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*ADMITTED IN ILLINOIS ONLY

202-347-7170




January 25, 1996



BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
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 Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver & Rio Grande Western Railway Company

Dear Mr. Secretary:

Enclosed for filing in the referenced proceeding please find an original and twenty (20) copies of the Comments of the Western Coal Traffic League in Support of the Motion of Western Shippers' Coalition for Enlargement of the Procedural Schedule (WCTL-3).

An extra copy of this filing is enclosed. Kindly indicate receipt and filing by time-stamping the copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for Western Coal Traffic League

Item No. _____

Page Count 7

JAN 3442

Enclosures

WCTL-3

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

**COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE IN SUPPORT OF THE MOTION OF WESTERN SHIPPERS' COALITION FOR ENLARGEMENT OF THE PROCEDURAL SCHEDULE**

The Western Coal Traffic League ("WCTL") hereby submits its comments in support of the January 22, 1996 Motion of Western Shippers' Coalition for Enlargement of the Procedural Schedule (WSC-2). WCTL submits that a 60-day enlargement of the current procedural schedule is wholly appropriate as the rushed pace of the current procedural schedule has become simply unworkable. Accordingly, in support hereof, WCTL states as follows:

Applicants[1] believe that the precedent of the BN/Santa Fe proceeding,[2] wherein a 6-month procedural schedule was strictly adhered to, justifies the compressed schedule in this proceeding. However, this is not the case and the two proceedings are not analogous. The proposed UP/SP merger proceeding is significantly more complex than BN/Santa Fe in a number of respects, and requires more time. For example, as compared to BN/Santa Fe, this proceeding has more actively participating opponents, each of whom require adequate time both to conduct discovery -- i.e., to review thousands of pages of documents -- and participate in numerous depositions -- and to prepare their respective cases. The participation of a large number of active parties has created severe congestion in the discovery process. This situation is becoming worse as the case progresses and has also been further complicated by the unusual January weather patterns. In short, there is simply is not enough time to accommodate numerous parties' reasonable and legitimate discovery requests given the constraints of the current procedural schedule, and parties are being prejudiced daily as a result.

---

[1] "Applicants" include the Union Pacific Railroad Company ("UP") and the Southern Pacific Transportation Company ("SP"), and other related corporate entities which have been identified as Applicants by the Commission in its Decision No. 1 in this proceeding (at 1 n.1).

[2] Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Decision served August 23, 1995.

Moreover, the UP/SP discovery process has been further exacerbated because it has become necessary for several parties to request additional depositions of individuals beyond the witnesses that Applicants chose to submit verified statements from in the proceeding. Other comments have noted the recent request of the Department of Justice for additional depositions because of the limited knowledge of one of the Applicants' witnesses. Another example is provided from the deposition earlier this week of Applicants' Witness Rebensdorf who identified other UP non-witness employees as the individuals who would be knowledgeable with regard to a number of significant areas of inquiry relating to the subject matter of his testimony (e.g., cost analyses relating to the trackage rights compensation in the BN/SF Settlement Agreement and the existence of shippers who may have feasible build-outs options that would be dominated by the merger). Still another example of this problem relates to Applicants' witness who addresses the competitive impacts of the proposed merger on coal traffic. This witness, Mr. Sharp, is a consultant/expert witness and we anticipate that he will be unable to respond to significant inquiries because of his unfamiliarity with the actual workings of either UP's or SP's Coal Marketing Divisions.[3] WCTL may thus have to submit a

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[3] Applicants' Witness Peterson intermittently addresses coal issues in his Verified Statement (Volume 2, Railroad Merger Application). However, Witness Peterson's position at UP is "Senior Director-Interline Marketing," and he is most likely not the most knowledgeable company witness regarding western coal traffic.

request for additional depositions of company witnesses who are able to speak to these topic areas. WCTL's efforts to identify through interrogatories the extent of Witness Sharp's consultations with Applicants' personnel, in an effort to gain an early indication of whether it would become necessary to seek depositions of UP and SP personnel, were rejected by Applicants on the grounds that this is information that should be developed on deposition.

