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Item No. _____

Page Count 6

May # 70

UP/SP-243

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 3250

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

-- CONTROL AND MERGER --

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

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MAY 10 1996

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ADDITIONAL ERRATA TO REBUTTAL FILING

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

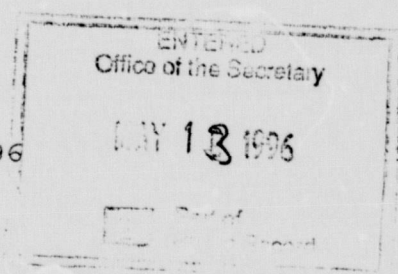
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Pacific Railroad Company

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
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RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

ADDITIONAL ERRATA TO REBUTTAL FILING

<u>Page</u>	<u>Line</u>	<u>Change</u>
<u>Volume 1 (UP/SP-230)</u>		
56	19	Delete previous errata
73	4	Delete previous errata
86	8	Delete previous errata
99	5	Delete previous errata
110	8	Change "\$796" to "\$795" (modifying previous errata)
114	23	Change "Wecker" to "Willig"
139	15	Change "\$945.3" to to "\$1,001.8"
139	20 & 22	Change "\$738.8" to "\$795.3"
279	20	Change "RTC" to "RCT"

Volume 2 (UP/SP-231)

Part B

Rebuttal Verified Statement of Richard B. Peterson

Chart following p. 23	Change ".7" to ".8"; change "18" to "18.1"
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Chart following p. 26		Change "514.9" to "534.4"; change "223.9" to "260.9"; 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,

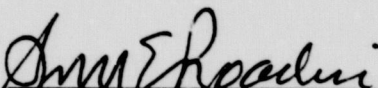
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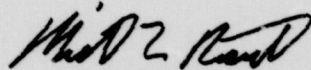
May 10, 1996

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

Premarmer 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

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

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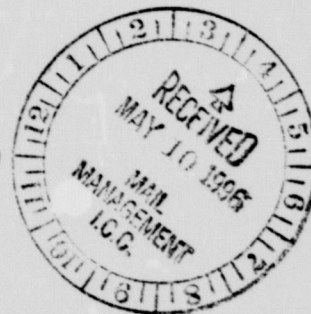
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Page Count _____

May # 68

83405

UP/SP-244



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

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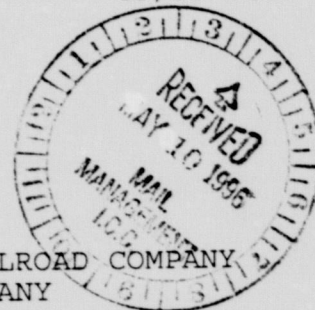
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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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,^{2/} 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,

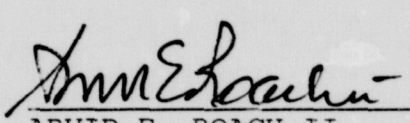
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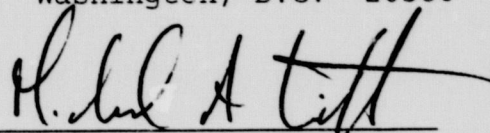
May 10, 1996

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

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

A handwritten signature in black ink, appearing to read "Michael A. Listgarten", written over a horizontal line.

Michael A. Listgarten

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Item No. _____

Page Count 5

May # 61

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HOPKINS & SUTTER

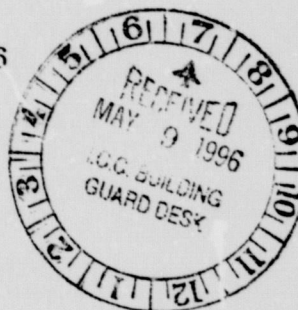
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May 9, 1996



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., Finance 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.

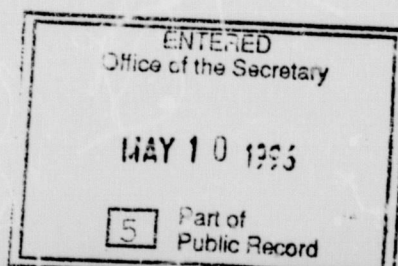
Sincerely,

A handwritten signature in cursive script that reads "Alicia M. Serfaty".

Alicia M. Serfaty

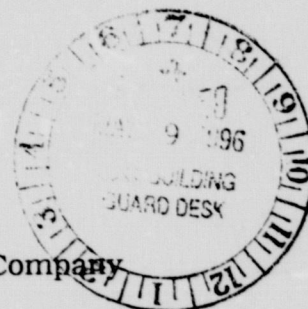
AMS/lb
Enclosures
cc: All Parties of Record

P47066-1



BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 32760



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

-- Control and Merger --

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

**REPLY OF THE
INTERMOUNTAIN POWER AGENCY
TO MOTION OF UTAH RAILWAY COMPANY**

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.

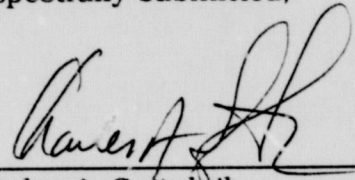
As a substantive matter, IPA disputes the Utah Railway's mischaracterization of its position. As IPA stated in its pleading, the Utah Railway settlement agreement and the additional access provided to the Utah Railway appears to "reduce some, though not all, of the adverse competitive impacts that will 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 example in support of its Motion.

Dated: May 9, 1996

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

Charles A. Spitulnik
Alicia M. Serfaty

HOPKINS & SUTTER
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(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:

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Roy T. Englert, Jr.
Kathryn A. Kusske
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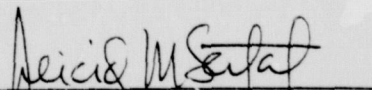
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I also certify that three copies of the aforementioned pleading were served by hand upon the following:

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Harkins, Cunningham
Suite 600
1300 Nineteenth Street, N.W.
Washington, D.C. 20036


Alicia M. Serfaty

STB

FD

32760

5-9-96

D.

83809

Item No. _____

Page Count 7

May # 64

G.V. "SONNY" MONTGOMERY
3D DISTRICT, MISSISSIPPI

83809

DISTRICT OFFICES:-
2100 NINTH ST. ROOM 302
MERIDIAN, MS 39301
(601) 693-6681

2080 AIRPORT ROAD, SUITE D
COLUMBUS, MS 39701
(601) 327-2766

110-D AIRPORT ROAD
PEARL, MS 39208
(601) 932-2410

COMMITTEES:

VETERANS' AFFAIRS
RANKING MINORITY MEMBER
NATIONAL SECURITY
ADMINISTRATIVE ASSISTANT:
ANDRE CLEMANDOT

Congress of the United States
House of Representatives
Washington, DC 20515-2403

May 3, 1996

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

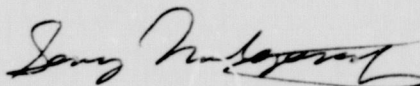
ATTN: Finance Docket No. 32760

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 5618, Meridian, MS 39302.

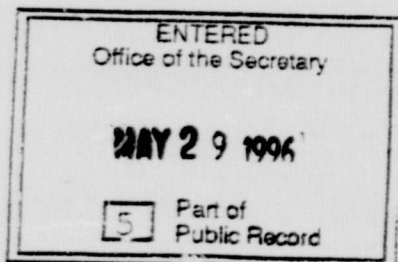
Sincerely,



GILLESPIE V. MONTGOMERY
Member of Congress

GVM:kmm

RECEIVED
SURFACE TRANSPORTATION
BOARD
MAY 9 1 16 PM '96
OFFICE OF
CHAIRMAN JORGAN



4-18-96

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

Dear Representative Montgomery:

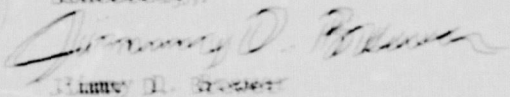
I am a resident of Louisa, Va. I am employed by the Kansas City Southern Railway Company.

The purpose of this letter is ask you to urge 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 United States which will lead to higher rates and lower standards of service. It will give traffic at the expense of carriers such as AJS 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,


Jimmy D. Fowler



ENTERGY

Mississippi Power & Light Company
308 East Pearl Street
P.O. Box 1640
Jackson, MS 39215-1640
Tel 601 969-2684

Donald E. Meiners
President

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).

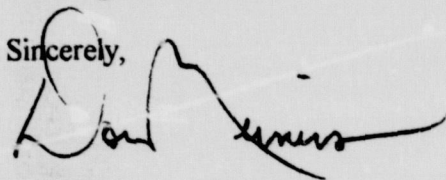
These competitive options will be lost as a result of the proposed UP/SP merger. In the case of coal movements to both the White Bluff and Nelson Stations, SP would no longer be able to bid independently for the movement of coal originated by BNSF, and UP's control of SP would enable UP to prevent SP from bidding competitively with BNSF for these movements. The White Bluff spur "build-out" would be rendered meaningless, and the competitive options 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,

A handwritten signature in dark ink, appearing to be "DEM/as", written over a horizontal line.

DEM/as

Route 1, Box 137
Porterville, MS 39352

APR 20 1996

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
2184 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

JEFF C FULLER
PO Box 4443
Meridian Ms 39304



Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

*File in
Docket
FD-32760*

May 20, 1996

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
Linda J. Morgan

ENTERED Office of the Secretary
MAY 29 1996
5 Part of Public Record

STB

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32760

5-7-96

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83147

Item No. _____

Page Count 7

May # 53

83747

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

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK
WASHINGTON
ALBANY
BOSTON
DENVER
HARRISBURG
HARTFORD
JACKSONVILLE

1875 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20009-5728

(202) 986-8000

TELEX: 440274 FACSIMILE: (202) 986-8102

WRITER'S DIRECT DIAL:

(202) 986-8050

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

May 7, 1996

VIA HAND DELIVERY

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,

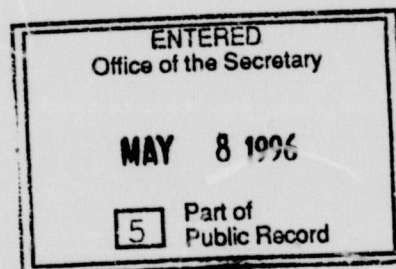
Michael F. McBride

Michael F. McBride

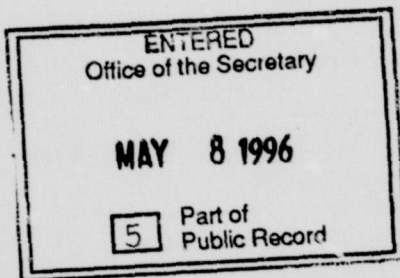
Attorney for Western
Shippers' Coalition

Enclosure

cc: All Parties on Service List

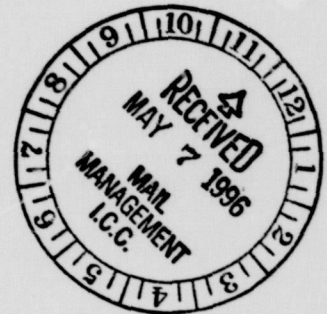


UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD



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 COMPANY

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-⁴~~10~~), filed April 29, 1996.¹ 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 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.

29, 1996; and in WSC-16, filed April 29, 1996. 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,

Michael F. McBride

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

STB

FD

32760

5-3-96

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82992

Item No. _____

82992

Page Count 9

May # 16

CITY OF SUSANVILLE

66 North Lassen Street
Susanville, California 96130
(916) 257-1000 • FAX (916) 257-4725



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



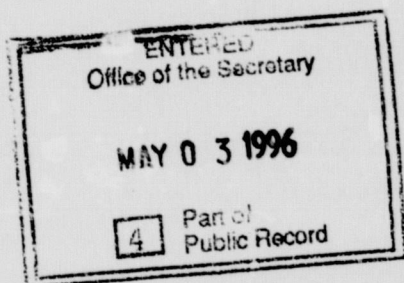
Re: Union Pacific Railroad Company, Merger with Southern Pacific Railroad Company, Finance Docket No. 32760 and Southern Pacific Transportation Company Abandonment Exception, Docket No. AB-12 (Sub-No. 184X)

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. LAZARD
City Attorney
City of Susanville
700 Court Street
P.O. Box 730
Susanville, CA 96130
(916) 257-7704



MAYOR
Douglas Sayers

MAYOR pro tem
Vernon H. Templeton

COUNCIL MEMBERS
Cino P. Gallegari, Shirley Johnson-Wright, Rodney E. DeBoer

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.

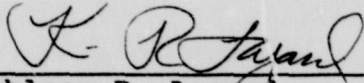
Both the City of Susanville and County of Lassen have adopted resolutions supporting the responsive application of Montana Rail Link, Inc., dated March 29, 1996. Resolutions No. 96-2794 (City) and 96-032 (County) supporting said Responsive Application are attached hereto and by this reference incorporated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



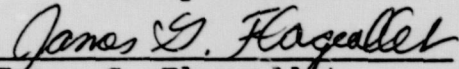
Kathleen R. Lazard
700 Court Street, P.O. Box 730
Susanville, CA 96130
(915) 257-7704

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

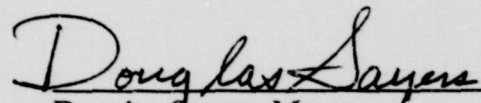
WHEREAS, the Shasta Cascade Wonderland Association, of Redding, California, which is a private organization that represents northern California's tourism interests is actively seeking ways to attract and transport people to northern California to see and enjoy the natural and scenic resources of this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

1 Resolution No. 96-2794 Continued:

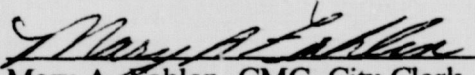
2 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Susanville,
3 as follows:

4
5 The City Council supports the Responsive Application of Montana Rail Link, Inc., dated
6 March 29, 1996.

