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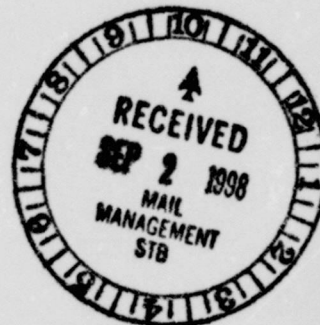
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UNION PACIFIC RAILROAD COMPANY

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



September 1, 1998



VIA UPS NEXT DAY AIR

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street NW, Suite 700
Washington, DC 20423

Re: Finance Docket 32760, UP - Control and Merger - SP

Dear Mr. Williams:

Pursuant to Decision No. 44, UP/SP submits station passing report for the month of August, 1998 for the city of Reno, Nevada. The report indicates that UP/SP is in compliance with Condition 22.a and Condition 23.a of Exhibit G to Decision No. 44.

	<u>Reno</u>
Cap	14.7
Average Through Freight Trains	11.8

The attached original and 20 copies of the verified report includes the details for both included and excluded trains for each day during August.

ENTERED
Office of the Secretary

SEP 04 1998

Part of
Public Record

Very truly yours,

Louise A. Rinn (mfr)
Louise A. Rinn
General Commerce Counsel
(402) 271-4227

LAR:mag
Attachments

C: (With attachments)

PERSONAL (2 copies)
Elaine Kaiser
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Steven J. Kalish, Esq.
McCarthy, Sweeney & Harkaway, PC
1750 Pennsylvania Avenue, NW
Washington, DC 20006

Paul H. Lamboley, Esq.
Attorney at Law
1350 I Street, Suite 200
Washington, DC 20005

(Via UPS Next Day Air)
J. Michael Hemmer, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20044

BC: (With partial attachment)
John Bromley - Room 605 (Reno)
Wayne Horiuchi - Sacramento (Reno)
Thom H. Williams - Harriman Dispatch Center (Reno)

BC: (With attachments)
Carol Harris - San Francisco/Law
Clyde Anderson - Room 700
Bill Wimmer - Room 1030
Kevin Crowe - Harriman Dispatch Center
Dennis Shackelford - Harriman Dispatch Center



RECAP OF PASSING REPORTS FOR MONTH OF AUGUST 1998

RENO, NEVADA

DATE	FREIGHT
1-Aug	13
2-Aug	13
3-Aug	9
4-Aug	12
5-Aug	9
6-Aug	12
7-Aug	12
8-Aug	9
9-Aug	12
10-Aug	13
11-Aug	11
12-Aug	12
13-Aug	12
14-Aug	11
15-Aug	16
16-Aug	13
17-Aug	9
18-Aug	11
19-Aug	12
20-Aug	14
21-Aug	9
22-Aug	17
23-Aug	8
24-Aug	14
25-Aug	18
26-Aug	12
27-Aug	9
28-Aug	12
29-Aug	11
30-Aug	12
31-Aug	9



Original

FREIGHT TRAIN MONTH TO DATE AVERAGE

11.8

AUTHENTICATION:

I certify under penalty of perjury that the foregoing record is true and correct and compiled from records maintained by SPT Company in the usual and ordinary course of business.

JF Murphy 9-1-98
 General Superintendent Date
 Western region - Harriman Dispatch Center

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TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Saturday August 1, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MSTNPP-30	4:30 AM	1ZG1OA-24	11:20 PM
1MRVPCX-31	8:35 AM	1MROOA-29	12:05 PM
1MSGDVJ-31	9:50 AM	1MROOA-28	7:50 PM
1AOAKSB-31	3:00 PM	1AKSBE-29	2:25 PM
1ZOAG1-01	12:35 PM	1CSRST-28	6:15 PM
1LRVRV-29	4:15 PM	1ZG1OA-30	10:00 PM
1MRVRO-30	8:16 PM		

EAST TRAINS: 7
TOTAL FREIGHT TRAINS: 13

WEST TRAINS: 6

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0532 PM)	1
PSGR TRAINS: (#5 RENO 1044 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Sunday August 2, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :			WESTWARD :	
TRAIN ID	RENO(EST)		TRAIN ID	RENO(EST)
1MRVRO-31	4:05 AM		1MNPSTB-29	1:40 AM
1AQAKS-01	12:30 PM		1LRVRV-29	8:50 AM
1MOARO-31	2:30 PM		1MNPSTB-30	11:05 AM
1ZOAG1-02	1:00 PM		1GSOVPX-30	12:55 PM
1MRVRV-30	6:15 PM		1AKSBE-30	10:00 PM
1GSTLBL-31	3:40 PM		1ZG1QA-31	9:10 PM
1GEECPC-30	10:36 PM			

EAST TRAINS: 7
TOTAL FREIGHT TRAINS: 13

WEST TRAINS: 6

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0458 PM)	1
PSGR TRAINS: (#5 RENO 1230 PM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Monday August 3, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :		WESTWARD :	
TRAIN ID	RENO(EST)	TRAIN ID	RENO(EST)
1MRVNPX-01	7:44 AM	2MNPATB-26	3:25 PM
1MSGDVJ-02	10:20 AM	1ZG1OA-01	5:40 PM
1MOARO-02	11:05 AM	1MROOA-01	8:05 PM
1LRVRV-02	10:20 AM		
1MBKPCX-02	10:30 PM		
1MOARC-3J	12:10 PM		

EAST TRAINS: 6
TOTAL FREIGHT TRAINS: 9

WEST TRAINS: 3

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0705 PM)	1
PSGR TRAINS: (#5 RENO 1117 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	2
TOTAL:	4

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
Tuesday August 4, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MRVNPX-02	3:45 AM	1CRVRV-02	4:10 AM
1RVNPX-03	8:20 AM	1AKSBE-01	11:45 AM
1MOARO-03	9:50 AM	1MNPSTB-31	1:50 PM
1MSTNPP-02	3:15 AM	1ZG1OA-02	7:10 PM
1MRVOGX-03	2:45 PM	1MROOA-02	11:45 PM
1AOAKS-03	3:40 PM		
1ZGOA1-04	5:50 PM		

EAST TRAINS:	7	WEST TRAINS:	5
TOTAL FREIGHT TRAINS:	12		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0718 PM)	1
PSGR TRAINS: (#5 RENO 1247 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
Wednesday August 5, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :			WESTWARD :	
TRAIN ID	RENO(EST)		TRAIN ID	RENO(EST)
1MRVPCX-04	12:20 AM		1MNPSTB-02	9:20 AM
1MSGIJ-02	1:45 AM		1ZG1QA-03	3:50 PM
1AOAKS-04	10:40 AM		1GDBRKY-29	11:55 PM
1ZOAG1-05	6:20 PM			
1CRVRV-05	7:05 PM			
1MSGLIS-03	11:05 PM			

EAST TRAINS: 6
TOTAL FREIGHT TRAINS: 9

WEST TRAINS: 3

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGK TRAINS: (#6 RENO 0056 PM)	1
PSGR TRAINS: (#5 RFNO 1250 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS: WLROVR-29	1
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	3

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Thursday August 6, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :			WESTWARD :	
TRAIN ID	RENO(EST)		TRAIN ID	RENO(EST)
1GESTNY-29	3:15 AM		1MROOA-31	7:25 AM
1MALNPX-03	5:40 AM		1AKSBE-02	9:15 AM
1MFRNPX-02	3:10 PM		1LRVRV-05	12:30 PM
1AOAKS-05	11:35 AM		1MROSTB-02	8:25 PM
1ZOAG1-06	3:40 PM		1MNPSTB-02	10:05 PM
1CLXWC-01	7:35 PM		1ZG1OA-04	10:00 PM

EAST TRAINS: 6
TOTAL FREIGHT TRAINS: 12

WEST TRAINS: 6

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC)

PSGR TRAINS: (#6 RENO 0752 PM)	1
PSGR TRAINS: (#5 RENO 0306 PM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
 TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Friday August 7, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1GEDHGB-04	12:50 AM	1MROOA-04	12:50 PM
1MOARO-05	5:05 AM	1CSKFNI-31	1:30 PM
1MSTNPP-01	5:55 AM	1ZG1OA-05	7:35 PM
1AOAKS-06	6:00 AM	1MNPSTB-03	6:50 PM
1MOARO-06	6:50 PM		
1MRVNPX-06	2:20 PM		
1ZOAG1-07	3:35 PM		
1GEPAGI-04	7:55 PM		

EAST TRAINS:	8	WEST TRAINS:	4
TOTAL FREIGHT TRAINS:	12		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0556 PM)	1
PSGR TRAINS: (#5 RENO 1136 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Saturday August 8, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
3MSGLIJ-05	3:20 AM	1MROOA-03	11:30 AM
1AOAKSB-07	6:52 AM		
1ZOAG1-08	1:10 PM		
1MRVNPX-05	4:35 PM		
1MSTLIJ-06	8:30 PM		
1CRIGV-05	9:40 PM		
1MSTNPP-03	4:50 AM		
1MOARO-01	1:50 AM		

EAST TRAINS:	8	WEST TRAINS:	1
TOTAL FREIGHT TRAINS:	9		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0534 PM)	1
PSGR TRAINS: (#5 RENO 1253 PM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Sunday August 9, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1AOAKS-08	7:25 AM	1ZG1OA-06	2:20 AM
1GEDHPC-08	1:50 PM	1MROOA-07	7:35 AM
1ZOAG1-09	4:30 PM	1MNPSTB-27	12:45 PM
1MOARO-04	2:15 PM	1AKSBE-04	1:30 PM
1LRVRV-08	8:20 PM	1ZG1OA-07	7:50 PM
		1MSPOAX-09	8:30 PM
		1AKSBE-09	11:10 PM

EAST TRAINS:	5	WEST TRAINS:	7
TOTAL FREIGHT TRAINS:	12		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0545 PM)	1
PSGR TRAINS: (#5 RENO 1132 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS: WBKOGT-05	1
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	3

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
Monday August 10, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :		WESTWARD :	
TRAIN ID	RENO(EST)	TRAIN ID	RENO(EST)
1MRVNPX-07	3:50 AM	1LRVRV-08	5:40 AM
1GSPXCD-06	3:40 AM	1MSKERX-10	11:55 AM
1MOARO-07	5:30 AM	1GSSOTL-09	8:55 AM
1MSTNPP-08	10:20 AM	1MNPSTB-04	2:05 PM
1MOARO-08	10:50 AM	1ZG1OA-08	10:55 PM
1MSTLDJ-07	3:10 PM		
1MRVNPX-09	11:45 PM		
1MRVROX-10	8:55 PM		

EAST TRAINS: 6
TOTAL FREIGHT TRAINS: 13

WEST TRAINS: 5

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0550 PM)	1
PSGR TRAINS: (#5 RENO 1124 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
 TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Tuesday August 11, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MFRNPX-09	10:35 AM	2MNPSTB-05	11:10 AM
1MOARO-09	5:10 AM	1MPVSTS-09	12:40 PM
1AOAKS-10	7:40 AM	1GSWRTR-09	1:10 PM
1ZGOA1-11	1:20 PM	1AKSBE-08	2:05 PM
1MRVRO-07	7:50 PM	1ZG1OA-09	11:35 PM
1MRVNPX-10	11:59 AM		

EAST TRAINS: 6
 TOTAL FREIGHT TRAINS: 11

WEST TRAINS: 5

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0703 PM)	1
PSGR TRAINS: (#5 RENO 1041 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
 TOTAL:	 2

v5
 TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Wednesday August 12, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MSTNPP-09	5:35 AM	1MSKOA-12	6:30 AM
1MSGLIJ-09	12:55 PM	1MNPSTB-08	9:40 AM
1AOAKS-1	7:55 AM	1MROOA-09	11:25 PM
1MRVNPX-08	6:55 PM	1ZG1OA-10	10:10 PM
1ZOAG1-12	3:20 PM	1GNDBDH-12	9:10 PM
1MRVNPX-11	6:25 PM	1MPVSTJ-11	11:59 PM

EAST TRAINS: 6
 TOTAL FREIGHT TRAINS: 12

WEST TRAINS: 6

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0535 PM)	1
PSGR TRAINS: (#5 RENO 1135 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
 TOTAL:	 2

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Thursday August 13, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1GEBLKR-10	3:35 AM	1AKSBE-09	1:35 AM
1GESTFR-11	11:10 AM	1MNPSTB-05	5:40 AM
1LRVRV-10	9:35 AM	1MROSTB-11	1:25 PM
1AOAKS-12	8:30 AM	1GDMIBL-12	2:20 AM
1MOARO-11	4:30 PM	1GDBRTL-07	6:30 PM
1ZOAG1-13	1:48 PM	1ZG1OA-11	9:25 PM

EAST TRAINS: 6
TOTAL FREIGHT TRAINS: 12

WEST TRAINS: 6

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0636 PM)	1
PSGR TRAINS: (#5 RENO 1135 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	2
TOTAL:	4

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Friday August 14, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MSTLIJ-12	12:30 AM	1GDNCCT-05	12:25 AM
1GEKYPC-10	10:55 AM	1LRVRV-10	5:45 AM
1GSTLNY-12	2:10 PM	1AKSBE-10	5:00 AM
1AOAKS-13	3:45 PM	1MNPSTB J9	5:25 PM
1ZOAG1-14	3:05 PM		
1CRIGV-12	6:05 PM		
1MRVNPX-12	9:35 PM		

EAST TRAINS: 7
TOTAL FREIGHT TRAINS: 11

WEST TRAINS: 4

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0535 PM)	1
PSGR TRAINS: (#5 RENO 1102 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
Saturday August 15, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :			WESTWARD :	
TRAIN ID	RENO(EST)		TRAIN ID	RENO(EST)
1MRVNPX-13	12:10 AM		1MNPST-10	4:50 AM
1MRVROX-11	4:05 AM		1MDVSTJ-12	1:05 AM
1MOARO-12	10:10 AM		1ZG10A-12	4:35 AM
1ZG10A-15	1:04 PM		1AKSBE-12	5:10 AM
1AOAKSB-14	4:05 PM		1CCOPN-06	7:20 AM
1LRVRV-15	4:05 PM		1MROSTB-13	1:50 PM
1MSTNPP-14	9:20 PM		1ZG10A-13	5:55 PM
			1ESXRV-15	6:25 PM
			1LRVRV-15	7:35 PM

EAST TRAINS: 7
TOTAL FREIGHT TRAINS: 16

WEST TRAINS: 9

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0520 PM)	1
PSGR TRAINS: (#5 RENO 1225 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Sunday August 16, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :			WESTWARD :	
TRAIN ID	RENO(EST)		TRAIN ID	RENO(EST)
1MOARO-14	3:55 PM		1MSPOAX-15	12:05 AM
1CRIGV-14	10:35 AM		1MNPLA-13	3:05 AM
1MRBLIJ-13	11:50 AM		1MSFFR-16	12:55 PM
1MSTNPP-15	4:20 PM		1ZG1OA-14	6:20 PM
1AOAKS-15	2:10 PM		1AKSBE-13	8:45 PM
1ZOAG1-16	1:20 PM			
1MRVNPX-15	7:45 PM			
1SSUHR-15	2:00 PM			

EAST TRAINS:	8	WEST TRAINS:	5
TOTAL FREIGHT TRAINS:	13		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0502 PM)	1
PSGR TRAINS: (#5 RENO 1046 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETCUR TRAINS:	0
SWITCH	0
TOTAL:	2

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
Monday August 17, 1998

CATEGORY 1 (ROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :		WESTWARD :	
TRAIN ID	RENO(EST)	TRAIN ID	RENO(EST)
1MRVNPX-16	2:05 AM	1GSECPX-13	1:30 AM
2MRVNPX-16	2:55 AM	1MROOA-14	3:55 AM
1MOARO-15	8:05 AM	1LRVRV-17	7:35 PM
1AOAKS-16	3:15 PM	1GDNYTR-12	9:10 PM
1MSTLIJ-14	6:30 PM		
1MRVNPX-17	6:45 PM		

EAST TRAINS: 6
TOTAL FREIGHT TRAINS: 10

WEST TRAINS: 4

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0556 PM)	1
PSGR TRAINS: (#5 RENO 1152 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS: WLRRVR-14	1
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	3

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
Tuesday August 18, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MFRNPX-16	12:20 AM	1ZG10A-15	1:02 AM
1MRVROX-16	3:30 AM	1CRORJ-17	8:20 AM
1GEDHCD-16	6:55 AM	1MNPST-14	10:10 AM
1MOARO-16	6:35 PM	1MSPFAX-18	1:20 PM
1ZOAG1-18	12:30 PM	1ZG10A-16	8:05 PM
		1AKSBE-14	9:50 PM

EAST TRAINS:	5	WEST TRAINS:	6
TOTAL FREIGHT TRAINS:	11		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0557 PM)	1
PSGR TRAINS: (#5 RENO 1207 PM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	2
TOTAL:	4

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Wednesday August 19, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MSTNPP-17	4:05 AM	3MDVSTJ-13	8:10 AM
1MOARO-12	9:05 AM	1ZG1OA-17	1:25 PM
1GSTRNC-13	8:00 AM	1MRROA-17	7:00 PM
1CSTSK-12	11:50 AM		
1AOAKS-18	1:10 PM		
1SSUHA-17	3:10 PM		
1ZOAG1-19	1:50 PM		
1MRVNPX-18	3:50 PM		
1MSTNPP-18	4:55 PM		

EAST TRAINS: 9
TOTAL FREIGHT TRAINS: 12

WEST TRAINS: 3

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0500 PM)	1
PSGR TRAINS: (#5 RENO 0128 PM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS: WTEKRG-17	1
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	3

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Thursday August 20, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MRVNPX-19	7:50 AM	1AKSBE-16	8:50 AM
1LRVRV-18	8:20 AM	1MSPFRX-19	2:40 PM
1MOARO-19	8:05 AM	1MROOA-18	3:10 PM
1MSGITJ-17	5:30 PM	1MNPST-15	5:35 PM
1MOARO-18	5:05 PM	1ZG1OA-18	8:10 PM
1ZOAG1-20	1:00 PM	1AKSBE-17	9:50 PM
1MSGLIJ-19	6:05 PM	1GPNCLT-12	11:45 PM

EAST TRAINS: 7
TOTAL FREIGHT TRAINS: 14

WEST TRAINS: 7

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0820 PM)	1
PSGR TRAINS: (#5 RENO 1221 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS: 1WTHKRG-17	1
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	3

v5
TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Friday August 21, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :			WESTWARD :	
TRAIN ID	RENO(EST)		TRAIN ID	RENO(EST)
1AOAKS-20	7:00 AM		1GLHTWC-14	7:00 AM
1ZOAG1-21	12:50 PM		1LBVRV-18	9:05 AM
1MRVRO-20	7:10 PM		1MDVSTJ-17	9:55 AM
1MFRMPX-18	10:30 PM		1CSKST-17	1:05 PM
			1ZG1OA-19	2:50 PM

EAST TRAINS: 4
TOTAL FREIGHT TRAINS: 9

WEST TRAINS: 5

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0540 PM)	1
PSGR TRAINS: (#5 RENO 1144 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

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TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Saturday August 22, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :			WESTWARD :	
TRAIN ID	RENO(EST)		TRAIN ID	RENO(EST)
1MTPUPX-18	12:25 AM		1MSPFRX-21	2:05 AM
1MWCROB-18	1:20 AM		1MNPST-18	9:15 AM
1MSTNPP-20	6:45 AM		1GSNYTL-18	10:40 AM
1AOAKSB-21	10:05 AM		1AKSBE-19	1:20 PM
1ZOAG1-22	2:55 PM		1MROOA-19	3:30 PM
1MOARO-20	6:35 PM		1ZG1OA-20	9:00 PM
1GETLPC-18	5:35 PM		1MDVSTJ-19	7:05 PM
1LRVRV-22	6:25 PM			
1MOARO-21	7:00 PM			
1GEDCI-19	11:20 PM			
EAST TRAINS:	10		WEST TRAINS:	7
TOTAL FREIGHT TRAINS:	17			

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0503 PM)	1
PSGR TRAINS: (#5 RENO 0102 PM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS: WRVKMR-21	1
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	3

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 TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Sunday August 23, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1AOAKS-22	8:10 AM	1CCOPN-17	9:00 AM
1MSGUJ-21	1:30 PM	1ESKTR-22	12:20 PM
1MRVNPX-22	7:20 PM	1CSKRV-21	4:25 AM
		1LRVRV-22	7:20 AM
		1ZG10A-21	9:15 PM

EAST TRAINS: 3
 TOTAL FREIGHT TRAINS: 8

WEST TRAINS: 5

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0529 PM)	1
PSGR TRAINS: (#5 RENO 0713 PM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	2
 TOTAL:	 4

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TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Monday August 24, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MRVNPX-23	12:35 AM	1MNPST-21	6:20 AM
1GESTKR-21	2:20 AM	1MDVSTJ-20	3:10 AM
1MOARO-22	8:35 AM	1MLESTX-22	7:20 AM
1AOAKS-23	8:00 AM	1AKSBE-21	2:25 PM
1MFRNPX-23	12:35 PM	1ZG1OA-22	7:45 PM
1MSTNPP-21	3:35 PM		
1GEBLLX-20	5:45 PM		
1MSGLTJ-22	6:05 PM		
1MOARO-23	10:20 PM		
EAST TRAINS:	9	WEST TRAINS:	5
TOTAL FREIGHT TRAINS:	14		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 REI'O 0455 PM)	1
PSGR TRAINS: (#5 REN: 1 1749 PM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

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TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Tuesday August 25, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MOARO-23	10:20 AM	1ZG1OA-22	7:45 PM
1LRVST-24	11:40 AM	1MROOA-23	12:45 AM
1MSTNPP-23	6:20 AM	1CSKST-20	1:00 AM
1MFRNPX-24	10:20 AM	1MSPFRX-24	7:40 AM
1GETRPC-23	10:30 AM	1MROOA-20	3:25 PM
1ZOAG1-25	1:20 PM	1ZG1OA-23	6:35 PM
1MRVNPX-24	7:00 PM	1GSMDST-11	4:30 PM
1GSTUNC-23	4:35 PM	1MPVSTS-24	11:25 PM
1MSTLSJ-25	8:25 PM		
1MOARO-24	8:35 PM		
EAST TRAINS:	10	WEST TRAINS:	8
TOTAL FREIGHT TRAINS:	18		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0623 PM)	1
PSGR TRAINS: (#5 RENO 1135 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

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TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Wednesday August 26, 1996

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :			WESTWARD :	
TRAIN ID	RENO(EST)		TRAIN ID	RENO(EST)
1AOAKS-25	9:30 AM		1GSMDST-11	4:10 PM
1ZOAG1-26	1:05 PM		1LRVRV-24	3:35 AM
1CSTHR-22	2:35 PM		1MNPST-23	7:25 AM
1GEDHNC-25	4:50 PM		1MNPSTJ-23	4:41 AM
1MSTNPP-25	10:00 PM		1AKSBE-23	12:10 PM
			1MROOA-24	9:15 PM
			1ZG1OA-24	10:40 PM

EAST TRAINS: 5
TOTAL FREIGHT TRAINS: 12

WEST TRAINS: 7

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS:	0
PSGR TRAINS: (#5 RENO 1043 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	1

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TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Thursday August 27, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MSTNPP-26	9:25 AM	1MROOA-24	9:15 PM
1GSTLNY-24	7:35 AM	1MROOA-25	2:35 AM
1ZOAG1-27	2:30 PM	1ZG1OA-25	6:45 PM
1MSGUJ-25	3:45 PM		
1MSTNPP-27	7:20 PM		
1LRVRV-27	10:43 PM		

EAST TRAINS:	6	WEST TRAINS:	3
TOTAL FREIGHT TRAINS:	9		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0529 PM)	1
PSGR TRAINS: (#5 RENO 1220 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS: WKMRVR-26	1
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	2
TOTAL:	5

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TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Friday August 28, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MOARO-26	4:18 AM	1GDNYBC-21	7:15 AM
1MORAO-25	10:10 AM	1LRVRV-27	9:30 AM
1AQAKS-27	9:05 AM	1GSNCIR-24	10:25 AM
1ZOAG1-28	2:10 PM	1MROOA-27	2:10 PM
1MSTNPP-28	9:13 PM	1MSPFRX-27	9:15 PM
1MSTNPP-24	11:20 PM	1ZG1OA-26	6:15 PM

