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LAW OFFICES  
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THOMAS F. McFARLAND, JR.

May 13, 1996

By UPS Overnight Mail

Vernon A. Williams, Secretary  
Surface Transportation Board  
U.S. Department of Transportation, Rm. 1324  
12th & Constitution Avenue, NW  
Washington, DC 20423

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

Finance Docket No. 32760 (Sub-No. 16), Responsive Application -- Wisconsin Electric Power Company

Dear Mr. Williams:

Enclosed please find an original and 20 copies of Rebuttal In Support Of Responsive Application, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

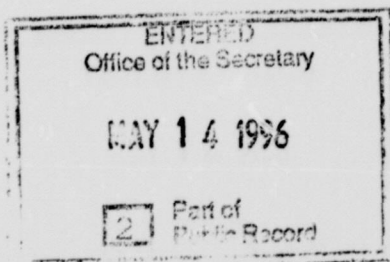
Very truly yours,

*Tom McFarland*

Thomas F. McFarland, Jr.  
*Attorney for Wisconsin Electric Power Company*

TMCF:kl:521

Enclosures



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## REBUTTAL IN SUPPORT OF RESPONSIVE APPLICATION

**WISCONSIN ELECTRIC POWER COMPANY**  
231 West Michigan Street  
P.O. Box 2046  
Milwaukee, WI 53201-2046

Applicant

**THOMAS F. McFARLAND, JR.**  
**McFARLAND & HERMAN**  
20 North Wacker Drive  
Suite 1330  
Chicago, IL 60606-2902  
(312) 236-0204

Attorney for Applicant

Date Filed: May 14, 1996

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
UNITED STATES DEPARTMENT OF TRANSPORTATION

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UNION PACIFIC CORPORATION, ET	)	
AL. -- CONTROL AND MERGER --	)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL	)	NO. 32760
CORPORATION, ET AL.	)	
	)	
RESPONSIVE APPLICATION --	)	
WISCONSIN ELECTRIC POWER	)	FINANCE DOCKET
COMPANY	)	NO. 32760 (SUB-NO. 16)

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**REBUTTAL IN SUPPORT OF RESPONSIVE APPLICATION**

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Pursuant to Decision No. 29 in this proceeding served April 12, 1996, WISCONSIN ELECTRIC POWER COMPANY (WEPCO or Responsive Applicant) hereby files this rebuttal in support of its Responsive Application, filed March 29, 1996. WEPCO's rebuttal consists of the Reply Verified Statement of Robert M. Quinlan of John T. Boyd Company, WEPCO's coal transportation consultant in this matter (Appendix 1), and the Reply Verified Statement of Gerald A. Abood, WEPCO's Director - Resource Supply and Services, Fossil Operations (Appendix 2). In its Brief to be filed on June 3, 1996, WEPCO will describe the manner in which this rebuttal supports the relief sought in WEPCO's Responsive Application.

Respectfully submitted,

WISCONSIN ELECTRIC POWER  
COMPANY  
231 West Michigan  
P.O. Box 2046  
Milwaukee, WI 53201-2046

Applicant

Date Filed: May 14, 1996

*Thomas F. McFarland Jr.*

THOMAS F. McFARLAND, JR.  
McFarland & Herman  
20 North Wacker Drive, Suite 1330  
Chicago, IL 60606-2902  
(312) 236-0204

Attorney for Applicant



**APPENDIX 1**

**REBUTTAL VERIFIED STATEMENT**

**OF**

**ROBERT M. QUINLAN**

**REBUTTAL VERIFIED STATEMENT****OF****ROBERT M. QUINLAN**

My name is Robert M. Quinlan. I am a Vice President of John T. Boyd Company (BOYD), located at 4 Gateway Center, Suite 1900, 44 1/2 Liberty Avenue, Pittsburgh, Pennsylvania, 15222-1212. I have testified frequently in regulatory proceedings relative to coal supply markets and transportation issues on behalf of both coal producers and users. A statement of my qualifications documenting this experience is contained in an appendix to my initial verified statement in this proceeding.

The purpose of this testimony is to rebut Dr. Robert L. Sansom's assertions that Western Bituminous Coal (WBC) does not compete with Power River Basin (PRB) coal. Dr. Sansom's statement indicates WBC and PRB coals are in separate markets based on quantity shipped, economic recoverability (f.o.b. mine price) and boiler design.

In addressing the quantity issue it is indisputable that PRB production is substantially higher than production of WBC from Colorado-Utah (1995 PRB production was 285,700,000 tons versus Colorado-Utah production of 50,270,000 tons.) This does not imply that the two coals do not compete head-to-head for market share. The fact is that many generating stations have the capability to burn both PRB and/or Colorado-Utah coal (or a blend) and the decision of which coals to use will be based on market economics. Even in the case of cyclone boilers, which Dr. Sansom considers a separate market based on stringent boiler design quality considerations (low fusion temperature), a high percentage of current Utah production can compete.

The following table indicates the Colorado-Utah production has increased over 60% since 1980 and almost 50% since 1988.

<u>Year</u>	<u>Total Production Tons</u>	<u>Productivity (TPEH)</u>	<u>Number of Mines</u>
1995*	50,270,298	6.02	32
1994	50,286,643	6.13	33
1993	43,412,476	5.55	35
1992	40,307,320	5.19	36
1991	39,070,065	4.72	35
1990	40,166,458	4.24	40
1989	37,377,648	4.03	45
1988	33,938,827	3.78	45
1987	30,239,813	3.73	46
1986	29,483,548	3.15	50
1985	29,793,782	2.82	58
1984	29,931,258	2.90	62
1983	28,201,340	2.68	65
1982	35,086,746	2.19	73
1981	33,215,016	2.03	78
1980	31,336,357	1.92	80

\*Preliminary

Source: Mine Safety and Health Administration, Form 7000-2.

The 13.4 billion tons of demonstrated reserves (250 years at current production levels) provides an ample base for additional growth. During the period 1992 to 1995 Colorado-Utah was increasing production from 40,307,320 tons to 50,270,298 tons (25% increase) while other regions producing higher sulfur coals (e.g., Illinois) were suffering large losses in production capacity (15% between 1992 and 1995) as follows:

<u>Illinois</u>			
<u>Year</u>	<u>Production</u>	<u>TPEH</u>	<u>No. of Mines</u>
1995	50,508,175	3.86	35
1994	54,409,683	3.57	39
1993	42,834,185*	3.16	39
1992	59,763,815	3.12	44

\*UMWA strike



Dr. Sansom comments at page 66 of his testimony that I selected a low point for Colorado-Utah out-of-state shipments in 1989 in order to present misleading trend data. This statement is inaccurate and disingenuous at best. Dr. Sansom's own Table 4, page 13 of his testimony demonstrates that this is not the case. For example:

Shipments to Electric Utilities Outside of Colorado-Utah from Colorado-Utah			
Year	Tons (000)		
	Colorado	Utah	Total
1995*	11,120	5,377	16,497
1994	10,073	3,906	13,979
1993	7,450	2,654	10,104
1992	5,843	2,515	8,358
1991	5,020	3,533	8,553
1990	5,397	2,731	8,128
1989	3,985	2,641	6,626
1988	3,807	2,348	6,155
1987	3,347	2,791	6,138
1986	3,956	2,981	6,937
1985	3,705	3,765	7,470
1984	4,640	3,854	8,494
1983	5,397	3,448	8,845
1982	3,986	3,658	7,643
1981	3,705	2,625	6,330
1980	5,595	3,321	8,916
1979	4,948	3,083	8,031

Source: Dr. Sansom's Table 4, page 13.

Clearly 1988 or 1987 were years in which out-of-state shipments from Colorado-Utah were lower than 1989. In selecting 1980 as his base year to estimate an annual percent change to 1995, Dr. Sansom has picked the single largest year (8,916,000 tons) of Colorado-Utah out-of-state shipments between 1973 and 1991. My point is that the recent dramatic growth in Colorado-Utah out-of-state shipments is evident by comparing any pre-1993 year, including 1980, to 1995.

As Southern Pacific Railroad (SP) was aggressively setting new rail rates it became economical for more and more utilities to consider WBC coals. Low sulfur and high Btu/lb WBC coals, particularly SP served Colorado-Utah coals, are becoming more competitive with PRB coal to non-traditional and new market regions.

Since 1988 there has been substantial growth in Colorado-Utah coal production.

Growth over this time is due to:

- Lower production costs achieved by capital investment (i.e., longwalls), and productivity improvements in Colorado-Utah mines.
- SP's aggressive rail rates in 1992/1993 and ultimately low backhaul rates beginning in 1994.
- Phase I of the Clean Air Act Amendment (CAAA) of 1990 implemented on January 1, 1995, requiring limits on sulfur dioxide emissions.

The combination of the above have resulted in growth in Colorado-Utah coals because a high quality (high Btu/lb and low sulfur) product can be delivered at a competitive delivered price.

Phase II of the CAAA of 1990 will become effective January 1, 2000. Growth of high quality (low sulfur) coal will accelerate as utilities must meet an emissions standard of 1.2 pounds sulfur dioxide per million Btu. Colorado-Utah and coal from PRB meet this specification with Colorado-Utah having the heat content advantage. Competition between the WBC (including Colorado-Utah) and PRB coals will increase in the years up to 2000 and beyond because of emission compliance. This along with decreasing mining costs and favorable rail rates allows Colorado-Utah coals to compete with PRB coals for Midwestern markets.



Dr. Sansom states power plants buy lowest cost fuel on a cents per kilowatt-hour basis (page 80). At no other time does Dr. Sansom make this distinction for the comparison of PRB and Colorado-Utah coals. Dr. Sansom also admits in his rebuttal statement coal competes on a delivered cents per million Btu and a coal quality basis (page 17). However, he then ignores what he knows to be true and frequently compares prices (pages 7, 8, 23, and 67) of an f.o.b. mine, dollar per ton basis. This ignores not only price adjustments based on heat content, consideration of the transportation component in the delivered price, but also the coal quality relative to boiler design efficiency factor which is in favor of Colorado-Utah coals. Comparison of costs on a f.o.b. mine basis is completely irrelevant. Delivered prices on a cents per million Btu basis adjust the price for heat content. The best measurement for comparison is the total cost to generate a kilowatt (cents per kilowatt-hour basis). Loss of efficiency and derates associated with PRB coals can be factored into generation cost and compared with generation costs for Colorado-Utah coals.

The following is an average comparison of f.o.b. mine price for PRB and Colorado-Utah coals:

	Sansom f.o.b. Mine Price Range (\$/ton)	Midpoint f.o.b. Mine Price (\$/ton)	f.o.b. Mine (¢/MM Btu)	Btu/lb
Colorado-Utah	10.00 - 15.00	12.50	54.3	11,500
PRB	3.50 - 4.00	3.75	22.1	8,500

On a dollar-per-ton f.o.b. mine price basis the Colorado-Utah prices are over 330 percent higher than PRB prices. If the prices are evaluated on a cents per million

Btu basis, Colorado-Utah coals are only 245% higher than PRB coals, but this provides a distorted comparison of the relative economics at the point of end use.

Cost of delivery for these coals to market is another factor that narrows the difference between Colorado-Utah and PRB coals. Each trainload and each ton of Colorado-Utah coal delivers more Btu's than each trainload and each ton of PRB coal. The rail savings of Colorado-Utah coals on a Btu delivered basis compared to PRB coals is approximately 30%.

Colorado-Utah coals are higher in heat content, more similar to that of Midwestern boiler design. This provides Colorado-Utah coals an advantage on a quality evaluated basis. The increase in efficiency (heat rate) will yield a lower cost per kilowatt-hour for Colorado-Utah coals even though the delivered coal price (cents per million Btu) may be higher than PRB coals. Dr. Sansom ignores not only heat value cost analysis (cents per million Btu), but also the quality evaluated advantage of Colorado-Utah coals in his comparison of dollar per ton f.o.b. mine prices (page 23).

As Midwestern utilities position themselves for Phase II (CAAA of 1990) requirements of 1.2 pounds sulfur dioxide per million Btu Colorado-Utah coals and PRB will continue to compete for this market. However, Colorado-Utah coals will be a favorable option only so long as competitive rail rates continue to make their delivered cost reasonable. Colorado-Utah test burns in the Midwest and elsewhere

are indicators that these utilities believe the coal can be delivered at an economic price.

A number of utilities have test burned WBC coals between 1989 and 1995. RDI's "Western Bituminous Coal Industry" report shows utility test burns by plant and coal region (Table 1). The table below shows a summary of the number of test shipments by year, by coal source:

Coal Region	Number of Test Burns						
	1995*	1994	1993	1992	1991	1990	1989
Central Rockies	3	9	5	1	-	-	-
San Juan Basin	-	-	-	-	-	-	-
Southern Wyoming	2	3	9	1	4	6	2
Raton Basin	-	2	1	1	3	1	-
	5	14	15	3	7	7	2

\*Estimated

Central Rockies (Colorado-Utah) had 18 tests, all to states in the Midwest or east of the Mississippi River between 1992 and 1995 which demonstrates the recent interest in Colorado-Utah coals outside traditional markets.

I agree with Dr. Sansom that both cyclone and pulverized coal boilers are used by Midwestern utilities. Typically cyclone boilers require coals of low ash fusion temperature (less than 2,450°F fluid temperature, reducing atmosphere) and  $T_{250}$  temperature less than 2,600°F. The  $T_{250}$  temperature is the temperature at which the ash has a viscosity of 250 poise. Contrary to Dr. Sansom's contention there is competition by PRB and Colorado-Utah coals for both cyclone and pulverized coal boilers.



While it is true nearly all PRB production has a suitable  $T_{250}$  temperature for use in cyclone boilers, Utah coals are also competitive with PRB coals to cyclone boilers.

The following Utah mines produce coals having a  $T_{250}$  less than 2,600°F:

<u>Mine</u>	<u>1995 Production (tons)</u>	<u>Base-Acid Ratio</u>	<u>SiO<sub>2</sub> Content (%)</u>	<u>Ash Softening Temperature (°F)</u>	<u>T<sub>250</sub> (°F)</u>
Skyline	3,796,513	0.50	49.0	2,150	2,300
White Oak	1,035,269	0.51	47.0	2,150	2,300
SUFCO	<u>4,945,425</u>	0.46	48.0	2,150	2,300
	9,777,207				
Utah	25,471,950				

\*Preliminary

Source: Mine Safety and Health Administration Form 7000-2 (production data).

