BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32-70

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

ADDITIONAL ERRATA TO REBUTTAL FILING

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

May 10, 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

ADDITIONAL ERRATA TO REBUTTAL FILING

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<thead>
<tr>
<th>Page</th>
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<td>Change &quot;$796&quot; to &quot;$795&quot; (modifying previous errata)</td>
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<td>23</td>
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<tr>
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<td>Change &quot;$945.3&quot; to &quot;$1,001.3&quot;</td>
</tr>
<tr>
<td>139</td>
<td>20 &amp; 22</td>
<td>Change &quot;$738.8&quot; to &quot;$795.3&quot;</td>
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<tr>
<td>279</td>
<td>20</td>
<td>Change &quot;RTC&quot; to &quot;RCT&quot;</td>
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<tr>
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<tr>
<td>Part B</td>
<td></td>
<td></td>
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<td>Rebuttal Verified Statement of Richard B. Peterson</td>
<td></td>
<td></td>
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<tr>
<td>Chart following p. 23</td>
<td></td>
<td>Change &quot;.7&quot; to &quot;.8&quot;; change &quot;18&quot; to &quot;18.1&quot;</td>
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</table>
Chart following p. 26
Change "514.9" to "534.4"; change "223.9" to "260.3"; change "738.8" to "795.3"

27
1
Change "$945.3" to "$1,001.8"

27
7
Change "$738.8" to "$795.3"

131
10
Insert "and" between "gateway" and "Tex Mex’s"

140
8
Change "well over $1.7 billion" to "over $1.9 billion"

Chart following p. 162
Change "796" to "795"; change "1,919" to "1,918" (modifying previous errata)

168
22
Change "$796" to "$795" (modifying previous errata)

169

In footnote added in previous errata, change "$796" to "$795"

195
20
Change "systemn" to "system"

Volume 2, Part C (UP/SP-231)

Rebuttal Verified Statement of William W. Whitehurst

12
See replacement Table 4 following errata list

13
4
Change "For only one movement" to "For no movements"

5-6
Delete ", and there the BN/Santa Fe variable cost disadvantage is only 13%"

16
20
Change "Peterson’s" to "Gray’s"
Respectfully submitted,

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[Signature]

May 10, 1996

Attorneys for Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company
CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 10th day of May, 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
Suite 500
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
Table 4

BN/Santa Fe (Merged) Cost per Car
Including Trackage Rights Compensation to UP/SP
Compared to SP
for Representative Traffic Movements

<table>
<thead>
<tr>
<th>Move No.</th>
<th>Movement Identification</th>
<th>Origin-Destination</th>
<th>Commodity</th>
<th>VARIABLE COST PER CAR (URCS 1994 unit costs)</th>
<th>BN/Santa Fe Over/(Under) SP</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>Chicago-Oakland</td>
<td>TOFC</td>
<td>via SP</td>
<td>$ 2,399 $ 1,890</td>
<td>(509) - 21%</td>
</tr>
<tr>
<td>b</td>
<td>Chicago-Salt Lake City</td>
<td>Auto</td>
<td>via BN/</td>
<td>2,615 2,251</td>
<td>(364) - 14%</td>
</tr>
<tr>
<td>c</td>
<td>Oakland-Salt Lake City</td>
<td>TOFC</td>
<td>Santa Fe</td>
<td>814 752</td>
<td>(62) - 8%</td>
</tr>
<tr>
<td>d</td>
<td>Provo-Valmy</td>
<td>Coal</td>
<td></td>
<td>528 516</td>
<td>(12) - 2%</td>
</tr>
<tr>
<td>e</td>
<td>Houston-Brownsville</td>
<td>Plastics</td>
<td></td>
<td>698 614</td>
<td>(84) - 12%</td>
</tr>
<tr>
<td>f</td>
<td>Kansas City-Brownsville</td>
<td>Grain</td>
<td></td>
<td>1,806 1,647</td>
<td>(159) - 9%</td>
</tr>
<tr>
<td>g</td>
<td>Eagle Pass-New Orleans</td>
<td>Auto</td>
<td></td>
<td>1,102 1,199</td>
<td>97 9%</td>
</tr>
<tr>
<td>h</td>
<td>Kerr-Houston</td>
<td>Crushed Stone</td>
<td></td>
<td>279 268</td>
<td>(11) - 4%</td>
</tr>
<tr>
<td>i</td>
<td>Chicago-Eagle Pass</td>
<td>Auto Parts</td>
<td></td>
<td>1,381 1,299</td>
<td>(82) - 6%</td>
</tr>
<tr>
<td>j</td>
<td>Houston-E St Louis</td>
<td>Chemicals</td>
<td></td>
<td>1,409 1,557</td>
<td>148 10%</td>
</tr>
<tr>
<td>k</td>
<td>Houston-Memphis</td>
<td>Plastics</td>
<td></td>
<td>1,264 918</td>
<td>(346) - 27%</td>
</tr>
<tr>
<td>l</td>
<td>Pine Bluff-San Jose</td>
<td>Paperboard</td>
<td></td>
<td>3,617 3,826</td>
<td>209 6%</td>
</tr>
<tr>
<td>m</td>
<td>Camden-Brownsville</td>
<td>Paperboard</td>
<td></td>
<td>1,298 1,235</td>
<td>(63) -5%</td>
</tr>
<tr>
<td>n</td>
<td>Little Rock-Lafayette</td>
<td>Cotton</td>
<td></td>
<td>1,237 1,170</td>
<td>(67) -5%</td>
</tr>
<tr>
<td>o</td>
<td>San Antonio-St Louis</td>
<td>TOFC</td>
<td></td>
<td>1,004 905</td>
<td>(98) -10%</td>
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<tr>
<td>p</td>
<td>Dayton-New Orleans</td>
<td>Plastics</td>
<td></td>
<td>622 592</td>
<td>(30) -5%</td>
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<tr>
<td>q</td>
<td>Baytown-Los Angeles</td>
<td>Plastics</td>
<td></td>
<td>2,258 2,166</td>
<td>(92) -4%</td>
</tr>
<tr>
<td>r</td>
<td>New Orleans-Los Angeles</td>
<td>TOFC</td>
<td></td>
<td>1,672 1,493</td>
<td>(179) -11%</td>
</tr>
</tbody>
</table>
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' RESPONSES TO STRICT'S
SECOND SET OF INTERROGATORIES AND DOCUMENT REQUESTS

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Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad Company

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

May 10, 1996
APPLICANTS' RESPONSES TO STRICT'S SECOND SET OF INTERROGATORIES AND DOCUMENT REQUESTS

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW, collectively, "Applicants," hereby respond to STRICT's second set of discovery requests served on May 6, 1996.1

GENERAL RESPONSES

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

1. Applicants have conducted a reasonable search for documents responsive to the interrogatories. Except as objections are noted herein, all responsive documents have been or shortly will be made available for inspection and

1/ In these responses Applicants use acronyms as they have defined them in the application. However, subject to General Objection No. 9 below, for purposes of interpreting the requests, Applicants will attempt to observe STRICT's definitions where they differ from Applicants' (for example, STRICT's definitions of "UP" and "SP," unlike Applicants', include UPC and SPR, respectively).

2/ Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege (General Objection No. 1) or the work product doctrine (General Objection No. 2) are not being produced.
copying in Applicants' document depository, which is located at the offices of Covington & Burling in Washington, D.C.

2. Production of documents or information does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any objection stated herein.

3. The document to be produced contains sensitive shipper-specific and other confidential information. Applicants are producing this document subject to the protective order that has been entered in this proceeding.

4. In line with past practice in cases of this nature, Applicants have not secured verifications for the answers to interrogatories herein. Applicants are prepared to discuss the matter with STRICT if this is of concern with respect to any particular answer.

GENERAL OBJECTIONS

The following objections are made with respect to all of the discovery requests. Any additional specific objections are stated at the beginning of the response to each interrogatory or document request.

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

2. Applicants object to production of, and are not producing, documents or information subject to the work product doctrine.
3. Applicants object to production of, and are not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other proceeding.

4. Applicants object to production of, and are not producing, public documents that are readily available, including but not limited to documents on public file at the Board or the Securities and Exchange Commission or clippings from newspapers or other public media.

5. Applicants object to the production of, and are not producing, draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such documents have been treated by all parties as protected from production.

6. Applicants object to providing information or documents that are as readily obtainable by STRICT from its own files.

7. Applicants object to the extent that the discovery requests seek highly confidential or sensitive commercial information (including, inter alia, contracts containing confidentiality clauses prohibiting disclosure of their terms) that is of insufficient relevance to warrant production even under a protective order.

8. Applicants object to the discovery requests to the extent that they call for the preparation of special studies not already in existence.
9. Applicants incorporate by reference their prior objections to the definitions and instructions set forth in STRICT's First Set of Interrogatories and Document Requests to Applicants.

RESPONSES TO SPECIFIC DISCOVERY REQUESTS

Interrogatory No. 29

"State whether under the Kansas City-Labadie proportional rate agreement the Applicants or any other party will be required to use any part of the SSW Kansas City-St. Louis line to reach Labadie from:

a. Kansas City; or
b. St. Louis."

Response

Subject to the General Objections stated above, Applicants respond as follows:

No. The agreement between UP and Union Electric discussed at page 7 of Mr. Rebensdorf's Rebuttal Verified Statement does not require any party to use the SSW line. However, if Applicants decided to use the SSW line between Leeds Junction and Pleasant Hill, Union Electric trains could move over that line.

Interrogatory No. 30

"State why, as stated at page 7 of UP/SP-231, that [sic] Applicants 'could not reach agreement with BN/Santa Fe on sale of [the former Rock Island line between St. Louis and Owensville]."
Response

Subject to the General Objections stated above,
Applicants respond as follows:

BN/Santa Fe and Applicants were unable to agree on a
purchase price for the referenced line.

Document Request No. 19

"Produce the Kansas City-Labadie proportional rate
agreement."

Response

Subject to the General Objections stated above,
Applicants respond as follows:

The agreement between UP and Union Electric
discussed at page 7 of Mr. Rebensdorf’s Rebuttal Verified
Statement will be produced, with availability limited to
outside counsel.
Respectfully submitted,

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(202) 662-5388

May 10, 1996
CERTIFICATE OF SERVICE

I, Michael A. Listgarten, certify that, on this 10th day of May 1996, I caused a copy of Applicants' Responses to STRICT's Second Set of Interrogatories and Document Requests by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

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

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

Michael A. Listgarten
May 9, 1993

BY HAND DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Room 1324
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Mr. Williams:

Enclosed please find an original and 20 copies of the Reply Of The Intermountain Power Agency (IPA 4) for filing in the above-referenced action. Also enclosed is a 3.5 inch disk containing the text of this pleading in WordPerfect 5.1 format.

Please date-stamp the extra copy provided and return it with our messenger.

Thank you.

Sincerely,

Alicia M. Serfaty

AMS/llb
Enclosures
cc: All Parties of Record
The Intermountain Power Agency ("IPA"), by its undersigned counsel, hereby replies to the Motion to Compel Further Explanation or Correction Re: Western Shippers' Coalition ("WSC") Position On Montana Rail Link Inc.'s ("MRL") Inconsistent Application filed with this Board on April 29, 1996.

As a preliminary matter, IPA takes issue with the Utah Railway's failure to serve IPA or any party of record other than Applicants, WSC or MRL. In spite of the fact that Utah Railway mischaracterizes IPA's position and uses IPA's pleading as an exhibit to its motion, IPA did not learn about the Utah Railway's motion until yesterday when it received WSC's reply to the motion. When questioned as to whether IPA was served with the Motion, counsel for the Utah Railway indicated that only Applicants, WSC and MRL had been served and indeed, Utah Railway's certificate of service indicates the same. It is a violation of this Board's rules as well as the Board's specific directives in this proceeding.
for the Utah Railway to file a motion with the Board without serving the parties of record. See 49 C.F.R. § 1104.12 (a) ("Every document filed with the [Board] should include a certificate showing simultaneous service upon all parties to the proceeding.") (emphasis added); Finance Docket No. 32760, Decision No. 15, at 1-2 (served Feb. 16, 1996) ("All future filings must each have a certificate of service indicating that all PORs have been properly served with a copy of the filing."). Utah Railway’s failure to serve IPA has prejudiced IPA in its ability to respond to the Motion and the assertions made therein about its position and it is only by happenstance that IPA discovered the Motion and was able to respond on time. Utah Railway’s failure to abide by this Board’s regulations should not be tolerated.

As a substantive matter, IPA disputes the Utah Railway’s mischaracterization of its position. As IPA stated in its pleading, the Utah Railway settlement agreement and the additional access provided to the Utah Railway appears to "reduce some, though not all, of the adverse competitive impacts that will likely result from the proposed merger." See IPA-2 at 2-3. IPA also reserved the right to return to the Board in the event that the "settlement agreement fails to ameliorate competitive concerns as anticipated." Id. at 3. Thus, IPA did not support the merger in light of the settlement agreement, as the Utah Railway argues in its Motion at 2, but rather chose "not [to] make any specific objections to the merger proceeding at this time." See IPA-2 at 3.

This position is not inconsistent with that articulated by the WSC in its pleading. IPA’s position that the Utah Railway settlement agreement may resolve some of the competitive concerns raised by the merger does not contradict WSC’s position supporting MRL’s inconsistent application, a proposal
which may or may not go farther in ameliorating competitive concerns than the
Utah Railway settlement agreement. While IPA has chosen to articulate its own
position and did not affirmatively sign on to WSC's pleading, it does not, as a
member of WSC, object to the position taken by WSC. Accordingly, Utah
Railway improperly characterized IPA's position and improperly used IPA as an
eexample in support of its Motion.

Dated: May 9, 1996

Respectfully submitted,

Charles A. Spitalnik
Alicia M. Serfaty

HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for Intermountain
Power Agency
CERTIFICATE OF SERVICE

I hereby certify that on May 9, 1996, a copy of the foregoing Reply Of The Intermountain Power Agency (IPA-4) was served by first-class U.S. mail, postage prepaid upon all parties of record in this proceeding.

I further certify that two copies of the aforementioned pleading were served by Federal Express, unless otherwise indicated, upon the following:

Erika Z. Jones (By Hand)  
Adrian L. Steel, Jr.  
Roy T. Englert, Jr.  
Kathryn A. Kusske  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Jeffrey R. Moreland  
Richard E. Weicher  
The Atchison, Topeka and Santa Fe Railway Company  
1700 East Golf Road  
Schaumburg, IL 60173

Janice G. Barber  
Michael E. Roper  
Burlington Northern Railroad Company  
3800 Continental Plaza  
777 Main Street  
Ft. Worth, TX 76102-5384

I also certify that three copies of the aforementioned pleading were served by hand upon the following:

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

Paul A. Cunningham  
Richard B. Herzog  
James M. Guinivan  
Harkins, Cunningham  
Suite 600  
1300 Nineteenth Street, N.W.  
Washington, D.C. 20036

Alicia M. Serfaty
May 3, 1996

Office of the Secretary
Case Control Branch
Surface Transportation Board
1201 Constitution Avenue, NW
Washington, DC 20423

ATTN: Finance Docket No. 32760

TO WHOM IT MAY CONCERN:

My office has received several letters concerning the merger of the Union Pacific and Southern Pacific railroads. Enclosed are copies of the letters.

I would appreciate a reply from your office in which to base a response to my constituents. Please send your response to my District Office at Post Office Box 5518, Meridian, MS 39302.

Sincerely,

GILLESPIE V. MONTGOMERY
Member of Congress

GVM:kmm
Dear Representative Montgomery:

I am a resident of Kansas, Mo. I am employed by the Kansas City Southern Railway Company.

The purpose of this letter is to ask you to oppose the Southern Transportation Board's plan to merge the Santa Fe, the Atchison, Topeka and Santa Fe, and the Missouri Pacific railroads as proposed by the board.

I believe this merger is anti-competitive. It will result in a company that will dominate traffic in the northern half of the United States which will lead to higher rates and lower standards of service. It will give railroads at the expense of carriers such as KCS and still unduly benefit results a loss of jobs to rail and other railroad.

I hope you agree and will express your views to the Senate. I would appreciate hearing from you regarding your position on this important issue.

Sincerely,

[Signature]

[Name]
April 18, 1996

The Honorable G. V. Montgomery
2184 Rayburn House Office Building
Washington, DC 20515

Dear Sonny:

The Union Pacific/Southern Pacific merger, if approved unconditionally, will result in a loss of competition between UP and SP for the delivery of coal to two large Entergy power plants: the White Bluff Station in Arkansas and the Nelson Station in Louisiana. These plants burn low-sulfur coal from the Wyoming Powder River Basin, and this coal is transported by rail. Rail rates represent 70% to 80% of the delivered cost of the coal, so it is very important that these rates be kept as low as possible to enable Entergy to provide electric service to its customers in Arkansas, Louisiana, Mississippi and Texas at reasonable cost.

The best means of keeping Entergy's coal transportation costs at the lowest practicable level is through competition. The Powder River Basin mines are served by both UP and the Burlington Northern Santa Fe, either of which can originate the coal used as fuel at the White Bluff and Nelson Stations. At present, the White Bluff Station is served only by UP, but Entergy is considering construction of a rail spur to a nearby SP line which would enable SP (together with BNSF) to provide direct line which would enable SP (together with BNSF) to provide direct competition with UP for transportation of coal to White Bluff in the future. The Nelson Station is now served only by the Kansas City Southern Railway, but Entergy is in the process of building a spur to a nearby SP line which will provide it with two-carrier service at destination (KCS and SP) as well as two-carrier service at the mine origins (UP and BNSF).

These competitive options will be lost as a result of the proposed UP/SP merger. In the case of coal movements to both the White Bluff and Nelson Stations, SP would no longer be able to bid independently for the movement of coal originated by BNSF, and UP's control of SP would enable UP to prevent SP from bidding competitively with BNSF for these movements. The White Bluff spur “build-out” would be rendered meaningless, and the competitive option Entergy anticipated when it committed substantial capital to the Nelson spur “build-out” would be cut in half (and Entergy would lose the benefit of the most efficient competitive routing, via BNSF-SP). This loss of competition will result in
coal transportation costs at least $2 per ton higher than they would otherwise be. For both power plants, this translates into a near-term total fuel cost increase of about $5 million annually, and a long-term total fuel cost increase of about $18 million annually.

Because of these anti-competitive impacts, Entergy opposes the proposed UP/SP merger unless conditions are imposed by the Surface Transportation Board (STB) that would preserve Entergy’s present competitive options. The conditions requested by Entergy would require UP/SP to grant “trackage rights” to BNSF which would enable BNSF to operate over certain SP lines in order to serve the White Bluff and Nelson Stations via the rail spurs described above. Under a “Settlement Agreement” between UP/SP and BNSF, negotiated prior to the filing of the merger application last fall, UP/SP has already agreed to give BNSF trackage rights over the very same lines if the merger is approved. However, under this agreement BNSF would be prevented from using the trackage rights to deliver coal to the White Bluff and Nelson Stations.

Entergy believes that the forces of competition (which govern other fuel delivery options) should be what determine the level of its future coal rail rates. If the STB decides to approve the UP/SP merger, the trackage rights conditions requested by Entergy are necessary merely to preserve Entergy’s present competitive options. Entergy urges public officials from its service area to write the STB in support of Entergy’s requests. Letters should be addressed to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32760, Surface Transportation Board, 1201 Constitution Avenue, NW, Washington, DC 20423.

Sincerely,

[Signature]

DEM/as
April 22, 1996

The Honorable Sonny Montgomery
2184 Rayburn House Office Bldg.
Washington, D.C. 20515-2403

Dear Representative Montgomery:

I am a resident of Porterville, Mississippi. I am employed by the Kansas City Southern Railway Company.

The purpose of this letter is to ask you to write to Surface Transportation Board advising it that you oppose the merger of the Union Pacific and Southern Pacific railroads as presented to the Board.

I believe this merger is anti-competitive. It will result in a company that will dominate traffic in the western half of the United States which will lead to higher rates and lower standards of service. It will gain traffic at the expense of carriers such as KCS and will undoubtedly result in a loss of jobs on KCS and other railroads.

I hope you agree and will express your views to the STB. I would appreciate hearing from you regarding your action on this important issue.

Sincerely,

David J. Brown

David J. Brown
April 17, 1996

The Honorable Sonny Montgomery’s Office
2144 Rayburn House Office Bldg.
Washington, DC. 20515-2403

Dear Representative:

I am a resident of Meridian, Ms. I am employed by the Kansas City Southern Railway Co. The purpose of this letter is to ask you to write to the Surface Transportation Board advising it that you oppose the merger of the Union Pacific and Southern Pacific railroads as presented to the Board. I believe this merger is anti-competitive. It will result in a company that will dominate traffic in the western half of the U.S. which will lead to higher rates and lower standards of service. It will gain traffic at the expense of carriers such as KCS and will undoubtedly result in a loss of jobs on KCS and other railroads. I hope you agree and will express your views to the STB. I would appreciate hearing from you regarding your action on this important issue.

Sincerely,

Jeff C Fuller
PD Box 4443
Meridian Ms 39304
The Honorable Gillespie V. Montgomery  
U.S. House of Representatives  
Post Office Box 5618  
Meridian, MS 39302

Dear Congressman Montgomery:

Thank you for your recent letter forwarding correspondence from several constituents expressing their concerns regarding the proposed merger of the Union Pacific (UP) and Southern Pacific (SP) railroads. They urge that careful consideration be given to the competitive aspects of the merger, particularly in your state.

As you may know, UP and SP filed their merger application on November 30, 1995. Because the matter now is pending before the Surface Transportation Board (Board), it would be inappropriate for me to comment on the merits of the case. Let me assure you, however, that the Board remains committed to fostering an effective and competitive rail industry. The Board will certainly give careful scrutiny to the competitive situation in your state, as well as any other issues affecting the public interest that may be raised during the merger proceeding. I anticipate a final decision in this proceeding by August 12, 1996.

I appreciate your interest in this matter, and I am having your constituents' correspondence placed in the public docket for this proceeding. If you need any further information, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Office of the Secretary

May 20, 1996

MAY 29 1996

Part of Public Record
May 7, 1996

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation
1201 Constitution Avenue, N.W., Room 2215
Washington, DC 20423

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

Dear Secretary Williams:

Enclosed are the original and twenty copies of "Reply of Western Shippers' Coalition To Motion of Utah Railway." Also enclosed is a 3.5" diskette containing the contents of the Reply.

Please date stamp the additional three copies and return via our messenger.

Very truly yours,

Michael F. McBride
Attorney for Western Shippers' Coalition

cc: All Parties on Service List

Enclosure
Western Shippers' Coalition ("WSC") hereby replies to "Motion to Compel Further Explanation or Correction Re Western Shippers' Coalition Position on Montana Rail Link Inc.'s Inconsistent Application," (Utah-10), filed April 29, '996. The Motion is extraordinary, does not cite any authority for the relief it seeks, and must be denied.

WSC has stated its position with respect to MRL in this proceeding in JSS-1, filed March 29, 1996; WSC-11, filed March 1, 1996. 

Despite the Board's intent that this proceeding be expedited, Utah Railway's Motion was not served by hand, by overnight delivery, or by facsimile. Counsel for WSC received it on May 2, 1996, and is responding as quickly as possible, after consultation with the client and while performing other professional responsibilities. Counsel for Utah Railway could have provided telephonic notice to WSC's counsel of the filing of the Motion, but did not. Evidently, therefore, Utah Railway does not consider the Motion to be an urgent matter. Neither should the Board.
WSC filed its list of members as Attachment AHJ-1 to the Verified Statement of WSC's Executive Director, Alexander H. Jordan, in WSC-11, and as an attachment to JSS-1. WSC hereby affirms that the list was accurate as of that date.

Certain WSC members are separately represented in this proceeding, and apparently some of them have reached settlements with UP and SP. We are not privy to those settlement agreements. However, so far as is known to WSC, where those settlements required them to withdraw from WSC, they have done so, and as UP and SP admit, WSC's counsel has so advised the Board and Applicants. Applicants' Rebuttal (UP/SP-230), Vol. 1 - Narrative, pp. 49-50. But some WSC members have reached individual settlements with UP/SP that permit them to continue as members of WSC. The essential point is that WSC filed its current list of members with its March 29, 1996 filing, and has not been advised by any of those members that they have withdrawn from WSC.

Utah Railway, for example, was a member of WSC, but withdrew months ago. WSC so advised UP/SP in its discovery responses. Indeed, when the undersigned learned that Utah Railway had contributed financially to WSC, which he had not known previously, he promptly advised Judge Nelson and counsel for Applicants (as well as those on the restricted service list) so that his representations about financial contributions to WSC to Applicants and Judge Nelson during the discovery process would
be corrected. That demonstrates that WSC and its counsel have discharged their responsibilities to the Board.

To go beyond that and to invade the internal communications of WSC members with WSC’s Director would violate WSC’s and its members’ First Amendment rights of free association and speech. Even the Applicants conceded in discovery that they would not seek communications among members of WSC. That, in essence, is what Utah Railway is seeking, and the Board may not do that. If UP or SP are in possession of a settlement agreement with a WSC member that requires that member to withdraw from WSC, UP or SP should take that up with the WSC member. WSC is unaware of any such circumstance.