EAST TRAINS: 6
TOTAL FREIGHT TRAINS: 12

WEST TRAINS: 6

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0552 PM)	1
PSGR TRAINS: (#5 RENO 0104 PM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

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 TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Saturday August 29, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MOARO-27	3:31 AM	1MNPSTX 16	11:15 AM
1MFRNPX-27	5:00 PM	1GSRWPX-24	3:10 AM
1MSTNPX-28	10:52 AM	1MNPST-24	5:40 AM
1ZOAG1-29	12:45 PM	1MROOA-22	4:10 PM
1MRVROX-28	6:35 PM	1MDVSTJ-26	4:15 PM
		1ZG1OA-27	7:25 PM

EAST TRAINS: 5
 TOTAL FREIGHT TRAINS: 11

WEST TRAINS: 6

CATEGORY 2: (LINE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0521 PM)	1
PSGR TRAINS: (#5 RENO 1144 AM)	1
YARD ENGINES:	0
HELPER:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
 TOTAL:	 2

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TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Sunday August 30, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD : TRAIN ID	RENO(EST)	WESTWARD : TRAIN ID	RENO(EST)
1MOARO-28	5:20 AM	1AKSBE-26	12:30 AM
1MFRNPX-28	2:50 PM	1MNPST-17	1:05 AM
1MSGLIJ-28	4:25 PM	1CCOPN-27	4:45 AM
1MRVNPX-30	10:46 PM	1AKSBE-27	9:30 AM
		1GDNBH-18	11:20 AM
		1MSPFRX-30	5:15 PM
		1CSKST-28	4:40 PM
		1ZG1OA-28	9:55 PM

EAST TRAINS:	4	WEST TRAINS:	8
TOTAL FREIGHT TRAINS:	12		

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0452 PM)	1
PSGR TRAINS: (#5 RENO 1108 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	0
TOTAL:	2

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TRAIN MOVEMENT ACTIVITY THROUGH CITY OF RENO
 Monday August 31, 1998

CATEGORY 1 (THROUGH FREIGHT TRAIN MOVEMENTS)

EASTWARD :			WESTWARD :	
TRAIN ID	RENO(EST)		TRAIN ID	RENO(EST)
1MSTLIJ-29	3:10 AM		1MNPSTB-18	12:30 AM
1MSTNPP-29	3:20 PM		1MSPFRX-31	2:00 AM
1MOARO-28	9:25 AM		1MROOA-26	6:05 AM
1LRVRV-29	9:35 PM		1MRVSTJ-27	4:55 AM
			1MROOA-28	5:30 PM

EAST TRAINS: 4
TOTAL FREIGHT TRAINS: 9

WEST TRAINS: 5

CATEGORY 2: (LITE ENGINE, WORK TRAINS, YARD ENG, HELPER, SNOW EQUIPMENT, LOCALS ETC):

PSGR TRAINS: (#6 RENO 0517 PM)	1
PSGR TRAINS: (#5 RENO 1034 AM)	1
YARD ENGINES:	0
HELPERS:	0
LITE ENGINE:	0
WORK TRAINS:	0
SNOW EQUIPMENT:	0
DETOUR TRAINS:	0
SWITCH	2
TOTAL:	4

STB FD

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OxyChem®

Robert L. Evans
Corporate Manager - Rail Transportation

September 20, 1996

Mr. Vernon A. Williams
Secretary, Surface Transportation Board

Dear Secretary Williams:

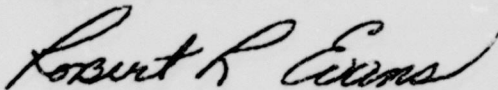
FD 32760

I am writing in response to the recent decision by the Surface Transportation Board approving the Union Pacific-Southern Pacific merger. Occidental Chemical Corporation supported the merger and Occidental Chemical Corporation supports the Surface Transportation Board decision in approving the merger of the Union Pacific-Southern Pacific railroad.

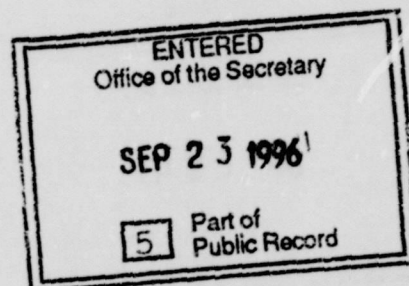
I am the Corporate Manager - Rail Transportation for OxyChem and I am responsible for purchasing rail transportation in the Houston area as well as for the United States. Securing competitive rail service, boxcar and/or intermodal, is essential to our ability to effectively service our customers as well as develop new market opportunities.

One of the conditions outlined in the STB's UP-SP decision grants the Texas Mexican Railway (Tex Mex) trackage rights between its line in Corpus Christi and Beaumont but with restricted access at Houston. I strongly urge the STB to lift all service restrictions on the Tex Mex giving it full local service access in the greater Houston area. Full access would provide for a viable third rail competitor in Houston that could connect with other carriers in Beaumont including the Union Pacific, BNSF and the Kansas City Southern Railway.

Respectfully yours,



Robert L. Evans



Occidental Chemical Corporation
Corporate Office
Occidental Tower, 5005 LBJ Freeway
P.O. Box 809050
Dallas, TX 75380
972/404-3503

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Georgia-Pacific Corporation

133 Peachtree Street NE (30303-1847)
P.O. Box 105005
Atlanta, Georgia 30348-5605
Telephone (404) 652-4000

Bob Thompson
General Manager Transportation - Pricing

September 18, 1996

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

RE: Finance Docket 32760

Dear Mr. Secretary:

Georgia-Pacific Corporation is a large shipper and receiver of building materials (lumber, plywood, oriented strandboard, wallboard, etc.). We have facilities and conduct business in the area served in this proceeding, and we are writing you to express support for Burlington Northern Santa Fe's position in this matter.

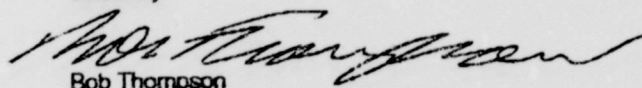
It is our firm belief that for BNSF to maintain a strong competitive presence under the newly granted rights in this proceeding, the UPSP must open 100% of contract volumes at 2-1 points to the BNSF. We supported the UPSP merger and feel it is in our long term best interests, but only if a viable competitive environment is nurtured which gives all parties a reasonable chance to succeed in the marketplace.

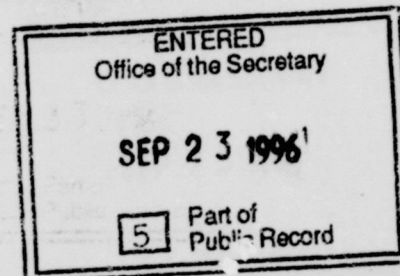
By providing shippers with the ability to make decisions on whether to modify contract provisions (on volume incentives, penalties, etc.), rational competitive choices can be exercised. Without this modification, we could see little economic value for us to award business, as volume penalties or incentives could serve as an economic barrier to the BNSF in their ability to compete effectively for these opportunities.

Also, we support the provision to solicit a competitive bid from BNSF in cases where the UPSP may offer to modify terms of a contract with a 2-1 shipper. This will allow us to negotiate in a way that will preserve our competitive status at 2-1 points. We strongly believe that it should be the shipper, not the carrier, who makes the decision as to what business is offered under any opening of contract provisions.

We also strongly support the ability of the BNSF to serve new transloading facilities and new industries on lines where they have acquired trackage rights. The purpose of the Surface Transportation Board decision in this proceeding as I understand it was to preserve competition, and it is essential that the option to use transload facilities in our negotiations with carriers not be limited. We need the ability to locate new facilities which are open to competing carriers as a vehicle for maintaining our competitive options.

Sincerely,


Bob Thompson
General Manager - Transportation Pricing



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LAW OFFICES

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

688 SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-3939

TELEPHONE: (202) 298-8660

FACSIMILES: (202) 342-0683

(202) 342-1316

September 20, 1996

Via Hand Delivery

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



Re: Union Pacific Corp., Union Pacific RR. Co. and Missouri Pacific RR Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Transp. Co., St. Louis Southwestern R.W. Co., SPCSL Corp. and The Denver and Rio Grande Western RR Co.,
Finance Docket No. 32760

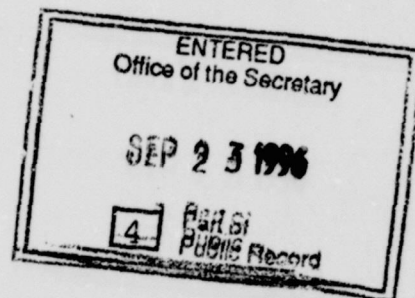
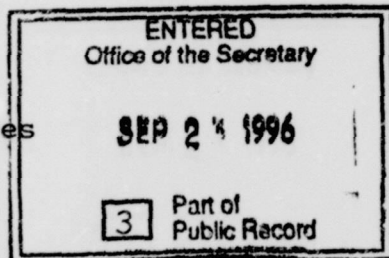
Dear Secretary Williams:

Enclosed for filing are an original and twenty copies of TM-46, Comments of Shippers in Support of the Petition of The Texas Mexican Railway Company to Reopen Decision No. 44. Also enclosed is a 3.5" floppy computer disc containing a copy of the filing in Wordperfect 5.1 format.

Sincerely,

Richard A. Allen

Enclosures



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CHAPARRAL STEEL

300 Ward Road • Midlothian, Texas 76065-9651 • (214) 775-8241

September 17, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12 St & Constitution Ave NW
Room 2215
Washington, DC 20423
Attention: Finance Docket 32760



Dear Mr. Williams:

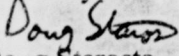
Chaparral Steel is concerned regarding two issues raised by the Surface Transportation Board's decision in the Union Pacific/Southern Pacific merger proceeding (Finance Docket 32760). Competition for rail services will be adversely affected, and our rail transportation options diminished, unless the Board acts favorably.

The first issue relates to the Board's decision to require UP/SP to make 50% of the volume of each contract they have with shippers at points now served only by the UP and SP available to the BN/Santa Fe. This requirement assures competition between the UP/SP and the BNSF and also allows BNSF to have immediate access to a traffic base. Chaparral's concerns are that the UP/SP may try to limit BN/Santa Fe's ability to compete for traffic. By clarifying this issue and stating that the UP/SP must allow all contract volumes at 2-to-1 points, regardless of any prior commitments, be made available to the BN/Santa Fe, the Board would strengthen true competition among Western Railroads.

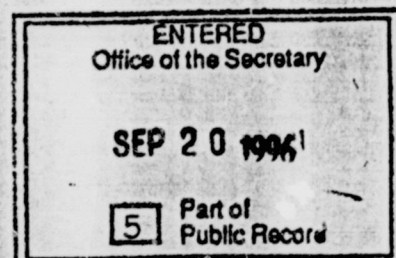
The second issue is to clarify that the BN/Santa Fe will have the right to serve all new facilities, including transload facilities, located on any UP or SP line over which BN/Santa Fe is to receive trackage rights as a condition to the Board's approval of the merger.

I appreciate your attention to these issues. Without proper clarification competition among Western Railroads would be compromised.

Sincerely,


Doug Starosta

Manager-Transportation & Distribution



STB FD

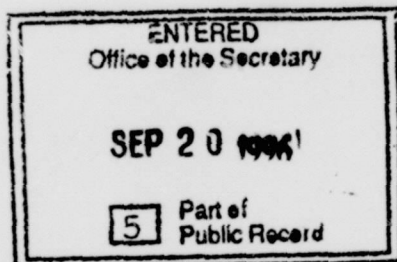
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Monsanto

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

September 18, 1996



Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Department of Transportation
12th Street & Constitution Ave., Room 2215
Washington, DC, 20423

Re: Union Pacific / Southern Pacific Merger
Finance Docket No. 32760

Dear Mr. Williams:

This is Monsanto's verified statement submitted to advise the Surface Transportation Board of Monsanto Company's position and comments on both the BN/ATSF's and UP/SP's requests for clarification regarding the questions of interpretation raised by the Board's decision in the Union Pacific / Southern Pacific merger proceeding (Finance Docket No. 32760). First, the Board's requirement that the UP/SP open at least 50% of the volume of each contract it has with shippers at points now served by only UP and SP and no other rail carrier. Second, the Board's requirement that BN/Santa Fe will have the right to serve any new facilities, including transload facilities, located on any UP or SP line over which BN/Santa Fe is to receive trackage rights as a condition to the Board's approval of the merger.

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 US states using all of the class 1 railroads, and many of the short lines in order to meet our shipping needs. We have been identified as being a 2 to 1 shipper under the terms of the UP/SP merger.

My name is L. Lee Thellman. I am Rail Transportation Manager for Monsanto Company. I am responsible for procurement of rail transportation services, selection of rail vendors, and negotiating rail freight and service contract terms and conditions.

Monsanto would like to comment on both the BNSF's and UP/SP's requests for clarification of the issues. We support an interpretation which affords BNSF full opportunity to develop sufficient traffic in order to provide service competitive with the UP/SP and which

preserves post merger competition. We further believe that is what the STB intended in Finance Docket 32760.

Monsanto believes that the Board wisely recognized the potential for reduction of competition resulting from the merger and appropriately imposed conditions designed to ensure and preserve post merger competition and the Board's record clearly shows that it intended the BNSF to compete and be a viable competitor with the UP/SP. The Board previously stated that the UP/SP did not go far enough in addressing certain adverse competitive effects and therefore the Board intended to clearly expand the UP/BNSF and UP/CMA Agreements to provide meaningful competition by and traffic density for BNSF. The wording in the STB conditions is clear and unambiguous.

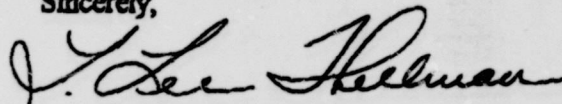
An interpretation of these two conditions which provides the greatest opportunity for meaningful competition and the development of significant traffic density for the BNSF would be the most appropriate given the magnitude and potential impact of this merger.

Therefore, we urge the Board to clarify its ruling on the 50% volume provision to ensure the BNSF's access to sufficient volumes of traffic and to protect shippers rights to choose which percentage of their traffic is to be open to which carrier, if in fact no more than 50% of the traffic is to be open and we also urge that the Board reject the recent petition filed by the UP/SP as it will significantly narrow the opportunities for shippers to enjoy the benefits of competition intended by the Board's requirements.

Thank you in advance for your interest and consideration of Monsanto's statement. Monsanto supports the STB in its responsibility for and efforts toward preserving and enhancing head-to-head rail transportation.

I ask that this statement be made a part of the official record in this proceeding. I certify under the penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement on behalf of Monsanto, executed on September 18, 1996.

Sincerely,



L. Lee Thellman
Rail Transportation Manager

CC:

G. L. Brasier, Monsanto
D. E. Williams, Monsanto
J. E. Wilson, Monsanto

Erika Z. Jones, Esquire
Mayer, Brown & Platt
2000 Pennsylvania Ave. NW
Suite 6500
Washington, DC 20006-1882
Council for BNSF

Arvid E. Roach II, Esquire
Covington & Burling
1201 Pennsylvania Ave. NW
P.O. Box 7566
Washington, DC 20044
Council for UP/SP

STB FD

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Hoechst Celanese**Chemical Group**

Hoechst Celanese Corporation
 1601 West LBJ Freeway
 PO Box 819005
 Dallas, TX 75381-9005
 214 277 4000

September 16, 1996
 RCS:039:96

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

Re: Finance Docket 32760

Dear Honorable Williams:



Hoechst Celanese Chemical Group, Ltd. (HCCG) is a producer and shipper of bulk commodity chemicals. HCCG has a facility in Bishop, Texas which is located in the area served in this proceeding. Our purpose in writing to you is to support Burlington Northern Santa Fe's (BNSF) position in this proceeding.

This is to declare our company's support to the BNSF petition for clarification of the Surface Transportation Board's decision to modify any contracts Union Pacific/Southern Pacific (UPSP) has with shippers at 2-1 p. ints. We also take the position that the UPSP petition to limit shippers' protections regarding new facilities and transload facilities should be denied on the basis that the petition, if granted, will limit competition.

This issue relates to the Board's requirement that the BNSF will have the right to serve any new facilities located on any UP or SP line over which BNSF is to receive trackage rights as a condition to the Board's approval of the merger. UPSP has recently filed a petition with the Board which attempts to significantly narrow the opportunities for shippers to enjoy the benefits of competition intended by the Board's requirements.

Hoechst Celanese Chemical Group, Ltd. opposes UPSP's proposed limitation. Our facility in Bishop, Texas would be negatively affected by the UPSP's proposal to eliminate competition on the segment between Placedo and Harlingen, Texas.

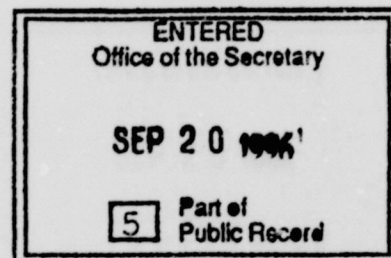
HCCG supported the UP/SP merger with the understanding that, if approved, competitive rail transportation would be enhanced, not more restrictive as per the UPSP proposed limitation.

We, therefore, take the position that the UPSP petition to limit competitive access should be denied on the basis that it will limit competition.

Very truly yours,

R. C. Seawright
 Richard C. Seawright
 Manager, Rail Management

cc: R. B. Gengelbach
 J. T. McMahon
 W. Love
 J. P. Radvansky



STB FD

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HONDA

AMERICAN HONDA MOTOR CO., INC.

1919 Torrance Boulevard • Torrance, CA 90501-2746
(310) 783-2000

September 13, 1996

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
ATTN: Finance Docket 32760
12th Street and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20433



Dear Sir:

RE: FINANCE DOCKET 32760

American Honda Motor Co., Inc. is a significant shipper of automobiles, machinery, and related products that has direct access to both the Burlington Northern Santa Fe (BNSF) and the Union Pacific (UP).

In order to maintain a competitive environment subsequent to the merger of the UP and Southern Pacific Railroad (SP), we believe it important for the BNSF to have direct participation in determining the shipper points where the UP/SP must open at least 50% of the volume of each contract they have with shippers at points served only by the UP/SP and no other rail carrier.

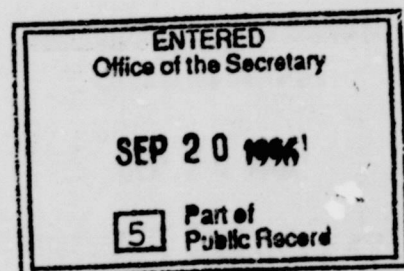
In addition, we believe the UP/SP must open 100% of all 2-to-1 points to competition from BNSF. This is important in order to prevent the possibility of anti-competitive tactics.

These two issues are important to American Honda Motor Co., Inc. in order to maintain the benefits of competition available to our company prior to the UP/SP merger.

Sincerely,

Dave Haney
Sr. Manager - Distribution

/rh



STB FD

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9-18-96

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LaRoche INDUSTRIES INC.

1100 JOHNSON FERRY ROAD N.E.
ATLANTA, GA 30342-1708
(404) 851-0300

September 13, 1996



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th St. & Constitution Avenue NW
Room 2215
Washington, DC 20423
Attn: Finance Docket 32760

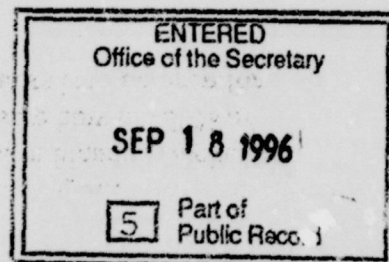
Dear Mr. Williams:

We are writing to request that the STB clarify the so called "50% of volume" provision in Southern Pacific Corporation and Union Pacific merger authorized in Finance Docket 32760. In discussions with BNSF and SP-UP, it seems no one is sure how the 50% of traffic now moving under contract with SP or UP on - 2 for one tracks is to be open for competitive bidding by BNSF.

The only way for this to effectively work is that shippers have the right to open any of these contracts now moving along the 2 - for - 1 lines to BNSF; and, that any volume or incentive provisions in such contract be pro-rated to September 11, 1996.

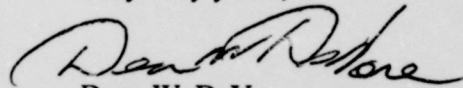
Also, all new facilities located on any UP or SP line over which BNSF is to receive trackage rights as a condition of merger. This should be very clear. All includes every new facility.

LaRoche has an Ammonium Nitrate plant at Geneva, Utah, that pre-merger was served by SP and UP. We also have tran-loading facilities in Nevada that would be effected by merger. We are also a member of CMA and it has been our understanding since the CMA agreement that all new facilities located on any UP or SP line, over which BNSF received trackage rights as a condition of merger, would be served by BNSF.



Finally, we did not oppose the merger because we were assured that any contracts along the 2 - for - 1 lanes could be open to BNSF; and, any new facility along these same lanes would be served by two carriers.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Dean W. DeVore", written in a cursive style.

Dean W. DeVore
Transportation Manager

DWD/sk

STB FD

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9-17-96

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L & R Timber Co., Inc.
P.O. Box 599
San Augustine, Texas 75972



September 12, 1996

Honorable Vernon A Williams, Secretary
Surface Transportation Board
12th St & Constitution Ave NW
Room 2215
Washington, DC 20423

Attention: Finance Docket 32760

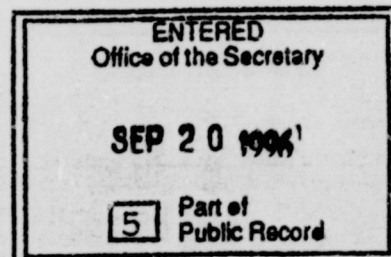
Dear Sir:

This to to urge the board to support the shippers rights as advocated by BN/Santa Fe.

Please clarify that shippers must be protected by the Contract-Reopener condition and also to deny the UP/SP effort to limit shippers protections regarding new shipping facilities, including new transload facilities.

Sincerely,

Ricky Lout, Secretary
L & R Timber Co., Inc.



STB FD

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9-17-96

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Robertson Tie & Lumber Co., Inc.

Route 5 Box 121, Center, Texas 75935 Phone 409/598-5948

9-12-96



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12 St. & Constitution Ave. NW
Room 2215
Washington, DC 20423
Attn: Finance Docket 32760

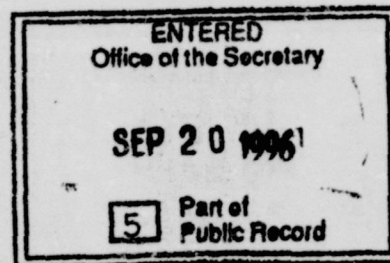
Dear Sirs:

This is to urge the board to support the shippers rights as advocated by BN/Santa Fe.

Please clarify that shippers must be protected by the contract-reopener condition and also to deny the UP/SP effort to limit shippers protections regarding new shipping facilities, including new transload facilities.

Sincerely,

Randy Robertson
Robertson Tie & Lumber Co., Inc.



STB FD

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**Desticon
Transportation
Services Inc.**

100, 8431 - 160th Street
Surrey, British Columbia
Canada V3S 3T9

Telephone (604) 597-0708
Fax (604) 597-7464

Honorable Vernon A Williams
Secretary
Surface Transportation Board
12th St & Constitution Ave NW
Room 2215
Washington, DC 20423

September 12, 1996

Attention: Finance Docket 32760

Re: 1. Contract-reopener condition
 2. Shippers' protections regarding new shipping facilities



We are writing to express our concerns regarding the above-mentioned issues in connection with the UP/SP merger proceedings.

The Board has required that UP/SP open up at least 50% of the volume of each contract it has with shippers now served only by UP and SP. Unless the Board takes further action in connection with contract volume incentives, BN/Sante Fe's ability to effectively compete on these volumes could be unfairly restricted.

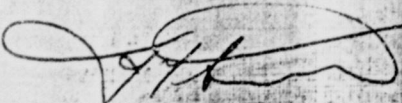
We understand that BN/Sante Fe has suggested methods of clarifying the contract-reopener condition to prevent the possibility of anticompetitive tactics.

