STB FD 32760 2-2-96 61167

Item No. _____

Page Count 28

Feb # 24

NGTON & BURLING
NNSYLVANIA AVENUE, N. W.
P.O. BOX 7566
NGTON, D.C. 20044-7566
(202) 662-6000

TELEFAX: (202) 662-6291
TELEX: 89-593 (COVLING WSH)
CABLE: COVLING

LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND
TELEPHONE: 44-171-495-5655
TELEFAX: 44-171-495-3101

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

MICHAEL L. ROSENTHAL
DIRECT DIAL NUMBER
(202) 662-5448
DIRECT TELEFAX NUMBER
(202) 778-5448

February 2, 1996

BY HAND

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

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty copies of Applicants' Submission of Settlement Agreements with Utah Railway and Illinois Central (UP/SP-74). Also enclosed is a 3.5-inch disk containing the text of this pleading in WordPerfect 5.1 format.

Please note that Applicants' settlement agreement with Illinois Central has two versions: one is redacted for the public file, and the other contains "Highly Confidential" information for filing under seal. The redacted version is included as Exhibit B to this filing, which is being served on all parties. The "Highly Confidential" version is clearly marked and is being separately filed with the Board under seal. The Board is being provided with 20 copies of both versions. The "Highly Confidential" version is also being served on parties that have requested it and have indicated that they will adhere to the restrictions of the protective order.

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

Sincerely,

Michael L. Rosenthal

Enclosures

cc: Hon. Jerome Nelson
Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' SUBMISSION OF SETTLEMENT AGREEMENTS WITH UTAH RAILWAY AND ILLINOIS CENTRAL

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

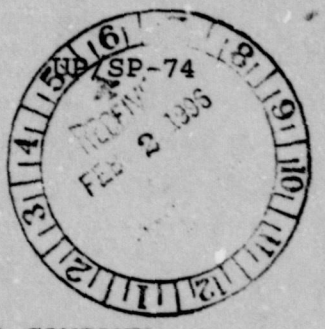
CARL W. VON BERNUTH
RICHARD J. RESSLER
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018
(610) 861-3290

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

February 2, 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' SUBMISSION OF SETTLEMENT AGREEMENTS
WITH UTAH RAILWAY AND ILLINOIS CENTRAL

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW hereby submit copies of the settlement agreements that they have reached in this proceeding with Utah Railway Company (Exhibit A hereto) and Illinois Central Railroad Company (Exhibit B hereto).

I. SETTLEMENT WITH UTAH RAILWAY

Applicants have entered into a settlement agreement with Utah Railway in order to resolve a dispute about Applicants' ability to grant trackage rights to BN/Santa Fe over joint SP/Utah Railway track that forms a portion of the SP mainline between Denver, Colorado, and Salt Lake City, Utah. Under the settlement, Utah Railway will receive access to certain additional coal sources in Utah and Colorado, and will receive overhead trackage rights between Utah Railway Junction, Utah, and Grand Junction, Colorado, which will allow for greater crew efficiencies on traffic interchanged with UP/SP or BN/Santa Fe at Grand Junction.

Applicants' settlement with Utah Railway is not intended to address any competitive issue raised by the UP/SP merger. As Applicants have demonstrated in their application, the UP/SP merger will not cause any lessening of competition for Western coal traffic. Rather, the merger will enhance such competition and provide significant benefits to coal producers. Applicants' settlement resolves a contractual dispute with Utah Railway on a sound business basis. In addition, the settlement, by providing increased access to Utah coal for Utah Railway, will further enhance competition. Applicants' witness Richard G. Sharp will be prepared to address the Utah Railway's expanded coal access at his deposition on February 13, 1996.

II. SETTLEMENT WITH IC

Applicants have entered into a settlement agreement with IC that, among other things, calls for developing traffic through joint marketing efforts after the consummation of the UP/SP merger. The agreement addresses IC's expressed concerns about UP/SP's continued cooperation in joint-line routings with IC following the merger. Applicants are of the view that, as the ICC ruled in many rail merger decisions, joint-line routings will continue to be used whenever they are efficient. Nonetheless, in the interest of resolving disputes amicably through settlement, Applicants have agreed that UP/SP will continue to join with IC in joint routings when it is

efficient to do so. Other provisions of the agreement address specific joint marketing opportunities which Applicants have agreed with IC, in the parties' mutual interest, to work to develop.[1/] The agreement also contains provisions designed to ensure efficient operations after the merger, such as a clarification of interchange arrangements in the Chicago area.

As is true of Applicants' settlement with Utah Railway, Applicants' settlement with IC is not intended to resolve any competitive issue raised by the UP/SP merger. Rather, Applicants' have agreed to resolve several matters relating to IC's relationship with UP/SP on a mutually beneficial business basis.

1/ Certain commercially sensitive provisions of the agreement have been redacted from the public version of the agreement which is attached hereto. A full copy of the agreement, classified "Highly Confidential" pursuant to the protective order in this proceeding, has been placed in Applicants' document depository, is being served on parties that have requested it and have indicated that they will adhere to the restrictions of the protective order, and is being separately filed with the Board under seal.

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
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

February 2, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 2nd day of February, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

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

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

Michael L. Rosenthal

EXHIBIT A

1/17/96

SETTLEMENT AGREEMENT

This Agreement ("Agreement") is entered into this 17th day of January, 1996, between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP", with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Utah Railway Company, hereinafter referred to as "UTAH", on the other hand, concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Interstate Commerce Commission ("ICC") in 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.

NOW, THEREFORE, in consideration of their mutual promises and in the interest of preserving and promoting rail service competition, UP/SP and UTAH agree as follows:

1. **Trackage Rights**

a) UP/SP shall grant UTAH trackage rights over SP's line between Utah Railway Junction, Utah and Grand Junction, Colorado (the joint track).

b) The trackage rights granted under this Agreement shall be bridge rights for the movement of overhead traffic only except for the local access specified below.

c) UTAH shall have the right in common with UP/SP to serve the Savage Industries, Inc. Savage Coal Terminal coal loading facility located on the so-called CV Spur near Price, Utah.

d) UTAH shall pay UP/SP as compensation for the trackage rights granted by this Agreement 3.1 mills per ton mile for carload traffic and 3.0 mills per ton mile for bulk traffic (67 cars or more of one commodity in one car type). These rates shall apply to all equipment moving as a train consist including locomotives. UP/SP shall be responsible for ordinary maintenance of the joint track including rail relay and tie replacement. The compensation for such maintenance shall be included in the mills per ton mile rates received by UP/SP under this Agreement.

e) In addition to the mills per ton mile rate, UTAH shall also pay its share of the cost of any capacity improvements required for the joint track so long as such capacity improvements are beneficial to UTAH's operations as well as UP/SP's. These costs shall be borne by the parties on the basis of their respective usage (gross ton mile basis) of the joint track determined for the 12 month period prior to making such improvement.

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

UP/SP shall keep and maintain the joint track at no less than the track standard designated in the current timetable for the joint track.

g) Each party shall be responsible for any and all costs relating to providing employee protection benefits, if any, to its employees prescribed by law, governmental authority or employee protective agreements where such costs and expenses are attributable to or arise by reason of that party's operation of trains over the joint track. To the extent that it does not violate existing agreements, for a period of three years following acquisition of control of SP by UP, UTAH shall give preference to UP/SP's employees when hiring employees needed to carry out trackage rights operations. UP/SP shall provide UTAH with lists of available employees by craft or class to whom such preference shall be granted. Nothing in this Section 1.g) is intended to create an obligation to hire any specific employee.

h) The trackage rights grants described in this Agreement, shall be included in a separate trackage rights agreement of the kind and containing such provisions as are normally and customarily utilized by the parties, including exhibits depicting specific rail line segments, and other provisions dealing with maintenance, improvements, and liability, and the general provisions described in this section. The parties shall use their best efforts to complete such agreement by July 1, 1996. If agreement is not reached by July 1, 1996 either party may request that any outstanding matters be resolved by binding arbitration with the arbitration proceeding to be completed within sixty (60) days of its institution. In the event such agreement is not completed by the date the grant of such trackage rights are to be effective, it is intended that operations under such grant shall be commenced and governed by this Agreement.

i) All trackage rights charges under this Agreement shall be subject to adjustment

annually beginning as of the effective date of this Agreement to reflect seventy percent (70%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the Surface Transportation Board or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and failing to agree on such an index, the matter shall be referred to binding arbitration under Section 7 of this Agreement.

Upon every fifth anniversary of the effective date of this Agreement, either party may request on ninety (90) days notice that the parties jointly review the operations of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 7 of this Agreement. It is the intention of the parties that rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement.

j) The trackage rights and access rights granted by this Agreement (including the access rights granted in Section 2 hereof) shall be for both carload and bulk (E.g. coal unit-train) commodities.

k) UP/SP agree to work with UTAH to make railroad-owned rail cars available for UTAH-UP/SP interchange traffic in the same manner UP/SP will make railroad-owned cars available for shippers served by UP/SP.

2. <u>Additional Coal Mine Access</u>

a) In addition to the coal mine access granted in Section 1.c), UP/SP also grant UTAH access to Cyprus Amax' Willow Creek Mine adjacent to the SP main line near Castle Gate, Utah over which UTAH has operating rights pursuant to a Joint Trackage Agreement dated November 1, 1913 between The Denver & Rio Grande Railroad Company and Utah Railway Company. This grant of access is exclusive, contingent upon and subject to either (A) Cyprus Amax' written agreement to such exclusive access or (B) its failure to object, in writing, within thirty (30) days of its receipt of a notice of this provision of this Agreement. Notwithstanding any such written objection, UTAH shall have a further period of ninety (90) days to address concerns raised by Cyprus Amax and conclude an agreement with Cyprus Amax.

The grant of exclusive access to Cyprus Amax' Willow Creek Mine is also subject to business under contract between SP and Cyprus Amax, specifically for the Willow Creek Mine, as of the date of UP's acquisition of control of SP; provided, however, that if (i) UTAH has satisfied the contingencies described above for exclusive access to the Willow Creek Mine, and (ii) any

such contract has not yet expired, then UTAH and UP/SP will negotiate a service contract or revenue division for only the remaining portion of such contract(s) in order to facilitate the exclusive service to the Willow Creek Mine by UTAH.

b) UTAH shall be responsible for any improvements to trackage and other facilities required to efficiently provide rail service to Cyprus Amax' Willow Creek mine if UTAH access is exclusive.

