

INTERSTATE COMMERCE COMMISSION 07/01/96

FINANCE DOCKET # 32760

539-549 10.

1 the case.

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

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

18 He also, the Governor suggested that you  
19 might extend the oversight period to 15 years or  
20 something. You could do that at the time if there's  
21 a basis for it. But if, as I believe will be the  
22 case, after 5 years you have no question that the BN

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1 Santa Fe agreement has yielded what it was intended to  
2 yield. At some point, you don't have to continue  
3 having oversight proceedings into infinity. I think  
4 five years is a good basic starting point. That's  
5 what you did in the CSX American Commercial Barge.  
6 That's what you did in Wisconsin Central, although you  
7 actually stopped after three years there because there  
8 weren't any problems showing up. So it's a tentative  
9 schedule, but it's a reasonable one.

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

18 The record is that that is exactly what  
19 the negotiated rate in these agreements does.

20 The DOT has argued that well you should  
21 change the structure of it. You should have an up  
22 front payment each year and then the tenant can price

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1 it at variable costs during the year. It has a kind  
2 of seductive appeal until you stop and think about it.  
3 If the tenant would pay the up front payment, he would  
4 only do that if he's damn sure he's going to earn it  
5 back. So he's not going to sudden start pricing at  
6 variable costs. He's going to price the same way  
7 whether there's an up front payment or there isn't an  
8 up front payment, but the problem of the up front  
9 payment is it's a barrier to entry. It's a big lump  
10 sum that they've got to pay and somehow, I don't know,  
11 they never tell us the details, but line by line or  
12 shipper by shipper, who knows what, they might just  
13 not do it. And then where are you? What you want is  
14 free entry and a stake in the matter. BN Santa Fe has  
15 both. They have free entry and they've got a huge  
16 stake in the matter. They can make big money on the  
17 traffic. A lot of it is going to move over their own  
18 lines where they've got, sunk investments, so they  
19 have every incentive to build volume and earn back  
20 their fixed costs.

21 As I said, they're going to invest another  
22 \$150 million in assets, so I think these compensation

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1 arguments that have been litigated and ruled on in the  
2 last case and nobody has said anything new to change  
3 your mind.

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

11 They haven't proven it's a failing  
12 company, so forget about the financial problems of  
13 Southern Pacific. Well, there they are, right over  
14 there. Since 1983, SP has lost \$1,700,000,000 in  
15 cash, a huge cash deficit. They are losing nearly  
16 half a million in cash a day as we stand here. Every  
17 day this case goes on, they're hemorrhaging half a  
18 million dollars in cash. Nobody has ever explained  
19 how they're going to get out of that problem. The  
20 real estate is running out. Their unsecured credit  
21 has junk bond status. They're in default on their  
22 debt covenants. This is fantasy land to say they can

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1 just go on competing. Their earnings over the last,  
2 since 1987 are the tiny little sliver down at the  
3 bottom of that pie. BN Santa Fe and UP have  
4 respectable earnings. SF doesn't. Their operating  
5 ratio is 15 points higher than those of their  
6 competitors. And it's going up, not down.

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

19 Are we saying they're going bankrupt  
20 tomorrow? No. We're not. They'll downsize. They'll  
21 struggle along. Maybe they'll get carved up. That  
22 isn't what the shippers want. That isn't what's in

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1 the public interest. And I didn't hear anything from  
2 DOT or DOJ to suggest the contrary.

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

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

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1           The merger strengthens competition of  
2 grain. The routes to all export ports will be  
3 improved. I make that statement sincerely. Shorter,  
4 faster, better. They'll be able to handle heavier  
5 cars. This is an excellent merger for grain shippers.  
6 There will be new markets for UP's feed grain  
7 producers in the San Joachim Valley of California that  
8 only SP reaches and Arizona feed area that only SP  
9 reaches and the western Mexico gateways that only SP  
10 reaches, and a lot of cattle feeding down in Mexico  
11 now, Eagle Pass and so forth. We're going to improve  
12 hopper car utilization. We're going to build the  
13 Kansas City bypass to get those grain trains out of  
14 Kansas City terminal, and BN Santa Fe is going to have  
15 shorter route to take the Nebraska grain to California  
16 that I was talking about.

17           The abandonments that Mr. McBride talked  
18 about will not reduce service for grain shippers.  
19 There are almost no grain shippers along the lines  
20 we're going to abandon. We have very few abandonments  
21 in this case for a merger this size because this is a  
22 capacity driven merger. We need capacity. We're not

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1 abandoning very many lines, less than 600 miles of  
2 lines.

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

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

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

20 As to the support for this merger, I  
21 submit to you that the merger has the support of the  
22 great majority of shippers, the overwhelming majority

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1 of ports, all the West Coast ports, all the Gulf Coast  
2 ports, the majority of organized labor, 21 of the 25  
3 states that we operate in, and I'll make it 22 after  
4 the Governor of Utah. He said he supported the  
5 merger, this morning. And virtually all railroads,  
6 100 railroads, CSX, Wisconsin Central, Gateway  
7 Western, all the short lines that depend upon UP and  
8 SP to get access to markets in the West. And  
9 significantly, the only federal shipper, the  
10 Department of Defense, supports this merger and says  
11 it's very important in terms of our national defense  
12 infrastructure. They're worried about the SP. They  
13 support this merger.

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

21 Much as I would love to answer some of the  
22 other parties, my red light is on and I'll rely on the

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1 record, unless you have questions.

2 CHAIRPERSON MORGAN: Anything?

3 COMMISSIONER OWEN: I think I'm saturated.

4 (Laughter.)

5 CHAIRPERSON MORGAN: Thank you, Mr. Roach.

6 MR. ROACH: Thank you so much.

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

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

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

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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.

Collett River