Utah Railway also mischaracterizes Intermountain Power Agency’s (“IPA”) position. IPA’s comments, attached as Attachment B to Utah Railway’s Motion, nowhere state that it supports the proposed merger, and those comments specifically refer to "the adverse competitive impacts that will likely result from the merger." Id. at 3. It is Utah Railway, not WSC, that fails to properly characterize another party’s position.

Utah Railway prefers that the Board approve the merger of UP and SP, with Utah Railway’s settlement agreement with UP and SP part of that transaction. MRL has sought divestiture of SP’s Central Corridor, in a filing accepted by the Board as complying with its rules. The proper determination is up to the Board, and WSC has made appropriate filings for the Board’s consideration, which it hardly considers a "body count" approach.
to evidentiary submissions (Motion at 3). Even a cursory review of WSC-11 would belie that. It is therefore mystifying to be accused of "misserv[ing] the Board in its balancing role" (id.), and to be "approach[ing] the borders of propriety" (id.).

All of WSC's filings satisfy counsel's obligations to the Board. The undersigned takes his responsibilities to the Board seriously. No one can demonstrate that the undersigned has failed to discharge any obligation owed the Board.

Given WSC's counsel's representations herein and in its previous submissions in this proceeding, Utah Railway's Motion must be denied. We trust the Board will consider the matter closed, in light of these representations.

Respectfully submitted,

[Signature]

Michael F. McBride
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
Suite 1200
1875 Connecticut Ave., N.W.
Washington, D.C. 20009-5728
(202) 986-8000

Attorney for Western Shippers' Coalition
UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760
(Sub-No. 11)

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

CERTIFICATE OF SERVICE

I hereby certify that I have served this 7th day of
May, 1996, a copy of the foregoing "Reply of WSC To Motion of
Utah Railway" on all parties on the official service list in this
proceeding by First Class mail, postage prepaid.

Michael F. McBride
Michael F. McBride
UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

REPLY OF WESTERN SHIPPERS’ COALITION
TO MOTION OF UTAH RAILWAY

Michael F. McBride
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20009-5728
(202) 986-8000

Attorneys for Western Shippers’ Coalition
April 23, 1996

City Administrator
Harry Jensen

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

Re: Union Pacific Railroad Company, Merger with Southern Pacific Railroad Company, Finance Docket No. 32760 and Southern Pacific Transportation Company Abandonment Exception, Docket No. AB-12 (Sub-No. 184X)

Dear Sir or Madam:

Enclosed is an original of the filing by the City of Susanville and the County of Lassen regarding the merger of Union Pacific Railroad and Southern Pacific Railway Company and the abandonment exception, Wendel-Alturas line in Modoc and Lassen Counties, California. Also enclosed are twenty copies of this filing with the board.

Sincerely,

KATHLEEN R. LACAR
City Attorney
City of Susanville
700 Court Street
P.O. Box 730
Susanville, CA 96130
(916) 257-7704
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 TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CITY OF SUSANVILLE AND
COUNTY OF LASSEN IN SUPPORT OF
RESPONSIVE APPLICATION OF
MONTANA RAIL LINKS, INC.

Dated: April 23, 1996.

The City of Susanville, California, and the County of Lassen,
California, have reviewed the Responsive Application of Montana
Rail Links, Inc., dated March 29, 1996, and are in support thereof.

The Modoc Line provides the most direct rail route to move
materials and products to and from the Pacific Northwest to the
INTERSTATE 80 corridor. Additionally, the line provides an
alternative form of transportation to move goods to and from the
City of Susanville and County of Lassen.

In 1995, the Base Realignment and Closure Commission realigned
the Sierra Army Depot at Herlong, Lassen County, by removing one of
its missions. A local Reuse Committee was established to
investigate potential uses of the Depot. The Reuse Committee has
identified the following possible uses:

1. A two hundred (200) acre industrial facility located at
the north end of the Depot. Possible uses include a tire recycling
operation and a munitions manufacturer.

2. A six hundred (600) acre industrial facility located at
the south end of the Depot. Possible uses have not yet been
identified.

Abandonment of the Wendel to Alturas Line will severely
jeopardize the Reuse Committee's ability to attract industry and otherwise severely limit the options available for base reuse. As previously noted, the line provides access to both the Pacific Northwest and the Interstate 80 corridor. Such transportation provided by rail access will greatly enhance the committee's ability to attract industry. In addition, the prospect that steady growth in rail volume will occur benefits the local, State and Nation's economy.

It is axiomatic that the City of Susanville and the County of Lassen are in a depressed economic state. The loss of the Sierra Army Depot will only exacerbate the existing situation. Not only is the rail system necessary to attract industry for the Depot but it is vitally important to attract industry for other areas of Lassen County.

For example, a cogeneration power plant is located in Wendel, Lassen County. Lassen County has received inquiries regarding development of the area primarily based upon the location of the rail system in relation to the known geothermal resource area. Without continued rail service development of the Wendel area is unlikely.

It is undisputed that the Line is in generally good condition. Assuming that industry requiring rail use is drawn to the City of Susanville, Lassen County, or the Depot costly reconstruction would be necessary if abandonment is allowed.

Although the Line is currently under utilized it is believed that the Sierra Army Depot currently averages six trains a day north from Herlong, Lassen County. Obviously, should full buildout of the industrial parks occur more intense rail use will be realized.

The route, besides relieving local streets and highways of alternative transportation traffic, is not exposed to weather related problems associated with other local rail routes.

Both the City of Susanville and County of Lassen have adopted resolutions supporting the responsive application of Montana Rail Link, Inc., dated March 29, 1996. Resolutions No. 96-2794 (City) and 96-032 (County) supporting said Responsive Application are attached hereto and by this reference incorporated herein.

CONCLUSION

The City of Susanville and County of Lassen urge the Board to grant the Responsive Application of Montana Rail Link, Inc., dated March 29, 1996, regarding the Wendel-Alturas Line and encourage full utilization of said Line.
Respectfully submitted,

CITY OF SUSANVILLE
KATHLEEN R. LAZARD, City Attorney

Kathleen R. Lazard
700 Court Street, P.O. Box 730
Susanville, CA 96130
(916) 257-7704

Attorney for the City of Susanville
April 23, 1996.

Respectfully submitted,

COUNTY OF LASSEN
JAMES G. FLAGEOLLET,
County Counsel

James G. Flageollet
County of Lassen
707 Nevada Street
Susanville, CA 96130
(916) 251-8334

Attorney for County of Lassen
RESOLUTION NO. 96-2794

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUSANVILLE
IN SUPPORT OF RESPONSIBLE APPLICATION OF
MONTANA RAIL LINK, INC.

WHEREAS, the City of Susanville will experience an adverse economic impact if the proposed 85 mile Southern Pacific Railroad abandonment from near Wendel to near Alturas is approved; and

WHEREAS, the City of Susanville has reviewed and considered the responsive Application of Montana Rail Link, Inc., dated March 29, 1996; and

WHEREAS, the Feather River Rail Society, the organization that operates the Portola Railroad Museum in Portola, California, and Motorcar Operators West, an organization whose members own and operate railroad motor cars throughout the western United States, have expressed interest in using the railroad line for alternate railroad purposes including passenger tourist trains and motorcar events; and

WHEREAS, interest in using the line for rail cycling has been expressed by individuals seeking safe and legitimate locations to operate individual outings and/or a commercial rail-cycling venture; and

WHEREAS, the City of Susanville is seeking ways to diversify its economic base including tourism; and

WHEREAS, the Wendel to Alturas line could be part of a much larger tourist railroad loop connecting communities in Lassen, Modoc, and Plumas Counties on existing track; and

WHEREAS, the Shasta Cascade Wonderland Association, of Redding, California, which is a private organization that represents northern California’s tourism interests is actively seeking ways to attract and transport people to northern California to see and enjoy the natural and scenic resources of this area;
Resolution No. 96-2794 Continued:

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Susanville, as follows:


APPROVED:

Douglas Sayers, Mayor

ATTEST:

Mary A. Fahlen, CMC, City Clerk

The foregoing resolution was adopted at a regular adjourned meeting of the City Council of the City of Susanville, held on the 18th day of April, 1996 by the following vote:

AYES: Johnson-Wright, DeBoer, Callegari, Templeton, and Sayers
NOES: None
ABSENT: None
ABSTAINING: None

Mary A. Fahlen, CMC, City Clerk

APPROVED AS TO FORM:

Kathleen R. Lazard, City Attorney
CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Statement on all parties of record on the service list in this proceeding, and an original plus twenty copies on the Secretary of the Surface Transportation Board by first class mail, postage prepaid this 25th day of April, 1996.

[Signature]

MARY Fahlen, CMC
City Clerk

C:\CITYSTB1
RESOLUTION NO.  96-032

RESOLUTION IN SUPPORT OF RESPONSIBLE APPLICATION OF MONTANA RAIL LINK, INC.

WHEREAS, the County of Lassen will experience an adverse economic impact if the proposed 85 mile Southern Pacific Railroad abandonment from near Wendel to near Alturas is approved; and

WHEREAS, the County of Lassen has reviewed and considered the responsive Application of Montana Rail Link, Inc., dated March 29, 1996; and

WHEREAS, the Feather River Rail Society, the organization that operates the Portola Railroad Museum in Portola, California, and Motorcar Operations West, an organization whose members own and operate railroad motor cars throughout the western United States, have expressed interest in using the railroad line for alternate railroad purposes including passenger tourist trains and motor car events; and

WHEREAS, interest in using the line for rail cycling has been expressed by individuals seeking safe and legitimate locations to operate individual outings and/or a commercial railcycling venture; and

WHEREAS, the County of Lassen is seeking ways to diversify its economic base including tourism; and

WHEREAS, the Wendel to Alturas line could be part of a much larger tourism railroad loop connecting communities in Lassen, Modoc, and Plumas Counties on existing track; and

WHEREAS, the Shasta Cascade Wonderland Association, of Redding, California, which is a private organization that represents northern California’s tourism interests is actively seeking ways to attract and transport people to northern California to see and enjoy the natural and scenic resources of this area;

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

1. That the foregoing recitals are true and correct.

2. That the Board of Supervisors of the County of Lassen hereby supports the Responsive Application of Montana Rail Link, Inc., dated March 29, 1996.
The foregoing resolution was adopted at a regular meeting of the Board of Supervisors of the County of Lassen, State of California, held on the 23rd day of April, 1996, by the following vote:

AYES: Lough, Neely, Chapman, Loubet

NOES: 0

ABSENT: Lemke

I, THERESA NAGEL, Clerk of the County of Lassen, State of California and ex officio Clerk of the Board of Supervisors thereof, do hereby certify that the foregoing resolution was adopted by the said Board of Supervisors at a regular meeting thereof held on the 23rd day of April, 1996.

Theresa Nagel, Clerk of the Board

ATTEST:

Julie Bustamante, Deputy

Chairman of the Board of Supervisors,
County of Lassen, State of California
May 1, 1996

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

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

Dear Mr. Secretary:


An extra copy of this letter and the Appendix are enclosed. Kindly indicate receipt and filing by time-stamping both and returning them to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

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

Enclosures
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 110 GRANDE WESTERN
RAILROAD COMPANY

Finance Docket No. 32760

APPENDIX TO THE
COMMENTS OF ENTERGY SERVICES, INC.,
ARKANSAS POWER & LIGHT COMPANY AND
GULF STATES UTILITIES COMPANY

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

By: Wayne Anderson
General Attorney-Regulatory
Entergy Services, Inc.
Mail Unit L-ENT-26E
631 Loyola Avenue
New Orleans, LA 70013

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

Attorneys and Practitioners

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

Dated: May 1, 1996
Relevant Excerpts from Deposition Transcripts
Referenced in Entergy’s Argument of Counsel (page 21)

-- Deposition of Witness Neal D. Owen
BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN
PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPDSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
HIGHLY CONFIDENTIAL
Washington, D.C.
Friday, February 23, 1996
Deposition of NEAL D. CWEN, a witness
herein, called for examination by counsel for the
Parties in the above-entitled matter, pursuant to
agreement, the witness being duly sworn by JAN A.
WILLIAMS, RPR, a Notary Public in and for the
District of Columbia, taken at the offices of
Mayer, Brown & Platt, 2000 Pennsylvania Avenue,
N.W., Washington, D.C., 20006-1882, at
10:05 a.m., Friday, February 23, 1996, and the
proceedings being taken down by Stenotype by JAN
A. WILLIAMS, RPR, and transcribed under her
direction.

ALDERSON REPORTING COMPANY, INC.
(202)289-2280 (800) FOR DEPO
1111 14th St., N.W., 4th FLOOR / WASHINGTON, D.C., 20005
for the central corridor -- I meant BN/Santa Fe, for the central corridor trackage rights between Denver and Salt Lake City make any provision for traffic increases on the central corridor lines which may occur in spite of the proposed merger?

A. Both the UP/SP operating plan and my description of the planned BN/SF operation are basically restatements of traffic as it exists today. And growth traffic is really -- is treated separately in plans such as this. So there's been no consideration of growth in what I've stated here, economic growth.

Q. Okay. If UP/SP coal traffic post-merger were to increase between Orestad and Denver by five trains a day total in both directions, would this affect the lines' capacity to handle BN/Santa Fe trains?

A. It might or it might not, I would really have to look at it in that context and make an analysis. And lacking that I can't really answer the question.

Q. Well, let me rephrase the question a bit. Would you agree that increases in traffic density and train frequency on a particular line can affect a railroad's ability to operate on the
line in the future as planned, assuming that there are no capacity enhancements?

A. It can. It doesn’t always, but it can, yes.

Q. Do you know whether applicants plan to make any capacity improvements to the Denver to Salt Lake City line after the merger?

A. On the basis of our planned operation, no. There is a fund established by the settlement agreement that, if improvements are needed to UP/SP lines where BN/SF has trackage rights, there is money available for those improvements, if they’re found to be necessary.

Q. But you’re not aware of any specific improvements from Denver to Salt Lake City?

A. No, there’s nothing planned as of this testimony.

Q. If you could please reference page 15 of your verified statement. You’re talking about the southern corridor at this point. And my first question to you about the southern corridor traffic is does the SP line between Houston and Iowa Junction, Louisiana, pass through Beaumont, Texas?

A. Yes.
Q. Does BN/Santa Fe also have a line that passes through Beaumont?

A. BN/Santa Fe has a line to the north of the SP line that goes to Silsbee and then turns south to Beaumont which is basically the end of the BN/Santa Fe right now. It would join the SP line at Beaumont.

Q. So there is an existing connection between SP and BN/Santa Fe at Beaumont?

A. Yes.

Q. Could this connection be used by BN/Santa Fe to move unit coal trains from, for example, Wyoming to Lake Charles, Louisiana?

A. Yes.

Q. On page 16, the beginning of section 2a, three lines down, you note that intermodal trains between California and New Orleans will be bypassing Houston on BN/Santa Fe's Conroe subdivision to the north and entering the new segments at Beaumont?

MS. KUSSKE: I'll just like to correct for the record, I believe it says one intermodal train pair.

BY MS. KOLESAR:

Q. Could you please identify on the map on
What is the Conroe subdivision?

A. Let me get the colored version here.

On the map on page 15A, if you locate Beaumont, roughly in the center of the map, a little bit to the left side of the page, there’s a green line extending north to Silsbee. That is the BN/Santa Fe Silsbee subdivision. It’s a little over 20 miles in length.

Q. What’s 20 miles on this map, over to Dobbin?

A. No, between Beaumont and Silsbee is about 20 miles.

Q. So just that one segment?

A. Yes. That is the Silsbee subdivision.

Then you go west from Silsbee toward Dobbin and on to Somerville. That green line is BN/Santa Fe’s Conroe subdivision. And from Somerville then this goes on to Temple to the north, where we can go to California or we can go north to Seattle or Denver or wherever we want to go at that point in time, Chicago.

So that route from Temple to Somerville, Dobbin, Silsbee, Beaumont is the route that this intermodal train would use. It’s the route that the hypothetical train to Lake...
Charles would use to bypass Houston.

Q. So you would want to bypass Houston. Is that because it's shorter?

A. It's shorter and because of occasional rail congestion that is going to occur in the Houston area, both.

Q. If you could please turn to page 25. In the second to the last paragraph, you refer to the establishment of an equitable arrangement between BN/Santa Fe and UP/SP for switching service needed for LCRA equipment moving to and from the car maintenance facility at Smithville?

A. That's correct.

Q. First of all are you aware that LCRA's private cars used for the movement of Powder River Basin coal to the Fayette power project are maintained at Smithville?

A. I don't have specific knowledge of that, but I have seen the Smithville facility and it certainly appears to be the major maintenance facility for those coal cars.

Q. Okay. Is your testimony referring to the possibility that in the future BN/Santa Fe may handle the LCRA coal traffic instead of UP as a result of the settlement agreement?
A. Yes.

Q. And what do you mean by an equitable arrangement?

A. Smithville under the terms of the settlement agreement is not a two-to-one point. And that line item is included in my verified statement to show that we might need access to Smithville and would plan to negotiate for such access.

Q. But you know of no negotiations to date?

A. That's correct, I know of none.

Q. Would you assume, for example, if negotiations were underway, that UP would be doing the actual switching in return for a reciprocal switching charge or would there be a different way to handle the matter?

A. I really can't respond to that because I haven't looked at this in detail. I think the option might be open since there is other BN/Santa Fe service in the area, local service from Temple as an example and the aggregate trains that we would hope would be running from Georgetown by that facility toward Houston.

It's conceivable that BN/Santa Fe would
CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 1996, I caused a copy of the foregoing Appendix to Entergy Services, Inc., and its affiliates Arkansas Power & Light Company and Gulf States Utilities Company’s Comments to be served by first class mail (postage prepaid) on the individuals listed below.

Highly Confidential Version

Arvid E. Roach II, Esq.
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Redacted, Public Version

Carol A. Harris, Esq.
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Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Patricia E. Kolesar
BY HAND DELIVERY

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

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

Dear Mr. Secretary:

Pursuant to Administrative Law Judge Nelson’s April 22, 1996 Order in the above-referenced proceeding, Wisconsin Power & Light Company and Wisconsin Public Service Corporation ("WPL, WPS") hereby enclose five (5) copies of the Appendix to the Joint Comments of Wisconsin Power & Light Company and Wisconsin Public Service Corporation. WPL and WPS are filing a HIGHLY CONFIDENTIAL VERSION (WPL-8, WPS-8) and a REDACTED VERSION (WPL-9, WPS-9) of the deposition transcript pages that were cited in the March 29 Comments. The HIGHLY CONFIDENTIAL copies are being FILED UNDER SEAL in accordance with the procedure set forth at 49 C.F.R. § 1104.14.

An extra copy of this letter and the Appendix are enclosed. Kindly indicate receipt and filing by time-stamping both and returning them to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Kelvin J. Dowd
An Attorney for Wisconsin Power & Light Company and Wisconsin Public Service Corporation

Enclosures
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

APPENDIX TO THE JOINT COMMENTS OF WISCONSIN POWER & LIGHT COMPANY AND WISCONSIN PUBLIC SERVICE CORPORATION

--REDACTED-- ACCESS NOT RESTRICTED

WISCONSIN POWER & LIGHT COMPANY
222 West Washington Avenue
Madison, Wisconsin 53710

WISCONSIN PUBLIC SERVICE CORPORATION
600 North Adams
Green Bay, Wisconsin 54307

OF COUNSEL:
Sloyer & Loftus
1224 Seventeenth Street, N.W.
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By: C. Michael Loftus
Kelvin J. Dowd
1224 Seventeenth Street, N.W.
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Attorneys and Practitioners

Dated: May 1, 1996
BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 32760

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

HIGHLY CONFIDENTIAL

Washington, D.C.
Tuesday, February 13, 1996

Deposition of RICHARD G. SHARP, a
witness herein, called for examination by counsel
for the Parties in the above-entitled matter,
pursuant to agreement, the witness being duly
sworn by JAN A. WILLIAMS, RPR, a Notary Public in
and for the District of Columbia, taken at the
offices of Covington & Burling, 1201 Pennsylvania
Avenue, N.W., Washington, D.C., 20044, at
10:05 a.m., Tuesday, February 13, 1996, and the
proceedings being taken down by Stenotype by JAN
A. WILLIAMS, RPR, and transcribed under her
direction.

ALDERSON REPORTING COMPANY, INC.
(202)289-2260 (800) FOR DEPO
1111 14th St., N.W., 4th FLOOR / WASHINGTON, D.C., 20005
involved; is that correct?

A. Not necessarily directly. It assumes that the receiver has access to Burlington Northern originated coal in some fashion, not necessarily by being located on the Burlington Northern/Santa Fe system.

Q. Because you did not look into the rate levels that Southern Pacific is either currently charging or planning to charge in the future for coal moving from SP origins, I ask this as a hypothetical, isn't it possible that a carrier with limited coal origins it serves directly might promote that coal more aggressively, and by that I mean with lower rates, than a carrier with the ability to serve many different mines in different areas?

A. I believe that analysis to be invalid, and invalid based on the following observation: When you look at the delivered cost of Powder River coal at destinations, many destinations in many areas, and you compare that delivered cost to the delivered cost of Colorado or Utah coal when it goes to those destinations or New Mexico coal or, in a very few cases, Hanna Basin Southern Wyoming Union Pacific served coal, you
reread, please.

MR. LIVINGSTON: Did you finish your answer?

THE WITNESS: Yes.

THE REPORTER: "Question: As you know in the statement I found that the extent of direct competition between Union Pacific origins and Southern Pacific origins was quite modest. I think I used the term rare. That is extremely true of competition between Union Pacific exclusively served origins and Southern Pacific exclusively served origins.

"It's important to recognize and it was an important part of my analysis that all of the Powder River traffic to which Union Pacific has access is competitive at origin, every mine. So that, if there is source competition between Southern Pacific and Union Pacific involving Powder River origins, there will remain source competition between Southern Pacific and Burlington Northern."

BY MR. LOFTUS:

Q. Well, with regard to that last response, that assumes that there is the ability for the Burlington to serve the destinations
will see that the delivered cost is much, much
below the delivered cost of the comparable
products in the great majority of cases.

There are exceptions. There are
exceptions derived from when contracts with
producers were signed and what the terms of the
contracts were and so forth. But by and large --
and some of this data is in my statement -- there
is a substantial discrepancy at destination in
delivered cost between Powder River coal and coal
from other Western areas.

And that is an indication that rates on
Powder River coal are being held down not by
source competition but by the competition that
exists between the carriers serving the Powder
River. Otherwise the transporter would allow the
transport rate to rise until it was just below
the level of the other sources.

So the Powder River rates are being
constrained by direct competition between
Burlington Northern and Union Pacific. I don't
think there is any doubt about that. Witness
Peterson I believe in the record provided some
information on what has happened to the rates in
terms of mills per ton mile since competition was
APPENDIX TO JOINT COMMENTS OF WPL & WPS ON THE PROPOSED
UP/SP MERGER (WPS-6)/(WPL-6)
FILED MARCH 29, 1996

Relevant Excerpts from Deposition Transcripts
Referenced in the Verified Statement of David G. Weishaar . . 1

-- Deposition of Witness Richard G. Sharp
-- Deposition of Witnesses R.B. (Brad) King and
  Michael D. Ongerth

Relevant Excerpts from Deposition Transcript
Referenced in the Verified Statement of Ramesh Malhotra . . 2

-- Deposition of Witness Richard G. Sharp

Relevant Excerpts from Deposition Transcript
Referenced in the Verified Statement of William C. Lyman . . 3

-- Deposition of Witnesses R.B. (Brad) King and
  Michael D. Ongerth

Relevant Excerpts from Deposition Transcript
Referenced in WPS/WPL's Argument of Counsel . . . . . . . . . . 4

-- Deposition of Witnesses R.B. (Brad) King and
  Michael D. Ongerth
introduced to the Powder River. And the effect has been very substantial.

Therefore because it's competition within the Powder River that is holding down rates, it makes no sense for a carrier, if it had access to another source of coal, to favor the Powder River. If rates are going to be driven to marginal costs anywhere, it would be where there is direct head-to-head competition at origin.

MR. LIVINGSTON: I don't want to break up a line of questioning, but it's my understanding from -- this is my first deposition in this proceeding. But the practice has been to take a break at 11:30 and then continue on to lunch after the break. And it is now 11:30.

MR. LOFTUS: Perhaps one more question.

MR. LIVINGSTON: All right.

MR. McBRIDE: We're not that rigid.

BY MR. LOFTUS:

Q. Did you make any effort to determine whether delivered price competition from SP origin coals acts as a competitive limitation on both BN and UP delivered coal prices out of the Powder River Basin?
A. Based on the analysis I just gave you, my answer to that is no. The Burlington Northern -- the delivered price of Powder River coal served jointly by BN and Union Pacific is much lower in the great majority of instances than coal from other Western sources.

It is very common to see Powder River coal say at an Iowa utility for, oh, perhaps around $1 per million Btu and see coal received from other sources at $1.20 or higher. So that delivered cost is not the constraint on the delivered cost of coal from the Powder River.

Obviously something else is happening, and that something else is direct competition in the Powder River Basin.