3. **Admission of BN/Santa Fe to UTAH Trackage**

Pursuant to an Agreement dated September 25, 1995 and a Supplemental Agreement dated November 18, 1995, between UP/SP on the one hand and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, hereinafter collectively referred to as "BN/Santa Fe", on the other hand, UP/SP granted BN/Santa Fe trackage rights over SP's line between Denver, Colorado and Salt Lake City, Utah. SP and UTAH operate over each other's tracks between Utah Railway Junction and Provo in Utah pursuant to an Operating and Trackage Agreement dated November 1, 1913 between The Denver and Rio Grande Railroad Company and Utah Railway Company. UTAH hereby authorizes UP/SP to grant BN/Santa Fe the right to use, in common with UTAH and UP/SP and subject to the November 1, 1913 Agreement, the trackage of UTAH covered by the November 1, 1913 Agreement, subject to the entry of a Final Order as specified in Section 4. For purposes of allocating expenses and other items under the November 1, 1913 Agreement, BN/Santa Fe usage shall be considered UP/SP usage. UTAH also agrees not to make any claim or assertion whatsoever that UP/SP do not have the right, without UTAH's consent, to authorize BN/Santa Fe to use, in common with UTAH and UP/SP and subject to the November 1, 1913 Agreement, the trackage of SP covered by the November 1, 1913 Agreement.

4. **Term**

This Agreement shall be effective upon execution for a term of ninety-nine years, provided, however, that the grants of rights under Sections 1 and 2 shall be effective only upon UP's acquisition of control of SP. This Agreement and all agreements entered into pursuant or in relation hereto shall terminate, and all rights conferred pursuant thereto shall be canceled and deemed void ab initio, if, in a Final Order, the application for authority for UP to control SP has been denied or has been approved on terms unacceptable to the applicants, provided, however, that if this Agreement becomes effective and is later terminated, any liabilities arising from the exercise of rights under Sections 1 and 2 during the period of its effectiveness shall survive such termination. For purposes of this Section 4, "Final Order" shall mean an order of the Surface Transportation Board, any successor agency, or a court with lawful jurisdiction over the matter

which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

5. **Assignability**

This Agreement and any rights granted hereunder may not be assigned in whole or in part by either party without the prior consent of the other party except as provided in this Section. UTAH may not permit or admit any third party to the use of all or any of the joint track to which it has obtained rights under this Agreement, nor under the guise of doing its own business, contract or make any arrangement to handle as its own trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of UTAH. This Agreement may be assigned by either party without the consent of the other party only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets.

6. **Government Approvals**

The parties agree to cooperate with each other and make whatever filings or applications, if any, are necessary to implement the provisions of this Agreement or of the separate agreement made pursuant to Section 1.h) and whatever filings or applications may be necessary to obtain any approval that may be required by applicable law for the provisions of such agreements. UTAH agrees not to oppose the primary application or any related applications in Finance Docket No. 32760 (collectively the "control case"), and not to seek any conditions in the control case, not to support any requests for conditions filed by others, and not to assist others in pursuing their requests. UTAH shall remain a party in the control case, but shall not participate further in the control case other than (a) to support this Agreement, (b) to support the agreements entered into between UP/SP and BN/Santa Fe dated September 25, 1995 and November 18, 1995, (c) to protect the commercial value of the rights granted to UTAH by this Agreement, and (d) to oppose requests for conditions by other parties which adversely affect UTAH.

7. **Arbitration**

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

8. **Further Assurances**

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

9. **No Third Party Beneficiaries**

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

10. **No Precedential Effect**

This agreement is entered into as a settlement among the parties relating to outstanding issues in Finance Docket No. 32760. In the event UP's acquisition of control of SP pursuant to Finance Docket No. 32760 is not consummated the parties agree that this agreement and the terms thereof shall not be used by any party for any reason, including as evidence in any legal or administrative proceeding or any arbitration proceeding. Nothing in this agreement shall be construed to limit the right of SP to operate and manage the use of its own main track.

Signature page for Settlement Agreement dated January 17, 1996

UNION PACIFIC CORPORATION

By: Carlton Bernard
Title: Senior Vice President

UNION PACIFIC RAILROAD COMPANY

By: Carlton Bernard
Title: VICE PRESIDENT

SOUTHERN PACIFIC RAIL CORPORATION

By: _____
Title: _____

MISSOURI PACIFIC
RAILROAD COMPANY

By: James V. Dolan
Title: Vice President

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: _____
Title: _____

THE DENVER & RIO GRANDE
WESTERN RAILROAD COMPANY

By: _____
Title: _____

SPCSL CORP.

By: _____
Title: _____

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY

By: _____
Title: _____

UTAH RAILWAY COMPANY

By: Gary L. Barker
Title: President

Signature page for Settlement Agreement dated January 17, 1996

UNION PACIFIC CORPORATION

By: _____
Title: _____

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

SOUTHERN PACIFIC RAIL CORPORATION

By: John D. Gray
Title: Vice President

MISSOURI PACIFIC
RAILROAD COMPANY

By: _____
Title: _____

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By: John D. Gray
Title: Vice President

THE DENVER & RIO GRANDE
WESTERN RAILROAD COMPANY

By: John D. Gray
Title: Vice President

SPCSL CORP.

By: John D. Gray
Title: Vice President

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY

By: John D. Gray
Title: Vice President

UTAH RAILWAY COMPANY

By: Gary L. Barker
Title: President

EXHIBIT B

REDACTED

AGREEMENT

This Agreement ("Agreement") is entered into this 30th day of January, 1996, between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP", with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Illinois Central Railroad Company, hereinafter referred to as "IC", on the other hand, concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Interstate Commerce Commission ("ICC") in 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.

NOW, THEREFORE, in consideration of their mutual promises, UP/SP and IC agree as follows:

1. Interchange at Chicago.

UP/SP agrees that upon consummation of the common control of UP and SP ("the UP/SP merger") north-south traffic will be interchanged with IC in Chicago at 31st Street or by utilizing The Belt Railway Company of Chicago (BRC). East-west traffic (including traffic from/to former CNW points) will be interchanged with IC in Chicago at 31st Street. UP/SP will be responsible for the associated BRC puller charge on interchange through the BRC. UP/SP will also be responsible for the associated BRC intermediate switch charges on deliveries to IC through the BRC and on receipts from IC through the BRC at UP's request. If IC delivers UP cars through the BRC for its own operating convenience or on its own behalf, then IC will be responsible for the intermediate switch charge. IC will agree to movement of the UP-IC Chicago interchange to Matteson if requested by UP. UP/SP agree that, if interchange is moved to Matteson, UP/SP will be responsible for any intermediate switch charges assessed by carriers other than IC in connection with such UP-IC interchange at Matteson.

2. Rebuilding NOPB East Bridge Interlocking.

a)

b) UP/SP and IC agree to discuss the most advantageous location for control of the East Bridge Interlocking following an on-ground inspection by operating officials of each company to be held on or before April 1; 1996. The parties will consider locating control of East Bridge Interlocking at UP's Harriman Dispatching Center (HDC) located in Omaha, Nebraska. UP/SP is willing to consider installation of an override feature for control of East Bridge Interlocking which would allow IC's dispatchers to establish a route through East Bridge Interlocking. If East Bridge Interlocking control is relocated to HDC, then at IC's request, UP/SP will install a dispatching display (cathode ray tube) in IC's Chicago dispatching office to allow IC to monitor movements through East Bridge Interlocking.

c) UP/SP and IC agree to move control of West Bridge to HDC.

3. IC and BN/Santa Fe Trackage Rights Over NOPB.

UP/SP agrees to support IC's request for trackage rights over NOPB between South Port and Stuy Dock. IC agrees to support any request by or on behalf of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BN/Santa Fe") to use NOPB. Support by UP/SP and IC for the foregoing initiatives will include exercising any voting rights or ownership interests in NOPB in favor of such initiatives or endorsing modification of Louisiana law if either NOPB approval or a change in law is required to accomplish these initiatives.

4. Assignment of Trackage Rights.

IC and SPCSL are parties to an agreement dated June 1, 1990 granting SPCSL overhead trackage rights between MP 21 (Markham Yard) and MP AO-36.7 (Joliet). IC hereby agrees upon consummation of the UP/SP merger to permit assignment of the trackage rights agreement, including any amendments, by SPCSL to UP/SP.

5. Sale - Church to Valley Jct., IL.

For $400,000, SPCSL agrees to sell to IC its fifty percent (50%) interest in the SPCSL/Gateway Western Railway joint line between Church (Mile Post 287.2) and Valley Junction (Mile Post 283.6), Illinois. IC agrees to grant back to SPCSL overhead trackage rights between the aforementioned points. SPCSL shall pay IC as compensation for these

trackage rights the rate of $0.25 per car mile. The charge shall include maintenance (ordinary and program) and operation, taxes and interest rental. It shall be subject to adjustment annually beginning as of January 1, 1997 to reflect seventy percent (70%) of increases or decreases in the Rail Cost Adjustment Factor, not adjusted for productivity ("RCAF-U") published by the Surface Transportation Board or successor agency or other organizations.

The trackage rights grant described in this section shall be included in a separate written trackage rights agreement of the kind and containing such provisions as are normally and customarily utilized by the parties, including an exhibit depicting the affected trackage, and other provisions dealing with maintenance, improvements, and liability, and the general provisions described in this section. The parties shall use their best efforts to complete such agreement with three (3) months after sale of the trackage. If agreement is not reached in such three (3) month period, either party may request that any outstanding matters be resolved by biding arbitration with the arbitration proceeding to be completed with sixty (60) days of its institution. In the event such agreement is not completed by the date the grant of such trackage rights are to be effective, it is intended that operations under such grant shall be commenced and governed by this Agreement.

6. Maintenance and Operation - Sioux City to LeMars, Iowa.

UP and The Chicago, Central & Pacific Railroad Company ("CCP") are parties to an agreement dated July 6, 1887 governing operations by UP over CCP tracks between Sioux City and LeMars, Iowa. On January 17, 1996 IC and CCP announced an agreement for IC to buy CCP. At such time as IC and CCP merge or come under common control, IC agrees it will maintain the Sioux City to LeMars line to at least FRA Class 3 standards (40 mph). If IC allows the condition of the line to slip below FRA Class 3 standards (40 mph) and has not returned the line to FRA Class 3 condition within sixty (60) days after receipt of a written notice by UP/SP demanding that the line be returned to FRA Class 3 standards (40 mph), then IC agrees to amend the July 6, 1887 agreement to provide that UP/SP shall be responsible for the maintenance and operation (including dispatching) of the line. If UP/SP undertake maintenance and operation of the line, expenses of maintenance and operation will be shared by UP/SP and IC pursuant to the July 6, 1887 agreement.

7. UP/SP Trackage Rights Between Chicago and Joliet, IL.

After consummation of the UP/SP merger, UP/SP want to explore various options for handling traffic moving between UP's Global I, Global II, Proviso and Canal Street Yards in Chicago and UP and BN/Santa Fe's main line at Joliet, IL. Options UP/SP would like to explore require securing overhead trackage rights on IC's line between MP W1.2 in Chicago and Joliet, IL and between 21st Street and 16th Street in Chicago. The options UP/SP would want to consider include constructing connections at 16th Street, 21st Street

and Brighton Park to connect existing UP trackage or track of another carrier over which UP operates over pursuant to trackage rights with the IC trackage.

