

STB

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32760

10-10-95

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60186

60184
SKILL TRANSPORTATION CONSULTING, INC.

1800 N. BROADWAY, SUITE H, WICHITA, KANSAS 67214

(316) 264-9630

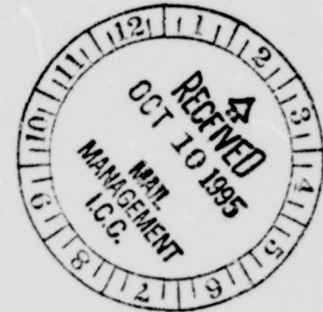
October 9, 1995

Vernon William
Secretary
Case Control Branch
Interstate Commerce Commission
1201 Constitution Ave., N.W.
Washington, D.C. 20423

RE: Finance Docket No. 32760

Honorable Secretary Williams,

There is enclosed the original and 10 copies of the Kansas Shippers Association Notice of Participation. Please place us on the mailing list as an active participant. In addition, this Practitioner desires a copy of the present participants in order to notify them of participation in this proceeding.



Respectfully Yours,

James J. Irlandi
James J. Irlandi
President

IJI/sl

Office of the Secretary
OCT 11 1995
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Public Record
Office of the Secretary
OCT 11 1995
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Public Record

Item No. _____

Page Count 3

Oct # 56

BEFORE THE
INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 32760

UNION PACIFIC CORP. ET AL -- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORP. ET AL.

NOTICE OF PARTICIPATION
BY THE KANSAS SHIPPERS ASSOCIATION
IN THIS FINANCE DOCKET PROCEEDING

Comes now the Kansas Shippers Association comprised of the following three shippers groups: UP-MP, SFE and SSW and respectfully requests that it desires to participate fully in Finance Docket 32760. It further states:

PRELIMINARY STATEMENTS

The advisor and Transportation Practitioner, James Irlandi, notified the Chairmen of the three Associations named infra, of the merger procedure and the need for participation therein to protect the interests of their membership. Unfortunately, many of the Directors of these three shippers association were not available for consultation, some were on vacation, one was ill and in the hospital, others were attending meetings which were being held in the time frame of notification to participate herein.

Subsequently, all of the directors were canvassed by phone, letter authority and at a meeting held in Wichita to discuss the

by reason of shortline lease arrangement or ownership contract by the UP-SP or BNSF.

- C. Car Ordering Systems of the Class I combined systems.

CONCERN OF MEMBERS LOCATED ON
MAINLINES OF THE COMBINED BNSF OR UP-SP

- A. There is concern that with the Proposed Merger and operating rights granted in Previous BN-SF merger mainline shippers will not be served.
- B. Cars will not be available because mainlines will be used more frequently by larger shippers.
- C. Locals will not be available because of increased activity on the mainline.

LOSS OF SP RAILROAD SERVING SECTIONS OF KANSAS

The Kansas Shippers Association members prepared statements for the S.P. railroad which detailed the non competitive nature of the shippers facilities due to the ATSF (now BNSF) and UP railroads having control of through freight rates from shortline connections, car supply and connecting line service and also non service on mainline facilities as addressed supra. The Commission did not receive those statements due to the arrangement made between the BN and ATSF railroads with the S.P. who withdrew from the proceeding.

There is still the same need for an additional competition in this area over which the SP was granted operating rights over the ATSF lines.

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10-10-95

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STATE CAPITOL
P.O. BOX 924849
SACRAMENTO, CA 94249-0001
916-445-9234

DISTRICT OFFICE
444 WEST OCEAN BLVD.
SUITE 707
LONG BEACH, CA 90802
310-495-4766

INTERNET ADDRESS
kuykenst@assembly.ca.gov

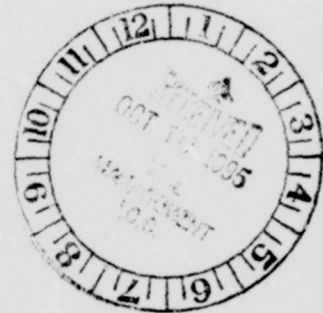
60184
**Assembly
California Legislature**

STEVEN T. KUYKENDALL
ASSEMBLY MEMBER, FIFTY-FOURTH DISTRICT
REPUBLICAN WHIP

COMMITTEES:
BANKING AND FINANCE
CONSUMER PROTECTION
GOVERNMENTAL EFFICIENCY
AND ECONOMIC DEVELOPMENT
LOCAL GOVERNMENT
PUBLIC UTILITIES AND COMMERCE

October 4, 1995

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



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

Dear Secretary Williams:

I am writing to urge the support of the Interstate Commerce Commission for the proposed merger between the Union Pacific Railroad (UP) and the Southern Pacific Railroad (SP). This merger will contribute many factors which will help to provide long-term, top-quality service from a financially strong railroad.

Some of the beneficial ramifications from this merger will include: improving service and strengthening competition, meeting the competitive challenge of BN/Santa Fe, and the problems of SP service, finances and capital constraints will be overcome.

The key service improvements for California shippers are numerous. The merger will render the first truck-competitive single-carrier rail service ever between Seattle/Tacoma and both southern and northern California. Also, transcontinental carload shippers, such as California's lumber producers, canners and perishables dealers, will see greater speed, reliability and frequency of schedules.

Major cost savings, 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 and to the State of California.

Again, I ask you to support the merger between Union Pacific Corporation and Southern Pacific Rail Corporation. Thank you for your consideration.

Sincerely,

STEVEN T. KUYKENDALL
Assemblyman, 54th District

STK:kag

Office of the Secretary

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Oct. # 54

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32760

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60183

CAPITOL OFFICE
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001
(916) 445-7874
FAX (916) 324-2936

DISTRICT OFFICE
43271 Mission Blvd.
Fremont, CA 94539
(510) 440-9030
(408) 263-5300
FAX: (510) 440-9035

Assembly
California Legislature

LIZ FIGUEROA

ASSEMBLY MEMBER, TWENTIETH DISTRICT

COMMITTEES:

Vice-Chair
Environmental Safety
& Toxic Materials
Member
Insurance
Judiciary
Public Employees,
Retirement and
Social Security

October 3, 1995

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

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

Dear Mr. Williams:

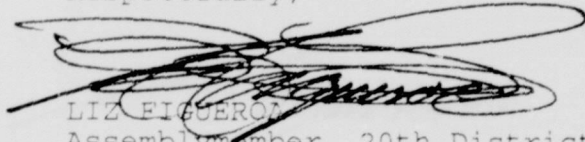
I am writing in support of the Union Pacific/Southern Pacific merger, which I believe will lead to improved services and new shipping opportunities for California shippers. I urge your support of this merger.

This merger will enable UP/SP to compete effectively against BN/Santa Fe. Transcontinental carload shippers will see improved service in the form of greater dependability and frequency of schedules. There will be a new third-morning intermodal service between Oakland and Chicago, a service the two companies could not offer independently.

Currently, SP has the most extensive shipper coverage in the state, however, questions about its finances and ability to consistently meet the needs of its customers persist. Without the merger, SP's situation would further deteriorate against the competition of BN/Santa Fe. By approving the merger, the Interstate Commerce Commission will ensure that the marketplace is competitive and UP/SP can meet the challenge put forth by BN/Santa Fe.

I urge your support of this merger.

Respectfully,


LIZ FIGUEROA
Assemblymember, 20th District

Item No. _____

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Oct #53

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60152
COSCO North America, Inc.

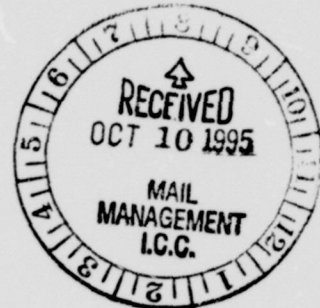
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Oct 10 1995

October 9, 1995

Honorable Vernon A. Williams
Secretary
INTERSTATE COMMERCE COMMISSION
12th Street & Constitution Avenue, N.W.
Room 2215
Washington, DC 20423



Reference: Union Pacific Corp., Union Pacific Railroad Co. and Missouri Pacific Railroad Co. -- Control and Merger -- Southern Pacific Rail Corp., Finance Docket 32760

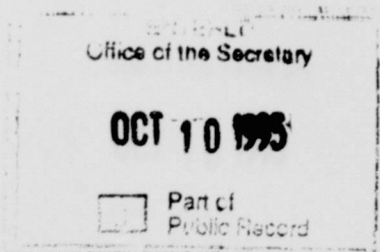
Dear Honorable Williams:

COSCO NORTH AMERICA, INC., a fully owned subsidiary of COSCO, Inc., is the general agent for COSCO in North America, responsible for all the business activities of COSCO's fleet.

As part of its international intermodal service, COSCO and its general agent, COSCO North America, are heavily involved in inland transportation of intermodal containers.

During the first three quarters of 1995, COSCO moved over 55,000 intermodal containers with a variety of rail carriers (Southern Pacific Line, Burlington Northern, CSX, Norfolk Southern, Union Pacific, etc.).

COSCO North America, Inc. has no objection to the proposed control and merger of the Union Pacific Corp. and the Southern Pacific Rail Corp., nor to any other merger, as long as such merger enhances the competitive environment of rail transportation in the United States. COSCO believes this merger will benefit all rail users by creating a better and more efficient intermodal network and therefore, COSCO North America would like to voice its support.



PAGE 2

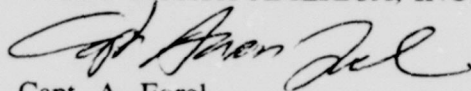
UNION PACIFIC CORP. & SOUTHERN PACIFIC RAIL CORP. MERGER

October 9, 1995

I, Capt. Aaron Forel, Executive Vice President of COSCO North America, declare that this statement is true and correct, and I am qualified and authorized to file this statement with the ICC.

Very truly yours,

COSCO NORTH AMERICA, INC.



Capt. A. Forel
Executive Vice President

CAF/jp/upspmerg

cc: Russel F. Shue
Southern Pacific Lines
1515 Arapahoe, Suite 1200
Denver, CO 80202

T. (Pete) Mori
AVP International Marketing
Union Pacific Railroad
1416 Dodge Street
Omaha, NE 68179

**Executive
Committee**

Terry L. Lengfelder
Chamber Chairman
Arthur Andersen LLP

Leo F. Mullin
Chamber Vice Chairman
First Chicago Corp.

James J. O'Connor
Chamber Vice Chairman
Commonwealth Edison Company

G. J. Gunn
Chamber General Secretary
American Airlines, Inc.

John W. Madigan
Chamber General Treasurer
Tribune Company

James Annable
First National Bank of Chicago

Tom Bridgman
Baker & McKenzie

Frank W. Considine
American National Can Company

Robert W. Crawford, Jr.
Brook Furniture Rental, Inc.

Timothy J. Danis
Rollins Hudig Hall of Illinois

Richard Donat
Marshall Field's

Thomas R. Donovan
Chicago Board of Trade

E. Stanley Enlund

Bernard J. Ford, Sr.
McDonough Associates, Inc.

Donald J. Gidwitz
Helene Curtis, Inc.

Sue Ling Gin
Flying Food Fare, Inc.

Charles H. Knittle
Montgomery Ward & Co., Inc.

Homer J. Livingston, Jr.
Chicago Stock Exchange, Inc.

James J. McDonough
McDonough Associates, Inc.

Robert D. McLean
Sidley & Austin

Raymond Minkus
Minkus & Dunne Communications

Michael H. Moskow
Federal Reserve Bank

Edward J. Noha
CNA Financial Corporation

John C. Psaltis
Molex Incorporated

Larry P. Sheffield
IBM Corporation

Gerald D. Skoning
Seyfarth, Shaw, Fairweather & Geraldson

John C. Staley
Ernst & Young

Richard E. Terry
Peoples Energy Corporation

Peter Van Cleave
Peter Van Cleave & Associates

Maynard P. Venema
Mid-America Legal Foundation

Ben Vessely
Ameritech

William Wrigley, Jr.
Wm. Wrigley Jr. Company

Gerald J. Roper
President and CEO

STB

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• 32760

10-10-95

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Item No. _____

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Oct. 51



STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814
(916) 445-8873
FAX: (916) 324-7544

DISTRICT OFFICE
2345 ERRINGER ROAD
SUITE 212
SIMI VALLEY, CALIFORNIA
93065
(805) 522-2920
FAX: (805) 522-1194

CALIFORNIA LEGISLATURE

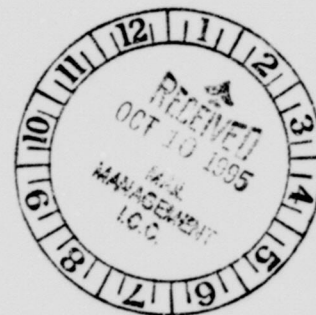
Senate

SENATOR CATHIE WRIGHT
NINETEENTH SENATORIAL DISTRICT

September 28, 1995

60181

MEMBER
TOXICS AND PUBLIC SAFETY
MANAGEMENT COMMITTEE
VICE-CHAIR
BUDGET AND FISCAL REVIEW
COMMITTEE
VICE-CHAIR
JUDICIARY COMMITTEE
JOINT RULES COMMITTEE
BUDGET AND FISCAL REVIEW
SUBCOMMITTEE #2 ON
RESOURCES, ENVIRONMENTAL
PROTECTION AND JUDICIARY



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

Secretary Williams:

It is with great pleasure that I write to you in support of the proposed merger of the Union Pacific Railroad and the Southern Pacific Railroad. Not only will this merger dramatically improve service, it will also strengthen competition.

The merged system will meet the competitive challenge of BN/Santa Fe. Vigorous competition in this market is crucial to California's continued economic growth and to the nation's domestic and international competitiveness.

In addition, major cost savings, 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.

I look forward to hearing of the Interstate Commerce Commission's overwhelming approval of this merger. If you have any questions regarding my recommendation, please do not hesitate to contact me.

Sincerely,

CATHIE WRIGHT
Senator, 19th District

Office of the Secretary

OCT 11 1995

Part of

STB

FD

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10-10-95

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• 60180

REPLY TO:

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-8496
FAX: (916) 445-1826
DISTRICT OFFICES:
1200 AGUAJITO ROAD
MONTEREY, CA 93940
(408) 646-1980
FAX: (408) 649-2867
701 OCEAN STREET
SANTA CRUZ, CA 95060
(408) 425-1503
FAX: (408) 454-3070

Assembly
California Legislature



BRUCE MCPHERSON
ASSEMBLYMAN, TWENTY-SEVENTH DISTRICT

CHAIRMAN:
ASSEMBLY COMMITTEE ON
ELECTIONS, REAPPORTIONMENT
& CONSTITUTIONAL AMENDMENTS
COMMITTEES:
HIGHER EDUCATION
AGRICULTURE
GOVERNMENTAL ORGANIZATION
TASK FORCES:
DEFENSE CONVERSION TASK FORCE
ECONOMIC STRATEGY PANEL

60180

FD-32760

October 3, 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:

I respectfully urge your support of the Union Pacific Railroad and the Southern Pacific Railroad proposed merger.

The proposed merger of the Union Pacific Railroad and the Southern Pacific Railroad will dramatically improve service to customers and strengthen competition. Additionally, this merger will remove Southern Pacific Railroad from increasing financial constraints which lead to customer service problems.

Transcontinental rail shipping is vital to the economy of California and our nation. The merger of these two companies is a positive step toward transportation efficiency.

Thank you for considering my views on this issue. I look forward to hearing your final decision.

Sincerely,

Bruce McPherson
BRUCE MCPHERSON
Assemblyman

Office of the Secretary

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10-10-95

D

• 60179



CHICAGOLAND CHAMBER OF COMMERCE

The Unified Business Voice of Greater Chicago

Item No. _____

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Oct # 49

Executive Committee

Terry L. Lengfelder
Chamber Chairman
Arthur Andersen LLP

Leo F. Mullin
Chamber Vice Chairman
First Chicago Corp.

James J. O'Connor
Chamber Vice Chairman
Commonwealth Edison Company

G. J. Gunn
Chamber General Secretary
American Airlines, Inc.

John W. Madigan
Chamber General Treasurer
Tribune Company

James Annable
First National Bank of Chicago

Tom Bridgman
Baker & McKenzie

Frank W. Considine
American National Can Company

Robert W. Crawford, Jr.
Brook Furniture Rental, Inc.

Timothy J. Danis
Rollins Hudig Hall of Illinois

Richard Donat
Marshall Field's

Thomas R. Donovan
Chicago Board of Trade

E. Stanley Enlund
Bernard J. Ford, Sr.
McDonough Associates Inc.

Donald J. Gidwitz
Helene Curtis, Inc.

Sue Ling Gin
Flying Food Fare, Inc.

Charles H. Knittle
Montgomery Ward & Co., Inc.

Homer J. Livingston, Jr.
Chicago Stock Exchange, Inc.

James J. McDonough
McDonough Associates Inc.

Robert D. McLean
Sidley & Austin

Raymond Minkus
Minkus & Dunne Communications

Michael H. Moskow
Federal Reserve Bank

Edward J. Noha
CNA Financial Corporation

John C. Psaltis
Molex Incorporated

Larry P. Sheffield
IBM Corporation

Gerald D. Skoning
Seyfarth, Shaw, Fairweather & Geraldson

John C. Staley
Ernst & Young

Richard E. Terry
Peoples Energy Corporation

Peter Van Cleave
Peter Van Cleave & Associates

Maynard P. Venema
Mid America Legal Foundation

Ken Vessely
Ameritech

William Wrigley, Jr.
Wm. Wrigley Jr. Company

Gerald J. Roper
President and CEO

October 3, 1995

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, NW
Room 2215
Washington, DC 20423

RE: Docket No.: 32760

Dear Mr. Williams:

Please find attached my statement regarding the Union Pacific/South Pacific merger. If you have any questions or concerns, please feel free to contact me. Thank you.

Sincerely,

Gerald Roper
President and CEO
Chicagoland Chamber of Commerce

cc: Mr. David Fischer
Director Government Affairs
Union Pacific
416 Dodge Street
Room 801
Omaha, NE 68179



CHICAGOLAND
Office of the Secretary

OCT 10 1995



CHICAGOLAND CHAMBER OF COMMERCE

The Unified Business Voice of Greater Chicago



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, et al

VERIFIED STATEMENT

OF

Jerry Roper, President
Chicagoland Chamber of Commerce

My name is Jerry Roper. I am President of the Chicagoland
Chamber of Commerce. I submit this statement in order to express the
support of the Chicagoland Chamber of Commerce for the proposed
merger of the Union Pacific and Southern Pacific railroads.

The members of the Chicagoland Chamber of Commerce are local
businesses with headquarters and/or substantial operations in the City of
Chicago and its suburbs. The Chamber's goal is to promote the
commercial interests of its members and to work for policies that will
promote business and economic development in the Chicago area.

Executive Committee

Terry L. Lengfelder
Chamber Chairman
Arthur Andersen LLP
Leo F. Mullin
Chamber Vice Chairman
First Chicago Corp.
James J. O'Connor
Chamber Vice Chairman
Commonwealth Edison Company

G. J. Gunn
Chamber General Secretary
American Airlines, Inc.

John W. Madigan
Chamber General Treasurer
Tribune Company

James Annable
First National Bank of Chicago

Tom Bridgman
Baker & McKenzie

Frank W. Considine
American National Can Company

Robert W. Crawford, Jr.
Brook Furniture Rental, Inc.

Timothy J. Danis
Rollins Hudig Hall of Illinois

Richard Donat
Marshall Field's

Thomas R. Donovan
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Stanley Enlund
Bernard J. Ford, Sr.
McDonough Associates Inc.

Donald J. Gidwitz
Helene Curtis, Inc.

Sue Ling Gin
Flying Food Fare, Inc.

Charles H. Knittle
Montgomery Ward & Co., Inc.

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Chicago Stock Exchange, Inc.

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McDonough Associates Inc.

Robert D. McLean
Sidley & Austin

Raymond Minkus
Minkus & Dunne Communications

Michael H. Moskow
Federal Reserve Bank

Edward J. Noha
CNA Financial Corporation

John C. Psaltis
Molex Incorporated

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IBM Corporation

Gerald D. Skoning
Seyfarth, Shaw, Fairweather & Geraldson

John C. Staley
Ernst & Young

Richard E. Terry
Peoples Energy Corporation

Peter Van Cleave
Peter Van Cleave & Associates

Maynard P. Venema
Mid-America Legal Foundation

Ken Vessely
Ameritech

William Wrigley, Jr.
Wm. Wrigley Jr. Company

Gerald J. Roper
President and CEO

The proposed Union Pacific/Southern Pacific merger will benefit businesses in the Chicago area. The City of Chicago currently holds a unique position as the rail and transportation hub of our nation. Both the Union Pacific and the Southern Pacific as well as other railroads, provide service to Chicago. While the Union Pacific has provided reliable service to Chicago businesses, Southern Pacific service levels have suffered in recent years as a result of SP's lack of financial resources, traffic volume and equipment. This has been a source of concern to the Chicago business community.