(Recess)

BY MR. LOFTUS:

Q. Mr. Sharp, before the break we were at page 672 of your statement, sir, and we were addressing the paragraph where you were addressing SP served utility plants. And in that you address the benefits that they would or might obtain from gaining single-line service from the Powder River Basin. Such single-line service would only be of significance to plants only able
It would not -- I kind of look at your question from the flip side. It would not logically favor the routes that were more closely driven to marginal costs. So where there is direct competition from origins as in the Powder River, where margins are squeezed, I would think there would be less likelihood that it would favor those routes.

Q. Well --
A. But I think the customer preference in order to capture the business would be the main outcome.

Q. Assuming equal chances of getting the business on coal moving from two different origin areas served by the same carrier, isn't it logical that the carrier will favor the origin area that would yield it the greatest profit?
A. Well, I don't accept your assumption as valid because direct head-to-head competition in the Powder River I think is not equivalent to exclusive service in Colorado and Utah. And I think it is definitely the Powder River origins which is where the bulk of Western coal traffic originates that are most likely to be driven toward marginal costs, because there is
BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL 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
HIGHLY CONFIDENTIAL
Washington, D.C.
Thursday, February 8, 1996
Deposition of R.B. (BRAD) KING and
MICHAEL D. ONGERTH, witnesses herein, called for
examination by counsel for the Parties in the
above-entitled matter, pursuant to agreement, the
witnesses being duly sworn by MARY GRACE PRESTO,
RPR, a Notary Public in and for the District of
Columbia, taken at the offices of Covington &
Burling, 1201 Pennsylvania Avenue, N.W.,
Washington, D.C., 20044, at 10:20 a.m., Thursday,
February 8, 1996, and the proceedings being taken
down by Stenotype by MARY GRACE PRESTO, RPR, and
transcribed under her direction.

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MR. MILLS: And since you assumed your current position, have you refamiliarized yourselves in general with the movement of coal via the Union Pacific?

MR. KING: In general, yes.

MR. MILLS: Now, you indicated that you assumed your current position earlier this month, which I believe is early November of '95, is that correct?

MR. KING: That's correct.

MR. MILLS: And you indicate that was as a result of a reorganization in UP's operating department. Did that reorganization have anything to do with the service problems that were being encountered as a result of the assimilation of the CNW?

MR. KING: It was one factor.

MR. MILLS: Referring to page 60 of your verified statement, in separate testimony by Mr. King, the second paragraph, about two-thirds of the way down that paragraph, there is a sentence that reads, "We have reorganized our operating regions, returning experienced CNW officers who had been rotated to other parts of the UP system to CNW territory."
Can you tell us when the CNW officers or the so-called experienced CNW officers initially joined the Union Pacific?

MR. KING: You mean as to when the merger --

MR. MILLS: Yes.

MR. KING: I don't recall the exact date of the merger, I'm sorry.

MR. MILLS: Would it have been late last spring or late last summer?

MR. KING: That sounds about right.

MR. MILLS: And can you tell us, do you have particular individuals in mind in that sentence, referring to experienced CNW officers?

MR. KING: Well, the primary person would be Jeff Koch, K-o-c-h.

MR. MILLS: And what was his position with the CNW before the merger was implemented, do you recall?

MR. KING: I think his title was vice president of transportation.

MR. MILLS: And he was based in Chicago?

MR. KING: Yes.

MR. MILLS: And when he left CNW and
FOR IMMEDIATE RELEASE

OMAHA, December 28 - The 50,000th trainload of Powder River Basin coal carried by Union Pacific Railroad rolled out of the world's largest coal mine in December, marking the 12th year since UP began competing for Basin customers.

It was August 16, 1984, when the first trainload made its way over Union Pacific from the Powder River Basin to an electric utility. Previously, only the Burlington Northern Railroad carried Basin coal.

While that 1984 start was small, Union Pacific this year will ship nearly 100 million tons of Basin coal to many utilities throughout the United States. This equals about 23 loaded coal trains daily compared to 1.6 loads per day the first month of operation in 1984 and 10.4 trains daily in 1989.

"Use of Powder River Basin coal has climbed dramatically due to low cost and environmentally acceptable characteristics," said Henry Arms, UP's vice president-energy. "Significant efficiency improvements by the railroads in recent years have also driven this unprecedented growth."

The 50,000th load was carried on 2CBTHS-13, a train that loaded 112 cars at the Black Thunder Mine on December 13. Pulling 16,000 tons, 2CBTHS-13 began its 1,500-mile trip to the Lower Colorado River Authority/City of Austin's Fayette Power Project Utility near Halsted, Texas.

At this plant and dozens of others in the United States, Powder River Basin coal is popular because its low sulfur content reduces pollution. PRB coal has become such an efficient fuel, Union Pacific ships it to states as far away as Georgia.

To keep up with increasing demand, both Basin railroads are expanding track capacity. Portions of lines have been double-tracked or triple-tracked.
BEFORE THE SURFACE TRANSPORTATION BOARD
Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL 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
HIGHLY CONFIDENTIAL
Washington, D.C.
Friday, February 9, 1996
Deposition of R.B. (BRAD) KING and MICHAEL D. ONGERTH, witnesses herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witnesses having been previously duly sworn, taken at the offices of Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C., 20044, at 9:10 a.m., Friday, February 9, 1996, and the proceeding, being taken down by Stenotype by FERNITA R. FINKLEY and CRAIG KNOWLES and transcribed under their direction.

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MR. MILLS: The number of loaded trains would increase, would it not?

MR. KING: Yes.

MR. MILLS: Now, you indicated earlier that -- or you confirmed that in 1994 the Union Pacific originated about 86 million tons in the Powder River Basin. In 1995 it was about 100 million tons which represent a 14 million ton increase; is that correct?

MR. KING: That's correct.

MR. MILLS: Would a fair average tons per train for Powder River Basin trains be about 12,000 tons?

MR. KING: Approximately, yes.

MR. MILLS: Do me a favor and tell me how many trains, loaded trains, 14 million tons would represent based on an average of 12,000 tons per train.

MR. KING: Approximately 1,166.

MR. MILLS: Each of those loaded trains would have an associated empty movement, correct?

MR. KING: Yes.

MR. MILLS: So you have to double that
1995, for various reasons the Union Pacific and
CNW, prior to the merger, experienced service
problems in hauling Powder River Basin coal to
the Midwest?

MR. KING: Well, it would vary by
customer.

MR. MILLS: There were capacity
problems in the Powder River Basin, were there
not, among other things?

MR. KING: There was some capacity
issues, yes.

MR. MILLS: Yesterday in response to a
question from Mr. Hut as to whether the Southern
Pacific is providing quality service to its
shippers, Mr. Ongerth stated, as I recall -- this
is not a direct quote, but I think it’s close --
SP is not measuring up to the standards that it
set for itself.

Could the same be said for the Union
Pacific with respect to its PRB coal service
during 1994 and 1995?

MR. KING: It would vary according to
customer. There were some customers we were not
doing as well as we would have liked. There were
some we were do very well with.
MR. MILLS: So in some instances, that statement could be said of the Union Pacific's coal service?

MR. KING: In some instances?

MR. MILLS: I'd now like to turn to one last highly confidential document. It involves questioning of Mr. King, so maybe we need to have Mr. Ongerth and Mr. Carey leave the room.

I'd like to have marked -- I'd like to have marked for identification as King-Ongerth Exhibit 9 a two-page exhibit bearing Bates numbers HC37 - 000005 and HC37 - 000006, and they're a highly confidential designation. And the first line on the first page reads, quote, An Analysis of the 1995 Original Budget, paren, 12-1-94, close paren, on Energy Traffic. And I'll represent for the record that this document was produced to the Western Coal Traffic League by the Union Pacific during discovery.

(King-Ongerth Exhibit No. 9 was marked for identification.)

MR. MILLS: I'll also represent for the record that additional pages over and above these were also produced for different years, but this document related to '95 is the only one that I

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intend to ask Mr. King questions about.

Mr. King, have you ever seen these numbers before?

MR. KING: I haven't seen this document before. I've probably seen some pieces of these numbers.

REDACTED
MR. MILLS: That's all I have on that exhibit. We can recall the other gentlemen.

(Discussion off the record.)

MR. MILLS: Mr. Ongerth, I'd like to refer you to page 86 of your verified statement, specifically the bottom paragraph on that page, number 2, entitled Eliminating Cross-Hauls. The back-haul or triangulation movement we mentioned earlier involving Geneva Steel would be a means of eliminating or reducing cross-hauls, correct?
## 5-year Coal Plan
### 1996 - 2000

13-Jul-95

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Change from previous year

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Change versus 1996...

Change versus previous year...

HIGHLY CONFIDENTIAL

EXHIBIT

King/9472

2/3/96 RLP
SP Coal Tonnage
1995 - 2000

Million Tons


38.7 43.4 46.9 47.8 48.6 50.1
BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
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SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN
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Washington, D.C.
Tuesday, February 13, 1996

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majority of cases. And I regret in retrospect that we did not acknowledge that more aggressively when I testified on behalf of Houston Lighting & Power and Southwest Public Service in the Burlington Northern/Santa Fe merger.

But, there are conditions in which the one lump theory does not apply and foreclosure can be a major concern. So, in the majority of cases, the answer is yes. But in some cases the answer is no. I have specific reasons why I think so. If we want to talk about those after the break, I’ll be happy to do so.

MR. LIVINGSTON: All right. With that why don’t we go off the record.

(Recess)

MR. McBRIDE: Back on the record.

BY MR. McBRIDE:

Q. You were about to tell us what you thought was wrong with the one lump theory, Mr. Sharp.

A. What I indicated was I believe the one lump theory applied in most circumstances, but that foreclosure which is essentially ruled out under the one lump theory is possible in a
defined set of circumstances. And I see there as being basically five conditions for foreclosure to be a serious concern.

First is, and I think it’s quite obvious but often not stated, there must be direct actual competition for the movement that is at issue. If competition does not exist, there can be no foreclosure of competition. So first you must show that there is indeed origin/carrier competition.

Second and I think equally as important, the exclusive terminating carrier must be in a position of market dominance with respect to the receiver. If there is geographic competition or product competition that is effective, exclusive termination is not tantamount to market power. So you must also have that condition.

Thirdly and also quite important, the terminating carrier must itself not be a major source of the product which is being delivered. In other words, if it’s coal, if the terminating carrier is itself a source of a suitable coal for that facility, then the possibility of foreclosure already exists in the affiliation and
the affiliation with another carrier will not
affect that.

Fourth, and this is I think the issue
that has been most difficult to communicate in an
effective way before the regulatory body, while
the terminating carrier is in a position of
market dominance with respect to the destination,
it must not be in a position of market dominance,
if you will, with respect to the carriers that
provide it the business; that is, the terminating
carrier must be dependent on the originating
carriers to give it traffic, here coal traffic,
both to the facility in question and to other
destinations where the terminating carrier may
not be in a position of exclusivity.

If that is the case, then the
terminating carrier may feel that it is unable to
abuse its market position if it hopes to retain
the interline traffic received from the
originating carriers. And that constraint
prevents it from exercising its market power at
destination.

And then finally the affiliation in
question must substantially change the situation
so that the terminating carrier is no longer
constrained to not abuse its position at the
destination. For example, if we're talking about
c coal, if the coal originator has a lot of
capacity, incentive to make use of that capacity
by diverting traffic from the nonmerging carrier
to its own lines, situation constraints that were
previously imposed by the terminating carrier's
position of nonmarket dominance with respect to
the traffic it receives may be undermined and a
foreclosure situation created.

Now, to be very clear on my position on
this, in the Burlington Northern/Santa Fe
proceeding, I felt, one, there was direct
head-to-head competition among the origin
carriers, the coal at issue was Powder River coal
originating on Burlington Northern and on WRPI
and the carriers were clearly vigorously engaged
in competition for the movements and engaged in
competitive bidding for the specific traffic at
issue. So there was carrier competition.

Secondly, Santa Fe for the traffic at
issue, as the utility spokesman testified, was
not a prospective originator of low Btu coal
which is what those facilities were designed to
use. Santa Fe, high Btu coal was not considered
to be an option. Moreover, and this gets to point No. 3, Santa Fe was highly dependent on coal traffic received from both Burlington Northern and from WRPI-UP. Two-thirds of Santa Fe’s coal traffic is received coal traffic. Most of that from Burlington Northern and Union Pacific.

So finally would the merger change anything. I felt that as by far the predominant originator of coal in the West, either jointly served or exclusive, even looking purely at the exclusive origin coal, that Burlington Northern had the capacity and the incentive to divert traffic from the nonmerging company, in this case WRPI-UP, to its own lines. So that all five conditions that I feel are necessary for foreclosure to be a concern were fulfilled.

With the present merger, I do not see those same conditions being fulfilled. First of all, to SP destinations, there is little existing competition for Powder River coal. So the issue of is there active competition now is in question.

Secondly, is the terminating carrier in a position of market dominance with respect to
facilities. Well, in the Santa Fe case, the two
specific facilities we were talking about were
highly dependent on those particular plants, the
plants occupied a very prominent place in their
system, both utilities were not affiliated with a
holding company that had a lot of additional
facilities.

And they were very dependent on the
particular traffic at issue. They were committed
to the Powder River. Obviously trucking was not
feasible for the Powder River so there was a rail
dependence, a dependence on particular origins, a
dependence on particular facilities, a
substantial case that their options were pretty
limited.

In the case of utilities served by
Southern Pacific, you have to examine them on a
one-on-one basis, you know, which utilities have
broader options. But many of the utility systems
that we are talking about that are served by SP
are parts of large companies with multiple
facilities and so forth. So the dependence on
the facilities is not as great.

Southern Pacific is not a carrier that
is highly dependent on its interline traffic as
Santa Fe was. About 10 percent of Southern Pacific's coal traffic is interline received from BN, from UP, or others. It's very, very small. So that constraint which I think really is the key element on the one lump theory not holding, that constraint which I felt was there for the Santa Fe I don't think is there, at least not nearly as strongly, for the Southern Pacific because it's simply not that dependent on interline received traffic.

And does the same situation exist with respect to the capacity and desire of the acquiring company to divert the coal to its own lines? Well, I think not because again Union Pacific does not have that large amount of exclusive access to coal resources to which it could devote traffic, it simply does not exist. For all the Powder River origins, BN remains an alternative. The Southern Wyoming stuff originated by UP has basically failed in the marketplace. Again you're talking about

REDACTED
receive Southern Pacific coal. We're talking about very small amounts of traffic.

So, for all of those reasons, I saw the one lump theory as not holding in the Burlington Northern/Santa Fe affiliation -- I'm sorry. Yes, I see the one lump theory as not holding in that situation and as foreclosure being a real problem. And I do not see that to be true in this affiliation. So that's I think a complete explanation of my position on the one lump theory and foreclosure.

Q. Thank you. I heard a thread near the end of that answer that I think I heard earlier and I just want to see if I'm hearing the thread correctly, and is that that you believe or perhaps the applicants believe, and you know their position, that, if there is a utility or other coal consumer who feels that its competitive options are being reduced as a result of the merger, that the appropriate remedy is for that utility to come forward for individual relief before the board rather than for the merger to be effected to protect that shipper?

A. I can't speak for the merging companies on that. I have no idea what their position
BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 32760
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL ERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
HIGHLY CONFIDENTIAL
Washington, D.C.
Thursday, February 8, 1996
Deposition of R.B. (BRAD) KING and MICHAEL D. ONGERTH, witnesses herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witnesses being duly sworn by MARY GRACE PRESTO, RPR, a Notary Public in and for the District of Columbia, taken at the offices of Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C., 20044, at 10:20 a.m., Thursday, February 8, 1996, and the proceedings being taken down by Stenotype by MARY GRACE PRESTO, RPR, and transcribed under her direction.

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MR. HUT: So you can't say whether the service is good or not in your judgment, is that correct.

MR. ONGERTH: Not at this point in time.

MR. HUT: Has SP provided or does it currently provide, in your view, highly competitive prices to chemical shippers in the Gulf Coast region?

MR. ONGERTH: I don't have that information.

MR. HUT: You're not able to say one way or the other?

MR. ONGERTH: Not able to say.

MR. HUT: Mr. King, let me supply to you also what I believe to be a copy of your verified statement and direct you, if I can, to page 60 where you discuss, among other things, problems with quality of service provided by UP following the CNW merger. Can you describe the problems you identified there in more detail?

MR. KING: Talking about the first paragraph?

MR. HUT: The first and, to the extent
it bears, the second, yes, sir.

MR. KING: I'm sorry, could you repeat
the question, please?

MR. HUT: Sure. Could you describe the
problems that you're referring to here in
somewhat greater detail than as set out in the
statement?

MR. KING: When we absorbed the CNW, as
we talked about, that we entered in some service
problems and some of them had to do with
the - we underestimated the amount of grain as
we opened up new markets for the Iowa grain, the
consumption for resources such as manpower and
locomotives and, as a result, we were short of
both manpower and of locomotives. And that then
spread as we tried to respond to it with
locomotives and caused us service problems.

As stated in here, we went out and
leased large numbers of locomotives as well as
purchasing locomotives to respond to that. And
as this time, the CNW service is much improved.

MR. HUT: Are you still in the process
of taking steps to try to improve it further?

MR. KING: We're always in those
steps. Any railroad is always in the steps of
trying to improve their service, but the service is back to levels that are acceptable.

MR. HUT: Did you undertake any analysis following this CNW merger to determine whether the cost savings and efficiencies projected for that acquisition have been realized in operation?

MR. KING: No, I haven't.

MR. HUT: Has anybody at the Union Pacific to date, to your knowledge?

MR. KING: I don't know.

MR. HUT: Did anybody or has anybody undertaken any study whether the number of jobs that the CNW acquisition was thought to eliminate has in fact been realized in practice?

MR. KING: I don't know.

MR. HUT: You have not?

MR. KING: No.

MR. HUT: Let me ask a couple questions of you, Mr. King, concerning your role in developing the operating plan. At the time the operating plan was being developed, did you have any discussions with any shippers about it, about the plan as it would reflect postmerger operation?

MR. KING: No.
MR. HUT: When I say you here, I hope the context indicates this, I mean you or anybody at the Union Pacific Railroad about whom you know.

MR. KING: Not that I'm aware of.

MR. HUT: How about you, Mr. Ongerth?

MR. ONGERTH: I had a few, personally.

MR. HUT: Tell me what discussions you had.

MR. ONGERTH: Discussions largely with shippers in the Pacific Northwest.

MR. HUT: Any other regions?

MR. ONGERTH: Not with shippers.

MR. HUT: Do you to just identify for the record the shippers in the northwest with whom you had the discussions to which you just made reference?

MR. ONGERTH: Roseburg Lumber, Willamette Industries, Port of Coos Bay, which is not actually a shipper and, on reflection, with the Port of Oakland. Again, not actually a shipper.

MR. HUT: Any others?

MR. ONGERTH: Conversations with some short lines, which again are not shippers.
MR. MILLS: Let me reintroduce myself. I'm Chris Mills with Slover & Loftus. And as you may recall from the introductions at the beginning of the day, my clients are interested primarily in coal, the effect of the merger on coal transportation. I will also try to follow the ground rules laid down by Mr. Hut and Mr. Hemmer. Most of my questions will be directed to Mr. King but I may ask the wrong question. Mr. King, again, if you want to defer it to Mr. Ongerth, that's fine. I will have some questions for Mr. Ongerth as well.

First, I would like to ask Mr. King some questions about his background. Referring to pages 5 and 6 of his testimony. Is it fair to say, Mr. King, that over the past decade, you have familiarized yourself with the movement of Powder River Basin coal to various electric utility power plants?

MR. KING: Yes, except for the period of July -- middle of July '93 until November 1, '95 when I was on a risk management job.

MR. MILLS: Was that also in the operating department?

MR. KING: Yes.
MR. MILLS: And since you assumed your current position, have you refamiliarized yourselves in general with the movement of coal via the Union Pacific?

MR. KING: In general, yes.

MR. MILLS: Now, you indicated that you assumed your current position earlier this month, which I believe is early November of '95, is that correct?

MR. KING: That's correct.

MR. MILLS: And you indicate that was as a result of a reorganization in UP's operating department. Did that reorganization have anything to do with the service problems that were being encountered as a result of the assimilation of the CNW?

MR. KING: It was one factor.

MR. MILLS: Referring to page 60 of your verified statement, in separate testimony by Mr. King, the second paragraph, about two-thirds of the way down that paragraph, there is a sentence that reads, "We have reorganized our operating regions, returning experienced CNW officers who had been rotated to other parts of the UP system to CNW territory."
Can you tell us when the CNW officers or the so-called experienced CNW officers initially joined the Union Pacific?

MR. KING: You mean as to when the merger --

MR. MILLS: Yes.

MR. KING: I don't recall the exact date of the merger, I'm sorry.

MR. MILLS: Would it have been late last spring or late last summer?

MR. KING: That sounds about right.

MR. MILLS: And can you tell us, do you have particular individuals in mind in that sentence, referring to experienced CNW officers?

MR. KING: Well, the primary person would be Jeff Koch, K-o-c-h.

MR. MILLS: And what was his position with the CNW before the merger was implemented, do you recall?

MR. KING: I think his title was vice president of transportation.

MR. MILLS: And he was based in Chicago?

MR. KING: Yes.

MR. MILLS: And when he left CNW and
joined Union Pacific, where was he assigned.

MR. KING: He was assigned as general manager of the western region.

MR. MILLS: And was he the individual who was rotated back to CNW territory?

MR. KING: Yes.

MR. MILLS: And when did that occur?

MR. KING: It was about the middle or late November.

MR. MILLS: I would like to ask Mr. Ongerth, are you familiar in general with the movement of coal from origins in Colorado and Utah served by the Southern Pacific?

MR. ONGERTH: In a general way, yes.

MR. MILLS: Let me ask Mr. King again. I think Mr. Hut asked you a couple of questions about the section beginning on page 6 of the verified statement, moving over to page 7, entitled The UP/SP Merger from an Operating Perspective. And the first sentence starts out in that section, "Historically and physically, major UP and SP routes were created to work together." Is that correct?

MR. KING: Yes

MR. MILLS: And then, the second
Colorado and Utah that may occur in the next five years.

MR. HEMMER: Object to the extent that calls for, what I might call regulatory conclusion. But in any event, go ahead.

MR. KING: Well, on the Powder River Basin, their trains are in the density as far as growth and I'm not aware of any growth in there. On the SP origins, I'm not aware of any growth in there except when we looked at the KP and things like that, those trains were taken into consideration but I don't know of any growth projections.

MR. MILLS: There has been a significant growth in recent years in the Powder River Basin coal traffic originated by the Union Pacific, has there not?

MR. KING: Yes, there has.

MR. MILLS: I'm going to refer to a highly confidential exhibit.

MR. HEMMER: Which railroad?

MR. MILLS: Union Pacific.

MR. HEMMER: Mr. Ongerth, do you want to excuse yourself for a moment?

(Messrs. Ongerth and Carey exit)
MR. HEMMER: I have agreed to make a statement regarding the nature of the application, which is identical to applications filed in all other merger proceedings in the last 15 years or so.

The application is intended to isolate and identify the effects of a UP/SP combination. It is intended to identify the effects on traffic, that is, by extended halls, on the development of new marketing opportunities, which may result in the creation of new rail traffic, and the development of intermodal diversions, all of which generated new traffic for UP/SP system.

In this case, it has an additional feature, which is that it looks at the loss of about a half a billion dollars of BN/Santa Fe traffic associated with the settlement agreement.

All of that, however, focuses on a - - is intended to look at the effects of the merger in isolation. No attempt was made, and we understand that commission regulations did not contemplate, but no attempt was made to look at future changes in traffic of any kind, including
increases in Powder River Basin coal traffic, Colorado and Utah coal traffic, lumber traffic, intermodal traffic, steamship traffic or any other type, nor was any attempt made to look at the types of capacity improvements, changes in operations and new operating patterns that would be expected to be associated with all of those future changes, which, frankly, we hope will occur.

All we were trying to do here, and as we understand it, all the Commission's regulations contemplate is looking at the effects of the UP/SP merger in isolation based on a set of base year traffic statistics. If my colleagues from the Southern Pacific have any other perspectives or supplements, I would be delighted to have them add them.

MR. NORTON: No, I think the point to make to be clear is that the universe is governed by the 1994 traffic.

MR. HEMMER: That's right.

MR. NORTON: And how it would be redistributed under the changes.

MR. MILLS: So changes in a routing, for example, that arise because of the merger.
would be considered, would that be correct?

MR. HEMMER: Because of the merger, yes.

MR. MILLS: But not due to extraneous factors?

MR. HEMMER: That's right. So, for example, if it occurred out in the real world that a vast new coal scene were to be found in western Colorado and that required an entirely different way to approach rail operations to transport that coal, that's not considered here.

MR. MILLS: That will shorten my questioning to some extent. Thank you.

MR. HEMMER: Thank you.

MR. MILLS: Mr. King, let me ask you this.

MR. NORTON: Would you like them to come back in?

MR. MILLS: Yes.

(Messrs. Ongerth and Carey reenter deposition room.)