In 1995 Utah produced approximately 10 million tons of coal suitable for cyclone boilers accounting for approximately 38% of Utah's total 1995 production. Analysis of  $T_{250}$  temperature and Dr. Sansom's own rebuttal statement Table 6, showing Midwestern coal consumption at cyclone boilers, are evidence Utah coals do in fact compete for cyclone boiler markets. Dr. Sansom's Table 6 shows approximately 2.5 million tons of Utah coal was burned in Midwestern cyclone boilers in 1995.

The competitiveness of Colorado-Utah coals with PRB coals at pulverized coal boilers is shown in Dr. Sansom's Table 8 showing 1995 deliveries to Midwestern pulverized coal boilers. Approximately 2.6 million tons of PRB coal was burned in Midwestern pulverized coal boilers in 1995. Colorado-Utah supplied nearly 7.5 million tons of Midwestern pulverized coal boilers in 1995. Utilities will continue to test PRB coals to assess viability of blending with current deliveries.

Dr. Sansom expresses criticism that I listed stations which have cyclone boilers, have solicited only bituminous coal, and/or have only test burned either PRB or Colorado-Utah coal as stations where PRB and Colorado-Utah coal compete (37 stations listed in Appendix RMQ-8 of my verified statement).

As previously explained cyclone boilers can burn either Utah or PRB coals based on ash fusion characteristics and PRB and Utah coals do compete for this market.

Dr. Sansom discounted a list of eight plants which he believed had not received PRB coal between 1989 and 1995. The following eight plants were eliminated by Dr. Sansom:

- |                |               |
|----------------|---------------|
| • Apache       | • North Valmy |
| • Manitowoc    | • Lawrence    |
| • Presque Isle | • Tecumseh    |
| • Quindaro     | • Valmont     |

Federal Energy Regulatory Commission (FERC) Form 423 indicates two of the eight stations (Manitowoc and Presque Isle) did receive PRB coal between 1989 and 1995. Manitowoc received coal from the PRB in 1993 and 1994; Presque Isle station received PRB coals in 1993 through 1995.

Discussions with personnel at four (Apache, Lawrence, Tecumseh and Valmont) of the remaining six stations indicate PRB coals have been tested at three of these stations in the past (except for Valmont). Three of the four stations (Lawrence, Tecumseh and Valmont) plan test burns of PRB coals in 1996.

Kansas Power and Light Company (KP&L) personnel indicate PRB coals have been test-burned at Lawrence and Tecumseh Stations. Test burns are planned at

both stations in 1996. Lawrence and Tecumseh Stations received 100% Colorado coal in 1995. Consideration of a fuel switch to PRB coals is certainly evidence of competition between coals (Colorado-Utah and PRB).

Dr. Sansom, at page 69 of his testimony, states:

AEPCO Apache did not burn PRB coal between 1989 and 1995, as Mr. Quinlan testifies. According to AEPCO's witness, a test burn occurred in 1986. A test burn does not establish a coal as a viable economic source for a user. In fact, if anything, a test burn not followed in a reasonable tie frame by a purchase shows that the coal was found to be non-suitable for the boiler or uneconomic versus other alternatives.

Apache station (Arizona Electric Power Cooperative [AEPC]) personnel verified PRB coals have been test burned in 1986. Dr. Sansom reiterates his point on test burns at page 61 of his testimony indicating if a purchase does not follow the test burn, the coal should be considered to have failed. However, contrary to Dr. Sansom's assumption that PRB coal has been proven to be nonsuitable, AEPC is currently investigating the economics of PRB coal use (either blended or 100%) including capital requirements necessary for plant modifications. AEPC has also spoken with PRB mine personnel regarding installation of blending facilities. Often several test burns are required (or possibly some equipment modifications) before a coal is accepted for large scale use at a generating station.

Blending of coals does not preclude competition between the blending sources. PRB coals and WBC are in competition for percentage of blend components. For example, Tecumseh and Lawrence Stations received 100% Colorado coal in 1995 (under contract through 1999). If PRB coal test burns are successful on a blended



basis (e.g., 80% Colorado and 20% PRB) there has been a competition for a percentage (20%) of the burn. Obviously, a fuel switch for KP&L clearly demonstrates competition between not only coals (Colorado-Utah and PRB) but also between rail companies (UP and SP).

Dr. Sansom has eliminated eight stations on the basis that solicitations from these stations are for bituminous coal only. However, some stations that solicited only bituminous coal in the past, now purchase subbituminous coal from the PRB. Current purchasing practice does not guarantee future coal use. This is particularly true for Midwestern utilities faced with more stringent regulations under the CAAA in the year 2000. Dr. Sansom ignores the fact that solicitation practices of utilities are always evolving to meet current needs of the utility in terms of economics and plant requirements.

WBC coals, particularly Colorado-Utah, are competing and will continue to compete with PRB coals for market share in the Midwest and other non traditional markets.

# AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF ALLEGHENY

SS:

Robert M. Quinlan, 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.

Robert M. Zundel

Signature of the Affiant

Subscribed and sworn to before  
me this 10th day of May, 1996.

Judith A. Shepard  
Notary Public

Notarial Seal  
Judith A. Sheperd, Notary Public  
West Mifflin Boro, Allegheny County  
My Commission Expires March 7, 2000  
Member, Pennsylvania Association of Notaries



**APPENDIX 2**

**REBUTTAL VERIFIED STATEMENT**

**OF**

**GERALD A. ABOOD**

**REPLY VERIFIED STATEMENT OF GERALD A. ABOOD**

My name is Gerald A. Abood. I am Director-Resource Supply and Services, Fossil Operations, of Wisconsin Electric Power Company (WEPCO). I submitted a verified statement that was included as Appendix 3 to WEPCO's Responsive Application in this Sub-No. 16 proceeding, filed March 29, 1996. A general description of my background and qualifications was included in that verified statement. In this reply statement, I respond to specific testimony by applicants directed to WEPCO. WEPCO's expert witness, Mr. Robert M. Quinlan, is responding to applicants' more generalized testimony relating to coal transportation.

**I. REPLY TO REBUTTAL VERIFIED STATEMENT OF RICHARD G. SHARP, PP. 23-24**

Mr. Sharp is mistaken in stating (p. 23) that most of the coal burned at Oak Creek is bituminous coal from Pennsylvania. As shown in my initial verified statement, Appendix GAA-1, page 3, Pennsylvania coal has not been the highest volume of coal burned at Oak Creek since 1992. Western bituminous coal has been the highest volume coal burned at Oak Creek in each of the three years since that date (initial V.S. Abood, Appdx. GAA-1, p. 3, 1993, 1994, 1995).

Mr. Sharp's statement (p. 24) that Oak Creek's past use of SP and UP coal sources has been minimal is true, but misleading. Mr. Sharp ignores the fact that WEPCO will receive over 1 million tons of coal in 1996 from a UP-served coal mine in the Powder River Basin (PRB) (initial V.S. Abood, p. 3). He also ignores the fact that WEPCO has been receiving substantially-increased numbers of bids for SP coal from Colorado and Utah mines in recent years, and that such SP coal will play an important role when an unknown portion of 1 million tons of bituminous coal for Oak Creek, presently being supplied from Pennsylvania, are rebid later in 1996 (*id.*, p. 4;

Appdx. GAA-2). Consequently, Mr. Sharp's statement does not rebut my testimony that the competitive posture of WEPCO's Oak Creek Power Plant has been strongly influenced by the receipt of SP coal or its prominence in the bidding process, and that such influence would be even stronger in the future but for the UP-SP merger.

Mr. Sharp is incorrect in contending (p. 24) that WEPCO has not explained the relationship between the loss of source competition between UP and SP at origin and the destination trackage rights sought by WEPCO. The relationship is explained by WEPCO Witness Quinlan at pages 16-17 of his initial verified statement (WEPCO Responsive Application, Appendix 2, pp. 16-17). Contrary to Mr. Sharp's statement (p. 24), the WEPCO condition would not improve WEPCO's transport options, but instead would preserve them as required in the public interest. Access by a second carrier at destination would be a direct offset to loss of two-carrier source competition at origin. The WEPCO condition is carefully crafted not to improve WEPCO's position in that the second carrier to provide service at destination would not be a carrier capable of serving any coal mines at origin (initial VS Quinlan, pp. 16-17). UP's competitive position would be preserved as the only carrier able to transport coal to Oak Creek in single-line service.

**II. REPLY TO REBUTTAL VERIFIED STATEMENT OF JOSEPH T. HUTTON, PP. 9-11**

---

Mr. Hutton is not correct in asserting (p. 11) that SP coal does not compete against PRB coal for supply to WEPCO's Oak Creek Power Plant. That is not established by the fact that WEPCO sought separate bids for high and low Btu coals for Oak Creek in 1995 (RVS Hutton,



p. 10). That was not done because those coals were not considered to be competitive, but rather out of caution because WEPCO had not used PRB coal in any significant volume at Oak Creek prior to that time. The request for separate bids was in furtherance of a back-up procurement plan in the event that PRB coal proved to be unsuitable at Oak Creek. WEPCO's agreement to receive PRB coal at Oak Creek is contingent on its ability to successfully burn that coal. The separate bidding in 1995 does not mean that the coals will be separately bid in the future. Moreover, Mr. Hutton's testimony ignores the fact that PRB coal replaced a large volume of Western bituminous coal. The reverse could as easily occur.

Mr. Hutton's description (p. 10) of WEPCO's 1995 decision to burn Pennsylvania coal at Oak Creek is incomplete and misleading. The Pennsylvania contract is a one-year contract that expires by the end of 1996. That decision was materially influenced by soft sulfur-emission allowance prices at the time. At the same time, sulfur-emission costs were forecast to increase significantly in the longer range. Consequently, that contract was made of short duration so that it could be rebid to take advantage of coal of lower sulfur content. SP coal would satisfy that requirement.

The difference in delivered price of SP and PRB coals (RVS Hutton, p. 11) does not establish absence of competition between them. The spread in delivered prices between SP and PRB coals is narrowing. Indeed, at WEPCO's Presque Isle facility, SP coal recently was received at a lower delivered price than most of the PRB coal received at that location.

Mr. Hutton is wrong in stating (p. 11) that for operational reasons some units at WEPCO's Presque Isle facility take bituminous coal exclusively while others take PRB coal

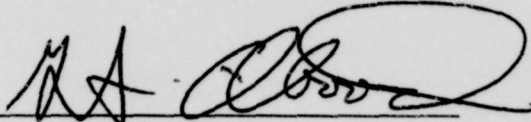
exclusively. Receipt of those kinds of coal at Presque Isle is not only for operational reasons.

Presque Isle is committed by contract to receipt of PRB coal until the end of 1997. Contracts for most of that coal preceded WEPCO's acquisition of the Presque Isle facility in 1988.

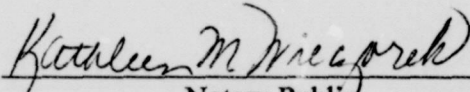
**VERIFICATION**

STATE OF WISCONSIN       )  
                                      )  
COUNTY OF MILWAUKEE    )

GERALD A. ABOOD, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct to the best of his belief, information and knowledge.

  
Gerald A. Abood

SUBSCRIBED AND SWORN to  
before me this 9<sup>th</sup> day  
May 1996.

  
Notary Public

My Commission Expires: 8-1-99



**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document, Rebuttal In Support Of Responsive Application, was served by U.P.S. overnight mail on the following:

Arvid E. Roach, II  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, DC 20044

Paul A. Cunningham  
Harkins Cunningham  
1300 Nineteenth St., N.W.  
Washington, DC 20036

Erika Z. Jones  
Mayer, Brown & Platt  
2000 Pennsylvania Ave., N.W., Suite 6500  
Washington, DC 20006-1882

on all parties specified in Decision No. 29 and on all parties of record by first-class, U.S. mail, postage prepaid, this 13th day of May, 1996.

Thomas F. McFarland Jr.  
THOMAS F. McFARLAND, JR.

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U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation

RECEIVED  
OFFICE OF ECONOMICS  
DIRECTOR'S OFFICE

MAY 9 4 51 PM '96  
GENERAL COUNSEL

83622 D  
400 Seventh St., S.W.  
Washington, D.C. 20590

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

May 9, 1996

Ms. Elaine K. Kaiser  
Chief, Section of Environmental analysis  
U.S. Surface Transportation Board  
1201 Constitution Ave., N.W.  
Washington, D.C. 20423

Re: Environmental Assessment  
Finance Docket No. 32760

Dear Ms. Kaiser:

Enclosed herewith are the original and ten copies of the Comments of the U.S. Department of Transportation on the Environmental Assessment in the above-referenced proceeding.

I appreciate your accommodation of the Department's request for additional time in which to submit its comments. Should the Surface Transportation Board so decide, we look forward to working with the Section of Environmental Analysis on this matter.

Sincerely,

Paul Samuel Smith  
Senior Trial Attorney

Enclosures

ENTERED	
Office of the Secretary	
MAY 21 1996	
5	Part of Public Record

ORIGINAL

DOT-3

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

Finance Docket No. 32760

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

COMMENTS OF THE UNITED STATES  
DEPARTMENT OF TRANSPORTATION

I. Introduction

The Surface Transportation Board ("STB" or "Board") in this proceeding is considering the proposed consolidation of two major railroads in the West, the Union Pacific Railroad Company ("UP") and the Southern Pacific Transportation Company ("SP"). As part of that proceeding, the Board's Section of Environmental Analysis ("SEA") has issued an Environmental Assessment ("EA") that reviews the transaction's potential impacts on, inter alia, the environment and safety. In response to the SEA's request, the United States Department of Transportation ("DOT" or "Department") hereby offers these comments on the environmental and safety aspects

of the EA.<sup>1</sup>

The SEA has identified certain adverse environmental and safety impacts that would result in certain areas from the merger and the projected increases in rail traffic volume. These adverse impacts generally involve increased levels of noise and air pollution as well as potential decreases in operating safety. The Department overall is concerned that the SEA's recommendations to the Board are not sufficiently specific with respect to measures necessary to fully mitigate these adverse impacts. More detailed, substantive recommendations would assist the STB in its consideration of what mitigation measures to impose in the event the merger is approved. We therefore offer some specific mitigation measures for the STB's consideration.