An additional 60 days will not prejudice Applicants and will fully comply with the Interstate Commerce Act, and with Congressional intent behind the ICC Termination Act of 1995. The Interstate Commerce Act, by which this proceeding is governed, see ICC Termination Act § 204, allows for a 31-month schedule for merger proceedings; in contrast, the ICC Termination Act of 1995 calls for a 15-16 month schedule. In either case, an additional 60 days is a minor extension -- it will not hamper the overall process, it will fully comply with applicable law, and it will at least offer some reasonable prospect of meeting opposing parties' reasonable discovery needs.

## CONCLUSION

The largest railroad merger in history requires more time and attention than has been allotted. Given the discovery and weather delays that have plagued this proceeding thus far, there are ample grounds for granting the requested extension. A 60-day extension is very modest as compared to what is called for

under past and present interstate commerce laws, and WCTL hereby respectfully urges that the Surface Transportation Board extend the procedural schedule accordingly.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE

By: C. Michael Loftus
John H. LeSeur
Christopher A. Mills
Patricia E. Kolesar
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: January 25, 1996

Attorneys and Practitioners

## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 1996, I caused a copy of the foregoing "Comments of the Western Coal Traffic League in Support of the Motion of Western Shippers' Coalition for Enlargement of Procedural Schedule" to be served by hand on the individuals listed below, and by first-class United States mail, postage prepaid, on all other persons on the service list for this proceeding.

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Patricia E. Kolesar

Patricia E. Kolesar

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ANDREW B. KOLESAR III
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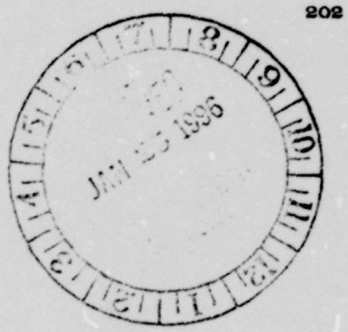
*ADMITTED IN ILLINOIS ONLY

202 347-7170


January 25, 1996



BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
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 Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver & Rio Grande Western Railway Company

Dear Mr. Secretary:

Enclosed for filing in the referenced proceeding please find an original and twenty (20) copies of the Comments of Wisconsin Power & Light Company in Support of the Motion of Western Shippers' Coalition for Enlargement of the Procedural Schedule (WPL-2).

An extra copy of this filing is enclosed. Kindly indicate receipt and filing by time-stamping the copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for Wisconsin Power & Light Company

Item No. _____
Page Count 5
JAN 341

Enclosures

WPL-2

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

**COMMENTS OF WISCONSIN POWER & LIGHT COMPANY IN SUPPORT OF THE MOTION OF WESTERN SHIPPERS' COALITION FOR ENLARGEMENT OF THE PROCEDURAL SCHEDULE**

Wisconsin Power & Light Company ("WP&L") hereby submits its comments in support of the January 22, 1996 Motion of Western Shippers' Coalition for Enlargement of the Procedural Schedule (WSC-2). WP&L submits that a 60-day enlargement of the current procedural schedule is wholly appropriate as the rushed pace of the current procedural schedule has become simply unworkable. Accordingly, in support hereof, WP&L states as follows:

Applicants[1] believe that the precedent of the BN/Santa Fe proceeding,[2] wherein a 6-month procedural schedule was strictly adhered to, justifies the compressed schedule. However, the two proceedings are not analogous. The proposed UP/SP merger proceeding is significantly more complex than was BN/Santa Fe, and requires more time. For example, as compared to BN/Santa Fe, this proceeding has more numerous actively participating opponents, each of whom require adequate time both to conduct thorough discovery -- i.e., to review thousands of pages of documents -- and to prepare their respective cases. The participation of a large number of active parties has created severe congestion in the discovery process, and has also been further complicated by the unusual January weather patterns. In short, there simply is not enough time to accommodate numerous parties' legitimate discovery requests given the constraints of the current procedural schedule, and parties are being prejudiced daily as a result.