Accordingly, IC and UP agree to amend the June 1, 1990 agreement between IC and SPCSL granting SPCSL overhead trackage rights between IC's Markham Yard in Chicago and Joliet, Illinois to (a) give UP/SP the right to construct connections and enter and exit the line at 16th Street, 21st Street and Brighton Park, Illinois and (b) limit UP/SP's use of the line to a weekly average of four trains per day in each direction, i.e., four train pairs per day. If UP/SP desires to increase its use of the line beyond four train pairs per day then UP/SP shall be required to pay IC 50% of the total cost to relay about 34 route miles (68 track miles) of rail with continuous welded rail and to install centralized traffic control on said line. The estimated total cost of this work is $20 million. UP/SP may partially satisfy its obligation for the cost of this work by providing material for the rail relay and signal installation and having credited against its 50% share of the cost of the work the fair market value of such material. The material provided by UP/SP shall be suitable for the anticipated use of such material. Upon UP/SP's payment (whether in cash or in kind) of 50% of the cost of such work, the June 1, 1990 agreement shall be further amended to (w) change the amount UP/SP shall pay IC as compensation for these trackage rights to the rate of $0.30 per car mile which charge shall include maintenance (ordinary and program) and operation, taxes and interest rental, and (x) provide that the rate of $0.30 per car mile shall be subject to adjustment annually beginning as of January 1, 1997 to reflect seventy percent (70%) of increases or decreases in RCAF-U. If IC has accomplished the work in question (rail relay and signal upgrade) before UP/SP increases its use of the line, then UP/SP shall, upon its election to increase its use of the line have the option to (y) pay IC 50% of the total cost of such work and have the June 1, 1990 Agreement amended as described in clauses (w) and (x) above, or (z) continue to pay IC the compensation provided for in the June 1, 1990 Agreement.

8. Joint Rates and Routes.

a) UP/SP intend to work with IC to market interline business after consummation of the UP/SP merger. Routing and divisions between UP/SP and IC for interline carload traffic shall be established as follows:

i) UP/SP agrees that between (a) stations or industry on its lines and the lines of its short line connections on the one hand, and (b) stations or industry (which are not served by UP/SP), excluding plastics transload facilities, on IC's and CCP's lines (if IC and CCP merge or come under common control) and the lines of their short line connections on the other hand, UP/SP will join with IC in market competitive rates on new or renewal business where the joint route is reasonably efficient, or where a competitive service package satisfactory to the customer can be offered. For example, on business originating or terminating at UP/SP stations south of Memphis and destined to or originating at IC stations (which are not served

by UP/SP) north of Memphis, both IC and UP/SP will favor the Memphis Gateway for their joint line routes. In constructing the associated joint rates, UP/SP agrees that its portion of such joint rates shall be reasonably related first to the proportion it would receive under so-called "established divisions" with consideration given to commodity type and second, to its proportion of the distance involved, with consideration given to minimum divisions over the gateway and other relevant cost considerations, including absorbed switching charges and short-line connecting divisions (absorbed switching charges and short-line connecting divisions will be first deducted from the through rate and the balance of the through rate will be divided between UP/SP and IC in accordance with the foregoing guidelines). "Established divisions" shall be defined as divisions in place over a gateway as of the date of this Agreement or divisions which are subsequently established by mutual Agreement between UP/SP and IC. If multiple divisions exist for a specific commodity and origin/destination pair and interchange point, the division most favorable to IC shall be used.

ii) UP/SP further agrees that (a) from and to stations on the IC (except those that are also served by UP/SP), and (b) from and to stations on railroads beyond IC which connect with IC but not with UP/SP, UP/SP will establish and maintain joint rates with IC on terms at least as favorable as those granted IC's competing railroads for similar routes and movements.

b) Routing and divisions via junctions at Memphis, Baton Rouge and New Orleans for carload business originating or terminating on the IC in the area of Geismar, Louisiana (hereinafter the "Geismar area") shall be established as follows:

i) IC agrees that between the Geismar area on the one hand and stations on UP/SP lines and the lines of its short line connections (not served by IC) on the other hand, it will join with UP/SP in market competitive joint rates where the applicable joint line routes are reasonably efficient, considering distance and/or where a competitive service package can be offered the customer. IC will establish and maintain rates with UP on terms at least as favorable as those granted UP's competing railroads for similar routes and movements.

ii) If IC should merge or come under control with either BN/Santa Fe, The Kansas City Southern Railway Company (KCS), or their successors, then IC or its successor in interest will following such merger or control, continue to construct joint rates with UP/SP over the Memphis, Baton Rouge, and New Orleans gateways reasonably related to the proportion it would receive under established divisions for a period of 10 years following the date of any such IC merger or change of control.

c) UP/SP agree to the rate factors listed on the attached confidential Exhibit A-1 which are intended to allow IC to develop interline rates for forest products business moving over the Chicago, East St. Louis, Memphis and New Orleans Gateways between IC local points and UP/SP local points (including short-line connections) in Illinois, Wisconsin, Minnesota, Iowa, Nebraska, Wyoming, Colorado, Kansas, Oklahoma, Missouri, Arkansas, Louisiana and Texas. IC agrees to the rate factors listed on the attached confidential Exhibit A-2 which are intended to allow UP/SP to develop interline rates for forest products business moving over the Chicago Gateway between UP/SP served local points in Washington, Oregon, California, Idaho and Wyoming and IC local points. If IC should merge or come under common control with BN/Santa Fe, CP Rail System ("CP"), CN North America ("CN") or KCS or a successor company to BNSF, CP, CN or KCS, the terms of this section 8c) will apply for a period of 10 years following the date of any such IC merger or change of control.

d) The agreement by UP/SP and IC to cooperate on establishing and maintaining joint routes is not intended to hinder, prevent or discourage either party from offering or providing competitive rates or service in conjunction with other railroads.

e) The foregoing procedures shall be applicable for ten years following consummation of the UP/SP merger with the option upon mutual agreement of both parties to renew for successive ten year periods.

9. Coal Marketing Agreement.

a) Plant Daniel - UP/SP agree to work cooperatively with IC to secure coal business for Mississippi Power's Plant Daniel facility from Utah, Colorado, Southern Wyoming, and the Powder River Basin with interchange at Memphis. Divisions will be negotiated based on market conditions with a heavy linkage to mileage.

b) BRT Terminal -

c) Gulf Coast Coal Terminal -

10. Labor Protection.

Each party shall be responsible for any and all costs relating to providing employee protection benefits, if any, to its employees prescribed by law, governmental authority or employee protective agreements where employee protection benefits are attributable to or arise by reason of the rights and obligations created by this Agreement.

11. Change of Control.

If Illinois Central or a successor is acquired by or merges with or sells any portion of its lines covered by this agreement to Consolidated Rail Corporation ("Conrail"), CSX Transportation, Norfolk Southern Railway Company, CP, CN, KCS, or BN/Santa Fe or any affiliated company wholly owned or controlled by one of these companies, then at UP's option, the rights and obligations created by sections 1 and 8a) of this Agreement shall be terminated and be of no further force or effect, provided, however, that if IC sells only a portion of its lines covered by this Agreement, the termination of rights specified herein shall be applicable only to the extent that those rights are affected by the line sale.

12. Term.

This Agreement shall be effective upon execution, provided, however, that the grants of rights above shall be effective only upon UP's acquisition of control of SP

pursuant to a Final Order of the Surface Transportation Board. This Agreement and all agreements entered into pursuant or in relation hereto shall terminate, and all rights conferred pursuant thereto shall be cancelled and deemed void ab initio, if, in a Final Order, the application for authority for UP to control SP has been denied or has been approved on terms unacceptable to the applicants. For purposes of this Section 12, "Final Order" shall mean an order of the Surface Transportation Board, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

13. Assignability.

This Agreement shall be binding upon the parties and their successors and assigns. Except as otherwise expressly provided herein, no sale or assignment of the rights herein by IC separate and apart from the sale or assignment of its entire railroad shall be valid and binding without the prior written consent of UP/SP.

14. Government Approvals.

a) The parties agree to cooperate with each other and make whatever filings or applications, if any, are necessary to implement the provisions of this Agreement and whatever filings or applications may be necessary to obtain any approval that may be required by applicable law for the provisions of such agreements. Except as provided in sections 14b), c), and d) below, IC agrees not to oppose the primary application or any related applications in Finance Docket No. 32760 (collectively the "control case"), and not to seek any conditions in the control case, not to support any requests for conditions filed by others, and not to assist others in pursuing their requests. IC shall remain a party in the control case, but shall not participate further in the control case other than (a) to support this Agreement, (b) to protect the commercial value of the rights granted to IC by this Agreement, and (c) to oppose requests for conditions by other parties which adversely affect IC. IC's obligations under this section 14a) extend to all contacts of IC with third parties (including, but not limited to customers; federal, state and local governmental officials, and representatives of the media). IC may, without violating its obligations under this section 14a), respond to criticism, if any, directed at IC in the control case by other parties to the control case.

b) UP/SP agree that (i) if conditions in addition to or in lieu of the BN/Santa Fe Agreement are required as a condition to the merger, and (ii) UP/SP decide to go forward with the merger as so conditioned, then to the extent UP/SP have any choice in negotiating with other carriers to satisfy such additional conditions, they will first negotiate with IC; provided, however, that UP/SP shall not be obligated to first negotiate with IC if the additional condition or conditions are addressed via tracks or at points covered by the BN/Santa Fe Agreement and can be satisfied by negotiating with BN/Santa Fe. UP/SP will

not negotiate with any other party until they have been unable to reach agreement with IC. The term "BN/Santa Fe Agreement" refers to the Agreement dated September 25, 1995 and the Supplemental Agreement dated November 18, 1995 between UP/SP and BN/Santa Fe.

c) UP/SP further agree that if prior to the decision of the ICC or successor agency, (i) they entertain the possibility of granting rights to a party other than IC designed to remedy an alleged competitive problem caused by the common control of UP/SP, and (ii) such alleged competitive problems can be feasibly solved by either IC or such other party, they will first negotiate with IC. UP/SP will not negotiate with any other party until they have been unable to reach agreement with IC.

d) In the case of any negotiations conducted with IC pursuant to the provisions of this clause, UP/SP agree that, if they are unable to reach agreement with IC and subsequently negotiate with another party for the same rights, they will not offer such other party terms materially more favorable than those last offered to IC without first offering such more favorable terms to IC.

e) If IC should agree to merge or come under common control with any Class 1 railroad, the terms of sections 14b), c) and d) will be of no further force and effect.

15. Arbitration.

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

16. Further Assurances.

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

17. No Third Party Beneficiaries.

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

18. Confidentiality.

Except as provided below, the parties may make all terms of this Agreement known to the public through a press release previously reviewed and approved by the other parties, and may address it in subsequent communications to the Surface Transportation Board or others. The parties agree, however, that the terms of this Agreement found in sections 2a), 9b) and c) and in Exhibits A-1 and A-2 are confidential and shall not be disclosed, without the consent of the other party, to individuals not employed by or acting as counsel for or consultants to UP/SP or IC, except as required by law, provided the parties may make appropriate disclosure of such terms to government entities or as required in connection with the process of seeking government approval of the control case, or of this Agreement under applicable Surface Transportation Board confidentiality procedures.