7 APPROVED:

8
9 
10 Douglas Sayers, Mayor

11 ATTEST:

12
13
14 
15 Mary A. Fahlen, CMC, City Clerk

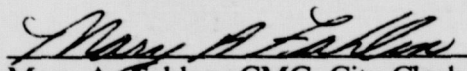
16 The foregoing resolution was adopted at a regular adjourned meeting of the City Council
17 of the City of Susanville, held on the 18th day of April, 1996 by the following vote:

18 AYES: Johnson-Wright, DeBoer, Callegari, Templeton, and Sayers

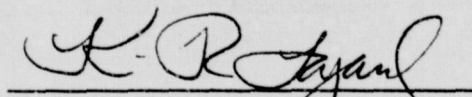
19 NOES: None

20 ABSENT: None

21 ABSTAINING: None

22 
23 Mary A. Fahlen, CMC, City Clerk


24 APPROVED AS TO FORM:

25
26 
27 Kathleen R. Lazard, City Attorney

28

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.



MARY FAHLEN, CMC
City Clerk

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 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;

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

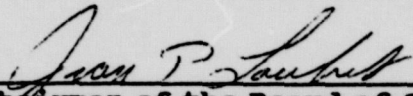
1. That the foregoing recitals are true and correct.
2. That the Board of Supervisors of the County of Lassen hereby supports the Responsive Application of Montana Rail Link, Inc., dated March 29, 1996.

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:

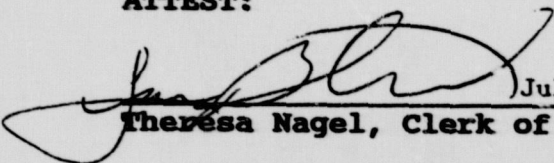
AYES: Lough, Neely, Chapman, Loubet

NOES: -0-

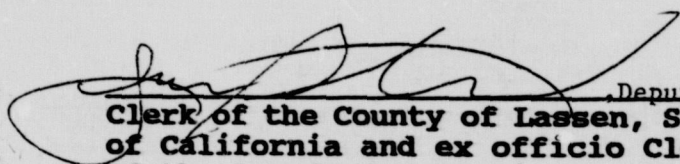
ABSENT: Lemke


Chairman of the Board of Supervisors,
County of Lassen, State of California

ATTEST:


Julie Bustamante, Deputy
Theresa Nagel, Clerk of the Board

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.


Deputy
Clerk of the County of Lassen, State
of California and ex officio Clerk
of the Board of Supervisors thereof

STB

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82959

SLOVER & LOFTUS

ATTORNEYS AT LAW

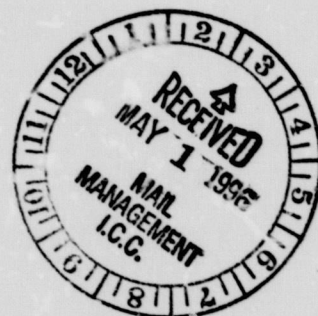
1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

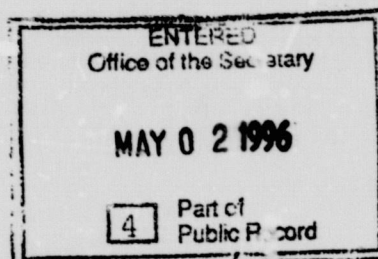
WILLIAM L. SLOVER
 C. MICHAEL LOFTUS
 DONALD G. AVERY
 JOHN E. LE SEUR
 KELVIN J. DOWD
 ROBERT D. ROSENBERG
 CHRISTOPHER A. MILLS
 FRANK J. PERGOZZI
 ANDREW B. KOLESAR III
 PATRICIA F. KOLESAR
 EDWARD J. KOLESAR

* ADMITTED IN PENNSYLVANIA ONLY

May 1, 1996

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, Entergy Services, Inc. and its affiliates Arkansas Power & Light and Gulf States Utilities Company ("ESI") hereby enclose five (5) copies of the Appendix to the Comments of Entergy Services, Inc., Arkansas Power & Light Company and Gulf States Utilities Company (ESI-19).

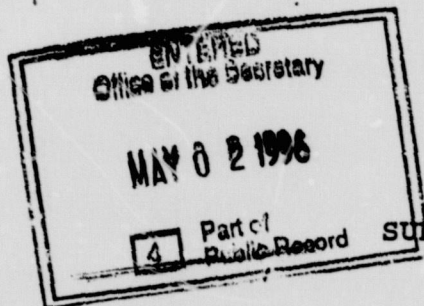
An extra copy of this letter and the Appendix are enclosed. Kindly indicate receipt and filing by time-stamping both and returning them to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

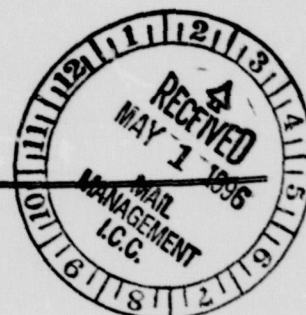
Christopher A. Mills
 An Attorney for Entergy
 Services, Inc., and its
 affiliates Arkansas Power &
 Light and Gulf States
 Utilities Company

Enclosures



ESI-19

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

Finance Docket No. 32760

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

OF COUNSEL:

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

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

Dated: May 1, 1996

Attorneys and Practitioners

APPENDIX TO COMMENTS OF ENTERGY SERVICES, INC., ARKANSAS POWER &
LIGHT COMPANY AND GULF STATES UTILITIES COMPANY
ON THE PROPOSED UP/SP MERGER (ESI-12/13)
FILED MARCH 29, 1996

Relevant Excerpts from Deposition Transcripts
Referenced in Entergy's Argument of Counsel (page 21)

-- Deposition of Witness Neal D. Owen

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 32760
4 UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
5 COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
6 -- CONTROL MERGER --
7 SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN
8 PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
9 SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
10 DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
11 HIGHLY CONFIDENTIAL

12 Washington, D.C.
13 Friday, February 23, 1996

14 Deposition of NEAL D. OWEN, a witness
15 herein, called for examination by counsel for the
16 Parties in the above-entitled matter, pursuant to
17 agreement, the witness being duly sworn by JAN A.
18 WILLIAMS, RPR, a Notary Public in and for the
19 District of Columbia, taken at the offices of
20 Mayer, Brown & Platt, 2000 Pennsylvania Avenue,
21 N.W., Washington, D.C., 20006-1882, at
22 10:05 a.m., Friday, February 23, 1996, and the
23 proceedings being taken down by Stenotype by JAN
24 A. WILLIAMS, RPR, and transcribed under her
25 direction.

1 for the central corridor -- I meant BN/Santa Fe,
2 for the central corridor trackage rights between
3 Denver and Salt Lake City make any provision for
4 traffic increases on the central corridor lines
5 which may occur in spite of the proposed merger?

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

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

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

22 Q. Well, let me rephrase the question a
23 bit. Would you agree that increases in traffic
24 density and train frequency on a particular line
25 can affect a railroad's ability to operate on the

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1 line in the future as planned, assuming that
2 there are no capacity enhancements?

3 A. It can. It doesn't always, but it can,
4 yes.

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

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

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

16 A. No, there's nothing planned as of this
17 testimony.

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

25 A. Yes.

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

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

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

10 A. Yes.

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

14 A. Yes.

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

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

24 BY MS. KOLESAR:

25 Q. Could you please identify on the map on

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1 page 15A what the Conroe subdivision is?

2 A. Let me get the colored version here.

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

9 Q. What's 20 miles on this map, over to
10 Dobbin?

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

13 Q. So just that one segment?

14 A. Yes. That is the Silsbee subdivision.
15 Then you go west from Silsbee toward Dobbin and
16 on to Somerville. That green line is BN/Santa
17 Fe's Conroe subdivision. And from Somerville
18 then this goes on to Temple to the north, where
19 we can go to California or we can go north to
20 Seattle or Denver or wherever we want to go at
21 that point in time, Chicago.

22 So that route from Temple to
23 Somerville, Dobbin, Silsbee, Beaumont is the
24 route that this intermodal train would use. It's
25 the route that the hypothetical train to Lake

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1 Charles would use to bypass Houston.

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

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

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

13 A. That's correct.

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

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

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

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1 A. Yes.

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

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

10 Q. But you know of no negotiations to
11 date?

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

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

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

25 It's conceivable that BN/Santa Fe would

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1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

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.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

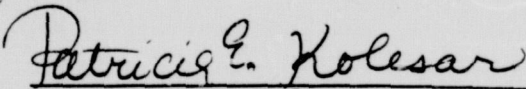
Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

Redacted, Public Version

Carol A. Harris, Esq.
Southern Pacific
Transportation Company
One Market Plaza
San Francisco, CA 97105

Carl W. Von Bernuth
Union Pacific Corporation
Martin Tower
Eighth and Eaton Ave.
Bethlehem, PA 18018

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


Patricia E. Kolesar

STB

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Item No. _____

Page Count 1

May # 5

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SLOVER & LOFTUS

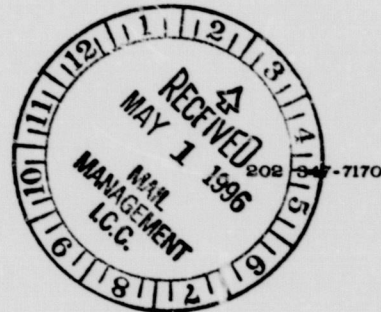
ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

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

May 1, 1996



* ADMITTED IN PENNSYLVANIA ONLY

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.

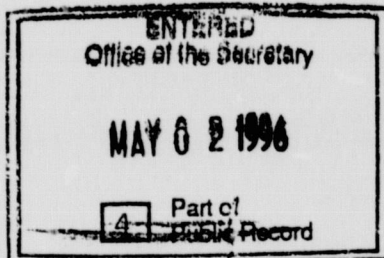
Dear Mr. Secretary:

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,



Enclosures

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

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Item No. 82953 82953

Page Count 97

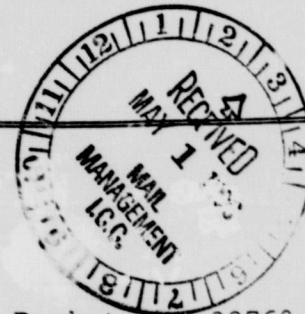
may #6

ENTERED	
Office of the Secretary	
MAY 0 2 1996	
4	Part of Public Record

WPL-9
WPS-9

BEFORE THE
SURFACE TRANSPORTATION BOARD

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



Finance Docket No. 32760

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
CORP RATION
600 North Adams
Green Bay, Wisconsin 54307

OF COUNSEL:-

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

Dated: May 1, 1996

By: C. Michael Loftus
Kelvin J. Dowd
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys and Practitioners

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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 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.

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

1 involved; is that correct?

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

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

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

1 reread, please. 40

2 MR. LIVINGSTON: Did you finish your
3 answer?

4 THE WITNESS: Yes.

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

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

22 BY MR. LOFTUS:

23 Q. Well, with regard to that last
24 response, that assumes that there is the ability
25 for the Burlington to serve the destinations

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1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 will see that the delivered cost is much, much
2 below the delivered cost of the comparable
3 products in the great majority of cases.

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

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

19 So the Powder River rates are being
20 constrained by direct competition between
21 Burlington Northern and Union Pacific. I don't
22 think there is any doubt about that. Witness
23 Peterson I believe in the record provided some
24 information on what has happened to the rates in
25 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

Tab

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

1 introduced to the Powder River. And the effect
2 has been very substantial.

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

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

16 MR. LOFTUS: Perhaps one more
17 question.

18 MR. LIVINGSTON: All right.

19 MR. McBRIDE: We're not that rigid.

20 BY MR. LOFTUS:

21 Q. Did you make any effort to determine
22 whether delivered price competition from SP
23 origin coals acts as a competitive limitation on
24 both BN and UP delivered coal prices out of the
25 Powder River Basin?

1 A. Based on the analysis I just gave you,
2 my answer to that is no. The Burlington
3 Northern -- the delivered price of Powder River
4 coal served jointly by BN and Union Pacific is
5 much lower in the great majority of instances
6 than coal from other Western sources.

7 It is very common to see Powder River
8 coal say at an Iowa utility for, oh, perhaps
9 around \$1 per million Btu and see coal received
10 from other sources at \$1.50 or higher. So that
11 delivered cost is not the constraint on the
12 delivered cost of coal from the Powder River.
13 Obviously something else is happening, and that
14 something else is direct competition in the
15 Powder River Basin.

16 (Recess)

17 BY MR. LOFTUS:

18 Q. Mr. Sharp, before the break we were at
19 page 672 of your statement, sir, and we were
20 addressing the paragraph where you were
21 addressing SP served utility plants. And in that
22 you address the benefits that they would or might
23 obtain from gaining single-line service from the
24 Powder River Basin. Such single-line service
25 would only be of significance to plants only able

1 one. It would not -- I kind of look at your
2 question from the flip side. It would not
3 logically favor the routes that were more closely
4 driven to marginal costs. So where there is
5 direct competition from origins as in the Powder
6 River, where margins are squeezed, I would think
7 there would be less likelihood that it would
8 favor those routes.

