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Apr #272

81337

LAW OFFICES
SCOUTT & RASENBERGER, L.L.P.
888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE : (202) 298-8660
FACSIMILES: (202) 342-0683
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APR 12 1996
MAIL MANAGEMENT I.C.C.

April 12, 1996

Via Hand Delivery

Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing are an original and twenty copies of TM-27, Supplemental Responses of The Texas Mexican Railway Company to the Applicants' First and Second Set of Interrogatories and Request for Production of Documents. Also enclosed is a 3.5" floppy computer disc containing a copy of each of the filings in Wordperfect 5.1 format.

Sincerely,

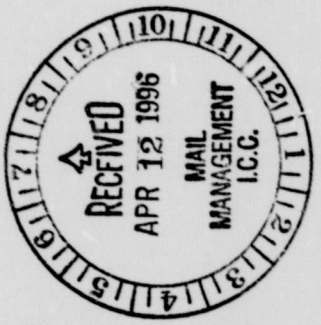
Richard A. Allen

Enclosures

cc: Restricted Service List

ENTERED
Office of the Secretary
APR 17 1996
5 Part of Public Record

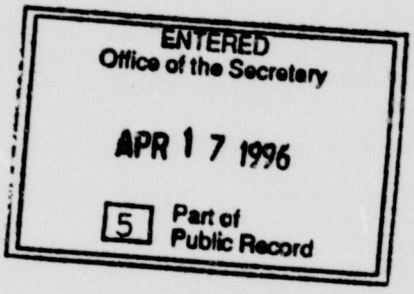
TM-27



BEFORE THE
SURFACE TRANSPORTATION BOARD

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

SUPPLEMENTAL RESPONSES OF THE TEXAS MEXICAN RAILWAY COMPANY TO THE APPLICANTS' FIRST AND SECOND SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS



Richard A. Allen
Andrew R. Plump
John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
Brawner Building
888 17th Street, N.W.
Washington, D.C. 20006-3939
(202) 298-8660

Attorneys for The Texas
Mexican Railway Company

April 12, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

SUPPLEMENTAL RESPONSES OF THE TEXAS MEXICAN RAILWAY COMPANY TO THE APPLICANTS' FIRST AND SECOND SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

The Texas Mexican Railway Company ("Tex Mex"), hereby supplements its responses to the Applicants' First Interrogatories and First Request for Production of Documents to Tex Mex served by the Applicants[1/] on February 26, 1996, and Applicants' Second Interrogatories and Request for Production of Documents, served by the Applicants on April 3, 1996.

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

GENERAL RESPONSES

Tex Mex incorporates by reference the general responses it made in its initial response to the Applicants' First Interrogatories and Document Requests to Tex Mex (TM-19).

GENERAL OBJECTIONS

Tex Mex incorporates by reference the general objections it made in its initial response to the Applicants' First Interrogatories and Document Requests to Tex Mex (TM-19).

SPECIFIC OBJECTIONS

Tex Mex preserves and incorporates by reference the specific objections it made to each individual interrogatory and document request to which Tex Mex provides a supplemental response herein.

RESPONSES TO SPECIFIC INTERROGATORIES AND DOCUMENT REQUESTS

Applicants' First Set of Interrogatories

Tex Mex hereby supplements its response to the following interrogatories:

Interrogatory 3.

> "Specify all facts that support the contention by Tex Mex that UP's line between Algoa and Placedo, Texas, or any part thereof, is congested or will be congested following the UP/SP merger."

Response: The verified statement of Allen W. Haley, Jr., which appears in Tex Mex's responsive application, discusses

congestion on the UP line from Algoa to Placedo. His workpapers have been produced to the Applicants.

Interrogatory 4:

> "Letters sent by Tex Mex to shippers to solicit support statements say that Tex Mex may 'ask for trackage rights to points such as Beaumont, Caldwell and Houston, Texas from Corpus Christi, to connect with other railroads,' and state: "As you may have heard, TexMex recently established a competitive undertaking with KCS to forge a strong and competitive rail link with Mexico to meet the needs that we expect NAFTA to create. These connections will be essential for that effort.' Explain how the cited connections will be 'essential' to the 'competitive undertaking' referred to, and describe in detail that 'competitive undertaking.'"

Response: The verified statements of Larry Fields, Joseph Ellebracht, Brad Lee Skinner and Curtis Grimm, each contained in Tex Mex's responsive application, address these matters. The workpapers for these witnesses have been produced to the Applicants.

Applicants' First Set of Document Requests

Tex Mex hereby supplements its response to the following document requests:

Document Request 23.

> "Produce all studies, reports or analysis relating to collusion among competing railroads or the risk thereof."

Response: Tex Mex has no responsive documents.

Document Request 24.

"Produce all studies, reports or analysis relating to the terms for or effectiveness of trackage rights."

Response: Tex Mex has no documents responsive to this document request as narrowed by the Administrative Law Judge at the discovery conference held on March 8, 1996.

Document Request 25.

"Produce all Tex Mex business plans or strategic plans."

Response: Tex Mex has produced its 1996 business plan, the only document responsive to this document request.

Document Request 28.

"Produce all studies, reports or analysis relating to competition for traffic to or from Mexico (including but not limited to truck competition) or competition among Mexican gateways."

Response: The verified statements of Larry Fields, Joseph Ellebracht, Brad Lee Skinner and Curtis Grimm, each contained in Tex Mex's responsive application, address the subject matter of this document request, as narrowed by the Administrative Law Judge in the discovery conference held on March 8, 1996. Tex Mex has produced workpapers for these witnesses that are responsive to this document request.

Supplemental Responses to
Applicants' Second Set of
Requests for the Production of Documents

Tex Mex hereby supplements its response to the following document requests:

DOCUMENT REQUESTS

2. To the extent not done as part of your prior discovery responses or March 29 filings, produce machine-readable versions, if they exist, of documents or data you submitted as part of your March 29 filings, of documents or data included as work papers, or of documents or data relied upon by persons whose verified statement you submitted in your March 29 filings. [All]

Response: Tex Mex has produced responsive documents.

3. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, analyses or reports discussing benefits or efficiencies that may result from the UP/SP merger. [All]

Response: Tex Mex has no responsive documents.

4. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, analyses or reports discussing potential traffic impacts of the UP/SP merger. [All]

Response: Tex Mex has produced responsive documents.

5. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses discussing competitive impacts of the UP/SP merger, including but not limited to effects on the following (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in or build-out options. [All]

Response: Tex Mex has no responsive documents.

6. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing the BN/Santa Fe Settlement Agreement, the IC Settlement Agreement, or the Utah Railway Settlement Agreement. [All]

Response: Tex Mex has produced responsive documents.

7. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing conditions that might be imposed on approval of the UP/SP merger. [All]

Response: Tex Mex has produced responsive documents.

8. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing actual or potential competition between UP and SP.

Response: Tex Mex has produced responsive documents.

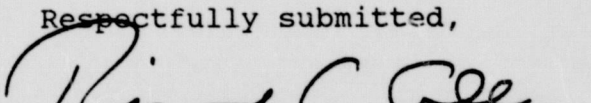
9. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing competition between single-line and interline rail transportation. [All]

Response: Tex Mex has produced responsive documents.

10. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing the benefits of any prior Class I rail merger or rail mergers generally. [All]

Response: Tex Mex has no responsive documents.

Respectfully submitted,



Richard A. Allen
Andrew R. Plump
John V. Edwards
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth St., NW, Suite 600
Washington, DC 20006-3939

Attorneys for Texas Mexican Railway

Dated: March 12, 1996

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of April, I have caused to be served TM-27, the Supplemental Responses of the Texas Mexican Railway Company to the Applicants' First and Second Set of Interrogatories and Requests for the Production of Documents, by hand delivery upon the following persons:

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

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

I have also caused the foregoing to be served by first-class mail, postage pre-paid, or by a more expeditious manner of delivery, on the Honorable Judge Nelson and all parties on the restricted service list in Finance Docket No. 32760.

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

Dated: April 12, 1996

81348

Item No. _____

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Apr # 274

LAW OFFICES
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April 12, 1996

Via Hand Delivery

Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

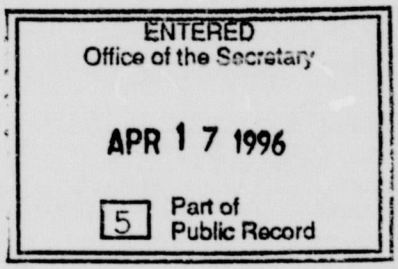
Enclosed for filing are an original and twenty copies of TM-26, the Supplemental Comments of Shippers in Support of the Responsive Application of The Texas Mexican Railway Company. Also enclosed is a 3.5" floppy computer disc containing a copy of each of the filings in Wordperfect 5.1 format.

Sincerely,

Richard A. Allen

Enclosures

cc: All parties of record



TM-26

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORP., UNION PACIFIC RR. CO. AND
MISSOURI PACIFIC RR CO.
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORP., SOUTHERN PACIFIC
TRANS. CO., ST. LOUIS SOUTHWESTERN RW. CO.,
SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN CORP.

Finance Docket No. 32760, Sub No. 13

THE TEXAS MEXICAN RAILWAY CO.
-- TRACKAGE RIGHTS OVER LINES OF
THE UNION PACIFIC RR. CO. AND SOUTHERN PACIFIC TRANS. CO.

SUPPLEMENTAL COMMENTS OF SHIPPERS IN SUPPORT OF THE RESPONSIVE APPLICATION OF THE TEXAS MEXICAN RAILWAY COMPANY

Richard A. Allen
Andrew R. Plump
John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W., Suite 600
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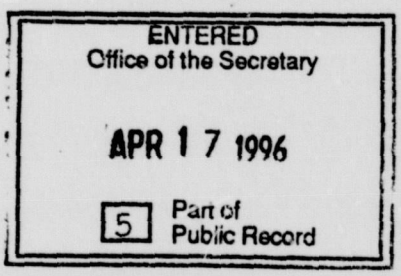
(202) 298-8660
Attorneys for The Texas
Mexican Railway Company

April 12, 1996



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORP., UNION PACIFIC RR. CO. AND MISSOURI PACIFIC RR CO.
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORP., SOUTHERN PACIFIC TRANS. CO., ST. LOUIS SOUTHWESTERN RW. CO., SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN CORP.

Finance Docket No. 32760, Sub No. 13

THE TEXAS MEXICAN RAILWAY CO.
-- TRACKAGE RIGHTS OVER LINES OF THE UNION PACIFIC RR. CO. AND SOUTHERN PACIFIC TRANS. CO.

SUPPLEMENTAL COMMENTS OF SHIPPERS IN SUPPORT OF THE RESPONSIVE APPLICATION OF THE TEXAS MEXICAN RAILWAY COMPANY

The Texas Mexican Railway Company makes this supplemental filing to submit additional verified statements of shippers in support of the Responsive Application of the Texas Mexican Railway Company. These statements are attached. The parties registering their support for the merger are listed on the enclosed table of contents.

Respectfully submitted,

Richard A. Allen
Andrew R. Plump
John V. Edwards
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 600
Washington, DC 20006-3939
(202) 298-8660

Attorneys for Texas Mexican Railway Company

April 12, 1996

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of April, I have caused to be served TM-26, Supplemental Comments of Shippers in Support of the Responsive Application of the Texas Mexican Railway Company, by hand delivery upon the following persons:

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

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

I have also caused the foregoing to be served by first-class mail, postage pre-paid, or by a more expeditious manner of delivery, on all parties of record in Finance Docket No. 32760.

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

Dated: April 12, 1996

TABLE OF CONTENTS

CABLE ADDRESS COMPACO
FAX: 312-226-2025

C.P.G.CO.

AREA CODE 312 226-2010

CONTINENTAL PAPER GRADING CO.
PAPER MILL SUPPLIES
1628 LUMBER ST.
CHICAGO, ILLINOIS 60616

March 22, 1996

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

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

I have held the position of Transportation Manager at Continental Paper Grading for three years. Continental Paper Grading is a major national scrap paper broker. Our company ships more than 200 carloads of scrap paper annually from all over the country in to Mexico via Laredo, Texas.

Our company has been a major user of rail service for transportation between the United States and Mexico. Continental Paper Grading has a strong interest in competitive rail transportation between the United States 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 customs 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 our traffic via 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 no 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.

I understand there is an alternative that will preserve effective competition for my traffic. TexMes 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.

Yours truly,

CONTINENTAL PAPER GRADING COMPANY

Paul Carlson

Paul Carlson

cc: Texas Mexican Railway Co.

Daniel B. Hastings Inc.
Licensed U.S. Customs Brokers
P.O. Box 673 • Laredo, Texas 78042 -0673 • (210)723-7431 • Fax (210)723-0576

Verified Statement
of
Daniel B. Hastings, Jr.
On behalf of
Daniel B. Hastings, Inc.

My name is Daniel B. Hastings, Jr., President of Daniel B. Hastings, Inc. Our company acts as an agent to represent many Fortune 500 companies that use rail transportation service between the United States and Mexico. We are involved in expediting thousands of rail cars annually moving via the Laredo gateway.

This high volume gateway is important because of the strong infrastructure of customs brokers, warehousing, transportation and distribution centers located there to support importers, and exporters. Laredo also provides the shortest and most direct route for shipments moving between the Midwestern and Eastern United States and the major industrial centers in Mexico. Use of this gateway versus other border crossings translates into major financial savings each year to the Fortune 500 companies we represent. We anticipate a 20% annual growth in the business we handle over the Laredo gateway.

The majority of the business we handle involves shipments for the steel, automobile and minerals industries. We are very concerned about the loss of business that could occur at Laredo if the UP-SP merger is approved. From our perspective, the UP and SP-TexMex have competed strongly for business moving in this corridor. This competition has produced lower rates and better service over Laredo which has contributed to the tremendous growth in business moving over this gateway. We believe that a loss of competition in this corridor will decrease our ability to handle import and export traffic in the future.

We are also concerned that the combined UP-SP will concentrate only on the larger customers, leaving smaller shippers (many of whom we also represent) without competitive rates or service to continue their import and export activity. This would result in lost business for smaller shippers and for us at the Laredo border crossing. We understand that the TexMex Railroad is asking for trackage rights as a condition of the UP-SP merger. A stronger TexMex Railroad operating between Laredo and Houston and Beaumont would continue to provide rail shippers with a competitive option to move traffic over the Laredo gateway. We support the TexMex in this effort. Therefore, we ask the Surface Transportation Board to strongly consider granting the trackage rights to the TexMex Railroad.

El Paso, Texas
(915)599-1594
Fax (915)599-2027

Eagle Pass, Texas
(210)773-5344
Fax (210)773-8896

Brownsville, Texas
(210)541-0902
Fax (210)541-4795

VERIFICATION

I, Daniel B. Hastings, Jr., declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on March 27, 1996.

Daniel B. Hastings, Jr.
President

Subscribed and sworn to before me on March ____, 1996.

Notary Public

SAN JUANA POSADAS
MY COMMISSION EXPIRES
July 12, 1999

Degussa

Degussa
Corporation

VERIFIED STATEMENT
of Andrew J. Polo
on behalf of Degussa Corporation

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

I am Andrew J. Polo, Distribution Manager, Chemical Group of Degussa Corporation. Degussa Corporation manufactures and distributes various products from three U.S. plants to many destinations, including Mexico. Below is a summary of our plant locations, the serving railroad, and the products shipped.

Location	Serving Railroad	Products
Theodore, AL	CSX	Peroxide and feed supplements
Ivanhoe, LA	SP	Carbon blacks
Anzas, TX	SP	Carbon blacks

Degussa leases a substantial number of rail cars to move product. Our fleet currently consists of 200 tank cars and 600 covered hopper cars. We also truck a significant amount of business, including bagged product into Mexico.

Currently we ship less than 100 carloads annually into Mexico. Most of the traffic is routed via SP-Corpus Christi, TX-TexMex. For years the UP and SP have competed for our Mexico business. As a result our company has benefited from lower rates and has been successful in penetrating the Mexico market. In fact we are working with our Mexican company (Degussa of Mexico) to expand our business there. We plan to open a transload and repackaging plant, and are considering locating it at Pantaco, Mexico. Overall we believe that the option to truck product to this market will not play a significant role in our plant expansion project due to somewhat high truck rates.

Our plans to expand our business in Mexico will be difficult without competitive rail rates and service to move our product. We are very concerned that the UP/SP merger will eliminate rail competition that currently exists in south Texas. An absence of competition could translate into higher rates and slower service. Higher rates would make our delivered price noncompetitive in the export market. Higher transit times would require us to maintain a larger inventory and would delay payments.

We are very satisfied shipping into Mexico via Laredo. First of all, this gateway provides the shortest routing between our three plants and the markets we serve in Mexico Secondly, the concentration of customs brokers there serves to expedite our

65 Challenger Road Ridgefield Park NJ 07660 201-641-6100

shipments. Finally, Degussa of Mexico holds transportation contracts from Laredo to destinations in Mexico. In sum, the Laredo gateway will work for our expansion project as long as we continue to have competitive rail rates that will get us there.

To date, the BNSF has not expressed an interest in our Mexico traffic. We believe that the route they negotiated with the UP will be circuitous and therefore probably will not be competitive from a rate or service standpoint. Also, the BNSF does not have representation in Mexico. In contrast, the SP and TexMex, who have bid aggressively for our Mexico business, do have representation there.

Therefore, we urge the Surface Transportation Board to grant the trackage rights that the TexMex is seeking. We believe that this action will preserve the rail competition in the south Texas corridor that exists today.

VERIFICATION

I, Andrew J. Polo, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.
Executed on March 28, 1996.
(date)

Andrew J. Polo

Subscribed and sworn to before me on March 28, 1996
(date)

Notary Public

NANCY A. MONTESANO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Oct. 3, 1999

VERIFIED STATEMENT
OF
FRED SCHRODT
ON BEHALF OF
FARMLAND INDUSTRIES, INC.

My name is Frederic E. Schrodt, Vice President of Transportation at Farmland Industries, Inc. My company is involved in the distribution of grain, feed, tallow and dical to the Mexico market. Business levels into Mexico have continued to grow since the passage of NAFTA. In fact, we ship a high volume of business into Mexico. Trucks cannot effectively handle this volume, particularly to destinations farther south in Mexico. Thus, we rely on rail movement to keep product flowing into the Mexican markets we serve.

Farmland is interested in retaining viable rail options to move our products into Mexico. In the past, the TexMex has provided a viable alternative for rail movement to Laredo. We believe that this alternative will disappear if the UP-SP merger is approved. For years the UP and SP-TexMex have competed for our Mexico business, particularly in instances where both railroads serve the origination point. Our company has benefited from this competition by using the lowest cost and most beneficial method to transport our products to Mexican markets. Without competition in south Texas to Laredo, rail rates are sure to increase.

This loss of competition for our business could be remedied with a grant of trackage rights to the TexMex from Corpus Christi to Beaumont, TX. We believe that a TexMex operating from Houston and Beaumont in conjunction with other rail carriers could provide effective competition to the combined UP-SP by connecting with an independent Class I carrier.

The BNSF has at times not shown much interest in our Mexican shipments. The BNSF's decision to get involved with this aspect of our business is driven by their hopper car needs for the U.S. market. The BNSF is competitive for our Mexico business only when demand for rail cars weakens. The TexMex, on the other hand, has always had a strong commitment to moving traffic into Mexico. That is why they must be given the opportunity to remain a viable carrier serving south Texas.

In view of the foregoing, Farmland strongly supports the granting of trackage rights to the TexMex from Corpus Christi to Beaumont so that the TexMex will be able to provide effective competition for our rail shipments to Laredo.

I. Fred Schrodt, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on March 28, 1996.

Frederic E. Schrodt

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

Notary Public

CYNTHIA L W[illegible]SON
NOTARY PUBLIC STATE OF MISSOURI
JACKSON COUNTY
MY COMMISSION EXP. SEPT 6,1998

Georgia-Pacific Corporation
133 Peachtree Street NE (30303)
P.O. Box 105605
Atlanta, Georgia 30348-5605
Telephone (404) 652-4000

To:
Tish
Fitzsimmons
(708) 256 2863
From: Clark Handy

March 26, 1996

Mr. Vernon Williams
Surface Transportation Board
Room 3315
12TH and Constitution, N.W.
Washingon, D.C. 20423-001

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

Dear Mr. Williams:

My name is Clark Handy, and I am Sr. Manager-Transportation Negotiations for Georgia-Pacific Corporation. In this capacity, I negotiate rail transportation for G-P's 14 papermills and 39 boxplants. Georgia-Pacific is one of the world's largest forest products companies with annual revenues of over 13 billion dollars. Annually, we ship over one hundred thousand tons of pulp and paper into Mexico by rail through the Eagle Pass and Laredo gateways.

Georgia-Pacific Corporation has a strong interest in competitive rail transportation between the United States 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 customs 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 our traffic via 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.

The merger of Union Pacific and Southern Pacific, as currently proposed will 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 a competitive alternative on this important route.

I understand there is an alternative that will preserve effective competition for my 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 be lost in the current merger proposal. Thus I urge the Surface Transportation Board to alter the current merger proposal 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.

Yours truly,

Clark D. Handy

Clark D. Handy
Senior Manager, Transportation Negotiations
Pulp & Paper Logistics

cc: The Texas Mexican Railway Company

CRUSHED LIMESTONE BASE • RAILROAD BALLAST • CHEMICAL STONE • LIMESTONE PRODUCTS

GULF COAST LIMESTONE, INC.

P.O. Box 66, Seabrook, Texas 77586

Office (713) 474-4124 Fax (713) 474-3829

March 25, 1996

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

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

Dear Mr. Williams:

I have held the position of Vice President at Gulf Coast Limestone, Inc. for 10 years. G.C.L. is a major retailer of limestone and other road materials. Our products are used by general industry in a wide variety of projects. Currently, our company ships more than 10,000 carloads of material annually from central Texas to various destinations in Texas. We are always open to new marketing opportunities which may include Mexico.

Gulf Coast Limestone has a strong interest in competitive rail transportation between the United States 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 customs 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 our traffic, 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, 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.

I understand there is an alternative that will preserve effective competition. 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 to 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.

Yours truly,

Robert R. Robinson

cc: The Texas Mexican Railway Company C/O Central Business Services

Verified Statement
of
TOMMIE A. TURNER
on behalf of
JAMES RIVER CORPORATION

Surface Transportation Board
Finance Docket No. 32760

My name is Tommie A. Turner. I have been in Transportation and General Traffic Management for over thirty years. My current position is Manager of Rail Transportation at James River Corporation.

James River is a leading marketer and manufacturer of Consumer Products, Food and Consumer Packaging, and Communication Papers, with 116 manufacturing facilities in North America and Europe.

Our company ships more than 300 carloads of product annually to and from Mexico via Laredo. With the recent acquisition of additional sourcing facilities in Mexico, we plan a 25% increase in our business to and from Mexico in the next two years. A summary of our Mexico business is as follows:

PRODUCTS

Facility	Inbound	Outbound	Route
Portland, OR	Tissue stock	Finished paper towels	SP-TM and reverse
Berlin, NH	Printing paper	Finished products	CN-NS-New Orl-SP-TM and reverse
St. Francisville, LA	Printing paper, Pulpboard	Finished products	IC-New Orl-SP-TM and reverse
Pennington, AL	Tissue stock, Woodpulp	Finished products	MB-NS-New Orl-SP-TM and reverse

The Southern Pacific and TexMex have provided very competitive rates and service to and from Mexico. Their willingness to compete for our business has contributed to our success in accessing the Mexican market. Aggressive bidding for our traffic in the future will be necessary for us to accomplish our expansion goals.

The Laredo gateway has proved to be most efficient for the movement of our products between the U.S. and Mexico. This gateway possesses a strong infrastructure of customs brokers. Also, our Mexico receivers hold contract rates to move product from Laredo to destinations in Mexico. Our expansion in Mexico will depend on continued use of this gateway.

We are very concerned about the loss of competition that will occur in south Texas if the UP/SP merger is approved. Without the TexMex to bid on our business, we do not foresee any rail competition in this corridor in the future. The BNSF has not approached our company about handling our Mexico business and we would not consider the circuitous route on which they will be operating to Laredo in the future. While we move product to Mexico via trucks today, we fear that the loss of rail competition could prompt truckers to raise their rates.

We understand that the TexMex is asking the Surface Transportation Board for trackage rights from Corpus Christi to Houston and Beaumont, TX as a condition of the UP/SP merger. We support the TexMex in this effort. We believe the trackage rights will allow the TexMex to continue to be competitive to Laredo if the merger is approved.

I, Tommie A. Turner, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on March 28TH, 1996.

Tommie A. Turner
Manager of Rail Transportation

Subscribed and sworn to
before me on March 28, 1996

Notary Public
My Commission Expires June 30, 1997

KPMG

SHEFFIELD
ISO 9002
Certified Quality System

March 25, 1996

Mr. Vernon Williams
Interstate Commerce Commission
Room 3315
12th and Constitution, N. W.
Washington, D.C. 20423-001

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

Dear Mr. Williams:

Sheffield Steel Corporation is a privately owned domestic steel producer with facilities located at Sand Springs, Oklahoma as well as three other locations and is part of the beleaguered U.S. Steel Industry. The Sand Springs plant provides stable and satisfying employment for approximately 500 people. I have functioned as Traffic Manager for Sheffield Steel for the past 8 years and as such, am familiar with it's transportation requirements.

Our company has been a major user of rail service for transportation between the United States and Mexico. Sheffield Steel has a strong interest in competitive rail transportation between the United States 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 possess the strongest infrastructure of customs 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 completed for our traffic via 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

Sheffield Steel Corporation • 2300 South Highway 97 • P.O. Box 218 Sand Springs, Oklahoma 74063 (918) 245-1335 • An HMK Group Company

effective competitive replacement for an independent Southern Pacific on this important route.

I understand there is an alternative that will preserve effective competition for my 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.

Very Truly Yours,

SHEFFIELD STEEL CORPORATION

M. McKinney

Michael M. McKinney
Traffic Manager

MMM:srj

16

Item No. _____

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LAW OFFICES

DUTT & RASENBERGER, L.L.P.

SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-3939

TELEPHONE : (202) 298-8660

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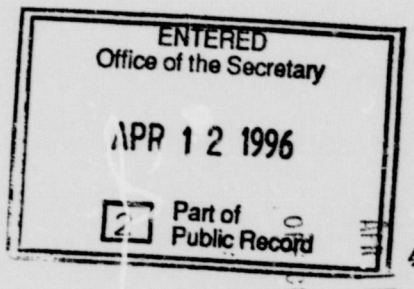
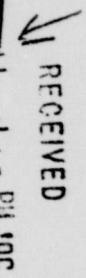
April 11, 1996





VIA HAND DELIVERY

Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed are an original and twenty copies of SPP-12, Responses of Sierra Pacific Power Company and Idaho Power Company to Applicants' Fourth Set of Interrogatories and Request for Production of Documents. Also enclosed is a 3.5" floppy computer disc containing a copy of the filing in Wordperfect 5.1 format.

Sincerely,

Jennifer P. Oakley

Richard A. Allen
Jennifer P. Oakley

Enclosures

cc: Honorable Jerome Nelson
Restricted Service List

ENTERED
Office of the Secretary
APR 12 1996
2 Part of Public Record

SPP-12

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
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OFFICE OF SECRETARY
ICC

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

SIERRA PACIFIC'S RESPONSES TO APPLICANTS' FOURTH SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

Richard A. Allen
James A. Calderwood
Jennifer P. Oakley
ZUCKERT, SCOUTT & RASENBERGER, L.L.P.
888 Seventeenth Street, N.W.
Washington, D.C. 20006-3939
(202) 298-8660

Attorneys for Sierra Pacific Power Company and Idaho Power Company

April 11, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

SIERRA PACIFIC'S RESPONSES TO APPLICANTS'
FOURTH SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

Sierra Pacific Power Company and Idaho Power Company (collectively, "Sierra Pacific"), hereby respond to the Applicants' Fourth Set of Interrogatories and Request for Production of Documents to Sierra Pacific served by Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and the Denver and Rio Grande Western Railroad Company (collectively, "Applicants") on April 5.[1/]

[1/] On April 8, 1996 Applicants advised that Sierra Pacific was not a party required to respond to Applicants Third Set of Interrogatories and Request for Production of Documents served on April 5, 1996.

GENERAL RESPONSES

Sierra Pacific incorporates by reference the general responses it made in response to Applicants' First Set of Interrogatories and Request for Production of Documents to Sierra Pacific.

GENERAL OBJECTIONS

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

1. Sierra Pacific objects to production of documents or information subject to the attorney-client privilege or any other applicable privilege.

2. Sierra Pacific objects to production of documents or information subject to the work product doctrine, including but not limited to documents or information subject to the common interest or joint defense work product doctrine.

3. Sierra Pacific objects to production of public documents that are readily available, including but not limited to documents on public file at the Surface Transportation Board or state agencies or clippings from newspapers or other public media.

4. Sierra Pacific objects to the production of draft verified statements and documents related thereto.

5. Sierra Pacific objects to the extent that the interrogatories and requests seek highly confidential or

sensitive commercial information (including, inter alia, contracts containing confidentiality clauses prohibiting disclosure of their terms) that is of insufficient relevance to warrant production even under a protective order.

6. Sierra Pacific objects to the interrogatories and requests to the extent that they call for the preparation of special studies not already in existence.

RESPONSES TO APPLICANTS' FOURTH SET OF INTERROGATORIES

Interrogatory No. 1:

"Identify the type of boilers at the North Valmy Station, state the manufacturer of the boilers, and the year(s) that those boilers were installed."

Response

North Valmy Station has two units, each of which has a boiler that is of the natural circulation, radiant, reheat, balanced draft, wall-fired, pulverized coal fuel, dry bottom ash removal type. Unit I was manufactured and erected by the Babcock and Wilcox Company and began service in 1981. Unit II was manufactured and erected by the Foster Wheeler Energy Corporation and began service in 1985.

Interrogatory No. 2:

"State the coal specifications for which the North Valmy Station boilers were designed."

Response

Sierra Pacific performed a detailed analysis of potential coals for North Valmy Unit I during the period 1974-78. Relevant excerpts from the specification reports will be produced in response to this interrogatory. Specifically, the North Valmy

Unit I and II boiler specifications, which are being produced, list the coals for which the units were designed to be capable of using. Performance guarantees were based on the coal designated as "C-1." The various characteristics of the coals determine the operating characteristics, costs, and limitations associated with the different fuels.

Interrogatory No. 3:

"State any alternative coal specifications for which the North Valmy Station boilers were designed."

Response

Please refer to the list of coals produced in response to Interrogatory No. 2.

Interrogatory No. 4:

"State whether any modifications have been made to the North Valmy Station boilers since they were originally installed that affect the coal specifications for which they are designed and, if so, specify those modifications."

Response

North Valmy Station's boilers have not been modified since their installation in any way that would affect the coal specifications for which they are designed.

Interrogatory No. 5:

"State all specifications developed for purposes of any actual or contemplated coal solicitations."

Response

See response to Interrogatory No. 2. In addition, Sierra Pacific will produce an April 15, 1988 coal Request for Proposal in response to this interrogatory.

Interrogatory No. 6:

"State all constraints on the coal that can be burned in the boilers at North Valmy Station, including without limitation:

(a) HGI;
(b) ash fusion;
(c) BTU per pound;
(d) ash percentage;
(e) sulfur percentage; and
(f) other constraints."

Response

(a) HGI: North Valmy's Unit I performance is based on an HGI of 48 and a moisture content of 6.5%. Unit II performance is based on an HGI of 50 and a moisture content of 8.5%. For HGI values less than these, energy requirements will be higher than the performance basis. North Valmy fuel preparation capacity may be exceeded for low HGI values, high moisture content, or low heating value coals.

(b) Ash Fusion: The boiler must be designed so that the furnace exit gas temperature (FEGT) is below the ash fusion temperature in order to avoid slag buildup in the convective sections of the unit. The FEGT for North Valmy Unit I is 1932°F; for Unit II, the FEGT is 2000°F. Ash fusion temperatures must exceed 2050°F to avoid derating the two units. Since local reducing conditions may be experienced, ash fusion temperatures under reducing conditions must be considered.

(c) BTU per pound: Heating value and moisture content affect unit capacity and performance. The "base coal" for pulverizer design purposes was expected to have a heating value of 9500 BTUs per pound, 45 HGI and 20% moisture. Lesser quality

coal will limit unit capacity because of fuel preparation capability limitations.

(d) Ash Percentage: Ash percentage is not considered to be a limiting constraint. Constraints on heating value, moisture content and grindability will limit operations before ash percentage.

(e) Sulfur Percentage: North Valmy Unit I does not require and does not employ flue gas desulfurization. A fuel sulfur limit of less than 0.6 lb. sulfur per million BTU heat input is required to meet emissions regulations. Unit II employs flue gas desulfurization and its fuel sulfur content restrictions are less limiting. Because of the limited coal blending facilities at North Valmy Station, low sulfur coals are required.

(f) Other Constraints: Sodium content in the ash must be limited to less than 5% (as Na2O) to avoid excessive slagging and fouling of boiler surfaces.

Interrogatory No. 7:

"State (a) the pulverizer capacity at North Valmy Station, (b) whether there is spare pulverizer capacity at North Valmy Station, and (c) whether pulverizer capacity constrains the ability to use different kinds of coal at North Valmy Station."

Response

(a) Each unit at North Valmy Station has four coal pulverizers. Unit I uses four Babcock and Wilcox MPS 75G pulverizers. For 50 HGI, 65% X 200 mesh, each pulverizer is rated at 43 tons per hour. Unit II uses four Foster Wheeler MBF 22 1/2 pulverizers. For 50 HGI, 65% X 200 mesh, each pulverizer is rated at 59 tons per hour.

(b) For the performance basis coal, there is spare pulverizer capacity. This means that full load normally can be reached with one mill out of service.

(c) Coal with low grindability, low heating value, or high moisture content will require four mills in service to achieve full load operation. Very low grindability, very low heating value, or very high moisture will exceed the fuel preparation capabilities of North Valmy Station's fuel preparation equipment.

Interrogatory No. 8:

"With respect to the precipitator at North Valmy Station, state:

(a) The SCA of the precipitator.
(b) Whether the precipitator is hot-side or cold-side.
(c) Whether fine gas conditioning capability has been installed.
(d) Whether any evaluations have been undertaken as to whether fine gas conditioning capability is necessary and, if so, what the conclusions of such evaluations have been."

Response

North Valmy Station uses fabric filters (baghouses) for particulate emissions control, not electrostatic precipitators. These questions, therefore, do not apply. Dust collection at North Valmy Station is not dependent on ash resistivity or flue gas conditioning.

Interrogatory No. 9:

"Describe in detail the blending capabilities and capacity at North Valmy Station, including without limitation a description of the facilities used for blending operations."

Response

Fuel blending facilities at North Valmy Station consist of a divided coal unloading trestle and two rotary plow feeders that transfer the coal from the unloading trestle hoppers to a common conveyor belt. Each half of the divided unloading trestle will hold approximately the contents of an 80-car unit coal train. Coal blending can be done by filling the two unloading trestle sections with different coals and then operating the rotary plow feeders to provide the desired proportions of the two coals on the common conveyor belt. The coal is then either transferred to the coal storage bunkers in the plant or transferred to storage. This is not a precision process.

An alternate blending method is to fill each coal bunker with the desired coal and achieve the blending proportions by varying the coal feed rate from each bunker (each coal bunker serves one coal feeder/pulverizer). This method, too, is imprecise. In filling the bunkers it is difficult to control the topping off of one bunker and the initial filling of the next bunker with different coals due to the coal stored on the thousands of feet of conveyor belts between the coal supply and the coal bunker. This method is complicated by equipment problems forcing shutdown of individual coal pulverizers, the need to vary burner selection and firing patterns (and, therefore, mill selection) to follow load demands and the regulatory requirements governing sulfur dioxide emissions.

In short, the coal blending capabilities at North Valmy Station are very limited.

Interrogatory No. 10:

"State each basis for the statement at page 13 of the Verified Statement of Jeffery Hill that the modification of the North Valmy Station boilers to burn PRB coal would "require millions of dollars," specify the dollar amount being referred to, and each basis on which that dollar amount has been determined."

Response

Sierra Pacific has not conducted a detailed review of the modifications required for North Valmy Station to be able to burn PRB coal without significant derating of the Units I and II. Coal-fired steam electric generating stations are engineered systems. One of the key criteria for the design of the systems and the selection of the equipment is specification of the fuel to be used. PRB coal is outside the range of fuels included in the design of the North Valmy units. To switch to PRB coal would require either derating the units and purchasing additional generating capacity at significant cost, or altering the units in order to accommodate the PRB coal. Alterations to plant equipment valued at hundreds of millions of dollars will cost many millions of dollars.

The impact on the plant is in the following areas:

(a) Material handling: Using coal with lower heating value, lower grindability, and higher moisture content will require increased coal handling capacity due to the greater coal quantity needed. The lower grindability will require more work to grind the coal to an acceptable fineness. This may exceed

pulverizer and primary air (air used to dry the coal, circulate and classify the coal through the pulverizer, and transport the pulverized coal to the furnace) capacity of the units. Additional energy and operating expenses will be incurred as well as capital expenses in equipment modification.

(b) Coal drying: Higher moisture content in the coal will require additional hot air for drying the coal prior to burning. The hot air is supplied by primary air fans and a primary air heater sized for the coals specified in the original design. Capacities of these components may be exceeded. Increasing coal drying requirements will impact capital equipment and operating costs.

(c) Sulfur emissions compliance: Unit I must fire coal with a sulfur level no greater than 0.6 lb sulfur per million Btu heat input. If this level is not maintained, flue gas desulfurization equipment must be added to the unit. This is a major investment in capital equipment. Unit II has flue gas desulfurization equipment and may fire coals with higher sulfur contents. Operating costs for flue gas desulfurization, however, are proportional to the sulfur content of the coal. Higher sulfur coals, therefore, will result in higher operating costs.

(d) Boiler design: Coals with higher slagging and fouling tendencies require larger furnaces, increased tube spacing, and increased sootblowing capability for achieving the same generating capacity when using better coals. Reduced capacity

from firing lower grade coals may need to be replaced at significant cost.

All of these systems represent major investments in engineered equipment. Significant changes to these systems will require a major investment in equipment. Quantification of the investment required to use PRB coal is a major engineering study. Such a study has not been undertaken. Modifications to the plants and purchasing replacement capacity easily will cost several million dollars.

Interrogatory No. 11:

"State each basis for the statement at page 14 of the Verified Statement of Jeffery Hill that using higher moisture content coal 'would result in a 1.5 to 2.0 percent decrease in boiler efficiency.'"

Response

Boiler efficiency calculations using typical PRB and Black Butte coal analyses yielded boiler efficiencies of 86.67% on PRB coal and 88.39% on Black Butte coal. The major difference in the calculation result is the efficiency loss due to moisture in the fuel. This loss is 3.67% for PRB coal and 2.10% for Black Butte coal.

Interrogatory No. 12:

"State the anticipated useful life of the boilers at North Valmy Station."

Response

Sierra Pacific anticipates the useful life of coal-fired plants to be 37 years from start up. Through life extension

measures, however, plant life often can be extended to up to 50 years.

RESPONSES TO APPLICANTS FOURTH SET OF DOCUMENT REQUESTS

Document Request No. 1:

"To the extent not done as part of your prior discovery responses or March 29 filings, produce the analysis described at page 14 of the Verified Statement of Jeffery Hill concerning whether the North Valmy Station could use PRB coal."

Response

The reports referred to in the accompanying interrogatories, which are being produced, address at length the coal specifications for North Valmy Station's boilers. Although the detailed reports do not specifically address the problems associated with using PRB coal, the reports address problems associated with using coal of the same quality as PRB coal. In addition, Sierra Pacific has performed from time to time informal analyses, such as the analysis referred to at page 14 of the Verified Statement of Jeffery Hill, which are not contained in writing.

Document Request No. 2:

"To the extent not done as part of your prior discovery responses or March 29 filings, produce any proposals or studies relating to modifications at North Valmy Station to allow it to burn sub-bituminous coal."

Response

Sierra Pacific has never conducted or solicited studies concerning modifications to North Valmy Station in order to burn lower grade coal. The studies referred to in response to the

accompanying interrogatories, however, address some of the modifications that would be required to burn a PRB type coal.

Document Request No. 3:

"To the extent not done as part of your prior discovery responses or March 29 filings, produce all engineering studies of the ability to burn alternative coals at North Valmy Station, including without limitation any engineering studies of the ability to burn sub-bituminous coal at North Valmy Station."

Response

Responsive documents will be produced.

Document Request No. 4:

"To the extent not done as part of your prior discovery responses or March 29 filings, produce all engineering studies of the ash fusion characteristics of coal burned at North Valmy Station."

Response

Responsive documents will be produced.

Document Request No. 5:

"To the extent not done as part of your prior discovery responses or March 29 filings, produce all engineering studies of the fine gas conditioning capability of the precipitator at North Valmy Station."

Response

See response to Interrogatory No. 8. Sierra Pacific has no responsive documents.

Document Request No. 6:

"To the extent not done as part of your prior discovery responses or March 29 filings, produce all engineering studies of blending capabilities at North Valmy Station, including without limitation any studies of the need for additional blending capacity."

Response

Responsive documents will be produced.

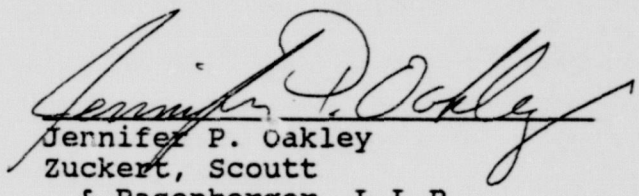
CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing SPP-12, Responses of Sierra Pacific Power Company and Idaho Power Company to the Applicants' Fourth Set of Interrogatories and Request for Production of Documents, by hand delivery upon the following persons:

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

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

I have also served by first-class mail, postage pre-paid, the Honorable Judge Nelson and all persons on the restricted service list.



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

Dated: April 11, 1996

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LEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

Part of Public Record

RECEIVED
APR 11 1996
SURFACE TRANSPORTATION BOARD

April 11, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, NW
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.

Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding are an original and twenty (20) copies of ERRATA TO COMMENTS, EVIDENCE, AND REQUEST FOR CONDITIONS OF THE DOW CHEMICAL COMPANY, designated DOW-17. Also enclosed is a diskette formatted in WordPerfect 5.1 with a copy of the Interrogatories.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Nicholas J. DiMichael
Jeffrey O. Moreno

ENCLOSURES
1750-020

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

— CONTROL AND MERGER —

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

ERRATA TO COMMENTS, EVIDENCE, AND REQUEST FOR CONDITIONS OF THE DOW CHEMICAL COMPANY

The Dow Chemical Company submits the following Errata to its Comments, Evidence, and Request for Conditions (Dow-11), submitted on March 19, 1996;

Presentation of Comments and Evidence (Tab A)

Page	Line	Change
23	14	Change "Gehring V.S." to "Gehring Tr."
23	14	Change "Gray V.S." to "Gray Tr."
27	11	Change "prime" to "primo"
33	22	Change "want risk" to "want to risk"
38	17	Change "second to" to "second carrier to"

Verified Statement of William L. Gebo (Tab B)

Page	Line	Change
6	20	Change "two" to "four"
8	21	Delete "Exhibit WLG-5"
9	6	Change "Exhibit WLG-6" to "Exhibit WLG-5"

DOW- 17

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APR 12 1996
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

RECEIVED
APR 11 1996
MAIL
MANAGEMENT
I.C.C.

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

ERRATA TO COMMENTS, EVIDENCE, AND REQUEST FOR CONDITIONS OF THE DOW CHEMICAL COMPANY

ORIGINAL

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Jeffrey O. Moreno
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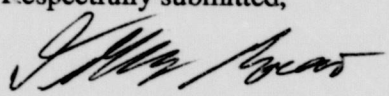
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for The Dow Chemical Company

April 11, 1996

9	15	Change "Exhibits WLG-7 and 8" to "Exhibits WLG-6 and 7"
9	Note 2	Change "Exhibit WLG-8" to "Exhibit WLG-7"
10	5	Change "Exhibit WLG-9" to "Exhibit WLG-8"
10	13	Change "Exhibit WLG-10" to "Exhibit WLG-9"
10	27	Change "Exhibit WLG-11" to "Exhibit WLG-10"
11	7-8	Change "Exhibits WLG-7 and 8" to "Exhibits WLG-6 and 7"
12	27	Change "Exhibit WLG-8" to "Exhibit WLG-7"
14	8	Change "Exhibit WLG-9" to "Exhibit WLG-8"
24	16	Change "Exhibit WLG-12" to "Exhibit WLG-11"

Respectfully submitted,



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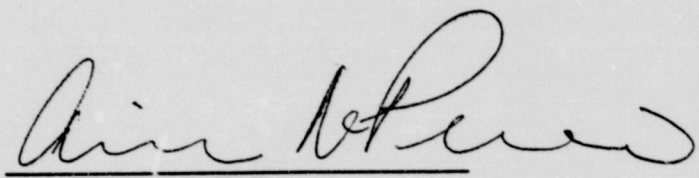
Attorneys for The Dow Chemical Company

April 11, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ERRATA TO COMMENTS, EVIDENCE, AND REQUEST FOR CONDITIONS OF THE DOW CHEMICAL COMPANY has been served via facsimile upon the Applicants and by regular first class mail upon all parties of record in this proceeding on the 11th day of April, 1996.



Aimee L. DePew

Item No.

Page Count 2

Appl #159

42530

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 PARKWAY AVENUE
CN 601
TRENTON, N.J. 08625-0601
609-530-3535

CHRISTINE TODD WHITMAN
GOVERNOR

FRANK J. WILSON
COMMISSIONER

RECEIVED
APR 2 1996
MAIL MANAGEMENT
I.C.C.

Mr. Vernon Williams, Secretary
U.S. Surface Transportation Board
1201 Constitution Ave., NW
Room 2215
Washington, DC 20423-0001

Re: Finance Docket 32760

Dear Mr. Williams:

The New Jersey Department of Transportation hereby expresses its support of the Consolidated Rail Corporation in their proposal to purchase what has commonly become known as the SP East, the former Cottonbelt Railroad lines in Illinois, Tennesee, Arkansas, Louisianna and Texas. We further request that any approval of the proposed Union Pacific / Southern Pacific merger be conditioned upon divestiture of these lines by UP/SP to such a financially viable competitor.

We concur in the position taken by Conrail and the National Industrial Traffic League that trackage rights granted to Burington Northern / Sante Fe do not constitute a viable substitute for ownership of these lines by a competitive carrier. The bulk of New Jersey's chemical and petroleum product transportation by rail from the Gulf Coast occurs in this corridor. To permit what would become the largest railroad in the United States ($9.0 billion in revenues annually) to maintain effective monopoly control over this corridor is contrary to the public, and New Jersey's, interests.

Combined, UP/SP will control greater than 90% of the rail market share of trade between the United States and Mexico. Divestiture of the SP East and subsequent acquisition by Conrail would open a competitive single line corridor between the notheast, the midwest and Mexico, expanding the opportunity for American industries in these regions to do business under NAFTA. New Jersey firms currently do an estimated $600,000,000 annually in business with Mexico. Existence of a single line competitive option will have a considerable impact on a New Jersey or other northeastern/midwestern firm's ability to compete for this business with its western and southwestern counterparts.

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APR 4 1996
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Finally, intermodal growth in this corridor has remained strong at 15%-20%, while average growth rates nationally have shrunnk to 5% or less...in large part a reflection of the consistent growth in trade with Mexico under NAFTA. New Jersey's geographic location makes it an ideal distribution center for the entire eastern seaboard. As business opportunities increase in Mexico, distribution of Mexican produced goods to the northeastern and midwestern markets would be enhanced by the existence of a single line, competitive intermodal rail option. We believe such a service would bring with it attendant benefits in air quality as competitive intermodal single line service to Mexico and the southwest is made available for the first time.

In summary, the State of New Jersey believes that divestiture of the SP East lines, and subsequent purchase by Conrail, would extend the efficiencies of single line competitive shipments of products to areas of the northeast and midwest which do not currently enjoy this option. It would constitute an end-to-end merger with no duplicate facilities, and would preserve rail competition to customers within and outside of this corridor.

Sincerely

Frank J. Wilson
Commissioner

Item No. _____

Page Count 5

MR #845

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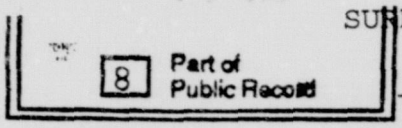
UP/SP-193



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' REVISED RESPONSES TO
PUBLIC SERVICE COMMISSION OF NEVADA'S
FIRST SET OF INTERROGATORIES AND
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

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Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

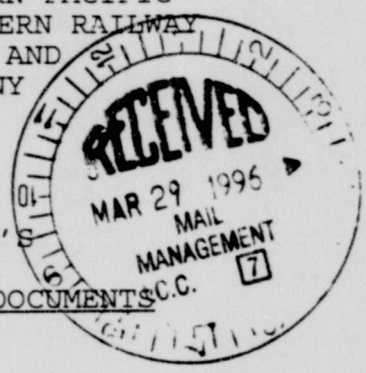
March 29, 1996

UP/SP-193

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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



APPLICANTS' REVISED RESPONSES TO
PUBLIC SERVICE COMMISSION OF NEVADA'S
FIRST SET OF INTERROGATORIES AND
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Applicants hereby revise their response to Interrogatory No. 5 of the Nevada Public Service Commission as follows:

Interrogatory No. 5

"The merger application of Joint Applicants states that the increased number of accidents at crossings would be more than offset by reductions in accidents on highways and other railroads due to (freight) traffic being diverted. (Vol. 6, Part 1, Page 53).

a. On what basis is this claim made?

b. Does that claim incorporate pedestrian accidents?"

Response

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

(a) The systemwide increase in train miles is expected to be 4,214,290 per year. The rail accident rate in 1994 (national average) was 4.07 accidents per million train miles. This figure includes all impacts between railroad on-track equipment and vehicles or pedestrians at road crossings, plus any death or injury requiring treatment to persons other than rail employees. Therefore, there should be an increase of 17 accidents systemwide per year because of increased UP/SP traffic. This increase will be offset by the number of trucks that will be taken off the highways. Applicants project that truck-to-rail diversions will reduce nationwide truck travel by 283,313,759 truck miles per year. The truck accident rate in 1992 (national average) was 0.911 accidents per million truck miles travelled. Therefore, there should be a decrease of 258.1 accidents per year, pursuant to the following calculations:

$$\frac{0.911}{1,000,000} = \frac{X}{283,313,759}$$

X = 258.10 accidents per year decrease.

Therefore, nationwide there should be a net decrease of 241.1 accidents per year.

(b) Yes. See Response to subpart (a).

Respectfully submitted,

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

March 29, 1996

CERTIFICATE OF SERVICE

I, Karen W. Kramer, certify that, on this 29th day of March, 1996, I caused a copy of the foregoing document to be served via facsimile, on Timothy Hay, Esquire, General Counsel for Public Service Commission of Nevada, 727 Fairview Drive, Carson City, Nevada 89710, and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

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

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

Karen W. Kramer
Karen W. Kramer

Item No.

