this reason we believe SPT's oral motion to compel production of pre-1979 documents pertaining to internal discussions or analyses of the possibility or desirability of a Union Pacific/Missouri Pacific consolidation should have been granted. We will grant the appeal, but limit discovery of such material to the time period after January 1, 1976. Material prior to this time is too remote to be relevant in this proceeding.^{5/}

Oral Motion to Compel
Production of Certain Studies

The testimony of Mr. Cook also revealed the existence of certain studies on potential consolidations prepared by Union Pacific prior to consideration of the consolidations by its board of directors. SPT argues that such studies are relevant to the development of the proposed transaction and should be produced. While applicants noted that they would not object to production of parts of the studies,^{6/} they argued that the studies were dated, of little usefulness and that portions of the studies dealt with sensitive considerations of possible mergers with railroads other than Missouri Pacific and should not be subject to discovery in this proceeding.

The Judge denied SPT's motion.

For the reasons discussed above regarding production of pre-1979 documents, we believe the portions of the post January 1, 1976 studies specifically dealing with Missouri Pacific should be made available to SPT.^{7/} We

^{5/} In addition, materials prepared before 1976 would not reflect the effectiveness of the 4R Act. See also transcript page 273.

^{6/} Transcript p. 315-316 and 848-849.

^{7/} The interlocutory appeal did not request material for other than Missouri Pacific.

Draft verified statements, whether written originally by the witnesses or by an attorney, are refined and focused by the interaction of the witness and the attorney. As such the drafts are indicative of the process followed by the attorney in preparation for litigation and deserve protection under the work product doctrine. See United States v. Nobles, 422 U.S. 225, 238-39 (1975), and Hickman v. Taylor, 329 U.S. 495, 510-11 (1947).

Moreover, the absence of work papers and unavailability of draft verified statements do not preclude SPT's cross examination of each witness based upon the submitted statements.

The Judge did not abuse his discretion in denying the motion, and SPT's appeal seeking draft verified statements will be denied.

SPT's Ninth Set of Discovery Requests, February 2, 1981: SPT's Ninth Set of Discovery Requests is set forth in Appendix A. It calls for production of all correspondence and other materials exchanged between and among the top executive officers within each of the three carrier applicants and their respective parent organizations concerning the proposed transactions. SPT states in its appeal that the purpose of these discovery requests was to obtain any documents or correspondence sent to or received by these executives. SPT cites the lack of any work papers describing the evolution of the verified statements of applicants' executives as justifying the need for discovery of these items. SPT alleges that compliance with its request would require a search only of the files of seven top executives of applicants.

In reply applicants offer the following points. First, the requests are extremely broad. Second, SPT has allegedly already discovered against applicants with regard to Union Pacific's proposed acquisitions of both Missouri Pacific and Western Pacific.^{10/} Third, applicants allege that compliance with SPT's request would require a search of the files of 48 executives, including all the vice-presidents set forth in the request.

The verified statements with which SPT is concerned were filed along with the primary applications in these

^{10/} Requests 15 and 16 of SPT's First Set of Discovery Requests called for "all documents which refer or relate to the possible acquisition or control of MP (and WP) by UP or merger or consolidation of UP and MP (or WP)." See also Requests 12 and 13 (documents used in connection with presentation to applicants' Boards of Directors regarding the transactions) and Request 21 (documents generated by UP in connection with its review of the business or property of MP and WP) in SPT's First Set of Interrogatories and Requests for Production.

discovery.^{14/} The work product doctrine is invoked to protect 40 documents, 32 of which are also included under attorney-client privilege.^{15/} The work product doctrine without the attorney-client privilege is invoked to protect 8 documents.^{16/} Applicants continue to withhold 11 documents because of their confidential nature.^{17/} Of these, nine are commercially sensitive^{18/} and two relate to confidential settlement negotiations.^{19/}

(1) The Attorney-Client Privilege.

The attorney client privilege exists "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests and the observance of law and the administration of justice." Upjohn Co. v. United States, 66 L. Ed.

2d 584, 591 (1981). Our rules comprehend privileged material at 49 C.F.R. 1100.55.^{20/} The Supreme Court in Upjohn, supra, recently noted that "the privilege exists to protect not only the giving of professional advice to those who can act on it, but also the giving of information to the lawyer to enable him to give sound and informed advice." 66 L.Ed. 2d. at 592.

SPT argues that the attorney client privilege does not apply to a lawyer acting outside of his responsibilities as a lawyer, and that in this proceeding applicants' counsel may have been evaluating the information in the withheld documents in a business rather than legal sense.

^{14/} Documents F-1-11, 14, 15, 17-21, 30-33, 35-46 and 48-52; G-1; and H-1-4.

^{15/} Documents F-1-11, 14, 15, 17-21, 30-33, 35, 48-52; G-1; and H-2-4.

^{16/} Documents F-12, 13 and 25-29.

^{17/} Documents F-22-28, 52, 54 and 55; and H-5.

^{18/} Documents F-22-28, and 52; and H-5.

^{19/} Documents F-54, 55.

^{20/} See General Rules of Practice, 346 I.C.C. 603 (1974).

with conforming our rules and procedures as nearly as possible to those in use in the courts of the United States, General Rules of Practice, 346 U.C.C. 603, 619 (1974). There is no reason the work product doctrine should not apply to Commission proceedings, and we see no need for the dire consequences predicted by SPT to flow from its application. However, following the Supreme Court's example in Upjohn, 66 L.Ed. at 591, we will not "lay down a broad rule or series of rules to govern all conceivable future questions" in the area of privilege. The work product doctrine can be applied on a case by case basis in Commission proceedings.

The documents withheld by applicants pursuant to the work product doctrine appear properly withheld. One document (F-47) reflects the legal opinions of applicants' counsel. The remaining documents are summaries of specific shippers' volumes which do not appear necessary to SPT's case in light of the voluminous materials otherwise provided regarding traffic.

The Judge did not abuse his discretion regarding those items protected by the work product doctrine.

(3) Confidentiality.

Confidential business information is not discoverable unless the relevancy of the information is sufficient to outweigh its commercial sensitivity. Confidential business matters are similar to trade secrets and the courts are loath to order their disclosure absent a clear showing of immediate need for the information requested, Duplan Corp. v. Derring Millikin, Inc., 397 F. Supp. 1146, 1185 (D.S.C. 1975). The Duplan court went on to say "[o]nce the [trade secrets] privilege is asserted . . . the party seeking discovery must make a clear showing that the documents are relevant to the issues involved in the litigation. In doubtful situations production will not be ordered." 397 F. Supp. at 1185, emphasis in original.

SPT in its appeal does not address the specific relevance of the confidential documents withheld. Instead it argues that applicants should have the burden of showing the need for protection of the documents under 49 C.F.R. 1100.55(c).^{24/}

^{24/} SPT seems to argue that Requests 12 and 13 and Item 72 of its First Set of Interrogatories require production. These items seem unrelated to confidentiality. Requests 12 and 13 are discussed, supra.

Documents Referring to Other Possible Mergers Involving UP: In SPT-19, SPT sought an order compelling applicants' response to Request 17 of SPT's First Set of Discovery Requests.^{26/} SPT renews its request on appeal, alleging that discovery of Union Pacific's plans regarding other railroads is necessary to allow SPT to present the antitrust issues involved in this proceeding.

Applicants argue that, by definition, this request focuses on matters outside the scope of this proceeding and seeks documents not "relevant to the subject matter of the pending proceeding" within the meaning of 49 C.F.R. 1100.55(a).

SPT states that this argument by UP is inconsistent with what Union Pacific argued in support of its Motion for Dismissal in Southern Pacific Transportation Company v. Union Pacific Corporation, Civil Action No. 80-5281 MRP (Tx), Central District of California, filed November 25, 1980.^{27/}

Applicants respond that there is no justification for SPT's attempt to bootstrap support for its discovery request in this proceeding by reference to its District Court antitrust action against applicants. The antitrust action, like this proceeding, addresses the proposed consolidation of Union Pacific, Missouri Pacific and Western Pacific. It does not address the potential acquisition of some other railroad company.

SPT makes no effort to show how the information requested would support its allegations of monopolization, particularly regarding carriers other than those involved in this proceeding, since no discussions of these possible consolidations ever reached the point of negotiations.^{28/} Moreover, any consolidation of other carriers would require Commission approval, and in the proceeding to obtain such approval the Commission would carefully review the transaction to determine its competitive effect.

To the extent the request indirectly seeks information about how the proposed consolidations might weaken other carriers (so that those carriers were susceptible to takeover), the Commission and the parties have already endeavored to obtain more direct and probative evidence. Indeed the Commission's intent to focus on the impact of the

^{26/} "17. Identify and produce all documents referring and relating to the possible acquisition of control by UP or merger or consolidation with UP of any other railroad company or company owning or controlling a railroad company. As used in this interrogatory the term "UP" refers to Union Pacific Railroad Company or its parent subsidiary."

^{27/} UP argued that matters raised in the District Court antitrust proceeding were within the primary and exclusive jurisdiction of the Commission and should be considered in this proceeding.

^{28/} Transcript pages 265-9.

SPT argues that this information is made necessary by applicants' instructions to its personnel not to prepare written memoranda of meetings involving the consolidation.^{31/}

Applicants objected to the request, alleging it to be unreasonably broad, burdensome and vague. Applicants state that complying with this request would be overwhelming, for each of applicants' officers may have had thousands of oral communications regarding the consolidation.

Because of the volume of material already made available to SPT and the extraordinary difficulty of complying with the request, the motion was properly denied by the Judge. The appeal is denied.

Request 47 of SPT's First Set of Discovery Requests: By this request SPT seeks to compel production by UP of all documents concerning Union Pacific's relationship with Chicago and North Western Transportation Company (CNW).^{32/} The requested information is allegedly necessary to determine the status of CNW as a friendly connection if SPT's request for trackage rights over Union Pacific is granted. Additionally, SPT argues the discovery request is relevant to whether CNW will continue to function if the merger is approved, to CNW's role as a coal carrier, and to the present ability of Union Pacific and CNW to conduct coordinated operations short of merger. Finally, SPT argues this information is relevant to its antitrust claim against Union Pacific.

^{31/} SPT's reference is to a document obtained in discovery entitled "Procedures for Handling Confidential Materials" attached as Exhibit F to SPT-19. The document sets forth procedures for controlling written material; it notes that "memoranda containing speculative personal opinions or memorializing meetings often cannot be protected from discovery and may confuse issues in the ICC proceedings." The document appears to be an appropriate guide to preparation of materials related to this proceeding.

^{32/} SPT defines "relationship" as:

- (a) Ownership or purchase by UP of stock of CNW; ownership or purchase by any other applicant of the stock of CNW;
- (b) intention of any applicant to purchase or otherwise acquire any ownership interest in CNW stock or assets of any kind;
- (c) any loan or advance of funds or planned or possible loan or advance of funds by any applicant to CNW;
- (d) any discussions with CNW officers or employees concerning the use of federal funds by CNW for improvements; and
- (e) any dealings or plans concerning the Powder River Basin.

Applicants reply that these requests are burdensome, and, in light of the voluminous material already produced to SPT, unnecessary.

We agree. SPT's requests represent a classic "fishing expedition." The Judge properly denied the motion. The appeal will also be denied.

Summary. We have discussed each of the four SPT motions ruled upon by the Judge on March 3, 1981. Upon reconsideration, we will grant the appeal from each of the denials of the oral motions, to compel production of pre-1979 documents pertaining to internal discussions or analyses of the possibility or desirability of the proposed consolidation and to compel production of certain studies prepared prior to consideration of the consolidation by the Union Pacific board of directors, with both limited in time to the period after January 1, 1976. We will deny the appeal from the denials of SPT-19 and SPT-20.

It is ordered:

(1) The interlocutory appeal of Southern Pacific Transportation Company is granted to the extent set forth above.

(2) This decision is effective upon service.

By the Commission, Division 2, Commissioners Gresham, Trantum and Alexis. Commissioner Trantum was absent and did not participate.

(SEAL)

AGATHA L. MERGENOVICH
Secretary

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C. 20423

UNION PACIFIC CORPORATION,
PACIFIC RAIL SYSTEM, INC., AND
UNION PACIFIC RAILROAD COMPANY--CONTROL--
MISSOURI PACIFIC CORPORATION AND
MISSOURI PACIFIC RAILROAD COMPANY

UNION PACIFIC CORPORATION,
PACIFIC RAIL SYSTEM, INC., AND
UNION PACIFIC RAILROAD COMPANY--CONTROL--
WESTERN PACIFIC RAILROAD COMPANY

KANSAS CITY SOUTHERN RAILWAY COMPANY
AND LOUISIANA & ARKANSAS RAILWAY COMPANY,
ACQUISITION OF TRACKAGE RIGHTS OVER
MISSOURI PACIFIC RAILROAD COMPANY IN
LA., TX., AR., AND IL.

FINANCE DOCKET NO. 30,000,
30,000 (SUB-NO. 1)
30,000 (SUB-NO. 34), et al.

MOTION TO COMPEL RESPONSES TO KCS' INTERROGATORIES TO
PRIMARY APPLICANTS (KCS-37) AND TO PRODUCE DOCUMENTS
INFORMALLY REQUESTED OF PRIMARY APPLICANTS

Pursuant to 49 C.F.R. §§ 1100.55, 1100.60, 1100.64 and
1100.65, The Kansas City Southern Railway Company and the
Louisiana & Arkansas Railway Company (collectively "KCS")
respectfully request the Commission to issue an order
compelling the Union Pacific Corporation and Union Pacific

of the bargain struck and the consequences it will entail, both of which determinations are essential to the public-interest findings which must be made. It must be stressed, moreover, that these proposals are advanced by the very parties whose claim of privilege, if honored, would frustrate full inquiry into the public-interest aspects of transactions these parties assert must be found to be in the public interest.

Second, there is no reasonable method for obtaining the information contained in the listed documents short of calling to the stand all originators and recipients to recite the contents. Apart from the inefficacy of such a procedure, it can be anticipated that such testimony will be objected to on grounds of work-product privilege, thus merely delaying resolution of the issue of privilege. Furthermore, even if witness testimony were a feasible method for the proceeding on this issue, such method would not substitute for pre-hearing discovery necessary to the preparation of cross-examination.

c. Settlement negotiations.

The rule against admission of settlement offers is rule of admissibility of evidence, not a doctrine of privilege against production. Moreover, even this rule of admissibility does not apply in a situation where the settlement agreement itself is at issue.

There is a rule at common law that offers of settlement are not admissible in evidence as an admission of liability. See 4

Wigmore § 1061. At this point, however, KCS is not seeking to admit evidence; it is merely seeking discovery. Rule 55(a) of the Commission's Rules of Practice, 49 CFR § 1100.55(a), states: "Parties may obtain discovery . . . regarding any matter, not privileged which is relevant to the subject matter involved in the pending proceeding . . . It is not grounds for objection that the information sought will be inadmissible as evidence if such information appears reasonably calculated to lead to the discovery of admissible evidence." Thus the applicants cannot refuse discovery of documents withheld for the purpose of protecting the "integrity" of settlement negotiations.^{8/}

8/ See 4 Wigmore §1061 at 26-27:

"It was in Massachusetts formerly propounded, and has elsewhere sometimes been suggested, that there is a privilege protecting as confidential all overtures of settlement made to the opposing party--and this upon a principle analogous to that of the privileges for confidential communications.

* * *

[This] supposed privilege does not fit the rule of law as it is everywhere accepted and applied. Nowhere but in Massachusetts has this theory been definitely advocated; and even by its own expounders it is conceded not to explain the actual rule of law."

See also Rule 408 of the Federal Rules of Evidence, relating to compromise offers. Rule 408 appears in the relevancy section of the Rules, not in the privilege section.

INTERSTATE COMMERCE COMMISSION

ORDER

SERVICE DATE

OCT 2 1981

FINANCE DOCKET NO. 30,000*

UNION PACIFIC CORPORATION AND UNION PACIFIC
RAILROAD COMPANY-CONTROL-MISSOURI PACIFIC
CORPORATION AND MISSOURI PACIFIC
RAILROAD COMPANY

Decided: September 30, 1981

In a petition (KCS-38) dated August 25, 1981, Kansas City Southern Railway Company and Louisiana & Arkansas Railway Company (KCS) seek an order requiring the primary applicants (UP, MP and WP) in these proceedings to produce the following documents and information:

A. All documents of each and every nature deposited in one or more of the primary applicants' depositories relating in whole or in part to Chicago and North Western Transportation Company ("C&NW").

B. All documents of each and every nature relating to the "C&NW settlement" which comprises the settlement agreement appended to UP/MP/WP-99, CNW-24 and the pooling agreement appended to the Application of Chicago and North Western Transportation Company and Missouri Pacific Railroad Company under 49 U.S.C. Section 11342 for Approval of a Pooling Agreement, dated July 31, 1981, and filed in this proceeding.

C. To the extent that any documents described in A and B above were withheld from any of the depositories, or their production is now withheld, on the basis of a claim of privilege, a list identifying each and every such document and specifying, as to each, the basis upon which the claim of privilege is asserted.

In motions (KCS-41 and KCS-43) respectively dated September 11 and 14, 1981, KCS seeks an order compelling responses by UP, MP and WP and the C&NW to various interrogatories and to produce certain documents.

The petition and motions are responded to by the primary applicants in UP/MP/WP-105 and 114 respectively dated September 3 and 23, 1981, and by the Chicago and North Western in C&NW-34, dated September 28, 1981.

In their responses, the primary applicants and the C&NW point out that KCS has been given all identifiable documents related to the "C&NW settlement" except for a select number which are privileged.

*Embraces Finance Docket No. 30,000 (Sub-Nos. 1-10 and 14-43), and Nos. MC-F-14448 and MC-F-14449.

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INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 30,000¹/₁

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UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY-
CONTROL-MISSOURI PACIFIC CORPORATION AND MISSOURI PACIFIC
RAILROAD COMPANY

KCS-49 APPEAL (DENIAL OF KCS-38, KCS-41, AND KCS-43)

Decided: November 4, 1981

On October 7, 1981, Kansas City Southern Railway Company and Louisiana & Arkansas Railway Company (collectively KCS) filed an interlocutory appeal (KCS-49) to the decision of Administrative Law Judge Paul Cross, served October 2, 1981, denying motions by KCS to compel responses to interrogatories and to produce documents. Two of those motions (KCS-38 and KCS-41) relate to interrogatories and requests to produce propounded to the primary applicants (Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Corporation, Missouri Pacific Railroad Company, Pacific Rail System, Inc., and Western Pacific Railroad Company). The other motion (KCS-43) relates to interrogatories and requests to produce propounded to the Chicago & North Western Transportation Company (CNW). Primary applicants and CNW have replied. We will dismiss the appeal.

KCS has made very intensive use of discovery to obtain information from primary applicants and CNW relating to the CNW settlement (UP/MP/WP/-99, CNW-24 - Notice of Settlement, filed July 8, 1981). Primary applicants and CNW have responded to discovery providing answers and supplying, or making available, documents requested, except to the extent they made claims of privilege. Claims of privilege were made on the basis of attorney-client communication, attorney work product, and confidential settlement negotiations. KCS asserted that the responses have been inadequate and the claims of privilege have not been adequately established.

Judge Cross, however, held that primary applicants and CNW had established their claims of privilege and had reasonably responded to unprivileged requests. By letter dated October 15,

¹/ Embraces F.D. No. 30,000 (Sub-Nos. 1-10, 14-43) and Nos. MC-F-14448 and MC-F-14449.

unnecessarily increase the expense of litigation. In this appeal, KCS has argued an interpretation of Rule 85 which is clearly contrary to two of our prior decisions in these proceedings. This appeal also fails to articulate clearly any appropriate claim for relief. The record in these proceedings is very large and complex. We do not condone the unnecessary cluttering of the record with groundless pleadings.

It is ordered:

1. The interlocutory appeal by KCS of the denial of KCS-38, KCS-41, and KCS-43 is dismissed.
2. This decision is effective on its service date.