An additional 60 days will not prejudice Applicants. This is a minor extension -- one that will not hamper the overall process, that will fully comply with applicable law governing the

---

[1] "Applicants" include the Union Pacific Railroad Company ("UP") and the Southern Pacific Transportation Company ("SP"), and other related corporate entities which have been identified as Applicants by the Commission in its Decision No. 1 in this proceeding (at 1 n.1).

[2] Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Decision served August 23, 1995.

timing of merger proceedings, and that will offer some possibility of accommodating opposing parties' reasonable discovery needs and the Board's own interest in obtaining a well-developed record upon which to base its decision.

## CONCLUSION

The largest railroad merger in history requires more time and attention than has been allotted. Given the discovery and weather delays associated with this proceeding, strong justification exists for enlarging the procedural schedule. The proposed 60-day extension is very modest, and WP&L respectfully urges that the Surface Transportation Board extend the procedural schedule accordingly.

Respectfully submitted,

WISCONSIN POWER & LIGHT COMPANY

By: C. Michael Loftus

C. Michael Loftus
Christopher A. Mills
Patricia E. Kolesar
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys and Practitioners

Dated: January 25, 1996

## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 1996, I caused a copy of the foregoing "Comments of Wisconsin Power & Light Company in Support of the Motion of Western Shippers' Coalition for Enlargement of Procedural Schedule" to be served by hand on the individuals listed below, and by first-class United States mail, postage prepaid, on all other persons on the service list for this proceeding.

Arvid E. Roach II, Esq.
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Washington, D.C. 20044

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

Patricia E. Kolesar
Patricia E. Kolesar

Item No. _____

Page Count 5

JAN 340

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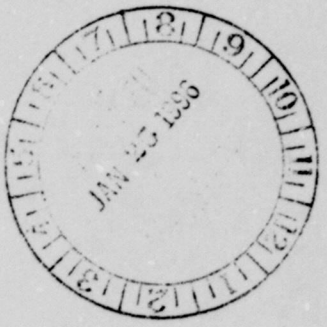
*ADMITTED IN ILLINOIS ONLY

202 347-7170


January 25, 1996



BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
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 Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver & Rio Grande Western Railway Company

Dear Mr. Secretary:

Enclosed for filing in the referenced proceeding please find an original and twenty (20) copies of the Comments of Entergy Services, Inc., Arkansas Power & Light Company, and Gulf States Utilities Company in Support of the Motion of Western Shippers' Coalition for Enlargement of the Procedural Schedule (ESI-4).

An extra copy of this filing is enclosed. Kindly indicate receipt and filing by time-stamping the copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

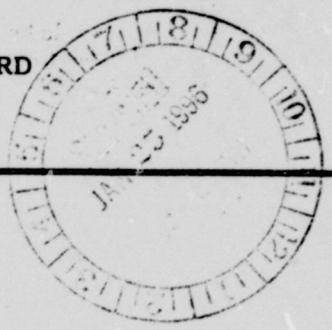
Sincerely,

Christopher A. Mills
An Attorney for Entergy Services, Inc.,
Arkansas Power & Light Company, and
Gulf States Utilities Company

Enclosures

ESI-4

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

**COMMENTS OF ENTERGY SERVICES, INC., ARKANSAS POWER & LIGHT COMPANY AND GULF STATES UTILITY COMPANY IN SUPPORT OF THE MOTION OF WESTERN SHIPPERS' COALITION FOR ENLARGEMENT OF THE PROCEDURAL SCHEDULE**

Entergy Services, Inc., Arkansas Power & Light Company, and Gulf States Utilities Company (collectively, "Entergy") hereby submit their comments in support of the January 22, 1996 Motion of Western Shippers' Coalition for Enlargement of the Procedural Schedule (WSC-2).

Entergy submits that a 60-day enlargement of the current procedural schedule is wholly appropriate.