MR. MILLS: Mr. King, is it correct in the year 1995 the Union Pacific originated approximately 100 million tons of Powder River Basin coal?

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MR. KING: That number sounds about right.

MR. MILLS: Let me mark -- have marked as King-Ongerth Deposition Exhibit Number 6 a one-page news release produced by the Union Pacific Railroad.

(King-Ongerth Exhibit No. 6 was marked for identification.)

MR. MILLS: Mr. King, this Exhibit 6 for identification appears to be a news release issued by the Union Pacific Railroad on December 28th, 1995, is that correct?

MR. KING: Yes.

MR. MILLS: And in that news release, the statement is made that Union Pacific this year will ship nearly 100 million tons of Powder River Basin coal to utilities. Is that correct?

MR. KING: Yes.

MR. MILLS: And there is also an indication that includes about 23 loaded trains a day, is that correct?

MR. KING: Yes.

MR. MILLS: Notwithstanding the stipulation that was recently made, Mr. King, let me ask you this. Would you agree that increases
in traffic that are not related to the merger may affect the merged system’s ability to implement the operating plan in the manner described in the verified statement and in the operating plan itself?

MR. KING: Well, after the merger is approved, business levels may be substantially different than in 1994 base year. So marketing conditions could change capacity or situations on any one piece of the railroad.

MR. MILLS: So the answer is yes, it could?

MR. KING: Yes.

MR. MILLS: In developing the operating plan for the merged entity, did you consider -- and I’m focusing on coal traffic moving to the Midwest now -- any changes in plans by electric utilities or facility changes by other carriers, for example, in the Chicago area or Wisconsin that might result in a change in the routing of coal traffic that would mean additional movements to Chicago as opposed to other points?

MR. KING: Could you read that back to me, please?
THE REPORTER: "Question: In developing the operating plan for the merged entity, did you consider -- and I'm focusing on coal traffic moving to the Midwest now -- any changes in plans by electric utilities or facility changes by other carriers, for example, in the Chicago area or Wisconsin that might result in a change in the routing of coal traffic that would mean additional movements to Chicago as opposed to other points?"

MR. KING: Not that I'm aware of.

MR. MILLS: Are you familiar with the movement of Powder River Basin coal to the power plants of Wisconsin public service in Wisconsin?

MR. KING: Generally, yes.

MR. MILLS: And are you aware that at the present time, that coal moves via two routes, one to Chicago and one to the Twin Cities for movement beyond by a terminating carrier?

MR. KING: Generally, yes.

MR. MILLS: And would a change in that routing under which all that tonnage would move to Chicago be something that would be relevant to your development of the operating plan as it relates to coal traffic?
MR. KING: Well, it depends on the volume per day and what it would generate as far as trains and things -- factors such as that would have to be known before I could really answer that.

MR. MILLS: But you didn't consider any such changes in the routing of Wisconsin public service traffic in developing the operating plan, would that be accurate.

MR. KING: Yes.

MR. MILLS: On pages 36 and 37 of the verified statement and elsewhere, there is a discussion of the changes in routing for intermodal traffic. And first, I would ask you, is it correct that intermodal traffic is considered extremely time sensitive or more time sensitive than other types of railroad traffic?

MR. KING: Yes.

MR. MILLS: And would you also consider automotive traffic to be time sensitive?

MR. KING: Yes.

MR. MILLS: I'm going to refer to the map that appears in a pocket attached to volume 1 of the application entitled lines of applicant carriers and other western railroads. I'm going
to place this map in front of you, Mr. King. To the extent you need to refer to it, please do so.

With respect to intermodal and automotive traffic moving between the West Coast and the Midwest, let’s focus on Chicago, for the Union Pacific, is it correct -- whether it comes from southern California, central California or the Pacific Northwest, it is basically funneled through Ogden Utah and Granger, Wyoming and eastward through North Platte, Nebraska?

MR. KING: When you say UP, you mean premerger?

MR. MILLS: Yes, premerger.

MR. KING: That’s correct.

MR. MILLS: Can you tell us approximately how many intermodal or automotive trains presently operate per day over the Union Pacific between Granger, Wyoming and Gibbon, Nebraska?

MR. KING: Somewhere between 16 and 22.

MR. MILLS: And given, on eastbound traffic, some moves from Gibbon to Council Bluffs, Fremont, Omaha and eastward toward Chicago and Kansas City, correct?
MR. KING: That's correct.

MR. MILLS: Could you tell me approximately the number of daily intermodal and automotives trains operating between Gibbon and Council Bluffs and Chicago and, B, between Gibbon and the Kansas City area?

MR. KING: When you say Council Bluffs, you mean Fremont or Council Bluffs?

MR. MILLS: Yes, Fremont or Council Bluffs.

MR. KING: This may not be exact because I would have to look at the schedules and count them but I think about six of them go toward Gibbon to Kansas City and the remainder that I talked about go-between Gibbon and Council Bluffs/Fremont.

MR. MILLS: As I understand it, under the merger operating plan, in general, intermodal traffic from southern California, in particular, perhaps some from central California, will be concentrated on the current SP route through El Paso and Tucumcari and the route from southern California, at least, to the Chicago area via North Platte will handle primarily manifest and other traffic, the traffic other than intermodal traffic.
and automotive, is that correct?

MR. KING: Yes, except during -- we stated in there, we talked about as capacity came on, that we would probably go westbound on the SP and eastbound on the UP.

MR. MILLS: Would I be correct that despite that general statement, there will be some manifest traffic on the Tucumcari route and similarly some intermodal traffic over the central corridor route via North Platte and Ogden.

MR. KING: Still referring to southern California?

MR. MILLS: Yes.

MR. KING: That’s correct.

MR. MILLS: After the merger, if it’s consummated, under the operating plan, can you tell us how many daily intermodal and automotive trains, approximately, you expect will operating over the Union Pacific between Granger, Wyoming and Gibbon, Nebraska?

MR. KING: It would be a real guess but, as I recall, it’s probably about the same number.

MR. MILLS: So there will be no
significant decrease in the number of intermodal trains operating over that route.

MR. KING: That's to my best recollection. I would have to go through all the schedules to give you an exact count.

MR. MILLS: Let me ask Mr. Ongerth --

MR. HEMMER: Chris, the data showing that are in the depository and we could show you what that effect is.

MR. MILLS: Mr. Ongerth, with respect to the current premerger of Southern Pacific operations for intermodal traffic between the West Coast and Kansas City, there are presently two theoretical routes that could be used, is that correct?

MR. ONGERTH: This is from southern California?

MR. MILLS: Yes. Let's say central California.

MR. ONGERTH: There are two theoretical routes that can be used, yes.

MR. MILLS: And one is the central corridor route via Ogden and Grand Junction and Pueblo and thence eastward, is that correct?

MR. ONGERTH: Grand Junction in either
Pueblo or Denver and then eastward.

MR. MILLS: And the other right is via El Paso and the Tucumcari line?

MR. ONGERTH: That's correct.

MR. MILLS: Can you tell us approximately how many daily intermodal trains presently operate over the SP between Ogden and Kansas City via either Denver or Pueblo?

MR. ONGERTH: My recollection is we have three schedules in there but I believe that most days, we're only operating two of those three.

MR. MILLS: Is that in each direction?

MR. ONGERTH: Yes

MR. MILLS: How about between central and southern California and Kansas City via Tucumcari?

MR. ONGERTH: Both central and southern California trains?

MR. MILLS: Yes.

MR. ONGERTH: That's a bunch. Let me see if I can find something in here to help that. On pages 348 and 349, you've got intermodal Golden State eastbound and intermodal Golden State westbound. It shows five schedules
questions about changes in routing for Powder River Basin coal trains destined to the Midwest and Texas as a result of the proposed merger.

First of all, coal trains operating from the Powder River Basin to the Chicago and Wisconsin area presently operate through Council Bluffs and Missouri valley rather than through Fremont and California junction. is that correct?

MR. KING: Yes.

MR. MILLS: Are there any plans to change the routing of those trains to operate them via Fremont and California junction after the merger?

MR. KING: Not shown in here. As just a UP, nothing merger-related. We are starting to study that possibility but it’s very early.

MR. MILLS: Is it correct that if the merger is implemented, at least some trains from Colorado and Utah origins would also move into the -- moving to the Midwest would also use that same route?

MR. KING: Yes.

MR. MILLS: Has the additional coal traffic that may move from those origins over this route had any impact on the physical -- on
your restoration of improvements to the physical
plant in that area or the routing of trains in
that area, the Omaha-Council Bluffs-Fremont
area?

MR. KING: Those trains are taken into
consideration as far as what’s shown on the UP
densities but the capital improvements and
capacity improvements that North Platte, Council
Bluffs, Gibbon area you referred to, were not
impacted by the merger, there is a very slight
increase in the number of trains and the Union
Pacific, as an independent company, has capacity
plans for all that area that are already in the
works.

MR. MILLS: I would like now to refer
you to Powder River Basin originated trains
moving to Texas. And I’m going to focus in
particular on movement to the Lower Colorado
River Authority, City of Austin’s Fayette power
product and to the City Public Service of San
Antonio’s Dealy plant. Are you familiar with
those movements in general?

MR. KING: Yes.

MR. MILLS: At present, those trains
moving to those plants move via Gibbon and Kansas
Dotsero and over the Tennessee Pass line to
Pueblo, is that correct?

MR. ONGERTH: That's the normal
routing, yes.

MR. MILLS: With respect to -- let me
refer you to the map. Do you happen to have a
copy of it?

MR. ONGERTH: I've got it. I'm
following you. With respect to -- coal does
originate in the Craig, Colorado area on that
line, correct?

MR. ONGERTH: It sure does.

MR. MILLS: And that line connects with
the Dotsero to Denver line at a point on the map
that is referenced as Orestod, O-r-e-s-t-o-d,
which is Dotsero spelled backwards, I believe, is
that correct?

MR. ONGERTH: Yes.

MR. MILLS: Where is Bond in relation
to Orestod?

MR. ONGERTH: It's in the vicinity. I
have to look at another map to tell you
specifically.

MR. MILLS: From an operating
standpoint, are Orestod and Bond considered
MR. ONGERTH: Probably, yes.

MF. MILLS: With respect to coal originating on the line to Craig and moving to the Midwest, can you describe the route that that coal would normally take?

MR. ONGERTH: We use two routes. Some coal goes back to Dotsero and over Tennessee Pass, some -- some coal comes off the Craig Branch, goes west to Dotsero and then over Tennessee Pass to Pueblo, thence east through Herington. Some coal goes west from Dotsero through Denver down to Pueblo and then east to Herington.

MR. MILLS: Can you give us the approximate portions that move --

MR. ONGERTH: It charges.

MR. MILLS: What's the reason for moving over two routes?

MR. ONGERTH: Occasionally there is quite a bit of line congestion between Denver and Pueblo. It's shorter to go via Denver but, given line congestion problems right now on the front range, we will sometimes relieve that congestion by taking some back and going via Tennessee.
Pass. The shorter route is to go via Denver.

MR. MILLS: What about coal coming from mines in Utah or mines on the line down toward Montrose south of Grand Junction? Does any of that coal move via Bond and Denver?

MR. ONGERTH: The normal route is via Tennessee Pass.

MR. MILLS: In fact, that route, as I recall, is about 60 miles shorter than the route through Denver to Pueblo, is that right?

MR. ONGERTH: That sounds about right.

MR. MILLS: The line from Dotsero to Denver, is that basically a single-track line with passing tracks and CTC?

MR. ONGERTH: Yes.

MR. MILLS: Is that also true of the line from Dotsero to Pueblo via Tennessee Pass?

MR. ONGERTH: Yes.

MR. MILLS: With respect to the track structure and signaling, et cetera, are those two lines in comparable condition in terms of weight of rail and so forth?

MR. ONGERTH: No.

MR. MILLS: Can you describe the differences in general.
MR. ONGERTH: There is a lot more joint rail on the Tennessee Pass route. The grade is significantly different on the Tennessee Pass route.

MR. MILLS: In the eastbound direction for loaded coal trains, what is the ruling grade on the Tennessee Pass line?

MR. ONGERTH: Three percent.

MR. MILLS: And did those trains require helper locomotives?

MR. ONGERTH: They not only require helper locomotives, they shunt the trains.

MR. MILLS: Are helpers normally added at Minturn, Colorado?

MR. ONGERTH: Yes.

MR. MILLS: By the way, I think you indicated in response to a question from Mr. Hut that you had some responsibility in connection with the line abandonments and, as part of the merger plan, it is proposed to abandon the line from, I believe it's Malta, which is near Gibson, Colorado, over Tennessee Pass to Canyon City, including the branch to Leadville, is that correct?

MR. ONGERTH: There are two
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COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
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SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN
PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
HIGHLY CONFIDENTIAL
Washington, D.C.
Friday, February 9, 1996
Deposition of R.B. (BRAD) KING and
MICHAEL D. ONGERTH, witnesses herein, called for
examination by counsel for the Parties in the
above-entitled matter, pursuant to agreement, the
witnesses having been previously duly sworn,
taken at the offices of Covington & Burling, 1201
Pennsylvania Avenue, N.W., Washington, D.C.,
20044, at 9:10 a.m., Friday, February 9, 1996,
and the proceedings being taken down by Stenotype
by FERNITA R. FINKLEY and CRAIG KNOWLES and
transcribed under their direction.

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show -- the numbers show an increase from the 1994 base of 4 trains per day to 6 trains a day between Bond and Dotsero, correct? I'm looking at freight only.

MR. ONGERTH: I didn't follow what you stated.

MR. MILLS: Well, I'm asking you to confirm that between Bond and Dotsero the number of trains would -- as a result of merger would increase from 4 in the '94 base to 6 per day, freight trains.

MR. ONGERTH: Yes.

MR. MILLS: And on the same page between Dotsero and Grand Junction and Grand Junction to Helper it looks like the result of the impact of the merger will be an approximate halving of the number of freight trains per day on those segments; is that correct? Only on freight trains, now.

MR. ONGERTH: Grand Junction to Helper?

MR. MILLS: Well, Dotsero to Grand Junction and Grand Junction to Helper.

MR. ONGERTH: All right. Dotsero to Grand Junction we go from 18 to 9 for freights,
and Grand Junction to Helper we go from 18 to 8.

MR. MILLS: Now, the numbers shown for
the line segments between Denver, Bond, Dotsero,
Grand Junction, Helper, et cetera, do not
include, as I understand it, any Burlington
Northern/Santa Fe train movements that may occur
as a result of the BN-UP settlement agreement; is
that correct?

MR. ONGERTH: That's correct.

MR. MILLS: Do you have any knowledge
as to how many trains per day the Burlington
Northern/Santa Fe plans to operate in that
corridor?

MR. ONGERTH: It's in the Santa Fe
statement in --

MR. MILLS: Let me show you --

MR. ONGERTH: But I can’t recall.

MR. MILLS: Let me show you the
Burlington Northern/Santa Fe’s comments on the
primary application, specifically the verified
statement of Neal Owen, the bottom of page 7.
Mr. Owen indicates there that BN/Santa Fe plans
to operate 6 trains a day in each direction in
that corridor, 3 in each direction; is that
correct?
MR. ONGERTH: Says 6 regular trains, 3 train pairs between Denver and Richmond/Oakland.

MR. MILLS: And referring you to the bottom of page 8 of Mr. Owen's statement, does he indicate there that in addition there may be additional traffic such as coal traffic if the BN/Santa Fe is able to originate coal traffic as a result of those trackage rights?

MR. ONGERTH: He says that in addition they might handle unit trains to carry bulk traffic, such as grain and coal, and that traffic would be both overhead traffic and locally-generated traffic.

MR. MILLS: I have one more highly confidential SP document. I'd like to ask Mr. Ongert to move out and I'll be done with them.

I'd like to have marked as King-Ongert Deposition Exhibit 8 a two-page exhibit entitled -- first page of which is entitled 5-Year Coal Plan 1996 to 2000, the second page of which is entitled SP Coal Tonnage 1995-2000. bears Bates numbers HC65-000001 and HC65-000010.

MR. NORTON: For the record, are you --

do you know whether these two pages were stapled
MR. MILLS: The next line is North Platte to South Morrill, Nebraska, and that is the route of coal -- the most coal trains operating from the Powder River Basin toward either Kansas City or Council Bluffs; is that correct?

MR. KING: I'm sorry. Repeat the question or read it back.

MR. MILLS: Is the line between North Platte and South Morrill, Nebraska, the line that is used to move most coal traffic between Powder River Basin and either Kansas City or Council Bluffs?

MR. KING: Yes.

MR. MILLS: Now, that shows a decrease in the number trains per day from 40 in 1994 to 39 in 1990 -- postmerger, correct?

MR. KING: That's right.

MR. MILLS: And I believe you indicated yesterday that the -- we looked at a document that showed that the 1995 Powder River Basin coal traffic amounted to about 23 trains a day; is that correct?

MR. KING: That's correct.

MR. MILLS: And that's 23 loaded
trains, correct?

MR. KING: That's right.

MR. MILLS: In the case of Powder River Basin, each one of those loaded trains would have an empty movement associated with it, correct?

MR. KING: That's correct.

MR. MILLS: Some of the empties move over the Yoder-Egbert line rather than between North Platte and South Morrill; is that correct?

MR. KING: That's correct.

MR. MILLS: In 1995 I believe you indicated yesterday -- you confirmed that the Union Pacific originated approximately 100 million tons in the Powder River Basin; is that correct?

MR. KING: That's correct.

MR. MILLS: And can you confirm that in 1994 the total Powder River Basin originations for the Union Pacific were approximately 86 million tons?

MR. KING: That sounds approximately right.

MR. MILLS: Do you know whether further increases are projected for 1996 and 1997?

MR. KING: Yes, they are.
MR. MILLS: Would the projected increase for 1996, to our knowledge, be --
exceed ten million tons?

MR. HEMMER: I don't think there's anything confidential about this information. It's been published.

MR. MILLS: I think it has been.

MR. KING: What's the question again?

MR. MILLS: Can you confirm that in 1996 the increase over 1995 would exceed ten million tons?

MR. KING: Yes.

MR. MILLS: Is expected to exceed ten million tons?

MR. KING: Yes.

MR. MILLS: Can you tell us why the number of trains per day from 1994 to 1990 -- to postmerger for the North Platte to South Morrill segment shows a decrease in light of the traffic increases we just talked about?

MR. HEMMER: I'm going to object to the question because of the tag "light of the traffic increases you just talked about." As I stipulated for you yesterday, this is a snapshot in time; doesn't look at those traffic

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increases. It's not intended to look at those
traffic increases or any of the capacity
associated with handling those traffic increases
which, as you know, is being implemented as we
speak. Now, with that objection, he can answer.

MR. MILLS: Let me rephrase the
question and eliminate the tag. Do you know why
there is a decrease in the number of trains per
day on the North Platte to South Morrill line
segment from 40 to 39 from 1994 to postmerger?

MR. NORTON: I think the question has
the same problem implicit. Saying to postmerger
is suggesting the time point --

MR. MILLS: As a result of the merger,
then, that's the -- whatever the postmerger line
means, I believe.

MR. KING: The only possibility they
have is that the number of empties would be
running up the Yoder side with a change in train
count.

MR. MILLS: Would you agree with me
then in actuality, the number of train movements
of that segment is likely to increase from 1994
to 1996, let's say?

MR. KING: Well, depends on how much we
use the Yoder.

MR. MILLS: The number of loaded trains would increase, would it not?

MR. KING: Yes.

MR. MILLS: Now, you indicated earlier that -- or you confirmed that in 1994 the Union Pacific originated about 86 million tons in the Powder River Basin. In 1995 it was about 100 million tons which represent a 14 million ton increase; is that correct?

MR. KING: That's correct.

MR. MILLS: Would a fair average tons per train for Powder River Basin trains be about 12,000 tons?

MR. KING: Approximately, yes.

MR. MILLS: Do me a favor and tell me how many trains, loaded trains, 14 million tons would represent based on an average of 12,000 tons per train.

MR. KING: Approximately 1,166.

MR. MILLS: Each of those loaded trains would have an associated empty movement, correct?

MR. KING: Yes.

MR. MILLS: So you have to double that
1,166 to get the total trains per day in both
directions -- trains in both directions,
correct?

MR. KING: Yes.

MR. MILLS: Would you perform that
calculation for me, please. What's the result?

MR. KING: 2,333.3333.

MR. MILLS: And to convert that to
trains per day, you need to divide by 365, would
you not?

MR. KING: Unfortunately, I cleared it
off. Yes.

MR. MILLS: You said 2,333 divided by
365 produces how many trains per day on average?


MR. MILLS: Thank you. About 6.4.

MR. KING: Right.

MR. MILLS: In your verified
statement -- I'll address this to Mr. King -- you
describe the effect of the merger operations
between Topeka and Kansas City. And with respect
to the operation of coal trains from the Powder
River Basin to Texas, I believe you indicated
yesterday and in the verified statement that once
the merger plan is fully operated, those trains
would no longer operate between Topeka and Kansas City; is that correct?

MR. KING: That's correct.

MR. MILLS: Are you familiar with the trains moving to Arkansas Power & Light's power plants at Newark and Redfield, Arkansas?

MR. KING: Yes.

MR. MILLS: And those trains would continue to operate via Kansas City after the merger; is that correct?

MR. KING: That's correct.

MR. MILLS: Similarly, trains operating to or via St. Louis from the Powder River Basin would also continue to operate between Topeka and Kansas City, correct?

MR. KING: That's correct.

MR. MILLS: Let me refer you one final time, I believe, to the traffic density exhibits, specifically page 379. I want to make sure I understand this correctly. About five lines down there's the line segment Kansas City to Topeka via UP which shows a change or increase from the 1994 base of 50 trains to postmerger trains per day of 64, correct?

MR. KING: That's correct.
MR. MILLS: And then on page 383, which is the SP, one of the SP train density exhibits, four lines from the bottom there's again a reference to Kansas City, Missouri to Topeka Kansas via UP.

MR. KING: That's correct.

MR. MILLS: That reflects the SP traffic rights over the UP between those points?

MR. KING: That's correct.

MR. MILLS: And that shows a change from 23 trains a day again to 64 trains a day, correct?

MR. KING: Yes, but you'll also notice there's a line that shows UP.

MR. MILLS: That was my next question. If you add the 50 trains a day for the UP and the 23 trains a day for the SP, you get 73 trains total, right?

MR. KING: That's correct.

MR. MILLS: So the result of the merger is that -- and you have to look at them both together -- the reduction will be a net reduction for both companies to 64 trains a day or 9 trains a day, correct?

MR. KING: That's correct.
MR. MILLIS: Nor do I understand the minus nine number in the far right-hand column. You need to look at both the UP and SP density charts, correct?

MR. KING: Right. They're shown on both charts.

MR. MILLIS: I thought I had it right, but I wanted to confirm it. Mr. King, referring to page 12 of the verified statement, I'd like to refer you once more to the reference in the third line from the top to the, quote, complications of interline coordination, close quote. Let me ask you, would you agree that interline service can be very effective for unit train coal traffic?

MR. KING: It can be, yes.

MR. MILLIS: It can involve a run-through power cycling trains from origin to destination involving joint line service of more than one railroad; is that correct?

MR. KING: That's correct.

MR. MILLIS: In fact, prior to the merger of Union Pacific in Chicago Northwestern, the movements of Powder River Basin coal via the Union Pacific involved -- necessarily involved a joint line movement, did they not, between CNW
MR. KING: Yes.

MR. MILLS: And CNW and UP cooperated very well on those interline movements, did they not?

MR. KING: Most of the time, yes.

MR. MILLS: And, in fact, if it not correct that that joint line service was able to compete effectively with single-line BN services in some instances?

MR. KING: Well, we'd have to talk about destinations. It would vary according to destinations.

MR. MILLS: Let me give you an example. On movements from the Powder River Basin to Commonwealth Edison power plants in the Chicago area, in order to get from the Powder River Basin to Chicago prior to the CNW merger, that involved actually a three-railroad haul on the UP-CNW, did it not?

MR. KING: Well, three railroads as far as entities, the WRPi was staffed by CNW people.

MR. MILLS: By WRPi you're referring to the CNW subsidiary and the Powder River Basin Western Railroad Properties, Incorporated?
MR. KING: That's correct.

MR. MILLS: It is correct. Is it not,

that the Burlington Northern had and has a

single-line route from the same Powder River

Basin mines to the Chicago area?

MR. KING: I don't know what their

route is as far as single-line -- you're not
talking about single track or double track?

MR. MILLS: I'm talking about one

railroad. In other words, BN can operate from

the Powder River Basin straight to Chicago

without handing the trains off to another

railroad until they get to Chicago.

MR. KING: That's correct.

MR. MILLS: Are you aware that CNW and

Union Pacific handles substantial volume of

Powder River Basin coal traffic for Commonwealth

Edison?

MR. KING: Yes.

MR. MILLS: Are you familiar in general

with the movement from the Powder River Basin to

Georgia Power's plant sharer south of Atlanta,

Georgia?

MR. KING: Yes.

MR. MILLS: And that involves a
movement, does it not -- let's take prior to the
CNW merger. That involved a movement via CNW and
UP to Memphis, Tennessee, correct?

MR. KING: That's right.