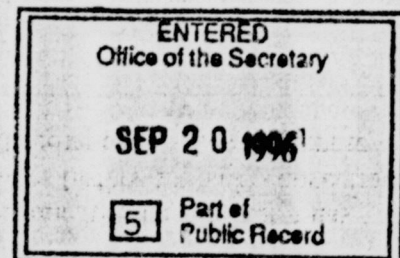
Secondly, the question UP/SP's recent proposal to restrict BN/Sante Fe's right to offer services to new shipping facilities that are located on any UP or SP line over which trackage rights have been granted as a condition of the merger.

In both cases we believe that shipper rights, as advocated by BN/Sante Fe, should be protected.

Thank-you for your consideration.

Sincerely,
Desticon Transportation Services Inc.,


Jade M. Stevenson
President



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SOLVAY POLYMERS

Quality Polymers Through Technology and People



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

Date: Sept., 11, 1996

FO32760

Dear Secretary Williams:

One of the conditions outlined in the STB's decision to approve the UP-SP merger granted the Texas Mexican Railway (Tex Mex) trackage rights between its line in Corpus Christi and Beaumont but with restricted access to Houston. Solvay Polymers strongly believes that these restrictions do not provide for adequate competitive rail options into Houston, and we strongly urge the STB to lift all service restrictions on the Tex Mex giving it full local service access in the Greater Houston area. Full access would provide for a viable third rail competitor in Houston that could connect with other carriers in Beaumont including the Union Pacific, BNSF and the Kansas City Southern Railway.

As the Director of Logistics and Customer Service for Solvay Polymers, Inc. I am responsible for procurement of all transportation services-rail, motor, and other. Solvay Polymers is a manufacturer of polyolefins with our facility located in Deer Park, TX on the Houston ship channel. We manufacture over 2 billion pounds of plastic resin annually, all of which is shipped in privately owned covered hopper cars. Last year we made approximately 10,500 rail shipments with 2700 cars. Securing competitive rail service is essential for us to effectively service our customers as well as develop new market opportunities. Transportation costs alone comprise 20% of product value.

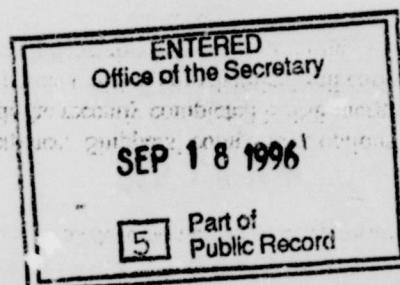
Just eight years ago five rail carriers served the Houston marketplace. Shippers' competitive options have been reduced to just two carriers in this short time period. With the recently completed BNSF merger and the approved UP-SP merger, these two carriers will control 88 percent of the petrochemical rail carloads to and from Texas and 100 percent of the petrochemical rail carloads originating or terminating in the Houston area. These limited rail options do not provide adequate competition to keep service levels high and rates low.

Respectfully yours,

Mike Scherm

Mike Scherm
Director of Logistics and Customer Service

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STB FD

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THE HERITAGE GROUP

P.O. BOX 68123 / 5400 WEST 86TH STREET / INDIANAPOLIS, IN 46268
(317) 872-6010 / FACSIMILE #317-879-8145



September 11, 1996

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

FD 32760

Dear Secretary Williams:

I am writing in response to the recent decision by the Surface Transportation Board approving the Union Pacific-Southern Pacific merger. My company does not believe the decision provides for adequate competitive rail options in the greater Houston area, even with the conditions imposed in the decision.

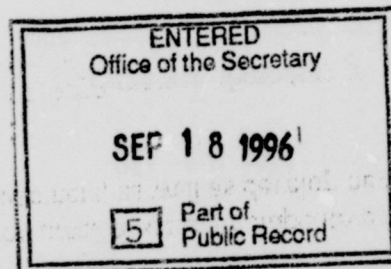
As the Rail Coordinator for the Heritage Group, I am responsible for securing competitive rail rate contracts for the transportation of everything from asphalt to petro-chemicals from various points across the United States, including the greater Houston area. Securing competitive rail service is essential to our ability to effectively service our customers, as well as develop new market opportunities.

With the recently completed BNSF merger and the upcoming UP-SP merger, these two giants will control 88% of the petro-chemical rail carloads to and from Texas and 100 % of that originating or terminating in the Houston area. How can these mergers possibly guarantee my ability to secure both competitive rates in this area, as well as keeping service levels high?

One solution to this problem would be to allow the Texas Mexican Railway trackage access to the greater Houston area. At this time, the UP-SP decision will grant them trackage rights between its line in Corpus Christi and Beaumont but with restricted access at Houston. The Heritage Group strongly urges the STB to lift all service restrictions on the Texas Mexican Railway giving it full local service access in the greater Houston area. Full access would provide for a viable third rail competitor in this area that could connect with other carriers in Beaumont including the UP, BNSF and KCS.

Respectfully yours,

Gary Ulerick
Rail Coordinator



GU/cp

96gu3034.a3

Asphalt Materials, Inc.
Asphalt Refining Company
Bituminous Materials & Supply, L.P.
Calumet Lubricants Co., L.P.
Crystal Clean Parts Washer Service
Crystal Flash Limited Partnership of Michigan
Crystal Flash Petroleum Corporation

Emulsicoat, Inc.
Fairchild Oil Company
Heritage Environmental Services, Inc.
Heritage Research Group
Heritage Technologies, L.P.
Hoosier Asphalt & Chemical Company
Laketon Refining Corporation
Legacy Acquisitions, Inc.

Legacy Resources Co., L.P.
Meshberger Stone, Inc.
Michigan Crystal Flash Petroleum Corp.
Milestone Contractors, L.P.
Petroleum Management
U.S. Aggregates, Inc.
White Rock Quarry, L.P.

STB FD

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ARISTECH CHEMICAL CORP.

600 GRANT STREET, ROOM 1020

PITTSBURGH, PA 15219

412-433-7663

FAX 412-433-7544



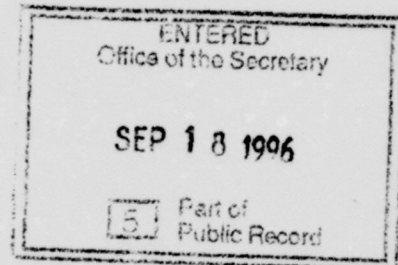
**CORPORATE LOGISTICS
AND RELATED SERVICES**

FAX transmission cover sheet



Date: September 10, 1996

To: Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street and Constitution Avenue N.W.
Room 2215
Washington, DC 20423



Fax #: 202-638-1045

Attention: Finance Docket 32760

**YOU SHOULD RECEIVE 2 PAGE(S) INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 412-433-7668**

Dear STB Board Members:

My name is Phillip C. Rine. I am the Corporate Manager, Logistics and Related Services for Aristech Chemical Corporation, Pittsburgh, Pennsylvania.

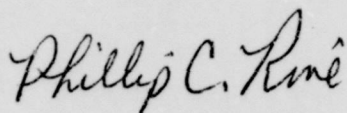
Aristech Chemical has manufacturing plants located in Pennsylvania, Ohio, West Virginia, Kentucky and Texas. Competitive railroad service is critical to the chemicals and plastics industries which we serve.

The purpose of my letter today is to urge the Surface Transportation Board to support BN/Santa Fe's efforts to clarify the Board's decision in two ways: 1) to clarify that shippers must be protected by the contract-reopener condition and 2) to deny UP/SP's effort to limit shippers' protections regarding new shipping facilities, including transload facilities. Unless the Board acts favorably on these issues, competition for rail services will be adversely affected, and shipper rail transportation options may be significantly diminished.

Aristech Chemical Corporation is requesting the Board members' support for shipper rights as advocated by BN/Santa Fe.

Thank you for receiving this letter. We look forward to your favorable support of our urgent request.

Sincerely,

A handwritten signature in cursive script that reads "Phillip C. Rine".

Phillip C. Rine
Corporate Manager
Logistics and Related Services

STB FD

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9-16-96

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Aristech Chemical Corporation
600 Grant Street
Pittsburgh, PA 15219-2704
412/433-2747
Telex: 6503608865
Answer Back: 6503608865MCI UW

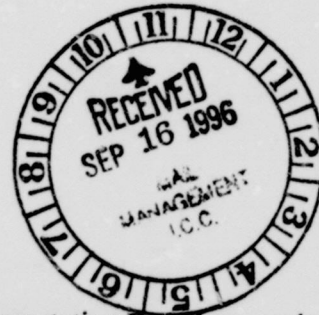


September 11, 1996

Mr. Vernon A. Williams
Secretary, Surface Transportation Board
12th Street & Constitution Avenue N.W.
Room 2215
Washington, DC 20423

Dear Secretary Williams:

FP 32760



I am writing in response to the recent decision by the Surface Transportation Board approving the Union Pacific - Southern Pacific merger. My company does not believe the decision provides for adequate competitive rail options in the Greater Houston area, even with the conditions imposed in the decision.

As the Corporate Manager, Logistics and Related Services for Aristech Chemical Corporation, I am responsible for all aspects of purchased rail transportation. Aristech Chemical Corporation is a major manufacturer and shipper with two world-class facilities in the Houston area. Securing competitive rail service is essential to our ability to effectively serve our customers as well as develop new market opportunities.

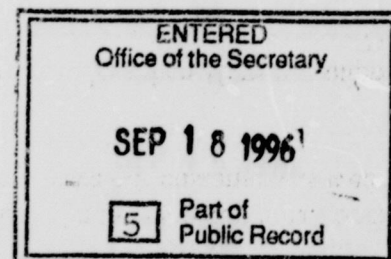
Just eight years ago, five rail carriers served the Houston area. In less than 10 years, shippers' competitive options will be reduced to just two carriers. With the recently completed BNSF merger and the upcoming UP-SP merger, these two giant carriers will control 88 percent of the petro-chemical rail carloads to and from Texas and 100 percent of the petro-chemical rail carloads originating or terminating in the Houston area. These limited rail options do not provide adequate competition to keep service levels high and rates low.

One of the conditions outlined in the STB's UP-SP decision grants the Texas Mexican Railway (Tex Mex) trackage rights between its line in Corpus Christi and Beaumont but with restricted access at Houston. I strongly urge the STB to lift all service restrictions on the Tex Mex, giving it full local service access in the Greater Houston area. Full access would provide for a viable third rail competitor in Houston that could connect with other carriers in Beaumont including the Union Pacific, BNSF and the Kansas City Southern Railway.

Respectfully yours,

Phillip C. Rine

Phillip C. Rine
Corporate Manager
Logistics and Related Services



STB FD

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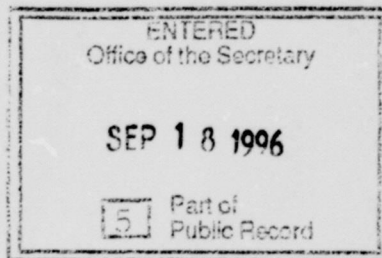
86142

Knightsbridge Drive
Hamilton, Ohio 45020
513 868-4974, Fax: 513 868-5778

86142
Richard E. Kerth
Transportation/Distribution Manager—Commerce, Regulatory Affairs
and Organizational Improvement
Corporate Transportation/Distribution



September 12, 1996



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

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

Dear Secretary Williams:

On August 29, 1996, the primary applicants in the above named proceeding filed a petition (captioned UP/SP -275), pursuant to 49 C.F.R. 1117.1, requesting the Board clarify certain aspects of Decision No. 44 or in the alternative, a petition to reopen pursuant to 49 C.F.R. 1115.3 on the ground of material error.

On September 3, 1996, attorneys for the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company filed a petition (captioned BN/SF -65) with the Board seeking clarification of that portion of Decision No. 44 dealing with modification of contracts for shippers at 2-to-1 points.

Champion International Corporation participated in this proceeding (see Decision No. 44, pages 76 and 193) as a party of record. At the request of the parties who now seek Board clarification, Champion respectfully submits these additional comments related to issues raised by the parties.

The UP/SP -275 petition relates to the Board's decision to require UP/SP to open up at least 50% of the volume of each contract it has with shippers at points now served only by UP and SP and no other rail carrier. The Board

reasoned this requirement would ensure shippers receive benefit from competition between UP/SP and BN/SF and to "ensure that BNSF has immediate access to a traffic base sufficient to support effective trackage rights operations." Champion International is not directly affected by this condition; however, we urge the Board to give *broad interpretation* to this condition to foster and continue direct rail to rail competition. BNSF should be provided every opportunity to be, at a minimum, as competitive as SP in these lanes. Since the BNSF has been put on notice by the Commission that it is expected to compete vigorously on these trackage rights and "that a failure to conduct trackage rights operations in these corridors could result in termination of BNSF's trackage rights and substitution of another carrier, or in divestiture", it is only fair that the Board be broad rather than narrow in its clarification.

Champion also responds to the primary applicants, UP/SP, in their petition UP/SP-275 concerning transloading facilities. This petition asks the Board to clarify: a) the BNSF's right to serve new transloading facilities located on the UP or SP lines on which BNSF will have overhead trackage rights, and b) to restrict, based upon its clarification, that the BNSF's right to serve new transloading facilities is not to be used as a conduit for access to shippers located on overhead trackage rights lines and served exclusively by the UP or SP.

The Verified Statement of applicant's witness, Richard B. Peterson (see UP/SP-275, attached statement at pages 3 and 4 citing Champion as an example) argues that a literal reading of the Board's transloading condition would go beyond preserving the status quo. UP/SP contends that the BNSF could locate a transloading facility immediately adjacent to a shipper that is now exclusively served by one of the merging railroads on a line where BNSF will receive overhead trackage rights, and to handle traffic to or from that shipper via transloading, even though the shipper has no remotely comparable transloading option via the other merging railroad today.

UP/SP's witness Peterson asserts that BNSF could, under the transloading condition approved by the Board, build a new transloading facility at Moscow, Texas and use it to move Champion's traffic thereby improving, not maintaining, competition. However, Champion's claim that the BNSF transload facility at Cleveland, Texas, 30 miles to the south, "may be eliminated as a post merger competitive alternative in the wake of the various realignments triggered by the BNSF agreement" was clearly rejected by the Board. (See Decision No. 44, page 193, CIC International Corporation.) The Board indicated, "if anything, this reload operation will be strengthened because of BNSF's ability to route reload traffic over UP/SP's Houston-Memphis line".

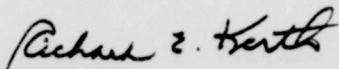
Champion believes the Board's current language on this subject in Decision No. 44 should stand. If the BNSF determines that it can be more cost effective and efficient by building a reload facility at a place other than Cleveland, Texas to serve customers, including Champion, the BNSF should not be prohibited from gaining those efficiencies as a result of a condition to this merger. The BNSF is clearly Champion's preferred option to SP rail service (see UP/SP-230 at 287; the BNSF received 93.4% of Champion's reload traffic between January and October, 1995). In this instance, a new transload facility would be a replacement, albeit at a new location. UP/SP can compete against a new transload facility for Champion's traffic since Champion is served by the combined railroad.

UP/SP asks the Board to restate the transloading condition by specifically ordering BNSF not to set up a transloading facility on a trackage rights line to handle the business of an exclusively served shipper on that same line or on a nearby branch of that merging railroad. Any such restatement of the transloading condition would be contrary to the Board's requirement that the BNSF compete vigorously against the UP/SP where trackage rights have been granted.

In addition, we would urge the Board not to impose any condition or wording which would prevent a new third party from establishing a transload facility served by UP/SP and / or BNSF.

Champion respectfully prays that the Board allow its transloading condition stand as ordered in its original decision; or in the alternative, not to restate the order in any manner which would preclude the BNSF from being cost effective and efficient as an existing alternative nor prevents a new transloading business from being developed by third parties.

Sincerely,



Richard E. Kerth
Transportation Manager-
Commerce, Regulatory Affairs &
Organizational Improvement

cc: All Parties of Record

STB FD

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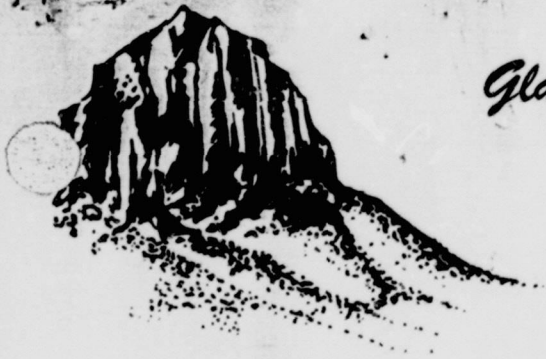
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Glass Mtn. Pumice, Inc.



September 11, 1996

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave, N.W.
Room #2215
Washington, D.C. 20423

Attention: Finance Docket #32760

Dear Mr. Williams:

I am writing this letter to voice our opinion on a matter that is vital to our company.

At present we are shipping 400 plus railcars per year from Tionesta, California to our unloading site at Bombay, Rio Linda, California. We anticipate these shipments to show a continued increase over the next several years.

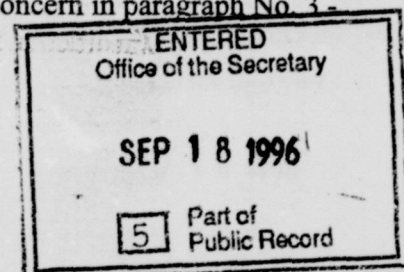
At present the routing is B.N. to Bieber, California, a distance of about thirty-five miles, then U.P. to our Bombay siding at Rio Linda, a distance of about two hundred & fifty miles.

This has always been a problem because of the two rail carriers. It has been more costly because of the two lines, each wanting certain revenues, and much time lost because of extra switching.

We operate our own cars and pay a certain fee per month. The extra switching time causes us to have many less cycles, obviously costing us extra money.

We supported the merger, but were concerned by again having a second railroad involved to do our switching at Rio Linda, California, hence adding additional costs.

Enclosed is our letter of support dated October 11, 1995 showing our concern in paragraph No. 3 - highlighted.



The Honorable Vernon A. Williams
September 11, 1996
Page Two

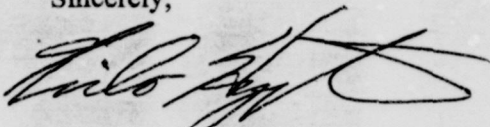
We urge you to support B.N./S.F., efforts to clarify the Boards' decision in two ways:

1. To clarify that shippers be protected by the contract- reopener condition and;
2. To deny UP/SP's effort to limit shippers' protection regarding new shipping facilities, including new transload facilities.

We would be happy to do whatever necessary to accomplish this.


Thank you.

Sincerely,



Niilo Hyttinen
President

NH/dgg
Enclosure



Glass Mtn. Pumice, Inc.

October 11, 1995

Verified statement of Niilo Hyytinen on behalf of Glass Mtn Pumice concerning the proposed merger of the Union Pacific and Southern Pacific Railroads.

I am Niilo Hyytinen, president of Glass Mtn Pumice. I founded Glass Mtn Pumice in 1977 and have managed it since its inception.

Glass Mtn Pumice mines and distributes volcanic pumice for a variety of industrial and building uses at its location near Tionesta, CA on BN-ATSF railroad.

The bulk of our product is shipped by rail to our Rio Linda, CA distribution yard switched by Union Pacific railroad at Bombay, CA. We are concerned that whoever switches our receiving location (Bombay) that it results in the lowest possible freight rate.

Historically, one of our obstacles when shipping rail is that the two railroads must be combined to provide each one with some relatively short mileage hauls. This phenomenon produces some disproportionately higher freight rates, when the hauls of the two railroads are combined and the prices are then furnished to us.

We also operate a reload on Southern Pacific railroad at Perez, CA on the so-called Modoc cutoff line, in an attempt to reach customers served by that railroad.

With the sale of the Bieber Line (south of Bieber) to the BN-ATSF, they will achieve a longer, single-line service from our mine to serve customers switched by either of those two railroads.

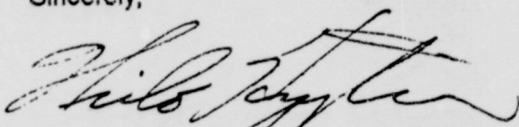
Therefore, we strongly support the merger of Union Pacific and Southern Pacific railroads.

Southern Pacific will be strengthened by the financial stability of Union Pacific railroad and competition in the Western United States along a north south axis will be preserved by the sale of the Bieber line to the Burlington Northern railroad.

Additionally, the combined car fleets of the UP-SP and BN-ATSF should enhance the availability of cars for loading pumice to Glass Mtn Pumice.

We urge consideration of this transaction for the benefit of ourselves and other rail shippers and receivers who can benefit from it.

Sincerely,



Niilo Hyytinen, President
Glass Mtn Pumice

STB FD

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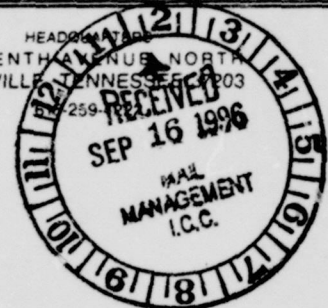
FRANKLIN INDUSTRIAL MINERALS



September 12, 1996

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 20423

HEADQUARTERS
612 TENTH AVENUE, NORTH
NASHVILLE, TENNESSEE 37203
BN 259-4444



Dear Secretary Williams:

RE: Finance Docket 32760

We are writing to you in support of the Board's decision in the Union Pacific/Southern Pacific merger to incorporate provisions which promote competition for rail service. That decision included two provisions which we find particularly favorable.

First, the decision included a requirement that the UP/SP open at least 50 percent of the volume of each contract it has with shippers now served by only UP/SP and no other carrier. We believe that this provision was designed to expedite the implementation and opening of trackage rights for competitive carriers, and particularly the BNSF. This should lead to shippers having the opportunity to solicit competitive bids and to maintaining a competitive freight environment.

Secondly, we also support the provisions which would allow the BNSF the right to serve any new facilities, including transloading, located on UP/SP lines over which the BNSF or any other carrier was to have trackage rights. Again, we see this as a provision which will promote competition.

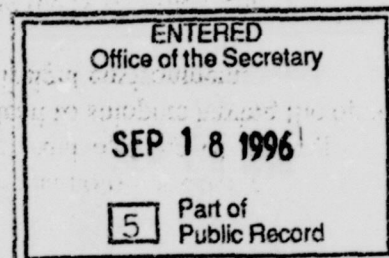
In summary, Franklin sees many service advantages which accrue to shippers through the major rail merges which have materialized in the last three years. However, we do not believe that they should be allowed to promote a monopoly position, but rather, that competition should be promoted wherever possible.

We thank you and the Board for your careful deliberation on these issues.

Respectfully,

Robert C. Freas
Sr. Vice President

RCF:adc



STB FD

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Western Sugar

September 12, 1996



The Western Sugar Company
 1700 Broadway
 Suite 1600
 Denver, Colorado 80290-1601
 (303) 830-3939
 Fax: (303) 830-3940

Honorable Vernon A. Williams
 Secretary
 Surface Transportation Board
 12th Street & Constitution Ave. N.W.
 Room 2215
 Washington, DC 20423

RE: FINANCE DOCKET 32760

Dear Mr. Secretary:

The Western Sugar Company is writing to support the BN/Santa Fe's position in Finance Docket 32760 with regard to the BN/Santa Fe's right to serve any new facilities, including new transload facilities, located on any UP or SP line over which BN/Santa Fe is to receive trackage rights as a condition to the board's approval of the merger. The Western Sugar Company is hereby requesting that the Surface Transportation Board deny the UP/SP's effort to limit shippers' protections regarding new shipping / receiving facilities, including new transload facilities.

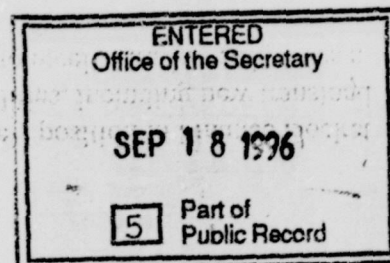
The opportunity for increased competition is the basis for Western Sugar Company's request to the board members to support shipper rights as advocated by the BN/Santa Fe.