By the Commission, Division 2, Commissioners Gresham, Gilliam, and Taylor. Commissioner Taylor did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary

DECISION

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

[Decision No. 19]

Decided: April 20, 1995

By petition filed April 13, 1995 (IC-4),¹ Illinois Central Railroad Company (IC) seeks an extension of the procedural schedule established in Decision No. 10.² That schedule set May 10, 1995, as the due date for filing responsive applications and, generally, comments in opposition to the BN/Santa Fe primary application. IC requests an extension of that due date for 44 days, to June 23, 1995. IC indicates that until April 7, 1995--the day that news of the "11th hour" settlement reached by the primary applicants and KCS first became available--it had not made a final decision to participate in this proceeding. That settlement, IC adds, prompted its IC-1 and IC-2 filings, because the BN/Santa Fe merger coupled with the KCS haulage rights arrangement "has the potential to create a scenario for Applicants and KCS to use their market power to require shippers to move freight over less efficient routes." IC-4 at 2. IC indicates that, because of the KCS settlement, it has been forced "on very short notice to seek conditions that are broader in scope than those that would have been required to address the impacts of the merger transaction alone." IC-4 at 2. IC adds that it simply needs more time to develop a complete understanding of the KCS arrangement and of the harm to competition and to shippers that will ensue therefrom. IC insists that an extension of time is necessary to allow IC to protect "the interests of the shippers it serves in the face of the recently announced but significant change in circumstances." IC-4 at 3.

The KCS settlement upon which IC has focused is hardly the "could not have been anticipated" development that IC makes it out to be. Settlements, or at least the possibility of settlements, are an expected component of any merger proceeding. The KCS settlement, indeed, is hardly unique. Two other railroads--Union Pacific Railroad Company and Southern Pacific Transportation Company--are also reported to have reached negotiated settlements with primary applicants BN and Santa Fe.

¹ No reply has been filed. Pursuant to Decision No. 10 served March 7, 1995 (slip op. at 10 n.5), any reply to a procedural motion must be filed within 3 working days.

² The procedural schedule established in this proceeding set April 10, 1995, as the due date for filing descriptions of anticipated responsive applications and petitions for waiver or clarification with respect thereto. Acting in accordance with that schedule, IC filed, on April 10, 1995, a description of its anticipated responsive application (IC-2) and a petition for waiver and clarification with respect thereto (IC-1). IC indicates that it will request, among other things, a condition that primary applicants Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) reach an agreement with The Kansas City Southern Railway Company (KCS) that requires KCS to agree to grant IC certain haulage rights and trackage rights.

IC may not have anticipated the precise details of the KCS settlement, but it could not have failed to anticipate the settlement itself.

Nor is that settlement likely to be of such intricate complexity as to require extended time for analysis of the effects thereof. Although the terms of the settlement have not been filed with the Commission, the available accounts made to the public suggest that the settlement involves swapped haulage rights. The settlement terms (which should be available to IC in discovery) should be sufficient to enable IC to ascertain any possible competitive implications.

It must also be noted that the competitive implications, if any, of the KCS haulage rights are only indirectly related to the BN/Santa Fe transaction. The haulage rights do not, in and of themselves, constitute a transaction subject to our jurisdiction under 49 U.S.C. 11343, and the primary applicants and KCS can therefore swap haulage rights without our approval. By the same token, however, this haulage rights arrangement will not enjoy the benefits of antitrust immunity that 49 U.S.C. 11341(a) offers to transactions that do require our approval under 49 U.S.C. 11343. This haulage rights arrangement, if it turns out to be the conspiracy in restraint of trade that IC intimates, will thus remain subject to challenge. It is possible, of course, that the primary applicants and KCS may attempt to immunize their haulage rights arrangement notwithstanding the fact that this arrangement, standing alone, does not require our approval under 49 U.S.C. 11343. See Union Pacific--Control--Missouri Pacific; Western Pacific, 366 I.C.C. 462, 605 (1982) ("[S]ettlement terms requiring our approval in order to be implemented effectively will be approved if they are consistent with the public interest."). If such approval is sought, however, IC and all other interested parties will have the right to be heard with respect thereto, with or without a responsive application.

IC cannot, in any event, seek conditions with respect to the KCS haulage rights. IC can seek conditions with respect to the BN/Santa Fe transaction itself, but not with respect to the conditions sought by some other party with respect to the BN/Santa Fe transaction. Cf. The Kansas City Southern Railway Company -- Haulage Rights Over The Lines Of Union Pacific Railroad Company and Chicago and North Western Transportation Company, Finance Docket No. 32133 (Sub-No. 1) (ICC served Dec. 29, 1993) (slip op. at 5: "Because these [responsive] applications contain proposed conditions to approval of the [primary] application in Finance Docket No. 32133, the Commission will entertain no requests for affirmative relief related to these proposals. Parties may only participate in direct support of or direct opposition to these [responsive] applications as filed.").

We mention, as well, that the particular shipper interests advanced by IC in support of its extension request are not necessarily entitled to regulatory protection. IC indicates that it will seek its anticipated KCS condition "[t]o preserve IC's shippers' competitive options," because the haulage rights arrangement entered into by the primary applicants and KCS threatens to substantially alter the competitive balance among "shippers whose transportation options figure prominently in their ability to compete in markets around the country." IC-2 at 3. What we said in approving common control of UP (Union Pacific

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Railroad Company and Missouri Pacific Railroad Company) and CNW (Chicago and North Western Railway Company) bears repetition here:

Some shippers have submitted comments in opposition to the proposed transaction. These opponents, however, appear to be located exclusively on competing rail lines. These shippers are primarily concerned over the impact common control will have on the carrier they use and on their ability to compete with shippers on a more efficient UP/CNW system. Their purpose, in essence, appears to be to handicap their UP/CNW competitors in order to protect their own ability to participate in certain markets which will benefit from common control. Regulatory intervention designed to protect carriers and shippers from competition is not in the public interest. To the contrary, regulation should foster efficiency. The public interest is best served when efficient suppliers are permitted to compete, and thereby to succeed in the marketplace on the basis of their efficiency.

Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Chicago and North Western Transportation Company and Chicago and North Western Railway Company, Finance Docket No. 32133 (ICC served Mar. 7, 1995) (slip op. at 69).

In adopting the procedural schedule now underway in this proceeding, we indicated that we were convinced that this schedule would accord due process to all parties and would allow time for full consideration of all issues. Decision No. 10, slip op. at 6. IC contends, in essence, that this schedule does not provide sufficient time for the preparation of the responsive application it intends to file. Having reviewed IC's extension petition at some length, we have found nothing that provides any support for that contention. Accordingly, IC's petition for extension of time will be denied.³

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

It is ordered:

1. IC's petition for extension of time is denied.

³ An additional point requires our attention. We encourage IC, as we encouraged all parties in Decision No. 2 served August 5, 1994 (slip op. at 2 n.2), to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 5.1 (or formatted so that it can be converted by WordPerfect 5.1). However, we encourage the submission of such diskettes in addition to the traditional and still required paper submissions (an original and 20 copies).

2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

(SEAL)

MAY 3 1995

INTERSTATE COMMERCE COMMISSION

DECISION

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

[Decision No. 20]

Decided: April 26, 1995

BACKGROUND

By petition filed April 13, 1995 (IC-4), Illinois Central Railroad Company (IC) sought an extension of the procedural schedule established in Decision No. 10 served March 7, 1995, in this proceeding. That schedule set May 10, 1995, as the due date for filing responsive applications and, generally, comments in opposition to the primary application of Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe). IC requested an extension of that due date for 44 days, to June 23, 1995. IC indicated that it had not made a final decision to participate in this proceeding until April 7, 1995--the day that news of the settlement reached by the primary applicants and Kansas City Southern (KCS) first became available. IC indicated that the KCS settlement necessitated IC seeking broader conditions, and that IC needed more time to completely understand the impacts of the KCS arrangement on competition and on shippers.

By decision served April 20, 1995 (Decision No. 19), the Commission denied IC's petition. It noted that settlements like the one the primary applicants reached with KCS are not unexpected, that the settlement is unlikely to be so complicated that analysis thereof will require extended time, that any competitive implications of the haulage rights KCS receives in the agreement are only indirectly related to the BN/Santa Fe transaction, that IC cannot seek conditions with respect to the KCS haulage rights, and that particular shipper interests advanced by IC in support of its extension request are not necessarily entitled to regulatory protection.

In Decision No. 19, we stated that the primary applicants had not filed a response to IC's request. The Commission later received the primary applicants' reply in opposition to IC's petition, which they had filed on April 19, 1995.¹ The primary applicants note that the Commission adopted its procedural schedule only after receiving comments from over 170 parties. Furthermore, state the primary applicants, the Commission designed the schedule to ensure due process for all participating parties, and to provide for the issuance of a final decision in the proceeding by August 23, 1995.

Regarding IC's reasons for seeking an extension to the procedural schedule, the primary applicants argue: (1) that IC has had ample time to assess the proposed consolidation; (2) that

¹ We note that the primary applicants filed their reply in an untimely fashion. We call the parties' attention again to Decision No. 10, footnote 5, where we stated: "... [A]ny reply to any procedural motion filed with the Commission itself in the first instance must also be filed within 3 working days."

the primary applicants' settlement with KCS does not justify the requested extension; (3) that a 44-day extension for parties opposing the proposed consolidation would prejudice the primary applicants, who would have only 30 days to respond to those parties' evidence, while the opposing parties would have had over 100 days from the date of adoption of the procedural schedule to file their evidence; (4) that IC has failed to actively participate in discovery in this proceeding, even after filing its request for an extension; and (5) that IC never identifies any of the shippers whose interests it claims to be protecting, and none of those shippers appear to be actively participating in this proceeding.

On April 20, 1995, IC filed a motion for leave to file a response to the primary applicants' response to IC's request for an extension of time and, in the same filing, IC requests an oral argument before the Commission on the matter (IC-6). IC also filed its response (IC-7) at the same time. In addition to reiterating its earlier arguments, IC also states that the primary applicants' agreement with Southern Pacific Lines (SP) will affect IC's assessment of the merger's effect on its shippers' operations.² IC contends that the scope and details of the agreements with KCS and SP have not been available through the course of the proceeding, and that the primary applicants themselves should have known that changes in their position vis-a-vis other carriers would potentially affect other carriers such as IC that have been monitoring the proceeding until it became evident that they would have to participate fully.

In IC-7, IC alleges that its concerns are broader than, and relate directly to, the cumulative competitive impacts resulting from the merger as well as the settlement agreements, and that it could not have begun preparing and analyzing its case before it knew the rough terms of the settlement agreement on April 7, 1995. IC also refutes the primary applicants' statement that IC has been "passive" in this proceeding, noting that IC and its counsel have worked diligently to "get up to speed" and participate in the proceeding. IC maintains that it should be given a fair opportunity to address the consequences of the proposed merger and should not be penalized in its preparations because of the primary applicants' timetable for negotiating and executing settlement agreements.

We will accept both the primary applicants' late-filed response and IC's reply into the record. However, having reviewed the contents of both of those filings, we remain unpersuaded that IC's requested extension of time is necessary, and, for the same reasons articulated in Decision No. 19, reiterate our denial of the request. We also deny IC's request for an oral argument on this issue. We believe that the written record provides adequate information upon which to base our decision. We also believe that the procedural schedule, as it now stands, offers all parties adequate time in which to assess the impacts of the proposed transaction and prepare any opposition to the primary application.

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

There have been numerous reports in the press regarding the settlement between the primary applicants and SP. Although at present neither the primary applicants nor SP has officially informed the Commission of the details of such a settlement, the primary applicants did reference the agreement in an April 20, 1995 letter to the Commission.

It is ordered:

1. IC's request to file a reply to the primary applicants' response to IC's request for an extension of time is granted.

2. IC's request for an oral argument on the issue of whether or not it may have a 44-day extension to file its opposition to the primary application is denied.

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

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

Vernon A. Williams
Secretary

(SEAL)

12TH CASE of Level 1 printed in FULL format.

SANDUSKY COUNTY-SENECA COUNTY-CITY OF TIFFIN PORT AUTHORITY
 -- FEEDER LINE APPLICATION -- CONSOLIDATED RAIL CORPORATION
 CARROTHERS SECONDARY IN SANDUSKY AND SENECA COUNTIES, OH

FINANCE DOCKET NO. 31438

INTERSTATE COMMERCE COMMISSION

1990 ICC LEXIS 50

February 9, 1990

SYLLABUS:

[*1]

Opposed feeder line application granted. Line found eligible for sale under 49 U.S.C. § 10910(b)(2) and constitutional minimum value determined at net liquidation value. Applicant found able to purchase the line at constitutional minimum value and financially responsible.

PANEL:

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

OPINION:

In a feeder line application filed March 22, 1989, Sandusky County-Seneca County-City of Tiffin Port Authority (SST-PA) n1 seeks to acquire a 25.5-mile Consolidated Rail Corporation (Conrail) line in Sandusky and Seneca Counties, OH (the Carrothers Secondary Line). SST-PA filed the application under 49 U.S.C. § 10910 and 49 C.F.R. § 1151.3. Conrail opposes the application and requests that we recommend negotiations on a counter proposal. A comment was filed by the Railway Labor Executives' Association. Various procedural aspects of the case are discussed in Appendix B. We will grant the application.

n1 SST-PA is a public authority established by Sandusky and Seneca Counties and the City of Tiffin, under Ohio statute, specifically to ensure long-term rail service for this line.

BACKGROUND

The line [*2] is located south of Toledo, OH, extending between Woodville Township, Sandusky County (MP 67.0) on the north and Tiffin, Seneca County (MP 41.5) on the south. At Woodville, the line connects with Conrail's lines and yards in the Toledo area. At Tiffin, the line connects with both CSX Transportation, Inc. (CSX) and Norfolk Southern Corporation (NS).

Conrail states that, over the years, revenues on the line were sufficient to cover operating expenses but are inadequate to finance rehabilitation. n2 In June of 1988, Conrail placed the line on its System Diagram Map (SDM), Category 1. Conrail notes this designation was based on several factors. The traffic volume was less than 1,000 cars in 1987. Further, 70% of this traffic moves from the end of the line at Tiffin. According to Conrail, serving Tiffin is not



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profitable because it is 40 miles from the Conrail yard and 20 miles from Woodville, the nearest Conrail point with significant traffic.

n2 Conrail Reply Statement, V. S. Michel, at 2.

Conrail considered the line a good candidate for short line operations and began discussions with shippers on the line about this possibility. A Conrail representative met with a shipper/community [*3] task force (Task Force) in September 1988. In October 1988, as part of those discussions, Conrail sent SST-PA and the Ohio Department of Transportation (ODOT) estimated values for salvaged track and for the real estate. The Task Force approached two major carriers and 12 short line railroads to see if any would be interested in buying the line for that price and operating it, but all declined. SST-PA then put together a financing package to acquire the line and entered an agreement with a short line carrier to operate it. n3

n3 See infra.

Subsequently, Conrail had second thoughts about selling the entire line. Conrail determined to retain the northern segment of the line to Millersville, abandon the middle segment between Millersville and Maple Grove, and sell the southern segment from Maple Grove to Tiffin. The purchaser of the southern segment would be able to interchange traffic originating at Maple Grove and points south with CSX and NS. Conrail presented its counter proposal in March 1989, but the shippers and the local governmental bodies decided it was not in their interest. Consequently, SST-PA filed this feeder line application in an attempt to preserve service [*4] over the entire line.

DISCUSSION AND CONCLUSIONS

The Feeder Railroad Development Program provides communities and shipper groups an opportunity to preserve rail lines prior to their abandonment or possible downgrading. See *Cheney R. Co.-Feeder Line Acq.*, 5 I.C.C.2d 250 (1989) (Cheney). To accomplish this, § 10910 authorizes us to require railroads to sell rail lines under specific circumstances to financially responsible applicants. n4

n4 The procedures for handling these applications are set out in 49 C.F.R. Part 1151, Feeder Railroad Development Program.

The statute and regulations require that we determine if the line is eligible for forced sale, and, if so, the constitutional minimum value, the applicant's ability to purchase the line at the constitutional minimum value, and the applicant's ability to assure adequate service for three years. The statute does not give us latitude to choose between SST-PA's offer and Conrail's counter proposal. n5 If SST-PA meets the statutory requirements, we must require Conrail to sell the line to it. These issues are addressed below.

n5 Conrail does not suggest that its counter proposal should be considered as a competing offer for the line, simply that we recommend negotiations concerning it. Given our findings in this decision, this request is denied. [*5]

Eligibility

Under § 10910 and 49 C.F.R. § 1151.1, a line is eligible if: (1) it appears



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in Category 1 or 2 of the owning carrier's SDM (but the railroad has not filed for abandonment) § 10910(b)(1)(A)(ii); or (2) the public convenience and necessity permit or require the sale of the line (§ 10910(b)(1)(A)(i)). The line is eligible for forced sale under (1) above, because Conrail placed the entire line in Category 1 in June 1988. n6

n6 In June 1989, Conrail revised its SDM to reflect its new proposal by removing the northern segment from Category 1. Because SST-PA filed its feeder line application while the entire line was in Category 1, we will consider the application under the SDM provision. See *Indiana Hi Rail Corp. -- Feeder Line Acq.*, 366 I.C.C. 42, 44 (1981) (Indiana).

Constitutional Minimum Value

Having determined the line's eligibility for forced sale, we must next determine the constitutional minimum value (CMV). Under § 10910, Conrail is entitled to the net liquidation value (NLV) or going concern value (GCV) of the line, whichever is higher. Conrail argues generally that GCV is higher, while SST-PA claims that NLV is higher. Conrail also claims that it should [*6] be compensated for the value of the line as a fiber optics right-of-way. Table 1 below sets out the parties' different valuations.

	TABLE 1 SST-PA	Conrail
Net Salvage Value (Track, etc.)	\$ 2,662,827	\$ 3,566,280
Land	267,700	606,220
Fiber Optics Route	0	612,200
Total	\$ 2,930,527	n7 \$ 4,784,700

n7 While Conrail sets a higher value for the salvage value of its track and materials than does SST-PA, the parties substantially agree on real estate assessments, at least as a starting point. (As discussed in Appendix B, SST-PA's real estate appraisals are stricken for lack of verification.) The differing real estate figures result from SST-PA's application of a discount factor. If the discount is applied to both (or omitted from both), the values are relatively close. As discussed *infra*, we will apply a 50% discount factor.

As a preliminary matter, Conrail requests that the application be dismissed because SST-PA did not file evidence on GCV. Although our rules n8 require an applicant to submit estimates of both GCV and NLV and evidence in support of these estimates, SST-PA only submitted NLV data. It contends that GCV must be less than NLV whenever a [*7] rail line is listed in Category 1, which it argues proves unprofitability. n9 We believe that SST-PA substantially complied with our regulations in light of the fact that it submitted evidence that no private purchaser was willing to buy the line for its NLV. If the line were worth more than NLV as an operating rail line, then we would expect someone to have shown some interest in purchasing it at that price. Under these circumstances, applicant's failure to submit formal GCV calculations does not prejudice its case.

n8 49 C.F.R. Part 1151.

n9 Conrail did not allege that a GCV above NLV existed until its reply



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statement. Accordingly, the SST-PA rebuttal testimony is proper (see, e.g., SST-PA Rebuttal, V. S. Hentz) and Conrail's motion to strike it is denied.

As explained below, we have determined that NLV, rather than GCV, should be used to determine the value of the rail line transferred in this proceeding. Conrail did not submit evidence for the value of the property as a line of railroad, but contends simply that because the line is being sold for rail use, its value must be determined accordingly. n10 Nevertheless, we are not barred from limiting compensation to NLV [*8] simply because the line will continue to be used as a rail line. Chicago and North Western Transp. Co. -- Abandonment, 363 I.C.C. 956 (1981) (Lake Geneva) aff'd sub nom. Chicago and North Western Transp. Co. v. U.S., 678 F.2d 665 (7th Cir. 1982) (CNW); and Amtrak-Conveyance of B&M in Conn. River Line in VT & NH, 4 I.C.C.2d 761, 781 (1988) (Amtrak).

n10 Conrail's valuation included net salvage values for track and other materials, undiscounted real estate values, and the value of a potential fiber optics lease.