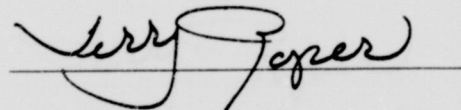
The proposed merger should provide significant service improvements for Chicago shippers and receivers. In particular, the ability to combine UP and SP lines and terminals will allow UP/SP to offer new competitive service between Chicago and northern and southern California, including reliable third-morning intermodal service. As a result, UP/SP will be able to offer genuine competition to the intermodal service offered now by the Atchison Topeka & Santa Fe Railway. In addition, Chicago businesses will enjoy more effective access to all Mexican gateways. Use of UP's efficient border-crossing processes, including pre-blocking and pre-cleaning of shipments to Mexico, will be available for both UP and SP-served gateways.

We expect that the combined UP/SP will be able to make more effective use of capital, maximizing improvements in capacity and efficiency. SP has faced particularly tight capital constraints. Investment to relieve capacity bottlenecks should particularly benefit SP lines and yards of importance to Chicago shippers. Merging the two systems should also reduce switching and terminal delays by allowing more pre-blocking and run-through trains. Coordination of UP and SP facilities, particularly intermodal yards, is likely to result in reduced highway congestion in the Chicago area. Shorter routes and the combination of different seasonal traffic patterns will

result in improved utilization of cars and locomotives, to the benefit of Chicago shippers and receivers.

The Chicagoland Chamber of Commerce sees the Union Pacific/Southern Pacific merger as a way to strengthen rail competition in the Chicago area. The Interstate Commerce Commission recently approved the merger of the Burlington Northern and the Santa Fe railroads. The combination of these two railroads, both of which serve Chicago, has created a very strong competitor, with an extensive route system linking Chicago with points throughout the west. The BN/Santa Fe system has important competitive strengths that UP or SP standing alone do not have. For example, Santa Fe is the leader in handling service-sensitive traffic between California and Chicago; its lead will widen as a result of the further cost savings and financial strength brought by the merger with BN. We believe that combining Union Pacific and Southern Pacific will create a strong and efficient railroad that can offer Chicago shippers a true competitive alternative to the BN/Santa Fe system.

In conclusion, the Chicagoland Chamber of Commerce strongly supports the proposed merger of the Union Pacific and the Southern Pacific. The Chamber urges the Interstate Commerce Commission to act promptly and favorably to approve the proposed merger.

A handwritten signature in dark ink, reading "Jerry Roper", is written over a horizontal line.

Jerry Roper
President, Chicagoland Chamber
of Commerce

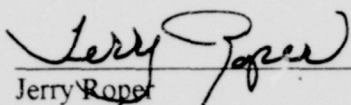
VERIFICATION

STATE OF ILLINOIS)

ss:

COUNTRY OF)

_____, 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.



Jerry Roper

Subscribed and sworn to before me the 3rd day of October, 1995.

Notary Public

My Commission Expires:

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• 32760

10-10-95

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Edwin W. Edwards
Governor

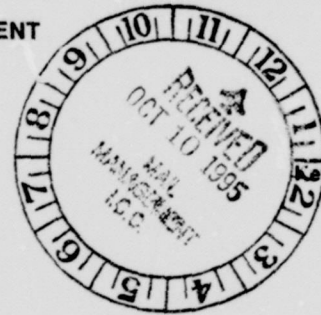
State of Louisiana 60128

DEPARTMENT OF ECONOMIC DEVELOPMENT

October 3, 1995

Item No. _____

Page Count 1



Kevin P. Reilly
Secretary

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, NW
Washington, DC 20425

FD-32760

Dear Secretary Williams:

I have had the opportunity to consider the proposed merger of the Union Pacific and Southern Pacific Railroads and want to offer my support in principle for the merger. I can see substantial benefits to shippers and the general public from such a merger.

It would appear that traffic originating and terminating at our ports would be specifically advantaged. Single line rail service from our ports along the most direct routes to Texas, New Mexico, Arizona and California and the Pacific Northwest will open up new opportunities that we have not been able to market in the past. Additionally, our ports will have single line service to all the major gateways into Mexico.

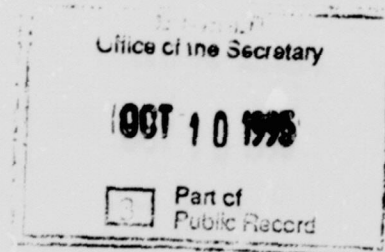
Furthermore, I understand Union Pacific will be addressing competitive concerns by negotiating arrangements with other carriers to assure that competition in major markets continues.

Sincerely,

Kevin P. Reilly Sr.

Kevin P. Reilly, Sr.
Secretary of Economic Development

KPR:ELH:gmv
wp/C&IUP-SPmrg ICC



STB

FD

• 32760

10-10-95

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• 60176

COMMITTEES
VICE CHAIRMAN
APPROPRIATIONS
JUDICIARY
RURAL CAUCUS
3ER
ALTH AND HUMAN
SERVICES
NATURAL RESOURCES
AND WILDLIFE
REPUBLICAN ELECTIONS

Senate

California Legislature



TIM LESLIE
SENATOR, FIRST DISTRICT

October 4, 1995



60176
SUBCOMMITTEES
HEALTH AND HUMAN
SERVICES SUBCOMMITTEE
ON RURAL HEALTH
JOINT COMMITTEES
FAIRS ALLOCATION AND
CLASSIFICATION
LEGISLATIVE BUDGET
PRISON CONSTRUCTION
AND OPERATIONS

Honorable Vernon A. Williams, Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W., Room 2215
Washington, D.C. 20423

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

Dear Mr. Williams:

It is with sincerity and conviction that I write to express my support of the proposed merger between Union Pacific Corporation and Southern Pacific Rail Corporation. The proposal will facilitate the increased and improved competition with Burlington Northern (BN)/Santa Fe Railroad.

From reviewing the details of the proposal, it is apparent that access and service to significant markets will be markedly improved by consolidating the UP/SP lines. Anticipated major costs savings from reduced overheads, facility consolidations and use of the best systems of each railroad will ultimately be realized by consumers. Competition between BN/Santa Fe and a merged UP/SP in California transcontinental markets will be much stronger than competition between BN/Santa Fe and UP and SP separately.

As well, although SP provides by far the most extensive shipping coverage in California, and most of SP's customers are exclusively served by SP, those customers have had to cope with service problems and uncertainties resulting from SP's unstable finances. The UP/SP merger will provide SP shippers the assurance of top-quality service with a more financially secure railroad that can afford the capital investments necessary to increase capacity, implement new technology and continually improve its operations.

For these reasons, I urge favorable consideration of UP/SP's merger proposal.

Your attentive consideration to this important matter will be most appreciated.

Item No. _____

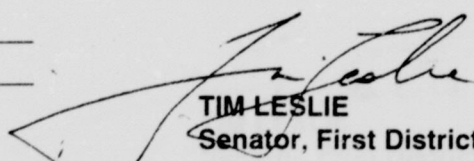
Sincerely,

Office of the Secretary

Page Count 1

Oct. # 46

OCT 11 1995


TIM LESLIE
Senator, First District

TL:cw

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10-10-95

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MEMBER

SELECT COMMITTEE ON CA PORTS
 SELECT COMMITTEE ON CA WINE
 PRODUCTION AND ECONOMY
 SELECT COMMITTEE ON MARINE
 RESOURCES
 JOINT COMMITTEE ON FAIRS
 ALLOCATION AND CLASSIFICATION
 JOINT COMMITTEE ON SCHOOL FACILITIES
 WILDLIFE CONSERVATION BOARD

Assembly California Legislature

DAN HAUSER

ASSEMBLYMAN, FIRST DISTRICT

CHAIRMAN

COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

COMMITTEES

GOVERNMENTAL ORGANIZATION
 TRANSPORTATION
 WATER, PARKS AND WILDLIFE
 CHAIRMAN:
 JOINT COMMITTEE ON FISHERIES
 AND AQUACULTURE



September 27, 1995

The Honorable Vernon A. Williams
 Secretary, Interstate Commerce Commission
 12th Street & Constitution Avenue, N.W.
 Washington, D. C. 20423

Re: Finance Docket No. 32760, Union Pacific Corporation
 - Control Merger - Southern Pacific Rail Corp. I.C.C.

*Dear Secretary Williams:

I am writing to express my strong support for the proposed merger of the Union Pacific and Southern Pacific Railroads.

The Union Pacific-Southern Pacific merger will dramatically improve service and strengthen competition in California and across the country. Such a merger will enable SP to overcome its financial and capital constraints and customers will once again have the assurance of long-term, top quality service from a financially stable railroad.

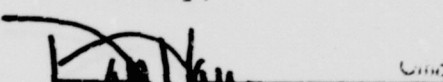
As we on the North Coast of California struggle to maintain and improve our rail freight system (the North Coast Railroad Authority) it is imperative that a viable and efficient railroad be in place to accommodate our growing needs and make those critical connections throughout the state and nation. This merger will ensure that carload shippers, such as California lumber producers, will see improved service with greater speed, reliability and frequency of schedules as a result of mileage savings, gradient improvements and operating efficiencies.

I unequivocally support this historic merger and urge your approval. Thank you.

Item No. _____

Sincerely,

Page Count _____
 Oct. # 44


 DAN HAUSER

Chairman of the Assembly

DH:SW

OCT 11 1995

STATE CAPITOL, P.O. BOX 942849, SACRAMENTO, CA 94249-0001 (916) 445-8360
 NORTHERN OFFICE, 510 O STREET, SUITE G, EUREKA, CA 95501 (707) 445-7014
 CENTRAL OFFICE, P.O. BOX 1014, UKIAH, CA 95482 (707) 468-0504
 SOUTHERN OFFICE, 50 D STREET, SUITE 450, SANTA ROSA, CA 95404 (707) 576-2526

STB

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10-10-95

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• 60173

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-4445
4811 CHIPPENDALE DRIVE
SUITE 501
SACRAMENTO, CA 95841
(916) 349-1995

60173

Assembly California Legislature

BARBARA ALBY
ASSEMBLYWOMAN, FIFTH DISTRICT

MEMBER:
ASSEMBLY COMMITTEE
ON RULES
ASSEMBLY COMMITTEE
ON BUDGET
ASSEMBLY COMMITTEE
ON JUDICIARY
ASSEMBLY COMMITTEE ON
UTILITIES & COMMERCE
ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY
AND TOXIC MATERIALS
TASK FORCE ON DEFENSE
CONVERSION

FD 32760

September 29, 1995

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



Dear Secretary Williams:

I am writing today to urge the Interstate Commerce Commission to give swift and sure approval of the application of the Southern Pacific and Union Pacific railroads to merge.

As the Assembly Member from the 5th District, I represent the area generally north and northeast of Sacramento. The Sacramento area is an important junction between the South Pacific and the Union Pacific. The SP's East-West rail line stretches from Oakland through Sacramento, Roseville, and Reno, Nevada, intersecting its North-South rail line through Stockton, Sacramento, Roseville and then northward. The UP main line from Oakland runs through Stockton and Sacramento, and north into the Feather River Canyon on its way to Reno.

Key concerns here include jobs, like those at the Southern Pacific's facility at Roseville, northeast of Sacramento, as well as the preservation of rail competition and the continuation of quality rail service to area business.

Merger of the UP and SP should join the financial strength of the Union Pacific Railroad with the facilities and personnel of the Southern Pacific Railroad. Long-term, that should be good for both railroads, for their employees, and for their customers.

The UPRR/SPRR merger will improve service and strengthen rail competition in our area. The UPRR and SPRR recently announced an agreement with the Burlington Northern/Santa Fe railroad which will ensure continued rail competition in California. The agreement allows the BN/SF Railroad to link its routes in Northern California with its routes in Central and Southern California by bridging the gap between Bieber and Stockton. It also will allow the BN/SF Railroad the opportunity to operate between Oakland/San Francisco and Denver through Sacramento.

Item No. _____

Page Count 2

Oct 11 1995

Office of the Secretary

OCT 11 1995

Honorable Vernon Williams
September 29, 1995
Page 2

Both provisions should ensure that the Sacramento/Roseville areas will remain a key rail crossroads in California.

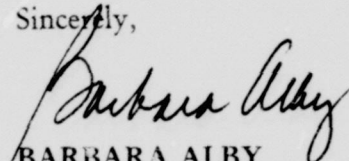
The merger should provide other public benefits. The UPRR/SPRR plans to provide the first truck-competitive single-carrier rail service ever in the corridor between California and the Seattle/Tacoma area. The result should be to take trucks off of crowded I-5 which runs through Sacramento.

The importance of the Sacramento/Roseville area as a rail hub should increase as the two railroads work to combine and coordinate their operation, as the BN/SF Railroad begins to move freight through the area, and as the merged UPRR/SPRR moves more intermodal freight in the I-5 corridor. That increase in business should ensure that good paying railroad jobs remain in our community.

The SPRR serves many businesses in Northern California. The merger will allow the railroad to service and provide high-quality service to those businesses. Combining the best of the SPRR and the best of the UPRR should benefit customers of both railroads.

In summary, the proposed UPRR/SPRR merger appears to have substantial benefits. I urge your Commission to give its swift approval to the railroads' application.

Sincerely,


BARBARA ALBY

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STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-8305
E-Mail: Jim.Cunneen@assembly.ca.gov

DISTRICT OFFICE
901 CAMPISI WAY, SUITE 300
CAMPBELL, CA 95008
(408) 369-8170

Assembly California Legislature

JIM CUNNEEN

ASSEMBLYMEMBER, TWENTY-FOURTH DISTRICT
*Representing the communities of: Campbell, Cupertino,
Los Altos, Los Gatos, Monte Sereno, San Jose, Saratoga, and Sunnyvale*

6072
COMMITTEES
BANKING AND FINANCE
INSURANCE
REVENUE AND TAXATION

BUDGET
VICE CHAIR, SUBCOMMITTEE ON
RESOURCES, TRANSPORTATION,
AGRICULTURE AND THE
ENVIRONMENT
VICE CHAIR, SUBCOMMITTEE ON
INFORMATION TECHNOLOGY

CHAIRMAN, SELECT COMMITTEE
ON HIGH TECHNOLOGY

FD 32760

September 29, 1995



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

Dear Secretary Williams:

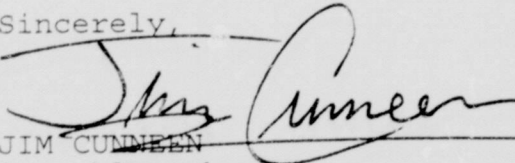
I am writing regarding the proposed merger between the Union Pacific Railroad (UP) and the Southern Pacific (SP) Railroad. I'm encouraged that this merger can not only improve the present service provided by the separate entities, but also strengthen competition.

Given the competitive changes posed by the Burlington Northern/Santa Fe alliance, the proposed merger could allow for real competition in the Chicago-California intermodal market for the first time. Such vigorous competition in this vital economic corridor can only result in improved service and price. This merger will create the largest railroad in California and the country.

The UP/SP merger will also likely improve service for California shippers by providing new shipping opportunities up and down the West Coast. I understand this merger could significantly reduce delays, increase reliability and improve efficiency between California and the national gateways. Best of all, the improved west coast rail corridor will create competition between trucking companies and rail - again with the potential of lowering transportation costs.

Please give the proposed merger every reasonable consideration.
Thank you.

Sincerely,


JIM CUNNEEN
Assemblymember
24th District

Office of the Secretary

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☐ Part of Item No. _____
☐ Public _____

Page Count 1

Oct. # 42

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JANICE L. MOLNAR
CHIEF OF STAFF
ANTHONY STANLEY
LEGISLATIVE COORDINATOR
CAPITOL OFFICE

CHAIRMAN:
SENATE REPUBLICAN CAUCUS

California State Senate

60170



SENATOR
BILL LEONARD

COMMITTEES:
APPROPRIATIONS
ENERGY, UTILITIES
AND COMMUNICATIONS
INDUSTRIAL RELATIONS
TOXICS AND PUBLIC
SAFETY MANAGEMENT
SELECT COMMITTEE ON
BUSINESS DEVELOPMENT
CHAIRMAN

Item No. _____

Page Count 1
Oct. # 40

October 6, 1995



The Honorable Vernon A. Williams, Secretary
Interstate Commerce Commission, Room 2215
Twelfth Street and Constitution Avenue, NW
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 write in support of the proposed merger of the Union Pacific and Southern Pacific
Railroads.

I believe that this merger will improve service and strengthen competition with BN/Santa
Fe, and California will greatly benefit from this. UP/SP will provide the first truck-competitive
rail service ever between the Seattle/Tacoma area and both southern and northern California. The
businesses and travelers of my area need this transportation option and the new capacity that this
merger will create. California's industry needs greater speed, reliability and frequency of
scheduled routes-- all factors which can result from this merger.

I encourage you to give this merger application your most favorable consideration. If I
can provide you with any additional information, please do not hesitate to call. Thank you.

Sincerely,

BILL LEONARD

Office of the Secretary

OCT 11 1995

BL:jm

Part of

Capitol Office:
State Capitol, Room 5087, Sacramento, CA 95814
(916) 445-3688 • FAX (916) 327-2272

District Office:
400 North Mountain Avenue, Suite 109, Upland, CA 91786
(909) 946-4889 • (800) 404-3131 Toll Free • FAX (909) 982-1197

Internet Address: senator.leonard@sen.ca.gov

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Item No. _____

Page Count 1

Oct # 21

Howard Kalogian

ASSEMBLYMAN, SEVENTY-FOURTH DISTRICT

(Pronounced "Ka-loo-ge-in")

CALIFORNIA LEGISLATURE, STATE CAPITOL, SACRAMENTO, CA 95814 (916) 445-2396 FAX (916) 324-9991

October 2, 1995

Honorable Vernon A. Williams
 Secretary, Interstate Commerce Commission
 12th Street & Constitution Ave. N.W.
 Room 2215
 Washington, D.C. 20423



COMMITTEES:
 JUDICIARY
 GOVERNMENTAL
 ORGANIZATION

SELECT COMMITTEE:
 CALIFORNIA-MEXICO
 AFFAIRS

STATE VICE CHAIR,
 AMERICAN LEGISLATIVE
 EXCHANGE COUNCIL

RE: UNION PACIFIC RAILROAD/SOUTHERN PACIFIC RAILROAD MERGER

Dear Secretary Williams:

The railroad service industry is a cost effective and reliable way for commerce and business to transport shipments across state and national borders. We must work and strive to ensure that these services remain at the optimum level while being able to foster a competitive market which benefits economic growth in California and helps to ensure domestic and international competitiveness.

The Union Pacific Railroad and the Southern Pacific Railroad have proposed a merger which would provide a two railroad system with a wide market and intense competition. This merger will provide California shippers and receivers with extensive new single line services that will connect California with Arizona, New Mexico, Texas and Louisiana, as well as the intermountain area and the upper midwest.

Southern Pacific has been able to remain competitive since the merger of Burlington Northern/Santa Fe railroads. Thus, this merger will increase the number of services that the Union Pacific/Southern Pacific will be able to offer California businesses while providing a more competitive market and major cost savings by consolidating the two railroad systems into one.

I would like to request that you help in supporting this merger. The transportation, economic and service benefits are clear. Thank you for the opportunity to bring this issue to your attention. Your favorable consideration is requested.

Respectfully,

[Signature]
 HOWARD KALOOGIAN
 Assemblyman, 74th District

HK n

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Item No. _____

Page Count 2

Sept # 76

(910) 443-0300

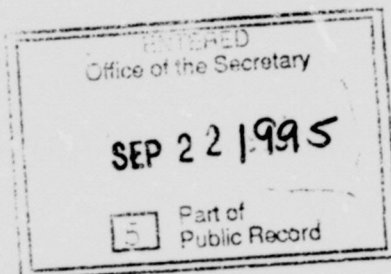
DISTRICT ADDRESS
0727 WHITE OAK, SUITE 124
GRANADA HILLS, CA 91344
(818) 368-3838

Assembly
California Legislature

PAULA L. BOLAND

MEMBER OF THE ASSEMBLY
THIRTY-EIGHTH DISTRICT

CHAIR:
PUBLIC SAFETY
MEMBER:
EDUCATION
HOUSING & COMMUNITY
DEVELOPMENT
NATURAL RESOURCES



September 18, 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 Corporation, et al.

Dear Mr. Williams:

I would like to take this opportunity to voice my support for the proposed merger of Union Pacific Railroad and Southern Pacific Railroad.

Experience shows that two strong railroads with wide market reach provide intense competition. This has been proven in many important markets, such as Seattle/Tacoma, the Power River Basin and much of the eastern United States. Here, two rail systems -- BN/Santa Fe and UP/SP -- 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. 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.

Together they will be able to provide a competitive single-carrier rail service between Seattle/Tacoma and both southern and northern California. Railroads providing interline service via Portland or other junctions have never been able to offer high-quality through service. UP/SP would be able to provide new shipping opportunities up and down the west Coast.