## II. Environmental and Safety Impacts of the Merger

The Department anticipates that the merger, if approved, would generate both positive and negative environmental and safety impacts. The positive impacts include: elimination of numerous grade crossings because of rail line abandonments, with attendant reduction in air pollution, noise and traffic congestion; reduction of energy consumption and air pollution resulting from shorter routings using the combined system; and creation of a more efficient rail system better able to compete with trucks, which will reduce pollution and enhance safety by taking traffic off the highways. The negative impacts would result from increased rail traffic in certain areas and additional truck traffic at intermodal terminals handling increased rail traffic

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1/ We wish to emphasize that these comments refer only to these issues and do not, in any way, reflect the Department's overall position regarding the proposed merger. The Department's position on the merits of the merger will be set forth in its brief, which is due to be filed with the Board by June 3, 1996.



flows. While the positive environmental impacts of the merger should be considered, DOT strongly urges the Board to impose specific measures to mitigate the negative impacts.

The EA identifies a small number of individual communities that will experience significant increases in train traffic as a result of the merger (e.g., the Cities of Abilene and Wichita, Kansas and McPherson County, Kansas; the City of Reno, Nevada). EA, Vol. 2, at 8-34 and 12-15. These communities may face increases in noise, congestion, air pollution and safety risks if adequate mitigation measures are not implemented. Again, the DOT urges the Board to impose specific requirements to mitigate these real impacts, in a manner consistent with existing processes.

### III. Safety Concerns

Because of its statutory responsibilities for rail and highway safety, the Department is particularly concerned about the impacts of the proposed merger on safety. The Department would like to offer comments on two specific safety-related points discussed by the EA. The EA recommends that the Board require the merged UP/SP to develop capacity studies of several of its lines, particularly those that will be run as paired tracks, with largely single-direction lines. EA, Vol., at 3-14,15; 6-28; 9-15; and 16-43,44. The EA also recommends that the STB require the UP/SP to submit those plans to the Federal Railroad Administration ("FRA") for review.

The FRA has in place a comprehensive program of railroad safety requirements, found in the Code of Federal Regulations ("CFR") in Title 49, Parts 209-240. These regulations address a broad range of safety concerns, including, among other things, track safety standards, freight car safety standards, locomotive inspection and safety standards, railroad power brakes and drawbars,

signal system reporting requirements, hours of service of railroad employees, qualification and certification of railroad locomotive engineers, radio standards and procedures, and grade crossing signal system safety. In implementing this merger, UP/SP will be required to comply with all of these requirements in operating the merged system. FRA also has in place a vigorous and effective safety inspection and enforcement program to assure that compliance is achieved.

The Department believes that compliance by the merged railroad with the FRA's safety regulations and with the UP/SP's own internal safety requirements will afford a consistent level of railroad safety across the merged system. Accordingly, preparation and submission by UP/SP of a specific safety plan to the FRA to address certain individual railroad lines is not necessary. Staff from the FRA has met with SEA to discuss railroad safety matters generally, and would be pleased to continue to work with that office on railroad safety issues as SEA completes its environmental analysis of the UP/SP proposal.

#### IV. Comments on Proposed Mitigation Measures

The Department appreciates the difficulties SEA faced in completing the EA in the limited time available. Perhaps as a result of the compressed schedule, the mitigating measures outlined in the EA are, in DOT's view, too vague to assure specific relief. For example, the EA recommends, in the absence of an agreement between the City of Reno and UP/SP, the construction of three grade-separated crossings and up to two pedestrian grade crossings to mitigate the transportation and safety impact of increases in rail traffic in Reno, Nevada (EA, Vol. 2, at 12-15,16). The EA also suggests consideration of a grade-separated crossing for the same reasons at the Grand Junction, Colorado yard (EA, Vol. 2 at 5-26). However, the EA does not

explain how the recommendations were arrived at or, if implemented, how fully they would mitigate the adverse impacts identified. Nor do the recommendations provide any guidance on the critical question of who will pay the costs of these measures.

For environmental impacts other than transportation and safety (i.e., air quality and noise), the SEA recommendations require UP/SP to meet with the communities to develop mitigation plans, reporting back to the SEA periodically on the status (e.g., EA at Vol. 2, 4-42). DGT believes that such meetings will be ineffective where significant adverse impacts are expected, unless the Board also identifies the minimum level and type of mitigation required, while leaving the railroad and the communities to resolve how to satisfy that requirement.

The same approach -- consultation (with EPA) and preparation of a remedial plan -- is taken with respect to clean-up of hazardous mining remnants and remediation of "Superfund" sites on lines to be sold or abandoned. EA, Vol 3; 4-10. This approach does not assure that adequate clean-up will occur and that financial responsibility for the clean-up will be placed where it belongs -- with the UP/SP.

Similarly, the EA recommends that the merged carriers consult with affected cities and counties about potential safety consequences and develop mutually agreeable plans to alleviate concerns (e.g., EA, Vol. 2, 2-19; 3-13; 4-42; 5-26; and 6-27). The EA should identify mitigation measures that the merged carriers will be required to implement to assure that there are no significant adverse impacts.



## V. Recommendations

The Department recommends that the Board require that individual states and the UP/SP jointly develop grade crossing improvement plans that will result in no net reduction in safety, state-wide. The states and UP/SP should conduct a rigorous assessment of those lines and crossings where increased traffic or other operational changes are likely to cause increased safety problems, consistent with the process now undertaken annually by states pursuant to Federal Highway Administration ("FHWA") rules. 23 CFR 646.214 & 924.

The grade crossing improvements annually selected by the states under their normal processes are generally funded in part from the Surface Transportation Program, allocated to the states through the Federal Highway Administration. Intermodal Surface Transportation Efficiency Act of 1991, Section 133,(d)(1) and 23 USC, Section 130. However, where significant increases in safety risk (the exposure of vehicles to trains at crossings), state-wide, would result from the merger, the UP/SP should be responsible for the full cost of bringing the safety risk down to pre-merger levels -- i.e., ensuring no net state-wide increase in safety risk -- as one aspect of the merger's cost.<sup>2</sup>

Accordingly, if the merger is approved, the states should recalculate the exposure factors of rail crossings within their borders based on the train counts expected after the merger,

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2/ The Department does not view this approach as being inconsistent with the initial position it has taken in a pending rulemaking, "Selection and Installation of Grade Crossing Warning Systems," 60 Fed Reg 11649 (March 2, 1995). The proposed rule, if implemented, would not be an impediment to requiring enhanced railroad participation in crossing upgrades in circumstances such as this; where an action, approving the merger, requires federal approval and, as a result, the existing level of crossing safety is adversely affected by a merger proposed by two railroads.

including trains operated over trackage rights reestablish their priorities, and, working with the railroads, develop plans to reduce any overall increase in risk. In states where the number of trains will increase significantly, or where rerouting will send trains through grade crossings with higher levels of vehicular traffic, requiring the applicants to assure no increase in overall risk relieves the state from the difficult choice of accepting decreases in overall safety or allocating its limited grade crossing funding resources to remedying problems caused by the merger. The improvements in safety resulting from eliminating the need for highway crossings where rail lines are abandoned may, in the case of some states, offset the increased safety exposure on lines over which traffic is rerouted. This state-wide approach is consistent with existing programs and will provide incentives for closing grade crossings and considering improvements addressed to specific corridors that offer greater safety than mandating a specific crossing-by-crossing approach.

The Department urges one exception to this general, state-wide approach. In those urban areas identified as facing significant increases in rail traffic -- at a minimum, Reno, Nevada, and Wichita, Kansas -- a similar approach, but with a narrower scope, should be used. Because of the relative severity and localized nature of prospective safety risks in these communities, a state-wide focus is simply too broad. Consequently, overall grade crossing risk should be no greater in these urban areas after the merger than before the merger, and the merging lines should again bear the cost of such equalization. The Department recommends that the states of Nevada and Kansas and the UP/SP, working with the Metropolitan Planning Organizations of these urban areas, calculate the area-wide safety risks presented by the merger and identify a program of improvements that will mitigate the negative safety impacts at the least feasible cost. The applicants should be responsible for funding the agreed-upon improvements, and the STB should



assure satisfactory implementation of this approach.

Finally, the EA did not address the mitigation measures proposed by the City of Wichita, Kansas, and Sedgwick County, Kansas, to address their concerns about increased rail traffic.<sup>3</sup> Those communities proposed that UP/SP reroute the additional trains that would otherwise pass through Wichita over Burlington Northern Santa Fe lines. While we cannot comment on the practicality or any other aspect of the proposal, it certainly should be discussed, as it may offer a relatively low cost solution to the problem.

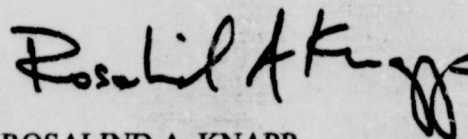
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3/ Verified Statement of Lloyd E. Stagner (SEDG-3), pages 1-2; 4-9

VI. Conclusion

The Department encourages the Board to identify and quantify more fully the merger's specific adverse impacts. Similarly, the Board should impose specific conditions for the mitigation of those impacts, with the costs to be borne by the merging carriers. General requirements that Applicants and local authorities "discuss" the issues may not bring about definite resolutions. The Department stands ready to assist the Board, states and local communities by assuring that railroad operations are conducted in compliance with applicable safety regulations.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Rosalind A. Knapp", with a stylized, flowing script.

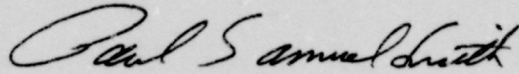
ROSALIND A. KNAPP

Deputy General Counsel

May 9, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing **Comments of the United States Department of Transportation on the Environmental Assessment in Finance Docket No. 32760** to be served upon all Parties of Record in this proceeding on May 10, 1996, by first class mail, postage prepaid.



Paul Samuel Smith

May 9, 1996



STB

FD

32760

5-9-96

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83621



# State of Utah

Department of Community & Economic Development  
Division of State History  
Utah State Historical Society



Michael O. Leavitt  
Governor  
Max J. Evans  
Director

300 Rio Grande  
Salt Lake City, Utah 84101-1182  
(801) 533-3500 • FAX: 533-3503 • TDD: 533-3502  
cehistory.ushs@email.state.ut.us

May 3, 1996



Elaine K. Kaiser  
UP/SP Environmental Project Director  
Section of Environmental Analysis  
Surface Transportation Board  
12th and Constitution Avenue, Room 3219  
Washington, DC 20423-0001

Attention: Finance Docket No. 32760

RE: Surface Transportation Board Request for Environmental Comments on the Potential  
Environmental Impacts of the Control and Merger Application between the Union Pacific and  
Southern Pacific Railroads

In Reply Please Refer to Case No. 95-1312

Dear Ms. Kaiser:

The Utah State Historic Preservation Office received the above referenced project. Our office has  
seen no site specific action which would effect historic properties, our office therefore recommends a  
determination of No Historic Properties.

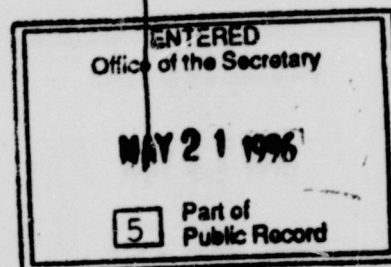
This information is provided on request to assist the Surface Transportation Board with its Section  
106 responsibilities as specified in 36CFR800. If you have questions, please contact me at (801) 533-  
3555, or Barbara L. Murphy at (801) 533-3563. My computer address on internet is:  
jdykman@email.state.ut.us

As ever

James L. Dykmann  
Compliance Archaeologist

JLD:95-1312

**ADVISE OF ALL  
PROCEEDINGS**



STB

FD

32760

5-13-96

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83620 D



DEPARTMENT OF THE ARMY  
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS  
CLOCK TOWER BUILDING — P.O. BOX 2004  
ROCK ISLAND, ILLINOIS 61204-2004

RECEIVED  
OFFICE OF ECONOMICS  
DIRECTOR'S OFFICE

MAY 13 11 56 AM '96

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

REPLY TO  
ATTENTION OF:

May 2, 1996

Planning Division

Ms. Elaine K. Kaiser  
Chief  
Section of Environmental Analysis  
Surface Transportation Board  
1201 Constitution Avenue, NW.  
Room 3219  
Washington, DC 20423

ENTERED	
Office of the Secretary	
MAY 21 1996	
5	Part of Public Record

Dear Ms. Kaiser:

I received your Environmental Assessment, Volumes 1-5, dated April 12, 1996, concerning Finance Docket No. 32760; Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and The Denver & Rio Grande Western Railroad Company. Rock Island District staff reviewed the information you provided.

Copies of our previous correspondence on the subject of this merger to Ms. Julie Donsky of Dames and Moore are enclosed for your review. Our previous responses are still applicable. If you have any questions regarding permits for this project, please contact Ms. Donna Jones of our Operations Division, telephone 309/794-5371.

No new concerns surfaced during our review. Thank you for the opportunity to comment on your proposal. If you need more information, please call Mr. Randy Kraciun of our Planning Division's Environmental Analysis Branch, telephone 309/794-5174.

Sincerely,

**ADVISE OF ALL  
PROCEEDINGS**

*Dudley M. Hanson*  
Dudley M. Hanson, P.E.  
Chief, Planning Division

Enclosures



DEPARTMENT OF THE ARMY  
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS  
CLOCK TOWER BUILDING — P.O. BOX 2004  
ROCK ISLAND, ILLINOIS 61204-2004

REPLY TO  
ATTENTION OF:

November 17, 1995

Planning Division

Ms. Julie Donsky  
Environmental Scientist  
Dames & Moore  
One Continental Towers  
1701 Golf Road, Suite 1000  
Rolling Meadows, Illinois 60008

Dear Ms. Donsky:

I received your letter dated October 23, 1995, concerning the Union Pacific and Southern Pacific Railroads merger and related abandonment sites. Rock Island District staff reviewed the information you provided and have the following comments:

a. The Barr, Illinois, project does not involve Corps of Engineers (Corps) administered land; therefore, no further Corps real estate coordination is necessary.

b. The lands involved in the Dupo, Illinois, project are within the Corps' St. Louis District geographic boundaries and must be coordinated with that District. The lands involved in the Global 2 and Dolton, Illinois, projects are within the Corps' Chicago District geographic boundaries and must be coordinated with that District. The addresses are as follows:

District Engineer  
U.S. Army Engineer District, Chicago  
111 North Canal Street, Suite 600  
Chicago, Illinois 60606-7206

District Engineer  
U.S. Army Engineer District, St. Louis  
1222 Spruce Street  
St. Louis, Missouri 63103-2833

c. Any proposed placement of fill or dredged material into waters of the United States (including wetlands) requires Department of the Army (DA) authorization. We require additional details of your project before we can make a final determination. When detailed plans are available, please complete and submit the enclosed application packet to the Rock Island District for processing.



d. In accordance with the National Flood Insurance Program, permits may be required by municipal and/or counties for any dredging, filling, or placement of dredged material and road construction.

e. You should coordinate with the Illinois State Historic Preservation Officer, Old State Capitol, Springfield, Illinois 62701 to determine impacts to historic properties.

f. You also should contact the Rock Island Field Office of the U.S. Fish and Wildlife Service to determine if any federally listed endangered species are being impacted and, if so, how to avoid or minimize impacts. The Rock Island Field Office address is: 4469 - 48th Avenue Court, Rock Island, Illinois 61201. Mr. Rick Nelson is the Field Supervisor. You can reach him by calling 309/793-5800.

