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Item No. _____

Page Count 59
Mar # 789

March 27, 1996

Vernon A. Williams
Surface Transportation Board
1201 Constitution Avenue NE
Washington DC 20423-0001



RE: Finance Docket No. 32760, UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD CO, AND MISSOURI PACIFIC RAILROAD CO. --Control and Merger --SOUTHERN PACIFIC RAIL CORP., SOUTHERN PACIFIC TRANSPORTATION CO., ST. LOUIS SOUTHWESTERN RW. CO., SPCSL CORP. And THE DENVER AND RIO GRANDE WESTERN RAILROAD CO.

Dear Mr. Williams:

This letter transmits the comments of the State of Oregon regarding the Application of the Union Pacific Corporation, et., to acquire the Southern Pacific Transportation Company, et al. The State of Oregon supports this merger, with the inclusion of the agreement with the Burlington Northern Santa Fe. We also request conditions we believe will mitigate damage caused by loss of competition for many Oregon producers.

Our comments include a statement of the state's position prepared by the Oregon Department of Transportation. Included are also letters and comments from Oregon shippers and governmental entities.

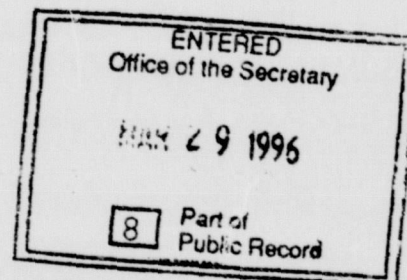
The historic merger of these two railroads offers Oregon both benefits and challenges. We support the merger because we believe that Oregon shippers will benefit from additional single-line access to major markets provided by financially sound railroads. We also believe that the conditions we request are reasonable and, if accepted by the Board, will maintain strong railroad competition in the West.

We urge the Board's acceptance of our conditions as part of the approval of the Application.

Sincerely,

John A. Kitzhaber, M.D.
JAK/ch/1

Attachment



March 25, 1996

DEPARTMENT OF
TRANSPORTATION

Vernon A. Williams
Surface Transportation Board
U.S. Department of Transportation
1201 Constitution Avenue NE
Washington DC 20423-0001

OFFICE OF THE
DIRECTOR

FILE CODE:

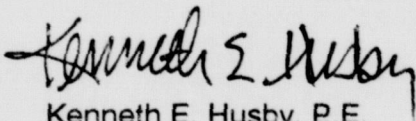
Re: **Finance Docket No. 32760**

Union Pacific Corporation, Union Pacific Railroad Company and Missouri
Pacific Railroad Company
--CONTROL AND MERGER--
Southern Pacific Rail Corporation, Southern Pacific Transportation
Company, St. Louis Southwestern Railway Company, Spscl Corp. and the
Denver and Rio Grande Western Railroad Company

The Oregon Department of Transportation (ODOT) has been designated by the Governor of Oregon as the agency responsible for representing customers of railroads, governmental entities and the public generally in the above-captioned proceeding. As Director of ODOT, I authorize the enclosed Verified Statement of Claudia L. Howells to represent the position of the State of Oregon in this matter.

Oregon's comments are generally in support of the acquisition by the Union Pacific Railroad of the Southern Pacific Transportation Co. Oregon, as specified in these comments, also requests conditions to alleviate competitive damage that we believe may result.

The Oregon Department of Transportation strongly supports a vital, multi-modal transportation system and believes this merger benefits that system. We request that the Board approve the application, with conditions as requested herein.


Kenneth E. Husby, P.E.
interim Director



140 Transportation Bldg.
Salem, OR 97310
(503) 986-3200

**BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION**

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, SPSCL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY**

**WRITTEN COMMENTS SUBMITTED BY

THE STATE OF OREGON

THROUGH ITS

DEPARTMENT OF TRANSPORTATION**

**Communications with respect
to this document should be
addressed to:**

**Claudia L. Howells, Railroad Service Coordinator
Transportation Development Branch
Oregon Department of Transportation
555 13th St. NE
Salem OR 97310-1333**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION**

Finance Docket No. 32760

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

**WRITTEN COMMENTS SUBMITTED BY
THE STATE OF OREGON
THROUGH ITS
DEPARTMENT OF TRANSPORTATION**

INTRODUCTION

My name Claudia L. Howells, Railroad Services Coordinator for the Oregon Department of Transportation. I am authorized to submit this Verified Statement on behalf of the State of Oregon (Oregon) and the Oregon Department of Transportation (ODOT). ODOT has been designated by John Kitzhaber, Governor of Oregon to represent shippers, port districts, local governments and the public generally in this proceeding.

I have been employed by ODOT since January 1, 1996. I was previously employed, with the same responsibilities, by the Oregon Public Utility Commission for 11 years. I have participated in numerous proceedings before the Interstate Commerce Commission, including many rail mergers. I am co-chair of the Railroad Committee for the National Association of Transportation Specialists (NCSTS). I have organized seminars on behalf of NCSTS on rail mergers and rail line abandonments.

STATEMENT OF POSITION

Oregon generally supports the acquisition of Southern Pacific Lines (SP) by Union Pacific Railroad (UP), with the inclusion of the agreement with the Burlington Northern and with application of the conditions requested herein.

The merger of these two great railroads is not only the largest in American history, but one of the most complex. There is also no question, that while this may not be the end of rail mergers, it will set in place the western rail system well into the next century. There are most certainly benefits to Oregon and its shippers, but there are also very real concerns. Some of the concerns are specific and can be remedied. Others are of larger scope, beyond remedy, and raise greater questions about the future of the nation's rail system and the public's role in that future.

The merger of the UP and SP became inevitable with the approval of the merger of the Burlington Northern and Santa Fe (BNSF), which in turn was entirely predictable with the merger of the UP and the Chicago Northwestern Railroad (CNW). While the UP can well survive competition with the BNSF, SP's competitive position is severely disadvantaged. The alternative to merging with the UP could well be the divestiture and break-up of the SP system, an alternative the Oregon would not find acceptable.

In view of our current and historic interest in retaining the north-south rail corridor connecting Oregon with California and beyond, we believe this merger is in the

public interest. We also believe that the other benefits include: additional market access for both UP and SP shippers in Oregon; the completion of single-line access from border to border; and perhaps most importantly, Port of Portland's access to Californian, Mexican and Southwest markets.

We suggest, however, that there are competitive and operational issues that must be resolved for Oregon to fully support the merger. The agreement with the BNSF is good as far as it goes, and we would not support the merger without the agreement, but we believe it can be improved on. We also believe that while benefits accrue to some shippers in Oregon, other shippers are damaged. Further, we believe that while Oregon in general may benefit, we benefit far less than our neighboring states, an issue in terms of future economic development. We also believe that the Operating Plan raises a number of questions that must be answered.

Oregon is requesting conditions that will be fully detailed in this filing.

OREGON'S INTEREST

Oregon has long held that it's primary interest in these proceedings has been to maintain and improve the ability of Oregon producers and manufacturers to compete in national and international markets. Because of Oregon's relative distance from primary markets, efficient and competitive rail service is fundamental to maintaining Oregon's economy. Historically, forest products have been the largest component of the state's economy and it's most significant rail-moved commodity. In recent years, the production of dimensional lumber has declined, a loss that has been deeply felt by the Southern Pacific. On the positive side, processed wood products, paper products and agricultural products have increased both in amount and value, with an increase in "value-added" production. Oregon steel production has also increased, with both the raw material (scrap steel) and the finished product being moved by rail.

In the last five years, Oregon has seen major changes both in its rail system and in the flow of rail traffic. Now, all of SP's branch lines are operated as short lines. All but one of UP's branch lines are operated as short lines, or have been abandoned. BNSF still operates three branch lines, but we anticipate that those lines will be converted to short line operation in the near future. (Appendix A)

In the very near past, far more rail traffic originated in Oregon than terminated. (Appendix B) Now the inverse is true. This is a result of a decline in the forest products industry, but is also a result of the success of the Port of Portland in developing a healthy export business. While much of SP's traffic still depends on Oregon producers for its business, UP, and to some extent BN, either terminate or originate significant tonnage at the Port of Portland, relying far less on Oregon producers. That fact creates both a reason for Oregon's support for the merger, and an explanation for why we believe conditions are important to give all shippers full benefit and full protection.

In the Application, it is interesting, if not ironic, to read in the Joint Verified Statement of Mr. Brad King and Mr. Michael Ongerth, the historic references to the Central Pacific Railroad. Their statement characterizes the merger of the UP and SP almost as a love match long denied. But we need to remember that what John W. Barriger III described as "the most natural merger in American railroading," the United States Supreme Court undid, describing the same merger as suffering "from the sin of bigness."

While supporting this merger generally, we recognize that both the UP and the SP are considerably larger than either railroad was in 1905. We also recognize, that despite heavy competition from the motor carrier industry, which did not exist in 1905, there remains a risk that railroad mergers can suffer from the sin of bigness. We believe that the careful application of protective conditions will reduce the potential in this merger for such a sin.

MERGER ISSUES

Operating Plan

We find much we support in the Operating Plan. Overall, we agree with the Applicants that the consolidated system, particularly the triangle created by joining the SP I-5 Corridor and the UP Columbia Gorge Line, in conjunction with a through connection to Seattle, offer tremendous opportunities to improve the efficiency of the system. In general, though, we are concerned that the Applicants seriously underestimate their own capacity needs. We suggest specifics in this filing. Looking beyond Oregon, we note that the abandonment of major rail lines, as well as consolidation of terminals, seems to be premised on a declining rail business rather than a growing business. We also suggest that it is particularly fool hardy to reduce terminal and line capacity, when

power shortages are currently rampant in the industry. We hope that the new railroad will proceed with constraint as it integrates the two systems.

Our local concerns, and compliments, are as follows:

Portland and Willamette Valley

The Operating Plan has several elements that affect Oregon and several elements that cause us concern. While we understand that the Operating Plan submitted to the STB is not meant to be an "implementation plan," we believe that questions raised in the plan need to be addressed.

Under the combined railroad, traffic destined in Chicago and originating in the Willamette Valley, including traffic turned over at Eugene by the Central Oregon and Pacific Railroad (CORP), will move north on the I-5 Corridor, through Portland and east on UP's Columbia Gorge route. In theory there is merit to this idea, UP's east-west route being the best route to Chicago, but the shift in traffic will substantially increase train moves through Albany, Salem, Portland and points in between. In Salem, the almost doubling of traffic (potentially, from 12 to 24 a day) causes local government concerns, both in terms of safety and environmental effects. (See Letter 12.)

The effect on Portland is far greater. The change in operations, combined with planned consolidation of terminal facilities, will have major effects on both rail and vehicular traffic in Portland. The Operating Plan suggests that UP's Albina facility will be converted to an intermodal facility and that UP's Barnes Yard will handle the region's manifest traffic. From the Operating Plan, one surmises that SP's Brooklyn Yard will be substantially downsized or eliminated. We would suggest that the plan needs considerable refinement.

Portland is currently a railroad interchange nightmare. While some of the problems relate to how reciprocal switching charges are structured, the local rail infrastructure is inadequate to handle the current level of traffic efficiently. Additional traffic will only increase congestion, unless considerable capital investment is made in both the terminals and the connecting trackage. We also suggest that the combined railroad reconsider the elimination or downsizing of Brooklyn Yard. It is the main interchange point for the Willamette & Pacific, Portland & Western, Portland Traction Company railroads which together run approximately 1400 cars a month through Brooklyn Yard. This does not include SP origin/destination traffic that is currently handled at Brooklyn Yard. The possibility also exists for additional traffic being moved off of short lines through Brooklyn Yard.

The infrastructure needs are of such magnitude in Portland, that we seriously suggest that UP move cautiously in changing the traffic patterns in the Willamette Valley. We further suggest that UP work closely with the local governments in Portland, Salem, Albany, and points between to insure that rail traffic flows are fluid, that safety is not compromised, and that congestion at grade crossings is reduced. (For more detail reference the comments from the Portland area governments. Letter 11)

We are not requesting conditions on these issues, but we are, in a separate filing, protesting the abandonment of the Modoc Line. The protest is based in part on our concern about the ability of the Portland Gateway to handle any increase in traffic without major improvements of the I-5 system. Additional concerns will be addressed in more detail in the related filing

Cascade Line

We fully support increasing tunnel clearances on the Cascade Line, as proposed in the Operating Plan. SP has suffered from its inability to operate double-stack container trains through the I-5 corridor, being kept out of the growing intermodal business.

Providing for double-stack operations from Portland to California and into the Southwest opens opportunities to Oregon producers, and should also help reduce long-haul truck traffic, a clear advantage to the public and to the state.

Fleet Management and Car Supply

This is an issue that could be considered a subset of the Operating Plan, but we believe it to be important enough that it deserves it's own section. Oregon shippers, for the last three years, have suffered under almost intolerable service from the SP. Oregon, through its Public Utility Commission, closely monitored service levels and dealt almost daily with SP senior officials. There was one decision that stands out as a major cause of the service disaster. The SP, in order to save money, returned 200 locomotives that SP held under lease. Within days the railroad had very nearly come to a standstill. Recently, when the combined UP/CNW began having serious service problems, source of the problems was a shortage of power. A shudder ran through many Oregon shippers.

SP currently has probably the best locomotive fleet of any of the western railroads, and perhaps of any of the Class I lines. We want to make sure that the SP system will continue to benefit from that investment. Oregon will not tolerate the economic loss suffered by many Oregon shippers during the worst of SP's service. A well-managed locomotive fleet is imperative.

Both UP and SP have committed to an improvement in car supply. We believe that the new system will improve car utilization, thus car supply. We are concerned about the short term effects of the merger on the car allocation systems of the two railroads. We hope that the combined railroad will plan carefully the integration of the two systems. SP's car allocation system was a very poor system, but now appears to be working fairly well. We note that it appears to have greater flexibility than UP's system, a result, no doubt, of improved technology. We encourage the new railroad to retain the flexibility of the SP system, something strongly supported by customers.

Competitive Issues

The most challenging aspects of this Application, are those related to competition. No merger, in my memory, has had such a broad range of shipper positions. Where you are situated in great part determines the position you take. There is no question that the Port of Portland benefits enormously. Shippers who currently have access to the BNSF and to either the UP or SP benefit. UP and BNSF shippers who wish to access California markets benefit. SP shippers located north of Roseburg wishing a faster route to Chicago benefit.

The Interstate Commerce Commission has traditionally looked at mergers based on the effects of that merger alone. In our opinion that approach is becoming more problematic. In our comments on the BN/SF merger, as well as our comments on the UP/CNW merger we expressed concern about "trend toward mega-mergers." We know that there is strong speculation about transcontinental mergers. We are looking at huge railroads serving the nation, and in our opinion, that is not healthy competition. It is government's role to establish a balance between predatory competition and collusion, as it is government's role to protect customers against market abuse. We would suggest that the approach being taken by the Federal Communication Commission and the Federal Energy Regulatory Commission could provide some guidance in maintaining competition among very large, nearly monopolistic entities.

Oregon has long held that the survival of the SP is fundamental to the health of the Oregon economy. The fact that this merger should strengthen the SP is reason alone to support it, but we believe that in doing so we cannot compromise the competitive position of Oregon producers. Carefully applied conditions, in our opinion, will mitigate potential competitive damage.

High Speed Rail and Passenger Service

The I-5 Corridor between Eugene and Portland has been designated as a High Speed Rail Corridor by the federal government and is part of the Cascadian Corridor that extends through Washington to British Columbia. Oregon has received good cooperation from SP in its endeavors to increase passenger rail service on SP's line. We have been assured by the UP that under its direction, cooperation will continue at least at the level we have received from SP. We will reiterate here that increasing rail passenger service both in the I-5 corridor and elsewhere in Oregon is a long-term, well supported effort. This demonstrated by the letter from Oregon's Governor John Kitzhaber, included in the Supplemental to the Application. In turn, the state commits fully to insuring that the efficiency of freight moves will not be compromised.

Environmental Concerns

With hesitation we express here some concern about the Environmental Report. Our hesitation is based on the unfortunate fact that Oregon natural resource agencies were unable to evaluate the effects of the proposed changes in train operations and terminals. This comes as a result of staff reductions and changes in agency responsibilities. This agency is not in a position to comment with any authority on environmental issues, but we are concerned that the Environmental Report lacks much in the way of detail. We think this is, in part, because the Operating Plan also lacks detail. We have been advised by both UP and SP that the Operating Plan is not an "implementation plan," which then raises the question as to what environmental impacts may occur that were not anticipated in the Operating Plan or in the Environmental Report.

We can say with certainty that increases in train traffic have the potential for adversely affecting air quality, primarily because of vehicular traffic stopped at grade crossings in congested urban areas. We also know that the expansion of Barnes Yard

may well require permitting from the Oregon Division of State Lands, the agency vested with the authority to regulated the fill and removal of wetlands. We also know that changes in yard operations in Portland will affect truck traffic, we hope for the better. These issues are discussed in more detail in submissions from local governments that are included within this filing.

CONDITIONS

Condition # 1

Expand the BNSF agreement to include:

1. Open interchange at all points between and within Portland and Eugene for all BN- and SP-direct shippers, as well as for all shippers located on short lines, notwithstanding lease or sale agreements. This should apply to current and future short line customers directly served by either carrier.
2. Grant trackage rights to BN over the SP main line between Portland and Eugene and between Eugene to Klamath Falls over SP's Cascade Line.
3. Require reasonable or free reciprocal switching charges at all points in Oregon among all carriers.
4. Grant BNSF joint trackage between Wallula Junction, located in Washington, and points within a fifty mile radius of Hinkle Yard, near Hermiston.

Argument

We believe that the agreement with the BNSF, which eliminates reciprocal switching charges for "2-1" shippers, establishes a proportional rate agreement for traffic moving over the Portland Gateway, and extends BN trackage rights beyond Bieber into California, provides little benefit to most Oregon shippers. Furthermore, the agreement appears to provide greater benefits to competitors of Oregon producers. Those benefits also accrue to industrial locations in our neighboring states, making Oregon, except for

property within the Port of Portland, less competitive than sites across the Columbia River

BNSF's presence in terms of market share, Oregon is relatively small, as is demonstrated by the 1995 revenue figures provide to ODOT by the three Class I railroads (Appendix C) The combined UP/SP system will dwarf the BNSF in Oregon and the BNSF agreement provides the BNSF little opportunity to expand its market share of Oregon traffic.

We also argue that the "2-1" philosophy is seriously flawed. SP shippers in the Willamette Valley and Southern Oregon have benefited in the last few years from UP's aggressive reload activities. UP often pays the cost of drayage to reload operation in Portland, and also offers highly competitive rail rates into both Chicago and California. As can be verified by ICC Waybill data, the percentage of the traffic is sizable. While some of the reload traffic is "mix and match" carloads, a significant amount is single commodity, single source carloads. In our opinion, UP's competitive presence in SP's territory has functioned as if UP had direct rail access to all SP-served points.

UP may argue that BN can still provide the same competition. While, indeed, BN offers reloading as a competitive option, the affect on SP rates has been far more limited. We would argue that there is no public benefit in increasing truck traffic in heavily congested, non-attainment urban areas, such as Portland and Salem.

Establishing open interchange for customers located on Oregon short lines will provide clear public benefit. As set forth in SP/DRGW Application, 80 percent of SP's traffic in Oregon originates or terminates with its short line partners. Open interchange will allow Oregon shippers to reduce use of reloads, and thereby reduce truck traffic on Oregon highways. The traffic that will return to Oregon's short lines, from mill to interchange point will allow our very important short lines to their revenue base.

As a direct result of poor SP service over the past three years, short lines have been starved of traffic as shippers and customers of Oregon producers have chosen to make greater use of reloads on the UP and BNSF. Were it not for the presence of the reloads and better service from BNSF, this traffic would have disappeared because customers would have chosen to purchase their products from other regions of the country. The effect of three years of poor service from SP must not be ignored in terms of diminishing traffic handled by these critically important short lines.

We know first hand that Oregon short lines that have the ability to interchange with more than one Class I carrier have clear advantages over those who do not. They handle more carloads, and therefore, receive more revenue. The communities they serve would also benefit by being better positioned for retaining existing businesses and attracting new industry.

We also believe that this condition is critical to the future of the International Port of Coos Bay, now located on the Central Oregon & Pacific Railroad (CORP) and entirely captive to the SP. While not a part of this merger, we would like to see the same benefits provided to the Port of St. Helens, a port located on BN's Astoria Branch. The Port of St. Helens recently lost a bid to bring a new steel mill to its property. According to the industry, the reason for going elsewhere was based on non-competitive rail rates. The industry has chosen a site in the State of Washington that is served by both the UP and the BNSF.

The description in the BNSF filing, laying out the terms of the agreement, refers to the expanded trackage rights agreement that adds competition in the I-5 Corridor. The Oregon Trunk (also called the Bend Branch) is 100 miles east of the I-5 Corridor, with

Note: The City of Prineville Railroad has benefited from interchange with the BN and the UP since around 1915. The Port of Tillamook Bay Railroad has interchanged with the SP and BN under a contractual arrangement since 1987. The competitive option has kept both railroads alive.

the Cascade Mountain Range in between. It is not a competitive option for producers in the Willamette Valley or in Southern Oregon. The agreement provides some benefit to Central Oregon producers, who will now have, under the terms of the BNSF agreement, competitive, single-line access into California and Southwest markets. This is a benefit we believe that the majority of Oregon producers deserve.

We also wish to call attention to the current traffic levels and track conditions of the Oregon Truck. The 152 mile line is classified as a branch by UP and as a secondary main line by BNSF. The combined freight density is under 7 million gross tons per year. The maximum speed varies between 40 and 60 mph, with segments through the Deschutes River Canyon restricted to 25 mph.

Our request for BN to be granted trackage rights on the SP main line between Portland and Eugene is driven as much by safety concerns as by competitive interest. Currently, the BN is operating over the SP main line as far south as Salem. This agreement was part of a settlement involving the extension of TriMet's light rail commuter line in Washington County. BN leaves SP's main line in Salem and, using an old industrial lead, reconnects with its line, the Oregon Electric. In the past few months, there have been several derailments at this site, caused by running extremely long trains over curvature and grade that were not designed to handle through traffic. Train consists typically include high level hazardous materials. These trains also move through residential areas, near several schools. The increasingly frequent derailments isolate north Salem and the City of Keizer from the rest of Salem, causing major traffic problems and restricting the movement of emergency vehicles. Our efforts to encourage the two railroads to address this situation have been fruitless. (Letter 13)

We are aware that the Oregon Electric may be a candidate for short line operation in the near future. Our requested condition should in no way affect the future of the

Oregon Electric or affect local service provided by either the BN or a succeeding operator.

Granting BNSF trackage rights over the Cascade Line would provide genuine rail competition in the Willamette Valley.

The third element of Condition #1 is taken from the Verified Statement of Richard B. Peterson in Volume 2 of the Application. On page 71, Mr. Peterson state that UP/SP will significantly reduce switch charges. We have to assume that this statement applies to all railroad interchange points, not just to interchange points with the BNSF. We request that the merger be specifically conditioned to reflect Mr. Peterson's statement.

The fourth element of Condition #1 will mitigate damage we believe will be incurred by grain shippers located in northeastern Oregon and Portland General Electric, which operates a coal-fired electrical generating plant at Boardman, Oregon. As if the merger has already been consummated, UP has begun manipulating source markets and car supply in a manner that is detrimental to Oregon shippers and receivers.

We are convinced that no element of this condition jeopardizes the merger. Each element is strongly in the public interest, will improve public safety and will increase rail traffic over-all. We are convinced enough, that we further suggest that BN-captive shippers and short lines be afforded the same access.

Condition #2

Require divestiture of one Central Corridor line.

Argument

Oregon has long held that the competitive access via the Central Corridor is essential to continuing the ability of Oregon producers to compete in national markets. Despite the linkage of the UP and SP lines at Portland, we believe that our traditional position regarding the Central Corridor is still valid. With the merger of the UP and SP, three major east-west corridors will be under the control of a single carrier. With approval of the BNSF Agreement, and acceptance of Oregon's Condition #1, Oregon shippers will be in an improved competitive position, but we are not convinced that the BNSF trackage rights agreement fully mitigates the loss of two equally motivated railroads.

We believe a reasonable solution is for the Board to require divestiture of one of the lines, and allow a third railroad to enter the Western market. At this point, we will not take a final position on the possible inconsistent applications affecting the Central Corridor, but we will suggest that we are most interested in proposals that include retaining the Modoc Line and other lines across Colorado that, like the Modoc, are proposed to be abandoned. We also strongly support the ability of this third carrier to handle traffic that originates on Oregon's short lines.

Allowing the third carrier to procure traffic out of Oregon may also decrease the number of east bound trains that UP anticipates routing north through the I-5 corridor and east over UP's line. As noted in filings from local government located on the line, there is genuine concern about the sharp increase in traffic through many communities.

We submit that this in no way diminishes the benefits derived by UP and SP in the merger. By introducing a third, smaller carrier, it encourages genuine competition both in terms of rates and in standards of service. It further preserves needed rail capacity without forcing undue hardship on either of the two Class I railroads. We are aware that there are similar competitive issues in other parts of the country. We may choose to take a position on other proposals at a later time.

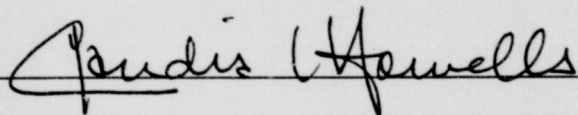
As an alternative to Condition #2, we would consider supporting an extension the agreement with the BNSF that would give trackage rights to the BNSF on the Cascade Line (see Condition #1) and trackage rights over the Modoc Line.

CONCLUSION

We have included comments and letters from local governments and shippers, encouraging as we always have, an open dialogue with affected parties on rail matters. It is indicative of the complexity of this merger that comments and stated positions are not necessarily consistent. We believe, however, that all of the comments enclosed herein, as well as Oregon shippers' comments included in the Application have merit, even when they may not reflect consensus, something which appears difficult to find in this proceeding.

In closing, Oregon asks the Board to approve the acquisition by the Union Pacific Railroad of the Southern Pacific Transportation Company, subject to conditions that will insure a long-term competitive balance among the western railroads. Oregon reserves the right to comment further in this proceeding, and wishes to be served with all future communications.

Respectfully submitted:

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INDEX OF APPENDICES AND LETTERS

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Rail Freight Appendix B

Railroad Revenue Staistics Appendix C

State Agency Letters

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Oregon Economic Development Department Letter 2

Shipper Letters

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Boise Cascade Corporation Letter 4

Hull-Oakes Lumber Co. Letter 5

Timber Products Co. Letter 6

Freight Services Inc. Letter 7

Cascade Warehouse Co. Letter 8

Governmental Units

Bay Area Chamber of Commerce Letter 9

Port of Coos Bay Letter 10

Metro Letter 11

City of Salem Letter 12

SKATS Letter 13

Additional Shipper Letters

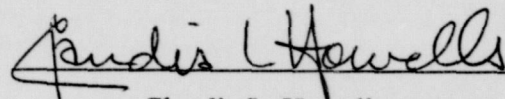
NORPAC Foods Letter 14

Portland General Electric Letter 15

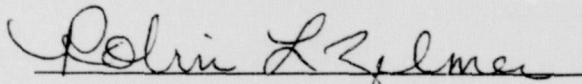
VERIFICATION

STATE OF OREGON)
COUNTY OF MARION)

Claudia L. Howells, being duly sworn, deposes and says that she has read the foregoing statement and knows the contents thereof, and that the same are true as stated.


Claudia L. Howells

Subscribed and sworn before me this 28th day of March, 1996.


Notary Public

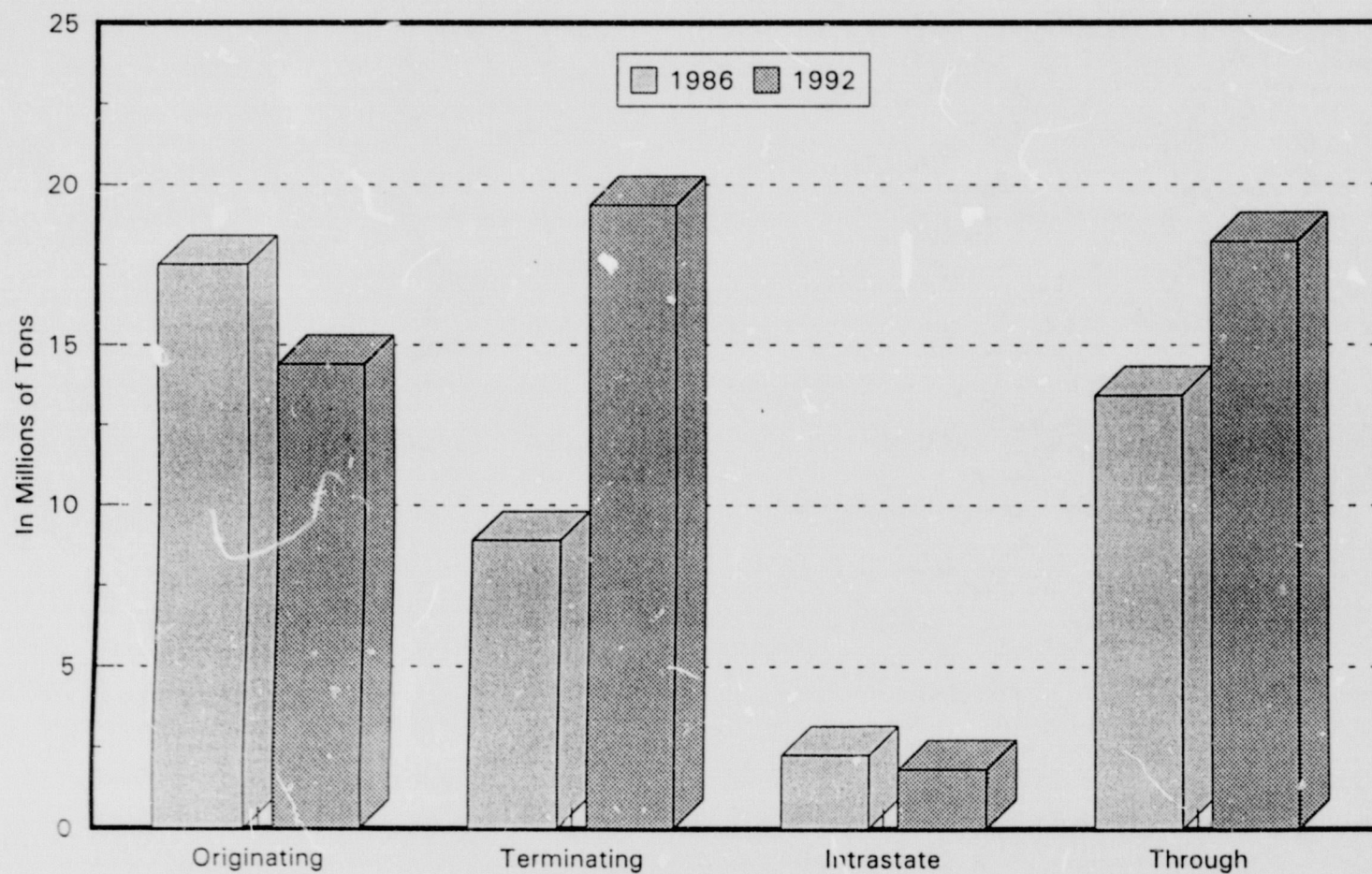
My Commission expires 6-30-98



[illegible]

7-10-4

FIGURE 1-2
OREGON RAIL FREIGHT TRAFFIC
1986 vs. 1992



FEB 26 1996

**OREGON DEPARTMENT OF TRANSPORTATION
GROSS REVENUE FEE STATISTICS FOR CLASS I RAILROADS
1995 VERIFICATION FORM**

REVISED

Railroad: Southern Pacific Transportation CompanyContact Person: Calvin Wong Phone No. (415) 541-2567Address: One Market Plaza, SP Bldg #250 San Francisco CA 94105
Number and Street City State Zip Code

1. GROSS OPERATING REVENUES DERIVED WITHIN THE STATE OF OREGON FROM ALL TRAFFIC, IN THE CALENDAR YEAR 1995 ① \$ 86,456,132
2. MILES OF ROAD TO BE USED IN THE COMPUTATION OF THE FEE ASSESSMENT IN ACCORDANCE WITH OAR 860-49-000(2) ② 366 miles
3. NUMBER OF CROSSINGS TO BE USED IN THE COMPUTATION OF THE FEE ASSESSMENT IN ACCORDANCE WITH OAR 860-49-000(2) ② 362 crossings

OATH

STATE OF California)
)
COUNTY OF San Francisco) ss

I, Calvin Wong, BEING FIRST DULY SWORN, SAY THAT I AM THE Director of Income Taxes OF THE Southern Pacific; THAT THE FOREGOING STATEMENT HAS BEEN PREPARED UNDER MY DIRECTION FROM THE ORIGINAL BOOKS AND RECORDS OF SAID RESPONDENT; THAT I HAVE CAREFULLY EXAMINED THE SAME; THAT IT IS COMPLETE AND CORRECT STATEMENT AND THAT NO IMPROPER DEDUCTIONS WERE MADE BEFORE STATING THE REVENUE AND ASSET STATISTICS THEREIN SET FORTH. I SO VERIFY.

2/23/96

Dated

Signature of officer making affidavit

In accordance with OAR 860-49-030, all Class I railroads shall complete the information requested on this sheet by February 15. Item 1, gross revenues earned in Oregon, may be estimated. Carrier should so note below by checking the appropriate row:

- ① Check one: ☐ Revenues are preliminary. Railroad will resubmit this form as **revised** on or before March 15, 1996.
☒ Revenues are final and will be reported in the annual report to the Oregon Department of Transportation.
- ② Statistics are for **year end 1995**.

ADP: ~~PAVE~~, 17A DET.

Appendix C-2

From: Dan Burns, Dir Admin
418-6321

MAR 18 1996

**OREGON DEPARTMENT OF TRANSPORTATION
GROSS REVENUE FEE STATISTICS FOR CLASS I RAILROADS
1995 VERIFICATION FORM**

Railroad: Burlington Northern Railroad Company
~~Burlington Northern Santa Fe~~

Contact Person: DANIEL L. BURNS, DIRECTOR ADMINISTRATION Phone No. 360-418-6321

Address: 1313 WEST 11TH STREET VANCOUVER WA 98660-3000
Number and Street City State Zip Code

- GROSS OPERATING REVENUES DERIVED WITHIN THE STATE OF OREGON FROM ALL TRAFFIC, IN THE CALENDAR YEAR 1995 32,980,112.61
~~0 534,001,309.55~~
- MILES OF ROAD TO BE USED IN THE COMPUTATION OF THE FEE ASSESSMENT IN ACCORDANCE WITH OAR 860-49-000(2) 526.9 miles
- NUMBER OF CROSSINGS TO BE USED IN THE COMPUTATION OF THE FEE ASSESSMENT IN ACCORDANCE WITH OAR 860-49-000(2) 518 crossings

OATH

STATE OF WASHINGTON
COUNTY OF CLARK

SS

BNRR Co.

I, DANIEL L. BURNS, BEING FIRST DULY SWORN, SAY THAT I AM THE DIRECTOR ADMINISTRATION OF THE Burlington Northern Railroad; THAT THE FOREGOING STATEMENT HAS BEEN PREPARED UNDER MY DIRECTION FROM THE ORIGINAL BOOKS AND RECORDS OF SAID RESPONDENT; THAT I HAVE CAREFULLY EXAMINED THE SAME; THAT IT IS A COMPLETE AND CORRECT STATEMENT AND THAT NO IMPROPER DEDUCTIONS WERE MADE BEFORE STATING THE REVENUE AND ASSET STATISTICS THEREIN SET FORTH. I SO VERIFY.