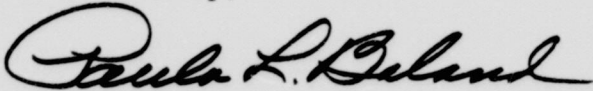
Vernon A. Williams
Interstate Commerce Commission
Page 2

Furthermore, this merger will produce many advantages, not only to California shippers, but also receivers will enjoy extensive new single-line service in many corridors between California and other parts of the continental United States.

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.

I would most sincerely appreciate your favorable consideration of this merger.

Sincerely,

A handwritten signature in cursive script, reading "Paula L. Boland". The signature is written in dark ink and is positioned above the printed name.

Paula L. Boland

PLB:cv

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Item No. _____

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Sept # 77

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Monsanto

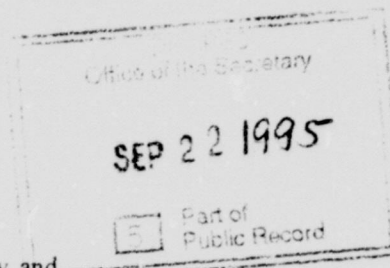
The Chemical Group
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-1000

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 I 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.

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 Manufactures 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.

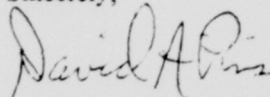
Monsanto subscribes to CMA's railroad merger policy which is supportive of railroad mergers that maintain or enhance competition, service, and safety. Monsanto, due to the vast level of business it does with the UP and SP is just now analyzing its position on this merger, and we are not in a position 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

STB

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U. S. Department of Justice

Antitrust Division

Item No. 60134

Page Count 7

Oct #16

555 4th Street, N.W.

Washington, DC 20001

October 2, 1995



Honorable Vernon A. Williams, Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Room 2215
Washington, D. C. 20423

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

Dear Mr. Williams:

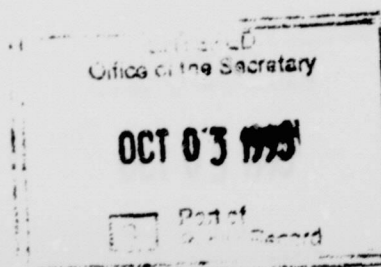
Enclosed for filing in the captioned docket are the original and twenty copies of (1) Petition of the Department of Justice for Leave to File Additional Comments on Procedural Schedule, and (2) Additional Comments of the Department of Justice on Proposed Procedural Schedule. Please have the extra copy of this filing date-stamped and return it to the messenger for our files.

In accordance with the Commission's request contained in Decision No. 1 issued in this proceeding, we also enclose a copy of these documents on a 3.5 inch floppy diskette formatted for Word Perfect 5.1.

Sincerely yours,

Michael D. Billiel
Attorney
Transportation, Energy and
Agriculture Section

CC: Hon. Jerome Nelson
Arvid E. Roach II, Esq.
Paul A. Cunningham, Esq.
All Parties of Record



BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.



UNION PACIFIC CORP., UNION PACIFIC)
RAILROAD CO. AND MISSOURI PACIFIC)
RAILROAD CO.-- CONTROL AND MERGER --)
SOUTHERN PACIFIC RAIL CORP., SOUTHERN) FINANCE DOCKET
PACIFIC TRANSPORTATION CO., ST. LOUIS) NO. 32760
SOUTHWESTERN RAILWAY CO., SPCSL CORP.)
AND THE DENVER AND RIO GRANDE WESTERN)
RAILROAD CO.)

ADDITIONAL COMMENTS BY THE DEPARTMENT OF JUSTICE
ON PROPOSED PROCEDURAL SCHEDULE

Communications with respect to this document should be addressed
to:

Roger W. Fones, Chief
Donna N. Kooperstein, Assistant Chief

Michael D. Billiel
Joan S. Huggler
Robert L. McGeorge
Attorneys

OCT 11 1995

Transportation, Energy &
Agriculture Section
Antitrust Division
U.S. Department of Justice
555 4th Street, N.W.
Washington, D. C. 20001

202-307-6666

October 2, 1995

DOJ-3

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

UNION PACIFIC CORP., UNION PACIFIC)
RAILROAD CO. AND MISSOURI PACIFIC)
RAILROAD CO.-- CONTROL AND MERGER --)
SOUTHERN PACIFIC RAIL CORP., SOUTHERN) FINANCE DOCKET
PACIFIC TRANSPORTATION CO., ST. LOUIS) NO. 32760
SOUTHWESTERN RAILWAY CO., SPCSL CORP.)
AND THE DENVER AND RIO GRANDE WESTERN)
RAILROAD CO.)

ADDITIONAL COMMENTS BY THE DEPARTMENT OF JUSTICE
ON PROPOSED PROCEDURAL SCHEDULE

The Department of Justice ("Department") hereby submits additional comments on the procedural schedule to be adopted in this proceeding for the limited purpose of addressing the effect of the settlement agreement between the Applicants and Burlington Northern/Santa Fe.

On September 1, 1995, the Commission, in Decision No. 1, requested comments on the procedural schedule proposed by Applicants (UP/SP-4) and certain modifications suggested by the Commission. Comments were due on September 18 and Applicants' reply on September 28. On September 18, the Department filed comments on the procedural schedule (DOJ-1) urging that the schedule be modified in order to allow sufficient time for the parties to fully develop the record on the numerous and complex

simple proceeding. Evaluating the adequacy of the competitive relief provided by the agreement to those shippers that will become captive to UP/SP as a result of the proposed transaction will entail the same analysis of the extremely complex competitive issues presented by the Application, as well as investigation of the adequacy of this (or alternative) proposed remedies. The extent to which the agreed upon trackage rights will provide meaningful competitive alternatives to the large number of affected shippers depends upon a number of factors, including the terms and conditions of the agreement and the compensation levels. Given the unprecedented scope of this agreement,² Applicants' procedural schedule is simply inadequate to provide for the development of a meaningful record of the adequacy of the proposed remedy to cure the competitive harm.

Furthermore, the agreement with BNSF does not, and cannot, remedy the competitive harm arising from the reduction in the number of carriers in the western United States from three to two. As the Department noted in its earlier comments, there is substantial empirical evidence that such a reduction leads to higher prices, DOJ-1 at 3 n.2, and there is evidence that three to two markets affected by the proposed transaction account for nearly \$4 billion in annual revenues. KCS-3, Exhibit A (Verified Statement of Curtis M. Grimm) at 4. Thus, even if the effect on

²UP/SP would provide BNSF over 3800 miles of trackage rights and BNSF would purchase an additional 335 miles if track. By comparison, the Commission concluded that the competitive problems caused by the BNSF merger could be remedied by giving other carriers slightly over 1000 miles of trackage rights. Finance Docket No. 32549, Decision No. 38 (served Aug. 23, 1995).

rail rates or service in these markets were not as great as the effect in two to one markets, the potential competitive harm from a reduction in the number of western railroads from three to two is still enormous. Even if a close analysis eventually reveals that the BNSF agreement does remedy the concerns about two to one markets, the parties in this proceeding will still require time to develop an adequate record on the remaining competitive issues raised by this transaction.

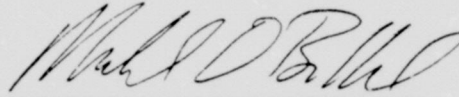
In sum, the Applicants characterize their agreement with BNSF as addressing "every legitimate competition issue with respect to the UP/SP merger." (UP/SP-14 at 2) This conclusion cannot, and should not be made at this stage of the proceeding. It is not at all self-evident that the scope of the agreement is co-extensive with the competitive problems raised by the transaction, or that the terms of the agreement replicate pre-merger competition. The Commission, by accepting the Applicants' assertion that the BNSF agreement is sufficient and setting the schedule accordingly, will effectively assume a conclusion that should be reached only after being tested by a full record.

CONCLUSION

For the reasons discussed above and in our September 18 comments (DOJ-1), the Department urges the Commission to modify the proposed procedural schedule to allow additional time for the

parties to take discovery and develop testimony in order to
ensure a complete record in this extremely important proceeding.

Respectfully submitted,



Michael D. Billiel
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Attorneys

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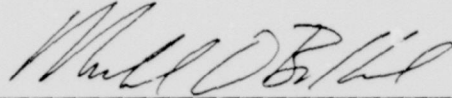
Roger W. Fones, Chief
Donna N. Kooperstein,
Assistant Chief

Transportation, Energy
and Agriculture Section

October 2, 1995

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 1995, I caused to be served by, by hand or by first class mail, postage prepaid, copies of the foregoing Additional Comments of the Department of Justice on Proposed Procedural Schedule in Finance Docket No. 32760 on attorneys for the Applicants, the Honorable Jerome Nelson, and all known parties of record in this proceeding.

A handwritten signature in cursive script, appearing to read "Michael D. Billiel", written over a horizontal line.

Michael D. Billiel

STB

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• 32760

10-2-95

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• 60131



DAVID READE
CHIEF OF STAFF

Assembly California Legislature

BERNIE RICHTER
ASSEMBLYMAN, THIRD DISTRICT

COMMITTEES
CHAIRMAN:
ENVIRONMENTAL SAFETY
AND TOXIC MATERIALS
MEMBER:
HOUSING AND COMMUNITY
DEVELOPMENT
NATURAL RESOURCES
PUBLIC EMPLOYMENT,
RETIREMENT AND SOCIAL SECURITY

September 20, 1995

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

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

Dear Secretary Williams:

I am writing this letter in support of the proposed merger of
Union Pacific Railroad and Southern Pacific Railroad. This merger
will improve service for both lines and strengthen competition.

The UP/SP merger will provide for competitive new shipping
opportunities. Shorter routes can be expected, as well as,
improved equipment supply. Customers may expect their shipping
needs to be met with greater speed, reliability and more frequent
schedules.

The proposed merger will result in greater efficiency than
either line is capable of today. There will be major cost savings
from reduced overhead and facility consolidations. This will also
provide for the capacity to expand and improve service to benefit
all shippers.

The merger will produce a financially stable railroad able to
afford the capital investments necessary to build new capacity,
implement new technology and continue improvement of its opera-
tions. Such a railroad will promote stronger competition and
profit its patrons.

Thank you for giving me the opportunity to comment on the
UP/SP merger. I urge your serious consideration of the proposal.

Sincerely,

Bernie Richter
BERNIE RICHTER

BR:jlw

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Page Count 1
Oct # 1

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Page Count 15
Sept #90

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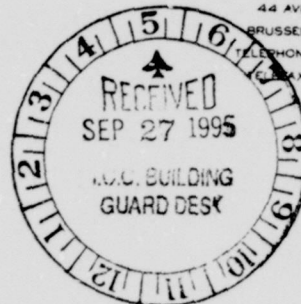
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September 27, 1995



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
Petitions to Reconsider or Modify Protective Order (UP/SP-13).
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.

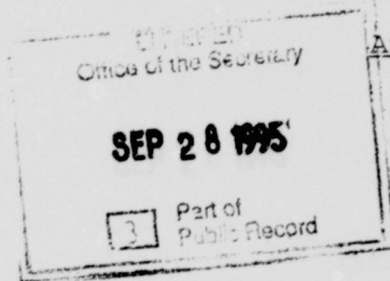
Sincerely,

Michael L. Rosenthal

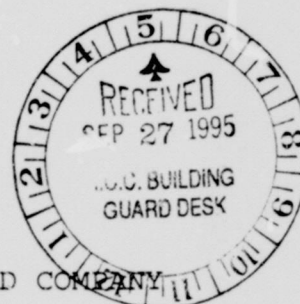
Michael L. Rosenthal

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

Enclosures



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

Office of the Secretary

SEP 28 1995

3 Public Hearing

APPLICANTS' REPLY TO PETITIONS TO
RECONSIDER OR MODIFY PROTECTIVE ORDER

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and The Denver and Rio Grande
Western Railroad Company

Office of the Secretary

SEP 28 1995

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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

APPLICANTS' REPLY TO PETITIONS TO
RECONSIDER OR MODIFY PROTECTIVE ORDER

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
petitions of the National Industrial Transportation League
("the NIT League") (NITL-3), Western Resources, Inc. (WSTR-3),
and the Railway Labor Executives' Association, its affiliated
organizations and the United Transportation Union

^{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."

(collectively, "RLEA") (RLEA-2) for reconsideration of the Commission's decision, served Sept. 1, 1995, entering a protective order in this matter (Decision No. 2).

I. NIT LEAGUE AND WESTERN RESOURCES ARGUMENTS

The NIT League and Western Resources ask that the Commission reconsider its decision to enter a protective order for this proceeding that includes a category of "highly confidential" information and restricts access to that information to parties' outside counsel or consultants. This request should be denied. The NIT League and Western Resources simply rehash the same arguments that the Commission has already rejected in this proceeding, see Decision No. 2, served Sept. 1, 1995, pp. 1-3, and in other proceedings, including the recently concluded BN/Santa Fe case, see Finance Docket No. 32549, Burlington Northern, Inc., & Burlington Northern R.R. -- Control & Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry., Decision served May 3, 1994, p. 2.

In its decision granting Applicants' petition for a protective order, the Commission found good cause to exist for granting the petition because "unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause serious competitive injury to the parties." Decision No. 2, served Sept. 1, 1995, p. 3. The Commission also found that issuing the protective order

would "facilitate the prompt and efficient resolution of this proceeding." Id. When it issued the protective order, the Commission explicitly rejected arguments made by Kansas City Southern Railway Company against the creation of a "highly confidential" category of documents. Neither the NIT League nor Western Resources presents any reason for concluding that the Commission was wrong.

The Commission's decision to allow Applicants to designate unusually sensitive commercial information as "highly confidential" and to restrict access to that information to parties' outside counsel and consultants finds overwhelming support in Commission precedent. As both the NIT League and Western Resources acknowledge (NITL-3, p. 3; WSTR-3, p. 1), the protective order entered by the Commission is essentially identical to the order in BN/Santa Fe. Nor can the NIT League or Western Resources take issue with the fact that similar orders restricting access to "highly confidential" information have been used in rail merger cases for at least the past decade and a half.

At the heart of the NIT League's and Western Resources' arguments is a claim that the Commission has repeatedly rejected: that parties will be unfairly disadvantaged if their in-house counsel (and business executives, as the NIT League would have it) are unable to have access to Applicants' highly sensitive commercial

information. See NITL-3, pp. 4, 6; WSTR-3, p. 2. As Applicants explained in response to KCS, this argument is without merit. See UP/SP-7, pp. 6-9.

In BN/Santa Fe, in responding to a petition by Western Resources similar to the one it filed here, the Commission rejected Western Resources' request that its in-house counsel be given access to the applicants' "highly confidential" documents, and reaffirmed its practice of restricting access to highly sensitive commercial information to outside counsel and consultants. The Commission explained that the "highly confidential" classification was designed precisely to prevent disclosure of such information to shippers, including their in-house counsel. It held that disclosure of such information to shippers with which applicants have "arms-length business relationships" was inappropriate because it "could adversely affect the primary applicants' future business dealings with those entities." BN/Santa Fe, Decision served May 3, 1994, p. 2. The concerns in this proceeding are no different.

Especially in a proceeding of this size and scope, the risk of inadvertent disclosure of confidential business information is substantial. This fact has nothing to do with whether in-house counsel intend in the utmost good faith to abide by the protective order. Access to confidential competitive information places in-house counsel in the

untenable position of having to refrain from offering advice on a host of issues in order to avoid disclosing highly confidential information. When outside counsel are available to protect a party's interests, such risk and such conflicts can be avoided at the same time as the applicants' interest in confidentiality is preserved.

Furthermore, as Applicants explained in response to KCS (UP/SP-7, pp. 7), the Commission's resolution of the conflict between applicants' need to preserve confidential business information and other parties' interest in discovery is not by any means unique. Courts faced with similar issues have drawn the same line between in-house counsel, on the one hand, and outside counsel and experts on the other. As one court explained when affirming an order that denied in-house counsel access to confidential competitive information:

"It has been noted that in-house counsel stand in a unique relationship to the corporation in which they are employed. Although in-house counsel serve as legal advocates and advisors for their client, their continuing employment often intimately involves them in the management and operation of the corporation of which they are a part."

FTC v. Exxon Corp., 636 F.2d 1336, 1350 (D.C. Cir. 1980). See also Brown Bag Software v. Symantec Corp., 960 F.2d 1465, 1470-72 (9th Cir.), cert. denied, 113 S. Ct. 198 (1992); Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1482-83 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). The Commission certainly has enough experience with rail

mergers and enough knowledge of railroads and shippers to decide that a protective order that denies access to competitively sensitive information to parties' in-house counsel is appropriate in light of the type of information involved and the role of in-house counsel.^{2/}

Both the NIT League and Western Resources argue (NITL-3, p. 4; WSTR-3, pp. 1-2) that experience in the BN/Santa Fe proceeding revealed problems with this type of protective order. But neither the NIT League nor Western Resources points to a single instance in which any party abused the classification. Nor do they point to any way in which their participation in that proceeding was handicapped by the inability of in-house counsel or other employees to view "highly confidential" material. In fact, when issues involving the protective order arose in BN/Santa Fe, they were quickly resolved either informally or by the Commission. And, significantly, in the single dispute that the Commission did have to resolve, which involved Western Resources, the Commission denied a request for access to highly confidential information and forcefully reaffirmed the need to protect

^{2/} Contrary to the NIT League's suggestion, Brown Bag Software v. Symantec Corp., 960 F.2d 1465 (9th Cir.), cert. denied, 113 S. Ct. 198 (1992), supports the use of a blanket protective order here. The Brown Bag court upheld an order precluding Brown Bag's in-house counsel's access to trade secrets produced in discovery because the information was extremely sensitive, knowledge of the information would place the in-house counsel in an untenable position, and outside counsel were available to protect Brown Bag's interests.

highly confidential business information in a proceeding such as this. See BN/Santa Fe, Decision served May 3, 1995, p. 2.

The NIT League argues (p. 5) that, rather than adopt a protective order that allows Applicants to designate a category of material as "highly confidential," the Commission should direct Applicants to present their concerns about disclosure of confidential materials "on a case-by-case basis." This suggestion is ludicrous. As the Commission has recognized by entering similar protective orders in rail merger cases for at least the past decade and a half, the page-by-page approach advocated by the NIT League is completely unworkable in a proceeding of this size and scope. The number of Commission actions required would grind this proceeding to a halt early in the discovery phase. By contrast, the Commission has found that the protective order it has entered will "facilitate the prompt and efficient resolution of this proceeding." Decision No. 2, served Sept. 1, 1995, p. 3. The NIT League's suggestion that the Commission has somehow not adequately balanced the need for public disclosure against the need for confidentiality is belied by the Commission's specific findings. Id.

Neither the NIT League nor Western Resources has presented any new challenge to the Commission's decision to enter a protective order that allows Applicants to designate certain information as "highly confidential." In-house

counsel for non-applicant parties have no compelling need for access to competitively sensitive data. Outside counsel -- and both the NIT League and Western Resources have outside counsel who are experienced in railroad control proceedings -- can adequately protect their clients' interests in these proceedings without expanding competitors' or customers' potential access to commercially sensitive data. This is the same resolution the Commission adopted in BN/Santa Fe. Finally, there is no reason to believe that parties will not act in good faith when designating information "highly confidential." Nonetheless, if, after reviewing material designated as "highly confidential," outside counsel for a party believes that particular information has been improperly classified, or that particular in-house personnel should receive access to particular information, that party remains free to raise the matter with the party that designated the material as "highly confidential," and, if the matter cannot be resolved amicably, to present it to the Commission.

The NIT League's and Western Resources' petitions present no arguments that the Commission has not already considered and rejected, and thus they should be denied.

II. RLEA ARGUMENTS

RLEA requests that the Commission modify a different section of the protective order it entered on September 1, and this request also should be denied. RLEA has not shown good

cause for modifying the protective order. RLEA has only demonstrated that it has misread or misunderstood the provision to which it objects, and its proposed redrafting of the provision is completely unreasonable.

Contrary to RLEA's claim (p. 1), paragraph 2 of the protective order does not create "a blanket prospective finding and order, that the 'meetings, conferences, exchanges of data and other cooperative efforts' of the Applicants during the pendency of this proceeding will not violate" either Section 11343 or Section 11910 of Title 49. Rather, paragraph 2 provides that meetings and exchanges of data will not be considered violations of Sections 11343 or 11910 "to the extent that" that they are "for purposes of this and any related proceedings." RLEA's statement (p. 3) that "Applicants did not specify what they intended to do at these meetings . . . and did not specify the subject matter of the data to be exchanged" represents a similar confusion on RLEA's part: paragraph 2 makes clear that the meetings and data must relate to the preparation of the primary application and other related applications.

RLEA's argument that paragraph 2 is inappropriate ignores the task that faces applicants preparing a control application. Such a provision is necessary for applicants to proceed with this transaction. The preparation of a control application requires applicants to share a certain amount of

otherwise confidential information. The sharing of such information might be contended to violate Section 11343, which prohibits one carrier from obtaining unauthorized control of another carrier, or Section 11910, which prohibits a carrier from disclosing certain confidential shipper information. Unless applicants can receive some advance assurance that the necessary exchanges of information for purposes of preparing the primary application and related applications will not violate these prohibitions, mergers could never occur.