UNION PACIFIC CORPORATION

By: _____
Title: President

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: Chairman of the Board

MISSOURI PACIFIC RAILROAD COMPANY

By: _____
Title: Chairman of the Board

SOUTHERN PACIFIC RAIL CORPORATION

By: _____
Title: _____

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

By: _____
Title: _____

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By: _____
Title: _____

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

By: _____
Title: _____

SPCSL CORP.

By: _____
Title: _____

ILLINOIS CENTRAL RAILWAY COMPANY

By: _____
Title: _____

STB FD 32760 2-16-96 61265 D

61265

Item No. _____

Page Count 5

Fee $ 125

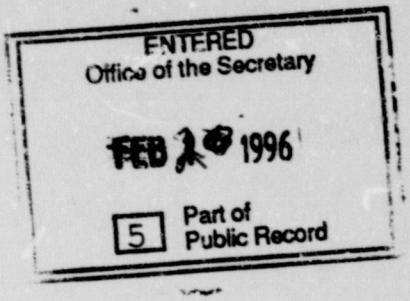
Before the
United States Surface Transportation Board

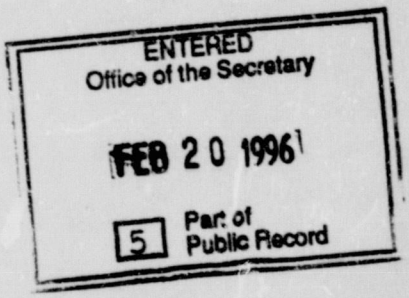
Finance Docket No. 32760

APPLICATION OF UNION PACIFIC RAILROAD, ET AL.

NOTICE OF INTENT OF EAST BAY REGIONAL PARK DISTRICT TO PARTICIPATE IN PROCEEDINGS AND PETITION TO INTERVENE

ORIGINAL





Susan B. Gerson
J. Michael Cavanaugh
GRAHAM & JAMES LLP
Suite 700
2000 M Street N.W.
Washington D.C. 20036
Tel. (202) 833-0807
Fax (202) 463-0823

Attorneys for the
East Bay Regional Park District

Before the
United States Surface Transportation Board

Finance Docket No. 32760

APPLICATION OF UNION PACIFIC RAILROAD, ET AL.

NOTICE OF INTENT OF EAST BAY REGIONAL PARK DISTRICT TO PARTICIPATE IN PROCEEDINGS AND PETITION TO INTERVENE

The East Bay Regional Park District ("District") is a duly constituted political subdivision of the State of California established pursuant to California Public Resource Code Article 3, Division 5, Chapter 3, Sections 5500 et seq. The District has jurisdiction over the construction, reconstruction, maintenance and operation of a system of parks and trails within Alameda and Contra Costa Counties, California.

A significant portion of the District's land consists of tidelands acreage located along the shoreline of the Carquinez Strait and San Pablo Bay, between the cities of Richmond and Martinez, including tracts known as the Carquinez Strait Regional Shoreline and the San Pablo Bay Regional Shoreline. A substantial percentage of the District's land is traversed, bisected by or adjacent to the main line right of way of the Southern Pacific Rail Corporation ("SPRC"). Other portions of the District's lands are also crossed by the tracks of the Union Pacific ("UP") branch in Niles Canyon connecting Fremont and Livermore, and that portion of the Mococo Line branch of the SPRC that is located within Contra Costa Country.

Under its mandate in California Public Resource Code Article 3, the District is responsible for the administration and protection of lands under its jurisdiction, including issues of environmental protection, public access and public safety.

Accordingly, the District has a significant interest in the proceedings in Finance Docket No. 32760 in several respects. Initially, as a general matter, the District is concerned with the possible changes in traffic density and the character of traffic which may be moved over rights of way crossing or adjacent to the District's lands in Contra Costa and Alameda Counties if the proposed merger and/or related transactions proceed. Significant changes in the density and character of traffic may affect the use and enjoyment of the District's lands by California citizens.

The District also has concerns relating to a series of grade-separated or at-grade crossings of the SPRC main line right of way on the San Pablo Bay and Carquinez Strait shorelines, which are needed to provide public access to the District's parklands and regional trail corridors. Pursuant to Application No. 94-11-007 filed by the District on November 3, 1994, the California Public Utilities Commission entered a Decision and Order on July 19, 1995 authorizing the construction of an at-grade crossing of the SPRC right of way at Eckley, subject to certain terms and conditions. The District wishes to assure that this project can proceed without interruption.

Further, on May 20, 1987, in connection with the then-proposed merger of the SPRC's parent company, Southern Pacific Transportation Company ("SPT") and the Atcheson Topeka and Santa Fe Railroad ("ATSF"), the District and SPRC entered into a conditional agreement ("Agreement") with a special purpose acquisition company established by the railroads. This Agreement, which has been performed in part, provided for potential acquisition of land by the District from the railroads and addressed the issue of grade-separated and at-grade crossings of the SPRC right of way along Carquinez Strait and San Pablo Bay. Certain issues relating to the allocations of costs and liabilities for which the Agreement provides are related to the traffic density on the SPRC main line along this shoreline.

In the Agreement, the SPRC granted certain crossing rights and easements, and various other rights, to the District. The District also has certain easements and other legal rights pertaining to crossings of the SPRC and UP rights of way. These rights provide District users with important access to certain portions of the District's park lands, without which users would have extreme difficulty in gaining access to such lands in certain areas.

Certain new issues relating to these crossings of the SPRC right of way arose in mid-January 1996, when the SPRC advised the District of its position and policy regarding crossings issues. When the District became aware of these issues, the District promptly acted to consult with all interested parties, assess its position and thereafter to retain counsel in order to participate in this proceeding. In order to protect its rights, and the rights of citizens of California who use the District's lands

via crossings of SPRC main line right of way, and in the public interest, the District seeks leave to participate in this proceeding.

Respectfully submitted,
GRAHAM & JAMES LLP

February 16, 1996

By _____
Susan B. Gerson
J. Michael Cavanaugh
Attorneys for the
East Bay Regional Park District

Suite 700
2000 M Street N.W.
Washington D.C. 20036
Tel. (202) 833-0807
Fax (202) 463-0823

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1104.12, I certify that I have this day served copies of the foregoing "NOTICE OF INTENT OF EAST BAY REGIONAL PARK DISTRICT TO PARTICIPATE IN PROCEEDINGS AND PETITION TO INTERVENE" upon all parties of record in this proceeding, by first-class, postage pre-paid U.S. mail.

Date: 2·16·96 Signature: _____

e:\word\sgerson\cavanaug\eastbay.pet

FD-32760 2-9-96 D 61220

Item No. 61220

Page Count 16

Feb 78

61220

BN/SF-10

BEFORE THE
ANSPORTATION BOARD

ORIGINAL

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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY TO ENTERGY SERVICES, INC.'S FIRST SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

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

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

and

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

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

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

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

February 9, 1996

BN/SF-10

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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY TO ENTERGY SERVICES, INC.'S FIRST SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe") answer and object as follows to Entergy Services, Inc., Arkansas Power & Light Company ("AP&L"), and Gulf States Utilities Company's ("GSU") (collectively "Entergy") "First Set of Interrogatories and Document Production Requests To BN/Santa Fe." These responses and objections are being served pursuant to the Discovery Guidelines Order entered by the Administrative Law Judge in this proceeding on December 5, 1995 ("Discovery Guidelines").

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

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

GENERAL OBJECTIONS

BN/Santa Fe objects to Entergy's First Set of Interrogatories and Document Production Requests on the following grounds:

1. Privilege. BN/Santa Fe objects to Entergy's First Set of Interrogatories and Document Production Requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.

2. Relevance/Burden. BN/Santa Fe objects to Entergy's First Set of Interrogatories and Document Production Requests to the extent that they seek information or documents that are not directly relevant to this proceeding, and to the extent that a response would impose an unreasonable burden on BN/Santa Fe.

3. Settlement Negotiations. BN/Santa Fe objects to Entergy's First Set of Interrogatories and Document Production Requests to the extent that they seek information or documents prepared in connection with, or related to, the negotiations leading to the Agreement

entered into on September 25, 1995, by BN/Santa Fe with Union Pacific and Southern Pacific, as supplemented on November 18, 1995.

4. Scope. BN/Santa Fe objects to Entergy's First Set of Interrogatories and Document Production Requests to the extent that they attempt to impose any obligation on BN/Santa Fe beyond those imposed by the General Rules of Practice of the Interstate Commerce Commission ("Commission"), 49 C.F.R. § 1114.21-31, the Commission's scheduling orders in this proceeding, or the Administrative Law Judge assigned to this case.

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

> 3. "Document" means the term "document" as that term is used in Fed. R. Civ. P. 34(a) in BN/Santa Fe's current or prior possession, custody or control. "Document" as used herein also encompasses electronic mail and physical things such as computer disks in BN/Santa Fe's current or prior possession, custody or control.

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

> 11. "Relate to" or "Relating to" means making a statement about, discussing, describing, referring to, reflecting, explaining, analyzing, or in any other way pertaining, in whole or in part, to a subject.

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

6. Instructions. BN/Santa Fe makes the following objections to Entergy's instructions:

> 5. Unless otherwise specified, these interrogatories cover the period from January 1, 1991 to date, and these document production requests cover all documents fitting one or more of the categories listed below, and created or modified on or after January 1, 1991.

BN/Santa Fe objects to this instruction to the extent that it requests information or documents created before January 1, 1993, on the ground that it is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

1. Following consummation of the proposed merger, would BN/Santa Fe be able to use the trackage rights granted in Section 5 of the Settlement Agreement to serve the Nelson Station via the SGR line presently under construction between the Nelson Station and a point of connection with the SP's Houston, TX-Iowa Junction, LA line near Lake Charles, LA?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 1 to the extent that it calls for speculation. BN/Santa Fe further objects to this Interrogatory to the extent that it would require BN/Santa Fe to speculate as to the legal meaning of a document that is readily available to Entergy and that speaks for itself.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that because, to its knowledge, the Nelson Station is not served by both UP and SP, BN/Santa Fe would not appear to have the contractual right to use the trackage rights granted in Section 5 of the Settlement Agreement to serve the Nelson Station via the SGR line described in this Interrogatory.

2. If your answer to Interrogatory No. 1 is negative, and assuming the Board were to require, as a condition to any grant of merger authority to Applicants, that the Settlement

Agreement be amended to enable BN/Santa Fe to serve the Nelson Station in the manner described in Interrogatory No. 1, would BN/Santa Fe (a) consent to such an amendment, and/or (b) be willing to provide unit-train service to the Nelson Station?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 2 to the extent that it calls for speculation.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it is interested in the development of new traffic, including unit-train shipments of coal, throughout its system, and that if BN/Santa Fe were granted rights to use SP's line to access the Nelson Station via SGR, it would be interested in exploring opportunities for handling the described traffic, assuming it were commercially and operationally feasible to do so.