Sincerely,

THE WESTERN SUGAR COMPANY

N. Chet Whitehouse
 Transportation Manager

cc: Frank Bush- Western Sugar
 Mathew K. Rose- BNSF
 Douglas W. Langston - BNSF



STB FD

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9-16-96

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SEBASTIANI VINEYARDS

SEBASTIANI SONOMA CASK WINES
AUGUST SEBASTIANI COUNTRY VARIETALS
AUGUST SEBASTIANI PROPRIETOR'S WINES
NATHANSON CREEK

RICHARD CUNEO VINTAGE SPARKLING WINES
GRAPPA DI SEBASTIANI
VENDANGE

September 9, 1996



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th St. & Constitution Ave NW
Room 2215
Washington, D.C. 20423

RE: Financial Docket No 32760 - UP/SP Merger Proceeding

Honorable Vernon A. Williams:

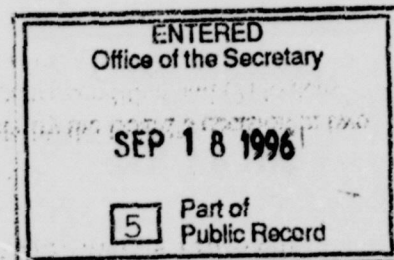
Please support shipper rights as advocated by BN/Santa Fe efforts to clarify the Board's decision in two ways: (1) to clarify that shippers must be protected by the contract-reopener condition and (2) to deny UP/SP's effort to limit shippers' protections regarding new shipping facilities, including new transload facilities.

Sincerely yours,

SEBASTIANI VINEYARDS

William J. Bell

Director of Distribution Services



STB FD -32760

9-16-96

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September 11, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave NW
Room 2215
Washington, D C 20423
Attention: Finance Docket #32760

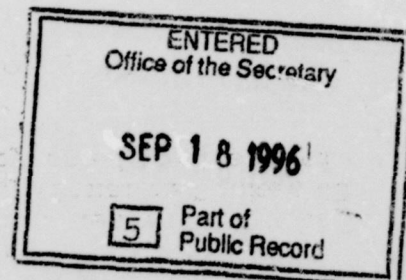
I am writing this in regard to the Board's decision in the Union Pacific/Southern Pacific merger proceeding (Finance Docket #32760). I support BN/Santa Fe's efforts to clarify the Board's decision in two ways:

1. To clarify that shippers must be protected by the contract-reopener condition, and
2. To deny UP/SP's effort to limit shippers' protections regarding new shipping facilities, including new transload facilities.

Sincerely,

Charles Emmons

Charles Emmons
Charles Emmons Pulpwood Co.
P. O. Box 494
Cleveland, Texas 77328



STB FD

32760

9-16-98

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Grain Processing Corporation

1600 Oregon Street
P.O. Box 349
Muscatine, Iowa 52761-0349

319-264-4211
TELEX 468497

September 10, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th St. and Constitution Ave. NW
Room 2215
Washington, DC 20423

Attn: Finance Docket 32760

Dear Secretary Williams:



We urge the Board to clarify the contract reopener in the Union Pacific/Southern Pacific merger proceeding to protect our nation's shippers. In order to prevent the possibility of anticompetitive tactics please confirm that the UP/SP must open 100% of the contract volumes at 2-to-1 points to competition from BN/Santa Fe. We support the PN/Santa Fe's alternatives to clarification: **First**, shippers may choose whether to remove entirely, or prorate, existing volume incentives (whether discounts or penalties) on contracts that must be opened under the Board's condition; **second**, that shippers may solicit a competitive bid from BN/Santa Fe for all traffic affected by any offer by Applicants to modify any of the terms of a contract with a 2-to-1 shipper (such as offering to lower rates on volumes remaining closed as well as on volumes opened to BN/Santa Fe in compliance with the Board's order); and **third**, that shippers - not Applicants - are entitled to choose and to designate (on a shipper-by-shipper, contract-by-contract basis) the 50% of their traffic that will be open to BN/Santa Fe competition, if in fact no more than 50% of the traffic is to be open. By clarifying the order in one of the manners suggested, the Board can ensure that shippers will have a realistic opportunity to enjoy competition between BN/Santa Fe and UP/SP.

The next issue relates to the Board's requirement that the BN/Santa Fe will have the right to serve new facilities, including transloading facilities, on any UP or SP line over which BN/Santa Fe receives trackage rights as a condition to the Board's approval of the merger. UP/SP has filed a petition which seeks to significantly narrow these opportunities. We oppose this proposed limitation.

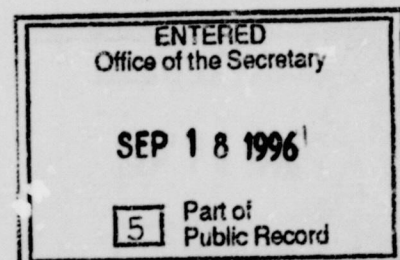
We ask your support on these two issues and ask your Board members to support shipper rights as these mergers progress.

Sincerely,

GRAIN PROCESSING CORPORATION

Robert J. Willis
Vice President - Transportation

RJW/bc



STB FD - 32760

9-16-96

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86134

September 10, 1996



Honorable Vernon A. Williams, Secretary
Surface Transportation Board
12th Street & Constitution Avenue, N.W.
Room 2215
Washington DC 20423

ATTENTION: Finance Docket 32760

To Whom It May Concern:

I am writing to you regarding two very important issues that are being raised by the Board in the Union Pacific/Southern Pacific merger proceeding (Finance Docket No. 32760). Unless the Board acts favorably on these two issues, competition for rail services will be adversely affected and my rail transportation options will significantly diminish.

I am asking that the Surface Transportation Board support the BN/Santa Fe's efforts to clarify the Board's decision in two ways:

- (1) To clarify that shippers must be protected by the contract-re-opener condition.
- (2) To deny UP/SP's effort to limit shipper's protections regarding new shipping facilities, including new transload facilities.

This is very critical to the continued success of my business and I urge you to support this action by the Board.

Sincerely,

Daniel B. Atchley
Rio Mountain Forest Products, LLC

ENTERED	
Office of the Secretary	
SEP 18 1996	
5	Part of Public Record

STB FD

32760

9-16-96

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86132



LUMBER, INC.

P.O. BOX 1726, LAKE OSWEGO, OREGON 97035 - PHONE (503) 636-0320 - FAX: (503) 636-1368

86132

September 11, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Avenue, N.W.
Room 2215
Washington, DC 20423



Reference: Finance Docket No.: 32760

To Whom It May Concern:

My name is Donna R. Kohler, I am Director of Transportation for Furman Lumber, Inc. Furman Lumber is a Wholesale Lumber Distributor with Distribution Centers in fourteen states. Our sales in 1995 exceeded \$450,000,000.00. Furman Lumber buys from and ships to every state in the continental United States.

Regarding the above referenced docket, it is our understanding there are two issues which need to be clarified by the Board. First is the Board's decision to require UP/SP to open up at least 50% of the volume of each contract it has with shippers at points now served by UP and SP only. Second is the Board's requirement that the BNSF will have the right to serve any facilities, including new transload facilities, located on UP or SP lines over which BNSF is to receive trackage rights.

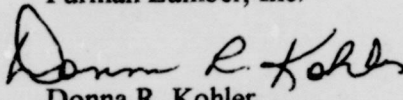
On both of these issues, and subsequent issues that will arise from the approval of the purchase of the Southern Pacific by the Union Pacific, one thing should be kept in mind. We as shippers told the Board of our concerns regarding the competitive aspects of this purchase. This is why many of the conditions were imposed by the Board upon approval of this purchase.

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Office of the Secretary	
SEP 18 1996	
5	Part of Public Record

For this reason, in these two above mentioned issues, I agree with BNSF. If there is any ambiguity regarding the contract re-opener the meaning should be clarified. Also regarding the Boards decision to allow BNSF access to new facilities. The UP/SP should not be allowed at this time to petition for these changes. If there are any changes or any clarification that needs to be done the decision should always fall on the side of increased competition.

Thank you for your time and consideration.

Sincerely,
Furman Lumber, Inc.



Donna R. Kohler
Director of Transportation

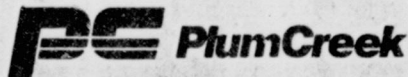
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86130



September 11, 1996

Honorable Vernon A Williams
Secretary
Surface Transportation Board
12th St & Constitution Ave N.W.
Room 2215
Washington, DC 20423



Attention: Finance Docket 32760

Dear Secretary Williams:

I am writing to encourage you to clarify the Board's position on two conditions of the UP/SP merger (Finance Docket No. 32760). The two issues of concern are to clarify the contract-reopener condition and to deny UP/SP's effort to limit shippers' protections regarding new shipping facilities.

I feel that 100 % of the contracts at 2-to-1 points must be opened in order to prevent anti-competitive tactics. As an alternative, I suggest you clarify the condition to state: 1. Shippers may choose whether to remove entirely, or prorate, exiting volume incentives (whether discounts or penalties) on contracts that must be opened under the Board's condition; 2. Shippers may solicit a competitive bid from BNSF for all traffic affected by any offer from UP/SP to modify any of the terms of a contract with a 2-to-1 shipper (such as offering to lower rates on volumes remaining closed, as well as, on volumes opened to BNSF in compliance with the Board's order); 3. Shippers, not Applicants, are entitled to choose and to designate (on a shipper by shipper, contract by contract basis) the 50% of their traffic that will be open to BNSF competition, if in fact, no more than 50% of the traffic is to be open.

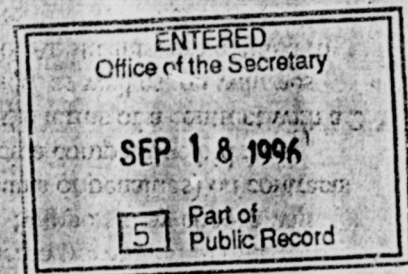
The second issue is of great concern to me. The Board stated that BNSF would have the right to serve any new facilities, including new transload facilities, located on any UP or SP line over which BNSF is to receive trackage rights as a condition of the merger. I understand that the UP/SP has recently filed a petition which could severely limit the BNSF's ability to compete for this traffic. This would be a detriment to Plum Creek, as it would cut out possible single line traffic into these areas.

I support the BNSF's to have clarified the conditions of the UP/SP merger, on these two issues. Thank you for your attention to this matter.

Sincerely,

Raymond L. Sanford
Director of Transportation

RLS/JK



STB FD

32760

9-16-98

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86126



201 Ray Young Drive
Columbia, MO 65201-2599
Phone: (573) 874-5111

86124

September 13, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th St. & Constitution Ave. NW
Room 2215
Washington, DC 20423
Attention: Finance Docket 32760



Dear Secretary Williams:

My name is Bruce Hanson. I am Vice-President of Transportation and Distribution for MFA Incorporated. MFA is a regional agricultural cooperative with facilities in several Midwestern states. We represent the economic well-being of more than 52,000 farmer-owners.

I am writing concerning the Union Pacific-Southern Pacific rail merger. The wisdom of the Surface Transportation Board's decision provides for competitive access by Burlington Northern Santa Fe at two for one locations, opening 50% of UP/SP contract tonnage and the ability to build in or locate transload facilities on granted trackage rights areas.

My concern is in regard to the specifics of such competitive remedies. As a shipper/receiver of several thousand rail cars of fertilizers, feed ingredients and grain, we must be allowed to determine what tonnage, if any, is made available for BNSF bidding. Without a chance to completely review all the corridor(s) and tonnages involved, BNSF would have difficulty assessing their ability to provide service. Likewise, if left to either carrier to decide the traffic "available", the carriers could "cherry-pick" traffic resulting in higher total costs to the shipper.

The ability for the BNSF to build in or establish transload facilities on granted trackage must also be protected. This, as you know, often provides the only real competitive alternative. Failure to provide this service would seriously dilute the competitive alternatives envisioned by the Board.

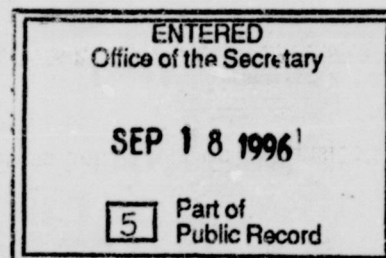
As a consumer of rail transportation and on behalf of all our members, I urge the Board to protect the rights of shippers and provide the maximum support and flexibility in the areas of contract reopening and access.

Respectfully,

A handwritten signature in cursive script that reads "Bruce R. Hanson".

Bruce R. Hanson
Vice President
MFA Transportation & Distribution

BRH/jsd



STB FD

32760

9-12-96

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86122

September 5, 1996

C&D Warehouse, Inc.

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



The Specialists in
Plastics Packaging,
Public Warehousing,
Distribution Services.

Dear Secretary Williams,

FD 3776

I am writing in response to the recent decision by the Surface Transportation Board approving the Union Pacific Southern Pacific merger. My company does not believe the decision provides for adequate competitive rail options in the Greater Houston area, even with the conditions imposed in the decision.



We are a contract packaging company in Houston, Texas for the Plastics Manufacturers. They ship between 500 and 600 Railcars monthly to us to package for them. If rates don't stay competitive the manufacturers will be forced to pay in house to package. We employ up to 200 people and these jobs could be lost. Securing competitive rail service is essential to our ability to effectively service our customers as well as develop new market opportunities.

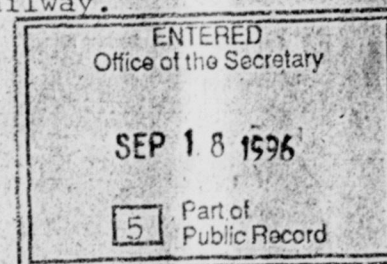
Just eight years ago five rail carriers served the Greater Houston area. In less than 10 years, shippers' competitive options will be reduced to just two carriers. With the recently completed BNSF merger and the upcoming UP-SP merger, these two giant carriers will control 88 percent of the petro-chemical rail carloads to and from Texas and 100 percent of the petro-chemical rail carloads originating or terminating in the Houston area. These limited rail options do not provide adequate competition to keep service levels high and rates low. One of the conditions outlined in the STB's UP-SP decision grants the Texas Mexican Railway (Tex Mex) trackage rights between its line in Corpus Christi and Beaumont but with restricted access at Houston. I strongly urge the STB to lift all service restrictions on the Tex Mex giving it full local service access in the Greater Houston area. Full access would provide for a viable third rail competitor in Houston that could connect with other carriers in Beaumont including the Union Pacific, BNSF and the Kansas City Southern Railway.

1905 Turning Basin Drive
Suite 434
Houston, Texas 77029
713 672-2140

Respectfully yours,

Gene Cravey

Gene Cravey
President



Mailing Address:
P.O. Box 24964
Houston, Texas 77229-4964

STB FD

32760

9-12-96

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86121

HOLNAM INC.
6211 Ann Arbor Road
P.O. Box 122
Dundee, MI 48131
313-529-2411
Fax 313-529-5140

HOLNAM

Walton H. Rice, Jr.
Senior Vice President
Traffic and Distribution



September 9, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th St. & Constitution Ave. N.W.
Room 2215
Washington, DC 20423

RE: Finance Docket 32760

Dear Secretary Williams,

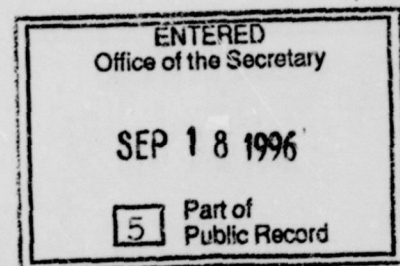
We have watched, with great interest, the rail mergers in our country lately and after your board had ruled on the UP/SP merger we felt fairly comfortable.

It now looks as if UP/SP is trying to limit some of the competitive situations implied by the Surface Transportation Board's requirements. Therefore, we urge the Surface Transportation Board to (1) to clarify that shippers must be protected by the contract-reopener condition and (2) to deny UP/SP's effort to limit shippers' protections regarding new shipping facilities, including new transload facilities.

Thank you for your attention in this matter.

Sincerely,

Walton H. Rice, Jr.
Sr. V.P. Traffic & Distribution
WHR/kls
whr@surfboard.itr



STB

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32760

9-13-96

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86124



DairyAmerica, Inc. P.O. Box 2369 11875 Dublin Blvd. Suite B230 Dublin, CA 94568

September 11, 1996



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave. N. W.
Room 2215
Washington, DC 20423
Attn.: Finance Docket 32760

Dear Secretary Williams:

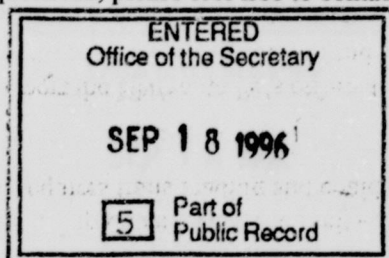
My name is Patrick Mathiowetz and I am the Executive Vice President of DairyAmerica, Inc. of Dublin, CA. DairyAmerica, Inc. is a federated marketing cooperative owned by three major California dairy manufacturing cooperatives: Danish Creamery of Fresno, CA; California Milk Producers, Inc. of Tipton, CA; and Dairyman's Cooperative Creamery of Tulare, CA.

The plant locations in Tipton and Tulare are rail - served by the UP/SP. The plant location in Fresno requires trans loading and could then ship on either the UP/SP or BN/Santa Fe.

I am writing to support the BN/Santa Fe's efforts to clarify that shippers must be protected by the contract re-opener condition, and to support the BN/Santa Fe's request to deny UP/SP's effort to limit shippers' protection regarding new shipping facilities, including new trans load facilities.

DairyAmerica has been supportive of both the BN/Santa Fe and the UP/SP mergers, because we felt these mergers would result in more focused and more economically sound carriers. We are, however, deeply concerned that the resulting decrease in competition may be detrimental to our ability to continue to secure shipping rates which will allow our company to remain competitive with the rest of the dairy industry. Therefore, we support the efforts of the BN/Santa Fe to insure shippers rights.

If you have any questions, please feel free to contact me.



Sincerely,

Patrick Mathiowetz
Executive Vice President

cc: Tina Mejia

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SERVING THE UNITED STATES AND INTERNATIONAL MARKETS

(510) 828-3110 Fax: (510) 828-8296

STB FD

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9-13-96

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86123



86123
CHEMICAL LIME

John McMullan
Chemical Lime Company
6263 N. Scottsdale Rd., Ste. 280
Scottsdale, AZ 85250

September 9, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12 th St. & Constitution Ave. NW
Room 2215
Washington, DC 20423



Attnetion: Finance Docket 32760

Dear Mr. Secretary:

We urge the Board memebbers to support shipper's rights as advocated by the BN/
Santa Fe's efforts to clarify the Board's decision in two ways

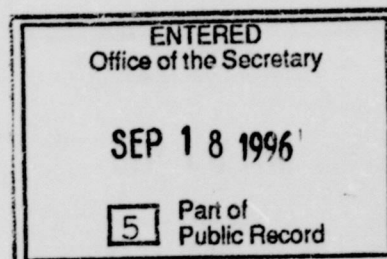
- 1) to clarify that shippers must be protected by the contract-reopener condition.
- 2) to deny UP/SP's effort to limit shipper's portections regarding new shipping facilities, including new transload facilities.

It is our belief that the Board's intent for shippers to enjoy the benefits of competition instructed by the Board's requirements in this matter and the above subject clarification in its decision will do so.

Sincerely,

John D. McMullan

Distribution Manager
JM/pw



CHEMICAL LIME COMPANY

7272 EAST INDIAN SCHOOL ROAD SUITE 350 SCOTTSDALE, ARIZONA 85251-3951 (800) 288 9676 (602) 941 1291 Fax (602) 941 2015

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**INTERNATIONAL RELOAD SYSTEMS (1986) LTD.**

P.O. Box 70, Laurier, Washington
99146
Tel: (604) 447-9415
Fax: (604) 447-6226

September 10, 1996

Honorable Vernon A Williams
Secretary
Surface Transportation Board
12th St & Constitution Ave NW
Room 2215
Washington DC 20423
Attn: Finance Docket 32760



Dear Sir:

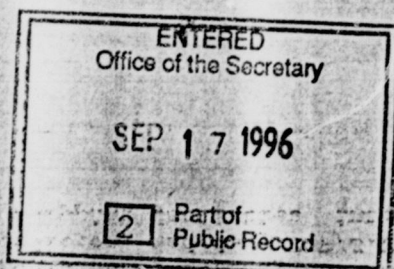
We are a major shipper and reloader on the B.N.S.F., and are very concerned about two issues raised in the Board's decision in the U.P./S.P merger proceeding (finance docket 32760).

We support the B.N./S.F. position to clarify that shippers must be protected by the contract - reopener condition, and deny U.P./S.F.'s effort to limit shipper's protections regarding new shipping facilities, including new transload facilities.

We urge you to reconsider these important issues.

Yours truly,

Doug Sandner
President



STB

FD

32760

3-12-96

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DD

61743

REDACTED -- TO BE FILED IN THE PUBLIC RECORD

UP/SP-171



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' APPEAL FROM ALJ'S ORDER
GRANTING DOW'S REQUEST TO TAKE CERTAIN DEPOSITIONS

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

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

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

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

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

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

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

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Office of the Secretary

MAR 12 1996

Part of
Public Record

March 11, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' APPEAL FROM ALJ'S ORDER
GRANTING DOW'S REQUEST TO TAKE CERTAIN DEPOSITIONS

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 appeal from
the order of Administrative Law Judge Jerome Nelson, entered
orally at the March 6, 1996 discovery hearing in this
proceeding, granting Dow Chemical's request that Applicants be
required to produce Daniel A. Witte and Tommy L. Coale, two UP

^{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."

employees who have had responsibility for Dow's account, for depositions.

Appellate review of Judge Nelson's decisions is proper "to correct a clear error of judgment or to prevent a manifest injustice." See Decision No. 6, served Oct. 19, 1995, p. 13; 49 C.F.R. § 1115.1(c). The decision ordering the depositions of Messrs. Witte and Coale constitutes a clear error of judgment, with regard to both the Board's rules governing deposition discovery and Dow's particular need to depose Messrs. Witte and Coale. This appeal presents an important opportunity for the Board to provide guidance with regard to the proper standards to be applied in deciding whether to allow depositions of non-testifying witnesses.

I. BACKGROUND

On February 23, counsel for Dow wrote Applicants requesting that Messrs. Witte and Coale be made available for deposition (Exhibit A hereto). Dow based its request on statements by Applicants' witnesses Spero and Peterson that they consulted with Messrs. Witte and Coale about chemicals and plastics matters, including matters relating to Dow, and the fact that Applicants had identified Mr. Coale as an employee knowledgeable about plastics transportation.

Applicants declined Dow's request by letter dated February 28 (Exhibit B hereto). Applicants explained that Dow's request was unjustified and cumulative because

Applicants had presented three witnesses -- Messrs. Peterson, Barber and Spero -- who addressed chemical and plastics matters in depth, and because Applicants had produced the complete UP and SP Dow plastics and chemical files, amounting to some 10,000 pages, which extensively document UP's and SP's relationships with Dow. In addition, by reference to a letter of the same day to counsel for several coal interests (Exhibit C hereto), Applicants expressed their belief that these requests for depositions of non-testifying witnesses were inconsistent with the Board's rules regarding depositions, the principles established in the Discovery Guidelines entered in this proceeding, and the expedited nature of the proceeding.

In a March 4 letter (Exhibit D hereto), Dow asked Judge Nelson to order Applicants to produce Messrs. Witte and Coale for depositions. Dow attached to its letter several pages of Mr. Spero's workpapers and deposition transcript, and one excerpt from Mr. Peterson's deposition, that refer to Messrs. Witte or Coale. Dow said that it wanted to depose Messrs. Witte and Coale because of their familiarity with Dow, their length of service, and their roles in the preparation of the merger application. Dow said that Mr. Witte was particularly important because he was apparently the source of several statements about Dow that appeared in witness Spero's workpapers. Dow said that Mr. Coale was important because he was apparently the source of information cited by witnesses

Spero and Peterson regarding

Finally, Dow said that Messrs. Witte and Coale would be able to provide information regarding Dow's ability to exert competitive pressure upon UP through modal and source competition at its facilities.