MR. MILLS: And at Memphis the traffic
was interchanged to Norfolk Southern?

MR. KING: That's correct.

MR. MILLS: Are you aware CNW-UP
competed for that movement with a single-line BN
haul from the Powder River basin to Memphis?

MR. KING: I don't recall who they were
competing with for the contract.

MR. MILLS: Do you know whether the
Burlington Northern prior to the CNW merger or
today has a direct route or single-line haul, I
should say, from the Powder River Basin to
Memphis?

MR. KING: Yes, they do.

MR. MILLS: CNW-UP won that contract,
did they not?

MR. KING: Yes, they did.

MR. MILLS: I'd like to ask you to turn
to page 60 of your verified statement. Let me
say in your separate testimony I commend you for
your candor in acknowledging the service problems
and the statement that you've been perhaps too aggressive in the way we absorb CNW. And you indicate at the end of that same paragraph in which that's discussed that, quote, our customers have been complaining, comma, as they should, close quote. Do those customers include any coal customers, to your knowledge?

MR. KING: I'm sorry, where are you reading?

MR. MILLS: Last sentence of the first paragraph under separate testimony by Mr. King.

MR. KING: And the question again was?

MR. MILLS: To your knowledge, do any of the customers who have been complaining include coal customers?

MR. KING: Yes, they do.

MR. MILLS: Can you tell me which ones or give me some examples? Let's put it that way.

MR. KING: There was various plants, Powerton, Sheboygan, Waukegan, for example.

MR. MILLS: That would be Commonwealth Edison and Wisconsin Power & Light?

MR. KING: Yes.

MR. MILLS: Is it fair to say that during the entire period, two-year period 1994
1995, for various reasons the Union Pacific and CNW, prior to the merger, experienced service problems in hauling Powder River Basin coal to the Midwest?

MR. KING: Well, it would vary by customer.

MR. MILLS: There were capacity problems in the Powder River Basin, were there not, among other things?

MR. KING: There was some capacity issues, yes.

MR. MILLS: Yesterday in response to a question from Mr. Hut as to whether the Southern Pacific is providing quality service to its shippers, Mr. Ongerth stated, as I recall -- this is not a direct quote, but I think it's close -- SP is not measuring up to the standards that it set for itself.

Could the same be said for the Union Pacific with respect to its PRB coal service during 1994 and 1995?

MR. KING: It would vary according to customer. There were some customers we were not doing as well as we would have liked. There were some we were do very well with.
MR. MILLS: So in some instances, that statement could be said of the Union Pacific's coal service?

MR. KING: In some instances?

MR. MILLS: I'd now like to turn to one last highly confidential document. It involves questioning of Mr. King, so maybe we need to have Mr. Ongerth and Mr. Carey leave the room.

I'd like to have marked -- I'd like to have marked for identification as King-Ongerth Exhibit 9 a two-page exhibit bearing Bates numbers HC37 - 000005 and HC37 - 000006, and they're a highly confidential designation. And the first line on the first page reads, quote, Analysis of the 1995 Original Budget, paren, 12-1-94, close paren, on Energy Traffic. And I'll represent for the record that this document was produced to the Western Coal Traffic League by the Union Pacific during discovery.

(King-Ongerth Exhibit No. 9 was marked for identification.)

MR. MILLS: I'll also represent for the record that additional pages over and above these were also produced for different years, but this document related to '95 is the only one that I
MR. McGEORGE: That should be $1.3 billion.

MR. HEMMER: Back on the record.

BY MR. McGEORGE:

Q. Have you made any other guarantees that you will proceed with these specific projects?

A. (Mr. King) Not that I am aware of.

Q. In your operating plan you project certain efficiencies in terms of reduced mileages or reduced transit times, is that correct?

A. (Mr. King) Yes.

Q. And are many of those efficiencies dependent upon actually making the upgrades that you have described, upgrades including, you know, tunnel enlargements, building specs, building sidings, making improvements in rail yards?

A. (Mr. King) Many of them are.

Q. Does that mean that if for some reason the construction projects were not to proceed, that we would have to revise the transit times and mileages that are indicated in the operating plans?

A. Of course, this is based on '94 traffic levels.

Q. Yes.
A. (Mr. King) So when this merger is approved, then you look at the volumes out there now. Some of them may adjust because traffic flows may have changed or customers may have changed and things like that. So some of them may have to be adapted.

And we also haven't worked through the implementation of the schedule of when they will be done. So there, because once it is approved, then we go through the implementation of which, the prioritization of which ones will be done.

Q. Yes.

A. (Mr. King) So that may shift in there, also.

Q. Okay. I am going to focus just on one of those projects for a second. The track construction on the Sunset route. That is about a hundred miles, is that right?

A. (Mr. Smith) Are you talking about between El Paso and West Colton?

Q. Yes. I am going to your table on page 23 for my reference.

A. (Mr. King) Okay.

Q. Okay. It says over a hundred. I mean, do you mean if it's about a hundred, or
BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS

SOUTHWESTERN RAILWAY COMPANY, SFCSL CORP. AND THE

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

HIGHLY CONFIDENTIAL

Washington, D.C.

Thursday, February 8, 1996

Deposition of R.B. (BRAD) KING and

MICHAEL D. ONGERTH, witnesses herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witnesses being duly sworn by MARY GRACE PRESTO, RPR, a Notary Public in and for the District of Columbia, taken at the offices of Covington & Burling, 1201 Pennsylvania Avenue, N.W.,

Washington, D.C., 20044, at 10:20 a.m., Thursday, February 8, 1996, and the proceedings being taken down by Stenotype by MARY GRACE PRESTO, RPR, and transcribed under her direction.
Colorado and Utah that may occur in the next five years.

MR. HEMMER: Object to the extent that calls for, what I might call regulatory conclusion. But in any event, go ahead.

MR. KING: Well, on the Powder River Basin, their trains are in the density as far as growth and I'm not aware of any growth in there. On the SP origins, I'm not aware of any growth in there except when we looked at the KP and things like that, those trains were taken into consideration but I don't know of any growth projections.

MR. MILLS: There has been a significant growth in recent years in the Powder River Basin coal traffic originated by the Union Pacific, has there not?

MR. KING: Yes, there has.

MR. MILLS: I'm going to refer to a highly confidential exhibit.

MR. HEMMER: Which railroad?

MR. MILLS: Union Pacific.

MR. HEMMER: Mr. Ongerth, do you want to excuse yourself for a moment?

(Messrs. Ongerth and Carey exit.)
MR. HEMMER: I have agreed to make a statement regarding the nature of the application, which is identical to applications filed in all other merger proceedings in the last 15 years or so.

The application is intended to isolate and identify the effects of a UP/SP combination. It is intended to identify the effects on traffic, that is, by extended halls, on the development of new marketing opportunities, which may result in the creation of new rail traffic, and the development of intermodal diversions, all of which generated new traffic for UP/SP system. In this case, it has an additional feature, which is that it looks at the loss of about a half a billion dollars of BN/Santa Fe traffic associated with the settlement agreement.

All of that, however, focuses on a -- is intended to look at the effects of the merger in isolation. No attempt was made, and we understand that commission regulations did not contemplate, but no attempt was made to look at future changes in traffic of any kind, including...
increases in Powder River Basin coal traffic, Colorado and Utah coal traffic, lumber traffic, intermodal traffic, steamship traffic or any other type, nor was any attempt made to look at the types of capacity improvements, changes in operations and new operating patterns that would be expected to be associated with all of those future changes, which, frankly, we hope will occur.

All we were trying to do here, and as we understand it, all the Commission’s regulations contemplate is looking at the effects of the UP/SP merger in isolation based on a set of base year traffic statistics. If my colleagues from the Southern Pacific have any other perspectives or supplements, I would be delighted to have them add them.

MR. NORTON: No. I think the point to make to be clear is that the universe is governed by the 1994 traffic.

MR. HEMMER: That’s right.

MR. NORTON: And how it would be redistributed under the changes.

MR. MILLS: So changes in a routing, for example, that arise because of the merger
would be considered, would that be correct?

MR. HEMMER: Because of the merger, yes.

MR. MILLS: But not due to extraneous factors?

MR. HEMMER: That's right. So, for example, if it occurred out in the real world that a vast new coal scene were to be found in western Colorado and that required an entirely different way to approach rail operations to transport that coal, that's not considered here.

MR. MILLS: That will shorten my questioning to some extent. Thank you.

MR. HEMMER: Thank you.

MR. MILLS: Mr. King, let me ask you this.

MR. NORTON: Would you like them to come back in?

MR. MILLS: Yes.

(Messrs. Ongerth and Carey reenter deposition room.)

MR. MILLS: Mr. King, is it correct in the year 1995 the Union Pacific originated approximately 100 million tons of Powder River Basin coal?
CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 1996, I caused a copy of the foregoing Appendix to Wisconsin Power & Light Company and Wisconsin Public Service Corporation's Comments to be served by first class mail (postage prepaid) on the individuals listed below.

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Patricia E. Kolesar
April 30, 1996

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
U.S. Department of Transportation
1201 Constitution Avenue, N.W.
Room 2215
Washington, DC 20423

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

Dear Secretary Williams:

Pursuant to the Order served April 22, 1996, enclosed are five copies of a volume entitled "Transcript Pages Referenced In Comments and Verified Statements Filed by Western Shippers' Coalition on March 29, 1996." We are not enclosing a diskette because it did not seem necessary given the fact that this is not a pleading as such.

Also enclosed are three additional copies for date stamping and return via our messenger.

Very truly yours,

Michael F. McBride

Attorney for Western Shippers' Coalition

Enclosure

cc (w/o encl.): Arvid E. Roach, II, Esq.
Paul A. Cunningham, Esq.
Mr. Alexander H. Jordan
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 AGREEMENT WITH CMA

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April 19, 1996
APPLICANTS' SUBMISSION OF SETTLEMENT AGREEMENT WITH CMA

Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"),\footnote{UPC, UPRR, and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."} Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and The Denver and Rio Grande Western Railroad Company ("DRGW"),\footnote{SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."} hereby submit the attached settlement that they have reached with the Chemical Manufacturers' Association. Applicants will address this important settlement in their rebuttal filing.
April 19, 1996

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 19th day of April, 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
Suite 500
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
SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 18th day of April 1996 among


Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (collectively, "BN/Santa Fe"); and

the Chemical Manufacturers Association ("CMA"),

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 Surface Transportation Board ("STB") in Finance Docket No. 32760, Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control & Merger -- Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Ry., SPCSL Corp. & Denver & Rio Grande Western R.R. ("the Control Case").

WHEREAS, Applicants entered into a Settlement Agreement in the Control Case with BN/Santa Fe dated September 25, 1995, as later amended ("the BN/Santa Fe Settlement Agreement"); and

WHEREAS, CMA had certain concerns about the BN/Santa Fe Settlement Agreement and raised those concerns with Applicants; and

WHEREAS, Applicants wish to address those concerns and to convince CMA to withdraw its opposition to the proposed UP/SP merger,

NOW THEREFORE, in consideration of their mutual promises, Applicants, BN/Santa Fe and CMA agree as follows:

1. The BN/Santa Fe Settlement Agreement shall be amended to grant BN/Santa Fe overhead trackage rights (a) over UP’s line between Houston, Texas, and Valley Junction, Illinois, via Palestine, Texas, (b) over SP’s line between Fair Oaks, Arkansas, and Valley Junction, Illinois, and (c) over UP’s line between
Fair Oaks and Bald Knob, Arkansas. These rights shall be for traffic moving to or from points south of Bald Knob and Brinkley, Arkansas. Local access shall be limited to that provided for in Section 6c of the BN/Santa Fe Settlement Agreement.

2. The BN/Santa Fe Settlement Agreement shall be amended to grant BN/Santa Fe the right to serve any new shipper facility located subsequent to the consummation of the UP/SP merger on any SP-owned line over which BN/Santa Fe receives trackage rights in the BN/Santa Fe Settlement Agreement. New facilities do not include expansions of or additions to existing facilities or load-outs or transload facilities. Each railroad electing to serve such a new facility shall share equally in any capital investment necessary to provide rail service to the facility.

3. Effective upon consummation of the UP/SP merger, UP/SP shall modify any contracts with shippers at "2-to-1" points in Texas and Louisiana so that at least 50% of the volume is open to BN/Santa Fe.

4. (a) The BN/Santa Fe Settlement Agreement shall be amended to provide for a reciprocal switch charge at "2-to-1" points of no more than $130 per car. This charge shall be adjusted upward or downward each year on the basis of 50% of RCAF(U).

(b) In addition, effective upon consummation of the UP/SP merger, all SP reciprocal switch charges with other railroads (other than those at "2-to-1" points) that are higher than $150 per car shall be reduced to no more than $150 per car. This charge shall be adjusted upward or downward each year on the basis of 50% of RCAF(U).

5. The BN/Santa Fe Settlement Agreement shall be amended to specify that BN/Santa Fe shall have equal access to Dayton Yard, on economic terms no less favorable than the terms of UP/SP's access, for storage-in-transit of traffic handled by BN/Santa Fe pursuant to the Agreement, and that UP/SP shall work with BN/Santa Fe to locate additional storage-in-transit facilities on the trackage rights lines as necessary.

6. (a) UP/SP shall place 100% of the total trackage rights fees received from BN/Santa Fe with respect to the lines in Texas, Louisiana, Arkansas, Missouri and Illinois over which BN/Santa Fe will receive trackage rights in a segregated fund to be spent on (a) maintenance on those lines, (b) offsetting depreciation of those lines, and (c) capital improvements on those lines. If UP/SP's expenditures for maintenance, depreciation and capital improvements on the trackage rights lines in those states exceed the amount in the segregated fund,
UP/SP shall first be reimbursed for the excess out of future trackage rights fees before making further payments into the fund. The costs for accounting necessary to administer this provision may also be charged to the segregated fund. Maintenance, depreciation and capital improvements expenditures shall include standard additives. CMA or its designee shall have the right to audit these calculations.

(b) UP/SP shall place 100% of the total trackage rights fees received from BN/Santa Fe with respect to the lines in states other than Texas, Louisiana, Arkansas, Missouri and Illinois over which BN/Santa Fe will receive trackage rights in a segregated fund to be spent on (a) maintenance on those lines, (b) offsetting depreciation of those lines, and (c) capital improvements on those lines. If UP/SP's expenditures for maintenance, depreciation and capital improvements on the trackage rights lines in states other than Texas, Louisiana, Arkansas, Missouri and Illinois exceed the amount in the segregated fund, UP/SP shall first be reimbursed for the excess out of future trackage rights fees before making further payments into the fund. The costs for accounting necessary to administer this provision may also be paid out of the segregated fund. Maintenance, depreciation and capital improvements expenditures shall include standard additives. CMA or its designee shall have the right to audit these calculations.

7. Section 12 of the BN/Santa Fe Settlement Agreement shall be amended to provide that BN/Santa Fe's trackage rights fees shall be adjusted upward or downward each year by the difference between the year in question and the preceding year in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the fee. CMA or its designee shall have the right to audit the escalation calculations.

8. The BN/Santa Fe Settlement Agreement shall be amended to give BN/Santa Fe the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles and West Lake, Louisiana, (a) to, from and via New Orleans, and (b) to and from points in Mexico, with routings via Eagle Pass, Laredo (through interchange with Tex Mex at Corpus Christi or Robstown), or Brownsville, Texas. BN/Santa Fe access to the covered shippers at Lake Charles and West Lake shall be on the same basis as is provided for in the BN/Santa Fe Settlement Agreement for "2-to-1" points, except that at West Lake BN/Santa Fe shall be required to pay a fee to UP/SP equal to the haulage fee that UP must now pay to KCS to access the traffic, adjusted per Section 12 of the BN/Santa Fe Settlement Agreement. The BN/Santa Fe Settlement Agreement shall also be amended to give BN/Santa Fe the right to handle traffic of shippers open to all of UP, SP and KCS at
Texarkana, Texas/Arkansas, and Shreveport, Louisiana, to and from the Memphis BEA (BEA §5), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA.

9. Applicants shall agree with BN/Santa Fe on a dispatching protocol for the trackage rights under the BN/Santa Fe Settlement Agreement along substantially the lines of Attachment A hereto.

10. The BN/Santa Fe Settlement Agreement shall be amended to specify that, in the Houston-Memphis-St. Louis corridor, BN/Santa Fe has the right to move some or all of its traffic via its trackage rights over either the UP line or the SP line, at its discretion, for operating convenience.

11. Section 4b of the BN/Santa Fe Settlement Agreement shall be amended by adding at the end thereof: "BN/Santa Fe’s access and interchange rights at Corpus Christi and Brownsville must be at least as favorable as SP has currently. BN/Santa Fe shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and Ferrocariles Nacionales de Mexico. BN/Santa Fe shall have the right to purchase for fair market value a yard at Brownsville to support trackage rights operations."

12. The BN/Santa Fe Settlement Agreement shall be amended to specify that (a) BN/Santa Fe has the right to serve all shippers that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the BN/Santa Fe Settlement Agreement was signed, regardless of how long ago a shipper may have shipped, or whether a shipper ever shipped, any traffic via either UP or SP; and (b) BN/Santa Fe has the right to serve new facilities located within the geographic boundaries of the "2-to-1" points, as defined in the BN/Santa Fe Settlement Agreement, including but not limited to situations where, when the BN/Santa Fe Settlement Agreement was signed, a facility was being developed, or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP. With regard to (b), where switching limits exist at a "2-to-1" point, they shall define the area within which BN/Santa Fe has the right to serve new facilities, and where switching limits do not exist, the covered area shall be defined on the basis of what would have been reasonable switching limits.

13. This provision applies to any CMA member ("the Shipper") that

(a) has a facility that was, prior to the consummation of
the UP/SP merger, solely served by UP, and seeks, in order
to obtain two-railroad service, the right to build out from
that facility to (or the right for BN/Santa Fe to build in
to that facility from) a point on the former SP ("the Build-
In Point") and the associated grant to BN/Santa Fe of any
trackage rights that may be necessary for BN/Santa Fe to
reach the Build-In Point, or

(b) has a facility that was, prior to the consummation of
the UP/SP merger, solely served by SP, and seeks, in order
to obtain two-railroad service, the right to build out from
that facility to (or the right for BN/Santa Fe to build in
into that facility from) a point on the former UP ("the Build-
In Point") and the associated grant to BN/Santa Fe of any
trackage rights that may be necessary for BN/Santa Fe to
reach the Build-In Point.

The Shipper may request arbitration of a claim for such relief by
the later of (i) one year following consummation of the UP/SP
merger, or (ii) one year following the expiration of the contract
in existence as of the date of this settlement that has the
latest expiration. The arbitration shall be conducted under the
Commercial Arbitration Rules of the American Arbitration
Association, and shall be subject to the U.S. Arbitration Act.
The arbitration shall be concluded within 90 days unless
otherwise agreed to between the shipper and UP/SP. The standard
for decision as to whether the Shipper shall be entitled to
relief shall be the principles with regard to build-ins
articulated by the Interstate Commerce Commission in Finance
Docket No. 32549, Decision served Aug. 23, 1995, or, if more
favorable to the Shipper, any principles with regard to build-ins
articulated by the STB in the Control Case. If the parties do
not agree on the route over which BN/Santa Fe shall receive any
necessary trackage rights to reach the Point of Build-In, the
arbitrator shall decide the route, and in doing so shall seek to
minimize the operating inconvenience to UP/SP, consistent with
ensuring that BN/Santa Fe can provide competitive service. The
compensation terms of any trackage rights awarded to BN/Santa Fe
shall be the same as for all other BN/Santa Fe trackage rights
(except Keddie-Stockton) under the BN/Santa Fe Settlement
Agreement. The rights conferred by this provision shall be
without prejudice to any pending request for relief in the
Control Case and to any other rights a shipper has to proceed
before the STB.

14. Applicants will, in a submission to the STB, state that
they are agreeable to annual STB oversight proceedings for five
years, with the Board to examine whether the BN/Santa Fe
Settlement Agreement has effectively addressed the competitive
issues it was intended to address. The Board shall have
authority to impose additional remedial conditions.

15. In light of the provisions of this agreement, CMA will withdraw its opposition to the UP/SP merger and the BN/Santa Fe Settlement Agreement. A number of CMA's member companies have taken positions in support of or in opposition to the UP/SP merger. This settlement is without prejudice to the right of any CMA member company that is a party to the Control Case to continue to take any position and seek any relief in that docket.

16. The provisions of this agreement shall remain in effect for 99 years or until the termination of the BN/Santa Fe Settlement Agreement in accordance with its terms.

Arvid E. Roach II
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Vice President-Law and General Counsel
BN/Santa Fe

David F. Zoll
Vice President and General Counsel
CMA

Thomas E. Schick
Assistant General Counsel
CMA

Scott N. Stone
Patton Boggs L.L.P.

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16. The provisions of this agreement shall remain in effect for 99 years or until the termination of the BN/Santa Fe Settlement Agreement in accordance with its terms.

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BNSF - UP/SP DISPATCHING PROTOCOLS

1. **Scope:** These protocols apply on all rail line segments where Burlington Northern Railroad Company or The Atchison, Topeka & Santa Fe Railway Company (which will be referred to jointly or individually as “BNSF”) has trackage rights over tracks of the entity or entities resulting from the merger of the rail affiliates of Union Pacific Corporation and Southern Pacific Rail Corporation (which will be referred to jointly or individually as “UP/SP”) and on all rail line segments where UP/SP has trackage rights over tracks of BNSF. All such rail lines will be referred to as “joint trackage.”

2. **Purpose:** To ensure that BNSF and UP/SP trains operating on joint trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of tenant operations on joint trackage is not adversely affected by the fact that the other railroad owns the track.

3. **General Instructions:** BNSF and UP/SP will issue written instructions to all personnel (including supervisors) responsible for train dispatching on joint trackage that trains of the tenant are to be dispatched exactly as if they were trains of the owner and given equal treatment with trains of the owner. These instructions will be issued at agreed intervals or at the request of either party.

4. **Monitoring Systems:** At the request and expense of the tenant, the owner will make available computer terminals, facilities or capabilities comparable to those available to its own dispatchers showing joint trackage it dispatches so that the tenant can monitor the handling of its trains by the owner.

5. **Train Information:** The tenant will provide to the owner, and regularly update, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over joint trackage, preferably using electronic data interchange. The tenant will provide reliable and current information about trains approaching joint trackage, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching joint trackage, sufficiently in advance to allow dispatchers to plan for them. The owner will provide to the tenant advance notice of planned maintenance-of-way projects, line closures and train or equipment restrictions.

6. **Specific Instructions:** The owner will permit the tenant to transmit instructions regarding the requirements of specific trains and shipments to dispatching employees.
responsible for handling those trains.

7. **Train Priorities:** BNSF and UP/SP will at all times provide to each other current procedures for assigning dispatching priorities or rankings to their trains and information sufficient to show how those procedures are applied to their own trains. The tenant will assign priorities or rankings to its trains operating on joint trackage using the owner's procedures, and the owner will dispatch tenant trains in accordance with those priorities or rankings. The Joint Service Committee will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads.

8. **Entry to Joint Trackage:** At points where tenant trains enter joint trackage, entry will be provided by the owner on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. [If operating circumstances make strict application of this principle difficult or uncertain, BNSF and UP/SP may jointly establish standards for determining sequence of entry to joint trackage.]

9. **Communications:** BNSF and UP/SP will provide to each other, and keep current, lists of dispatching personnel responsible for dispatching each segment of joint trackage and contact numbers. For each segment, BNSF and UP/SP will designate supervisory employees to serve as the day-to-day contacts for communications about operating changes, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.

10. **Access to Dispatching Centers:** Appropriate officials of either railroad will be admitted at any time to dispatching facilities and personnel of the other responsible for dispatching joint trackage to review the handling of trains on joint trackage and will be provided an office in the other railroad's dispatching center (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to that review). In order to support BNSF operations over UP/SP trackage rights granted in connection with the UP/SP merger, UP/SP will pay BNSF an amount equal to the reasonable and conventional salary of one supervisory employee to be placed by BNSF at UP/SP's Harriman dispatching center.

11. **Performance Measurement:** BNSF and UP/SP will cooperate to develop train performance evaluation methods under which train performance of tenant trains on joint trackage segments can be compared to train performance of the owner’s trains on the same segments.

12. **Personnel Incentives and Evaluation:** In evaluating the performance of employees and supervisors responsible for dispatching joint trackage, both BNSF and UP/SP will
consider train performance of tenant trains and effectiveness in cooperating with tenant personnel and meeting tenant service requirements in the same manner as such factors are considered with respect to the owner's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of the owner's trains, performance of the tenant's trains shall be considered on the same basis to the extent feasible.

13. **Disagreements:** The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them. If a matter is not resolved to the satisfaction of both parties, it will be presented to the Joint Service Committee. If a satisfactory resolution cannot be achieved by the Joint Service Committee, the matter will be submitted to binding summary arbitration before a neutral experienced railroad operating official within fourteen days. The parties will agree in advance on the sanctions available to the arbitrator to address failures to comply with these protocols.