3. Assuming that, following consummation of the proposed merger, BN/Santa Fe has direct access to GSU's Nelson Station via the trackage rights granted pursuant to Section 5 of the Settlement Agreement and the SGR line presently under construction between the Nelson Station and the SP line near Lake Charles, LA, describe the route of movement BN/Santa Fe would use were it to provide direct service for unit-train shipments of coal from the Powder River Basin to the Nelson Station, including principal intermediate points, the route's total mileage assuming the origin is Kerr-McGee's Jacobs Ranch Mine, and the mileage of the SP line over which BN/Santa Fe would operate pursuant to the Settlement Agreement.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 3 to the extent that it calls for speculation and to the extent it calls for the production of information or documents not in the possession of BN/Santa Fe.

Subject to and without waiving the foregoing objections, BN/Santa Fe speculates that, in order to provide direct service for unit-train shipments of coal from the Jacobs Ranch Mine to the Nelson Station, it would take a BN/Santa Fe train out of the Jacobs Ranch Mine to Guernsey, WY to Northport, NE to Brush, CO to Denver, CO to Fort Worth, TX to Dallas, TX to Houston, TX. This portion of the movement is 1508.1 miles. BN/Santa Fe would then

operate pursuant to the Settlement Agreement over 142 miles of SP track from Houston to Lake Charles. The total mileage on the movement would be 1650.1 miles, excluding the SGR line presently under construction between the Nelson Station and the SP line near Lake Charles.

4. Describe any communications (a) between BN/Santa Fe and Entergy, (b) among employees or agents of BN/Santa Fe, (c) between BN/Santa Fe and SP, and (d) between BN/Santa Fe and KCS concerning the delivery of coal to the Nelson Station by SP and/or KCS, including but not limited to communications concerning the effect of the proposed merger on BN/Santa Fe's and/or KCS' ability to continue to participate in the movement of PRB coal to the Nelson Station following consummation of the merger.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 4 to the extent that it is overly broad and vague and to the extent that it calls for the production of information or documents subject to a confidentiality provision. BN/Santa Fe further objects to this Interrogatory on the grounds that it is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

5. Identify all studies, analyses and reports or other documents prepared for or in the possession or control of BN/Santa Fe relating to your response to Interrogatory No. 4.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 5 to the extent that it is overly broad and vague and to the extent that it calls for the production of information or documents subject to a confidentiality provision. BN/Santa Fe further objects

to this Interrogatory on the grounds that it is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, see Response to Interrogatory No. 4.

6. If, following consummation of the proposed merger, Entergy were to construct a spur or other line connecting the White Bluff Station with the existing SP line at Pine Bluff, AR, would BN/Santa Fe be able to use the trackage rights granted in Section 6 of the Settlement Agreement to serve the White Bluff Station via such spur or other line?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 6 to the extent that it calls for speculation. BN/Santa Fe further objects to this Interrogatory to the extent that it would require BN/Santa Fe to speculate as to the legal meaning of a document that is readily available to Entergy and that speaks for itself.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that because, to its knowledge, the White Bluff Station is not served by both UP and SP, BN/Santa Fe would not appear to have the contractual right to use the trackage rights granted in Section 6 of the Settlement Agreement to serve the White Bluff Station via a connecting line as described in this Interrogatory.

7. If your answer to Interrogatory No. 6 is negative, and assuming the Board were to require, as a condition to any grant of merger authority to Applicants, that the Settlement Agreement be amended to enable BN/Santa Fe to serve the White Bluff Station in the manner described in Interrogatory No. 6 would BN/Santa Fe (a) consent to such amendment, and/or (b) be willing to provide unit-train service to the White Bluff Station?

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 7 to the extent that it calls for speculation.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it is interested in the development of new traffic, including unit-train shipments of coal, throughout its system, and that, if BN/Santa Fe were able to use SP's line to access the White Bluff Station via a new[illegible]-constructed line, it would be interested in exploring opportunities for handling the described traffic, assuming it were commercially and operationally feasible to do so.

8. Assuming that, following consummation of the proposed merger, BN/Santa Fe has direct access to the White Bluff Station via the trackage rights granted pursuant to the Settlement Agreement and a spur or other line constructed between the White Bluff Station and Pine Bluff, AR, describe the route of movement BN/Santa Fe would use were it to provide direct service for unit-train shipments of coal from the Power River Basin to the White Bluff Station, including principal intermediate points, the route's total mileage assuming the origin is Kerr McGee's Jacobs Ranch Mine, and the mileage of the UP and/or SP line(s) over which BN/Santa Fe would operate pursuant to the Settlement Agreement.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 8 to the extent that it calls for speculation and to the extent it calls for the production of information or documents not in the possession of BN/Santa Fe.

Subject to and without waiving the foregoing objections, BN/Santa Fe speculates that, in order to provide direct service for unit-train shipments of coal from the Jacobs Ranch Mine to the White Bluff Station, it would take a BN/Santa Fe train out of the Jacobs Ranch Mine to Guernsey, WY to Northport, NE to Alliance, NE to Lincoln, NE to Kansas City, MO to Edward, KS to Nichols, MO to Springfield, MO to Bridge Junction, TN. This portion of the movement is 1312.6 miles. BN/Santa Fe would then operate pursuant to the Settlement Agreement over 134 miles of SP track from Bridge Junction to Brinkley, AR to Pine Bluff, AR. BN/Santa Fe would then operate pursuant to the Settlement Agreement over 20.4 miles

of UP track from Pine Bluff to White Bluff, AR. The total mileage on the movement would be 1467 miles, excluding the spur or other line constructed between the White Bluff Station and Pine Bluff, AR.

9. Describe any communications between (a) BN/Santa Fe and Entergy, and (b) among employees or agents of BN/Santa Fe concerning the possibility of BN/Santa Fe's participation in the movement of PRB coal to the White Bluff Station.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 9 to the extent that it is overly broad and vague and to the extent that it calls for the production of information or documents subject to a confidentiality provision. BN/Santa Fe further objects to this Interrogatory on the grounds that it is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that it will produce non-privileged, responsive documents, if any, in accordance with the Discovery Guidelines.

10. Identify all studies, analyses and reports or other documents prepared for or in the possession or control of BN/Santa Fe relating to your answer to Interrogatory No. 9.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Interrogatory No. 10 to the extent that it is overly broad and vague and to the extent that it calls for the production of information or documents subject to a confidentiality provision. BN/Santa Fe further objects to this Interrogatory on the grounds that it is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, see Response to Interrogatory No. 9.

11. Identify the individuals at BN/Santa Fe who now have, or during the period covered by these interrogatories did have, responsibilities related to the Entergy account with specific reference to the movement of coal to the Nelson and/or White Bluff Stations, and describe the nature of such responsibilities for each such individual.

Response: Subject to and without waiving the General Objections stated above, in particular the burden, relevance and scope objections, BN/Santa Fe objects to Interrogatory No. 11 to the extent that it is unduly vague and overbroad and includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that the individuals with current responsibilities related to the Entergy account include Sami Shaiah, Assistant Vice President Coal Marketing; and Brent Pickering, Account Manager. Mr. Shalah and Mr. Pickering have responsibility for all marketing decisions regarding the Entergy account.

12. Identify the individuals at BN/Santa Fe who now have, or during the period from January 1, 1995 to date did have, any responsibilities related to the bidding for the movement of PRB coal to the Nelson Station, and describe the nature of such responsibilities for each such individual.

Response: Subject to and without waiving the General Objections stated above, in particular the burden, relevance and scope objections, BN/Santa Fe objects to Interrogatory No. 12 to the extent that it is unduly vague and overbroad and includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that the individuals with responsibilities relating to the bidding by BN/Santa Fe for the movement of PRB coal to the Nelson Station include Mr. Shalah and Mr. Pickering.

13. Assuming the proposed merger is consummated, with respect to coal traffic originating at mines (i) in the PRB and (ii) in the states of Colorado, Utah and New Mexico, state, by origin, destination and shipper:

(a) the volume of such traffic that BN/Santa Expects to gain annually as a result of the Settlement Agreement; and

(b) the volume of such traffic that BN/Santa Fe expects to be diverted to UP/SP as a result of the merger.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe responds as follows: Assuming that Interrogatory No. 13 seeks information beyond that contained in BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in workpapers in BN/Santa Fe's document depository, BN/Santa Fe objects to Interrogatory No. 13 to the extent that it would require BN/Santa Fe to speculate as to how, were the proposed consolidation of Union Pacific and Southern Pacific approved, it would undertake certain activities with respect to matters it has not studied and as to which it has formulated no position. BN/Santa Fe further objects to this Interrogatory to the extent that it would require BN/Santa Fe to perform a special study in order to respond to the Interrogatory and to the extent that it is thereby overly broad and burdensome.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that other than BN/Santa Fe's Comments on the Primary Application (BN/SF-1), filed December 29, 1995, and in particular the Verified Statements of Neal D. Owen and Larry M. Lawrence, and in Mr. Owen's related workpapers numbered BN/SF-02500 -- 03238 and in Mr. Lawrence's

related workpapers number BN/SF-00050 -- 01065 in BN/Santa Fe's document depository, it has no other actual figures or concrete estimates as to the volume of coal traffic originating at mines in the PRB or in the states of California, Utah or New Mexico that BN/Santa Fe expects to handle annually after consummation of the proposed merger. Similarly, BN/Santa Fe has no such figures or estimates of the volume of such traffic BN/Santa Fe expects to be diverted to UP/SP as a result of the proposed merger.

14 Identify all studies, analyses and reports or other documents, including work papers, relating to your answer to Interrogatory No. 13.

Response: See Response to Interrogatory No. 13.

15. State the current division of revenue as between BN and KCS for the movement of PRB coal to the Nelson Station pursuant to Contract ICC-BN-C-1286.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 15 on the ground that it is not relevant and not reasonably calculated to lead to the discovery of admissible evidence. BN/Santa Fe further objects to this Interrogatory to the extent that it calls for the production of information or documents subject to a confidentiality provision.

RESPONSES AND OBJECTIONS TO DOCUMENT PRODUCTION REQUESTS

1. Produce all documents identified in response to Interrogatory No. 5.

Response: See Response to Interrogatory No. 5.

2. Produce all documents identified in response to Interrogatory No. 10.

Response: See Response to Interrogatory No. 10.

3. Produce all documents identified in response to Interrogatory No. 14.

Response: See Response to Interrogatory No. 14.

4. Produce all documents in the custody of BN/Santa Fe that relate to the divisions of revenue as between (a) BN and KCS and (b) BN and SP in conjunction with the bidding for the movement of PRB coal to the Nelson Station during January 1, 1995 to date.

Response: Subject to and without waiving the General Objections stated above, in particular the burden and scope objections, BN/Santa Fe objects to Document Request No. 4 to the extent that it is overly broad, that it seeks documents that are not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence, and that it calls for the production of documents subject to a confidentiality provision.