Page Count ~~12~~ 13

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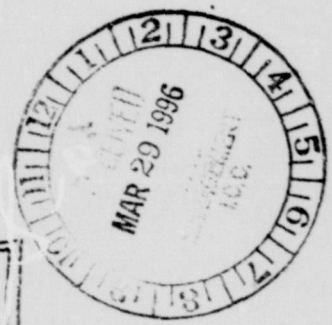
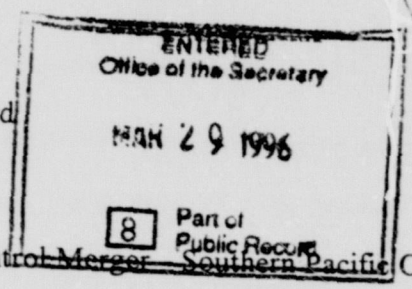
the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL



March 28, 1996



Honorable Vernon A. Williams
Secretary, Surface Transportation Board
1201 Constitution Avenue, NW
Washington, DC 20423

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

Dear Honorable Williams:

By oversight Texas did not previously designate an acronym for use in this proceeding. In accordance with 49 C.F.R. Sec.1180.49(a)(2), we ask that STTX now serve as acronym for the State of Texas, by and through Dan Morales, Attorney General of Texas. Prior pleadings should be designated at STTX 1 through 3. They include:

STTX-1	Letter of intent to participate as a Party of Record	Filed 1-11-96
STTX-2	State of Texas Reply in Support of Motion of Western Shippers' Coalition for Enlargement of the Procedural Schedule	Filed 1-25-96
STTX-3	State of Texas' Certificate of Service Pursuant to Decision No. 16 listing all pleadings filed in this proceeding by the Attorney General Dan Morales on behalf of the State of Texas	Filed 2-26-96

We are enclosing for filing the following:

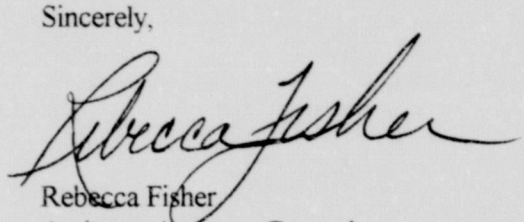
STTX 4	Comments of Office of the Attorney General of Texas. Enclosed are the original and 20 copies.
STTX-5	Verified Statement of Dr. Henry B. McFarland. Enclosed are the original and 20 copies of the Highly Confidential Version. ***The State of Texas asks this highly confidential document be filed under seal.***

512/463-2100 P.O. BOX 12548 AUSTIN, TEXAS 78711-2548

Also enclosed are:

- Two 3.5 inch diskettes in WordPerfect 5.1 format. One diskette contains the text of the Comments of Office of Attorney General of Texas and one diskette contains the Highly Confidential Version of the Verified Statement of Dr. Henry B. McFarland.
- One extra copy each of STTX-4 and STTX-5 which we request you file stamp and return to us in the enclosed self-addressed postage-paid envelope.

Sincerely,



Rebecca Fisher
Assistant Attorney General
Antitrust Section
Consumer Protection Division
P. O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185
(512) 320-0975 (Facsimile No.)

Enclosures

cc: Parties of Record List

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

COMMENTS OF OFFICE OF THE ATTORNEY GENERAL OF TEXAS

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

LAQUITA A. HAMILTON
Deputy Attorney General for Litigation

ENTERED
Office of the Secretary
MAR 29 1996
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Public Record

Communications with respect to this document should be addressed to:

THOMAS P. PERKINS, JR.
Assistant Attorney General
Chief, Consumer Protection Division

MARK TOBEY
Assistant Attorney General
Deputy Chief for Antitrust

REBECCA FISHER
AMY KRASNER
WESLEY OLIVER
Assistant Attorneys General
Antitrust Section
P.O. Box 12548
Austin, TX 78711-2548
(512) 463-2185
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STTX-4

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

**COMMENTS OF OFFICE OF
ATTORNEY GENERAL OF TEXAS**

The Union Pacific Corporation, the Union Pacific Railroad Company, and the Missouri Pacific Railroad Company (collectively "UP") and the Southern Pacific Rail Corporation and its subsidiaries (collectively "SP") have applied to the Surface Transportation Board for authorization of the merger of Southern Pacific Rail into Union Pacific Railroad Company and the consolidation of the rail operations of UP and SP (collectively "UP/SP"). Acknowledging that such a consolidation would have anticompetitive effects, the Applicants have requested the merger be conditioned upon a settlement agreement they have entered into with Burlington Northern Railroad Company and The Atchinson, Topeka and Santa Fe Railway Company (collectively "BNSF").

The State of Texas, by and through Dan Morales, Attorney General of Texas, hereby submits comments regarding competitive issues affecting Texas that are raised by the UP/SP merger as proposed. Under separate cover, the State of Texas files the Verified Statement of Dr. Henry B. McFarland which is incorporated herein for all purposes.

A. POSITION OF THE STATE OF TEXAS

As more fully explained below, the State of Texas has concluded that the UP/SP merger as proposed would reduce competition for a significant volume of rail traffic involving origins and destinations in Texas and the Texas-Mexican gateways. This merger will reduce the number of Class I railroads currently competing for this traffic; in some situations from three to two and in many locations from two to one. Further, the significant

number of Texas shippers currently served exclusively by UP or SP will be combined, decreasing the ability of these shippers to leverage potential competition.

The adversely affected markets include various commodity movements into and out of Texas through the Mexican gateways, rail service to chemical plants located along the Gulf Coast of Texas, and service for shippers and receivers in Harris County, Texas, which includes the Port of Houston. Dr. McFarland has specifically identified Texas rail traffic of nearly $200 million annually that would be subject to a loss of competition upon a consolidation of UP and SP.

The State of Texas does not believe that the settlement agreement with BNSF will provide an adequate remedy for the anticipated competitive harm that will result from the merger. Therefore, the State of Texas opposes the merger as currently proposed.

B. BACKGROUND FACTS REGARDING CURRENT AND PROPOSED RAIL SERVICE IN TEXAS

To clearly understand why harmful effects of the proposed merger may have a disproportionate impact on the State of Texas, it is important to realize that, in regard to current rail service and with respect to the proposed merger, Texas is unique in many ways. The expanse, location and natural resources of Texas set it apart from most other states in the volume and types of commodities transported by rail. With respect to several of these commodities, Texas is the largest producer in the U.S. For example, Texas ranks first in the nation in the production of industrial organic chemicals, plastics, and synthetics.[1]

Texas also is situated in a unique position regarding international rail shipment. More than ninety percent of all U.S. rail traffic into Mexico in 1995 crossed over Texas-Mexican gateways. Laredo, Texas (served primarily by UP) has consistently been the primary U.S. gateway for rail access to Mexico, accounting for 71% all railcars traveling from Texas to Mexico in 1994.[2] Texas anticipates the passage of the North American Free Trade Agreement ("NAFTA") will lead to an increased demand for rail traffic to and from Mexico.

Rail service in Texas is also unique. Although Texas has the most operated railroad mileage of any state in the United States[3], only three Class I railroads presently serve the

---

[1] "Texas leads in production capacity for the 24 major commodity chemicals...Texas has an infrastructure consisting of the largest chemical and petroleum refining complexes in the world which makes it attractive for future expansions of the commodity chemical industry...This infrastructure makes Texas one of the best places to locate a new chemical plant, because a new plant may tie into a pipeline network, purchase new materials from and sell products to other plants within the network or ship them by pipeline, rail, ship or barge to other destinations." *The Chemical Industry of Texas*, by Dr. M.A.M. Anari and Dr. Jared E. Hazelton, November 1992, pg. 1. *See also The Texas Chemical Industry: Our Heritage and Our Future*, pg.3-4, 7.

[2] *Border Business Indicators*, December 1995, Published by the Institute for International Trade (IIT), a division of the College of Business Administration at Texas A&M International University.

[3] Statistics from 1994 show that Texas has 10,413 miles out of a total 122,492 in the US. The Texas total represents nearly twice the mileage as California, with 5,435, and over 3,000 more miles than Illinois, which is the

majority of the State.[4] Texas, as the largest producer of chemical products in the U.S., has more shippers "captive to rail" than any other state affected by the proposed merger. In addition, Texas has more shippers served exclusively by either the UP or SP. Further, as defined by Applicants, Texas has more shippers presently served by only UP and SP ("2-to-1 customers") than any other state.[5]

The fact that this merger will have a significant impact on Texas is apparent by looking at maps provided by the Applicants. This visual review confirms that UP and SP, who own most of the rail tracks in Texas, have several lengthy parallel lines. Furthermore, one third of all the proposed trackage over which BNSF is proposed to have trackage rights fall within Texas borders.

C. FRAMEWORK FOR ANALYSIS

1. THE PUBLIC INTEREST

The Surface Transportation Board must approve the proposed UP/SP merger only if it determines that to do so would be consistent with the "public interest". To give meaning to this standard it is imperative to understand the purpose and precedent of the Board and its predecessor, the Interstate Commerce Commission.

The Rail Transportation Policy ("Policy"), promulgated by the Staggers Act[6] and codified at 49 U.S.C.A. § 10101, reflects Congress' intent to revolutionize the railroad industry from one characterized by complete government regulation to one governed, in large measure, by a competitive marketplace. The enacting legislation is replete with principles which codify this purpose and vision. The Policy directs the government "to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes."[7] Through the Policy, the government seeks "to minimize the need for Federal regulatory control," "to avoid undue concentration of market power," and "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers."[8] The Rail Transportation Policy,

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second ranking in railroad miles with 6,986. Association of American Railroads, *Railroad Mileage Operated in Each State -- 1994*, RAILROAD FACTS 1995 EDITION, Sept. 1995, at 45.

[4] UP, SP, and BNSF own the vast majority of track in the state. Kansas City Southern Railway Company ("KCS") owns limited track which is part of its routes from Dallas/Fort Worth to Shreveport, Louisiana and from Beaumont, Texas to Shreveport.

[5] This definition was made by Applicants in the settlement agreement with BNSF on which they have asked the Board to condition this merger. The number of 2-to-1 customers as therein defined can be determined by reviewing Settlement Agreement and Exhibit A, dated September 25, 1995, and the Supplement Agreement, dated November 18, 1995. ("BNSF Agreement")

[6] The Staggers Act of 1980, Pub. L. No. 96-448.

[7] 49 U.S.C.A. § 10101(5).

[8] 49 U.S.C.A. § 10101(2), (12), and (4).

taken as a whole, emphasizes the need for reliance on competitive forces to modernize the railroad industry and to promote efficiency.[9]

This point is accentuated by the fact that the Staggers Act codified the requirement that the Board must determine and weigh effects on competition when conducting any merger analysis. Although such consideration had generally been a matter of practice, it was not included in the obligatory criteria for consideration prior to enactment of the Act. Congress acknowledged the importance and necessity of understanding the competitive impact of a merger by adding Section (b)(1)(E) to the list of matters that must be considered. This provision instructs the Board to consider whether the proposed merger""would have an adverse effect on competition among rail carriers in the affected region."[10]

2. ANTITRUST ANALYSIS

Although the Board does not sit as an antitrust court determining compliance with the antitrust laws, it is imperative that it heed the precedent of the ICC by beginning its review of this merger with antitrust analysis. Antitrust analysis provides a structure that illuminates the meaning of the above-noted concepts of "effective competition" and "concentration of market power". The policies embodied in antitrust laws provide guidance for implementing the purpose of the Rail Transportation Policy and determining what is the public interest in a control proceeding.[11]

Both the Department of Justice and the National Association of Attorneys General have promulgated guidelines for reviewing proposed mergers. The guidelines explain antitrust policies and the appropriate analytical approach to use in a merger analysis.[12] As noted in the guidelines and applied by the Commission in previous proceedings, the threshold for any meaningful merger analysis is to define the markets that will be affected. Antitrust analysis requires the defining of both a relevant product and relevant geographic market and the Commission has previously followed this approach.

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[9] Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Chicago and North Western Transportation Company and Chicago and North Western Railway Company, Finance Docket No. 32133 (ICC Decision No. 25, served March 7, 1995) at 49. (UP/CNW hereinafter)

[10] (T)he Commission shall consider 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 carrier 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." 49 U.S.C.A. S11344(b)(1).

[11] ... *Lean Trucking v. United States*, 321 U.S. 67, 87 (1944); *FMC v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238, 244 (1968).

[12] Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, released April 2,1992; and National Association of Attorneys General Horizontal Merger Guidelines, adopted March 30, 1993.

The Commission has previously defined the product market as rail transportation of freight.[13] The Commission has included other modes of transportation in the relevant product market only where there is sufficient evidence that the other modes are actual rail competitors. In defining geographic markets, the Commission has often focused on whether the merger primarily affected parallel lines or end-to-end lines.[14] It has determined that analysis of actual lines provides a clearer approach to identifying competitive problems.[15]

After having determined the relevant markets, the Board must evaluate the anticompetitive impact of the merger in these markets. As stated in the guidelines, such impact would include a lessening of competition through coordinated interaction or a lessening of competition through unilateral effects.[16] The decrease in competition, however accomplished, can negatively influence shippers' choices for price, service, potential competition, or expansion.[17] Decreased competition can also concentrate sufficient market power in the hands of one carrier for it to behave more like a monopolist than a competitor.

The obvious fact that negative competitive impact is more likely to be found in a parallel merger is codified in the regulations governing control proceedings.[18] This fact also caused the Commission to require a more careful examination of the competitive options remaining after a "parallel merger" than it would in a purely "end-to-end merger".[19]

The emphasis and evaluation of anticompetitive effects has, by necessity, changed in the last decade. The Commission has recognized that the "extensive deregulation of the rail industry brought about by the Staggers Act, other reform legislation, and numerous administrative actions undertaken by the Commission to reduce regulations, require that the anticompetitive effects of a consolidation be examined more carefully than in the past

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[13] Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Chicago and North Western Transportation Company and Chicago and North Western Railway Company. Finance Docket No. 32133 (ICC Decision No. 25, March February 21, 1995) at 51. (UP/CNW hereafter)

[14] "Parallel effects may arise where the merging railroads run between common origin/destination pairs or corridors and generally involve the question of whether there is reduction in the number of rail competitors serving transportation markets. End-to-end effects may exist where the merging railroads serve common destination points from different origins, or originate from common origins to different destinations. These effects relate primarily to whether there will be a reduction in source competition or a vertical foreclosure of competition at commonly served gateways." UP/CNW at 52.

[15] UP/MP/WP at 33.

[16] DOJ Merger Guidelines, Section 2.

[17] Industries with high transportation costs must take into consideration their transport options, as well as the presence or absence of rail competition, when deciding if and where to expand or locate new plants.

[18] "If two carriers serving the same market consolidate, the result would be the elimination of competition between the two...While the reduction in the number of competitors serving a market is not in itself harmful, a lessening of competition resulting from the elimination of a competitor may be contrary to the public interest." 49 C.F.R. S1180.1(c)(2)(i).

[19] Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Missouri-Kansas-Texas Railroad Company, et al. Finance Docket No. 30800 (ICC Decision No. 37, May 13, 1988) at 19. (UP/M-K-T hereafter).

because the ability of the railroads to take various actions free of regulatory restraints will make it easier to exert or abuse market power gained as a result of consolidation."[20]

The need for more careful consideration of any anticompetitive effects is clearly illustrated by numbers alone. In 1980, the U.S. had a total of forty Class I railroads. If the proposed merger is approved, there will be nine Class I railroads remaining, with only two of those serving approximately ninety percent of the entire United States west of the Mississippi River. The concentration of market power for many of the existing rails is, therefore, very significant. Further consolidation will only exacerbate the situation, increasing the potential for economic harm through monopolistic practices.

3. BALANCING TEST

Once the initial antitrust analysis is complete, the Board is obligated, under its regulations, to proceed with a balancing test. It must, after reviewing at least the five statutory criteria,[21] weigh the potential benefits to applicants and the public against the potential harm to the public.[22]

The Commission has found that efficiency gains can be a public benefit.[23] For example, public benefits can be realized through single-line service and a consolidated rail system's ability to reach new markets.[24] To the extent that cost reductions are passed on to shippers through reduced rates or deferral of rate increases, they benefit the public directly and reflect the amount of resources freed for other productive uses.[25] Efficiency gains can promote a healthy national rail system, allowing competition to determine prices, service and innovation.

However, if the Board has found potential public harm by identifying the likelihood of anticompetitive effects, it must give the touted consolidation efficiencies critical scrutiny. When a merger results in increased market power and decreased competition, the likelihood diminishes that any benefit from efficiencies will inure to the public. Through increased market power, the merged carrier may be able to increase prices and either keep service levels static or decrease them with little or no fear of losing business. At the very least, a competitor with sufficient market power loses incentive to improve prices and service.

Consolidations generating efficiencies, while stifling competition, may lead to purely private benefit. The public and the industry are ill-served when the market and its driving

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[20] Santa Fe Southern Pacific Corporation--Control--Southern Pacific Transportation Company, Finance Docket No. 30400 (I.C.C., Decided July 24, 1986) at 13. (SF/SP hereafter).

[21] See footnote 10, above.

[22] 49 C.F.R. S 1180.1(c).

[23] Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and the Atchison, Topeka, and Santa Fe Railway Company. Finance Docket No. 32549 (I.C.C. Decision No. 38, served Aug. 23, 1995) at 43. (BN/SF hereafter)

[24] BN/SF at 54.

[25] UP/M-K-T at 13.

force--competition--are preempted by anticompetitive market power ceded in the name of efficiencies.[26]

D. COMPETITIVE CONCERNS OF THE STATE OF TEXAS

1. COMPETITIVE ISSUES

For both an explanation of its analysis of market definitions and an analytical study of some areas of potential anticompetitive harm that may result in Texas because of this merger, the State commends the Board to the Verified Statement of Dr. Henry B. McFarland. Dr. McFarland's statement is filed in this proceeding and is incorporated herein for all purposes. Dr. McFarland's conclusion is that "the UP/SP merger would seriously reduce competition for a significant volume of rail traffic involving origins and destinations in Texas." McFarland Verified Statement at page 24.

The BNSF Agreement is clear evidence Applicants understand that competition for customers now served only by UP and SP (the "2-to-1 customer") will be lost when UP and SP consolidate.[27] Identifying the potential for competitive harm in this way is unduly restrictive. The State of Texas believes the shippers subject to competitive harm from the proposed merger are much more numerous. Applicants identify the need to preserve competition only at specific points. As set forth in his Verified Statement, Dr. McFarland believes a more appropriate approach is to define origins and destinations by areas, not by specific points as the Applicants have done. The State asserts that Dr. McFarland's broader definition and analysis more accurately reflects the actual and true potential competition Texas shippers are presently experiencing.

Applicants acknowledge potential harm only to the 2-to-1 customers. Dr. McFarland identifies economic studies that conclude competitive harm exists in markets where the number of competitors is reduced from three to two. This economic analysis is pertinent to a review of the industry at large and this merger in particular given that the railroad industry has been in the process of consolidating over the last decade and the market power for many current Class I rail carriers is significant.[28]

Another group of shippers who may be harmed are shippers presently served exclusively by UP or SP. Not only are Applicants not concerned about any competitive harm to these captive shippers, Applicants have suggested that, at least as to the SP customers, these shippers will enjoy more competition. But combining the monopoly customers of SP with those of UP eliminates the potential competition that often exists between nearby

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[26] In scrutinizing claimed efficiencies, the Board must determine if the claimed efficiencies could be "realized by means other than the proposed consolidation that would result in less potential harm to the public" 49 C.F.R. §1180.1(c).

[27] It is noteworthy that the BNSF Agreement identified many 2-to-1 customers (several located in Texas) who will not be able to avail themselves of the trackage rights service to be provided by BNSF under the agreement. See BNSF Agreement, Section 8(I).

[28] See discussion in C.2., above.

railroads, which may be the most effective leverage captive shippers have in negotiating. This is born out by information from shippers themselves, as noted in Dr. McFarland's Verified Statement. The increase of market power in regard to this group of shippers is not benign, as Applicants would suggest.

2. LIMITATIONS OF UP/SP AGREEMENT WITH BNSF

In recognition of potential anticompetitive effects of this merger, Applicants submitted the proposed agreement with BNSF as the remedy. As the Board independently identifies all the anticompetitive harm from this merger, it must closely scrutinize and review the proposed agreement to determine if it will eliminate or acceptably reduce this harm. The proposed agreement has raised a significant number of questions and concerns. The State of Texas believes these questions and concerns have not been sufficiently addressed to assure the Board that the proposed remedy cures the anticipated competitive harm of the proposed merger.

The effectiveness of BNSF as a competitor in Texas by use of the agreed trackage rights is doubtful at best. This agreement, like all trackage rights agreements, leaves BNSF, as lessee, at a competitive disadvantage to UP/SP, the owning rail carrier. The oft quoted phrase by Gerald Grinstein, former CEO of BNSF, seems to sum up this truism. He stated that trackage rights provide "service with some disability".[29] Such disabilities include whether the compensation to be paid by BNSF will negatively impact its ability to set competitive rates over the lines in question. And BNSF's ability to compete on service may be limited by UP/SP's control of dispatch and other operational factors.

Additional operational issues may further undercut BNSF's competitive abilities. For example, BNSF presently lacks adequate storage-in-transit facilities needed to competitively serve the plastics industry in the Texas Gulf Coast. Another concern is that BNSF presently is slated to use the SP line to move its northbound traffic from Houston to Memphis, even though UP/SP intends, as one of the proposed efficiencies of the merger, to make this line generally a unidirectional southbound line.[30] The fact that BN and SF have not yet fully integrated their operations, makes it impossible to know if, or to what extent, BNSF can or will use its trackage rights to compete effectively.

The fact that these trackage rights are only "bridge" or "overhead" trackage rights creates additional concern. BNSF will only be able to serve customers on these lines that are presently at "2 to 1" points Because of this, BNSF is foreclosed for 99 years from serving shippers who are presently captive to UP or SP and from serving new shippers who locate at points anywhere other than what Applicants define as a "2 to 1" point. This presents two different problems. First, due to the piecemeal nature of the traffic BNSF can serve, BNSF will have difficulty achieving the traffic density necessary to justify serving various Texas lines. The dominant position of a "full service" UP/SP will further discourage a strong BNSF presence in affected areas.

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[29] Christopher Palmeri and Ann Marsh *Can Drew Lewis drive the golden nail?* FORBES, Dec. 18, 1995, at 64.
[30] Applicants Operating Plan, Volume III, pp. 41-46.

A less obvious issue with the restricted nature of the bridge trackage rights revolves around the importance of potential competition. At best, the BNSF agreement might address competitive concerns at 2 to 1 points. But it does nothing to address the loss of potential competition at points that are presently served only by UP or SP. Applicants' rationale is that since the captive shippers have no other choice today, this restriction on BNSF's future service is not a decrease in competition. But this rationale only makes sense if both the railroad industry and the various shipper industries remain static. It is possible that the situation for either UP or SP could change and either company could decide that allowing BNSF to serve a particular shipper or group of shippers that are presently captive would be in its best interest. Under the proposed agreement, this potential competition is eliminated.

Likewise, the Applicants' narrow concept of decreased competition ignores the possibility of presently unforeseen innovation by either the shippers or transportation industries that would provide a more economical method for rails who do not have current access to the captive shippers to serve these customers. The agreement, as proposed, would foreclose such service by BNSF.

CONCLUSION

The State of Texas believes that the elimination of actual and potential competition, as a result of the merger, will affect significant amounts of Texas rail shipments involving some of the most important commodities to the national economy. This negative impact far outweighs the net public benefits of any efficiencies gained and renders this merger inconsistent with the public interest. Thus, the State of Texas requests the Board deny this merger as proposed.

DATED this 29th day of January, 1996.

Respectfully submitted,

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First Assistant Attorney General

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing instrument has sent via Airborn Express to Honorable Vernon A. Williams, Secretary of the Surface Transportation Board and by First Class Mail to all parties on the Parties of Record List.

REBECCA FISHER
Assistant Attorney General

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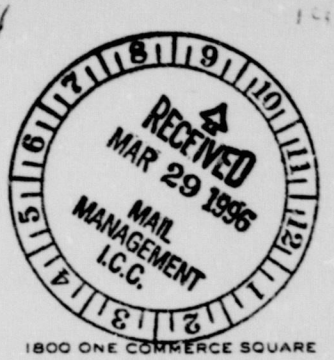

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March 29, 1996

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W., Room 1324
Washington, D.C. 20423

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

Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding are an original and 20 copies of a document designated as UP/SP-198, Applicants' Notice of Organized Labor Support for Proposed UP/SP Merger.

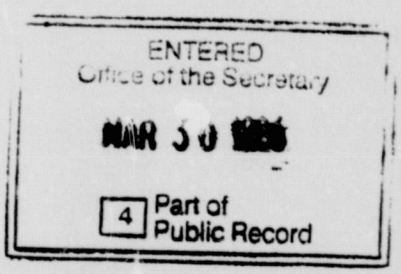
Also enclosed is a 21st copy of this document. Please date-stamp the extra copy and return it to me in the enclosed postage-paid envelope.

Very truly yours,

James M. Guinivan

James M. Guinivan

Enclosures



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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' NOTICE OF ORGANIZED LABOR SUPPORT FOR PROPOSED UP/SP MERGER

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March 29, 1996

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' NOTICE OF ORGANIZED LABOR
SUPPORT FOR PROPOSED UP/SP MERGER

In the past few weeks, Applicants have held discussions with their unions, and have made commitments to several of these unions regarding the application of New York Dock arrangements. We understand that some of these unions may submit their own filings in this proceeding supporting the proposed UP/SP merger. However, the following is a complete list, as of this time, of the labor organizations that support the proposed merger: the International Association of Machinists and Aerospace Workers; the International Brotherhood of Boilermakers, Ironshipbuilders, Blacksmiths, Forgers and Helpers; the International Brotherhood of Electrical Workers; the International Brotherhood of Firemen & Oilers; the International Brotherhood of Locomotive Engineers; the Sheetmetal Workers' International Association; and the United Transportation Union. These unions represent approximately 55% of the organized workforce of UP and SP.