In recognition of this fact, carriers have long sought, and the Commission has long approved, similar provisions in railroad control proceedings. See, e.g., BN/Santa Fe, Decision served July 15, 1994; Finance Docket No. 32556, Illinois Central Corp. -- Common Control -- Illinois Central R.R. & Kansas City Southern Ry., Decision served Aug. 12, 1994; 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. 4, 1992; 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 Aug. 19, 1992; Finance Docket No. 30400, Santa Fe Southern Pacific Corp. -- Control -- Southern Pacific Transportation Co., Decision

served Feb. 3, 1984. In light of this long and consistent history, RLEA's statement (p. 6) that "Paragraph 2 of the protective order amounts to a complete reversal of the Commission's earlier positions" is inexplicable.

3 The provision of the protective order to which RLEA objects simply allows Applicants to share information necessary to prepare their control application and any related applications. Thus, RLEA's entire discussion (pp. 2-8) regarding the Commission's responsibility to prevent unauthorized acquisition of control is irrelevant. Nothing in the protective order immunizes Applicants from engaging in unauthorized control, and nothing in the protective order requires the Commission to be any less vigilant in preventing unauthorized control. To the extent that RLEA ultimately asks that the Commission reaffirm these basic facts (p. 8), it is unnecessary, because RLEA's concerns are based on its misreading of paragraph 2.^{4/}

RLEA also asks the Commission to modify the protective order to require Applicants to notify the Commission of any "meeting, conference, exchange of data or other cooperative effort" related to the preparation of the application (RLEA pp. 8-9). This request is, if anything,

^{4/} Moreover, this case is entirely dissimilar to SFSP, in which 100% of the stock of Southern Pacific was placed in a voting trust. Here, Southern Pacific remains completely independent, and under the control of its principal shareholders and incumbent management.

even further detached from reality than the NIT League's argument that confidentiality issues should be pre-litigated on a page-by-page basis. RLEA's proposed modification would be enormously burdensome, both for the Applicants and the Commission. RLEA's proposed modification is not required by any conceivable reading of the Commission's rules, applicable precedent or the Interstate Commerce Act, and it should be denied.

Respectfully submitted,

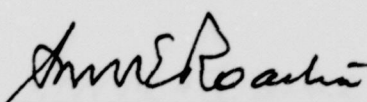
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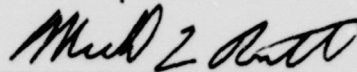
Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 27th day of September, 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

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Item No. _____

Page Count 11

Sept #89

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*ADMITTED IN VIRGINIA ONLY

September 27, 1995



JAMES L. HIGHSAW
1970 - 1992

BY HAND DELIVERY

Hon. Vernon A. Williams, Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corp.--Control & Merger

Dear Secretary Williams:

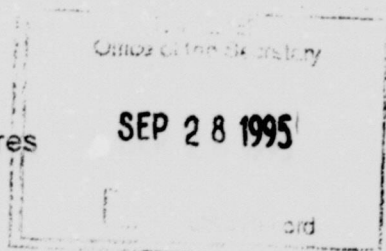
Enclosed for filing with the Commission are the original and twenty copies of the Reply of the Railway Labor Executives' Association, Its Affiliated Organizations And The United Transportation Union In Response To International Brotherhood Of Teamsters Petition To Reopen Decision No. 3. Please stamp the extra enclosed copy as received so that the messenger may return it to the undersigned.

Also enclosed is a 3.5" floppy diskette containing the text of the petition presented in Wordperfect 5.1 format.

Sincerely,

Richard S. Edelman
An Attorney for RLEA/UTU

Enclosures



SEP 28 1995

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P. 1000
Record



RLEA-3

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

REPLY OF THE
RAILWAY LABOR EXECUTIVES' ASSOCIATION,
ITS AFFILIATED ORGANIZATIONS AND THE
UNITED TRANSPORTATION UNION IN RESPONSE TO
INTERNATIONAL BROTHERHOOD OF TEAMSTERS PETITION
TO REOPEN DECISION NO. 3

This memorandum constitutes the response of the Railway Labor Executives' Association ("RLEA"), its affiliated organizations¹ and the United Transportation Union (collectively "RLEA/UTU") to the petition of the International Brotherhood of Teamsters ("IBT") to reopen and reverse the Commission's determination in Decision No. 3 in the above-captioned proceeding

¹ The RLEA affiliated organizations are: American Train Dispatchers Department/BLE; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; and Sheet Metal Workers' International Association.

with respect to its exclusion from the definition of "applicant carriers" the following trucking companies: Overnite Transp. Co. ("Overnite"), Pacific Motor Transp. Co. ("PMT") and Southern Pacific Motor Trucking Co. ("SPMT"), which are, respectively, subsidiaries of Union Pacific Corp. ("UPC") and Southern Pacific Transp. Co. ("SPTC"). UPC and Southern Pacific will be jointly referred to herein as "Applicants" or "UP/SP".

RLEA/UTU concurs with the IBT's argument that the Commission's exclusion of Overnite, PMT and SPMT from the definition of applicant carriers in this proceeding was in error because it was made without any findings of fact which would provide any support for that conclusion, and without any rationale; and because the exclusion of these subsidiary trucking companies from the definition of applicant carriers will prevent the Commission from fulfilling its duties under 49 U.S.C. §11344. RLEA/UTU submits that it is important that the Commission reopen and reverse the portion of Decision No. 3 excluding the trucking subsidiaries from the definition of applicant carriers in order to insure that parties to this proceeding will have an adequate opportunity to address the significant competition issues raised by the proposed transaction, and to insure that the Commission can develop an adequate record and give due consideration to those issues.

When confronted with claims that proposed rail transactions give rise to a likelihood of market dominance, rail applicants

have often argued, and the Commission has lately agreed, that the existence of trucks as an alternative to trains substantially mitigates those concerns. See e.g. discussion in *Union Pacific Corp. et al.--Missouri-Kansas-Texas R.R. Co.*, 4 ICC 2d 409, 433-35 (1988). However, if Overnite, PMT and SPMT are excluded from the definition of applicant carriers, parties who oppose the transaction will be hindered in responding to claims that motor carrier competition for the combined rail will mitigate the effects of the reduction in rail options. Similarly, removal of the motor carrier subsidiaries from the definition of "applicant carrier" in this case will impede the Commission's ability to assess the overall effect of this merger on the transportation market west of the Mississippi and indeed on the national transportation system. Since Overnite, PMT and SPMT are controlled by UPC and SPTC, facile acceptance of the assertion that trucking competition will mitigate monopoly and duopoly concerns in this case would be arbitrary and capricious, especially since Overnite is one of the nation's largest motor carriers. See *Union Pacific Corp.--Control--Overnite Transp. Co.*, 4 ICC 2d 36, 39 (1987).

Additionally, in *Union Pacific--Overnite*, the Commission described the common control of Union Pacific and Overnite as creating a nationwide, fully integrated, multi-modal transportation system. 4 ICC 2d at 40-41, 49. Any reasoned

evaluation of the combination of UPC and SPTC must therefore recognize that one of the nation's largest motor carriers is an integral part of UPC and thus necessarily an integral party to the instant transaction. Given the Commission's prior findings regarding the nature of the UPC--Overnite operation, it is arbitrary and capricious to exclude Overnite as a party in this proceeding on the basis that Overnite will not likely be significantly affected by the merger of its parent and SPTC.

Similarly, it must be noted that in *Rio Grande Industries, et. al.--Control--Southern Pacific Transp. Co.*, 4 ICC 2d 834 (1988), the Commission treated PMT and SPMT as carrier parties involved in that transaction; and it did a specific analysis of the RGI--SPT transaction to the extent that it involved RGI's acquisition of control of the two motor carriers. *Id.* at 949-951. Although the Commission ultimately determined that the acquisition of control of PMT and SPMT could be exempted from prior approval under 49 U.S.C. §11344, the Commission did not simply eliminate them as parties, and it certainly did not remove them from the transaction at the outset. Thus the exclusion of Overnite, PMT and SPMT from the definition of carriers in this proceeding is at odds with the Commission's treatment of similarly situated (and in part, identical) motor carriers in *RGI-SPT*.

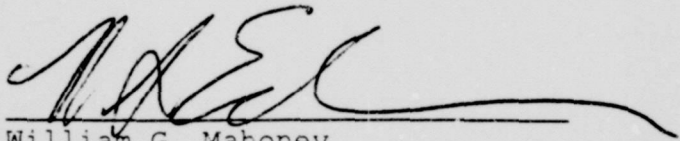
Additionally, elimination of Overnite, PMT and SPTC from the definition of carrier in this proceeding may preclude discovery from those entities. And, even if it will be possible to obtain information concerning Overnite, PMT and SPTC, the possibility of a significant limitation on the number of interrogatories which may be served on parties in this proceeding means that treating the trucking subsidiaries as mere parts of the applicants will hinder discovery by other parties. In that situation, the use of written discovery to obtain information regarding Overnite, PMT and SPTC would significantly diminish parties' ability to address other important issues through written discovery; or concerns about a limitation on written discovery will discourage parties from making inquiries concerning the trucking subsidiaries.

Accordingly, RLEA/UTU respectfully submits that the exclusion of Overnite, PMT and SPTC from the definition of applicant carriers will adversely affect the ability of the parties and the Commission to effectively deal with the competition issues in this proceeding.

For the reasons stated in the IBT petition, and for the reasons stated above, RLEA/UTU respectfully submits that the IBT petition should be granted.

- 6 -

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'W. G. Mahoney', with a long horizontal flourish extending to the right.

William G. Mahoney
Richard S. Edelman
Donald F. Griffin

HIGHS AW, MAHONEY & CLARKE, P.C.
1050 17th Street, N.W.
Suite 210
Washington, D.C. 20036
(202) 296-8500

Counsel for Railway Labor
Executives Association, Its
Affiliated Organizations and
United Transportation Union

Dated: September 27, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the Reply Of The Railway Labor Executives' Association, Its Affiliated Organizations And The United Transportation Union In Response To International Brotherhood OF Teamsters Petition To Reopen Decision No. 3 by first-class mail, postage prepaid, to the offices of the parties on the attached list.

Dated at Washington, D.C. this 27th day of September, 1995.

A handwritten signature in dark ink, appearing to read 'R. S. Edelman', written over a horizontal line.

Richard S. Edelman

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2001 Market Street, 16-A
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Martin Tower
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Kingsport, TN 37662

C. L. Crawford, Chairman
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United Transportation Union
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FERC
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Chemical Manufacturers Assoc.
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Mallinckrodt Chemical
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Chesterfield, MO 63017-1777

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North Little Rock, AR 72119

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Santa Fe Pacific Corporation, *et al.*
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Schaumburg, IL 60173

Honorable Lester Williams
Mayor
Town of Eads
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Union Pacific Corporation
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Frederic L. Wood
DONELAN, CLEARY, WOOD
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Suite 750
Washington, D.C. 20005-3934

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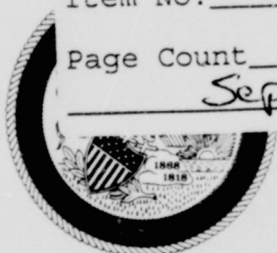
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Page Count 1

Sept #87

Beverly Fawell
SENATOR • 20TH DISTRICT

Committees:
Chairman-Transportation
Appropriations



District Office:
213 W. Wesley • Suite 105
Wheaton, Illinois 60187
708-752-1100
Fax: 708-752-1103

Capitol Office:
Room 121A Capitol
Springfield, Illinois 62706
217-782-8022
Fax: 217-782-4079

18 September 1995



Interstate Commerce Commission
12th Street and Constitution Avenue, NW
Washington, DC 20423

Attn: Ms. Linda Morgan
Chairperson

Re: Finance Docket 32760 (Union Pacific/Southern Pacific)

Dear Ms. Morgan:

As an Illinois State Senator and Chairman of the Illinois State Senate Transportation Committee I strongly support the merger of the Union Pacific and Southern Pacific railroads.

It is obvious that a unified system will be stronger financially, relieving pressure on the Southern Pacific caused by the BN/Santa Fe merger and protecting SP share- holders as well as taxpayers.

In addition, a UP/SP merger can be expected to promote operating efficiencies on the unified line and reduce costs to the new entity which will ultimately benefit our own Illinois shippers and receivers.

Furthermore, a new UP/SP combination will find it possible to compete with the Burlington Northern/Santa Fe line in the California-Chicago intermodal traffic market for the first time, applying pressure to further reduce shipping costs in the Midwest.

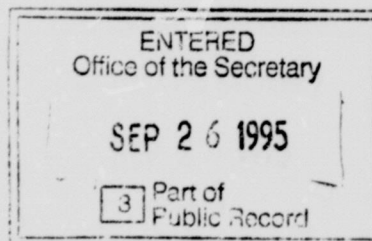
On the basis of more competition, increased efficiency, and the potential of reduced freight rates and better service for the citizens of Illinois, I am urging the ICC to respond to the UP/SP merger request in a positive manner.

Sincerely,

Beverly Fawell

cc. Vernon A. Williams
Secretary, ICC

Thomas A. Zapler
Chicago and NorthWestern
Transportation Company



STB

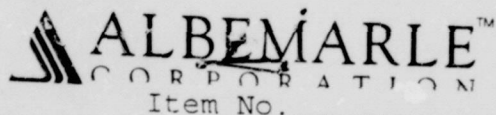
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Item No. _____

Page Count 2 04-388-8011
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September 15, 1995



Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 2215
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

SEP 25 1995

3 Part of
Public Record

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 Corporation and the Denver and Rio Grande Western Railroad Company

Dear Mr. Williams:

The purpose of this letter is to express the objection of Albemarle Corporation to the Interstate Commerce Commission's proposal to expedite the procedural schedule for the Union Pacific Corporation's merger application of the Southern Pacific Rail Corporation. As the Commission indicated in 60 FR 45737, this is a major transaction which we believe will have a significant impact on rail transportation competitiveness and service for Albemarle. We are supportive of mergers that maintain or enhance competition, service, and safety.

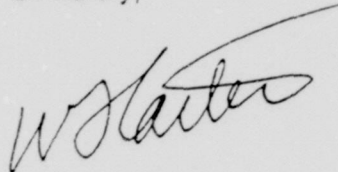
The proposed merger of the UPC/SPC is very significant to the chemical industry and combined annual chemicals traffic handled by the UPC/SPC represents about 35% of chemical railcar tonnage in the U.S. and about 36% of chemical rail transportation revenues which equates to \$1.6 billion (*Rail Price Advisor* 4, no. 3 (1995): 2). The percentage of traffic handled by UPC/SPC is estimated to be 70% in the gulf coast states, particularly in Louisiana and Texas.

The trend toward fewer Class I railroads has generated concern for Albemarle and it is felt this could threaten our 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. We need a full allotment of time to ascertain the impacts of this merger.

We hope that the phase out of the Commission does not cause an unjustified acceleration in the proposed procedural schedule. Acceleration of the schedule will result in fewer responses to the application and less information for the Commission. We are unaware of any reason to expedite these proceedings and are supportive of the original schedule. 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 where that task will ultimately be centered.

Albemarle requests that the Commission retain the original proposed schedule submitted in the UPC Petition. Thank you for this opportunity to comment.

Sincerely,



W.F. Carter
Director, Distribution

WFC/jn

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

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

SPRIN
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DIST

220 WINDY HILL
LANSING, ILLINOIS 60436
708/895-4400
708/895-9424 FAX

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Sept #83



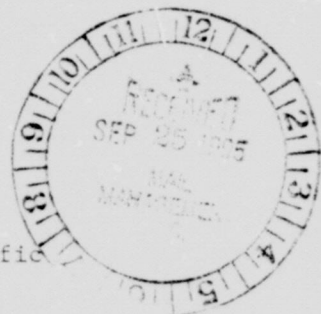
60112

CHAIR:
CITIES & VILLAGES
SALES TAX REVENUE
SUBCOMMITTEE
VICE CHAIR:
REVENUE
MEMBER:
AGING
FINANCIAL INSTITUTIONS
JCAR/JOINT COMMITTEE
ON ADMINISTRATIVE RULES

BILL W. BALTHIS
STATE REPRESENTATIVE - 79TH DISTRICT

September 20, 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:

As a member of the Illinois General Assembly, I, Bill Balthis, support the Union Pacific and Southern Pacific merger.

My reasons for supporting this acquisition are as follows:

There will be greatly improved service for both intermodal and carload traffic moving between California and the gateways of Chicago and St. Louis/East St. Louis.

Availability of alternative routings will provide UP/SP with flexibility to reroute traffic to improve service. For example, intermodal and automobile traffic moving between southern California and Chicago will be concentrated on UP's Overland route. This will reduce delays, increase reliability and create new capacity for the merged system.

This is very important as Sauk Village is building a facility like this.

Sincerely,

BILL W. BALTHIS
STATE REPRESENTATIVE

BWB:mcg

cc: Vernon A. Williams - Secretary ICC ✓
David Fischer, Director Government Affairs
Union Pacific RR
1416 Dodge Street, Rm 801
Omaha, NE 68179

Office of the Secretary

SEP 25 1995

3

Public Record

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Sept #84



60113

PETER G. FITZGERALD
STATE SENATOR, 27TH DISTRICT

COMMITTEES:

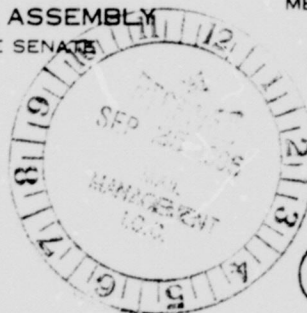
VICE CHAIRMAN
INSURANCE, PENSIONS
& LICENSED ACTIVITIES

MEMBER:
JUDICIARY
REVENUE

SPRINGFIELD OFFICE:

127 CAPITOL BUILDING
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FAX: 217/782-4079

STATE OF ILLINOIS
88TH GENERAL ASSEMBLY
ILLINOIS STATE SENATE



COPY

September 21, 1995

Ms. Linda Morgan
Chairperson
Interstate Commerce Commission
12th Street and Constitution Avenue, NW
Washington, D.C. 20423

RE: Finance Docket 32760 - Union Pacific/Southern Pacific

Dear Chairperson Morgan:

I am writing to express my support of the Union Pacific and Southern Pacific merger. I believe that the merger will improve service for Illinois shippers, promote competition and ensure the availability of high quality shipping in Illinois and elsewhere throughout the country.

Thank you for your consideration.

Very truly yours,

Peter G. Fitzgerald
Peter G. Fitzgerald

cc: Vernon A. Williams, ✓
Secretary ICC

David Fischer,
Director of Government Affairs,
Union Pacific Railroad

Office of the Secretary

SEP 25 1995

☐ Part of
Public Record

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Page Count 1
Sept #83

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60112

CHAIR:
CITIES & VILLAGES
SALES TAX REVENUE
SUBCOMMITTEE
VICE CHAIR:
REVENUE
MEMBER:
AGING
FINANCIAL INSTITUTIONS
JOINT/JOINT COMMITTEE
ON ADMINISTRATIVE RULES

BILL W. BALTHIS
STATE REPRESENTATIVE - 79TH DISTRICT

September 20, 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:

As a member of the Illinois General Assembly, I, Bill Balthis, support the Union Pacific and Southern Pacific merger.

My reasons for supporting this acquisition are as follows:

There will be greatly improved service for both intermodal and carload traffic moving between California and the gateways of Chicago and St. Louis/East St. Louis.

Availability of alternative routings will provide UP/SP with flexibility to reroute traffic to improve service. For example, intermodal and automobile traffic moving between southern California and Chicago will be concentrated on UP's Overland route. This will reduce delays, increase reliability and create new capacity for the merged system.

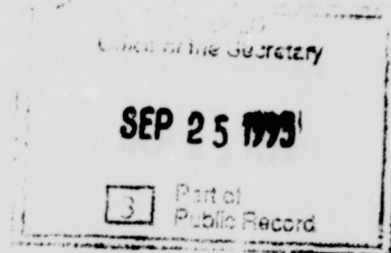
This is very important as Sauk Village is building a facility like this.

Sincerely,

BILL W. BALTHIS
STATE REPRESENTATIVE

BWB:mcg

cc: Vernon A. Williams - Secretary ICC ✓
David Fischer, Director Government Affairs
Union Pacific RR
1416 Dodge Street, Rm 801
Omaha, NE 68179



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• 32760

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SACR

Sept #82

**Assembly
California Legislature**

FRED AGUIAR

ASSEMBLYMAN, SIXTY-FIRST DISTRICT

ASSISTANT REPUBLICAN LEADER

Representing the cities of Chino, Chino Hills, Montclair, Ontario, Pomona, and Rancho Cucamonga

September 21, 1995

COMMITTEES:

RULES
APPROPRIATIONS
HEALTH
INSURANCE
TRANSPORTATION

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



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

Dear Mr. Williams:

The proposed merger between Union Pacific Railroad and Southern Pacific Railroad will dramatically improve service, reduce costs, and strengthen competition.