In considering the value of property taken by condemnation, the value to the taker is irrelevant. United States v. Miller, 317 U.S. 369, 375 (1943). Here, there is no indication that the line has value as an operating rail line to anyone other than SST-PA. Applicant is able to purchase the property only because of a substantial subsidy from state and local governments to preserve local rail service, not because the business prospects for the line justify the investment.

SST-PA has demonstrated that it made extensive efforts to find a buyer for this "going concern," but was unable to do so. It attempted to interest CSX and NS, with whom this track connects. But even [*9] on the basis of SST-PA's greatly increased projected carload volume (alleged by Conrail to be unobtainable), neither carrier was interested in buying or operating all or part of the line. CSX n11 stated that the line would be only marginally profitable at a purchase price of \$ 1.25 million (about 40% of NLV, see infra), and a volume in excess of 5,000 cars annually. CSX stated that since the projected volume was only 1,625 cars, the possibility of obtaining 4,000 more carloads per year seemed "beyond the realm of reasonableness."

n11 SST-PA Rebuttal Statement, attached to V. S. McCarthy.

Having been rejected by two major carriers, the SST-PA approached 12 short line carriers. All of the short lines, when presented with a purchase price between \$ 2 to 2.5 million and the present traffic volume, stated they could not successfully purchase the line and operate it at the current carload level. n12 Although such short line carriers can ordinarily operate lines at lower costs than can Class 1 carriers, none apparently believed that the line would generate revenue sufficient to justify an investment equivalent to NLV.

n12 SST-PA Rebuttal Statement, V. S. Fascetti, at 3.

Conrail [*10] submits no evidence of offers to purchase the line. Nor has it even attempted to show that the line will generate net revenue in excess of what could be achieved through liquidation. To the contrary, Conrail admits that line revenues do not cover rehabilitation expenses. n13 SST-PA, a



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subsidized entity, is the only offeror. Accordingly, we find that NLV is the only proper valuation standard here.

n13 Conrail Reply Statement, V. S. Michel, at 2. Conrail's counter proposal also concedes that operations over the entire line are not viable.

Conrail argues that a fiber optics valuation must be included as part of constitutional minimum value. Conrail values that right-of-way at \$ 612,200. n14 After examining Conrail's evidence supporting a potential fiber optics route, we conclude that it has not supported this claim. Conrail has no offer or ongoing negotiations for a fiber optics lease, but merely the potential of one. Conrail contends the potential is reasonable because the line is part of a link between Toledo, the only large city in Northwestern Ohio, and Tiffin, a relatively small city in Northwestern Ohio.

n14 Conrail calculated the value by using a system average revenue per mile of \$ 4,763 (in 1990) multiplied by 25.5 miles, reduced the product by \$ 44,398 to reflect Conrail's 37% composite income tax rate, and then multiplied by a price-earnings ratio of 8 (applicable to Conrail stock on June 20, 1989) to determine the current market value of the earnings stream. [*11]

The record does not demonstrate that this relatively small city is a desirable fiber optics junction/terminal point. n15 Conrail has considered average data from high-density locations elsewhere, but there is no evidence that this line could support such an installation. There is no evidence to support fiber optics potential, neither the testimony of a major fiber optics company nor an analysis by Conrail of the economics of such operations. Accordingly, we will not include any value for a fiber optics route in establishing the line value and will not increase land values because of a speculative potential for fiber optics cable.

n15 SST-PA contends that a Toledo-Tiffin line would not be a viable fiber optics investment. Conrail has moved to strike SST-PA's fiber optics testimony as hearsay. We deny Conrail's motion. Any problem with SST-PA's testimony goes to the weight of the evidence, not to its admissibility.

Having found that GCV is not the proper standard, and that fiber optics potential should not be considered, we proceed to our computation of NLV. NLV is the sum of: (1) the value of the real estate; and (2) the net salvage value of track and materials (gross [*12] salvage value less cost of removal). In our line valuation, we apply the same criteria as for offers of financial assistance under 49 U.S.C. § 10905 (to enable continued rail service on a line already approved to be abandoned). See Feeder Line Development Program, 367 I.C.C. 261, 264 (1983); Cheney, supra, at 268. And, under § 10905, the net liquidation value standard for rail properties is their monetary value for the highest and best non-rail use. Lake Geneva, supra, and CNW, supra.

a. Real estate. SST-PA's appraisals have been stricken for lack of verification. (See Appendix B.) Conrail's Real Estate Department prepared an estimate of right-of-way land, totalling \$ 606,220. Conrail includes a total of 261.43 acres in its appraisal. Approximately half of this acreage is rural agricultural land with a per acre value of \$ 1,285. Unit values in Tiffin, Gibsonburg and other rural towns ranged from \$ 2,196 to \$ 9,500 per acre.

This valuation is based on the market prices of comparable adjacent land



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sales. Conrail's appraisal, as far as it goes, is consistent with generally accepted methods for land valuation. But in *Lake Geneva*, supra, at 959, we outlined various general [*13] factors to be considered in adjusting land valuation in forced sales. These include marketability of title and costs of sale by individual parcel. The Conrail appraisal includes no evidence concerning the quality of land title, a potentially important consideration in determining land value. Nor were Conrail's across-the-fence estimates discounted in any way to reflect the fact that narrow strips of rail right-of-way are frequently worth considerably less per acre than are parcels of adjoining land. See, e.g., *Cheney*, supra, at 270, where a 60% discount for this purpose was applied (with various adjustments).

Conrail contends that the real estate should be valued as an assembled corridor because it is being sold for rail use. As previously explained, the value to the taker cannot be considered here. There is no evidence of any market for this land as an assembled rail corridor. Thus, we must reject Conrail's argument that no discounts should apply. Indeed, Conrail's own real estate appraisal, sent to ODOT and SST-PA earlier, used a 50% discount factor. n16 Because this is the best evidence of record of a proper discount factor and similar to that used in *Cheney*, we will use [*14] the 50% factor and value the real estate at \$ 303,110.

n16 Conrail memo dated October 10, 1988, from Wartman, Real Estate Manager in Indianapolis, IN to Sandefur, Real Estate, Philadelphia, PA attached to SST-PA application filed March 22, 1989.

b. Net Salvage Value. We base the net salvage value on Conrail's data (with adjustments). The Conrail salvage estimate is preferable and more reliable than SST-PA's because it is more detailed in its analysis of the conditions of track and other related materials. SST-PA's estimate does not consider the condition of track materials and thus lacks desired specificity. n17

n17 In the absence of information on the condition of the rail and other track material (OTM), ODOT classified all rail and OTM over 130 lb. as fit for relay purposes. Any track materials of lesser weight were classified as scrap.

Conrail field engineers inspected the entire line between Tiffin and Woodville. Information was collected on actual quantities, on the size and specifications of track materials, and on their condition. With the exception of ballast, we accept the Conrail salvage estimate.

Applicant disputes the inclusion of \$ 123,774 for ballast. [*15] This line was reported to have been resurfaced in 1980-1981. Thus, the newest ballast has been in place for eight or nine years. Even ballast which has been recently installed on a line is often considered to be unrecoverable. The record does not show that this ballast has any special characteristics to make salvage economically feasible. Therefore, given the lack of evidence that the ballast on this line would be recovered, the inclusion of ballast in the gross salvage value is rejected. n18

n18 Exclusion of ballast from salvage value does not affect Conrail's removal costs since this cost is borne by the purchaser. Conrail Reply Statement, V. S. Jones, at 3.

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SST-PA also questions the \$ 159,091 valuation for ties and timbers. SST-PA did not include any value for ties and timbers in the application or supplemental statement. Conrail submitted tie values based on whether the ties are reusable as rail ties or would be sold as landscaping ties. Some 32 thousand ties (over half) were evaluated as nursery grade at 50¢ each, while over 28 thousand were classified as reusable and valued at \$ 5 each. n19 SST-PA counters that an excess of used ties is already available for sale [*16] in the Toledo area and thus no value should be assigned to these ties. n20 We do not agree. Some value must be accorded the ties, especially those which can be reused in Conrail's system. The evidence is not entirely satisfactory -- Conrail does not take into account local market conditions n21 while SST-PA refuses to acknowledge any value for the 60,000 ties. However, since we must assign a value to the ties, SST-PA has the burden of proof, and since there are no other data of record indicating that adjustments to Conrail's data are necessary, we accept Conrail's data.

n19 Conrail Reply Statement, V. S. Miller's Appendix, at 1.

n20 SST-PA's statement of August 4, 1989, V. S. Wehner, at 3.

n21 The testimony is unclear as to how Conrail determined the value for ties.

Excluding Conrail's ballast valuation reduces the gross track value to \$ 3,371,537 [\$ 3,495,311 - \$ 123,774]. The net salvage value of the track materials is \$ 2,646,911 (gross salvage value of \$ 3,371,537 less take up costs of \$ 724,626). To this amount, we will add the net salvage estimate of \$ 46,531 for communications and signals, for a total net salvage value of \$ 2,693,442. Thus NLV (sum of land and [*17] one building, and net salvage) is \$ 2,996,552 (\$ 303,110 + \$ 2,693,442). (We compare our NLV determination with those of the parties in Appendix A.)

Financial Responsibility

Applicant must demonstrate it is a "financially responsible person," by showing its ability: (1) to pay the value set for the line; and (2) to cover expenses associated with providing services over the line for at least the first three years of operations. The evidence conclusively shows that SST-PA will be able to finance the line's acquisition cost and operate the line for at least the three-year period.

a. Ability to pay. Third parties, including ODOT, shippers on the line, the proposed operator, and the National City Bank, have made commitments to SST-PA for this purpose in the amount of \$ 2,932,500. This is roughly sufficient to cover the line's acquisition cost of \$ 2,996,552. While the NLV amount is \$ 64,052 above the amount raised for the line purchase, we note that this amount is relatively small in relation to the total amount. We also believe this additional amount can be obtained by SST-PA. SST-PA obtained additional financial commitments of about \$ 300,000 during the course of this proceeding [*18] when SST-PA had to increase its estimate of NLV to include track left out of the original appraisal. n22

n22 SST-PA Rebuttal Statement, at 10.

Conrail believes SST-PA's submission in this respect is defective because it



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is not verified (since corrected) and none of the commitments are contractually binding. Both the ODOT and the short-term bank loan are commitments, and we consider them sufficiently binding. The lack of verification by the parties making the commitments is not fatal to their admissibility; the commitments run to SST-PA and its statement now is verified.

b. Ability to cover expenses for first three years. SST-PA's financial statements show that SST-PA will generate sufficient funds to meet this criterion, and that the line can be operated as projected.

SST-PA entered an agreement with Indiana Hi-Rail Corporation (IHRC), for IHRC to provide service on behalf of SST-PA. IHRC data show sufficient financial stability to provide the service. IHRC has been in business since 1981, and has been profitable every year since.

SST-PA has developed a pro forma income statement and cash flow projections for the three-year period. n23 The income statement and cash flow [*19] figures show that the applicant will generate sufficient funds and will operate profitably over the three-year period. The cash flow statement shows projected cash balances at the end of each of the first three years of the line's proposed operations are projected to be as follows: Year 1, \$ 92,305; Year 2, \$ 129,859; and Year 3, \$ 167,759. (These ending cash balances would be negative in the absence of substantial infusions from the Counties of Sandusky and Seneca, and the City of Tiffin, amounting to \$ 125,000 in Year 1 and \$ 50,000 annually in Years 2 and 3.)

n23 Several revenue items in the income statement do not agree with inflow items in the cash flow statement due to timing differences. The income statement is on an accrual accounting basis (which recognizes revenues when generated, not necessarily when payment is received), while the cash flow statement is strictly on a cash basis. The source of these pro forma statements was cash flow and budget statements submitted by SST-PA.

The projected income statement for the three-year period forecasts profitable operations for the line. Annual net income is projected to be as follows: Year 1, \$ 59,741; Year 2, \$ 57,741; [*20] and Year 3, \$ 57,741.

SST-PA's projections are predicated on a growing level of traffic and on certain fees charged to shippers. Conrail questions SST-PA's ability to attain the traffic levels and revenues projected in the application. We believe the traffic projections are reasonable. The projected traffic levels, increased over what Conrail has experienced in prior years, are predicated in part on eased interchange with CSX and NS. According to the shippers, this will open new markets, and will provide faster transit times than possible under Conrail ownership because direct connections can be made on this line with CSX and NS.

Moreover, the shippers are making substantial financial commitments (non-interest bearing bonds) in this line. These commitments show their willingness to use the line and provide a strong financial incentive to do so. If the line fails, the shippers not only lose rail service, but also this and their other rail-related investments. Indeed, when SST-PA's appraisal was adjusted upwards to account for track missed in the first valuation, the shippers agreed to increase their financial commitments.

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Conrail has accused SST-PA of including a surcharge [*21] in its revenue projections to cover a shortfall between revenues and expenses. We disagree. SST-PA's forecasted traffic levels substantially reflect projections by the line's shippers for carloads during the three-year period. The projected revenues appear feasible and attainable according to statements made by both those shippers and IHRC.

Closing terms

To ensure the smooth transfer of the line, we will establish the following terms traditionally used in § 10905 cases: (1) payment will be made by cash or certified check; (2) closing will occur within 90 days after the service date of this decision; (3) Conrail will convey all property by quit-claim deed; (4) Conrail will deliver all releases from any mortgages and original documents conveying interest in the right-of-way to purchasers within 90 days from closing; (5) all taxes should be prorated as of the date of closing; and (6) deed recording fees should be paid by purchaser. Mortgage or lien release taxes and recording fees should be paid by Conrail. The parties may modify the terms of the sale by mutual agreement.

Labor protection

RLEA requests that labor protection be imposed. Section 10910(g) requires the selling [*22] carrier to provide an arrangement at least as protective of the employee interests as that established under § 11347. In feeder line applications, we impose the conditions in New York Dock Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), which would be used here to protect Conrail employees. n24 Conrail estimates that its additional costs for labor protective conditions will total \$ 1,753,212 over a six-year period. It believes that labor protective costs should be considered in addition to the factors discussed above and it argues that imposition of labor protection in these circumstances is an unconstitutional taking in violation of the 5th Amendment.

n24 Indiana, supra, at 50.

The statute is clear that the cost of labor protection may not be included in the purchase price of the line. 49 U.S.C. § 10910(b)(2). n25 We have no jurisdiction to adjudicate claims that the statute we administer is unconstitutional. Conrail can raise its claims in a court of competent jurisdiction.

n25 In any case, we note that during negotiations Conrail's representative indicated that the carrier planned to reassign personnel currently involved in operation of the line. SST-PA Rebuttal Statement, V. S. McCarthy, at 4. [*23]

Under § 10910(e), we must require, to the maximum extent practicable, the use of employees who would normally have performed work in connection with the line. Accordingly, we direct SST-PA and/or IHRC that, should they need to hire any new employees, they shall offer employment to Conrail employees who worked on the line. n26

n26 SST-PA and IHRC would not be obligated to continue to pay the same wages or provide the same work rules as those of Conrail.



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Environmental Concerns

We agree with the environmental assessment prepared by the Commission's Section of Energy and Environment and served August 25, 1989, indicating that the sale will not affect the quality of the human environment or the conservation of energy resources.

We note that this project contemplates removal of some duplicate track. We will require that SST-PA contact both the U.S. Army Corps of Engineers and the U.S. Department of Agriculture prior to the removal of one of the two tracks in the line's double-track portion. If, as a result of this feeder line transaction, SST-PA wishes to remove, modify, n27 or destroy a building acquired here that is in or adjacent to the right-of-way, it shall consult with [*24] the Ohio State Historic Preservation Officer.

n27 This condition does not pertain to maintenance not affecting the historic character of the structure.

It is ordered:

1. On SST-PA's tender of \$ 2,996,552 (less amounts for removed track, switches, and structures), Conrail is directed to convey its interests, as set out in ordering paragraph 3, in the Carrothers Secondary Line.
2. Conrail is ordered not to dismantle or make any changes to the line except with SST-PA's consent, on order of another government agency, or for compelling reasons.
3. Conrail must convey all rights, titles, and interests in the rail right-of-way and structures between Woodville Township, Sandusky County (MP 67.0) and Tiffin, Seneca County (MP 41.5), both in Ohio.
4. SST-PA must contact both the U.S. Army Corps of Engineers and the U.S. Department of Agriculture prior to the removal of one of the two tracks in the line's double-track portion. SST-PA is also required to contact the Ohio State Historic Preservation Officer prior to the removal, modification, or destruction of any acquired building located in, or adjacent to, the right of way.
5. The labor protective conditions of New York Dock [*25] Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) are imposed on Conrail.
6. Conrail's motions to strike are granted in part and denied in part as discussed in the Appendix B.
7. This decision is effective on February 15, 1990.

APPENDIX: APPENDIX A

Item	NET LIQUIDATION VALUE		
	SST	Conrail	Commission n1
Track Structure			
Rail		\$ 2,418,826	\$ 2,418,826
OTM		686,699	686,699



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Turnouts		106,921	106,921
Ballast		123,774	
Ties & Timber		159,091	159,091
Take Up Costs		(724,626)	(724,626)
Total Track Structure		\$ 2,770,685	\$ 2,646,911
Communication & Signals			
C & S		\$ 70,969	\$ 70,969
Take Up Costs		(24,438)	(24,438)
Total C & S		\$ 46,531	\$ 46,531
Net Salvage Value	\$ 2,662,827	\$ 2,817,216	\$ 2,693,442
Real Estate			
Land	n2 \$ 277,600	\$ 606,220	\$ 303,110
Building	n2 1,700		
Fiber Optics Route	0	612,220	0
Total Real Estate	\$ 279,300	\$ 1,218,440	\$ 303,110
Total NLV	\$ 2,942,127	\$ 4,035,656	\$ 2,996,552

n1 Amounts accepted in our analysis in establishing the line's acquisition cost.

n2 Represents the higher of two appraisals as submitted by SST.

APPENDIX B

MOTIONS [*26] AND PETITIONS

This appendix considers and resolves the various pending motions and petitions. Conrail has filed motions to strike; SST-PA has filed a petition for extraordinary relief.

A. Conrail motions.

Conrail filed motions to strike on June 26, 1989, and August 29, 1989. The evidence which Conrail seeks to strike falls in five categories: (1) Conrail data indicating line value; (2) line profitability evidence; (3) information regarding the price at which Conrail was willing to negotiate, especially in the initial negotiation stages; (4) material submitted without verification; and (5) shipper data.

Several of these categories concern evidence regarding negotiations. Prior to filing this application, SST-PA and Conrail negotiated for the sale of this line. Conrail now objects to SST-PA's using evidence obtained during the negotiations in this proceeding. n1 Conrail argues that Rule 408 of the Federal Rules of Evidence (Rule 408, 28 U.S.C.) n2 prohibits the admission of evidence obtained while attempting to settle or compromise a claim. Conrail specifically moves to strike from SST-PA's presentation the representations made by Conrail employees in negotiations for a voluntary [*27] settlement. Conrail also moves to strike all references to, or conclusions sought to be drawn from, this material.

n1 Conrail's motion No. 2, Reply Statement, June 26, 1989.

n2 That rule provides that:



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Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. The rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

A.1. Conrail data. During negotiations, on September 30, 1988, counsel for the Joint County Task Force requested net liquidation value data from Conrail "in [*28] accordance with our informal agreement." SST-PA counsel also stated that he understood the State of Ohio was requesting similar information under 49 C.F.R. § 1152.14. n3 On October 7, 1988, Conrail sent a copy of Conrail's estimated net salvage value to SST-PA, with a copy to the ODOT. Conrail later sent a copy of its real estate estimates. The accompanying Conrail letter indicates that the data were sent to SST-PA "in a spirit of cooperation."

n3 SST-PA rebuttal statement, letter following page 18 of the argument.

We will not strike SST-PA submissions based on Conrail data provided under 49 C.F.R. § 1152.14. Under that section, the carrier must provide the designated state agency net liquidation value data, along with a system diagram map or line description of the line and facilities and their condition, at the state agency's request. Conrail states that it has no record of such a request by ODOT.