Respectfully submitted,

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March 29, 1996

CERTIFICATE OF SERVICE

I, James M. Guinivan, certify that, on this 29th day of March, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

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Antitrust Division
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Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
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James M. Guinivan

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Page Count 10

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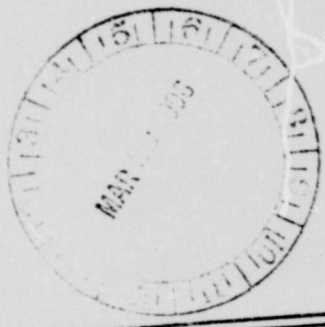

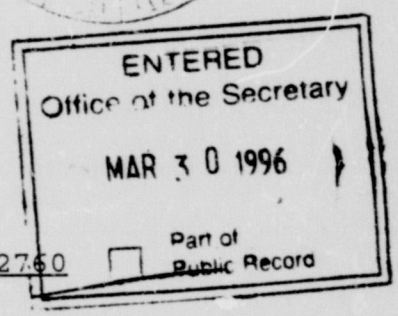

VIA HAND-DELIVERY

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
Room 1324
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Attention: Finance Docket No. 32760

Re: Finance Docket No. 32760

Dear Secretary Williams:

Enclosed for filing are the original and 20 copies of Illinois Power Company's Verified Comments and Request for Imposition of Additional Conditions (ILP-6) in Finance Docket No. 32760.

In addition, please date-stamp and return the extra copy to the messenger for our files. Thank you for your assistance.

Sincerely,

Michelle J. Morris

Michelle J. Morris

Enclosures

cc: All Parties of Record

ILP-6

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

UNION PACIFIC CORPORATION, ET AL.
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, ET AL.

ILLINOIS POWER COMPANY'S VERIFIED COMMENTS AND REQUEST FOR IMPOSITION OF ADDITIONAL CONDITIONS

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March 29, 1996

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

UNION PACIFIC CORPORATION, ET AL.
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, ET AL.

ILLINOIS POWER COMPANY'S VERIFIED COMMENTS AND REQUEST FOR IMPOSITION OF ADDITIONAL CONDITIONS

Illinois Power Company ("Illinois Power") hereby provides the following verified comments on the Applicants' proposed merger.[1] Illinois Power requests that approval of the merger be denied unless the Surface Transportation Board imposes conditions that will maintain effective competition for high-BTU, low-sulphur coal from Western mines to Illinois Power's plants. Illinois Power currently benefits from such geographic competition and should not be made worse off by the proposed merger -- which in its present form will unify the only two railroads capable of efficiently delivering this coal.

COMMENTS

Illinois Power is a combination electric and gas utility serving customers in various parts of Illinois. Currently, Illi-

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1. Throughout this submission, Illinois Power uses abbreviations as they appear to be commonly used otherwise in this proceeding.

nois Power purchases 1.2 million tons annually of high-BTU, low-sulphur coal from Western mines for use at its Wood River and Havana power stations. This coal is shipped from various originating mines via the SP to Illinois where it is then transported to the two plants either by another rail carrier or by barge. At considerable expense, Illinois Power has built facilities at both Wood River and Havana to ensure that both plants can take coal by either rail or barge (and thus ensure that there is competition at the destination).

The Western coal Illinois Power purchases is currently transported as part of a backhaul arrangement whereby the SP transports taconite from the Midwest for Geneva Steel and then backhauls coal for Illinois Power. Furthermore, other Western mines (served in some cases by the UP, in others by the SP) are capable of providing coal with the characteristics that Illinois Power requires.[2] Suitable mines are located in the Hanna Basin (served only by UP) and in the Uinta Basin (served by the SP and the Utah Railway).[3]

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2. At the Havana and Wood River facilities, Powder River Basin coal is not a viable alternative since its lower BTU content would require very expensive plant modifications. Although there are also Eastern sources of coal, this coal is currently not priced to serve as a viable competitive alternative for Illinois Power's purposes.

3. Although the Utah Railway (with an interchange thereafter to BN/SF) has access to some mines in the Uinta Basin, it is unclear whether coal from those mines is available or, even if available, would be competitively priced for long-haul shipments. Furthermore, even if those hurdles were surmounted, it appears that the terms of BN/SF Agreement are such that the BN/SF could not offer competitive transportation rates. There is also no assurance that BN/SF would have access to Geneva Steel or other appropriate back-

(continued...)

Because of both the favorable backhaul arrangement and the competition from various mines and railroads, Illinois Power was able to contract through the year 1999 for favorable coal transportation prices to its Wood River and Havana power plants. These rates were obtained as a direct result of competition between various mines served by either the SP or the UP -- it is not (and clearly was not) necessary that any particular mine be served by both the UP and the SP; rather it is (and was) sufficient that there be competition between carriers serving different mines since this sort of geographic competition drives down the delivered price of coal to a shipper such as Illinois Power.

Illinois Power's current rate contracts with SP expire in 1999. At that point, when Illinois Power solicits bids, the proposed merger threatens to destroy the competition that has served the utility so well. After the merger, the only Western mines able to provide the coal Illinois Power needs will be served by the merged company. By reducing the number of rail carriers for the initial portion of the move from two-to-one, competition is destroyed. As a result, the newly formed company will have no incentive to offer rates as low as those that have been obtained under present conditions.

Because of the adverse effects of the merger as currently proposed, it should not be approved. Illinois Power contends that, if it is approved, the merger should be conditioned on steps

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3. (...continued)
haul shippers so that BN/SF would have the ability to offer competitive backhaul rates to Illinois Power.

that will ensure the continuation of competition for Western coal movements to Illinois Power's plants. Illinois Power contends that any number of possibilities exist for appropriate conditions, including:

1. BN/SF could be granted trackage rights to appropriate Western mines currently served directly by UP and/or SP that have coal capable of being used at Illinois Power's two plants. If this option is chosen, however, BN/SF would also need a trackage rights fee (for the entire BN/SF movement that would be substituting for the SP current moves) that permitted BN/SF to offer competitive prices. The trackage rights and related fee would have to cover not only BN/SF coal movements to Illinois Power's plants or appropriate interchange points, but also any movements to Geneva Steel or other shippers involved in backhaul traffic.

2. Another carrier could be granted ownership of necessary lines in the Central Corridor or trackage rights from the appropriate mines to the current SP destinations. As in option 1 above, the sale price or trackage rights fee needs to be set at an amount that permits the new carrier to offer truly competitive prices. Any new carrier would also require access to a suitable backhaul shipper in the West.

3. The Applicants could provide Illinois Power with an option (exercisable at Illinois Power's sole discretion) to have coal move at current backhaul rates (adjusted by a suitable index and with the same service provisions) for 2000-20 (the approximate end of the useful live of each of the two plants at issue).

Any of the above conditions should be sufficient to ensure that Illinois Power does not suffer from the loss of competition threatened by the proposed merger.[4] Rather than seeking only one option at this time, Illinois Power believes that the Board is better served by having several options and the chance to choose the one that best comports with the other conditions it imposes.

The conditions presented above meet the test set forth in Finance Docket No. 32549, *Burlington N. Inc. & Burlington N. R.R. -- Control & Merger -- Santa Fe Pac. Corp. & The Atchison, T. & S.F. Ry.*, slip op. at 55-56, 93 (served August 23, 1995): (1) the consolidation will produce effects harmful to the public interest due to a significant reduction of competition in an affected market; (2) the conditions Illinois Power has proposed will ameliorate or eliminate these harmful effects; (3) there is no sound basis to believe that the conditions Illinois Power has proposed will not be operationally feasible; and (4) by reducing or eliminating the threatened harm, the conditions Illinois Power has pro-

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4. Other conditions might also be sufficient. For example, it was reported recently that NITL would be seeking conditions relating to the region of concern to Illinois Power. *See, e.g.*, The Wall Street Journal (at p. A2, 03/21/96), *Shippers Signal Trouble for Rail Merger*. In general, to the extent the comments and requests for conditions are not inconsistent with those presented by Illinois Power herein, Illinois Power supports and incorporates by reference the comments and requests for conditions of NITL, the Western Shippers Coalition and any party raising issues related to the issues raised by Illinois Power herein. Illinois Power has not yet had the opportunity to study the filings made by others and therefore, depending on the exact contours of the conditions requested by NITL and others in this proceeding, Illinois Power reserves the right to comment on the appropriateness of those conditions to remedy the concerns raised by Illinois Power.

posed will produce a net public benefit (especially since there is no sound basis to believe that the conditions will cause any reduction in the public benefits produced by the merger).

CONCLUSION

As currently proposed, Illinois Power opposes the merger by the Applicants. As discussed above, however, Illinois Power requests that, if the merger is approved, appropriate conditions be imposed such that the competition Illinois Power currently enjoys is not destroyed.

Respectfully submitted,

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Of Counsel

VERIFICATION

I, Stephen E. Smith, a Fuel Specialist for Illinois Power Company, have reviewed the foregoing Verified Comments and declare under penalty of perjury that, as to factual matters contained therein, the foregoing is true and correct. Further, I certify that I am qualified and authorized to file these Comments.

Executed on March 28, 1996

Stephen E. Smith

Stephen E. Smith

CERTIFICATE OF SERVICE

I certify that this 29th day of March 1996 that I have caused to be served a copy of the foregoing Verified Comments and Request for Imposition of Additional Conditions (ILP-6) on the following persons via hand-delivery:

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Washington, D.C. 20044

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

Erika Z. Jones
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A following persons were served via Federal Express overnight delivery:

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Ft. Worth, TX 76102-5384

Cannon Y. Harvey
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A copy of the foregoing submission was also sent this day by first class mail to all parties of record.

Michelle J. Morris

Michelle J. Morris

March 29, 1996

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Item No. 41

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ER & LOFTUS

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March 29, 1996

BY HAND DELIVERY

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

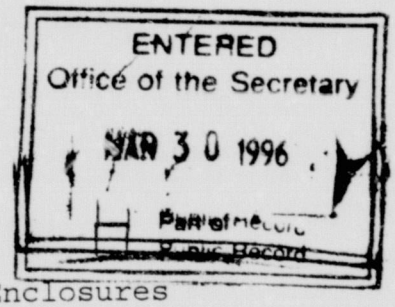
Re: Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.

Dear Mr. Secretary:

Enclosed for filing in the above-referenced proceeding please find an original and twenty (20) copies of the Comments of Public Service Company of Colorado **(PSC-3)**. In accordance with prior orders in this proceeding, we have also enclosed a Wordperfect 5.1 diskette containing these Comments.

We have also enclosed an extra copy of this document. Kindly indicate receipt and filing by time-stamping this copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.



Sincerely,

Christopher A. Mills

An Attorney for Public Service Company of Colorado

Enclosures

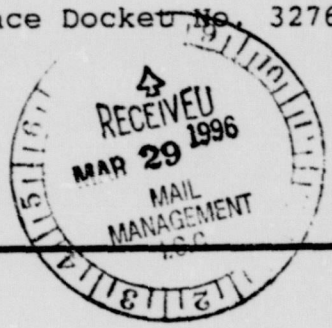
cc: Arvid E. Roach II, Esq.
Paul A. Cunningham, Esq.
The Honorable Jerome Nelson

Original

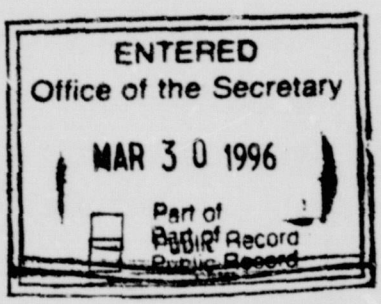
PSC-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

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



COMMENTS OF
PUBLIC SERVICE COMPANY OF COLORADO



PUBLIC SERVICE COMPANY OF COLORADO

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Dated: March 29, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

COMMENTS OF
PUBLIC SERVICE COMPANY OF COLORADO

Public Service Company of Colorado ("PSCo"), by and through its undersigned counsel, hereby comments on the Railroad Merger Application filed by Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCL Corp., and The Denver and Rio Grande Western Railroad Company (collectively, "Applicants"),[1] which application seeks the Board's

[1] The Union Pacific Railroad is referred to herein as "UP" and the Southern Pacific/Denver & Ric Grande Western Railroads are referred to herein as "SP".

approval and authorization under 49 U.S.C. §§ 11343-11347[2] to merge UP and SP into a single railroad system.

IDENTITY AND INTEREST

PSCo served a Notice of Intent to Participate in this proceeding (PSC-1) on January 16, 1996. PSCo is an operating public utility company located in Denver, Colorado. PSCo's principal business is the generation, purchase, transmission, distribution and sale of electricity. It is the largest supplier of electric power in the state of Colorado. Its service territory encompasses the entire state, and includes 1,100,000 electric customers. PSCo depends almost entirely on coal to meet its generation needs, and operates seven coal-fired power plants in Colorado. Three of these plants (the Cherokee, Arapahoe and Valmont Generating Stations), all located in the Denver area, presently burn about 3.1 million tons per year of SP-originated coal produced in the western-Colorado portion of the Uinta Basin.

SUMMARY OF POSITION

While PSCo has a keen interest in the proposed UP/SP merger, but it is concerned about the possible effects of the merger on source competition for the future supply of coal to PSCo's three coal-fired power plants in the Denver area (the "Denver area plants"). These plants presently burn SP-originated

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[2] References are to provisions of the Interstate Commerce Act prior to their amendment by the ICC Termination Act of 1995.

Uinta Basin coal produced in western Colorado, but they can also burn Powder River Basin ("PRB") coal. When PSCo's current supply and rail transportation contracts for Colorado coal expire, PSCo will consider other sourcing options including coal from the southern PRB in Wyoming that can be originated by UP or Burlington Northern/Santa Fe ("BNSF").

Competitive rail service presently exists between SP and UP (as well as BNSF) for the movement of coal from western Colorado and from the PRB. This competition could be reduced as a result of the merger because SP would no longer be an independent carrier with an incentive to market Uinta Basin coal (which is the only coal it originates) aggressively. The combined UP/SP may well discontinue the current aggressive pricing of service from Colorado origins in order to increase business for its more profitable PRB service. If this were to happen, PSCo would lose many of the benefits of source competition between the two coal regions.

In addition, the UP/SP merger may well result in deterioration in the quality of rail service PSCo receives for the movement of western Colorado coal to its Denver area plants. This coal moves over SP's Moffat Tunnel line between Orestod and Denver, Colorado, and this already-busy line would see a doubling in the number of daily train movements as a result of the merger. The Moffat Tunnel line appears to lack the capacity to handle this increased traffic volume, and its capacity cannot be in-

creased significantly due to physical constraints in the very mountainous area traversed by this line.

If the Board decides to approve the merger notwithstanding its possible effects on source competition for Colorado and PRB coal, it should consider conditioning its grant of merger authority upon either divestiture of SP's lines necessary to transport western Colorado coal to the Denver/Pueblo area to an independent rail carrier,[3] or a grant of trackage rights over these lines to an independent carrier. Such a condition would serve the sole function of maintaining existing competitive options for the rail transportation of Colorado coal.

If the Board is not inclined to consider a divestiture or trackage rights condition, it should consider alternative conditions designed to ensure that Colorado coal shippers such as PSCo do not suffer deterioration in the level of service provided by SP as a result of the merger. PSCo suggests two such conditions for the Board's consideration, either of which would help to preserve the present level of rail service for the transportation of Colorado coal to PSCo's Denver area plants.

One possible service condition would require UP/SP to maintain service on SP's "Tennessee Pass" line between Dotsero and Pueblo, Colorado. An alternative condition would permit

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[3] These lines include SP's lines between Grand Junction and Denver via Dotsero, between Dotsero and Pueblo, between Denver and Pueblo, and its branch lines between Orestod and Craig and between Grand Junction and Montrose/Oliver. All of these lines and points are shown on Map #2 in Volume 2 of the merger application in this proceeding.

UP/SP to discontinue service on (but not physically abandon) the Tennessee Pass line for a period of three years after the merger is consummated. This condition would provide Colorado coal shippers such as PSCo the opportunity to determine whether, during such three-year period, UP/SP is able to provide the level of service (in terms of average round-trip train cycle times) that SP provided in 1995 with respect to their Colorado coal tonnage. If it cannot, the Board could then take steps necessary to enable UP/SP to achieve the 1995 level of service (such as possible restoration of service over the Tennessee Pass line).

In order to apprise the Board of the relevant facts that give rise to PSCo's concerns as summarized above, PSCo presents the accompanying Verified Statement of Charles R. Bomberger, its Manager, Production Services, who is familiar with the fuel supply and related transportation arrangements for PSCo's coal-fired power plants.

PUBLIC INTEREST CONSIDERATIONS

The merger application in this proceeding was filed with the Interstate Commerce Commission ("ICC") on November 30, 1995, before enactment of the ICC Termination Act of 1995.[4] Section 204(b)(1) of the Termination Act provides that proceedings such as this one that were pending before the ICC on the effective date of the Termination Act are to be decided under the

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[4] Pub. L. No. 104-88, 109 Stat. 803 ("Termination Act"). The Termination Act was enacted on December 29, 1995, and took effect on January 1, 1996.

prior law. Accordingly, in considering whether to grant the merger application, the Board must apply the railroad merger and consolidation provisions of the former Interstate Commerce Act, 49 U.S.C. §§ 11343-11347.

I. MERGERS MUST BE CONSISTENT WITH THE PUBLIC INTEREST.

The essential consideration in evaluating the merits of a railroad merger application under the Interstate Commerce Act is whether the proposed merger is in the public interest.[5] In determining whether a merger is consistent with the public interest, the Board is also required to consider "whether the transaction would have an adverse effect on competition among rail carriers in the affected region." See 49 U.S.C. § 11344(b)(1)(E).

The ICC's (now the Board's) regulations codifying its Railroad Consolidation Procedures, 363 I.C.C. 784 (1981), set forth a balancing test to be used in evaluating whether a proposed merger is in the public interest:

> In determining whether a transaction is in the public interest, the [Board] performs a balancing test. It weighs the potential benefits to applicants and the public against the potential harm to the public. The [Board] will consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation that would result in less potential harm to the public.

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[5] "The Commission shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest." 49 U.S.C. § 11344(c).

See 49 C.F.R. § 1180.1(c)(1). The regulations identify a reduction in competition as one form of this "harm to the public" that the Board must balance against any supposed public benefit (49 C.F.R. § 1180.1(c)(2)(i)), and they also emphasize the importance of competition:

> Furthermore, the [Board] does not favor consolidations that substantially reduce the transport alternatives available to shippers unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a less anticompetitive fashion. Our analysis of the competitive impacts of a consolidation is especially critical in light of the congressionally mandated commitment to give railroads greater freedom to price without regulatory interference.

49 C.F.R. § 1180.1(a).

This pro-competitive theme is echoed in the fifteen elements of the National Rail Transportation Policy ("NRTP"), which influences the Board's determination under Section 11344.[6] Inter alia, the NRTP directs the Board "to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;" and "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense." 49 U.S.C. § 10101a(1), (4).

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[6] See Finance Docket No. 32133, Union Pacific Corp., Union Pacific R.R. Co. and Missouri Pacific R.R. Co. -- Control -- Chicago and North Western Railway Co., Decided February 21, 1995, at 53-54, citing Norfolk Southern Corp. - Control - Norfolk & W. Ry. Co., 366 I.C.C. 171, 190 (1982).

These standards were reaffirmed in the ICC's recent BNSF merger decision, which was its last merger decision before the Termination Act was enacted. See Finance Docket No. 32549, Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Decision served August 23, 1995 ("BN/Santa Fe"), at 50-54.

Even if the Board determines that the overall effect of a proposed merger is in the public interest, the Board still has broad authority to condition the merger in order to maximize its public interest benefits. See Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 459, 562-64 (1992), aff'd sub. nom. Southern Pacific Transp. Co. v. I.C.C., 736 F. 2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985) ("UP/MP/WP"); Santa Fe Southern Pacific Corp. -- Consolidation -- Southern Pacific Transp. Co., 2 I.C.C.2d 709, 807-08 (1986); see also 49 U.S.C. § 11344(c).

The criteria for imposing conditions on a proposed merger were described as follows in the recent BN/Santa Fe decision:

> [W]e will not impose conditions unless we find that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), and that the conditions will ameliorate or eliminate the harmful effects, will be operationally feasible, and will produce public benefits (through reduction or elimination of the possible harm) outweighing any reduction to the public benefits produced by the merger.

BN/Santa Fe at 55-56, citing UP/MP/WP, 366 I.C.C. at 562-565.

by both UP and BNSF, and can accommodate 70 cars at a time. (Bomberger at 4-5.)

The coal for the Denver area plants is supplied by various western Colorado producers under supply contracts that give PSCo the right to burn the coal at any one of the three plants. At present, PSCo has two "base" supply contracts with producers served by SP's Craig and Montrose/Oliver branch lines. These contracts together commit PSCo to the purchase of 2.3 to 2.7 million tons of coal annually. They expire on December 31, 1997 and December 31, 2000. The remainder of the coal requirements for the Denver area plants, amounting to 400,000 to 800,000 tons per year, are purchased from other Colorado producers on the spot market. (Bomberger at 5-6.)

This coal is transported to the Denver area by SP, over its main line through the Moffat Tunnel, under separate rail transportation contracts for each of the three plants. The contracts covering the Arapahoe and Valmont movements both expire on December 31, 1996, and the contract covering the Cherokee movement expires on December 31, 1997. The Cherokee and Arapahoe contracts are with SP alone; in the case of Arapahoe, BN provides switch delivery service and SP absorbs a portion of its destination switching charge, billing PSCo for the balance. Both SP and BN are parties to the Valmont contract since SP originates the coal and BNSF terminates it. (Bomberger at 6-8.)

PSCO's Denver area plants were designed to burn a variety of coals, and as the foregoing discussion indicates, PSCo

having capacity and service problems on this line, and it has experienced difficulty delivering Colorado coal to the Denver area plants in a timely manner in accordance with normal schedules. (Bomberger at 13-14.)

Presently, nine trains move over the Moffat Tunnel line between Bond (Orestod) and Denver each day. UP/SP's Operating Plan forecasts that, after the merger, this volume will increase to twelve trains per day -- partially as a result of the proposed abandonment of most of SP's "Tennessee Pass" line between Dotsero and Pueblo, Colorado.[8] In addition, BNSF will operate six more trains per day over the Moffat Tunnel line as a result of the "Central Corridor" trackage rights it will obtain under it September 25, 1995 Settlement Agreement with UP/SP.[9] Thus, the merger will result in a doubling of the number of daily train movements over the Moffat Tunnel line -- from nine to eighteen. This huge increase in the volume of traffic moving over the same route used by PSCo's Colorado coal trains is of considerable concern to PSCo because it could well result in less dependable SP service.

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[8] See the Operating Plan included in Volume 3 of the merger application. The 1994 (base year) and post-merger daily UP/SP train frequencies for the line segment between Denver and Bond (Orestod) are shown on page 384 of Volume 3.

[9] See the Verified Statement of Neal D. Owen included in BNSF's December 29, 1995 Comments on the Primary Application. The Settlement Agreement grants BNSF overhead trackage rights between Denver and northern California. BNSF's expected operations over these trackage rights (which include SP's Denver-Orestod-Dotsero-Grand Junction line) are described on pages 6-9 of Mr. Owen's Verified Statement.

IV. IF THE MERGER IS APPROVED, THE BOARD SHOULD CONSIDER CONDITIONS TO PROTECT PSCO AND OTHER COLORADO COAL SHIPPERS FROM POTENTIAL EFFECTS.

As indicated above, if the Board determines that, on balance, the overall effect of the proposed UP/SP merger is in the public interest, it still has broad authority to specify conditions to maximize the public interest benefits. The conditions suggested by PSCo are designed (1) to preserve source competition for future coal supplies for its Denver area plants, and (2) to reduce the deterioration of service for the movement of Colorado coal to these plants that may otherwise occur as a result of the merger.

Thus, these conditions are appropriate for consideration under the Board's enunciated standard for requiring such remedial measures. BN/Santa Fe, supra, at 55-56 (citing UP/MP/-WP, 366 I.C.C. at 562-65.) Their imposition would produce public benefits by mitigating the merger's effects on PSCo and similarly-situated coal shippers, and they are operationally feasible.

The Board's public interest analysis should be conducted "in light of the longstanding congressional policy favoring railroad mergers that increase efficiency and quality of service." Lamoille Valley R.R. Co. v. I.C.C., 711 F. 2d 295, 301 (D.C. Cir. 1983) (emphasis added). The divestiture/trackage rights condition suggested by PSCo, and involving most of the former DRGW lines in Colorado, is particularly appropriate under this standard. If this condition is imposed, vigorous source competition will be preserved and the service inefficiencies

described above may not occur. In the absence of such a condition, rather than increasing efficiency and quality of service for Colorado coal shippers, the proposed UP/SP merger may accomplish just the opposite. In short, a divestiture/trackage rights condition would ensure that aggressive pricing, healthy competition, and adequate rail service remain available to Colorado coal shippers such as PSCo.

PSCo suggests that if such a divestiture or trackage rights condition is implemented, the involved lines should be sold (or the trackage rights should be granted) to a carrier other than BNSF, because for many of the same reasons that apply to UP, BNSF could not be relied upon to promote the movement of SP-origin coals.

If the Board believes that a divestiture or trackage rights condition is inappropriate, then PSCo suggests for the Board's consideration an alternative condition, designed to reduce the likelihood that Colorado coal shippers such as PSCo will see a deterioration of service with respect to the transportation of coal from western Colorado origins as a result of the merger. Such a condition could take two forms, either of which would accomplish the intended result of helping to preserve adequate rail service for Colorado coal shippers. First, the Board should consider prohibiting UP/SP from abandoning or discontinuing service on any portion of the Tennessee Pass line -- which today is SP's primary route for eastbound coal movements to the Midwest -- and requiring UP/SP to maintain that line as an

alternative route for coal or other traffic. This line (in conjunction with SP's Pueblo-Denver line) would give UP/SP an alternate route from western Colorado to Denver when congestion occurs on the Moffat Tunnel line.

An alternative service condition would permit UP to discontinue service (but not abandon or remove the track) on the Tennessee Pass line for a period of three years after consummation of the merger. If UP is unable during this period to maintain the level of service (measured by average round-trip coal train cycle times) that SP provided in 1995, the Board could then require UP to take appropriate steps to enable it to achieve the 1995 level of service -- such as restoration of coal service over the Tennessee Pass line.