Respectfully submitted,

Erika Z. Jones

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

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

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

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

and

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

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

February 9, 1996

CERTIFICATE OF SERVICE

I hereby certify that copies of Responses and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to Entergy Services, Inc.'s First Set of Interrogatories and Document Production Requests (BN/SF-10) have been served this 9th day of February, 1996, by fax and by first-class mail, postage prepaid on all persons on the Restricted Service List in Finance Docket No. 32760 and by hand-delivery on counsel for Entergy Services, Inc.'s.

Kelley O'Brien

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

STB FD 32760 1-30-96 61126 D

Item No: 61126

Page Count 2

JAN 402

DEUF, LAMB, GREENE & MACRAE

L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON
ALBANY
BOSTON
DENVER
HARRISBURG
HARTFORD
JACKSONVILLE

1875 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20009-5728
(202) 986-8000
TELEX: 440274 FACSIMILE: (202) 986-8102

WRITER'S DIRECT DIAL:
(202) 986-8030

LOS ANGELES
NEWARK
PITTSBURGH
SALT LAKE CITY
SAN FRANCISCO

LONDON
BRUSSELS
MOSCOW
ALMATY

January 30, 1996

VIA HAND DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
U.S. Department of Transportation
1201 Constitution Avenue, N.W.
Washington, DC 20423

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

Dear Secretary Williams:

I have enclosed twenty-one copies of an attachment that was inadvertently omitted from the filed original (but not from the copies served to all parties) of the Notice of Intent to File Inconsistent or Responsive Application of Western Shippers' Coalition. Please include the attachment with WSC's filing.

I appreciate your help with this matter.

Very truly yours,

Daniel Aronowitz

Attorney for Western
Shippers' Coalition

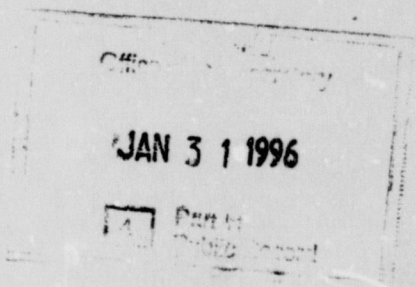
Enclosure

ATTACHMENT A

WESTERN SHIPPERS' COALITION

COMPANY

ARCO Coal Company
AKZO Nobel Salt
Andalex Resources Inc.
Ash Grove Cement
Circle Four Farms
Coastal Coal
Colorado Mining Assoc.
Colorado Springs Utility
Continental Lime
Cyprus Amax Coal Co.
Eagle Picher
ECDC Laidlaw Environmental
Geneva Steel
Great Salt Lake Minerals
Intermountain Power Project
Interwest Mining
ECDC Laidlaw Environmental
Magma Copper
Metropolitan Stevedore Company
Moab Salt
Moroni Feed Co.
PacifiCorp
Kennecott Utah Copper
Savage
Sierra Pacific Power
Utah Mining Association
Western Coal Transportation Association
White Oak Mining



(Date 12/14/95)

Item No. _____

Page Count 1

JAN 401

6e1125

EUF, LAMB, GREENE & MACRAE
L.L.P.

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON
ALBANY
BOSTON
DENVER
HARRISBURG
HARTFORD
JACKSONVILLE

1875 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20009-5728
(202) 986-8000
TELEX: 440274 FACSIMILE: (202) 986-8102

WRITER'S DIRECT DIAL:
202-986-8050

LOS ANGELES
NEWARK
PITTSBURGH
PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO
BRUSSELS
MOSCOW
ALMATY
LONDON
(A LONDON-BASED MULTINATIONAL PARTNERSHIP)

January 30, 1996

BY HAND

Mr. Vernon A. Williams
Secretary, Room 2215
Surface Transportation Board
Department of Transportation
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Attn.: Case Control Branch

Re: Finance Docket No. 32760, Union Pacific Corp., et al.

Dear Secretary Williams:

Please be advised that Commonwealth Edison Company has joined the Western Shippers' Coalition. The Coalition filed a Notice of Intent to File an Inconsistent or Responsive Application yesterday, as did Commonwealth Edison Company.

JAN 31 1996

Very truly yours,

Michael F. McBride

Michael F. McBride

Attorney for Western Shippers' Coalition

cc: Arvid E. Roach, II, Esq. (by facsimile)
Paul A. Cunningham, Esq. (by facsimile)
Other Persons on Service List (by First Class mail)

FD-32760 1-25-96 D 61076

Item No. _____

Page Count 12

Jon 351

61074

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. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. DIETRICH

*ADMITTED IN ILLINOIS ONLY

202 347-7170

January 25, 1996

Via Hand Delivery

Office of the Secretary
Case Control Branch
Attn: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

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

Gentlemen:

Enclosed for filing in the above-referenced proceediong are the original and 20 copuies of Entergy Services, Inc., Arkansas Power & Light Company and Gulf States Utilities Company's First Set of Interrogatories and Document Production Requests to BN/Santa Fe (ESI-3).

Also enclosed is a WordPerfect 5.1 diskette containing the aforementioned filing.

Sincerely yours,

Christopher A. Mills

CAM:mfw
Enclosure

cc: The Honorable Jerome Nelson
Restricted Service List

ORIGINAL

ESI-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

ENTERGY SERVICES, INC., ARKANSAS POWER & LIGHT COMPANY, AND GULF STATES UTILITIES COMPANY'S FIRST SET OF INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS TO BN/SANTA FE

ENTERGY SERVICES, INC.
ARKANSAS POWER & LIGHT COMPANY
GULF STATES UTILITIES COMPANY

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

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

Their Attorneys
Services, Inc.

Dated: January 25, 1996

ENTERGY SERVICES, INC.'S
FIRST SET OF INTERROGATORIES
AND DOCUMENT PRODUCTION REQUESTS
TO BN/SANTA FE

Entergy Services, Inc., Arkansas Power & Light Company ("AP&L") and Gulf States Utilities Company ("GSU") (collectively "Entergy") hereby submit these, their First Set of Interrogatories and Document Requests to Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe"). Entergy requests responses to these interrogatories and document production requests within 15 days after service thereof as provided in the Discovery Guidelines adopted by Judge Nelson in his decision served December 7, 1995.

DEFINITIONS AND INSTRUCTIONS

A.

Definitions

1. "Applicant" or "Applicants" means one or more of the parties to the Railroad Merger Application in Finance Docket No. 32760 filed at the Interstate Commerce Commission ("ICC") on November 30, 1995.

2. "Communication" means the transmittal by whatsoever means of information of any kind.

3. "Document" means the term "document" as that term is used in Fed. R. Civ. P. 34(a) in BN/Santa Fe's current or prior possession, custody or control. "Document" as used herein

also encompasses electronic mail and physical things such as computer disks in BN/Santa Fe's current or prior possession, custody or control.

4. "Identify," when used with reference to a document, means to either produce such document or to state its date, type of document (e.g., letter, memorandum, chart, etc., or other means of identifying it), its title or heading, the author's (authors') full name(s), its recipient(s), general subject matter contents, number of pages and the document's present location and custodian and in the case of contracts filed with the Interstate Commerce Commission or Surface Transportation Board, the contract number. If such document was, but is no longer in BN/Santa Fe's possession, custody or control, state what disposition was made of it.

5. "Identify," when used with reference to a communication other than a document, means to state the nature of the communication (e.g., meeting, telephone call, etc.), the time, date and place the communication occurred, and the participants' full names, business addresses and job titles.

6. "Identify," when used with reference to an individual, means to state the full name, business address(es) and job title(s) of such individual during the period covered by these interrogatories and document production requests.

7. "KCS" means the Kansas City Southern Railway Company.

8. "Merger" or "proposed merger" means the merger proposed by the Applicants in Finance Docket No. 32760.

9. "Nelson Station" means GSU's Roy S. Nelson Generating Station near Mossville, LA.

10. "PRB" means the Powder River Basin.

11. "Relate to" or "Relating to" means making a statement about, discussing, describing, referring to, reflecting, explaining, analyzing, or in any other way pertaining, in whole or in part, to a subject.

12. "Settlement Agreement" means the agreement between BN/Santa Fe and UP/SP dated September 25, 1995, including all supplements and amendments thereto.

13. "SGR" means Southern Gulf Railway Company.

14. "SP" means Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, and the Denver and Rio Grande Western Railroad Company.

15. "UP" means Union Pacific Railroad Company, the former Chicago and North Western Railway Company, Missouri Pacific Railroad Company, and the former Western Railroad Properties Incorporated.

16. "White Bluff Station" means AP&L's White Bluff Steam Electric Station near Redfield, AR.

B.

INSTRUCTIONS

1. In the following interrogatories and document production requests, all uses of the conjunctive include the

disjunctive and vice versa. Words in the singular include the plural and vice versa. References to railroads, shippers or other companies include officers, directors, employees, and agents thereof, except where the context clearly requires otherwise.

2. To the extent that BN/Santa Fe considers any of the following interrogatories or document production requests objectionable, respond to each part thereof as is not objectionable in your view, and separately identify that part of the interrogatory request that you find objectionable and state the grounds for each such objection.

3. If BN/Santa Fe objects to any interrogatory or document production request on grounds of privilege, identify which privilege is claimed.

4. If Counsel for BN/Santa Fe wants clarification concerning any interrogatory or document production request set forth, Counsel for BN/Santa Fe is instructed to contact Counsel for Entergy (either in writing or telephonically) concerning such requests reasonably in advance of the due date referenced above.

5. Unless otherwise specified, these interrogatories cover the period from January 1, 1991 to date, and these document production requests cover all documents fitting one or more of the categories listed below, and created or modified on or after January 1, 1991.

6. These interrogatories and document production requests are continuing in nature, and BN/Santa Fe's responses

should be supplemented whenever additional responsive information or documents come into BN/Santa Fe's possession or control.

INTERROGATORIES

1. Following consummation of the proposed merger, would BN/Santa Fe be able to use the trackage rights granted in Section 5 of the Settlement Agreement to serve the Nelson Station via the SGR line presently under construction between the Nelson Station and a point of connection with the SP's Houston, TX-Iowa Junction, LA line near Lake Charles, LA?

2. If your answer to Interrogatory No. 1 is negative, and assuming the Board were to require, as a condition to any grant of merger authority to Applicants, that the Settlement Agreement be amended to enable BN/Santa Fe to serve the Nelson Station in the manner described in Interrogatory No. 1, would BN/Santa Fe (a) consent to such an amendment, and/or (b) be willing to provide unit-train service to the Nelson Station?

3. Assuming that, following consummation of the proposed merger, BN/Santa Fe has direct access to GSU's Nelson Station via the trackage rights granted pursuant to Section 5 of the Settlement Agreement and the SGR line presently under construction between the Nelson Station and the SP line near Lake Charles, LA, describe the route of movement BN/Santa Fe would use were it to provide direct service for unit-train shipments of coal from the Powder River Basin to the Nelson Station, including principal intermediate points, the route's total mileage assuming

the origin is Kerr-McGee's Jacobs Ranch Mine, and the mileage of the SP line over which BN/Santa Fe would operate pursuant to the Settlement Agreement.