The Applicants believe that the precedent of the BN/Santa Fe proceeding,[1] which involved a 6-month procedural

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[1] Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Decision served August 23, 1995.

schedule, justifies the compressed schedule in this proceeding. However, the two proceedings are not analogous. The proposed UP/SP merger proceeding is infinitely more complex than was BN/Santa Fe, and accordingly requires more time. For example, as compared to BN/Santa Fe, this proceeding has far more numerous actively participating opponents, each of whom require adequate time both to conduct thorough discovery -- i.e., to review thousands of pages of documents -- and to prepare their respective cases. The participation of a large number of active parties has created severe congestion in the discovery process, and has also been further complicated by the unusual January weather patterns. In short, there is simply is not enough time to accommodate numerous parties' discovery requests given the constraints of the current procedural schedule, and parties are being prejudiced daily as a result.[2]

An additional 60 days will not prejudice Applicants. This is a minor extension -- one that will not hamper the overall process, that will fully comply with applicable law governing the timing of merger proceedings, and that will meet opposing parties' reasonable discovery needs and the Board's own interest in obtianing a well-developed record upon which to base its decision.

---

[2] Earlier today, Entergy filed its initial discovery requests directed both to Applicants (ESI-2) and BN/Santa Fe (ESI-3).

## CONCLUSION

The largest railroad merger in history requires more time and attention than has been allotted. Given the discovery and weather delays associated with this proceeding, it has become imperative that the procedural schedule be enlarged. The proposed 60-day extension is very modest, and Entergy thus respectfully urges that the Surface Transportation Board extend the procedural schedule accordingly.

Respectfully submitted,

ENTERGY SERVICES, INC.
ARKANSAS POWER & LIGHT COMPANY
GULF STATES UTILITIES COMPANY
WESTERN COAL TRAFFIC LEAGUE

By: C. Michael Loftus
Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Wayne Anderson
General Attorney-Regulatory
Entergy Services, Inc.
Mail Unit L-ENT-26E
639 Loyola Avenue
New Orleans, LA 70113

Dated: January 25, 1996

Their Attorneys

## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 1996, I caused a copy of the foregoing "Comments of Entergy Services, Inc., Arkansas Power & Light Company, and Gulf States Utilities Company in Support of the Motion of Western Shippers' Coalition for Enlargement of Procedural Schedule" to be served by hard on the individuals listed below, and by first-class United States mail, postage prepaid, on all other persons on the service list for this proceeding.

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January 25, 1996

**HAND DELIVERY**



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

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty copies of Applicants' Reply to Comments of KCS and Tex Mex in Support of Motion for Enlargement of the Procedural Schedule (UP/SP-66). 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,

Mike Hemmer

J. Michael Hemmer

Enclosures

cc: The Honorable Jerome Nelson (By Hand)
Parties of Record

Item No. _____

Page Count 10

JAN 339

UP/SP-66

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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

# APPLICANTS' REPLY TO COMMENTS OF KCS AND TEX MEX IN SUPPORT OF MOTION FOR ENLARGEMENT OF THE PROCEDURAL SCHEDULE

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(202) 662-5388

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

January 25, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 32760

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

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APPLICANTS' REPLY TO COMMENTS OF KCS AND TEX MEX
IN SUPPORT OF MOTION FOR ENLARGEMENT OF THE
PROCEDURAL SCHEDULE

Late Monday afternoon, the Western Shippers' Coalition ("WSC") filed an eleventh-hour request for a 60-day deferral of the entire procedural schedule established by the Commission to govern this proceeding. In documents transmitted to Applicants' offices as late as midnight this morning, KCS and Tex Mex filed supporting documents. See KCS-17 and TM-6, dated January 24, 1996. Although captioned "Comments," the KCS and Tex Mex filings are lengthy petitions alleging entirely new grounds for delay. Applicants have had only a few hours to prepare this reply, but they are entitled to be heard in response to these newly-asserted requests to unnecessarily prolong this proceeding.