Dow's request was addressed at the March 6 discovery hearing. (Relevant pages of the transcript of that hearing are attached hereto as Exhibit E.) Applicants explained that it was inappropriate for non-testifying witnesses -- witnesses who did not submit verified statements on the issues in question -- to be exposed to depositions as readily as testifying witnesses, that Dow had had the opportunity to depose three witnesses regarding competition for plastics and chemicals traffic, and that Applicants had provided Dow's outside counsel with copies of the complete UP and SP Dow files. Applicants also explained that the discovery would unnecessarily disrupt both UP's business operations and Applicants' work on their rebuttal case. Applicants noted that Dow had not even attempted to, and in fact could not, "point to critical facts that [the UP] people know, that [Dow] hasn't been able to get from other sources, including their own sources." See Tr., pp. 1749-50.

After hearing from Applicants and establishing that Dow believed it was necessary to depose both Mr. Witte and Mr.

Coale and that it could conduct both depositions in half a day, Judge Nelson ordered Applicants to produce Messrs. Witte and Coale for a half a day of depositions. Tr., p. 1752.

When Applicants pointed out to Judge Nelson that he had not heard any argument from Dow regarding why the witnesses were needed, Judge Nelson responded that he was persuaded by the reasons set forth in Dow's March 4 letter. Tr., pp. 1752-53.

II. JUDGE NELSON'S ORDER DOES NOT TAKE PROPER ACCOUNT OF THE BOARD'S RULES AND ICC PRECEDENT REGARDING DEPOSITIONS, AND THE NATURE OF THIS PROCEEDING

Under the Board's rules, the proponent of a deposition must show that the deposition is needed to prevent "a failure or delay of justice." 49 C.F.R. § 1114.22(c). ICC precedent illuminates this standard and explains that the proponent must show (1) "that the information it seeks may not be obtained through other means of discovery, such as interrogatories, requests for the production of documents, or inspection visits to [a party's] offices, that are readily available and less disruptive than depositions"; and (2) "that the material" sought to be discovered by deposition "is not merely cumulative or [is] in danger of loss." Docket No. 37021, Annual Volume Rates on Coal -- Rawhide Junction, WY to Sergeant Bluff, IA; Burlington Northern R.R. & Chicago & North Western Transportation Co., Decision served Jan. 5, 1985, p. 2. It is plainly not enough that the information sought in a deposition is "relevant"; rather, the proponent must

demonstrate that there is a real need for a particular deposition. See id.; Docket No. 40411, Farmland Industries, Inc. v. Gulf Central Pipeline Co., Decision served Feb. 24, 1993, p. 4. Moreover, the proponent must "set forth the facts it desires to establish and the substance it expects to elicit." 49 C.F.R. § 1114.22(b)(1).

In this proceeding, the ICC ruled at the outset that parties were to make their testifying witnesses available for discovery depositions upon request. See Decision No. 6, served Oct. 19, 1995, p. 16. The Discovery Guidelines embody this requirement. See Discovery Guidelines, served Dec. 7, 1995, ¶ 6. The Discovery Guidelines also state that the Board's discovery rules apply to this proceeding unless altered by the Board's decisions or the Guidelines. Id. ¶ 10. No decision in this case altered the standards to be applied in determining whether to order depositions of non-testifying witnesses, nor did the Discovery Guidelines.

Judge Nelson's March 6 Order ignored the Board's well-established standards. Applicants recognize that the Board empowered Judge Nelson to resolve discovery disputes in this proceeding and that he is entitled to substantial deference in his determinations. Applicants have forgone appeals on many discovery matters that the Judge has resolved against them. But this appeal involves an important issue of principle. Judge Nelson has consistently and expressly

declined to give any weight to the Board's rules and precedents which place a burden on proponents of depositions that goes beyond a bare relevance standard. He has rejected Applicants' repeated arguments that the Board's rules require a distinction between testifying witnesses, whom the ICC specifically exempted from its deposition rules in Decision No. 6, and non-testifying witnesses, to whom the Board's rules apply in full force. Applicants respectfully submit that the Judge has erred in rejecting out of hand the considerations that weigh against freely allowing non-testifying witnesses' depositions in this proceeding.

At the first discovery conference held in this proceeding, Judge Nelson expressed his inclination not to place any limitations on requests for depositions of non-testifying witnesses. Tr., Dec. 1, 1995, pp. 133-39. In the context of more specific disputes that developed, and despite Applicants' citation of ICC precedent, Judge Nelson ruled that no distinction should be drawn between testifying witnesses and non-testifying witnesses in deciding whether to allow a deposition. See Tr., Mar. 1, 1996, p. 1524; Tr., Mar. 6, 1996, pp. 1744-45. Judge Nelson has not given any more explanation for his decision not to follow Board rules and ICC precedent than his statement that "any sophisticated company knows that when they submit a merger application to a regulatory board the door is opened to the . . . world." Tr.,

Mar. 1, 1996, p. 1525. But this is precisely what the Board's rules are designed to prevent.

Not only the Board's rules and ICC precedent, but also the nature of this particular proceeding, requires that some limitation beyond a mere relevance standard be placed on requests to depose non-testifying witnesses. This is not a case in which depositions can be taken by the scores or hundreds if they meet bare standards of relevance. It is a highly expedited proceeding before an agency whose law requires parties seeking depositions to show why they are necessary "to prevent a failure or delay of justice," and which has specifically instructed that discovery in this case be strictly restricted to relevant matters. See Decision No. 6, served Oct. 19, 1995, p. 8 ("In pursuing discovery and in preparing pleadings, we encourage parties (and will instruct the Administrative Law Judge) to focus strictly on relevant issues") (emphasis added). If anything, the Board's already tight standards for allowing depositions should be tightened.

Applicants have already provided Dow and all other parties with very extensive opportunities for discovery and depositions. Applicants have submitted a comprehensive application, supported by lengthy verified statements from 20 witnesses. Applicants have provided these 20 witnesses for seven weeks of depositions. All of the witnesses' workpapers

have been placed in Applicants' document depository, along with almost 200,000 pages of discovery documents. Applicants have received 55 sets of written discovery, and have responded to more than 1,200 written discovery requests.

The standard for deposing non-testifying witnesses must be more than a bare relevance standard because such a standard would be a prescription for hundreds of depositions. For example, every testifying witness consulted or relied upon many other people; scores of UP and SP employees helped to prepare the application; and every shipper has marketing contacts at the railroad who have particular knowledge of the shipper's situation. Similarly, the standard must be more than that a witness knows something arguably relevant that no testifying witness knows -- that too would be a standard that would open the door to hundreds of depositions.

In a memorably candid statement, counsel for KCS predicted in a letter to Applicants (Exhibit F hereto) that "the number of relevant witnesses is going to grow geometrically with each witness." And indeed, protestants have now made requests for as many non-testifying witness depositions as the 20 testifying witnesses whose depositions consumed seven weeks -- requests that are simply incompatible with adhering to the procedural schedule in this case. That is why here, even more than in other Board proceedings, the test must be something more than bare relevance -- there must

be a showing of genuine need and an inability to obtain similar information by other means.

Applicants do not maintain that depositions of non-testifying witnesses are never permissible. Applicants have repeatedly indicated that whenever their testifying witnesses could not address a significant matter, they were prepared to provide additional witnesses for deposition. Applicants have provided one such witness, a cost expert (Richard Kauders), and were prepared to provide a second (ultimately, it was agreed that the desired information would be provided through a less burdensome means). Applicants also did not appeal Judge Nelson's order that they produce an additional witness to address an issue relating to Applicants' shipper support campaign which no testifying witness had addressed. Applicants simply maintain that, at a minimum, the Board's rules and precedent should be applied, and that those rules and precedents do not authorize the cumulative depositions of these two marketing employees.

Finally, the notion that parties may freely depose non-testifying witnesses is contrary to the principles established in the Discovery Guidelines. The Guidelines contemplated that parties would be able to use the month of March to prepare their upcoming filings. This is just as important to the Applicants -- who must file their rebuttal at the end of April -- as to other parties, and it is why the

Guidelines established a month-long bilateral "moratorium" on written discovery. See Discovery Guidelines, ¶ 5. The Applicants scheduled the depositions of their testifying witnesses to take place in January and February, despite the difficulties in preparing for so many depositions in such a condensed period. (In fact, Applicants wanted to begin the deposition schedule two weeks earlier in order to allow more time for preparation, but changed the schedule at the request of many of the active parties.) Requiring Applicants to produce non-testifying witnesses for depositions threatens to tie down the Applicants throughout March in continued formal discovery and to undermine the idea of a "moratorium."

Applicants do not contend that the Judge Nelson or the Board should apply any special rule to determine whether requests for depositions of non-testifying witnesses should be granted in this case. Rather, Applicants ask the Board to rule that depositions of non-testifying witnesses should not be permitted freely as a matter of right or upon a bare showing of relevance, but rather should be governed by the Board's rules, which provide that a deposition may only be had to prevent "a failure or delay of justice." This standard requires the proponent to show a need for the information, and that (1) the information it seeks may not be obtained through means that are less disruptive than depositions, and (2) the material sought to be discovered by deposition is not merely

cumulative or is in danger of loss. Measured under such a standard, Judge Nelson's March 6 ruling constitutes a clear error of judgment.

III. DOW HAS NOT SHOWN ANY NEED TO DEPOSE MESSRS. WITTE AND COALE

At the March 6 discovery hearing in this proceeding, Judge Nelson stated that he was relying on the reasons cited in Dow's March 4 letter to order that Applicants produce Messrs. Witte and Coale for deposition. But the statements contained in Dow's letter do not meet the most minimal requirement that Dow demonstrate a need to depose Messrs. Witte and Coale. Nor do they establish that Dow could not obtain the information it seeks through means that are less disruptive than depositions, or that the information it seeks is not merely cumulative. In fact, the information contained in Dow's March 4 letter proves the opposite.

As Dow acknowledges in its March 4 letter, UP and SP have already produced their Dow files, which contain nearly 10,000 pages of information, including information relating to the issue of modal and source competition for Dow products. Dow's apparent desire to avoid the work of reviewing those files should not trump the Board's discovery rules, which provide that parties should pursue alternatives to depositions when they are available. Moreover, as explained more fully below, Applicants have produce three witnesses whose verified

statements discuss competition for chemical traffic for a total of 15 days of depositions. Dow has no need for more.

A. The Fact That Messrs. Witte and Coale Were Sources of Information About Dow For Applicants' Testifying Witnesses Does Not Establish Dow's Need to Depose Them

In its March 4 letter, Dow says that it needs to depose Messrs. Witte and Coale because Applicants' witnesses who submitted verified statements in this proceeding relied on Messrs. Witte and Coale for information about Dow.

Dow states that Mr. Spero apparently obtained some of his information about Dow from Mr. Witte and Mr. Coale. That is true but irrelevant. Dow also asserts that Mr. Coale is important because "both Mr. Spero and Mr. Peterson identified Mr. Coale as the source of their information about
and "[n]either
Mr. Peterson nor Mr. Spero had direct knowledge concerning the

" That is not true. Mr. Peterson testified on the page immediately preceding the one Dow included as an attachment to its March 4 letter that he had personal knowledge Peterson Dep., p. 854
(Exhibit G hereto).

Even on issues as to which Messrs. Witte and Coale may have more direct knowledge about Dow than Messrs. Peterson or Spero, Dow cannot justify deposing the two because Dow personnel have equal if not greater knowledge of every specific issue on which Dow wants to depose Messrs. Witte and

Coale. If Dow wants to challenge the factual basis for UP's experts' opinions, it can do so without deposing Messrs. Witte and Coale. But it is not clear what, if anything, Dow truly hopes to accomplish through these depositions: Dow makes absolutely no attempt to describe the type of information it hopes to elicit at these depositions, as required by the Board's rules, see 49 C.F.R. § 1114.22(b)(1), and absolutely no attempt to show how any information it might obtain through depositions of Messrs. Witte and Coale would be at all relevant to this proceeding.

The attachments to Dow's March 4 letter contain several pages from Mr. Spero's workpapers and several excerpts from Mr. Spero's and Mr. Peterson's deposition transcripts. Unfortunately, Dow does not state what it is in these documents that supposedly justifies the depositions Dow seeks. An examination of the Dow-related issues discussed on these pages demonstrates that Dow has no need to depose either Mr. Witte or Mr. Coale to obtain additional information regarding the statements on those pages, because in each instance Dow could obtain the information from its own personnel, through less disruptive methods such as interrogatories, or from the massive amount of documents that Applicants have already produced.

1. At Mr. Spero's deposition, Dow's counsel asked Mr. Spero about notes from his workpapers that appeared to

indicate that Mr. Witte had estimated that, of Dow chemical traffic shipped by UP,

See Spero Dep., pp. 208-09; HC04-110112.^{1/}

Dow cannot possibly contend that it needs Mr. Witte's testimony in order to probe these figures. This information can be obtained from Dow just as easily, if not more easily, than from a UP witness. Moreover, Dow could have sought confirmation of its own shipment data through an interrogatory or request for admission.

2. At Mr. Spero's deposition, Dow's counsel asked Mr. Spero about notes in his workpapers that appeared to indicate that Mr. Witte had estimated that, of all the Dow traffic carried by UP in the liquid and dry chemical area,

originated at Dow's Plaquemine facility and

originated at Dow's Freeport facility. Spero Dep., p. 211; HC04-110112. Again, Dow does not need Mr. Witte if it wishes to probe these figures -- Dow knows where its traffic originates. And again, Dow could have sought confirmation of its own shipment data through an interrogatory or request for admission.

3. At Mr. Spero's deposition, Dow's counsel asked Mr. Spero about notes from his workpapers indicating that Dow

^{1/} In fact, Mr. Spero indicated that he was not certain that all of his information regarding Dow was provided by Mr. Witte. Spero Dep., pp. 209, 210. There were three other UP employees with responsibilities for chemical marketing present when Mr. Spero spoke with Mr. Witte. See HC04-110112.

was served exclusively by UP. See Spero Dep., p. 211; HC04-110112. Mr. Spero explained that Mr. Witte had been responding to his question about what Dow was saying with respect to the merger. In its March 4 letter, Dow suggests that it is somehow significant that Mr. Witte apparently attributed this remark to someone at Dow and that Mr. Spero could not say who at Dow had originally made the remark. But all one has to do to find out that Dow is exclusively served by UP at Freeport and Plaquemine is to look at a map. And if Dow wants to deny that one its employees told UP that Dow was exclusively served by UP, Dow can do so using its own witnesses. Or, Dow could have requested the identity of the speaker by way of interrogatory. There is certainly no need to depose Mr. Witte on this issue.

4. At Mr. Spero's deposition, Dow's counsel asked Mr. Spero about notes in his workpapers that indicated that Mr. Witte may have said that UP was making efforts to keep Dow neutral with respect to the merger. Spero Dep., pp. 212-15; HC04-110112. Again, Dow personnel can testify about Applicants' efforts to persuade Dow not to oppose the merger. And counsel can represent that neither Mr. Witte nor Mr. Coale was involved in Applicants' efforts to obtain Dow's support for, or prevent Dow's opposition to, the merger.

5. At Mr. Spero's deposition, Dow's counsel asked Mr. Spero about notes in his workpapers indicating that

someone said it was "no secret" that Dow's rail transportation prices were "higher." Spero Dep., pp. 215-17; HC04-110112. Mr. Spero explained that Mr. Witte had told him that this statement had been made by someone at Dow. Spero Dep., p. 217. Again, in its March 4 letter, Dow assigns some significance to the fact that Mr. Witte apparently attributed this remark to someone at Dow and that Mr. Spero could not say who at Dow had originally made the remark. But if Dow wants to deny that anyone ever made that remark, it can do so without deposing Mr. Witte. Or Dow could have requested the identity of the speaker in an interrogatory.

6. At Mr. Spero's deposition, Dow's counsel asked Mr. Spero about notes in his workpapers that refer to Spero Dep., pp. 223-25; HC04-110114. Mr. Spero agreed with Dow's counsel that he had not independently verified the situation, and that UP personnel would know more. Spero Dep., p. 225. But once again, employees of Dow know even more. If Dow wants to deny or explain the details of the situation, it can do so without deposing Mr. Witte or Mr. Coale.

7. At Mr. Spero's deposition, Dow's counsel asked Mr. Spero about notes in his workpapers that say Spero Dep., pp. 225-27; HC04-110114. Mr. Spero stated that he knew nothing

more about the contracts than what he had been told. Again, Dow has not shown why it needs to depose Mr. Witte or Mr. Coale about any issues regarding these contracts. If Dow has anything it wants to say about these contracts or the information provided to Mr. Spero, there are Dow employees with knowledge equal or superior to the knowledge of any UP employee.

8. At Mr. Spero's deposition, Dow's counsel asked Mr. Spero about notes in his workpapers that mentioned

Spero Dep., pp. 228-31; HC04-110118. Mr. Spero explained that he had been told that

Spero Dep., pp. 230-31.

Mr. Spero indicated that he got this information from Mr. Coale. Again, this does not establish that Dow has any need to depose Mr. Coale. Dow has as much information about

as UP does. Moreover,
UP's study and correspondence

is contained in Dow files in Applicants' document depository. If Dow wants to try to deny what the documents clearly show

it can do so using its own witnesses -- it does not need to depose Mr. Coale.

9. At Mr. Peterson's deposition, Mr. Peterson mentioned that Mr. Coale was one of the people in the UP's marketing department who assisted in the production of the study of Gulf Coast chemicals that appeared as an appendix to his verified statement. Peterson Dep., p. 388. Many people in UP's marketing department assisted in the production of that study, and Dow has not shown that there were any questions about the study that Mr. Peterson could not answer or that Mr. Coale would be better suited to answer. In fact, Dow submitted interrogatories regarding a number of statements Mr. Peterson made in the text of his verified statement that relate to Dow, and documents relating to every one of those statements is contained in the Dow files Applicants have placed in their document depository.

10. Finally, Mr. Peterson mentioned

Peterson Dep., p. 855.

But again, this does not establish any reason why Mr. Coale should be deposed on the subject. Documents relating to

are contained in Applicants' document depository, and Dow is free to present its own witnesses on the subject. Moreover, as explained above, Mr. Peterson testified that he had personal knowledge
Peterson Dep., p. 854.

In sum, Dow can demonstrate no need to depose Messrs. Witte and Coale regarding UP's relationship with Dow.

In fact, Dow's counsel seemed to recognize this when he said to Mr. Spero "it appears that Dow would have known about at least under your recollection all of these things; is that correct?" Spero Dep., p. 223. If Dow believes that Mr. Witte or Mr. Coale communicated incorrect information to Applicants' witnesses, it can present its own witnesses to that effect. If Dow believed that any of the information was particularly important, Dow could have submitted written interrogatories to obtain the information it needed. The fact is that Dow's request to depose Messrs. Witte and Coale is no more than a fishing expedition into the minds of UP employees who had responsibility for the Dow account.^{4/} And Dow has tried to extend this fishing expedition to SP by requesting, without providing any justification at all, that SP make its Dow account representative available for deposition. See Letter to Paul A. Cunningham from Nicholas DiMichael, dated Mar. 7, 1996 (Exhibit H hereto).

B. Any Information Messrs. Witte and Coale Could Provide Regarding Competition for Chemicals Traffic in General, or Competition for Dow Traffic in Particular, Would be Merely Cumulative

Any information Mr. Witte or Coale could provide regarding competition for chemicals traffic generally would be merely cumulative. The merger application contains verified

^{4/} In fact, as the result of UP's recent reorganization of its marketing department, Mr. Coale is no longer responsible for the Dow account. Mr. Witte is now responsible for Dow's plastics, as well as its liquid and dry chemicals.

statements from three witnesses that discuss the impact of the merger on competition for chemical products. These three witnesses were deposed for a total of 15 days by Dow and other parties interested in chemicals issues. Mr. Peterson devoted more than 75 pages of his verified statement, including a 60-page appendix, to the question of competition for Gulf Coast chemical products. Mr. Spero's entire 21-page verified statement focused on the consequences of the merger for the transportation of chemicals. Mr. Barber devoted a 15-page section of his verified statement and a separate 23-page appendix to the issue of competition for chemicals traffic.

Moreover, Dow has not explained why information it seeks from Messrs. Witte and Coale regarding Dow in particular could not be obtained from the nearly 10,000 pages of Dow files applicants have already produced. As mentioned above, these files contain information on the situations Dow asked about in its interrogatories, including the roll-on/roll-off barge issue. Reluctance on the part of Dow to use the available information is no reason to subject Applicants to the burden of two deposition.

C. There Was Nothing Unique About the Roles of Messrs. Witte or Coale in Connection with the Preparation of the Application

Dow suggests in its March 4 letter that it is particularly appropriate to depose Messrs. Witte and Coale because of "their roles in preparing the merger application."

Neither Mr. Witte nor Mr. Coale submitted a verified statement in support of the primary merger application;^{2/} rather, they shared their knowledge with witnesses who were preparing such statements. Their roles in this proceeding were indistinguishable from those of hundreds of UP and SP employees who contributed bits of knowledge and expertise to the application process.

Nor are Mr. Witte and Mr. Coale any different from the dozens of marketing personnel at UP and SP who deal directly with customers who have expressed an interest in this proceeding. The Spero workpapers that Dow cites as supporting its need to depose Messrs. Witte and Coale contain the names of four other UP marketing personnel who provided similar information regarding customers they were familiar with. To allow these depositions to proceed would leave the door wide open to scores of similar requests by others. Dow, which has already asked to depose SP's Dow account representative without even attempting to justify its request, clearly understands this to be the implication of Judge Nelson's rulings.

* * *

^{2/} Mr. Coale submitted a verified statement in one of the related abandonment applications relating to three specific customers (none of them Dow). Appl., Vol. 5, pp. 443-46.

Dow has not provided the necessary support for its request to depose Messrs. Witte and Coale, and Judge Nelson's order granting those depositions should be reversed.

KCS' January 25 letter predicted that the number of depositions requested by parties in this proceeding would "grow geometrically with each witness." Unfortunately, this has proven true. It is simply impossible to expect that any limited number of people would have first-hand knowledge of every fact of any arguable relevance to the application, and to allow parties to depose every witness with the slightest bit of relevant information would change this from an expedited proceeding to one that would rival the Rock Island's unfortunate record.

But this situation does not present the Board with a difficult line to draw. If the Board accepts that depositions of non-testifying witnesses are governed by its existing rules and precedents, requests for depositions can be dealt with in a consistent and principled way, and most, including the requests for depositions here, will be properly denied.

Respectfully submitted,

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

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

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

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

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

Arvid E. Roach II
ARVID E. ROACH II
J. MICHAEL HEMMER
MICHAEL L. ROSENTHAL
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

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

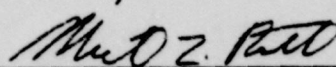
March 11, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 11th day of March, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

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



Michael L. Rosenthal

EXHIBIT A

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) 371-9900

TELECOPIER: (202) 371-0900

February 23, 1996

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

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

Dear Arvid:

On behalf of The Dow Chemical Company, we request that the Union Pacific make Thomas Coale and Daniel Witte available for deposition. Both Richard D. Spero and Richard B. Peterson, in their deposition testimony, have indicated that they consulted extensively with Mr. Coale and/or Mr. Witte regarding chemicals and plastics matters. At pages 209 through 212, Mr. Spero indicates that he relied extensively upon Mr. Witte for information concerning Dow. Mr. Spero refers to both Mr. Witte and Mr. Coale at pages 66 through 68 of his testimony. Furthermore, Mr. Peterson, at page 388 of his testimony, identifies Mr. Coale as the one individual who is particularly responsible for the Gulf Coast Chemical Study in Appendix B of Mr. Peterson's Verified Statement. Also, in response to SPI Interrogatory No. 20, Mr. Coale is identified as one of the UP employees most knowledgeable about plastics transportation.

Please inform us when these witnesses will be made available for deposition.