V. CONCLUSION.

For the reasons set forth in these Comments, PSCo commends for the Board's consideration the conditions described above. Overall public-interest considerations may well lead the Board to approve the proposed UP/SP merger. If so, however, protective conditions addressing PSCo's concerns may be warranted to ensure that the public-interest benefits of the merger are not dissipated by a loss of source competition for Colorado coal shippers or by a diminution of the level of service necessary to ensure an adequate supply of low-cost fuel for the benefit of Colorado's electric ratepayers. PSCo therefore respectfully requests the Board to give serious consideration to the conditions it has suggested, and to select the condition that, in its

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

VERIFIED STATEMENT OF
CHARLES R. BOMBERGER

I. Introduction

My name is Charles R. Bomberger and my business address is P.O. Box 840, Denver, Colorado 80201-0840. I am the Manager, Production Services for Public Service Company of Colorado ("PSCo"), and am authorized to provide this Statement for and on behalf of PSCo.

I joined PSCo in 1986 as a member of our Nuclear Licensing Department. After spending several years at this and other positions within the organization, I was promoted to my current position of Manager, Production Services in 1992. In this capacity, I have supervisory responsibility for all of our direct production service units, which consist of the Applied Sciences Group, the Fuel & Water Group, the Maintenance Services Group, the Performance Engineering Group, the Production Group,

and the Budget and Analysis Group. For present purposes, however, my most relevant duties include primary supervision of all aspects of PSCo's coal procurement and coal transportation. Consequently, I am familiar with PSCo's coal source options, transportation arrangements, and utilization plans.

The purpose of my statement is to describe PSCo to the Board, to offer an explanation of our current and expected rail transportation service needs, and to explain our interest in the effects that the proposed merger between Union Pacific ("UP") and Southern Pacific ("SP") may have upon our ability to obtain competitively priced rail transportation in the future. Specifically, I will explain how approval of the subject merger application may have potential adverse effects on the beneficial competition that has been provided to PSCo in the past by SP's independent marketing of coal transportation service from Colorado origins. I will also outline our concern over possible increases in congestion problems on SP's east-west line through the Moffat Tunnel that the merger may cause. On the basis of these concerns, PSCo is keenly interested in the subject merger application. In the event that the Board determines that it should approve the application, PSCo requests that it consider the relevant facts and possible remedies such as protective conditions that would ameliorate its possible effects on Colorado coal shippers.

II. The Public Service Company of Colorado System

Denver-based PSCo is an operating public utility company engaged principally in the generation, purchase, transmission, distribution and sale of electricity, and in the purchase, distribution, sale, and transportation of natural gas. With respect to the electric side of our business, PSCo is the largest supplier of power in Colorado, both in terms of total power supplied, and in terms of total customers. Our service territory spans the length and breadth of the state and includes some 1,100,000 electric customers. PSCo depends almost entirely upon coal to meet its generation needs; coal fuels a full 98% of our generation, with the remaining 2% fueled by hydro- and gas-fired generation. In terms of nameplate ratings, PSCo utilizes 2,712 MW of coal-burning steam units, 175 MW of gas combustion turbines, 40 MW of conventional hydro power, and 300 MW of hydro pumped storage capacity.

PSCo owns (or co-owns) and operates seven coal-fired, electric generating facilities.[1] Of these facilities, two are minemouth plants (Cameo and Hayden Stations, located near Grand Junction and Steamboat Springs, CO, respectively), two burn Powder River Basin ("PRB") coal (Pawnee and Comanche, located near Brush and Pueblo, CO, respectively), and three are located in the general vicinity of Denver (Cherokee, Arapahoe, and

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[1] PSCo is the exclusive owner of six of these stations, and owns the seventh (the Hayden Station) in conjunction with two other parties: PSCo (53.1%); PacifiCorp (17.5%); Salt River Project (29.4%).

Valmont) and burn SP-originated Colorado coal. For purposes of PSCo's Comments on the subject merger application, the three Denver-area plants are of principal relevance.

A. Cherokee

The Cherokee Generating Station ("Cherokee"), which is located just north of Denver, is PSCo's single largest plant. Cherokee's four coal burning units -- totalling 723 MW -- were built between 1957 and 1968. Cherokee's newest generating unit possesses one of the most favorable heat rates on the entire PSCo system. Cherokee has the ability to receive full unit coal trains in excess of one hundred cars. It burns approximately 2.0 million tons of SP-originated Colorado coal annually, and is captive to SP at destination for rail transportation.

B. Arapahoe

PSCo's Arapahoe Generating Station ("Arapahoe") lies south of Denver on the west side of the South Platte River. Although, like Cherokee, Arapahoe has four generating units, this plant is relatively small, with only 242 MW of total generating capacity. It burns approximately 500,000 tons of Colorado coal annually. Arapahoe is also somewhat older than Cherokee and consequently suffers from slightly less advantageous efficiency ratings. Arapahoe is served only by Burlington Northern/Santa Fe ("BNSF"), although it is located within the Denver switching limits. Arapahoe lacks sufficient space to accommodate full unit trains, and is only able to receive some seventy cars at a time.

BNSF, however, faces an even greater size constraint and is only able to move thirty-five cars at a time to Arapahoe.

C. Valmont

The third and final Denver-area plant owned by PSCo is the Valmont Generating Station ("Valmont"), located northwest of Denver near Boulder, Colorado. Valmont has a single generating unit, capable of producing 178 MW of power. While UP and BNSF can each serve the plant, Valmont can only accommodate trains up to seventy cars in length. Valmont burns approximately 600,000 tons of Colorado coal annually.[2]

III. Coal Supply and Transportation

A. Coal Supply

PSCo currently purchases western-Colorado coal for our three Denver-area plants on an f.o.b. mine basis through combined coal supply agreements. In other words, under each of our coal supply agreements, we have the right to burn the subject coal at any one of the three Denver-area plants. At the present time, PSCo is a party to two such coal supply agreements, one for the purchase of coal from Cyprus Amax's Twenty-Mile Mine in Routt County, CO (near Craig), and the other for the purchase of coal from Arco's West Elk Mine in Gunnison County, CO (near Oliver). Both of these mines are served exclusively by SP, and they supply

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[2] Collectively, the Cherokee, Arapahoe, and Valmont Stations burn about 3.1 million tons of SP-originated Colorado coal annually.

between 2.3 and 2.7 million tons of coal per year to PSCo's Denver area plants. In addition, PSCo purchases approximately 500,000 to 800,000 tons per year of coal on the spot market for use at these three plants.

Our agreement with Cyprus Amax for the Twenty-Mile coal will expire on December 31, 1997. Our agreement with Arco for the West Elk coal will expire on December 31, 2000.

B. Coal Transportation

Unlike our coal supply arrangements, PSCo obtains transportation service for coal to each of the three Denver-area units under separate rail transportation contracts with SP. Each one of these three SP contracts permits PSCo to tender coal to SP at a variety of western-Colorado origins. Under these agreements, SP transports coal east to the Denver area via SP's Moffat Tunnel line, first to SP's switching yard north of Denver, and then to each plant. The rates under the Cherokee contracts apply to movements in private (PSCo-supplied) railcars, while the rates under the Arapahoe and Valmont contracts apply to movements in railroad-supplied cars. PSCo presently owns and/or leases a fleet of 260 open-top, rotary dump gondola railcars which are utilized in the service to Cherokee.

PSCo's current contract for SP's transportation of coal to the Cherokee Station will expire on December 31, 1997. This agreement provides for single-line SP transportation service from origin to destination, and establishes a pricing structure that varies with the total volume that we transport. In other words,

SP charges lower rates for transporting greater volumes on an annualized basis.

Significantly, since this contract's inception, SP has aggregated all of the volumes of coal that it moves to Denver for us under our three separate contracts (i.e. the volumes moving to Cherokee, Arapahoe, or Valmont) to determine our rate to Cherokee. This practice, of course, yields a more favorable rate for our Cherokee service. Within the past six weeks, however, SP provided bids to us for service after the expiration of our current contracts. In these bids, SP indicated that it will not aggregate our Denver volumes, but instead, would charge us the rate applicable to only the Cherokee-specific tonnage volume. This approach would significantly increase our rate for the transportation of SP-originated coal to our largest Denver area plant, and as a result we are extremely concerned by this development.

Our rail transportation contracts to transport coal to Arapahoe and Valmont will each expire on December 31, 1996. Although Arapahoe is directly served only by BNSF, it is located within the Denver switching limits; accordingly, we do not have a separate contract with BNSF for the completion of this movement. Instead, SP delivers our Arapahoe traffic to BNSF at Denver, and absorbs a portion of the applicable BNSF switching charges. SP lists the balance of the switching charges as a separate item on our bills. Our present contract for transportation to Valmont, however, combines both SP (as originating carrier) and BNSF (as

terminating carrier) in a through rate, so no separate switching charges are implicated.

IV. Potential Future Sources of Coal

As we are approaching the end of our current coal supply and coal transportation agreements for the Denver area plants, we have begun to evaluate potential future sources of supply. In contracting for our future coal and transportation needs, we will certainly consider the economics of all feasible coal supply and transportation options available for these plants. One significant step in our preliminary evaluations was our recent test burn of PRB coal.

In November of 1995, we tested about 20,000 tons of coal from Arco's Black Thunder Mine in the PRB for approximately two weeks at our Arapahoe Station. This station, like our Cherokee and Valmont Stations, was originally "overdesigned" to allow us to burn a broad range of coal types. On the basis of our test burn, which I was responsible for overseeing and evaluating, PSCo reached an initial conclusion that PRB coal provides a viable competitive option for our future baseload needs. In order to allow us to confirm our initial conclusion, however, PSCo will conduct three additional test burns of PRB coal later this year. These tests will involve several hundred thousand tons of coal at Arapahoe, and 20,000 to 30,000 tons each at Cherokee and Valmont.

For the Board's information, BNSF provided the transportation of our 1995 test burn coal from Black Thunder Mine to

the Arapahoe Station. While we invited UP to bid on the movement, it declined to do so.

Any discussion of future coal supply must necessarily also consider the potential rail transportation options available to move such coal. As I previously stated, the Cherokee Station is captive to SP at destination. Consequently, we presently have the ability to originate coal out of the PRB on either BNSF or UP, to use either carrier to transport such coal to Denver, and then to interchange such coal with SP for delivery to the plant. Our Arapahoe Station, on the other hand, is served by BNSF at destination and therefore can receive coal from the PRB via either BNSF in single-line service, or via UP (with BNSF providing a destination switch for the final segment of the movement). Finally, our Valmont Station can receive PRB coal on either BNSF or UP via Denver.

V. Post-Merger Rail Service to the Denver Area Plants

Acquisition of SP by UP could significantly impact PSCo in two important respects. First, it would consolidate two of the three entities providing origination rail service out of PRB and Colorado coal origins. Second, we are concerned that a UP/SP merger could increase congestion which may degrade the quality of service on SP's east-west line through the Moffat Tunnel under the Continental Divide.

A. Consolidation of Coal Originating Carriers

Over the past two years, we have observed SP endeavor to market its Colorado-origin coal service in an aggressive and customer-oriented fashion to a variety of different customers. For example, in the summer of 1994, SP implemented its Geneva Steel "backhaul" service to allow it to compete with UP and BNSF to serve midwestern coal shippers. Of course, given the market pressures upon SP, this result should be expected. Specifically, with its coal origination service limited to Colorado (and eastern Utah) origins, SP has made every effort possible to satisfy its coal customers and encourage potential customers to contract for the use and transportation of Colorado coal.

Consistent with these motivations, and as I have already noted, SP has made significant negotiating concessions to secure PSCo's business. In particular, SP has offered innovative and favorable treatment to PSCo: (i) by aggregating volumes delivered to our three Denver-area plants to yield a lower rate for service to our main Cherokee plant; (ii) by combining movements of partial unit trains to Arapahoe and Valmont for pricing and delivery purposes; (iii) by allowing us to tender coal for delivery from a broad range of different Colorado origins; and (iv) by agreeing to reasonable limits on the escalation of its contract rates for coal deliveries. In our view, these aggressive marketing efforts have reflected a strong SP desire to maintain PSCo's transportation business.

nevertheless concerned that SP has made the initial moves away from its previous aggressive marketing strategies. As SP and UP approach approval of their merger application, we are concerned about their continued actions to reflect the pro-shipper competitive benefits that they claim the merger will produce. Finally, we also expect that if UP and SP favor the PRB, economies of scale for shippers of Colorado coal may disappear and those shippers that seek to reach new contracts to burn Colorado coal will face greater revenue demands from the mines.

B. Potential Congestion on SP's Moffat Tunnel Route

At the present time, all of our Colorado coal moves over SP's east-west line between Orestod (Bond), CO and Denver through the Moffat Tunnel. Given the high volume of traffic currently moving on this single-track line, however, congestion and associated service problems are becoming a more significant problem. Specifically, we have seen coal moving to Denver that is scheduled to arrive at 7:00 a.m. routinely arrive at 2:00 p.m., 3:00 p.m., or even 4:00 p.m. In fact, we have observed that SP deliveries are erratic, with approximately half of our SP traffic arriving late. While a delay of several hours may not seem significant, such delays can cause us to fall an entire day behind our own schedule, and can therefore prove to be costly.

I understand that a total of nine trains in both directions currently move over this line each day. I further understand that the Applicants have requested authorization to abandon most of SP's line from Dotsero, CO to Pueblo over the

VERIFICATION

STATE OF COLORADO)
) ss:
COUNTY OF Denver)

Charles R. Bomberger, being duly sworn, deposes and says that he has read the foregoing Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

Charles R. Bomberger
Charles R. Bomberger

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

Virginia R. Trujillo
Notary Public

My Commission expires 11/9/97.

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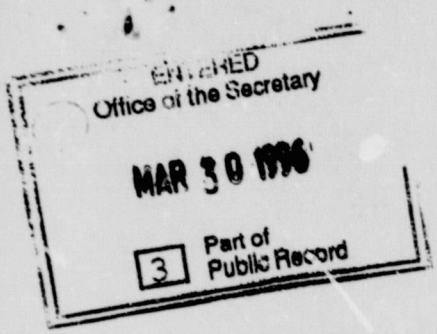

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

COMMENTS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS REQUESTING CONDITIONS ON ANY APPROVAL OF THE MERGER APPLICATION

The International Brotherhood of Teamsters ("IBT"),[1/] by its undersigned attorneys, files these comments pursuant to the procedural schedule adopted by the Interstate Commerce Commission in Decision No. 6 in this Docket. As set forth more fully below, the IBT respectfully requests: (1) that any merger approval be conditioned on the divestiture by the railroads of their motor carrier subsidiaries; (2) that the employees of Union Pacific Motor Freight receive New York Dock labor protection; and (3) that any merger approval be conditioned by requiring that rail carriers file periodic reports regarding post-merger

1/ The identity and interest of the IBT are set forth in the Petition By The International Brotherhood of Teamsters to Reopen Decision No. 3 With Respect to Waiver of Inclusion of Wholly Owned Motor Carriers as Applicants ("IBT-2") (September 25, 1995). In addition to the employee representations there described, IBT represents 346 employees of Union Pacific Motor Freight.

diversion of truck cargoes to rail, including traffic volumes and revenue/cost ratios for diverted traffic.

I. DIVESTITURE OF MOTOR CARRIER SUBSIDIARIES

As part of the proposed merger, three motor carriers -- Overnite Transportation Company ("Overnite"), Pacific Motor Transport Company ("PMT"), and Southern Pacific Motor Trucking Company ("SPMT") would come under the common control of the merged railroads.[2/] Under 49 U.S.C. §§ 11343-44, the transactions resulting in the common control of SP and Overnite, and UP and PMT and SPMT, respectively, must receive prior approval of the Board unless an exemption from such approval is granted by the Board. Applicants have applied for such an exemption, see Application, Vol. 5 at 114. In a separate pleading (IBT-13) also filed on this date, IBT has stated its opposition to Applicants' Petition for Exemption. As discussed in detail in IBT's Opposition, the Petition for Exemption fails to meet the statutory requirements under 49 U.S.C. § 10505, and

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2/ IBT notes that Applicants have not sought approval of or exemption from review of the common control of Union Pacific Motor Freight ("UPMF"), a company that is indirectly controlled by UPC. See Application, Vol. 1 at 59, 63. IBT understands this omission to mean that Applicants consider UPMF to be a railroad company rather than a motor carrier company, thus entitling UPMF employees to mandatory labor protective provisions under 49 U.S.C. § 11347 as discussed infra. If Applicants do consider UPMF to be a motor carrier subsidiary, then the merger cannot be approved until approval of the acquisition of control of UPMF is either granted or exempted. Neither action has been requested by Applicants.

must be denied. In order for these motor carrier acquisitions by the merging railroads to go forward, therefore, they must meet the statutory requirements for such transactions. For the reasons stated below, however, these transactions cannot meet the mandatory requirements of 49 U.S.C. § 11344(c),[3/] and the Applicants must divest themselves of ownership of those motor carrier subsidiaries if the merger is to be approved.

49 U.S.C. § 11344(c) sets forth explicit findings that the Board must make before approving a transaction involving a motor carrier and a rail carrier. Unless those findings are made, any such transaction is prohibited. The relevant portion of section 11344(c) states:

> When a rail carrier, or a person controlled by or affiliated with a rail carrier, is an applicant and the transaction involves a motor carrier, the Commission may approve and authorize the transaction only if it finds that the transaction is consistent with the public interest, will enable the rail carrier to use motor carrier transportation to public advantage in its operations, and will not unreasonably restrain competition. (emphasis added)

3/ Section 204(b)(1) of the ICC Termination Act of 1995, P.L. 104-88, provides in relevant part:

> The provisions of this Act shall not affect any proceedings or any application for any license pending before the Interstate Commerce Commission at the time this Act takes effect. . . . Orders shall be issued in such proceedings . . . as if this Act had not been enacted. . . .

P.L. 104-88 became effective on January 1, 1996. The Application was filed on November 30, 1995, and the law as it existed prior to January 1, 1996, therefore applies to this proceeding.

It is the second finding required by this section -- that the transaction will enable the rail carrier to use motor carrier transportation to public advantage in its operations -- that is of particular interest here. That finding, like the other two set forth by the fourth sentence of section 11344(c), is mandatory; the Board can approve the transaction only upon making the required finding.

The interpretation of the second required finding has varied over the years as a result of varying Commission policies, court decisions, and Congressional action. The current meaning, however, is the same as that originally endorsed by the Commission; namely, in order for the Board to approve the acquisition of a motor carrier by a railroad, the Board must find, inter alia, that the rail carrier will use the services of the acquired motor carrier in furtherance of the rail carrier's rail operations. International Brotherhood of Teamsters v. I.C.C. (hereinafter "IBT v. ICC"), 801 F.2d 1423 (D.C. Cir.1986), petitions for review denied, 818 F.2d 87 (D.C. Cir.1987). Traditionally, the Commission has held that this means that a rail carrier may acquire a motor carrier only if the service of the motor carrier, absent "special circumstances," will be "auxiliary to or supplemental of, train service." Rock Island M Transit Co. -- Purchase -- White Line M. Frt., 40 M.C.C. 457, 473 (1946).

The court in IBT v. ICC, supra, did acknowledge that the Commission retained some discretion to modify its application of the "special circumstances" doctrine, id. at 1431, but clearly stated that the statute requires that "rail-acquired motor carriers 'act in coordination with train service'. . . ." Id. at 1430. However the Board may choose to apply the discretion described by the IBT v. ICC court, it is clear in this case that Applicants cannot meet the statutory requirement. This is so because Applicants have stated unequivocally that the motor carrier subsidiaries for which approval is required will operate "entirely independently" of the rail carriers. With respect to both Overnite and PMT, Applicants state that "Petitioners have no plans to eliminate that independence or otherwise incorporate [Overnite or PMT] into their operations." Application, Vol. 5, at 115, 116. By Applicants' own admission, therefore, the railroads will not use the acquired motor carriers "in coordination with train service," IBT v. ICC, 801 F.2d at 1430, and the transactions thus cannot satisfy the second part of the section 11344(c) test.

Because it is impossible for Applicants to satisfy the requirements of the fourth sentence of 49 U.S.C. § 11344(c), the merger cannot be approved as proposed. The alternatives available to the Board are to disapprove the Application or to order the Applicants to divest themselves of ownership of

Overnite, PMT and SPMT[4/] prior to the effective date of any merger approval.

II. LABOR PROTECTIVE PROVISIONS FOR UNION PACIFIC MOTOR FREIGHT EMPLOYEES

49 U.S.C. 11347 provides in relevant part:

> When a rail carrier is involved in a transaction for which approval is sought under sections 11344 and 11345 or section 11346 of this title, the Interstate Commerce Commission [now the Board] shall require the carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under this section before February 5, 1976, and the terms established under sections 24307(c), 24312, and 24706(c) of this title.

Under recent Commission practice, the minimum labor protective provisions required under this section are those enunciated in New York Dock Ry., 360 I.C.C. 60 (1979), aff'd sub nom., New York Dock Ry. v. United States, 609 F.2d 83 (2nd Cir. 1979). IBT submits that the employees of Union Pacific Motor Freight ("UPMF") are "rail employees" for the purposes of section 11347 and are therefore entitled under that section to New York Dock protections.[5/] Cosby v. Interstate Commerce Commission, 741

4/ Inasmuch as SPMT currently has no operations, it would appear that there is an alternative to divestiture of that company. The alternative would be the imposition of a condition on the approval of the acquisition of SPMT by UP requiring that any future SPMT operations be auxiliary to rail operations.

5/ IBT represents 346 UPMF employees, approximately 300 of whom are active, working members.

F.2d 1077 (8th Cir. 1984), cert. denied, 471 U.S. 1110 (1985);[6] contra, Rives v. Interstate Commerce Commission, 934 F.2d 1171 (10th Cir. 1991), cert. denied, 118 L.Ed.2d 207 (1992).[7] Accordingly, IBT requests that the Board impose such protections as a condition of any merger approval. As discussed in footnote 2, supra, Applicants appear to agree that UPMF employees are "rail employees" for the purposes of section 11347, and are therefore entitled to mandatory protections.[8]

In the event that the Board determines that UPMF employees are not entitled to mandatory labor protective provisions under 49 U.S.C. § 11347, IBT requests in the

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6/ Kansas City Southern Indus. Inc. v. Interstate Commerce Commission, 902 F.2d 423 (5th Cir. 1990), is not to the contrary inasmuch as the court there only considered the applicability of section 11347 to motor carriers that offered services that were not restricted to support of rail services.

7/ As the cited cases indicate, there is a split in the federal judicial circuits with respect to the proper application of 49 U.S.C. § 11347 as it pertains to specialized railroad workers that are nominally employed by a company that itself may not be a "rail carrier" for regulatory purposes under the statute. IBT contends that the analysis of the Cosby court, based on the nature of the work done by the employees in question, is the correct analysis. To hold otherwise is to invite companies to structure their operations so as to avoid the requirements of section 11347 by segregating all possible rail workers into companies that are not recognized or regulated as "rail carriers" as that term is defined at 49 U.S.C. § 10102.

8/ In this regard, the argument for imposing labor protective provisions for the benefit of UPMF employees is even more compelling here than it was under the facts of Cosby, supra. Whereas in Cosby the Court mandated protections based solely on the nature of the work performed by the employees, here it appears that, for the purposes of section 11347, UPMF may in fact fall within the "structural" approach accepted by the Rives court since Applicants do not appear to consider UPMF a motor carrier.

alternative that the Board impose New York Dock protections as an exercise of the Board's discretionary power under 49 U.S.C. § 11344(c).[9/]

As is discussed in more detail in the Verified Statement of Mr. Paul Boldin of the IBT (attached hereto as Exhibit 1), the employees of Union Pacific Motor Freight ("UPMF") are engaged almost exclusively in supporting rail operations within rail yards. The tasks performed by these employees fall into three basic categories: (1) ramp drivers ("hostlers") and groundmen who move trailers and containers within rail yards and assist with such movements; (2) crane operators who load and unload containers from trains; and (3) mechanics who repair trailers and other UP equipment. Whereas some employees were previously involved in traditional over-the-road haulage and local cartage, these functions have been almost entirely taken over by non-UPMF drivers hired by the railroads on a contract basis. The tasks performed by UPMF employees, therefore, are almost exclusively restricted to services that directly support rail services.

The jobs currently performed by UPMF employees are unique to the rail industry. Unlike over-the-road truck drivers working in support of rail operations, these UPMF employees possess skills that are not generally marketable outside of the

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9/ 49 U.S.C. § 11344(c) provides that "[t]he Commission may impose conditions governing the transaction."

railroad industry. If the merger results in job loss for these workers, therefore, their prospects for alternative employment are not good, and they will experience significant financial hardship as a result.

Just what the effects of the merger on the UPMF employees will be is unclear. The IBT has attempted through discovery to determine how the merger will affect these workers, but has met with little success. Interrogatory No. 62 propounded by IBT to Applicants (IBT-5 at 19) asked:

> Have the Applicants undertaken any study or analysis of what, if any, changes in the work performed by UPMF or SIMB will occur as a result of the merger? If so, identify all such studies and analyses and any documents relating to such studies or analyses.

Applicants' response (UP/SP-68 at 37) stated:

> Subject to the General Objections stated above, Applicants respond as follows: No.

IBT Interrogatory 64 (IBT-5 at 19) asked:

> Will any of the employees identified in the response to Interrogatory No. 63[10/] be dismissed or relocated as a result of the merger? If so, describe each such dismissal or relocation.

Applicants responded as follows (UP/SP-68 at 38):

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

10/ IBT Interrogatory No. 63 stated: "Describe the work done by UPMF and SIMB at each location at which they operate. State the number of employees and their positions at each location." Applicants responded as follows: "Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence."

> No employees are identified in response to Interrogatory No. 63. Applicants do not anticipate that any employees of UPMF or SIMB will be adversely affected by the UP/SP merger. (emphasis added)

Applicants' responses to IBT's interrogatories are curious in that Applicants state without qualification that they do not anticipate any adverse impacts on UPMF employees from the merger, yet they also state that they have done no analyses or studies to determine what those impacts might be. Applicants are essentially asking the UPMF workers to take Applicants' word that they will not lose their livelihoods as a result of the merger. That, the IBT respectfully submits, is not good enough.