2/16/96 Daniel L. Burns
Dated Signature of officer making affidavit

In accordance with OAR 860-49-030, all Class I railroads shall complete the information requested on this sheet by February 15. Item 1, gross revenues earned in Oregon, may be estimated. Carrier should so note below by checking the appropriate row:

- ① Check one: ☐ Revenues are preliminary. Railroad will resubmit this form as revised on or before March 15, 1996.
☒ Revenues are final and will be reported in the annual report to the Oregon Department of Transportation.
- ② Statistics are for year end 1995.

BNSFRR-15

* The \$34,001,309.55 originally reported was on a consolidated basis the included \$26,101.67 of BNRR Co's subsidiary company Clatsop Fruit Lique. The amount reported also included Industrial Land revenue, in the amount of \$995,094.27. Amt. Rptd. \$34,001,309.55

$$\begin{array}{r} < 995,094.27 > \text{Ind. Land} \\ < 26,101.67 > \text{WFE} \\ \hline \text{Corrected at } 33,006,113.61 \end{array}$$

MAR 04 1996

**OREGON DEPARTMENT OF TRANSPORTATION
GROSS REVENUE FEE STATISTICS FOR CLASS I RAILROADS
1995 VERIFICATION FORM**

Railroad: Union Pacific Railroad

Contact Person: Kathy Thompson Phone No. (402) 271-6258

Address: 1416 Dodge St - Rm 738 Omaha NE 68179

Number and Street City State Zip Code

1. GROSS OPERATING REVENUES DERIVED WITHIN THE STATE OF OREGON FROM ALL TRAFFIC, IN THE CALENDAR YEAR 1995 ① \$ 238 428 614
2. MILES OF ROAD TO BE USED IN THE COMPUTATION OF THE FEE ASSESSMENT IN ACCORDANCE WITH OAR 860-49-000(2) ② 614 miles
3. NUMBER OF CROSSINGS TO BE USED IN THE COMPUTATION OF THE FEE ASSESSMENT IN ACCORDANCE WITH OAR 860-49-000(2) ② 426 crossings

OATH

STATE OF Nebraska)

COUNTY OF Douglas)

SS

I, Kathy Thompson, BEING FIRST DULY SWORN, SAY THAT I AM THE
Tax Associate OF THE Union Pacific Railroad; THAT THE FOREGOING
 STATEMENT HAS BEEN PREPARED UNDER MY DIRECTION FROM THE ORIGINAL BOOKS AND
 RECORDS OF SAID RESPONDENT; THAT I HAVE CAREFULLY EXAMINED THE SAME; THAT IT IS A
 COMPLETE AND CORRECT STATEMENT AND THAT NO IMPROPER DEDUCTIONS WERE MADE
 BEFORE STATING THE REVENUE AND ASSET STATISTICS THEREIN SET FORTH. I SO VERIFY.

2-28-96 Kathy Thompson

Dated Signature of officer making affidavit

In accordance with OAR 860-49-030, all Class I railroads shall complete the information requested on this sheet by February 15. Item 1, gross revenues earned in Oregon, may be estimated. Carrier should so note below by checking the appropriate row:

- ① Check one: ☐ Revenues are preliminary. Railroad will resubmit this form as **revised** on or before March 15, 1996.
- ☒ Revenues are final and will be reported in the annual report to the Oregon Department of Transportation.
- ② Statistics are for **year end 1995**.

March 8, 1996

Ms. Claudia Howells, Railroad Service Coordinator
Oregon Department of Transportation
Transportation Development Branch
Salem, Oregon 97310



Oregon
Department
of Agriculture

AGRICULTURAL
DEVELOPMENT
& MARKETING
DIVISION

Dear Ms. Howells:

RE: Conditions Sought by Oregon Agricultural Shippers for
Embedding in the UP/SP Merger Approval

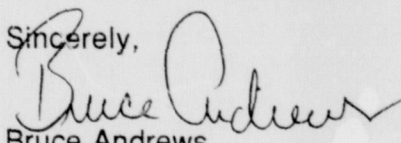
The resulting merger of the UP/SP will limit the rail competition for agricultural shippers between two large rail systems of BN/SP and UP/SP. Hence we wish to join in the State of Oregon's filing in the Finance Docket No. 32760 Before the Surface Transportation Board.

OSDA, on behalf of Oregon agricultural shippers, supports the merger with conditions as follows:

1. BN/SF be granted joint trackage rights from Wallula, Washington to Hinkle Yard in Hermiston, Oregon. This will provide the competitive element for Eastern Oregon shippers when 2. and 3. below are incorporated.
2. Proportional rate agreements based on mileage. An example is Birmingham Alabama where from Eastern Oregon UP services Memphis and BN connects Memphis and Birmingham. Also where from Eastern Oregon UP services Seattle and BN connects Seattle to the Canadian border.
3. Free or reasonable reciprocal switching or in the alternative open interchange. In the Southern California market this condition is most important to maintain competition in line-haul to customers directly served by one carrier system. Another example is Salem, Oregon where at present BN/SF and SP directly serve different shippers; to preserve the competitive element reciprocal switching or open interchange would provide two carrier service instead of one.

Please keep this Department apprised of the merger status.

Sincerely,


Bruce Andrews
Director



One World Trade Center
121 SW Salmon Street
Suite 240
Portland, OR 97204-2587
USA (503) 229-6734
FAX (503) 229-6113



March 26, 1996

Ms. Claudia Howells, Railroad Service Coordinator
Oregon Department of Transportation
Transportation Development Branch
155 13th Street, NE
Salem, Oregon 97310

**RE: Comments submitted by the State of Oregon on the proposed merger of the
Union Pacific and Southern Pacific Railroads**

Dear Ms. Howells:

The Oregon Economic Development Department supports the proposed merger with conditions as outlined in written comments submitted on behalf of the State of Oregon for finance docket 32760.

Overall, we believe this merger as proposed is good for Oregon's economy for two key reasons. First, the strengthening of the Southern Pacific Railroad will benefit many Oregon shippers who have struggled over the last several years due to downturns in the forest products industry and inadequate rail service. Second, the merger would benefit freight traffic moving through the Port of Portland en route to international markets. The continued growth of the Port of Portland as an intermodal point for outbound products to the Pacific Rim is very important to Oregon's economy.

While there are clear benefits to service, we are also concerned about the potential negative impact on competition. The entire western United States would essentially be served by two mega-railroads (the Burlington Northern-Santa Fe/Union Pacific-Southern Pacific). Competitive access becomes more problematic for shippers who are served by only one class I carrier. For these reasons, we support the conditions outlined in the official State of Oregon comments aimed at mitigating this potential threat to competition.

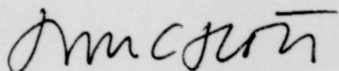


Claudia Howells, Railroad Service Coordinator
March 26, 1996
Page 2

Oregon relies on short line railroads to offer service to many rural communities. Traditionally, the forest products industry has provided a good share of the traffic needed to keep these railroads operational. However, since the late 1980's these communities have been in an on-going process of economic diversification and have struggled to keep rail service viable. These short lines can survive only if they have reasonable access to the mainline railroads. To that end, we support establishing open interchange for customers located on Oregon short lines.

Thank you for the opportunity to comment on the proposed merger.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm C Scott", written in a cursive style.

William C. Scott
Director



General Offices

Transportation/Timber & Wood Products
P.O. Box 72
Boise, Idaho 83707-0072
208/384-7978
Fax: 208/384-7516

Boise Cascade Corporation

March 27, 1996

Ms. Claudia Howells
Rail Planning & Service Section
Transportation Development Branch
Department of Transportation
555 13th Street Northeast
Salem, OR 97310 1333

Dear Claudia:

This letter is to advise you that Boise Cascade Corporation has read and supports the Verified Statement of the State of Oregon regarding the Union Pacific/Southern Pacific Merger Application.

Boise Cascade is an integrated forest products company that owns and operates a paper mill in St. Helens, Oregon; plywood mills in Elgin, White City, and Medford, Oregon; lumber mills in Elgin, LaGrande, White City, and Medford, Oregon; veneer mills in Independence, Willamina, and St. Helens, Oregon; and an engineered products mill in White City, Oregon.

Combined with other related businesses and operations, Boise Cascade employs approximately 3,000 people in the State of Oregon.

Of most significant concern to our company is the effect of the proposed merger on our Western Oregon operations, and particularly those in Medford and White City. In 1995 we shipped 2,173 rail cars of product from these operations and received 224 rail cars of product at Medford and White City. We are concerned that when we move from three rail carriers to two in the region, we will not enjoy benefits of competition, particularly those brought to the area through aggressive forest products reload activities.

Another significant concern we have is that we will be adversely affected by competition to our traditional markets via a marketing agreement negotiated between Union Pacific and Burlington Northern to solicit forest products traffic in the states of Washington, Northern Idaho, Western Montana, and British Columbia, Canada, and destined to California and Southwest markets.

Page 2

March 27, 1996

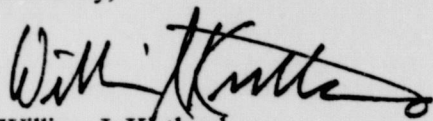
We do not fear competition in and by itself. However, we feel that if Union Pacific and Burlington Northern can agree to compete for forest products manufactured in neighboring states and provinces and shipped to our traditional markets, they should be allowed or required to compete for our forest products business at Eugene, Oregon. Currently, we are captive to the Southern Pacific in Southern Oregon. Implementation of Condition #1 would alleviate our concerns and level the competitive playing field.

We also support the State of Oregon's Condition #2 that requires divestiture of one Central Corridor Line, and access to the Central Corridor by Burlington Northern. Again, the direct benefactors of Condition #2 would be our Southern Oregon operations.

In closing, all we are asking for is what the railroads brought to our competitors in neighboring states and provinces, and that is a choice of carriers.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Will Kirtland", with a long horizontal flourish extending to the right.

William J. Kirtland
General Manager
Transportation/Building Products

/a

039626a



General Offices

Transportation/Timber & Wood Products
P.O. Box 72
Boise, Idaho 83707-0072
208/384-7978
Fax: 208/384-7516

Boise Cascade Corporation

January 15, 1996

FAX (503) 378-3567

Ms. Claudia L. Howells
Transportation Program
Public Utility Commission
550 Capitol St. NE
Salem, OR 97310 1380

Dear Claudia:

As you are well aware, it has been difficult for Boise Cascade Corporation to rationalize the merger of the Southern Pacific and Union Pacific railroads.

First, we do not believe the SP will go out of business without a merger with UP. And, in the odd event that SP was to fail, another carrier (even a shortline operator) could step in and provide for more competition or leverage than we would have with the two merged carriers alone. For example, a shortline carrier that could haul traffic from Southern Oregon to Portland or Eugene, and interchange with either UP or Burlington Northern, would be much better than being captive to the UP per the proposed merger plan.

Second, moving from three carriers to two will not provide for more or strengthened competition. Fewer carriers allow for less competition -- plain and simple.

Another point to consider here is that the UP has indicated they are going to allow shippers that are going from two carriers to one to be given access to the BN.

In our opinion, solid wood transload operations in the Pacific Northwest should be viewed as a serving carrier or a choice to Oregon shippers. Even though Southern Oregon shippers have never been served by UP or BN, both railroads brought significant competition to the SP, and indeed to each other, through their transload programs.

Page 2
January 15, 1996

Third, and perhaps most disconcerting in this proposal, is the issue of corridor dominance. Historically, SP always made sure their shippers had a market in Southern California for their products. Producers in Canada, Washington, Idaho and Montana that wanted access to the California market were kept at bay by the SP for two primary reasons. First, SP wanted its online shippers to be competitive into the California market. Secondly, SP was incapable from a service and rate perspective to keep its shippers competitive to Midwest and Northeast U.S. markets because UP and BN had shorter, more efficient routes that ran east. The opposite situation existed with respect to California. Southern Pacific was the only carrier that could serve that market efficiently and competitively. All of this changed when UP and BN representatives met in Omaha to divide up Western markets in an attempt to do what UP thought the ICC would require before the agency would approve the UP/SP merger.

To our knowledge no Oregon solid wood producers had any input whatsoever in the process that opened the rail gateway over Portland to forest products manufactured in Western Montana, Northern Idaho, Washington and British Columbia, Canada. While UP and BN agreed to interject new competition into our traditional markets, SP and UP have refused to afford Southern Oregon shippers a choice of carriers over the Eugene gateway.

Unfortunately, we are the victims of the aggressive UP/SP that asked for access to these producers and the passiveness of the BN/SF negotiator who agreed to the deal. Neither railroad had any appreciation for the subsequent impact on the Oregon producers.

To offset this negative situation, UP/SP should be required to open all of its closed gateways in Oregon to BN/SF. This would include shortline interchanges as well. While it will not stop the flow of new competition to our traditional markets, it will give many Oregon producers a choice of carriers to Eastern markets, where historically we have had only transload operators. These interchanges must be free and without attached punitive costs like the Central Oregon and Pacific Railroad would be forced to pay today if they were to interchange a car to the BN over Eugene without SP approval.

I suggest that the state of Oregon seek the opinions of other solid wood shippers on this issue and act in the most responsible way by supporting the open interchanges as a condition to the merger. Not only will an open interchange with BN/SF benefit shippers, it will also help keep Oregon's extensive shortline system viable, as the UP/SP will be challenged by BN, thus creating competition and

Page 3
January 15, 1996

additional railcars of business. This action would truly preserve and intensify rail competition following the UP/SP merger, which is exactly what the UP said they wanted to do in the September 26, 1995, news release announcing the merger.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Kirtland", with a large, sweeping flourish extending to the right.

William J. Kirtland
General Manager
Transportation/Building Products

/a

019610c.wjk

Telephone
Bellfountain
(503) 424-3112

P. O. Box 48

AMERICA MEANS BUSINESS + BUSINESS MEANS AMERICA

Letter 5

Hull-Oakes Lumber Co.

manufacturers & distributors • dimensions • timbers — long timbers a specialty

March 21, 1996

Ms. Claudia L. Howells
Railroad Service Coordinator
Oregon Department of Transportation
555 13th Street NE
Salem, OR 97310

Dear Ms. Howells:

As per our request, we acknowledge receipt of your written comments regarding Finance Docket No. 32760 regarding the merger of the Union Pacific Corporation and the Southern Pacific Rail Corporation entities.

We fully support your position that the Burlington Northern and Santa Fe (BNSF) agreement must be included in the merger agreement. It is very important to Hull-Oakes Lumber Co. to continue to have main line rates to the Eastern and Southern gateways, and just as important to expand the areas where we can be competitive.

Your written comments are comprehensive and touch the very points that concern us as shippers. As you know we have been advocates for the Railroads for many years. We believe the points you raise should become apart of the operating procedures and this should be mutually beneficial to the Railroads and the Shippers. We desire an excellent relationship with a strong railroad for the good of generations to come.

You have our support,

Sincerely yours,

Hull-Oakes Lumber Co.

By


Wayne Giesy, Consultant

Timber Products

C O M P A N Y

Post Office Box 1669
Medford, Oregon 97501
Phone (503) 773-6681
Fax (503) 770-1509

January 26, 1996

Ms. Claudia L. Howells
Rail Planning & Service Section
Transportation Development Branch
Department of Transportation
555 13th Street NE
Salem, OR 97310-1333

Dear Claudia:

On behalf of Timber Products Company, I would like to communicate our concerns regarding the Southern Pacific and Union Pacific merger. Both the Burlington Northern/Santa Fe and proposed UP/SP mergers are rationalized by the pursuit of strengthened competition and increase transportation efficiencies. Timber Products Company supports the UP/SP merger but is concerned by the fact that Southern Oregon will continue to be serviced by one railroad (the UP/SP).

Being a major Southern Oregon wood products manufacturer, California has and continues to be Timber Products core market place. The UP has indicated they are going to allow shippers that are going from two carriers to one the access to the BN/SF through Portland. The rail gateway over Portland (into Oregon and California) would be opened to wood products manufacturers in Western Montana, Northern Idaho, Washington, and British Columbia Canada via the BN/SF. While UP and BN agreed to allow new competition into our traditional markets (Oregon & California), SP and UP have refused to afford Southern Oregon shippers a choice of carriers over the Eugene Gateway.

In pursuit of consistent and fair competition, as well as national transportation efficiencies, UP/SP should be required to open all of its closed gateways in Oregon to BN/SF. This should include shortline interchanges as well. This will not stop the flow of new competition into our traditional markets, but will give many Oregon shippers a choice of carriers to Eastern markets. Historically we have had to use transload (reload) operators to utilize a choice of east bound rail carriers.

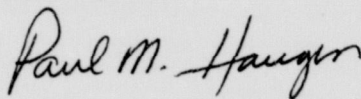
Page 2

These interchanges must be free and without attached punitive costs which is not the case. Currently the Central Oregon and Pacific Railroad is forced to pay punitive charges today if they were to interchange a car to the BN over Eugene.

Timber Products Company is asking the State of Oregon to seek opinions of other wood products shippers on this issue, and also ask the State to support the open interchanges as a condition of the UP/SP merger. An open interchange will benefit Oregon shippers/manufacturers, enhance the viability of Oregon's shortline railroads, and will lead to enhanced transportation efficiencies and competition.

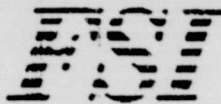
Thanks you for your consideration.

Best Regards,

A handwritten signature in cursive script that reads "Paul M. Haugen".

Paul M. Haugen
Transportation Manager

PMH/jg



FREIGHT SERVICES INCORPORATED ^{Letter 7}

Post Office Box 908 • Eugene, Oregon 97440

Phone (541) 484-2303

File: 01
March 21, 1996

Fax (541) 545-8847

VIA FAX (503) 986-4174

Ms. Claudia L. Howells
Railroad Service Coordinator
Oregon Department of Transportation
Transportation Development Branch
Planning Section
Mill Creek Office Park
555 - 13th Street NE
Salem, OR 97310

Dear Claudia:

Thank you for including *Freight Services Incorporated (FSI)* in the process of reviewing the draft comments for the State of Oregon regarding the Union Pacific's acquisition and merger with the Southern Pacific Rail Corporation. We appreciate your consideration and wanted to offer our support and suggestions per our discussion this date as it is not possible for an *FSI* representative to attend the meeting on Friday.

Claudia, I think that the State's position is well-thought out and well enumerated in the position statement. *FSI* is concerned about the UP/SP merger and the impact it will have on shippers. The shippers in the state of Oregon should be well served if the trackage rights agreement with the BNSF is appropriately implemented and if the BNSF can gain trackage rights direct from Eugene to Klamath Falls. The State of Oregon's draft comments are well-founded, reflecting your years of experience in the Oregon rail network. Without your's and Ed Immel's review of state rail matters, the state of Oregon would be at a major disadvantage.

Recently, *FSI* was approached by the BNSF to provide a verified statement to the Surface Transportation Board, not necessarily endorsing or denouncing the UP/SP merger, but to provide in a verified statement the request that the BNSF Agreement be made a part of the UP/SP final decision. We have provided a number of verified statements from shippers represented by *FSI* to the Surface Transportation Board so indicating that desire. As is pointed out in the State's position, this is critical to Oregon, but even more important are the trackage rights we discussed from Eugene to Klamath Falls for the BNSF.

Thank you once again for including us in your review of the draft. If you have any questions, please do not hesitate to give me a call.

Sincerely yours,

Fred E. Hamlin
President

FEH/mak



CASCADE WAREHOUSE COMPANY

Claudia Howells, Railroad Service Coordinator
Oregon Department of Transportation
Mill Creek Office Park
555 13th St NE
Salem OR 97310

Dear Claudia:

As the Oregon Department of Transportation formulates its position regarding the Union Pacific's acquisition of Southern Pacific Transportation Company, several factors need to be addressed relative to the amount and nature of regulation.

Paramount of all concerns should be increased market access for Oregon shippers to Union Pacific destinations.

Secondly, the burden of securing competitive transportation alternatives should not be a regulatory function. Freight movement is market driven, a mere segment of daily commerce. Currently, more than viable options exist for shippers with minimal creativity to ship and receive via rail competitively.

Finally, from a mandated standpoint, some consideration should be given to track abandonment. Minimum guidelines need to be set for the merging parties to guarantee operations or reassign track segments to contract carriers. However, industries located on questionable trackage should realize minimum volumes must be met to maintain viability. Regulatory stipulations need to be two-sided, clearly identifying responsibilities of both railroad and rail shipper.

Ultimately this combination, which Cascade Warehouse Company supports, needs to be treated as a business decision, with expanded business opportunities for the Oregon Shipper as its culminative result.

Please feel free to contact me at any time for additional comment.

Best Personal Regards,

Scott Cant

Scott Cantonwine
President

cc: Don Veidt, Southern Pacific
Jim Nave, Union Pacific
Mike Salvino, Willamette Industries
John Ficker, Weyerhaeuser Company

SC:gb

1625 Front St. N.E. • Salem, Oregon 97303
(503) 363-2483 • Fax: (503) 363-3527



BAY AREA CHAMBER OF COMMERCE

P.O. Box 210 • 50 East Central • Coos Bay • OR 97420

(503) 269-0215 • 1-800-824-8486

November 1, 1995

Ken Adams
Southern Pacific Lines Merger Application
1860 Lincoln Street, 5th Floor
Denver, CO 80295

Dear Mr. Adams:

The Bay Area Chamber of Commerce supports the merger of Union Pacific and Southern Pacific lines. The merger will provide greater access to markets, thus enabling our railroad to compete more effectively in the marketplace. This is of utmost importance to our region, as the Oregon International Port of Coos Bay is the second busiest port in the State of Oregon.

The Bay Area Chamber believes that the merger of the Union Pacific and Southern Pacific lines will strengthen both railroads, and we hope that the strengthened position will provide incentive for investment in the Southern Pacific rail bridge which spans Coos Bay. This is important to the future of our industry and our entire community.

Sincerely,

Crystal Shoji
Executive Director

CC: Allan Rumbaugh, Port of Coos Bay
Tom Shea, Southern Pacific
Claudia Howells, Oregon PUC

8 *together*
"... ^ we mean business"



October 19, 1995

Mr. Ken Adams
Southern Pacific Lines, Merger Application
1860 Lincoln Street, 5th Floor
Denver, CO 80295

Dear Mr. Adams:

The Oregon International Port of Coos Bay supports the merger request for Union Pacific and Southern Pacific lines. We believe that the combined system will provide us with greater access to markets (and greater access for our customers to the Port) than we currently experience under the Southern Pacific system alone. We believe the combined UP/SP system is necessary to enable our railroad to compete effectively in the market, especially given the recent approval of the Burlington Northern/Sante Fe Railroad merger.

As a condition of the merger, the Port of Coos Bay would like UP/SP to grant interchange rights at Eugene for our regional short-line railroad, Central Oregon & Pacific (CORP) to the BN/SF line. In support of our condition, we note in your informational materials that UP/SP intends to provide trackage rights across its system to BN/SF in a number of areas. Granting interchange rights at Eugene to CORP to access BN/SF lines will enhance the limited competitive position of our rural and economically depressed region.

We believe the UP/SP merger will also strengthen the capital position of the two railroads, which should enable UP/SP to (finally) invest money long-overdue in refurbishing the Southern Pacific rail bridge over Coos Bay, which serves the second busiest port in the State of Oregon. RailTex (the owner of CORP) has pledged up to \$600,000 toward refurbishment costs, and the Port of Coos Bay and the State of Oregon continue to explore ways to provide additional supportive funding.

We appreciate the opportunity to provide supportive comments, and look forward to working closely with a larger and more productive railroad in the coming years.

Sincerely,

Allan E. Rumbaugh
General Manager

AER:dcB

cc Port Commission
Coos County Board of Commissioners
Tom Shea, Southern Pacific
Claudia Howells, Oregon PUC
Keith Leavitt, Ports Division, OEDD

Ed Immel, ODOT
Bay Area Chamber of Commerce
Transportation Committee
Paul Wyatt, CORP
Coos Bay Maritime Council





METRO

March 14, 1996

Ms. Claudia Howells
Railroad Services Coordinator
ODOT Transportation Development Branch
555 13th Street NE
Salem, OR 97310

Subject: Proposed Union Pacific/Southern Pacific Merger

Dear Ms. Howells:

The Joint Policy Advisory Committee on Transportation (JPACT) for the Portland area offers the following comments on the proposed Union Pacific/Southern Pacific railroad merger. Consistent with the merger schedule, these comments represent our initial reaction to the proposal and are for inclusion in ODOT's March comments to the federal Surface Transportation Board. JPACT and the Metro Council intend to take a formal position on the merger through a Metro resolution later this year.

In general, JPACT, consisting of elected officials from local jurisdictions and the Metro Council, as well as transportation agency officials, views freight rail facilities within the region as an integral part of the regional transportation network. Roadways and railways in our growing region serve as the "circulatory system" for our regional economy and for trade passing through the region and the state. The ability of the railroad companies to efficiently serve our customers directly affects the ability of our region to attract and retain business and remain economically viable and healthy.

We see the proposed merger of the UP and SP railroads to have major beneficial impacts on rail operations and facilities. Through rationalization of operating facilities, we feel the combined company will have an impact on the regional transportation system. Specifically, based on the information and discussion to date, we support the merger as it offers significant benefits to the region and state, including:

- Creating direct, single-line, north-south service from Canada through the Portland area to Mexico.

Ms. Claudia Howells
March 14, 1996
Page 2

- . Expanding single-line competition with other railroads to enhance operations.
- . Improving Portland area and State of Oregon rail service to the mid-western and southeastern regions of the United States.
- . Improving access for Willamette Valley and Portland area customers to Portland area marine terminals through single-line service.
- . Improving area intermodal operations through consolidation and improvements at the Lower Albina intermodal facility.

With approval of the merger, we feel these improvements will enhance rail freight operations and provide more and better choices for users of the freight system in the Portland area. We also feel that the proposed merger provides an opportunity for the region to develop partnerships to discuss merger-related operational improvements. Such partnerships should attempt to further meet a number of the region's other transportation objectives as they relate to commercially sound business decisions of the merged railroad. Areas that we would wish to pursue include the following:

1. Rail Facility Access. Continue to work with a combined UP/SP to improve access to major rail yards including Albina (specifically a grade-separated facility for business access), Brooklyn, and Kenton.
2. Rail Operations. Retention and full utilization of existing major rail and industrial infrastructure within the region is imperative if we are to manage growth consistent with the Region 2040 Growth Concept of growing and redeveloping from within and preventing "green field" fringe development.
3. Grade Crossings. Work with local governments and ODOT to examine the feasibility of eliminating or improving the operations and safety of key grade crossings throughout the region. Examples include blockages in Southeast Portland, Kenton mainline crossings at NE Columbia and NE Lombard; near the Fir and Hemlock sidings; at Railroad Avenue and Harmony Road east of Milwaukie; and at 201st, 164th, 223rd, and the Columbia Highway in east Multnomah County. Others throughout the region should also be identified and discussed.
4. Work with Tri-Met to identify potential available right-of-way for the South/North Light Rail. A key need is in the vicinity of the Brooklyn Yard. Approximately 7 to 20 acres are needed for a Maintenance Facility at that location.

Ms. Claudia Howells
March 14, 1996
Page 3

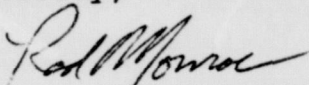
Other potential right-of-way opportunities exist along the entire line in segments running from the Hawthorne Bridge area south through Milwaukie to future extensions to Oregon City. Consideration should also be given to whether Tri-Met should accept operational control of the Steel Bridge.

In addition to these areas of concern, the region also requests that more information be provided in the following areas:

- . Analyses of current and forecast delays at major rail crossings.
- . Existing and anticipated truck, intermodal, and other general traffic volumes accessing major yards.
- . Plans for rail abandonments in order that they may be considered for regional recreational trails.
- . Impacts, if any, on current and proposed passenger rail operations (e.g., high-speed rail) by Amtrak or others within the state and on interstate routes.

We thank you for keeping us informed on opportunities to comment. If you have questions or need clarification on our comments, please call Mike Foglund, Metro staff, at (503) 797-1743.

Sincerely,



Rod Monroe, Chair
Joint Policy Advisory Committee
on Transportation

RM:MH:lmk

February 23, 1996



**CITY
OF SALEM,
OREGON**

City Hall/555 Liberty Street SE
Zip Code 97301-3503

Public Works Department
(503) 588-6211
FAX: (503) 588-6025
TTY: (503) 588-6292

Elaine K. Kaiser
UP/SP Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
12th and Constitution Avenue, Room 3219
Washington D.C. 20431-0001

SUBJECT: SURFACE TRANSPORTATION BOARD REQUEST FOR ENVIRONMENTAL COMMENTS ON THE POTENTIAL ENVIRONMENTAL IMPACTS OF THE CONTROL AND MERGER APPLICATION BETWEEN THE UNION PACIFIC AND SOUTHERN PACIFIC RAILROADS (Finance Docket No. 32760)

Dear Ms. Kaiser:

This letter is in response to your request for comments on the above-referenced subject. The City of Salem was not directly notified of the request for comments. We obtained a copy of your January 29, 1996, letter to the Hon. Mary Pearmine, Chair, Board of Marion County Commissioners, through our regional inter-governmental notification process. Unfortunately, we received the copy after the comment deadline had passed. The potential impacts to the safety, traffic flow, ambient air quality, and overall quality of life of our citizens due to the proposed merger of the Union Pacific and Southern Pacific Railroads is of critical importance to us. Thus, while we realize that our comments are being provided to you after the close date, we hope that they will be given due consideration.

In your letter, you request comments on the potential impacts of the merger on a number of impact areas that pertain to our jurisdiction. The following comments are organized under the categories you suggested.

Existing local, regional, and national transportation systems The Oregon-specific information attached to your letter indicates that an increase in train traffic is probable within our area. The City of Salem currently has 15 at-grade railroad crossings, the majority of which are located on the eastern fringe of the central business district.¹ Increased train traffic along the SP line will certainly impact our citizen's ability to travel into and out the CBD. All of the at-grade crossings are locally-maintained roadway facilities.

Local land use, including parks and refuges The southern portion of the SP line through Salem generally traverses land that is agriculture, exurban, or industrial in nature. The central and northern portions of the line however, is directly adjacent to a number of commercial, institutional, and historic areas. These include: Willamette University, Tokyo International University of America, State of Oregon Supreme Court, Mission Mill Historic District, North Salem High School and

¹Salem's central business district is made up of a downtown core area, state capitol and associated office buildings, and Willamette University. It is generally bounded by the Southern Pacific Railroad Line on the east, Willamette River on the west, State Road 22/Business 99E on the south, and Marion Street on the north.

Elaine K. Kaiser
February 23, 1996
Page 2

Parrish Middle School, and Barrick Field (park). The line also bisects three vital residential areas consisting of Southeast Salem (SESNA), Northeast Neighbors (NEN), and Northgate Neighborhood Associations.

Air emissions and ambient air quality conditions The Salem metropolitan area (Salem/Keizer) is designated as a non-attainment area for both carbon monoxide (CO) and ozone (O₃). Potential impacts to the area's air quality due to automobile delays at the at-grade crossings is of concern to not only the City of Salem, but the participating governments of the Salem/Keizer Transportation Study (the locally-designated MPO). As you may know, air quality non-attainment may lead to the curtailment of federal funding of roadway projects for the region.

Noise Given the new rules pertaining to train whistle and horn blowing required by the Swift Rail Development Act of 1994, increased train traffic will result in a decline of quality of life for the residents who live adjacent to the SP line, and will impact the other land uses that abut it.

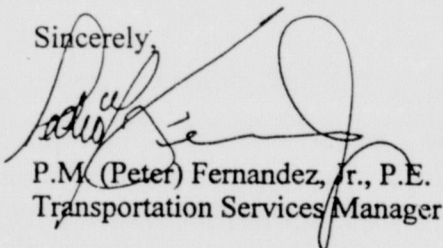
Public Health and Safety, including hazardous materials The City of Salem's public health and safety concerns are two-fold. First is safety at the railroad crossings. The City of Salem has experienced four pedestrian accidents at railroad crossings over the past twelve months. Given the SP line's location, motorists and pedestrians are equally at risk. Second is train derailments. A number of derailments have be felled the SP line in Salem recently. The hazard of the derailment itself, combined with the potential for hazardous materials spills is of great concern to us.

Historic, cultural, or archeological resources As previously noted in this letter, the SP line is directly adjacent to a number of historic and cultural land uses.

Thank you for the opportunity to provide you with our comments. Please include the City of Salem in future mailings on this issue. The City's contact is:

Peter Fernandez, P.E.
Transportation Services Manager
City of Salem Public Works Department
555 Liberty Street SE, Room 325
Salem, OR 97301-3503

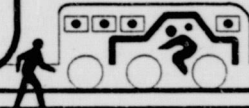
Sincerely,



P.M. (Peter) Fernandez, Jr., P.E.
Transportation Services Manager

:\PERSONAL\POSTIER\CORR96\KAISER.223
Attachment:

cc: Richard Schmid, Mid-Willamette Valley Council of Governments
Bob Hansen, Marion County Public Works Director
John Morgan, City of Keizer
Frank Mauldin, Public Works Director

SKATS**SALEM - KEIZER AREA TRANSPORTATION STUDY**

105 HIGH STREET SE, SALEM, OREGON 97301 PHONE (503) 588-6177 FAX (503) 588-6094

March 22, 1996

Claudia Howells
 Oregon Department of Transportation, TDB
 555 13th Street NE
 Salem, OR 97301

Re: UP/SP Merger

Dear Claudia:

In response to your request for local government commentary regarding the Union Pacific/Southern Pacific (UP/SP) railroad merger, please consider the following points for inclusion in your Verified Statement. While the Mid-Willamette Valley Council of Governments (COG) and the Salem-Keizer Area Transportation Study (SKATS) generally support the proposed merger between the UP and SP railroads, there are some COG/SKATS concerns that could be addressed in your Verified Statement.

The following areas are of concern to our agency:

Right-of-Way (ROW) and Public Safety. The Salem-Keizer area has experienced nine rail-related fatalities within the past 15 months. With the likelihood of increased levels of freight rail traffic resulting from the merger, the potential for an increase in the number of these incidences is very real. Additional rail traffic could also hinder response times of emergency vehicles needing to cross the tracks. Several sections of the Valley Mainline within the SKATS area, such as the trackage located between Hines and "D" Streets, and the interchange trackage located in the Cherry Avenue Industrial Park between the Valley Mainline switch and Industrial Way, should be rebuilt. The trackage along these sections displays an excessive amount of vertical deflection; a condition exacerbated by poor drainage of the roadbed and a high ground water level. A derail, especially one involving hazardous materials, would be disastrous in these areas.

Support of the Oregon/Washington High Speed Rail Program. The COG supports efforts to establish a Cascade rail corridor in the Pacific Northwest and hopes the merged railroad would do the same. Oregon's High Speed Rail Program has offered the only clearly defined

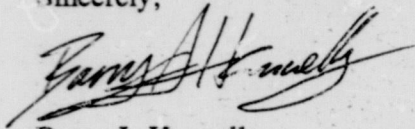
capital investment plan that would improve rail safety devices and infrastructure within the Salem-Keizer area.

Improved Communications Between the Railroad and Local Government. The Valley Mainline ROW passes through the center of the city of Salem. Improved communication between the railroad and local planning, public safety, and public works officials should be considered a priority.