9 Q. Well --

10 A. But I think the customer preference in
11 order to capture the business would be the main
12 outcome.

13 Q. Assuming equal chances of getting the
14 business on coal moving from two different origin
15 areas served by the same carrier, isn't it
16 logical that the carrier will favor the origin
17 area that would yield it the greatest profit?

18 A. Well, I don't accept your assumption as
19 valid because direct head-to-head competition in
20 the Powder River I think is not equivalent to
21 exclusive service in Colorado and Utah. And I
22 think it is definitely the Powder River origins
23 which is where the bulk of Western coal traffic
24 originates that are most likely to be driven
25 toward marginal costs, because there is

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

5 MR. KING: In general, yes.

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

10 MR. KING: That's correct.

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

17 MR. KING: It was one factor.

18 MR. MILLS: Referring to page 60 of
19 your verified statement, in separate testimony by
20 Mr. King, the second paragraph, about two-thirds
21 of the way down that paragraph, there is a
22 sentence that reads, "We have reorganized our
23 operating regions, returning experienced CNW
24 officers who had been rotated to other parts of
25 the UP system to CNW territory."

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1 Can you tell us when the CNW officers
2 or the so-called experienced CNW officers
3 initially joined the Union Pacific?

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

6 MR. MILLS: Yes.

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

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

11 MR. KING: That sounds about right.

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

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

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

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

22 MR. MILLS: And he was based in
23 Chicago?

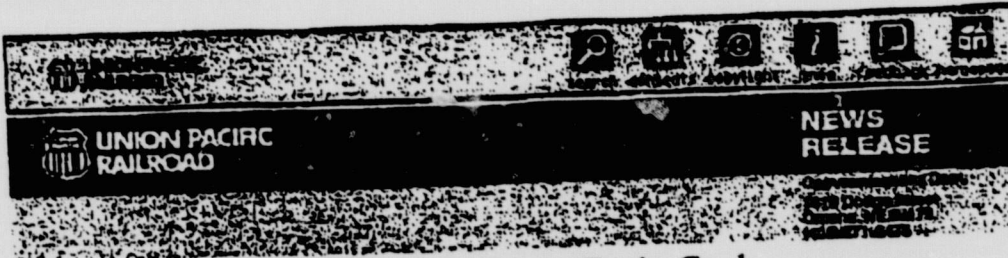
24 MR. KING: Yes.

25 MR. MILLS: And when he left CNW and

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50,000th Trainload of Powder River Basin Coal



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.



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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 32760
4 UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
5 COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
6 -- CONTROL MERGER --
7 SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN
8 PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
9 SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
10 DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
11 HIGHLY CONFIDENTIAL
12 Washington, D.C.
13 Friday, February 9, 1996
14 Deposition of R.B. (BRAD) KING and
15 MICHAEL D. ONGERTH, witnesses herein, called for
16 examination by counsel for the Parties in the
17 above-entitled matter, pursuant to agreement, the
18 witnesses having been previously duly sworn,
19 taken at the offices of Covington & Burling, 1201
20 Pennsylvania Avenue, N.W., Washington, D.C.,
21 20044, at 9:10 a.m., Friday, February 9, 1996,
22 and the proceedings being taken down by Stenotype
23 by FERNITA R. FINKLEY and CRAIG KNOWLES and
24 transcribed under their direction.
25

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1 use the Yoder.

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

4 MR. KING: Yes.

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

11 MR. KING: That's correct.

12 MR. MILLS: Would a fair average tons
13 per train for Powder River Basin trains be about
14 12,000 tons?

15 MR. KING: Approximately, yes.

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

20 MR. KING: Approximately 1,166.

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

24 MR. KING: Yes.

25 MR. MILLS: So you have to double that

1 1995, for various reasons the Union Pacific and
2 CNW, prior to the merger, experienced service
3 problems in hauling Powder River Basin coal to
4 the Midwest?

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

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

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

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

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

22 MR. KING: It would vary according to
23 customer. There were some customers we were not
24 doing as well as we would have liked. There were
25 some we were do very well with.

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1 MR. MILLS: So in some instances, that
2 statement could be said of the Union Pacific's
3 coal service?

4 MR. KING: In some instances?

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

9 I'd like to have marked -- I'd like to
10 have marked for identification as King-Ongerth
11 Exhibit 9 a two-page exhibit bearing Bates
12 numbers HC37 - 000005 and HC37 - 000006, and
13 they're a highly confidential designation. And
14 the first line on the first page reads, quote, An
15 Analysis of the 1995 Original Budget, paren,
16 12-1-94, close paren, on Energy Traffic. And
17 I'll represent for the record that this document
18 was produced to the Western Coal Traffic League
19 by the Union Pacific during discovery.

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

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

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1 intend to ask Mr. King questions about.

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

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

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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?

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5-year Coal Plan 1996 - 2000

13-Jul-95



YEAR TONS CARS TRAINS

1996 43,436,840 421,414 4,750

1997 46,965,082 456,946 4,863
Change versus 1996...

1998 47,886,578 466,728 4,954
Change versus previous year...
Change versus 1996...

1999 48,656,457 474,511 5,025
Change versus previous year...
Change versus 1996...

2000 50,196,476 490,159 5,170
Change versus previous year...
Change versus 1996...

Change from previous year

TONS CARS TRAINS

— — —

3,528,242 35,532 113

921,496 9,782 91
4,449,738 45,314 204

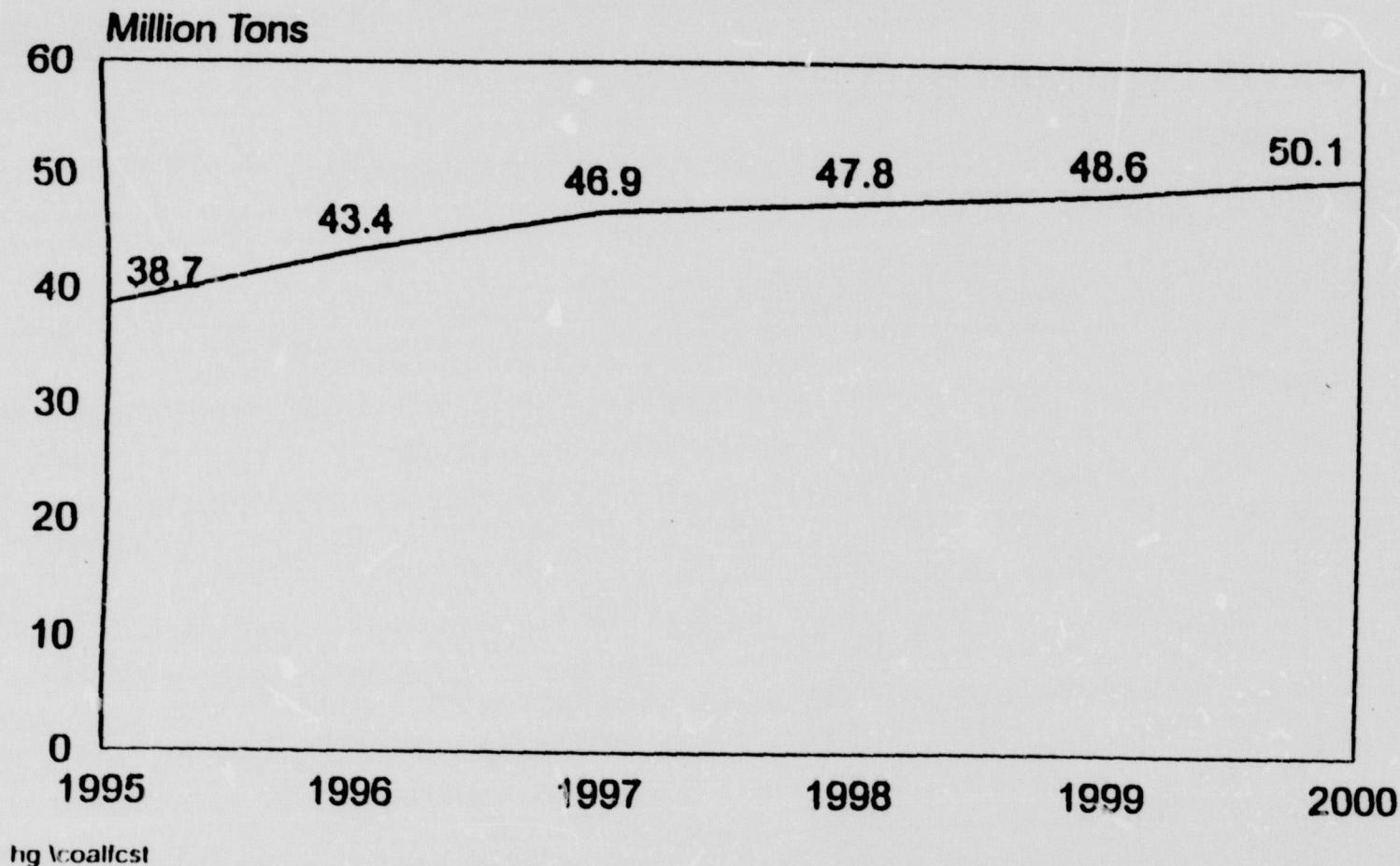
769,879 7,783 71
5,219,617 53,097 275

1,540,019 15,648 145
6,759,636 68,745 420

HIGHLY CONFIDENTIAL

SP Coal Tonnage

1995 - 2000



HIGHLY CONFIDENTIAL

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

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

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

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

16 (Recess)

17 MR. McBRIDE: Back on the record.

18 BY MR. McBRIDE:

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

22 A. What I indicated was I believe the one
23 lump theory applied in most circumstances, but
24 that foreclosure which is essentially ruled out
25 under the one lump theory is possible in a

1 defined set of circumstances. And I see there as
2 being basically five conditions for foreclosure
3 to be a serious concern.

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

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

19 Thirdly and also quite important, the
20 terminating carrier must itself not be a major
21 source of the product which is being delivered.
22 In other words, if it's coal, if the terminating
23 carrier is itself a source of a suitable coal for
24 that facility, then the possibility of
25 foreclosure already exists in the affiliation and

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1 the affiliation with another carrier will not
2 affect that.

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

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

23 And then finally the affiliation in
24 question must substantially change the situation
25 so that the terminating carrier is no longer

1 constrained to not abuse its position at the
2 destination. For example, if we're talking about
3 coal, if the coal originator has a lot of
4 capacity, incentive to make use of that capacity
5 by diverting traffic from the nonmerging carrier
6 to its own lines, situation constraints that were
7 previously imposed by the terminating carrier's
8 position of nonmarket dominance with respect to
9 the traffic it receives may be undermined and a
10 foreclosure situation created.

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

21 Secondly, Santa Fe for the traffic at
22 issue, as the utility spokesman testified, was
23 not a prospective originator of low Btu coal
24 which is what those facilities were designed to
25 use. Santa Fe, high Btu coal was not considered

1 to be an option. Moreover, and this gets to
2 point No. 3, Santa Fe was highly dependent on
3 coal traffic received from both Burlington
4 Northern and from WRPI-UP. Two-thirds of Santa
5 Fe's coal traffic is received coal traffic. Most
6 of that from Burlington Northern and Union
7 Pacific.

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

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

24 Secondly, is the terminating carrier in
25 a position of market dominance with respect to

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1 facilities. Well, in the Santa Fe case, the two
2 specific facilities we were talking about were
3 highly dependent on those particular plants, the
4 plants occupied a very prominent place in their
5 system, both utilities were not affiliated with a
6 holding company that had a lot of additional
7 facilities.

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

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

24 Southern Pacific is not a carrier that
25 is highly dependent on its interline traffic as

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

11 And does the same situation exist with
12 respect to the capacity and desire of the
13 acquiring company to divert the coal to its own
14 lines? Well, I think not because again Union
15 Pacific does not have that large amount of
16 exclusive access to coal resources to which it
17 could devote traffic, it simply does not exist.

18 For all the Powder River origins, BN
19 remains an alternative. The Southern Wyoming
20 stuff originated by UP has basically failed in
21 the marketplace. Again you're talking about
22
23

24 REDACTED
25

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

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

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

24 A. I can't speak for the merging companies
25 on that. I have no idea what their position

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 32760
4 UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
5 COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
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10 DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

11 **HIGHLY CONFIDENTIAL**

12 Washington, D.C.

13 Thursday, February 8, 1996

14 Deposition of R.B. (BRAD) KING and
15 MICHAEL D. ONGERTH, witnesses herein, called for
16 examination by counsel for the Parties in the
17 above-entitled matter, pursuant to agreement, the
18 witnesses being duly sworn by MARY GRACE PRESTO,
19 RPR, a Notary Public in and for the District of
20 Columbia, taken at the offices of Covington &
21 Burling, 1201 Pennsylvania Avenue, N.W.,
22 Washington, D.C., 20044, at 10:20 a.m., Thursday,
23 February 8, 1996, and the proceedings being taken
24 down by Stenotype by MARY GRACE PRESTO, RPR, and
25 transcribed under her direction.

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1 information.

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

5 MR. ONGERTH: Not at this point in
6 time.

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

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

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

15 MR. ONGERTH: Not able to say.

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

23 MR. KING: Talking about the first
24 paragraph?

25 MR. HUT: The first and, to the extent

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1 it bears, the second, yes, sir.

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

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

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

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

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

24 MR. KING: We're always in those
25 steps. Any railroad is always in the steps of

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1 trying to improve their service, but the service
2 is back to levels that are acceptable.