14. **Modifications:** As the ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of both railroads on joint trackage, these protocols may be modified at any time by mutual agreement, consistent with that objective.
April 17, 1996

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

Re: UP/SP Merger, Finance Docket No. 3276:

Dear Mr. Williams:

Enclosed herewith, please find five copies of the extracts from the deposition testimony cited in the Comments of The Society of the Plastics Industry, Inc., (SPI), Montell USA, Inc. and Olin Corporation, and Union Carbide Corporation. This is forwarded in response to the request of Mr. Konsschnik, set forth in his letter of April 9, 1996 to Judge Jerome N. Nelson, and pursuant to the Order entered by Judge Nelson at the Discovery Conference held on Friday, April 12, 1996.

Inasmuch as the enclosed extracts replicate the record on file with the Board, see 49 C.F.R. § 1114.24(h) and 1114.28, see also UP/SP-197, these are being submitted for staff convenience only. Accordingly, they bear the same numbers as the March 29, 1996 filings (SPI-11, MON-2/Olin-2, UCC-6), with the designation "Supp" for supplement. Pursuant to Judge Nelson’s Order, no service is being made hereof, except we are providing courtesy copies of this letter as noted below.

Very truly yours,

[Signature]

Martin W. Bercovich

Enclosures

cc (w/out enc.): David M. Konsschnik, Director,
Office of Proceedings
Honorable Jerome N. Nelson
Arvid E. Roach II, Esquire
Paul A. Cunningham, Esquire
SUPPLEMENT

DEPOSITION EXTRACTS

- Richard J. Barber
- Rollin Bredenberg
- Richard K. Davidson
- James S. Gehring
- Gerald Grinstein
- Carl R. Ice
- Neal D. Owen
- Richard B. Peterson
- John H. Rebensdorf
- Richard D. Spero
- Robert Willig
April 18, 1996

HAND DELIVERED

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423


Dear Secretary Williams:

Attached please find five copies of the Excerpts of Depositions Cited in Comments of The Kansas City Southern Railway Company and Request for Conditions (KCS-42) and an original and twenty copies of a public and Highly Confidential version of The Kansas City Southern Railway Company's ERRATA to Comments and Request for Conditions (KCS-43) (the only difference being Table 7.1 in Volume I, page 190.1).

Also enclosed is a 3.5 inch disk containing the text of KCS-43.

Sincerely yours,

William A. Mullins

Enclosures

cc: The Honorable Jerome Nelson
Restricted Service List
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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
ERRATA TO COMMENTS AND
REQUEST FOR CONDITIONS (KCS-33)

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Attorneys for The Kansas City
Southern Railway Company

April 18, 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, SFCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
ERRATA TO COMMENTS AND
REQUEST FOR CONDITIONS (KCS-33)

The Kansas City Southern Railway Company hereby submits the following changes to
the Comments and Request for Conditions filed in this proceeding on March 29, 1996 (KCS-
33).

ERRATA

Volume I

Page i - Table of Contents : Some copies may reflect Nell Nunn's statement at page 7.
Correct page is 77.

Page 39, line 18 : Change from "Topeka, Hutchinson" to "Topeka and
Hutchinson, Kansas"
Page 43, line 4: Change "Vol. II, Highly Confidential Appendix" to "Vol. III, Highly Confidential Appendix"

Page 48, last line: Add period at end of sentence

Page 65, footnote 38: Change "V.S. Rees at xx" to "V.S. Rees at 232"

Page 69, line 12: Change "Vol. II, Highly Confidential" to "Vol. III Highly Confidential"

Page 82, footnote 41: Change "give in" to "given in"

Page 100, line 16: Change "should to determine" to "should determine"

Page 103, line 17: Change "the SP," to "the SP;"

Page 145, line 4: Change "V.S. Grimm at xxx" to "V.S. Grimm at 215-216 (Vol. I)"

Page 152, paragraph 1: Change "Section I" to "Section II"; change "Section II" to "Section III"; change "Section III" to "Section IV"; change "Section IV" to "Section V"; and change "Section V" to "Section VI"

Page 168, line 2: Change "numbers of shippers" to "number of shippers"

Page 190, last line: Change "Table 7.1" to "Table 7.1R"

Page 190.1: Delete Table 7.1 and replace with Table 7.1R (attached to Highly Confidential versions only)

Page 205, footnote 60: Change "spur lines in feasible" to "spur lines is feasible"

Page 215, line 5: Change "BEA pair" to "BEA pairs"

Page 343, line 19: Change "described in by" to "described by"

Page 353, line 11: Change "disarray inevitable" to "disarray is inevitable"

Page 361, line 2: Change "These reduction" to "These reductions"

Page 361, line 4: Change "Additionally, m" to "Additionally."

Page 361, line 9: Change "traffic going" to "traffic is going"
Volume II

Page i - Table of Contents : Some copies may reflect Nell Nunn's statement at page 7.
Correct page is 77.

Page 8, line 16 : Insert new sentences between first sentence and original second sentence: "There was one instance where the information on the spreadsheet caused me to question NYP about the dimensions shown on the spreadsheet (see first example discussing Red River Army Depot in Section II that follows). In that case, NYP gave me dimension confirmation from their actual bids."

Page 9, lines 3-4 : Delete "If examples include truck, it is so noted within the example." Substitute and add: "If an example includes truck as a competitor to rail, the truck line's abbreviated name (National Motor Freight Classifications Standard Carrier and Agents Codes) will be displayed with the abbreviation T or TRK in parenthesis beside the truck abbreviation. If a rail-truck operation is used to compete with an all rail movement or with another rail-truck operation, the abbreviation T or TRK with a dash will be displayed with the abbreviation for the railroad using the truck transload operation. All figures shown in the examples under columns "RATE"; "TOTAL REV"; "REVENUE"; "REV DIFF"; "DIFFERENCE" and all figures summarized at the end of the examples in line titled "TOTAL LOW COST"; "TOTAL MID COST"; "TOTAL HIGH COST"; "TOTAL M-L DIFF"; "TOTAL H-L DIFF" are whole dollars."

Page 17, footnote 2, page 16 : Change "That movement is shown at the end of the recap of the results of this analysis." to "That movement is shown as the last entry of the movements reviewed in this example."

Page 19, line 16 : Change "is business" to "this business"

Page 23, line 11 : Change "at a level below SP's" to "at a level above SP's"
Page 25, lines 21, 26, 31 and 36 : Change "INFY" to "INFY (TRK)"

Page 25, lines 22, 27, 32 and 37 : Change "RNGR" to "RNGR (TRK)"

Page 25, lines 23, 28, 33 and 38 : Change "LIGS" to "LIGS (TRK)"

Page 26, line 3 : Change "MODA" to "MODA (TRK)"

Page 26, line 4 : Change "GDLS" to "GDLS (TRK)"

Page 26, line 5 : Change "PREF" to "PREF (TRK)"

Page 26, line 9 : Change "TRIM" to "TRIM (TRK)"

Page 26, line 10 : Change "WESTRANS" to "WESTRANS (TRK)"

Page 26, line 11 : Change "LIGS" to "LIGS (TRK)"

Page 27, lines 9-13 : Delete and replace with

"DESTINATION CARRIER RATE %DIF #CARS TOTAL REV REV DIF"

Phoenix, AZ SP 2,466 7 17,262

RRTQ (TRK) 3,570 45% 7 24,990 7,728

INFY (TRK) 4,872 97% 7 34,104 16,842

RNGR (TRK) 5,296 115% 7 37,072 19,810

Page 28, line 3 : Change "by truck to a rail head by 4 railroads:" to "by truck to nearby rail locations served by the 4 railroads:"

Page 29, line 22 : Change "CSXT closed," to "CSXT"

Page 29, lines 29, 30 and 36 : Change "*WECR/MCEO" to "WECR/MCEO (TRK)"

Page 30, lines 10 and 13 : Change "*MCEO/MCEO" to "MCEO/MCEO (TRK)"

Page 30, lines 4, 7 and 19 : Change "*WECR/MCEO" to "WECR/MCEO (TRK)"

Page 30, line 15 : Change "*RNGR/WCON" to "RNGR/WCON (TRK)"
Page 30, line 11: Delete "SEALY EVALUATION cont"

Page 33, line 5: Change "on bid" to "one bid"

Page 35, line 16: Change "truck provide the capt to UP’s" to "truck provided the cap to UP’s"

Page 35, line 17: Change "one more" to "one move"

Page 37, line 10: Change "about $10 million" to "about $5 million"

Page 37, lines 12-13: Change "Being slow, no formal bids were placed" to "Being slow, only one formal bid was placed"

Page 37, line 17: Change "offered by SP. Where its bid" to "offered by SP, where its bid"

Page 37, line 18: Change "$700,000" to "$463,000"

Page 38, last line: Change "SP’s 31% is close, 39% to the" to "SP’s 31% is close to the 39%"

Page 42, line 26: Change "illustrates the great" to "and illustrates the great"

Page 43, line 18: Change "truck completion" to "truck competition"

Page 43, line 19: Change "treadlines" to "trend lines"

Page 44, last line and Page 45, lines 1-6: Delete and replace with

"-32 bids involving SP;
-63 bids involving UP;
-67 bids involving BNSF;

The winning results of those bids were

-- SP 61%;
-- UP 40%;
-- BNSF 46%"

Page 45, line 21: Change "19 bids" to "20 bids"

Page 45, line 22: Change "divided by 19" to "divided by 20"
Page 45, line 24: Change "Exhibit 11" to "Exhibit 11R"

Page 46, line 3: Change "Exhibit 11" to "Exhibit 11R"

Page 47, line 11: Change "As seen from Exhibit 12, the same pattern exist for ammo" to "As seen from Exhibit 12R, the same pattern exists for ammo"

Page 47, lines 24 and 25: Change "There were no truck bids made for any of these movements" to "Except for a couple of Sealy, TX lanes and about six ammo bids, truck was not in the competitive picture"

Page 47, line 26: Change "this graph shows" to "these graphs show"

Page 47, lines 26 and 27: Change "Since no truck has bid, the rates of the BNSF become" to "The rates of the BNSF become"

Page 48, line 10: Change "Since no truck bids" to "Since few truck bids"

Page 56, last line: Change "HIHG" to "HIGH"

Page 74-75, Exhibit 11: Delete and replace with Exhibit 11R (attached)

Page 76, Exhibit 12: Delete and replace with Exhibit 12R (attached)


Page 102, line 15: Change "alternative frequently" to "alternatives frequently"

Page 103, line 8: Change "construction project start" to "construction projects start"

Page 105, after last line: add "(iii) SP restricted its local joint tariff rates in an attempt to prevent HC from moving its freight on BN, or at least to recoup a substantial part of its long-haul revenues from the local move."

Page 109, line 9: Change "vita" to "vitae"

Page 122, line 3: Change "fewer bidders tend to yield higher prices;" to "fewer bidders tend to yield lower prices, which disadvantages the seller;"
Page 226, line 13: Change "one a day's" to "one day's"

Page 253, line 10: Change "using the a line" to "using a line"

Page 350, SUMMARY AND CONCLUSIONS: Delete two paragraphs as written and replace with

GRA evaluated a number of break up scenarios for the SP. Nearly all of the scenarios studied indicated that the SP was more valuable broken up than if sold intact to UP. Analysis of scenarios involving the sale of a significant portion of the SP indicated a range of premiums from 15.5 percent to 21.0 percent over the value of intact SP.

In a "likely" scenario, a premium of $1.17 billion over the SP’s intrinsic value was obtained through sale of portions of the SP to a combination of the KCS and Monon Railroad (MRL). This premium represents a 38.6 percent increase in value over the intact SP. In performing this analysis, I did not speak with any of the carriers interested in acquiring the various line segments. Thus, my opinion as to the amount a carrier would be willing to pay for a given SP line segment is based purely on my own analysis.

Page 350, last line: Add "and trackage rights grants to Burlington Northern-Santa Fe (BN/SF) would be inadequate to preserve competition. The sale of certain key lines could better preserve competition, as well as increase the transaction’s yield to SP shareholders."

Page 353, line 17: Change "Table 16" to "Table 16R"

Page 353, Table 16: Delete and replace with Table 16R (attached)

Page 354, lines 5-6: Change "Table 17" to "Table 17R"

Page 354, line 10: Change "Table 18" to "Table 18R"

Page 354, line 12: Change "between $535 and $658 million" to "between $861 million and $1.6 billion"

Page 354, Table 17: Delete and replace with Table 17R (attached)

Page 355, Table 18: Delete and replace with Table 18R (attached)

Page 355, line 9: Change "Table 19" to "Table 19R"
Page 356, line 1  :  Change "Table 20" to "Table 20R"
Page 356, line 2  :  Change "$2.3 billion to $3.4 billion," to "$2.1 billion to $3.2 billion,"
Page 356, line 4  :  Change "Table 21 . . . Table 18 and Table 20" to "Table 21R . . . Table 18R and Table 20R"
Page 357, Table 19  :  Delete and replace with Table 19R (attached)
Page 358, Tables 20 & 21  :  Delete and replace with Tables 20R and 21R (attached)
Page 358, line 1  :  Change "Table 21" to "Table 21R"
Page 358, line 4  :  Change "from 6.6 to 9.0" to "from 13.5 to 17.8"
Page 358, last line  :  Change "Table 22" to "Table 22R"
Page 359, Tables 22 & 23  :  Delete and replace with Tables 22R and 23R (attached)
Page 359, lines 3 and 5  :  Change "Table 23" to "Table 23R"
Page 359, line 7  :  Change "24 percent" to "39 percent"
Page 360, line 4  :  Change "Table 24" to "Table 24R"
Page 360, line 7  :  Change "a 14.2 percent premium" to "a 25.1 percent premium"
Page 360, line 8  :  Change "of 10.4 percent over" to "of 19.7 percent over"
This 18th day of April, 1996.

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Robert K. Dreiling  
The Kansas City Southern  
Railway Company  
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Tel: (816) 556-0392  
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April 18, 1996

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Alan E. Lubel  
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Attorneys for The Kansas City Southern Railway Company
<table>
<thead>
<tr>
<th>STCC</th>
<th>Commodity Name</th>
<th>Mileage Blocks</th>
<th>Total Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Undetermined STCC numbers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Farm products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Forest products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Fresh fish or other marine products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Metallic ores</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Coal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Crude petroleum, natural gas or gasoline</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Nonmetallic minerals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Ordnance or accessories</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Food or kindred products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Tobacco products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Textiles, mill products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Apparel or other finished textile</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Lumber or wood products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Furniture or fixtures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Pulp, paper or allied products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Printed matter</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Chemicals or allied products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Petroleum or coal products</td>
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<td></td>
</tr>
<tr>
<td>19</td>
<td>Rubber or miscellaneous plastics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Leather or leather products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Clay, concrete, glass or stone products</td>
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</tr>
<tr>
<td>22</td>
<td>Primary metal products, including</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Fabricated metal products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Machinery</td>
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<td></td>
</tr>
<tr>
<td>25</td>
<td>Electrical machinery, equipment or transportation equipment</td>
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<td></td>
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<tr>
<td>26</td>
<td>Instruments, photographic goods, optical</td>
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<td></td>
</tr>
<tr>
<td>27</td>
<td>Miscellaneous products of manufacturing</td>
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<tr>
<td>28</td>
<td>Waste or scrap materials not identified</td>
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<td></td>
</tr>
<tr>
<td>29</td>
<td>Miscellaneous freight shipments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Containers, carriers or devices, shipping,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Mail, express or other contract traffic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Freight forwarder traffic</td>
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</tr>
<tr>
<td>33</td>
<td>Shipper association or similar traffic</td>
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<td></td>
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<td>34</td>
<td>Miscellaneous mixed shipments</td>
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<tr>
<td>35</td>
<td>Small packaged freight shipments</td>
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<td></td>
</tr>
<tr>
<td>36</td>
<td>Unknown STCC</td>
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<td></td>
</tr>
<tr>
<td>37</td>
<td>Hazardous material or hazardous</td>
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<td></td>
</tr>
<tr>
<td>38</td>
<td>Bulk commodities</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Grand Total

Highly Confidential: Filed pursuant to protective order issued in Finance Docket No. 32760
AVERAGE PER BID UNDERBID/OVERBID
BNSF/SP/UP ANALYSIS WITH SEALY

THOUSANDS OF DOLLARS PER BID
(Thousands)

-80 -60 -40 -20 0 20 40 60 80

SP UP BNSF

- AVG SAVINGS PER BID
- AVG OVERBID AMT - BID
AVERAGE PER BID UNDERBID/OVERBID
BNSF/SP/UP ANALYSIS WITHOUT SEALY

THOUSANDS OF DOLLARS PER BID

SP

UP

BNSF

AVG SAVINGS PER BID
AVG OVERBID AMT-BID
AVERAGE SAVINGS/OVERBID AMMO
BY CARRIER - AVERAGE OF BIDS

AVG SAVINGS PER BID  AVG OVERBID AMT/BID
Table 16
1994 DIVERTED REVENUE
($MILLIONS)

<table>
<thead>
<tr>
<th>Railroad</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>KCS</td>
<td>362.9</td>
</tr>
<tr>
<td>CR</td>
<td>561.6</td>
</tr>
<tr>
<td>MRL</td>
<td>311.8</td>
</tr>
<tr>
<td>WC</td>
<td>68.5</td>
</tr>
<tr>
<td>GW</td>
<td>37.0</td>
</tr>
<tr>
<td>TM</td>
<td>25.6</td>
</tr>
<tr>
<td>BN/SF</td>
<td>772.4</td>
</tr>
<tr>
<td>Railroad</td>
<td>1996 Revenue</td>
</tr>
<tr>
<td>----------</td>
<td>--------------</td>
</tr>
<tr>
<td>KCS</td>
<td>387.2</td>
</tr>
<tr>
<td>CR</td>
<td>599.2</td>
</tr>
<tr>
<td>MRL</td>
<td>332.7</td>
</tr>
<tr>
<td>WC</td>
<td>73.1</td>
</tr>
<tr>
<td>GW</td>
<td>39.5</td>
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<tr>
<td>TM</td>
<td>27.3</td>
</tr>
<tr>
<td>BN/SF</td>
<td>824.2</td>
</tr>
<tr>
<td>Railroad</td>
<td>14%</td>
</tr>
<tr>
<td>----------</td>
<td>------</td>
</tr>
<tr>
<td>KCS</td>
<td>1,059.3</td>
</tr>
<tr>
<td>CR</td>
<td>1,129.6</td>
</tr>
<tr>
<td>MRL</td>
<td>994.2</td>
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<tr>
<td>WC</td>
<td>217.6</td>
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<tr>
<td>GW</td>
<td>118.0</td>
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<tr>
<td>TM</td>
<td>28.3</td>
</tr>
<tr>
<td>BN/SF</td>
<td>1,544.1</td>
</tr>
</tbody>
</table>
Table 19
SP RESIDUAL VALUE - CONRAIL ACQUISITION
($MILLIONS)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>SP &quot;Normal&quot; Revenues</td>
<td>3,311.3</td>
</tr>
<tr>
<td>Less Revenue Loss</td>
<td>599.2</td>
</tr>
<tr>
<td>New SP Revenue</td>
<td>2,712.1</td>
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<tr>
<td>Operating Income - SP</td>
<td>447.5</td>
</tr>
<tr>
<td>Other Income - SP</td>
<td>7.4</td>
</tr>
<tr>
<td>Taxable Income</td>
<td>454.9</td>
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<tr>
<td>Taxes (38%)</td>
<td>172.9</td>
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<tr>
<td>Earnings After Taxes</td>
<td>282.0</td>
</tr>
<tr>
<td>Plus Depreciation</td>
<td>177.6</td>
</tr>
<tr>
<td>Property sales (after tax)</td>
<td>36.4</td>
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<tr>
<td>Excess property sales</td>
<td>40.8</td>
</tr>
<tr>
<td>Total Cash Inflow</td>
<td>536.9*</td>
</tr>
<tr>
<td>Less Capital Expenditures</td>
<td>-402.5</td>
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<tr>
<td>Net Cash Flow</td>
<td>134.4</td>
</tr>
<tr>
<td>Synergies</td>
<td></td>
</tr>
<tr>
<td>UP Base</td>
<td>409.7</td>
</tr>
<tr>
<td>Less: Lost Net Revenue</td>
<td>13.8</td>
</tr>
<tr>
<td>Reduced Operations Savings</td>
<td>47.3</td>
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<tr>
<td>Car Utilization</td>
<td>2.3</td>
</tr>
<tr>
<td></td>
<td>63.4</td>
</tr>
<tr>
<td></td>
<td>-63.4</td>
</tr>
<tr>
<td>Net Synergies</td>
<td>346.4</td>
</tr>
<tr>
<td>Total Net Cash Flow</td>
<td>480.8</td>
</tr>
</tbody>
</table>

*Numbers subject to rounding.
<table>
<thead>
<tr>
<th>WACCs</th>
<th>12%</th>
<th>13%</th>
<th>14%</th>
</tr>
</thead>
<tbody>
<tr>
<td>SP Value</td>
<td>5,526.0</td>
<td>4,956.3</td>
<td>4,493.1</td>
</tr>
<tr>
<td>Less: Debt</td>
<td>-1,508.8</td>
<td>-1,508.8</td>
<td>-1,508.8</td>
</tr>
<tr>
<td>Less One Time Expenses</td>
<td>-1,151.9</td>
<td>-1,151.9</td>
<td>-1,151.9</td>
</tr>
<tr>
<td>Plus NOLs</td>
<td>303.0</td>
<td>303.0</td>
<td>303.0</td>
</tr>
<tr>
<td>SP Value</td>
<td>3,168.3</td>
<td>2,598.6</td>
<td>2,135.4</td>
</tr>
</tbody>
</table>

Table 20
SP VALUE
($MILLIONS)
## Table 21

**VALUE OF SP WITH CONRAIL ACQUISITION ($MILLIONS)**

<table>
<thead>
<tr>
<th>WACCs</th>
<th>12%</th>
<th>13%</th>
<th>14%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SP Only</td>
<td>SP/CR</td>
<td>SP Only</td>
</tr>
<tr>
<td>SP</td>
<td>3,786.8</td>
<td>3,168.3</td>
<td>3,127.1</td>
</tr>
<tr>
<td>CR</td>
<td>1,129.6</td>
<td>-</td>
<td>1,013.1</td>
</tr>
<tr>
<td>Total</td>
<td>3,786.8</td>
<td>4,297.9</td>
<td>3,127.1</td>
</tr>
<tr>
<td>Per Share</td>
<td>24.23</td>
<td>27.51</td>
<td>20.01</td>
</tr>
<tr>
<td>Percent Increase</td>
<td>13.5%</td>
<td>15.5%</td>
<td>-</td>
</tr>
</tbody>
</table>

**Table Note:**

- Values are in millions of dollars.
- SP: South Pacific
- CR: Conrail
- WACC: Weighted Average Cost of Capital
Table 22
PREMIUMS IN SP VALUE FOR VARIOUS ACQUISITIONS AT 13% WACC

<table>
<thead>
<tr>
<th>Railroad</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>KCS</td>
<td>19.5%</td>
</tr>
<tr>
<td>CR</td>
<td>15.5%</td>
</tr>
<tr>
<td>MRL</td>
<td>19.0%</td>
</tr>
<tr>
<td>WC</td>
<td>4.5%</td>
</tr>
<tr>
<td>GW</td>
<td>2.5%</td>
</tr>
<tr>
<td>TM</td>
<td>----</td>
</tr>
<tr>
<td>BN/SF</td>
<td>21.0%</td>
</tr>
</tbody>
</table>
### Table 23

**PREMIUM FOR SP FOR COMBINATIONS OF ACQUISITION AT 13% WACC**

<table>
<thead>
<tr>
<th>Railroad Combination</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>KCS/MRL</td>
<td>38.6%</td>
</tr>
<tr>
<td>KCS/WC</td>
<td>23.6%</td>
</tr>
<tr>
<td>CR/MRL</td>
<td>34.6%</td>
</tr>
<tr>
<td>CR/WC</td>
<td>19.7%</td>
</tr>
<tr>
<td>Carrier Combination</td>
<td>WACC*</td>
</tr>
<tr>
<td>---------------------</td>
<td>-------</td>
</tr>
<tr>
<td>KCS/MRL</td>
<td>13/13</td>
</tr>
<tr>
<td>KCS/MRL</td>
<td>14/16</td>
</tr>
<tr>
<td>KCS/MRL</td>
<td>14/17</td>
</tr>
<tr>
<td>KCS/MRL</td>
<td>15/17</td>
</tr>
<tr>
<td>KCS/WC</td>
<td>13/13</td>
</tr>
<tr>
<td>KCS/WC</td>
<td>14/15</td>
</tr>
</tbody>
</table>

*SP is constant at 13% for this analysis.
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company’s ERRATA to Comments and Request for Conditions (KCS-33)" was served this 18th day of April, 1996, by hand delivery to counsel for Applicants and by hand delivering or depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party of record.

[Signature]

Attorney for The Kansas City Southern Railway Company
VIA HAND DELIVERY.
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 20423


Dear Secretary Williams:

Enclosed please find the original and twenty (20) copies of Reply to Petition of Consolidated Rail Corporation for Revocation of Settlement-Related Trackage Rights Class Exemption (BN/SF-53). Also enclosed is a disk containing the text of BN/SF-53 in Wordperfect 5.1 format.