Local Area Rail Service. Certain groups of Salem-Keizer area shippers have experienced decreasing levels of service. Many of these shippers have resorted to using containers, and have experienced increased operating efficiencies by doing so. The effect has been to increase the levels of truck traffic between the Salem-Keizer area and the Albina and Brooklyn intermodal facilities in Portland. The COG hopes that the railroad would be amenable to the *possibility* of locating an intermodal reload facility in the central Willamette Valley at some point in the future.

Staff appreciates this opportunity to comment on the proposed merger. If I can be of any further assistance please do not hesitate to call me at (503) 588-6177.

Sincerely,

A handwritten signature in dark ink, appearing to read "Barry J. Hernelly", written in a cursive style.

Barry J. Hernelly
Associate Transportation Planner



NORPAC FOODS INC.

930 W. Washington
PO Box 458
Stayton, OR 97383-0458
(503) 769-2101

March 22, 1996

Ms. Claudia Howells
Oregon Department of Transportation
555 15th Street, NE
Salem, OR 97310-1333

RE: Union Pacific/Southern Pacific Railroad Merger

NORPAC Foods, Inc. is a farmer owned cooperative operating four (4) vegetable processing facilities located in the Willamette Valley. As a major employer within the Willamette Valley, with an annual payroll totaling in excess of \$40 million, our ability to be competitive in the Northeast and Southeast markets of the United States is dependent upon the railroad to service our customers.

NORPAC, in general, supports the acquisition of the Southern Pacific by the Union Pacific Railroad. However, there are some competitive and operational concerns that we feel need to be resolved.

Currently, all of our facilities are serviced by the Southern Pacific. In order to ship on the Burlington Northern Santa Fe from our Salem facilities, railcars have to be interchanged in Salem. This creates not only a safety problem in moving rail cars over traffic crossings, but also a one to two day delay in transit time eastbound. We request that trackage rights be granted to the Burlington Northern Santa Fe over the Southern Pacific main line between Portland and Salem.

Our facilities at Brooks and Stayton are closed to the Burlington Northern. We request that the Burlington Northern be extended trackage rights for Brooks and allowed access to the short line servicing Stayton.

It is in NORPAC's and other shippers best interest to have access to both the Burlington Northern Santa Fe and Union Pacific to maintain a healthy, competitive rail system to service our customers.

Sincerely,

Rick Jacobson
President



Portland General Electric Company

March 27, 1996

Ms. Claudia L. Howells
Railroad Service Coordinator
Transportation Development Branch
Oregon Department of Transportation
555 13th Street NE
Salem, Oregon 97310-1333

Dear Ms. Howells:

Re: Union Pacific/Southern Pacific Merger Comments-Boardman Plant

Portland General Electric (PGE) appreciates the opportunity to comment upon the proposed acquisition of Southern Pacific Lines (SP) by the Union Pacific Railroad (UP). PGE is in general support of the proposed merger, with one condition requested herein.

As a means of a brief background, PGE is an electric utility serving 650,000 customers in a service territory covering 3,170 square miles. PGE's diverse generation mix--which includes low-cost hydroelectric power, coal, and gas combustion--allows flexibility to economically meet the area's demand. PGE operates and owns a 65% share of the Boardman Coal-Fired Electrical Generating Plant near Boardman, Oregon. This plant in a typical year provides enough power to serve 185,000 residential PGE customers.

The electric industry is undergoing a major transformation to a more competitive environment. Plants must do all that is possible to lower production costs in order to operate. The Boardman Plant has not been insulated from these economic pressures. Boardman's captivity to the UP as the sole final-delivering carrier from Wallula Junction to the Boardman Spur has not provided economic rail competition to the plant. UP's uneconomic rail rate into Boardman has contributed to the plant only operating at a 36% capacity factor in 1995. Forecasts are the plant will operate even less in 1996. With the Burlington Northern Santa Fe (BNSF) as another railroad delivery alternative to Boardman, this situation can be remedied.

This increased delivery alternative to the Boardman Plant--and the corresponding reduced rail rates--will help provide PGE's customers with competitive electricity. With low-priced electricity, Oregon can continue to compete both on a national and international front. PGE's request for joint trackage rights is analogous to the Federal Government's efforts underway to open electricity transmission line access. With access rights to both trackage and transmission, electric competition and resulting low-priced electricity alternatives can be truly realized.



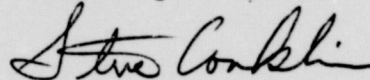
Portland General Electric

Ms. Claudia L. Howells
March 27, 1996
Page Two

Without the joint trackage rights to the Boardman Plant, PGE's electric customers will be at a disadvantage to neighboring states with joint rail alternatives to their utilities' coal-fired plants.

In conclusion, PGE supports the UP-SP merger, predicated upon granting BNSF joint trackage rights between Wallula Junction and the Boardman Spur in order to promote competition and resulting lower rail rates to lower electricity costs.

Sincerely,



Steve Conklin
General Manager,
Power Operations

TJS:F:SUPPORT.UP

by Union Pacific Railroad, with the inclusion of the agreement with Burlington Northern Santa Fe, and the application of conditions requested herein.

Condition 1. The combined railroad of UP/SP must ensure the competitive posture of Portland area (north of Eugene) shippers relative to pricing. Stimson's Seghers facilities have been operating since 1931, captive on SP rail. Over the last 5 years SP service has been poor, at best. In 1994 our stud mill was producing 6 days a week, yet the facility was rail served only 3 days per week. Car supply was inconsistent over these 3 days, resulting in an unpredictable loading schedule. Portland Western (PW) began servicing our branch line in August of 1995. Since that time, service has improved relative to car supply and the number of switches required, but a competitive pricing issue continues to erode our markets. SP has broken Oregon into 4 origin pricing or rate groups. The southern groups (south of Eugene) benefit from lesser rates to western markets, in spite of comparable costs. SP indicates their pricing is "truck competitive" but does not consider that all shippers, both in northern and southern Oregon, compete for the same fiber in a common market. "Truck competitive" by itself is an ineffective measurement, omitting cost based and other rail competitive analysis. The result of SP's current I-5 corridor pricing package is that northern shippers have added cost in the transportation of their product when shipping via SP, or, northern shippers subsidize southern shippers that have similar or equal costs, as is the Roseburg origin group. As the SP's northern most shipper, our Dimension mill at Seghers produces the equivalent of 1,500 carloads per year. In 1995, less than 10% of this volume shipped via SP. This was a result of an aggressive marketing strategy that became necessary for our survival, as we are not priced competitively with southern Oregon shippers via SP. Truck, reload and barge shipments have

added congestion as a result.

To further complicate this matter, SP has aggressively priced with an adjoining railroad north of Portland (BN) for incremental volumes from the Seattle market place. BN shippers in this market can reach Los Angeles on the SP at the same transportation cost as a Portland SP shipper. Thus, the SP-Portland rate group also subsidizes the BN-Seattle market place.

Stimson Lumber was a victim of the 1994 SP power shortage, and is therefore concerned about congestion in local yards as a result of the merger. Also, as the largest truckload shipper in Washington County, the motor carrier traffic at our Seghers facility is significant, approximately 125 trucks per day. Therefore, we also find issue in UP and SP subsidizing reload operation in already congested areas.

Condition 2 is also relative to reload operations. At UP's Portland reload operated by Savage Industries, we currently wait an average of 6 business days for a car to be loaded, after completing inbound truckload shipments. Industry standard is 2 days. The extended window is a result of congestion issues in the local UP yard. We would here suggest that the combined railroad not immediately abandon or downsize any yard (Brooklyn) that currently offers a means of flexibility.

Condition 3 is relative to issues mentioned in conditions 1 and 2. As previously noted, we currently enjoy the option of BN reloading in Oregon. I also advised of our concerns surrounding truck congestion at Seghers, the already congested industrial reload areas, and the issue of low mill loaded rail volume, due to competitive pricing issues. Our serving short-line, PW, can physically interchange to BNSF, though the PW's current operating agreement with SP does not allow for this. As this merger would further define BNSF vs. UP/SP markets, we

March 25th, 1996

**Before the
Surface Transportation Board
United States Department of Transportation**

Finance Docket No. 32760

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

- Control and Merger -

Southern Pacific Rail Company, Southern Pacific Transportation Company, SPSC Corporation and the Denver and Rio Grande Western Railroad Company.

Written comments submitted by Stimson Lumber Company, Portland, Oregon.

My name is Kandy Davis, Traffic Manager for Stimson Lumber Company. I have been employed in this position for over 8 years and have 12 years of experience within the transportation industry. Stimson Lumber Company is a 6th generation timberland owner and manufacturer of lumber, plywood and hardboard products, with 8 production facilities in Oregon and Montana. Stimson produces the equivalent of 8,200+ rail carloads annually.

Of Stimson's 4 mills in Oregon, 3 are Portland Western (PW) served for Southern Pacific Lines (SP) at Seghers, and 1 is Burlington Northern (BN) served at Clatskanie. Of the Montana facilities, 2 at Bonner are Montana Rail Link (MRL) served for BN, and 2 in Libby are BN served. All locations currently enjoy reload option from Union Pacific (UP); Seghers and Clatskanie at Portland, Bonner at Silverbow/Butte, and Libby at Eastport, ID. Seghers production is also reloaded on the BN at both Salem, Oregon and Portland, Oregon.

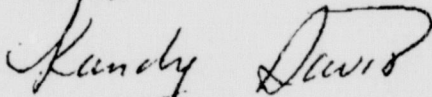
Stimson Lumber Company generally supports the acquisition of Southern Pacific Lines

suggest that the Surface Transportation Board expand the BNSF agreement and UP/SP merger application to include open interchange from SP and SP-short lines origins to BNSF. To expand on this idea, we also suggest that the agreement and application be amended to allow MRL origin traffic to be interchanged to UP over Butte/Silverbow, rather than over the already congested Portland, Oregon.

Condition 4 is also relative to switching/interchange. We suggest that the combined railroad continue UP's reasonable switching agreement with BNSF.

Stimson Lumber Company has a growing, not declining need, to be rail served in both Oregon and Montana. This is a need that, in Oregon, has not been recently met. We would like the Surface Transportation Board to note that in nearby Tillamook, Oregon, the Federal Emergency Management Agency has granted \$3,000,000 for flood related repairs to a struggling short line. While our serving short line is in fine operating condition, it has proven ineffective due to the competitive pricing issues cited herein. Due to our pricing issues with SP, we naturally tend to support the merger, but feel the implementation of the conditions cited herein will be fully necessary in order to establish a competitive rail environment that will result in the health and longevity of both the rail and forest products industries, and the Pacific Northwest economy.

Sincerely,



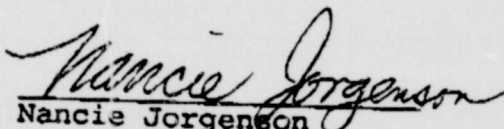
Kandy Davis
Traffic Manager

cc: Steve Schmitt, VP Marketing, Stimson Lumber Company
Arvid E. Roach II, Covington & Burling
Paul Cunningham, Harkins, Cunningham
James V. Dolan, Union Pacific Railroad Company
Cannon Y. Harvey, Southern Pacific Transportation Company
Cannon Y. Harvey, Southern Pacific Railroad Company
John Hovis, VP Forest Products, Burlington Northern Santa Fe
Susan Walsh-Enloe, Director Marketing and Sales, Portland and Western Railroad
Larry L. Huff, Marketing Manager, Montana Rail Link
Claudia Howells, Railroad Services Coordinator, Oregon Department of Transportation
Jack Estes, Coalition for Competitive Rail Transportation

State of Oregon)
)ss.
County of Multnomah)

Personally appeared the above-named Kandy Davis who, being first
duly sworn, acknowledged that the foregoing instrument is a
voluntary act and deed.

BEFORE ME:


Nancie Jorgenson
Notary for State of Oregon
My commission expires 6/12/96



CERTIFICATE OF SERVICE

I hereby certify that on this 28 day March, 1996, true and correct copies of the Comments of State of Oregon were sent by United Parcel Service from Salem, Oregon as follows:

An original and 20 copies of the Comments were sent to:

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

Additionally, one copy of the comments were sent to each Party of Record by United States Mail.

Claudia L. Howells

STB

FD

32760

3-29-96

D

62291

Item No. _____

Page Count 2

Mar # 617

MILTON & SCHEETZ

ATTORNEYS AT LAW

PHILADELPHIA, PENNSYLVANIA

DETROIT, MICHIGAN

NEW YORK, NEW YORK

PITTSBURGH, PENNSYLVANIA

HARRISBURG, PENNSYLVANIA

WRITER'S DIRECT NUMBER

(202) 828-1415

1300 NINETEENTH STREET, N.W.

WASHINGTON, D.C. 20036-1665

(202) 828-1200

TELEX CABLE ADDRESS: 440653 (ITT)

FAX: (202) 828-1665

WILMINGTON, DELAWARE

BERWYN, PENNSYLVANIA

WESTMONT, NEW JERSEY

LONDON, ENGLAND

MOSCOW, RUSSIA

March 28, 1996

VIA HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20549

Re: Certificate of Service
Finance Docket No. 32760

Dear Mr. Williams:

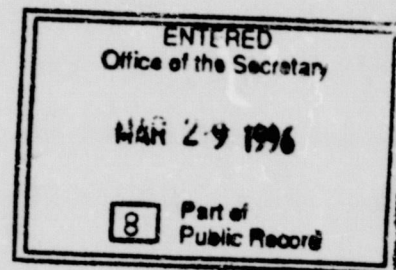
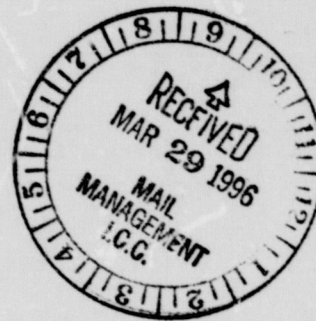
In accordance with Decision No. 26 in the above-referenced docket, I enclose Illinois Power Company's Certificate of Service which has been served by first class mail upon the persons who have been added as a party of record [POR].

Sincerely,

Michelle J. Morris

Michelle J. Morris

/rme



CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing Notice was served on the persons added to the Party of Record in Decision No. 26 served March 25, 1996 by first-class mail, postage prepaid.

Dated this 28 day of March, 1996

Michelle J. Morris
Michelle J. Morris

STB

FS

32760

3-29-96

D

62289

Item No. _____

Page Count 6

Mr # 786

62289

ORIGINAL

ENTERED	
Office of the Secretary	
MAR 29 1996	
8	Part of Public Record

IL AG-2

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

COMMENTS OF THE
PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois, ex rel. James E. Ryan,
Attorney General of the State of Illinois, ("Illinois Attorney
General" or "IL AG"), submit Comments in Finance Docket No.
32760.

The Illinois Attorney General has broad public interest
responsibility to represent the People of the State of Illinois
in regulatory proceedings. Additionally, the Illinois Attorney
General has certain antitrust enforcement power on behalf of the
State of Illinois and its citizens. This office is regularly
involved in proceedings involving the assessment of the

competitive impact of proposed transactions upon the public involving a wide variety of industries.

The Illinois Attorney General at this stage of the proceedings takes no position on behalf of the People of the State of Illinois either in support of or in opposition to the proposed merger of Union Pacific and Southern Pacific. This "neutral" position is based upon the necessity of evaluating the evidentiary submissions of other interested parties to be filed on March 29, 1996 and April 12, 1996.

Facially, the application and supporting documents filed by UP/SP, including the BN Santa Fe Agreement, indicate that the impact on the adequacy of transportation service within Illinois will be largely positive. Indeed, the Illinois Department of Transportation (IDOT) basically supports the merger in its evidentiary filing on the basis *inter alia* of expected improvements in transportation services in Illinois and improvement in the viability of services on Southern Pacific's Chicago - East St. Louis line.¹ Similarly, Governor Jim Edgar

¹ Verified Statement of Kirk Brown, Secretary of the Illinois Department of Transportation. IDOT-2. March 28, 1996.

supports the merger in a letter to the Board.²

However apparent the general benefits to Illinois may be as contained in the application and supporting documents, the Illinois Attorney General remains concerned about the broader issues in this proceeding as they involve transportation throughout the midwestern and western United States and the consequent transportation impacts upon Illinois and its shippers. In the preliminary comments of the Illinois Attorney General³ four issues were identified.⁴ This preliminary definition of issues, of course, was based solely upon applicants' original

² Letter to Vernon A. Williams, Secretary, Surface Transportation Board. March 22, 1996.

³ Notice of Intent to Participate and Preliminary Comments of the People of the State of Illinois. IL AG-1. January 13, 1996.

⁴ Id. at 2-3:

1. Whether the resulting markets after merger would be sufficiently competitive to protect the public interest.

2. Whether resulting improvements in service after merger are reasonably probable and likely to enhance the public interest in competition in the markets.

3. Whether the financial and operating condition of Southern Pacific is such that it is in the public's interest that it be part of a merged system.

4. Whether inclusion of other rail carriers in the transaction would provide competitive and service alternatives to the merger as proposed that would better protect the public interest.

filing in December, 1995. Nonetheless, the issues then raised continue to indicate, if only in general terms, the nature of potential questions which have been raised subsequently in the initial discovery phase of the proceeding and which will be addressed in the March 29 and April 12 filings of other parties.

With the burden of moving forward now resting on the interested parties most directly affected, the Illinois Attorney General will review their evidentiary submissions with a particular focus on detailed studies by shippers and shipper groups, as well as government agencies, concerning the probable impact of the merger, as proposed by applicants or with conditions proposed by others, on competition within the various commodity and geographic markets involved.

The question of whether the merger as proposed would result in applicants' possible acquisition of market power in certain areas of the country (e.g., the central corridor and in Texas) requires considerable analysis, which presumably will be provided from the perspective of those shippers and others, as well as the U.S. Department of Transportation and the U.S. Department of Justice. To the extent that the submissions indicate a potential adverse market impact on Illinois shippers, and ultimately consumers, those contentions will be evaluated by this office.

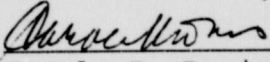
The Illinois Attorney General recognizes that the ultimate public interest determination by the Board under Section 11344 of the Interstate Commerce Act will require a weighing and balancing of numerous evidentiary factors concerning competition and service, as well as the prudence of the original and alternative proposals. Depending on the scope of the evidentiary submissions, it may be expected that this office will submit views on those factors in a subsequent April 29 filing in response to evidence filed on March 29 and April 12.

For the reasons stated the Illinois Attorney General will submit a further responsive position on April 29, 1996.

Respectfully submitted,

People of the State of Illinois

James E. Ryan
Attorney General of Illinois



Carole R. Doris
Chief
Public Interest Litigation Division

Christine H. Rosso
Chief
Antitrust Bureau

100 W. Randolph St. - 12th Fl.
Chicago, IL 60601
(312) 814-4499

Dated: March 29, 1996

Certificate of Service

I hereby certify that copies of the Comments of the People of the State of Illinois (IL AG-2) in Finance Docket No. 32760 were served upon all parties of record, as listed in the Surface Transportation Board's Notice of February 15, 1996, on March 29, 1996 by U.S. Mail, postage prepaid from Chicago, Illinois 60601.

Carole R. Doris

Carole R. Doris
Chief, Public Interest Litigation Division
Office of the Attorney General
100 W. Randolph St. - 12th Fl.
Chicago, IL 60601

STB

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3-29-96

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Item No. _____

Page Count 5

Mar #784



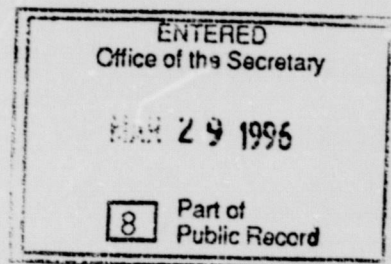
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS



Jim Ryan
ATTORNEY GENERAL

March 29, 1996

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, DC 20423

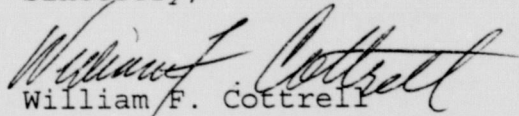


Attn: Case Control Branch, Finance Docket No. 32760

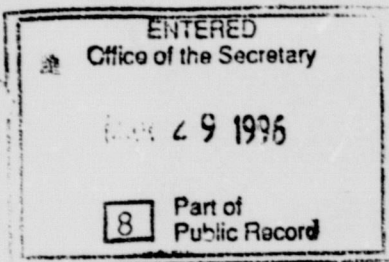
Dear Mr. Williams:

Enclosed for filing in Finance Docket No. 32760 are an original and twenty copies of the Verified Statement of Kirk Brown, Secretary of the Illinois Department of Transportation. (IDOT-2).

Sincerely,

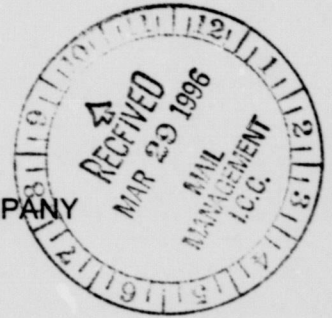

William F. Cottrell
Assistant Attorney General
100 W. Randolph St. - 12th Fl.
Chicago, IL 60601
(312) 814-4323

cc: All Parties



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

VERIFIED STATEMENT OF KIRK BROWN, SECRETARY OF THE
ILLINOIS DEPARTMENT OF TRANSPORTATION

My name is Kirk Brown, and I am Secretary of the Illinois Department of Transportation (IDOT). IDOT is the agency responsible for both rail policy and rail planning activities in Illinois, which requires us, among other things, to analyze any proposed railroad merger, consolidation, or acquisition in order to determine its potential effects on the adequacy of transportation for the public in our state. The proposed merger of the Union Pacific (UP) and Southern Pacific (SP) (and its subsidiary companies as noted above and hereinafter referred to collectively as SP) is of vital interest to our state. Similarly, the effects of the proposed abandonment of certain portions of the former Chicago and North Western Nelson to St. Louis rail line are of interest to our state.

Following an analysis of the proposed merger of UP and SP, including review of the potential impacts of the associated abandonments, IDOT has determined that the merger would be of great benefit to the state and its users of rail transportation. IDOT submits the following statement of support for the proposed transaction:

1. IDOT has responsibility under Illinois law for rail planning and programming. IDOT represents the public interest in the transportation system of the State of Illinois and expresses its essential concern for a continued growth in competitive transportation alternatives for Illinois shippers. In addition, IDOT is concerned about the potential economic impact upon the state resulting from major changes in its transportation.

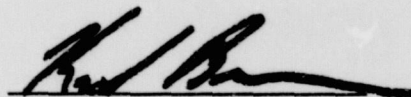
2. As described in the Applicants' railroad merger application (Volume 1) and the attendant operating plan (Volume 3), IDOT expects that the UP/SP merged system, coupled with the provisions found within the Burlington Northern Santa Fe (BNSF) settlement agreement, should yield shorter routes, expanded single-line service, greater capacity, better equipment supply, faster and more reliable service, and lower costs.

Significantly, for Illinois, the merged system should increase the competitiveness and viability of the rail services provided by SP, which have been adversely impacted by service problems and capital constraints. IDOT, through its rail freight assistance program, has dedicated considerable resources (well over \$40 million since 1989) to ensuring the continued viability of the SP's Chicago-St. Louis corridor - a corridor upon which both rail passengers and rail-dependent industries place great importance. Consequently, it is of paramount importance to IDOT that the merged system continue to expend the necessary funds for maintenance activities, etc., to ensure this corridor's continued viability.

3. Illinois, as with other states, will experience the negative impacts associated with rail line abandonment. In Illinois' case, the Applicants have asserted that two segments of the former Chicago and North Western's Nelson-St. Louis line will be abandoned, totaling approximately 68 miles, should the merger be approved. These abandonments may either cause business displacement (as in the case of Illinois Transit Assembly Corporation, Madison County, Illinois) and/or transportation cost increases (as in the case of Springfield Plastics and Brandt Fertilizer, Sangamon County, Illinois, both of which would be forced to switch from rail to truck transportation). However, IDOT recognizes that the traffic volume for these industries is probably not large enough, when viewed as a stand-alone operation, to warrant continued operations.

In summary, IDOT supports the proposed UP/SP merger. As stated, SP's continued viability is of great importance to Illinois and its rail using public. A SP/UP combined operation should enhance that viability. IDOT is also aware of the hardships that certain Illinois businesses will face as a result of the attendant Illinois rail line abandonments, and trusts that the Applicants will deal fairly with these affected businesses, at the very least allowing them ample opportunity, before service cessation, to derive and implement alternative transportation plans.


Finally, it must be noted that IDOT does not now suggest the imposition of any conditions by the Surface Transportation Board concerning Illinois interests. However, as in the case of previous merger proceedings, IDOT will review in detail the evidentiary contentions and proposed conditions of other interested parties to be submitted this date and later. IDOT's further review will involve a determination of whether there are valid and essential proposed conditions which should be supported to enhance effective rail competition between Illinois and other points, consistent with the public interest.


Kirk Brown

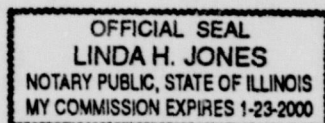
Verification

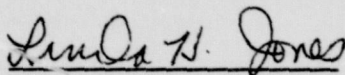
State of Illinois)
)
County of Sangamon) SS

I, Kirk Brown, being duly sworn, depose and state that i have read the foregoing statement, know the contents thereof, and the statements made therein are true and correct, to the best of my knowledge and belief.


Kirk Brown.

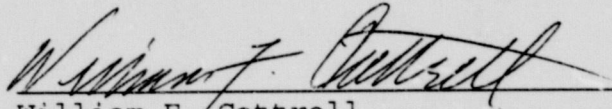
Subscribed and sworn to
before me this 29th day
of March, 1996




Notary Public

Certificate of Service

I hereby certify that copies of the Verified Statement of Kirk Brown, Secretary of the Illinois Department of Transportation (IDOT-2) in Finance Docket No. 32760 were served upon all parties of record, as listed in the Surface Transportation Board's Notice of February 15, 1996, on March 29, 1996 by U.S. Mail, postage prepaid from Chicago, Illinois 60601.

A handwritten signature in dark ink, appearing to read "William F. Cottrell", is written over a horizontal line.

William F. Cottrell
Assistant Attorney General
100 W. Randolph St. - 12th Fl.
Chicago, IL 60601

STB

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3-28-96

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Item No. _____

Page Count 6

Mar. #602

LAW OFFICES

CROSS & AUCHINCLOSS

SUITE 420

1920 N STREET, N.W.

WASHINGTON, D. C. 20036

(202) 785-3700

FACSIMILE: (202) 659-4934

THOMAS M. AUCHINCLOSS, JR.

LEO C. FRANEY

JOHN D. HEFFNER

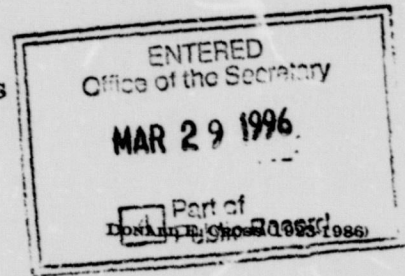
WILLIAM E. KENWORTHY

KEITH G. O'BRIEN

BRYCE REA, JR.

BRIAN L. TROLANO

ROBERT A. WIMBISH



March 28, 1996

Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Ave, N.W.
Washington, D.C. 20423



RE: Finance Docket 32760

Dear Secretary Williams:

On behalf of Pioneer Railcorp ("Pioneer") and its subsidiary, Keokuk Junction Railway ("KJRY"), I am filing the following documents in connection with the above-captioned proceeding:

1. **KJRY-1**, "Motion of Pioneer Railcorp and Keokuk Junction Railway for Leave to Intervene and File Comments," and
2. **KJRY-2**, "Comments of Pioneer Railcorp and Keokuk Junction Railway."

As instructed by the STB, enclosed are an original and twenty copies of each filing, along with a 3.5" computer disk containing "Word Perfect 5.1" versions of both documents. Pioneer and KJRY have served copies of the foregoing documents upon the Applicants and all parties of record.

By virtue of these filings, Pioneer and KJRY request to be added as parties of record in the subject merger proceeding. All filings and correspondence relating to Finance Docket 32760 should be served upon their counsel as follows:

John D. Heffner
REA, CROSS & AUCHINCLOSS
Suite 420
1920 N Street, N.W.
Washington, D.C. 20036
(202) 785-3700

and

62131

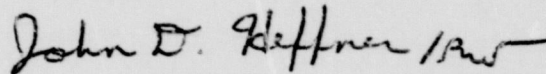
Vernon A. Williams
March 28, 1996
Page Two

Daniel A. LaKemper
General Counsel
Pioneer Railcorp
1318 S. Johanson Road
Peoria, IL 61607
(309) 697-1400

A copy of this letter will be served upon all parties of record in this proceeding, in order that they properly may add Pioneer and KJRY to their respective service lists.

If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in cursive script that reads "John D. Heffner /aw".

John D. Heffner

Counsel for Pioneer Railcorp and
Keokuk Junction Railway

Enclosures

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760



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

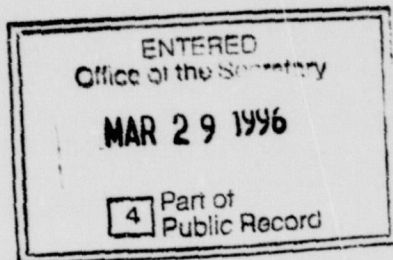
- CONTROL AND MERGER -

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

RAILROAD CONTROL AND MERGER APPLICATION

MOTION OF PIONEER RAILCORP AND
KEOKUK JUNCTION RAILWAY FOR
LEAVE TO INTERVENE AND FILE COMMENTS

KJRY-1



JOHN D. HEFFNER
REA. CROSS & AUCHINCLOSS
Suite 420
1920 N Street, N. W.
Washington, D. C. 20036
(202) 785-3700

DANIEL A. LaKEMPER
General Counsel
PIONEER RAILCORP
1318 S. Johanson Road
Peoria, IL 61607
(309) 697-1400

Attorneys for Pioneer Railcorp
and Keokuk Junction Railway

DATED: MARCH 28, 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, SPSCL CORP., AND
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

RAILROAD CONTROL AND MERGER APPLICATION

MOTION OF PIONEER RAILCORP AND
KEOKUK JUNCTION RAILWAY FOR
LEAVE TO INTERVENE AND FILE COMMENTS

KJRY-1

Comes now Pioneer Railcorp ("Pioneer") and its subsidiary, the Keokuk Junction Railway ("KJRY") and requests that the Surface Transportation Board grant them leave to file the "Comments of Pioneer Railcorp and Keokuk Junction Railway," which is included herewith and filed under the docket designation "KJRY-2."

On March 12, 1996, Pioneer assumed control of KJRY pursuant to Finance Docket No. 32877, Pioneer Railcorp -- Acquisition of Control Exemption -- KNRECO, Inc., d/b/a Keokuk Junction Railway (served March 26, 1996). Upon consummating this transaction, Pioneer soon concluded that it would be prudent for it and KJRY to participate in the UP-SP merger proceedings now before the STB. Admittedly, neither Pioneer nor KJRY had before

indicated an intent to participate in the subject merger proceeding, but the lack of any such prior notice merely reflects that KJRY's previous owners did not at any time prior to KJRY's sale to Pioneer choose to participate in this proceeding.

To confirm that they would not be automatically precluded on some procedural ground from filing comments with the STB, counsel for the Pioneer-controlled KJRY contacted Julia Farr of the STB during the week beginning March 17, 1996. Ms. Farr advised that parties such as Pioneer and KJRY could still submit comments in the subject proceeding, provided that they submitted what she described as a "Motion for Leave to Intervene," and provided further that such comments were filed on or after March 29, 1996. Based upon Ms. Farr's instructions, Pioneer and KJRY file the present Motion.

Pioneer and KJRY therefore respectfully request that the STB grant the subject Motion for Leave to Intervene. Further, Pioneer and KJRY request that the STB accept and consider their jointly-filed comments as contained in **KJRY-2**, "Comments of Pioneer Railcorp and Keokuk Junction Railway."

Respectfully submitted,

John D. Heffner /s/

John D. Heffner
REA, CROSS & AUCHINCLOSS
Suite 420
1920 N Street, N.W.
Washington, D.C. 20036
(202) 785-3700
and

Daniel A. LaKemper
General Counsel
Pioneer Railcorp
1318 S. Johanson Road
Peoria, IL 61607
(309) 697-1400

Attorneys for Pioneer Railcorp and
Keokuk Junction Railway

Dated: March 28, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of March 1996, served copies of the foregoing document upon the Applicants and all parties of record by means of first class mail, postage prepaid, or by more expeditious delivery where such delivery has been requested by certain participants in the subject proceeding.

Robert A. Wimbish
Robert A. Wimbish

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Item No. _____

Page Count 3
Mar #582

62130

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BEFORE THE SURFACE TRANSPORTATION BOARD

The Denver and Rio Grande Western)
Railroad Company -- Discontinuance) AB-8 (Sub-no. 38)
of Trackage -- Towner-NA Jct. Line)
in Kiowa, Crowley and Pueblo Counties,) Colo.)

Missouri Pacific Railroad Company --)
Abandonment -- Towner-NA Jct. Like) AB-3 (Sub-no. 130)
in Kiowa, Crowley and Pueblo Counties,) Colo.)



[merger related: Finance Dkt. 32760, UP/SP]

Statement of Willingness to Assume
Financial Responsibility

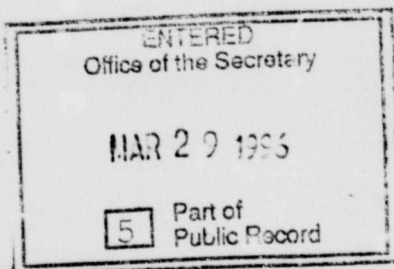
In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, the Rails to Trails Conservancy (hereinafter "RTC" or "interim Trail User"), is willing to assume full responsibility for management of, for any legal liability arising out of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned and operated by Missouri Pacific Railroad Company ("Railroad"), with trackage rights held by The Denver and Rio Grande Western Railroad Company ("DRG"). The property extends from MP 747.0 near Towner to MP 869.4 near NA Junction, a distance of approximately 122.4 miles in Kiowa, Crowley and Pueblo Counties, Colorado. The right of way is part of a line proposed for abandonment in Docket AB-3 (Sub-no. 130), and for discontinuance of trackage rights in Docket AB-8 (Sub-no. 38).

A map depicting the property is attached.

RTC acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the Railroads on the same date it is being served on the Commission.

Hal Hienstra

~~David Burwell~~, Hal Hienstra,
Vice President,
Rails to Trails Conservancy
1400--16th St., N.W., #300
Washington, D.C. 20036
(202) 797-5400



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Counsel:

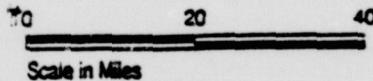
Charles H. Montange, Esq.
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936

Of counsel: Simon Sidamon-Eristoff, Esq.