We agree with the SST-PA argument that, had Conrail not sent SST-PA the data, it could have obtained the data from ODOT. And, had Conrail refused SST-PA's request, SST-PA could still have obtained the data through discovery, thus barring the exclusion of this data under Rule [*29] 408. ("This rule does not require the exclusion of evidence otherwise discoverable * * *.") And, if we were to grant Conrail's motion to strike this evidence, we would essentially be nullifying the intent of the regulation at 49 C.F.R. § 1152.14. Accordingly, we will deny Conrail's motion to strike any of these data.

A.2. Line profitability. In the second category is SST-PA evidence about Conrail statements that the line was losing money (V.S. Supance, at 6; McCarthy, at 3; Fascetti, at 2). Conrail states that such statements were made during negotiations and are barred by Rule 408. Rule 408 prohibits the admissibility of compromise offers to encourage settlements, which would be discouraged if such evidence were admissible.

SST-PA argues that an exemption to Rule 408 permits independent admissions of fact made in settlement negotiations to be admitted into subsequent litigations, citing *Urlico v. Parnell Oil Co.*, 708 F.2d 852, 854 (1st Cir. 1983). We are not bound by the Federal Rules, however, but rather by our own policies and procedures. Our rules afford no specific guidance on this issue. Our policy, however is strongly to encourage the resolution of these issues by [*30] agreements between parties rather than by administrative action, and to discourage action that would chill the negotiation of agreements. A narrow view



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of the prohibition against disclosing the contents of settlement negotiations would not further our policy of fostering settlements, and we will not adopt that view here. Conrail's motion to strike this evidence is granted.

A.3. Negotiations and values. The third category is Conrail's negotiating price. SST-PA uses the negotiation price as evidence that the line has no going concern value. n4 We agree with Conrail that this material should be stricken from the record under the policy of Rule 408. Materials will also be struck from the record where opinions, rather than data, indicate the line value. n5

n4 Conrail had negotiated on the basis of "net salvage value." Conrail letter dated October 7, 1988, from Mr. Michel to Mr. O'Brien.

n5 SST-PA's Response to Request for Supplemental Information, v.s. Wehner, at 5.

A.4. Verification. Conrail has moved to strike all the nonverified statements and attachments. These include those filed with the initial application, n6 the real estate appraisals, n7 other statements, n8 and [*31] the proposal of the Indiana Hi-Rail Corporation (IHRC) and the Proposed Official Plan. Conrail moves to strike the last two since neither disclose the individual sponsor of either document. In response, SST-PA argues that the unverified statements were appendices to the verified statement of James Supance, Chairman of SST-PA. These were submitted as a supplemental response to an April 3, 1989 Commission decision accepting the application.

n6 These include statements of J. A. Friday, L. T. Fascetti, James A. Page, John C. Weslow, and Bernard B. Hurst.

n7 The statements of Messrs. Halas, Hentz, and Wehner.

n8 Messrs. Molitoris, Fascetti, Harrington, Page, Baker, and Workman.

Allegations of fact must be verified under both Commission procedural rules and the Feeder Development Program. 49 C.F.R. §§ 1104.4, 1151.5. We will not strike the attachments confirming the financial commitments, the short line carrier's proposal to operate the line, and the proposed operating plan. All of these are materials which the witness, in line with his responsibilities as Chairman of SST-PA, was negotiating or had responsibility for. Further, any defects in verification were remedied in [*32] the rebuttal statements.

Conrail also seeks to have certain statements made in SST-PA's rebuttal statement struck. It argues that some witnesses, whose statements were not verified initially, have submitted verified statements in the reply, n9 and that this is improper. We disagree. SST-PA has corrected this defect in the reply. Further, the evidence has not changed in content, and Conrail has responded to, or has had the opportunity to respond to, this evidence. Conrail is not prejudiced.

n9 Messrs. Friday, Fascetti, Hentz, Wehner, and Molitoris.

We will, however, grant the motion to strike SST-PA's real estate appraisals. Neither was verified despite the fact that SST-PA was earlier on notice of verification deficiencies. See Conrail Reply Statement, at 3-4. The subsequent Halas statement on rebuttal is verified, and thus will be accepted, but that



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statement does not verify the appraisal itself.

We will also grant Conrail's motion to strike SST-PA's video tape submitted on rebuttal. The tape shows an aerial view of the line; its purpose in the testimony is unclear and it serves no purpose for rebuttal.

A.5. Shipper data. Conrail also moves to strike traffic projections [*33] by individual shippers, claiming it is material not responsive to any Conrail evidence. The motion is denied. Conrail questioned the traffic increases projected by SST-PA (V.S. Dietz, at 9). SST-PA's evidence is proper rebuttal.

B. SST-PA petition. SST-PA filed a petition for extraordinary relief, alleging that Conrail was destroying switch connections with NS. It seeks an order directing Conrail to restore the switches and to refrain from any other dismantlement of the line. We accept Conrail's response that its actions were required to comply with Federal Railroad Administration directives.

SST-PA in a letter states that Conrail has destroyed a structure and dismantled some track. We are ordering Conrail to refrain from further changes to the line absent compelling circumstances. We are further requiring that the sale price be adjusted to reflect the changes since the appraisals. SST-PA will have the option either to have Conrail replace the equipment or to adjust the sales price.



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COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N.W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

TELEFAX: (202) 662-6291

TELEX: 89-593 (COVLING WSH)

CABLE: COVLING

WRITER'S DIRECT DIAL NUMBER

January 4, 1996

LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND
TELEPHONE: 071-495-5655
TELEFAX: 071-495-3101

BRUSSELS CORRESPONDENT OFFICE
44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-512-9890
TELEFAX: 32-2-502-1598



BY HAND

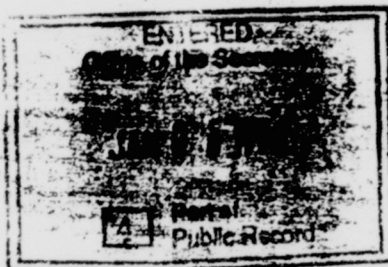
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Twelfth Street and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

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-captioned docket are the original and twenty copies of Applicants' Objections to Southern California Regional Rail Authority's First Set of Interrogatories (UP/SP-45). Also enclosed is a 3.5-inch disk containing the text of this pleading in WordPerfect 5.1 format.

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



Sincerely,

Michael A. Listgarten
Michael A. Listgarten

Member of the Bar of New York
State
Not admitted to the Bar of the
District of Columbia

Enclosures

STB

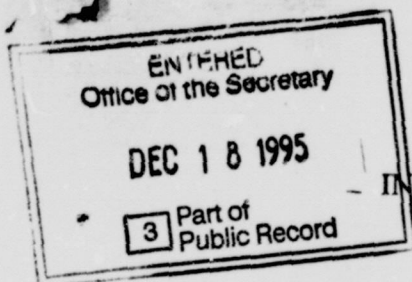
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Before The
INTERSTATE COMMERCE COMMISSION

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

NOTICE OF INTENT TO PARTICIPATE AS A PARTY OF RECORD

Filed by

The City of Pueblo, a Municipal Corporation, (hereinafter referred to as "Pueblo"), by and through its undersigned counsel, pursuant to Interstate Commerce Commission Decision No. 6 in the above referenced Docket (60 Fed. Reg. 54384) hereby furnishes Notice of Intent to Participate as a Party of Record in the above referenced Docket. In support hereof, Pueblo states as follows:

1. Pueblo is a home rule city organized and existing under and by virtue of Article XX of the Colorado Constitution. As such, Pueblo is a political subdivision of the State of Colorado.
2. Pueblo intends to participate in the entire UP/SP consolidation proceeding in ICC Docket No. 32760 as well as in the following related abandonment/discontinuance proceedings: Docket No. AB-3 (Sub-No. 130), Docket No. AB-8 (Sub-No. 38), Docket No. AB-8 (Sub-No. 36x), Docket No. AB-12 (Sub-No. 189x), Docket No. AB-8 (Sub-No. 39) and Docket No. AB-12 (Sub-No. 188).
3. Pueblo will be affected or aggrieved by the action of the Commission in this proceeding.

4. Notices and copies of all comments, protests, exhibits, briefs and other documents required to be served on parties to the proceeding should be served upon the undersigned counsel for Pueblo.

Dated this 14th day of December, 1995.

Respectfully submitted,

THOMAS E. JAGGER

By Thomas J. Florczak
THOMAS J. FLORCZAK
Attorneys for City of Pueblo,
a Municipal Corporation
127 Thatcher Building
Pueblo, Colorado 81003
Telephone: (719)545-4412

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that she has filed an original and 20 copies of the foregoing Notice of Intent to Participate as a Party, together with a 3.5" diskette containing same in WordPerfect 5.1 format, with the Commission by mailing same via first class mail, postage prepaid, addressed as follows:

Secretary Vernon A. Williams
Office of the Secretary
Interstate Commerce Commission
1201 Constitution Ave., N.W.
Washington, D.C. 20423

and that a true and correct copy of same was served upon each of the following by mailing same, via first class mail, postage prepaid, addressed as follows:

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

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

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

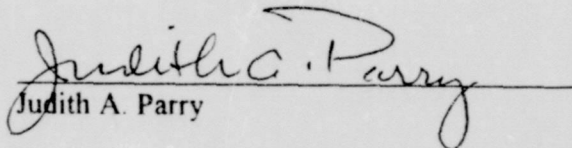
Gary A. Laakso, Esq.
Southern Pacific Building
One Market Plaza, Room 846
San Francisco, CA 94105

Robert T. Opal, Esq.
1416 Dodge Street, #830
Omaha, NE 68179

Gale A. Norton, Esq.
Colorado Attorney General
1525 Sherman Street, 5th Floor
Denver, CO 80203

James P. Gatti
Denver & Rio Grande Western Railroad
P. O. Box 5482
Denver, CO 80217

Bruce N. Smith
Public Utilities Commission
Logan Tower, Office Level 2
1580 Logan Street
Denver, CO 80203


Judith A. Parry

STB

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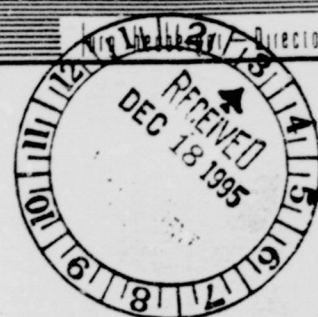


PLANNING DEPARTMENT

PLANNING BUILDING INSPECTION PLANNING COMMISSION A.L.U.C. L.A.P.C.

December 12, 1995

DEC 19 1995



Coordinator Rail Merger
Section of Environmental Analysis
Interstate Commerce Commission
Room 3219
Washington, D.C. 20423

SUBJECT: Finance Docket No. 32760 and Railroad Merger Application, Volume 6,
Part 6 Env. Report (Exh. 40 Appendix, dated November 30, 1995)

Dear Sir:

The County of Imperial Administrative Office received on December 8, 1995, copies of the "Railroad Merger Application" dated November 30, 1995 (cover of document attached for reference).

The cover letter which was included indicated the following:

"If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the ICC's environmental review process, please contact the Section of Environmental Analysis ("SEA")."

The cover letter indicated that a written response would be appreciated within three weeks on the Railroad Merger Application. After a review of the Application, Volume 6, Part 6, Environmental Report (Exhibit 4) Appendix, the County responded to Julie Donsky, Environmental Planner, Dames & Moore. Please refer to the attached letter from Dames & Moore received by the County Planning/Building Department on November 21, 1995, regarding the Niland Rail Yard.

It is of course difficult to provide a precise and well informed response on a project when only one (1) of six (6) volumes of a document are distributed for comment. We therefore note that our comments only extend to Volume 6 and we would appreciate the opportunity to review the full document. It is our position that this type of action should allow for adequate public review time.

The previous County response is not included in Section A-4, Rail Yards, pages 0460 through 0474, which dealt with the Niland Rail Yard. Attached please find another copy since the statement is made on page 0474 that "...NO AGENCY RESPONSES RECEIVED TO DATE..."

It may be that the comments were not received in time for the mailing of Volume 6, Part 6, to the parties of record. In the event that this is the situation, or that the County's comments were misplaced or missing, another copy is enclosed herewith for this or any later re-printing of Volume 6.

939 MAIN STREET, EL CENTRO, CALIFORNIA, 92243-2856 (COURTHOUSE) (619) 339-4236
AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER FAX NO. (619) 353-8338

3. The "Agreement and Plan of Merger" means the August 3, 1995 Agreement referred to on page 2 of the Applicants' Notice of Intent to File Application (UP/SF-1 at 2).

4. "Commission" or "ICC" means the Interstate Commerce Commission.

5. "Competition" includes both intramodal and intermodal competition and, where applicable, includes source competition.

6. "Consolidated System" means the integrated rail system after the Proposed Merger (as defined below).

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

- a. both basic records and summaries of such records (including computer runs);
- b. both original versions and copies that differ in any respect from original versions, including notes; and
- c. both documents in the possession, custody, or control of Applicants and documents in the possession, custody, or control of consultants or others who have assisted Applicants in connection with the Transaction.

8. "Identify,"

a. when used in relation to an individual, means to state the name, address, and home and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;

b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;

c. when used in relation to a document, means to:

- (1) state the type of document (e.g., letter, memorandum, report, chart);
- (2) identify the author, each addressee, and each recipient; and
- (3) state the number of pages, title, and date of the document;

d. when used in relation to an oral communication or statement, means to:

- (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
- (2) state the date and place of the communication or statement;
- (3) describe in detail the contents of the communication or statement; and
- (4) identify all documents that refer to, relate to or evidence the communication or statement;

e. when used in any other context means to describe or explain.

9. "IP" means International Paper Company.

10. "Including" means including without limitation.

11. "Person" means an individual, company, partnership, or other entity of any kind.

12. "Proposed merger" means the transaction described in the Agreement and Plan of Merger, including

a. the acquisition of control of SPR by UP Acquisition;

b. the merger of SPR into UPRC; and

c. the resulting common control of UP and SP by UPC or any one of such actions or any combination of such actions, and any related transactions.

13. "Provide" (except where the word is used with respect to providing service or equipment) or "describe" means to supply a complete narrative response.

14. "Rates" include contract rates and tariff rates.

15. "Relating to" a subject means making a statement about, referring to, or discussing the subject including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (e.g., competition between carriers), its absence or potential existence.

16. "Settlement Agreement" means the agreement as supplemented between UP and SP and BN attached to the verified statements of John H. Rebensdorf, which is contained in Volume I of the Application filed in connection with the Proposed Merger.

17. "Shipper" means a user of rail services, including a consignor, a consignee, or a receiver.

18. "STCC" means Standard Transportation Commodity Code.

19. "Studies, analyses, and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.

20. "This proceeding" means Finance Docket No. 32760 and any sub-dockets that may be established.

INSTRUCTIONS

1. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed under oath by the person making them. Objections are to be signed by the representative or counsel making them. A copy of the answers and objections should be served upon the undersigned counsel for IP within fifteen (15) days after the date of service.

2. Applicants should contact the undersigned immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these discovery requests cover the period beginning January 1, 1993, and ending with the date of response.

4. If Applicants have information that would permit a partial answer to any interrogatory, but they would have to conduct a special study to obtain information necessary to provide a more complete response to that interrogatory, and if the burden of conducting such special study would be greater for Applicants than for IP, then:

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

5. If Applicants' reply to any interrogatory includes a reference to the Application filed in this proceeding, such response shall specify the volume(s) and exact page number(s) of the Application where the information is contained.

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

- a. identify the information or document (in the manner provided in Definition 8 *supra*); and
- b. state the basis for the claim that it is privileged or otherwise not discoverable.

7. Where any interrogatory or document request refers to "Applicants" or to any "Applicant," and the response for one applicant would be different from the response for other applicants, give separate responses for each applicant.

8. In responding to any request for data regarding intermodal traffic, indicate separately data for trailers and for containers.

9. If either Applicant knows or later learns that its response to any interrogatory is incorrect, it is under a duty seasonably to correct that response.

10. Pursuant to 49 C.F.R. § 1114.29, Applicants are under a duty seasonably to supplement their responses with respect to any questions directly addressed to the identity and locations of persons having knowledge of discoverable matters.

INTERROGATORIES

1. Identify all officers and managers employed by Applicants with marketing and operational responsibility for IP rail shipments originating in Pine Bluff and Camden, AR.

2. Describe Applicants' operating plan for handling shipments originating in Pine Bluff and Camden AR if the proposed merger is consummated, including but not limited to any changes in the frequency, car supply, performance standards, switching service or rates of Applicants' service. Identify all studies, analyses and reports or other documents, including work papers, relating to that plan. Also identify all persons participating in the creation of that plan.

3. Describe Applicants' operating plan for handling IP traffic to and from Camden and Pine Bluff, AR if the proposed merger is consummated, including but not limited to any changes in the frequency of service, car supply, performance standards, switching service or rates for Applicants' service. Identify all studies, analyses and reports or other documents, including work papers, relating to that plan. Also identify all persons participating in the creation of that operating plan.

4. Describe Applicants' plan for operating traffic in the corridor between Memphis, TN and Houston, TX if the proposed merger is consummated, including but not limited to Applicants' plan to have trains bypass the Little Rock/Pine Bluff terminals as set forth in the statement of Witness Peterson. Identify all studies, analyses and reports or other documents, including work papers, relating to that plan.

5. Describe Applicants' operating plan for shipments to and from Gurdon, AR if the proposed merger is consummated, including but not limited to any changes in the frequency of service, car supply, switching service or rates for Applicants' service to and from that point, as well as changes in traffic that would

be necessitated by the planned abandonment of the line between Camden and Gurdon, AR. Identify all studies, analyses and reports or other documents, including work papers, relating to that plan.

6. Identify all BN employees with whom employees of Applicants have communicated concerning the trackage rights between Houston, TX and Memphis, TN granted to BN under the Settlement Agreement. Identify all documents relating to any such communications.

7. With respect to the Applicants' Exemption Petition in Docket No. AB-3 (Sub No. 129x) to abandon the line between Gurdon and Camden AR if the proposed merger is consummated, state, for 1993, 1994 and 1995 year to date, the total number of shipments and tonnage, the costs associated with handling such traffic, and the estimate of the number of shipments and tonnage that would be handled annually if the trackage were not abandoned.

8. Describe how the Settlement Agreement leaves IP with competitive rail service at Pine Bluff and Camden, AR.

9. State whether the reciprocal shipping arrangements currently in place in Carrollton, TX and Pinesville, LA will be maintained if the proposed merger is consummated. If not, explain any planned changes to those arrangements, and identify all studies, analyses and reports or other documents, including work papers, relating to said changes.

10. Describe how Applicants determined the fees it proposes to charge BN for trackage rights under the Settlement Agreement. Identify all studies, analyses and reports or other documents, including work papers, relating to that determination, and all persons participating in that determination.

11. State the average number of daily train movements in each direction (a) during 1994, (b) during the first six months of 1995 and (c) projected for the first and second full years of operation after consummation of the proposed merger for each of the following railroad line segments:

(a) Pine Bluff, AR - Memphis, TN

(b) Pine Bluff, AR - Shreveport, LA

- (c) Shreveport, LA - Houston, TX
- (d) Pine Bluff, AR - Little Rock, AR

Identify all documents consulted with in responding to this interrogatory.

12. State (separately for UP and SP) the amount of traffic originating in Pine Bluff and Camden AR Applicants expect to be diverted to BN as a result of the trackage rights granted BN under the Settlement Agreement. Identify all studies, analyses and reports or other documents, including work papers, relating to that predicted lost traffic. Also, identify all persons who participated in that determination.

13. Describe the operational control BN will have in determining the movement of traffic over the lines in the Houston-Memphis corridor for which BN has been granted trackage rights under the Settlement Agreement. Identify all studies, analyses and reports or other documents, including work papers, relating to that operational control. Also, identify all persons primarily responsible for the preparation of the documents identified in response to this interrogatory.

14. Describe the facilities and equipment Applicants plan to make available to BN to enable it to operate over the lines in the Houston-Memphis corridor for which BN has been granted trackage rights under the Settlement Agreement.

15. State, for all line segments over which Applicants are granting BN trackage rights under the Settlement Agreement: (a) annual density; (b) track capacity; (c) net investment by ICC account; (d) annual depreciation by ICC account; and (e) annual operating costs. Identify all documents consulted with in responding to this interrogatory.