Sincerely,



Nicholas J. DiMichael
Jeffrey O. Moreno

1750-020

cc: The Honorable Jerome Nelson
Restricted Service List

EXHIBIT B

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N.W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

TELEFAX (202) 662-6291

TELEX 89-593 (COVING WSH)

CABLE COVING

ARVID E. ROACH II

DIRECT DIAL NUMBER

(202) 662-5366

DIRECT TELEFAX NUMBER

(202) 778-5388

LECONFELD HOUSE

CURZON STREET

LONDON W1T 6AS

ENGLAND

TELEPHONE 44-171-489-5898

TELEFAX 44-171-489-3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE 32-2-512-9880

TELEFAX 32-2-502-508

February 28, 1996

BY FACSIMILE

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

Dear Nick:

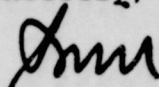
This responds to your February 23, 1996 letter in which you express Dow's desire to depose Thomas Coale and Daniel Witte.

Applicants do not believe there is any justification for providing Mr. Coale or Mr. Witte for deposition. Applicants have presented three witnesses -- Messrs. Peterson, Barber and Spero -- who address chemicals and plastics matters in depth. In addition, Applicants have produced their Dow plastics files, and have produced most of their Dow chemical files (these files are extensive and production is continuing).

In your February 23 letter, you do not indicate any topics that the three witnesses Applicants have made available for deposition were unable to address, or that you are unable to address through access to Applicants' Dow files. Dow has not even attempted to show why it expects these depositions to produce or lead to the discovery of relevant, admissible evidence, and why these depositions would not be merely cumulative and wasteful.

For these reasons and the reasons set forth in our letter of today to Mike Loftus, Applicants do not intend to produce Mr. Coale or Mr. Witte for deposition.

Sincerely,



Arvid E. Roach II

cc: Hon. Jerome Nelson
Restricted Service List (by facsimile)

EXHIBIT C

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P. O. BOX 7566

WASHINGTON, D. C. 20044-7566

(202) 662-6000

TELEFAX (202) 662-6291

TELEX 89-593 (COVLING WSH)

CABLE COVLING

ARVID E. ROACH II

DIRECT DIAL NUMBER

202) 662-5388

DIRECT TELEFAX NUMBER

202) 778-5388

LECONFELD HOUSE

CURZON STREET

LONDON W1T 8AS

ENGLAND

TELEPHONE 44-71-495-5656

TELEFAX 44-71-495-3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE 32-2-512-9890

TELEFAX 32-2-502-1998

February 28, 1996

BY FACSIMILE

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

Dear Mike:

This responds to your February 16, 1996 letter in which you express WCTL's and your individual utility and producer clients' desire to depose F.M. Gough and J.T. Hutton.

Applicants do not believe there is any justification for providing Mr. Gough or Mr. Hutton for deposition. As you point out in your letter, Applicants have already presented witnesses to address the very subjects upon which you wish to question Messrs. Gough and Hutton: Messrs. King and Ongerth were made available to discuss the Operating Plan in general, as well as the movement of Western coal in particular. In addition, Mr. Peterson was made available as a knowledgeable individual from UP who could discuss the effects of the merger on coal shippers, and Mr. Gray was made available as a knowledgeable individual from SP who could do so. And in fact, both Mr. Peterson and Mr. Gray were questioned, and provided answers, regarding the railroads' coal business. Furthermore, Mr. Sharp was made available as a witness who focused solely on coal issues. While your February 16 letter indicates that Mr. Sharp was unable to respond to questions about specific UP or SP coal movements, Messrs. Peterson and Gray were available to testify regarding shipper-specific coal issues.

Your request to depose non-testifying witnesses is troubling. Applicants have received requests to depose 16 non-testifying witnesses in addition to the 21 witnesses Applicants have made available for 7 weeks of depositions. In its letter of January 25, KCS predicted that "the number of relevant witnesses is going to grow geometrically with each witness." While Applicants disagree that the number of relevant witness has grown, it is certainly true that the number of requests for depositions has grown geometrically.

C. Michael Loftus, Esq.
February 28, 1996
Page 2

As we have stated before, Applicants reject the notion that parties have the right to depose all individuals who may have the slightest knowledge about anything arguably relevant to the merger application. This is especially true if testifying witnesses can amply address the particular topic -- whether or not those witnesses know every detail that some other witness might add. This is not a multi-year, wide-open, old-style federal court case in which depositions can be taken by the scores or hundreds if they meet bare standards of relevance. It is a highly expedited proceeding before an agency whose law disfavors depositions, and which has specifically instructed that discovery be strictly restricted to relevant matters. See Decision No. 6, served Oct. 19, 1995, p. 8 ("In pursuing discovery and in preparing pleadings, we encourage parties (and will instruct the Administrative Law Judge) to focus strictly on relevant issues").

Applicants have provided 21 witnesses for 7 weeks of depositions. Where no testifying witness could address a significant matter, Applicants have been prepared to provide an additional witness for deposition, as they have with Mr. Kauders, or to cooperate in other informal discovery. But Applicants are not willing to allow the number of depositions to "grow geometrically," as many parties to this case would prefer. Where testifying witnesses (three in this particular case) have addressed a topic, Applicants see no need to make additional, cumulative, non-testifying witnesses available for deposition.

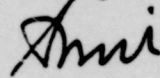
Finally, your request to depose non-testifying witnesses is contrary to the principles established in the Discovery Guidelines. The Guidelines contemplate that parties will be able to use the month of March to prepare their upcoming filings. This is just as important to the Applicants -- who must file their rebuttal at the end of April -- as to other parties, and that is why the Guidelines establish a month-long bilateral "moratorium" on written discovery. The Applicants scheduled the depositions of their witnesses to take place in January and February, despite the difficulties in preparing for so many depositions in such a condensed period. (In fact, as you will recall, Applicants wanted to begin the deposition schedule two weeks earlier in order to allow more time for preparation, but changed the schedule at the request of many of the active parties.) The multiple requests, by a variety of different merger opponents, for depositions of non-testifying witnesses would tie down the Applicants in continued formal discovery throughout the month of March and would undermine the idea of a "moratorium."

COVINGTON & BURLING

C. Michael Loftus, Esq.
February 28, 1996
Page 3

For these reasons, Applicants do not intend to
produce Mr. Gough or Mr. Hutton for deposition.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arvid", written in dark ink.

Arvid E. Roach II

cc: Hon. Jerome Nelson
Restricted Service List (by facsimile)

EXHIBIT D

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) 371-05

March 4, 1996

Via Telecopier & Hand Delivery

Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
Room No. 11F21
888 First Street, NE
Washington, DC 20426

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

Dear Judge Nelson:

On February 23, 1996, we requested, on behalf of The Dow Chemical Company, that the UP make available Mr. Tom Coale and Mr. Dan Witte, of UP's chemicals and plastics business units, for deposition. On February 29, the UP informed us that these individuals would not be made available for depositions. Therefore, Dow hereby notices this issue for resolution at the discovery conference scheduled for this Wednesday, March 6, 1996.

Dow is a major producer of chemicals and plastics at its facilities in Freeport, Texas and Plaquemine, Louisiana. Both of these facilities are served exclusively by the UP. Mr. Witte and Mr. Coale work within the UP chemicals and plastics marketing divisions, respectively, and are very familiar with Dow. This familiarity is indicated by the fact that, in virtually every letter or memorandum involving Dow that has been produced by the UP to date, Mr. Witte and Mr. Coale are identified as either the author, the addressee, or a recipient. These documents fill up two file drawers in the Applicants' depository and are too numerous to produce here. Although there are at least a half dozen individuals in these marketing departments whom Dow would like to depose, Mr. Witte and Mr. Coale have been selected because of their position, their length of service, and their roles in preparing the merger application.

Mr. Witte is important to Dow because of, among other things, several statements he is alleged to have made to Mr. Richard D. Spero, a witness who has presented written testimony for the Applicants. In a number of workpapers obtained from the applicants' document depository (which are notes of Mr. Spero's interviews with several UP personnel), Mr. Spero identifies Mr. Witte at the top of the page and, near the bottom of the same page, he has written several important statements regarding Dow and Dow's competitive situation. (Attachment 1; see also Attachment 2, at 210-211). When we inquired about these notes at Mr. Spero's deposition, he attributed these statements to Mr. Witte and claimed that the original source of the first two comments was actually someone at Dow. However, Mr. Spero could not provide any further explanation and suggested that we direct further questions to Mr. Witte. (Attachment 2 at 211-13, 215-17) Thus, Dow has a particularized need to probe the source of these statements attributed to Mr. Witte.

Letter to Honorable Jerome Nelson
March 4, 1996
Page 2

Moreover, at his deposition, Mr. Spero also confirmed that Mr. Witte was responsible for Dow with respect to liquid and dry chemicals and that most of his information on Dow came directly from Mr. Witte. (Attachment 2 at 208, 209-10) The deposition transcript makes clear that Mr. Spero had little or no independent knowledge of Dow's situation, and simply relied upon others, including Mr. Witte, for his information. (See, e.g., Attachment 2 at 223-225) In view of Mr. Spero's lack of knowledge regarding Dow, Dow is entitled to cross-examine the persons whose information formed the basis for Mr. Spero's statements regarding Dow's transportation.

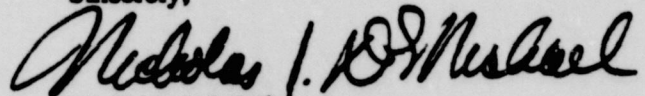
Mr. Coale is important to Dow particularly because of his knowledge of the UP's reaction

Both Mr. Spero and Mr. Peterson identified Mr. Coale as the source of their information about this

therefore, it is necessary to ask Mr. Coale.

As a general matter, Mr. Witte and Mr. Coale will provide information specific to Dow regarding Dow's ability to exert competitive pressure upon the UP through modal and source competition at Freeport and Plaquemine. No witness proffered by the UP has possessed this direct knowledge. Rather, UP witnesses have simply referred in deposition to individuals in the chemicals and plastics marketing divisions as the persons with such knowledge, including Mr. Witte and Mr. Coale. Therefore, Dow requests that the applicants be ordered to make Mr. Witte and Mr. Coale available for depositions at the earliest possible time prior to March 29, 1996.

Sincerely,



Nicholas J. DiMichael
Jeffrey O. Moreno

cc: Restricted Service List w/o attachments (Outside counsel only)

1750-020

HC04 - 11011

Finance Docket No. 32760 - HIGHLY CONFIDENTIAL

HC04 - 110117

Finance Docket No. 32760 - HIGHLY CONFIDENTIAL

HC04 - 110118

Finance Docket No. 32760 - HIGHLY CONFIDENTIAL

HC04 - 110119

Finance Docket No. 32760 - HIGHLY CONFIDENTIAL

1 plastics, was it those two?

2 A. No, it was a more general comment.

3

4

5

6 Q. Do you have any information as to what
7 the nature of that source competition is?

8 A. I do somewhere in this stuff.

9 Q. Perhaps what you might do again, to
10 save time here, is if you find that reference, to
11 simply send that to me with a copy to the other
12 people attending this deposition.

13 A. Well, here's one answer, ethylene
14 glycol.

15 Q. I'm sorry, where are you looking?

16 A. I'm looking at work paper -- these are
17 not the confidential work papers.

18 Q. I guess I don't have those.

19 A. 110033. Similarly, 703 110345 for
20 ethylene oxide.

21 Q. Let me just ask, did you make any
22 reference in your verified statement to Fort
23 Saskatchewan?

24 A. I don't believe I did.

25 Q. Okay. Let me direct your attention to

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1 a meeting on November 3 then, the day after, with
2 Mr. Witte. And this is Shirley Newell --

3 A. Correct.

4 Q. -- Veronica Alsop and Tim Devlin. Now,
5 Mr. Witte, after his name there, you have Dow, Du
6 Pont, Monsanto. Can you tell me what that refers
7 to?

8 A. Those are customers that he is
9 responsible for at the railroad with respect to
10 liquid and dry chemicals.

11 Q. And then the other names after the
12 other people would be the companies that those
13 particular persons are responsible for?

14 A. Correct.

15 Q. There's quite a long listing there.
16 Did you talk about each one of those during your
17 conversations?

18 A. Each?

19 Q. Each company that is listed there, did
20 you kind of go down through each of those
21 companies or was it more varied?

22 A. No, it was more the -- the orientation
23 was commodity, not company.

24

25

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Q. Can you tell me what that means then,
the 60 percent and the 40 percent?

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A. It was 60 percent and 40 percent was
their -- I'm not sure which of the four made the
estimate.

A. That was their estimate.

A. It's possible, but I cannot be
absolutely certain that that's the case. I don't
remember.

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3 A. I believe that's correct, yes.

4 Q. So, if I have questions about some of
5 the things here, Mr. Witte would be the one to
6 check out first?

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25

Q. I would have to ask Mr. Witte that?

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1 A. Yes.

2 Q. Did you ask him who he was talking to?

3 A. No.

4 Q. Did you ask him what was the content or
5 the context of the conversation in which this was
6 made?

7 A. No.

8 Q. And you said that your notes indicate
9 that making efforts to render neutral, who was
10 making those efforts?

11 A. I don't know.

12 Q. Was it people at the railroad?

13 A. I presume so.

14

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20 A. No, I think he's responding to my
21 question, it's part of the same question of how
22 they're going to -- are they going to
23 participate.

24 Q. And what was your understanding about
25 the meaning of the term rendering neutral?

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1 A. I really didn't dwell on it.

2 Q. You didn't have any understanding of
3 what he was telling you?

4 A. I mean I didn't dwell on it.

5 Q. I understand you didn't dwell on it, I
6 just asked what your understanding was?

7 MR. GULLAND: Objection. I know it's
8 late and we're trying to hurry, but we're not
9 going to hurry things along by interrupting the
10 witness.

11 BY MR. DiMICHAEL:

12 Q. All I'm asking you is what was your
13 understanding?

14 MR. GULLAND: Let the witness finish
15 his answer.

16 THE WITNESS: I didn't really probe the
17 issue, it wasn't particularly germane to what I
18 was really getting at. But my -- I guess you
19 would have to say that my understanding of it was
20 that Dow's position was somewhat ambivalent as to
21 what position it would take regarding the
22 application.

23 BY MR. DiMICHAEL:

24 Q. And so the railroad was attempting to
25 keep Dow neutral in this whole thing; is that

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1 right?

2 A. Yeah.

3 Q. Do you know what they were doing?

4 A. No.

5 Q. Do you know why they were concerned to
6 keep it neutral?

7 A. I'm sure they wanted as much support as
8 possible from all shippers. Beyond that I have
9 no --

10 Q. It says to keep them neutral, not to
11 get their support..

12 A. You asked me why they were doing this.
13 I said I assume they were doing this with all
14 shippers, regardless of what their status was.

15 Q. Were they concerned that Dow would
16 oppose the application?

17 MR. GULLAND: Objection. You haven't
18 got a basis for that question.

19 MR. DiMICHAEL: Are you instructing him
20 not to answer?

21 MR. GULLAND: No.

22 BY MR. DiMICHAEL:

23 Q. Okay.

24 A. I think I've already answered it. It
25 was -- my understanding was that this particular

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1 shipper was ambivalent in terms of position that
2 it was going to take with respect to this
3 application and that they were obviously trying
4 to get the most favorable outcome from the
5 standpoint of the railroad in terms of how the
6 shipper would participate, if it participated.

7 Q. Were they concerned that Dow would
8 oppose the application?

9 A. I don't know.

10 MR. GULLAND: Objection. Look, ask him
11 what they said, don't ask him what the mental
12 state of third parties is.

13 BY MR. DiMICHAEL:

14 Q. Did they tell you that they were
15 concerned that Dow would oppose the application?

16 A. No.

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Q. Now, how do you know that this is a paraphrase, because it doesn't indicate that here at all? And why is this not what Mr. Witte was actually saying, his own statements, not Dow's statements? How do you know that this is a paraphrase?

A. Which question are you asking me?

Q. How do you know that this is a paraphrase?

A. That's my distinct recollection.

Q. Did Mr. Witte say who he met with at Dow who told him that?

A. I think I've already answered that, but the answer is no.

BY MR. DiMICHAEL:

1 Q. They were in a position to know,
2 correct?

3 A. It wasn't -- it wasn't a comment that
4 was being affirmed by anyone at the meeting that
5 I was at. It was a representation of what they
6 were saying to the railroad.

7 Q. So they were --

8 A. They being Dow.

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18 Q. Do you have any reason to believe that
19 that's not true?

20 MR. GULLAND: That what's not true?
21 What was being said during the meeting?

22 BY MR. DIMICHAEL:

23

24

25

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1 then they had with Dow, that's your recollection,
2 or actions they were taking vis-a-vis Dow?

3 A. Part of those pages. Obviously the
4 material with respect to Rohm & Haas on 13
5 doesn't relate to Dow.

6 Q. Yes. But it appears that Dow would
7 have known about at least under your recollection
8 all of these things; is that correct?

9 MR. GULLAND: Objection.

10 You can answer.

11 THE WITNESS: I would assume so.

12 BY MR. DiMICHAEL:
13
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16

17 Q. You mentioned that I believe at page
18 715 of your verified statement, the second full
19 paragraph, second line?

20 A. My reference may not have been to this
21 particular note, however. It may have been to
22 some other note in my work papers, I'm not
23 certain.

24 Q. I guess that's what I was going to ask,
25 whether this particular note here was the basis

1 for that statement in your work papers -- excuse
2 me, was this particular statement in the work
3 papers the basis for your statement in the
4 verified statement?

5 A. I'm not quite certain, it may have been
6 something else, it may have come up again.

7 Q. Do you know how much styrene was
8 barged?

9 A. No.

10 Q. Do you know when?

11 A. No.

12 Q. Do you know why?

13 A. No.

14 Q. Do you know any of the circumstances
15 surrounding it?

16 A. The only circumstances that I know is
17 that the people with whom I was discussing this
18 felt that it was a significant enough option so
19 that it operated as a discipline on Union
20 Pacific.

21 Q. Did they indicate to you how or why
22 that was so significant?

23 A. No. But I was asking the questions not
24 for isolated, onetime deals but really
25 significant alternatives that impacted on

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1 their -- the way in which they viewed the
2 marketplace.

3 Q. You made no independent verification
4 that that was a significant thing?

5 A. Right.

6 Q. You were just accepting their
7 representation in this thing?

8 A. Correct.

9 Q. And again, if I wanted to probe --

10 A. In response to my question.

11 Q. -- I would need to talk to them?

12 A. Right.

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21 A. No. I think Mr. Peterson may have
22 discussed it at some point in his testimony, but
23 that would be the extent of it.

24 Q. You don't know any of the circumstances
25 of the negotiation of that contract or anything

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- 1 of that sort?
- 2 A. No, I do not.
- 3 Q. Did you ever review the contract or
- 4 ever see it at all?
- 5 A. No.
- 6 Q. Turn to your notes at 117 and 118 and I
- 7 guess 119. These are also notes of the meeting
- 8 that occurred on November 3?
- 9 A. Yes.
- 10 Q. And this meeting was with Cindy Graham
- 11 and Tom Cole; is that right?
- 12 A. Yes.
- 13 Q. And they are UP persons, UP personnel?
- 14 A. Yes.
- 15 Q. And what is their function?
- 16 A. Plastics.
- 17 Q. Are they in the marketing?
- 18 A. Yes.
- 19 Q. Do you know what their relationship is
- 20 to Mr. Witte?
- 21 A. No.
- 22 Q. And, when you say they're with
- 23 plastics, do they have a pricing function?
- 24 A. Yes.
- 25 Q. Do you know whether they negotiate

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1 contracts?

2 A. I'm sure they're involved in it.

3 Q. Do you know whether they are
4 responsible for face-to-face negotiations with
5 Dow?

6 A. I don't know.

7 Q. Do you know whether they deal with Dow
8 at all?

9 A. They seem to be familiar with aspects
10 of Dow's operation. When you say whether they
11 deal with them at all, I'm not sure I can tell
12 you what the basis of their knowledge is.

13 Q. And what is your basis for that
14 statement, that they seem to have some
15 familiarity?

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Q. What did you understand as the circumstances in which the roll-on/roll-off possibility was raised with the railroad?

A. Either to get better price or better service or both.

Q. Let me ask you this, when was that raised?

A. When was -- what is that?

Q. The possibility of a roll-on/roll-off raised.

A. With Formosa?

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Q. Do you know whether the UP ever made any analysis of that possibility?

8

A. I do not know.

9

10

Q. You were not told that by -- strike that.

11

12

13

Did Ms. Graham and Mr. Cole indicate any more to you about the roll-on/roll-off than what is reflected here in the notes?

14

A. No.

15

16

17

18

Q. And is it fair to say that the notes here are the basis for your statement about the roll-on/roll-off on page 719 of your verified statement?

19

A. Yes.

20

21

22

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25

Q. Let me ask you, shifting topics now, your statement mentions rail-to-rail competition. And you talked to Mr. Stone before a little bit about the scope of the chemical product market. Are you familiar with I guess what is known in transportation circles as the

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EXHIBIT E

USCIN, 18711 2548
3121 443-2185

In Reply, Use Montana Rail Link

ELLEN A. GOLDSTEIN, Esq.
ATTORNEY, BRODSKY, SIDMAN & KIDER
1114 HOO
1250 NEW YORK AVENUE, NORTHWEST
WASHINGTON, D.C. 20005-4197
202/338-1700

ALL 2 PRESENT

APPEARING WITH: KARA HEAL
COUNSELOR, PROPERTY, TRANSPORTATION
MONTANA RAIL LINK

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- (1) P-R-O-C-E-E-D-I-N-G-S
(2) (9:02 a.m.)
(3) JUDGE NELSON: Please be seated. Let's (4) get a record of who is here. For the Applicants?
(5) MR. LIVINGSTON: For the Applicants, Bill (6) Livingston, also Carolyn Corwin, and Michael (7) Rosenthal, all with - representing Union (8) Pacific; Gerald Norton and Paul Cunningham representing (9) Southern Pacific.
(10) JUDGE NELSON: And for the Intervenor?
(11) MR. McBRIDE: Good morning, Your Honor, (12) Michael McBride -
(13) JUDGE NELSON: Mr. McBride.
(14) MR. McBRIDE: - from LeBoeuf, Lamb, Green (15) and MacRae for Western Shippers Coalition. With me (16) are my colleagues Linda Breggin and Daniel Aronowitz.
(17) MR. MORENO: Good morning, Your Honor, (18) Jeff Moreno from the law firm of Donelan, Cleary, Wood (19) & Maser. We represent the Dow Chemical Company, (20) Kennecott Utah Copper Corporation and Kennecott Energy (21) Company.
(22) MR. JOSEPHS: Marc Josephs with Howrey and

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- (1) Simon representing Coastal Corporation.
(2) MR. DiMICHAEL: Nicholas DiMichael with (3) the law firm of Donelan, Cleary representing the (4) National Industrial Transportation League.
(5) MR. EDWARDS: Good morning, Your Honor. (6) John Edwards with Zuckert, Scoutt & Rasenberger (7) representing the Tex/Mex Railroad and Sierra Pacific.
(8) MR. LUBEL: Your Honor, Alan Lubel with (9) Troutman Sanders representing the Kansas City Southern (10) Railway.
(11) MR. GOLDSTEIN: Your Honor, Ellen (12) Goldstein with Weiner, Brodsky, Sidman & Kider (13)

representing the Montana Rail Link.

- (14) MR. STEEL: Good morning, Your Honor, (15) Adrian Steel representing Burlington Northern and the (16) Santa Fe.
(17) MR. ONGMAN: Good morning, Your Honor. (18) I'm John Ongman with Pepper, Hamilton & Scheetz (19) representing the Geneva Steel Company and Omaha Power (20) Company*.
(21) MR. BILLIEL: Good morning, Your Honor, (22) Michael Billiel, Department of Justice.