Rails to Trails Conservancy
1400--16th St., N.W., #300
Washington, D.C. 20036
(202) 939-3411

cc. per Arvid Roach (UP) letter of 19 March 1996
in Finance Dkt. 32760

Figure 5C Overview of Proposed Abandonment Towner - NA Junction, Colorado



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Donna K. Murphy
Joseph F. Rall
Myron F. Smith

Board of County Commissioners

FREMONT COUNTY

615 Macon, Room 102 • Cañon City, Colorado 81212
Phone 719 275-1515 • Fax 719 275-7626

March 27, 1996

Vernon A. Williams, Secretary
Surface Transportation Board
Interstate Commerce Commission
12th and Constitution Ave. N.W.
Washington, D.C. 20423

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

Docket No. AB-8 (Sub-No. 39)✓
Docket No. AB-8 (Sub-No. 36x)✓
Docket No. AB-3 (Sub-No. 130)✓

LETTER OF PROTEST AND REQUEST FOR CONDITIONS SUBMITTED BY

FREMONT COUNTY BOARD OF COMMISSIONERS

Fremont County Courthouse
615 Macon Avenue
Canon City, CO 81212

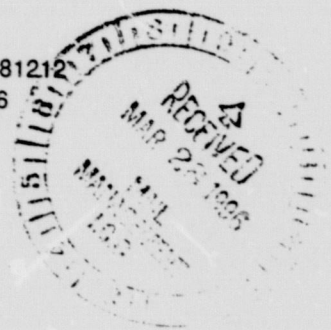
Dear Secretary Williams:

Pursuant to the Notice of Intent to Participate, dated January 11, 1996, the Fremont County Board of Commissioners hereby submits its position statement concerning protest to the proposed merger particularly as it pertains to the anticipated and proposed abandonment of 178 miles of track between Canon City, Colorado and Sage, Colorado.

1. Fremont County is a political subdivision of the State of Colorado. The Board of Commissioners is made up of three County Commissioners elected at large (but residing in three separate districts within the county). Canon City is the county seat of the county, which is the commencement point of the proposed abandonment of lines. The Board of Commissioners is the administrative, legislative and policy making board of Fremont County.

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MAR 28 1996

Secretary Vernon A. Williams
March 27, 1996
Page Two.

Fremont County was formed by an act of the State Legislature in February of 1879. Among the duties of the Board of Commissioners are the powers granted to counties to regulate land use of all unincorporated portions of Fremont County and to improve and protect the health, welfare and safety of all citizens and visitors to Fremont County. The county has a population of approximately 35,775. The county comprises 1,502 square miles of varied terrain, and is centrally located within the state of Colorado.

2. The County has participated with municipalities, entities and agencies within and without Fremont County concerning the matter of the Merger and Abandonment of Lines proposed in this action. It is the widespread consensus of the municipalities, agencies and entities that the abandonment of the 178 miles of track between Canon City and Sage, Colorado, will be detrimental to the interests of the region and should not occur without the imposition of certain conditions concerning such line abandonment.

3. The Fremont County Board of Commissioners hereby requests that the proposed line abandonment be denied. If the line abandonment is granted, the County requests that it be subject to the following conditions:

a. The merging parties, or Southern Pacific be required to offer for sale all of the Denver & Rio Grande Western lines as a whole unit which would encourage an interested party to make beneficial use of the lines for the betterment of the region. Although Southern Pacific has indicated that it does not oppose the sale of the lines, it has failed to give any consideration to inquiries for purchase of the lines.

b. If negotiations for sale of the intact lines are unsuccessful, the merging parties, or Southern Pacific be required to rail-bank the 178 miles of line, from Canon City to Sage, which would allow the right of way to be preserved.

c. The merging parties, or Southern Pacific be required to leave the physical track in place along the 300 miles of line proposed for abandonment in the State of Colorado for a period of 24 months following final approval of the proposed merger.

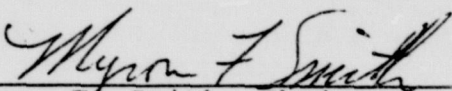
Secretary Vernon A. Williams
March 27, 1996
Page Three.

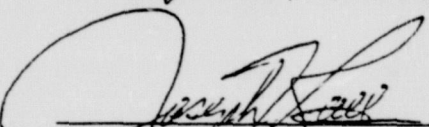
It is the position of the Board of Commissioners for Fremont County that the interests of the residents, citizens, governments, agencies, businesses and other entities would be best served if the conditions set forth in this letter are imposed. Without the proposed conditions, the detrimental effect of the proposed line abandonment to this region would be tremendous.

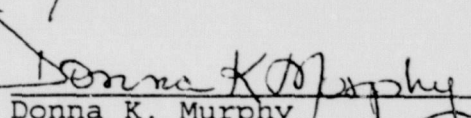
A copy of this protest letter is recorded on the enclosed 3-1/2" disk, formatted for Word Perfect 5.1.


Sincerely Yours,

BOARD OF COMMISSIONERS FOR
FREMONT COUNTY


Myron F. Smith, Chairman
Commissioner, District 3


Joseph F. Rall
Commissioner, District 2


Donna K. Murphy
Commissioner, District 1


Brenda L. Jackson
Fremont County Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by pre-paid U.S. first class mail on all other Parties of Record (POR) in accordance with Surface Transportation Board's Decision No. 15, as well as on upon each of the parties listed below.

Gary A. Laakso, General Attorney
Southern Pacific Building, Room 846
One Market Plaza
San Francisco, CA 94105

Robert Opal, General Attorney
1416 Dodge Street
Omaha, NE 68179-0830

Hon. Jerome Nelson, Administrative Law Judge
Interstate Commerce Commission
825 North Capitol Street, NE
Washington, DC 20426

Arvid E. Rosch, II, Esq.
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, DC 20044

Paul Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, NW
Washington, DC 20036

Dated at Canon City, Colorado, this 27 day of March, 1996.

Denise E. Miller
Denise E. Miller

STB

FD

32760

3-28-96

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MONTANA FARMERS UNION

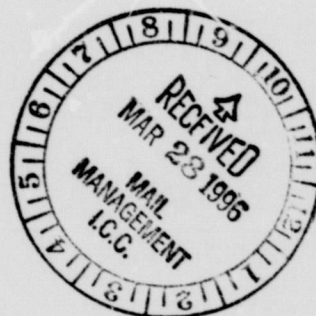
300 River Drive North
P.O. Box 2447
Great Falls, MT 59403-2447
Phone 406 • 452-6406
Fax 406 • 727-8216

Item No. _____

Page Count 8
Mar #585

March 27, 1996

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



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

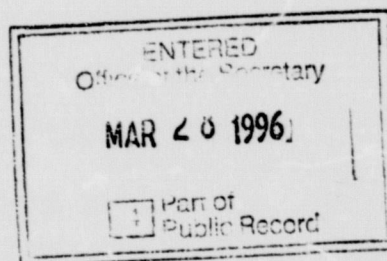
Dear Sir:

Enclosed please find the original and 20 copies of the Montana Farmers Union Request for Conditions, Protest and Comments in the above-styled proceeding. I am also enclosing a diskette on which are copied this pleading in Word for Windows 6.0 format.

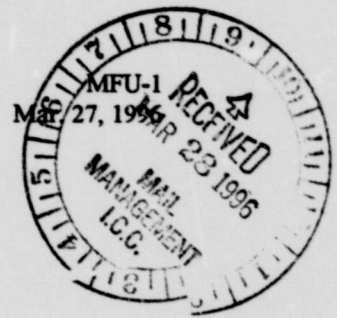
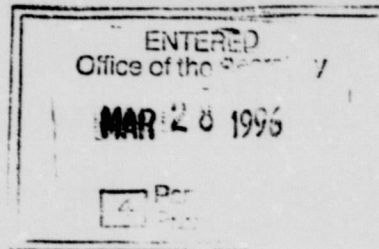
Please receipt duplicate copy of this transmittal and return to address below.

Sincerely,

George Paul, Executive Director
Montana Farmers Union
P.O. Box 2447
Great Falls, Montana 59403
406-452-6406 phone
406-727-8216 FAX



62127



Before The
Surface Transportation Board

Finance Docket No. 32760

Original

Union Pacific Corporation, Union Pacific Railroad Co.
and Missouri Pacific Railroad Company
-Control and Merger-
Southern Pacific Rail Corporation, Southern Pacific Transportati
St. Louis Southwestern Railway Company, SPCSL Corporation.,
and The Denver Rio Grande Western Railroad Company

**Comments,
Conditioned Statement of Support**

submitted on behalf of
the
Montana Farmers Union

Montana Farmers Union, (MFU) pursuant to the procedural schedule adopted by the Interstate Commerce Commission and thereafter by the Surface Transportation Board in this proceeding, and the Commission's regulations, hereby submits this Comments and Conditioned Statement of Support for the Proposed Merger submitted by Union Pacific Corporation (UP) et al, and Southern Pacific Rail Corporation (SP) et al. (Applicant).

MFU represents agricultural producers and other rural residents of the state of Montana.

The proposed merger and consolidation of the Union Pacific and Southern Pacific will further exacerbate the captive shipper status of Montana farm producers.

There will be serious detrimental adverse effects on existing competition among rail carriers who serve Montana if this Application is not conditioned by this Board to ameliorate the anti-competitive effects. Accordingly, MFU respectfully requests the Board, pursuant to its authority under 49 U.S.C. § 11344 (c) of the Interstate Commerce Act, to impose conditions requiring the Applicants, upon consummation of their proposed merger and consolidation, to establish and maintain a rail competitive balance within the State of Montana. Those requested conditions, and the reasons why such conditions must be imposed, are specified in detail in this submittal. The requested conditions of support are:

1. MFU seeks the sale of the line between Salt Lake City, UT and Silver Bow, MT to Montana Rail Link (MRL) together with the granting of a proportional rate agreement similar to the agreement between UP/SP and BNSF for all traffic moving over Silver Bow, MT from all Montana origins to Portland, OR and points south of Portland, OR.
2. MFU further seeks the sale of the UP line between Kansas City and Stockton, CA as outlined in the responsive application filed by Montana Rail Link to provide competitive balance to the massive anti-competitive effects that will emanate from this merger.
3. Support for Montana Governor Marc Racicot's Request for Conditions requiring establishment of a UP Interchange to interchange all traffic designated in the Pre-Merger agreement, as amended therein, including the right by UP, to solicit movement and price competitively, at the Silver Bow, MT gateway, a shipping point located on the UP railroad. This UP interchange will be in addition to the proposed gateway in Portland, OR which is outlined in the Pre-Merger Agreement filed within the Application. This request for condition will not require additional connections, crossings or related rail facilities to facilitate the exercise and use of this interchange. In the alternative, MFU supports the sale of the line between Pocatello, ID and Silver Bow, MT to Montana Rail Link (MRL) together with the granting of a proportional rate agreement similar to the agreement between UP/SP and

BNSF for all traffic moving over Silver Bow, MT from all Montana origins to Portland, OR and points south of Portland, OR.

4. MFU further supports Montana Governor Marc Racicot's Request for Condition requesting modification of the Pre-Merger Agreement, and the trackage rights contained therein, to allow UP access to solicit, competitively price and move traffic, under the pre-merger proportional agreement, made up of all agricultural commodities whose shipments originate in Montana, not just a limited number of commodities.
5. MFU further supports Montana Governor Marc Racicot's Request for Condition requesting modification of the Pre-Merger Agreement, and the trackage rights contained therein, to allow UP access to solicit, competitively price and move traffic, under the pre-merger proportional agreement, from all points in Montana, not just the western half of the state.
6. MFU further supports Montana Wheat and Barley Committee's Request for Condition seeking, from this Board, the modification of the Pre-Merger agreement to allow the Applicant to solicit and price competitively agricultural commodities to Portland, OR as well as points south of Portland.

STATEMENT OF FACTS

The Montana Transportation Environment Has Eroded from Three Transcontinental Railroads to One

Today, in Montana, we have one major railroad, the Burlington Northern Railroad, operating as a monopoly in the transportation of bulk commodities from the farm to market, a situation the Commission has deemed a 'market dominant' transportation condition in the *McCarty Farms Case*, Docket Nos. 37809, 37809 (Sub-No.1). The farm producers of this State together with Montana State Government have spent over 15 years at the Commission attempting to get the excessive rate levels extracted by the BN from the Montana producers, adjudicated by this Commission, now Board. As yet, this Commission has yet to complete the case.

This Board must consider the real and actual movement of rail-transported commodities from Montana. Under Section 11343 of the IC Act, a consolidation or merger of two carriers may be carried out only with the approval and authorization of the Board. 49 U.S.C. § 11343 (a). The agency must carefully and broadly consider the potential adverse effects on competition among rail carriers in an affected region.

The history of rail mergers that have been approved show that the anti-competitive effects of mergers have not been adequately addressed and have caused hardship on many classes of transportation users. Currently the Board is relying on criteria for imposing conditions to remedy anti-competitive effects as set out in *Union Pacific -Control- Missouri Pacific; Western Pacific*, 366 I.C.C. 462, 562-65 (1982).

For the farm producer, the cost of transporting grain can represent as much as one-third the overall price received for the grain and Montana's are the highest in the nation. Unlike virtually every other industry, the farm producers bear the freight charges and cannot pass them on to any other party in the distribution chain, and yet the farm producer does not physically pay the freight charges.

The granting of the proportional rate access to UP/SP by BNSF over the northern part of its system appears to be a payback to Applicants for the granting of extensive trackage rights in the Central Western U.S. to BNSF.

The selection by the merging railroads of its future competitor on its merged system, by granting trackage rights to a single railroad, closes out any other viable options by affected shippers, and does not, on the surface, serve the public interest. The MRL proposal provides the needed competition balance to offset the anti-competitive effects of this merger.

The second consequence of the UP/SP action in selecting BNSF, is to make it difficult on shippers to suggest and support alternative proposals to overcome the anti-competitive effects of this merger. Shippers, large and small, are concerned with railroad reprisals from the UP and BN, if they publicly support alternative proposals that are not

ultimately accepted by this Board. Therefore, the effect of the pre-merger agreement is to stifle creative shipper-based solutions designed to combat the anti-competitive effects of this, the largest of parallel railroad mergers in U.S. history. Never in the history of the Commission has a major parallel railroad merger not been conditioned by establishment of one or more major intramodal competitors to provide competitive balance to the anti-competitive aspects of parallel mergers. The proposal by MRL directly deals with this anti-competitive effect of parallel mergers.

In fact, the selection of the BNSF as the only future competitor to the newly formed UP/SP did not allow other smaller railroads a chance to develop proposals. It is widely reported that many smaller railroads had made proposals to the UP while negotiations were being conducted by the UP with the BN.

In short, the Applicants have provided this Board with virtually no means by which to develop competitive alternatives to the two major carriers that will exist in the West if this merger is approved.

The effect of the Pre-Merger proportional rate agreement disadvantages Montana producers when compared with producers located in western Canada, Washington, northern Idaho and Oregon. By artificially establishing Portland, OR as the only gateway, and requiring Montana to haul 40+% farther mileage than is necessary, Montana producers will be effectively embargoed from participating in the markets it traditionally participates in today.

This Board should strongly consider development of both an alternative gateway at Silver Bow, MT to shorten the distances to California and Arizona markets for Montana farm producers and bring the comparable distances from Washington and northern Idaho in line compared with this out-of-route hauling procedure suggested by Applicants in their Pre-Merger Agreement.

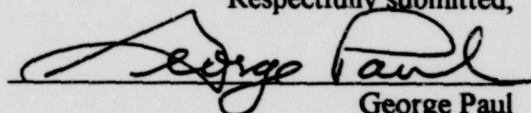
MFU SUPPORT STATEMENT

1. MFU seeks the sale of the line between Salt Lake City, UT and Silver Bow, MT to Montana Rail Link (MRL) together with the granting of a proportional rate agreement similar to the agreement between UP/SP and BNSF for all traffic moving over Silver Bow, MT from all Montana origins to Portland, OR and points south of Portland, OR.
2. MFU further seeks the sale of the UP line between Kansas City and Stockton, CA as outlined in the responsive application filed by Montana Rail Link to provide competitive balance to the massive anti-competitive effects that will emanate from this merger.
3. Support for Montana Governor Marc Racicot's Request for Conditions requiring establishment of a UP Interchange to interchange all traffic designated in the Pre-Merger agreement, as amended therein, including the right by UP to solicit movement and price competitively, at the Silver Bow, MT gateway, a shipping point located on the UP railroad. This UP interchange will be in addition to the proposed gateway in Portland, OR which is outlined in the Pre-Merger Agreement filed within the Application. This request for condition will not require additional connections, crossings or related rail facilities to facilitate the exercise and use of this interchange. In the alternative, MFU supports the sale of the line between Pocatello, ID and Silver Bow, MT to Montana Rail Link (MRL) together with the granting of a proportional rate agreement similar to the agreement between UP/SP and BNSF for all traffic moving over Silver Bow, MT from all Montana origins to Portland, OR and points south of Portland, OR.
4. MFU further supports Montana Governor Marc Racicot's Request for Condition requesting modification of the Pre-Merger Agreement, and the trackage rights contained therein, to allow UP access to solicit, competitively price and move traffic, under the pre-merger proportional agreement, made up of all agricultural commodities whose shipments originate in Montana, not just a limited number of commodities.
5. MFU further supports Montana Governor Marc Racicot's Request for Condition requesting modification of the Pre-Merger Agreement, and the trackage rights

contained therein, to allow UP access to solicit, competitively price and move traffic, under the pre-merger proportional agreement, from all points in Montana, not just the western half of the state.

6. MFU further supports Montana Wheat and Barley Committee's Request for Condition seeking, from this Board, the modification of the Pre-Merger agreement to allow the Applicant to solicit and price competitively agricultural commodities to Portland, OR as well as points south of Portland.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "George Paul", is written over a horizontal line.

George Paul
Executive Director
Montana Farmers Union
300 River Drive North
P. O. Box 2447
Great Falls, MT 59403
Phone: (406) 452-4506

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IDAHO BARLEY COMMISSION

Item No. _____

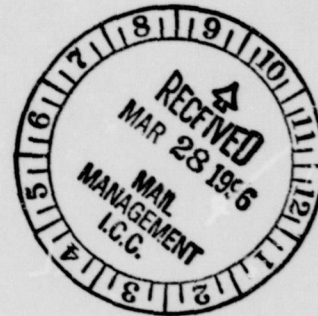
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ED
Secretary

MAR 28 1996

4 Part of
Public Record



March 28, 1996

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

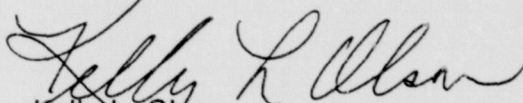
Re: Finance Docket No. 32760, *Union Pacific Corporation, et al* -- Control
and Merger -- *Southern Pacific Rail Corporation, et al*

Dear Sir:

Enclosed please find the original and 20 copies of the Idaho Barley Commission and Idaho Wheat Commission's Request for Conditions, Protest and Comments in the above-styled proceeding. I am also enclosing a diskette on which are copied this pleading.

Please receipt duplicate copy of this transmittal and return to address below.

Sincerely,


Kelly L. Olson
Administrator

62126

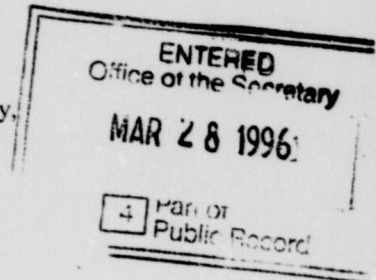
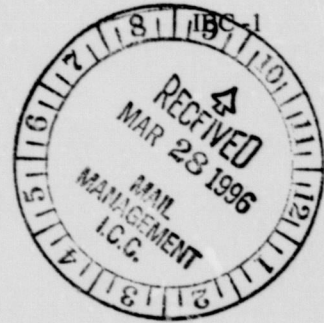
Before The
Surface Transportation Board

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 Corporation.,
and The Denver Rio Grande Western Railroad Company

**Request for Conditions,
Protest
and
Comments**

submitted on behalf of
the
**Idaho Barley Commission
and
Idaho Wheat Commission**



Idaho Barley Commission (IBC) and Idaho Wheat Commission, (IWC) pursuant to the procedural schedule adopted by the Interstate Commerce Commission and thereafter by the Surface Transportation Board in this proceeding, and the Commission's regulations, hereby submits the following evidence and argument in support of (1) Request for Conditions and Comments specifying the specific protective conditions IBC/IWC is requesting the Commission place on its approval of the Railroad Control and Merger Application ("Application") submitted by Union Pacific Corporation (UP) et al, and Southern Pacific Rail Corporation (SP) et al.; and (2) IBC/IWC's protest and comment on the Application.

I. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

IBC/IWC represents the barley producers of the state of Idaho. Idaho is a natural resources state with the main economies built upon agriculture, manufacturing as well as tourism. In order for our bulk agricultural products to have value, they require bulk transportation to points inside and outside Idaho and, in many cases, outside the United States.

The proposed merger and consolidation of the Union Pacific and Southern Pacific will further exacerbate the captive shipper status of Idaho farm producers.

This proposed merger poses serious adverse effects on the levels of service among rail carriers who serve Idaho. Specifically, the Pre-Merger agreement filed with this application could alter long standing regional cross-country competitive relationships between Idaho shippers and those located in other states. This merger will also further increase the monopolistic control of the Union Pacific over southern Idaho transportation users. Accordingly, IBC/IWC respectfully requests the Board, pursuant to its authority under 49 U.S.C. § 11344 (c) of the Interstate Commerce Act, to impose conditions requiring the Applicants, upon consummation of their proposed merger and consolidation, to establish and maintain a rail competitive balance within the State of Idaho. Those requested conditions, and the reasons why such conditions must be imposed, are specified in detail in this submittal.

Outline of IBC/IWC's Submittal

This Request for Conditions and Comment is divided into three Sections:

- (1) Section 1 - entitled "Statement of Fact"
- (2) Section 2, entitled "Summary of Evidence and Argument," generally summarizes: the facts relating to transportation in Idaho; the adverse effect on

competition that will be caused by this merger; the legal standards applicable to the Commission's consideration of this question; and the reasons why the Commission must eliminate those adverse effects.

(3) Section 3, "Relief Requested," pursuant to 49 U.S.C. § 11344 (c), the Board's regulations at 49 C.F.R. 1180, the procedural orders issued in this docket by the Board, and decisions of the Commission applying its authority to condition its approval of rail mergers, IBC/IWC requests that, if the Board approves the merger that is the subject of the Application in this docket, such approval be expressly subject to the following conditions in order to eliminate the adverse effect of this proposed merger upon the transportation of goods from Idaho.

1. IBC/IWC seeks approval of the Responsive Application of Montana Rail Link including the sale of the line between Pocatello, ID and Silver Bow, MT to Montana Rail Link (MRL) together with the granting of a proportional rate agreement similar to the agreement between UP/SP and BNSF for all traffic moving from all Idaho origins to Portland, OR and points south of Portland, OR.

2. Grant trackage rights to allow BN access to solicit and move traffic, under a competitive proportional rate agreement, made up of all commodities whose shipments originate in Idaho.

SECTION 1 - STATEMENT OF FACTS

II. STATEMENT OF FACTS

The Idaho Transportation Environment Is Characterized by Its Captive Shipper Status

The Idaho transportation environment is characterized by one transcontinental railroad, the UP, to handle the major portion of outbound traffic. Therefore, one of

the keys to this State's economic stability depends on having access to good affordable rail/motor carrier transportation as well as facilities so that its shippers can deliver a competitively priced product.

This Board is faced with creating the largest railroad in history with tremendous anti-competitive effects. The Applicant has even suggested, in its Pre-Merger application, filed with the Application, that this Board consider amelioration of the anti-competitive effects by allowing the Applicant semi-access to PNW origins in exchange for massive amounts of trackage rights to a competitive railroad, the BNSF, throughout the Applicants newly formed system. This Pre-Merger agreement directly affects the agricultural shippers of the state of Idaho and demands that this Board hear their concerns and consider their REQUEST FOR CONDITIONS in the deliberation of this, the last of the great western railroad mergers in the West.

In fact, in 1994, over 36% of the barley and 75% of the wheat produced in Idaho moved out of state. Over 60% of Idaho barley was utilized in the malting industry and about 38% was utilized in the feed industry with about 2% utilized for seed and other uses(*Source: Idaho Barley End Uses*). Idaho is the second largest producer of barley and sixth largest producer of wheat in the U.S. (*1994 U.S. Ag Statistics*).

The conditions sought by IBC/IWC are reasonable and necessary to ameliorate the competitive harm to the transportation users of Idaho. As will be demonstrated, approval of this merger as proposed will result in the exacerbation of anti-competitive effects in areas and of commodities in Idaho from access to competitive rail that other grain producers in other states will attain under this Pre-Merger agreement. Consequently, any conditions that merely allow only part of Idaho's commodities access to the proportional rate structures will not preserve competition. It will have the effect of further stratifying and isolating southern Idaho shippers from traditional markets while positioning their traditional competitors, in neighboring states, with unfettered access to compete.

OUTLINE OF INDUSTRY IN IDAHO

1. The wheat industry in Idaho is characterized by an export-dominant rail movement.
2. The barley industry in Idaho is characterized by both an export and domestic market dominated by rail.

SECTION 2 - SUMMARY OF EVIDENCE AND ARGUMENT

III. THE INTERSTATE COMMERCE ACT, AS AMENDED BY INTERSTATE COMMERCE TERMINATION ACT AND THE STAGGERS ACT, REQUIRES THE SURFACE TRANSPORTATION BOARD TO BROADLY IDENTIFY POTENTIALLY HARMFUL COMPETITIVE EFFECTS OF A PROPOSED MERGER AND TO MITIGATE THOSE EFFECTS WHEREVER POSSIBLE

Under Section 11343 of the IC Act, a consolidation or merger of two carriers may be carried out only with the approval and authorization of the Board. 49 U.S.C. § 11343 (a). Where a proposed merger results in harmful competitive effects, the Board must impose conditions on the merger to eliminate those effects, as long as the conditions are operationally feasible and will produce benefits which are of greater benefit to the public than they are detrimental to the transaction.

A. The Statutory Standard

The Interstate Commerce Act, in 49 U.S.C. § 11344 (b)(1), requires the Commission to consider, in a proceeding involving the merger of two or more Class I railroads, at least the following:

- (A) the effect of the proposed transaction on the adequacy of transportation to the public.
- (B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

- (C) the total fixed charges that result from the proposed transaction.
- (D) the interest of carriers employees affected by the proposed transaction.
- (E) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

The statute directs the Board to "approve and authorize a transaction...when it finds the transaction consistent with the public interest." 49 U.S.C. § 11344 (c). The same section also provides that "[t]he Commission may impose conditions governing the transaction." *Id.*

The history of rail mergers that have been approved, show that the anti-competitive effects of mergers have not been adequately addressed by the Commission and have caused hardship on many classes of transportation users. Currently the Board is relying on criteria for imposing conditions to remedy anti-competitive effects as set out in *Union Pacific -Control—Missouri Pacific; Western Pacific*, 366 I.C.C. 462, 562-65 (1982).

The Commission in that decision stated:

- that it would not impose conditions on a railroad consolidation unless it found that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market),
- that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and
- that the conditions will produce public benefits (through reduction or elimination or possible harm) outweighing any reduction to the public benefits produced by the merger.

B. The Board Must Identify Potentially Harmful Competitive Effects and Mitigate Those Effects Wherever Possible.

The Commission at 363 I.C.C. 786-87 stated that in rail merger consideration of anti-competitive effects, "we are necessarily also concerned about any significant 'lessening' or 'reduction' in competition caused by a consolidation."

C. The ICC's (now STB) case law is clear that, in examining a proposed transaction, the Commission must look at specific instances where a lessening or reduction in competition is alleged to take place.

The Board must broadly consider all types of restrictions on competition, including direct preclusion of competitive transportation alternatives as a result of the merger, as well as such indirect effects such as the lessening of source competition or the possibility of traffic diversion from and foreclosure of "upstream" competitors. We believe it is inherently anti-competitive for the merging carriers (Applicants) to have the right to select and define their own future competitors and, in addition, at the same time pre-determine pricing arrangements to the detriment of the Idaho grain producers.

This merger appears to be a case of Pre-Merger agreements. In the original merger the state of Utah would have become as captive as Idaho with no choice of competing railroads. UP then negotiated with BN, granting BNSF trackage rights from Denver, CO, through Utah to Oakland, CA. The NEW arrangement was intended to correct what was considered an intolerable loss of competition to Utah businesses - that of becoming a captive shipper. The IBC/IWC does not expect that this Board will see businesses openly defy the UP/SP or the BNSF and suggest shipper generated alternative competitive solutions because of the fear of marketing reprisals by the affected big TWO railroads.

The Pre-Merger agreement also gave to grain producers in neighboring states access to the UP/SP via proportional rate solicitation agreements. Idaho's traditional competitive position with grain producers in neighboring states will thus be weakened by this merger because of our lack of access to competitive rail. Regional rail competitive balance is and should be based upon traditional competitive relationships. This Board must consider the broad regional rail anti-competitive effects of this merger. The Board's power to attach conditions to its approval of a major rail merger is, under the statute, unqualified, and the Commission has indicated that it considers its authority as 'broad.' *UP/MP*, 366 I.C.C. 462, 562. The Commission has generally issued conditions to protect the interests of the competing carrier and to protect the public from anti-competitive consequences. *UP/MP*, 366 I.C.C. 462, 562.

The granting of the proportional rate access to UP/SP by BNSF over its northern part of the system appears to be a payback to Applicants for the granting of extensive trackage rights in the Central Western U.S. to BNSF.

Other 'side-deals' continue to favor specific rail users, such as the recent agreement made between the ports of Seattle and Tacoma with UP. The Ports gained commitments from UP/SP to increase rail capacity in the northern corridor between Puget Sound and Chicago, and to gain improvements in port access between existing and planned marine terminals and rail mainlines.

For grain producers in Idaho, the cost of transporting grain represents a significant portion of the overall price received for the grain. The key to understanding the uniqueness of the farmer producers plight is to understand: unlike virtually every other industry, the farm producers bear the freight charges and cannot pass them on to any other party in the distribution chain, and yet the farm producer does not physically pay the freight charges.

D. The Proposed Trackage Rights Agreement (Pre-Merger Agreement) Will Not Provide Sufficient Competition and Did Not Seek Shipper Involvement In The Process of Selection of Carriers

The selection by UP/SP of the BNSF to provide 'competition' and 'competitive balance' to overcome the massive anti-competitive aspects of this proposed rail merger creates great concern here in Idaho. *After the UP merged with the Chicago and Northwestern in 1995, the decline in service levels on the newly merged railroad have become a legend in their own time.* IBC/IWC is advised the UP/SP did not consult with shippers in Idaho, or according to news reports, other shippers or railroads prior to selecting the BNSF as its future competitor through the use of trackage rights. Selection of alternative competitive carriers by affected shippers would most certainly result in selection of carriers to best meet the needs of affected shippers and service levels equal or greater than that posed by UP/SP in this merger proposal.

It is this Board's responsibility to analyze and solicit alternatives to the anti-competitive effects of this proposed merger.

Our second concern with the merger as proposed, involves the potential for increased north-south rail traffic to the detriment of east-west traffic from Idaho. One potential outcome of the Pre-Merger arrangements that UP made with BNSF, allows Canadian commodities moving to Portland to have a more competitive rate structure than is available to grain shippers in southern Idaho moving grain to Portland. Additionally, both UP/SP and BNSF have indicated that they are going to bid for portions of the Mexican National Railroad, thereby improving rail access from Canada to Central America.

Since southern Idaho grain shippers have no alternative rail options as things stand currently, a concern exists that UP may switch more hopper cars to accommodate north-south movement at the expense of western states' traditional east-west grain movements.

Therefore, IBC/IWC requests that the Board oversight this merger for possible anti-competitive effects requiring further protection to captive shippers in Idaho, and further require UP to monitor and report to the Board grain movements to and from Canada, and to and from Mexico, for the next 20 years. In this manner, evidence will be available to this Board to consider the long-term anti-competitive effects on captive shippers in the areas of transportation, such as car supply, and captive shipper rates.

SUMMARY

In summary, most customers who would have lost competitive service due to the proposed merger are being given a price/service choice. This choice is being defined by UP itself. We believe these price/service choices eliminate anti-competitive effects and should be developed by affected shippers and shipper groups. This is the last of the western railroad mergers. The captive shippers of Idaho need protection from the anti-competitive effects of this merger. At this point, leverage used by UP/SP in neighboring

competitive effects of this merger. At this point, leverage used by UP/SP in neighboring states to gain support for the proposed merger will only put Idaho shippers at an increased disadvantage when attempting to compete for international markets.

The IBC and IWC alternatively supports the approval of the MRL proposal.

The Board has the ability, in this UP/SP proposed merger, to ameliorate the further anti-competitive effects on Idaho captive transportation users.

In short, the Applicants have provided this Board with virtually no means by which to develop competitive alternatives to the two major carriers that will exist in the West if this merger is approved. Surely, a better way exists to encourage and foster competitive rail in the West.

A. In this proceeding, IBC/IWC requests that the Board condition its approval of the merger of the UP and SP on the establishment of continued oversight of the last vestiges of intramodal competition in Idaho by maintaining oversight of the merger for the next 20 years or, in the alternative, IBC/IWC seeks support for MRL's proposed Responsive Application from all Idaho origins

The maintenance of limited competitive balance requires and necessitates, in this merger, the inclusion of trackage rights given by the UP/SP to BNSF over the UP lines in southern Idaho. The assurance of guaranteed continuation of adequate levels of service with on-going maintenance and upgrades without the potential or eventual threat of abandonment must also be a conditioning factor in this merger. Otherwise, southern Idaho has the potential to have large areas left without rail service.

The limited competition this merger provides requires this Board consider with favor, MRL's proposed Responsive Application.

- The Conditions Sought are Operationally Feasible and Desirable.

- The Proposed Conditions Will Produce Substantial Public Benefits Outweighing Their Effect on the Merger and Potentially Correct The Anti-Competitive Effects of Pre-Merger Agreement on Idaho Grain Producers.

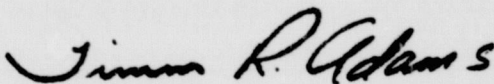
SECTION 3 - RELIEF REQUESTED

IV. THE COMMISSION MUST CONDITION THE APPLICATION TO PROTECT IDAHO BARLEY AND WHEAT PRODUCERS FROM THE ANTI-COMPETITIVE EFFECTS OF THIS MERGER

IBC/IWC herein requests:

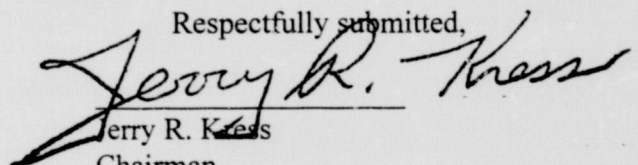
1. IBC/IWC seeks approval of the Responsive Application of Montana Rail Link including the sale of the line between Pocatello, ID and Silver Bow, MT to Montana Rail Link (MRL) together with the granting of a proportional rate agreement similar to the agreement between UP/SP and BNSF for all traffic moving from all Idaho origins to Portland, OR and points south of Portland, OR.
2. In addition grant trackage rights to allow BN access to solicit and move traffic, under a competitive proportional rate agreement, made up of all commodities whose shipments originate in Idaho.

For all conditions, herein requested, the merger carrier, period of 20 years, will receive oversight by this Board.



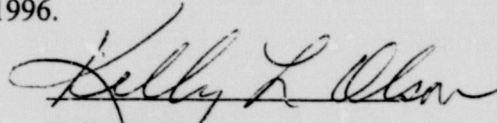
Timm R. Adams
Chairman
Idaho Barley Commission
1199 Main Street, Suite G
Boise, ID 83702-5630
Phone: (208) 334-2090
for Idaho Barley Commission
Commission

Respectfully submitted,



Jerry R. Kress
Chairman
Idaho Wheat Commission
1109 Main Street, Suite 310
Boise, ID 83702-5642
Phone: (208) 334-2353
for Idaho Wheat

I HEREBY CERTIFY that a copy of the foregoing REQUEST FOR CONDITIONS AND COMMENTS has been served upon all parties of record, as amended, by U.S. mail, postage prepaid, this 28th day of March, 1996.