16. State for all line segments over which Applicants have been granted trackage rights by BN under the Settlement Agreement: (a) annual density; (b) track capacity; (c) net investment by ICC account; (d) annual depreciation by ICC account; and (e) annual operating costs. Identify all documents consulted with in responding to this interrogatory.

17. With respect to Applicants' traffic study developed in connection with the proposed merger, describe any modification that have been made to that study to reflect (a) UP's acquisition of the CNW; and (b) Burlington Northern's merger with the Atchison, Topeka & Santa Fe Railway Company.

18. State whether Applicants maintain documents relating to the reliability of their respective performance, as that term is used by, *inter alia*, Witness Peterson at page 62 of Volume 2 of the Application (UP/SP-23). If so, describe how such information is developed, who are the responsible persons for recording that information, whether such information is developed on a shipper specific basis and identify all such documents.

19. Identify all paper company facilities served in California, Oregon and Washington that ship linerboard (STCC 26 311 17) via rail and state which rail carrier serves each facility. For each such company, state:

(a) Whether service is provided by other than direct access (e.g., via reciprocal switching, voluntary coordination agreement, etc.) and, if so, describe such arrangements including whether any switching charges are absorbed; and

(b) Whether any such facilities will have competitive rail service if the merger is consummated and, if so, describe the nature of the competitive service that would be provided.

20. State the number of "paper grade" boxcars in the Applicants' respective carfleets, by size and type, that are available to service shipments tendered by paper companies in 1995.

21. State the number of "paper grade" boxcars Applicants intend to acquire if the proposed merger is consummated.

22. Describe any alternatives contemplated by Applicants in lieu of the Settlement Agreement, and identify all studies, analyses and reports or other documents, including work papers, relating to such alternatives.

DOCUMENT REQUESTS

1. All documents identified in response to Interrogatory No. 2.

2. All documents identified in response to Interrogatory No. 3.
3. All documents identified in response to Interrogatory No. 4.
4. All documents identified in response to Interrogatory No. 5.
5. All documents identified in response to Interrogatory No. 6.
6. All documents identified in response to Interrogatory No. 9.
7. All documents identified in response to Interrogatory No. 10.
8. All documents identified in response to Interrogatory No. 11.
9. All documents identified in response to Interrogatory No. 12.
10. All documents identified in response to Interrogatory No. 13.
11. All documents identified in response to Interrogatory No. 15.
12. All documents identified in response to Interrogatory No. 16.
13. All documents identified in response to Interrogatory No. 18 for the period of January 1, 1993 through the most current period for which such information is available.

14. All documents identified in response to Interrogatory No. 22.

15. The transcript of any testimony given by the following persons before the ICC, or any other verified statement submitted by any of the following persons in an ICC proceeding in which they have discussed the issues of competition, relevant markets or market definitions, as well as testimony related to the economic analysis of mergers in the railroad industry, or the subject of trackage rights or other conditions imposed on a rail merger:

- (a) Witness Spero
- (b) Witness Willig
- (c) Witness Sharp
- (d) Witness Peterson
- (e) Witness Barber

Also, produce any articles, books or other writings authored in part or in whole by any of the above persons related to the above-stated issues.

16. All traffic studies performed by UP and SP relating to the proposed merger.
17. All documents used or referred to in formulating the Applicants operating plan.
18. In connection with SP's sale of certain lines in Oregon to the Central Oregon & Pacific Railroad, Inc. ("COPR"), as described in the Exemption proceeding submitted to the Interstate Commerce Commission in F.D. 32567 and F.D. 32568, provide all documents relating to:

- (a) restrictions on the ability of the COPR to interchange with the Burlington Northern at Eugene, Portland or Chemult, Oregon;
- (b) the provision of empty cars for all shippers on the lines sold to COPR;
- (c) arrangements between COPR and SP for the handling of traffic into and out of IP's mill at Gardiner, Oregon; and
- (d) divisional arrangements involving the Longview, Portland and Northern Railroad ("LP&N").

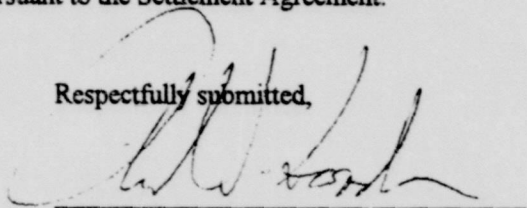
19. All documents relating to potential movements of outbound product from IP's mill at Gardiner, Oregon moving to points served by BN, including but not limited to:

- (a) requests by IP or BN for joint or proportional rate movements;
- (b) responses by SP to such requests;
- (c) refusals by SP to offer proportional or joint rate arrangements to points other than in the states of Washington, Idaho, North Dakota, South Dakota, Montana, Wyoming or Oregon or to points in Canada other than in British Columbia;
- (d) car supply for traffic destined to BN points;
- (e) differences in proportional rates to Portland between traffic destined to BN served points and points that are served by UP or its subsidiaries or affiliates.

20. All documents relating to SP's absorption or non-absorption of switching charges at Portland, Oregon on IP traffic.

21. All documents relating to SP's refusal to provide cars to IP at Gardiner, Oregon on STCC 26 commodities.
22. All documents referring or relating to complaints from paper company shippers concerning the quantity or quality of "paper grade" boxcars Applicants used during the period of January 1, 1993 to the present.
23. All studies, analyses and reports relating to the transit times and utilization of cars used to provide rail service to International Paper from January 1, 1993 to present.
24. All studies, analyses and reports or other documents, including work papers, discussing SP's strategic plans, its competitive position and/or financial forecasts, including any such documents supplied to investment analysts.
25. All studies, analyses and reports or other documents, including work papers, discussing the competitive consequences of the proposed merger.
26. All studies, analyses and reports or other documents, including work papers, relating to service problems experienced by UP following its acquisition of CNW.
27. All studies, analyses and reports or other documents, including work papers, discussing BN's ability to compete with Applicants for business from shippers served by lines over which BN has been granted trackage rights or which BN is purchasing pursuant to the Settlement Agreement.

Respectfully submitted,



Edward D. Greenberg
Andrew T. Goodson
GALLAND, KHARASCH, MORSE &
GARFINKLE, P.C.
1054 Thirty- First Street, N.W.
Second Floor
Washington, D.C. 20007
(202) 342-5200

Attorneys for International Paper Company

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MAX-TORQUE, LTD. • 2725 Thomas Street • Melrose Park, IL 60160-2934 • (708) 547-7022 • FAX (708) 547-7444

November 28, 1995

Mr. Vernon Williams
Interstate Commerce Commission
Room 3316
12th and Constitution, N.W.
Washington, D.C. 20423-0001

RE: Finance Docket #32760



Dear Mr. Williams:

Our company has the occasion to use the services of the Texas Mexican Railway. The proposed merger between the Union Pacific and the Southern Pacific will seriously reduce, if not eliminate, the competitive alternatives for rail service available to our company.

Max-Torque depends upon competition to keep prices down and to spur improvements in products and services. The only two carriers connecting with TexMex are the Union Pacific at Laredo and the Southern Pacific at Corpus Christi. For many years these two railroads have competed for shipments to and from the TexMex, which resulted in substantial cost savings and service improvements. A merger of these two railroads will eliminate that competition. Although these railroads have recently agreed to give certain trackage rights to the new Burlington Northern Santa Fe Railroad, we do not believe the BNSF, as the only major rail system remaining in the Western United States, will be an effective competitive replacement for an independent Southern Pacific on this important route. We anticipate significant price increases and service deterioration for that portion of rail service needs beyond TexMax.

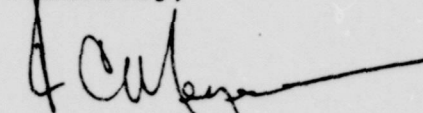
The ~~TexMex~~ has historically relied on international traffic intertained with the SP for much of its traffic base. Since a UP/SP merger will eliminate most of this traffic, this lost volume will likely reduce train frequency on the TexMex and slow service. There is also a question of whether the TexMex will be able to survive this loss of business.

These price increases and service reductions will seriously reduce the ability of many companies to compete both domestically and internationally.

The alternative that will preserve competition is to grant trackage rights or allow the TexMex to purchase trackage from Corpus Christi to Houston, and connect with the Kansas City Southern and other railroads in Houston. In such a way, competition could be maintained through Laredo. We urge the Commission to correct this loss of competition and service by conditioning the merger with a grant of trackage rights to the TexMex allowing service to Houston.

Preserving competition and service is an important function of the Interstate Commerce Commission. In this instance it is possible to do so while furthering the national goal of promoting international trade.

Sincerely,

A handwritten signature in dark ink, appearing to read 'F. C. Meyers', with a long horizontal flourish extending to the right.

Frederick C. Meyers
President

FCM/ff

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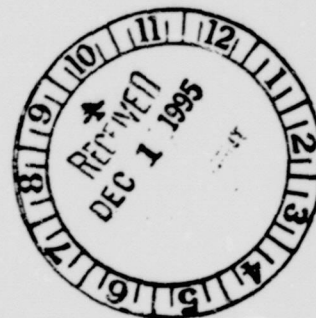
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THE CHAMBER OF COMMERCE
of St. Joseph County
Working for You...Meeting Member Needs

November 27, 1995



The Honorable Vernon A. Williams
Secretary, Interstate Commerce Commission
12th Street and Constitution Avenue
Washington, D.C. 20423

Encl. 1
Office of the Secretary

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Re: Finance Docket 32760

3 Part of

Dear Secretary Williams:

The Chamber of Commerce of St. Joseph County and Project Future have carefully evaluated the proposed Union Pacific/Southern Pacific merger and its effects on this community and the State of Indiana. While there may be benefits to the consolidation between these two railroads, it is important from an economic development standpoint that other options and proposals be weighed and considered before any merger approval is given by the Interstate Commerce Commission (ICC). Furthermore, the Chamber of Commerce of St. Joseph County and Project Future are not persuaded that the proposed agreement between Union Pacific and Burlington Northern/Santa Fe will satisfy our concerns over competition.

Conrail has approached the Chamber of Commerce of St. Joseph County and Project Future with its proposal for acquiring some of the Southern Pacific Eastern lines from Chicago and St. Louis ~~to take over the lines and the opportunities for economic growth for those Midwest cities and states~~ eager to encourage economic growth through the North American Free Trade Agreement (NAFTA).

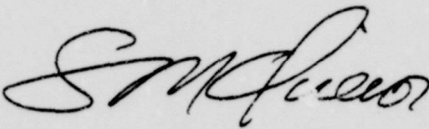
Conrail has been and continues to be, a good corporate resident of South Bend, and its level of service has greatly benefited the manufacturers and shippers in our community. This proposed acquisition by Conrail will only enhance the current service being provided. Economic expansion opportunities will be available to the businesses and industries in our community. In addition, with direct shipments of Midwest-made products to new markets in Mexico, the mid-South and Gulf Coast regions, areas currently not easily accessed by Midwest shippers, will be opened.

For these reasons, the Chamber of Commerce of St. Joseph County and Project Future strongly support Conrail's purchase of the Southern Pacific Eastern lines. Without the Conrail proposal

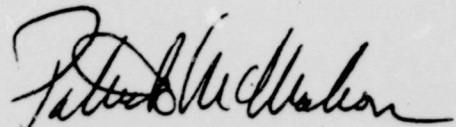
The Honorable Vernon A. Williams
November 27, 1995
Page Two

being a part of the ICC's approval, the Union Pacific/Southern Pacific merger should not be consummated. Conrail's ownership of the Southern Pacific Eastern lines is good business sense and brings more corporate responsibility than the lease arrangement as proposed by Burlington Northern/Santa Fe. Thank you for the opportunity to comment on this proposal.

Sincerely,



Stephen M. Queior, CCE
President
The Chamber of Commerce of St. Joseph County



Patrick M. McMahon
Executive Director
Project Future

cc: Mr. David M. LeVan
President & CEO
Consolidated Rail Corporation
2001 Market Street - 17th Floor
Philadelphia, PA 19101-1409

Ms. Maria F. Ward
Manager, Community Relations
Consolidated Rail Corporation
17301 Michigan Avenue, Suite 230
Dearborn, MI 48126

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SECRETARIA DE COMUNICACIONES

Y
TRANSPORTES

SUBSECRETARIA DE TRANSPORTE

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México, D.F., a 5 de octubre de 1995



HONORABLE VERNON A. WILLIAMS

Secretary
Interstate Commerce Commission
Room 2215
12th Street & Constitution Avenue, NW
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 Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company.

Dear Secretary Williams:

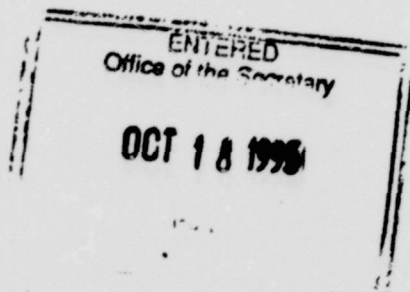
Please place The Ministry of Communications and Transportation of Mexico ("SCT") on the list of all parties of record prepared and issued under the provisions of 49 C.F.R. § 1180.4 (a) (4). Presently, SCT intends to participate in this proceeding as an active party. In accordance with 49 C.F.R. § 1180.4 (a) (2), SCT selects the acronym "SCT" for identifying all documents and pleadings it submits. SCT has designated Mr. Jorge Silberstein as its representative, and all communications on Finance Docket No. 32760 should be addressed as follows:

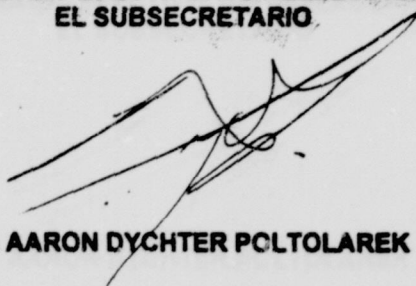
Mr. Jorge Silberstein
c/o Min. Salvador de Lara
Minister for Economic Affairs
Embassy of Mexico
Pennsylvania Ave. N.W.
20006 Washington, D.C.

Copies of this letter are being served on all parties presently on the Commission's service list, including the applicants' representatives.

Respectfully submitted.

SUFRAGIO EFECTIVO. NO REELECCION
EL SUBSECRETARIO




DR. AARON DYCHTER POLTOLAREK

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FLETCHER CHALLENGE CANADA



October 3, 1995

Office of the Secretary

OCT 11 1995

Vernon A. Williams, Secretary
Case Control Branch
Attention: Finance Docket 32760
Interstate Commerce Commission
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

☐ Paid
☐ Pending

Dear Mr. Williams:

Re: Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- control and Merger -- Southern Pacific Corporation, Southern Pacific Transportation company, et al.

Fletcher Challenge Canada Limited is an international forest products company with headquarters in Vancouver, British Columbia, Canada serving world markets from its B.C. operations. A key market for Fletcher Challenge is the U.S.A. with extensive concentration in California. Fletcher Challenge Canada Limited will ship in excess of 600,000 tonnes per annum of paper products to the U.S. of which approximately 70% of this tonnage is destined to destinations neighboring the I-5 corridor. As previously stated, our predominant market in the United States is the state of California.

The aforementioned merger, if approved, will have a significant impact on our distribution patterns, customer delivery schedules and overall competitiveness in this market which is critical to our business. Under the current merger proposal Fletcher Challenge Canada is strongly opposed to the merger because of the loss of competitive routes that will be created by the merger.

However, while Fletcher Challenge Canada is opposed to the merger under the current terms and conditions outlined in docket no. 32760 we would be prepared to support the merger under the following conditions:

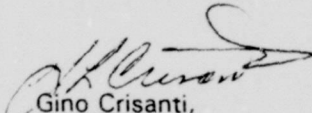
1. Union Pacific be awarded running rights between Seattle, WA and Vancouver, BC.
2. Burlington Northern /Santa Fe Railroad be given running rights between Bieber, CA and Stockton, CA.

The above two amendments would ensure competitive routes between the last remaining major railroads in the west and in particular the I-5 corridor. This competition is required to ensure adequate service levels at competitive pricing.

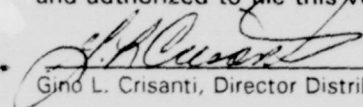
If the above amendments are granted the combined UP/SP connection competing against the Burlington Northern Santa Fe will benefit rail customers through shorter routes, faster schedules, extensive new single line routes, and overall cost efficiencies.

If further information is required please do not hesitate to contact the undersigned at (604) 654-4909.

Yours truly,
Fletcher Challenge Canada Limited


Gino Crisanti,
Director, Distribution

I Gino L. Crisanti, Director Distribution, Fletcher Challenge Canada Limited, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.



Gino L. Crisanti, Director Distribution

Executed on October 3, 1995

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TROUTMAN SANDERS
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

601 PENNSYLVANIA AVENUE, N.W.
SUITE 640
NORTH BUILDING
WASHINGTON, D.C. 20004
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

WILLIAM A. MULLINS

Off:

OCT 11 1995



Per:
Per:

DIRECT: 202-274-2953

October 10, 1995

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 1324
Washington, D.C. 20423



RE: *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*

Dear Secretary Williams:

Enclosed herewith are one original and twenty-one copies of the following two filings:

1. Petition of The Kansas City Southern Railway Company for Leave to File Additional Comments on Proposed Procedural Schedule, designated KCS-4; and
2. Additional Comments of The Kansas City Southern Railway Company on Proposed Procedural Schedule, designated KCS-5.

Please date and time stamp one of the copies of each filing and return them to the courier for return to our offices. Pursuant to the Commission's Decision No. 1, n. 7, also enclosed is a computer diskette formatted in WordPerfect 5.1 containing the filings.

No filing fee is required for these filings. See 49 C.F.R. Part 1002.2(f). Copies have been served on all known parties of record.

Very truly yours,

William A. Mullins

Enclosures

cc: Parties of Record

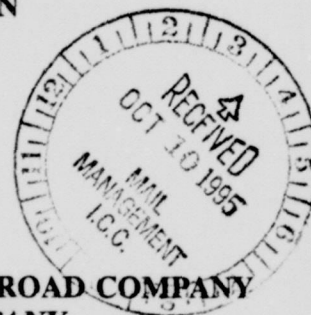
Item No. _____

Page Count 8

OCT # 45 KCS5

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

ADDITIONAL COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY
COMPANY ON PROPOSED PROCEDURAL SCHEDULE

Richard P. Bruening
W. James Wochner
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 556-0392
Fax: (816) 556-0227

John R. Molm
Alan E. Lubel
William A. Mullins
Troutman Sanders
601 Pennsylvania Ave. N.W.
Suite 640 - North Building
Washington, D.C. 20004-2608
Tel: (202) 274-2950
Fax: (202) 274-2994

October 10, 1995

Attorneys for The Kansas City
Southern Railway Company

KCS-5

**BEFORE THE
INTERSTATE COMMERCE COMMISSION**

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**

**ADDITIONAL COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY
COMPANY ON PROPOSED PROCEDURAL SCHEDULE**

The Kansas City Southern Railway Company ("KCS") hereby files these Additional Comments on the proposed procedural schedule in order to address the effect of the settlement agreement between the Applicants and Burlington Northern/Santa Fe.

By decision served September 1, 1995, ("Decision No. 1") the Commission requested comments on Applicant's proposed procedural schedule ("UP/SP-4") and certain modifications suggested by the Commission. On September 18, 1995, KCS filed Comments on the proposed procedural schedule ("KCS-3") urging the Commission to establish a schedule allowing for the full statutory time period so that all the parties will have a sufficient amount of time to fully develop a record adequately reflecting the complexity and scope of the competitive issues raised by a merger of this magnitude. KCS also requested that the Administrative Law Judge be given the flexibility to adjust the procedural schedule, including the ability to shorten the schedule.

Office of the Secretary

OCT 11 1995

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On September 26, the Applicants announced a settlement agreement with the Burlington Northern/Santa Fe ("BNSF") whereby BNSF would receive trackage rights to more than three thousand eight hundred (3,800) miles of the UP/SP system and would purchase about three hundred and thirty-five (335) miles of UP/SP track. In their September 28 reply the Applicants argue that the settlement agreement with BNSF reduces the complexity of the issues in this proceeding, thus eliminating any need to extend the time available for discovery and preparation of evidence.