Based on their interrogatory responses, Applicants are apparently not inclined to take any steps to actually investigate the possible impact of the merger on UPMF employees, although they are willing to state that there will be no such impacts. Given this level of confidence on the part of Applicants, they should have no objection to the imposition of labor protective provisions for UPMF workers. Such protections will only impact Applicants if it turns out that their sworn responses to the IBT's interrogatories are incorrect. Furthermore, placing that risk (which Applicants appear to believe is small) on Applicants is eminently fair in light of the fact that Applicants have essentially assured UPMF employees that the merger will not

affect them, but have provided UPMF employees with no information upon which to evaluate the accuracy of that assurance.[11/]

III. THE IBT REQUESTS THAT THE BOARD CONDITION ANY APPROVAL OF THE MERGER ON A REQUIREMENT THAT APPLICANTS FILE PERIODIC REPORTS DISCLOSING THE VOLUME OF AND REVENUES DERIVED FROM CARGOES DIVERTED FROM TRUCK CARRIAGE

Applicants have acknowledged in the Application that consummation of the merger will result in the diversion of significant volumes of cargo from over-the-road truck carriage to rail carriage. The IBT submits that because these diversions of cargo may be obtained in part by non-compensatory pricing, and will in any case result in significant job losses in the motor carrier industry, they present the potential for harm to the public interest. IBT therefore respectfully requests that any approval of the merger be conditioned on a requirement that Applicants file semi-annual reports with the Board identifying the volume of and rate of return information related to cargoes diverted from truck to rail.

11/ Although Applicants have claimed that there will be no impacts on UPMF employees, there are indications in the Operating Plan (Application, Vol. 3 at 103-398) that the proposed merger would negatively affect certain UPMF employees. At the following locations, for example, the Operating Plan describes yard consolidations and closings that could eliminate UPMF jobs (page references are to Vol. 3 of the Application): (1) Stockton, California (pp. 163-164); (2) Oakland, California (p.166); (3) Kansas City, Mo. (pp. 179-180); (4) Marshall, Texas (pp. 195-196); and (5) Avondale, Louisiana (pp. 213-214).

49 U.S.C. § 11344(c) provides that "[t]he Commission shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest." In interpreting its duty to consider the public interest, the Commission has stated that "[t]here are two potential results from consolidations that would ill serve the public -- reduction of competition and harm to essential services." 49 C.F.R. § 1180.1(c)(2). In addition, 49 U.S.C. § 10101a provides in part that "[I]n regulating the railroad industry it is the policy of the United States Government --

> (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;
>
> * * *
>
> (10) to encourage honest and efficient management of railroads and, in particular, the elimination of noncompensatory rates for rail transportation;. . . . " (emphasis added)

Applying these legal standards to the record in this proceeding, it is clear that there is a potential here for damage to effective competition and the viability of motor carrier transportation through cargo diversion driven by non-compensatory rail rates. In addition, the cumulative economic effects of the loss of thousands of truck driver jobs will be detrimental to the public interest.

Applicants submitted as part of their Application two Verified Statements dealing with the diversion of certain over-the-road truck traffic to rail carriage as a result of the

merger. One statement was provided by Donald P. Ainsworth of Reebie Associates ("Reebie"), Application, Vol. 1, pp. 433-463; the other was submitted by Paul O. Roberts of Transmode Consultants ("Transmode"), Application, Vol. 1, pp. 465-485. Using different methodologies, Reebie and Transmode calculated separate estimates of truck-to-rail diversion that the merger would cause. Through a process of informal discussion, Reebie and Transmode then adjusted their conclusions to arrive at a "consensus" estimate that is set forth as Appendix A to Mr. Ainsworth's Verified Statement.

The conclusion of the consensus statement is that the merger will result in daily diversions of 496 truckloads of freight from truck to rail in the traffic lanes studied. Reebie also provided calculations of expected freight revenue gains by the railroads as a result of diversions. Reebie's total revenue estimate for the traffic that was the subject of its study was $158 million.[12/] These diversion and revenue estimates are considered by the Applicants to be "conservative." See, e.g., Application, Vol. 1 at 439. In addition to these estimates for diversion of certain types of freight, Mr. Richard Peterson of UP submitted a Verified Statement, Application, Vol. 2, pp. 1-369,

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12/ This figure does not include revenues from the diversions predicted by Mr. Peterson and discussed infra. Because the cargo that Mr. Peterson considered includes a large percentage of temperature-controlled traffic, it can be expected that the rates and revenues associated therewith will be higher on average than the "dry van" cargoes studied by Reebie Associates.

in which he identified additional significant truck-to-rail traffic diversions for certain commodities omitted from the Reebie and Transmode studies. Mr. Peterson stated that $65 million in revenue would be diverted from truck carriage for certain commodities, see Application, Vol. 2 at 291. Additional truck revenue of $8.4 million would be diverted with respect to traffic between Portland and Seattle. Application, Vol. 2 at 270 (erratum).

In his Verified Statement, Mr. Boldin describes how the truck diversion figures supplied by Applicants have been used to calculate an estimate of how many truck driver jobs will be eliminated because of truck diversions resulting from the merger. The final result of that calculation is that approximately 5,000 jobs will be lost as a result of truck diversions. This is a conservative estimate of job loss because the underlying diversion numbers supplied by the Applicants are, by Applicants' own admission, themselves conservative. Five thousand lost jobs translates into lost driver compensation of approximately $250 million. The total effect on the economy derived from the application of a commonly recognized multiplier is on the order of $475 million. Boldin Verified Statement at 8.

Mr. Boldin also discusses a discrepancy between the testimony of Applicants' consultants and current industry practice with regard to railroad pricing policy for intermodal transportation. Specifically, Applicants' diversion estimates

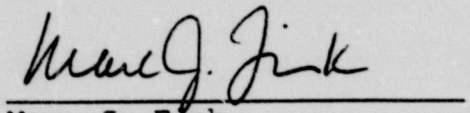
are based on an assumption that diverted cargo will be profitable. However, at least one of Applicants' experts testified that railroads today move some intermodal cargo at less than compensatory rates. See Boldin Verified Statement at 4-5. If that current railroad practice of moving cargo at non-compensatory rates is applied to new cargo diverted from truck carriage, two detrimental results will follow.

First, the level of cargo diversion will be substantially greater than that predicted by Applicants, with corresponding increases in job and wage loss. Second, and perhaps more important in terms of the applicable legal standards, the merged railroads will be using their combined resources and marketing power to divert cargo from motor carriers at rates that the motor carriers cannot possibly meet on a long-term basis. By diverting truck traffic through the offering of below-market rail rates, the merged railroads could force motor carrier rates to marginal or non-compensatory levels as well. Given the highly competitive nature of the motor carrier industry, this could well lead to motor carrier failures and resulting loss of service to shippers. Such a situation would constitute both types of harm to the public interest identified at 49 C.F.R. § 1180.1 -- reduction of competition and harm to essential services. These results are neither in the public interest nor consistent with the railroad policies set forth at 49 U.S.C. § 10101a.

Although the practice of below-cost railroad pricing is, by Applicants' own admission, a reality in some markets today, the IBT recognizes that future railroad practices may, as Applicants claim, be more in keeping with the tenets of fair competition. In keeping with that recognition, the IBT does not here request that the merger be disapproved on the basis of potential market power abuse in those markets where the railroads compete with over-the-road carriers. Instead, in order that the Board, affected carriers, and the public may monitor the competitive impacts of the largest railroad merger in United States history on the rail and motor carrier industries and on services to shippers, the IBT requests that the Board condition any merger approval by requiring that the merged railroad file semi-annual, public reports indicating the volume of traffic diverted from truck carriage, and the rate of return (ratio of revenue to fixed costs) for such cargo. The reported information should be segregated at least to the level of the five "traffic corridors" adopted by Reebie Associates and Transmode Consultants in their analyses so that averaging of data cannot be used to

mask unfair competition in a given market.

Respectfully submitted,



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Attorneys for
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

March 29, 1996

EXHIBIT 1

VERIFIED STATEMENT OF

PAUL BOLDIN

VERIFIED STATEMENT OF PAUL BOLDIN

My name is Paul Boldin. I am the Director of Research for the International Brotherhood of Teamsters ("IBT"). I have held that position since 1994. I received a Ph.D. in economics from the University of Wisconsin in 1985. As Director of Research for IBT, my duties include coordination and execution of studies and analyses of transportation and labor issues affecting the membership of IBT. As a result of my ten years of experience in the transportation labor field, I am familiar with commonly employed techniques for analyzing the labor, competitive, and traffic distribution impacts of structural changes in the transportation industry, such as railroad and railroad/motor carrier mergers.

In coordinating the IBT's factual analysis of the proposed Union Pacific ("UP")/Southern Pacific ("SP") merger and related transactions, I have studied two primary issues: (1) the scope and probable effects of the truck-to-rail diversions projected by Applicants to result from the merger; and (2) the nature of the work performed by IBT members employed by Union Pacific Motor Freight ("UPMF"). My conclusions regarding these issues are set forth below, along with the bases for those conclusions.

I. Truck to Rail Diversion and Non-Compensatory Rail Rates

Applicants have submitted as part of their Application two Verified Statements dealing with the diversion of certain over-the-road truck traffic to rail intermodal carriage as a result of the merger. One statement was provided by Mr. Donald P. Ainsworth of Reebie Associates ("Reebie"), Application, Vol. 1, pp. 433-463; the other was submitted by Mr. Paul O. Roberts of Transmode Consultants ("Transmode"), Application, Vol. 1, pp. 465-485. Reebie and Transmode used different approaches to predict for five "traffic corridors" how much of certain types of non-refrigerated truck traffic would be diverted to rail intermodal carriage as a result of the merger. Although the two studies resulted in predictions of different levels of diversion, Reebie and Transmode agreed to a "consensus" estimate that is set forth as Appendix A to Mr. Ainsworth's Verified Statement. The conclusion of the consensus statement is that the merger will result in daily diversions of 496 truckloads of freight from truck to rail in the traffic lanes studied. This estimate is considered by the Applicants to be "conservative." See, e.g., Application, Vol. 1 at 439. In addition to these estimates for diversion of certain classes of freight, Mr. Richard Peterson of UP submitted a Verified Statement, Application, Vol. 2, pp. 1-369, in which he identified significant additional truck-to-rail traffic diversions for certain commodities (including perishable

fruits and vegetables) omitted from the Reebie and Transmode studies.

I have reviewed the methodology and conclusions of the diversion predictions made by Messrs. Ainsworth, Roberts, and Peterson. For the reasons discussed below, it is clear that those predictions are indeed "conservative," as Applicants have acknowledged.[1/] Because the Reebie and Transmode predictions are based on computer models that are not available for review, it has not been possible for me to attempt to re-create their results in order to test their accuracy. Based on the descriptions of their methodology in their verified statements, however, I have identified several points that reinforce the conclusion that the predictions underestimate the amount of probable diversion.

A basic limitation of the Reebie study is that it analyzed only "dry van" cargo, thus limiting from the outset the size of the sample that it considered. That this limitation resulted in lower diversion predictions is confirmed by Mr. Roberts' testimony. Application, Vol. 1 at 478-479. In addition, it is not at all clear from the testimony that the TRANSEARCH database used by Reebie or the NATS database used by

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1/ It is also interesting to note that the diversion estimates here presented, although not expressed as a percentage of the total market, are significantly lower than the truck diversions predicted by Mr. Roberts in the Burlington Northern/Santa Fe merger. See Verified Statement of Paul O. Roberts, Finance Docket No. 32549 (predicting diversion of 34% of the traffic studied).

Transmode provides a truly representative sample of the traffic moving in the lanes studied. Since neither data source purports to reflect all truck moves, it follows that the traffic sample analyzed represents something less than the actual volume of traffic moving. This limitation must also logically be reflected in lowered diversion estimates.

In addition to sample size, there are other assumptions built into the Reebie and Transmode models that tend to lower the diversion estimates. In the Reebie model, for example, it is assumed that there will be no diversion if the revenue from the diverted cargo does not cover at least the variable cost of the move. Ainsworth Deposition Transcript at 119. At the same time, however, Mr. Ainsworth acknowledged that some existing intermodal rail cargo does not pay its way. Application, Vol. 1 at 436; Ainsworth Deposition Transcript at 117-118. Curiously, therefore, the predictions exclude the possibility of diversion of certain cargo because of its failure to produce sufficient revenue, while at the same time railroads are in fact carrying some intermodal cargoes at less than compensatory rates. The revenue assumptions in Applicants' studies therefore appear to be at odds with current industry practice, and may result in significant under-counting of diversions.

In addition, and perhaps more significantly, these facts demonstrate that Applicants' stated future pricing policies for intermodal traffic and their current pricing policies are

inconsistent. The fact that the current policy includes pricing at non-compensatory rates in some cases raises a concern that the merged railroad could use its size and marketing power to engage in unfair competition against motor carriers.

Another example of an assumption that may have lowered Reebie's and Transmode's diversion estimates is the exclusion from the consensus statement of any market pairs in which the origin and destination points are less than 500 miles apart. Ainsworth Deposition Transcript at 155-156; Application, Vol. 1 at 470. Based on Applicants' Document No. N04 100004 (Exhibit 3 to Ainsworth Deposition Transcript), there is more intermodal traffic in each of the 200 and 400-mile ranges than there is in any mileage block between 1300 and 1800 miles. Given the existence of this volume of intermodal traffic at distances less than 500 miles, the exclusion of that traffic from the final consensus statement clearly under-estimates the full diversion impact of the merger. In addition to excluding moves below a certain distance, the consensus statement also curiously fails to analyze diversions of cargo moving to or from such major distribution centers as Denver, Colorado, and Salt Lake City, Utah. It is impossible to determine what effect the exclusion of these, and perhaps other major market centers, may have had on the diversion analysis results.

With respect to the diversions predicted by Mr. Peterson, his deposition testimony makes clear that his

predictions are based not on a scientific analysis of the existing market and how that market may be affected by the merger, but rather on a "back of the envelope" type of analysis based on his experience and that of members of the SP marketing team. Peterson Deposition Transcript at 1097-1098. In light of this, it appears that Mr. Peterson's estimates, which represent expected truck diversions in addition to those predicted by Messrs. Ainsworth and Roberts, are also conservative. Mr. Peterson confirmed this view in his deposition testimony at page 1087. Again, because there is no means by which to determine the relationship of the sample considered to the entire market, it is impossible to determine how much additional, unpredicted diversion will occur.

For all of the above reasons, I have concluded that the truck diversion estimates presented by Applicants represent the least amount of truck-to-rail diversion that will occur as a result of the merger.

The Applicants' analysis of the truck diversion issue ends, as noted above, with an estimate of the number of loads that will be diverted from truck to rail in certain traffic lanes. In order to understand more fully the economic implications of those diversions, I arranged to have Applicants' diversion estimates correlated to the number of truck driver jobs that would be lost as a result of the diversions. I also took

the further step of calculating the amount of lost compensation represented by that job loss.

In order to capture all diversions predicted by Applicants' witnesses, we added to the consensus figures (i) the diversions predicted by Mr. Peterson and (ii) additional diversions predicted by Mr. Roberts for market pairs that were not finally included in the consensus statement. Next, we multiplied the daily number of diversions for each market pair[2/] by the mileage distance between the origin and destination poin in that pair to arrive at the total number of daily truck miles represented by the estimated diversions. We then converted the daily miles to annual miles for each lane.

Finally, we divided the total number of annual diverted truck miles for each lane by the number of average driver miles per year. This calculation resulted in the number of full-time driver jobs that would be lost for each market pair. Adding these market pair figures resulted in a total of approximately

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2/ Because Mr. Peterson's analysis was not conducted on a market pair basis, we used an average length of haul of 1,200 miles for the perishable commodities originating in California that made up the bulk of his predicted diversions. Similarly, because some of Mr. Peterson's diversion figures are stated in rail carloads rather than truckloads, see Application, Vol. 2 at 291, carloads were converted to truckloads to conform to the data in the other two studies. The conversion ratio was 3.15 truckloads per carload. This ratio is the mean of the ratio stated by Mr. Peterson (2.5) and an independent calculation of 3.3, which in turn was based on American Association of Railroads data on carload average tonnages (64.4 tons per car) and an average truckload weight of 17 tons as stated by Mr. Ainsworth at p. 451 of Vol. 1 of the Application.

5,000 lost driver jobs. Multiplying that figure by average yearly compensation of $50,000 per full-time driver results in a loss of driver income of $250 million dollars per year.[3/]

The $250 million annual loss of driver compensation is, of course, based on the conservative estimates of diversion presented by Applicants. If, as appears almost certain, actual diversions are greater, the resulting job loss and salary loss will increase accordingly. In addition, it should be kept in mind that wage income is generally recognized to provide multiplicative benefits as those wage dollars are spent in the economy. By the same token, lost wages have negative economic impacts beyond the value of the wages lost. A commonly recognized wage multiplier posits that for every dollar spent, 1.9 dollars of economic activity is generated. Thus, even using the conservative estimate of $250 million in lost driver compensation, the actual loss to the economy from merger-related diversions will be in the neighborhood of $475 million.

In my opinion as a transportation economist, the magnitude of this impact strongly indicates that railroad diversion of truck cargoes should be monitored to ensure that such diversion is not the result of unfair pricing practices and

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3/ The $50,000 compensation figure is the median of the average compensation levels for truckload drivers and those for higher paid less-than-truckload ("LTL") and parcel service drivers. The median was used because, measured either by total revenue or by total employees, the ratio of truckload traffic to combined LTL and parcel traffic is approximately 50/50.

does not threaten the ability of the motor carrier industry to provide high quality service to shippers. Such monitoring is particularly appropriate in light of the fact that none of the diversion estimates calculated by Applicants' consultants (for any transaction) has ever been compared to what actually happened following the transaction. Ainsworth Deposition Transcript at 74-75; Roberts Deposition Transcript at 118. This merger, if approved, therefore provides an excellent opportunity to gather information that would be useful not only in monitoring the effects of this transaction, but also in evaluating the possible effects of future transactions. We suggest that the Applicants therefore be required to report to the Board on a semi-annual basis the volume of cargo diverted from truck to rail, and the ratio of revenues derived therefrom to the cost of providing rail carriage for those cargoes.

II. Union Pacific Motor Freight Employees

I have been asked as part of my review of the labor effects of the Application to describe the nature of the work performed by the employees of Union Pacific Motor Freight ("UPMF").

As of the date of this statement, the IBT represents 346 UPMF employees, approximately 300 of whom are active members. This number has declined by approximately 50 workers in the past year because of UP's practice of contracting local cartage work

out to non-UPMF vendors. As a result of this contracting-out, the remaining UPMF jobs are confined almost exclusively to work within the rail yards.

Member UPMF workers' job classifications fall into three basic categories: (1) ramp drivers ("hostlers") and groundmen who load and unload, move, guide, and secure containers and trailers within the rail yard; (2) crane operators who load and unload containers and trailers; and (3) mechanics who maintain UP equipment. Virtually all of the work is performed in the rail yards in direct support of UP's rail service. Unlike general over-the-road haulage, the work here described is quite specialized, and the skills of these workers are not generally transferable to applications outside of the rail yard. Because of the specialized nature of this railroad work, it would be difficult for any UPMF workers who lost their jobs to find comparable employment elsewhere.

That the UPMF employees' work consists of providing rail services and is controlled directly by the railroad is further demonstrated by the following provisions from a representative UPMF/IBT Local Agreement:

> 5.2 Starting Times
>
> * * *
>
> Moreover, the starting times shall remain constant during any given work week unless it is known by the employer one and one-half (1-1/2) hours before a start time that a train will be late. The Employer shall be allowed to have two (2) floating start times. . . . These start times shall be

> utilized by the Employer . . . in order to meet the train schedules. (emphasis added)

As this contract provision demonstrates, work is scheduled around the train schedules because the work performed is entirely in support of rail transportation functions.

VERIFICATION

City of Washington)
District of Columbia) ss.

I, Paul Boldin, having been duly sworn, state that I have read the foregoing statement and know its contents, and that it is true to the best of my knowledge, information, and belief.

Paul Boldin

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

Notary Public

My Commission Expires: May 31, 1998

Item No. _____

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ORIGINAL

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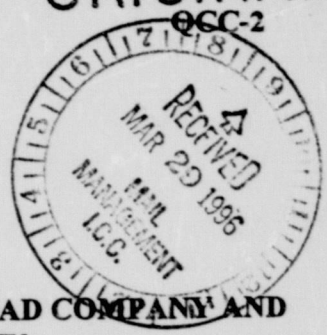
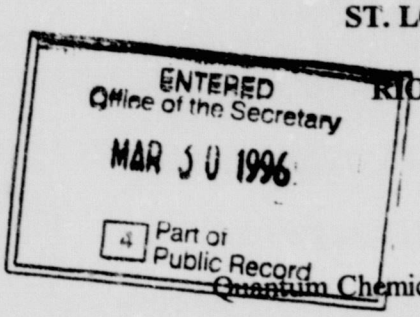


BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY
— Control and Merger — SOUTHERN PACIFIC CORPORATION, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY



COMMENTS OF
QUANTUM CHEMICAL CORPORATION

Quantum Chemical Corporation ("Quantum") wishes to submit its comments on the subject proceeding which is pending before the Surface Transportation Board ("the Board"). In particular, Quantum wishes to raise four issues which it believes merit consideration by the Board in this proceeding and to propose four conditions upon approval of the merger.

As a preface to its comments, Quantum would like to give the Board some background information in order to establish the context within which Quantum views the proposed merger. Quantum is a manufacturer of polyolefin resins and petrochemicals. [1] While a pound of its products may be transported by several modes of transportation in the distribution chain from point of manufacture to customer, by and large the chief transportation mode by which Quantum's products are shipped is by covered hopper rail car and rail tank car. Quantum makes approximately 20,000 rail car shipments of its products annually, moving 3.7 billion pounds of

[1] Quantum is the largest domestic producer of polyethylene resin, industrial ethyl alcohol and di-ethyl ether and the second leading domestic producer of vinyl acetate monomer and acetic acid.

products out of six major manufacturing and four minor manufacturing facilities in six states and into six regional distribution centers in six states.[2]

Within Quantum's industry, transportation is the second largest cost after feedstocks. The competitiveness of polyethylene resins with other materials is affected, generally, by the cost of transportation and, specifically, by the cost of bulk rail transportation. Unreasonable rail transportation rates which cannot be passed along to customers (and ultimately to consumers) impact the slim profit margins which polyethylene resin manufacturers average over an economic cycle. Alternate modes of transportation to rail are neither viable nor cost-effective. [3]In addition, Quantum's ability to be competitive within the polyethylene resin and petrochemical industry is affected by its ability to obtain competitive rates for transportation, especially rail transportation. Changes in the rail transportation network which impact only upon Quantum put it at a competitive disadvantage within its industry.

Included in a supplemental application filing by the applicant[4] is a letter from Quantum. In this letter Quantum states that it does not oppose the merger of the Union Pacific and the Southern Pacific because of the benefits in improved service and capital investment which will

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[2] Quantum's major manufacturing facilities are located at LaPorte, Texas; Chocolate Bayou, Texas; Port Arthur, Texas; Morris, Illinois; Tuscola, Illinois and Clinton, Iowa. Its minor manufacturing facilities are located at Heath, Ohio; Fairport Harbor, Ohio; Crockett, Texas; Anaheim, California and Newark, New Jersey. Its regional distribution centers are located at Atlanta, Georgia; Baytown, Texas; San Bernadino, California; Gary, Illinois and Findern; New Jersey.

[3] Competing mode of transportation are not viable or cost effective alternatives to rail because of the large volumes of product which are produced and shipped in bulk each year, the high unit volume which can be shipped in each rail car and the extensive infrastructure investments in bulk rail transportation within the polyethylene resin industry.

[4] UP/SP-36.

result. Yet, Quantum remains very concerned about the effects which the proposed merger will have upon source competition for rail transportation services and upon the rates for freight originating from points where the number of rail carrier competitors will be reduced. Quantum is particularly concerned about the effects the merger will have in the Gulf coast region of Texas where it has large manufacturing and distribution locations. Quantum believes that the agreement between the Union Pacific and the Burlington Northern Santa Fe ("UP/BNSF Agreement"), which has been proffered as a remedy to any diminution of competition which the merger may produce, is not sufficient, in and of itself, to assure the current level of competitiveness amongst rail carriers. Neither is the UP/BNSF Agreement solely adequate to prevent unreasonable rates from being charged by the remaining rail carriers.

Quantum has identified four issues which it believes merits the Board's consideration in this proceeding. The first issue is the loss of new competitive opportunities should the merger be approved as proposed by the applicants. Quantum's Chocolate Bayou, Texas facility is solely served by, or captive on, the Union Pacific. Prior to the announcement of the merger, Quantum was in discussion with the Southern Pacific regarding the construction of a rail line from Galveston, Texas to Chocolate Bayou which would serve Quantum's Chocolate Bayou manufacturing facility, as well as manufacturing facilities for Amoco Chemicals in Chocolate Bayou and Dow Chemical in Freeport, Texas. These discussions had progressed to a high level in both the Quantum and Southern Pacific organizations. After the merger was announced the Southern Pacific stopped further discussion regarding the build-in project at Chocolate Bayou. Quantum was left with the impression that this project would be abandoned under a merged

Union Pacific and Southern Pacific. Quantum (as well as the other shippers which would have been served by the new rail line) will lose this opportunity for direct competition in originating freight between the Union Pacific and another class I rail carrier if the merger is approved as proposed. Quantum is not aware of any other rail carrier which could undertake construction of the alternative rail access to Chocolate Bayou. Nor is Quantum aware of any rail carrier which would be interested in undertaking such a project after the merger is approved.[5]

The second issue is the loss of competitive opportunities between existing originating points. Quantum presently has a manufacturing facility at Chocolate Bayou, Texas, which is captive on the Union Pacific, and a manufacturing facility at Williams, Texas, which is captive on the Southern Pacific. Both facilities have the ability to produce similar polyethylene products. By leveraging its ability to swing production capacity for these similar products between the two manufacturing facilities Quantum is able to take advantage of the current competition between the Union Pacific and the Southern Pacific for originating freight traffic. Quantum will lose this competitive opportunity should the merger be approved as proposed, since both Chocolate Bayou and Williams will be captive on the merged Union Pacific/Southern Pacific. Quantum will no longer be able to utilize geographic leverage to obtain competitive rail rates for these origin points.