Southern Pacific's customers have had to live with service problems and uncertainties about SP's financial stability. Incorporating the best routes, facilities and equipment of UP/SP will reduce costs and dramatically improve California's shipping service. The UP/SP merger will assure California's shippers the quality service and a financially strong railroad that can afford to continually improve its operations.

If this merger is successful it will create greater competition between UP/SP and Santa Fe for routes formerly dominated by Santa Fe Railroad. The net results of increased competition are lower costs and increased quality of service for consumers.

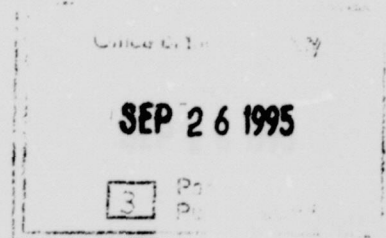
The UP/SP merger will reduce costs, improve service, and increase competition which is in the best interests of consumers, California, and the railroad industry.

Sincerely,

Fred Aguiar

FRED AGUIAR

FA:wh



STB

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• 32760

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BP CHEMICALS

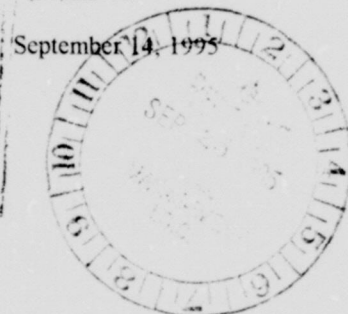
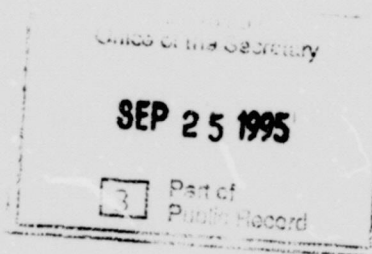
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Sept #81

60110

BP Chemicals Inc.
4440 Warrensville Center Road
Cleveland, Ohio 44128-2837
(216) 586-4141



Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 2215
12th Street & Constitution Avenue, N.W.
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 Mr. Williams:

The purpose of this letter is to express BP Chemicals 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.

BP is supportive of railroad mergers that maintain or enhance competition service, and safety.

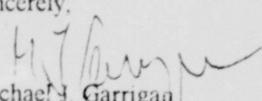
The proposed merger of the UPC/SPC is very significant as BP Chemicals; receives and ships approximately 5000 carloads of Hazardous Materials annually via the U.P.

BP Chemicals just now meeting to develop our position on this merger, and we are not in a position to respond to the Commission sooner than the original UPC proposed schedule. We need the full allotment of time proposed by UPC to ascertain the impacts of this merger.

BP Chemicals 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 information for the Commission. We are unaware of any reason to expedite these proceedings and are 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 is not clear whether DOT or DOJ will have that task.

BPC request that the Commission retain the original proposed schedule submitted in the UPC Petition. Thank you for this opportunity to comment.

Sincerely,


Michael J. Garrigan
Director, Distribution

STB

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• 32760

9-25-95

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• 60109

Item No. _____

Page Count 1
Sept #80

60109

DAVID CARRUTH
City Attorney
152 Madison Street--P. O. Box 91
Clarendon, Arkansas 72029
501-747-3839
501-747-5695 fax

September 19, 1995



Mr. Vernon A. Williams, Secretary
Interstate Commerce Commission
12th and Constitution Ave., N.W. Room 2215
Washington, D. C. 20423

RE: ICC Finance Docket No. 32760,
Union Pacific--Control and Merger--Southern
Pacific Rail Corp.

Dear Mr. Williams:

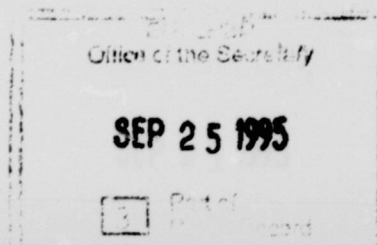
The City of Clarendon has received notice that the Union Pacific proposes to merge with the Southern Pacific. As part of that merger, the rail line that runs through Clarendon, Arkansas has the potential to be abandoned. THE CITY OF CLARENDON, ARKANSAS, OBJECTS TO ANY SUCH ABANDONMENT.

It is our understanding that the procedure being used by Union Pacific/Southern Pacific could allow abandonment without further notice to affected communities. Please let this letter stand as our strirgent objection to any determination, hearing or fact finding procedure being undertaken in this regard without notice to Clarendon. The rail line in question is a vital asset to our community and essential for future economic and industrial growth. Abandonment of this line would deal a serious blow to our community. We therefore, object to its abandonment and, so that we might participate, request notice of any proceedings in that regard. Such notice should be sent to me at the above address and to Mayor Rheta Griffith, 270 Madison, Clarendon, Arkansas and Mr. J. Perry Lee, Chairman, Clarendon Industrial Development Commission, Merchant's and Planter's Bank, 297 Madison, Clarendon, Arkansas 72029.

Very truly yours,

T. David Carruth

cc/ Mayor Rheta Griffith
Mr. J. Perry Lee



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• 32760

9-22-95

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Item No. _____

Page Count 2

Sept # 76

(910) 443-0300

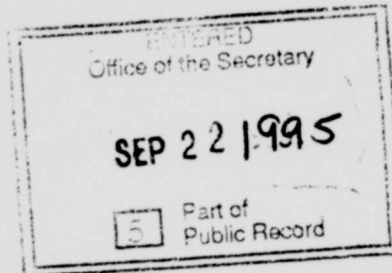
DISTRICT ADDRESS
0727 WHITE OAK, SUITE 124
GRANADA HILLS, CA 91344
(818) 368-3838

**Assembly
California Legislature**

PAULA L. BOLAND

MEMBER OF THE ASSEMBLY
THIRTY-EIGHTH DISTRICT

CHAIR:
PUBLIC SAFETY
MEMBER:
EDUCATION
HOUSING & COMMUNITY
DEVELOPMENT
NATURAL RESOURCES



September 18, 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 Corporation, et al.

Dear Mr. Williams:

I would like to take this opportunity to voice my support for the proposed merger of Union Pacific Railroad and Southern Pacific Railroad.

Experience shows that two strong railroads with wide market reach provide intense competition. This has been proven in many important markets, such as Seattle/Tacoma, the Power River Basin and much of the eastern United States. Here, two rail systems -- BN/Santa Fe and UP/SP -- 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. 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.

Together they will be able to provide a competitive single-carrier rail service between Seattle/Tacoma and both southern and northern California. Railroads providing interline service via Portland or other junctions have never been able to offer high-quality through service. UP/SP would be able to provide new shipping opportunities up and down the west Coast.

Vernon A. Williams
Interstate Commerce Commission
Page 2

Furthermore, this merger will produce many advantages, not only to California shippers, but also receivers will enjoy extensive new single-line service in many corridors between California and other parts of the continental United States.

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.

I would most sincerely appreciate your favorable consideration of this merger.

Sincerely,

A handwritten signature in cursive script, reading "Paula L. Boland". The signature is written in dark ink and is positioned above the printed name.

Paula L. Boland

PLB:cv

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• 32760

9-22-95

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Item No. _____

Page Count 2

Sept #77

60106

Monsanto

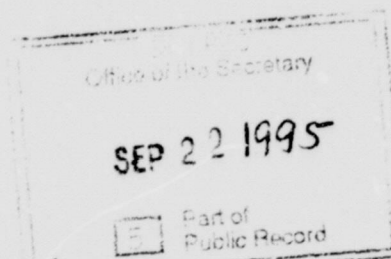
The Chemical Group
800 N. Lindbergh Boulevard
St. Louis, Missouri 63167
Phone: (314) 694-1000

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.

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 Manufactures 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.

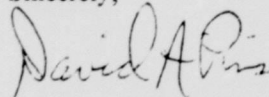
Monsanto subscribes to CMA's railroad merger policy which is supportive of railroad mergers that maintain or enhance competition, service, and safety. Monsanto, due to the vast level of business it does with the UP and SP is just now analyzing its position on this merger, and we are not in a position 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

STB

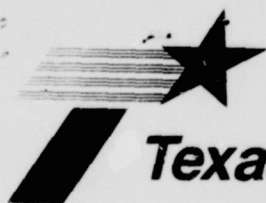
FD

• 32760

9-21-95

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• 60101



Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

Item No. _____

September 15, 1995

Page Count 3

TXDT-1

Sept #72

via AIRBORNE EXPRESS

Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
Attn: Finance Docket No. 32760
Interstate Commerce Commission
1201 Constitution Avenue, N.W.
Washington, D.C. 20423



Dear Secretary Williams:

The Texas Department of Transportation (TxDOT) wishes to go on record in opposition to the proposed expedited schedule for Finance Docket No. 32760 as published in the Federal Register, Volume 60, No. 170, Friday, September 1, 1995.

The magnitude of anticipated impacts in the state of Texas from this proposed merger far exceed any railroad merger in modern history. In comparing UP/SP with Burlington Northern/Santa Fe, it should be noted that—in Texas, at least—this is not an end-to-end joining like BN/SF, but rather a parallel merger of more than 6,000 miles that must have tremendous effects on employees, communities and shippers. We anticipate many miles of line changes, including abandonments but especially through line sales or trackage rights/haulage rights.

At this time, TxDOT takes no position either in favor or in opposition to the merging of UP/SP. However, we are especially cognizant of several major issues in our state. TxDOT is attempting to complete economic impact analyses for the following areas of particular importance to our state, so as to arrive at conclusions based on fact:

1. Gulf Coast petrochemical shipments by rail.
2. Export grain to Texas deepwater ports from the Midwest
3. Coal from the Midwest and northwestern U.S. destined for utilities.
4. Gateways to Mexico, including the single most important one—Laredo.
5. Ownership or control of rail corridors within the Republic of Mexico.
6. Gulf port intermodal container traffic.
7. Line abandonments or sales.
8. More than 40 short lines or regional railroads and their dependence on Class 1 connection(s).

The results of BN/SF have yet to appear, much less be understood or digested as they relate to the above listed areas of concern. It is hardly in the public interest to hastily conclude UP/SP with only minimal time for analysis and decision.

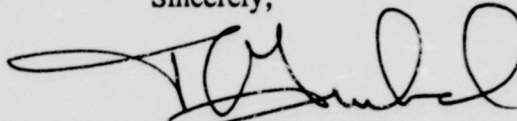
ICC's proposed procedural schedule that would allow only 140 days prior to the filing of briefs is unduly expeditious. It will severely handicap public agencies attempting to wrestle with the complexities raised by UP/SP.

We do not agree with the Commission's position that parties filing inconsistent and responsive applications, comments, protests, etcetera may need less than 90 days to prepare their applications. To the contrary, our position is that 90 days is an insufficient time in which to reply.

The Federal Register publication of *Decision No. 1: Notice of Prefiling Notification and Request for Comments* includes references to several notices apparently already filed by various railroads for this merger case. At least three of the notices ("UP/SP-5", "SF-2", and "KCS-2") were never received by TxDOT, even though we have requested copies of all filings pertaining to the UP/SP merger. TxDOT would appreciate any efforts to ensure that we receive copies of all future filings.

We appreciate the opportunity to comment this - the biggest rail merger in U.S. history. If you have any questions or require additional information, please contact me at (512) 305-9506.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. A. Griebel', with a long horizontal flourish extending to the left.

Thomas A. Griebel
Assistant Executive Director
Multimodal Transportation

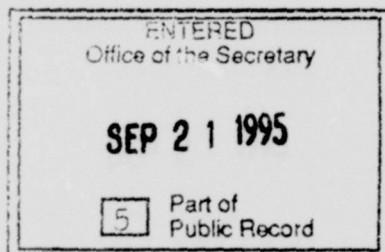
BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C. 20423



ICC 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

COMMENTS OF THE
DEPARTMENT OF TRANSPORTATION OF THE
STATE OF TEXAS
REGARDING THE PROPOSED PROCEDURAL SCHEDULE

TXDT-1



THOMAS A. GRIEBEL
Assistant Executive Director
Multimodal Transportation
Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701-2483

September 15, 1995

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• 60097

Item No. _____



Page Count 1

Sept #48

60097

UNION CARBIDE CORPORATION

39 OLD RIDGEBURY ROAD, DANBURY, CT 06817-0001

September 15, 1995

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 2215
12th Street & Constitution Avenue, N.W.
Washington, DC 10423



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

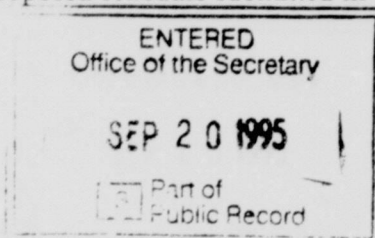
Dear Mr. Secretary:

The purpose of this letter is to express Union Carbide'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 rail transportation competitiveness in the United States.

With the United States chemicals and plastics industry heavily concentrated in the Texas/Louisiana gulf coast region, the majority of the industry's producers for the most part have access to one of two railroads: the Union Pacific or Southern Pacific, both of whom dominate the market..

For Union Carbide, railroad transportation is essential. It needs an efficient, safe and competitive railroad industry to effectively compete in the chemicals and plastics marketplace.

Union Carbide is in the process of formulating its position on this merger and it is attempting to quantify its impact on reductions in rail to rail competition and rail to rail competitive access. We are therefore not in a position to effectively respond to the Commission earlier than the original UPC proposed schedule. Union Carbide respectfully requests that the Commission retain the original proposed schedule submitted in the UPC petition.



Very truly yours,

R. Stanley
Robert G. Stanley

Manager

Overland/Air Transportation

RGS/kv

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Item No. _____

Page Count 1

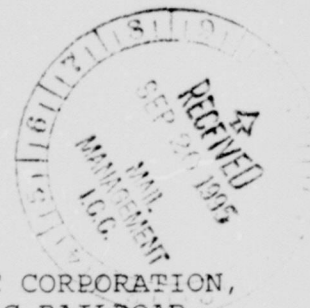
Sept # 67

60096

Eastman Chemical Company
P. O. Box 1990
Kingsport, Tennessee 37662

SEPTEMBER 15, 1995

OFFICE OF THE SECRETARY,
CASE CONTROL BRANCH
ATTN: FINANCE DOCKET NO. 32760
INTERSTATE COMMERCE COMMISSION
1201 CONSTITUTION AVENUE, NW
WASHINGTON, DC 20423



REFERENCE: 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:

In the referenced docket, request for comments on the schedule,
Eastman Chemical Company wishes to provide input into the
proposed schedule. Eastman Chemical Company is a large shipper
and receiver of bulk rail transportation, with multiple plant
locations. Eastman would be very adversely affected by the
proposed merger.

The proposed procedural schedule calls for shipper comment on the
90th day after the merger applications are filed, and
inconsistent and responsive applications due on the 60th day
after the merger applications are due.

We feel this proposed procedural schedule is much too short,
given the huge potential impact of this proposed merger.

Yours very truly,

E.C. Cassell

E.C. Cassell
Manager, Domestic Distribution Services

Copies:

Mr. Arvid E. Roach, II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
PO Box 7566,
Washington, D.C. 20044

Mr. Paul A. Cunningham, Esq.
Harkens Cunningham
1300 Nineteenth Street, NW
Washington, D.C. 20036

ENTERED
Office of the Secretary

SEP 20 1995

Part of
Public Record



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Item No. _____

Page Count 2Sept # 165

60094

2020 Dow Center
September 15, 1995

The Dow Chemical Company
Midland, Michigan 48674

Office of the Secretary
Case Control Branch
Attn.: Finance Docket No. 32760
Interstate Commerce Commission
1201 Constitution Avenue, NW
Washington, DC 20423



FINANCE DOCKET NO. 32760 – PETITION TO EXTEND COMMENT PERIOD
ON UNION PACIFIC/SOUTHERN PACIFIC MERGER

Dear Madam/Sir:

The Dow Chemical Company (Dow) is a large shipper and receiver of materials by rail that would be significantly economically impacted by a Union Pacific Corporation (UPC) and Southern Pacific Corporation (SPC) merger. The August 14, 1995 issue of Chemical & Engineering News states that 70 percent of all chemicals transported by rail in the Gulf Coast region would be impacted by subject merger. In view of the recent merger of the Burlington Northern and Santa Fe Railroads, the UPC/SPC merger can significantly impact the competitive environment facing shippers.

The ICC proposed expedited Procedural Schedule would only allow shippers 90 days to comment on the subject merger once it has been filed with your office. In order to adequately study the overall impact of the merger on Dow operations, we need more time than the F + 90 days ICC proposed in the September 1, 1995 Federal Register. Dow is not aware of any reason for the ICC's request for a variation that would cut 30 days from the shipper comment period.

Therefore, Dow respectfully requests the UPC/SPC merger comment period for shippers be extended back to the original UPC proposed schedule.

Your consideration of this petition will be appreciated. Please call should you have any questions.

Sincerely,

S. Douglas Hall
Director
Transportation & Logistics Services Purchasing
(517) 636-8109

E. J. D.
Chief of the Secretary

SEP 19 1995

SEP 19 1995

Quantifying Competitive Effects
UP/SP Merger vs. BN/SF and SF/SP
Competing Route Alternatives Decreasing from
2 to 1
Revenue Affected (\$'s in Billions)

KCS - 3
Exhibit B

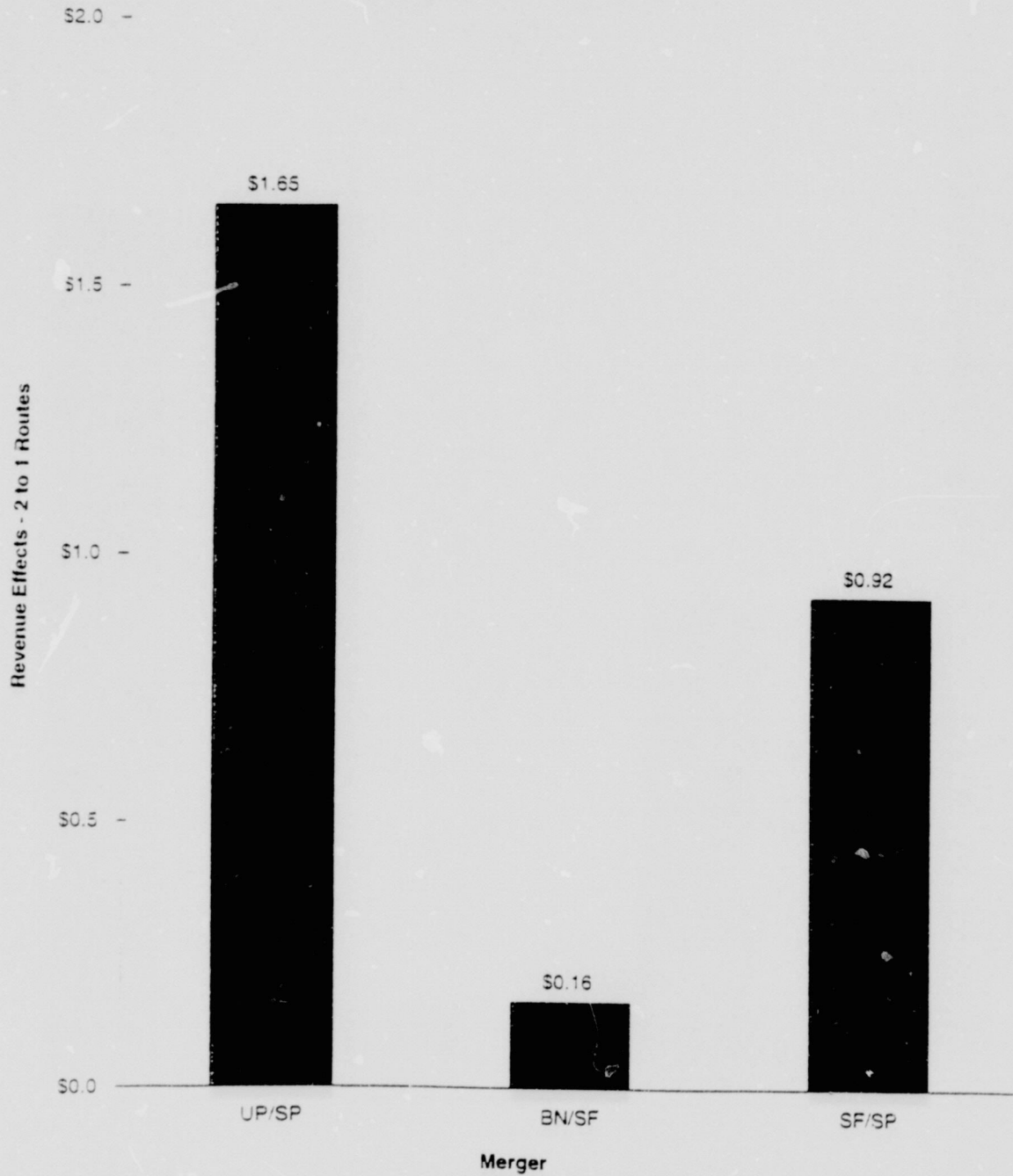


Figure 1

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32760

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60093

Item No. _____

Nebraska State Legislature

Page Count 2

Sept # 64

60093

SENATOR DOUGLAS A. KRISTENSEN

District No. 37
Minden, Nebraska 68959

Legislative Address:
State Capitol
PO Box 94604
Lincoln, Nebraska 68509-4604
(402) 471-2726



COMMITTEES

Chairperson, Transportation
Revenue
Executive Board
Reference
Legislative Council

Ninety-Fourth Legislature

September 15, 1995



SEP 20 1995

3 Part of
Public Record

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

SEP 20 1995

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

Dear Secretary Williams:

As Chair of the Nebraska Legislature's Committee on Transportation, I am writing to strongly urge your prompt approval of the proposed merger between the Union Pacific and Southern Pacific Railroads.

