

INTERSTATE COMMERCE COMMISSION 03/20/96

FINANCE DOCKET # 32760 2434-2444 6.

1 But the object of discovery is not to  
2 produce pieces of paper that are meaningless. Rather  
3 reflects upon the meaningless of our ground rules if  
4 that's what we came up with. So I wasn't comfortable  
5 with that result. Wanting to do something for the  
6 discoverers, wanting to protect the confidentiality to  
7 the maximum extent possible -- I respect that problem,  
8 and I'm willing to take any suggestions on that in  
9 regard to who gets it, who sees it, what dissemination  
10 there is and so forth.

11 We can make a special rule for this if we  
12 want. I'm willing to hear suggestions about that.

13 MR. LIVINGSTON: Well, we'll --

14 JUDGE NELSON: So those were my thoughts.

15 MR. LIVINGSTON: We will -- I think we  
16 ought to undertake to call Your Honor at 11:00.

17 JUDGE NELSON: I'm putting down 11:00 for  
18 a conference call.

19 MR. LIVINGSTON: And whether or not we've  
20 resolved it to let you know --

21 JUDGE NELSON: Let me know what the status  
22 of it is.

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1 MR. LIVINGSTON: Status is.

2 JUDGE NELSON: Regarding the bids. Then  
3 we have a conference call coming up on the  
4 computerized tapes. Oh, that's going to be between  
5 counsel.

6 MR. LIVINGSTON: That's among lawyers.

7 JUDGE NELSON: And when's our next  
8 discovery conference then?

9 MR. McBRIDE: Before we get off the  
10 conference call at 11:00 tomorrow, as I understood  
11 it, Mr. Norton had agreed we'd set it at 11:00 to  
12 accommodate him to give us this coded information  
13 before, and you will fax it to all of us? So if Your  
14 Honor has to hear some discussion on this on the  
15 phone, you'd have the sheets available.

16 JUDGE NELSON: If it's a sheet of paper I  
17 need, fax it over.

18 MR. LIVINGSTON: It will come to you as  
19 well.

20 MR. McBRIDE: Right. And then as to the  
21 next discovery conference, other than the KCS matter  
22 which you just said is between counsel, I think on

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1 this side of the aisle, if you will, I didn't hear any  
2 great interest in taking time out of working on our  
3 comments next week to come down for a discovery  
4 conference.

5 But I can't speak for everybody in the  
6 case. I haven't heard of anyone who wants a discovery  
7 conference next week, have you?

8 JUDGE NELSON: I just wanted to know for  
9 our own planning purposes whether we're going to use  
10 the Wednesday/Friday machinery or a different utility.

11 MR. McBRIDE: I guess what I would say,  
12 Your Honor, because most people aren't here, is that  
13 you probably ought to stick to the Wednesday/Friday  
14 thing. But I doubt seriously anybody's going to use  
15 that.

16 JUDGE NELSON: That Friday would be the  
17 filing day.

18 MR. McBRIDE: Yeah, or maybe  
19 Monday/Wednesday, I don't know. But it's likely to be  
20 a useless opportunity.

21 JUDGE NELSON: Well, we have to tell  
22 people though.

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1 MR. DOWD: Well, yeah, and at the risk of  
2 diverging from my brother counsel here, I would  
3 request that Your Honor perhaps make a direction that  
4 everyone be informed that there will be no discovery  
5 conference next week so that no one is sort of caught  
6 unaware or certain people show up for a conference and  
7 people -- as happened today, two parties'  
8 representatives were not here.

9 Now, that could have implications down the  
10 road for them. Whatever the reasons they weren't  
11 here, you know, are not important.

12 JUDGE NELSON: Your suggestion is that we  
13 fax out a notice that there be no conference next  
14 week?

15 MR. LIVINGSTON: I don't think that would  
16 be appropriate. I know of no conference that's been  
17 scheduled or anybody who wants one. But who knows  
18 what may happen. For instance, the South Orient  
19 Texas, the people didn't bother to respond. And Your  
20 Honor deferred that pending our submitting what we  
21 actually submitted to them.

22 We may want to bring that on next week.

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1 We may want to bring other things on.

2 JUDGE NELSON: Well, we don't want to  
3 bring it on on Friday.

4 MR. LIVINGSTON: Well, I don't know what  
5 we may want to bring on. I think we ought to just  
6 leave things as they are, and if somebody notices the  
7 hearing, they notice the hearing. We deal with it  
8 then.

9 JUDGE NELSON: But they will notice it on  
10 Wednesday for Friday, and that won't work this Friday.

11 MR. LIVINGSTON: Well, Your Honor, many of  
12 these --

13 JUDGE NELSON: That would be a serious  
14 blow to --

15 MR. LIVINGSTON: I'm not sure that's true.  
16 For instance, KCS said they're going to the printer on  
17 the 27th.

18 MR. DOWD: Well, he's hopeful. I heard  
19 him say if he can get to the printer.

20 MR. LIVINGSTON: They'll go to the printer  
21 before the 29th.

22 MR. McBRIDE: I'm not going to the printer

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1 before the 29th. I've got a conference in another  
2 case on Wednesday morning.

3 MR. LIVINGSTON: Your Honor, if somebody  
4 notices the hearing -- if we notice a hearing or  
5 anybody else notices a hearing and it causes a  
6 problem, they can deal with it then. It hasn't  
7 happened yet, but I don't think we should rule out of  
8 bounds any possible hearings next week.