Although the relief KCS and Tex Mex seek requires virtually instantaneous action by the Board with little or no time for reflection, the Board should make no mistake about its significance. WSC sought an extension for reasons special to it, which in Applicants' view are clearly inadequate. In

contrast, KCS and Tex Mex seek a fundamental transformation of the nature of this proceeding. Grossly mischaracterizating -- and indeed in some instances demonstrably misrepresenting -- the discovery process in this case, KCS and Tex Mex seek to transform this proceeding from the procedurally fair but "expedited schedule" envisioned by the Commission (Decision No. 9, served Oct. 19, 1995 ("Schedule Order"), p. 6)) into a long, drawn-out, burdensome discovery war in which every conceivable witness is deposed and every last scrap of paper examined. In substance KCS and Tex Mex have resuscitated their arguments last fall for a schedule lasting "the full statutory time period" of over two years, which the Commission rejected. See KCS-3 and TM-2, Sept. 18, 1995.

Seemingly endless discovery wars once plagued Commission proceedings, prolonging them for years.[1/] The schedule fixed by the Commission for this proceeding rejected the notion that these sorts of discovery wars are necessary or worthwhile, and the Commission's views track those of the federal courts which have recently moved to restrain wasteful and prolonged discovery.[2/] One of the lessons the Commission learned from the BN/Santa Fe proceedings is that the central issues and key facts to be considered in weighing the public interest, even in major transaction proceedings, can be

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1/ KCS has followed a similar strategy in many Western rail merger proceedings going back to the UP/MP/WP proceeding.

2/ The Federal Rules of Civil Procedure and the local rules of many district courts have been revised to place strict limits on discovery.

identified without devoting millions of dollars in legal and applicant employee time to turning over every stone. The Commission expressly directed "the parties (and will instruct the Administrative Law Judge) to focus strictly on relevant issues." Schedule Order, p. 8. It concluded that "the schedule as adopted allows sufficient time for meaningful discovery." Id., p. 13. The Commission, which gave the Applicants a mere 30 days to respond to the entire mass of comments and inconsistent applications KCS and other parties will file on March 29, very plainly expected the parties not to engage in the sort of perpetual discovery that KCS now seeks.

KCS has made it equally plain that it intends to expand its discovery efforts until it is reined in by the Board or the ALJ. It clearly intends to seek depositions of every person for whom it can fashion any pretext of justification. Attachment C to its Comments exemplifies this intent, demanding depositions of "at least" five non-testifying UP employees simply because they helped a witness "come up with the list of 2-to-1 points under the definition used by Applicants." KCS-17, Ex. C. For KCS, looking at a map and public tariffs to identify shippers served by both UP and SP makes one an essential deposition target. If the Board encourages such demands for constantly expanding discovery, this 60-day extension request will be only the first of many.

To support their call for delay, KCS and Tex Mex portray Applicants as refusing to cooperate in the discovery

process. This characterization is wrong, and some of KCS' statements are simply false. For example, KCS asserts that Applicants are refusing to cooperate in responding to its third set of discovery requests (KCS-17, p. 4), but Applicants have not even received those requests. Similarly, KCS' assertions that "for most document requests or interrogatories, the requestor is forced to take such requests to Judge Nelson" is absolutely false, with respect to KCS or any other party.[3/] Only 28 of the roughly 600 discovery requests have been presented for rulings; Judge Nelson denied nine, modified sixteen, and granted only one in full.

KCS also fails to disclose that many of its discovery requests have ranged from burdensome to outlandish and are highly objectionable. Applicants reasonably objected to such discovery requests, and Judge Nelson upheld most of the objections. Indeed, in every instance of a dispute, Judge Nelson declined to order compliance with the KCS discovery request as served. The real problem is that KCS has failed to make any effort to tailor its discovery efforts to the Commission's Schedule Order and rules and to the discovery guidelines in this proceeding.

The discovery process, under Judge Nelson's leadership, has moved far more efficiently and expeditiously

---

[3/] KCS also castigates applicants for objecting to virtually all interrogatories and document requests of all parties (KCS-17, p. 2), but, as KCS well knows, Applicants merely followed the normal practice of noting, where applicable, that there were objectionable aspects to a request, and then, in the vast majority of cases, nonetheless responding to the request.

than KCS and Tex Mex want the Board to believe. In response to every set of discovery requests, Applicants file their objections within five business days. They then file their responses, which generally include substantive responses even where protective objections are raised, within fifteen days of the original requests. When disagreements arise, Applicants willingly participate in informal discovery conferences to reach compromises, and they have repeatedly reached agreements with other parties. When compromises cannot be reached, the disputes are quickly and immediately aired before Judge Nelson in a weekly hearing, and Applicants have complied with all his rulings. It is emblematic of KCS' mischaracterizations that two of the three attachments to its comments, which supposedly demonstrate Applicants' refusal to cooperate, had not even been received by Applicants when KCS filed its Comments.