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

8 MR. KING: No, I haven't.

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

11 MR. KING: I don't know.

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

16 MR. KING: I don't know.

17 MR. HUT: You have not?

18 MR. KING: No.

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

25 MR. KING: No.

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1 MR. HUT: When I say you here, I hope
2 the context indicates this, I mean you or anybody
3 at the Union Pacific Railroad about whom you
4 know.

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

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

7 MR. ONGERTH: I had a few, personally.

8 MR. HUT: Tell me what discussions you
9 had.

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

12 MR. HUT: Any other regions?

13 MR. ONGERTH: Not with shippers.

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

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

23 MR. HUT: Any others?

24 MR. ONGERTH: Conversations with some
25 short lines, which again are not shippers.

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1 MR. MILLS: Let me reintroduce myself.
2 I'm Chris Mills with Slover & Loftus. And as you
3 may recall from the introductions at the
4 beginning of the day, my clients are interested
5 primarily in coal, the effect of the merger on
6 coal transportation. I will also try to follow
7 the ground rules laid down by Mr. Hut and
8 Mr. Hemmer. Most of my questions will be
9 directed to Mr. King but I may ask the wrong
10 question. Mr. King, again, if you want to defer
11 it to Mr. Ongerth, that's fine. I will have some
12 questions for Mr. Ongerth as well.

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

20 MR. KING: Yes, except for the period
21 of July -- middle of July '93 until November 1,
22 '95 when I was on a risk management job.

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

25 MR. KING: Yes.

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

5 MR. KING: In general, yes.

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

10 MR. KING: That's correct.

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

17 MR. KING: It was one factor.

18 MR. MILLS: Referring to page 60 of
19 your verified statement, in separate testimony by
20 Mr. King, the second paragraph, about two-thirds
21 of the way down that paragraph, there is a
22 sentence that reads, "We have reorganized our
23 operating regions, returning experienced CNW
24 officers who had been rotated to other parts of
25 the UP system to CNW territory."

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1 Can you tell us when the CNW officers
2 or the so-called experienced CNW officers
3 initially joined the Union Pacific?

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

6 MR. MILLS: Yes.

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

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

11 MR. KING: That sounds about right.

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

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

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

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

22 MR. MILLS: And he was based in
23 Chicago?

24 MR. KING: Yes.

25 MR. MILLS: And when he left CNW and

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1 joined Union Pacific, where was he assigned.

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

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

6 MR. KING: Yes.

7 MR. MILLS: And when did that occur?

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

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

14 MR. ONGERTH: In a general way, yes.

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

24 MR. KING: Yes

25 MR. MILLS: And then, the second

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1 Colorado and Utah that may occur in the next five
2 years.

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

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

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

18 MR. KING: Yes, there has.

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

21 MR. HEMMER: Which railroad?

22 MR. MILLS: Union Pacific.

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

25 (Messrs. Ongerth and Carey exit)

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1 deposition room.)

2 (Discussion off the record.)

3 MR. HEMMER: I have agreed to make a
4 statement regarding the nature of the
5 application, which is identical to applications
6 filed in all other merger proceedings in the last
7 15 years or so.

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

20 All of that, however, focuses on
21 a -- is intended to look at the effects of the
22 merger in isolation. No attempt was made, and we
23 understand that commission regulations did not
24 contemplate, but no attempt was made to look at
25 future changes in traffic of any kind, including

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1 increases in Powder River Basin coal traffic,
2 Colorado and Utah coal traffic, lumber traffic,
3 intermodal traffic, steamship traffic or any
4 other type, nor was any attempt made to look at
5 the types of capacity improvements, changes in
6 operations and new operating patterns that would
7 be expected to be associated with all of those
8 future changes, which, frankly, we hope will
9 occur.

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

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

21 MR. HEMMER: That's right.

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

24 MR. MILLS: So changes in a routing,
25 for example, that arise because of the merger

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1 would be considered, would that be correct?

2 MR. HEMMER: Because of the merger,
3 yes.

4 MR. MILLS: But not due to extraneous
5 factors?

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

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

14 MR. HEMMER: Thank you.

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

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

19 MR. MILLS: Yes.

20 (Messrs. Ongerth and Carey reenter
21 deposition room.)

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

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1 MR. KING: That number sounds about
2 right.

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

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

9 MR. MILLS: Mr. King, this Exhibit 6
10 for identification appears to be a news release
11 issued by the Union Pacific Railroad on December
12 28th, 1995, is that correct?

13 MR. KING: Yes.

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

18 MR. KING: Yes.

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

22 MR. KING: Yes.

23 MR. MILLS: Notwithstanding the
24 stipulation that was recently made, Mr. King, let
25 me ask you this. Would you agree that increases

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1 in traffic that are not related to the merger may
2 affect the merged system's ability to implement
3 the operating plan in the manner described in the
4 verified statement and in the operating plan
5 itself?

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

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

13 MR. KING: Yes.

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

24 MR. KING: Could you read that back to
25 me, please?

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1 THE REPORTER: "Question: In
2 developing the operating plan for the merged
3 entity, did you consider -- and I'm focusing on
4 coal traffic moving to the Midwest now -- any
5 changes in plans by electric utilities or
6 facility changes by other carriers, for example,
7 in the Chicago area or Wisconsin that might
8 result in a change in the routing of coal traffic
9 that would mean additional movements to Chicago
10 as opposed to other points?"

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

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

15 MR. KING: Generally, yes.

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

20 MR. KING: Generally, yes.

21 MR. MILLS: And would a change in that
22 routing under which all that tonnage would move
23 to Chicago be something that would be relevant to
24 your development of the operating plan as it
25 relates to coal traffic?

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1 MR. KING: Well, it depends on the
2 volume per day and what it would generate as far
3 as trains and things -- factors such as that
4 would have to be known before I could really
5 answer that.

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

10 MR. KING: Yes.

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

18 MR. KING: Yes.

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

21 MR. KING: Yes.

22 MR. MILLS: I'm going to refer to the
23 map that appears in a pocket attached to volume 1
24 of the application entitled lines of applicant
25 carriers and other western railroads. I'm going

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1 to place this map in front of you, Mr. King. To
2 the extent you need to refer to it, please do
3 so.

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

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

14 MR. MILLS: Yes, premerger.

15 MR. KING: That's correct.

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

21 MR. KING: Somewhere between 16 and 22.

22 MR. MILLS: And given, on eastbound
23 traffic, some moves from Gibbon to Council
24 Bluffs, Fremont, Omaha and eastward toward
25 Chicago and Kansas City, correct?

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1 MR. KING: That's correct.

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

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

9 MR. MILLS: Yes, Fremont or Council
10 Bluffs.

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

17 MR. MILLS: As I understand it, under
18 the merger operating plan, in general, intermodal
19 traffic from southern California, in particular,
20 perhaps some from central California, will be
21 concentrated on the current SP route through El
22 Paso and Tucumcari and the route from southern
23 California, at least, to the Chicago area via
24 North Platte will handle primarily manifest and
25 other traffic, the traffic other than intermodal

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1 and automotive, is that correct?

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

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

12 MR. KING: Still referring to southern
13 California?

14 MR. MILLS: Yes.

15 MR. KING: That's correct.

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

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

25 MR. MILLS: So there will be no

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1 significant decrease in the number of intermodal
2 trains operating over that route.

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

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

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

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

16 MR. ONGERTH: This is from southern
17 California?

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

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

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

25 MR. ONGERTH: Grand Junction in either

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1 Pueblo or Denver and then eastward.

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

4 MR. ONGERTH: That's correct.

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

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

13 MR. MILLS: Is that in each direction?

14 MR. ONGERTH: Yes

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

18 MR. ONGERTH: Both central and southern
19 California trains?

20 MR. MILLS: Yes.

21 MR. ONGERTH: That's a bunch. Let me
22 see if I can find something in here to help
23 that. On pages 348 and 349, you've got
24 intermodal Golden State eastbound and intermodal
25 Golden State westbound. It shows five schedules

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1 questions about changes in routing for Powder
2 River Basin coal trains destined to the Midwest
3 and Texas as a result of the proposed merger.
4 First of all, coal trains operating from the
5 Powder River Basin to the Chicago and Wisconsin
6 area presently operate through Council Bluffs and
7 Missouri valley rather than through Fremont and
8 California junction. is that correct?

9 MR. KING: Yes.

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

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

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

22 MR. KING: Yes.

23 MR. MILLS: Has the additional coal
24 traffic that may move from those origins over
25 this route had any impact on the physical -- on

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1 your restoration of improvements to the physical
2 plant in that area or the routing of trains in
3 that area, the Omaha-Council Bluffs-Fremont
4 area?

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

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

23 MR. KING: Yes.

24 MR. MILLS: At present, those trains
25 moving to those plants move via Gibbon and Kansas

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1 Dotsero and over the Tennessee Pass line to
2 Pueblo, is that correct?

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

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

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

12 MR. ONGERTH: It sure does.

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

18 MR. ONGERTH: Yes.

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

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

24 MR. MILLS: From an operating
25 standpoint, are Orestod and Bond considered

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1 basically the same point?

2 MR. ONGERTH: Probably, yes.

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

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

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

17 MR. ONGERTH: It changes.

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

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

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1 Pass. The shorter route is to go via Denver.

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

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

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

11 MR. ONGERTH: That sounds about right.

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

15 MR. ONGERTH: Yes.

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

18 MR. ONGERTH: Yes.

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

23 MR. ONGERTH: No.

24 MR. MILLS: Can you describe the
25 differences in general.

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1 MR. ONGERTH: There is a lot more joint
2 rail on the Tennessee Pass route. The grade is
3 significantly different on the Tennessee Pass
4 route.

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

8 MR. ONGERTH: Three percent.

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

11 MR. ONGERTH: They not only require
12 helper locomotives, they split the trains.

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

15 MR. ONGERTH: Yes.

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

25 MR. ONGERTH: There are two

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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 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 proceedings being taken down by Stenotype
by FERNITA R. FINKLEY and CRAIG KNOWLES and
transcribed under their direction.

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1 show -- the numbers show an increase from the
2 1994 base of 4 trains per day to 6 trains a day
3 between Bond and Dotsero, correct? I'm looking
4 at freight only.

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

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

12 MR. ONGERTH: Yes.

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

20 MR. ONGERTH: Grand Junction to
21 Helper?

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

24 MR. ONGERTH: All right. Dotsero to
25 Grand Junction we go from 18 to 9 for freights.

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1 and Grand Junction to Helper we go from 18 to 8.

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

9 MR. ONGERTH: That's correct.

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

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

16 MR. MILLS: Let me show you --

17 MR. ONGERTH: But I can't recall.

18 MR. MILLS: Let me show you the
19 Burlington Northern/Santa Fe's comments on the
20 primary application, specifically the verified
21 statement of Neal Owen, the bottom of page 7.
22 Mr. Owen indicates there that BN/Santa Fe plans
23 to operate 6 trains a day in each direction in
24 that corridor, 3 in each direction; is that
25 correct?

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1 MR. ONGERTH: Says 6 regular trains, 3
2 train pairs between Denver and Richmond/Oakland.

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

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

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

18 I'd like to have marked as King-Ongerth
19 Deposition Exhibit 8 a two-page exhibit
20 entitled -- first page of which is entitled
21 5-Year Coal Plan 1996 to 2000, the second page of
22 which is entitled SP Coal Tonnage 1995-2000,
23 bears Bates numbers HC65-000001 and HC65-000010.

24 MR. NORTON: For the record, are you --
25 do you know whether these two pages were stapled

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1 MR. MILLS: The next line is North
2 Platte to South Morrill, Nebraska, and that is
3 the route of coal -- the most coal trains
4 operating from the Powder River Basin toward
5 either Kansas City or Council Bluffs; is that
6 correct?

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

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

14 MR. KING: Yes.

15 MR. MILLS: Now, that shows a decrease
16 in the number trains per day from 40 in 1994 to
17 39 in 1990 -- postmerger, correct?

18 MR. KING: That's right.

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

24 MR. KING: That's correct.

25 MR. MILLS: And that's 23 loaded

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1 trains, correct?

2 MR. KING: That's right.

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

6 MR. KING: That's correct.

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

10 MR. KING: That's correct.

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

16 MR. KING: That's correct.

17 MR. MILLS: And can you confirm that in
18 1994 the total Powder River Basin originations
19 for the Union Pacific were approximately 86
20 million tons?

21 MR. KING: That sounds approximately
22 right.

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

25 MR. KING: Yes, they are.

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1 MR. MILLS: Would the projected
2 increase for 1996, to your knowledge, be --
3 exceed ten million tons?

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

7 MR. MILLS: I think it has been.

8 MR. KING: What's the question again?

9 MR. MILLS: Can you confirm that in
10 1996 the increase over 1995 would exceed ten
11 million tons?

12 MR. KING: Yes.

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

15 MR. KING: Yes.

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

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

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

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

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

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

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

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

25 MR. KING: Well, depends on how much we

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1 use the Yoder.

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

4 MR. KING: Yes.

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

11 MR. KING: That's correct.

12 MR. MILLS: Would a fair average tons
13 per train for Powder River Basin trains be about
14 12,000 tons?

15 MR. KING: Approximately, yes.

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

20 MR. KING: Approximately 1,166.

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

24 MR. KING: Yes.

25 MR. MILLS: So you have to double that

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1 1,166 to get the total trains per day in both
2 directions -- trains in both directions,
3 correct?