A handwritten signature in cursive script, reading "Kelly L. Olson", written over a horizontal line.

Kelly L. Olson
Administrator, Idaho Barley Commission

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3-28-96

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Page Count 37

RTATION CONSULTING, INC.

Mar #525
1809 N. BROADWAY, SUITE H, WICHITA, KANSAS 67214

(316) 264-9630

March 25, 1996

Secretary Vernon Williams
Case Control Branch
Surface Transportation Board
Room 3315
12th & Constitution N.W.
Washington, D.C. 20423-0001



Re: Tri-State's Comments in Finance Docket No. 32760

Honorable Secretary Williams,

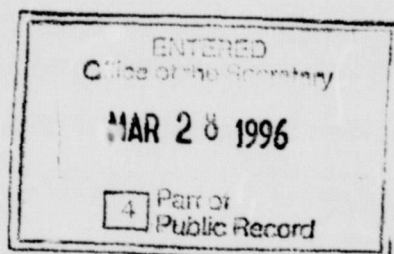
There is enclosed the original and 20 copies of Tri-State comments. We have the original of W.P. 6.1 Windows version but were able to save it on W.P. 5.1 dos. We are sending these total 21 comments by priority mail.

Respectfully yours,

J.J. Islandi
J.J. Islandi
STB Practitioner

JJI/sl

62118



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423**

Finance Docket No. 32760

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

**KANSAS-COLORADO-OKLAHOMA SHIPPERS ASSOCIATION
OPPOSITION TO THE UP-SP MERGER**

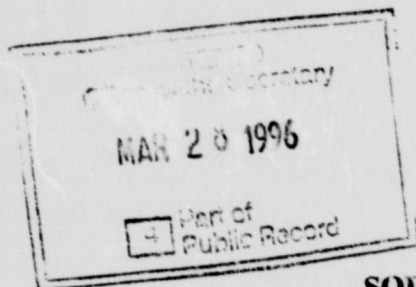
- PREFACE -

Comes now the Kansas-Colorado-Oklahoma Shippers Association to relate that its acronym Tri-State will be used in this proceeding in lieu of Kansas Shippers. Since the initial filing of intent to participate, three Colorado shippers and Oklahoma companies have joined the UP-MP and SFE Shippers Group, therefore, there was a need to identify these new shippers in our joint state nomenclature.

- BACKGROUND INFORMATION -

On October 9, 1995, the Kansas Shippers Association's STB Practitioner James Irlandi filed the Notice of Participation in this proceeding with the ICC. The notice provided information as to the members of the Association and gave detailed information as to the Chairmen of the three groups, as well as outline the concerns of the group, namely, "Concern of Shortline Railroads". Concerns of members located on main lines of the combined BNSF or UP-SP include: Loss of the SP Railroad Serving Sections of Kansas, Opposition to the Shortened Procedure, and Prayer for Allowance to Participate. Copies of this notice have been mailed to all parties of record. Tri-State incorporates its Notice of Intent to Participate, herein, in order that it becomes part of this statement of opposition. Original witness statements were sent to the Kansas City Southern Railway, attorney Tom McFarland and to the Coalition for Competitive Rail Transportation.

In order to portray the seriousness of the need to have the KCS Railway gain access to operating rights of the SP Railroad over the BNSF lines, and/or other possibilities, we mailed the majority of our original statements to the KCS Railway. We reserved the privilege to quote from these statements in our mailing to all three parties of record named supra. We are attaching the verified statement of President Lew Meibergen of W.B. Johnston Grain Company to this pleading in order to vividly provide information to your Board and other governmental agencies that the mega carriers may pick and choose what markets they wish to serve. In addition, to preclude any competitive carriers for provided service to that market.



- MAJOR ISSUES IN THIS PROCEEDING -

There are ten major issues of concern to Tri-State shippers in this proceeding:

1. Members were not contacted by either railroad in advance of public announcement of the proposed merger.
2. Members were concerned that the SP did not contact them because they expended funds, time and diligence to have the SP serve new sections of Kansas, only to merge in a few short months with the UP Railroad.
3. Members were concerned by the announcement that the UP-SP granted trackage rights to the BNSF when they had opposed the BN-ATSF merger.
4. Many members who are located on the UP or SSW railroad are opposed to the UP car ordering system.
5. Members on the mainline of the UP and SSW railroads are fearful of losing local service as well as equipment procurement.
6. Members on shortline railroads are concerned that this mega carrier merger will follow the pattern of the BN-ATSF merger with no equipment available and control of through rates by these mega carriers.
7. The need to replace the SP railroad's operating rights is crucial to members because of the lack of competition.
8. Granting the BNSF operating rights to UP and SP stations narrows the competitiveness of members.
9. Members support the KCS purchase of the BNSF line from Joplin, Missouri to Wichita, Kansas.
10. UP-MP line abandonments.

These main issues will be treated infra in the order of listing numbers 1 through 10.

**TRI-STATE MEMBERS HAVE GENERATED MORE THAN
FIFTY STATEMENTS**

Tri-State members have helped to obtain statements of 3 mayors, 3 county commissioners, 20 farmers or ranchers, 3 "concerned citizens", and the balance of 24 shippers located in Kansas, Colorado and Oklahoma. These statements include Coop facilities, independent grain firms, farmers, ranchers, and a former firm who owns a facility to be sold.

**WICHITA, KANSAS AND SEDGWICK COUNTY CITIZENS
CONCERNED ABOUT UP-SP MERGER**

Mayor Bob Knight, at a recent City Council Meeting held on February 13, 1996, expressed concern that the directing of additional UP train loads of coal, grain and possibly other commodities will tie up several crossings of major intersections with the UP mainline that runs through Wichita, Kansas and crossings at north and south intersections in Sedgwick County.

Tri-state's STB practitioner was invited to that meeting and supported the concern from actual experience at crossings at 29th, 21st, 17th, 15th, and 13th Streets, which run east and west and intersect UP tracks running north and south. The additional trains, the BNSF mainline, the shortline railroads all interchange with both the BNSF and UP and switching of cars to industries near the above named streets produce the numerous backups of vehicle traffic on most streets.

- ISSUE NO. 1 -

**MEMBERS WERE NOT CONTACTED BY EITHER RAILROAD IN ADVANCE
OF THE PUBLIC ANNOUNCEMENT OF THE
PROPOSED MERGER**

The SP has several members of the SSW Shippers Group who are important shippers on the Kansas line. President Orris stated: "We and UP talked to more than 1,000 customers, big and small," in regard to the merger and consequences while giving the BNSF consideration in lieu of other carriers. Not one member of our Tri-State Group was ever contacted by either railroad. Two members are trainloaders on the UP and one on both the UP and SP. One would think after shippers helped to obtain SP operating rights over the BN-ATSF track that the SP would have the courtesy to call us to explain the UP-SP merger and the agreement it had with the BNSF Railroad. This was not the case!

President Orris wrote this letter to a NIT League member and our Practitioner received a copy of same. The first paragraph on page 2 stated as follows:

"Before reaching agreement in late September with BNSF to resolve competitive issues, we and UP talked to more than 1,000 customers, big and small, to understand their concerns with the merger's competitive impacts following our August 3 merger announcement. Subsequently, conversations to address access issue concerns raised by the customers were held with 10 other carriers prior to reaching an agreement with BNSF. None of the others possess the network ability or resources to provide competitive service options in response to customers' requests that BNSF can. Clearly, shippers and your members will benefit from this move, and clearly it presents a far superior competitive alternative to today's situation."

As will be commented upon infra, the last sentence of the first paragraph referred to supra is "further from the truth". Please take into consideration the following excerpts from statements in this proceeding.

A. Witness Dave Stegall, at page 2 of his statement said, in part:

"Without consulting any of the SSW shippers on its line between Hutchinson and Guymon Oklahoma, the UP-SP will grant 3,800 to 4,000 miles of additional customers. It was prefaced with: Ultior Motive, Merge with the UP!"

B. Witness Montie Hunter at page 2 of his statement, under the caption "The KCS Railway", stated, in part:

"We gave the SP unlimited support to obtain trackage rights in Docket No. 32549, the BN-ATSF merger case. Did they call on our Association to tell us of the UP-SP merger? No! This neglect and no help for small businesses, has created an atmosphere that we need added competition. Where at? The closest market is Hutchinson by rail, by highway, both Hutchinson and Wichita. We need help, otherwise two major carriers are going to control rail transportation in our state."

C. Witness Duane Boyd at page 2 of his statement under the caption "Opposition to the UP-SP Merger" stated:

"Offerle has a facility at Bucklin, Kansas on the SSW railroad. Similar to the BNSF merger proceeding, we were never contacted by the SSW officials attesting to us that there would be a merger with the UP Railroad. We had to learn of this fact second hand. We have already been exposed to tactics of the ATSF, and on supporting the SP conditions learned that the SP would allow the ATSF access to a few key points in Kansas and Oklahoma while gaining access to Amarillo, Texas. The ATSF would use the SP main line from the McPherson area through Liberal and Guymon, Oklahoma south. This fact did not please our Board of Directors. From various newspaper articles, meetings with other shippers, and from the KGFA newsletter it was learned that the combined UP-SP would give the BNSF close to 4,000 miles access to its combined system. Again, we were not notified by either the UP or SP of the BNSF gaining exclusive rights to sections of the country that our SSW elevator could compete with on a smaller shipment basis."

D. Witness Floyd Barber at page 2 of his statement testified, in part:

"I testified in the BN-ATSF merger case Finance Docket No. 32549. Similar to the BN-ATSF case, we were never notified by the UP that it was going to merge with the SP."

- ISSUE NO. 2 -

SP DID NOT CONTACT MEMBERS AND OFFICIALS

Members and officials were concerned that the SP did not contact them because they expended funds, time and diligence to have the SP serve new counties of Kansas, only to merge in a few short months with the UP Railroad. Mayors, county commissioners and members who said officials represented were most concerned that the SP did not contact them prior and subsequent to the public announcement of the UP-SP merger. Two county commissioners from Ford and Clark Counties succinctly expressed this error by the SP officials.

A. Please refer to County Commissioner Molitor's statement at page 1.

"Our board of commissioners testified in the BN-ATSF merger case, ICC Finance Docket No. 32549. It is my understanding that the UP Railroad seeks to merge with the SP and that an application has been filed with the Interstate Commerce Commission. Our board testified on behalf of the SP in the other merger case, Docket No. 32549, in order to have our agricultural shippers better access to the Gulf markets. The concerns we have now are related to what has happened between the UP-SP and BNSF railroads. Normally, one would be pleased to have two large carriers serving the country. How will this affect the DCF&B?"

B. Please refer to County Commissioner Etheled Marshall's statement, wherein, she stated, in part:

"Why am I testifying in this merger proceeding before the Kansas Rail Working Group? I am concerned that our only surviving rail grain elevator in this county, the Minneola Coop, is fearful that the UP-SP merger will damage its ability to compete in the world market place. Yes, the CKR railroad has embargoed its line from Sitka to Englewood, therefore Minneola is the only grain elevator facility left in this county."

C. Please refer to the statement of Ronald Freeman in which he stated, in part:

"I, Ronald Freeman, manage the Equity Exchange, a local grain cooperative in Mullinville, Kansas. I join with my fellow members of the SSW Shippers Association to protest this merger. It is hard to see how, the SP granted conditions in the BN-ATSF merger ICC Docket No. 32549, has helped small businesses like this Cooperative. In the BN-ATSF merger I testified as follows:

'The Equity Exchange, which ships approximately 800,000 to 900,000 bushels of wheat annually by rail, is served by the SSW branch of the Southern Pacific Railroad. Allowing the SP shorter access to export markets at the Gulf should have a very beneficial effect on our operation. The Equity Exchange should also benefit by the allowance of rail access to the Wichita flour mill market.'

"With the UP-SP merger, the above statement, "access to the Wichita flour mill market," may not come to pass. The UP has many, many multi car shippers on its line. These shippers can load twenty-five or thirty cars. They will get better freight rates."

D. Please refer to the statement of David Andra which stated, in part:

"I David Andra, Manager of the Danville Cooperative Association, Danville, Kansas, have been in the grain business for the past 34 years. Our facilities are located in the heart of the hard red winter wheat area and depend largely on rail shipments to move our grain into the market channels. We are

served by the main-line of the Santa Fe and a Branch Line of the UP, which is presently being lease.' by the KSW. At the present time we are being forced to move more of our grain by trucks due to the uncompetitive nature of the railroad freight rates and the unavailability of rail cars."

- E. Please refer to the statement of Larry Wood at page 1 under the caption: "Conditions Now similar to the Time Before the SP was Granted Trackage Rights".**

"My original statement was mailed to the SP railroad, therefore, the ICC never had the opportunity to address the issues I raised in the BN-ATSF merger case. It is important that it be made part of the record in this proceeding.

"My statement was definitive! It was: 'Anthony Farmers Co-op has been in business since 1919. Shipping grain has been the heart of this business since its beginning. Moving grain by rail yields the best grades, most convenience, and speediest return of financing for the Cooperative. We are totally in favor of the SP railroad being able to access the other carriers, so there will be multiple shippers. The ATSF or the BN, did not contact us with any information concerning the proposed merger. We feel the "merger" will nearly eliminate us, as a shipper, on the ATSF and the CKR as the ATSF sets the rail rates on the CKR. The three carriers we deal with now are the KSW, CKR, and the ATSF. We are forced to ship our grain by truck because the rail rates on all three lines are non-competitive. The railroad operators idea of a car ordering system just does not coincide with grain shipments from the country elevators. We have a definite preference of shipping by rail instead of trucking. Being able to ship by rail and being able to ship to many different markets is the only thing that will keep the country elevator origin of grain alive.'

"Now the UP will merge with the SP railroad. Was all of the support for the SP in vain? The UP controls the KSW rates! The BNSF controls the CKR rates! Who will we have left to give us the added competition needed for new markets?"

- F. Please refer to our Chairman, Bill York's statement in which he quotes from the meeting before the House and Senate Small Business Committee meeting:**

"As Chairman of the UP-MP Shippers Association in South Central Kansas, our concern is that the proposed merger of the larger railroads will create a duopoly, meaning two large carriers completely dominating rail transportation in the western United States, and therefore creating a non-competitive environment for shippers to operate in. As mergers continue to happen, our options get less and less. We are therefore stressing the need for additional railroads in the area to keep rates and provide equipment alternatives. We have been told by various short line railroads that if allowed, they could offer rates that would be very competitive to truck rates, but unfortunately, most of these short lines connect

with only 1 large Class I carrier and this serve as feeder carriers. Even if there is a short line that connects with two carriers, for example, UP and SP, as those carriers merge, these short lines and the shippers located on these short lines lose the ability to benefit from UP and SP competition."

- ISSUE NO. 3 -

**MEMBERS WERE CONCERNED BY THE ANNOUNCEMENT
THAT THE UP-SP GRANTED TRackage RIGHTS TO
THE BNSF WHEN THEY HAD OPPOSED THE
BN-ATSF MERGER**

Several statements quoted supra relate that there was dismay when we heard of the UP-SP granting and /or selling parts of their lines to the BNSF Railroad. There is another reason for the objection by the Tri-State members to oppose this merger because of the UP's car ordering system, which relies on past performance and will be extended to the combined UP-SP origins in these United States. This will be treated infra.

- A. Please refer to the statement of the City of Argonia, County of Sumner. Mayor Ken Kohlenberg has outlined, in part, his concerns of the BNSF Railroad receiving additional destinations because of this merger proceeding.**

Argonia is only eight miles from Danville and the Mayor is aware of the past treatment of the ATSF Railroad toward the Danville Coop located at Danville His employer David Andra has testified supra in Issue No. 2

- B. Mayor Kohlenberg's major concern is the KSW line may be abandoned in the future. In addition, other concerns are as follows:**

- 1. "The BNSF railroad has not contacted the Argonia Mayor's office for at least five years."**
- 2. "I also know my employer, Danville Coop Assn. has not been contacted by the BNSF railroad for at least four years."**
- 3. "We are located on the main line of the former ATSF railroad and our citizens see all of the through traffic which passes us by."**

- C. Chairman of the Board Lew Meibergen at page 3 of his attached statement stated:**

"The UP was granted 3,600 miles of trackage rights by the BN, and I personally think that was to get the UP to quit bidding on the Santa Fe, in fighting the BN-Santa Fe merger. I just recently learned that the UP-SP has granted the BN-SF 4,000 miles of trackage rights. This probably sounds well and good to those who are not engaged in a business which is so dependent on rail transportation."

- ISSUE NO. 4 -

**MANY MEMBERS WHO ARE LOCATED ON THE UP OR SSW
ARE OPPOSED TO THE UP CAR ORDERING SYSTEM**

Although this Issue No. 4 may be interrelated with other issues herein, we have not thus far heard from shippers located solely on the UP or MP railroad. Many of these above mentioned shippers have facilities on more than one railroad.

- A. Please refer to the statement of Michael Klenda. His Coop has two facilities on the former MP mainline namely, Bison and Otis, which are located west of Geneseo, Kansas. His first paragraph notes the condition of the line and will be quoted infra. He stated, in part:**

"It is rumored that a short line railroad will operate this line. Who knows, right now, the UP is serving this line. I've been through the embargoed branch line, no empties to load, forcing us to truck scenario before on the ATSF Galatia branch line at Beaver, Kansas. The CKR took it over, then didn't serve us because of faulty track conditions. We now don't have faulty track conditions on the UP, but it appears we may be headed down the same "primrose path."

The strongest objections to the UP railroad's car ordering system and preferential treatment given to the UP main line running east to west from Salina to Denver are introduced in the next two statements.

- B. Please refer to the statement of Kelly Davidson who has facilities at Tribune (2), Whitelaw, Selkirk, Horace, Astor, and Kanco, Kansas. These facilities are located in Western Kansas a few miles from the Colorado border. The DRGW Railroad operates over this line from Pueblo, Colorado. At page 3 we find:**

Why are you opposed to the UP-SP merger?

"From past experience at Logan Coop, I learned of the UP's car ordering system fallacy, that when you get poor service, your car base becomes lower and lower, thereby, causing one to truck. When you truck, the bushels trucked do not count on your five-year allotment base."

Are you testifying that the UP may use the LO Hopper cars as a tool to prefer certain lines to the detriment of other UP lines?

"Yes. I am testifying that the UP is preferring the UP line north of us to our line."

Are you experiencing that preferred treatment today?

"We have poor service by a local. This line is geared to handling DRGW trains with trainloads. Our car base is low because we are forced to truck our grains in order to keep a viable operating base."

Have you conferred with UP officials on this problem?

"Yes. We have even conversed with them about establishing a train loading station to remain in business on the railroad mode."

What was the UP's answer?

"To me, the UP seemed uninterested in developing this section of the line."

Over the state border, we have a farmer-rancher and two elevators operators who are concerned with the UP's car ordering system and treatment which is detrimental to their business. They utilize and have facilities on the MP line to Pueblo.

C. Please refer to the statement of Don Briggs at page 2.

Are you presently a multi-car shipper with the UP?

"Yes, we are a multi-car shipper."

Have you upgraded your facility to load hopper cars faster?

"Yes. At this elevator we have a 36 car siding east of the elevator. We have power wenchers to move the cars. We also have installed a high speed load out for hopper cars."

What is your load out capacity?

"We can load out wheat and milo into hoppers at the rate of eight minutes per hopper."

Do you sell and merchandise grains to a restricted section of the United States?

"No. We ship grains to all parts of the United States."

What is your average loading per year?

"Well, I have loaded as many as 421 cars in 21 days. Now, we load an average of 200 cars per year."

Have you been able to obtain hoppers as needed?

"No. If cars were available we would have shipped more."

Would your Coop rather ship by rail than truck?

"Yes. We can draw draft on 90% of the volume of the hopper sales because the grain is inspected and we know what the grades are."

What is the problem with truck sales?

"We have to wait until the truck is unloaded and graded, and sometimes it takes a week to obtain our money."

Tom Redman of the Right Coop has facilities on three railroads, namely, UP-MP, BNSF, and DCF&B. His Coop realizes the problem with the MP line and the UP's car ordering system.

D. Please refer to Tom Redman's statement on page 2.

"Our other concern involves the Arnold MP area. Is that line going to be abandoned in the future? If a short line railroad operates the line, will the UP give that line hoppers to load for us shippers? I know of other shippers who have longer ownership of their facilities on the line that are also concerned. We need the State of Kansas and the ICC to help us in this predicament."

Former Kiowa County Colorado Commissioner Burl Scherler and his wife, Catherine, own the Scherler Farms. His statement is informative because of his excellent service as a commissioner and because of his transportation knowledge.

E. Please refer to Burl Scherler's statement and his qualifications. On page 3 he states:

"While serving as a Kiowa County Commissioner, I have become very interested in grain transportation by either the truck or rail mode. Heavily loaded trucks cause damage to county roads and bridges over time. Prior to the UP-MP merger and the UP grain ordering system, we were served by a local train, which was efficient and very helpful at the Sheridan Lake elevator. Since the merger, the UP has given emphasis to the UP line that serves Salina-west to the Denver area.

"Why am I opposed to this merger?" I am extremely concerned about the merger of the Union Pacific and Southern Pacific Railroad and the resulting lack of competition available to Colorado grain producers. My qualifications reveal the deep interest I have in this Colorado area and for all Colorado producers who are located near the Pueblo Line. For example, the Union Pacific Grain Elevator Directory, a copy of the Colorado version which I have, lists Sheridan Lake in the following manner:

CITY:
ELEVATOR NAME:

SHERIDAN LAKE
FARMCO

PARENT FIRM:
ELEVATOR CAPACITY:
SINGLE SWITCH:
SERVING CARRIERS:
SWITCH SERVICE:

TEMPEL GRAIN
390,000
8
UP
LOCAL

"We have experienced the lack of equipment when needed during wheat and milo harvests. As I mentioned above, the UP has preferred and given emphasis to the UP line north of us in Colorado. Because of this preference, we have experienced undue prejudice to the MP line shippers and preference accorded to shippers on the UP line."

Additional reference to this statement will be found in the discussion of Issue No. 10 infra.

- ISSUE NO. 5 -

**MEMBERS ON THE MAIN LINE OF THE UP AND SSW
ARE FEARFUL OF LOSING LOCAL SERVICE
AS WELL AS EQUIPMENT PROCUREMENT**

Tri-State members who have facilities on the mainline of the BNSF and also the short line CKR have experienced the shortage of rail equipment. The same is true of SSW and UP mainline shippers as well as KSW shippers. In order to demonstrate the concerns of Tri-State members, the facilities on which members are located will be listed by the railroads.

BNSF OR CKR RAILROADS

A. Please refer to the statement of Larry Wood at page 2 under the heading "Mainline Service on the BNSF".

"I joined with other shippers on the mainline of the BNSF to complain of future service not being suited to small shippers. Both the BN and ATSF divisions of the BNSF will utilize our Harper mainline tracks to move trainloads of many commodities, including intermodal shipments. Are the combined systems going to service small businesses? The answer will be no! An official of the ATSF railroad has not showed up in my office here at Anthony of four to five years. This is the kind of treatment we have to suffer with when there is a merger of two mega rail lines."

Mayor Charles Swayze of the City of Medicine Lodge located in Barber County has a unique problem. The City of Medicine Lodge is located on the CKR railroad.

B. Please refer to the statement of Mayor Swayze. At page 2 he states:

"My concern as Mayor in the UP-SP merger is the fact that there will be only two large railroads operating in the Midwest. These lines, the UP-SP and

BNSF, will have complete control over our destiny, as well as the short line railroads which they connect with on through traffic. Attica is on the main line of the BNSF. Increased use of this line by container train, through-grain train load shippers, and auto manufacturers' trains may cause a disruption of interchange for our CKR shippers."

In addition:

"Assume the BNSF railroad prefers customers who are located on its line, rather than a short line railroad, how long will the CKR railroad serve this area? The CKR has abandoned parts of its line already, namely, Spring to Blackwell, Oklahoma. It has the Harper to Anthony line up for abandonment. It has embargoed a portion of the Englewood branch line, the Galatia and McPherson to Marion branch lines. We are concerned!"

C. Please refer to the statement of Larry Coffman at page 2. He states:

"We are experiencing the BN-ATSF merger now, with our rates from some locations, almost double what they were last year. As time goes on, we are finding it is almost impossible to negotiate anything for the 25 car loading capacity, that we have at one of our locations that we have used for the last fifteen years. It is very apparent to us, that the larger the railroad gets the farther away from the shipper out in the country. Our contacts with railroads, after these mergers, becomes fewer and fewer. It is very clear that they have an agenda of the business that they want and are not interested in the other business."

D. Please refer to the statement of Jim Reed, whose facility is located at Kiowa on the BNSF mainline at page 1:

"Kiowa has a population of approximately 1,160 residents. This city, as well as the other localities which we operate are agricultural oriented. Is the BNSF serving small shippers today? I testified in the BN-ATSF merger case, but is anyone paying attention to the small communities? **I fear not!** My testimony followed the concerns of all the shippers who are located on the main line of the new BNSF railroad. No cars! No service! Is anyone listening? The state supported the merger with certain conditions. The ICC did not help any small shipper in the BN-ATSF merger. It alleges it looks at the small business communities. Our Chairman, Bill York, testified before the Senate and House Small Business Committee and our advisor presented a written statement on the same issues; small businesses need to be heard!"

SSW RAILROAD

Joe Strecker, Chairman of the SSW Shippers Group, is most concerned about future service on this line for his members.

- A. Vice Chairman of this group, Montie Hunter, is also concerned. Please refer to Hunter's statement at page 2, under the heading: "The SSW Shippers Association".**

"I am Vice Chairman of this shipping group. Although we are smaller in numbers than others comprising the Kansas Shippers Group, we have several members who have purchased facilities on this line and thereby creating a stronger base for this shippers group. All of us are concerned with mainline service. It currently comes from Pratt and the local runs to Liberal. It has been reduced in service from 6 days a week to as needed. We did not have a good harvest! With the single track and multiple yards it makes for a poor operation. Unless there is considerable spending of funds by the UP, we won't get service. The UP is expanding to triple tracks in Nebraska but will it do a double track in Kansas in our territory. This concerns us."

- B. Please refer to Commissioner C. E. Molitor's statement at page 2 under the heading: "Mainline Service Problems".**

"The coop grain elevators at Bucklin, Kingsdown and Bloom have concerns about getting local service. For example, container trains, multi-car grain shipments, and other train load commodities will use the shorter SSW route to the West Coast markets. Instead of one railroad system, the combined system of two railroads will cause this main line to be utilized to capacity.

"The same is true of the former ATSF-Pueblo line. If the combined BNSF shipments of coal are transferred to this line, local service may also be interrupted, causing concern to the local shippers."

- C. County Commissioner Etheled Marshall of Clark County has expressed her concern under issues noted above. She is also concerned that the Minneola Coop's facility, the only one rail operated in Clark County, will encounter additional harm by this merger. At paragraph 2 she states:**

"These fears have been prompted by actions of the SP in the BN-ATSF merger case, ICC Docket No. 32549. It has allowed the BNSF railroad to serve Liberal. Previously, the ATSF has allowed a Coop on its mainline to use the Coop's facilities to move grains on a trainload basis when it did not have a trainload capacity already in place. The ATSF railroad connected up with the D.C.F. & B railroad to allow this coop to load grains via Dodge City, thereby causing additional competition to the Minneola Coop."

- D. Another shipper on the mainline of the SSW railroad is concerned about the soon-to-be crowded mainline of the SSW. With the combined UP-SP and with BNSF large trains local service will become second or no option. Proof of this statement is the UP-SP future project of building a much longer passing track at Bucklin. Mullinville is only a short distance from Bucklin. Please refer to the statement of Ronald Freeman at page 1 wherein he stated:**

"There is something else bothering me concerning this merger, and the past merger, which gave operating rights over the mainline of the SSW to the , now BNSF. Both railroads, the UP and the BNSF, will use our mainline to capacity. They will ship all of the trainloads over this shorter route to the California markets. How am I going to get service? In addition, there is a spread between the Liberal and West Coast rate on SSW and our rate. The ATSF railroad was given operating rights out of Liberal and Guymon, Oklahoma."

- E. To summarize the concern of this Tri-State Shippers Group, Chairman Joe Strecker has stated it simply, but with special emphasis. Please refer to Joe Strecker's statement at page 1:**

"Concerning the forthcoming UP-SP merger, our SSW Shippers members are concerned with the additional overhead traffic, which will be placed on this mainline due to the conditions of the SP granted in Finance Docket No. 32549 (the BN-ATSF merger case).

"How will we be served when container trains and trainloads of grain, of both the UP-SP and BNSF railroads, hit this mainline? We are also concerned, because the SP granted access to the BNSF at Liberal, Guymon, Oklahoma and McPherson, providing extra competition for us. Not only are we concerned with the former SP grants, now the combined BNSF will get operation rights to about 4,000 miles of UP-SP destinations."

UP-MP MAINLINE

There is a new company that is expressing opposition to abandonment.

- A. Gary L. Mills, Vice President of Transportation with Bartlett and Company has indicated that his company is protesting the abandonment of the MP line from the Kansas state line to Pueblo.**

Gary Mills has extensive experience in the transportation field of U. S. grain and processing markets. He was employed at Cargill, Inc. for 32 years, obtaining an official position of Assistant Vice President. At Cargill, he managed the export grain terminals, as well as a soybean processing plant with management of interior facilities. He has knowledge of the need for rail service at Eads because of his experience as Cargill's Grain Division Transportation Manager.

Bartlett has need of rail service at Eads in order to move wheat and other grains to Bartlett Flour Mills for milling wheat into flour and for merchandising other grains to feed mills in other states such as Kansas. Additional comments will be provided under the heading "UP-MP Line Abandonment".

B. Please refer to the statement of Mike Klenda. He has stated:

"My name is Mike Klenda and I am the General Manager of the Mid-State Coop. As general manager, I oversee all facets of the operations of the elevators located at Bison and Otis, which are located on the former main line of the MP railroad running from Herington to Pueblo, Colorado. They are no longer main lines because the UP has placed the line west of the Kansas State line up for abandonment. It has also cut-off the main line from Herington to Osawatomie by abandonment. If the UP follows the patterns established in the past, this section of the line may be abandoned in the near future."

C. Please refer to the statement of Edwin Andres. His facility is located on the Herington to Dallas UP main line. Under the heading "The UP-SP Merger" he stated:

"Since the UP will merge with the SP, my grain elevator will again become non-competitive."

D. Please refer to the statement of Floyd Barber. His facilities are on the main line of the MP line to Pueblo. He stated at page 2:

"Our Board of Directors are concerned with the fact that the Pueblo line is being cut up from the Kansas State line west. Rumors had it, that the UP would lease this Walkinghood to Herington line to a short line railroad. Presently the UP is serving this line. With the forthcoming UP-SP merger, there is a great concern that this line is also being placed up for abandonment. It is my understanding, that the Hoisington Chamber of Commerce is much concerned and will testify in this UP-SP merger proceeding."

Our Colorado members have indicated supra in other issues that there is a deliberate attempt to force shippers to truck in order to then abandon the lines. Other members of Tri-State have experienced the same treatment from the BN and ATSF railroads including the short line shippers on the KSW and CKR railroads.

E. Please refer to the statement of Kelly Davidson at page 2.

This witness listed all his facilities, a total of seven, with a capacity of 5,447,000 bushels and total truck capacity of 58 cars. He contacted UP officials to build a train loading station on this line. They were uninterested.

F. Please refer to the statement of Don Briggs at page 2.

Briggs reveals that his company loads multi cars to ship. He has a high speed load out. He stated that if he could get equipment, he would load more cars.

- G. Please refer to the attachment statement of Lew Meibergen at page 21. His facility is on the mainline of the UP at Enid Oklahoma. He stated:**

"Our service has greatly deteriorated since the BN/Santa Fe merger, and I am fearful of what may happen with the UP-SP merger. I believe it is imperative that we have competing railroads to keep our transportation costs in line, and to be able to bid top dollar to the producers for their products. Today, we can ship out of Enid to Houston via the UP or BN-Santa Fe. However, the BN-Santa Fe has given trackage rights to the Southern Pacific on the old Santa Fe north-south line in Oklahoma. If the UP and SP were to merge, I am sure the SP would quit using the old Santa Fe main north-south line, because it runs parallel to the UP's line. Therefore, we would have only the BN-UP carrier left to ship our product to the Houston gulf."

It is evident that these witnesses in Colorado and Kansas are correct in their assumptions because of a recent newspaper article in the Wichita Eagle. It was entitled: "100-Car Trains of Grain Could Roll by Spring", with the subheading: **Two Shipping Elevators are Taking Shape in Trego County**. The locations are: Ogallah and Wakeeney. Where are they located? On the mainline of the UP in Northern Kansas.

- ISSUE NO. 6 -

MEMBERS ON THE SHORT LINE RAILROADS ARE CONCERNED THAT THIS MEGA CARRIER MERGER WILL FOLLOW THE PATTERN OF THE BN-ATSF MERGER WITH NO EQUIPMENT AND CONTROL OF THROUGH RATES BY THESE MEGA CARRIERS

- A. Chairman Bill York of the UF-MP group, who testified before the House and Senate Small Business Committee, was located on the KSW railroad. He expressed the plight of these shippers truly:**

"We presently are located on a short line railroad on leased lines. Therefore, the rates are set by a large Class I Railroad."

In addition, he also stated:

"We have been told by various short line railroads that if allowed, they could offer rates that would be very competitive to truck rates, but unfortunately, most of these short lines connect with only 1 large Class I carrier and thus serve as feeder carriers. As feeder carriers, their traffic and rates depend upon their connecting Class I carriers. Even if there is a short line that connects with two carriers, for example, UP and SP, as those carriers merge, these short line and the shippers located on these short lines lose the ability to benefit from UP and SP competition."

- B. The statement of Alvin Brensing, President of the only Kansas flour mill on a short line, vividly sets forth the problem of how mergers are harmful to shippers on this line. At page 1 he stated:**

"We also have a concrete grain elevator with a capacity of 800,000 bushels located at Macksville, Kansas, which is also located in Stafford County on the BNSF Railroad. Our mill, has in the past, attempted to buy milling wheat from UP origin sources but the UP and KSW could not meet truck competitive rate pricing. We are having to truck wheat to this mill in Hudson from various sources.

"The UP controls the KSW rates and publishes through rates on wheat and flour in its tariff. Service was also poor. When we needed equipment the KSW did not have it, when it had equipment, it desired us to bring in grain and ship grain in the same cars when it was feasible for us to do so. I am bitter because we expanded our family flour mill and business on the promise we would have rail competition.

"I testified in Finance Docket No. 32549, the BN-ATSF merger case, in support of the SP railroad. It appears my company's support was short lived because now the UP seeks to merge with the SP. Since my last testimony before the ICC, we have received official notice that the Conway Springs to Radium line is up for abandonment by the UP and KSW railroads. We have had business for both railroads but it appears that neither the UP nor the KSW cared to serve this line, as it is their duty under the ICC act. How does a railroad prepare a line for abandonment? It is easy! No freight rates to meet competition, no equipment by either railroad, and doing business in the manner the railroads wish, rather than their duty as a common carrier."

