the case.

I don't mean to -- God knows I don't mean to question the Governor's motives here. He's concerned with protecting his constituents, but the fact is that the major shippers in Utah are not concerned about this merger. And all the 2 to 1 shippers in Utah are going to have better competition. Just like those Mexican gateways. They're going to have wider access, via the BN Santa Fe to far more points than they have with UP and SP as their two competitors today.

You know you talked about well, UP and SP is going to own all the assets in Utah, well, that's really not the issue. BN Santa Fe is going to be right there competing with us, head to head over the trackage rights for all of the 2 to 1 shippers in Utah.

He also, the Governor suggested that you might extend the oversight period to 15 years or something. You could do that at the time if there's a basis for it. But if, as I believe will be the case, after 5 years you have no question that the BN
Santa Fe agreement has yielded what it was intended to yield. At some point, you don't have to continue having oversight proceedings into infinity. I think five years is a good basic starting point. That's what you did in the CSX American Commercial Barge. That's what you did in Wisconsin Central, although you actually stopped after three years there because there weren't any problems showing up. So it's a tentative schedule, but it's a reasonable one.

As to compensation, he said well let's drop the millage rate to 2.5. There's no rationale for that at all. No explanation for why that makes any sense. You have ruled repeatedly, the Commission did in precedence that are your precedence, that trackage rights compensation should cover more than just variable costs. It should cover full costs. Commissioner Owen made that point earlier today.

The record is that that is exactly what the negotiated rate in these agreements does. The DOT has argued that well you should change the structure of it. You should have an up front payment each year and then the tenant can price
It at variable costs during the year. It has a kind of seductive appeal until you stop and think about it. If the tenant would pay the up front payment, he would only do that if he’s damn sure he’s going to earn it back. So he’s not going to sudden start pricing at variable costs. He’s going to price the same way whether there’s an up front payment or there isn’t an up front payment, but the problem of the up front payment is it’s a barrier to entry. It’s a big lump sum that they’ve got to pay and somehow, I don’t know, they never tell us the details, but line by line or shipper by shipper, who knows what, they might just not do it. And then where are you? What you want is free entry and a stake in the matter. BN Santa Fe has both. They have free entry and they’ve got a huge stake in the matter. They can make big money on the traffic. A lot of it is going to move over their own lines where they’ve got, sunk investments, so they have every incentive to build volume and earn back their fixed costs.

As I said, they’re going to invest another $150 million in assets, so I think these compensation
arguments that have been litigated and ruled on in the
last case and nobody has said anything new to change
your mind.

I don’t want to go on too long about the
Justice Department. I think what you saw today was
confirmation of why the Senate voted 65 to 32 to
retain merger authority in this body. The Senate
concluded that narrow anti-trust perspectives were not
enough for rail mergers. What you heard today was
narrow anti-trust perspectives.

They haven’t proven it’s a failing
company, so forget about the financial problems of
Southern Pacific. Well, there they are, right over
there. Since 1983, SP has lost $1,700,000,000 in
cash, a huge cash deficit. They are losing nearly
half a million in cash a day as we stand here. Every
day this case goes on, they’re hemorrhaging half a
million dollars in cash. Nobody has ever explained
how they’re going to get out of that problem. The
real estate is running out. Their unsecured credit
has junk bond status. They’re in default on their
debt covenants. This is fantasy land to say they can
just go on competing. Their earnings over the last,
since 1987 are the tiny little sliver down at the
bottom of that pie. BN Santa Fe and UP have
respectable earnings. SF doesn't. Their operating
ratio is 15 points higher than those of their
competitors. And it's going up, not down.

They tried to get it down. They cut
costs. They cut employees and what happened was their
service fell apart and they had to hire people back
and it's this problem of not having enough volume for
the route structure, of having lost all that service
sensitive traffic for decades, to the point where
they're stuck with low yielding, low service traffic
and they are facing a real problem with the extension
of intermodal service in the West Coast ports to on
dock service because their last advantage is the ICTF
facility in Los Angeles and it's going to be gone and
then they are in serious, serious trouble.

Are we saying they're going bankrupt
tomorrow? No. We're not. They'll downsize. They'll
struggle along. Maybe they'll get carved up. That
isn't what the shippers want. That isn't what's in
the public interest. And I didn’t hear anything from
DOT or DOJ to suggest the contrary.