KCS would have the Board believe that Applicants are stonewalling against discovery requests, but in fact Applicants as of last week had produced well over 160,000 pages of workpapers and documents responsive to discovery requests, in addition to responding to some 600 often duplicative and overlapping interrogatories and document requests (not including numerous sub-parts and informal requests). KCS vaguely accuses Applicants of making it difficult for them to find material in Applicants' document depository, but Applicants have consistently offered to make, and have made, significant investments of time to assist parties in finding documents in the depository. One of Applicants' attorneys, as

well as several paralegals, spend virtually all their time adding documents to the document depository, helping parties find documents, and responding to requests for copies.

Tex Mex devotes a considerable part of its comments to Applicants' refusal, under the Commission's well-established settlement privilege, to disclose the give-and-take of the settlement negotiations among BN/Santa Fe, UP and SP that led to their settlement agreement. Tex Mex fails to disclose that this issue has been argued at length before Judge Nelson three times (and will be argued again on Friday), and that Judge Nelson has three times ruled for the Applicants. Its allegations that Applicants are withholding information are actually a collateral attack on Judge Nelson's rulings, without complying with the strict standards for appeal established by the Commission last year. Schedule Order, p. 13. Furthermore, Tex Mex and other parties were allowed to question UP's chief settlement negotiator, John Rebensdorf, for two full days (with a third day to come), and obtained answers to all their questions about the BN/Santa Fe agreement and Applicants' position in regard to that agreement, except those directed to the actual give-and-take of the negotiations covered by the core settlement privilege.

Finally, Tex Mex seeks delay because it apparently experienced difficulties, which other parties apparently did not experience, in processing Applicants' waybill data tapes. It suggests, inaccurately, that the "final" version of the tapes was withheld until January 11, 1996. The truth is that

Applicants' traffic tapes were provided to Tex Mex in October, although Applicants cautioned at the time that there would likely be some modest "clean-up" of the data in the final version to be placed in their document depository when the application was filed. Applicants did place the final tapes in the document depository on December 1, 1995, but Tex Mex did not bother to ask for them. Tex Mex received the final tapes on January 11, 1996 because, as a courtesy, Applicants' counsel sent them when we discovered that Tex Mex had never asked for them. Had Tex Mex asked for copies of the tapes on December 1, 1995, it would have had the final data more than five weeks earlier.

## CONCLUSION

KCS and Tex Mex have been and remain the leading crusaders for a "step backward . . . in [the ICC's] effort to process applications fairly but efficiently." Schedule Order, p. 5. They oppose this merger and appear to be predisposed to do everything in their power to postpone a final decision.

Applicants respectfully ask the Board to reject their requests for delay.

Respectfully submitted,

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

January 25, 1996

CERTIFICATE OF SERVICE

I, J. Michael Hemmer, certify that, on this 25th day of January, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Room 9104-TEA
Department of Justice
Washington, D.C. 20530

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

J. Michael Hemmer

J. Michael Hemmer

Box 127
Eads, Colo. 81036

61062

The Honorable Vernon Williams
Interstate Commerce Commission
12th & Constitution Aves N.W.
Washington, D.C. 20423



Re: ICC Finance Docket No. 32760

Dear Mr. Williams:

I am a resident of Eads, in Kiowa County, Colorado. I am writing to express my concern ove the intent to abandon the rail services of Union Pacific & Southern Pacific Railroads. Kiowa County depends on the rails for transportation of grains and other commodities. As well, the county relies upon tax revenues derived from railroad properties. If the service is discontinued, the County will suffer dramatic economic consequences. I would ask the Commission to deny the application, or to place restrictions on them to give our County time to respond to the loss of service and revenue.