4 MR. KING: Yes.

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

7 MR. KING: 2,333.3332.

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

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

13 MR. MILLS: You said 2,333 divided by
14 365 produces how many trains per day on average?

15 MR. KING: 6.39.

16 MR. MILLS: Thank you. About 6.4.

17 MR. KING: Right.

18 MR. MILLS: In your verified
19 statement -- I'll address this to Mr. King -- you
20 describe the effect of the merger operations
21 between Topeka and Kansas City. And with respect
22 to the operation of coal trains from the Powder
23 River Basin to Texas, I believe you indicated
24 yesterday and in the verified statement that once
25 the merger plan is fully operated, those trains

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1 would no longer operate between Topeka and Kansas
2 City; is that correct?

3 MR. KING: That's correct.

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

7 MR. KING: Yes.

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

11 MR. KING: That's correct.

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

16 MR. KING: That's correct.

17 MR. MILLS: Let me refer you one final
18 time, I believe, to the traffic density exhibits,
19 specifically page 379. I want to make sure I
20 understand this correctly. About five lines down
21 there's the line segment Kansas City to Topeka
22 via UP which shows a change or increase from the
23 1994 base of 50 trains to postmerger trains per
24 day of 64, correct?

25 MR. KING: That's correct.

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

6 MR. KING: That's correct.

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

9 MR. KING: That's correct.

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

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

15 MR. MILLS: That was my next question.
16 If you add the 50 trains a day for the UP and the
17 23 trains a day for the SP, you get 73 trains
18 total, right?

19 MR. KING: That's correct.

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

25 MR. KING: That's correct.

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1 MR. MILLS: Nor do I understand the
2 minus nine number in the far right-hand column.
3 You need to look at both the UP and SP density
4 charts, correct?

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

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

15 MR. KING: It can be, yes.

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

20 MR. KING: That's correct.

21 MR. MILLS: In fact, prior to the
22 merger of Union Pacific in Chicago Northwestern,
23 the movements of Powder River Basin coal via the
24 Union Pacific involved -- necessarily involved a
25 joint line movement, did they not, between CNW

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1 and UP?

2 MR. KING: Yes.

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

6 MR. KING: Most of the time, yes.

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

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

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

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

23 MR. MILLS: By WRPI you're referring to
24 the CNW subsidiary and the Powder River Basin
25 Western Railroad Properties, Incorporated?

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1 MR. KING: That's correct.

2 MR. MILLS: It is correct. is it not,
3 that the Burlington Northern had and has a
4 single-line route from the same Powder River
5 Basin mines to the Chicago area?

6 MR. KING: I don't know what their
7 route is as far as single-line -- you're not
8 talking about single track or double track?

9 MR. MILLS: I'm talking about one
10 railroad. In other words, BN can operate from
11 the Powder River Basin straight to Chicago
12 without handing the trains off to another
13 railroad until they get to Chicago.

14 MR. KING: That's correct.

15 MR. MILLS: Are you aware that CNW and
16 Union Pacific handles substantial volume of
17 Powder River Basin coal traffic for Commonwealth
18 Edison?

19 MR. KING: Yes.

20 MR. MILLS: Are you familiar in general
21 with the movement from the Powder River Basin to
22 Georgia Power's plant sharer south of Atlanta,
23 Georgia?

24 MR. KING: Yes.

25 MR. MILLS: And that involves a

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1 movement, does it not -- let's take prior to the
2 CNW merger. That involved a movement via CNW and
3 UP to Memphis, Tennessee, correct?

4 MR. KING: That's right.

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

7 MR. KING: That's correct.

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

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

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

18 MR. KING: Yes, they do.

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

21 MR. KING: Yes, they did.

22 MR. MILLS: I'd like to ask you to turn
23 to page 60 of your verified statement. Let me
24 say in your separate testimony I commend you for
25 your candor in acknowledging the service problems

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1 and the statement that you've been perhaps too
2 aggressive in the way we absorb CNW. And you
3 indicate at the end of that same paragraph in
4 which that's discussed that, quote, our customers
5 have been complaining, comma, as they should,
6 close quote. Do those customers include any coal
7 customers, to your knowledge?

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

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

12 MR. KING: And the question again was?

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

16 MR. KING: Yes, they do.

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

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

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

23 MR. KING: Yes.

24 MR. MILLS: Is it fair to say that
25 during the entire period, two-year period 1994

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1 1995, for various reasons the Union Pacific and
2 CNW, prior to the merger, experienced service
3 problems in hauling Powder River Basin coal to
4 the Midwest?

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

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

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

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

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

22 MR. KING: It would vary according to
23 customer. There were some customers we were not
24 doing as well as we would have liked. There were
25 some we were do very well with.

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1 MR. MILLS: So in some instances, that
2 statement could be said of the Union Pacific's
3 coal service?

4 MR. KING: In some instances?

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

9 I'd like to have marked -- I'd like to
10 have marked for identification as King-Ongerth
11 Exhibit 9 a two-page exhibit bearing Bates
12 numbers HC37 - 000005 and HC37 - 000006, and
13 they're a highly confidential designation. And
14 the first line on the first page reads, quote, An
15 Analysis of the 1995 Original Budget, paren,
16 12-1-94, close paren, on Energy Traffic. And
17 I'll represent for the record that this document
18 was produced to the Western Coal Traffic League
19 by the Union Pacific during discovery.

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

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

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1 MR. McGEORGE: That should be \$1.3
2 billion.

3 MR. HEMMER: Back on the record.

4 BY MR. McGEORGE:

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

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

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

11 A. (Mr. King) Yes.

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

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

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

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

25 Q. Yes.

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

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

12 Q. Yes.

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

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

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

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

23 A. (Mr. King) Okay.

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

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 32760
4 UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
5 COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
6 -- CONTROL MERGER --
7 SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN
8 PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
9 SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE
10 DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

11 **HIGHLY CONFIDENTIAL**

12 Washington, D.C.

13 Thursday, February 8, 1996

14 Deposition of R.B. (BRAD) KING and
15 MICHAEL D. ONGERTH, witnesses herein, called for
16 examination by counsel for the Parties in the
17 above-entitled matter, pursuant to agreement, the
18 witnesses being duly sworn by MARY GRACE PRESTO,
19 RPR, a Notary Public in and for the District of
20 Columbia, taken at the offices of Covington &
21 Burling, 1201 Pennsylvania Avenue, N.W.,
22 Washington, D.C., 20044, at 10:20 a.m., Thursday,
23 February 8, 1996, and the proceedings being taken
24 down by Stenotype by MARY GRACE PRESTO, RPR, and
25 transcribed under her direction.

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1 Colorado and Utah that may occur in the next five
2 years.

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

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

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

18 MR. KING: Yes, there has.

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

21 MR. HEMMER: Which railroad?

22 MR. MILLS: Union Pacific.

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

25 (Messrs. Ongerth and Carey exit)

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1 deposition room.)

2 (Discussion off the record.)

3 MR. HEMMER: I have agreed to make a
4 statement regarding the nature of the
5 application, which is identical to applications
6 filed in all other merger proceedings in the last
7 15 years or so.

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

20 All of that, however, focuses on
21 a -- is intended to look at the effects of the
22 merger in isolation. No attempt was made, and we
23 understand that commission regulations did not
24 contemplate, but no attempt was made to look at
25 future changes in traffic of any kind, including

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1 increases in Powder River Basin coal traffic,
2 Colorado and Utah coal traffic, lumber traffic,
3 intermodal traffic, steamship traffic or any
4 other type, nor was any attempt made to look at
5 the types of capacity improvements, changes in
6 operations and new operating patterns that would
7 be expected to be associated with all of those
8 future changes, which, frankly, we hope will
9 occur.

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

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

21 MR. HEMMER: That's right.

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

24 MR. MILLS: So changes in a routing,
25 for example, that arise because of the merger

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1 would be considered, would that be correct?

2 MR. HEMMER: Because of the merger,
3 yes.

4 MR. MILLS: But not due to extraneous
5 factors?

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

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

14 MR. HEMMER: Thank you.

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

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

19 MR. MILLS: Yes.

20 (Messrs. Ongerth and Carey reenter
21 deposition room.)

22 MR. MILLS: Mr. King, is it correct in
23 the year 1995 the Union Pacific originated
24 approximately 100 million tons of Powder River
25 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.

Highly Confidential Version

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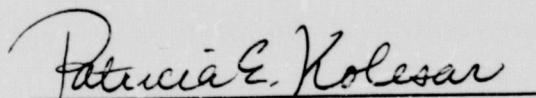
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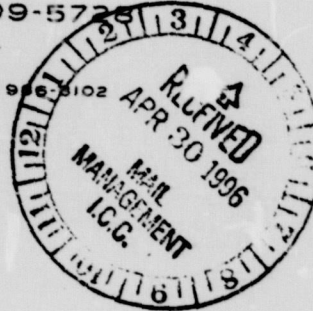
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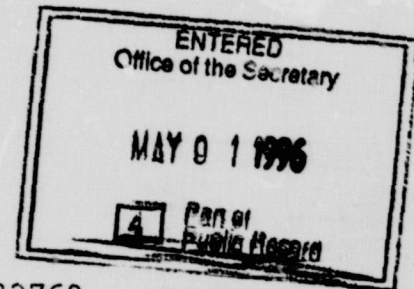
April 30, 1996



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VIA HAND DELIVERY

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
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

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4-19-96

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82656

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Apr # 326

82656

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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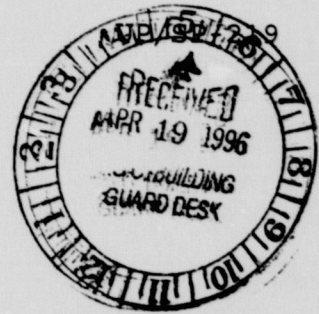
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ORIGINAL

April 19, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' SUBMISSION OF SETTLEMENT AGREEMENT WITH CMA

Union Pacific Corporation ("UPC"), Union Pacific
Railroad Company ("UPRR"), Missouri Pacific Railroad Company
("MPRR"),^{1/} Southern Pacific Rail Corporation ("SPR"), Southern
Pacific Transportation Company ("SPT"), St. Louis Southwestern
Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and The Denver
and Rio Grande Western Railroad Company ("DRGW"),^{2/} hereby
submit the attached settlement that they have reached with the
Chemical Manufacturers' Association. Applicants will address
this important settlement in their rebuttal filing.

^{1/} UPC, UPRR, and MPRR are referred to collectively as "Union
Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to collectively
as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to
collectively as "SP."

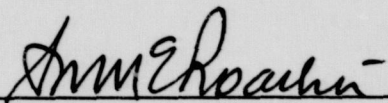
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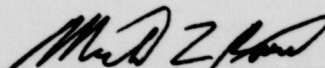
April 19, 1996

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

Premarmer 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

Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railroad Company, SPCSL Corp. and The Denver & Rio Grande Western Railroad Company (collectively, "Applicants," with Union Pacific Railroad Company and Missouri Pacific Railroad Company referred to collectively as "UP," Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railroad Company and SPCSL Corp. referred to collectively as "SP," and UP and SP referred to collectively as "UP/SP");

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 55), 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 Ferrocarriles 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 to 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 Keddies-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.

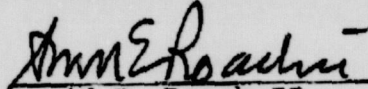
14. Applicants will, in a submission to the STB, state that they are agreeable to annual STB oversight proceedings for five years, with the Board to examine whether the BN/Santa Fe Settlement Agreement has effectively addressed the competitive issues it was intended to address. The Board shall have

- 6 -

authority to impose additional remedial conditions.

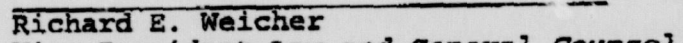
15. In light of the provisions of this agreement, CMA will withdraw its opposition to the UP/SP merger and the BN/Santa Fe Settlement Agreement. A number of CMA's member companies have taken positions in support of or in opposition to the UP/SP merger. This settlement is without prejudice to the right 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.



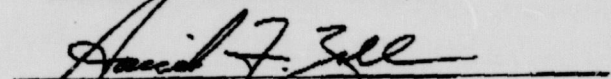
Arvid E. Roach II
Covington & Burling

Counsel for Applicants

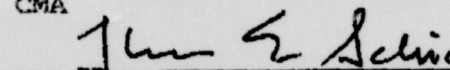


Richard E. Weicher
Vice President-Law and General Counsel
BN/Santa Fe

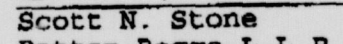
Counsel for BN/Santa Fe



David F. Zoll
Vice President and General Counsel
CMA



Thomas E. Schick
Assistant General Counsel
CMA



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

Counsel for CMA

- 6 -

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
Covington & Burling

Counsel for Applicants

Richard E. Weicher
Richard E. Weicher
Vice President-Law and General Counsel
BN/Santa Fe

Counsel for BN/Santa Fe

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Patton Boggs L.L.P.

Counsel for CMA

DRAFT - April 12, 1996

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.

STB

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Item No. _____

Page Count _____

Apr #307

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*NOT ADMITTED IN D.C.
*RESIDENT BRUSSELS

WRITER'S DIRECT DIAL NUMBER

April 17, 1996

(202) 434-4144

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

Re: UP/SP Merger, Finance Docket No. 32769

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. Konschnik, 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.