On October 2, 1995 the Department of Justice ("DOJ") filed a Petition for Leave to File Additional Comments and Additional Comments stating that the proposed remedy agreement does not change the nature or complexity of the issues in this proceeding in any manner that would justify the inadequate time period allowed under the proposed schedule. DOJ-3 at 2. On October 4th the Applicants filed a reply to DOJ's Additional Comments maintaining their argument that the settlement agreement ensures vigorous competition and that the settlement has occurred early enough in the process to give all parties sufficient time for discovery and preparation.

KCS submits, in agreement with DOJ's Additional Comments, that the BNSF settlement agreement does not in any way significantly alter the nature or complexity of the competitive issues that must be evaluated in connection with the proposed transaction. The Applicants' proposed procedural schedule remains inadequate to provide for the development of a meaningful record of the nature and extent of the competition lost in two-to-one

markets; the nature and extent of the competition lost in three to two markets; and, the nature and extent of the remedy required to maintain competition in all markets.

First, the evaluation of the competitive harm to shippers in two to one markets will require the same degree of complex analysis, regardless of the settlement agreement, because the participants must be in a position to fully evaluate all competitive issues created by the proposed transaction in order to adequately determine whether the proposed settlement agreement is appropriate or a sufficient remedy. Thus, sufficient time is needed to fully develop a record regarding all competitive issues in two to one markets and to evaluate the adequacy of any proposed remedies.

Second, the existence of the settlement agreement does not reduce the time necessary to establish an adequate record regarding the competitive harm created in three to two markets because the agreement does not and is not capable of providing relief in these markets. As KCS noted in its earlier comments, three-to-two markets affected by the proposed merger account for approximately \$4 billion in annual revenues, and DOJ has noted that there is sufficient evidence that three to two reductions result in an increase in prices. DOJ-3 at 3. The enormous impact that the proposed transaction will have on three-to-two markets alone justifies a period of time greater than that proposed by the Applicant's or The Commission.

Finally, in their reply on October 4th, the Applicants maintain that the settlement agreement ensures a proper remedy to the competitive issues raised by the merger; however, such a conclusion is not apparent or evident. Applicants now want the Commission to adopt

the expedited schedule on the basis of the settlement agreement. Yet, few have actually seen the settlement agreement, yet alone, extensively analyzed the agreement to determine if it truly does fix the competitive problems in the two to one markets. Such an extensive analysis can only be done with time.


Until such an extensive analysis can be performed, the Commission cannot, and should not, use the settlement agreement as a rationale for adopting a shorter procedural schedule. As KCS has previously stated, the Commission should take the full statutory time necessary to analyze this proceeding and any decision to shorten that schedule should only be reached following the development of a record that fully evinces the broad scope and complex nature of the competitive harms created by the proposed transaction.

CONCLUSION

For the foregoing reasons discussed above and in our comments of September 18 (KCS-3), KCS requests that the Commission not adopt the proposed schedule and instead allow for the full statutory time period for parties to take discovery and develop testimony in

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "ADDITIONAL COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY ON PROPOSED PROCEDURAL SCHEDULE" was served this 10th day of October, 1995, by hand-delivery, facsimile, overnight delivery, or first-class mail, postage prepaid, on counsel for all known parties of record.



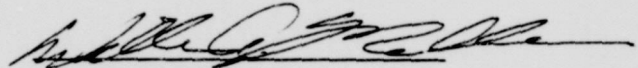
William A. Mullins

Attorney for The Kansas City
Southern Railway Company

order to establish a complete record. Such time periods contained within the statute and current regulations should then only be modified by the ALJ as it appears necessary.

Respectfully submitted,

Richard P. Bruening
W. James Wochner
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, MO 64105
Tel: (816) 556-0392
Fax: (816) 556-0227



John R. Molm
Alan E. Lubel
William A. Mullins
Troutman Sanders
601 Pennsylvania Ave. N.W.
Suite 640 - North Building
Washington, D.C. 20004-2608
Tel: (202) 274-2950
Fax: (202) 274-2994

Attorneys for The Kansas City Southern
Railway Company

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DISTRICT OFFICE:

10544 W. CERMAK ROAD
WESTCHESTER, ILLINOIS 60154
708/531-0390
AX: 708/531-0467

ITOL OFFICE:

ROOM 611A STATE CAPITOL
SPRINGFIELD, ILLINOIS 62706
217/782-2015
FAX: 217/782-0116

Item No. _____

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Oct # 41



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VICE-CHAIRMAN:
FINANCIAL INSTITUTIONS

MEMBER:
APPROPRIATIONS
LOCAL GOVERNMENT
AND ELECTIONS

ILLINOIS STATE SENATE
THOMAS J. WALSH
STATE SENATOR - 22ND DISTRICT

September 26



Ms. Linda Morgan, Chairperson
Interstate Commerce Commission
12th Street & Constitution Avenue, NW
Washington, D.C. 20423

Re: Finance Docket 32760
Union Pacific/Southern Pacific

Dear Chairperson Morgan:

It has come to my attention that Union Pacific and Southern Pacific plan to merge.

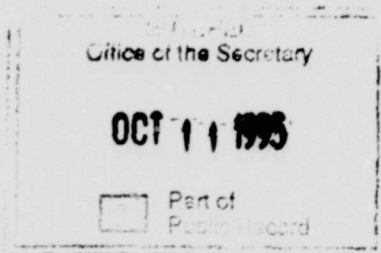
I fully support this merger, and feel that this move will enhance service and give the consumer a long term, financially sound railroad.

If you have any questions, please feel free to contact me at 708-531-0390.

Sincerely,

Thomas J. Walsh

Thomas J. Walsh
State Senator
22nd District



cc: Vernon A. Williams, Secretary ICC
David Fischer, Union Pacific Railroad

COMMUNITIES SERVED: BERKELEY, BERWYN, BROADVIEW, BROOKFIELD, CICERO, DOWNERS GROVE, ELMHURST, FOREST PARK, HILLSDALE, HINSDALE, LA GRANGE PARK, LOMBARD, LYONS, NORTH RIVERSIDE, OAK BROOK, OAK BROOK TERRACE, OAK PARK, RIVERSIDE, WESTCHESTER, AND WESTMONT

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COMMITTEES

ICE CHAIRMAN
OF
ALTH & HUMAN
SERVICESBUDGET &
FISCAL REVIEWBUDGET & FISCAL
REVIEW SUBCOMMITTEE
NO 3

EDUCATION

GOVERNMENTAL
ORGANIZATIONGOVERNMENTAL
ORGANIZATION
SUBCOMMITTEE ON CEQASELECT COMMITTEE ON
CALIFORNIA
BUSINESS CLIMATESELECT COMMITTEE ON
DEFENSE BASE
CLOSURESTATE CHAIRMAN
AMERICAN LEGISLATIVE
EXCHANGE COUNCILSTATE CHAIR OF
REGULATORY RELIEF
CAUCUSSTATE CO-CHAIR
CALIFORNIA CONFERENCE
OF THE FAMILY

SACRAMENTO OFFICE

STATE CAPITOL
ROOM 4082
SACRAMENTO, CA 95814
(916) 445-9781
FAX (916) 447-9008

DISTRICT OFFICES

140 INDIANA AVENUE
SUITE 275
RIVERSIDE, CA 92506
(909) 782-4111
FAX (909) 276-448327349 JEFFERSON AVENUE
SUITE 201
TEMECULA, CA 92590
(909) 693-0266
FAX (909) 693-0466

California State Senate

SENATOR
RAYMOND N. HAYNES
THIRTY-SIXTH SENATORIAL DISTRICT

September 28, 1995

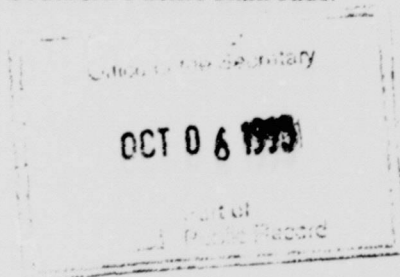
THE HONORABLE VERNON A. WILLIAMS
SECRETARY, INTERSTATE COMMERCE COMMISSION
TWELFTH STREET AND CONSTITUTION AVE., N.W.
ROOM 2215
WASHINGTON, D.C. 20423RE: Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control & Merger --
Southern Pacific Rail Corp., et al.

Dear Mr. Williams:

In support of the above referenced project I would like to make the following points:

- 1) the UP/SP merger will provide many service improvements for California shippers;
- 2) the merger will strengthen competition in all markets;
- 3) with the Santa Fe/BN merger, Southern Pacific will not be able to survive alone;
- 4) the UP/SP merger will provide Southern Pacific shippers an assurance of quality service from a financially strong railroad.

For these reasons and many others, I urge you to approve the merger of the Union Pacific and Southern Pacific Railroads.



Very truly yours,

Raymond N. Haynes
RAYMOND N. HAYNES

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COMMITTEES

BANKING & FINANCE, Chairman
HEALTH
LABOR & EMPLOYMENT
UTILITIES & COMMERCE

Page Count 1

Oct. # 26

**Asse.
California Legislature**

TED WEGGELAND

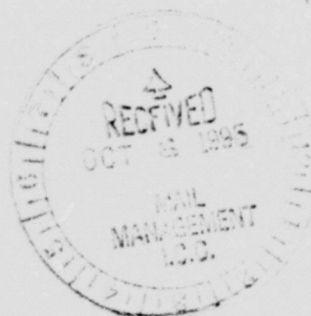
ASSEMBLYMAN, SIXTY-FOURTH DISTRICT

SACRAMENTO OFFICE:
STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-0854

DISTRICT OFFICE:
6840 INDIANA AVENUE
SUITE 150
RIVERSIDE, CA 92506
(909) 369-6644

September 29, 1995

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



Re: Finance Docket Number 32760, Union Pacific Corporation, et al. -- Control & Merger -- Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

I write to urge your favorable consideration of the proposed merger between Union Pacific and Southern Pacific rail corporations. The proposed merger will lead to a number of improvements that will better serve consumers and improve the competitiveness of the merging companies.

In addition to many shipping services that will become available from the combined companies, it is anticipated that a new Inland Empire facility will be built to service shippers in southern California. Such an expansion will directly benefit my constituents through improved shipping services, through improved air quality, and through increased employment opportunities.

Further, the proposed merger will strengthen free market conditions. Following the merger of a rival rail system, a merger between Union Pacific and Southern Pacific will promote strong rail shipping competition in many regions that currently do not receive the benefits of vigorous competition.

For these reasons, I urge your favorable consideration of this proposed merger. California consumers and businesses will gain from the improved services a merged Union Pacific-Southern Pacific rail carrier will be able to provide.

Sincerely,

TED WEGGELAND

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Eaton Metal Products Company

ENGINEERS DESIGNERS FABRICATORS

TRUCK UTILITY EQUIPMENT

(303) 296-4800

FAX (303) 296-5736

October 3, 1995

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
1201 Constitution Avenue, N.W.
Washington, D.C. 20423



Reference: Union Pacific - Southern Pacific Merger
Finance Docket No. 32760

Dear Mr. Williams:

My name is Timothy J. Travis. I am President and Chief Executive Officer of Eaton Metal Products Company, headquartered in Denver, Colorado. I have been with Eaton Metal Products for thirty-two years working in various areas of the company. In my present position I direct and manage all aspects of the company's operations.

Eaton Metal Products provides design engineering, steel fabrication, and steel erection services. Also, the company is a dealer/provider of petroleum and chemical handling equipment. Our corporate and engineering office is located in Denver, Colorado. We have manufacturing plants in Denver and Salt Lake City, Utah and Pocatello, Idaho. We have Branch and Sales Offices in Casper, Wyoming; Colorado Springs, Colorado; Grand Junction, Colorado; Albuquerque, New Mexico; Rapid City, South Dakota; Salt Lake City, Utah; and Denver. All of our plants are on the UP. However, the plants in Denver and Salt Lake City are open to reciprocal switching. In 1994, our plants in Denver, Salt Lake City and Pocatello received in excess of 100 carloads of steel. Our Pocatello facility shipped approximately 200 carloads of vessels, tanks and fabricated steel products.

We wholeheartedly support the proposed merger of the Union Pacific and Southern Pacific rail systems. Our company will benefit from expanded single line service for our traffic. Single line service over more efficient routes will produce general increased efficiency, better services and reduced transit time, all of which accrues to the benefit of shippers. The ability to ship single line from our plant in Pocatello on the UP to SP served customers in California and Texas and our enhanced ability to anticipate and control inventory is of great benefit.

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Oct # 25

Mr. Vernon A. Williams
October 3, 1995
Page 2

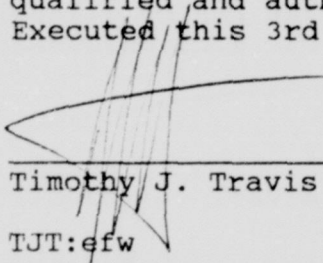
We believe that the increased strength and efficiency of the merged system will improve our ability to manage our traffic and will accrue to the benefit of our company and our customers.

In addition, much of the iron and steel plate we receive at Denver and Salt Lake City comes from steel mills in the Chicago area. Many of the shipments are high-wide loads. We have experienced regular, excessive delays due to the coordination on clearances necessary between UP and SP. We believe that with common, efficient management these delays can and will be reduced, if not eliminated.

We have been concerned about the continued viability of SP in light of the anticipated dominance of the newly merged BNSF. Combining the financial strength and service reliability of UP with the route structure and market reach of SP will produce a strong rail competitor that can go head to head with BNSF. Likewise, the proposed settlement between UPSP and BNSF will enhance the competitive environment in our region and preserve two railroad competition in the Salt Lake City area. We have been concerned about the potential loss of rail competition at our Salt Lake City facility. Not only does the settlement meet our concerns, it exceeds our expectations. The availability of two strong and efficient, single line rail carriers throughout the region can only benefit the shipping public. We support the settlement and believe that two strong competitors are preferable to the situation where smaller, weaker carriers are created or introduced to address perceived problems.

We urge the ICC to grant quick approval to this proposed merger and approve the UPSP-BNSF settlement.

I, Timothy J. Travis, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.
Executed this 3rd day of October, 1995.



Timothy J. Travis

TJT:efw

cc: Don Havlik

STB

FD

• 32760

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• 60154

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-8364

GRANT GILLHAM
Legislative Assistant

Assembly
California Legislature



JAMES E. ROGAN
ASSEMBLYMAN, FORTY-THIRD DISTRICT

60154

DISTRICT OFFICE
300 W. GLENOAKS BLVD.
SUITE 202
GLENDALE, CA 91202
(818) 240-6330
NATALIE BLANNING
Administrative Assistant

September 28, 1995

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



Dear Secretary Williams:

This is to support the merger of the Union Pacific Railroad Company and the Southern Pacific Railroad Corporation. (Reference: Finance Docket No. 32760, Union Pacific Corporation, et al -- Control & Merger -- Southern Pacific Rail Corp., et al.)

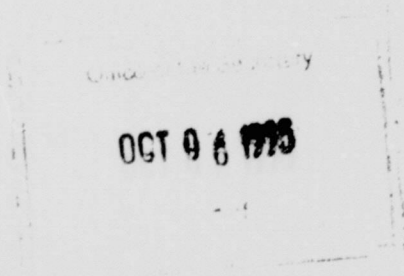
I believe that this merger will provide more effective competition in this market and contribute to the economic growth of the state of California. Both companies will be able to operate more efficiently, to the benefit of all shippers. In addition, the merger will provide new shipping opportunities up and down the west coast, removing some truck traffic from the busy Interstate 5.

Upon review, I feel this merger is in the best interest of California commerce and I am pleased to offer it my support.

Sincerely,

JAMES E. ROGAN
Assemblyman

JER:jpl



Item No. _____

Page Count 1

Oct # 24

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• 60153

MENTO OFFICE
JIM LUCCHESI NEWBILL
LEGISLATIVE & FISCAL DIRECTOR

STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-5581
FAX (916) 327-2187

COMMITTEES
APPROPRIATIONS
TRANSPORTATION
BUSINESS & PROFESSIONS
AGRICULTURE & WATER RESOURCES
BANKING, COMMERCE & INTL TRADE

SENATOR
DAVID G. KELLEY

37TH DISTRICT
CALIFORNIA LEGISLATURE
IMPERIAL, RIVERSIDE & SAN DIEGO COUNTIES



60153

DISTRICT OFFICES
DOROTHY MOELTER
DISTRICT COORDINATOR

11440 W. BERNARDO CT., #104
SAN DIEGO, CA 92127
(619) 675-8211
(619) 675-8262 FAX

73-710 FRED WARING DRIVE, #108
PALM DESERT, CA 92260
(619) 346-2099
(619) 346-0341 FAX
(800) 824-5200

September 27, 1995



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

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

Dear Secretary Williams:

I wish to convey my support of the proposed merger of the Union Pacific and the Southern Pacific Railroads.

The UP/SP merger will dramatically improve service and strengthen competition. The merged system will meet the competitive challenge of BN/Santa Fe. UP/SP will provide the first truck-competitive single-carrier rail service ever between Seattle/Tacoma and both southern and northern California. The new service will take trucks off busy Interstate 5 and provide new shipping opportunities up and down the West Coast.

UP/SP will be able to challenge Santa Fe's dominance of California-Chicago intermodal traffic for the first time. Vigorous competition in this market is crucial to California's continued economic growth and to the nation's domestic and international competitiveness. The merged system will be able to provide more reliable third-morning service, for the first time rivalling the service of BN/Santa Fe. Also the combined system expects to build a new "Inland Empire" facility in southern California to handle less-than truckload ("LTL") traffic of trucking companies in trailers and containers, and other intermodal business.

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Oct # 23

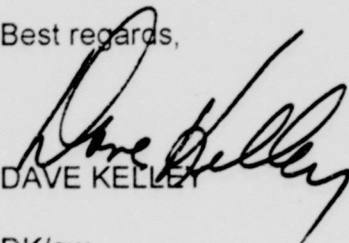
Transcontinental carload shippers, such as California lumber producers, canners and perishables dealers, will see greatly improved service--greater speed, reliability and frequency of schedules--as a result of mileage savings, gradient improvements and operating efficiencies.

Major cost saving, from reduced overheads, facility consolidations and use of the best systems of each railroad, will improve efficiency and justify increased investment to expand capacity and improve service, all to the benefit of shippers.

Competition will be strengthened in all markets. Experience shows that two strong railroads with wide-market reach provide intense competition. The two rail systems will provide stronger competition than three railroads, one of which is struggling. Southern Pacific has by far the most extensive shipper coverage in California, and most of SP's California customers are exclusively served by SP. SP customers have had to cope with service problems and uncertainties as to SP's finances. The UP/SP merger will provide SP shippers the assurance of top-quality service with a financially strong railroad that can afford the capital investments necessary to build new capacity, implement new technology, and continually improve its operations.

I hope the Interstate Commerce Commission (ICC) will approve this historic merger which is so crucial to my constituents and the economy of our state.

Best regards,



DAVE KELLEY

DK/gw

cc: Wayne Horiuchi
UPRR, Special Representative

Sande George
SP, Legislative Advocate

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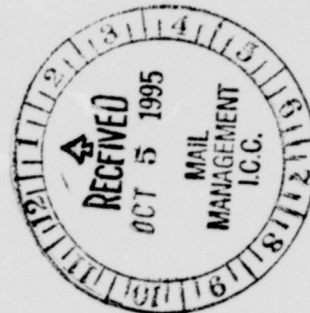
Curt Pringle

ASSEMBLYMAN, SIXTY-EIGHTH DISTRICT

ASSEMBLY REPUBLICAN LEADER CALIFORNIA LEGISLATURE, STATE CAPITOL, SACRAMENTO, CA 95814 (916) 445-8377 FAX (916) 323-5467

COMMITTEES:
BUDGET
INSURANCE
JOINT LEGISLATIVE
BUDGET REVIEW

September 25, 1995



The Honorable Vernon A. Williams
Secretary, Interstate Commerce Commission
12th St. and Constitution Ave., Rm. 2215
Washington, D.C. 20423

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

Dear Secretary Williams:

I am writing to urge the Interstate Commerce Commission to approve the proposed merger of Union Pacific Railroad with Southern Pacific Railroad.