No other concerns surfaced during our review. Thank you for the opportunity to comment on your proposal. If you need more information, please call Mr. Randy Kraciun of our Environmental Analysis Branch, telephone 309/794-5174.

Sincerely,

**ORIGINAL SIGNED BY  
PATRICK T. BURKE, P.E.**

Dudley M. Hanson, P.E.  
Chief, Planning Division

Enclosure





DEPARTMENT OF THE ARMY  
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS  
CLOCK TOWER BUILDING — P.O. BOX 2004  
ROCK ISLAND, ILLINOIS 61204-2004

REPLY TO  
ATTENTION OF:

October 20, 1995

Planning Division

Ms. Julie Donsky  
Environmental Scientist  
Dames & Moore  
One Continental Towers  
1701 Golf Road, Suite 1000  
Rolling Meadows, Illinois 60008

Dear Ms. Donsky:

I received your letter dated September 30, 1995, concerning the Union Pacific and Southern Pacific Railroads merger and related abandonment sites. Rock Island District staff reviewed the information you provided and have the following comments:

a. Your proposal does not involve Corps of Engineers (Corps) administered land; therefore, no further Corps real estate coordination is necessary within this district. You will need to contact the St. Louis District concerning lands within their boundaries. The address is as follows:

District Engineer  
U.S. Army Engineer District, St. Louis  
1222 Spruce Street  
St. Louis, Missouri 63103-2833

b. Only the Springfield, Illinois, project is in the Rock Island District. More details of that project are required for our Regulatory Branch to determine whether a permit is needed. When details are available, please fill out the enclosed application form and send it to Ms. Donna Jones at our address above, ATTN: Operations Division (Donna Jones).

c. You should coordinate with the Illinois State Historic Preservation Officer, Old State Capitol, Springfield, Illinois 62701 to determine impacts to historic properties.

d. You also should contact the Rock Island Field Office of the U.S. Fish and Wildlife Service to determine if any federally listed endangered species are being impacted and, if so, how to avoid or minimize impacts. The Rock Island Field Office address is: 4469 - 43th Avenue Court, Rock Island, Illinois 61201. Mr. Rick Nelson is the Field Supervisor. You can reach him by calling 309/793-5800.

No other concerns surfaced during our review. Thank you for the opportunity to comment on your proposal. If you need more information, please call Mr. Randy Kraciun of our Environmental Analysis Branch, telephone 309/794-5174.

Sincerely,

**ORIGINAL SIGNED BY  
PATRICK T. BURKE, P.E.**

Dudley M. Hanson, P.E.  
Chief, Planning Division

Enclosure



DEPARTMENT OF THE ARMY  
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS  
CLOCK TOWER BUILDING — P.O. BOX 2004  
ROCK ISLAND, ILLINOIS 61204-2004

REPLY TO  
ATTENTION OF:

October 16, 1995

Planning Division

Ms. Julie Donsky  
Environmental Scientist  
Dames & Moore  
One Continental Towers  
1701 Golf Road, Suite 1000  
Rolling Meadows, Illinois 60008

Dear Ms. Donsky:

I received your letter dated September 22, 1995, concerning the Union Pacific and Southern Pacific Railroads merger and related abandonment sites. Rock Island District staff reviewed the information you provided and have the following comments:

a. Your proposal does not involve Corps of Engineers (Corps) administered land; therefore, no further Corps real estate coordination is necessary. For your information, we have enclosed a brochure entitled Caring for the Nations Waters.

b. No Federal levee systems would be impacted by your project. The Barr-Girard line includes a crossing over the Sangamon River. Details of how the bridge structures will be abandoned are required for our Regulatory Branch to determine what permits are needed. Please send the information to Ms. Donna Jones at our address above.

c. You should coordinate with the Illinois State Historic Preservation Officer, Old State Capitol, Springfield, Illinois 62701 to determine impacts to historic properties.

d. You also should contact the Rock Island Field Office of the U.S. Fish and Wildlife Service to determine if any federally listed endangered species are being impacted and, if so, how to avoid or minimize impacts. The Rock Island Field Office address is: 4469 - 48th Avenue Court, Rock Island, Illinois 61201. Mr. Rick Nelson is the Field Supervisor. You can reach him by calling 309/793-5800.



No other concerns surfaced during our review. Thank you for the opportunity to comment on your proposal. If you need more information, please call Mr. Randy Kraciun of our Environmental Analysis Branch, telephone 309/794-5174.

Sincerely,

**ORIGINAL SIGNED BY  
PATRICK E. BURKE, P.E.**

Dudley M. Hanson, P.E.  
Chief, Planning Division

Enclosure



DEPARTMENT OF THE ARMY  
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS  
CLOCK TOWER BUILDING — P.O. BOX 2004  
ROCK ISLAND, ILLINOIS 61204-2004

REPLY TO  
ATTENTION OF:

December 4, 1995

Planning Division

Ms. Julie Donsky  
Environmental Scientist  
Dames & Moore  
One Continental Towers  
1701 Golf Road, Suite 1000  
Rolling Meadows, Illinois 60008

Dear Ms. Donsky:

I received your letter dated October 31, 1995, concerning information about the Union Pacific and Southern Pacific Railroads merger at Buda, Illinois. Rock Island District staff reviewed the information you provided and have the following comments:

- a. Your proposal does not involve Corps of Engineers (Corps) administered land; therefore, no further Corps real estate coordination is necessary.
- b. Any proposed placement of fill or dredged material into waters of the United States (including wetlands) requires Department of the Army (DA) authorization. We require additional details of your project before we can make a final determination concerning wetlands and Rock Island District's jurisdiction in this project. When detailed plans are available, please complete and submit the enclosed application packet to the Rock Island District for processing. If you have any questions regarding permits for this project, please contact Ms. Donna Jones of our Operations Division at 309/794-5371.
- c. Permits from the State of Illinois' Department of Natural Resources will be required for construction sites with respect to floodplain issues and stream crossings.
- d. You should coordinate with the Illinois State Historic Preservation Officer, Old State Capitol, Springfield, Illinois 62701 to determine impacts to historic properties.

e. You also should contact the Rock Island Field Office of the U.S. Fish and Wildlife Service to determine if any federally listed endangered species are being impacted and, if so, how to avoid or minimize impacts. The Rock Island Field Office address is: 4469 - 48th Avenue Court, Rock Island, Illinois 61201. Mr. Rick Nelson is the Field Supervisor. You can reach him by calling 309/793-5800.

No other concerns surfaced during our review. Thank you for the opportunity to comment on your proposal. If you need more information, please call Mr. Randy Kraciun of our Environmental Analysis Branch, telephone 309/794-5174.

Sincerely,

**ORIGINAL SIGNED BY  
PATRICK T. BURKE, P.E.**

Dudley M. Hanson, P.E.  
Chief, Planning Division

Enclosure





DEPARTMENT OF THE ARMY  
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS  
CLOCK TOWER BUILDING — P.O. BOX 2004  
ROCK ISLAND, ILLINOIS 61204-2004

REPLY TO  
ATTENTION OF:

December 22, 1995

Planning Division

Ms. Julie Donsky  
Environmental Scientist  
Dames & Moore  
One Continental Towers  
1701 Golf Road, Suite 1000  
Rolling Meadows, Illinois 60008

Dear Ms. Donsky:

I received your letter dated November 27, 1995, concerning information about the Union Pacific and Southern Pacific Railroads merger in Illinois. Rock Island District staff reviewed the information you provided and have the following comments:

- a. Your proposal does not involve Corps of Engineers (Corps) administered land within our district; therefore, no further Corps real estate coordination is necessary.
- b. An increase in traffic will not involve Section 404 authorization, as no construction is indicated. If you have any questions regarding permits for this project, please contact Ms. Donna Jones of our Operations Division at 309/794-5371.
- c. Any proposed construction in a Special Flood Hazard Area (SFHA) will need to comply with Executive Order 11988. Local floodplain development permits may be required from communities, counties, and the Illinois Department of Natural Resources for activities in a SFHA, as required by the National Flood Insurance Program.
- d. You should coordinate with the Illinois State Historic Preservation Officer, Old State Capitol, Springfield, Illinois 62701 to determine impacts to historic properties.
- e. You also should contact the Rock Island Field Office of the U.S. Fish and Wildlife Service to determine if any federally listed endangered species are being impacted and, if so, how to avoid or minimize impacts. The Rock Island Field Office address is: 4469 - 48th Avenue Court, Rock Island, Illinois 61201. Mr. Rick Nelson is the Field Supervisor. You can reach him by calling 309/793-5800.

No other concerns surfaced during our review. Thank you for the opportunity to comment on your proposal. If you need more information, please call Mr. Randy Kraciun of our Environmental Analysis Branch, telephone 309/794-5174.

Sincerely,

**ORIGINAL SIGNED BY**

Dudley M. Hanson, P.E.  
Chief, Planning Division

STB

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83619





1300 W. Washington  
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Fax: 602-542-4188  
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Fife Symington  
Governor

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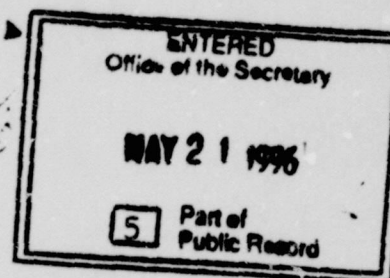
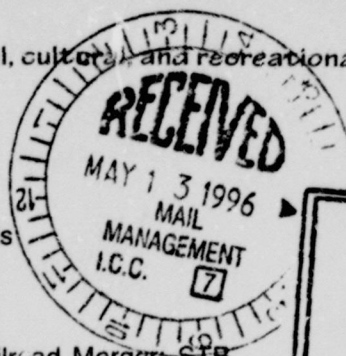
Kenneth E. Travous  
Executive Director

Charles R. Eatherly  
Deputy Director

"Managing and conserving natural, cultural, and recreational resources"

May 4, 1996

Elaine K. Kaiser  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
Washington, D.C. 20403-0001



RE: Union Pacific/Southern Pacific Railroad Merger, STB

Dear Ms. Kaiser:

Thank you for providing us with the response documentation as requested in our March 4, 1996 letter to you. I have reviewed the documentation submitted and note that specific determinations of eligibility and effect are requested from this office by the Surface Transportation Board (STB). Please note that we feel that such requests are premature at this time, as areas of new ground disturbance associated with the new construction of rail line segments and the expansion of intermodal facilities in Arizona could result in adverse effects to previously unknown cultural resources that are eligible for the National Register of Historic Places (NRHP), especially if human remains and/or grave goods are present at these sites.

As mentioned in our earlier letter, field surveys by qualified archaeologists are still required in order to assess these situations. The results of these surveys should provide a clear map of the entire right-of-way through Arizona that details which prehistoric and historic archaeological sites and historic structures (buildings, railroads, railroad camps, etc.) will be impacted by proposed activities associated with this merger. This survey report should also include NRHP eligibility recommendations for all cultural resources located within the areas of potential effect in Arizona.

In addition, given that this project is multi-state and could result in an adverse effect in any or all of the respective states (once survey results are known), we recommend that STB generate a Programmatic Agreement (PA) to facilitate the Section 106 process for this complex undertaking. It is our opinion that there should only be one determination of effect for this whole project -- in Arizona, we prefer not to segment undertakings and rarely provide multiple determinations of effect for one project. We would be more than happy, however, to agree within the body of the PA that certain categories of activities can proceed in Arizona without further consultation (e.g., Category 2--the increase of traffic at rail yards, Category 4--rail line abandonment [none of which is slated for Arizona], and Category 5--new construction of rail lines outside of the existing railroad right-of-way [none of which is planned for Arizona]).

Also, please clarify for us if any new construction will occur in Arizona outside of the existing railroad rights-of-way. If this is the case, then the respective land managers will need to be consulted regarding these expansions and be signatories to the project PA.

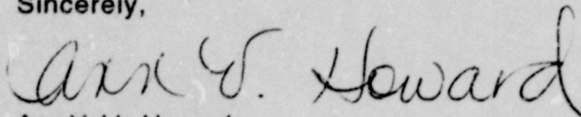
We look forward to further consultation on this undertaking and appreciate the STB's thorough and responsive consultation with this office on this project. We look forward to reviewing the future survey reports for Arizona and to formulating a working PA for the project with STB and the Advisory Council on Historic Preservation. In this way, we will have a better understanding of the nature of impacts to any NRHP-eligible property within Arizona and how to best mitigate these effects.

**ADVISE OF ALL  
PROCEEDINGS**

Elaine K. Kaiser  
May 4, 1996  
Page Two

We appreciate your continued compliance with the historic preservation requirements for federal undertakings. If you have any questions or concerns, please feel free to contact me at 602/542-7138.

Sincerely,

A handwritten signature in cursive script that reads "Ann V. Howard". The signature is written in dark ink and is positioned above the printed name and title.