4. Describe any communications (a) between BN/Santa Fe and Entergy, (b) among employees or agents of BN/Santa Fe, (c) between BN/Santa Fe and SP, and (d) between BN/Santa Fe and KCS concerning the delivery of coal to the Nelson Station by SP and/or KCS, including but not limited to communications concerning the effect of the proposed merger on BN/Santa Fe's and/or KCS' ability to continue to participate in the movement of PRB coal to the Nelson Station following consummation of the merger.

5. Identify all studies, analyses and reports or other documents prepared for or in the possession or control of BN/Santa Fe relating to your response to Interrogatory No. 4.

6. If, following consummation of the proposed merger, Entergy were to construct a spur or other line connecting the White Bluff Station with the existing SP line at Pine Bluff, AR, would BN/Santa Fe be able to use the trackage rights granted in Section 6 of the Settlement Agreement to serve the White Bluff Station via such spur or other line?

7. If your answer to Interrogatory No. 6 is negative, and assuming the Board were to require, as a condition to any grant of merger authority to Applicants, that the Settlement Agreement be amended to enable BN/Santa Fe to serve the White Bluff Station in the manner described in Interrogatory No. 6, would BN/Santa Fe (a) consent to such amendment, and/or (b) be

willing to provide unit-train service to the White Bluff Station?

8. Assuming that, following consummation of the proposed merger, BN/Santa Fe has direct access to the White Bluff Station via the trackage rights granted pursuant to the Settlement Agreement and a spur or other line constructed between the White Bluff Station and Pine Bluff, AR, describe the route of movement BN/Santa Fe would use were it to provide direct service for unit-train shipments of coal from the Power River Basin to the White Bluff Station, including principal intermediate points, the route's total mileage assuming the origin is Kerr McGee's Jacobs Ranch Mine, and the mileage of the UP and/or SP line(s) over which BN/Santa Fe would operate pursuant to the Settlement Agreement.

9. Describe any communications between (a) BN/Santa Fe and Entergy, and (b) among employees or agents of BN/Santa Fe concerning the possibility of BN/Santa Fe's participation in the movement of PRB coal to the White Bluff Station.

10. Identify all studies, analyses and reports or other documents prepared for or in the possession or control of BN/Santa Fe relating to your answer to Interrogatory No. 9.

11. Identify the individual(s) at BN/Santa Fe who now have, or during the period covered by these interrogatories did have, responsibilities related to the Entergy account with specific reference to the movement of coal to the Nelson and/or White Bluff Stations, and describe the nature of such responsibilities for each such individual.

12. Identify the individual(s) at BN/Santa Fe who now have, or during the period from January 1, 1995 to date did have, any responsibilities related to the bidding for the movement of PRB coal to the Nelson Station, and describe the nature of such responsibilities for each such individual.

13. Assuming the proposed merger is consummated, with respect to coal traffic originating at mines (i) in the PRB and (ii) in the states of Colorado, Utah and New Mexico, state, by origin, destination and shipper:

(a) the volume of such traffic that BN/Santa Fe expects to gain annually as a result of the Settlement Agreement; and

(b) the volume of such traffic that BN/Santa Fe expects to be diverted to UP/SP as a result of the merger.

14. Identify all studies, analyses and reports or other documents, including work papers, relating to your answer to Interrogatory No. 13.

15. State the current division of revenue as between BN and KCS for the movement of PRB coal to the Nelson Station pursuant to Contract ICC-BN-C-1286.

DOCUMENT PRODUCTION REQUESTS

1. Produce all documents identified in response to Interrogatory No. 5.

2. Produce all documents identified in response to Interrogatory No. 10.

3. Produce all documents identified in response to Interrogatory No. 14.

4. Produce all documents in the custody of BN/Santa Fe that relate to the divisions of revenue as between (a) BN and KCS and (b) BN and SP in conjunction with the bidding for the movement of PRB coal to the Nelson Station during the period from January 1, 1995 to date.

Respectfully submitted,

ENTERGY SERVICES, INC.
ARKANSAS POWER & LIGHT COMPANY
GULF STATES UTILITIES COMPANY

By: C. Michael Loftus
Christopher A. Mills
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202-347-7170

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

Their Attorneys

Dated: January 25, 1996

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of January, 1996, I caused a copy of the foregoing First Set of Interrogatories and Document Production Requests 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.

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

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

Christopher A. Mills

FD-32760 1-25-96 D 61069

Item No. _____

Page Count 5

JAN 344

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. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. DIETRICH

*ADMITTED IN ILLINOIS ONLY

202 347-7170

41069

Office of the Secretary

JAN 29 1996

Part of Public Record

January 25, 1996

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

Enclosed for filing in the referenced proceeding please find an original and twenty (20) copies of the Comments of Wisconsin Public Service Corporation in Support of the Motion of Western Shippers' Coalition for Enlargement of the Procedural Schedule (WPS-2).

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

Thank you for your attention to this matter.

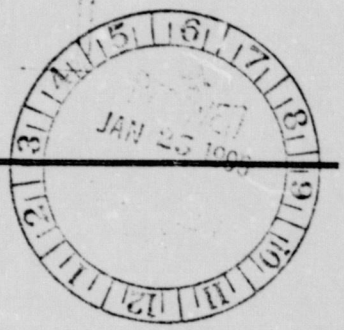
Sincerely,

Kelvin J. Dowd
An Attorney for Wisconsin Public Service Corporation

Enclosures

WPS-2

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

COMMENTS OF WISCONSIN PUBLIC SERVICE CORPORATION IN SUPPORT OF THE MOTION OF WESTERN SHIPPERS' COALITION FOR ENLARGEMENT OF THE PROCEDURAL SCHEDULE

Wisconsin Public Service Corporation ("WPS") supports the January 22, 1996 Motion of Western Shippers' Coalition for Enlargement of the Procedural Schedule (WSC-2), and respectfully requests that it be granted. The enlargement of the current procedural schedule proposed by the Coalition is necessary, as the current procedural schedule has become unrealistic. Accordingly, in support hereof, WPS states as follows:

Applicants[1] apparently assume that the 6-month schedule adhered to in the BN/Santa Fe proceeding[2] justifies a compressed schedule here. However, the proposed UP/SP merger proceeding is significantly more complex than was BN/Santa Fe, and requires more time. This proceeding has more numerous actively participating parties, each of whom requires adequate time to conduct thorough discovery and to prepare their comments. This large number of active parties has tended to congest the discovery process, which has been further complicated by recent winter storms. There simply has not been enough time to accommodate parties' legitimate discovery requests under the constraints of the current schedule, and parties are being prejudiced as a result.

An additional 60 days is a minor extension, that will not prejudice Applicants or retard the overall process. Rather, the extension will permit full compliance with applicable law governing the merger proceedings, and will offer some reasonable possibility of accommodating parties' legitimate discovery needs.

---

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

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

CONCLUSION

For the reasons set forth herein, strong justification exists for enlarging the procedural schedule. WPS respectfully urges that the Board grant the Coalition's schedule extension petition.

Respectfully submitted,

WISCONSIN PUBLIC SERVICE CORPORATION

By: Kelvin J. Dowd
Patricia E. Kolesar
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: January 25, 1996

Attorneys and Practitioners

CERTIFICATE OF SERVICE

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

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

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

Kelvin J. Dowd

3210 Watling Street
East Chicago, Indiana 46312

Item No. _____
Page Count 1
JAN 250

60974

Inland Steel

January 15, 1996

Office of the Secretary
Case Control Branch
Attn: Finance Docket No. 32760
INTERSTATE COMMERCE COMMISSION
1201 Constitution Avenue
N.W. Washington, D.C. 20423

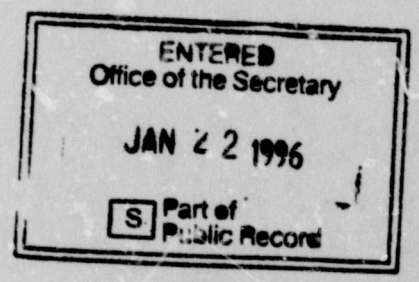
Dear Secretary:

This regards the Union Pacific Corporation - Control and Merger - Southern Pacific Rail Corporation application, and is the Inland Steel Company's notification of intent to participate in the above named proceeding.

Inland Steel Company is a major shipper of coal, coke, iron ore and steel products by railroad, and it ships substantial volumes of these products via the Union Pacific Rail Road Company and Southern Pacific Transportation Company.

Sincerely,

Bruce A. Klimek
Strategic Material Sourcing and Management



cc: Administrative Law Judge Jerome Nelson
Federal Energy Regulatory Commission

Arvid E. Roach II, Esq.
Covington & Burling

Paul A. Cunningham, Esq.
Harkins Cunningham

STB FD 32760 1-24-96 61057 D

Item No. _____ 61057

Page Count 6

JAN 332

LAW OFFICES

ERT, SCOUTT & ROSENBERGER, L.L.P.

888 SEVENTEENTH STREET N.W
WASHINGTON, D.C. 20006-3939
TELEPHONE : (202) 298-8660
FACSIMILES: (202) 342-0683
(202) 342-1316

January 24, 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 Rw. Co., SPCSL Corp. and The Denver and Rio Grande Western RR Co., Finance Docket No. 32760

RECEIVED
JAN 24 5 08 PM
ICC
OFFICE OF SECRETARY

Dear Secretary Williams:

Enclosed are an original and twenty copies of TM-6, The Texas Mexican Railway Company's Comments in Support of the Motion of Western Shippers Coalition for Enlargement of the Procedural Schedule. Also enclosed is a 3.5" floppy computer disc containing a copy in Wordperfect 5.1 of the filing.

Sincerely,

Richard A. Allen

ENTERED
Office of the Secretary
JAN 25 1996
5 Part of Public Record

CORRESPONDENT OFFICES: LONDON, PARIS AND BRUSSELS

BEFORE THE
SURFACE TRANSPORTATION BOARD

Union Pacific Corp., Union Pacific RR. Co. and Missouri Pacific RR Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Trans. Co., St. Louis Southwestern Rw. Co., SPCSL Corp. and The Denver and Rio Grande Western Corp.	Finance Docket No. 32760

THE TEXAS MEXICAN RAILWAY COMPANY'S
COMMENTS IN SUPPORT OF MOTION OF
WESTERN SHIPPERS COALITION
FOR ENLARGEMENT OF THE PROCEDURAL SCHEDULE

The Texas Mexican Railway Company (Tex Mex) urges the Board to grant the motion of the Western Shippers' Coalition (WSC), filed on January 22, 1996, for a 60-day extension of the procedural schedule. Tex Mex fully concurs with WSC that the magnitude of this proceeding, its unprecedented impact on competition and the complexity of the issues presented warrant the requested 60-day extension of the schedule. Tex Mex would only add the following points which, from its perspective, warrants that extension.

At present, more than 40 parties are actively engaged in discovery and in deposing witnesses whose depositions have been scheduled through February 29, 1996. In their responses to interrogatories and documents requests, applicants have refused to provide a great deal of information for reasons that the requesting parties, including Tex Mex, believe are without merit.