California's economy is greatly reliant on rail service to ship its products to external markets. As a result of the recent merger of Burlington Northern with Sante Fe, the rail market in California threatens to become uncompetitive. Two relatively smaller railroads are faced with trying to compete with an expanded carrier which is truly transcontinental in its reach. BN/Sante Fe has already asserted dominance over some important markets which are crucial to California, such as the California-Chicago intermodal traffic. The UP/SP merger then makes both logical and economic sense if any rail line is to realistically compete with the scope of the new BN/Sante Fe.

The benefits that this competition with BN/Sante Fe will offer to California are enormous. The merger would allow UP/SP to be able to break up slower traffic onto separate routes, increasing efficiency and creating new capacity. The combination of SP's Los Angeles terminals with UP's Chicago terminals, and the greater routing possibilities of a merged system would finally allow competition in that California-Chicago market. The consolidation of lines will lead to shorter routes and extensive single-line services. Additionally, the merger opens the possibility for new routes and the opening of new rail markets. For example, UP/SP will provide truck-competitive rail service between Seattle/Tacoma and southern California for the first time

DISTRICT OFFICE
12865 MAIN STREET, SUITE 100
GARDEN GROVE, CA 92640
(714) 638-1393
FAX (714) 638-1496

Item No. _____

Page Count 2

Oct # 22

Williams/ICC Letter

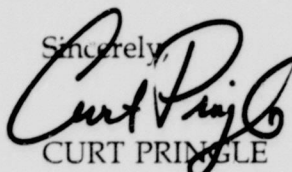
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Page 2

The merger would also produce immediately tangible benefits for California's transcontinental carload shippers. Greater speed of delivery, reliability and frequency of schedules would be possible as a result of mileage savings, gradient improvements and operating efficiencies. The reduction of overhead and savings from facility consolidation, and the use of each railroad's best system will also lead to cost savings for rail shippers, and draw increased investment in the railroads to expand capacity and improve services. Additional efficiencies would also result from improved equipment supply, the ability to reposition cars and take advantage of backhaul and triangulation opportunities -- benefits available only to a truly transcontinental system.

The combination of greater competition and increased operating efficiency promise benefits to California's producers, who utilize the rail systems as shippers, as well as California's economy, which benefits from competitively priced and quicker transactions. Likewise, the merger is good for the nation's rail industry itself, allowing rail companies to compete on an even playing field. For these reasons, I urge the Commission to approve the pending merger request.

Sincerely,

A handwritten signature in black ink, appearing to read "Curt Pringle", written over the printed name.

CURT PRINGLE

Assembly Republican Leader

STB

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D

60150

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(316) 445-6047

DISTRICT OFFICE
17100 PIONEER BLVD., SUITE 290
ARTESIA, CA 90701
(310) 809-0010

FD 32760 60150 RR

Assembly California Legislature

PHIL HAWKINS
ASSEMBLY MEMBER, FIFTY-SIXTH DISTRICT



COMMITTEES:

HOUSING AND COMMUNITY
DEVELOPMENT, Vice Chair
BUDGET
GOVERNMENTAL ORGANIZATION
UTILITIES AND COMMERCE

September 29, 1995

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



Dear Secretary Williams:

I would like to express my support for the Union Pacific/Southern Pacific merger application. I ask the Interstate Commerce Commission to approve the merger as proposed and recognize the numerous local and national benefits that it would create.

One of the key benefits of the merger will be a faster, more reliable rail service between the Ports of Long Beach and Los Angeles as well as the rest of America. Vital imports move through these ports, providing jobs locally and economic benefits throughout the country.

The Union Pacific/Southern Pacific merger will also encourage competitiveness in the railway market. Vigorous competition in this market is vital to continued economic growth at the ports of Long Beach and Los Angeles.

There are many benefits that would come from the merger of the Union Pacific and Southern Pacific railroads and I urge the Interstate Commerce Commission to grant its approval for the transaction.

Sincerely,

A handwritten signature in cursive script, appearing to read "Phil Hawkins".

PHIL HAWKINS
Assemblyman, 56th District

PH:jl

cc: Wayne Horiuchi, UPRR Sacramento

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Item No. 60149
Page Count 10
Oct # 19

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

TELEFAX: (202) 662-6291

TELEX: 89-593 (COVLING WSH)

CABLE: COVLING

MICHAEL L. ROSENTHAL

DIRECT DIAL NUMBER

(202) 662-5448

DIRECT TELEFAX NUMBER

(202) 778-5448

LECONFIELD HOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE: 44-171-495-5655

TELEFAX: 44-171-495-3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1596

October 4, 1995

BY HAND

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



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

Dear Secretary Williams:

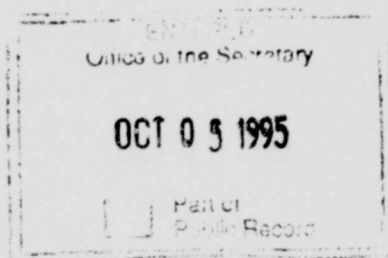
Enclosed for filing in the above-captioned docket
are the original and twenty copies of Applicants' Reply to
IBT's Petition to Reopen (UP/SP-15). Also enclosed is a 3.5-
inch disk containing the text of this pleading in WordPerfect
5.1 format.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael L. Rosenthal".

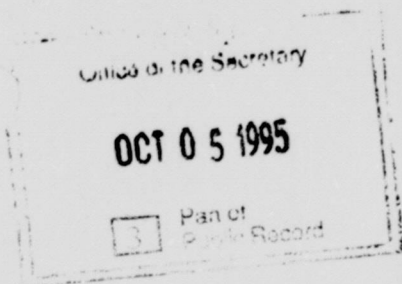
Michael L. Rosenthal



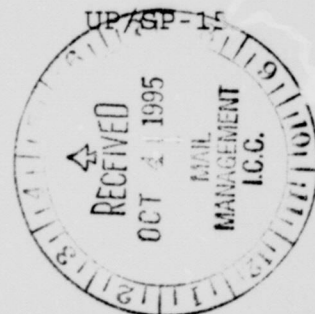
Attorney for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

Enclosures

cc: The Honorable Jerome Nelson (By Hand)



BEFORE THE
INTERSTATE COMMERCE COMMISSION



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' REPLY TO IBT'S PETITION TO REOPEN

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARPIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7601

Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp.,
and The Denver and Rio Grande
Western Railroad Company

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

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

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

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

October 4, 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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' REPLY TO IBT'S PETITION TO REOPEN

Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"),^{1/} Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and The Denver and Rio Grande Western Railroad Company ("DRGW"),^{2/} collectively, "Applicants," hereby reply to the "Petition by the International Brotherhood of Teamsters to Reopen Decision No. 3 with Respect to Waiver of Inclusion of Wholly Owned Motor Carriers as Applicants" and the "Reply of the Railway Labor Executives' Association, Its Affiliated Organizations and the United Transportation Union in Response

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."

to International Brotherhood of Teamsters Petition to Reopen Decision No. 3," which makes arguments similar to those advanced by IBT.

On August 4, 1995, Applicants requested (UP/SP-3, p. 9) waiver or clarification of the definition of "applicant carriers" in 49 C.F.R. § 1180.3(b) to exclude UPC's trucking subsidiary, Overnite Transportation Company ("Overnite"), and SPT's licensed motor carrier subsidiaries, Pacific Motor Transport ("PMT") and Southern Pacific Motor Trucking Company ("SPMT"). The Commission granted the waiver, consistent with its decisions in past cases. See Decision served Sept. 5, 1995, pp. 3-4. See also Finance Docket No. 32549, Burlington Northern, Inc., & Burlington Northern R.R. -- Control & Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry., Decision No. 16, served Apr. 20, 1995, pp. 2-3; Finance Docket No. 32167, Kansas City Southern Industries, Inc., Kansas City Southern Ry. & K&M Newco, Inc. -- Control -- MidSouth Corp., MidSouth Rail Corp., MidLouisiana Rail Corp., SouthRail Corp. & TennRail Corp., Decision served Nov. 6, 1992, p. 15; Finance Docket No. 32133, Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Chicago & North Western Holdings Corp. & Chicago & North Western Transportation Co., Decision served Oct. 26, 1992, pp. 2-3; Finance Docket No. 31700, Canadian Pacific Ltd., et al. -- Purchase & Trackage

Rights -- Delaware & Hudson Ry., Decision served July 3, 1990, p. 2.

IBT's (p. 1) request that the Commission "reopen and reverse" its decision is clearly improper, as is RLEA's pleading in support of IBT. The Commission's rules explicitly provide that replies to petitions for waiver are not permitted. 49 C.F.R. § 1180.4(f)(3). Certainly parties may not circumvent that rule by belatedly asking that the Commission reopen its decision on such a petition.^{2/}

In any event, IBT's request should be denied. A long line of Commission precedent clearly establishes the requirements associated with the acquisition of control of motor carriers as a collateral result of a railroad consolidation transaction. IBT's and RLEA's argument that the exclusion of Overnite, PMT and SPMT from the definition of "applicant carriers" will prevent the Commission from carrying out its statutory duty under 49 U.S.C. § 11344(c) to analyze the effect of the transaction on the merged railroad's use of the motor carriers ignores well-established Commission precedent. The Commission has repeatedly held that "where a transaction involving the control of a motor carrier by a railroad, or by a railroad affiliate, results in a change only

^{2/} IBT has publicly stated that its purpose in becoming involved in this case is to gain an advantage in an entirely unrelated union representation dispute. See Isidore, "Embattled Union Shifts Tactics in Its Bid to Win Overnite Workers," Journal of Commerce, Aug. 7, 1995, p. 3B, col. 4.

of form, rather than a change in substance, the provision contained in 49 U.S.C. 11344(c) concerning the finding necessary in such cases is not applicable." Union Pacific Corp., Pacific Rail System, Inc., & Union Pacific R.R. -- Control -- Missouri Pacific Corp. & Missouri Pacific R.R., 366 I.C.C. 462, 641 (1982), aff'd in part & remanded in part sub nom. Southern Pacific Transportation Co. v. ICC, 736 F.2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985). See also Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Missouri-Kansas-Texas R.R. ("UP/MKT"), 4 I.C.C.2d 409, 485 (1988), petition for review dismissed, 883 F.2d 1079 (D.C. Cir. 1989); Chicago, Milwaukee, St. Paul & Pacific R.R. -- Reorganization -- Acquisition by Grand Truck Corp., 2 I.C.C.2d 161, 263 (1984) ("Soo/Milwaukee I"); Burlington Northern, Inc. -- Control & Merger -- St. Louis-San Francisco Ry., 360 I.C.C. 784, 958 (1980), aff'd sub nom. Missouri-Kansas Texas R.R. v. United States, 632 F.2d 392 (5th Cir. 1980), cert. denied, 451 U.S. 1017 (1981); New York Central R.R. (Delaware) Merger, 312 I.C.C. 417, 419 (1961). This transaction falls squarely within this line of cases.

IBT's second argument (p. 2), that the waiver will make it impossible for the Commission to make other findings required under the Interstate Commerce Act, demonstrates a misunderstanding of the control application process and of the type of information that Overnite, PMT and SPMT would be

required to file if they were considered "applicant carriers." Contrary to IBT's apparent understanding, the vast bulk of information "applicant carriers" are required to file under the Commission's rules would be irrelevant with respect to the three carriers or would be extremely burdensome for Applicants to provide, while contributing nothing of value to the primary application. See, e.g., 49 C.F.R. §§ 1180.6(a)(5) (list of states in which property of each applicant carrier is located), 1180.6(a)(6) (map indicating the lines of applicant carriers), 1180.8(a)(5) (density charts for applicant carriers). That is why the Commission granted the waiver in the first place.

Applicants intend to file a petition for exemption under 49 U.S.C. § 10505 from the prior approval requirements of 49 U.S.C. § 11343 for the common control of SP and Overnite, and of UP and PMT and SPMT, respectively. This is the way such situations have been handled in past cases -- including the SP/DRGW case, cited by RLEA. See Rio Grande Industries, Inc., SPTC Holding, Inc., & Denver & Rio Grande Western R.R. -- Control -- Southern Pacific Transportation Co., 4 I.C.C.2d 834, 949-51 (1988). See also UP/MKT, 4 I.C.C.2d at 485; Soo/Milwaukee I, 2 I.C.C.2d at 263. As Applicants have explained, and will show in the petition for exemption, the creation of these control relationships will be merely incidental changes resulting from the primary railroad

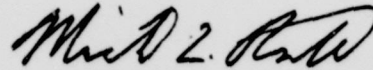
consolidation transaction. The operations of these trucking firms will not be affected in any significant way by the common control of UP and SP, just as they were not affected by prior railroad consolidation transactions involving UP and SP. Furthermore, IBT has not even attempted to demonstrate why its purported need for information regarding these three motor carriers cannot be satisfied through the discovery process.

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 4th day of October, 1995, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Room 9104-TEA
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

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60148
COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

TELEFAX: (202) 662-6291

TELEX: 89-593 (COVING WSH)

CABLE: COVING

Item No. _____

Page Count 7

Oct # 18

LECONFIELD HOUSE

CURZON STREET

LONDON W1T 8AS

ENGLAND

TELEPHONE: 44-(71)-495-5655

TELEFAX: 44-(71)-495-3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1598

MICHAEL L. ROSENTHAL

DIRECT DIAL NUMBER

(202) 662-5448

DIRECT TELEFAX NUMBER

(202) 778-5448

October 4, 1995



BY HAND

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

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket
are the original and twenty copies of Applicants' Reply to
Additional Comments by the Department of Justice on Proposed
Schedule (UP/SP-16). Also enclosed is a 3.5-inch disk
containing the text of this pleading in WordPerfect 5.1
format.

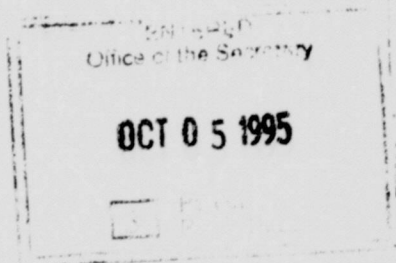
I would appreciate it if you would date-stamp the
enclosed extra copy of the pleading and return it to the
messenger for our files.

Sincerely,

Michael L. Rosenthal

Michael L. Rosenthal

Attorney for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

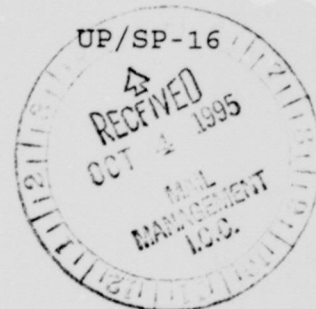


Enclosures

cc: The Honorable Jerome Nelson (By Hand)

OCT 03 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION



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' REPLY TO ADDITIONAL COMMENTS BY
THE DEPARTMENT OF JUSTICE ON PROPOSED SCHEDULE

CANNON Y. HARVEY
LOUIS P. WARCHOL
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7601

Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp.,
and The Denver and Rio Grande
Western Railroad Company

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

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

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

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

October 4, 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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' REPLY TO ADDITIONAL COMMENTS BY
THE DEPARTMENT OF JUSTICE ON PROPOSED SCHEDULE

Union Pacific Corporation ("UPC"), Union Pacific
Railroad Company ("UPRR"), Missouri Pacific Railroad Company
("MPRR"),^{1/} Southern Pacific Rail Corporation ("SPR"),
Southern Pacific Transportation Company ("SPT"), St. Louis
Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"),
and The Denver and Rio Grande Western Railroad Company
("DRGW"),^{2/} collectively, "Applicants," do not object to the
Commission's receipt of the "Additional Comments by the
Department of Justice on Proposed Procedural Schedule" (DOJ-
3), but respectfully request that if the Commission does
receive that paper, it consider this reply.

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union
Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to
collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW
are referred to collectively as "SP."

DOJ has expressed concerns regarding certain competitive issues raised by Applicants' proposed transaction. These are legitimate issues, which Applicants will address thoroughly and carefully in their application. These issues, however, are no different in kind from the issues that were addressed by the applicants in the BN/Santa Fe case, with the significant exception that, through their settlement with BN/Santa Fe, the Applicants in this case have ensured, well in advance of even filing the application, vigorous competition for all traffic that would lose a choice between two railroads in an unconditioned merger. As for UP and SP traffic that today has three or more railroad options -- the amount of which, as the application will show, is far less than KCS claims (KCS-3, Ex. A, p. 4, cited in DOJ-3, p. 3) -- the application will demonstrate that the UP/SP merger, especially with the conditions agreed upon with BN/Santa Fe, will increase competition for all of this traffic (as well as create new competition for extensive additional traffic flows).

While DOJ has pointed to a number of competitive issues that must be addressed in this proceeding, the question here is whether the issues can be addressed within the procedural schedule Applicants have proposed. Applicants submit that the proposed schedule will allow all parties sufficient time to analyze the proposed transaction. The

parties have had access to the 1994 ICC Waybill Sample for more than a month. In addition, Applicants have reached a definitive settlement agreement with BN/Santa Fe far earlier in the proceeding than settlement agreements were arrived at in BN/Santa Fe. Applicants will incorporate the terms of the settlement agreement into their primary application, which will give all parties much more time to analyze the actual effects of the transaction, as conditioned by voluntary settlement, than they had in BN/Santa Fe. Applicants have already provided copies of the settlement agreement to several parties, including DOJ. And Applicants will work with DOJ, and all parties, to provide them with other relevant information through expedited discovery following the filing of the application, and even, to the extent compatible with completing the application, in advance of filing the application.

Applicants stand by their proposed schedule. Applicants recognize their burden to address the issues discussed by DOJ, but submit they can be analyzed to the satisfaction of both DOJ and the Commission within the proposed schedule.

Respectfully submitted,

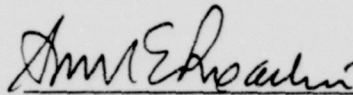
CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, California 94105
(415) 541-1000

PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 973-7601

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

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PAUL A. CONLEY, JR.
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Law Department
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000



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

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

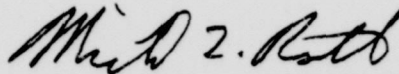
October 4, 1995

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 4th day of October, 1995, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Roc 9104-TEA
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

10-2-95

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60145

60145
☒ DISTRICT OFFICE:
932 LEE ST., SUITE 204
DES PLAINES, ILLINOIS 60016
708/297-6533
FAX: 708/297-2978

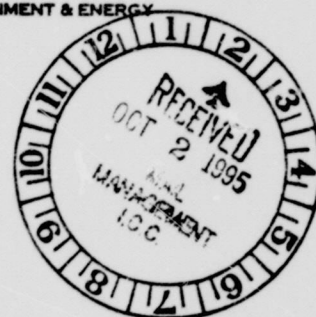
☐ STATE CAPITOL:
2133 STRATTON BUILDING
SPRINGFIELD, ILLINOIS 62706
217/782-8007



ROSEMARY MULLIGAN
STATE REPRESENTATIVE - 55TH DISTRICT

COMMITTEES:

HUMAN SERVICES APPROPRIATIONS
CHAIRMAN
REGISTRATION & REGULATION
HEALTH CARE & HUMAN SERVICES
ELECTIONS & STATE GOVERNMENT
ENVIRONMENT & ENERGY



September 21, 1995

Ms. Linda Morgan, Chairperson
Interstate Commerce Commission
12th Street and Constitution Avenue, NW
Washington, DC 20423

RE: Finance Docket 32760 - Union Pacific/Southern Pacific

Dear Chairperson Morgan:

I am writing in support of the Union Pacific and Southern Pacific merger that will improve service and strengthen competition, and insure a long-term, financially strong railroad.

Vigorous competition in the California-Chicago market is crucial to Illinois' continued economic growth. The proposed merger would allow Illinois shippers to benefit from shorter and more flexible routes, particularly in the Chicago-Oakland and St. Louis-Oakland corridors.