Ann Valdo Howard  
Public Archaeology Programs Manager/Archaeologist  
State Historic Preservation Office

cc: Claudia Nissley, ACHP

STB

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83617





BOB MILLER  
Governor

JOAN G. KERSCHNER  
Department Director

STATE OF NEVADA  
DEPARTMENT OF MUSEUMS, LIBRARY AND ARTS  
STATE HISTORIC PRESERVATION OFFICE

Capitol Complex  
100 Stewart Street  
Carson City, Nevada 89710

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ENTERED	
Office of the Secretary	
MAY 21 1996	
5	Part of Public Record

RONALD M. JAMES  
State Historic Preservation Officer

**ADVISE OF ALL  
PROCEEDINGS**

May 7, 1996

Elaine K. Kaiser, Chief  
Section of Environmental Analysis  
Surface Transportation Board  
Washington DC 20423-0001



SUBJECT: Union Pacific/Southern Pacific Railroad Merger, Nevada.

Dear Ms. Kaiser:

The Nevada State Historic Preservation Office (SHPO) has received your letter of April 5, 1996. At this time we cannot concur with your determinations of eligibility and effect.

First, in its submission of April 5, 1996, the Surface Transportation Board (STB) included the results of a literature search at the statewide archaeological inventory of the Nevada State Museum. According to this information, the six (6) proposed cross-over locations (see attached maps) are sensitive for cultural resources. However, these areas have not been inventoried yet. The SHPO again recommends that any undisturbed ground in the area proposed for cross-over construction be surveyed for cultural resources prior to the initiation of the undertaking.

Second, the STB states that the Carlin SP rail yard is not eligible for the National Register of Historic Places. We cannot concur with this determination because the STB has not conducted adequate research to make an evaluation. Photographs of the buildings at the rail yard do not constitute adequate documentation. We need a historic context for the yard as well as a building form (enclosed) for each building at the site. In addition, the yard needs to be evaluated as a district.

Third, it is not completely clear what effect phaseouts will have on the Carlin SP rail yard, the Reno UP intermodal facility, and the Sparks SP intermodal facility. For example, even if demolition does not include historic structures, we need to know if the process of demolishing other buildings and structures could harm historic ones. We cannot make determinations of effect until we know exactly what those effects will be.

Fourth, we will need information on the where the proposed UP facility in the Reno area will go. Depending on the location, archaeological and/or architectural inventories will have to be conducted before the Nevada SHPO can review the undertaking.

Elaine K. Kaiser

May 7, 1996

page 2

The SHPO reminds the STB that it is the responsibility of the federal agency to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register (36CFR Part 800.4(b)). If you have any questions concerning these comments, please contact me at (702) 687-7601 or Rebecca Palmer at (702) 687-5138.

Sincerely,

*Julie Nicoletta*

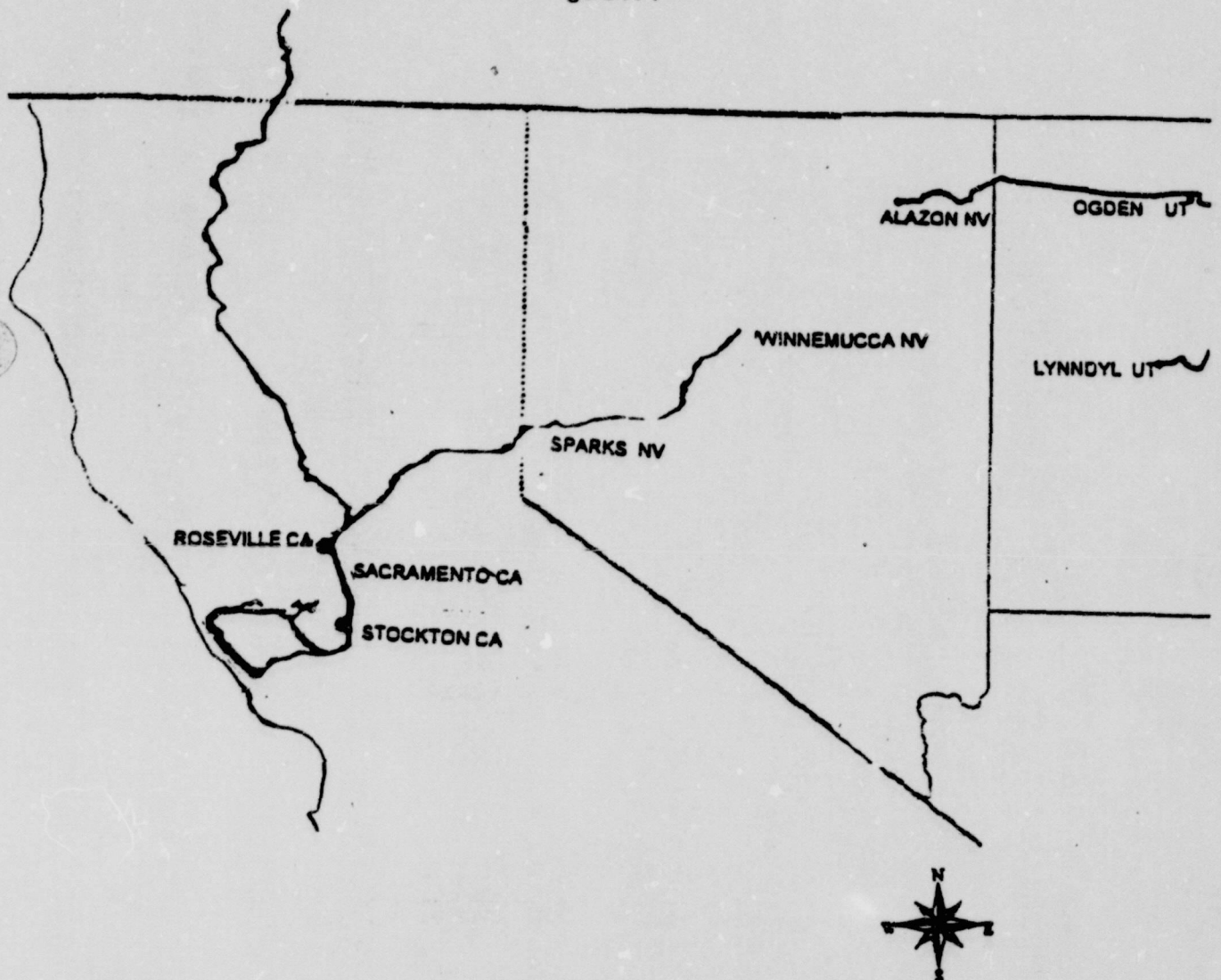
Julie Nicoletta

Architectural Historian

*Enclosures*

# Rail Line Segments Nevada

Figure A-1

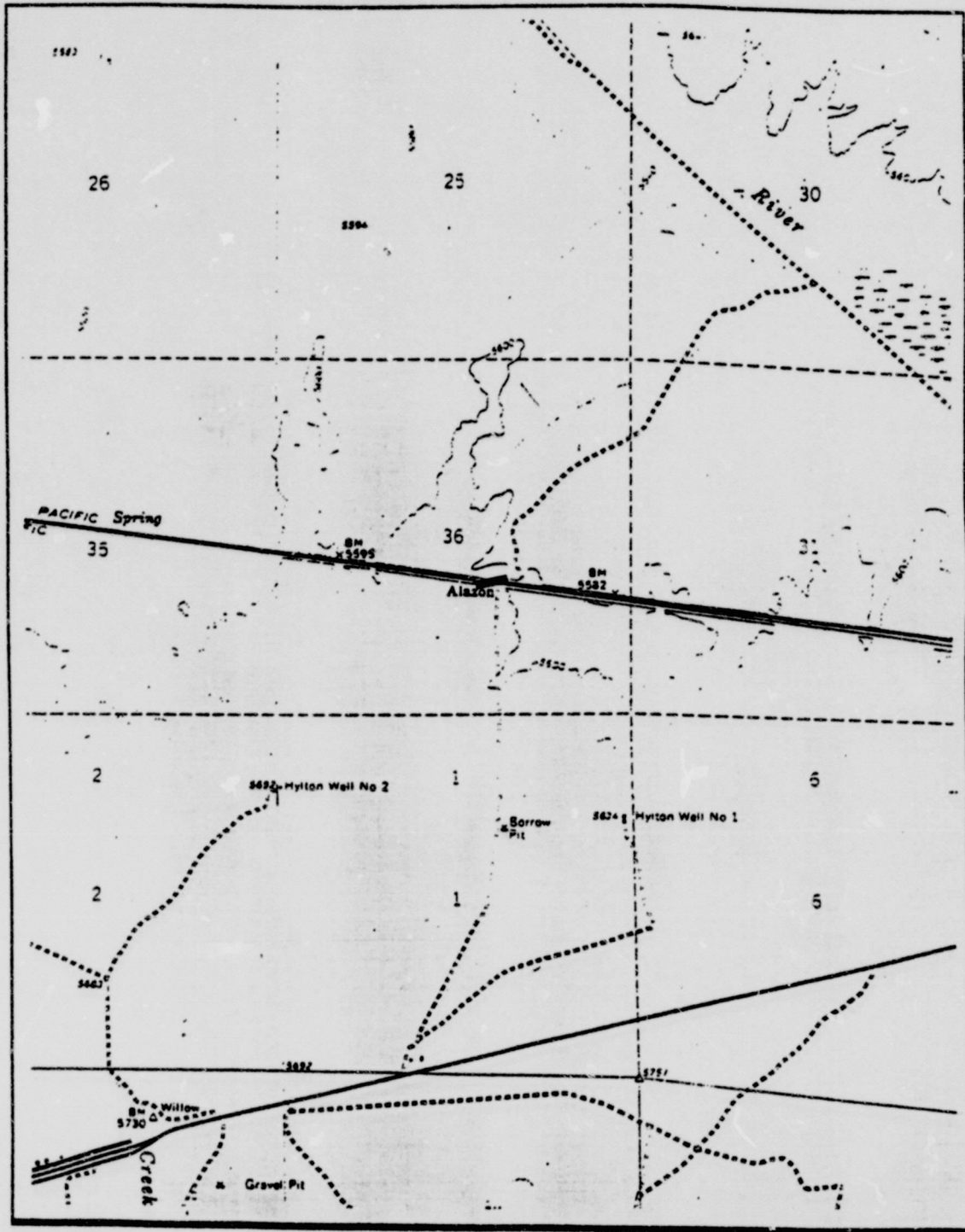


## LEGEND

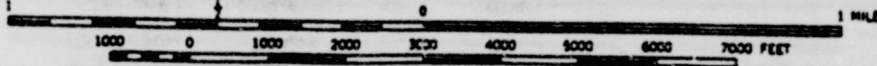
- Nodes
- Rail Lines
- State Border



Proposed Corridor Upgrade: Alazon, Nevada.



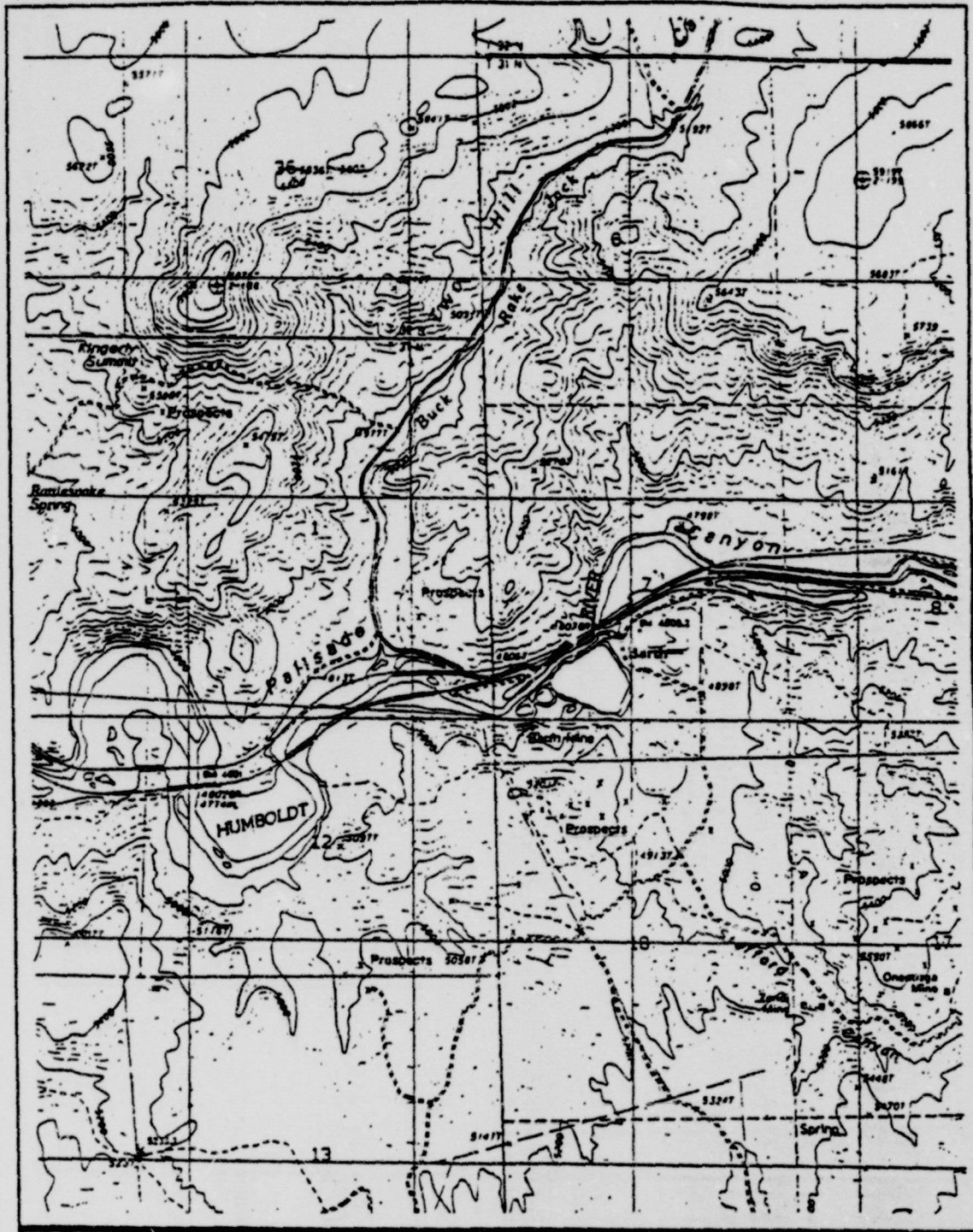
SCALE 1:24000



Base Map: USGS 7.5' Topographic Quadrangles: Metropolis, Nevada 1967; Welcome, Nevada 1967



Proposed Corridor Upgrade: Barth, Nevada.