Union Pacific Railroad has a long and favorable history with the State of Nebraska, dating back over 130 years to the early days of settlement and statehood. It is no exaggeration to suggest that the early growth of Nebraska was a direct result of the designation of the Union Pacific route through Nebraska by President Abraham Lincoln. Most of our larger cities and towns, including my own, were established or flourished because of proximity to the Union Pacific mainline.

The contribution of Union Pacific Railroad to the economy of Nebraska continues today. UP provides accessibility to extensive markets for Nebraska agricultural products

Honorable Vernon A. Williams

September 15, 1995

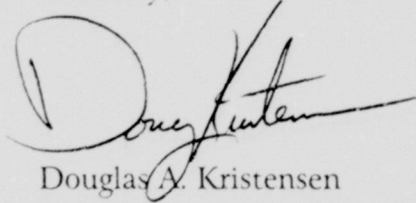
Page 2

and consumer goods, delivers low-cost, low-sulphur coal for electrical generation, pays significant taxes, provides one of the largest payrolls in the state for Nebraska workers, and maintains itself as a solid corporate citizen that Nebraska can be proud of.

All of these attributes and contributions will be enhanced and strengthened by approval of the proposed merger, which will allow for significant expansion of markets for Nebraska shippers. A stronger, more competitive railroad accrues benefits not just to the benefit of Nebraska shippers, but to Nebraska consumers, workers and the public-at-large, as well.

My support for this proposed merger is not intended to disparage Nebraska's other significant Class 1 railroad, the Burlington Northern, but with your recent approval of the BN/SF merger, you will place the Union Pacific and its shippers and customers at a permanent economic disadvantage if Union Pacific is not allowed to respond in kind and achieve a measure of competitive parity in the marketplace through merger with the Southern Pacific Railroad. The presence in Nebraska of two strong, competitive railroads will benefit shippers, consumers, workers, one tax base, and economy. I urge your approval of the proposed merger.

Sincerely,

A handwritten signature in dark ink, appearing to read "Doug Kristensen", with a large, stylized initial "D" at the start.

Douglas A. Kristensen

DAK:j

STB

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• 32760

9-19-95

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• 60092

Item No. _____

Page Count 2

KELLE Sept #63

60092

1001 G STREET, N.W.
SUITE 500 WEST
WASHINGTON, D.C. 20001
TELEPHONE (202) 434-4100
TELEX 48 95551 "KELMAN"
FACSIMILE (202) 434-4648

BOULEVARD LOUIS SCHMIDT 87
B-1040 BRUSSELS
TELEPHONE 32(2) 732 52 80
FACSIMILE 32(2) 732 53 92

JOSEPH E. KELLER (1907-1994)
JEROME H. HECKMAN
WILLIAM H. BORGHESE, JR.
WALCOLM D. MACARTHUR
WAYNE V. BLACK
TERRENCE D. JONES
MARTIN W. BERCOVICI
JOHN S. ELDRED
RICHARD J. LEIGHTON
ALFRED S. REGNIERY
WILLIAM L. KOVACS
DOUGLAS J. BEHR
RAYMOND A. KOWALSKI
SHIRLEY A. COFFIELD
MICHAEL F. MORRONE
JOHN B. RICHARDS
JEAN KAVINSKY
JOHN B. DUNICK
PETER L. DE LA CRUZ
MELVIN S. BROZEN
LAWRENCE P. HALPRIN
RALPH A. SIMMONS
RICHARD F. MARK

C. DOUGLAS JARRETT
SHELIA A. MILLAR
GEORGE G. MISKO
STEPHAN E. BECKER
PATRICK J. HURD
MARK A. SIEVERS
GAREN E. DODGE
DAVID G. SARVADI
JONATHAN R. SPENCER
CATHERINE R. NELSEN
AMY N. RODGERS
ELLIOT BELLOS
MARK L. TZOFF
JEAN-PHILIPPE MONTFORT
ROSEMARIE A. KELLEY
T. PHILLIPS BECK
ARTHUR S. JARRETT III
LESLIE E. SILVERMAN
JOSEPH M. SANDRI, JR.
ELIZABETH N. HARRISON
ROBERT H. G. LOCKWOOD
CAROL MOORS TOTM
JOAN C. SYLVAIN

MARTHA E. MARRAPESE
DONALD T. WURTH
DAVID B. BERRY
S. DEBORAH ROSEN
DAVID R. JOY
FREDERICK A. STEAPNS
TONY RUSSELL EPPS
THOMAS C. BERGER
JOHN F. FOLEY
ALEXANDRE MENCIX VON ZEBINSKY
JENNIFER A. BONANNO
JOHN REARDON
PATRICK W. RATKOWSKI

*NOT ADMITTED IN D.C.
*RESIDENT BRUSSELS

SCIENTIFIC STAFF
DANIEL S. DIXLER, PH. D.
CHARLES V. BREDER, PH. D.
ROBERT A. MATHEWS, PH. D. DABT
JOHN P. MODDERMAN, PH. D.
HOLLY HUTMIRE FOLEY
JUSTIN C. POWELL, PH. D.
JANETTE HOUK, PH. D.
LESTER BORODINSKY, PH. D.
THOMAS C. BROWN
MICHAEL T. FLOOD, PH. D.

WRITER'S DIRECT DIAL NUMBER

September 19, 1995

(202) 434-4144

Office of the Secretary
Case Control Branch
Interstate Commerce Commission
Attention: Finance Docket No. 32760
1201 Constitution Avenue, N.W.
Washington, D.C. 20423




Re: UP/SP Merger; Finance Docket No. 32760

Dear Secretary Williams:

Enclosed, please find a map which was inadvertently omitted from the comments filed September 18, 1995 on behalf of The Society of the Plastics Industry, Inc. in reference to Finance Docket No. 32760. Twenty (20) copies of the map are enclosed, and a copy of this enclosure has been sent to each of the applicants' representatives.

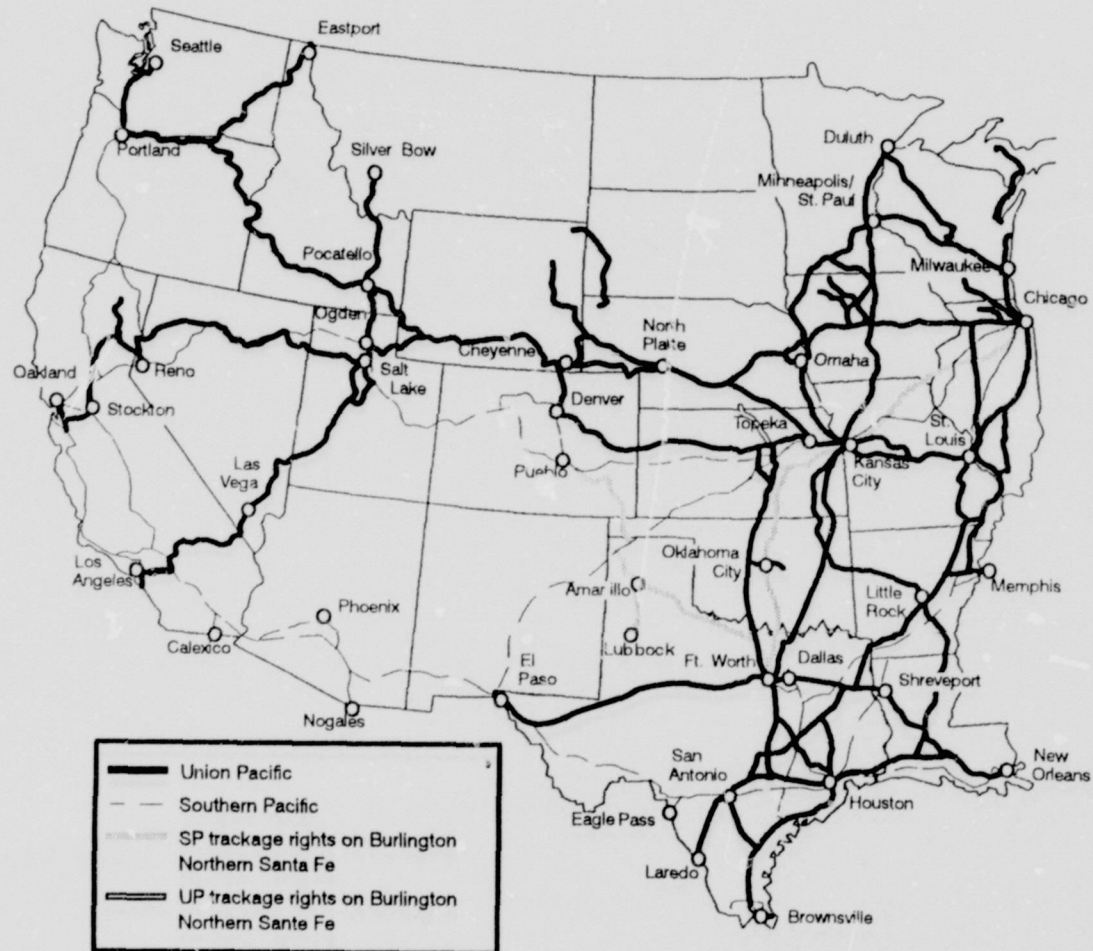
Cordially yours,


Martin W. Bercovici

Enclosures

cc: (with enclosure)
Arvid E. Roach, Esquire
Paul A. Cunningham, Esquire

Union Pacific and Southern Pacific



ORIGINAL



EXHIBIT 1

STB

FD

• 32760

9-19-95

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• 60091

Item No. _____

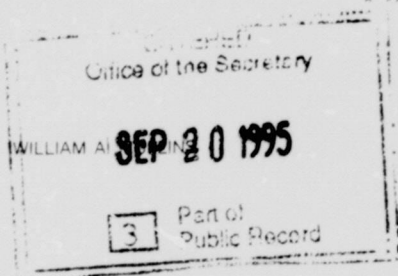
Page Count 3

Sept #42

60091

TROUTMAN SANDERS

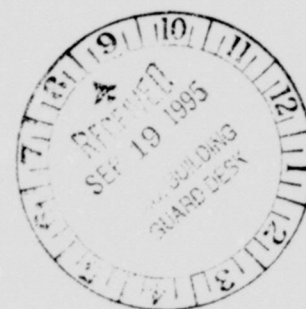
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS



601 PENNSYLVANIA AVENUE, N.W.
SUITE 640
NORTH BUILDING
WASHINGTON, D.C. 20004
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

DIRECT: 202-274-2953

September 19, 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:

The following changes should be made to the Comments of The Kansas City Southern Railway Company On Proposed Procedural Schedule, which was filed with the Commission on September 18, 1995.

Page 9 - The second sentence of the first full paragraph should read as follows:

"The failure to include time for the filing of reply briefs is in contrast to all previous class I merger proceedings, with the exceptions of the RGI divestiture and BN/Santa Fe proceedings."

Page 10 - The first sentence of the second full paragraph should read as follows:

"The modern proceeding that most closely compares to the proceeding currently before the Commission was *Santa Fe Southern Pacific Corporation--Control--Southern Pacific Transportation Company*, 2 I.C.C. 2d 709(1986)("SFSP"), where the Commission denied the merger after the full 2½ year analysis provided in 49 U.S.C. § 11345."

Mr. Vernon A. Williams
September 19, 1995
Page 2

Page 12 - Footnote 10 should cite to "V.S. Grimm at 4, n.3."

Page 14 - The first full sentence should read as follows:

"Under the proposed schedule, a party, whether it be a competing carrier, a shipper or a governmental body, would not be able to participate in a meaningful way because the schedule would not provide commenting parties with an adequate opportunity for discovery of the facts critical to the filing of inconsistent or responsive applications.¹³"

Page 17 - The fourth sentence should cite to "V.S. Grimm at 5."

Page 18 - The first sentence should cite to "V.S. Plaistow at 8-9."

Exhibit B, page 5 - The final sentence of the second paragraph should read as follows:

"The dollars of revenues affected over these routings is used as the comparative parameter in Figure 1, attached to the end of this verified statement."

Exhibit B, page 5 - The final sentence of the third paragraph should read as follows:

"Even more importantly, UP/SP's competitive effects are 79% greater than those of the SF/SP merger (\$1.65 billion vs. \$0.92 billion), and that merger was rejected by this Commission.³"

Exhibit B, page 5 - The third sentence of footnote 3 should read as follows:

"Between 1986 (the year the Commission rejected the Santa Fe/Southern Pacific merger) and the waybill year 1993, the following mergers took place, 1)DRGW - SP; 2) UP-C&NW; and 3) UP-MKT.

Exhibit B, page 7 - The second paragraph should read as follows:

"The amount of time required to deal with competitive effects is proportional to the number of circumstances for which remedies must be sought and resolved. At the conclusion of BN/SF, all 2 to 1's had been resolved in one of two ways:

1. Through the settlement agreements negotiated between the merger partners and potential alternative transportation providers such as Kansas City Southern, Southern Pacific and Union Pacific; and
2. Through the merger conditioning powers of the commission.

Mr. Vernon A. Williams

September 19, 1995

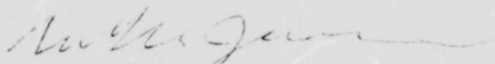
Page 3

The proposed UP/SP merger requires far more 2 to 1 resolutions that did BN/SF since there are far more of them."

Exhibit B - Figure 1 - The attached Figure 1 should be substituted for the one attached to the original Verified Statement.

Enclosed with this original are twenty-one copies of this letter - one to accompany each of the original Comments filed on September 19, 1995 and one to be stamped and returned for our files.

Very truly yours,



William A. Mullins

Enclosures

cc: Parties of Record
Robert K. Dreiling, Esquire

STB

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32760

9-18-95

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Item No. _____

Page Count 8

Sept #57

60084

IDLEY & AUSTIN

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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LOS ANGELES
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1722 EYE STREET, N.W.
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SINGAPORE
TOKYO

125th
Anniversary
1866-1991

WRITER'S DIRECT NUMBER

202: 736-8198

September 18, 1995

Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 2215
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423



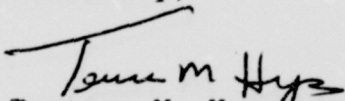
Re: F.D. Docket No. 32760, UNION PACIFIC CORPORATION,
UNION PACIFIC RAILROAD COMPANY AND MISSOURI
PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN
PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

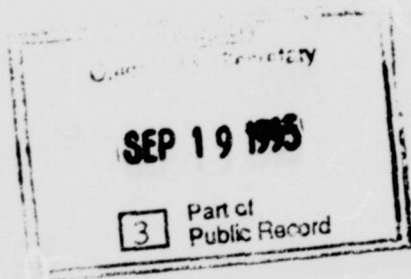
Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding
are an original and twenty (20) copies of Canadian Pacific
Limited's Notice of Appearance and Comments Regarding Procedural
Schedule (CP-1). Pursuant to the Commission's request in
Decision No. 1, a 3.5" diskette containing CP-1 is also being
submitted herewith.

Also enclosed are two (2) additional copies to be file-
stamped and returned to our messenger.

Sincerely,


Terence M. Hynes



SEP 19 1995

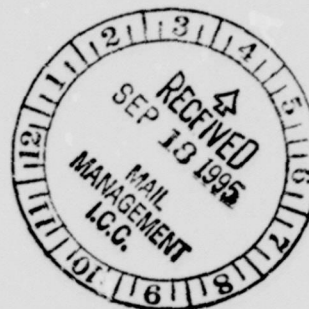
3 Pan v.
Public Record

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

CANADIAN PACIFIC LIMITED'S NOTICE OF APPEARANCE
AND COMMENTS REGARDING PROCEDURAL SCHEDULE



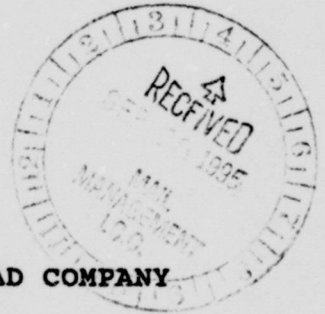
Terence M. Hynes
Krista L. Edwards
SIDLEY & AUSTIN
1722 Eye Street, NW
Washington, DC 20006
(202) 736-8000

Attorneys for
CANADIAN PACIFIC LIMITED

DATED: September 18, 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

CANADIAN PACIFIC LIMITED'S NOTICE OF APPEARANCE
AND COMMENTS REGARDING PROCEDURAL SCHEDULE

Canadian Pacific Limited ("CP"), doing business as "CP Rail System," hereby gives notice that it intends to participate as a party of record in the above-captioned proceeding.¹ The undersigned attorneys hereby enter their appearance as counsel of record for CP. Copies of all pleadings and decisions should be served on:

Terence M. Hynes
Krista L. Edwards
SIDLEY & AUSTIN
1722 Eye Street, NW
Washington, DC 20006
(202) 736-8000

Marcella M. Szel
Vice President - Legal Services
CP Rail System
910 Peel Street
Windsor Station, Room 234
Montreal, Quebec H3C 3E4 CANADA
(514) 395-6578

¹ The "CP Rail System" consists of the CP Rail division of Canadian Pacific Limited, Soo Line Railroad Company and Delaware and Hudson Railway Company, Inc.

Wayne Serkland
U.S. Regional Counsel
Canadian Pacific Legal Services
105 South Fifth Street, Suite 1000
Minneapolis, MN 55402
(612) 347-8287

Pursuant to the Commission's Decision No. 1, served on September 1, 1995, CP submits the following comments regarding the procedural schedule proposed by Applicants²:

CP does not object to the schedule proposed in the "Petition To Establish Procedural Schedule" filed by Applicants on August 4, 1995. See UP/SP-4 at 2-3. Based upon current circumstances, Applicants' proposed schedule appears to strike an appropriate balance between Applicants' desire to obtain expedited consideration of their proposed transaction and the interests of other parties in having a full and fair opportunity to present evidence and to pursue responsive applications or other requests for conditions.³

However, CP strongly opposes the "variation" of Applicants' procedural schedule identified by the Commission in Decision No. 1 (at page 3). That variation would require interested parties to file all inconsistent and responsive

² "Applicants" include Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"), Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL") and The Denver and Rio Grande Western Railroad Company ("DRGW").

³ As the Commission knows, developments during the course of a Class I merger proceeding have, in the past, warranted adjustments to the initial procedural schedule. CP reserves the right to seek appropriate adjustments to the schedule in this proceeding in the event that subsequent events render the schedule unworkable.

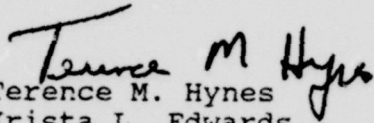
applications, as well as opposition evidence and argument, 30 days after the primary application is accepted (or approximately 60 days after it is filed). The development of those evidentiary submissions will involve several major tasks. First, interested parties must review and analyze the primary application and the voluminous workpapers that routinely underlie any Class I merger application. Next, parties must pursue discovery on the issues raised by the primary application through document requests and/or depositions of Applicants' witnesses. Protestant parties must then prepare their evidence and argument in opposition to the primary transaction, as well as responsive applications and/or testimony in support of requests for conditions. A period of 60 days is simply not sufficient to permit CP and other parties to complete all of these important tasks.

Moreover, the 60-day period following the submission of the primary application includes the year-end holidays. Based on past experience, it is likely to be difficult to schedule depositions during that period. Key personnel needed to prepare opposition evidence and responsive filings are likely to have scheduling problems at that time as well. At a minimum, a 60-day schedule would impose a considerable burden on personnel of both Applicants and other parties during the holiday season.

CP believes that the proposed UP/SP consolidation raises more significant competitive issues than the recently-approved BN-ATSF control transaction. Applicants propose a transaction that will, in conjunction with the BN-ATSF merger, fundamentally alter the transportation system serving the western

United States and Mexico. The public interest requires that the Commission develop an adequate record with respect to those issues. A procedural schedule that required interested parties to analyze Applicants' voluminous filing, complete all discovery and submit their entire cases-in-chief within 60 days would deny them a meaningful opportunity to participate in this important proceeding. Accordingly, CP respectfully submits that the Commission should not truncate further the highly-expedited procedural schedule proposed by Applicants. Rather, the Commission should adopt the procedural schedule proposed by Applicants in UP/SP-4.