- C. Norbert Gerstenkorn also has qualms about this merger. The merger of three connections will be reduced to two Class I carriers. In his statement at page 1 under the heading "The KSW Railroad", he explains how we helped save this line from abandonment and also supported the lease of the line by the KSW. He stated:**

"Unfortunately, the KSW could not get all the cars it needed from the UP railroad after wheat harvest. It usually helped the shippers during harvest. We are concerned about the probability that the entire lines from Conway Springs to Radium and Hardtner may be abandoned. We have friendly Co-op facilities on those lines. Now, the UP and KSW have placed the Radium line up for abandonment. Shippers on that Radium line will have to truck their grains to the nearest and best market. From Kingman northwest, the Hutchinson market appears to be the better market. From Kingman southeast, Conway Spring looks good, but the Wellington market is a strong competitor. My concerns for the Hardtner line echoes with other shippers and the UP should work with the KSW to give it the help needed to compete with trucks to destinations served by

the UP. Knowing, the UP will provide equipment to its train loader customers, the KSW will still have problems of car supply."

Other shippers on the CKR and KSW railroads echo the sentiments of Norbert Gerstenkorn. Only one of our members, who is located on the CKR and on the Great Bend to Scott City CKR line, received excellent service. For various reasons, shippers on three sections of the CKR railroad have had their portion of the branch line embargoed, namely, Galatia, Englewood and Marion, Kansas.

- ISSUE NO. 7 -

**THE NEED TO REPLACE THE SP RAILROAD OPERATING RIGHTS
BECAUSE OF LACK OF COMPETITION**

This issue is of utmost importance to our Tri-State members who realize the reduction of 3 to 2 railroads at Hutchinson and Wichita will be most harmful to them. In addition, Enid has the problem of 2 railroads serving it and only one railroad actually providing some service. The UP at Enid has not provided service to meet the needs of Johnston Grain. In the attached statement of Lew Meibergen he has strongly emphasized the need for replacement of the SP operating rights for the Enid market. He has testified of the reasons why the replacement is needed at his market. At page 2 he stated:

"My reasons for opposition to this merger is twofold. One, we are going to need another Class I carrier to serve Enid. The UP-SP have given the BNSF many destinations which we could ship via the MP if we had the service which the MKT provided to us. Our service has greatly deteriorated since the BN/Santa Fe merger, and I am fearful of what may happen with the UP-SP merger. I believe it is imperative that we have competing railroads to keep our transportation costs in line, and to be able to bid top dollar to the producers of their products. Today, we can ship out of Enid to Houston via the UP or BN-Santa Fe. However, the BN-Santa Fe has given trackage rights to the Southern Pacific on the old Santa Fe north-south line in Oklahoma. If the UP and SP were to merge, I am sure the SP would quit using the old Santa Fe main north-south line, because it runs parallel to the UP's line. Therefore, we would have only the BN-UP carrier left to ship our product to the Houston gulf. Losing the Santa Fe as a competitive carrier, as mentioned before, has greatly reduced our flexibility and ability to ship our products to the west coast and the Texas gulf.

"The BN has told us since they merged with the Santa Fe, there would be no more five-car rates to the west coast. The mills on the west coast are small and can handle only from three to ten cars at their particular mill. We worked hard to cultivate this association, but it appears that the lack of rail competition is going to take it away from us."

As one may readily ascertain, Johnston's statement reflects the attitude and experience of all shippers who have seen lessened competition in Kansas, Colorado and Oklahoma. Rather than quote from each and every statement, which would be burdensome to the S.T.B., we are listing statements which either specifically name the KCS for substitute service, or in the alternative describing the need for a Class I railroad to provide additional competition. The reference to the statement and subsequent page number will be provided thereby:

Mayors

	<u>NAME</u>	<u>PAGE</u>
1.	Mayor Debra Hatfield	1
2.	Mayor Charles Swayze	2
3.	Mayor Ken Koblenberg	2

County Commissioners

	<u>NAME</u>	<u>PAGE</u>
1.	Etheled Marshall (Clark)	1
2.	Richard Froetschner (Edwards)	2
3.	C. E. Molitor (Ford)	2

Chairmen of Tri-State

	<u>NAME</u>	<u>PAGE</u>
1.	Charles Swayze (SFE Shippers)	2
2.	Joe Strecker (SSW Shippers)	2
3.	Bill York (UP-MP Shippers)	2

Vice Chairmen of Tri-State

	<u>NAME</u>	<u>PAGE</u>
1.	Duane Boyd (SFE Shippers)	4
2.	Montie Hunter (SSW Shippers)	2
3.	The Vice Chairman of the UP-MP Shippers Group retired and there has been no replacement.	

Directors of Tri-State

	<u>NAME</u>	<u>PAGE</u>
1.	Rick Hagerty	2
2.	Lyman Adams	2
3.	Marvin Groff	1
4.	Floyd Barber	2
5.	Edwin Andres	1
6.	Larry Wood	2

Directors, cont.

	<u>NAME</u>	<u>PAGE</u>
7.	Norbert Gerstenkorn	2
8.	Jim Reed	1
9.	David Andra	1
10.	Alvin Brensing	2

Members

	<u>NAME</u>	<u>PAGE</u>
1.	David Stegall	3
2.	Don Clough	2
3.	Duff Deardoff	3
4.	Larry Coffman	2
5.	Michael Klenda	1
6.	Ronald Freeman	2
7.	Tom Redman	1
8.	Kelly Davidson	4
9.	Don Briggs	2
10.	Burl Scherler	3

- ISSUE NO. 8 -

**GRANTING THE BNSF OPERATING RIGHTS TO UP AND SP
STATIONS NARROWS THE COMPETITIVENESS OF MEMBERS**

Almost all Tri-State members are concerned with the fact that the UP-SP railroads gave away rights to their competitor, the BNSF. Those members who are located on the mainline of the SSW are most concerned because of the fact that trainloaders are located at Guymon, OK and Liberal, Kansas. In addition, Oklahoma members who have facilities on the former ATSF are also concerned.

A. Dave Stegall, at page 2 of his statement echoes this sentiment. He states:

"The 75 car shipper at Liberal will have two railroads to provide equipment and competitive rates to California and Arizona destinations. We will have only one - UP-SP. How devastating is this wrong doing? The SP Grain Tariff, Item 11718, names wheat rates to Arizona and California. Liberal takes Guymon, Oklahoma rates. Kingsdown takes Bucklin rates. The Bucklin rates are in increments of one car, five cars an twenty-five cars. Guymon, Oklahoma's rates are in item 11744."

	Bucklin, Kansas		
<u>DESTINATIONS</u>	<u>1 CAR</u>	<u>5 CARS</u>	<u>25 CARS</u>
Casa Grande, AZ	2587	2487	2387

Central CA	2852	2752	2652
Southern CA	2737	2637	2537

Guymon, Oklahoma

<u>DESTINATIONS</u>	<u>1 CAR</u>	<u>5 CARS</u>	<u>25 CARS</u>	<u>75 CARS</u>
Casa Grande, AZ	2542	2442	2342	2242
Central CA	2807	2707	2607	2507
Southern CA	2692	2592	2492	2392

The 75 car Guymon, Oklahoma rates versus Kingsdown 5 car rates are:

Casa Grande	2487 - 2242 = 245
Central CA	2752 - 2507 = 245
Southern CA	2637 - 2392 = 245

- B. Vice Chairman Duane Boyd affirmed Dave Stegall's remarks with his statement at page 2 and 3. He presented additional facts under the headings "How the Conditions Granted to the ATSF Have Harmed This Coop", and "Kansas SSW Shippers to be Less Competitive". Offerle owns the Bucklin Coop Facility. Boyd stated at page 2:**

"In the BN-ATSF merger, as noted above, the SP gave operating rights to the ATSF at McPherson, Liberal and Guymon, Oklahoma. There are train loading shippers at Hutchinson, Liberal and Guymon, Oklahoma. Guymon wheat rates are on single, 5 car, 25 car, and 75 car basis, on wheat to points west of our mainline, including the states of Texas, Utah, Oregon, Nevada, California, and Arizona. My Bucklin facility has single car, 5 car, and 25 car rates to the same territory. I can only load 15 cars presently at Bucklin. To the major markets in Arizona my rates are: 1 car-2587, 5 car-2487, 25 car-2652."

At page 3 he stated:

"Allowing the BNSF to reach Arizona and California destinations will place Kansas Shippers in a less competitive condition."

At page 4 there is additional information as noted below:

"In order for us to combat the BNSF multi-loading stations in Kansas, in our territory and the SSW stations at Hutchinson, Liberal, and Guymon, we have to expand our facilities at Bucklin. This is not an easy choice for our Board of Directors. The three mega carriers are forcing us to look at expanding the facility to a 25 car basis. This could narrow the spreads somewhat. We are being forced to do this knowing that the West Coast, Oregon and Washington markets will go to the BNSF Railroad and to UP-SP origins in Colorado, Nebraska, Utah, and Wyoming. The Amarillo and West Texas markets will have a competitive edge unless we do something constructive."

- C. Commissioner Molitor is also concerned. He expressed his view on page 1 of his statement regarding the short line D.C.F. & B. under the heading "Short Line Railroad DCF&B:**

"In order to exist in the new world of few carriers, a short line railroad must have its own equipment, good bargaining power and an excellent track structure. This is not the case with the DCF&B. It is performing the best that it can with its limited resources. We have learned that the soon-to-be UP-SP has given operating rights to its former competitor, the BNSF Railroad. In my opinion, by giving the BNSF rights to destinations on the UP and SP, it will cause additional competition to Ford County and the DCF&B. Both the UP-SP and BNSF serve geographic locations who may better compete for West Coast, Gulf, and Mexican business. I know that the UP has an advantage in northwest Kansas to the West Coast. Our train load facilities in Ford County cannot compete with the UP train loaders in Colorado, Nebraska and Wyoming, who are closer to the West Coast market."

- D. Ronald Freeman is located on the main line of the SSW at Mullinville. His statement reflects the same concern at page 1:**

"For example, on wheat to Southern California, Guyman, Oklahoma has published 2692 (one car), 2592 (5 cars), 2492 (25 cars), 2392 (75 cars) per car rates. Mullinville takes Greensburg rates 2918, 2818, 2718, respectfully. (One car) $2918 - 2692 = 226$; $2818 - 2592 = 226$; $2718 - 2492 = 226$ per car equates to .068 cents per bushel.

"It was bad enough to only compete with the SP, now we have BNSF to supply cars to those two locations. This one example is important to us but there are others equally as prohibitive for my Co-op."

- E. Commissioner Ethel Marshall of Clark County is also concerned. A devastating grass fire has turned Clark County and surrounding Oklahoma into a "no man's land". Our Kansas Governor Bill Graves toured the area recently. The farmers and ranchers are contemplating whether or not to sue the perpetrator of the fire, an electrical coop. Commissioner Marshall stated:**

"It is my understanding in conversation with the Minneola Coop, that the combined UP-SP will give the BNSF railroad additional rights causing additional harm to this Minneola Coop. If this will occur, then the ICC and the state of Kansas should support the bid of President Haverty of the KCS Railway to replace the SP railroad."

- F. Chairman Joe Strecker expressed the concern of the SSW Shippers Group in a short manner. He stated at page 1:**

"How will we be served when container trains and trainloads of grain, of both the UP-SP and BNSF railroads hit this mainline? We are also concerned,

because the SP granted access to the BNSF at Liberal, Guymon, Oklahoma and McPherson, providing extra competition for us. Not only are we concerned with the former SP grants, now the combined BNSF will get operating rights to about 4,000 miles of UP-SP destinations.

"I testified in the ICC Docket number 32549 concerning the need for the SP railroad to give us additional routing to Amarillo and to the Gulf, via Hutchinson SP. With the conditions granted to the BNSF by the UP-SP, shippers on the BNSF will gain a tremendous advantage over the mainline SSW shippers. Many will be closer to the markets of grain destinations."

G. Johnston Grain is most concerned because his subterminal elevators are located in the Panhandle section of Oklahoma where the former ATSF's mainline operates to Amarillo Texas.

At one time Woodward was served by both the ATSF and MKT lines. Shattuck was served by the ATSF and the Panhandle and Santa Fe which operated from Shattuck to Etter OK. This section of Oklahoma has competition from the former RI line now served by the SSW at Liberal and Guymon Oklahoma. These two locations have train loading capabilities. Regardless the BNSF has enhanced these facilities by a recent publication in its BN Tariff ICC-BN-4022-I Effective March 9, 1996. Item 46550 a new item. It has published rates that require 25 to 51 cars and 52-77 cars. The rates from Liberal, Guymon and Hooker are all identical: 1825 (25-51 cars) 1675 - (52-77 cars) on a per car basis. Rather than publish the rates in the ATSF tariff, where they should be published, so as to alert competitive ATSF stations, they were hid in a BN tariff with a route BN-Ft Worth-ATSF. Johnston is concerned with his two facilities because of the track capacity of each. Woodward cannot load 25 cars. Shattuck can load 30 cars but would compete with the 52 car shippers. $1825-1675=\$150$ per car or .045 per bushel spread.

At Pages 3 and 4 of Meibergen's statement, he stated:

"In addition to what I have just stated on BNSF employees, we know that top management of the BNSF's prompting the railroad to follow the foot path of the former BN. Effective last month and on March 1st of this month, they have published in the ATSF 4150, rates to the Gulf and West Coast destinations that will be harmful to small grain elevators and to my facility because of the Union problems I mentioned above. For example from my Shattuck and Woodward subterminals to the Gulf for Export they have published 1-26, 26-51, 52-77 and 78-110 rates. The rates are: 1875, 1675, 1525, 1475 in the order of the number of cars in the previous sentence. From Enid: 1620, 1420, 1270, 1220 in the same order. The BN lists my two elevators here at Enid as having only a 40 carload capacity (Page 127 1955). Shattuck and Woodward are not listed in the BN directory. The Santa Fe listed our Shattuck facility of having 30 cars and a capacity of 770,000 bushels and our Woodward facility as 7 cars and 1,380,000

capacity. At Shattuck we have expanded our tracks to load thirty cars and now we would be in the second tier of rates to the Gulf at 1675. We will have a \$200 per car deficit to compete with Liberal, Kansas and Guymon Oklahoma both of which are train loading stations. That relates to .06 cents per bushel. At Woodward we would have the full \$400 per car to compete with or .12 cents per bushel. The coarse grain rates hit us much harder. The spreads in rates are: 1-26, 27-53, 54-110. The rates from Woodward and Shattuck are 2600, 2350 and 2,000 per car. At Shattuck we are at a disadvantage of \$350 per car and at Woodward \$600 per car. This places us at a disadvantage of .11 cents per bushel at Shattuck and .18 cents per bushel at Woodward. You are aware that grain trades are lost for .01 cents per bushel on volume moves."

- ISSUE NO. 9 -

**MEMBERS SUPPORT THE KCS PURCHASE OF THE BNSF LINE
FROM JOPLIN, MISSOURI TO WICHITA, KANSAS
OR ALTERNATE PURCHASE PLANS**

All of our Kansas County Commissioners, Mayors and members whom they represent have supported the efforts of the KCS Railway to obtain operating rights to replace the SP railroad in the North-South Corridor or, in the alternative, to purchase the line of the BNSF from Joplin, Missouri to Wichita, Kansas. The UP-SP has stated that the BNSF will give the competitive factor needed in this merger proceeding. As mentioned supra in issues 2 and 3, none of the Kansas members were contacted by either the BN or ATSF railroads in their merger, and not by any of these three mega lines in this merger proceeding.

On November 14, 1995, I was authorized by the three chairmen of our Kansas group to write R. F. Starzel, Vice Chairman of the SP Lines, concerning the article appearing in the Journal of Commerce on November 13, 1995, entitled, "How to Judge the UP-SP Merger". In the letter, it was expressed that our group had supported his railroad in the BN-ATSF merger case and spent considerable time, energy and expense to support his acquisition of operating rights. Our members reflected the following assertions:

If your railroad and the UP are sincere about the benefits to be given and restore competition, please allow another Class I carrier, namely the KCS railway to replace the SP in the Kansas City to Fort Worth corridor and beyond when the merger is finalized.

Without another Class I carrier serving the Kansas City to Fort Worth corridor, our shipper members are in the same posture, namely, one competitive carrier serving the grain interests in the Wichita area as we were exposed to previous to the granting of the SP rights.

Recently, the Board of Directors of our group, as suggested by the three chairmen, canvassed by telephone a majority vote to write Robert D. Krebs, President and Chief Executive Officer, on the same subject, namely, that we prefer a Class I carrier who has the financial ability to be competitive to purchase the Joplin to Wichita line. A short line railroad would not have the resources to replace the SP line serving the Wichita switching zone. It is our understanding that Governor Bill Graves also supports the KCS Railway.

In a letter dated February 26, 1996, addressed to Richard K. Davidson, President of the UP, Governor Graves stated in the fourth and fifth paragraphs:

"In addition, I would like to maintain service into Wichita by a third Class I railroad. The Joplin route seems ideal for this purpose. Please encourage your counterparts at Burlington Northern Santa Fe to give all possible consideration to K.C. Southern in its bid for the line."

"I was very encouraged by your general assurances that these issues would be addressed. I have instructed my Secretary of Transportation, Dean Carlson, to work out the details with your representatives. Once Secretary Carlson and I are satisfied with the details, we will send a letter of support to the Surface Transportation Board. Please ensure that our concerns receive prompt attention so we can make a timely filing to the Board."

We have heard of the answer by the BNSF Railroad. This railroad does not wish to have any competition in the North-South Corridor. The last train service was completed on Saturday, March 23, in to Wichita on the Joplin to Wichita former BN line. Rumors are prevalent that the Diamond at Augusta will be removed for allegedly interfering with the BNSF main line service. This a deliberate attempt to keep competition of a Class I carrier from serving Wichita, yet the BNSF is getting almost 4,000 miles of UP-SP tracks and destinations. Contrary to the wishes of the Governor of Kansas and Tri-State members, the BNSF appears to cut-up the line for the another bidder, a short line. This railroad serves Wichita via the SP receiving trackage right by the ATSF railroad. The shortline may wish to buy the line only to have a connection between its other shortline railroad. It may abandoned the rest of the line. The BNSF is rerouting all traffic from Wichita via Kansas City. Shippers in Wichita are very disturbed by the delays of traffic movement which will be forthcoming by this distasteful act of the BNSF.

ALTERNATE PURCHASE PLANS

The BNSF does not wish to sell the Joplin line to the KCS as we have supported in Issue No. 9 supra. Our main thrust would be the SP replacement over the BNSF lines with a right to serve Enid OK from Perry OK to Enid and return. Assuming arguendo, the UP-SP wish to continue to use this ATSF line to Fort Worth, are any other plans available? Yes! The purchase of the UP line from Geneseo, Kansas to Wichita, Kansas by the KCS Railway. The KSW currently operates over this line on a lease with the UP. The KCS could allow the KSW to handle its trains from Geneseo to Wichita in order to help that railroad survive in this merger proceeding. The purchase of the line south of

Wichita to the Oklahoma border and a lease from the state of Oklahoma would give Hutchinson, Wichita and Enid the needed competition they seek.

The UP has three routes from Kansas City to the Gulf. One is its MP line running from Paola south through Coffeyville, Kansas. The other two were purchased from the MKT railroad. They are the OKT line from Herington south to Caldwell, and the MKT main line which runs via Paola to Chetopa south to Vinita, Oklahoma. The MP line runs from Coffeyville via Muskogee, Sallisaw to Little Rock and Muskogee to Fort Worth south to the Gulf Ports. The Little Rock route also goes to the Gulf via Dallas, Texas. The Oklahoma tracks have to be leased to the state of Oklahoma.

ANOTHER PURCHASE PLAN MAY BE AS FOLLOWS:

Tri-State recommends that the KCS Railway purchase the Herington to Wichita to Enid OKT route to Dallas in order to serve both Enid and Wichita. The UP has the other MKT route available to it. It will have the SP (trackage rights over the BNSF) routes available to it in lieu of the OKT route.

This would save the combined UP-SP millions of dollars it intends to spend to upgrade that OKT route. As this hearing progresses, Tri-State will develop additional plans in order to receive the added competition, its members desperately need to compete with the combined two large mega carriers.

- ISSUE NO. 10 -

UP-MP ABANDONMENTS

Many farmers, ranchers and shippers have been faced with abandonments since the mega carriers decided to merge in the 1980's. Pertinent to this proceeding is the fact that with lines up for abandonment and for sale to the short line railroads, is the protection of small business by the STB. Many businesses do not desire to be served by the short line railroads after experience with control of freight rates and equipment by the BNSF-UP railroads, if a Class I railroad would be able to gain operating rights or purchase the lines involved in the abandonment. A classic example is the East-West Corridor of the MP line from Herington, Kansas to Pueblo, Colorado.

THE EAST-WEST CORRIDOR

The Mountain/Plains Communities and Shippers Coalition Group, and some members of our Tri-State Group have stressed this fact in their statements.

A. Don Briggs of Haswell, Colorado expressed at page 2 of his statement:

Would your problems be solved if another railroad like the KCS, Wisconsin Central, or Montana Rail Link buys the line from Kansas City to California?
"Yes!"

B. Rancher Burl Scherler expressed his opinion on page 3 of his statement:

"If the grain elevator in Sheridan Lake received the proper service from the MP railroad, this line wouldn't be scheduled for abandonment. Sheridan Lake is a small elevator compared to Cheyenne Wells, Commerce City, and Denver. However, if the entire route of the old MP from Kansas City to Pueblo, Colorado and possibly on to Salt Lake City were to be sold to another operator, competition could be greatly enhanced and my objection to the merger would no longer be valid."

C. Kelly Davidson, in his statement, declares his preference for a Class I carrier, but would accept a short line as another possibility. At page 4 he states:

"The Surface Transportation Board has the largest merger proceeding before it during my grain career. If the UP and SP railroads wish to merge and do not need this Herington to Pueblo line, then let a Class I carrier like the KCS operate it. President Haverty is a Kansan, therefore he would have knowledge of the competitive nature of the agricultural business. A short line railroad is another possibility."

D. Gary Mills' company has a facility at Eads, Colorado. As stated supra, his company opposes the abandonment of the Pueblo to Kansas state line. Bartlett joins other Colorado shippers in protesting this abandonment.

There is a need for an additional carrier to supply service equipment and rates. Montana Rail Link has indicated a desire to purchase this line and provide the necessary service. Bartlett supports Montana Rail Link, Inc. in its bid to buy the MP line involved in lieu of the abandonment of the line by the UP railroad.

THE RADIUM BRANCH LINE ABANDONMENT

Farmers who utilize the grain elevator at Hudson are concerned with the potential abandonment by the lease line proponent KSW and the MP railroad. These are small business-type farmers and one of the largest utilizes all of his fields for the planting of wheat, corn, milo, and soybeans.

In order to express the plight of these farmers we are reproducing part of the statement of Maryln Spare, whose home is at 801 North Main Street, St. John, Kansas 67576.

1. Please state your name and residence.
Marylyn Spare 801 N. Main St. John, Ks. 67576
2. Please list your phone and /or fax number(s).
316-549-3330
3. Please state your occupation.
"Farmer."
4. Please state the acreage utilized for the production of wheat, corn, milo, or soybeans.

WHEAT 1,000 CORN 1,000 MILO 600 SOYBEANS 900
5. Do you have farm storage?
"Some, not too much."
6. Do you bring your grains to the grain facility locate at Hudson, Kansas?
"Yes."
8. Why do you bring your grains to the elevator listed in question number 6?
"Stronger market."
9. Do you own a semi-truck and trailer?
"Yes."
11. Why are you interested in the UP-SP merger case?
"Service and competition."
12. Would it be helpful to you, as a farmer, to have an operator which could give service to the Radium and connect with the BNSF at Stafford and the SSW at Turon?
"Yes."
13. Are you opposed to this merger?
"Yes."
14. In your opinion, has the KSW had any help from the UP to keep this line open?
"No."

An extrapolation of the other eighteen statements is as follows:

- Nos. 1 & 2: ALL DIFFERENT.
- No. 3: 18 FARMERS, 1 FARM MANAGER.
- No. 4: ACREAGE VARIED --
 Smallest: WHEAT 150 CORN 130 (11 answered "none")
 MILO 100 SOYBEANS 18 "none"
 Largest: WHEAT 1,500 CORN 1,000
 MILO 750 SOYBEANS 950
- No. 5: NO - 6 YES - 3 YES, SMALL AMOUNT - 9
- No. 6: YES - 18
- No. 7: BLANK - 18
- No. 8: BEST OR STRONGER MARKET AND CONVENIENCE - 18
- No. 9: NO - 18

- No. 10: YES - 18
No. 11: KEEP RAIL SERVICE - 18
No. 12: YES - 18
No. 13: YES - 18
No. 14: NO - 18

Contrary to the assertions being made by the proponent merger partners' statisticians concerning trucking to trainloading stations, only a very few farmers own or lease a tractor trailer. Even though Maryln Spare owns one, he still would like to bring his grains to Hudson because it is more convenient and necessary during harvests. He is the largest farmer of the group, yet he recognizes he cannot truck to Hutchinson or Wichita during harvests because he has some storage on the farm, "not too much".

The issues presented supra contain evidence that the mega carriers are only interested in their main lines business, not branch lines or small shipper business. How may a short line railroad keep competitive if the mega carrier controls the rates? The KSW, in order to keep the Hudson elevator line open had to have the cooperation of the MP railroad to obtain through rates both inbound and outbound. It had to have the equipment available when the elevator operator or the flour mill needed the equipment, not when the MP decided to give the equipment to the short line.

Alvin Brensing's statement reveals the frustration he had to keep this line open when there was no cooperation between the mega carrier and the KSW. He stated on page 1:

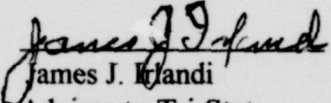
"I testified in Finance Docket No. 32549, the BN-ATSF merger case, in support of the SP railroad. It appears my company's support was short lived because now the UP seeks to merge with the SP. Since my last testimony before the ICC, we have received official notice that the Conway Springs to Radium line is up for abandonment by the UP and KSW railroads. We have had business for both railroads but it appears that neither the UP nor the KSW cared to serve this line, as it is their duty under the ICC act. How does a railroad prepare a line for abandonment? It is easy! No freight rates to meet competition, no equipment by either railroad, and doing business in the manner the railroads wish, rather than their duty as a common carrier. The UP controls the KSW rates and publishes through rates on wheat and flour in its tariff. Service was also poor. When we needed equipment the KSW did not have it, when it had equipment, it desired us to bring in grain and ship grain in the same cars when it was feasible for us to do so. I am bitter because we expanded our family flour mill business on the promise we would have rail competition."

- CONCLUSION AND PRAYER FOR RELIEF -

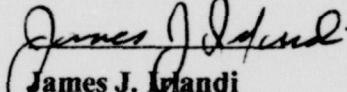
It is axiomatic that when all of the evidence is adduced in this merger proceeding, that in order for the small businesses to survive, the STB should either help grant the added competition needed in the states of Kansas, Colorado and Oklahoma or, in the alternative, deny the merger. The SP Railroad has survived in the past and its top management has given the railroad a boost in the competitive market in 1995 and the first two months of 1996. The Journal of Commerce, March 13, 1996, issue on its front page had an article entitled "Rail Traffic Trends prove difficult to track." At Page 25 second paragraph the month of February is described as Solid for Conrail kind to the SP and KCS 4% increase down side BNSF (6%) UP (4%) NS (2%) CSX (10%) I.C. (10%).

The DRGW line could be sold. The SSW line is desired by other railroads besides the UP-SP and BNSF. **It does not have to be the UP Railroad!** Tri-State prays that these conditions be found in the ultimate order of this new board, the STB.

Submitted by:

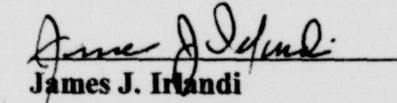

James J. Irlandi
Advisor to Tri-State

I, James J. Irlandi, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement, executed on March ____, 1996.


James J. Irlandi

Certificate Of Service

I, James J Irlandi, certify that on this 26th day of March 1996 caused this original and 20 copies of this statement to be mailed by first class to the Surface Transportation Board with a WP5.1 copy included herein. A copy is also directed to the Honorable Jerome Nelson. I further certify that I have mailed to all parties of record who have requested of Tri-state a copy by first class mail as required by the Surface Transportation Board Rules of Practice.


James J. Irlandi

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

**STATEMENT OF LEW MEIBERGEN
IN OPPOSITION TO THE UP-SP MERGER**

My name is Lew Meibergen and I am Chairman of the Board of W.B. Johnston Grain Co. Reference to this company will hereinafter be called Johnston. Johnston has been in operation in Oklahoma since 1893. It is an Oklahoma Corporation with its principal office located at 41 West Chestnut, P.O. Box 1301, Enid Oklahoma 73702. Johnston's phone and fax numbers are 405-233-5800.

Johnston owns and operates eighteen country elevators. Naming a few of these locations, Albin, Alcorn, Billings, Camango, Carnegie, Ceres, Covington, Eddy, Fairview, Hunter, Mutual Numa, Renfrow, Tonkawa, Wakita; two sub terminals located at Woodward and Shattuck and a terminal facility located at Enid Oklahoma. Our terminal facility at Enid is switched by the BNSF and open to reciprocal switching to the UP railroad. Railroad abandonments have caused fourteen of our country elevators to become landlocked. Only our two sub terminals at Woodward and Shattuck are also served by rail. These elevators are served by the BNSF railroad.

In 1976, I bought the company from my family. At that time all of outbound shipments, as well as, inbound were shipped by rail. In addition, we had three railroads serving Enid, they were Rock Island, ATSF and Frisco railroads. In order for the Surface Transportation Board to understand our concern today, I will relate what steps my family took before my takeover of the company and since 1976 to maintain rail transportation.

We upgraded our facilities in order to load hopper cars when before we loaded box cars. We also had to upgrade our unloading system in order to more handily unload hoppers without increasing demurrage charges. At that time, the railroad had grain inspection tracks so that grain inspectors could take samples of grains. We had to install better scales to weight cars. This was helpful because now there were no grain inspection tracks. We took samples on our tracks. The railroads allowed transit privileges so that we could store government grain as well as our own grains and customers without being penalized on applying through rates from country origins to the ultimate destinations of the shipments. As multiple car shipments became more popular, we made adjustments to our terminal

tracks to accommodate the new load out rules. We speeded up our legs in the elevator to unload and load cars faster and more efficiently. We are still upgrading these facilities to efficiently load the newer number of hopper cars. With the demise of transit privileges and storage privileges by the railroads, we were forced to speed up and construct additional truck unloading stations at our terminals and sub terminals. Our Enid elevator has the capability of loading 75-78 cars in 8 hrs.

Mergers have taken a toll on our railroad relationships. I have seen the Rock Island go broke. The purchase of Rock Island line in Kansas by the MKT with the help of the OKT shippers group. The lease of the Rock Island line by the MKT in Oklahoma. The BN bought the Frisco and now the BN has acquired the Santa Fe. The MP bought the MKT and our service suffered almost immediately. Of all these railroads, the Katy and the Santa Fe were the only ones that were grain shipper friendly. I can say that both of them tried very hard to service and accommodate their customers. They were competitive because of other modes of transportation both on inbound and outbound from small distances. The MP took over the MKT line. We have been through a lot.

What is our capacity to handle grains today? We will handle in excess of thirty million bushels per year, which includes primarily hard red winter wheat but also some milo and soybean. We ship the majority of our products to the Texas Gulf, but we also have product going to the West Coast. As I have stated above, only the MKT and the Santa Fe have been customer friendly. Not the MP nor the BN and now we have lost the Santa Fe since the merger of the BN-SFE railroads.

My reasons for opposition to this merger is twofold. One, we are going to need another Class I carrier to serve Enid. The UP-SP have given the BNSF many destinations which we could ship via the MP if we had the service which the MKT provided to us.

Our service has greatly deteriorated since the BN/Santa Fe merger, and I am fearful of what may happen with the UP-SP merger. I believe it is imperative that we have competing railroads to keep our transportation costs in line, and to be able to bid top dollar to the producers for their products. Today, we can ship out of Enid to Houston via the UP or BN-Santa Fe. However, the BN-Santa Fe has given trackage rights to the Southern Pacific on the old Santa Fe north-south line in Oklahoma. If the UP and SP were to merge, I am sure the SP would quit using the old Santa Fe main north-south line, because it runs parallel to the UP's line. Therefore, we would have only the BN-UP carrier left to ship our product to the Houston gulf.

Losing the Santa Fe as a competitive carrier, as mentioned before, has greatly reduced our flexibility and ability to ship our products to the west coast and the Texas gulf. The BN has told us since they merged with the Santa Fe, there would be no more five-car rates to the west coast. The mills on the west coast are small and can handle only from three to ten cars at their particular mill. We worked hard to cultivate this association, but it appears that the lack of rail competition is going to take it away from us.

There is no way we can get the product moved by truck to either the west coast, Texas gulf or St. Louis, and be competitive. For us to have to truck grain to any of these places is just out of the question. It is very difficult to get truck transportation on short hauls into our Enid terminal, Woodward and Shattuck, from our other country locations. We had to switch to trucking because of the abandonment of rail transportation here in Oklahoma. There is no question that truck transportation is no substitute for the rail transportation to our marketing areas. We have been able to improvise and use trucks from our origination points into our terminals, which are short hauls. When we speak of "short hauls" we mean one hundred miles or less. The Surface Transportation Board should not expect truck transportation rates to hold down rail rates, if the merger were to take place.

The UP was granted 3,600 miles of trackage rights by the BN, and I, personally, think that was to get the UP to quit bidding on the Santa Fe, in fighting the BN-Santa Fe merger. I just recently learned that the UP-SP has granted the BN-SF 4,000 miles of trackage rights. This probably sounds well and good to those who are not engaged in a business which is so dependent on rail transportation.

I am also concerned as to whether the UP and SP have different labor contracts as the BNSF have. It appears to me that the BN and the Santa Fe are running as two separate railroads under the same management because their two railroad union contracts differ so that they cannot be merged and be made efficient to compete. I certainly hope that the Surface Transportation Board will look into the labor agreements that the UP and the SP have, as I feel that should not even be considered for a merger unless they can operate under one labor contract.

Regardless of the union problems mentioned above, I can speak from experience. I was told by the Santa Fe, prior to the BN-SF merger, that the merger would take care of all of our switching problems and rail transportation problems in Enid Oklahoma. This fact was because the Santa Fe would be handling the grain division of the merged railroads, which is definitely not the case. I do not think there is more than one of possibly two Santa Fe employees still employed in the grain division of the BN-SF. The employees are still at those jobs because they are progressing with the BN's policy of stockholders come first and echo the sentiments of the BN's hierarchy.

In addition to what I have just stated on BNSF employees, we know that top management of the BNSF's prompting the railroad to follow the foot path of the former BN. Effective last month and on March 1st, they have published in the ATSF 4150 rates to the Gulf and West Coast destinations that will be harmful to small grain elevators and to my facility because of the Union problems I mentioned above. For example, from my Shattuck and Woodward sub terminals to the Gulf for Export they have published 1-26, 26-51, 52-77 and 78-110 rates. The rates are: 1875, 1675, 1525, 1475 in the order of the number of cars in the previous sentence. From Enid: 1620, 1420, 1270, 1220 in the same order. The BN lists my two elevators here at Enid as having only a 40 carload capacity (Page 127 1955). Shattuck and Woodward are not listed in that directory. The Santa Fe listed our Shattuck facility of having 30 cars and a capacity of 770,000 bushels and our Woodward facility as 7 cars and 1,380,000 capacity.