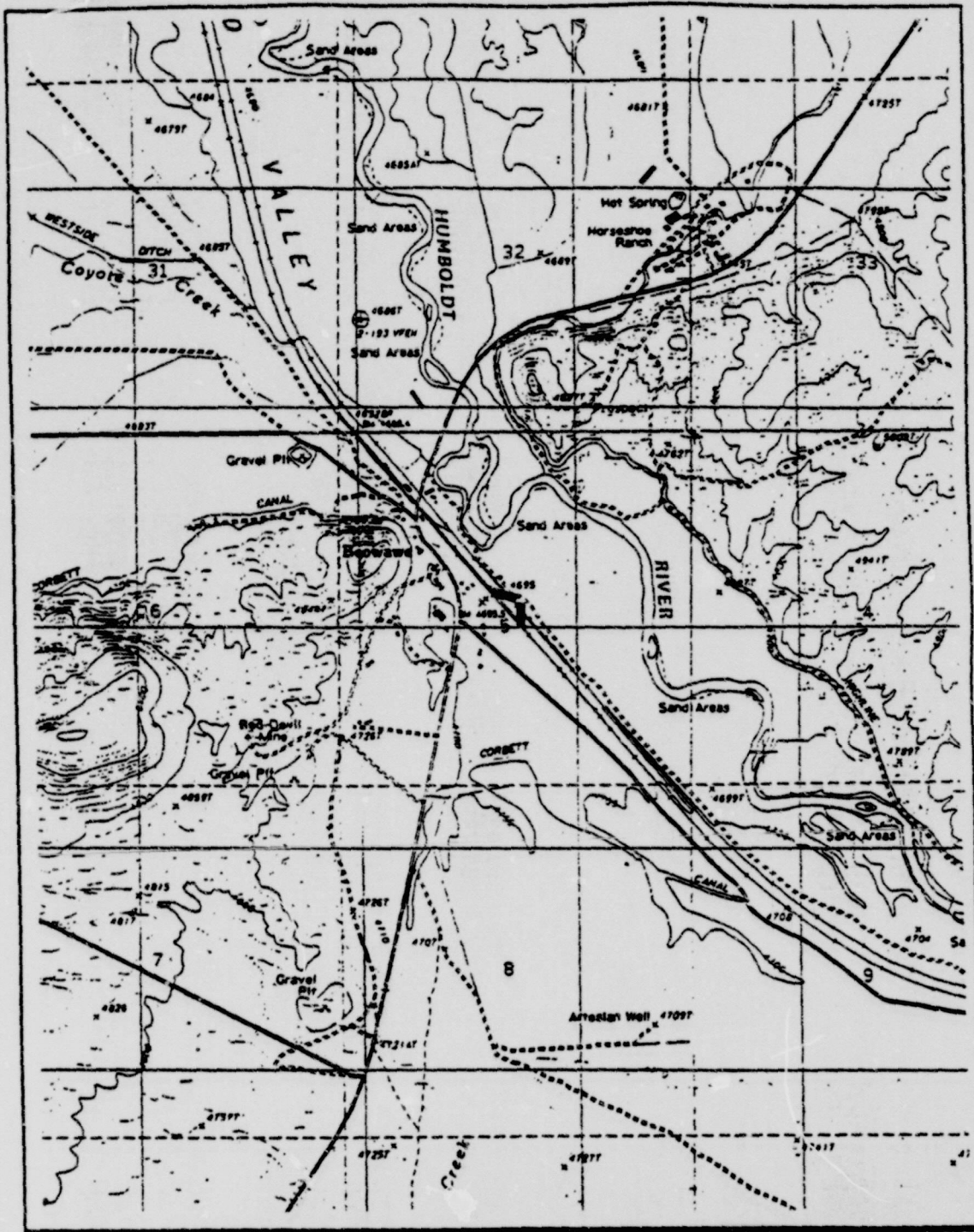
SCALE 1:24000



Base Map: USGS 7.5' Topographic Quadrangle: Scotts Gulch, Nevada (Provisional Edition 1985)



**Proposed Corridor Upgrade: Beowawe, Nevada.**



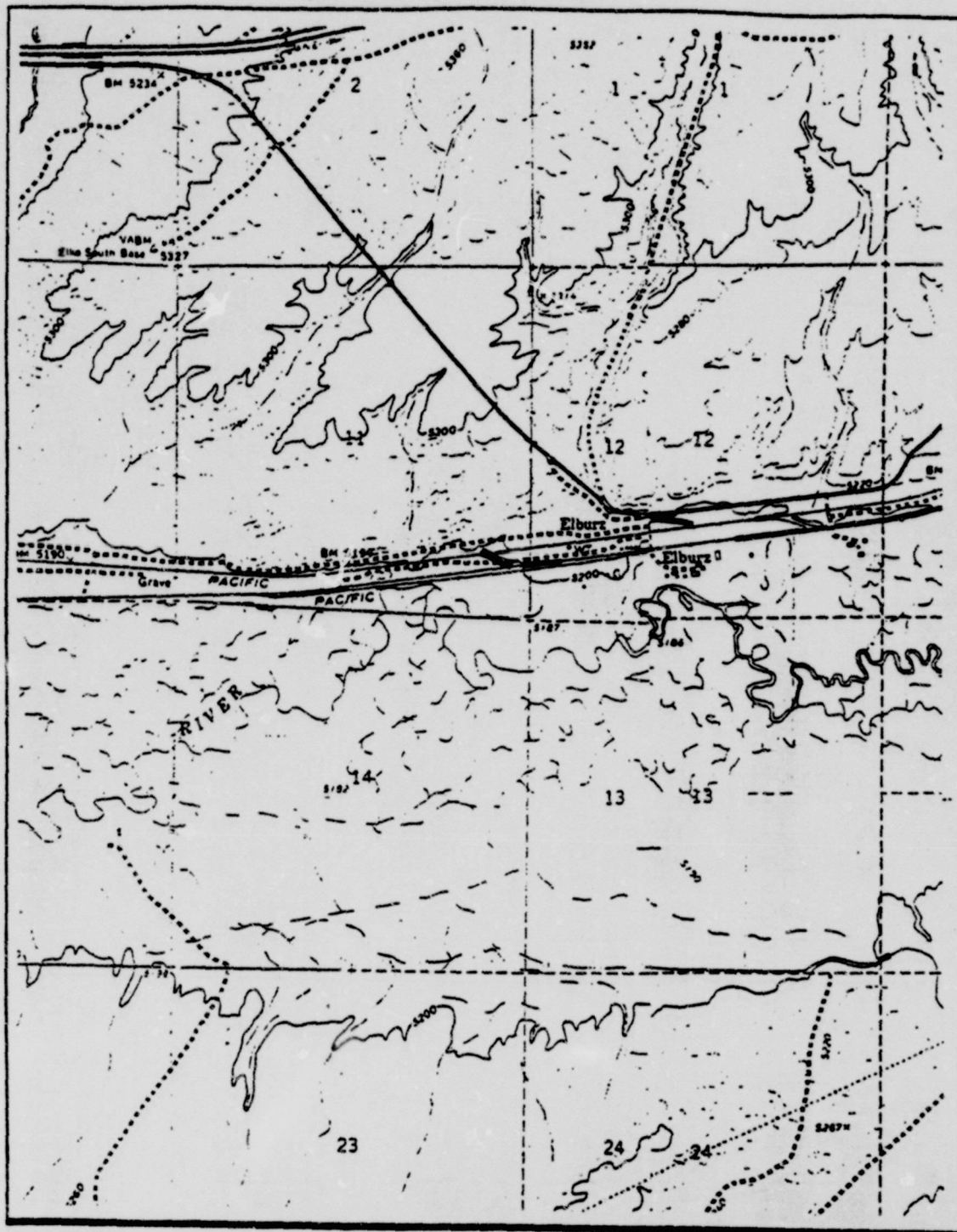
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Base Map: USGS 7.5' Topographic Quadrangle: Beowawe, Nevada (Provisional Edition 1986)



Proposed Corridor Upgrade: Elburz, Nevada.

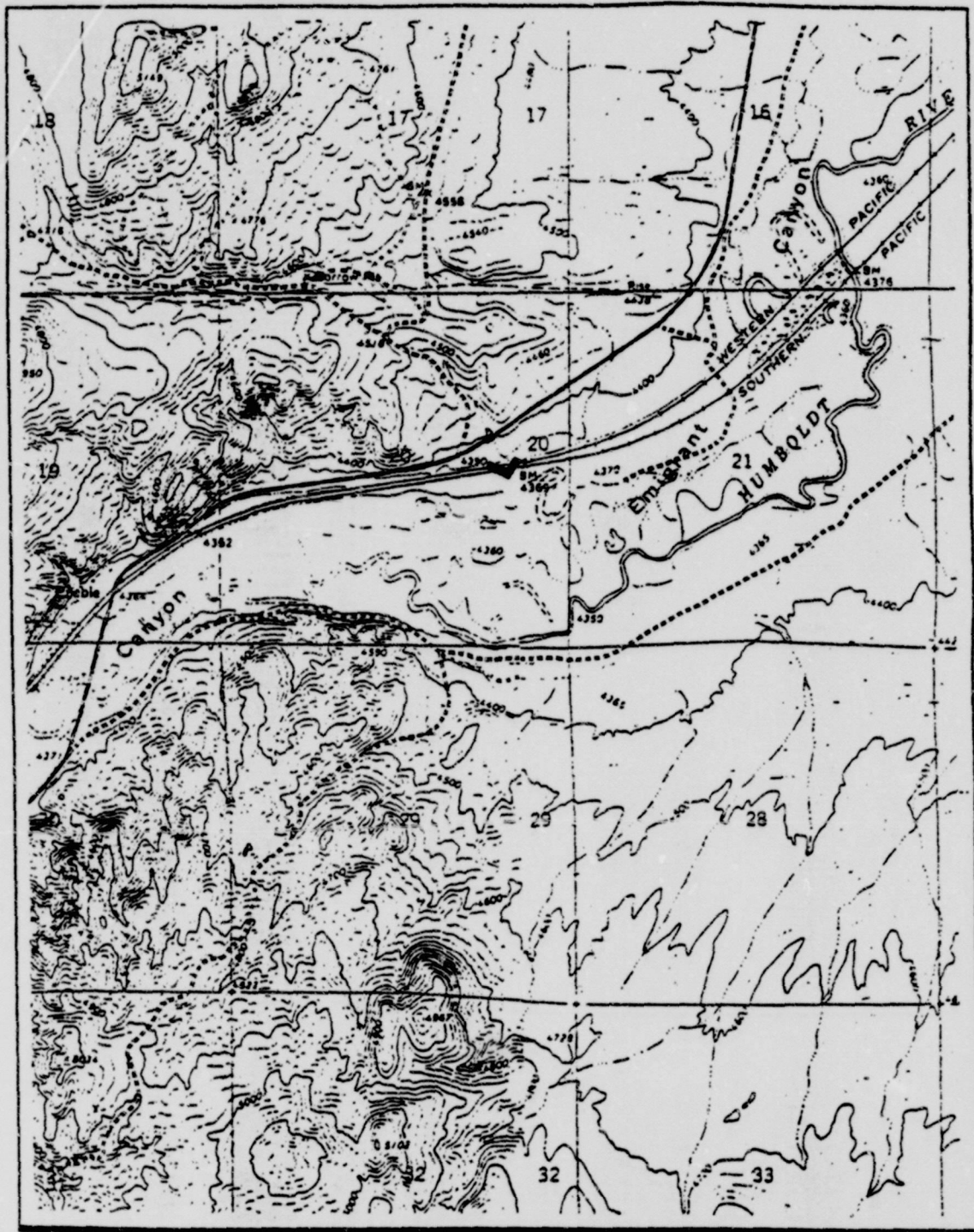


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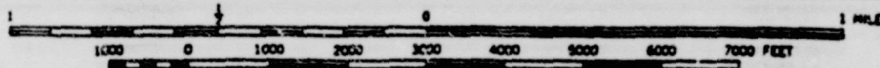


Base Map: USGS 7.5' Topographic Quadangles: Ryndon, Nevada 1962 (Photorevised 1983); Halleck, Nevada 1971

Proposed Corridor Upgrade: MP 440 (Mt Golconda), Nevada.