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

Sincerely,

Kelley E. O'Brien

Enclosures
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, SPCS1 CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

REPLY TO PETITION OF
CONSOLIDATED RAIL CORPORATION
FOR REVOCATION OF SETTLEMENT-RELATED
TRACKAGE RIGHTS CLASS EXEMPTION

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Richard E. Weicher
Janice G. Barber
Michael E. Roper
Sidney Strickland, Jr.

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and

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Adrian L. Steel, Jr.
Roy T. Engle, Jr.
Kathryn A. Kusske

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

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

April 18, 1996
Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively, "BN/Santa Fe") hereby reply to the Petition for Revocation of Settlement-Related Trackage Rights Class Exemption included within the Comments filed by Consolidated Rail Corporation ("Conrail") (CR-21). In support of its Petition, Conrail asserts that the class exemption authority under 49 C.F.R. § 1180.2(d)(7) should not be used for the trackage rights which are proposed to be granted to BN/Santa Fe pursuant to the September 25, 1995 Agreement between BN/Santa Fe and the Applicants, as
supplemented on November 18, 1995 (the "BN/Santa Fe Agreement"), if the proposed Union Pacific ("UP")/Southern Pacific ("SP") merger is approved. Conrail’s principal argument is that the exemption process should not be used in rail consolidation proceedings, because its use would preclude the Surface Transportation Board and parties from "test[ing] the adequacy of the proposed trackage rights against the national transportation policy" and assessing whether such trackage rights would be adequate to address any potential competitive concerns. See CR-21, at 92-93.

Not only is Conrail’s Petition for Revocation premature, it also is inconsistent with the Rail Exemption Procedure regulations and with the precedent established by the Interstate Commerce Commission, the Board’s predecessor, in the recently-concluded BN/Santa Fe merger proceeding (Fin. Dkt. No. 32549). Conrail’s Petition should therefore be dismissed as premature or denied.

I. Conrail’s Petition for Revocation Is Premature

Under 49 C.F.R. § 1121.4(i), a party may petition for revocation of an exemption "at any time after the exemption becomes effective." (Emphasis added.) Here, the trackage rights to be granted to BN/Santa Fe, which Conrail challenges, are to be effective only upon the Board’s approval of the underlying control and merger proceeding between UP and SP. See

Since Conrail filed its Petition for Revocation as a part of its Comments filed on March 29, 1996, it is not clear whether a separate response to the Petition for Revocation is required pursuant to 49 C.F.R. § 1104.13. Conrail also has filed an Opposition to Petition for Exemption for Settlement-Related Line Sales as a part of its March 29, 1996 submission. See CR-21. BN/Santa Fe will respond to that Opposition in its April 29, 1996 submission and/or its brief. Nonetheless, the arguments set forth herein establish that, like Conrail’s Petition for Revocation, its Opposition is also without merit.
Since the exemption at issue is not in effect, Conrail’s Petition for Revocation is premature and should be dismissed.

II. Conrail’s Petition is Inconsistent With the Rail Exemption Procedures and Prior Commission Precedent

As it must, Conrail concedes that the use of the trackage rights class exemption for the BN/Santa Fe trackage rights is permitted by the language of the Board’s regulations. See CR-21, at 91. The trackage rights are incorporated into a "written agreement[ ]," and they are "not filed or sought in responsive applications in [a] rail consolidation proceeding[ ]." See 49 C.F.R. § 1180.2(d)(7).

Nevertheless, Conrail asserts that the exemption process should not be used for trackage rights "sought as a condition" to a consolidation proposal, because trackage rights proposals in such situations require a "thorough examination." CR-21, at 91. Conrail’s argument is, however, inconsistent with the Rail Exemption Procedures, 49 C.F.R. Part 1121. The procedures explicitly provide that:

Exemption petitions containing proposals that are directly related to and concurrently filed with a primary application will be considered along with that primary application.

49 C.F.R. § 1121.4(e). In issuing the Final Rule adopting Part 1121, the Commission expressly confirmed that it is appropriate to use the exemption process in connection with "rail mergers and acquisitions." 56 Fed. Reg. 46,390 (Sept. 12, 1991).

Conrail’s argument is also inconsistent with the Commission’s decision in the BN/Santa Fe merger proceeding. There, Bunge Corporation asserted that the trackage rights class exemption could not be invoked as to trackage rights provided for in a settlement agreement between BN/Santa Fe and SP in that proceeding, because, according to Bunge, the party
settling with the applicants was in essentially the same posture as a responsive applicant and, therefore, should not be permitted to use the class exemption process. See Brief of Bunge Corporation (Bunge-4), at 6 n.9.

The Commission cited two reasons for rejecting Bunge’s argument that "the trackage rights class exemption cannot be invoked with respect to trackage rights provided for in the railroad settlement agreements." Fin. Dkt. No. 32549, Decision No. 38 (served Aug. 23, 1995) ("Decision No. 38"), at 87 n.116. First, the trackage rights met the requirement that they not be sought in a responsive application. Ibid. Second, the Commission stated that, because it had addressed the merits of Bunge’s substantive arguments elsewhere in its decision, no purpose other than delay would be served by holding that the trackage rights class exemption was unavailable. Ibid. In fact, the Commission appears to have invited parties to settlement-related trackage rights agreements to submit them through the class exemption process, stating that it "anticipate[d]" that the settling parties in that proceeding would use -- and some already had used -- the trackage rights class exemption to implement the trackage rights which were imposed as conditions to the Commission’s approval of the BN/Santa Fe merger. Decision No. 38, at 87.

Conrail’s efforts to distinguish the BN/Santa Fe proceeding are unavailing. Contrary to Conrail’s claim (CR-21, at 94 n.50), the Commission did decide the issue raised by Bunge -- which was the same issue raised by Conrail here -- against Bunge. See Decision No. 38, at 87 n.116. Moreover, just as in the BN/Santa Fe proceeding, the Commission will not need to revoke the exemption in order to develop the information it needs to assess the BN/Santa Fe trackage rights settlement agreement. The trackage rights in this proceeding are the subject of
scrutiny at least as intensive as that given to the settlement-related trackage rights in the BN/Santa Fe proceeding. Here, the Applicants, BN/Santa Fe, Conrail and other parties have submitted multiple volumes and thousands of pages of argument and evidence concerning the feasibility and competitiveness of the BN/Santa Fe trackage rights. The Board is being provided with sufficient information to conduct a "thorough examination" about whether the trackage rights at issue provide an adequate remedy for the alleged competitive harms. The revocation of the exemption notice would do nothing to further that end.

Accordingly, BN/Santa Fe respectfully submits that Conrail’s Petition for Revocation of Settlement-Related Trackage Rights Class Exemption should be dismissed as premature or denied.
Respectfully submitted,

[Signature]

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

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

and

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

April 18, 1996
CERTIFICATE OF SERVICE

I hereby certify that copies of Reply to Petition of Consolidated Rail Corporation for Revocation of Settlement-Related Trackage Rights Class Exemption (BN/SF-53) have been served this 18th day of April, 1996, by first-class mail, postage prepaid on all Parties of Record in Finance Docket No. 32760 and by hand-delivery on counsel for Consolidated Rail Corporation.

Kelley E. O'Brien
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Suite 6500
Washington, D.C. 20006
(202) 778-0607
April 16, 1996

BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Twelfth Street and Constitution Ave., N.W.
Washington, D.C. 20423


Dear Secretary Williams:

Pursuant to 49 C.F.R. § 1180.6(b)(1) and (4), as clarified in Decision No. 3 in the above-captioned proceeding, served September 5, 1995, pp. 5-6, we are enclosing an original and twenty copies of UPC's 1995 Annual Report and an original and twenty copies of UPC's 10-K form for the fiscal year ended December 31, 1995, and an original and twenty copies of MP's 10-K for the fiscal year ended December 31, 1995. Please date-stamp the enclosed extra copy of this filing and return it to the messenger for our records.

By copy of this letter, all parties of record are being notified of the filing of these documents with the Board. Parties interested in a copy of these documents may contact counsel for the Applicants.

Sincerely,

Michael L. Rosenthal

Enclosure

cc (w/o encl.):
All Parties of Record
Dear Secretary Williams:

Enclosed please find The Kansas City Southern Railway Company's Responses to Applicants' Seventh Discovery Requests ("KCS-41").

Also enclosed is a 3.5 inch diskette containing the text of KCS-41.

Sincerely yours,

William A. Mullins

William A. Mullins

Enclosures

c: The Honorable Jerome Nelson
Restricted Service List
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, SPXCL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

THE KANSAS CITY SOUTHERN RAILWAY COMPANY’S RESPONSES TO
APPLICANTS’ SEVENTH SET OF DISCOVERY REQUESTS

Richard P. Bruening
Robert K. Dreiling
The Kansas City Southern
Railway Company
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April 16, 1996

John R. Molm
Alan E. Lubel
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601 Pennsylvania Avenue, N.W.
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Tel: (202) 274-2950
Fax: (202) 274-2994

April 16, 1996

Attorneys for The Kansas City Southern
Railway Company
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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY’S RESPONSES TO
APPLICANTS’ SEVENTH SET OF DISCOVERY REQUESTS

The Kansas City Southern Railway Company ("KCS") responds to Applicants’
Seventh Set of Discovery Requests as follows:

KCS reasserts and incorporates by reference, its General Objections to Applicants’
discovery requests as set forth in KCS-28, paragraphs 3 through 13. Further, KCS notes that
Applicants’ references to "interrogatories and document requests" is misplaced as to the
Requests for Admission included in this pleading. Subject to these objections and to prior
rulings by Administrative Law Judge Nelson, KCS responds to Applicants’ individual
interrogatories as follows:

ADMISSIONS

1. A trackage rights agreement dated May 8, 1933, between The Yazoo and
Mississippi Valley Railroad Company and the Houston & Shreveport Railroad Company,
joined by its lessee, the Texas and New Orleans Railroad Company, covering tracks from
about 596 feet south of Jordan Avenue to a connection with SSW in the vicinity of
Commerce Street in Shreveport, Louisiana ("the Jordan Ave. trackage rights agreement"),
provides in Section 3 as follows:

All rules, regulations or orders with respect to the movement of engines, cars
and trains, and the switching of cars on the Track, or to the maintenance,
operation and use of the Track, or governing and conduct of employees, shall
be reasonable and fair, and without any unreasonable preference or
discrimination in favor of or against either party hereto; provided, however,
that in the movement of trains, engines and cars upon and over the Track,
those of the same class shall be accorded equal rights, while those of a
superior class shall have preference over those of an inferior class. [KCS]

Response: KCS admits that the "Jordan Avenue Trackage Rights Agreement"
exists. The Agreement, being a written document, speaks for itself.

2. KCS and its affiliates are bound by the Jordan Ave. trackage rights agreement.

[KCS]

Response: KCS objects to this request as calling for a legal conclusion

3. KCS and its affiliates intend to comply with the terms of the Jordan Ave.
trackage rights agreement, including the language quoted above in Request No. 1. [KCS]

Response: While KCS admits that, subject to the qualification noted below, it
intends to comply with the terms of the Agreement, it acknowledges that the actual
administration of trackage rights agreements does not always conform to the terms of the
agreements as written.

4. A trackage rights agreement dated December 13, 1980, between the Kansas
City Southern Railway Company and the Louisiana & Arkansas Railway Company and
Southern Pacific Transportation Company and St. Louis-Southwestern Railway Company
covering KCS' line of railroad from its Harriet Street Yard at Shreveport, Louisiana, southeasterly to Red Junction ("Red Junction trackage rights agreement") provides in Section 5 as follows:

All passenger trains shall be given preference over other trains and road trains shall be given equal dispatch according to their class. All operations upon and over the Red Line shall be conducted with due regard to and without reasonable interference with rights of all users.

[KCS]

Response: KCS admits that the "Red Junction Trackage Rights Agreement" exists. The Agreement, being a written document, speaks for itself.

5. KCS and its affiliates are bound by the Red Junction trackage rights agreement. [KCS]

Response: KCS objects to this request as calling for a legal conclusion.

6. KCS and its affiliates intend to comply with the terms of the Red Junction trackage rights agreement, including the language quoted above in Request No. 4. [KCS]

Response: While KCS admits that, subject to the qualification noted below, it intends to comply with the terms of the Agreement, it acknowledges that the actual administration of trackage rights agreements does not always conform to the terms of the agreements as written.

7. A January 1, 1937, agreement between the Kansas City Southern Railway Company and Texas and Fort Smith Railway Company, on the one hand, and Guy A. Thompson, Trustee, on the other, relating to joint use of tracks between De Quincy, Louisiana and Beaumont, Texas ("Beaumont trackage rights agreement"), provides in Section 13 as follows:
All time cards, rules, regulations or orders for the movement of trains upon the Joint Line, issued by the Southern Company, shall be reasonable, just and fair to the Trustee, without preference for or discrimination in favor of the Southern Company.

All passenger trains upon the Joint Line shall be given preference over other trains, and the trains of the parties hereto shall be given equal dispatch, according to their class.

[KCS]
Response: KCS admits that the "Beaumont Trackage Rights Agreement" exists. The Agreement, being a written document, speaks for itself.

8. KCS and its affiliates are bound by the Beaumont trackage rights agreement.

[KCS]
Response: KCS objects to this request as calling for a legal conclusion.

9. KCS and its affiliates intend to comply with the terms of the Beaumont trackage rights agreement, including the language quoted above in Request No. 4. [KCS]
Response: While KCS admits that, subject to the qualification noted below, it intends to comply with the terms of the Agreement, it acknowledges that the actual administration of trackage rights agreements does not always conform to the terms of the agreements as written.

INTERROGATORIES

1. If the answer to any Request for Admission is other than an unqualified "Yes," state every respect in which you disagree with the request. [KCS]
Response: KCS objects to this interrogatory as being vague and incapable of a meaningful response as written. Subject to this objection, KCS states that whether KCS is
"bound by" the various agreements calls for legal conclusions based on a variety of factors. Also, while KCS may "intend to comply" with an agreement, the actual administration of an agreement may not always conform to the terms of the agreement as written. Compliance may be a policy or goal that does not necessarily reflect the reality of how trackage rights agreements are administered in the field.

This 16th day of April, 1996.

Richard P. Bruening
Robert K. Dreiling
The Kansas City Southern Railway Company
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 556-0392
Fax: (816) 556-0227

James F. Rill
Sean F.X. Boland
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Washington, D.C. 20004-2608
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Fax: (202) 274-2994

Attorneys for The Kansas City Southern Railway Company
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Responses to Applicants' Seventh Set of Discovery Requests" was served this 16th day of April, 1996, by hand delivery to Applicants and upon the restricted service list by U.S. mail.

Alan E. Juley
Attorney for The Kansas City Southern Railway Company
April 15, 1996

Via Hand Delivery
Honorable Vernon A. Williams
Secretary
The Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423


Dear Secretary Williams:

Enclosed for filing in the above-captioned case are an original and twenty copies of the Coalition for Competitive Rail Transportation’s responses to Applicants’ fifth set of interrogatories and requests for production of documents identified as CCRT-7.

Respectfully Submitted,

John T. Estes
Executive Director
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

COALITION FOR COMPETITIVE RAIL TRANSPORTATION (CCRT)
RESPONSES TO APPLICANTS' FIFTH SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

John T. Estes
Executive Director
Coalition for Competitive Rail Transportation
1029 North Royal Street, Suite 400
Alexandria, Va 22314
(800) 814-3531

April 15, 1996
Coalition for Competitive Rail Transportation (CCRT) submits the following responses to the discovery request served by Applicants (UP/SP) on April 8, 1996.
RESPONSES TO INTERROGATORIES AND DOCUMENT REQUESTS

INTERROGATORIES

Interrogatory No. 1: Do you have any information about any offers made by or on behalf of any party to this proceeding opposing the UP/SP merger, or anyone affiliated with such party, to provide funds or other consideration to another such party to help finance its opposition efforts, and, if so, state that information and identify (and produce) any documents referring or relating to such offers. [You may exclude offers made to an association party by its members, or offers to finance work which was proffered to the Board as being jointly sponsored by the parties involved in the offer.] [Cen-Tex, CR, KCS, MRL, Tex Mex, CCRT, CMA, NITL, SPI, STRICT, WCTL, WSC]

Response: No response is necessary by CCRT to this interrogatory in view of the ruling by Judge Nelson on this matter on April 12, 1996.

DOCUMENT REQUESTS

Document Request No. 1: Provide the tonnage data supporting each of the percentages listed in Figure Nos. 1, 2, 3 and 4 (pp. 11-12, 16-17) of the Verified Statement of Thomas D. Crowley (SPI vs. SPI). [SPI]

Document Request No. 2: To the extent not done as part of your prior discovery responses or March 29 filings, with respect to the joint verified statement of Patteye J. Simpson and H. Lynn Turner, identify any instances relied on to support their statements in:

(a) the second bullet-point on p. 96, including for each instance (1) the name of the shipper, (2) the local carrier (3) the rail origination, local destination, and final destination city and state, (4) the date of any shipments, and (5) the name and seven-digit STCC code of the chemical shipped;

(b) the third bullet-point on p. 96, including for each instance (1) the name of the shipper, (2) the city and state of each manufacturing facility, (3) the relevant dates of operation of each facility, and (4) the name and seven-digit STCC code of any chemicals subject to such rescheduled production;

(c) the first bullet-point on p. 97, including for each instance (1) the name of the shipper, (2) the local carrier, (3) the rail origination, local destination, and final destination city and state, (4) the date of any shipments, and (5) the name and seven-digit STCC code of the chemical shipped;
CERTIFICATE OF SERVICE

I, John T. Estes, certify that, on the 15th day of April, 1996, I caused a copy of the foregoing document to be served by hand or overnight mail as appropriate on the representatives set forth below and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph nine of the Discovery Guidelines in Finance Docket No. 32760, and in addition by hand on:

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

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

John T. Estes

CANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
Southern Pacific Transportation Company
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ARVID E. ROACH II
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1201 Pennsylvania Avenue, N.W.
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CARL W. VON BERNUTH
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LOUISE A. RINN
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1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388
April 16, 1996

VIA HAND DELIVERY

Mr. Vernon A. Williams
Interstate Commerce Commission
Case Control Branch
Room 1324
1201 Constitution Avenue, N.W.
Washington, D.C. 20423


Dear Secretary Williams:

Enclosed for filing in the above-captioned case are one original and twenty copies of Consolidated Rail Corporation's Responses and Objections to Applicants' Sixth Set of Interrogatories and Requests For Production of Documents, designated as document CR-30.

so enclosed is a 3.5-inch WordPerfect 5.1 disk containing the text of CR-30.

Sincerely,

Joseph E. Killory, Jr.
Attorney for Consolidated Rail Corporation

Enclosures
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

CONSOLIDATED RAIL CORPORATION'S RESPONSES
AND OBJECTIONS TO APPLICANTS' SIXTH SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Constance L. Abrams
Jonathan M. Broder
Anne E. Treadway
CONSOLIDATED RAIL CORPORATION
2001 Market Street
Philadelphia, PA 19101

Daniel K. Mayers
A. Stephen Hut, Jr.
Joseph E. Killory, Jr.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037

April 16, 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, SPcsvL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

CONSOLIDATED RAIL CORPORATION'S RESPONSES
AND OBJECTIONS TO APPLICANTS' SIXTH SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Consolidated Rail Corporation ("Conrail") hereby
provides its responses and objections to Applicants' Sixth Set of
Interrogatories and Document Requests, dated April 9, 1996.

GENERAL RESPONSE AND GENERAL OBJECTIONS

Conrail incorporates herein by reference the General
Response and General Objections set forth in its prior responses
and objections to Applicants' First, Second and Third Sets of
Interrogatories and Requests for production of Documents.

SPECIFIC RESPONSES
TO INDIVIDUAL REQUESTS

INTERROGATORIES

Interrogatories 1-5 and 9-10 are not directed to
Conrail.
6. State all facts supporting the contentions by Conrail witness Good that "SP is particularly aggressive about its pricing strategy" (Good V.S., p. 1) and that SP's pricing led other railroads (including UP) to reduce their prices, including, but not limited to, identity of shippers and receivers, identity of all bidders, commodities, origins and destinations of traffic, rates offered, and approximate dates of pricing actions. [The response need not include facts described on the face of Mr. Good's statement or in workpapers already produced to Applicants.] [CR]

Additional Objections and Response: Conrail objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome. The burdensome search called for by the Interrogatory is particularly inappropriate in light of the fact that Mr. Good was available for deposition by Applicants.

Subject to and without waiving these objections, Conrail states that the bases for Mr. Good's statements regarding SP's aggressive pricing strategy and the competitive effect of that pricing strategy are set forth in his testimony. As explained in his testimony, Mr. Good's understanding of SP's aggressive pricing strategy is based on direct personal experience acquired (i) in his three years at SP, as Director of Sales in the Automotive Business Group of the Southern Pacific Rail Corporation from 1983 to 1990; and (ii) in his six years at Conrail in which he has worked in the Forest Products Group (responsible principally for the shipping of pulp and paper, and scrap paper).

In his work for SP in the automotive area, Mr. Good was aware of -- and helped to execute -- SP's policy of aggressively competing on price, and he was directly aware of the price-
lowering impact of that pricing strategy on SP's competitors. In his work for Conrail in the forest products area, Mr. Good understands that SP has followed a similarly aggressive approach with regard to pricing the shipment of pulp, paper and scrap paper. That understanding is based on what customers have told him, what he has observed with regard to SP's success in winning contracts for shippers served by more than one railroad, and his review of price discrepancies in published tariffs, such as for shipment of scrap paper.

In addition to Mr. Good's Verified Statement, the data set forth in Conrail's past and current scrap paper tariffs -- which are being produced in response to Document Request No. 36 -- strongly support the view that SP has been an aggressive price leader in the forest products area. Those data show that, at points served by more than one railroad (including SP or one of its affiliated railroads) SP frequently offers a lower price -- and often a substantially lower price -- than UP or other competing railroads.

7. State all facts supporting the contentions by Conrail witness Bridges that "SP has a very aggressive pricing strategy" and "SP is almost always more price aggressive" (Bridges, V.S., p. 3) and that SP's pricing led other railroads (including UP) to reduce their prices, including, but not limited to, identity of shippers and receivers, identity of all bidders, commodities, origins and destinations of traffic, rates offered, and approximate dates of pricing actions. [The response need not include any facts described on the face of Mr. Bridges' statement or in workpapers already produced to Applicants.] [CR]
**Additional Objections and Response:** Conrail objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome. The burdensome search called for by the Interrogatory is particularly inappropriate in light of the fact that Mr. Bridges was available for deposition by Applicants.

Subject to and without waiving these objections, Conrail states that the bases for Mr. Bridge's statements regarding SP's aggressive pricing strategy and the competitive effect of that pricing strategy are set forth in his testimony. As explained in his testimony, Mr. Bridge's understanding of SP's aggressive pricing strategy in the international intermodal area is based on Mr. Bridges' four years of direct personal experience in international intermodal marketing, including the last two years as Director of International Marketing in the Intermodal Services Group at Conrail.

Conrail's international intermodal marketing effort includes, among other things, serving as the Eastern portion of the rail "land bridge" by which goods are transported from West Coast ports to East Coast markets. Mr. Bridges understands that, in that capacity, Conrail serves as the hand-off railroad for shipments handled by SP, UP, BNSF, and other railroads. Moreover, from his communications with customers and observations of the marketplace, Mr. Bridges is aware -- where customers have more than one railroad available -- which railroad has successfully bid for the Western leg of the intermodal business.
8. State all facts supporting the contentions by Conrail witness McNeil that "SP's bids are almost always lower" (McNeil V.S., p. 5) and that SP's pricing led other railroads (including UP) to reduce their prices, including, but not limited to, identity of shippers and receivers, identity of all bidders, commodities, origins and destinations of traffic, rates offered, and approximate dates of pricing actions. [The response need not include any facts described on the face of Mr. McNeil's statement or in workpapers already produced to Applicants.] [CR]

Additional Objections and Response: Conrail objects to this Interrogatory on the grounds that it is overbroad and unduly burdensome. The burdensome search called for by the Interrogatory is particularly inappropriate in light of the fact that Mr. McNeil was available for deposition by Applicants.

Subject to and without waiving these objections, Conrail states that the bases for Mr. McNeil's statements regarding SP's aggressive pricing strategy are set forth in his testimony and accompanying workpapers that previously have been produced to Applicants. As explained in his testimony, Mr. McNeil's understanding of the automotive shipping market -- and SP pricing strategy in that market -- is based on his 17 years of direct personal experience working principally in that area at Conrail, including his current position as Director of Market Development for the Automotive Services Group. Price information supporting the statement cited by the Interrogatory can be found in the workpapers submitted with Mr. McNeil's Verified Statement. Further supporting information can be found in the numerous Master Agreements, Supplemental Agreements, and Amendments to those Agreements for the transportation by rail of automobiles
and automotive parts that Conrail is producing in response to Document Request No. 36.

**DOCUMENT REQUESTS**

Document Requests 1-35 and 37 are not directed to Conrail.