The third issue is the loss of competition at industries served by the Southern Pacific via Econorail at Baytown, Texas. It is unclear whether or not Seapac will be covered by the BN/SF

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[5] While the Burlington Northern/Santa Fe is a logical candidate to pick up this project, public statements to date indicate that the Burlington Northern/Santa Fe sees exercise of its trackage rights under the UP/BNSF Agreement as a cost-effective alternative to the construction of new rail lines.

Agreement. [6]Quantum presently uses Seapac for regional distribution and has the present ability to ship to and from this distribution center either by the Union Pacific or the Southern Pacific. [7]If Econorail is not covered by the UP/BNSF Agreement, the trackage serving East Baytown and Econorail will become duplicative in the merged Union Pacific/Southern Pacific system. More importantly, only one class I rail carrier will serve Seapac either via Baytown or via East Baytown. Quantum will lose a competitive alternate rail carrier into and from its regional distribution center. In short, Quantum's distribution center at Seapac will become captive on the merged Union Pacific/Southern Pacific. Quantum believes that captivity on the merged Union Pacific/Southern Pacific at Seapac will ultimately lead to unreasonable rail rates as a result of the lack of competition from another class I rail carrier, like the present captivity on the Union Pacific at Chocolate Bayou.

The fourth issue is maintenance of three class I competitors at Strang, Texas. The proposed merger will continue an erosion of class I competitors into and from Strang which began within the past year. Prior to the Burlington Northern/Santa Fe merger, four class I railroads competed for freight from and into Strang. [8]Amongst these four competitors, Quantum's experience was that the Union Pacific generally had the highest rate, followed by the Burlington

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[6] Seapac is a commercial warehouse captive on the Union Pacific at Baytown. It is served indirectly by the Southern Pacific via Econorail. Econorail is the former U.S. Steel rail yard currently utilized for rail car storage. It is captive on the Southern Pacific at East Baytown, Texas.

[7] In order to ship by the Southern Pacific, Quantum must first switch cars to Econorail, where they are interchanged with the Southern Pacific at the East Baytown, Texas station. Econorail has switching access to Seapac.

[8] The class I carriers competing at Strang were the Burlington Northern, the Atchison Topeka and Santa Fe ("Santa Fe"), the Southern Pacific and the Union Pacific.

Northern, then the Santa Fe and the Southern Pacific, which generally had the most competitive rates, for shipments between the same origin and destination points. Subsequent to the merger of the Burlington Northern and the Santa Fe, the number of class I competitors at Strang has been reduced from four to three. After that merger Quantum noticed that rates for the Burlington Northern/Santa Fe tended to migrate upwards. Under the proposed merger, competition will be further reduced from three to two class I competitors. Quantum fears that such further erosion of competition at Strang will again result in rates tending to rise to the higher level of the two former competitors. In addition, the rates at Strang for the two remaining competitors[9] will be the two highest rates compared to when there where four competitors at Strang. This further reduction in competition can only result in unreasonable rates and create a competitive disadvantage for Quantum's largest manufacturing facility.

Quantum believes that the issues which it has raised for the Board's consideration can be adequately addressed by the imposition of certain conditions to the Board's approval of the merger. Without such conditions, Quantum believes that any advantages in service created by the merger will be more than off-set by the disadvantages of increased freight costs resulting from the diminution of competition among rail carriers, especially in the Gulf Coast of Texas. In today's highly competitive markets, good rail service is a luxury which can be turned into a marketing advantage and bad rail service is a logistics problem which must be managed. On the other hand, unreasonable rail transportation cost due to a lack of competition comes out of the "bottom line"

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[9] After the proposed merger the two class I rail carriers at Strang will be the Burlington Northern/Santa Fe and the Union Pacific/Southern Pacific.

and must either be offset by finding reductions in other costs or be absorbed as diminished earnings.

Quantum respectfully suggests that the Board consider imposing the following conditions upon the proposed merger in order to maintain the present level of competition amongst class I rail carriers and to prevent unreasonable rates for rail transportation due to a lack of source competition, especially within the Gulf Coast of Texas.

First, Chocolate Bayou, Texas must be opened to access for originating shipments by a competing class I rail carrier, such as the Burlington Northern/Santa Fe or the Illinois Central, in order to compensate for the build-in opportunity which will be lost with the merger. In the alternative, the UP/BNSF Agreement should be modified to allow the Burlington Northern/Santa Fe trackage rights to originate shipments from Chocolate Bayou, Texas. The Board's attention is directed to the fact that under the UP/BNSF Agreement the Burlington Northern/Santa Fe is granted access rights to Mt. Belvieu, Texas[10] as consideration for the loss of a Union Pacific build-in opportunity to serve Exxon, Chevron and Amoco.[11]

Second, Williams, Texas must be opened to access for originating shipments by competing class I rail carriers, such as the Illinois Central or the Burlington Northern/Santa Fe, in

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[10] Mt. Belvieu is presently solely served by the Southern Pacific and no competing class I carrier has had such access rights in the past.

[11] All three industries/shippers benefiting from the rights granted at Mt. Belvieu under the UP/BNSF Agreement are Quantum's direct competitors.

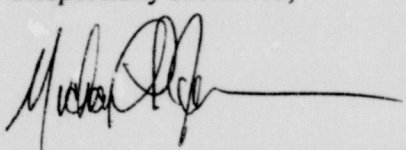
order to compensate for the loss of competition due to geographic leveraging between the Union Pacific at Chocolate Bayou and the Southern Pacific at Williams.

Third, industries in Baytown, Texas, specifically Seapac, must be opened to access for originating shipments by another class I carrier. In the alternative, the UP/BNSF Agreement must be clarified with respect to granting access rights to the Burlington Northern/Santa Fe for service to Seapac and Econorail.

Finally, access must be granted to a class I rail carrier, such as the Illinois Central , at Strang, Texas in order to preserve the present level of competition by three class I railroads.

Quantum believes if the Board imposes these conditions upon the merger, both improvements in service and preservation of competition can be achieved in the proposed merger.

Respectfully submitted,



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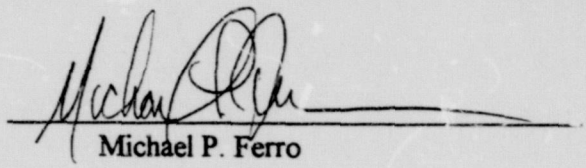
I declare under penalty of perjury that the foregoing is true and correct. Executed this 26th day of March. 1966.



Michael P. Ferro

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 32760

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

APPLICANTS' RESPONSES TO TEXAS UTILITIES ELECTRIC COMPANY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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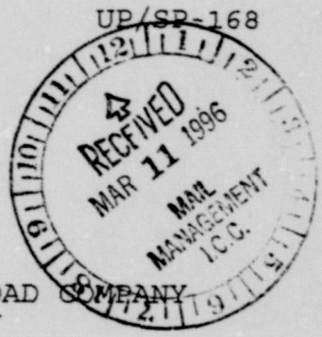
March 11, 1996

UP/SP-168



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' RESPONSES TO TEXAS UTILITIES ELECTRIC COMPANY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW, collectively, "Applicants," hereby respond to the discovery requests served by Texas Utilities Electric Company on February 23, 1996.[1/]

GENERAL RESPONSES

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

1. Applicants have conducted a reasonable search for documents responsive to the interrogatories and document requests. Except as objections are noted herein,[2/] all

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[1/] In these responses Applicants use acronyms as they have defined them in the application. However, for purposes of interpreting the requests, Applicants will attempt to observe TU Electric's definitions where they differ from Applicants' (for example, TU Electric's definitions of "UP" and "SP," unlike Applicants', include UPC and SPR respectively).

[2/] Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for (continued...)

responsive documents have been or shortly will be made availab for inspection and copying in Applicants' document depository, which is located at the offices of Covington & Burling in Washington, D.C. Applicants will be pleased to assist TU Electric to locate particular responsive documents to the exte that the index to the depository does not suffice for this purpose. Copies of documents will be supplied upon payment of duplicating costs (including, in the case of computer tapes, costs for programming, tapes and processing time).

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

3. Certain of the documents to be produced contai sensitive shipper-specific and other confidential information Applicants are producing these documents subject to the protective order that has been entered in this proceeding.

4. In line with past practice in cases of this nature, Applicants have not secured verifications for the an to interrogatories herein. Applicants are prepared to discu the matter with TU Electric if this is of concern with respe any particular answer.

2/ (...continued)
example, any documents subject to attorney-client privilege (General Objection No. 1) or the work product doctrine (Gen Objection No. 2) are not being produced.

GENERAL OBJECTIONS

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

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

2. Applicants object to production of, and are not producing, documents or information subject to the work product doctrine.

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

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

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

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

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

8. Applicants object to the definitions of "relating to" as unduly vague.

9. Applicants object to Instructions Nos. 2, 3 and 4 and the definition of "identify" when used with reference to documents to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

10. Applicants object to Instructions Nos. 2, 3 and 4 and the definition of "identify" when used with reference to documents as unduly burdensome.

11. Applicants object to the interrogatories and document requests to the extent that they call for the preparation of special studies not already in existence.

12. Applicants object to the interrogatories and document requests as overbroad and unduly burdensome to the extent that they seek information or documents for periods prior to January 1, 1993.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Interrogatory No. 1

"Does the Settlement Agreement permit BN/Santa Fe to transport TU Electric coal trains between Shreveport and Tenaha?"

Response

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

Yes, but only as part of an overhead movement between Tenaha and Memphis.

Interrogatory No. 2

"Does the Settlement Agreement permit BN/Santa Fe to interchange TU Electric coal trains with the KCS at Shreveport?"

Response

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

No.

Interrogatory No. 3

"Is there any legal prohibition now preventing KCS and SP from interchanging TU Electric coal trains at Shreveport for transportation by SP to and from Tenaha?"

Response

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

No.

Interrogatory No. 4

Identify all documents relating to potential UP or SP coal transportation service to TU Electric's Martin Lake Generating Station."

Response

Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes requests for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 5

"Identify all documents (other than those already in Applicants' Document Depository) that refer to the impact of the proposed merger of UP and SP on coal transportation service to any of the following TU Electric generating Stations:

(a) Monticello;

(b) Martin Lake; or

(c) Big Brown.

Response

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

Responsive documents located in the files of pertinent executives and the coal marketing groups of UP and SP will be produced.

Document Request No. 1

"Produce all documents identified in response to Interrogatory No. 4."

Response

See the Response to Interrogatory No. 4.

Document Request No. 2

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

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 11th day of March, 1996, I caused a copy of the foregoing document to be served by hand on John H. LeSeur, counsel for Texas Utilities Electric Company, at Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036, and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

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

Michael L. Rosenthal

Item No. _____

Page Count 32

March # 128

41455

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*ADMITTED IN PENNSYLVANIA ONLY

202 347-7170

ENTERED
Office of the Secretary
MAR 07 1996
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Public Record

March 6, 1996

RECEIVED
MAR 6 1996
SURFACE TRANSPORTATION BOARD
GUARD DESK

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

Enclosed for filing in the referenced proceeding please find an original and twenty (20) copies of the Appeal of Entergy Services, Inc., Arkansas Power & Light Company, Gulf States Utilities Company and the Western Coal Traffic League from Administrative Law Judge Nelson's Order Denying Request to Take Certain Depositions, together with Appendix I thereto **(ESI-8, WCTL-7)**. Also enclosed are the original and twenty (20) copies of Appendix II to the Appeal, which Appendix contains highly confidential information and is therefore being separately **filed under seal (ESI-9, WCTL-8)**.

Also enclosed are WordPerfect 5.1 diskettes containing Entergy/WCTL's filings.

An extra copy of this letter and of each of these filings is enclosed. Kindly indicate receipt and filing by time-stamping such copies and returning them to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Christopher A. Mills

CAM/mfw
Enclosures

cc: (With enclosures including Appendix II)

Arvid E. Roach II, Esq. (via telecopier)
Paul Cunningham, Esq. (via telecopier)
Erika Z. Jones, Esq. (via telecopier)

(With enclosures excluding Appendix II)

Carol A. Harris, Esq. (via telecopier)
Louise A. Rinn, Esq. (via telecopier)
Restricted Service List (via first class mail)

ENTERED
Office of the Secretary
MAR 07 1996
ESI-8
WCTL-7
Part of
Public Record

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

RECEIVED
MAR 6 1996
GUARD DESK
D.C. BUILDING

APPEAL OF ENTERGY SERVICES, INC., ARKANSAS POWER & LIGHT COMPANY, GULF STATES UTILITIES COMPANY AND THE WESTERN COAL TRAFFIC LEAGUE FROM ADMINISTRATIVE LAW JUDGE NELSON'S ORDER DENYING REQUEST TO TAKE CERTAIN DEPOSITIONS

ENTERGY SERVICES, INC. and its affiliates ARKANSAS POWER & LIGHT COMPANY, GULF STATES UTILITIES COMPANY and the WESTERN COAL TRAFFIC LEAGUE

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OF COUNSEL:

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1224 Seventeenth Street, N.W.
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Dated: March 6, 1996

ESI-8
WCTL-7

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

APPEAL OF ENTERGY SERVICES, INC., ARKANSAS POWER & LIGHT COMPANY, GULF STATES UTILITIES COMPANY AND THE WESTERN COAL TRAFFIC LEAGUE FROM ADMINISTRATIVE LAW JUDGE NELSON'S ORDER DENYING REQUEST TO TAKE CERTAIN DEPOSITIONS

Entergy Services, Inc., and its affiliates Arkansas Power & Light Company and Gulf States Utilities Company (collectively, "Entergy") and the Western Coal Traffic League ("WCTL") hereby jointly appeal from the order of Administrative Law Judge Jerome Nelson entered March 1, 1996, denying their requests (1) that BN/Santa Fe be ordered to produce Mr. Sami M. Shalah, its Assistant Vice President Coal Marketing, for deposition, and (2) that Applicants be ordered to produce Mr. F. M. Gough, Business Director in the Energy Marketing group of Union Pacific Railroad Company's ("UP") Marketing and Sales Department, and Mr. J.T.

Hutton, Director-Coal Marketing & Sales of Southern Pacific Lines ("SP"), for deposition.[1] In support of this Appeal, Entergy/WCTL state as follows:

BACKGROUND

On February 15, 1996, in accordance with the Discovery Guidelines applicable to this proceeding, Entergy/WCTL transmitted a written request to counsel for Burlington Northern Santa Fe ("BN/Santa Fe") to depose Mr. Sami M. Shalah, Assistant Vice President Coal Marketing for BN/Santa Fe, who had been identified as the individual in BN/Santa Fe's coal marketing department with primary responsibility for the Entergy account. Entergy/WCTL stated that they wished to inquire into issues regarding the particular impact of the merger on Entergy and regarding the effect of the proposed UP/SP merger and Applicants' Settlement Agreement with BN/Santa Fe on competition for the movement of SP-originated Colorado/Utah coal, which issues only a knowledgeable individual in BN/Santa Fe's coal marketing department such as Mr. Shalah could address.

Similarly, on February 16, 1996, Entergy/WCTL transmitted a written request to counsel for the Applicants to depose two individuals from UP and SP's coal marketing departments -- respectively, Mr. F.M. Gough and Mr. J.T. Hutton. Entergy/WCTL stated that Messrs. Gough and Hutton held positions of primary

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[1] Judge Nelson entered this order orally at a discovery conference in this proceeding held on March 1, 1996.

importance with regard to relevant issues of concern -- i.e. the competition between UP and SP to originate coal from either Colorado/Utah or the Powder River Basin. In addition, Entergy/WCTL stated that other Applicant witnesses who had submitted verified statements as part of the merger application had testified, at their depositions, that they were unable to address issues within the areas of Messrs. Gough's and Hutton's expertise.

By letter dated February 28, 1996, BN/Santa Fe denied Entergy/WCTL's request to depose Mr. Shalah, claiming that as a non-applicant's employee who had not submitted written testimony, Mr. Shalah should not be required to appear at a deposition. BN/Santa Fe added that other unspecified witnesses could address the issues to be raised by Entergy/WCTL.

Likewise, by letter also dated February 28, 1996, the Applicants denied Entergy/WCTL's request to depose Mr. Gough and Mr. Hutton. In this letter, Applicants complained of the burden associated with additional discovery, and characterized Entergy/WCTL's desire to depose non-testifying witnesses as "troubling," given the fact that Applicants had previously made witnesses with knowledge of the coal transportation business available; specifically, witnesses King/Ongerth, Peterson, Gray, and Sharp.

After receiving these responses, Entergy/WCTL immediately requested that Judge Nelson address the subject of these requested depositions at the discovery conference scheduled for March 1, 1996. Copies of Entergy/WCTL's letters requesting the

depositions, BN/Santa Fe's and Applicants' responses denying the requests, and Entergy/WCTL's letters to Judge Nelson are attached for the Board's convenience as Appendix I.

On March 1, 1996, Judge Nelson heard argument from counsel for several parties, including counsel for Entergy/WCTL, regarding the ability of interested parties to depose "non-testifying" witnesses. In addition, Judge Nelson heard both the Applicants and BN/Santa Fe argue for a complete preclusion of testimony by such witnesses. Despite ruling that he would not adopt a distinction between testifying and non-testifying witnesses for purposes of depositions,[2] Judge Nelson denied Entergy/WCTL's request to take the depositions in question.[3] Judge Nelson based this ruling from the bench upon (i) his perception

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[2] See Transcript of March 1, 1996 Discovery Conference before the Honorable Jerome Nelson (hereinafter, "Tr. at ___"), at 1496 ("I don't know of anything in the Constitution or the Interstate Commerce Act or the Administrative Procedure Act or the regulations of the Surface Transportation Board that hold that people are immune from deposition merely because they didn't submit proposed testimony."); Tr. at 1502 (Precedent cited by UP "doesn't draw any distinction between 'testifying' and 'non-testifying' witnesses."); Tr. at 1524 ("I do not choose to make a dichotomy between testifying witnesses and non-testifying witnesses.").

[3] It appears that Judge Nelson may have been swayed by the Applicants' citation of Docket No. 37021, Annual Volume Rates on Coal -- Rawhide Junction, WY to Sergeant Bluff, IA, Decision served Jan. 4, 1985, for the proposition that the Board generally disfavors depositions. This argument, however, ignores the fact that unlike ordinary proceedings in which a party must seek special Board permission in order to take a deposition, "pre-granted" authority for depositions already exists in this extraordinary proceeding. See ¶ 6 of the Discovery Guidelines in this proceeding served Dec. 7, 1995. The Board therefore should not condone the Applicants' effort to force this proceeding, which has been expedited at their request, into the mold of other, more routine Board proceedings.

that prior witnesses had testified to certain of the relevant issues in an adequate fashion; (ii) his perception that certain issues to be raised in the subject depositions did not appear relevant; and (iii) his apparent pre-determination of the merits of Entergy's position in this proceeding.[4] Relevant portions of the transcript of the March 1 discovery conference containing Judge Nelson's rulings are included in Appendix II, which Entergy/WCTL have today filed separately under seal due to the highly confidential nature of certain portions of the argument.

ARGUMENT

1. Legal Standard

The Board's regulations provide that appellate review of the decisions of employees is proper "to correct a clear error of judgment or to prevent manifest injustice." 49 C.F.R. § 1115.1(c). In this instance, Judge Nelson's denial of Entergy/

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[4] Judge Nelson alternatively based his denial of Entergy/WCTL's request to depose Applicants' Messrs. Gough and Hutton upon a purported timing defect. This defect, however, stemmed entirely from the Applicants' twelve-day delay in responding to Entergy/WCTL's deposition requests. In particular, the Applicants responded to Entergy/WCTL's February 16, 1996 request at 9:47 p.m. on the evening of February 28, 1996, nearly six hours after the 4:00 p.m. deadline to notice disputes for the March 1, 1996 discovery conference. In light of the similarity of subjects for the Shalah, Gough, and Hutton depositions, however, counsel for Entergy/WCTL nevertheless noticed the issue for the March 1 conference by letter sent via facsimile on the morning of February 29, 1996.

WCTL's requests for depositions both was a "clear error of judgment" and will work a "manifest injustice."[5]

Specifically, the issues of concern to Entergy/WCTL involved particular sets of relevant facts of which none of Applicants' or BN/Santa Fe's testifying witnesses possessed other than rudimentary knowledge. These facts directly pertained to the issues to be raised by Entergy and WCTL in their Comments (to be filed March 29, 1996) and to Entergy's Inconsistent Application (to be filed March 29, 1996 as well).

2. Entergy/WCTL Sought to Depose these Individuals Regarding Relevant Information

(i) Mr. Shalah

As indicated in its February 15, 1996 letter to BN/Santa Fe, Entergy's request to depose Mr. Shalah was based upon the specific need for information regarding the nature of the competition that BN/Santa Fe would be likely to provide for coal movements to Entergy's Nelson and White Bluff power plants if the Board approves the subject Application. Specifically, Entergy sought to develop information pertinent to the viability of BN/Santa Fe's participation in future Entergy coal movements from the only individual with direct knowledge of the competitive forces at work with respect to such movements. Nevertheless,

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[5] At the outset of the March 1 discovery conference, Judge Nelson acknowledged that he had not had an opportunity to familiarize himself with the issues under consideration. Tr. at 1482. Furthermore, Judge Nelson indicated that scheduling constraints would preclude any lengthy evaluation of the many disputes to be heard that day. Id. at 1494.

after first inquiring into the pre- and post-merger competitive relationship between the carriers serving Entergy's plants, Judge Nelson ruled that he was "not getting why you want this Burlington Northern (sic) to witness what this is about," that he "[d]id not see the need for this" and that he would deny Entergy's request on that basis. Tr. at 1647-48.

(ii) Messrs. Gough and Hutton

Similarly, as indicated in their February 16, 1996 letter to the Applicants, Entergy/WCTL's request to depose Messrs. Gough and Hutton was based upon WCTL's need to inquire into issues concerning the effect of the merger upon competition between UP-originated and SP-originated coals, and Entergy's need to inquire into the impact of the proposed merger on competition for the movement of coal to the Nelson and White Bluff plants. These competitive concerns impact directly upon the potential harm of the merger to members of the shipping public. Unlike his ruling upon Entergy's request to depose Mr. Shalah, however, Judge Nelson's denial of permission to depose Messrs. Gough and Hutton lacked any consideration of the relevance of the witnesses' testimony. To the contrary, Judge Nelson made an apparently dispositive determination of the request on the basis of a timing objection, but later suggested that his ruling had been based both upon a timing defect and upon a lack of relevance -- despite the fact that he had allowed no argument regarding that issue. The following excerpt from the transcript of the March 1

discovery conference reflects the entire argument permitted with respect to Mr. Gough and Mr. Hutton:

JUDGE NELSON: Who else do you want?

MR. MILLS: We have also requested that two witnesses from the applicants, Mr. Goth (sic) of the Union Pacific's Coal Marketing Department, and Mr. Hutton of the Southern Pacific's Coal Marketing Department. That request was -- it's technically out of time. It was served yesterday morning. I don't know whether Mr. Roach intends to object to it or not, but it covers several of the same subjects we wanted to go into with Mr. Shala (sic).

MR. ROACH: I do intend to object, but it's governed by the --

JUDGE NELSON: Sustained. I am denying that request. So I am denying the deposition as to all three.

* * *

MR. MILLS: May I raise a point of clarification, Your Honor, on your ruling of the deposition of the applicants, my recollection is that when I began to discuss the merits, Mr. Roach objected on the grounds that it was not (sic) out of time. We didn't notice it properly. Was that the basis for your ruling?

JUDGE NELSON: No.

MR. MILLS: We didn't go into all the subjects which we wanted to.

JUDGE NELSON: I was not seeing a sufficient connection with the case to warrant those depositions right now and if they were out of time, then that's an additional ground. We have to have a system to try to make sense.

See Tr. at 1649, 1728. To reiterate, although Judge Nelson refused to hear argument on the merits with respect to Messrs. Gough and Hutton, he nevertheless puzzlingly explained that his

ruling had been based upon their lack of relevance to the case, or in his words, the absence of a "sufficient connection with the case." Id. at 1728.

Entergy/WCTL submit that the subjects to be addressed in each of the three requested depositions do constitute relevant matters and are therefore proper for discovery under the Board's governing standard. See 49 C.F.R. § 1114.21. Potential competition from BN/Santa Fe for service to Entergy's plants goes directly to the issues under consideration in the Application and in Entergy's Responsive Application. Similarly, source competition between UP-originated and SP-originated coal also easily meets the relevance standard for discovery under the Board's regulations.[6] Consequently, Judge Nelson's apparent perception that this information was irrelevant was ill-considered. In fact, as the above-cited argument at the discovery conference regarding the two Applicant witnesses shows, Judge Nelson gave virtually no consideration at all to this question.

3. No Other Witnesses Could Address the Relevant Issues of Concern

In addition to meeting the Board's test of relevance, the information sought from these three individuals was not available from other so-called "testifying witnesses" who submitted verified statements and who were deposed. Absent this

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[6] In fact, during a separate line of argument at the discovery conference, Judge Nelson himself acknowledged the significance and fundamental relevance of the merger's potential impact upon coal transportation. See Tr. at 1618.

information, Entergy and WCTL will be greatly disadvantaged in their efforts to oppose or seek conditions to this merger designed to ameliorate its competitive impacts with respect to certain coal movements. By denying Entergy and WCTL access to information that they will need to meet the extremely high burden of proof necessary to justify the grant of competitive conditions to approval of the Application, Judge Nelson's decision works a manifest injustice.