At Shattuck we have expanded our track to load thirty cars and now we would be in the second tier of rates to the Gulf at 1675. We will have a \$200 per car deficit to compete with Liberal, Kansas and Guymon Oklahoma both of which are train loading stations. That relates to .06 cents per bushel. Woodward, we would have the full \$400 per car to compete with or .12 cents per bushel.

The coarse grain rates hit us much harder. The spreads in rates are: 1-26, 27-53, 54-110. The rates from Woodward and Shattuck are 2600, 2350 and 2,000 per car. At Shattuck we are at a disadvantage of \$350 per car and at Woodward \$600 per car. This places us at a disadvantage of .11 cents per bushel at Shattuck and .18 cents per bushel at Woodward. You are aware that grain trades are lost for .01 cents per bushel on volume moves.

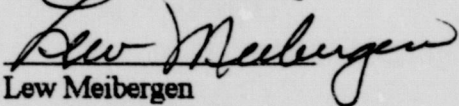
Trackage rights are not the answer to granting competition to a carrier and do not solve the competitive problems of a merger or of this merger. For instance, a railroad operating pursuant to trackage rights often experiences delays and congestion. It is charged higher rates thus the tenant-railroad cannot compete with the owner-railroad. That is what this is all about -- having competition to keep the rates in line and to have the equipment to move products to market.

Put the 7,600 miles of trackage rights that have been swapped between the BN-SF and the UP-SP, it appears to me that the BN-SF is not going to be too much interest in competing with the UP-SP for traffic, due to the tacit collusion between the two carriers. In fact, in looking at a rail map, it appears to me that if this merger were to go through, the BN-SF and the UP-SP would have a duopoly on all the states west of the Mississippi River. I can almost assure you if that happens there certainly will not be any competition between the two rail lines on prices or equipment. In fact, many shippers will be harmed by this collusion if this were allowed to take place. I am sure the UP-SP has used leverage or cut deals with various shippers to attempt to win support for this merger.

This is obvious because the BNSF's consultant, Larry M. Lawrence, who is National Director, Transportation Consulting practice of KMPG Peat Marwich L.L.P. in his study has affirmed my suspicions. In the BNSF's comments on Primary Application he stated that he examined ICC way bill sample to determine which cities would be the "Top U.S. Trading Partner Cities to Four Major Mexican Gateways." The larger grain dealers in our central corridor have facilities at these locations. In our corridor, the cities are Kansas City Mo., Lincoln NE., Topeka KS, Kansas City KS., Abilene KS, Superior NE and Salina KS. See my attachment No 1. Note the absence of Wichita KS and Enid Oklahoma. In addition, the way bill samples do not distinguish the grains moving on contracts. This is my reason for suspicions of cutting deals.

I sincerely hope that the Surface Transportation Board will turn down this merger request by the UP-SP. In the alternative, allow the KCS railroad to serve Enid in a manner which will give that railroad the impetus to give us here in Enid the needed competition.

Respectfully submitted,



Lew Meibergen
Chairman of the Board

I, Lew Meibergen, verify under penalty of perjury the foregoing is true and correct. Further I certify that I am qualified to file this statement on behalf of the W.B. Johnston Grain Company. Executed this 15th day of March 1996.

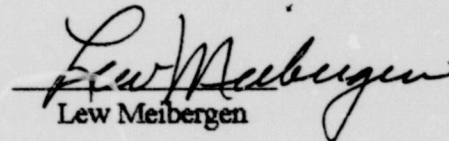

Lew Meibergen

Table 4: Top U.S. Trading Partner Cities to Four Major Mexican Gateways

Depth Rank	City	Revenue (\$, millions)	Served by UP/SP	Served by BN/Santa Fe
1	Chicago, IL	88.5	Yes	Yes
2	St. Louis, MO	55.4	Yes	Yes
3	St. Elmo, IL ^{7/}	38.0	Yes	No
4	Los Angeles, CA	17.7	Yes	Yes
5	Houston, TX	16.0	Yes	Yes
6	Kansas City, MO	13.5	Yes	Yes
7	Memphis, TN	11.9	Yes	Yes
8	Lincoln, NE	10.1	Yes	Yes
	New Orleans, LA	9.5	Yes	Yes
10	Portland, OR	7.6	Yes	Yes
11	Topeka, KS	7.1	Yes	Yes
12	Kansas City, KS	7.1	Yes	Yes
13	Council Bluff, IA	6.9	Yes	Yes
14	Dallas, TX	6.7	Yes	Yes
15	Detroit, MI	6.5	No	Yes ^{8/}

^{7/} St. Elmo is an eastern gateway. This traffic could be served instead by other gateways, but I have not included this in BN/Santa Fe single-line service.

^{8/} BN/Santa Fe has haulage rights to Detroit.

STB

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Page Count 1 of Representatives

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512-463-0520

FAX: 512-463-0904

62116
COMMITTEES:

GENERAL INVESTIGATING - VICE CHAIRMAN

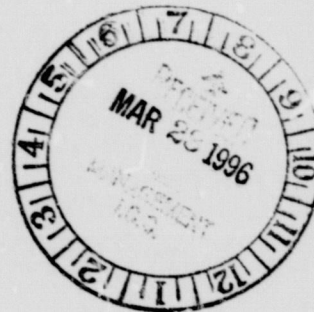
BUSINESS & INDUSTRY

ELECTIONS

JOE CRABB • STATE REPRESENTATIVE • DISTRICT 127

March 25, 1996

ADVISE OF ALL PROCEEDINGS



The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
12th Street and Constitution Avenue
Washington, DC 20423

Dear Secretary Williams:

I am writing in regard to a merger between the Union Pacific Railroad Company and Southern Pacific Lines. The application, Finance Docket 32760, which is pending before you seeks approval of this merger.

I feel that anything which reduces competition would be detrimental to the economic and business interests of Texas. I am concerned that this merger would create a monopolistic rail system which would result in higher rates to transport agricultural, chemical, petroleum, and manufactured goods. Higher freight rates would then mean higher prices for Texas consumers.

We need to ensure competition. Competition in Texas will help maintain the quality of services, rates, and job stability for railroad employees.

I urge the Board to review the proposed merger carefully and to ensure adequate rail competition in Texas.

Sincerely,

Joe Crabb

JC/sc

cc: Carole Keeton Rylander, Chairman
Railroad Commission of Texas
1707 North Congress Ave.
P.O. Box 12967
Austin, Texas 78711-2967

62116

DISTRICT OFFICE:

2240 NORTH PARK DR., SUITE 101 • KINGWOOD • 77339 • 713-359-1270 • FAX: 713-359-3766

CLEAR LAKE AREA • 713-282-0127

CROSBY/BAYTOWN • 713-422-2233

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Mar #578

ed in Farm Economics



BEFORE THE SURFACE TRANSPORTATION BOARD.

U.S. DEPARTMENT OF TRANSPORTATION

Comments on the Proposed Merger of the Union Pacific Railroad
and the Southern Pacific Transportation Company.

Finance Docket No. 32760

The above organization is in opposition to the merger unless
Conditioned as proposed in the responsive application of
MONTANA RAIL LINK, INC.

Women Involved in Farm Economics strongly supports Montana Rail
Link's proposed acquisition of the Union Pacific line between
Silver Bow, Montana, and Pocatello, Idaho as a strategic element
of the Central Corridor solution.

In conjunction with our organizations' members in Colorado,
who have been deeply involved in opposing the loss of rail
service, we are in total support of the MRL acquisition of the
lines from Kansas City- Hoisington- Pueblo-Salt Lake-Stockton,
California, - the so-called Central Corridor to the West Coast.

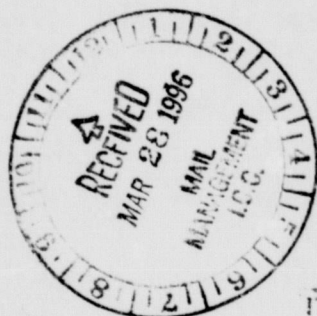
W.I.F.E. has long been concerned that all citizens should have
reasonable access to efficient, competitive modes of
transportation, since agricultural producers are the only
industry that bears the costs of shipping everything it produces
and everything it consumes, without having the ability to pass
those costs on.

Our organization is active in assisting and supporting
agricultural producers in 23 States, and is very concerned
about the possibility of a 'parallel lines' merger, which limits
competition for grain producers in many areas. We believe it
highly unlikely that the BNSF/UP-SP agreements will provide
adequate competition for many shippers. Montana's producers
remain captive to one railroad under the provisions of the
pre-merger agreement, and would likely continue to do so, and
they pay the highest freight rates for grain in the country.

W.I.F.E. urges that the proposed merger be granted only on
condition that MRL provide adequate competition so that more
of our members will not be subjected to a monopolistic entity.

Mary W. Nielsen

Mary W. Nielsen
Transportation Chair,
Women Involved in Farm Economics
302, Hazel St.
Plentywood,
MT. 59254
MARCH 26th 1996



ENTERED
Office of the Secretary

MAR 31 1996

3 Part of
Public Record

ADVISE OF ALL PROCEEDINGS

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3-28-96

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MAR #579

DEPARTMENT OF THE ARMY
ARMY LEGAL SERVICES AGENCY
121 NORTH STUART STREET
ARLINGTON, VA 22203-1837



REPLY TO
ATTENTION OF



March 27, 1996

Regulatory Law Office
U 3898



Subject: Finance Docket No. 32760 Union Pacific, Union Pacific Railroad Company, and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Railroad Corporation, St. Louis Southwestern Railway Company, SPCL Corp., and The Denver and Rio Grande Western Railroad Company

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

Dear Secretary:

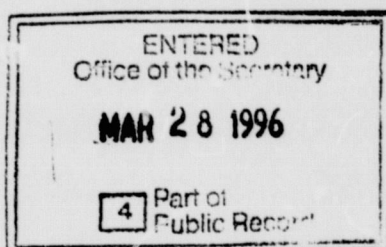
Enclosed are the original and 20 copies of the Comments of Major General Roger G. Thompson, Jr., on the behalf of the U.S. Department of Defense and All Other Federal Executive Agencies in the above-referenced proceeding.

Copies have been served in accordance with the attached Certificate of Service and Service List.

Sincerely,

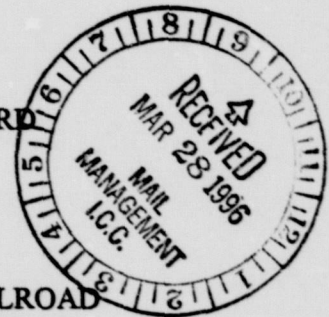
Peter Q. Nyce, Jr.
General Attorney
Regulatory Law Office

Enclosures



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

COMMENTS OF MAJOR GENERAL ROGER G. THOMPSON, JR.

INTRODUCTION

I, Major General Roger G. Thompson, Jr., hereby state as follows:

I am the Commander of the Military Traffic Management Command (MTMC), a major Army Command and a component command of the United States Transportation Command (USTRANSCOM). The Military Traffic Management Command is the Department of Defense (DOD) traffic manager for military traffic, land transportation, and common-user ocean terminals. MTMC is charged with the mission of providing transportation planning and operational support to USTRANSCOM, the Military Services, and DOD agencies.

Most specifically, MTMC is responsible for executing the Railroads for National Defense Program on behalf of the Commander-in-Chief, USTRANSCOM. The Railroads for National Defense Program integrates DOD requirements for rail service into civil sector planning and ensures the civil rail network, designated important to national defense, is capable of deploying our forces during a contingency. Under the Railroads for National Defense Program, MTMC assesses the impacts of railroad abandonments, bankruptcies and mergers on national defense interests. Working together with the Federal Railroad Administration of the Department of Transportation, MTMC conducts periodic reviews of civil rail lines important to National Defense

to update the Strategic Rail Corridor Network (the commercial rail lines designated important to national defense) and connector rail lines servicing DOD installations whose mission requires rail service.

POLICY

It is DOD policy to rely on the providers of commercial transportation to the maximum extent possible for its transportation needs. The U.S. railroads, as an integral part of the commercial transportation system, are an important element of our national defense transportation infrastructure.

PURPOSE

The purpose of this statement is to provide the Surface Transportation Board with information on the effects the Union Pacific - Southern Pacific merger will have on national defense.

ANALYSIS

As participants in the current Strategic Rail Corridor Network, the Union Pacific and Southern Pacific together serve a total of 46 DOD installations whose missions require rail service. This represents about 32 percent of the Strategic Rail Corridor Network and accounts for approximately 29 percent of DOD's annual expenditures for rail service.

In analyzing the impact the Union Pacific and Southern Pacific merger may have on the national defense, my Command looked at:

- (a) the essential military transportation requirement;
- (b) the potential benefits of the merger in terms of greater economies, efficiencies and continuation of service; and
- (c) the potential harm caused by the merger to include reduction in competition and reduction in essential services.

Our analysis and conclusions are as follows:

(a) Essential Military Transportation Requirement: In reviewing the proposed merger, we looked at whether it would preserve the track structure and other assets considered essential to national defense interests. We have analyzed the abandonments filed in the merger application and can find no adverse impact to specific defense installations or to the Strategic Rail Corridor Network. In fact the merger application lists considerable rail line maintenance improvements, a large portion of which will be performed on Strategic Rail Corridor Network lines. A potential concern from our perspective is the sale of particular Southern Pacific rail lines as a condition to the merger. If sales occur we have no assurances that low traffic density lines important to DOD will be purchased by other railroads. Overall, however, the UP/SP merger, as proposed, continues to provide rail service to our DOD installations and is compatible with a strong national defense transportation infrastructure.

(b) Competitive Benefit/Competitive Harm: Our analysis reveals no immediate competitive benefits identified as a result of this merger. As for potential competitive harm caused by the merger, six of the 46 installations currently served by the Union Pacific and Southern Pacific may change from two carrier to one carrier service. As the Department of Defense's land traffic manager, I am concerned with maintaining at least dual rail carrier capability to the six installations where both Union Pacific (UP) and Southern Pacific (SP) currently provide service. These installations are:

Pine Bluff Arsenal, AR
Sierra Army Depot (AD), Herlong, CA
Red River AD, Defense, TX
Lone Star Army Ammunition Plant (AAP), Defense, TX
Sharpe AD, CA
Defense Depot Tracy, CA

As part of their merger application, the Union Pacific and Southern Pacific have tentatively agreed to preserve two carrier status at the above listed installations. This agreement incorporates the Union Pacific commitment not to allow a single shipper to lose a choice between

two railroads. More specifically, an agreement between the UP and the Burlington Northern Santa Fe (BNSF) provides that Union Pacific and Southern Pacific agree to enter into arrangements with Burlington Northern Santa Fe under which, through trackage rights, haulage, ratemaking authority or other mutually acceptable means, Burlington Northern Santa Fe will be able to provide competitive service to 2-to-1 customers. MTMC, consistent with the Union Pacific's commitment, wants to ensure that if this merger is approved, the six installations mentioned above will continue to be served by at least two railroads.

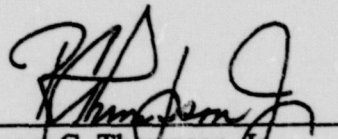
In reviewing the September 25, 1995, agreement between UP and BNSF Railroad, we note that the agreement allows BNSF to serve many shippers, including Pine Bluff Arsenal, that are presently served by Union Pacific and Southern Pacific. However, we understand that the September 25, 1995, agreement specifically precludes BNSF access via trackage rights to Herlong, California, and Defense, Texas, and appears not to include trackage rights necessary for Burlington Northern Santa Fe to serve Sharpe Army Depot, and Defense Depot Tracy.

We are still discussing competitive access to these five defense installations with the two railroads. Although both UP and BNSF are willing to reach an agreement, the specifics of how the BNSF or other rail carriers will serve these installations have yet to be worked out. Such agreements should be in place before approval of the proposed merger.

CONCLUSION

Overall, the proposed merger of Union Pacific and Southern Pacific appears to be the best option for the preservation of railroad assets dedicated to the movement of DOD freight. However, the merger may not be the best option for preservation of rate competition unless continued competitive access is maintained generally throughout the areas served by the UP and specifically at the six DOD installations mentioned above. We believe that the preservation of competitive access by the BNSF and other carriers, where operationally appropriate and supported by actual traffic requirements, should be in place when the merger is approved.

Executed this 22nd day of March, 1996.

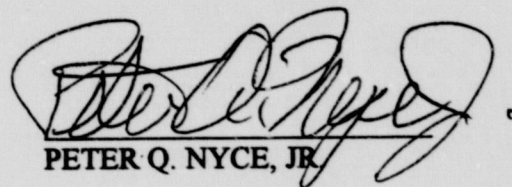
A handwritten signature in dark ink, appearing to read "R. G. Thompson, Jr.", written over a horizontal line.

Roger G. Thompson, Jr.
Major General, U. S. Army
Commanding

CERTIFICATE OF SERVICE

I, Peter Q. Nyce, Jr., certify that I have this day caused the enclosed Comments of Major General Roger G. Thompson, Jr., on behalf of the Department of Defense, to be served on all known parties by U.S. Mail delivery to the parties shown on the attached "Service List".

Executed March 27, 1996, at Arlington, Virginia.



PETER Q. NYCE, JR.

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Represents: STATE OF MICHIGAN - DOT

[FOR] RICHARD E. KERTH, TRANS. MGR.
CHAMPION INTERNAT'L CORP
101 KNIGHTSBRIDGE DRIVE
HAMILTON ON: 45020-0001
Represents: CHAMPION INTL CORP

[FOR] BRUCE A. KLIMEK
INLAND STEEL
3210 WATLING STREET
EAST CHICAGO IN 46312
Represents: INLAND STEEL CO.

[FOR] JEFFREY L. KLINGER
PEABODY HOLDING COMPANY
701 MARKET STREET, STE 700
ST. LOUIS MO 63101-1826

[FOR] ANN KNAPTON, TRANSP. MGR.
IDAHO TIMBER CORPORATION
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[FOR] ROBERT S. KOMPANY
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Represents: DOD, USMTMCTEA

[FOR] STANLEY B. KONIZ, UNIT MANAGER
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[FOR] ALBERT B KRACHMAN
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[FOR] JOHN F. LARKIN
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Represents: GENERAL RAILWAY CORPORATION

[FOR] JOHN P. LARUE
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Represents: PORT OF CORPUS CHRISTI

[FOR] THOMAS LAWRENCE III
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[FOR] MICHAEL O. LEAVITT
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[FOR] JOHN H. LESEUR
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Represents: CA. PUBLIC UTILITIES COMM

[POR] STEVEN G. RABE, CITY MANAGER
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Represents: HON MARC RACICOT

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EIGHTH AND EATON AVENUES
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[POR] REED M. RICHARDS
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236 STATE CAPITOL
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[POR] ROBIN L. RIGGS, GENERAL COUNSEL TO
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[POR] GARY L. TOWELL
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SPRINGFIELD CO 81073
Represents: COUNTY COMMISSIONERS

[POR] TIMOTHY M. WALSH
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE, N. W.
WASHINGTON DC 20036-1795

[POR] JEFFREY A. WALTER
WATERFALL TOWERS, 201-B
2455 BENNETT VALLEY ROAD
SANTA ROSA CA 95404
Represents: CITY OF MARTINEZ

[POR] LOUIS P. WARCHOT
SOUTHERN PACIF. TRANS. CO.
ONE MARKET PLAZA
SOUTHERN PACIFIC BLDG., RM. 815
SAN FRANCISCO CA 94105

[POR] PHILIP D. WARD, ET AL.
P. O. BOX 351
200 FIRST STREET, SE
CEDAR RAPIDS IA 52406-0351
Represents: IES UTILITIES, INC.

[POR] RICHARD E. WEICHER
SANTA FE PAC. CORP. ETAL.
1700 EAST GOLF ROAD
SCHAUMBURG IL 60173

[POR] MARTIN A. WEISSERT
BAKER & DANIELS
111 E. WAYNE STREET, STE. 800
FORT WAYNE IN 46802
Represents: GOLDEN CAT DIVISION

[POR] CHARLES H. WHITE, JR.
1054-THIRTY-FIRST STREET., N.W.
WASHINGTON DC 20007-4492
Represents: UTAH RAILWAY COMPANY
[POR] WILLIAM W. WHITEHURST, JR
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030-1711

[FOR] TERRY C WHITESIDE
SUITE 301 MTN BLDG
3203 THIRD AVENUE NORTH
BILLINGS MT 59101-1945
Represents: MT, WHEAT & BARLEY COMM

[FOR] THOMAS W. WIL OX
DONELAN, CLEARY, WOOD
1100 NEW YORK AVE., N.W., STE 750
WASHINGTON DC 20005-3934
Represents: WESTERN RESOURCES, INC.

[FOR] DEBRA L. WILLEN
GUERRIERI, EDMOND, ETAL
1331 F STREET, N. W.
WASHINGTON DC 20004
Represents: INTL ASSOC OF MACHINISTS

[FOR] MAYOR LESTER WILLIAMS
TOWN OF EADS
PO BOX 8
110 W 13TH ST.
EADS CO 81036
Represents: TOWN OF EADS

[FOR] RICK WILLIS
550 CAPITOL ST NE
SALEM OR 97310-1380
Represents: OREGON PUBLIC UTILITY COMM

[FOR] BRUCE B. WILSON
CONSOLIDATED RAIL CORP.
2001 MARKET STREET
PHILADELPHIA PA 19101-1417
Represents: CONTRAIL

[FOR] ROBERT A. WIMBISH, ESQ.
REA, CROSS & AUCHINCLOSS
1920 N STREET, N.W. SUITE 420
WASHINGTON DC 20036
Represents: BROWNSVILLE & RIO GRANDE, ET AL

[FOR] FREDERIC L. WOOD
DONELAN, CLEARY, WOOD
1100 NEW YORK AVE., N.W., SUITE 750
WASHINGTON DC 20005-3934
Represents: NATL INDUSTRIAL TPTN LEAGUE

[FOR] DEAN L. WORLEY
HILBURN CALHOON HARPER
P. O. BOX 5551
ONE RIVERFRONT PLACE, EIGHTH FL.
NORTH LITTLE ROCK AR 72119
Represents: GULF RICE ARKANSAS

[FOR] E W WOTIPKA
6388 TERRACE LANE
SALIDA CO 81201
Represents: E W WOTIPKA

[FOR] EDWARD WYTKIND, EXECUTIVE DIRECTOR
TRANSP TRADES DEPT AFL-CIO
400 N. CAPITOL ST, SW, STE 861
WASHINGTON DC 20001
Represents: TRANSP. TRADES DEPT., AFL-CIO

[FOR] R. L. YOUNG
P. O. BOX 700
ONE MEMORIAL DRIVE
LANCASTER OH 43130-0700
Represents: AMERICAN ELECTRIC POWER SVC.

[FOR] THOMAS ZWICA
21 WEST FIRST STREET
GENESEO IL 61254
Represents: LSBC HOLDINGS INC

STB

FD

32760

3-28-96

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62113

Witco

Item No. _____

Page Count 2

Mar #591

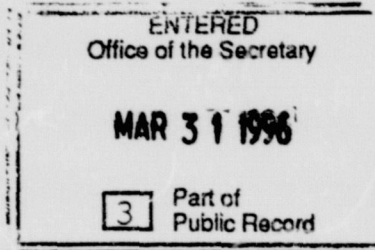
Witco Corporation

One American Lane
Greenwich, CT 06831-2559
(203) 552-3096
(203) 552-2874 Fax

John G. Breslin
Director of Logistics

FD 32760

Mr. Vernon Williams
Surface Transportation Board
Room 3315
12th and Constitution, N.W.
Washington, D.C. 20423-0001



Dear Mr. Williams:

My name is John G. Breslin and I am the Director of Logistics for Witco Corporation. My business address is One American Lane, Greenwich, CT 06831. I have held this position since November 1989. In this position my primary responsibility is the purchase of transportation.

Prior to November, 1989, I have held various positions with Witco and my employment has been continuous since June 1965.

As a major user of rail service for transportation, Witco has a strong interest in competitive rail transportation within the United States and between the U.S. and Mexico. The Laredo/Nuevo Laredo gateway is the primary route for shipments between the two countries for the majority of international traffic. This gateway possesses the strongest infrastructure of customers brokers. It also provides the shortest routing between major Mexican industrial and population centers and the Midwest and Eastern United States.

Our company depends on competition to keep prices down and to spur improvements in products and services. For many years Union Pacific and Southern Pacific have competed for traffic within Laredo, resulting in substantial cost savings and a number of service innovations. TexMex has been Southern Pacific's partner in reaching Laredo in competition with Union Pacific, as Southern Pacific does not reach Laredo directly.

A merger of Union Pacific and Southern Pacific will seriously reduce, if not eliminate, our competitive alternatives via the Laredo gateway. Although these railroads have recently agreed to give certain trackage rights to the new Burlington Northern Santa Fe Railroad, we do not believe the BNSF, as the only other major rail system remaining in the Western United States, will be an effective competitive replacement for an independent Southern Pacific on this important route.

**ADVISE OF ALL
PROCEEDINGS**

Mr. Vernon Williams

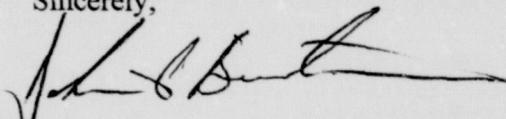
March 20, 1996

Page .

I understand there is an alternative that will preserve effective competition for traffic. TexMex has indicated a willingness to connect with other carriers via trackage rights to provide efficient competitive routes. Trackage rights operating in such a way as to allow TexMex to be truly competitive are essential to maintain the competition at Laredo that would otherwise be lost in the merger. Thus I urge the Surface Transportation Board to correct this loss of competition by conditioning this merger with a grant of trackage rights via efficient routes between Corpus Christi and these connecting railroads.

Economical access to international trade routes should not be jeopardized when the future prosperity of both countries depends so strongly on international trade.

Sincerely,



John G. Breslin

cc: The Texas Mexican Railway Company

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32760

3-28-96

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62112

Item No. _____

Page Count 12

Mar #592

CITY OF SUSANVILLE

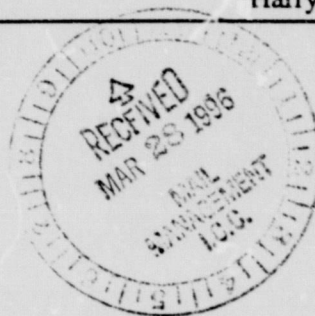
66 North Lassen Street
Susanville, California 96130
(916) 257-1000

FAX: (916) 257-4725



March 27, 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)

Gentlemen:

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.

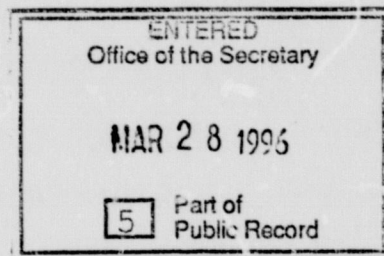
Sincerely,

Harry Jensen
City Administrator

HJ:jkt

Enc:

62112



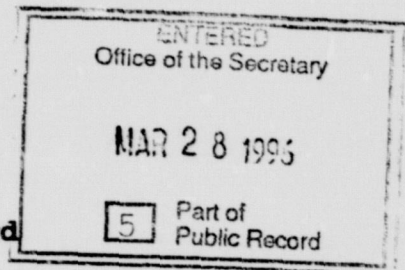
MAYOR
James C. Jeskey

MAYOR pro tem
Douglas Sayers

COUNCIL MEMBERS
Lino P. Callegari, Shirley Johnson-Wright, Vernon H. Templeton

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 CRP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

Before the interstate commerce commission

Docket No. AB-12 (sub-No. 184X)

SOUTHERN PACIFIC TRANSPORTATION COMPANY
ABANDONMENT EXEMPTION - WENDEL - ALTURAS LINE
IN MODOC AND LASSEN COUNTIES, CALIFORNIA

COMMENTS OF THE COUNTY OF LASSEN
AND CITY OF SUSANVILLE

The City of Susanville and the County of Lassen hereby submit comments on the above described proceedings opposing the merger of the Union Pacific Railroad and the Southern Pacific Railroad and proposed abandonment of the Modoc Line from Wendel to Alturas. The City of Susanville and County of Lassen submit that the rail system is under utilized but serves an important part of the entire rail system and may provide rail options currently being pursued for local reuse of the Sierra Army Depot.

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 conducted public hearings regarding possible abandonment of the rail line. Subsequent to said hearings, the respective entities adopted Resolutions No. 96-2774 (City) and 96-201 (County) opposing abandonment. The resolutions are attached hereto and by this reference incorporated herein.

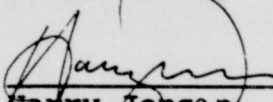
In addition, the Feather River Rail Society has expressed interest in utilizing the rail line for tourist or recreational uses should freight uses be discontinued. (please see the attached letter from the Feather River Rail Society.)

II

CONCLUSION

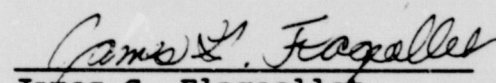
The City of Susanville and County of Lassen urge the Board to deny the abandonment exemption of the Wendel-Alturas Line and encourage full utilization of said Line.

Respectfully submitted,



Harry Jensen
City Administrator
City of Susanville
66 N. Lassen Street
Susanville, CA 96130

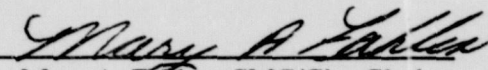
Respectfully submitted,



James G. Flageollet
County Counsel
County of Lassen
707 Nevada Street
Susanville, CA 96130

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing notice on all parties of record on the service list in this proceeding, and an original plus twenty (20) copies on the Secretary of the Surface Transportation Board by first class mail, postage prepaid this 27th day of March, 1996.


Mary A. Eahlen, CMC/City Clerk

RESOLUTION NO. 96-2774

A RESOLUTION OF CITY OF SUSANVILLE'S SUPPORT FOR USE OF THE PROPOSED SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY FROM WENDEL TO ALTURAS FOR CONTINUED COMMERCIAL RAIL USE, AND IF NOT ECONOMICALLY VIABLE FOR CONTINUED FREIGHT USE, FOR ALTERNATE RAIL USE FOR TOURIST AND RECREATIONAL RAIL USES, AND IF NOT VIABLE FOR ANY OF THE ABOVE RAIL USES, SUPPORT FOR RAIL BANKING OF THE CORRIDOR FOR POTENTIAL FUTURE RAIL USE AND FOR INTERIM TRAIL USE OF THE RAIL GRADE AND RIGHT-OF-WAY.

WHEREAS, the City of Susanville will have 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 is pursuing local reuse options for the Sierra Army Depot which may include commercial ventures that may require rail service to the north over the proposed abandonment, and the process for reuse analysis of Sierra Army Depot will extend beyond the March 29, 1996, time frame set for public input into the proposed abandonment decision; 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

Resolution No. 96-2774 continued:

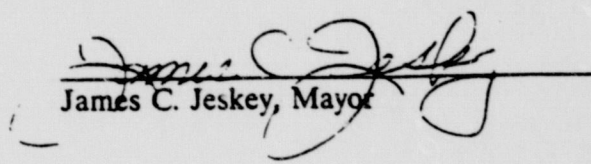
Section 3.

If, after pursuing the actions specified in Sections 1 and 2, rail use of the Wendel to Alturas line does not continue, the City Council supports rail banking of the Wendel to Alturas line by the Bureau of Land Management to preserve the railroad right-of-way for future rail use and for interim trail use of the railroad grade and corridor until such time as rail use may be reinstated on the corridor.

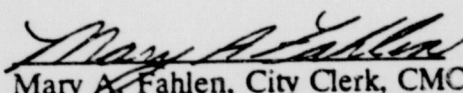
Section 4.

If rail banking occurs, a management plan with public involvement and environmental assessment should occur to identify issues affecting management of the rail banked corridor and to develop a management plan that addresses and mitigates impacts of potential trail uses.

APPROVED


James C. Jeskey, Mayor

ATTEST:


Mary A. Fahlen, City Clerk, CMC

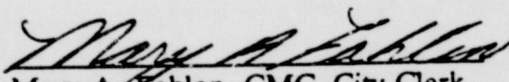
The foregoing resolution was adopted at a regular adjourned meeting of the City Council of the City of Susanville, held on the 20th day of March, 1996 by the following vote:

AYES: Johnson-Wright, Sayers, Callegari, Templeton, and Jeskey

NOES: None

ABSENT: None

ABSTAINING: None


Mary A. Fahlen, CMC, City Clerk

APPROVED AS TO FORM:

s/s Kathleen R. Lazard
Kathleen R. Lazard, City Attorney

RESOLUTION NO. 96-021

A RESOLUTION OF LASSEN COUNTY'S SUPPORT FOR USE OF THE PROPOSED SOUTHERN PACIFIC RAILROAD ABANDONMENT FROM WENDEL TO ALTURAS FOR CONTINUED COMMERCIAL RAIL USE AND IF NOT ECONOMICALLY VIABLE FOR CONTINUED FREIGHT USE, FOR ALTERNATE RAIL USE FOR TOURIST AND RECREATIONAL RAIL USES AND IF NOT VIABLE FOR ANY OF THE ABOVE RAIL USES, SUPPORT FOR RAIL BANKING OF THE CORRIDOR FOR POTENTIAL FUTURE RAIL USE AND FOR INTERIM TRAIL USE OF THE RAIL GRADE AND RIGHT-OF-WAY.

WHEREAS, the County of Lassen is traversed by the majority of the proposed 85 mile Southern Pacific Railroad abandonment from near Wendel to near Alturas;; and

WHEREAS, the County of Lassen is pursuing local reuse options for the Sierra Army Depot which may include commercial ventures that may require rail service to the north over the proposed abandonment and the process for reuse analysis of Sierra Army Depot will extend beyond the March 29, 1996 time frame set for public input into the proposed abandonment decision; 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 railcycling venture; and

WHEREAS, Lassen County 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; and

WHEREAS, additional time beyond the March 29, 1996 public input deadline is needed to determine the feasibility of alternate rail uses; and

WHEREAS, Lassen County residents and visitors use and enjoy the Bizz Johnson Trail, a rails to trails conversion of the former Southern Pacific Fernley and Lassen Branch line, and have expressed support for trail use of the Wendel to Alturas line if it is abandoned and rails and ties are removed;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Lassen as follows:

Section 1.

The Board of Supervisors opposes abandonment of the Wendel to Alturas line and supports keeping the north south rail line in place until such time as the local reuse authority process for the Sierra Army Depot reutilization has been completed and a determination of need has been made for whether or not future rail service over this line will be needed by future occupants of the reused army base; and

Section 2.

If, after completion of the Sierra Army Depot local reuse authority process, commercial freight use of the Wendel to Alturas rail line cannot be justified the Board of Supervisors supports keeping the Wendel to Alturas rail line in place for alternate rail uses including excursion trains and/or recreational use of the rail line provided that a rail operation organization takes on responsibility for operation of the line.

Section 3.

If, after pursuing the actions specified in sections 1 and 2, rail use of the Wendel to Alturas line does not continue, the Board of Supervisors supports rail banking of the Wendel to Alturas line by the Bureau of Land Management to preserve the railroad right-of-way for future rail use and for interim trail use of the railroad grade and corridor until such time as rail use may be reinstated on the corridor.

Section 4.