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- (1) MR. KILLORY: Your Honor, Joseph Killory (2) of Wilmer, Cutler & Pickering representing Conrail.
(3) JUDGE NELSON: All right. We have, I (4) think, two matters. One is all of the stuff raised in (5) Mr. McBride's letter of March fourth.
(6) And then do we still have this matter of (7) Dow Chemical and two depositions?
(8) MR. MORENO: Yes, Your Honor.
(9) JUDGE NELSON: I never got any opposition (10) to that. Is there a problem with these two witnesses?
(11) MR. LIVINGSTON: Yes, we do oppose it, (12) Your Honor.
(13) JUDGE NELSON: Well, I think what I'm (14) going to do is defer that for a moment. The other (15) issues seem to me more involved.
(16) Well, just give me it for a second. What (17) is the ground of the opposition of these depositions?
(18) MR. LIVINGSTON: Well, these are - the (19) requesting party is Dow Chemical. We presented three (20) witnesses on chemicals issues.
(21) JUDGE NELSON: We've been through this (22) contention that so-call non-testifying witnesses are

Page 1745

- (1) not subject to deposition. I have rejected that (2) contention.
(3) And I don't know whether you were here or (4) not, but Mr. Roach was making that argument. And I (5) ruled that with regard to such non-testifying (6) witnesses, they're really no different from anybody (7) else.
(8) We will look at them in terms of (9) relevance, burden, privileges, where they can be (10) taken, when and so on and so forth.
(11) So, what else do you have?
(12) MR. LIVINGSTON: Well, I'm aware of your (13) rulings last time. These - we did present three (14) witnesses on these issues, and they answered the (15) questions that were put to them.
(16) We have also provided Dow with the files, (17) the very extensive files,

nearly 10,000 pages relating (18) to the Dow - the Dow Chemical that the Applicants (19) had.
(20) The two witnesses they want - in (21) addition, not only did they not put in verified (22) statements, these are men in the Marketing Department

Page 1746

- (1) or involved in the marketing of chemicals and (2) plastics.
(3) They apparently deal with Dow. They are (4) indistinguishable from representatives of the company (5) who call on dozens of other shippers.
(6) They are, in our judgement, (7) indistinguishable from the coal shipper witnesses.
(8) JUDGE NELSON: Both are for UP?
(9) MR. LIVINGSTON: They both are UP.
(10) JUDGE NELSON: Mr. Coale, C-O-A-L-E, and (11) Mr. Witte?
(12) MR. LIVINGSTON: Mr. Witte. One is (13) chemicals and one is - one involves chemicals and one (14) involves plastics.
(15) JUDGE NELSON: Yes.
(16) MR. LIVINGSTON: These are fairly, (17) relatively low-level people.
(18) JUDGE NELSON: Aren't plastics part of (19) chemicals?
(20) MR. LIVINGSTON: I believe that's right. (21) I think plastics -
(22) JUDGE NELSON: That's a subcategory of

Page 1747

- (1) chemicals.
(2) MR. LIVINGSTON: I believe that -
(3) JUDGE NELSON: See what you can learn in (4) this business?
(5) MR. LIVINGSTON: This - to permit them -
(6) JUDGE NELSON: Which one is higher as (7) between the two?
(8) MR. LIVINGSTON: I think they're equal?
(9) JUDGE NELSON: Equal?
(10) MR. LIVINGSTON: Yes. But these are not (11) the chief executive officers of the company or the (12) vice - executive vice president in head of - charge (13) of sales or anything of that kind.
(14) This is - this is reaching into the low (15) levels of the company to find witnesses who - (16) apparently what they want is somebody who can talk (17) about relations with Dow, which is an area where if (18) there's any area, it's an area where Dow does not need (19) discovery.
(20) Dow has access to its own employees, and (21) they've now had access to all of our files on what Dow (22) is doing in the transportation area.

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- (1) If they think that -
- (2) JUDGE NELSON: What harm is done by a (3) deposition here?
- (4) MR. LIVINGSTON: Your Honor, we are in -
- (5) JUDGE NELSON: You say that these are (6) comparatively low-level and you're not interrupting (7) the great affairs of the company here. What's -
- (8) MR. LIVINGSTON: It interrupts the affairs (9) of the presentation of this case by the Applicants. (10) We are under enormous pressure because of the schedule (11) in this case to complete discovery responses to (12) prepare for responding to rebuttal, and to engage in (13) all the other activities that this case imposes.
- (14) Indeed, this is such a stressful time in (15) the case that there is a moratorium on written (16) discovery now.
- (17) And this - these depositions, we think, (18) are unnecessary. They are inconsistent with the (19) spirit of the moratorium.
- (20) I realize the moratorium doesn't (21) specifically apply to depositions. It only applies to (22) the service of written discovery.

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- (1) But nonetheless, it's inconsistent with (2) that slow-down period.
- (3) This kind of discovery is the sort of (4) thing you would see in a large federal court anti- (5) trust where every marketing representative is deposed (6) and there are dozens or hundreds of depositions.
- (7) It's not the way -
- (8) JUDGE NELSON: Well, they say that these (9) names of these two men continue to pop up on (10) correspondence and on documents. I mean, there is (11) some particularization -
- (12) MR. LIVINGSTON: Any shipper can come in (13) here and say well, Mr. Jones at UP and Mr. So-and-so (14) at SP deals with us on a regular basis and we want to (15) take his deposition.
- (16) And we would be doing the entire Sales (17) Department and the entire Marketing Department of (18) these two companies.
- (19) And that's about the level of (20) justification we have here. They can't point to (21) critical facts that these people know, that they (22) haven't been able to get from other sources, including

Page 1750

- (1) their own sources, which I think is really kind of (2) important here.
- (3) JUDGE NELSON: Okay. I think I

understand (4) your position. Is this Mr. Moreno on this issue?

(5) MR. MORENO: Yes, Your Honor.

(6) JUDGE NELSON: What can you help me with (7) in terms of if I wanted to order these depositions, (8) how to limit them, structure them, make it as easy as (9) possible to get them over with, possibly choose one (10) instead of the two?

(11) Could you give me any ideas along those (12) lines?

(13) MR. MORENO: Well, Your Honor, although (14) plastics and chemicals are generally treated in a (15) common manner, I believe under the Union Pacific they (16) have two separate marketing departments.

(17) Therefore, Mr. Witte is on a separate (18) hierarchy from Mr. Coale.

(19) JUDGE NELSON: I remembered when we had (20) problems with the searching of the records. I thought (21) that the plastics were a subset of chemicals.

(22) MR. MORENO: Plastics - generally

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(1) chemical manufacturers do also tend to manufacture (2) plastics. The reason we have asked for these two (3) witnesses is because the railroad itself handles the (4) marketing separate - distinctly for plastics and for (5) chemicals.

(6) JUDGE NELSON: What level are they on in (7) the company?

(8) MR. MORENO: Mr. - I do not know Mr. (9) Witte's precise title. But Mr. Coale is Product (10) Manager of Plastics, and he has been with the UP (11) Plastics Department since January of 1990.

(12) So, one reason for selecting him is (13) because he has been there much longer than many other (14) individuals and has had direct experience about -

(15) JUDGE NELSON: How much time would you (16) need for these depositions?

(17) MR. MORENO: I think we could handle these (18) depositions in half a day, Your Honor.

(19) JUDGE NELSON: Both?

(20) MR. MORENO: We could possibly - well, I (21) think we might be able to arrange the schedule to do (22) the two of them on the same day.

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(1) JUDGE NELSON: Where are these people (2) located, if you know?

(3) MR. MORENO: I'm not - I'm not sure. The (4) Applicants will have to speak to that.

(5) JUDGE NELSON: Mr. Livingston, where are (6) they?

(7) MR. LIVINGSTON: Omana.

(8) JUDGE NELSON: Omana. Well, you would go (9) to Omana for these purposes.

(10) MR. MORENO: Yes, Your Honor, we would.

(11) JUDGE NELSON: And I'm going to direct (12) those depositions and direct that the combined time of (13) the depositions shall not exceed four hours.

(14) MR. MORENO: I think we can handle that.

(15) JUDGE NELSON: And you can allocate the (16) four hours as you want. If you take up three hours (17) and 55 minutes with Mr. Coale, you've got five minutes (18) with the next man.

(19) Are there questions about that?

(20) MR. LIVINGSTON: I understand your ruling, (21) Your Honor. I would like to be heard one more time. (22) And I realize you've made the ruling, but no argument

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(1) was made here as to why these witnesses are needed.

(2) It is simply that they've been at the (3) company a long time and they deal with Dow. If that's (4) going to be the standard -

(5) JUDGE NELSON: I've read -

(6) MR. LIVINGSTON: - there is no limits -

(7) JUDGE NELSON: I've read Mr. Moreno and (8) Mr. DiMichael's letter of March fourth, and I am (9) persuaded by the reasons set out there that we ought (10) to have the depositions.

(11) I am of the view that they ought to be as (12) simple as possible to impose as little a burden as (13) possible. And can't see how four hours of time (14) divided between the two men is going to be a serious (15) detriment to the company.

(16) MR. LIVINGSTON: Well, there are not only (17) the four hours to the men, but it's the time we spend (18) in preparation.

(19) JUDGE NELSON: You've got Ms. Rinn sitting (20) right out there. She can defend those depositions.

(21) MR. LIVINGSTON: Ms. Rinn -

(22) JUDGE NELSON: You try the case any way

Page 1754

(1) you want, but you don't even have to spend money to (2) get her there. She's on the payroll.

(3) And that's headquarters, and that's where (4) the two people are. And I see no reason these (5) depositions can't go forward.

(6) I'd like to turn now to the other issues, (7) and that is Mr. McBride's

EXHIBIT F

TROUTMAN SANDERS
ATTORNEYS AT LAW
A PARTNERSHIP AND A LIMITED LIABILITY CORPORATION

999 PEACHTREE STREET N.E. SUITE 750
ATLANTA GEORGIA 30309-3964
TELEPHONE 404-885-3651
FACSIMILE 404-885-3652

NATIONSBANK PLAZA
600 PEACHTREE STREET N.E. SUITE 5200
ATLANTA GEORGIA 30308-2216
TELEPHONE 404-885-3000
FACSIMILE 404-885-3900

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

January 25, 1996

VIA FACSIMILE AND U.S. MAIL

Arvid Roach, Esquire
S. William Livingston, Jr., Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

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

Dear Arvid:

In response to your letter to Angela Hughes dated January 23, 1996 concerning the DOJ request for additional depositions, in which KCS joined, we disagree with your position that the depositions will not be necessary and renew the request for these depositions.

Mr. Runde was not able to testify as fully as you have suggested; and in fact stated that he had thrown away his work papers. He also testified that Messrs. Mamdani, Walsh and Eichorn would need to be consulted to know the full range of Morgan Stanley work and records. We can anticipate the same limitation with Mr. Stephan Month, the CS First Boston witness. Therefore, the deposition of Mr. David DeNunzio, who signed the CS First Boston opinion letter and was present at key Union Pacific board meetings, is warranted now.

We would suggest that these depositions be scheduled now for the beginning of March. If we wait until March to schedule them, the witnesses' schedules will be booked, and we will be faced with further delays.

In regard to Mr. Harvey, who holds the title of Southern Pacific "Executive Vice President Finance and Law and General Counsel," Mr. Runde testified to several meetings with Mr. Harvey in which he discussed "operations" with Mr. Harvey and, in Mr. Runde's words, Mr. Harvey is the chief legal officer "but sometimes he has a financial role too." (Deposition of James A. Runde, p. 63.)

In more general terms, you know from the deposition of Mr. Rebensdorf taken earlier this week (and Applicants presumably had to anticipate this) that the number of relevant witnesses is going to grow geometrically with each witness. Thus, by way of example, on most

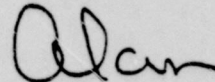
TROUTMAN SANDERS
ANDERSON LLP

Arvid Roach, Esquire
January 25, 1996
Page 2

questions dealing with "cost" analysis referred to in his own Verified Statement, Mr. Rebensdorf repeatedly deferred to Mr. Richard Kauders as the person who did the studies and who would need to explain the analysis. (E.g., Rebensdorf Deposition, Vol. II, p. 79.) Likewise, although Mr. Rebensdorf's Verified Statement boasts about hearing from customers and that "BN/Santa Fe appeared to be the leading candidate in the minds of most customers" (p. 293) in his deposition Mr. Rebensdorf admitted that he had not talked to any customers, but instead had relied on information from other UP executives or individuals in UP's Marketing Department for this representation in his sworn testimony. In separate correspondence we address our request to depose these additional witnesses identified by Mr. Rebensdorf.

We look forward to the prompt scheduling of the additional witnesses requested by the Department of Justice.

Sincerely yours,



Alan E. Lubel
Attorney for Kansas City Southern
Railway Company

cc: Restricted Service List

EXHIBIT G

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EXHIBIT H

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

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3634

Office: (202) 371-9500

TELECOPIER: (202) 371-0900

March 7, 1996

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 19th Street, N.W., Suite 600
Washington, D.C. 20035

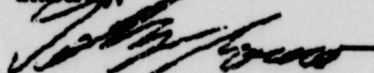
Re: Finance Docket No. 32760, *Union Pacific Corp., et al. -- Control & Merger --*
Southern Pacific Rail Corp., et al.

Dear Paul:

On behalf of The Dow Chemical Company, we request that Southern Pacific make Mr. John M. Sampson available for deposition. Mr. Sampson is Dow's account representative at Southern Pacific.

Please inform us when this witness will be made available for deposition.

Sincerely,



Nicholas J. DiMichael
Jeffrey O. Mureno

175U-020

cc: The Honorable Jerome Nelson
Restricted Service List

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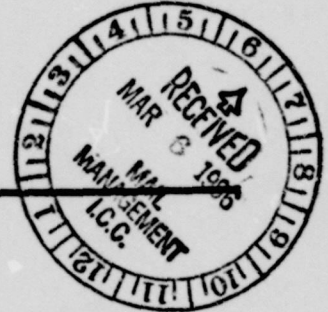
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Part of
Public Record

Part of
Public **EXPEDITED CONSIDERATION REQUESTED**

**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

**APPEAL OF ENTERGY SERVICES, INC., ARKANSAS
POWER & LIGHT COMPANY, GULF STATES UTILITIES
COMPANY AND THE WESTERN COAL TRAFFIC LEAGUE
FROM ADMINISTRATIVE LAW JUDGE NELSON'S ORDER
DENYING REQUEST TO TAKE CERTAIN DEPOSITIONS**

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

By: C. Michael Loftus
Christopher A. Mills
Andrew B. Kolesar III
Patricia E. Kolesar

OF COUNSEL:

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

1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys and Practitioners

Dated: March 6, 1996

EXPEDITED CONSIDERATION REQUESTED

**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

**APPEAL OF ENTERGY SERVICES, INC., ARKANSAS
POWER & LIGHT COMPANY, GULF STATES UTILITIES
COMPANY AND THE WESTERN COAL TRAFFIC LEAGUE
FROM ADMINISTRATIVE LAW JUDGE NELSON'S ORDER
DENYING REQUEST TO TAKE CERTAIN DEPOSITIONS**

Entergy Services, Inc., and its affiliates Arkansas Power & Light Company and Gulf States Utilities Company (collectively, "Entergy") and the Western Coal Traffic League ("WCTL") hereby jointly appeal from the order of Administrative Law Judge Jerome Nelson entered March 1, 1996, denying their requests (1) that BN/Santa Fe be ordered to produce Mr. Sami M. Shalah, its Assistant Vice President Coal Marketing, for deposition, and (2) that Applicants be ordered to produce Mr. F. M. Gough, Business Director in the Energy Marketing group of Union Pacific Railroad Company's ("UP") Marketing and Sales Department, and Mr. J.T.

Hutton, Director-Coal Marketing & Sales of Southern Pacific Lines ("SP"), for deposition.¹ In support of this Appeal, Entergy/WCTL state as follows:

BACKGROUND

On February 15, 1996, in accordance with the Discovery Guidelines applicable to this proceeding, Entergy/WCTL transmitted a written request to counsel for Burlington Northern Santa Fe ("BN/Santa Fe") to depose Mr. Sami M. Shalah, Assistant Vice President Coal Marketing for BN/Santa Fe, who had been identified as the individual in BN/Santa Fe's coal marketing department with primary responsibility for the Entergy account. Entergy/WCTL stated that they wished to inquire into issues regarding the particular impact of the merger on Entergy and regarding the effect of the proposed UP/SP merger and Applicants' Settlement Agreement with BN/Santa Fe on competition for the movement of SP-originated Colorado/Utah coal, which issues only a knowledgeable individual in BN/Santa Fe's coal marketing department such as Mr. Shalah could address.

Similarly, on February 16, 1996, Entergy/WCTL transmitted a written request to counsel for the Applicants to depose two individuals from UP and SP's coal marketing departments -- respectively, Mr. F.M. Gough and Mr. J.T. Hutton. Entergy/WCTL stated that Messrs. Gough and Hutton held positions of primary

¹ Judge Nelson entered this order orally at a discovery conference in this proceeding held on March 1, 1996.

importance with regard to relevant issues of concern -- i.e. the competition between UP and SP to originate coal from either Colorado/Utah or the Powder River Basin. In addition, Entergy/WCTL stated that other Applicant witnesses who had submitted verified statements as part of the merger application had testified, at their depositions, that they were unable to address issues within the areas of Messrs. Gough's and Hutton's expertise.

By letter dated February 28, 1996, BN/Santa Fe denied Entergy/WCTL's request to depose Mr. Shalah, claiming that as a non-applicant's employee who had not submitted written testimony, Mr. Shalah should not be required to appear at a deposition. BN/Santa Fe added that other unspecified witnesses could address the issues to be raised by Entergy/WCTL.

Likewise, by letter also dated February 28, 1996, the Applicants denied Entergy/WCTL's request to depose Mr. Gough and Mr. Hutton. In this letter, Applicants complained of the burden associated with additional discovery, and characterized Entergy/WCTL's desire to depose non-testifying witnesses as "troubling," given the fact that Applicants had previously made witnesses with knowledge of the coal transportation business available; specifically, witnesses King/Ongerth, Peterson, Gray, and Sharp.

After receiving these responses, Entergy/WCTL immediately requested that Judge Nelson address the subject of these requested depositions at the discovery conference scheduled for March 1, 1996. Copies of Entergy/WCTL's letters requesting the

depositions, BN/Santa Fe's and Applicants' responses denying the requests, and Entergy/WCTL's letters to Judge Nelson are attached for the Board's convenience as Appendix I.

On March 1, 1996, Judge Nelson heard argument from counsel for several parties, including counsel for Entergy/WCTL, regarding the ability of interested parties to depose "non-testifying" witnesses. In addition, Judge Nelson heard both the Applicants and BN/Santa Fe argue for a complete preclusion of testimony by such witnesses. Despite ruling that he would not adopt a distinction between testifying and non-testifying witnesses for purposes of depositions,² Judge Nelson denied Entergy/WCTL's request to take the depositions in question.³ Judge Nelson based this ruling from the bench upon (i) his perception

² See Transcript of March 1, 1996 Discovery Conference before the Honorable Jerome Nelson (hereinafter, "Tr. at ____"), at 1496 ("I don't know of anything in the Constitution or the Interstate Commerce Act or the Administrative Procedure Act or the regulations of the Surface Transportation Board that hold that people are immune from deposition merely because they didn't submit proposed testimony."); Tr. at 1502 (Precedent cited by UP "doesn't draw any distinction between 'testifying' and 'non-testifying' witnesses."); Tr. at 1524 ("I do not choose to make a dichotomy between testifying witnesses and non-testifying witnesses.").

³ It appears that Judge Nelson may have been swayed by the Applicants' citation of Docket No. 37021, Annual Volume Rates on Coal -- Rawhide Junction, WY to Sergeant Bluff, IA, Decision served Jan. 4, 1985, for the proposition that the Board generally disfavors depositions. This argument, however, ignores the fact that unlike ordinary proceedings in which a party must seek special Board permission in order to take a deposition, "pre-granted" authority for depositions already exists in this extraordinary proceeding. See ¶ 6 of the Discovery Guidelines in this proceeding served Dec. 7, 1995. The Board therefore should not condone the Applicants' effort to force this proceeding, which has been expedited at their request, into the mold of other, more routine Board proceedings.

that prior witnesses had testified to certain of the relevant issues in an adequate fashion; (ii) his perception that certain issues to be raised in the subject depositions did not appear relevant; and (iii) his apparent pre-determination of the merits of Entergy's position in this proceeding.⁴ Relevant portions of the transcript of the March 1 discovery conference containing Judge Nelson's rulings are included in Appendix II, which Entergy/WCTL have today filed separately under seal due to the highly confidential nature of certain portions of the argument.

ARGUMENT

1. Legal Standard

The Board's regulations provide that appellate review of the decisions of employees is proper "to correct a clear error of judgment or to prevent manifest injustice." 49 C.F.R. § 1115.1(c). In this instance, Judge Nelson's denial of Entergy/

⁴ Judge Nelson alternatively based his denial of Entergy/WCTL's request to depose Applicants' Messrs. Gough and Hutton upon a purported timing defect. This defect, however, stemmed entirely from the Applicants' twelve-day delay in responding to Entergy/WCTL's deposition requests. In particular, the Applicants responded to Entergy/WCTL's February 16, 1996 request at 9:47 p.m. on the evening of February 28, 1996, nearly six hours after the 4:00 p.m. deadline to notice disputes for the March 1, 1996 discovery conference. In light of the similarity of subjects for the Shalah, Gough, and Hutton depositions, however, counsel for Entergy/WCTL nevertheless noticed the issue for the March 1 conference by letter sent via facsimile on the morning of February 29, 1996.

WCTL's requests for depositions both was a "clear error of judgment" and will work a "manifest injustice."⁵

Specifically, the issues of concern to Entergy/WCTL involved particular sets of relevant facts of which none of Applicants' or BN/Santa Fe's testifying witnesses possessed other than rudimentary knowledge. These facts directly pertained to the issues to be raised by Entergy and WCTL in their Comments (to be filed March 29, 1996) and to Entergy's Inconsistent Application (to be filed March 29, 1996 as well).

2. Entergy/WCTL Sought to Depose these Individuals Regarding Relevant Information

(i) Mr. Shalah

As indicated in its February 15, 1996 letter to BN/Santa Fe, Entergy's request to depose Mr. Shalah was based upon the specific need for information regarding the nature of the competition that BN/Santa Fe would be likely to provide for coal movements to Entergy's Nelson and White Bluff power plants if the Board approves the subject Application. Specifically, Entergy sought to develop information pertinent to the viability of BN/Santa Fe's participation in future Entergy coal movements from the only individual with direct knowledge of the competitive forces at work with respect to such movements. Nevertheless,

⁵ At the outset of the March 1 discovery conference, Judge Nelson acknowledged that he had not had an opportunity to familiarize himself with the issues under consideration. Tr. at 1482. Furthermore, Judge Nelson indicated that scheduling constraints would preclude any lengthy evaluation of the many disputes to be heard that day. Id. at 1494.

after first inquiring into the pre- and post-merger competitive relationship between the carriers serving Entergy's plants, Judge Nelson ruled that he was "not getting why you want this Burlington Northern (sic) to witness what this is about," that he "[did] not see the need for this" and that he would deny Entergy's request on that basis. Tr. at 1647-48.

(ii) Messrs. Gough and Hutton

Similarly, as indicated in their February 16, 1996 letter to the Applicants, Entergy/WCTL's request to depose Messrs. Gough and Hutton was based upon WCTL's need to inquire into issues concerning the effect of the merger upon competition between UP-originated and SP-originated coals, and Entergy's need to inquire into the impact of the proposed merger on competition for the movement of coal to the Nelson and White Bluff plants. These competitive concerns impact directly upon the potential harm of the merger to members of the shipping public. Unlike his ruling upon Entergy's request to depose Mr. Shalah, however, Judge Nelson's denial of permission to depose Messrs. Gough and Hutton lacked any consideration of the relevance of the witnesses' testimony. To the contrary, Judge Nelson made an apparently dispositive determination of the request on the basis of a timing objection, but later suggested that his ruling had been based both upon a timing defect and upon a lack of relevance -- despite the fact that he had allowed no argument regarding that issue. The following excerpt from the transcript of the March 1

discovery conference reflects the entire argument permitted with respect to Mr. Gough and Mr. Hutton:

JUDGE NELSON: Who else do you want?

MR. MILLS: We have also requested that two witnesses from the applicants, Mr. Goth (sic) of the Union Pacific's Coal Marketing Department, and Mr. Hutton of the Southern Pacific's Coal Marketing Department. That request was -- it's technically out of time. It was served yesterday morning. I don't know whether Mr. Roach intends to object to it or not, but it covers several of the same subjects we wanted to go into with Mr. Shala (sic).