Cordially
Areta A. Blooding-Baird

STB FD 32760 1-20-96 D 61120

41120

# South Orient Railroad Company, Ltd.

January 26, 1996

**VIA U.P.S.**


Vernon A. Williams, Secretary
Surface Transportation Board
Room 2215
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Re: **Union Pacific Corp., et al -- Control and Merger -- Southern Pacific Rail Corp., et al - Finance Docket No. 32760** ([redacted])

Dear Secretary Williams:

Enclosed for filing is an original and 20 copies of the Anticipated Responsive Application which is being submitted by Cen-Tex/South Orient regarding the subject Finance Docket #32760[redacted]

If you have any questions regarding this matter, please contact the undersigned.

Sincerely yours,

James R. Craig

James R Craig
Chief Financial Officer

JRC/lt

Enclosures

cc: Administrative Law Judge Jerome Nelson
All Parties of Record

Item No. _____

Page Count 9

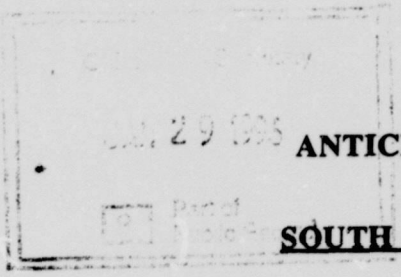
JAN 396

4809 Cole Avenue, Suite 350, Dallas, Texas 75205
telephone (214) 528-2888 fax (214) 528-0770

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 [redacted]

UNION PACIFIC CORP., et al
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORP., et al



**DESCRIPTION OF
ANTICIPATED RESPONSIVE APPLICATION
OF
CEN-TEX RAIL LINK, LTD./
SOUTH ORIENT RAILROAD COMPANY, LTD.**

This Description of Anticipated Responsive Application is submitted on behalf of Cen-Tex Rail Link, Ltd./South Orient Railroad Company, Ltd.[1] in accordance with the Board's Procedural Schedule and the regulations set forth at 49 CFR 1180.4. Cen-Tex/South Orient intends to submit a Responsive Application to the primary application by the Union Pacific Corp., et al and Southern Pacific Rail Corp., et al in Finance Docket No. 32760 (the "Primary Application") not later than March 29, 1996 in accordance with the Board's Procedural Schedule and the regulations set forth at 49 CFR 1180.4(d).

[1] Cen-Tex Rail Link, Ltd. and South Orient Railroad Company, Ltd. are under common ownership and management. Cen-Tex and South Orient offer service over their consolidated lines from Fort Worth, Texas to Presidio, Texas, located at the Mexican border (a total of approximately 550 miles). Traffic is interchanged to FNM, the Mexican rail carrier, at the Presidio gateway, and travels to and from the interior of Mexico.

Cen-Tex/South Orient anticipates opposing the Board's approval of the Primary Application unless certain conditions are imposed by the Board. Specifically, Cen-Tex/South Orient intends to request, as a condition to the Board's approval of the proposed UP/SP merger, that Cen-Tex/South Orient be granted trackage rights over UP lines in the vicinity of Dallas/Fort Worth, Texas in order to permit Cen-Tex/South Orient to directly connect with Railtran. In addition, Cen-Tex/South Orient requests trackage rights on SP trackage from Sulpher Springs, Texas to Texarkana, Texas, including all trackage rights necessary to connect with any carriers in the Texarkana area. Cen-Tex/South Orient intends to request haulage rights on SP track from Alpine, Texas to the Houston/Galveston switching districts, allowing Cen-Tex/South Orient to directly market traffic out of the Houston/Galveston area to Mexico via Presidio and to other locations on Cen-Tex/South Orient lines. Cen-Tex/South Orient intends to request that the grant of such trackage and haulage rights be at charges and otherwise on terms that are normal and customary in the industry. Cen-Tex/South Orient also intends to request that certain restrictions on current trackage rights with SP between and Alpine, Texas and Paisano, Texas be removed.