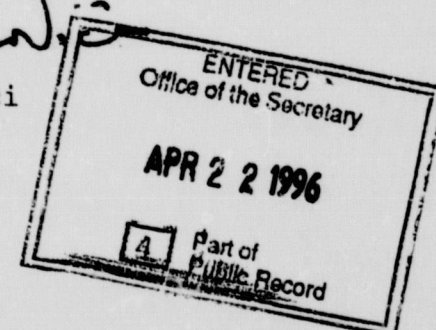
Inasmuch as the enclosed extracts replicate the record on file with the Board, see 49 C.F.R. § 1114.24(h) and 1114.28, see also UP/SP-197, these are being submitted for staff convenience only. Accordingly, they bear the same numbers as the March 29, 1996 filings (SPI-11, MON-2/OLIN-2, UCC-6), with the 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,

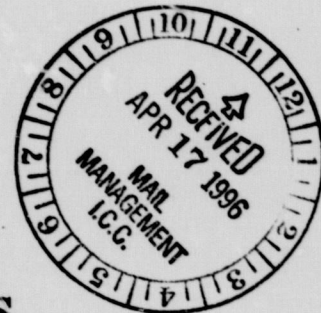
Martin W. Bercovici

Enclosures

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



SPI - 11



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**

STB

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D

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Item No. _____

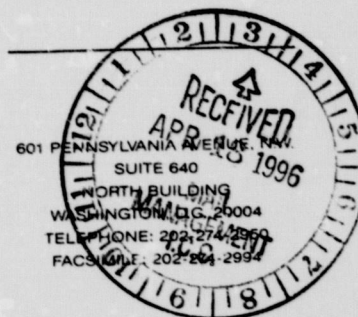
Page Count _____

Apr #315

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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

Re: 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*

Dear Secretary Williams:

Confidential
Enclosed 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
William A. Mullins

Enclosures

cc: The Honorable Jerome Nelson
Restricted Service List

*Confidential Material
Room 2203/2215*

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --

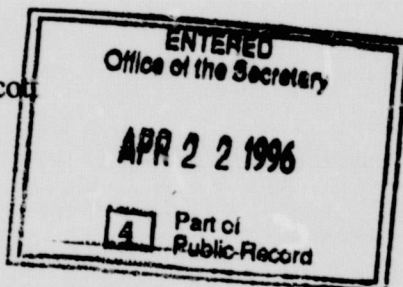
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

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, 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)

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 spread sheet caused me to question NYP about the dimensions shown on the spread sheet (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 10, line 10 : 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 17, footnote 2, line 4 : Change "lower rate than up" to "lower rate than UP"
- Page 19, line 16 : Change "is business" to "this business"
- Page 19, line 18 : Change "was \$144 a car more" to "was \$63 a car more"
- 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 101, line 11 : Change "Park in 1985" to "Park in 1982."
- 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 Montana Rail Link (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"

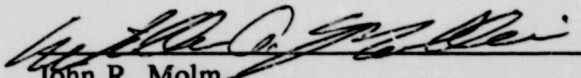
Page 360, line 8 : Change "of 10.4 percent over" to "of 19.7 percent over"

This 18th day of April, 1996.

Richard P. Bruening
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 556-0392
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James F. Rill
Sean F.X. Boland
Virginia R. Metallo
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April 18, 1996


John R. Molm
Alan E. Lubel
William A. Mullins
David B. Foshee
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Suite 640 - North Building
Washington, D.C. 20004-2609
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Attorneys for The Kansas City
Southern Railway Company

TABLE 7.1

UP/SP Defined 2 - to - 1's by STCC and Mileage
Originations & Terminations

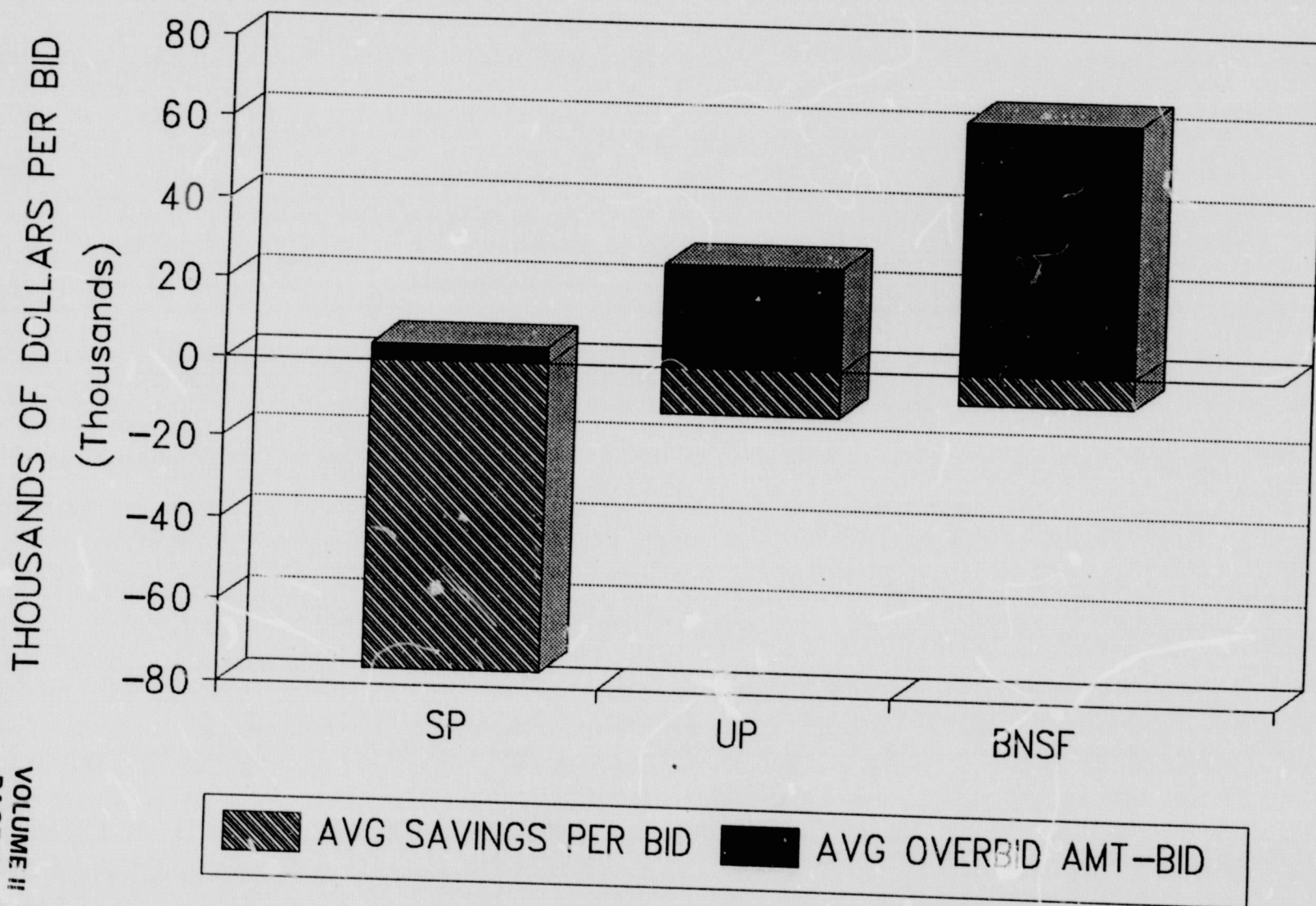
STCC	Commodity Name	2100 +	2100 - 1800	1800 - 1500	1500 - 1200	Mileage Blocks 1200 - 900	900 - 600	600 - 300	300 - 1	Indeterminate	Total Revenue
0	Undetermined STCC numbers										
1	Farm products										
8	Forest products										
9	Fresh fish or other marine products										
10	Metallic ores										
11	Coal										
13	Crude petroleum, natural gas or gasoline										
14	Nonmetallic minerals										
19	Ordinance or accessories										
20	Food or kindred products										
21	Tobacco products										
22	Textile mill products										
23	Apparel or other finished textile										
24	Lumber or wood products										
25	Furniture or fixtures										
26	Pulp, paper or allied products										
27	Printed matter										
28	Chemicals or allied products										
29	Petroleum or coal products										
30	Rubber or miscellaneous plastics										
31	Leather or leather products										
32	Clay, concrete, glass or stone products										
33	Primary metal products, including										
34	Fabricated metal products										
35	Machinery										
36	Electrical machinery, equipment or										
37	Transportation equipment										
38	Instruments, photographic goods, optical										
39	Miscellaneous products of manufacture										
40	Waste or scrap materials not identified										
41	Miscellaneous freight shipments										
42	Containers, carriers or devices, shipping,										
43	Mail, express or other contract traffic										
44	Freight forwarder traffic										
45	Shipper association or similar traffic										
46	Miscellaneous mixed shipments										
47	Small packaged freight shipments										
48	Unknown STCC										
49	Hazardous materials or hazardous										
50	Bulk commodities										
	Grand Total										

REDACTED

Highly Confidential: Filed pursuant to protective order issued in Finance Docket No. 32760