9 We've had -- just wait and see what  
10 happens. And if somebody calls for a hearing and --  
11 again, not everybody is here. I can't speak for the  
12 applicant.

13 JUDGE NELSON: Normal time would be 4:00  
14 Wednesday.

15 MR. DOWD: Your Honor, the only potential  
16 need that's been discussed are for these, if I may  
17 say, minor part time parties. If they're heard next  
18 week or the week after, I can't see how it's going to  
19 cause any harm to the applicant's case.

20 On the other hand, if a hearing is noticed  
21 and issues are to be raised there which have  
22 implications for some of the principal parties, we've

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1 all got to come to protect our interest.

2 JUDGE NELSON: I don't want to rule out a  
3 hearing altogether. Rather I want to keep the  
4 machinery in place to have one earlier rather than  
5 later. Suppose we did it with a Monday/Wednesday  
6 mechanism?

7 MR. LIVINGSTON: Monday is -- let's see,  
8 what's today?

9 JUDGE NELSON: The 25th. So we need you  
10 here by 4:00 on the 25th.

11 MR. LIVINGSTON: Monday/Wednesday?

12 JUDGE NELSON: Yes.

13 MR. LIVINGSTON: That would be  
14 satisfactory, a Monday/Wednesday mechanism. The  
15 Monday hearing would have to be noticed by Friday  
16 afternoon?

17 JUDGE NELSON: No, the notice would be  
18 given on Monday --

19 MR. LIVINGSTON: Oh, for Wednesday.

20 JUDGE NELSON: -- of any dispute to be  
21 brought on for a conference on Wednesday, the 27th.

22 MR. LIVINGSTON: That's fine.

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1 JUDGE NELSON: That gives us one last shot  
2 if somebody needs something before the --

3 MR. McBRIDE: Well, not only because I  
4 have a conference that morning in another case that  
5 I've been ordered to participate in by another judge,  
6 but also because people will be working feverishly  
7 away. Could we have dispensation from the usual rule  
8 that you announced earlier, which is if you're not  
9 here, it won't count against you?

10 If we don't bring on a discovery request  
11 and then somebody waltzes in here and all the sudden  
12 opens up some new issue and we're not here, I'd hate  
13 to find out that Your Honor had decided that, you  
14 know, rates were not relevant or something and --

15 JUDGE NELSON: All right.

16 MR. LIVINGSTON: I think we're talking  
17 about hypothetical problems. I think Your Honor is  
18 right to leave it in place and let's see what happens.

19 JUDGE NELSON: Well, I do want to move the  
20 machinery up in time.

21 MR. LIVINGSTON: That's fine. The  
22 Monday/Wednesday --

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1 JUDGE NELSON: So don't get caught on  
2 Friday. So will you do that? We've used -- Mr.  
3 Rosenthal, is it, in the past?

4 MR. LIVINGSTON: Right.

5 JUDGE NELSON: Who has faxed out notices  
6 to this effect. Just ask him -- or it may turn out  
7 that it's Ms. Kramer's role now to get this notice  
8 out.

9 MR. LIVINGSTON: We will send a notice --

10 JUDGE NELSON: And if so, just use the  
11 format that he has used in the past and explain that  
12 the machinery will now be such that it must be invoked  
13 by 4:00 p.m. on Monday, March 25th for a conference to  
14 be held -- when do we want to do this on Wednesday?  
15 Morning is better. 9:00 a.m.

16 MR. LIVINGSTON: 9:00 Wednesday?

17 JUDGE NELSON: Yeah, March 27th. And then  
18 I don't start my main case until 10:00 anyway so we  
19 could get an hour's work done. Do you have that in  
20 mind? And you fax that to all the parties on the  
21 restricted service list.

22 MR. LIVINGSTON: Yes.

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1 JUDGE NELSON: Including me. And then  
2 I'll see that it's there, and I'll reserve 9:00 on the  
3 27th. So, let me be sure I know what we're doing.  
4 We're having a conference call at 11:00 a.m. tomorrow  
5 regarding the discovery as to the bids.

6 MR. LIVINGSTON: Right.

7 JUDGE NELSON: And I am then to be  
8 available at 9:00 a.m., Wednesday, March 27th if a  
9 conference is invoked.

10 MR. McBRIDE: And could we have the  
11 courtesy of the faxing by 10:00 so that if we need to  
12 caucus or we need to think about it and it takes a few  
13 minutes to move these faxes around, we'll have them  
14 when we get online with the Judge at 11:00?

15 MR. NORTON: I hope so, yeah.

16 MR. McBRIDE: Great.

17 (Whereupon, the proceedings were adjourned  
18 at 2:46 p.m.)  
19  
20  
21  
22



**CERTIFICATE**

This is to certify that the foregoing transcript in


the matter of:      **Discovery Conference:  
Union Pacific Corporation, et al.  
-Control and Merger-  
Southern Pacific Rail Corporation, et  
al.**

Before:              **Surface Transportation Board  
Finance Docket No. 32760**

Date:                **MARCH 20, 1996**

Place:               **Washington, DC**

represents the full and complete proceedings of the  
aforementioned matter, as reported and reduced to  
typewriting.

  
IRENE GRAY