36. Produce all documents supporting or otherwise relating to the facts provided in response to Interrogatories 6-8. [CR]

**Additional Objections and Response:** See objections and responses to Interrogatory Nos. 6-8. Subject to and without waiving those objections, Conrail is, as described in the Interrogatory responses, producing responsive, non-privileged documents.

Constance L. Abrams  
Jonathan M. Broder  
Anne E. Treadway  
CONSOLIDATED RAIL CORPORATION  
2001 Market Street  
Philadelphia, PA 19101

Daniel K. Meyers  
A. Stephen Hut, Jr.  
Joseph E. Killory, Jr.  
WILMER, CUTLER & PICKERING  
2445 M Street, N.W.  
Washington, D.C. 20037

April 16, 1996
CERTIFICATE OF SERVICE

I certify that on this 16th day of April, 1996, a copy of the foregoing Consolidated Rail Corporation's Objections and Responses to Applicants' Sixth Set of Interrogatories and Requests for Production of Documents was served by hand delivery to:

Arvid E. Roach II
S. William Livingston, Jr.
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Paul A. Cunningham
Richard B. Herzog
James M. Guinnivan
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

and served by facsimile transmission on all parties on the Restricted Service List.

Joseph E. Killory, Jr.
April 15, 1996

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423


Dear Secretary Williams:

Enclosed please find The Kansas City Southern Railway Company’s Responses to Applicants’ Fourth, Fifth and Sixth Discovery Requests ("KCS-38," KCS-39," and "KCS-40").

Also enclosed is a 3.5 inch diskette containing the text of KCS-38, KCS-39, and KCS-40.

Sincerely yours,

William A. Mullins

Enclosures

cc: The Honorable Jerome Nelson
Restricted Service List
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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

APPLICANTS' FOURTH SET OF INTER
AND REQUESTS FOR PRODUCTION OF

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Attorneys for The Kansas City Southern Railway Company

April 15, 1996
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S RESPONSES TO APPLICANTS' FOURTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

The Kansas City Southern Railway Company ("KCS") responds to Applicants' Fourth Set of Interrogatories and Requests for Production of Documents as follows:

KCS reasserts and incorporates by reference, its General Objections to Applicants' discovery requests as set forth in KCS-28, paragraphs 3 through 13. Subject to these objections and to prior rulings by Administrative Law Judge Nelson, KCS responds to Applicants' individual interrogatories as follows:

13. With respect to the transcript cited at KCS-33, p.48, (a) who prepared it; (b) was it prepared from a recording (if so, produce it); (c) are there any notes (if so, produce them); (d) who provided it to KCS; (e) is KCS aware of any alterations from what was in
fact said on the conference call, inserted by anyone; (f) if so, identify same and who
inserted them; (g) state fully KCS' knowledge, or lack of knowledge, as to the accuracy of
the transcript. [KCS]

Response:


(b) Yes. KCS does not have within its possession, custody or control the actual
recording.

(c) If such notes exist, they are not in the possession, custody or control of KCS.

(d) James H. Sullivan

(e) Yes.

(f) Pg. 10, line 42, the words "BYE BYE esp to Mike H-" were inserted by Mr.
Sullivan.

(g) Based upon the representation of Mr. Sullivan, KCS believes the transcript to be an
accurate reflection of the September 26, 1995 Union Pacific Teleconference with
analysts.
This 15th day of April, 1996.

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Attorneys for The Kansas City Southern
Railway Company
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Responses to Applicants' Fourth Set of Interrogatories and Requests for Production of Documents" was served this 15th day of April, 1996, by hand delivery to Applicants and upon the restricted service list by U.S. mail.

[Signature]

Attorney for The Kansas City Southern Railway Company
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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S RESPONSES TO APPLICANTS' FIFTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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April 15, 1996

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Attorneys for The Kansas City Southern Railway Company
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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S RESPONSES TO
APPLICANTS' FIFTH SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

The Kansas City Southern Railway Company ("KCS") responds to Applicants’ Fifth
Set of Interrogatories and Requests for Production of Documents as follows:

KCS reasserts and incorporates by reference, its General Objections to Applicants’
discovery requests as set forth in KCS-28, paragraphs 3 through 13. Subject to these
objections and to prior rulings by Administrative Law Judge Nelson, KCS responds to
Applicants’ individual interrogatories as follows:

1. Do you have any information about any offers made by or on behalf of any
party to this proceeding opposing the UP/SP merger, or anyone affiliated with such party, to
provide funds or other consideration to another such party to help finance its opposition
efforts, and, if so, state that information and identify (and produce) any documents referring
or relating to such offers. [You may exclude offers made to an association party by its
members, or offers to finance work which was proffered to the Board as being jointly sponsored by the parties involved in the offer. [Cen-Tex, CR, KCS, MRL, Tex Mx, CCRT, CMA, NITL, SPI, STRICT, WCTL, WSC]

Response: KCS objects to this interrogatory as requesting information that is neither relevant to this proceeding nor likely to lead to the discovery of admissible evidence. KCS further objects on the grounds that such information is subject to the work product and joint and common defense privilege and protected by the First Amendment.

Document Requests

2. To the extent not done as part of your prior discovery responses or March 29 filings, with respect to the joint verified statement of Patteye J. Simpson and H. Lynn Turner, identify any instances relied on to support their statements in:

(a) the second bullet-point on p. 96, including for each instance (1) the name of the shipper, (2) the local carrier (3) the rail origination, local destination, and final destination city and state, (4) the date of any shipments, and (5) the name and seven-digit STCC code of the chemical shipped;

(b) the third bullet-point on p. 96, including for each instance (1) the name of the shipper, (2) the city and state of each manufacturing facility, (3) the relevant dates of operation of each facility, and (4) the name and seven-digit STCC code of any chemicals subject to such rescheduled production;

(c) the first bullet-point on p. 97, including for each instance (1) the name of the shipper, (2) the local carrier, (3) the rail origination, local destination, and final
destination city and state, (4) the date of any shipments, and (5) the name and seven-digit STCC code of the chemical shipped;

(d) the second bullet-point on p. 97, including for each instance (1) the name of the shipper, (2) the rail origination and destination city and state, (3) the date of any shipments, and (4) the name and seven-digit STCC code of the chemical shipped;

(e) the third bullet-point on p. 97, including for each instance (1) the name of the shipper, (2) the rail origination and destination city and state, (3) the date of any shipments, and (4) the name and seven-digit STCC code of the chemical shipped; and

(f) the first bullet-point on p. 98, including for each instance (1) the name of the shipper, (2) the rail origination and destination city and state, (3) the date of any shipments, and (4) the name and seven-digit STCC code of the chemical shipped. [KCS]

Response: Document Request No. 2 does not seek any documents. As worded KCS assumes Applicants intended the request as an interrogatory, and it will respond accordingly. Further, Witness Turner has no documents to substantiate the situations described on pages 96 through 98 of the joint statement since he is no longer employed by SP. Accordingly, the following responses are based on information and belief and the witness’ best recollection of the facts.

(a)(1) Schintech Plastics; (2) Union Pacific; (3) Houston, TX as rail origination, Houston, TX as local destination and various final destination cities/states; (4) in late 80’s and/or early 90’s - unknown whether the practice continues; (5) Plastics 28-211-43.
(b)(1) Cabot Corporation; (2) Rail stations Bayou Sale, LA on SP and Tate Cove, LA on UP; (3) Both plants continue to be operational; (4) Carbon Blacks, 28-996-10.

(c)(1) Texas Eastman Division, Eastman Chemical Company, (2) Jointly served facilities at Longview, TX by UP and ATSF (ATSF interchange to SP at Tenaha, TX for Houston, TX (Galena Park destined traffic); (3) Pak Tank for account of Texas Aromatics, Galena Park (Houston) TX; (4) at least until March, 1995; (5) Propionic Acid, 28-186-34, Petroleum Naphtha, 29-119-82.

(d)(1) Various shippers, including Exxon Chemical, USA, Baytown, TX and Eastman Chemical Company, Longview, TX; (2) Various Northeast and Southeast destinations and consignees on lines of CR, NS, CSXT, IC and others, including, GATX terminal at Argo, Illinois on IC line and Netera Chemical at Harriman, NY on Conrail; (3) at least until March, 1995; (4) Solvents 21 S4-20, Plastics 28-211, and others.

(e)(1) UP's exclusive customer at Odessa, TX is Rexene Polymers, unable to recall SP's customer or actual receiver in the Los Angeles, CA area; however, witness believes shipments were destined to Long Beach, CA.

(f)(1) Exxon Chemical USA; (2) Rail origins of Baytown and Mt. Belvieu, TX on SP and Baytown, TX on UP; (3) Various dates of shipment since 1970's and probably to the present; (4) Plastics 28-211.
This 15th day of April, 1996.

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Attorneys for The Kansas City Southern
Railway Company
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Responses to Applicants' Fifth Set of Interrogatories and Requests for Production of Documents" was served this 15th day of April, 1996, by hand delivery to Applicants and upon the restricted service list by U.S. mail.

[Signature]
Attorney for The Kansas City Southern Railway Company
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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S RESPONSES TO
APPLICANTS' SIXTH SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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April 15, 1996

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Attorneys for The Kansas City Southern
Railway Company
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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S RESPONSES TO
APPLICANTS' SIXTH SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

The Kansas City Southern Railway Company ("KCS") responds to Applicants' Sixth
Set of Interrogatories and Requests for Production of Documents as follows:

KCS reasserts and incorporates by reference, its General Objections to Applicants’
discovery requests as set forth in KCS-28, paragraphs 3 through 13. Subject to these
objections and to prior rulings by Administrative Law Judge Nelson, KCS responds to
Applicants’ individual interrogatories as follows:

37. Produce the publication listed as the third item on p. 153 of the verified
statement of James MacDonald. [KCS]

Response: This document has been placed in KCS’s document depository
(N6000572K - N6000628K).
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Responses to Applicants' Sixth Set of Interrogatories and Requests for Production of Documents" was served this 15th day of April, 1996, by hand delivery to Applicants and upon the restricted service list by U.S. mail.

[Signature]

Attorney for The Kansas City Southern Railway Company
April 1, 1996

Office of the Secretary
Case Control Branch
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760
Union Pacific - Control & Merger - Southern Pacific
Reply to Joint Motion

Dear Secretary Williams:

Enclosed for filing is an original and twenty copies of our Reply to Joint Motion of NITL, et al. in the above-captioned proceeding.

Very truly yours,

cc: The Honorable Jerome Nelson
   Administrative Law Judge
   Arvid E. Roach II, Esquire
   Paul A. Cunningham, Esquire
By Joint Motion dated April 10, 1996, the National Industrial Transportation League, et al. seek a Board order restricting the parties who may make responsive filings in this proceeding on April 29, 1996. In brief, movants argue that the Board’s prior decisions do not contemplate the making of such responsive filings by non-applicants and that the making of such responsive filings would burden this record and disrupt the orderly process of this case.

CSX is opposed to the entry of an order as requested in the Joint Motion. Contrary to movants’ assertion, the Board’s decisions in this proceeding do not preclude the filing of truly responsive pleadings by non-applicants. Moreover, the interpretation now sought by NITL, et al. would limit the ability of interested parties to afford the Board their views with respect to comments filed on March 29, 1996.

Clearly, the Board should entertain responsive filings. This is especially the case in
this proceeding where the April 29th filing date is the first opportunity that parties have to be heard on the March 29th filings. Movants have failed to demonstrate how such responsive filings would overburden this record or otherwise adversely affect the Board’s orderly disposition of this case.

Accordingly, CSX respectfully requests that the Board deny the Joint Motion.

Respectfully submitted,

[Signature]

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Richmond, Virginia 23219

Attorney for CSX Corporation and its subsidiaries, including CSX Transportation, Inc.

April 15, 1996
Certificate of Service

I hereby certify that on this 15th day of April, 1996, I served a copy of the foregoing Reply to Joint Motion by first-class mail, postage prepaid upon each party of record in Finance Docket No. 32760.

[Signature]

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' REPLY TO JOINT MOTION
FOR CLARIFICATION OF DECISION NO. 6

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

April 15, 1996
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' REPLY TO JOINT MOTION
FOR CLARIFICATION OF DECISION NO. 6

Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPPR"), Missouri Pacific Railroad Company ("MPRR"), 1/ Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPXSL Corp. ("SPXSL"), and The Denver and Rio Grande Western Railroad Company ("DRGW"), 2/ hereby reply to the Joint Motion of various parties for Clarification of Decision No. 6, filed on April 10, 1996 ("Joint Motion").

INTRODUCTION

In its Decision Nos. 6 and 9, served October 19, 1995 and December 27, 1995 respectively, the ICC issued a final procedural schedule under which certain categories of filings are

1/ UPC, UPRR, and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

2/ SPR, SPT, SSW, SPXSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPXSL and DRGW are referred to collectively as "SP."
to be made on April 29, 1996. The parties to the Joint Motion (the "Joint Movants") seek an advance declaration by the Board that non-Applicant parties are precluded from making all but a narrow category of filings -- responses involving related or responsive applications -- on April 29.

The impetus for the Joint Motion is the Joint Movants' desire to prevent BN/Santa Fe from responding to the numerous allegations relating to BN/Santa Fe that Joint Movants and other parties submitted on March 29. Having leveled a blunderbuss attack on every conceivable aspect of the settlement agreement between BN/Santa Fe and Applicants in their comments, Joint Movants now seek to preclude BN/Santa Fe from responding to that attack. More broadly, Joint Movants seek to foreclose any non-Applicant responses to the various comments and proposed conditions they spelled out for the first time in their March 29 filings. As discussed below, however, Board Decision Nos. 6 and 9 clearly authorize such filings on April 29.

That Joint Movants would make such a blatant move to protect their evidence from criticism at this stage of the proceeding speaks volumes about their confidence in that evidence. Put simply, the Joint Motion is an effort to deprive the Board of important and useful information that will assist it in rendering a decision in this case. The Board should promptly deny the Joint Motion.
ARGUMENT

Despite Joint Movants' tortured arguments to the contrary, Decision Nos. 6 and 9 clearly authorize filings by non-Applicants on April 29 in response to the comments and conditions submitted by merger opponents on March 29. Decision Nos. 6 and 9 provide that three types of filings may be made on or before April 29: (1) responses to inconsistent and responsive applications; (2) responses "to comments, protests, requested conditions, and other opposition"; and (3) "[r]ebuttal in support of primary application and related applications." These categories plainly encompass the filings Joint Movants seek to preclude.

A. The Board Has Authorized Non-Applicant Responses to Opposition Evidence and Argument

The second category of filings the Board listed in setting the April 29 deadline -- responses to "comments, protests, requested conditions, and other opposition" -- on its face authorizes responses by non-Applicants to the filings in opposition to the merger made on March 29. This category is not limited to responses by Applicants. By its plain terms, it encompasses a response by BN/Santa Fe to the many allegations in the March 29 filings concerning BN/Santa Fe's intentions and the obstacles it supposedly faces in connection with implementation of its settlement agreement with Applicants. In addition, a non-Applicant that would be disadvantaged by a condition proposed by Conrail (for example) would be entitled to present evidence in response to Conrail's presentation in support of the condition.
Common sense supports the conclusion that the Board meant what it said in Decision Nos. 6 and 9. It would make no sense for the Board to seek responses only from Applicants, when in fact many other parties would be affected if the Board were to accept particular requested conditions or other opposition arguments. As a matter of fairness, such parties should have the opportunity to provide the Board with evidence about the effect on them. Moreover, the Board clearly would benefit from hearing the responses of these parties to the evidence and arguments filed on March 29.

For example, many parties have presented the Board with arguments criticizing the BN/Santa Fe settlement agreement and evidence purporting to support those arguments. Applicants' filings will show why those criticisms are without merit. However, BN/Santa Fe -- the subject of much of the criticism, and with an obvious stake in the settlement agreement -- should also have an opportunity to respond. The Board itself no doubt will benefit from hearing BN/Santa Fe's perspective on the allegations and its evidence in support of its position.

Likewise, it is entirely appropriate that other non-Applicants should have the opportunity to offer evidence in response to proposed conditions and other arguments presented by opponents of the merger. Such proposals are likely to affect not only Applicants, but shippers, railroads, and others. The March 29 filings are the first detailed presentations of their proposals that merger opponents have made to the Board. Thus,
other parties affected by a proposal would have had no prior occasion to respond formally to it. Any response could come only in the next round of filings.1/

Joint Movants attempt to argue that the plain language of the Board's decisions concerning April 29 filings cannot mean what it says. They cite the Board's statement at page 7 of Decision No. 6 that parties that simply file comments, protests, or requests for conditions will not be allowed to file rebuttal evidence on May 14. (Joint Motion, p. 3.) This statement, however, has no relevance to the right of a non-Applicant to respond on April 29 to, for example, a merger opponent's request for conditions. Rather, the statement means that, after responses to the request have been filed on April 29, the requester will not be entitled to make a rebuttal filing on May 14. Such rebuttal filings are authorized only for those parties that filed inconsistent and responsive applications on March 29. (Decision No. 6, pp. 7-8.)

The Joint Movants' suggestion (at Joint Motion, p. 3) that there will be a "geometric proliferation of filings" if non-Applicants are permitted to file more than responses to inconsistent applications on April 29 is entirely without merit.

1/ There is thus no basis for Joint Movants’ claim (at Joint Motion, p. 5) that a party such as CSX would be engaged in "sandbagging" if it were to submit comments on a divestiture proposal on April 29. Because such a proposal would have been described in detail to the Board for the first time on March 29, CSX obviously could not have filed any meaningful comments on the same date.
The Board authorized responses to "comments, protests, requested conditions, and other opposition" (Decision No. 9, p. 15) (emphasis supplied). Thus, non-Applicants are not free to make any sort of filing they please; instead, they are confined to addressing the "opposition" evidence filed on March 29.1/ Clearly, parties that opposed the merger or sought conditions on March 29 are not entitled to file further evidence in opposition to the merger on April 29. The Board did not grant merger opponents such a second bite of the apple. The non-Applicant filings on April 29 will be both limited in scope and of obvious utility to the Board.2/

B. BN/Santa Fe Is Entitled to File Rebuttal in Support of the Primary Application

As explained in the preceding section, BN/Santa Fe, like other non-Applicants, is entitled to file a response to the March 29 opposition filings. BN/Santa Fe may make an April 29

1/ For this reason, it is unlikely that a party that wished to file comments on the merger application itself would wait until April 29 to do so. Joint Movants' prediction that, if non-Applicant responses are allowed, many parties will delay filing substantive comments until the last minute (Joint Motion, pp. 4-5) is entirely unrealistic.

2/ The suggestion that if non-Applicants may respond on April 29 a party requesting conditions in its March 29 filing must be given the right to file rebuttal has no merit. Parties such as Conrail elected to propose divestitures and other conditions without filing an inconsistent or responsive application, presumably in order to avoid the obligation to provide extensive information supporting their proposals. These parties made this choice knowing full well that the Board had already decided that parties not filing an application would not be entitled to file rebuttal evidence following receipt of the April 29 responses.
submission for the additional reason that it is entitled to file "[r]ebuttal in support of primary application and related applications," the third category of April 29 filings authorized by the Board in Decision Nos. 6 and 9.

Applicants presented their settlement agreement with BN/Santa Fe as an integral part of their application filed on November 30, 1995. BN/Santa Fe filed extensive evidence supporting the settlement agreement on December 29, 1995. Parties that criticize the BN/Santa Fe evidence in their March 29 filings have treated the BN/Santa Fe agreement as an integral part of the Applicants' proposed merger. In these circumstances, any BN/Santa Fe filing on April 29 qualifies as "[r]ebuttal in support of primary application."

CONCLUSION

Decision Nos. 6 and 9 clearly permit non-Applicants to make filings on April 29 in response not only to inconsistent and responsive applications, but also to requested conditions and other forms of opposition to the proposed merger filed on March 29. There is no basis for Joint Movants' arguments to the contrary. Moreover, if their position were accepted, the result
would be to deprive the Board of evidence crucial to its decision in this case. The Joint Motion should be denied.

Respectfully submitted,

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April 15, 1996
CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 15th day of April, 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
Suite 500
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
April 10, 1996

VIA HAND DELIVERY

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


Dear Secretary Williams:

Enclosed please find the original plus twenty (20) copies of the Reply to Motion of the Allied Rail Unions for Order Designating Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company as Co-Applicants (BN/SF-51).

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

Sincerely,

Kelley E. O'Brien

Enclosures
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

REPLY TO MOTION OF THE ALLIED RAIL UNIONS FOR ORDER DESIGNATING
BURLINGTON NORTHERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY COMPANY AS CO-APPLICANTS

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Attorneys for Burlington Northern Railroad Company
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April 10, 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, SPDSL CORP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

REPLY TO MOTION OF THE ALLIED RAIL UNIONS FOR ORDER DESIGNATING
BURLINGTON NORTHERN RAILROAD COMPANY AND THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY COMPANY AS CO-APPLICANTS

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa
Fe Railway Company ("Santa Fe") (collectively, "BN/Santa Fe") hereby reply to the motion
of the Allied Rail Unions ("ARU") for an order designating BN and Santa Fe as "co-
applicants" with the primary applicants, Union Pacific and Southern Pacific ("UP/SP"), in
this proceeding.1 ARU bases its motion on the fact that UP/SP entered into an agreement

1/ In its motion, ARU alternatively requests the Surface Transportation Board to
(continued...
with BN/Santa Fe, dated September 25, 1995, as supplemented November 18, 1993 (the "BN/Santa Fe" Agreement), to address potential competitive concerns arising from the proposed merger. It is clear, however, that neither BN nor Santa Fe is an "applicant" as that term is defined in the Surface Transportation Board’s regulations or as the term has been applied in prior merger and control proceedings.

First, the transaction for which Board approval is sought in this proceeding is the acquisition and exercise of control by UP over SP, along with the resulting merger of SP into UP and consolidation of their rail operations. See UP/SP-22, at 1. UP, SP and their related affiliates are the parties that have initiated that transaction, and thus they are the "applicants" under 49 C.F.R. § 1180.3(a). BN/Santa Fe is neither a party to nor involved in that merger transaction. Indeed, when the Interstate Commerce Commission accepted UP/SP’s application in Decision No. 9 (served December 27, 1995), only UP, SP and their related affiliates were referred to and identified as "applicants; BN/Santa Fe was referred to and identified separately and not as an applicant. ARU filed no objection at that time to the failure to characterize BN/Santa Fe as an applicant, notwithstanding the fact that the BN/Santa Fe Agreement had been previously filed with the Commission and its existence and relationship to the primary transaction were well known to all parties, including ARU.

\[\ldots\text{continued}\]

impose New York Dock conditions (New York Dock Ry--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979)) on the BN/Santa Fe Agreement. Because ARU’s alternative motion is not procedural in nature but rather argues for substantive relief, BN/Santa Fe will respond to that aspect of ARU’s motion in its April 29, 1995 filing and/or in its brief. In this regard, we note that, as reflected in Arvid E. Roach II’s April 8, 1996 letter to Secretary Williams, counsel for ARU has agreed to such timing for UP/SP’s response to ARU’s motion as a whole.
Second, contrary to ARU’s argument, the effect of the designation of BN/Santa Fe as an applicant would not be to impose New York Dock conditions on all aspects of the operations under the BN/Santa Fe Agreement. Rather, under the Board’s regulations, the purpose of designating a party as an "applicant" is to require that party to provide the Board with sufficient information concerning itself and its operations to permit the Board to fully and properly evaluate the application. Here, the designation of BN/Santa Fe as an applicant at this late date would do nothing to advance or serve that purpose. Accordingly, ARU’s untimely, misdirected effort should be rejected.

Third, in merger or control proceedings, the Interstate Commerce Commission has not historically treated parties entering into settlement agreements with primary applicants as applicants -- either for purposes of information submission or labor protective conditions. Thus, in the recently concluded BN and Santa Fe proceeding (Finance Docket No. 32549), SP and applicants BN and Santa Fe executed a settlement agreement which provided extensive trackage rights to SP in order to address potential competitive concerns. The Commission did not treat or identify SP as an applicant; rather, as has been the standard and consistent practice, SP sought implementation of its trackage rights through the exemption process authorized under the Commission’s regulations, and the standard trackage rights labor protective conditions set out in Norfolk and Western Ry. Co.--Trackage Rights--BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.--Lease and Operate, 360 I.C.C. 653 (1980), were imposed by the Commission. Burlington Northern Inc., et al.--Control and Merger--Santa Fe Pacific Corporation, et al., Finance Docket No. 32549, Decision No. 38 (served August 23, 1995), at 117. Notwithstanding
ARU’s arguments to the contrary, the BN/Santa Fe Agreement is no different in purpose or effect than the SP settlement agreement in the BN/Santa Fe merger proceeding, and thus there is no reason to treat BN/Santa Fe as an applicant here.

Accordingly, BN/Santa Fe requests that ARU’s motion for an order designating BN/Santa Fe as an applicant be denied.

Respectfully submitted,

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

April 10, 1996
CERTIFICATE OF SERVICE

I hereby certify that copies of Reply to Motion of the Allied Rail Unions for Order Designating Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company as Co-Applicants (BN/SF-51) have been served this 10th day of April, 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 Allied Rail Unions.

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