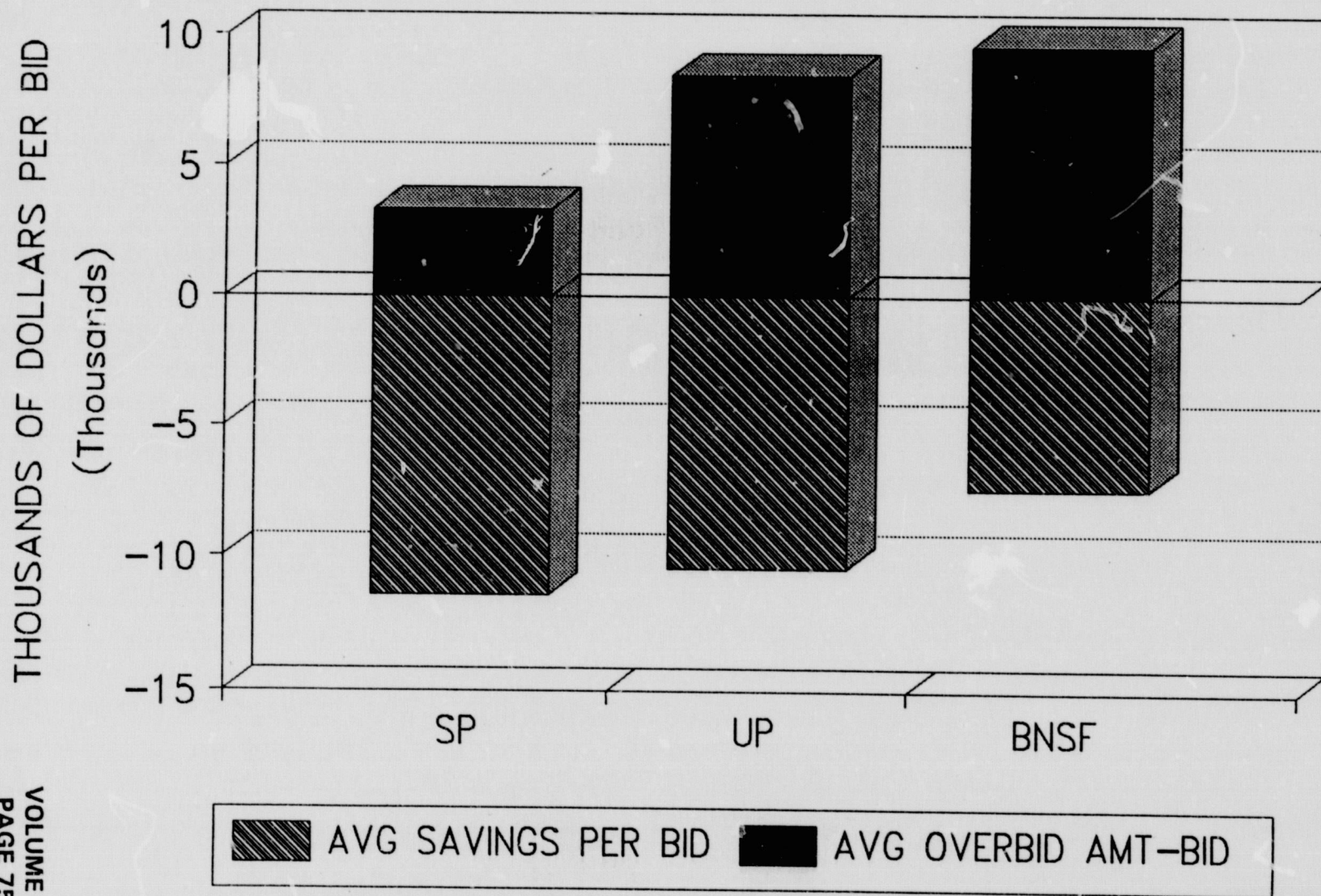
AVERAGE PER BID UNDERBID/OVERBID

BNSF/SP/UP ANALYSIS WITH SEALY

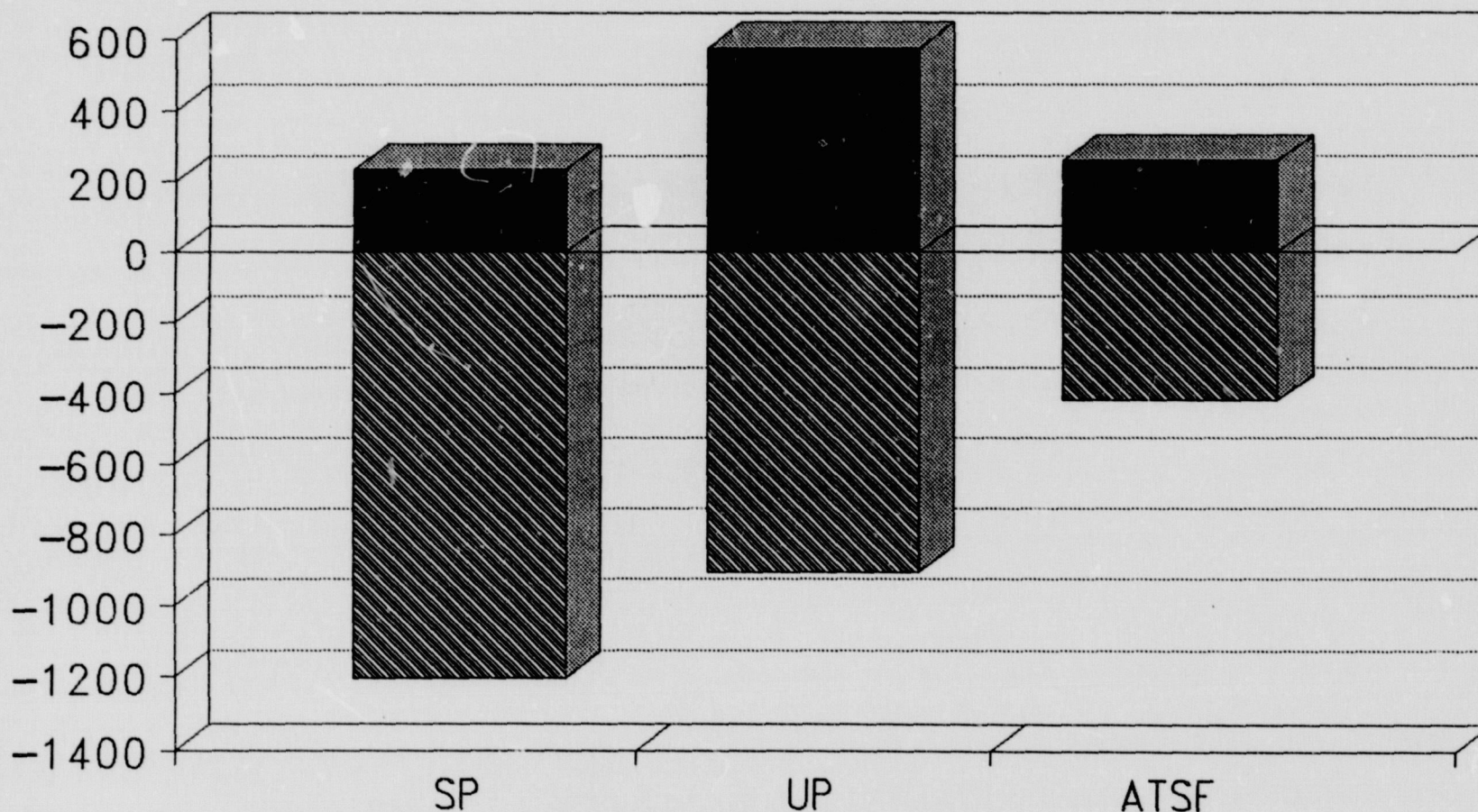


AVERAGE PER BID UNDERBID/OVERBID

BNSF/SP/UP ANALYSIS WITHOUT SEALY



AVERAGE SAVINGS/OVERBID AMMO BY CARRIER - AVERAGE OF BIDS



■ AVG SAVINGS PER BID ■ AVG OVERBID AMT-BID

Table 16
1994 DIVERTED REVENUE
(\$MILLIONS)

Railroad	Revenue
KCS	362.9
CR	561.6
MRL	311.8
WC	68.5
GW	37.0
TM	25.6
BN/SF	772.4

Table 17
OPERATING INCOME DERIVATION
(\$MILLIONS)

Railroad	1996 Revenue	Operating Ratio	Operating Income
KCS	387.2	0.76	92.2
CR	599.2	0.84	98.3
MRL	332.7	0.74	86.5
WC	73.1	0.74	18.9
GW	39.5	0.74	10.3
TM	27.3	0.91	2.5
BN/SF	824.2	0.84	134.3

Table 18
VALUES OF ACQUIRED LINES
(\$MILLIONS)

Railroad	WACC		
	14%	12%	13%
KCS	1,059.3	950.1	861.3
CR	1,129.6	1,013.1	918.4
MRL	994.2	891.7	808.4
WC	217.6	195.2	176.9
GW	118.0	105.8	95.9
TM	28.3	25.3	23.0
BN/SF	1,544.1	1,384.9	1,255.5

Table 19
SP RESIDUAL VALUE - CONRAIL ACQUISITION
(\$MILLIONS)

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

*Numbers subject to rounding.

Table 20 SP VALUE (\$MILLIONS)			
WACCs	12%	13%	14%
SP Value	5,526.0	4,956.3	4,493.1
Less: Debt	-1,508.8	-1,508.8	-1,508.8
Less One Time Expenses	-1,151.9	-1,151.9	-1,151.9
Plus NOLs	303.0	303.0	303.0
SP Value	3,168.3	2,598.6	2,135.4

Table 21
VALUE OF SP WITH CONRAIL ACQUISITION
(\$MILLIONS)

WACCs	12%		13%		14%	
	SP Only	SP/CR	SP Only	SP/CR	SP Only	SP/CR
SP	3,786.8	3,168.3	3,127.1	2,598.6	2,590.7	2,135.4
CR		1,129.6	-	1,013.1	-	918.4
Total	3,786.8	4,297.9	3,127.1	3,611.7	2,590.7	3,053.8
Per Share	24.23	27.51	20.01	23.12	16.58	19.54
Percent Increase		13.5%		15.5%		17.8%

Table 22
PREMIUMS IN SP VALUE FOR VARIOUS
ACQUISITIONS AT 13% WACC

Railroad	Premium
KCS	19.5%
CR	15.5%
MRL	19.0%
WC	4.5%
GW	2.5%
TM	----
BN/SF	21.0%

Table 23
PREMIUM FOR SP FOR COMBINATIONS OF
ACQUISITION AT 13% WACC

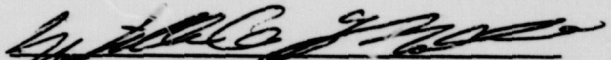
Railroad Combination	Premium
KCS/MRL	38.6%
KCS/WC	23.6%
CR/MRL	34.6%
CR/WC	19.7%

Table 24 SENSITIVITY ANALYSIS TO WACC		
Carrier Combination	WACC*	Premium
KCS/MRL	13/13	38.6%
KCS/MRL	14/16	29.0%
KCS/MRL	14/17	27.4%
KCS/MRL	15/17	25.1%
KCS/WC	13/13	23.6%
KCS/WC	14/15	19.7%

*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.


Attorney for The Kansas City Southern
Railway Company

STB

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32760

4-18-96

D.

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Item No. _____

Page Count 9

Att # 311

ROWN & PLATT

SYLVANIA AVENUE, N.W.

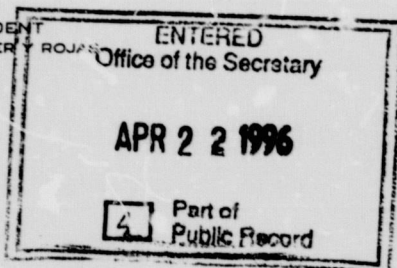
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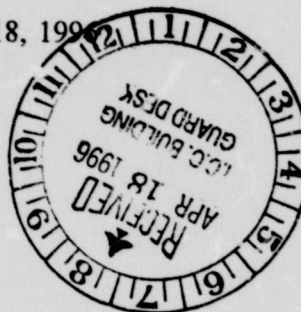
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NEW YORK

MEXICO CITY CORRESPONDENT
JAUREGUI, NAVARETTE, NADER & ROJAS

KELLEY E. O'BRIEN
MEMBER OF THE VIRGINIA BAR
NOT ADMITTED IN THE
DISTRICT OF COLUMBIA
202-778-0607



April 18, 1996



VIA HAND DELIVERY

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

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

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,

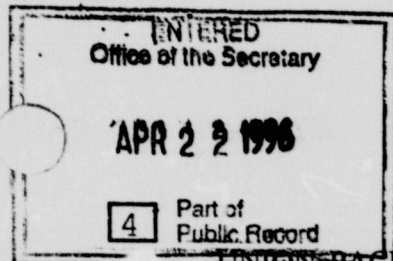
Kelley E. O'Brien
Kelley E. O'Brien

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

ORIGINAL



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

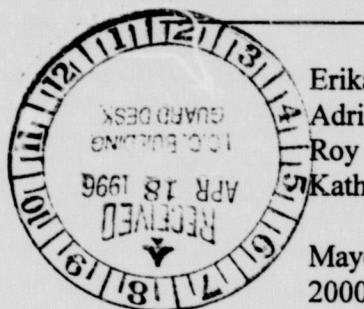
REPLY TO PETITION OF
CONSOLIDATED RAIL CORPORATION
FOR REVOCATION OF SETTLEMENT-RELATED
TRACKAGE RIGHTS CLASS EXEMPTION

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Richard E. Weicher
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Sidney L. Strickland, Jr.

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and

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

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.^{1/} 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

^{1/} 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.

Fin. Dkt. No. 32760 (Sub-No. 1) (UP/SP-26), at 8. 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.

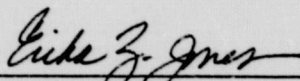
The Commission cited two reasons for rejecting Bunge's argument that "the trackage rights class exemption cannot be invoked with respect to trackage rights provided for in the railroad settlement agreements." Fin. Dkt. No. 32549, Decision No. 38 (served Aug. 23, 1995) ("Decision No. 38"), at 87 n.116. 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,



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Adrian L. Steel, Jr.
Roy T. Englert, Jr.
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Railroad Company
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(817) 333-7954

and

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

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

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

STB

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32760

4-16-96

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Page Count: _____

Apr #296

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MICHAEL L. ROSENTHAL

DIRECT DIAL NUMBER

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DIRECT TELEFAX NUMBER

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April 16, 1996

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LONDON W1Y 8AS
ENGLAND

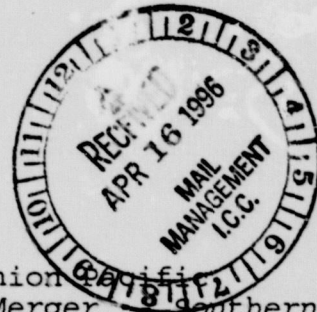
TELEPHONE: 44-171-495 5655
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BRUSSELS CORRESPONDENT OFFICE
44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-512-9890
TELEFAX: 32-2-502-1598

BY HAND

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

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



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

Michael L. Rosenthal

Enclosure

cc (w/o encl.):

All Parties of Record

STB

FD

32760

4-16-96

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Item No. _____

81506

Page Count 8

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SANDERS LLP

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A LIMITED LIABILITY PARTNERSHIP

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999 PEACHTREE STREET, N.E. - SUITE 750

ATLANTA, GEORGIA 30309-3964

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601 PENNSYLVANIA AVENUE, N.W.

SUITE 640

NORTH BUILDING

WASHINGTON, D.C. 20004

TELEPHONE: 202-274-2950

FACSIMILE: 202-274-2994

April 16, 1996

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HAND DELIVERED

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

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

Dear Secretary Williams:

Enclosed 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 NTA

William A. Mullins

Enclosures

cc: The Honorable Jerome Nelson
Restricted Service List



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APR 19 1996

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BEFORE THE
SURFACE TRANSPORTATION BOARD

original

KCS-41

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

ENTERED
Office of the Secretary

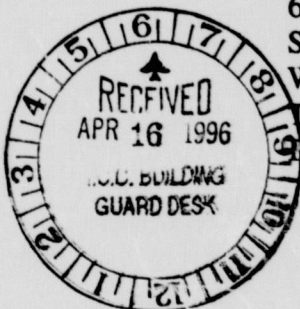
APR 19 1996

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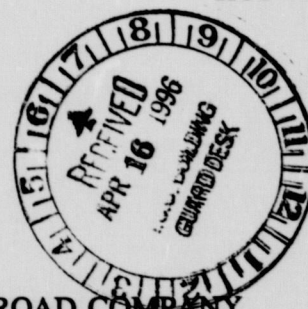
2 Part of
Public Record



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 a 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:

[A]ll 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
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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. Lufel

Attorney for The Kansas City Southern
Railway Company

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Item No. _____

Page Count 6
Apr #299

COMPETITIVE RAIL TRANSPORTATION

REGULATORY OFFICE

1029 North Royal Street

Suite 400

Alexandria, Va. 22314

Office: (800) 814-3531

Fax: (800) 641-2255

April 15, 1996

Via Hand Delivery

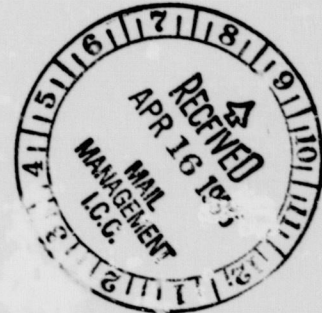
Honorable Vernon A. Williams

Secretary

The Surface Transportation Board

1201 Constitution Avenue, N.W.

Washington, D.C. 20423



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

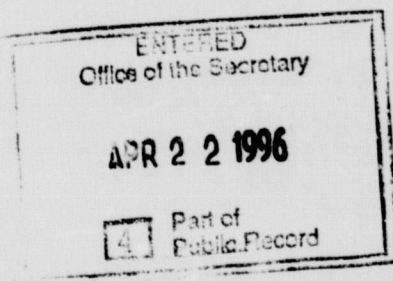
Dear Secretary Williams:

Enclosed for filing in the above-captioned 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.