Combining the strengths of the Union Pacific and Southern Pacific will create a more efficient, stronger railroad, competitive with the BN/SF system. All Illinoisans will benefit from more reliable service, shorter routes, improved equipment supply and new market opportunities.

I feel this proposed merger deserves your approval.

Sincerely yours,

Rosemary Mulligan
Rosemary Mulligan

RM/mai

cc: Vernon A. Williams, Secretary ICC ✓
David Fischer, Director Government Affairs

U.S. DEPARTMENT OF JUSTICE

OCT 02 1995

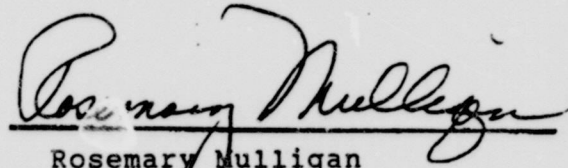
☐ FILE

ATTACHMENT

Format to be used for verification:

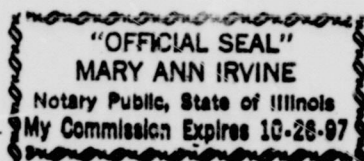
STATE OF Illinois)
COUNTY OF Cook) SS.

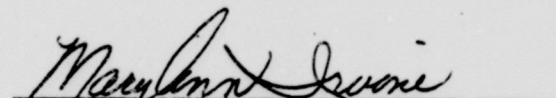
Rosemary Mulligan, being first duly sworn,
deposes and says that he has read the foregoing document, knows
the facts asserted therein, and that the same are true as stated.



Rosemary Mulligan

Subscribed and sworn to before me this 28 day of
September, 1995.





Notary Public

My Commission Expires: 10-26-97

Format to be used for affirmation (alternative to verification):

I, _____, declare under penalty of
perjury that the foregoing is true and correct. Further, I
certify that I am qualified and authorized to file this verified
statement. Executed on _____.

FD-3276.09-15-956.0057B

Item No. _____

Page Count 3Sept #28

MISSION

Monsanto

The Chemical Group
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-1000

ENTERED
Office of the Secretary

SEP 15 1995

3 Part of
Public Record



MONSANTO CHEMICAL GROUP
800 N. Lindbergh Blvd.
St. Louis MO 63167

DATE September 15, 1995TIME 10:35 (CST)

FAX: (314) 694-5798

PHONE: (314) 694-5587

NUMBER OF PAGES 3 (including cover page)TO Honorable Vernon A. Williams, Secretary
PANY Interstate Commerce Commission~~COPIES~~ FAX (202) 927-5984FROM: DAVID A. PINSREMARKS Response statement to Finance Pocket No. 32760

IF YOU DO NOT RECEIVE ALL PAGES,
PLEASE CALL THE NUMBER ABOVE

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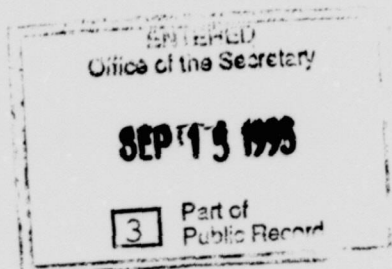
Monsanto

The Chemical Group
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-1000

September 15, 1995

FAX (202) 927-5984

Honorable Vernon A. Williams, Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423



RE: 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, SPCSL Corp. and the Denver and Rio Grande Western
Railroad Company

Dear Mr. Williams:

The purpose of this letter is to express Monsanto Company's objection to the Interstate Commerce Commission's proposal to expedite the procedural schedule for the Union Pacific Corporation's (UPC) control and merger application regarding the Southern Pacific Rail Corporation (SPC). As the Commission indicated in 60 FR 45737, this is a major transaction which will have a significant impact on U.S. rail transportation competitiveness and service.

Monsanto Company is a global company producing chemicals, fibers, consumer lawn care products, food additives, agricultural chemicals, agricultural seed, pharmaceuticals, plastics, and specialty products. Monsanto has over twenty four (24) production facilities in the United States, and purchases numerous raw materials from vendors numbering in the thousands. Monsanto, in conducting its business, uses rail transportation in all of the domestic U.S. states using all of the class 1 railroads, and many of the short lines in order to meet our shipping needs.

My name is David A. Pins. I am Manager, Rail Transportation for Monsanto Company. I am responsible for selecting rail transportation vendors, and negotiating contracts, terms and conditions with Monsanto's rail vendors.

Honorable Vernon A. Williams, Secretary
Interstate Commerce Commission

September 15, 1995

Page 2

The proposed merger of the UPC/SPC is very significant to Monsanto. Monsanto spends approximately \$25 million with the UP, and around \$9 million with the SP on an annual basis. As large, and diverse and spread out, as Monsanto's business is, it nevertheless has approximately 60% of its raw material and finished goods moving either partially or exclusively on the UP. The combined annual chemicals traffic handled by the UPC/SPC represents about 35% of chemical railcar tonnage in the U.S. and about 36% of chemical rail transportation revenues which equates to \$1.6 billion (Rail Price Advisor, P.2, Third Quarter 1995, Volume 4, Number 3). The percentage of traffic handled by UPC/SPC is very high in gulf coast states, particularly in Texas, and is of great concern to not only Monsanto but also to Chemical Manufacturers Association member companies in those gulf coast states. As the largest railroad in the U.S., the combined UPC/SPC will generate over \$8 billion in revenues. This could lead to further consolidation of the Class 1 railroads to ensure their viability.

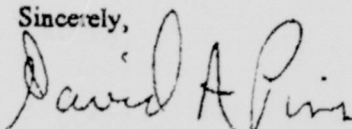
Monsanto subscribes to CMA's railroad merger policy which is supportive of railroad mergers that maintain or enhance competition, service, and safety. Monsanto, due to the vast level of business it does with the UP and SP is just now analyzing its position on this merger, and we are not in a position to respond to the Commission sooner than the original UPC proposed schedule. The trend toward fewer Class 1 railroads started in the 1980's has created problems for the chemical industry and continued reduction could threaten its ability to compete in world markets. Any merger that potentially reduces the level of competition in the rail industry regardless of service implications will be viewed as detrimental to the chemical industry, as well as Monsanto specifically. Therefore, the chemical industry and Monsanto need the full allotment of time proposed by UPC to ascertain the impacts of this merger.

Monsanto, along with the entire chemical industry, is further concerned that the phase out of the Commission is causing an unjustified acceleration in the proposed procedural schedule. Acceleration of the schedule would not be enough time and result in fewer responses to the application and less critical information for the Commission. Monsanto is unaware of any reason to expedite these proceedings and is supportive of the original schedule proposed by UPC. In fact, it would be prudent to slow down the proceedings, not speed them up since the Commission will likely not determine the outcome of this merger due to phase out timing, and it still isn't clear whether DOT or DOJ will have that task.

Monsanto requests that the Commission retain the original proposed schedule submitted in the UPC Petition. Thank you in advance for consideration of this statement.

In accordance with ICC custom and procedure, twenty (20) copies of this statement will be forwarded. One copy will be FAX'ed in order to meet the September 18, 1995 deadline.

Sincerely,



David A. Pins
Manager, Rail Transportation

FD-3276.09-15-95.D 60053

Item No. _____ NSPORTATION

TO

82029275984

P.01

Page Count 1

Sept #24

lin CHEMICALS

120 LONG RIDGE ROAD, P.O. BOX 1355, STAMFORD, CT 06904-1355

60053

September 15, 1995

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 2215
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 Corporation, Southern
Pacific Transportation Company, St. Louis
Southwestern Railway Company, SPCSL
Corp. and the Denver and Rio Grande
Western Railroad Company



Dear Mr. Williams:

The purpose of this letter is to express Olin Corporation's objection to the Interstate Commerce Commission's (ICC) proposal to expedite the proposed schedule for the Union Pacific Corporation's (UPC) control and merger application regarding the Southern Pacific Rail Corporation (SPC). As the ICC indicated in 60 FR 45737, this is a major transaction which will have a significant impact on U.S. rail transportation.

Olin Corporation is a diversified fortune 500 company who is generally supportive of railroad mergers that add an increased level of safety as well as maintain or enhance competition. However this merger would affect a significant portion of Olin Corporation's rail activities for our facilities inbound as well as outbound. Olin Corporation does not feel the acceleration of this proposed schedule would be in the best interest of the industrial community as we have not had sufficient time to fully analyze the impact of such a merger. We also feel that this action may result in fewer comments to the ICC. We therefore request the ICC retain the original proposed schedule submitted in the UPC Petition.

Thank you for the opportunity to comment on these issues.

Sincerely,

Donald W. Griffin

Donald W. Griffin
President, Chief Operating Officer
Olin Corporation

Cc: J. Badger, P. Craney, P. Davey

Office of the Secretary

SEP 18 1995

☐ Part of
Indexed Record

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TROUTMAN SANDERS
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION

601 PENNSYLVANIA AVENUE, N.W.
SUITE 640
NORTH BUILDING
WASHINGTON, D.C. 20004
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

WILLIAM A. MULLINS

Item No. 60003
Page Count 12
Aug # 12

DIRECT: 202-274-2953

August 14, 1995

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 1324
Washington, D.C. 20423



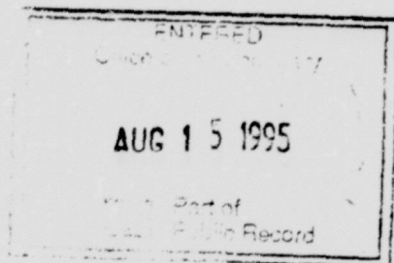
RE: *Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio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

Dear Secretary Williams:

Enclosed herewith are one original and eleven copies of the following two filings:

1. Comments of The Kansas City Southern Railway Company on Proposed Procedural Schedule and Discovery Guidelines, designated KCS-1; and
2. Opposition of The Kansas City Southern Railway Company to Proposed Protective Order, designated KCS-2.

Please date and time stamp one of the copies of each filing and return them to the courier for return to our offices.



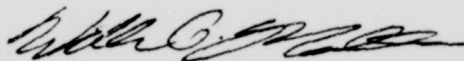
Mr. Vernon A. Williams

August 14, 1995

Page 2

No filing fee is required for replies to motions. *See 49 C.F.R. Part 1002.2(f).*
Copies have been served on all known parties of record.

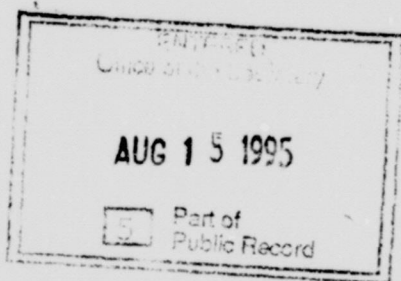
Very truly yours,



William A. Mullins

Enclosures

cc: Parties of Record
Robert K. Dreiling



**BEFORE THE
INTERSTATE COMMERCE COMMISSION**



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 THE KANSAS CITY SOUTHERN RAILWAY COMPANY
TO PROPOSED PROTECTIVE ORDER**

**Richard P. Bruening
W. James Wochner
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 556-0392
Fax: (816) 556-0227**

**John R. Molm
William A. Mullins
Troutman Sanders
601 Pennsylvania Ave. N.W.
Suite 640 - North Building
Washington, D.C. 20004-2608
Tel: (202) 274-2950
Fax: (202) 274-2994**

August 14, 1995

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

**BEFORE THE
INTERSTATE COMMERCE COMMISSION**

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 THE KANSAS CITY SOUTHERN RAILWAY COMPANY
TO PROPOSED PROTECTIVE ORDER**

On August 4, 1995, 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," filed a "Petition for Protective Order" ("UP/SP-2"). The Kansas City Southern Railway Company ("KCS") hereby files these comments in opposition to the proposed protective order.

While the proposed protective order is modelled closely upon that adopted by the Commission in *Burlington Northern Inc. & Burlington Northern R.R. -- Control and Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry.*, Finance Docket No. 32549 (ICC served Jul. 15, 1994) ("*BN/Santa Fe*"), it should not be adopted for this proceeding because Applicants have not presented any legal or policy justifications as to why the protective order adopted in the *BN/Santa Fe* proceeding should also be adopted in this

proceeding. Applicants state that the proposed order is "modelled substantially on those entered by the Commission in recent control proceedings." UP/SP-2 at 2, citing *BN/Santa Fe; Kansas City Southern Industries, Inc., Kansas City Southern Ry. & K&M Newco, Inc. -- Control -- MidSouth Corp., MidSouth Corp., MidLouisiana Rail Corp., SouthRail Corp. & TennRail Corp.*, Finance Docket No. 32167 (ICC served Nov. 3, 1992)("KCS/MidSouth"); *Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Chicago & North Western Holdings Corp. & Chicago & North Western Transportation Co.*, Finance Docket No. 32133 (ICC served Aug. 24, 1992)("UP/CNW"); and *Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Missouri-Kansas-Texas R.R.*, Finance Docket No. 30800 (ICC served Jul. 16, 1986)("UP/MKT"). Applicants leave the impression that the proposed protective order is simply standard and routine and should thus be adopted; however, if one closely examines the protective orders adopted in *KCS/MidSouth*, *UP/CNW*, and *UP/MKT*, it becomes clear that there are significant differences between the protective orders adopted in those proceedings and the protective order proposed by Applicants. None of the protective orders in those proceedings separated confidential materials into two categories, confidential and highly confidential, and none of those protective orders restricted the access to any confidential to "outside counsel/outside consultants only." UP/SP-2 at 4, ¶ 5.

Indeed, in the prior protective orders, all confidential information was simply "confidential" and was to be treated in accordance with 49 C.F.R. § 1104.14. Those regulations provide sufficient procedures for the protection of materials deemed confidential.

Those regulations, and the protective orders issued pursuant to them, have never, until *BN/Santa Fe*, restricted the access to some confidential materials to "outside counsel/outside consultants only." All parties to the proceeding, including the employees and in-house counsel of competing railroads, were allowed to review all confidential material. All that was required was an agreement of that person not to use any confidential information for any purpose other than litigation of the proceeding. This process worked well, and there were never any complaints or requests to modify the protective order.

In contrast, in *BN/Santa Fe*, the Commission, for the first time, issued a protective order that limited the ability of in-house counsel and employees to adequately review, analyze, and provide input on certain categories of materials. The Commission adopted that protective order because it was proposed by the applicants in that proceeding and was initially unopposed, but the adoption of such an order in that proceeding does not mean it automatically should be adopted in this proceeding, especially where there is opposition. The problems associated with the *BN/Santa Fe* protective order later became evident when, during the course of the proceeding, at least four petitions to modify the protective order were filed, and the Commission had to issue three decisions regarding the protective order. *BN/Santa Fe* (ICC served Mar. 13, May 3, and Jun. 20, 1995).¹ Such problems rarely, if ever, arose under the previous protective orders, and the Commission never had to modify those protective orders.

¹ Of particular note is that two of those decisions granted in-house counsel the right to review "highly confidential" information. See *BN/Santa Fe* (ICC served Mar. 13 and Jun. 20, 1995).

If the Commission adopts Applicants' proposed protective order, the Commission will once again be faced with similar problems. Such problems can be avoided easily by simply adopting, in this proceeding, the protective orders that were issued in *KCS/MidSouth* and *UP/CNW* proceedings. For the Commission's reference, copies of these protective orders have been attached as Appendix A.

Obviously, the concern, as the Commission expressed in some of its *BN/Santa Fe* decisions denying access to "highly confidential" information to certain in-house counsel of opposing parties, is that opposing parties will use confidential materials for purposes other than the litigation, but such a concern assumes that in-house counsel and employees of opposition parties will violate the terms of an appropriate protective order, such as the ones issued in *KCS/MidSouth* and *UP/CNW*. Those protective orders, which any in-house counsel or opposition employee must read and agree to before reviewing any confidential material, specifically provide that it is a violation of the law to use the confidential material for any purpose other than the litigation. Thus, unless the Commission is saying that such in-house counsel and employees cannot be trusted, and can be expected to violate the law, the Applicants, shippers, and others will be adequately protected through use of a *KCS/MidSouth/UP/CNW* protective order. There is simply no need to create a separate category of "highly confidential" information with its subsequent limited access.

The principle that the Commission is seeking to uphold, *i.e.*, in-house counsel and employees of competitors should not see "highly confidential" material, can be violated under Applicants' own proposed protective order, but only by the Applicants. Under that order,

in-house counsel and the employees of Applicants are able to review the "highly confidential" materials of each other in preparation of the application and other materials, but similarly situated in-house counsel and employees of opposing parties cannot review this same material for preparation of their arguments. Yet, until the merger is approved, UP and SP are to remain as much competitors as KCS and SP or BN and UP; however, under Applicants' proposal, only UP and SP in-house counsel get access to the "highly confidential" materials. There should be no second-class status for the in-house counsel and employees of non-merging parties.

Not allowing in-house counsel and employees of opposing parties the right to review all materials filed in this proceeding creates undue hardships and is manifestly unfair. In-house counsel play critical roles in advising outside counsel and outside consultants. In past proceedings, such as *KCS/MidSouth* and *UP/CNW*, in-house counsel played active roles in depositions, preparation of verified statements, and in developing evidence. Adopting Applicants' proposed procedural schedule would prevent them from playing this critical role, for no real policy or legal reason. Such an order would thus require opposing parties to spend additional fees to hire outside counsel and outside consultants to review materials and conduct depositions. Furthermore, given that some in-house counsel and employees are granted access to the Waybill data, it does not make sense to say that such persons can view highly confidential Waybill data but cannot view similar material during the discovery process.

Where, as has been the case with KCS in all previous ICC merger proceedings in which it has participated since the Staggers Act, in-house counsel is a counsel of record in the proceeding, appearing on all pleadings, and actively participating in the case, the deprivation of such counsel's access to **all** relevant information is nothing short of scandalous. The proposed protective order presupposes that such in-house counsel of record will violate their duty as officers of the court; that they cannot be trusted in this regard to the extent that counsel of record who are outside counsel can. In the *BN/Santa Fe* case, the Commission did not explain why in-house counsel should be considered any more prone to violate their oaths as lawyers than retained counsel. Applicants have not, and, indeed, cannot provide such an explanation.

In conclusion, the proposed protective order put forth by the Applicants, contrary to their assertions, is not substantially similar to protective orders adopted in other rail merger proceedings. There is a significant change from those prior orders, and this change was adopted, for the first time, in the *BN/Santa Fe* proceeding only because no party opposed such a change, but here, KCS strenuously objects to the adoption of the *BN/Santa Fe* protective order in this proceeding.

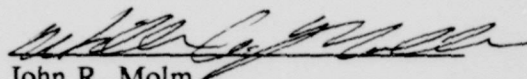
As the Commission later discovered, there were substantial problems with the *BN/Santa Fe* protective order. These problems can be easily avoided through the Commission adopting, as it did in almost every prior merger proceeding, its standard protective order. This standard order established only one category of confidential material and allowed access to that material to all parties, including in-house counsel and employees,

involved in those proceedings, as long as such parties read and agreed to be bound by the terms of the protective order.

KCS is simply requesting the Commission to follow its numerous precedents and adopt a protective order similar to those attached in Appendix A and consistent with 49 C.F.R. § 1104.14. Applicants are requesting a deviation from those precedents and the Commission's regulations. Other than simply citing to *BN/Santa Fe*, Applicants have failed to cite to any legal or policy reason for adopting their proposed protective order. Applicants request should be denied.

Respectfully submitted,

Richard P. Bruening
W. James Wochner
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 556-0392
Fax: (816) 556-0227


John R. Molm
William A. Mullins
Troutman Sanders
601 Pennsylvania Ave. N.W.
Suite 640 - North Building
Washington, D.C. 20004-2608
Tel: (202) 274-2950
Fax: (202) 274-2994

August 14, 1995

Attorneys for The Kansas City
Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "OPPOSITION OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY TO PROPOSED PROTECTIVE ORDER" was served this 14th day of August, 1995, by hand-delivery, facsimile, or overnight delivery on counsel for all known parties of record.

A handwritten signature in dark ink, appearing to read 'William A. Mullins', written over a horizontal line.

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

APPENDIX A

COPIES OF PROTECTIVE ORDERS IN *KCS/MIDSOUTH* AND *UP/CNW*