SCALE 1:24000



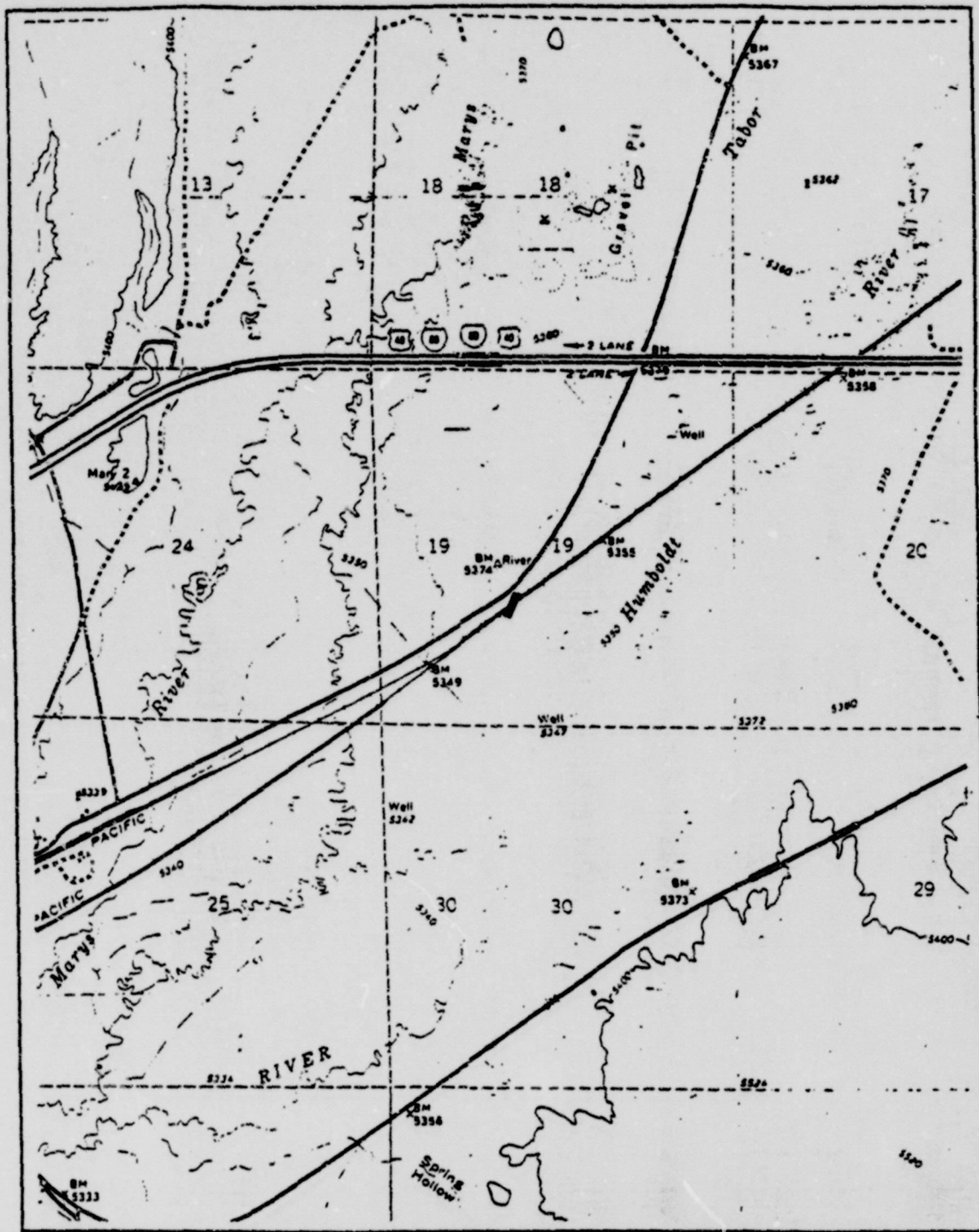
Base Map: USGS 7.5' Topographic Quadrangles: Golconda, Nevada 1965 (Photorevised 1981);  
Iron Point, Nevada 1965 (Photorevised 1981)



**Description of the Undertaking - Figure A-7**

**Description of the Undertaking - Figure A-7**

**Proposed Corridor Upgrade: UP Connection, Nevada.**



SCALE 1:24000



Base Map: USGS 7.5' Topographic Quadrangles: Death, Nevada 1967; Harder Creek, Nevada 1967



**STATE HISTORIC PRESERVATION OFFICE**  
**INSTRUCTIONS FOR COMPLETING THE HISTORIC PROPERTIES INVENTORY**  
**FORM**

Copies of the *Historic Properties Inventory Form* should be obtained from the State Historic Preservation Office. Each property requires a separate form. If there are associated structures, such as garage or carriage house, please indicate this on the same sheet under Section 11(e). If continuation sheets are required for a particular section of the form, please indicate on the continuation page(s) the section number and title, as well as the property name and location. Always use factual information; if you must provide an estimate of date, name, etc., please indicate this. To complete the form, please follow the instructions below:

1. **Name of property:** for houses, use the name of the original owner (e.g. Smith, John, House). In cases where the original owner was not the principal long-term occupant, combine the last names of the original owner and the principal owner with a hyphen e.g. Smith-Johnson House). For non-residential buildings, use the historic name of the building, which was usually the name of the business or institution that first occupied the building (e.g. Commercial Bank Building, Thurber School).
2. **Location:** provide the address, city and county.
3. **Use/Function:** residential, commercial, religious, educational, etc. Indicate if use is currently, public, private or restricted.
4. **Owner/Address:** provide name and address of current owner(s), the original owner and whether the property is currently occupied or in use.
5. **Parcel Number:** obtain the Assessor's Parcel Number from the County Assessor's Office.
6. **Acreage:** total acreage of the property.
7. **UTM reference:** if less than ten acres, list only one reference. If ten acres or more list at least three references that approximately encompass the property.
8. **Photo/Sketch:** provide at least one black-and-white photo or sketch of the front elevation of the building. Photo or sketch should measure at least 3 1/2" x 5".
9. **Plan:** line drawing of floor plan of building, if possible.
10. **Locale/Environment:** site map showing location of structure and associated properties in reference to the nearest cross-streets or other local landmarks.
11. **Description:** select information that best describes exterior fabric, structural system and roofing material. Include a verbal description of significant exterior and interior features.
12. **Significance:** include a verbal statement of significance noting National Register eligibility.
13. **Bibliography:** please indicate all sources of information.

# **HISTORIC PROPERTIES INVENTORY FORM**

STATE HISTORIC PRESERVATION OFFICE  
100 STEWART STREET  
CARSON CITY, NEVADA 89710

field/map

DISTRICT SITE BUILDING STRUCTURE OBJECT  
(circle one or more)

1. NAME(S), historic/common:

County:

2. LOCATION, street/road:

city/town:

3. USE/FUNCTION, present:

(public/private, restricted)

original:

4. OWNER/ADDRESS, present:

original:

occupied or in use:

5. PARCEL NUMBER:

6. ACREAGE (approx. of building site):

7. UTM REFERENCE:

8. PHOTO/SKETCH (may be attached):

9. PLAN (may be attached; include approx. dimensions and note additions/alterations)

10. LOCALE/ENVIRONMENT (map; may be attached):

# HISTORIC PROPERTIES INVENTORY FORM

STATE HISTORIC PRESERVATION OFFICE  
100 STEWART STREET  
CARSON CITY, NEVADA 89710

DISTRICT SITE BUILDING STRUCTURE OBJECT  
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1. NAME(S), historic/common:

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3. USE/FUNCTION, present:

(public/private, restricted)

original:

4. OWNER/ADDRESS, present:

original:

occupied or in use:

5. PARCEL NUMBER:

6. ACREAGE (approx. of building site):

7. UTM REFERENCE:

8. PHOTO/SKETCH (may be attached):

9. PLAN (may be attached; include approx. dimensions and note additions/alterations)

10. LOCALE/ENVIRONMENT (map; may be attached):

DATE



# HISTORIC PROPERTIES INVENTORY FORM

STATE HISTORIC PRESERVATION OFFICE  
100 STEWART STREET  
CARSON CITY, NEVADA 89710

field/modified

DISTRICT SITE BUILDING STRUCTURE OBJECT  
(circle one or more)

1. NAME(S), historic/common:

County:

2. LOCATION, street/road:

city/town:

3. USE/FUNCTION, present:

(public/private, restricted)

original:

4. OWNER/ADDRESS, present:

original:

occupied or in use:

5. PARCEL NUMBER:

6. ACREAGE (approx. of building site):

7. UTM REFERENCE:

8. PHOTO/SKETCH (may be attached):

9. PLAN (may be attached; include approx. dimensions and note additions/alterations)

10. LOCALE/ENVIRONMENT (map; may be attached):

11. DESCRIPTION (clarify as appropriate):

a. Exterior Fabric

stone  
brick  
concrete  
stucco  
weatherboard  
clapboard  
board & batten  
shingle  
shiplap  
other \_\_\_\_\_

b. Structural System

masonry  
frame  
log  
metal  
other \_\_\_\_\_  
foundation/basement \_\_\_\_\_

c. Roofing Material

wood  
metal  
slate  
tile  
asphalt  
composition  
other \_\_\_\_\_

d. Describe roof type, doors, windows, porches, and any significant exterior and interior features (use additional sheet if necessary)

e. Associated Structures (use/type):

related outbuildings and landscape features

other \_\_\_\_\_

f. Integrity (include dates):

original site/relocated

alterations

additions

g. Condition:

excellent  
good  
fair  
deteriorated  
abandoned  
ruins

h. Threats:

12. SIGNIFICANCE (use additional sheet if necessary):

a. Architect/Builder/Engineer:

b. Style/Period:

c. Date(s):

d. Main themes of historic resource:

Architecture	Arts and Leisure
Economic/Industrial	Government
Social/Education	Religion
Exploration/Settlement	Military
Other _____	

e. National Register eligible \_\_\_\_\_ non-eligible \_\_\_\_\_ unevaluated \_\_\_\_\_

Justification (include criteria):

13. BIBLIOGRAPHY (use additional sheet if necessary):

14. FORM PREPARED BY \_\_\_\_\_

DATE \_\_\_\_\_

a. Address \_\_\_\_\_

b. Organization \_\_\_\_\_

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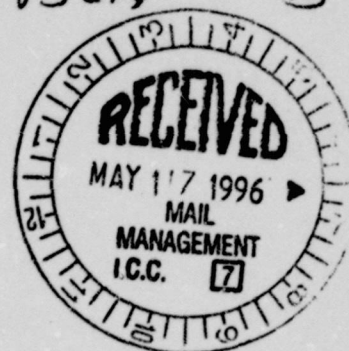
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ADVISE OF ALL  
PROCEEDINGS



COLORADO  
HISTORICAL  
SOCIETY

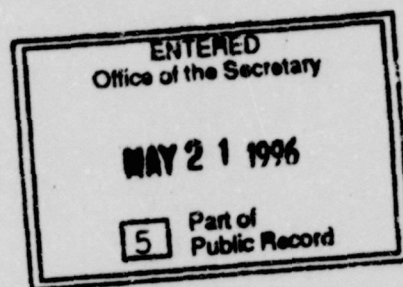


The Colorado History Museum 1300 Broadway Denver, Colorado 80203-2137

May 10, 1996

Elaine K. Kaiser  
Chief, Section of Environmental Analysis  
Surface Transportation Board  
Washington, D.C. 20423-0001

Re: Proposed Abandonment, Hoisington Subdivision  
Proposed Constructions on Salina Branch



Dear Ms. Kaiser:

Thank you for your correspondence dated March 13, 1996, concerning the above projects.

Hoisington Subdivision - Towner to NA Junction Abandonment

The Hoisington Subdivision appears to have been evaluated solely for architectural/engineering significance as related to its 1886-1887 construction. No evaluation has been made of the entire resource - as opposed to a series of bridges - for its historical significance in the area of transportation. The route appears to have changed little over its 1886-1946 period of significance. Most of the upgrades to track and bridges - in fact, for all but one bridge - occurred during this period of significance. There is no indication of why the line was upgraded during the Great Depression, although this would seem to be an unusual corporate expenditure for the 1930's. We note that the list of bridges in the photograph notebook does not include all the bridges along the route. Additionally, much of the route traversed by the line retains its historic appearance during the period of significance, thus yielding an intact transportation corridor/cultural landscape.

No mention is made of the railroad's impact on the towns along its route, i.e. Towner, Sheridan Lake, Haswell, Eads, Sugar City, Crowley, Olney Springs. Do these communities not owe their founding and development to the availability of rail service? The context submitted suggests that the Missouri Pacific served only Pueblo and points in Kansas without in any way impacting the development of eastern Colorado. Did the sugar beet industry around Sugar city and Ordway happen without reference to the availability of rail transportation provided by the Missouri Pacific? In addition, the report indicates the existence of five grain elevators along the route but makes no reference to agricultural history and its relation to rail service.

Elaine K. Kaiser  
May 10, 1996  
Page 2

As implied by the above discussion, the context and inventory forms do not contain adequate documentation on which to provide our comments about the historical significance of the Missouri Pacific Railroad from 1886-1946. Consequently, we are also unable to comment on the effects of the abandonment at this time.

Salina Branch - Kansas Boundary into Pullman Yard, Denver, Construction Activities

Our opinions regarding the National Register of Historic Places eligibility of the following properties is provided below:

**Union Pacific Railroad, Central Division, Salina Branch (5CH118, 5LN201, 5EL307, 5AH808, 5AM459)** - The Central Division is eligible as a whole under Criterion A for its transportation significance for the period 1869-1946.

**Bridge at MP 472.55 (5CH118.1)** - Contributing element to the above district

**Bridge at MP 525.67 (5LN201.1)** - Non-contributing

**Clifford School House (5LN96)** - A current photograph is needed to assess integrity.

**Bridge at MP 527.84 (5LN201.2)** - Contributing

**Bridge at MP 563.56 (5EL307.1)** - Non-contributing

**Commanche Crossing (5AH163)** - Listed in the National Register; contributing

**Bridge at MP603.08 (5AH808.1)** - Non-contributing

**Bridge at MP626.43 (5AM459.5)** - Need data

We request inventory record forms for the depots at Limon and Cheyenne Wells. It is also our recollection from previous visits to Cheyenne Wells that the depot was of wood frame construction with board and batten siding. We would like to know the status of this structure. In addition, we look forward to receiving photographs to accompany the inventory forms.

We agree with your determination that the Clifford School House is not within the APE. It is our opinion that routine maintenance and upgrading of roadbed, track and signal equipment will have no effect on historic properties. However, alterations or replacement activities have the potential to affect contributing elements to eligible railroad lines, branches or segments, such as bridges depots and culverts, whether or not such elements have been identified and evaluated as a result of this survey. In addition, if subsurface archaeological resources are encountered during ground disturbing activities, such as those associated with new or extended rail sidings, it will be necessary to halt the work until such resources can be evaluated in consultation with our office.



Elaine K. Kaiser  
May 10, 1996  
Page 3

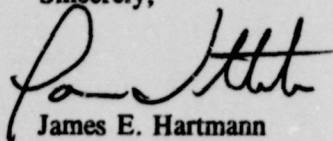
Southern Pacific (D&RGW) Denver Yard and Union Pacific Pullman Denver Yard Modifications

Based upon the information provided, it is our opinion that activities proposed for the above project will have no effect on historic properties. However, if subsurface archaeological resources are encountered during ground disturbing activities, such as those associated with new or extended rail sidings, it will be necessary to halt the work until such resources can be evaluated in consultation with our office.

If you disagree with the above opinions on National Register eligibility, please seek the comments of the Keeper of the National Register of Historic Places.

We look forward to further consultation regarding these proposed activities. If we may be of further assistance, please contact Kaaren Hardy-Hunt, our Technical Services Director, at (303) 866-3398.