Let me talk for a minute about grain. The
USDA says the merger will eliminate competition for
grain transportation quoting from their brief, "in the
vast grain and oil seed production area between the
Mississippi River and the Pacific."

That is 100 percent wrong. SP, as
Commissioner Simmons pointed out, handles almost no
grain. That’s why we said in our brief that grain is
a trivial issue in this case. It is a trivial issue
in this case. It wasn’t some invidious slap of the
farmers of Kansas. It’s a fact. SP doesn’t get to
grain points. It serves a few grain stations in
Kansas and that’s it. We’re not eliminating
competition for grain and where the Department of
Agriculture got that idea is a mystery. They have no
witnesses. They didn’t participate in the case. They
didn’t participate in discovery. They don’t cite any
of the evidence. They don’t appear to have read the
evidence. No disrespect intended, you’ve got to deal
with the facts. The facts are the facts.

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The merger strengthens competition of grain. The routes to all export ports will be improved. I make that statement sincerely. Shorter, faster, better. They'll be able to handle heavier cars. This is an excellent merger for grain shippers.

There will be new markets for UP's feed grain producers in the San Joachim Valley of California that only SP reaches and Arizona feed area that only SP reaches and the western Mexico gateways that only SP reaches, and a lot of cattle feeding down in Mexico now, Eagle Pass and so forth. We're going to improve hopper car utilization. We're going to build the Kansas City bypass to get those grain trains out of Kansas City terminal, and BN Santa Fe is going to have shorter route to take the Nebraska grain to California that I was talking about.

The abandonments that Mr. McBride talked about will not reduce service for grain shippers.

There are almost no grain shippers along the lines we're going to abandon. We have very few abandonments in this case for a merger this size because this is a capacity driven merger. We need capacity. We're not
abandoning very many lines, less than 600 miles of
lines.

The grain shippers in the Kansas and
Colorado areas are going to have better routes, better
direct routes. There just isn’t a grain problem in
this case.

Farmers’ Commodities Corporation, just to
take one example of yes, hundreds of grain shippers
that support this merger, you’re right. They’re in
the record, said the merger must be approved in order
to produce strong competition. The lines the merger
opponents wanted divested are necessary to build
capacity within the UP SP system. That’s a company
that has a thousand elevators in the south central and
Midwest region.

Senator Exon, who knows a lot about grain,
sent you a letter saying the merger enhances
competition and is in the long-term interest of
American agriculture.

As to the support for this merger, I
submit to you that the merger has the support of the
great majority of shippers, the overwhelming majority
of ports, all the West Coast ports, all the Gulf Coast ports, the majority of organized labor, 21 of the 25 states that we operate in, and I'll make it 22 after the Governor of Utah. He said he supported the merger, this morning. And virtually all railroads, 100 railroads, CSX, Wisconsin Central, Gateway Western, all the short lines that depend upon UP and SP to get access to markets in the West. And significantly, the only federal shipper, the Department of Defense, supports this merger and says it's very important in terms of our national defense infrastructure. They're worried about the SP. They support this merger.

As to coal, I'll just say very quickly, the record is very clear and very lengthy about the fact that Utah and Colorado coal is a qualitatively different coal than PRB coal. We're not eliminating competition between those coals. What we're doing is creating new opportunities for both types of coal to get single line access to new destinations.

Much as I would love to answer some of the other parties, my red light is on and I'll rely on the
record, unless you have questions.

CHAIRPERSON MORGAN: Anything?

COMMISSIONER OWEN: I think I'm saturated.

(Laughter.)

CHAIRPERSON MORGAN: Thank you, Mr. Roach.

MR. ROACH: Thank you so much.

CHAIRPERSON MORGAN: Well, we have heard from all of our speakers. I thank each of you for your patience and attention. I thank our staff for their patience and assistance. We have been here now almost 11 hours. I think we've heard quotes from Lincoln, Holmes and other luminaries. I think it's time to call it a day.

The Board will reconvene 10 o'clock on Wednesday to vote on this matter. This meeting is hereby adjourned.

(Whereupon, at 8:46 p.m., the meeting was concluded.)
CERTIFICATE

This is to certify that the foregoing transcript in
the matter of: Discovery Conference:
Union Pacific Corporation, et al.
-Control and Merger-
Southern Pacific Rail Corporation, et al.

Before: Surface Transportation Board
Finance Docket No. 32760

Date: July 1, 1996

Place: Washington, DC

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

[Signature]

[Name]