In a number of prior instances, the Applicants' "testifying witnesses" indicated that they lacked direct knowledge of the issue of source competition for western coal movements. In addition, these individuals have specifically identified Mr. Gough, and unnamed persons in SP's coal marketing department (such as Mr. Hutton), as the primary sources of such information. For example, Witness Sharp indicated in his deposition that he spoke with Mr. Gough to clarify data sources and to acquire factual information regarding coal traffic. See Transcript of Deposition of Richard G. Sharp, at 21-22. Mr. Sharp also testified that he neither spoke with anyone from SP's coal marketing department nor made any effort to determine SP's view of its ability to compete with UP to originate coal. Id. at 25. Finally, Mr. Sharp testified that he lacked knowledge of Entergy's Nelson Plant. Id. at 67.

Similarly, UP Witness Peterson testified that he relied upon his coal marketing department to make specific determinations as to competitive options for Entergy, and that he pos-

sessed no expertise as to pricing for service out of the Powder River Basin. See Transcript of Deposition of Richard B. Peterson, at 328, 352-53.

In fact, counsel for the Applicants acknowledged the testifying witnesses' lack of knowledge at the March 1 discovery conference, admitting that there were certainly other witnesses with more specific knowledge as to coal movements such as those to Entergy's power plants.[7] Nevertheless, the Applicants and BN/Santa Fe argued that Judge Nelson should adopt a more restrictive standard for determining whether "non-testifying witnesses" should be deposed. Judge Nelson specifically rejected this distinction. See Tr. at 1496, 1502, 1524-25. As previously indicated, however, the Applicants also repeatedly argued that the Board specifically disfavors all depositions, relying upon the decision in Annual Volume Rates on Coal, supra at note 3. Entergy/WCTL again respectfully submit that this argument seeks to treat this tremendously significant case in the same fashion as any routine matter before the Board. This argument also ignores the December 7, 1995 Discovery Guidelines' specific

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[7] MR. ROACH: [T]he current reasons you're going to hear are well, these people know something that the other witnesses don't know. And that -- of course, that can always be true. . .

JUDGE NELSON: Who better to talk about the meeting that Mr. Dealey?

MR. ROACH: Sure, and there are thousands of meetings that have taken place that they could list another 200 people.

Tr. at 1499.

approval of depositions of non-testifying witnesses in this case, and should therefore be rejected.

4. Judge Nelson Improperly Based his Decision Upon his Impression of the Merits of the Case

Finally, Entergy/WCTL respectfully submit that Judge Nelson's decision should also be reversed to the extent that it went beyond a mere determination of relevance and instead reflects Judge Nelson's premature determination of the merits of Entergy's intended claims in this case. As noted above, Judge Nelson's chief inquiry during the consideration of the requested Shalah deposition involved a discussion of UP and SP's ability to exclude other carriers from the market for coal transportation service to Entergy's plant. This inquiry, however, was completely inappropriate for this stage of the proceeding. In effect, Judge Nelson evaluated Entergy's position with respect to the impact of the merger (without the benefit of a full evidentiary submission), speculated that the merger would not harm Entergy, and thereupon ruled that Entergy did not "need" competition-related evidence. Tr. at 1648. This premature determination of the merits flies in the face of proper discovery procedure and should not be allowed to stand as a basis for a ruling on an issue of relevance.

In addition, the Applicants will undoubtedly defend their position in this proceeding with the claim that BN/Santa Fe will provide adequate competition, and the Board will subsequently evaluate Entergy's Comments and its Inconsistent Application

on the basis of Entergy's ability to prove a lack of effective competition. Again, the effect of Judge Nelson's pre-judgment is to deprive Entergy of the ability to develop evidence necessary to enable it to meet its burden before the substantive decision-making body, i.e the Board, in this proceeding.

CONCLUSION

For the foregoing reasons, Entergy/WCTL request that the Board reverse Judge Nelson's decision and authorize the three requested depositions. In addition, Entergy/WCTL request that the Board act in an expedited fashion in order to permit Entergy/WCTL to take the requested deposition in advance of the March 29, 1996 deadline for Comments and Inconsistent Applications.[8] Finally, for the Board's information, Entergy/WCTL are prepared take the requested depositions (each of which will last less than half a day) at any location that will minimize burden on the witnesses.

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[8] Given the fact that Entergy will file an Inconsistent Application, and will therefore have the right to file rebuttal evidence on May 14, 1996, the Board should not decline this appeal on the basis of mootness, should the Board be unable to decide this appeal prior to March 29.

Respectfully submitted,

ENTERGY SERVICES, INC. and its affiliates ARKANSAS POWER & LIGHT COMPANY, GULF STATES UTILITIES COMPANY and the WESTERN COAL TRAFFIC LEAGUE

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Attorneys for Entergy Services, Inc. and its affiliates Arkansas Power & Light Company and Gulf States Utilities Company

OF COUNSEL:

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Dated: March 6, 1996

APPENDIX I

SLOVER & LOFTUS
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PATRICIA E. KOLESAR
EDWARD J. McANDREW*

*ADMITTED IN PENNSYLVANIA ONLY

202 347-7170

February 28, 1996

VIA FACSIMILE

Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
Room 11F21
888 First Street, N.E.
Washington, D.C. 20426

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

Dear Judge Nelson:

At the discovery conference scheduled for Friday, March 1, 1996, Entergy Services, Inc. and its affiliates Arkansas Power & Light Company and Gulf States Utilities Company (collectively "Entergy") and the Western Coal Traffic League ("WCTL") will seek to resolve a discovery dispute with BN/Santa Fe concerning WCTL's and Entergy's request to take the deposition of Sami M. Shalah, Assistant Vice President Coal Marketing of the BN/Santa Fe.

On February 15, 1996, I wrote to Erika Z. Jones, lead counsel for BN/Santa Fe, notifying her of our desire to depose Mr. Shalah and of the subjects to be covered at his deposition. Today Ms. Jones responded by letter, declining our request to make Mr. Shalah available for deposition testimony. Copies of my February 15 letter to Ms. Jones and her responsive letter dated today are enclosed for your information.

While Paragraph 6 of the Discovery Guidelines in this proceeding appears to place the burden of seeking resolution of discovery disputes concerning objections to a deposition on the objecting party (in this case BN/Santa Fe), we believe it is appropriate to bring the matter before you directly rather than waiting for BN/Santa Fe to do so in view of the short time (four weeks) remaining before parties such as Entergy and WCTL must file their comments and/or inconsistent or responsive applications on the merits in this proceeding.

Entergy, in particular, intends to seek conditions requiring the Applicants to either grant BN/Santa Fe trackage rights so as to permit BN/Santa Fe to serve Entergy's White Bluff and Nelson Generating Stations in Arkansas and Louisiana, or to amend the September 25, 1995 Settlement Agreement between Applicants and BN/Santa Fe so as to include these plants as "two-to-one" points that can be served by BN/Santa Fe pursuant to the trackage rights granted in the Settlement Agreement. Mr. Shalah has knowledge of the competitive situations at both the White Bluff and Nelson plants, and he was involved in competitive bidding last August (shortly after the UP/SP merger was announced) for a portion of the Nelson coal traffic between BN/Santa Fe, UP, SP and KCS. His deposition testimony is necessary to enable Entergy to develop and support the factual predicate for the conditions it intends to seek.

In further support of our clients' request to take Mr. Shalah's deposition, I would note that in the recent BN/Santa Fe merger case, Finance Docket No. 32549, individual parties including electric utilities were permitted to depose individuals at BN and Santa Fe who had not submitted verified statements in support of the application but who had knowledge of the facts concerning specific competitive situations -- including Mr. Shalah. Without the ability to take such depositions, parties such as Entergy and WCTL are unable to develop essential facts concerning their competitive situations from any knowledgeable witness from the Applicants or parties such as BN/Santa Fe who are in the position of supporting the merger application from a competition standpoint.

Respectfully submitted,

Christopher A. Mills

CAM/mfw

Enclosures
cc: Erika Z. Jones, Esq.
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202 347-7170

February 15, 1996

VIA TELECOPIER

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

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

Dear Ms. Jones:

On behalf of the Western Coal Traffic League and our individual utility and producer clients, we desire to depose Mr. Sami M. Shalah, Assistant Vice President Coal Marketing of the BN/Santa Fe. We suggest that Mr. Shalah's deposition be scheduled for the week of February 26 or March 4, 1996, in Washington or Fort Worth.

We wish to inquire of Mr. Shalah concerning the implications of the September 25, 1995 Settlement Agreement between the Applicants and BN/Santa Fe with respect to the movement of Colorado/Utah coal by BN/Santa Fe.

We understand that Mr. Shalah has responsibility for the Entergy account at BN/Santa Fe, and that he was involved in the 1995 bidding for the movement of Powder River Basin coal to Gulf States Utilities' Nelson Station. Additional areas of inquiry for Mr. Shalah include the 1995 Nelson bidding, the feasibility of competitive service by BN/Santa Fe for the movement of coal to the Nelson Station and Arkansas Power & Light Company's White Bluff Station both with and without the proposed merger, and the implications of the September 25, 1995 Settlement

Agreement with respect to the ability of BN/Santa Fe to provide competitive rail service to the Nelson and White Bluff Stations.

Sincerely yours,

Christopher A. Mills

CAM:mfw

cc: Honorable Jerome Nelson (via telecopier)
Restricted Service List (via telecopier)

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February 28, 1996

By Facsimile

Christopher A. Mills, Esq.
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

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

Dear Mr. Mills:

We have received your request that we make Mr. Sami M. Shalah, the Assistant Vice President Coal Marketing of BN/Santa Fe, available for deposition testimony in this proceeding. After careful consideration of your request, it is BN/Santa Fe's position that it should not be required to produce Mr. Shalah for deposition testimony. Mr. Shalah is an employee of a company that is not a primary applicant here, and he did not submit testimony in this proceeding. He should not be required to make himself available for deposition testimony to address issues which can be addressed by other witnesses or issues which are not relevant to this proceeding. This is particularly so in light of his substantial daily obligations and responsibilities.

Accordingly, we respectfully decline your request to make Mr. Shalah available for deposition testimony. If you have any

questions regarding BN/Santa Fe's position in this regard, please call me.

Sincerely,

Erika Z. Jones

Erika Z. Jones

cc: The Honorable Jerome Nelson
The Honorable Vernon Williams
Restricted Service List

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202 347-7170

February 29, 1996

VIA FACSIMILE

Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
Room 11F21
888 First Street, N.E.
Washington, D.C. 20426

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

Dear Judge Nelson:

In my letter to you dated yesterday (February 28th), I placed on the agenda for tomorrow's discovery conference BN/Santa Fe's refusal to permit the deposition of Sami M. Shalah of BN/Santa Fe's coal marketing department to be taken on behalf of several of our clients in the above proceeding.

This letter is to advise that, on behalf of the same clients, we also wish to bring before you at tomorrow's discovery conference the Applicants' refusal to make two individuals from the UP's and SP's coal marketing departments, Mr. F.M. Gough and Mr. J.T. Hutton, available for deposition.

The Applicants were requested to make Mr. Gough and Mr. Hutton available for deposition in a letter from Mr. Loftus of this firm to Messrs. Roach and Cunningham dated February 16, 1996. By letter dated yesterday, and faxed to us at 9:47 PM last night (too late to provide the customary notice of our intent to raise this matter at the March 1 discovery conference, which was due at 4:00 PM yesterday), the Applicants have refused to make Messrs. Gough and Hutton available for deposition. Copies of Mr. Loftus' February 16 letter and Mr. Roach's responsive letter of February 28 are enclosed for your information.

We respectfully request that, under the circumstances, you waive the normal prenotification requirement and resolve the dispute between our clients and Applicants concerning the Gough and Hutton depositions at tomorrow's discovery conference. Applicants took 13 days to respond to a simple and straightforward deposition request, and the timing of their response is such that, absent a waiver, this matter could not be brought before you for another week (or a mere 21 days before the March 29, 1996 due date for substantive comments and requests for conditions with respect to the merger application). The subjects on which we wish to depose Messrs. Gough and Hutton are very similar to the subjects to be covered in deposing Mr. Shalah, and it is therefore appropriate to consider the propriety of deposing all three of these individuals at the same time.

Respectfully submitted,

Christopher A. Mills

CAM/mfw

Enclosures
cc: Arvid E. Roach II, Esq
Paul Cunningham, Esq.
Erika Z. Jones, Esq.
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February 16, 1996

VIA TELECOPIER

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

Dear Arvid and Paul:

On behalf of the Western Coal Traffic League and our individual utility and producer clients, we desire to depose Mr. F.M. Gough, Business Director in the Energy Marketing Group of the Union Pacific Railroad's Marketing and Sales Department, and Mr. J. T. Hutton, Managing Director-Coal Marketing & Sales of Southern Pacific Lines. We suggest that these depositions be scheduled for the week of February 26 or March 4, 1996, in Washington or other convenient location(s).

At the King/Ongerth deposition, Mr. King identified Mr. Gough as one of the individuals in UP's Energy Marketing Group who was consulted concerning the development of the Operating Plan for the merged UP/SP system, and we wish to inquire of Mr. Gough concerning the implications of the Operating Plan with respect to the movement of western coal by the merged system and the implications of the September 25, 1995 Settlement Agreement between the Applicants and BNSF with respect to the movement of Colorado/Utah coal. Similarly, Mr. Ongerth testified that unnamed individuals in SP's coal marketing group were consulted

concerning the Operating Plan, and we wish to inquire into the same areas with Mr. Hutton.

Messrs. Peterson and Sharp, at their depositions, both also identifed Mr. Gough as one of the people at UP with whom they spoke in preparing their verified statements. Mr. Peterson indicated that he had also spoken to someone in SP's coal marketing group; Mr. Sharp spoke to no one at SP.

We have questions concerning the impacts of the proposed merger on various specific coal movements. Mr. Sharp, who is the Applicants' witness responsible for analyzing the effects of the merger on coal shippers, was unable to respond at his deposition to questions about specific situations involving movements of coal originated by UP or SP. We desire to depose individuals at UP and SP who are knowledgeable about the specifics of individual utility situations, and Messrs. Gough and Hutton appear to be in a position to answer questions about such situations.

As an example, we understand that Mr. Gough and Mr. Hutton have responsibilities in connection with the Entergy account at their respective railroads, and that each was involved in the 1995 bidding for the movement of Powder River Basin coal to Gulf States Utilities' Nelson Station. We would like to inquire of each of these individuals as to his company's participation in the 1995 Nelson bidding, the feasibility of competitive service by BN/Santa Fe for the movement of coal to the Nelson Station and Arkansas Power & Light Company's White Bluff Station both with and without the proposed merger, and the implications of the September 25, 1995 Settlement Agreement with respect to competitive rail service to the Nelson and White Bluff Stations.

Sincerely,

C. Michael Loftus

CML/raw

cc: Honorable Jerome Nelson (via telecopier)
Paul Cunningham, Esq. (via telecopier)
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February 28, 1996

BY FACSIMILE

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

Dear Mike:

This responds to your February 16, 1996 letter in which you express WCTL's and your individual utility and producer clients' desire to depose F.M. Gough and J.T. Hutton.

Applicants do not believe there is any justification for providing Mr. Gough or Mr. Hutton for deposition. As you point out in your letter, Applicants have already presented witnesses to address the very subjects upon which you wish to question Messrs. Gough and Hutton: Messrs. King and Ongerth were made available to discuss the Operating Plan in general, as well as the movement of Western coal in particular. In addition, Mr. Peterson was made available as a knowledgeable individual from UP who could discuss the effects of the merger on coal shippers, and Mr. Gray was made available as a knowledgeable individual from SP who could do so. And in fact, both Mr. Peterson and Mr. Gray were questioned, and provided answers, regarding the railroads' coal business. Furthermore, Mr. Sharp was made available as a witness who focused solely on coal issues. While your February 16 letter indicates that Mr. Sharp was unable to respond to questions about specific UP or SP coal movements, Messrs. Peterson and Gray were available to testify regarding shipper-specific coal issues.

Your request to depose non-testifying witnesses is troubling. Applicants have received requests to depose 16 non-testifying witnesses in addition to the 21 witnesses Applicants have made available for 7 weeks of depositions. In its letter of January 25, KCS predicted that "the number of relevant witnesses is going to grow geometrically with each witness." While Applicants disagree that the number of relevant witness has grown, it is certainly true that the number of requests for depositions has grown geometrically.

As we have stated before, Applicants reject the notion that parties have the right to depose all individuals who may have the slightest knowledge about anything arguably relevant to the merger application. This is especially true if testifying witnesses can amply address the particular topic -- whether or not those witnesses know every detail that some other witness might add. This is not a multi-year, wide open, old-style federal court case in which depositions can be taken by the scores or hundreds if they meet bare standards of relevance. It is a highly expedited proceeding before an agency whose law disfavors depositions, and which has specifically instructed that discovery be strictly restricted to relevant matters. See Decision No. 6, served Oct. 19, 1995, p. 8 ("In pursuing discovery and in preparing pleadings, we encourage parties (and will instruct the Administrative Law Judge) to focus strictly on relevant issues . . . .").

Applicants have provided 21 witnesses for 7 weeks of depositions. Where no testifying witness could address a significant matter, Applicants have been prepared to provide an additional witness for deposition, as they have with Mr. Kauders, or to cooperate in other informal discovery. But Applicants are not willing to allow the number of depositions to "grow geometrically," as many parties to this case would prefer. Where testifying witnesses (three in this particular case) have addressed a topic, Applicants see no need to make additional, cumulative, non-testifying witnesses available for deposition.

Finally, your request to depose non-testifying witnesses is contrary to the principles established in the Discovery Guidelines. The Guidelines contemplate that parties will be able to use the month of March to prepare their upcoming filings. This is just as important to the Applicants -- who must file their rebuttal at the end of April -- as to other parties, and that is why the Guidelines establish a month-long bilateral "moratorium" on written discovery. The Applicants scheduled the depositions of their witnesses to take place in January and February, despite the difficulties in preparing for so many depositions in such a condensed period. (In fact, as you will recall, Applicants wanted to begin the deposition schedule two weeks earlier in order to allow more time for preparation, but changed the schedule at the request of many of the active parties.) The multiple requests, by a variety of different merger opponents, for depositions of non-testifying witnesses would tie down the Applicants in continued formal discovery throughout the month of March and would undermine the idea of a "moratorium."

For these reasons, Applicants do not intend to produce Mr. Gough or Mr. Hutton for deposition.

Sincerely,

Arvid E. Roach II

cc: Hon. Jerome Nelson
Restricted Service List (by facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 1996, I caused a copy of the foregoing: (i) Appeal of Entergy Services, Inc., Arkansas Power & Light Company, Gulf States Utilities Company, and the Western Coal Traffic League; and (ii) Appendix I to such Appeal, to be served by facsimile on the individuals listed below, and by first-class United States mail, postage prepaid, on all other persons on the Restricted Service List in this proceeding.

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Andrew B. Kolesar III

STB FD 32760 3-4-96 61601 D

Item No. _____

Page Count 8

Marc. #48 [redacted]

61601

UP/SP-158

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' RESPONSES TO IBT'S
SECOND SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS

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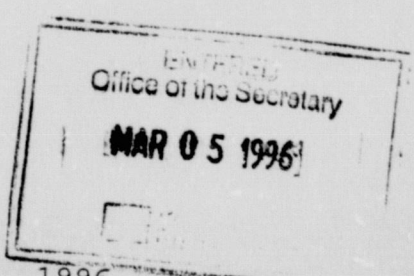

March 4, 1996

UP/SP-158

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

APPLICANTS' RESPONSES TO IBT'S
SECOND SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW, collectively, "Applicants," hereby respond to International Brotherhood of Teamsters' Second Set of Interrogatories and Requests for Production of Documents.[1/]

GENERAL RESPONSES

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

1. Applicants have conducted a reasonable search for documents responsive to the interrogatories and document requests. Except as objections are noted herein,[2/] all

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[1/] In these responses, Applicants use acroynms as they have defined them in the application. However, subject to General Objection No. 10 below, for purposes of interpreting the requests, Applicants will attempt to observe Tex Mex's definitions where they differ from Applicants' (for example, Tex Mex's definitions of "UP" and "SP," unlike Applicants', include UPC and SPR, respectively).

[2/] Thus, any response that states that responsive documents are being produced is subject to the General Objections, so (continued...)

responsive documents have been or shortly will be made available for inspection and copying in Applicants' document depository, which is located at the offices of Covington & Burling in Washington, D.C. Applicants will be pleased to assist IBT to locate particular responsive documents to the extent that the index to the depository does not suffice for this purpose. Copies of documents will be supplied upon payment of duplicating costs (including, in the case of computer tapes, costs for programming, tapes and processing time).

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

3. Certain of the documents to be produced contain sensitive shipper-specific and other confidential information. Applicants are producing these documents subject to the protective order that has been entered in this proceeding.

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

2/ (...continued)
that, for example, any documents subject to attorney-client privilege (General Objection No. 1) or the work product doctrine (General Objection No. 2) are not being produced.

GENERAL OBJECTIONS

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

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

2. Applicants object to production of, and are not producing, documents or information subject to the work product doctrine.

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

4. Applicants object to production of public documents that are readily available, including but not limited to documents on public file at the Board or the SEC or clippings from newspapers or other public media. Notwithstanding this objection, Applicants have produced some responsive materials of this kind, but Applicants have not attempted to produce all responsive materials of this kind.

5. Applicants object to the production of, and are not producing, draft verified statements and documents related thereto. In prior railroad consolidation proceedings, such

documents have been treated by all parties as protected from production.

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

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

8. Applicants object to the interrogatories and requests to the extent that they call for the preparation of special studies not already in existence.

9. Applicants incorporate by reference their prior objections to the definitions and instructions set forth in IBT's first set of interrogatories and document requests.

SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

Interrogatory No. 68

"Identify all documents relating to the possibility that United Parcel Service will divert over the road truck traffic to intermodal rail service provided by a merged UP/SP."

Response

Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without

waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

See the verified statements of Don P. Ainsworth and Paul O. Roberts in Volume 1 of the Application, together with the workpapers in Applicants' document depository.

Interrogatory No. 69

"Identify all communications between UP or SP personnel and representatives of United Parcel Service concerning the increased use of rail intermodal service by United Parcel Service following approval of the UP/SP merger application. Identify all documents relating to such communications."

Response

Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

There have been no such communications.

Interrogatory No. 70

"Identify all communications between UP or SP personnel and representatives of any motor carrier concerning the increased use of rail intermodal service by any motor carrier following approval of the UP/SP merger application. Identify all documents relating to such communications."

Response

Applicants object to this interrogatory as unduly vague and unduly burdensome, and overbroad in that it includes documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without

waiving this objection, and subject to the General Objections stated above, Applicants respond as follows:

Applicants have communicated with a number of representatives of motor carriers in the course of gathering shipper support statements. A list of Applicants' contacts as part of their shipper support effort can be found in Applicants' document depository.

Document Request No. 15

"Produce all documents identified in response to Interrogatory No. 68."

Response

See Response to Interrogatory No. 68.

Document Request No. 16

"Produce all documents identified in response to Interrogatory No. 69."

Response

See Response to Interrogatory No. 69.

Document Request No. 17

"Produce all documents identified in response to Interrogatory No. 70."

Response

See Response to Interrogatory No. 70.

Respectfully submitted,

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

March 4, 1996

STB FD 32760 2-22-96 61324 D

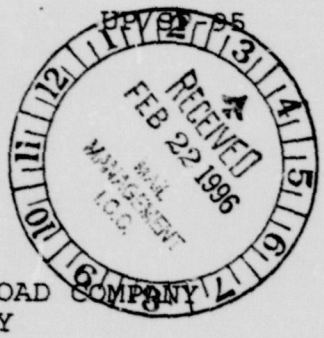
61324

Item No: _____

Page Count 5

Feb # 1 35

BEFORE THE
TRANSPORTATION BOARD



Finance Docket No. 32760

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

ADDITIONAL ERRATA

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UP/SP-95

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

ADDITIONAL ERRATA

Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW submit the following additional errata:

Page	Line	Change
Volume 1 (UP/SP-22)		
Verified Statement of John T. Gray		
218	25	Change "five and 17" to "six and 21"
223	15	Change "St. Louis and" to "St. Louis, Illinois and"
223	16	Change "four and 16" to "four and 18" (previously changed from "four and 12", see UP/SP-36).
		The corrections on page 223 are based upon workpapers that Applicants are placing in the document depository.
246	22	Change "existing specialized equipment such as covered coil gondolas" to "existing equipment such as gondolas"
Verified Statement of John H. Rebensdorf		
306	23	Change "143%" to "171%"
306	23	Change "148%" to "177%"

306	n.3	Change "166%" to "199%"
307	14	Change "75%" to "90%"
307	14	Change "77%" to "93%"
307	n.4	Change "87%" to "104%"
310	11	Change "4.2%" to "5.0%"
310	Table 3	Final column should read "5.0/3.7"; "7.9/6.1"; "31.1/25.1"; "5.2/3.8"

Volume 2 (UP/SP-23)

Verified Statement of Richard B. Peterson

285	25-26	Sentence should read "The third concerned the Nelson plant of Gulf States Utilities Company near Mossville, Louisiana."

Volume 3 (UP/SP-24)

Verified Statement of R. Bradley King and Michael D. Ongerth

13		Change "Colorado" to "Wyoming" in the two maps
48	3	Change "route switching" to "en route switching"

Operating Plan

320		For train LBSET, Southern Terminal, the time of "0425(1)" should be shown across from Oakland instead of Lathrop. Underneath Oakland the name "Roseville" should appear, and the time of "0840(1)" that is shown across from Oakland should be shown across from Roseville.
383		In the row for the segment from Odem, TX, to Kingsville, TX, in the column "Post-Merger Trns/Day," change the two "6" entries to "5" and change the number in the column "Change in # of Trains/Day" from "0" to "-1".

Respectfully submitted,

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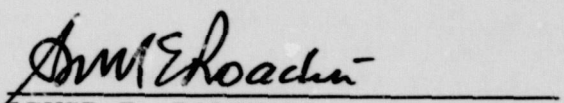

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February 22, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 22nd day of February, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

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

Michael L. Rosenthal