Respectfully submitted,


Terence M. Hynes
Krista L. Edwards
SIDLEY & AUSTIN
1722 Eye Street, NW
Washington, DC 20006
(202) 736-8000

Attorneys for
CANADIAN PACIFIC LIMITED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, this 18th day of September, 1995, copies of the foregoing CANADIAN PACIFIC LIMITED'S NOTICE OF APPEARANCE AND COMMENTS REGARDING PROCEDURAL SCHEDULE were delivered by hand or mailed, via U.S. Mail, postage prepaid, to the following:

Administrative Law Judge Jerome Nelson
FERC
825 North Capitol Street, NE
Washington, DC 20426

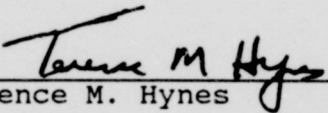
Cannon Y. Harvey
Carol A. Harris
Louis P. Warchot
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, CA 94105

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteen Street, NW
Washington, DC 20036

Carl W. Von Bernuth
Richard J. Ressler
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 17018

James V. Dolan
Paul A. Conley, Jr.
Louise A. Rinn
Law Department
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Arvid E. Roach II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20044



Terence M. Hynes

STB

FD

32760

9-18-95

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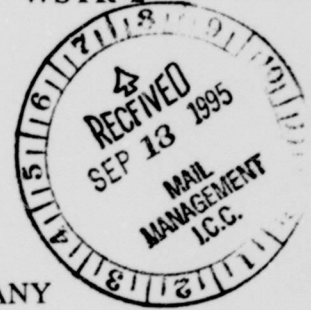
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Page Count 7

Sept #56

60085

WSTR-2



BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32760

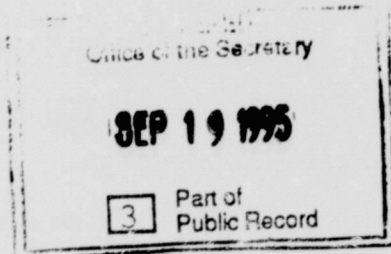
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

—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

COMMENTS
OF
WESTERN RESOURCES, INC.

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.

September 18, 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

COMMENTS
OF
WESTERN RESOURCES, INC.

Western Resources, Inc. ("Western") hereby submits the following comments on the procedural schedule proposed in Decision No. 1 in this proceeding, served on September 1, 1995. For the reasons set forth below, Western recommends that the Commission adopt a longer schedule which is set out in Attachment A to these comments.

Western Resources is an investor-owned utility based in Topeka, Kansas. It is a public utility engaged in the local distribution of natural gas and electricity in the States of Kansas and Oklahoma. The majority of Western Resources' power is generated by burning coal which is delivered by rail in unit coal trains to three electric generating stations: the Jeffrey Energy Center, located near St. Marys, Kansas; the Lawrence Center, located in Lawrence, Kansas; and the Tecumseh Energy Center located in Tecumseh, Kansas. These three stations combined received approximately 9.5 million tons of coal in 1994.

ARGUMENT

Western does not believe that the accelerated procedural schedule that was adopted by the Commission for its review of the merger of the Burlington Northern Railroad Company ("BN")

and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") provided all parties in that proceeding a full and fair opportunity to present their cases for the imposition of conditions on that merger, nor did it enable the Commission to create a complete administrative record for decision. The schedule for decision in that proceeding was therefore not in accord with the requirements of the Interstate Commerce Act or Administrative Procedure Act or the needs of the parties to that case.

The Commission's proposal in this proceeding to adopt a substantially similar proposed procedural schedule would, Western believes, be similarly inappropriate. It would deprive representatives of the shipping public of a fair opportunity to review and analyze the evidence to be submitted in support of and in opposition to the application, and particularly the effects of the related abandonment applications to be filed by the Applicants, which may have an adverse effect upon the transportation of coal to Western's Lawrence and Tecumseh generating stations and a potential operating impact at all of Western's coal generating facilities. Moreover, the proposed merger will reduce the number of rail carriers capable of hauling coal in the quantities required by western utilities from three to two, assuming the merger of BN and Santa Fe is completed, a situation of potential concern to Western.¹

The Changes to Commission Rules Proposed in Ex Parte 282 (Sub-No. 19)
Provide No Basis for The Commission's Proposal

The Commission, ninety days after adopting a 535-day procedural schedule for Finance Docket No. 32549 after notice and comment, abruptly published proposed amendments to its procedural rules which would require service of a decision in a merger proceeding 180 days from the date a merger application was filed. It subsequently replaced the original 535-day schedule in

¹ This reduction could be significant, since only two years ago, western utilities had four railroads from which to seek rail service. The significance of this reduction in competitive options was explicitly recognized by Commissioner McDonald in her concurrence with the Commission's decision approving the merger of the BN and Santa Fe, when she stated that the further reduction in competitive options "may be important or decisive in future large rail consolidations, and an issue that may extend beyond coal to other markets as well." See Finance Docket No. 32549, Decision No. 38 at 114 (served August 23, 1995).

the then-pending BN/Santa Fe merger with a variation of the 180-day schedule at the request of the merger applicants, over the opposition of Western and other parties. However, the proposed regulations have never been finalized by the Commission. Moreover, even if they were finalized at some point in the future, they would be subject to administrative and judicial review. The proposed rules therefore provide no basis for the schedule proposed by the Commission.²

The Commission's Proposal to Even Further Shorten the Schedule is Unreasonable

In Decision No. 1, the Commission has proposed to shorten the procedural schedule from that which was adopted in the BN/Santa Fe proceeding by deleting 30 days from the time allotted for parties opposing the merger to file responsive applications, comments, protests, requests for conditions and other opposition evidence and arguments. The only reason given for this alternative proposal is the Commission's belief that parties opposing the merger need less time to prepare their arguments in opposition, based on the Commission's recent experience in the BN/Santa Fe merger. Western strongly disagrees with the Commission's perception of the ability of parties to prepare their cases in that proceeding. The Commission's alternative schedule would compound the disservice to the public interest posed by the proposed procedural schedule, and should therefore not be adopted.

A Lengthier Procedural Schedule is Required to Adequately Review this Proposed Merger

For all the reasons set forth above, the schedule proposed by the Commission is far too brief to permit meaningful review of this proposed merger. Western urges the Commission not to adopt the schedule proposed by the Applicants, but to adopt the proposed schedule attached to these comments. It provides sufficient time for conduct of discovery after each round of

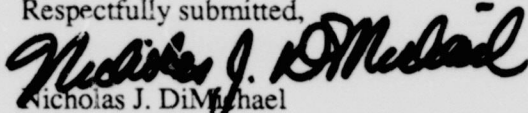
² Western would note that the Applicants' proposal to adopt the procedural schedule used by the Commission in Finance Docket No. 32549 for their merger is inconsistent with the positions taken by both SP Lines and UP in that proceeding. For example, SP characterized the 180-day schedule proposed by BN and Santa Fe as "unwarranted and unrealistic," and asked that the Commission adopt a 270-day schedule instead. Finance Docket No. 32549, Reply of Southern Pacific Lines to Applicants' Petition to Modify Procedural Schedule (SP-4) at 1 (February 21, 1995). UP characterized the 180-day schedule as "very ambitious," resulting in protestants having to prepare their case "without meaningful discovery." Finance Docket No. 32549, UP's Comments on Proposed Revision of Procedural Schedule (UP-2) at 2 (February 16, 1995).

evidentiary submission, allows a reasonable time for the preparation of the appropriate responsive evidence, and expressly provides for any necessary hearings to be conducted if it is determined that material facts remain in dispute after the submission of written evidence. It also provides the Commission (or its possible successor³) with adequate time to review the record and reach a reasoned decision.

CONCLUSION

The Commission should not adopt its proposed schedule, and should instead adopt the proposed procedural set forth in Attachment A.

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.

September 18, 1995

³ It appears that the Commission's responsibilities for administering the Interstate Commerce Act may be transferred to a successor long before this proceeding would be completed under any schedule. It makes little sense for the Commission to deny any successor an opportunity to decide one of the first significant matters it might consider on the basis of an inadequate record.

ATTACHMENT A

F	Primary application and related applications filed.
F+30	Commission notice of acceptance of primary application and related applications served and published in Federal Register
F+90	Inconsistent and responsive applications due.
F+105	Notice of acceptance (if required) of inconsistent and responsive applications served and published in the Federal Register.
F+120	Comments and protests (and supporting evidence) due on the primary application and related application and inconsistent applications; Requested conditions due;
F+150	Response to comments, protests, conditions to primary applications due; Response in support of primary applications due; Response to inconsistent and responsive applications due;
F+180	Reply in support of comments, protests, and conditions to the primary application due; Reply in support of inconsistent and responsive applications due.
F+210	Rebuttal by applicants due
F+230	Requests for oral hearing due, specifying material issues of disputed fact.
F+250	Evidentiary hearing begins (if necessary to resolve material issues of disputed fact).
F+280	Briefs due, all parties (not to exceed 75 pages).
F+310	Oral argument (at Commission's discretion).
F+340	Voting conference (at Commission's discretion).
F+360	Date for service of decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 18th day of September, 1995, served a copy of the foregoing on the Applicants in this proceeding both by first-class mail and by telecopy, and upon all other parties of record, as required by the Commission's Rules of Practice.

Walter J. Michael

STB

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32760

9-18-95

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60081

Item No. _____

Page Count 12

Sept #52

60081

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

September 18, 1995

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, NW
Washington, DC 20423



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

Dear Mr. Williams:

Enclosed for filing with the Commission in the above proceeding are an original and twenty (20) copies of the Comments of The National Industrial Transportation League on Proposed Procedural Schedule. In accordance with the suggestion in the Prefiling Notification, also enclosed is 3.5" diskette in MS-DOS format with a copy of the petition in WordPerfect 5.1 format.

Respectfully submitted,

Frederic L. Wood
FREDERIC L. WOOD

0124-480

FLW/mac
FD 32760 Letter 9/18/95

Office of the Secretary

SEP 19 1995

3 Part of
Public Record

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32760

Union Pacific Corp. et al — Control and Merger —
Southern Pacific Rail Corp. et al.

COMMENTS OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
ON PROPOSED PROCEDURAL SCHEDULE

The National Industrial
Transportation League
1700 North Moore Street
Suite 1900
Arlington, VA 22209

By: Nicholas J. DiMichael
Frederic L. Wood
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW, Suite 750
Washington, DC 20005-3934
Tel. (202) 371-9500

Dated: September 18, 1995
Due Date: September 18, 1995

Office of the Secretary

SEP 19 1995

3 Part of
Public Recd



BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32760

Union Pacific Corp. et al — Control and Merger —
Southern Pacific Rail Corp. et al.

COMMENTS OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
ON PROPOSED PROCEDURAL SCHEDULE

Pursuant to the provisions of Decision No. 1 in this proceeding (served September 1, 1995), The National Industrial Transportation League (the League) hereby comments on the petition filed August 4, 1995, by the Applicants asking the Commission for the adoption of a procedural schedule in this proceeding. UP/SP-4.¹ The National Industrial Transportation League *strongly* believes that the highly compressed schedule proposed by the Applicants and the Commission should *not* be adopted in this proceeding.

ARGUMENT

The procedural schedule proposed by the Applicants and the Commission would deprive the League and other parties of a fair opportunity to participate in this important proceeding. It would also deprive the Commission of an opportunity to receive a fully-developed record on the important issues that are involved. To require interested parties, including the League, to expend the very

¹ In Decision No. 1, the Commission referred a related request contained in UP/SP-4 for adoption of discovery guidelines to the Administrative Law Judge assigned to conduct discovery matters. Decision No. 4, served September 7, 1995.

substantial resources necessary to analyze this major railroad merger, under the time constraints proposed by the Applicants and the Commission, would be highly prejudicial and unfair. It would deprive the League, and other representatives of the shipping public, of a fair opportunity, under the circumstances of this proceeding, both to review and analyze the voluminous and detailed evidence to be submitted in support of and in opposition to the application; the related abandonment applications to be filed by the Applicants; and the inconsistent applications that are likely to be filed by other rail carriers and/or shippers.

Most importantly, this proposed schedule will foreclose an adequate opportunity to develop and present evidence on whether or not this transaction, as proposed by the Applicants, can be found to satisfy the statutory standard of being "consistent with the public interest." The application and implementation of that standard is highly dependent on the factual circumstances of each case. *Detroit, T. & I. R. Co. v. U.S.*, 725 F.2d 47, 51 (6th Cir. 1984). Therefore, the Commission must not overlook its obligation to permit the development of a record of these circumstances by conducting a fair and adequate "public hearing," as required by the provisions of both the Interstate Commerce and Administrative Procedure Acts. 49 U.S.C. §11344(a), and 5 U.S.C. §551 *et seq.*

Indeed, in its comments filed on February 21, 1995 in Finance Docket No. 32549, *Burlington Northern, Inc. et al., — Control and Merger — Santa Fe Pacific Corp. et al.*, (served Aug. 23, 1995) [BN/SF], the Southern Pacific Transportation Company, one of the Applicants in this proceeding, had the following comments on the modified procedural schedule proposed and finally adopted in BN/SF:

Applicants are merely seeking to deprive participants of a fair opportunity to address the substantial issues raised by this transaction, to constrain the Commission's ability to give the transaction the scrutiny required by the Interstate Commerce Act, and fundamentally to disserve the public interest.

Reply of Southern Pacific Lines to Applicants' Petition to Modify Procedural Schedule, February 21, 1995, p. 3. The Union Pacific Railroad Company, the other Applicant in this proceeding, had similar criticisms of the modified procedural schedule. See UP-2, filed February 16, 1995, in the *BN/SF* proceeding. The League agrees that the procedural schedule proposed by the Commission in this case, which would place even more severe time constraints on the parties and the Commission, is similarly flawed.

The fundamental error underlying the Applicants' request for adoption of their proposed procedural schedule is their belief that this proposed schedule will enable the Commission to determine, in accordance with the requirements of law, that the transaction at issue is one that will meet the public interest standards of the Interstate Commerce Act. 49 U.S.C. §11344(b)(1) and (c). The authority to make that determination is given by Congress to the Commission. But in accordance with fundamental notions of due process and fair procedures, the Commission has an obligation to adopt a procedural schedule that allows *all* of the parties, not just the Applicants, to have an adequate opportunity to participate in this proceeding. That determination must be made with appropriate recognition of the due process requirements embodied in the requirement of the Act for a public hearing on this application.

With all due respect, the League believes that the Commission should not become so caught up in the perceived need to convince the world that it can handle a major rail merger expeditiously, that it blinds itself to the fact that the hasty procedures that it has proposed in a matter of this significance are *not* fair procedures. They are not fair to the parties, but most importantly, such haste is not fair to the Commission itself, because a headlong rush to decision may deprive the Commission of the opportunity to receive meaningful evidence and argument from the affected parties on the significant issues raised by this proposed rail merger.

The Commission should not adopt procedures in this proceeding that prevent it from carefully and correctly discharging its statutory obligation to determine where the public interest lies. The statutory requirement for public hearings in a rail merger proceeding reflects a recognition by Congress that decisions on such transactions are far too important to be based on summary procedures.

The Commission should not reduce its role in this proceeding to "rubber-stamping" the Applicants' merger without carefully considering, on the basis of an adequate record, the public interest issues that it raises. In that connection, the League strongly believes that the procedures followed in the recently-concluded proceedings in the *BN/SF* merger should *not* automatically become a precedent for future rail merger proceedings. There are major differences between that proceeding and the proceeding now being considered by the Commission.

It should be noted that the procedural schedule first established by the Commission in the *BN/SF* proceeding (in a decision served on October 5, 1994) had to be suspended for about three months because of the commencement of an attempted hostile takeover of SF by the Union Pacific Corp., one of the Applicants in this proceeding. When the takeover attempt was ultimately rejected, the Commission adopted an accelerated schedule, clearly in order to complete the proceeding by the time that the Commission was expected to be sunsetted by the Congress. The result, nonetheless, was that the parties responding to that proposed merger still had considerably more than the 60 or 90 days proposed in this case to prepare their submissions. Specifically, the procedural schedule in *BN/SF* was suspended in Decision No. 7, served on December 5, 1994, 53 days after the primary application was filed. Decision No. 11 adopting the new schedule was served on March 10, 1995, providing for comments to be filed 60 days later. Thus, a total of 113 days was available for preparation of responses to the *BN/SF* primary application. Second, the *BN/SF* merger was largely end-to-end in nature. The

current merger is clearly a much larger parallel merger with a scope equal to the ultimately rejected Santa Fe-Southern Pacific merger², and will require much more discovery, analysis and preparation of evidence.

In view of the fact that this merger involves two of the three remaining major carriers in the western United States; clearly involves troubling competitive issues in numerous major areas of the country (*e.g.*, in the Central Corridor; in Utah, Nevada and parts of California; and along the Texas Gulf Coast, among others); and will, in all probability, be finally decided by an agency other than the Commission itself, after a complex transfer of functions from the Commission to another federal agency, the Commission should radically alter the schedule that it has proposed to provide for a substantially longer time period for development of the record and decision.

This new proceeding involves the merger of two of the few remaining major railroads in the United States. If approved as proposed, it will result in the existence of only two major rail systems in the western two-thirds of the United States because of the recent approval of the BN/SF merger. Both Applicants serve an area that has seen a precipitous decline over the last fifteen years in the competitive rail transportation opportunities that are available to shippers. There is and should be a significant issue concerning whether this merger should be approved at all, because there may well be significant problems with developing and implementing conditions to mitigate harm to competition without significantly lessening the public benefits.³ However, the Commission is reluctant to impose wide-ranging conditions because “[t]he Commission will not use its conditioning

² *Santa Fe Southern Pacific Corp. — Control — SPT Co.*, 2 I.C.C.2d 709 (1986); 3 I.C.C.2d 926 (1987) [*SF/SP*].

³ Applicants have already “indicated a willingness to accept conditions to preserve rail competition where [Union Pacific Railroad] and [Southern Pacific Transportation] are the only rail competitors.” SEC Schedule 14D-1, Tender Offer Statement (filed Aug. 10, 1995) at 66.

power to substantially restructure a transaction beyond the scope proposed.” *SF/SP*, 2 I.C.C.2d at 714; 3 I.C.C.2d at 928. There are thus issues raised by this transaction that implicate the Commission’s carefully established policies governing railroad consolidations, which focuses on, among other things, the potential harm that the transaction may cause to the public, and the conditions, if any, that are necessary to ameliorate such harm without eliminating the public benefits. 49 C.F.R. §1180.1(c)(2) and (d). Those issues *cannot* be adequately addressed with regard to a transaction of this magnitude without a careful and thorough review of the Applicants’ evidence, and an adequate opportunity for other parties to respond to that evidence, both by developing their own evidence and by testing the probative value of Applicants’ supporting evidence.

Furthermore, the Applicants can be expected to file thousands of pages of evidence and supporting materials when they file their primary application and the related abandonment applications on or about December 1, 1995. In addition, under the proposed procedures, a document depository to be established by Applicants will contain numerous file cabinets full of supporting work papers and materials that must be reviewed, catalogued and analyzed in order to understand the evidence submitted by Applicants. Discovery is likely to be even more extensive and time-consuming than in the BN/SF proceeding. Any schedule, whether it is the summary one proposed by Applicants, or any other, depends for its ultimate success, as in any proceeding of this complexity and importance, on the fair and adequate opportunity for parties to obtain necessary and appropriate discovery.

The Commission’s rail merger regulations explicitly encourage public participation in the process of considering a rail merger. 49 C.F.R. §1180.1(h). If that invitation is not to become a hollow one, the Commission must adopt a more reasonable schedule than the one proposed by Applicants. The Commission’s own

proposed alternative to the Applicants' schedule (Decision No. 1 at 4), which would reduce the time for conducting discovery and preparing comments and responsive evidence from 90 days to 60 days, is totally unworkable. For example, it will take the parties responding to the merger at least 90 days to have economic consultants obtain and review the traffic data and shipper facility data in order to prepare evidence that might be submitted by opponents or parties desiring protective conditions. Additional time will then be needed to integrate that evidence into an overall filing.

Finally, it is very likely that the Commission's responsibilities for administering the Interstate Commerce Act will be transferred to a successor long before this proceeding would be completed under *any* schedule. Indeed, at the present time, it appears that the Commission will be without funding beginning on January 1, 1996, just thirty days after the Applicants are expected to submit their application to the Commission. Despite the fact that this Commission will in all likelihood *not* be deciding this merger proceeding, the Commission is making a headlong rush to attempt to lock in a procedural schedule long before the application is even filed.

But there are strong reasons for developing a procedural schedule that would permit the Commission's successor agency to consider this most important transaction without undue haste. The transfer of the Commission's functions to a successor agency is likely to be complex, and any transfer, no matter how smooth, will clearly involve lost time as the transfer is completed. But under the Commission's proposed schedule, a decision would be required just four months after the transfer. The Commission should not deny a successor agency an opportunity to decide one of the first significant matters it might consider on the basis of a fully developed record.