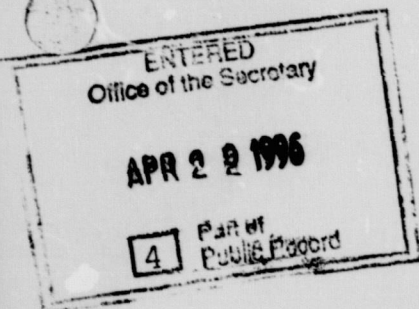
Respectfully Submitted,

John T. Estes

Executive Director



CCRT-7



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

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --

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

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April 15, 1996

COALITION FOR COMPETITIVE RAIL TRANSPORTATION (CCRT)
RESPONSES TO APPLICANTS' FIFTH SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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 V.S.-4). [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

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


John T. Estes

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Union Pacific Corporation
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STB

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Item No. _____

Page Count 9

Apr #300

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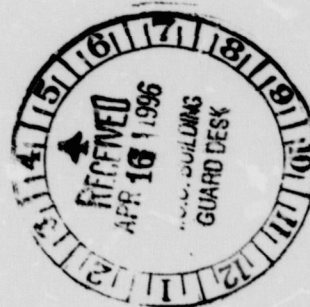
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D-10117 BERLIN
TELEPHONE 011 (4930) 2643 0301
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April 16, 1996

VIA HAND DELIVERY

Mr. Vernon A. Williams
Interstate Commerce Commission
Case Control Branch
Room 1324
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

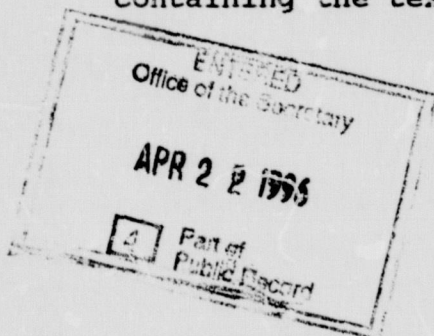


Re: Finance Docket No. 32760, Union Pacific
Corporation, et al. -- Control and Merger --
Southern Pacific Corporation, et al.

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.

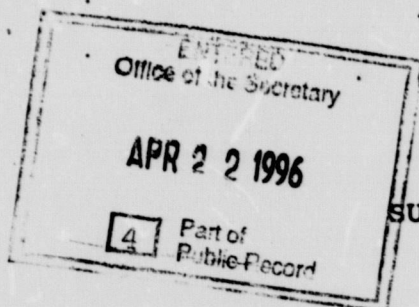
Also enclosed is a 3.5-inch WordPerfect 5.1 disk containing the text of CR-30.



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

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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, 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

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 1988 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 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

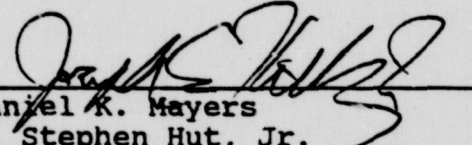
Document Requests 1-35 and 37 are not directed to Conrail.

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. Mayers
A. Stephen Hut, Jr.
Joseph E. Killory, Jr.
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Washington, D.C. 20037

April 16, 1996

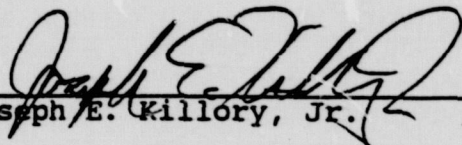
CERTIFICATE OF SERVICE

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. Guinivan
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.

STB

FD

32760

4-16-96

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Item No. _____

Page Count _____

Apr #298

IAN SANDERS LLP

NEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

Part of
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ATLANTA, GEORGIA 30309-3904
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FACSIMILE: 404-885-3652

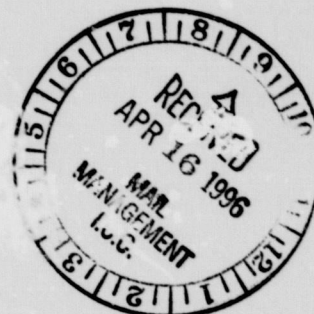
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NORTH BUILDING
WASHINGTON, D.C. 20004
TELEPHONE: 202-274-2950
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April 15, 1996

HAND DELIVERED

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



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

Dear Secretary Williams:

Enclosed 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.

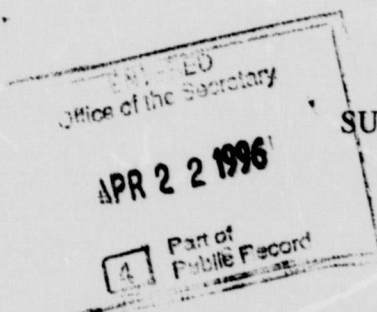
Sincerely yours,

William A. Mullins

William A. Mullins

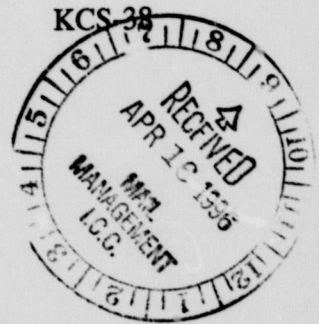
Enclosures

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 INTERIM
AND REQUESTS FOR PRODUCTION OF

ORIGINAL

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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, SPCSL 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:

- (a) James H. Sullivan of James H. Sullivan Research.
- (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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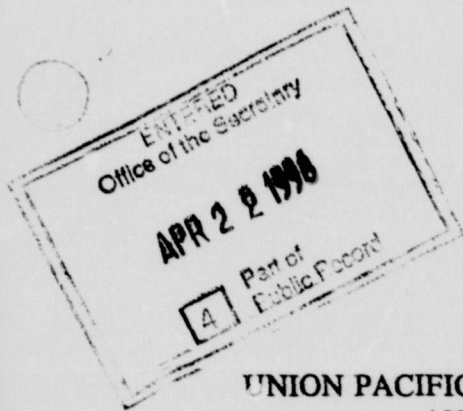
CERTIFICATE OF SERVICE

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.

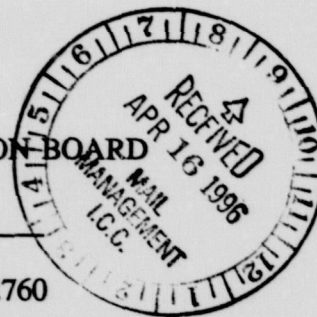
Alan E. Tubel

Attorney for The Kansas City Southern
Railway Company

KCS-39



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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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, 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 Mex, 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 upon 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 28-34-20, 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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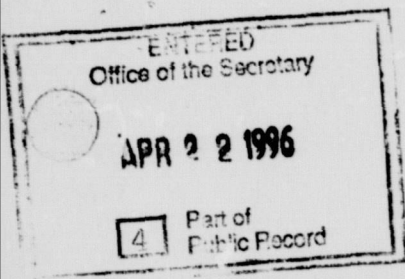
Attorneys for The Kansas City Southern
Railway Company

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.

Alan E. Tubel

Attorney for The Kansas City Southern
Railway Company



SURFA

ORIGINAL

BOARD

File Number No. 32700

KCS-40



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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Attorneys for The Kansas City Southern
Railway Company

April 15, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

Railway Commission
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
Kansas City 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

Shannon, W. & Scott
3020 N. Street, N.W., Suite 400
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 (N0000572K - N0000628K).

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.

Alan E. Jovel

Attorney for The Kansas City Southern
Railway Company

STB

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32760

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Item No. _____

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Page Count 4

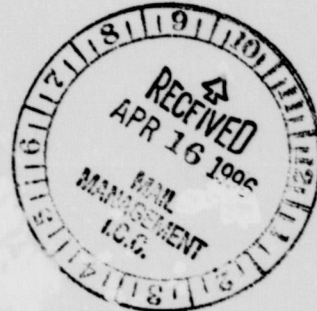
Ap # 244

One James Center
Richmond, Virginia 23219
Telephone: (804) 783-1343
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PETER J. SHUDTZ
General Counsel

April 15, 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

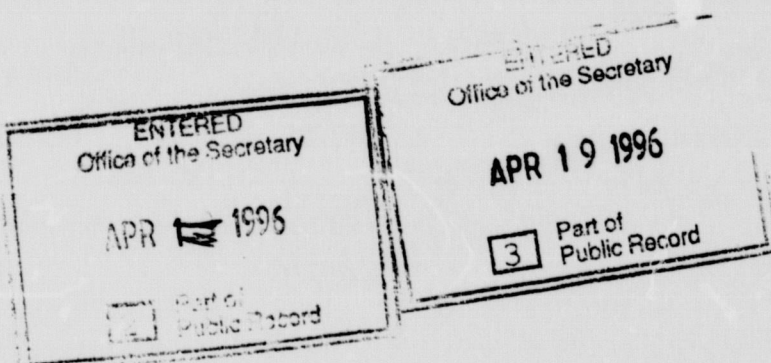
Dear Secretary Williams:

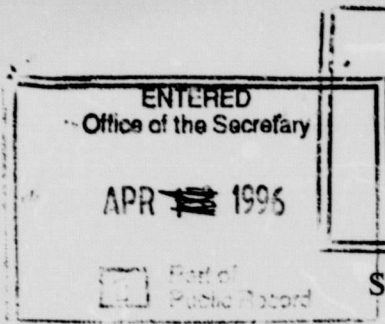
Enclosed for filing is an original and twenty copies of our Reply to Joint Motion of NITL, et al. in the above-captioned proceeding.

Very truly yours,

Pat / MS

cc: The Honorable Jerome Nelson
Administrative Law Judge
Arvid E. Roach II, Esquire
Paul A. Cunningham, Esquire





ENTERED
Office of the Secretary

APR 19 1996

3 Part of
Public Record

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

REPLY TO JOINT MOTION OF
NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE, ET AL.

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.

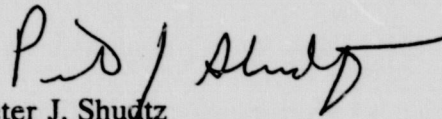
CSX is opposed to the entry of an order as requested in the Joint Motion. Contrary to movants' assertion, the Board's decisions in this proceeding do not preclude the filing of truly responsive pleadings by non-applicants. Moreover, the interpretation now sought by NITL, et al. would limit the ability 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,



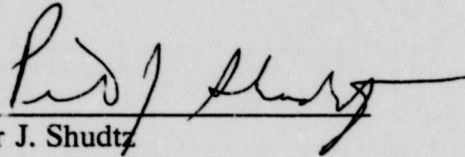
Peter J. Shultz
CSX Corporation
One James Center
901 E. Cary Street
Richmond, Virginia 23219

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.



Peter J. Shudtz
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Richmond, Virginia 23219
(804) 783-1343

STB

FD

32760

4-15-96

D

81459

Item No. _____

Page Count 10

or Apr. #287

81459

UP/SP-215

APR 19 1996

3 Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER

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

APPLICANTS' REPLY TO JOINT MOTION
FOR CLARIFICATION OF DECISION NO. 6

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

Union Pacific Corporation ("UPC"), Union Pacific
Railroad Company ("UPRR"), Missouri Pacific Railroad Company
("MPRR"),^{1/} Southern Pacific Rail Corporation ("SPR"), Southern
Pacific Transportation Company ("SPT"), St. Louis Southwestern
Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and The Denver
and Rio Grande Western Railroad Company ("DRGW"),^{2/} 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, SPCSL and DRGW are referred to collectively
as "Southern Pacific." SPT, SSW, SPCSL 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.^{3/}

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. 2) 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.

^{3/} 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.^{4/} 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.^{5/}

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

^{4/} 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.

^{5/} 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.

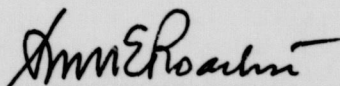
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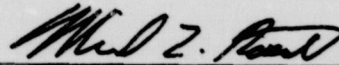
April 15, 1996

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

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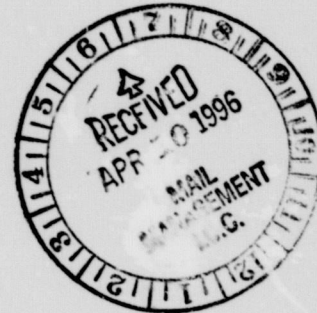
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April 10, 1996



VIA HAND DELIVERY

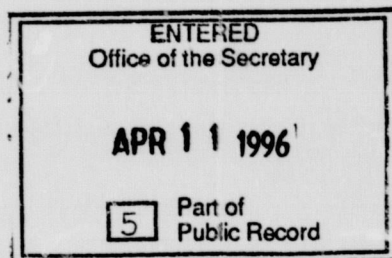
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 20423

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

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.



Enclosures

Sincerely,

Kelley E. O'Brien

Kelley E. O'Brien

BEFORE THE
SURFACE TRANSPORTATION BOARD

BN/SF-51

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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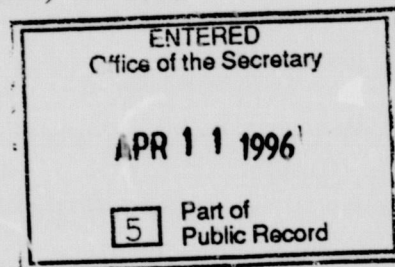
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April 10, 1996



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, 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

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, 1995 (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.

^{1/}(...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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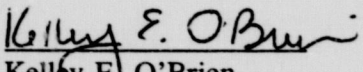
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April 10, 1996

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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