Cen-Tex/South Orient believes that these rights are essential to preserve competition for traffic moving to and from Mexico. Currently, there are only three carriers that serve Mexico: Union Pacific, Southern

Pacific and BNSF. The Union Pacific, Southern Pacific, and BNSF are all Class I rail carriers with significant market power. If the UP/SP merger were to be approved without the conditions requested by Cen-Tex/South Orient, the number of carriers serving Mexico would be reduced to two. In light of the substantial market power wielded by each of the three competitors serving Mexico, the loss of one of those carriers would greatly reduce competition.

It is the view of Cen-Tex/South Orient that the condition it intends to request in its Responsive Application, the granting of trackage and haulage rights at customary rates in order to enable it to directly access rail carriers in Dallas/Fort Worth and serve customers in the Houston/Galveston area, is essential to preserve a competitive alternative for shippers to and from Mexico and to promote the continued, competitive movement of products to and from the interior of Mexico as contemplated by the North American Free Trade Agreement.

This Description of Anticipated Responsive Application sets forth a brief summary of Cen-Tex/South Orient's anticipated requests and comments to be included in its Responsive Application to be filed with the Board on or prior to March 29, 1996. Cen-Tex/South Orient reserves the right to raise additional or alternative requests and comments in its actual Responsive Application.

Dated this 26 day of January, 1996.

Respectfully submitted,

**South Orient Railroad Company, Ltd.,**
a Texas limited partnership

4809 Cole Avenue
Suite 350, LB-126
Dallas, Texas 75205
(214) 528-2888

By: South Orient Company,
a Texas corporation,
General Partner

By: _____
Joel T. Williams, III,
President

**Cen-Tex Rail Link Ltd.**

4809 Cole Avenue
Suite 350, LB-126
Dallas, Texas 75205
(214) 528-2888

By: CTRL Company,
a Texas corporation
General Partner

By: _____
Joel T. Williams, III,
President

## VERIFICATION

State of Texas }
}
County of Dallas }

Joel T. Williams, III, being duly sworn, deposes and says that he is the President of Cen-Tex Rail Link Ltd. and South Orient Railroad Company, Ltd., that he has read the foregoing Description of Anticipated Responsive Application and knows the facts asserted therein, and that the same are true as stated.

Joel T. Williams, III

Subscribed and sworn to
before me this 26th day
of January, 1996.

Linda A. Taylor
Notary Public in and for Dallas County,
Texas

My Commission expires: 5-12-99

LINDA A. TAYLOR
NOTARY PUBLIC
State of Texas
Comm. Exp. 05-12-99

## CERTIFICATION

I, James R. Craig, certify that I am the duly elected and qualified Secretary of South Orient Company, a Texas corporation and general partner of South Orient Railroad Company, Ltd., and of CTRL Company, a Texas corporation and general partner of Cen-Tex Rail Link, Ltd., and further certify that Joel T. Williams, III is duly authorized to verify and file the foregoing Description of Anticipated Responsive Application on behalf of South Orient Company, in its capacity as general partner of South Orient Railroad Company, Ltd., a Texas limited partnership, and on behalf of CTRL Company, in its capacity as general partner of Cen-Tex Rail Link Ltd., a Texas limited partnership.

James R. Craig

**CERTIFICATE OF SERVICE**

I certify that one original and 20 copies of the foregoing Description of Anticipated Responsive Application (CTSO-1), dated January 26, 1996, has been served by hand delivery upon:

Honorable Vernon A. Williams
Surface Transportation Board
Room 2215
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

and one copy by hand delivery upon.

Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
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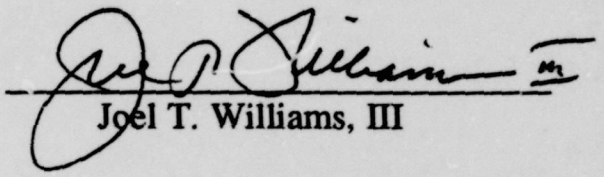
Dated this 26th day of January, 1996.



Joel T. Williams, III