The result of the schedule proposed by the Applicants would be to reduce the time the parties have to prepare comments from the 113 days available in the BN/SF proceeding to 90 days. If the Commission's schedule is adopted, parties will have only 60 days in which to prepare their filings, a reduction of nearly half of the days available in the BN/SF schedule. No one wants to spend years reviewing a proposed rail merger. But the actual schedule used in the BN/SF merger afforded the parties almost 120 days to prepare their filings and the merger decision was issued 310 days from the time of the filing of the applicants' primary application on October 13, 1994. The League urges the Commission to adopt a roughly similar schedule for the consideration of this far more complex merger with a far broader impact.

It should also be kept in mind that the Applicants will have about four months to prepare their primary application and supporting evidence.⁴ A corresponding amount of time is essential for the responsive evidence to be prepared. Thus, the League urges the Commission *not* to adopt the schedule proposed by the Applicants, but to adopt the proposed schedule attached to these comments. That schedule provides sufficient time for conduct of discovery after each round of evidentiary submission; allows a reasonable time for the preparation of the appropriate responsive evidence; and expressly provides for any necessary hearings to be conducted if it is determined that material facts remain in dispute after the submission of written evidence. It also provides the Commission or its successor with adequate time to review the record and reach a reasoned decision.

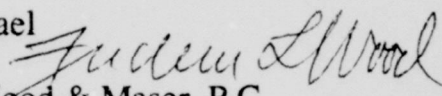
⁴ The merger agreement was approved by the boards of directors of the Applicants on August 1, 1995, although discussions and negotiations had been conducted for several months prior to that date. SEC Schedule 14D-1, Tender Offer Statement (filed Aug. 10, 1995) at 22-25.

CONCLUSION

In light of the foregoing considerations, the Commission should deny the Applicants' petition to adopt the procedural schedule set out in Decision No. 1. It should also not adopt the variation it proposed in the same decision. The League strongly but respectfully urges the Commission to recognize the need for careful and balanced development of a record for decision on this important proceeding and to adopt the schedule proposed in Attachment A hereto.

Respectfully submitted,

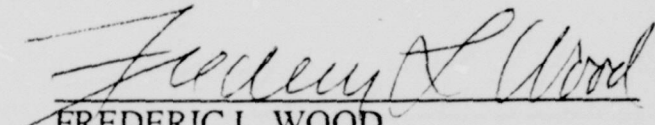
The National Industrial
Transportation League
1700 North Moore Street
Suite 1900
Arlington, VA 22209

By: Nicholas J. DiMichael
Frederic L. Wood 
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW, Suite 750
Washington, DC 20005-3934
Tel. (202) 371-9500

Dated: September 18, 1995
Due Date: September 18, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of September, 1995, served a copy of the foregoing comments upon counsel of record for the Applicants both by first-class mail and by telecopy, and upon all other parties of record, by first-class mail, postage prepaid, in accordance with the Commission's Rules of Practice.


FREDERIC L. WOOD

ATTACHMENT A

F	Primary application and related applications filed.
F+30	Commission notice of acceptance of primary application and related applications served and published in Federal Register
F+90	Inconsistent and responsive applications due.
F+105	Notice of acceptance (if required) of inconsistent and responsive applications served and published in the Federal Register.
F+120	Comments and protests (and supporting evidence) due on the primary application and related application and inconsistent applications; Requested conditions due;
F+150	Response to comments, protests, conditions to primary applications due; Response in support of primary applications due; Response to inconsistent and responsive applications due;
F+180	Reply in support of comments, protests, and conditions to the primary application due; Reply in support of inconsistent and responsive applications due.
F+210	Rebuttal by applicants due
F+230	Requests for oral hearing due, specifying material issues of disputed fact.
F+250	Evidentiary hearing begins (if necessary to resolve material issues of disputed fact).
F+280	Briefs due, all parties (not to exceed 75 pages).
F+310	Oral argument (at Commission's discretion).
F+340	Voting conference (at Commission's discretion).
F+360	Date for service of decision.

Notes: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications will begin immediately upon their filing. The Administrative Law Judge assigned to this proceeding will have the authority initially to resolve any discovery disputes.

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Item No. _____

Page Count 5

Sept #44

ILMER, CUTLER & PICKERING

2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420

MICHAEL B. BRESSMAN
DIRECT LINE (202) 663-6884

TELEPHONE (202) 663-6000
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4 CARLTON GARDENS
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TELEPHONE 011 (4471) 839-4466
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RUE DE LA LOI 15 WETSTRAAT
B-1040 BRUSSELS
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FRIEDRICHSTRASSE 95
BRIEFKASTEN 29
D-10117 BERLIN
TELEPHONE 011 (4930) 2643 3601
FACSIMILE 011 (4930) 2643 3630

September 18, 1995

Via Messenger:

Hon. Vernon A. Williams
Secretary
Interstate Commerce Commission
12th & Constitution Ave., N.W.
Room 1324
Washington, D.C. 20423



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

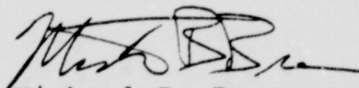
Dear Secretary Williams:

Enclosed please find the original and 20 copies of Comments of Consolidated Rail Corporation in Response to Decision No. 1 (Sept. 1, 1995) for filing in this proceeding. A copy of this filing will be served on the Applicants. Also enclosed is a 3.5 inch disk containing the text of this filing.

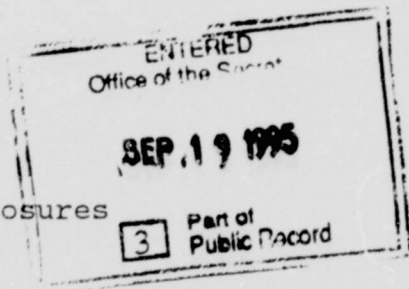
An extra copy of this filing has been included. Please date-stamp the copy and return it with the messenger to me.

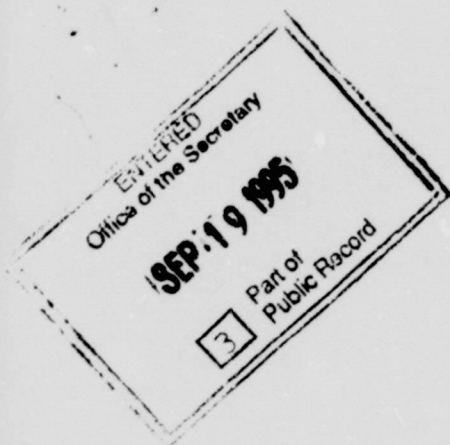
Thank you very much for your assistance.

Sincerely,


Michael B. Bressman

Enclosures





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, SPOSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

COMMENTS OF CONSOLIDATED RAIL CORPORATION
IN RESPONSE TO DECISION NO. 1 (SEPT. 1, 1995)

In response to the Commission's Decision No. 1, dated September 1, 1995, ___ Fed. Reg. ___, Consolidated Rail Corporation ("Conrail") submits these brief comments concerning the procedural schedule to be adopted in this proceeding.

Although in general Conrail believes that expeditious consideration and decision in such proceedings serves the public interest, what constitutes an appropriate schedule must inevitably vary from case to case according to the size and complexity of the proposed transaction. A timetable in one case may not be adequate in another.

This is especially the case when, as here, the proposed merger involves parallel lines. Indeed, the applicants acknowledged in their initial news release of August 3, that

their proposal presents competitive concerns and they have stated that they will grant access to other railroads to alleviate those concerns. The package of concessions that they will presumably propose will, therefore, require considerable scrutiny. Moreover, alternative proposals are likely to be offered, and they will also require analysis and evaluation.

Accordingly, Conrail urges the Commission to adopt a schedule for this proceeding that reflects the needs of all parties to consider difficult and controversial competitive issues, and to be clear that it will be receptive to subsequent requests for modification of that schedule if and as it becomes clear that the schedule it adopts does not accord sufficient time to develop and review a complete record.

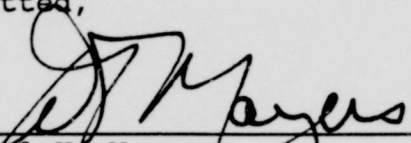
In that connection, Conrail is particularly concerned about the variation on the applicants' proposal identified by the Commission in its September 1 decision (at 2). That schedule would require the submission of comments, responsive applications, and opposition evidence 30 days after Commission acceptance of the primary application, rather than within 90 days of submission of that application as the applicants propose. The 30 days thus conserved would be re-inserted into the schedule at a later stage in the proceedings. Id.

Conrail urges that the procedural schedule provide more time at the outset, rather than less. In this way, adequate resources can be devoted to the time-consuming tasks of drafting comments or responsive applications, and compiling the supporting

evidence that will be required. Those tasks, which are essential to defining the issues adequately, must be accomplished at the outset if the issues are to be constructively joined by the parties and decided by the Commission.

Respectfully submitted,

Bruce B. Wilson
Constance L. Abrams
CONSOLIDATED RAIL CORPORATION
Two Commerce Square
Philadelphia, PA 19101-1416



Daniel K. Mayers
A. Stephen Hut, Jr.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for Consolidated Rail Corporation

September 18, 1995

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments of Consolidated Rail Corporation in Response to Decision No. 1 (Sept. 1, 1995), has been served upon all parties of record via U.S. mail postage-prepaid, this 18th day of September, 1995.

Anne E. Treadway/mbb
Anne E. Treadway

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UNION PACIFIC RAILROAD COMPANY

Law Department

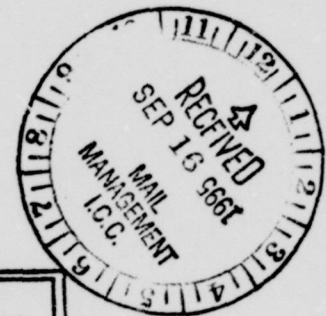
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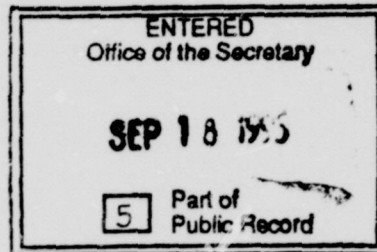
Sept #29



1416 DODGE STREET
ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610



September 15, 1995



VIA AIRBORNE

Hon. Vernon A. Williams
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp. et al.; Amendments to Applicants' System Diagram Map For Merger Related Abandonments

Dear Mr. Williams:

This refers to my letter of August 31, 1995 transmitting Applicants' amended System Diagram Maps to the Commission and to the parties of record in the above proceeding. The amended maps identified all proposed merger-related abandonments and placed them into Category 1.

The instant letter has two purposes; (1) to advise the Commission and the parties of deletions which have been made from the list of abandonments included in the August 31, 1995 letter (and which are, thus, not being placed into Category 1) and (2) to transmit the affidavits of service and publication required by 49 CFR §§ 1152.12 and 1152.13 and revised system Diagram Maps that reflect the post August 31 deletions.

I.
**IDENTIFICATION OF LINES
TO BE ABANDONED**



A. DELETIONS

The following lines have been deleted from the lines to be abandoned in connection with the proposed merger:

- Reno Jct. CA - Anderson NV (MP 0.0-12.0) (UP System)
- Taylor - Smithville TX (MP 920.0-969.16) (UP System)
- Welby - Magna UT (MP 5.1-17.9) (SP System)

B. REVISED ABANDONMENT LIST

As a result of the above deletions, the lines being placed in Category 1 in connection with the merger are now as follows:

1. Union Pacific System¹

- Gurden - Camden AR (MP 428.30-457.0)
- Jonesboro - Cherry Valley AR (MP 238.0-267.8)
- Whittier Jct. - Colina Jct CA (MP 0.0-5.18)
- Magnolia Tower - Melrose CA (MP 5.8-10.7)
- Towner - NA Jct. CO (MP 747.0-869.4)
- Barr - Girard IL (MP 51.0-89.4)
- DeCamp - Madison IL (MP 119.2-148.78)
- Herington - Bridgeport KS (MP 451.57-491.20)

¹ Includes Chicago and North Western Railway Company (AB-1), Missouri Pacific Railroad Company (AB-3) and Union Pacific Railroad Company (AB-33).

- Whitewater - Newton KS (MP 476.0-485.0)
- Iowa Jct. - Manchester LA (MP 680.0-688.5)
- Troup - Whitehouse TX (MP 0.50-8.0)
- Little Mountain Jct. - Little Mountain UT (MP 0.0-12.0)

2. **Southern Pacific System²**

- Suman - Bryan TX (MP 117.6-101.4)
- Victoria to Placedo TX (MP 27.8-14.47)
- Seabrook - San Leon TX (MP 30.0-40.5)
- Wendel - Alturas CA (MP 360.1-445.6)
- West Memphis - Wheatley AR (MP 10.0-64.0)
- Malta to Leadville CO (MP 271.0-276.1)
- Dotsero - Canon City CO (MP 335.0-162.0)
- Bridgeport - Herington KS (discontinuance of trackage rights over UP System line shown in #1 above)
- NA Jct. to Towner CO (discontinuance of trackage rights over UP System line shown in #1 above)

The accompanying UP and SP System line descriptions contain further information on the above lines, including identification of locations at which active industries will not be affected.

II.

ENCLOSED MATERIALS

The following materials are enclosed with this letter:

²

Includes Southern Pacific Transportation Company (AB-12), St. Louis Southwestern Railway Company (AB-39), Denver & Rio Grande Western Railroad Company (AB-8) and SPCSL Corp. (AB-357).

- § 1152.12(d) Affidavit of Jeanna L. Regier (UP System)
- § 1152.12(d) Affidavit of W. G. Claytor III (SP System)
- UP System SDM and accompanying line descriptions of merger-related Category 1 lines. Note that map includes non-merger related Category 1 lines previously on UP System SDM.
- SP System SDM and accompanying line description of merger-related Category 1 lines. Note that maps include non-merger related Category 1 lines previously on SP System SDM.

**EFFECTIVE DATE OF
SYSTEM DIAGRAM MAPS**

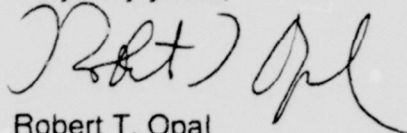
The enclosed §1152.12(d) affidavits complete the SDM filing, service, publication and posting requirements. Accordingly, the effective date of the amended System Diagram Maps enclosed with this letter is **September 18, 1995**.

* * * *

I am including an additional ten (10) copies of this letter and accompanying materials for the Commission files.

Please acknowledge receipt on the enclosed copy of this letter and return it to me in the stamped, addressed envelope provided for the purpose.

Very truly yours,



Robert T. Opal
General Attorney

cc: All Parties of Record

STB

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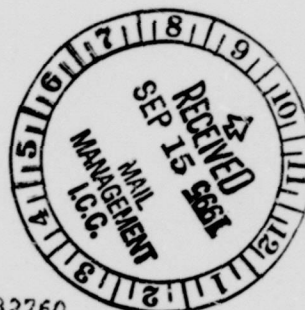
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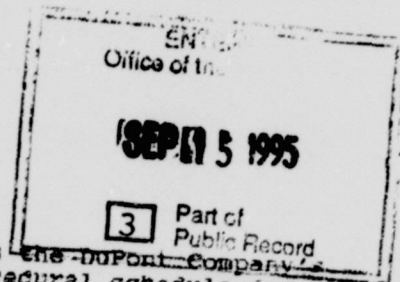
DuPont Sourcing
Wilmington, DE 19896

DuPont Sourcing



September 15, 1995

Office of the Secretary
Case Control Branch
Attn: Finance Docket No. 32760
Interstate Commerce Commission
1201 Constitution Avenue, N.W.
Washington, DC 20423



The purpose of this letter is to express the DuPont Company's objection to the proposal to expedite the procedural schedule for the Union Pacific Corporation's (UPC) control and merger application regarding the Southern Pacific Rail Corporation (SPC). This transaction will have a major impact on the level of competition in U.S. rail transportation.

DuPont is a major exporter from the U.S. Any merger that potentially reduces the level of competition in the rail industry threatens our ability to compete in the world markets. The majority of our rail shipments originate in the gulf coast states, a region that is greatly impacted by the proposed merger. We need time to assess the full impact of this merger.

We respectfully request that the Interstate Commerce Commission retain the original proposed schedule submitted in the UPC Petition.

Sincerely,

C. N. Bainkampen

Charles N. Bainkampen
Director - Global Distribution

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

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

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Item No. 60049

Page Count 2

Sept. #20

EXXON COMPANY, U.S.A.

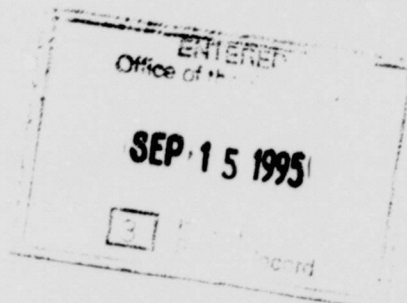
POST OFFICE BOX 4692 • HOUSTON, TEXAS 77210-4692

MATERIALS & SERVICES DEPARTMENT
TRANSPORTATION & SERVICES DIVISION

September 14, 1995



Honorable Vernon A. Williams
Secretary, Interstate Commerce Commission
Room 2215
12th Street & Constitution Avenue, NW.
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 Mr. Williams:

The purpose of this letter is to express Exxon Company, USA'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 significant impact on U.S. rail transportation competitiveness and service. As a major transaction, it will require the normal ninety days to allow full evaluation, rather than an abbreviated sixty day schedule.

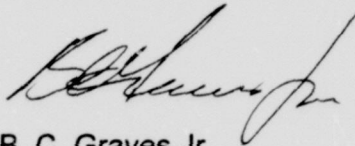
Exxon Company, USA, a division of Exxon Corporation, is a major manufacturer and marketer of petroleum products such as lube oils, process oils, wax, solvents and asphalt. Rail transportation plays a key role in the distribution of these products to our customers. The proposed merger of the UPC and SPC will have a significant impact on the petroleum industry and on Exxon Company USA. In fact, these two railroads handle over 25% of all the petroleum rail car tonnage in the U.S. Our largest refinery, which ships in excess of 8,000 rail cars per year is located at Baytown, Texas, and is jointly served by both of these railroads. No other railroad has access to this facility. The fact that our facility is served by both the UPC and SPC means that the proposed merger will have a unique and dramatic

impact on the current competitive environment which may restrict our ability to effectively compete in some markets.

UPC has stated that, after the merger, facilities with two rail carriers today will have access to two carriers in the future. We believe that since this merger has such a significant impact on our rail transportation delivery system we need all the time allowed in the original schedule proposed by the UPC to fully understand and evaluate any measures which the UPC may propose. The UPC has not revealed any details as to how our concerns about the merger will be addressed, therefore we will need the full allotment of time proposed by the UPC to determine our best course of action.

Exxon Company USA requests that the Commission retain the original proposed schedule submitted by the UPC Petition. Thank you for the opportunity to comment.

Very truly yours,



B. C. Graves Jr.

copy to:

Avid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
P. O. Box 7566
Washington, D.C. 20044

Paul A. Cunningham, Esq.
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1300 Nineteenth Street, NW
Washington, D.C. 20036

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September 5, 1995



Office of the Secretary
Case Control Branch
Attn: Finance Docket #32760
Interstate Commerce Commission
Washington, DC 20423

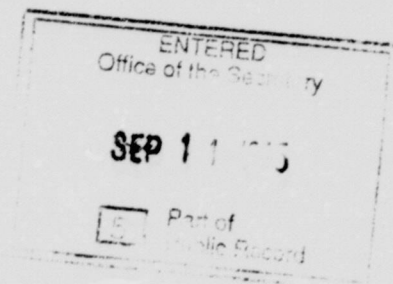
Reference: Finance Docket #32760

To whom it may concern:

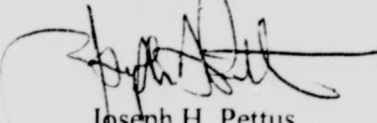
The purpose of this letter is to respond to the proposed procedural schedule change concerning the Union Pacific/Southern Pacific merger. Sun Valley Energy, Inc. is strongly opposed to any reduction in time allotted by the ICC to applicants for their comments on this merger. Since 1988 Sun Valley Energy, Inc. has been in the business of shipping and unloading propane tankcars for customers in Northern California and Nevada.

The current ICC procedural schedule allows 90 days for responsive applications. The schedule proposed by the UP has only 40 days; ten days for applicants to outline their comments and 30 days for filing their case.

The proposed shorter schedule is unrealistic, unnecessary, and unfairly burdensome to those companies wishing to file comments on this case. Also, to our knowledge, such a schedule change is completely unprecedented. The proposed Union Pacific/Southern Pacific merger will have a profound and lasting impact on the economy and business climate in California. Perhaps this merger will be favorable. Perhaps not. Under any circumstance it deserves our complete and uncompromised analysis.



Respectfully,


Joseph H. Pettus
President

cc: Paul A. Cunningham, Esq., Harkins Cunningham
Arvid E. Roach, II, Esq., Covington & Burling
20 copies to ICC

Attachment: Word Perfect 5.1, 3.5 inch floppy diskette: iccsunvy.ltr