MR. ROACH: I do intend to object, but it's governed by the --

JUDGE NELSON: Sustained. I am denying that request. So I am denying the deposition as to all three.

* * *

MR. MILLS: May I raise a point of clarification, Your Honor, on your ruling of the deposition of the applicants, my recollection is that when I began to discuss the merits, Mr. Roach objected on the grounds that it was not (sic) out of time. We didn't notice it properly. Was that the basis for your ruling?

JUDGE NELSON: No.

MR. MILLS: We didn't go into all the subjects which we wanted to.

JUDGE NELSON: I was not seeing a sufficient connection with the case to warrant those depositions right now and if they were out of time, then that's an additional ground. We have to have a system to try to make sense.

See Tr. at 1649, 1728. To reiterate, although Judge Nelson refused to hear argument on the merits with respect to Messrs. Gough and Hutton, he nevertheless puzzlingly explained that his

ruling had been based upon their lack of relevance to the case, or in his words, the absence of a "sufficient connection with the case." Id. at 1728.

Entergy/WCTL submit that the subjects to be addressed in each of the three requested depositions do constitute relevant matters and are therefore proper for discovery under the Board's governing standard. See 49 C.F.R. § 1114.21. Potential competition from BN/Santa Fe for service to Entergy's plants goes directly to the issues under consideration in the Application and in Entergy's Responsive Application. Similarly, source competition between UP-originated and SP-originated coal also easily meets the relevance standard for discovery under the Board's regulations.⁶ Consequently, Judge Nelson's apparent perception that this information was irrelevant was ill-considered. In fact, as the above-cited argument at the discovery conference regarding the two Applicant witnesses shows, Judge Nelson gave virtually no consideration at all to this question.

3. No Other Witnesses Could Address
the Relevant Issues of Concern

In addition to meeting the Board's test of relevance, the information sought from these three individuals was not available from other so-called "testifying witnesses" who submitted verified statements and who were deposed. Absent this

⁶ In fact, during a separate line of argument at the discovery conference, Judge Nelson himself acknowledged the significance and fundamental relevance of the merger's potential impact upon coal transportation. See Tr. at 1618.

information, Entergy and WCTL will be greatly disadvantaged in their efforts to oppose or seek conditions to this merger designed to ameliorate its competitive impacts with respect to certain coal movements. By denying Entergy and WCTL access to information that they will need to meet the extremely high burden of proof necessary to justify the grant of competitive conditions to approval of the Application, Judge Nelson's decision works a manifest injustice.

In a number of prior instances, the Applicants' "testifying witnesses" indicated that they lacked direct knowledge of the issue of source competition for western coal movements. In addition, these individuals have specifically identified Mr. Gough, and unnamed persons in SP's coal marketing department (such as Mr. Hutton), as the primary sources of such information. For example, Witness Sharp indicated in his deposition that he spoke with Mr. Gough to clarify data sources and to acquire factual information regarding coal traffic. See Transcript of Deposition of Richard G. Sharp, at 21-22. Mr. Sharp also testified that he neither spoke with anyone from SP's coal marketing department nor made any effort to determine SP's view of its ability to compete with UP to originate coal. Id. at 25. Finally, Mr. Sharp testified that he lacked knowledge of Entergy's Nelson Plant. Id. at 67.

Similarly, UP Witness Peterson testified that he relied upon his coal marketing department to make specific determinations as to competitive options for Entergy, and that he pos-

sessed no expertise as to pricing for service out of the Powder River Basin. See Transcript of Deposition of Richard B. Peterson, at 328, 352-53.

In fact, counsel for the Applicants acknowledged the testifying witnesses' lack of knowledge at the March 1 discovery conference, admitting that there were certainly other witnesses with more specific knowledge as to coal movements such as those to Entergy's power plants.⁷ Nevertheless, the Applicants and BN/Santa Fe argued that Judge Nelson should adopt a more restrictive standard for determining whether "non-testifying witnesses" should be deposed. Judge Nelson specifically rejected this distinction. See Tr. at 1496, 1502, 1524-25. As previously indicated, however, the Applicants also repeatedly argued that the Board specifically disfavors all depositions, relying upon the decision in Annual Volume Rates on Coal, supra at note 3. Entergy/WCTL again respectfully submit that this argument seeks to treat this tremendously significant case in the same fashion as any routine matter before the Board. This argument also ignores the December 7, 1995 Discovery Guidelines' specific

⁷ MR. ROACH: [T]he current reasons you're going to hear are well, these people know something that the other witnesses don't know. And that -- of course, that can always be true. . .

JUDGE NELSON: Who better to talk about the meeting that Mr. Dealey?

MR. ROACH: Sure, and there are thousands of meetings that have taken place that they could list another 200 people.

Tr. at 1499.

approval of depositions of non-testifying witnesses in this case, and should therefore be rejected.

4. Judge Nelson Improperly Based his Decision
Upon his Impression of the Merits of the Case

Finally, Entergy/WCTL respectfully submit that Judge Nelson's decision should also be reversed to the extent that it went beyond a mere determination of relevance and instead reflects Judge Nelson's premature determination of the merits of Entergy's intended claims in this case. As noted above, Judge Nelson's chief inquiry during the consideration of the requested Shalah deposition involved a discussion of UP and SP's ability to exclude other carriers from the market for coal transportation service to Entergy's plant. This inquiry, however, was completely inappropriate for this stage of the proceeding. In effect, Judge Nelson evaluated Entergy's position with respect to the impact of the merger (without the benefit of a full evidentiary submission), speculated that the merger would not harm Entergy, and thereupon ruled that Entergy did not "need" competition-related evidence. Tr. at 1648. This premature determination of the merits flies in the face of proper discovery procedure and should not be allowed to stand as a basis for a ruling on an issue of relevance.

In addition, the Applicants will undoubtedly defend their position in this proceeding with the claim that BN/Santa Fe will provide adequate competition, and the Board will subsequently evaluate Entergy's Comments and its Inconsistent Application

on the basis of Entergy's ability to prove a lack of effective competition. Again, the effect of Judge Nelson's pre-judgment is to deprive Entergy of the ability to develop evidence necessary to enable it to meet its burden before the substantive decision-making body, i.e. the Board, in this proceeding.

CONCLUSION

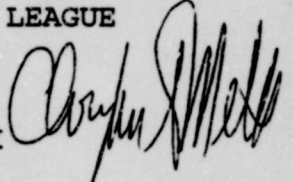
For the foregoing reasons, Entergy/WCTL request that the Board reverse Judge Nelson's decision and authorize the three requested depositions. In addition, Entergy/WCTL request that the Board act in an expedited fashion in order to permit Entergy/WCTL to take the requested deposition in advance of the March 29, 1996 deadline for Comments and Inconsistent Applications.⁸ Finally, for the Board's information, Entergy/WCTL are prepared take the requested depositions (each of which will last less than half a day) at any location that will minimize burden on the witnesses.

⁸ Given the fact that Entergy will file an Inconsistent Application, and will therefore have the right to file rebuttal evidence on May 14, 1996, the Board should not decline this appeal on the basis of mootness, should the Board be unable to decide this appeal prior to March 29.

Respectfully submitted,

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

By: C. Michael Loftus
Christopher A. Mills
Andrew B. Kolesar III
Patricia E. Kolesar
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170



OF COUNSEL:

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

Dated: March 6, 1996

Attorneys for Entergy
Services, Inc. and its
affiliates Arkansas Power &
Light Company and Gulf States
Utilities Company

APPENDIX I

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

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

202 347-7170

* ADMITTED IN PENNSYLVANIA ONLY

February 28, 1996

VIA FACSIMILE

Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
Room 11F21
888 First Street, N.E.
Washington, D.C. 20426

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

Dear Judge Nelson:

At the discovery conference scheduled for Friday, March 1, 1996, Entergy Services, Inc. and its affiliates Arkansas Power & Light Company and Gulf States Utilities Company (collectively "Entergy") and the Western Coal Traffic League ("WCTL") will seek to resolve a discovery dispute with BN/Santa Fe concerning WCTL's and Entergy's request to take the deposition of Sami M. Shalah, Assistant Vice President Coal Marketing of the BN/Santa Fe.

On February 15, 1996, I wrote to Erika Z. Jones, lead counsel for BN/Santa Fe, notifying her of our desire to depose Mr. Shalah and of the subjects to be covered at his deposition. Today Ms. Jones responded by letter, declining our request to make Mr. Shalah available for deposition testimony. Copies of my February 15 letter to Ms. Jones and her responsive letter dated today are enclosed for your information.

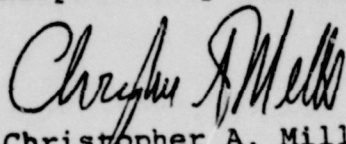
While Paragraph 6 of the Discovery Guidelines in this proceeding appears to place the burden of seeking resolution of discovery disputes concerning objections to a deposition on the objecting party (in this case BN/Santa Fe), we believe it is appropriate to bring the matter before you directly rather than waiting for BN/Santa Fe to do so in view of the short time (four weeks) remaining before parties such as Entergy and WCTL must file their comments and/or inconsistent or responsive applications on the merits in this proceeding.

Honorable Jerome Nelson
January 31, 1996
Page 2

Entergy, in particular, intends to seek conditions requiring the Applicants to either grant BN/Santa Fe trackage rights so as to permit BN/Santa Fe to serve Entergy's White Bluff and Nelson Generating Stations in Arkansas and Louisiana, or to amend the September 25, 1995 Settlement Agreement between Applicants and BN/Santa Fe so as to include these plants as "two-to-one" points that can be served by BN/Santa Fe pursuant to the trackage rights granted in the Settlement Agreement. Mr. Shalah has knowledge of the competitive situations at both the White Bluff and Nelson plants, and he was involved in competitive bidding last August (shortly after the UP/SP merger was announced) for a portion of the Nelson coal traffic between BN/Santa Fe, UP, SP and KCS. His deposition testimony is necessary to enable Entergy to develop and support the factual predicate for the conditions it intends to seek.

In further support of our clients' request to take Mr. Shalah's deposition, I would note that in the recent BN/Santa Fe merger case, Finance Docket No. 32549, individual parties including electric utilities were permitted to depose individuals at BN and Santa Fe who had not submitted verified statements in support of the application but who had knowledge of the facts concerning specific competitive situations -- including Mr. Shalah. Without the ability to take such depositions, parties such as Entergy and WCTL are unable to develop essential facts concerning their competitive situations from any knowledgeable witness from the Applicants or parties such as BN/Santa Fe who are in the position of supporting the merger application from a competition standpoint.

Respectfully submitted,



Christopher A. Mills

CAM/mfw

Enclosures

cc: Erika Z. Jones, Esq.
Restricted Service List

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

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

202 347-7170

• ADMITTED IN ILLINOIS ONLY

February 15, 1996

VIA TELECOPIER

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

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

Dear Ms. Jones:

On behalf of the Western Coal Traffic League and our individual utility and producer clients, we desire to depose Mr. Sami M. Shalah, Assistant Vice President Coal Marketing of the BN/Santa Fe. We suggest that Mr. Shalah's deposition be scheduled for the week of February 26 or March 4, 1996, in Washington or Fort Worth.

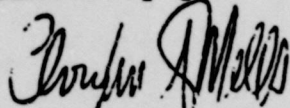
We wish to inquire of Mr. Shalah concerning the implications of the September 25, 1995 Settlement Agreement between the Applicants and BN/Santa Fe with respect to the movement of Colorado/Utah coal by BN/Santa Fe.

We understand that Mr. Shalah has responsibility for the Entergy account at BN/Santa Fe, and that he was involved in the 1995 bidding for the movement of Powder River Basin coal to Gulf States Utilities' Nelson Station. Additional areas of inquiry for Mr. Shalah include the 1995 Nelson bidding, the feasibility of competitive service by BN/Santa Fe for the movement of coal to the Nelson Station and Arkansas Power & Light Company's White Bluff Station both with and without the proposed merger, and the implications of the September 25, 1995 Settlement

Erika Z. Jones, Esq.
February 15, 1996
Page 2

Agreement with respect to the ability of BN/Santa Fe to provide competitive rail service to the Nelson and White Bluff Stations.

Sincerely yours,



Christopher A. Mills

CAM:mfw

cc: Honorable Jerome Nelson (via telecopier)
Restricted Service List (via telecopier)

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

CHICAGO
BERLIN
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LONDON
LOS ANGELES
NEW YORK
MEXICO CITY CORRESPONDENT
JAUREGUI, NAVARETTE, NAUER Y SOJAS

202-462-2000
TELEX 982603
FACSIMILE
202-681-0473

ERNA Z. JONES
202-778-0548

February 28, 1996

By Facsimile

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

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

Dear Mr. Mills:

We have received your request that we make Mr. Sami M. Shalah, the Assistant Vice President Coal Marketing of BN/Santa Fe, available for deposition testimony in this proceeding. After careful consideration of your request, it is BN/Santa Fe's position that it should not be required to produce Mr. Shalah for deposition testimony. Mr. Shalah is an employee of a company that is not a primary applicant here, and he did not submit testimony in this proceeding. He should not be required to make himself available for deposition testimony to address issues which can be addressed by other witnesses or issues which are not relevant to this proceeding. This is particularly so in light of his substantial daily obligations and responsibilities.

Accordingly, we respectfully decline your request to make Mr. Shalah available for deposition testimony. If you have any

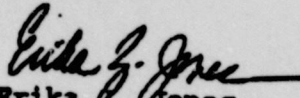
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MAYER, BROWN & PLATT

TO 1563#95210647#34 P.05/21

Christopher A. Mills, Esq.
February 28, 1996
Page 2

questions regarding BN/Santa Fe's position in this regard, please
call me.

Sincerely,


Erika E. Jones

cc: The Honorable Jerome Nelson
The Honorable Vernon Williams
Restricted Service List

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20006

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

202 347-7170

* ADMITTED IN PENNSYLVANIA ONLY

February 29, 1996

VIA FACSIMILE

Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
Room 11F21
888 First Street, N.E.
Washington, D.C. 20426

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

Dear Judge Nelson:

In my letter to you dated yesterday (February 28th), I placed on the agenda for tomorrow's discovery conference BN/Santa Fe's refusal to permit the deposition of Sami M. Shalah of BN/Santa Fe's coal marketing department to be taken on behalf of several of our clients in the above proceeding.

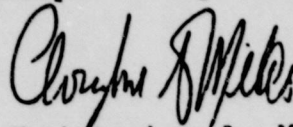
This letter is to advise that, on behalf of the same clients, we also wish to bring before you at tomorrow's discovery conference the Applicants' refusal to make two individuals from the UP's and SP's coal marketing departments, Mr. F.M. Gough and Mr. J.T. Hutton, available for deposition.

The Applicants were requested to make Mr. Gough and Mr. Hutton available for deposition in a letter from Mr. Loftus of this firm to Messrs. Roach and Cunningham dated February 16, 1996. By letter dated yesterday, and faxed to us at 9:47 PM last night (too late to provide the customary notice of our intent to raise this matter at the March 1 discovery conference, which was due at 4:00 PM yesterday), the Applicants have refused to make Messrs. Gough and Hutton available for deposition. Copies of Mr. Loftus' February 16 letter and Mr. Roach's responsive letter of February 28 are enclosed for your information.

Honorable Jerome Nelson
February 29, 1996
Page 2

We respectfully request that, under the circumstances, you waive the normal prenotification requirement and resolve the dispute between our clients and Applicants concerning the Gough and Hutton depositions at tomorrow's discovery conference. Applicants took 13 days to respond to a simple and straightforward deposition request, and the timing of their response is such that, absent a waiver, this matter could not be brought before you for another week (or a mere 21 days before the March 29, 1996 due date for substantive comments and requests for conditions with respect to the merger application). The subjects on which we wish to depose Messrs. Gough and Hutton are very similar to the subjects to be covered in deposing Mr. Shalah, and it is therefore appropriate to consider the propriety of deposing all three of these individuals at the same time.

Respectfully submitted,



Christopher A. Mills

CAM/mfw

Enclosures

cc: Arvid E. Roach II, Esq.
Paul Cunningham, Esq.
Erika Z. Jones, Esq.
Restricted Service List

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLOZZI
ANDREW B. KOLESAR III
PATRICIA R. DIETRICH

202 347-7170

* ADMITTED IN ILLINOIS ONLY

February 16, 1996

VIA TELECOPIER

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

Paul Cunningham, Esq.
Harkins Cunningham
1300 19th Street, N.W.
Suite 600
Washington, D.C. 20036

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

Dear Arvid and Paul:

On behalf of the Western Coal Traffic League and our individual utility and producer clients, we desire to depose Mr. F.M. Gough, Business Director in the Energy Marketing Group of the Union Pacific Railroad's Marketing and Sales Department, and Mr. J. T. Hutton, Managing Director-Coal Marketing & Sales of Southern Pacific Lines. We suggest that these depositions be scheduled for the week of February 26 or March 4, 1996, in Washington or other convenient location(s).

At the King/Ongerth deposition, Mr. King identified Mr. Gough as one of the individuals in UP's Energy Marketing Group who was consulted concerning the development of the Operating Plan for the merged UP/SP system, and we wish to inquire of Mr. Gough concerning the implications of the Operating Plan with respect to the movement of western coal by the merged system and the implications of the September 25, 1995 Settlement Agreement between the Applicants and BNSF with respect to the movement of Colorado/Utah coal. Similarly, Mr. Ongerth testified that unnamed individuals in SP's coal marketing group were consulted

Messrs. Roach and Cunningham
February 16, 1996
Page 2

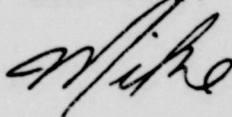
concerning the Operating Plan, and we wish to inquire into the same areas with Mr. Hutton.

Messrs. Peterson and Sharp, at their depositions, both also identified Mr. Gough as one of the people at UP with whom they spoke in preparing their verified statements. Mr. Peterson indicated that he had also spoken to someone in SP's coal marketing group; Mr. Sharp spoke to no one at SP.

We have questions concerning the impacts of the proposed merger on various specific coal movements. Mr. Sharp, who is the Applicants' witness responsible for analyzing the effects of the merger on coal shippers, was unable to respond at his deposition to questions about specific situations involving movements of coal originated by UP or SP. We desire to depose individuals at UP and SP who are knowledgeable about the specifics of individual utility situations, and Messrs. Gough and Hutton appear to be in a position to answer questions about such situations.

As an example, we understand that Mr. Gough and Mr. Hutton have responsibilities in connection with the Entergy account at their respective railroads, and that each was involved in the 1995 bidding for the movement of Powder River Basin coal to Gulf States Utilities' Nelson Station. We would like to inquire of each of these individuals as to his company's participation in the 1995 Nelson bidding, the feasibility of competitive service by BN/Santa Fe for the movement of coal to the Nelson Station and Arkansas Power & Light Company's White Bluff Station both with and without the proposed merger, and the implications of the September 25, 1995 Settlement Agreement with respect to competitive rail service to the Nelson and White Bluff Stations.

Sincerely,



C. Michael Loftus

CML/raw

cc: Honorable Jerome Nelson (via telecopier)
Paul Cunningham, Esq. (via telecopier)
Restricted Service List (via telecopier)

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

TELEFAX: (202) 662-6291

TELEX: 88-393 COVLING WSH

CABLE: COVLING

ARVID E. ROACH II

DIRECT DIAL NUMBER

(202) 662-6288

DIRECT TELEFAX NUMBER

(202) 778-6388

LEGIONFIELD HOUSE

CURSON STREET

LONDON W1T 6LX

ENGLAND

TELEPHONE: 44-21-492-0000

TELEFAX: 44-21-492-2001

BRISBANE CORRESPONDENT OFFICE

44 ADELAIDE STREET NORTH

BRISBANE 1040 AUSTRALIA

TELEPHONE: 61-6-252-0000

TELEFAX: 61-6-252-1000

February 28, 1996

BY FACSIMILE

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

Dear Mike:

This responds to your February 16, 1996 letter in which you express WCTL's and your individual utility and producer clients' desire to depose F.M. Gough and J.T. Hutton.

Applicants do not believe there is any justification for providing Mr. Gough or Mr. Hutton for deposition. As you point out in your letter, Applicants have already presented witnesses to address the very subjects upon which you wish to question Messrs. Gough and Hutton: Messrs. King and Ongerth were made available to discuss the Operating Plan in general, as well as the movement of Western coal in particular. In addition, Mr. Peterson was made available as a knowledgeable individual from UP who could discuss the effects of the merger on coal shippers, and Mr. Gray was made available as a knowledgeable individual from SP who could do so. And in fact, both Mr. Peterson and Mr. Gray were questioned, and provided answers, regarding the railroads' coal business. Furthermore, Mr. Sharp was made available as a witness who focused solely on coal issues. While your February 16 letter indicates that Mr. Sharp was unable to respond to questions about specific UP or SP coal movements, Messrs. Peterson and Gray were available to testify regarding shipper-specific coal issues.

Your request to depose non-testifying witnesses is troubling. Applicants have received requests to depose 16 non-testifying witnesses in addition to the 21 witnesses Applicants have made available for 7 weeks of depositions. In its letter of January 25, KCS predicted that "the number of relevant witnesses is going to grow geometrically with each witness." While Applicants disagree that the number of relevant witness has grown, it is certainly true that the number of requests for depositions has grown geometrically.

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As we have stated before, Applicants reject the notion that parties have the right to depose all individuals who may have the slightest knowledge about anything arguably relevant to the merger application. This is especially true if testifying witnesses can amply address the particular topic -- whether or not those witnesses know every detail that some other witness might add. This is not a multi-year, wide-open, old-style federal court case in which depositions can be taken by the scores or hundreds if they meet bare standards of relevance. It is a highly expedited proceeding before an agency whose law disfavors depositions, and which has specifically instructed that discovery be strictly restricted to relevant matters. See Decision No. 6, served Oct. 19, 1995, p. 8 ("In pursuing discovery and in preparing pleadings, we encourage parties (and will instruct the Administrative Law Judge) to focus strictly on relevant issues").

Applicants have provided 21 witnesses for 7 weeks of depositions. Where no testifying witness could address a significant matter, Applicants have been prepared to provide an additional witness for deposition, as they have with Mr. Kauders, or to cooperate in other informal discovery. But Applicants are not willing to allow the number of depositions to "grow geometrically," as many parties to this case would prefer. Where testifying witnesses (three in this particular case) have addressed a topic, Applicants see no need to make additional, cumulative, non-testifying witnesses available for deposition.

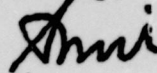
Finally, your request to depose non-testifying witnesses is contrary to the principles established in the Discovery Guidelines. The Guidelines contemplate that parties will be able to use the month of March to prepare their upcoming filings. This is just as important to the Applicants -- who must file their rebuttal at the end of April -- as to other parties, and that is why the Guidelines establish a month-long bilateral "moratorium" on written discovery. The Applicants scheduled the depositions of their witnesses to take place in January and February, despite the difficulties in preparing for so many depositions in such a condensed period. (In fact, as you will recall, Applicants wanted to begin the deposition schedule two weeks earlier in order to allow more time for preparation, but changed the schedule at the request of many of the active parties.) The multiple requests, by a variety of different merger opponents, for depositions of non-testifying witnesses would tie down the Applicants in continued formal discovery throughout the month of March and would undermine the idea of a "moratorium."

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For these reasons, Applicants do not intend to
produce Mr. Gough or Mr. Hutton for deposition.

Sincerely,



Arvid E. Roach II

cc: Hon. Jerome Nelson
Restricted Service List (by facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 1996, I caused a copy of the foregoing: (i) Appeal of Entergy Services, Inc., Arkansas Power & Light Company, Gulf States Utilities Company, and the Western Coal Traffic League; and (ii) Appendix I to such Appeal, to be served by facsimile on the individuals listed below, and by first-class United States mail, postage prepaid, on all other persons on the Restricted Service List in this proceeding.

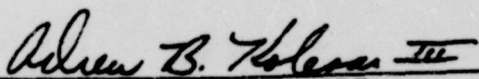
Arvid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

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

Carol A. Harris, Esq.
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, California 94105

Louise A. Rinn, Esq.
Union Pacific Railroad Company
Law Department
1416 Dodge Street
Omaha, Nebraska 68179

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


Andrew B. Kolesar III