This has and will generate numerous discovery disputes. Despite Administrative Law Judge Nelson's very conscientious efforts, it appears that disputes over the applicants' refusal to provide documents and information will continue for some time, and this has and will seriously impede the ability of Tex Mex and other parties to ascertain the facts and prepare their applications or comments within the present schedule.

Tex Mex filed its first interrogatories and document requests on the applicants on December 18, 1995. Applicants filed responses on January 3, 1996 which refused to provide most of the documents requested, stated that some requested documents "are being produced" or "will be produced," but did not indicate when they would be produced or how they could be located in the document depository. Despite several conversations and exchange of correspondence, applicants continue to refuse to provide requested documents and have not advised Tex Mex when promised documents would be produced and where they can be located.

Similarly, the applicants' witnesses that have so far been deposed have refused to respond to numerous questions. Of particular significance to Tex Mex and others, on advise of counsel the witnesses have refused to disclose any discussions between applicants and the Burlington Northern Santa Fe Corporation (BNSF) regarding the negotiation of the trackage rights agreement applicants concluded with BNSF on September 29, 1995 (BNSF Agreement), which applicants proffer as resolving all of the competitive issues created by the merger. Tex Mex

believes that the BNSF Agreement definitely will not resolve the serious anticompetitive effects of the merger on traffic handled by Tex Mex and that the applicants and BNSF know it. Whether or not the BNSF Agreement will adequately resolve the competitive issues is the most important issue in the proceeding for Tex Mex and many other parties. For Tex Mex, the issue is vital.

The discussions between the applicants and BNSF in reaching that agreement are almost certain to be directly relevant to that key issue. Judge Nelson has ruled that other parties may require applicants to disclose those discussions if they can show a "particularized need" for them. Tex Mex believes it can show such a need to Judge Nelson's satisfaction, but applicants are certain to resist those efforts as well as similar efforts by other parties. Although the ability of Tex Mex and other parties to discover those discussions is critical to them, the applicants' resistance to that discovery has and will greatly impede their ability to prepare their submissions within the current schedule.

Further, Tex Mex has experienced difficulties in processing tapes provided by the Applicants containing the 100% waybill data used by the Applicants in support of its primary application. This data is important not only for Tex Mex's evaluation of and comment on the primary application, it is also important for Tex Mex to accurately develop and present its responsive application. Tex Mex did not receive a "final" version of the tapes until January 11, 1996. We have just been informed by our

consultants that the tapes provided contain three unreadable fields. The present procedural schedule does not provide adequate time to evaluate the data from any replacement set of tapes Tex Mex receives from the Applicants.

Accordingly, the Board should grant WSC's motion to extend the procedural schedule 6 days.

Respectfully submitted,

Richard A. Allen
Andrew R. Plump
John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
Suite 600
888 17th Street, N.W.
Washington, D.C. 20036-3939

Dated: January 24, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing TM-6, The Texas Mexican Railway Company's Comments in Support of Motion of Western Shippers Coalition for Englargement of the Procedural Schedule by hand upon the following persons:

Arvid E. Roach II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-7566

I have also served by first class U.S. mail, postage pre-paid, all persons on who have made an appearance in this case of which we are aware, and the Honorable Judge Nelson.

Dated:

John V. Edwards
Zuckert, Scoutt
& Rasenberger, L.L.P.
Brawner Building
888 17th Street, N.W.
Washington, D.C. 20006-3959
(202) 298-8660

Item No.

Page Count 14

JAN 328

6 1055

ENTERED
Office of the Secretary
JAN 25 1996
Part of
Public Record

RECEIVED
JAN 23 1996
Mail
MANAGEMENT
I.C.C.

IN THE MATTER OF:

ICC Dockets AB 12 (Sub-Nos.188 and 189X) and AB-8 (Sub-No. 32, 36X and 39) and/or the Proposed Consolidation) Between Union Pacific Railroad Company and Southern Pacific Transportation Company Finance Docket No. 32760.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION VIII'S NOTICE OF INTENT TO PARTICIPATE IN CONSOLIDATION AND ABANDONMENT PROCEEDINGS

Pursuant to 49 U.S.C. § 10903 and 49 C.F.R. § 1152.25, the United States Environmental Protection Agency's Region VIII office ("EPA Region VIII") hereby states its intent to participate in the above captioned action. EPA Region VIII further states that it intends to participate both in the proceedings with regard to the proposed consolidation of Union Pacific Railroad Company and Southern Pacific Transportation Company and their respective subsidiaries (collectively, "the Companies"), as well as the proposed abandonment of the Malta and Sage rail lines located in Eagle and Lake Counties, in the State of Colorado. The proposed abandonment and discontinuance of service of these lines can be found in Docket Nos. AB-12 (Sub-Nos. 188 and 189X) and AB-8 (Sub-Nos. 32, 36X and 39).

Two additional "catch-all" requirements are important to note. First, 49 C.F.R. § 1105.7(e)(10) requires the applicant to describe any actions that are proposed to mitigate any adverse environmental impacts the abandonment may have and to explain why the proposed mitigation is appropriate. Second, the Interstate Commerce Commission ("the Commission")[1] can require applicants to submit additional information regarding the environmental or energy effects of the proposed action in accordance with 49 C.F.R. § 1105.7(f).

In issuing its procedural schedule for issuance of a final decision on the proposed merger of the Companies, including the abandonment of certain rail lines, the Commission required that inconsistent applications and responsive applications contain a preliminary draft environmental assessment (PDEA) at the outset, rather than the environmental assessment or environmental impact statement required by 49 C.F.R. § 1105.6(b)(4), because of the accelerated time frame to review the merger application. See 60 *Fed. Reg.* 54384, 54386 (October 23, 1995).

---

[1] Although EPA Region VIII realizes that the ICC is now known as the Surface Transportation Board, we have retained the references to the ICC for ease of applying the regulatory requirements.

III. EPA Region VIII's Interest in the Proceedings

With only a cursory review of the Environmental Report obtained today, it is difficult, if not impossible, for EPA Region VIII to determine the full nature and extent of its interest in these proceedings. However, it is our understanding that the rail lines proposed for abandonment in Eagle and Lake Counties run through or near three EPA-designated Superfund sites -- the Eagle Mine Site, located in and around Minturn, Colorado, the California Gulch Site, located in and around Leadville, Colorado and the Smeltertown Superfund Site, located in Salida, Colorado.

All of these Superfund sites contain the hazardous remnants of over a hundred years of hard rock mining operations. The mine sites, which historically were and continue to be serviced by rail lines owned and operated by the Denver & Rio Grande Western Railroad, are laden with mining wastes, such as tailings, waste rock, slag and acid mine drainage containing heavy metals such as lead, arsenic, zinc and cadmium. High concentrations of these metals have been released to receiving waters such as the Eagle and Arkansas Rivers. In addition to creating a substantial risk to the aquatic and ecological populations found in and near these water courses, the human populations living in the Minturn and Leadville communities are at risk of exposure to these heavy metals.

contamination exists within the rail line right-of-way, whether any potential future land uses are consistent with existing land uses, and whether there are any water quality impacts. There is also no mitigation plan for addressing any potential contamination in any structures, waste piles, soil or water media.

Most disturbingly for EPA Region VIII, there is no discussion on the potential environmental effects posed a future alternative public use of the Companies' property within the Eagle Mine Site. EPA Region VIII's understands that abandoned rights-of-way can be used as recreational trails subject to future restoration of rail service pursuant to Section 208 of the National Trails System Act Amendments of 1983.[2] While EPA Region VIII is generally in favor of returning properties to such recreational uses, EPA Region VIII is charged by Congress with the responsibility of ensuring that such a future use will not exposure recreational uses to hazardous substances existing in the former rights-of-way. Volume 6, Part 4 of the Railroad Merger Application (Environmental Report (Exhibit 4) - Abandonment) does not provide any discussion or evaluation of the potential impacts such a future use would have on sensitive human and ecological populations in the vicinity of the rail line.

EPA Region VIII has similar concerns regarding the potential future uses of the abandoned right-of-way intersecting the Town of

---

[2] Pub.L. No. 98-11 (1983), codified at 16 U.S.C. § 1247(d).

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 1996, true and correct copies of the foregoing NOTICE OF INTENT TO PARTICIPATE IN CONSOLIDATION AND ABANDONMENT PROCEEDINGS were deposited in the United States mail, postage prepaid, as follows:

An original and 20 copies and a 3.5" WordPerfect diskette of the NOTICE OF INTENT was sent to:

Office of the Secretary
Case Control Branch
Attn: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue N.W.
Washington, DC 20423

One (1) copy of the NOTICE OF INTENT was sent to:

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

FOR SOUTHERN PACIFIC TRANSPORTATION COMPANY AND DENVER & RIO GRANDE WESTERN RAILROAD:

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

Cannon Y. Harvey, Esq.
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

Kathleen M. Snead, Esq.
Southern Pacific Lines
P.O. Box [illegible]82
Denver, CO 80217

Charlotte L. Neitzel, Esq.
Holme Roberts & Owen, LLC
1700 Lincoln Street, Suite 4100
Denver, CO 80203

Smeltertown Superfund Sites.

VII. Prayer for Relief

Given the deficiencies in the Environmental Analysis and the failure to include EPA Region VIII in the consultation process required by the implementing regulations, EPA Region VIII requests the following relief from the Commission:

1. That the Commission require Southern Pacific Transportation Company to undertake and complete a remedial investigation of the nature and extent of contamination of the rail lines to be abandoned within the Eagle Mine and California Gulch Superfund Sites;

2. That such remedial investigations be completed and any appropriate mitigation plan be developed to EPA Region VIII's satisfaction prior to any final review and determination of the above-referenced abandonment applications; and

3. That EPA Region VIII be provided a copy of the complete merger application, including any original and supplemental environmental analyses, immediately so that EPA Region VIII may participate in a meaningful way in its review.

for identifying and addressing the contamination that may exist in the D&RGW's right-of-way. EPA is also troubled by the fact that D&RGW's commitments under the consent decree, including the remediation of the AV, La Plata and Harrison Street slag pile footprints and addressing any release of hazardous substances from these piles into sitewide surface and groundwater, are not mentioned in the Environmental Report.

Lastly, it appears from our review of the Environmental Report that there is no discussion of how environmental liabilities at the Colorado Superfund sites, as well as other sites currently managed or under investigation by EPA Region VIII such as Ogden Railyard, Hansen Container and the Eagle County Spill Site, will be assumed by or assigned to the new corporate entity.

V. Request for Supplemental Environmental Analysis

Given the lack of consultation and notice provided to EPA Region VIII, EPA Region VIII has not been afforded a reasonable opportunity to provide meaningful input to the preparation of the Environmental Analysis or the abandonment and merger processes as a whole. The Environmental Analysis must be supplemented to provide the contents required by Section 1105.7(e). EPA Region VIII also strongly urges that additional information be collected regarding the nature and extent of the contamination of the rights-