If rail banking occurs, a management plan with public involvement and environmental assessment should occur to identify issues affecting management of the rail banked corridor and to develop a management plan that addresses and mitigates impacts of potential trail uses.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Lassen held on March 19, 1996, by the following vote:

AYES: Supervisors Loubet, Neely, Chapman, Lemke, Lough

NOYES: None

ABSENT: None

ABSTAIN: None

Jean Loubet
Chairman, Lassen County Board of Supervisors

In accordance with Section 26101 of the Government Code of the State of California a copy of this document has been delivered to the Chairman of the Board of Supervisors, County of Lassen on

3-19-96
[Signature]
By Curly D. [Signature] Clerk of Supervisors



Feather River Rail Society

Post Office Box 608 • Portola, California 96122 • Office 916-832-4737 • Museum 916-832-4131

March 15, 1996

City of Susanville
Lassen County Board of Supervisors
City of Alturas
Modoc County Board of Supervisors

Dear City and County Officials:

The Feather River Rail Society is perhaps best known as the operator of the world famous Portola Railroad Museum in eastern Plumas County. The Museum opened in 1984, and continues to be a major tourist attraction in Northeastern California.

Operation of the Portola Railroad Museum is the major activity of the Feather River Rail Society; however, we are also interested in preserving railroad history. Indeed, the Feather River Rail Society Mission Statement confirms our commitment to "preserving railroad history of Northern California" as second only to "preserving the history of the Western Pacific Railroad". To this end, the Feather River Rail Society wishes to go on record as being in favor of retaining the track and roadbed intact on the portion of the Southern Pacific railroad line between Wendel and Alturas that is proposed for abandonment upon consummation of the Union Pacific-Southern Pacific merger, anticipated in August 1996. This line, commonly referred to as the "Modoc", is a historically significant and scenic line, which has potential to be developed into an operation for tourism, directly benefiting the cities of Alturas and Susanville, as well as Lassen and Modoc Counties.

The Feather River Rail Society would be interested in exploring the possible uses of this line, including Rail Banking the right-of-way for future development, if necessary. However, once the rails and ties are removed, many opportunities will be lost. Please contact the Feather River Rail Society for further information and discussion. Thank you.

Respectfully,

Steven J. Habeck
President

ATTEST:

Theresa Nagel
Theresa Nagel, County Clerk
County of Lassen

I Theresa Nagel, County 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 duly adopted by said Board of Supervisors at a regular meeting held on the 20th day of February, 1996.

Theresa Nagel
County Clerk and ex-officio Clerk of
the Board of Supervisors

STB

FD

32760

3-28-96

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62111

Before the

ENTERED
Office of the Secretary

MAR 28 1996

5 Part of
Public Record

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 CRP. AND THE
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

Before the Surface Transportation Board

Docket No. AB-12 (sub-No. 184X) ✓

62111

SOUTHERN PACIFIC TRANSPORTATION COMPANY
ABANDONMENT EXEMPTION - WENDEL - ALTURAS LINE
IN MODOC AND LASSEN COUNTIES, CALIFORNIA

COMMENTS OF THE COUNTY OF MODOC AND CITY OF ALTURAS

The County of Modoc and the City of Alturas wish be on record opposing the merger of the Union Pacific Railroad and the Southern Pacific Railroad as presented. The merger proposes abandonment of a portion of the Modoc Line (Flannigan to Alturas), rail line sections, beginning mile post 455.6 and ending mile post 360.1. The County of Modoc and the City of Alturas believe the entire rail system as it traverses the county is an under utilized system but a very important part of the entire rail transportation system, as well as a benefit to the public at large. The County of Modoc and the City of Alturas respectfully request that the commission consider these additional facts:

1. The N.C.O. railroad first began service to Modoc County in 1907. Prior to arrival of rail service, all raw materials, agricultural products and goods produced in the county were consumed within the rural area. Arrival of the railroad provided a means of transportation to export products and heralded 60 years of economic prosperity within the county. Thus, the rail line has played a large role in the development, customs and culture of the County of Modoc and is still an accepted part of our communities.
2. The Modoc line provides the only alternative form of transportation to move goods to and from Modoc County and the City of Alturas. Only United Parcel Service provides regular scheduled service within the County of Modoc and to the City of Alturas. No other regularly scheduled bus service or truck service is provided.
3. In an era of rapid consumer and economic changes, it is difficult to estimate transportation needs. The Modoc Line provides flexibility and transportation stability for the city and the county to adapt to these changing times.
4. Abandonment of the Wendel to Alturas section of the line will place the City of Alturas and the City of Lakeview at the end of what will be considered a very long spur. Without heavy traffic to keep the spur open, it will only be a short time before it is abandoned. The economies of rural regions are based on the extraction of base resources and the primary processing of such which are best shipped by rail. The Wendel to Alturas section of the Modoc Line is important because it provides the shortest distance to markets south of the county seat. Rerouting to the west could cost shippers considerably more and place them at an economic disadvantage. For example, shipments of lumber to Reno would be shipped first to Klamath Falls, Oregon, south to Sacramento then east to Reno.
5. The County of Modoc and the City of Alturas are in a depressed and marginal economic state experiencing high welfare and unemployment. We would suffer immeasurably in our ability to attract business and industry. As a point in fact, we are currently under consideration as a location for a meat packing plant, a building block manufacturing plant and a cogeneration power plant. Each of these industries are counting on continued rail service and will locate elsewhere without rail service.
6. Given the proximity of the line to wildlife refuges and sensitive habitats throughout the county and the economics associated with the construction of a new line, a decision to remove the line will most likely represent an irreversible commitment for no service to the

City of Alturas. We believe this represents a short-term benefit to the detriment of long-term goals.

7. In 1917, the City of Alturas gifted several blocks of land in the center of the city to the N.C.O. railroad; subsequently the Southern Pacific Railroad. The site was used as a maintenance and repair facility. The State of California currently has this location on a hazardous sites list. Should abandonment occur, the City of Alturas requests lands be remediated for hazardous waste and returned to the city for redevelopment efforts. The railroad grade both east and south of the City of Alturas is an integral part of the flood management program designed by the Army Corp of Engineers. Should abandonment of the line occur virtually one half of the city will be at risk of flood.

8. The Township of Likely utilizes and is dependant on a water system installed and maintained by the Southern Pacific Railroad.

9. Please be aware that under The County Land Use Ordinances any mitigations that involve the transfers or long-term lease of property to State or Federal agencies require county participation throughout the mitigation, negotiation and transfer process.

10. The line serves primarily overhead traffic that short cuts the terminals in Sacramento, Roseville and Portland. It also avoids the Sierra Nevada route that directs traffic through downtown Reno, Nevada. In addition, the line provides an alternate route when the routes to the west are under maintenance repair or have suffered accidental damage. The accident at Dunsmir in 1993 is a case in point. In addition, the line provides for increased overall traffic and scheduling flexibility at peak flows or in times of schedule conflict.

11. The document undervalues the line by stating there are between one and two trains per day utilizing the line. As discussed in the accompanying Verified Statement of Scott Kessler, average traffic on the route is between six to ten trains per day.

12. The line is in generally good condition, therefore costly reconstruction that would predicate abandonment is not necessary.

13. The City of Lakeview utilizes the line to ship lumber to external markets and biomass to a power plant in Wendel. The City of Lakeview purchased those portions of the line north of Alturas from Southern Pacific. You may wish to check the conditions of sale for provisions that would preclude abandonment.

14. The Modoc line is an under utilized cutoff. Total rail capacity could be increased if it were more fully utilized for overflow traffic and to provide service to destination points between Portland and Sacramento and east to Reno and Salt Lake City. In addition, it could reduce the number of trains that travel through downtown Reno and Sparks, and relieve pressure at terminals in Portland, Sacramento and Roseville.

15. The Modoc line provides some degree of national security through the movement of military equipment from bases at Herlong, Nevada to Klamath Falls, Oregon and destinations in the northwest.

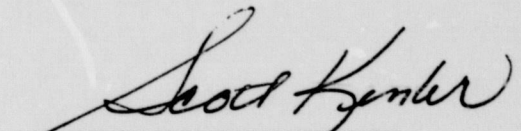
16. The Modoc Line is the shortest route connecting points in the east to points between Portland and Sacramento.

17. The route does not suffer the weather related hazards that routes over the Sierra Nevada's and Feather River Canyon have, and therefore could provide more reliable service for destinations north of Sacramento and south of Portland, as well as, destinations in the east.

WHEREFORE, the County of Modoc and the City of Alturas, respectfully request that this commission deny the merger as it is requested, or approve with a mandate to aggressively continue use of this line, or divest the Southern Pacific Railroad to a competing railroad that will fully utilize the line between Klamath Falls, Oregon east to Herington, Kansas.

Respectfully submitted,

SCOTT KESSLER, AICP



202 WEST FOURTH STREET
ALTURAS, CALIFORNIA 94102
(916) 233-6406

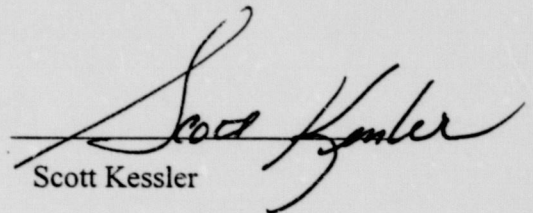
Planning Director for the
City of Alturas
County of Modoc

March 26, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document titled COMMENTS OF THE COUNTY OF MODOC AND THE CITY OF ALTURAS on all parties of record by sending by first-class mail a copy thereof properly addressed to each such party.

Dated at Alturas, California, this twenty-sixth day of March, 1996.


Scott Kessler

Wendel - Alturas, California

VERIFIED STATEMENT

OF

SCOTT KESSLER

My name is Scott Kessler. I have been employed by the County of Modoc and the City of Alturas for 5 years, and currently hold the position as Planning Director. I have a formal planning education and am certified by the American Institute of Certified Planners. I am responsible for coordination of all planning related activities within the incorporated city and county.

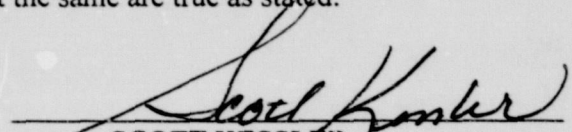
My home and office are located within a proximity near enough to hear passing train traffic. It has been my experience that an average of 6 to 10 trains per day utilize the Modoc Line. Further, at my request I have solicited the Planning Commission and the Board of Supervisors to observe train traffic at different locations throughout the county. They have verified a traffic count averaging 6 to 10 trains per day.

Loss of the railroad will hamper our efforts to attract industry to the remote region. Case in point, are conversations with operators of a meat packaging plant, building block manufacture and a cogeneration power plant which have stated that utilization of the railroad system necessary for their operations and loss of service would preclude the county and the city from consideration.

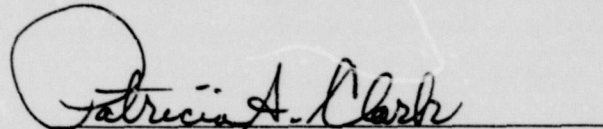
VERIFICATION

STATE OF CALIFORNIA)
) ss.
CITY OF ALTURAS AND)
COUNTY OF MODOC)

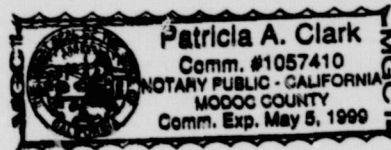
SCOTT KESSLER, being first duly sworn, deposes and states that he has read the above document, knows the facts asserted therein, and that the same are true as stated.


SCOTT KESSLER

SUBSCRIBED AND SWORN before me this 26th day of March, 1996.


Patricia A. Clark, Notary Public

My Commission expires: May 5, 1999



MODOC COUNTY
12/01/94

CAL/EPA
FACILITY INVENTORY DATA BASE
HAZARDOUS WASTE AND SUBSTANCES SITES LIST

MODOC COUNTY
PAGE 385

REG REG
BY ID

SIC
CODE

INVENTORY ID, COMMENTS,
CONTACT PERSON NAME/NUMBER

.....
CITY: ALTURAS
.....

EL CAPITAN LEASE (NO STREET NBR) ALTURAS
UNITED BEVERAGE

LTNKA 4004

INV-ID 59-036712

MAIN ST N. (1080) ALTURAS 96101
CHEVRON SS #99270 ALTURAS

LTNKA 25001

INV-ID 25-000003

MAIN ST S. (NO STREET NBR) ALTURAS 96101
TEXACO SS B&B ALTURAS

LTNKA 25009

INV-ID 25-000220

OLD HWY 97 (NO STREET NBR) ALTURAS 96101
SOUTHERN PACIFIC ALTURAS

LTNKA 25003

INV-ID 25-000005

12TH ST W. (215) ALTURAS
SHELL SS ALTURAS GIL'S

LTNKA 25006

INV-ID 25-000006

.....
CITY: CANBY
.....

COUNTY RD 82A (NO STREET NBR) CANBY
SOUTHERN PACIFIC CANBY

LTNKA 25002

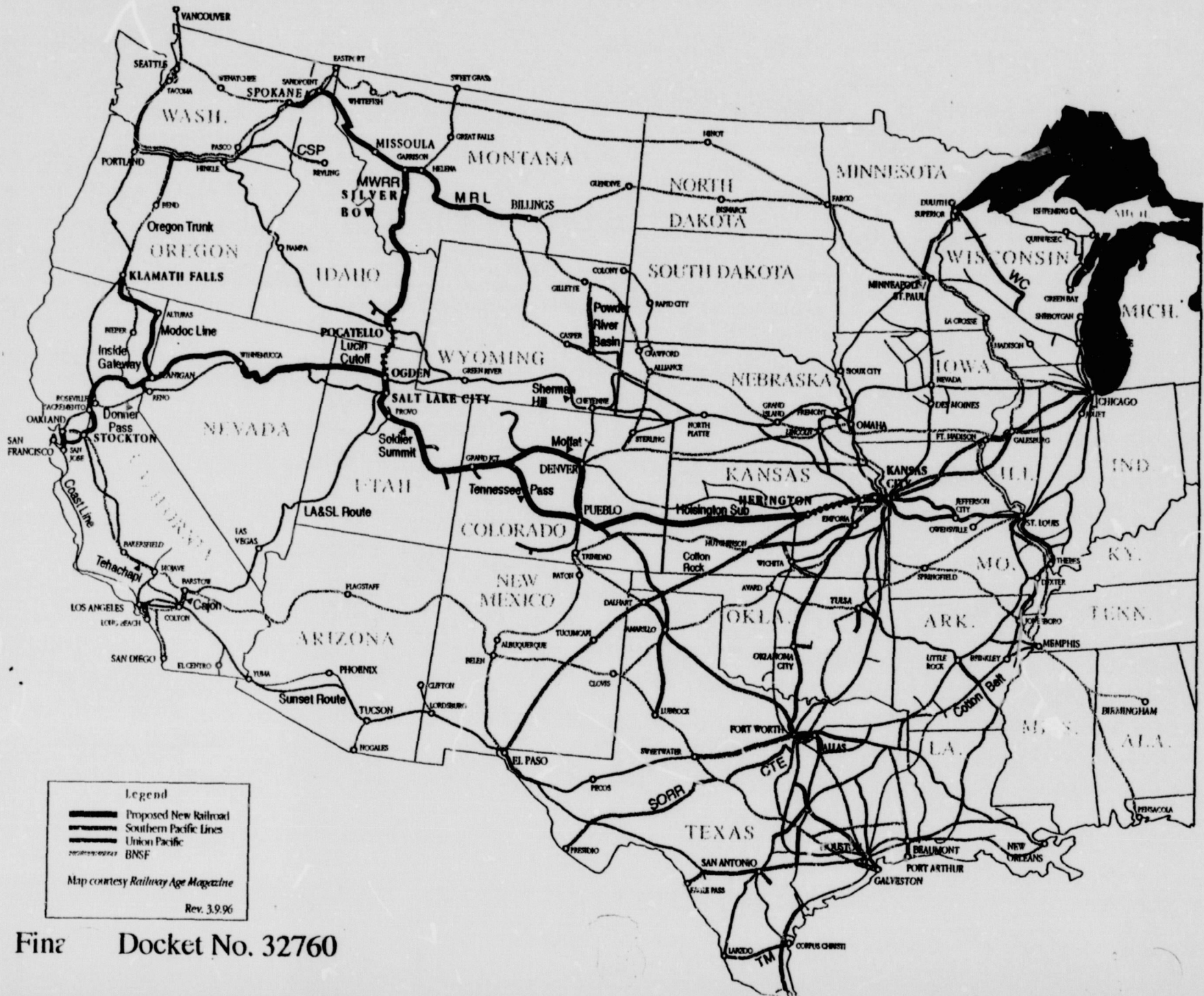
INV-ID 25-000004

.....
CITY: NEWELL
.....

(NO STREET NBR) NEWELL 96134
JT NEWELL MAINTANENCE STA.

LTNKA 1TM0001

INV-ID 25-000002



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Item No. _____

Page Count 1

Mar #1594

Lakewood, CO 80226
March 25, 1996

Surface Transportation Board
12th & Constitution Avenues
Washington DC 20423

Subject: Union Pacific/Southern Pacific Merger



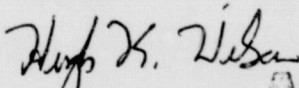
I am writing to express my conditional support for the proposed merger of the Union Pacific and Southern Pacific Railroads. This support is conditional upon the retention of rail competition in the Central Corridor from Kansas City to the Bay Area and retention of the Tennessee Pass line of the Southern Pacific.

The merger of the UP-SP will eliminate all rail competition in the Central Corridor. In an attempt to mitigate the concerns of shippers in this corridor the UP-SP has granted trackage rights to BNSF from Denver, through the Moffat Tunnel to the west coast. However, these trackage rights will not yield much competition. Double stack trains cannot fit through the Moffat Tunnel, thereby eliminating a large segment of potential rail traffic. The granting of trackage rights to resolve competitive concerns in the Central Corridor is an unsatisfactory solution to this problem.

What would be satisfactory is to force the UP-SP to sell to another company one of its lines in the Central Corridor. Montana Rail Link has offered to purchase the entire old Denver & Rio Grande Western Railroad (including both the Tennessee Pass Line and the Moffat Tunnel route), the Missouri Pacific line from Kansas City to Pueblo and the Western Pacific Line from Salt Lake City to the West Coast. If this purchase were allowed, Montana Rail Link would serve as a viable competitor in the central corridor with a good local traffic base to supplement through traffic. The local traffic base on the entire D&RGW system is essential for the survival of any new central corridor railroad. The Moffat line has coal traffic, the San Luis Valley line has a large agricultural base and the coal fields of Utah would also provide significant traffic.

A viable new railroad in the central corridor should emerge from the UP-SP merger. This new line (be it Montana Rail Link or any other railroad) would provide competition and ensure the survival of threatened rail lines. The abandonment of the Tennessee Pass line would be a terrible mistake that could have long term consequences on transcontinental railroad traffic. The STB must have the courage to require the creation of a viable competitive railroad in the central corridor. Thank you.

Sincerely,


Hugh K. Wilson

**ADVISE OF ALL
PROCEEDINGS**

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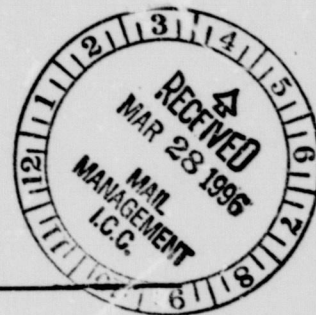
Item No. _____

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Mar # 604

S SENATOR HARRY REID

TELECOPIER TRANSMISSION SHEET



TO: UP Merger Board

FROM: Sen Reid

NO. OF PAGES INCLUDING THIS COVER PAGE 9

DATE 3/28/96

TIME 4:10 pm

C O M M E N T S

Hardcopy to follow

62100

HARRY REID
NEVADA

United States Senate

WASHINGTON, DC 20510-2803

BEFORE THE
SURFACE TRANSPORTATION BOARD

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)

Finance Docket No. 32760

COMMENT AND REQUEST FOR CONDITIONS

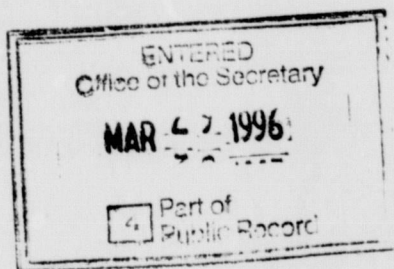
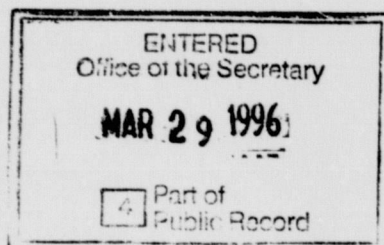
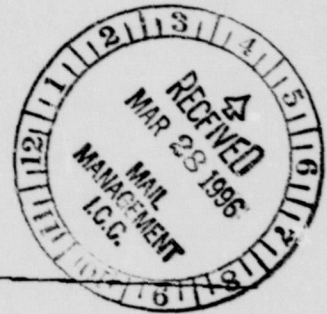


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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)

Finance Docket No. 32760

COMMENT AND REQUEST FOR CONDITIONS

SUMMARY

INTRODUCTION. As the senior United States Senator from Nevada, I submit these comments to oppose the merger of Union Pacific Railroad with Southern Pacific Railroad because of the merger's implication for the City of Reno. Reno functions as a regional nucleus for all of northern Nevada and northeastern California. The railroad tracks of Southern Pacific Railroad run directly through the center of the city and has historically been both a positive and negative influence on the downtown area. Since the proposal of the merger, the City of Reno has studied the impacts of the merger on the community and found severe negative consequences, discussed below.

ISSUES. The merger of Union Pacific Railroad and Southern Pacific Railroad, as proposed, will create a substantial hardship on the City of Reno. The significance of the merger's proposal and the negative implications to the City of Reno cannot be underestimated. Adverse safety, environmental, and economic effects have all been substantiated by the city.

Because the merger will expand the number of trains per day from 14 to 38 on the

railroad tracks that extend through the downtown area, there will be an increase in the air pollution from motor vehicle and train pollution, emergency and public safety vehicle responses will be significantly hindered; and the risk to the environment will be notably escalated. Consequently, as the new Union Pacific - Southern Pacific corporation enjoy annual benefits of approximately \$750 million annually, Reno and adjoining communities will see marked diminishment of the local and area economy. The railroad tracks lay through the middle of the city and consequently this merger will distinctly and permanently mar the very character of Reno. For these reasons, discussed further herein, the merger of Union Pacific Railroads and Southern Pacific Railroads is opposed.

MITIGATION DIALOGUE. Union Pacific Railroad management has agreed to meet with the city officials to find agreement on mitigation measures to the problems that the merger will create. There are options that are being jointly reviewed in relation to engineering possibilities, city infrastructure compatibility, and financial feasibility. However, since these talks have not yet produced any definite mitigation proposal, I must oppose the merger until the outstanding issues are resolved by Union Pacific and the City of Reno.

DISCUSSION OF ISSUES

PUBLIC SAFETY PROBLEMS. There are a number of reasons which lead to the conclusion that the public safety of Reno is jeopardized by the post-merger railroad traffic. First, because of the location of the tracks through the center of the city, the ability of the public service vehicles to respond to emergencies is severely limited. In recent years, train traffic has increasingly become a hindrance to responding police vehicles, fire units and paramedics. While population growth, increased requests for police assistance, and a declining number of officers all create stress for public safety personnel, it is the avoidance of trains that often requires the time consuming rerouting of public safety units and personnel to efficiently react to citizens' needs. The post-merger increase in train traffic, length, delays in movement will significantly compromise the effectiveness of public safety personnel. Indeed, it is estimated that fire and

ambulance response calls are increased by approximately 25% per call due to railroad blockages, which undermines the preferred goal of four minute responses. As emergency response units can attest that even a minute lost in the reaction to an emergency can be life-threatening. The city anticipates that response to traffic accidents, fellow officers needing backup assistance, and other citizen injury calls will all suffer serious delays.

Second, there will be an increase in the traffic violations and railroad crossing injuries and death. Historically there have been impatient motor vehicle drivers who, anxious to avoid the delays of the trains, will try to beat oncoming trains across the tracks, make u-turns, or proceed in the opposite direction of one way streets in anticipation of finding a route that avoids the hindrance of train traffic. Also, due to the location of the railroad tracks pedestrians are bound to congregate in precariously close proximity to the tracks. Post-merger enlargement of the number of trains, the amount of train cars and the duration of motor vehicle delay in the city will simply intensify circumstances that ought to be alleviated.

Third, another consequence of the merger that puts the safety of Reno's citizens at risk is the criminal population that find haven by and on the railroad tracks. The crossing arms, underpasses and train cars, when they have paused long enough, are gathering sites for criminals and are made temporary shelters by homeless persons and panhandlers. Downtown property owners have justifiably prohibited loitering on their property making the railroad property a refuge area for drifters, unruly crowds and drug dealers. Because the railroad does not monitor the tracks, this atmosphere is both unsafe and deteriorating for downtown Reno. In a community that relies upon tourism and recreation industries, the inevitability of violent crimes striking visitors increases as the circumstances continue unabated or train lengths and delays swell due to the merger.

In sum, the safety problems for the citizens of Reno that arise due to the proposed post-merger activity of Union Pacific Railroads and Southern Pacific Railroad compels opposition to the merger. There is no justification for proceeding with a merger whose activities will inherently place an undue burden on the community to provide for the health and safety of its citizens. Moreover, a merger that creates hazardous conditions in an otherwise prosperous, cultural, and tourist community is unwarranted and should be rejected.

ENVIRONMENTAL RISKS. The implications of the merger of Union Pacific and Southern Pacific dramatically increase the environmental risks and concerns to the City of Reno. Air and noise pollution will both increase significantly in the downtown area because of the post-merger railroad activities.

The city's efforts to shed its "non-attainment status" and comply with EPA standards will be frustrated if the vehicular delay caused by trains compels idling motor vehicles to emit approximately 11,000 additional tons of carbon monoxide into the air. This estimation of new air pollution are premised on the conclusion that the merger will delay motor vehicle traffic up to 339%. Furthermore, the engineers have found that the additional trains incorporated by the post-merger activity will add approximately 247 tons of pollution per year to the air. To subject a city to this environmental affliction for the sake of a corporate merger is unreasonable.

Noise pollution from the railroad track traffic is also expected to increase considerably if the proposed post-merger activity progresses. While the railroad noise levels of the increased amount and length of trains cannot be specifically quantified; within 1,500 feet of the railroad tracks are approximately 9,000 hospitals, hotels, churches, schools and growing number of residences all currently affected by the noise of railroad traffic. Railroad traffic at night will also produce agitation for the many hospital and hotel tenants, as well as residences along the track.

Finally, an environmental risk of the increased railroad traffic is the exposure of the principle water supply of the city to any railroad accident, spill, or leakage. The current railroad tracks subject the Truckee River to jeopardy from any railroad-connected accident, which would deprive Reno of potable drinking water for an indefinite period of time. Of the services of local government, providing drinking water is considered a fundamental utility of the municipality. To place in peril such an essential need for the purposes of a corporate merger is untenable.

ECONOMIC IMPACT. The economy of Reno is rooted in the tourism-recreation industry. The studies made of the economic impact of the post-merger activity conclude that the consequences of the negative impacts of the merger, discussed above, would depreciate property values, undermine special events and impair recreational enjoyment.

If the merger is implemented, the downtown area will be subjected to public safety concerns and environmental risks that are a direct result of the railroad tracks extending through the middle of Reno. The increased public safety anxieties will inevitably lead to less economic activity in the downtown areas, as the histories of modern urban cities clearly demonstrate. Moreover, the city has projected that the impact of pollution will devalue businesses and property while simultaneously the new merged railroad corporation will realize approximately \$750 million in annual benefits. No redevelopment effort of any city can withstand the assault of both public safety and environmental risks as this merger would produce and the City of Reno should not be required to do so now.

Special events have been a major component of the city's economic revitalization program. To yield to merger activity that will significantly handicap that program would be irresponsible. Post-merger activity would obstruct special event management as the trains would bisect parades, static display street closures, and major events. Further, as discussed above under **PUBLIC SAFETY CONCERNS**, any accidents or violence resulting from the post-merger conditions will seriously hurt the appeal of such special events. Spotighting the special events that could be most devastatingly harmed by the post-merger conditions is "*Hot August Nights*," a city sponsored celebration which attracts approximately 40-50,000 residents and visitors to the downtown area. The discontinuation of such special events would acutely alter the city's downtown economy.

The city's recreational and convention industries with unavoidable interaction with the downtown area and the current railroad tracks will be decisively undermined if the City of Reno must accommodate the public safety concerns and environmental deterioration due to the post-merger activities. Such conditions would critically affect the city's convention facilities, the recent infusion of private and public investment of approximately \$450 million into entertainment resorts and enterprises, and the hotel trade which, in the downtown venues, have occupancy rates of an average of 83% over the past three years. Reno's economic and cultural growth in recent years, which include the relocation of businesses to the area and the development of a philharmonic orchestra, ballet and opera companies, have made it a hub of northern Nevada and northeastern California. The trauma to Reno's economic efforts resulting from the merger should not be allowed by the Surface Transportation Board.

CONCLUSION

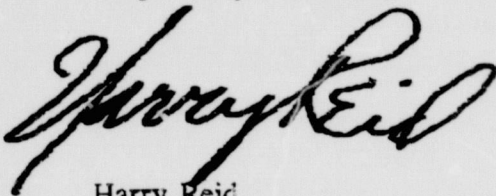
The merger of Union Pacific Railroad with Southern Pacific Railroad is the largest railroad transactions in modern railroad history. There may be some who would argue that the effects on a single city in northern Nevada should not impede such a prominent event and the many corporate benefits of the merger. On the contrary, the fact that the City of Reno is confronting such negative ramifications as direct consequences of the merger is evidence that the merger must be reexamined in light of the communities so impacted.

The public safety, environmental health, and economic state of a community should not be sacrificed in the cause of the railroad marketplace. The current location of the railroad tracks already greatly influence the tourism and trade patterns of the city. With the proposed merger Reno's citizens will unquestionably face significant unfavorable changes to their lifestyles, commerce, and standard of living if the merger proceeds without mitigating measures being taken by Union Pacific Railroad.

As noted in the SUMMARY, Reno's issues are currently being studied jointly by city representatives and Union Pacific management. The mitigation agreement to which they assent should be made a qualifying condition for approval of the merger application. Consequently, if no such accord is reached, then the application should be denied.

Dated this 28th day of March 1996.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Harry Reid", written in a cursive style.

Harry Reid
United States Senator

STB

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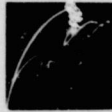
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HISPANIC CHAMBER OF COMMERCE

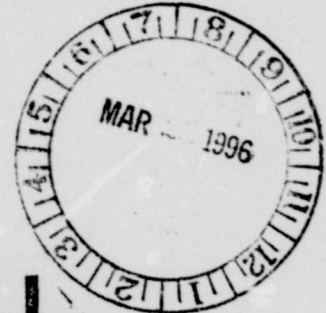
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MAR # 596



March 22, 1996



The Honorable
Vernon A. Williams, Secretary
Interstate Commerce Commission
12th. Street and Constitution Ave.
Washington, D.C. 20423

**ADVISE OF ALL
PROCEEDINGS**

RE: Finance Docket 32760 - Proposed Merger of Union Pacific and Southern Pacific

Dear Secretary Williams,

I am writing in regard to an application pending before you that seeks approval of a merger between the Union Pacific Railroad Company and Southern Pacific Lines (SP). We are very concerned that the merger of these two railroads will significantly reduce rail competition in Texas, seriously impacting Texas' business climate and our State's economy.

As proposed, the merger would grant UP control over a reported 30% of rail traffic into and out of Mexico. This, in particular, really concerns us. The merger would greatly reduce rail competition, and any proposed trackage rights agreement would not sufficiently guarantee independent competitive services. Owners of rail lines have incentives to invest in the track and to work with local communities to attract economic development. Owners have control over the service they provide - its frequency, its reliability, its timeliness. None of these things can be said about railroads that operate on someone else's tracks, subject to someone else's control.

Texas needs to ensure effective rail competition. An owning railroad willing to provide quality service and investment is the best solution for shippers, communities and our international business environment. For all of these reasons we urge the Board to carefully review the proposed UP/SP merger and to ensure adequate rail competition in Texas.

Sincerely,

Leo Gomez
Leo Gomez
President

62108

LG/ca

cc: Carole Keeton Rylander, Chairman for The Railroad Commission of Texas

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• 62107

Item No. _____

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MAR # 597



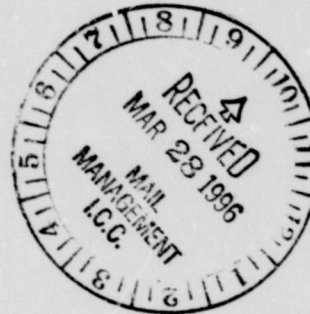
City of Mentor

Council-manager
government since 1963

8500 Civic Center Boulevard
Mentor, Ohio 44060-2499
216-255-1100

March 28, 1996

Honorable Vernon Williams
Secretary
Surface Transportation Board
12th Street and Constitution Avenue
Washington, D.C. 20423



Dear Secretary Williams:

As someone who represents working families and consumers, I am concerned about the proposed Union Pacific-Southern Pacific merger. I do not believe it is in the public interest for the following reasons:

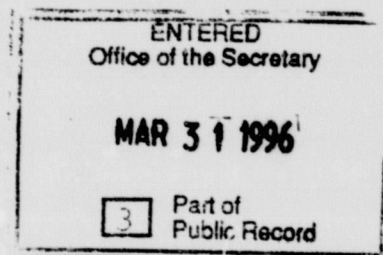
1. I believe it would result in unnecessary layoffs and job losses among the affected railroad workers.
2. It would weaken Northeast Ohio's economy by weakening eastern and midwestern railroads, and threatening industrial jobs here; and
3. By concentrating so many resources, it could negatively affect prices and service--potentially hurting area families at the market and in the workplace.

We therefore find that the merger is not in the public interest, and ask that it be disallowed by the Surface Transportation Board.

Very truly yours,

RICHARD A. HENNIG
Councilman-at-Large

RAH:mhr



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**ADVISE OF ALL
PROCEEDINGS**

the city of choice!



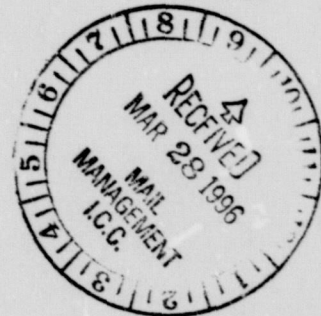
City of Mentor

Council-manager
government since 1963

8500 Civic Center Boulevard
Mentor, Ohio 44060-2499
216-255-1100

March 28, 1996

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



Dear Secretary Williams:

I am concerned that the proposed Union Pacific-Southern Pacific railroad merger is not in the public interest in Northeast Ohio. We would be far better served if the UP-SP's eastern routes were, as part of the proposed merger, sold to Conrail, not leased to another western railroad.

My reasoning is straightforward. First, our industrial companies, particularly in the booming polymers sector, need direct service to raw materials and markets in the Gulf "chemical coast" region and to Mexico. Second, we believe that an owner-carrier, such as Conrail, would have greater incentive to improve markets along the route. Third, by keeping Conrail strong, we ensure a variety of service options and strong price competition among the major railroads in our region, namely CSX, Norfolk and Southern, and Conrail.

Finally, I am concerned that railroad "mega mergers" cost hard-working citizens jobs--as they have in other industries. Conrail is a major Ohio employer, and their success is in the public interest here.

For those reasons I would oppose the proposed merger unless it includes the Conrail purchase of the eastern lines of the old Southern Pacific. Only with the Conrail acquisition will Northeast Ohio economies be maximally served.

Thank you for your consideration.

Very truly yours,

RICHARD A. HENNIG
Councilman-at-Large