Sincerely,



James E. Hartmann  
State Historic Preservation Officer

JEH/KKP



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UTAH -5



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

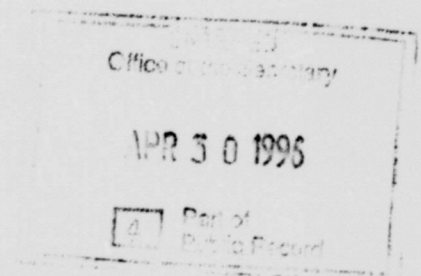
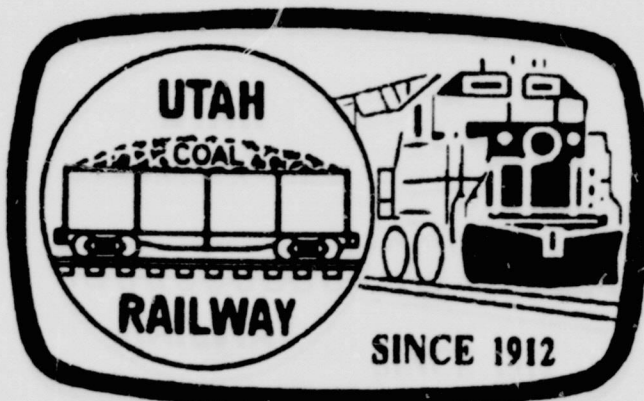
**Finance Docket No. 32760**

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

**--CONTROL AND MERGER--**

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

**UTAH RAILWAY COMPANY'S RESPONSE  
TO INCONSISTENT APPLICATIONS AND IN SUPPORT OF  
UTAH RAILWAY COMPANY'S SETTLEMENT AGREEMENT**



**Charles H. White, Jr.  
Galland, Kharasch, Morse & Garfinkle  
1054 31st Street, N.W.  
Washington, D.C. 20007  
(202) 342-6789**

**Counsel for Utah Railway Company**

**April 29, 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 CORPORATION,  
AND THE DENVER AND RIO GRANDE  
WESTERN RAILROAD COMPANY

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UTAH RAILWAY COMPANY'S RESPONSE  
TO INCONSISTENT APPLICATIONS AND IN SUPPORT OF  
UTAH RAILWAY COMPANY'S SETTLEMENT AGREEMENT

---

INTRODUCTION

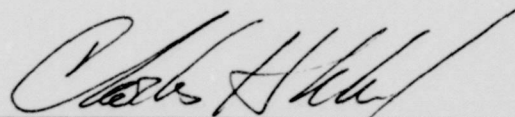
An Inconsistent Application is a request for the most drastic remedy within the Board's arsenal. This atavism from the ICC's pre-Staggers plenary powers is both politically and philosophically out of phase with today's market orientation. Coerced divestiture, in whatever guise and however named, must be a course of last resort. We submit that an exercise of the Board's powers to force an unwanted sale must be based on at least a clear and unambiguous demonstration that competition will be destroyed absent this governmental intrusion into the marketplace.



As the attached evidence will show, Inconsistent Applicant Montana Rail Link ("MRL") does not come near satisfying this threshold test. In fact, MRL proposes to substitute a monopolistic "solution" for the unfettered competition created on the Central Corridor by the Applicants' adoption of the "two-to-one" philosophy embedded in the BNSF and UTAH Settlement Agreements.

In this volume, Dr. Colin Blaydon, an expert on public policy and competition, will discuss the pro-competitive nature of the UTAH Settlement Agreement on the Central Corridor. Dr. Barry Vann, an expert on rail costing, will show the feasibility of meaningful eastward competition for Utah coals. Finally, Mr. John West, as spokesman for Utah Railway, will summarize the carrier's position as the record has evolved; will show that Utah Railway is poised to become an even more important competitor in the movement of coal as the coal/electric utility industry dynamic faces fundamental change; and will demonstrate why the MRL Inconsistent Application is an inappropriate "remedy" for a non-existent problem.

Respectfully submitted,



Charles H. White, Jr.  
Galland, Kharasch, Morse & Garfinkle, P.C.  
1054 Thirty-First Street, N.W.  
Washington, D.C. 20007  
(202) 342-6789

Counsel for Utah Railway Company

April 29, 1996

VERIFIED STATEMENT

OF

DR. COLIN C. BLAYDON

## VERIFIED STATEMENT OF DR. COLIN C. BLAYDON

### I. Colin C. Blaydon Qualifications.

My name is Colin C. Blaydon. I am the Buchanan Professor of Management and Dean Emeritus at the Amos Tuck School of Business Administration at Dartmouth College and I am also a Senior Advisor and Director of Putnam, Hayes & Bartlett, Inc., a management and economic consulting firm with headquarters in Cambridge, Massachusetts. I have held senior faculty appointments at Harvard Business School, Duke University and Dartmouth College in areas of finance, economics and public policy. I hold a B.E.E. degree from the University of Virginia, M.A. and Ph.D. degrees in Applied Mathematics from Harvard, and an M.A. (honorary) from Dartmouth College.

I have 27 years experience as a teacher, consultant, government official, and business executive working with industries and companies that are facing major market restructuring and are significantly affected by government policies and actions. I have testified as an expert and served as a consultant to federal administrative agencies, testified before state public utility commissions and advised other governments on matters of competition, regulation and pricing policy.



I have also served as an executive in the academic, governmental and private business sectors and have served as a director of a number of corporations and not - for - profit organizations. In particular, I have served as the head of both a leading graduate business school (at Dartmouth) and a leading public policy school (at Duke). My curriculum vitae is attached.

In this proceeding, Utah Railway Company ("UTAH") has asked me to evaluate the likely effects of its Settlement Agreement with the merged Union Pacific Railroad ("UP") and Southern Pacific Rail Corporation ("SP"), particularly with respect to the competition between the merged UPSP and the Burlington Northern and Santa Fe ("BNSF"). The role that UTAH will play in the competition for coal and other shipments on the Central Corridor is key to the level of competition over the Central Corridor, an important element of competition between UPSP and BNSF.

My evaluation is in five parts. In Section II, I provide a summary of my evaluation and statement. In Section III, I describe the key provisions of the Settlement reached by UTAH with UPSP. In Section IV, I describe the strong market position that UTAH has as a low cost, high service quality originator of coal shipments in the Utah coal fields. Based on that position, I describe in Section V the competitive environment for coal and other shipments from Utah for export markets, for western regional markets, and for markets east of Utah. I summarize my conclusions in Section VI.

## II. Summary of Statement.

The following points summarize my evaluation of the UTAH Settlement Agreement with the merged UPSP.

- ◇ The agreement expands UTAH's service territory and improves its competitive position to serve customers on its lines and on points where it will have new trackage rights, including the opportunity to improve operating efficiencies.
- ◇ The BNSF agreement with UPSP provides additional opportunities for UTAH to serve its existing markets and to service new markets due to the extensive BNSF network in the midwest, southwest and Pacific Coast.
- ◇ UTAH will have more opportunities to expand its westbound business through more efficient options on the merged UPSP and the more extended connections of the BNSF.
- ◇ UTAH will provide competitive service in the western region to assure a cost efficient alternative for customers in that region in combination with the BNSF or independently.
- ◇ UTAH should be able to capitalize on the new opportunities provided by new connections to BNSF to develop markets to the east for Utah coal.
- ◇ UTAH, with the expanded access provided by the UTAH and BNSF Agreements will be able to develop increased inbound business from

both the west and the east, facilitating the competitiveness of outbound traffic via both UPSP and BNSF.

- ◇ Overall, UTAH, with its competitive cost structure, high quality service, and ability to work effectively with multiple entities, provides the competitive nexus in the Central Corridor to assure shippers of access to competitive alternatives, in a key portion of the Central Corridor markets.

### III. Key Provisions of the Settlement Agreement.

The Settlement Agreement dated 17 January 1996 between the Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, the Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corporation (collectively referred to as "SP" with both UP and SP also referred to collectively as "UPSP") and Utah Railway Company ("UTAH") contains several key provisions which improve the competitive environment for rail service to shippers and consignees served by UTAH. For UTAH these provisions are:

- ◇ Trackage rights, to operate over UPSP tracks between Utah Railway Junction, Utah and Grand Junction, Colorado, and thus to connect with both BNSF and UPSP for service to points east of Grand Junction.



- ◇ Rights in connection with UPSP to serve the Savage Industries, Inc., Savage Coal Terminal coal loading facility located on the CV Spur near Price, Utah.
- ◇ Exclusive rights to serve the Cyprus Amax Willow Creek mine adjacent to the SP main line near Castle Gate, Utah (exclusive rights confirmed by Cyprus Amax letter dated 24 February 1996 in accordance with Settlement Agreement.)

Subsequent to the signing of the Settlement two additional provisions have been negotiated in response to requests instigated by specific consignees to be served by UTAH. These are:

- ◇ Rights for UTAH to serve a solid waste transload facility to be operated by East Carbon Development Company/Laidlaw ("ECDC") on the CV Spur near the Savage Coal Terminal.
- ◇ Rights to serve the Moroni Feed transfer facility at Spanish Fork (near Provo, Utah).

I understand that additional shipper/consignee requests for UTAH service have been made and are under consideration by UP.

In addition, the Settlement, in conjunction with a separate agreement between UPSP and BNSF, provides UTAH a significant expansion of its ability to provide two line service for many of its customers with a direct connection to BNSF's

service territory in the midwest. The UPSP - BNSF agreement preserves UTAH'S existing routing options and offers an additional carrier for its export and western region customers. It also makes two line service available to some industrial users moving product via three line routes.

The Agreements between UPSP and BNSF<sup>1</sup>, and between UPSP and UTAH, gives UTAH direct interchange to the BNSF at Provo for westbound movements and at Grand Junction for eastbound movements. In Section V, the resulting post-merger competitive environment and market opportunities for UTAH in three areas - export coal, western markets, and midwestern markets - are discussed in more detail.

#### **IV. UTAH Market Position.**

UTAH currently is a very strong force in providing rail service to coal producers in the State of Utah<sup>2</sup>. In 1995 UTAH originated 5.5 million tons or 30.1 % of all coal moved by rail from Utah mines. The 5.5 million tons originated by UTAH represented an increase of 68% since 1992, compared to an increase in total coal production in all of Utah of only 19% for the same period. UTAH's accelerated growth is tangible evidence of its ability to meet the needs of coal producers and their customers as an originating carrier dependent upon effective relationships with connecting roads.

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<sup>1</sup> Described in detail in the BNSF submission dated December 29, 1995.

<sup>2</sup> See previously submitted statements by Barker, West and Hensley for details regarding Utah operations.

All of UTAH's tonnage was moved to destination via interchange with at least one other railroad. Further, of the 5.5 million total, 2.5 million tons were originated via truck from mines not directly served by rail. The coal originated by UTAH currently is divided between export through Long Beach/ Los Angeles terminals and consumers in the west ranging from Northwest Washington to Southern California. UTAH export tonnage was 2.4 million tons in 1995 which represented 57.2 % of the 4.2 million tons exported to Taiwan/Japan/Korea in that year through Long Beach/ Los Angeles ports.

UTAH's position in the supply chain for coal dictates that it must develop effective operating and commercial relationships with several entities in order to provide a competitive price-service offering, e.g. coal producers, truckers, connecting railroads, and coal customers (utilities, industrial users, exporters).

An example of UTAH's ability to contribute to innovative and successful multi-player partnerships is its role in the development of the export market for Utah state coal since 1980. Most recently a significant portion (1.7 million tons) of the export coal originated by Utah has been shifted from the UP route over Las Vegas to the longer SP route over Reno through aggressive service and pricing actions in combination with the SP.



UTAH has developed and demonstrated three critical capabilities which will provide the basis for it to compete effectively in the market environment resulting from the UPSP merger. First, its proven ability to provide efficient, high quality service to producers in the Utah coal fields while achieving one of the US rail industry's lowest operating ratios. Second, it has the ability to negotiate and provide attractive price-service offerings in conjunction with other connecting railroads. Finally, it has the ability to work with trucking operators via transfer facilities which enables it to broaden its service area. These three capabilities will be critical in the future in maintaining and improving price-service levels for customers in UTAH's market - coal producers and its important new customers requiring inbound services, e.g. ECDC and Moroni Feed.

**V. Competitive Environment for UTAH.**

I do not address specific cost levels in this evaluation..<sup>3</sup> I am aware that UTAH is a very efficient operator and that it has one of the lowest operating ratio's of any railroad in the US. I understand that costs contained in the UTAH - UPSP Settlement were negotiated and ultimately accepted as a basis upon which UTAH could develop competitive rail services for its customers. In the future further negotiation of costs may be required to meet the specific needs of individual movements. UTAH has demonstrated its ability to develop competitive cost and service packages for its customers by effective negotiations with connecting roads and can be expected to continue to do so.

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<sup>3</sup> See other statements including Dr. Barry Vann for analysis of operating costs and pricing.

#### A. Export Coal.

Currently export coal totals 2.4 million tons or 43% of UTAH's total tonnage. The coal originated by UTAH is interchanged at Provo, Utah with both UP and SP. the current split is 1.7 million tons with SP and 700,000 tons with UP - all moving to Los Angeles/ Long Beach port facilities and final destinations in Japan/Korea/Taiwan (with a small but growing market in South America). Previously UTAH moved virtually all of its export coal in conjunction with UP. The current split results from an aggressive price and service combination with SP which offers both improved service and competitive pricing. Service performance is critical for export movements in order to avoid costly vessel demurrage charges and the UTAH - SP combination offered guaranteed service with penalties in the form of demurrage absorption by the rail carriers. The service was begun early in 1995 and no such penalties have been incurred thus far.

The UPSP merger in conjunction with the UTAH - UPSP Settlement and the UPSP - BNSF Agreement will alter the competitive environment for export coal originated by UTAH. First UTAH will have exclusive access to an important producer and potential exporter - Cyprus Amax Willow Creek Mine with a projected annual output of 5 million tons by mid - 1998. UTAH also will have access to the only public truck transfer unit train facility, i.e. one not controlled by a producer (the

Savage Coal Terminal at CV Spur)<sup>4</sup>. Finally, UTAH will have three routing options to consider in developing price-service packages for its customers. UPSP may offer both its Las Vegas and Reno routes, and BNSF can offer the former SP/Reno routing as well.

The prices for export coal from Utah are determined by world market dynamics, i.e. FOBT prices. Thus, the market forces which in the past have forced the development of innovative solutions such as the successful UTAH - SP routing can be expected to continue. UTAH's participation will be dependent upon its ability to continue and expand its previous innovation.

One opportunity created by the UTAH - UPSP Settlement which can provide complementary moves for export coal is the potential for significant eastbound solid waste movements to the ECDC disposal site to be served by UTAH over a transfer facility near the Savage Terminal. UTAH, in conjunction with either UPSP or BNSF will have the opportunity to combine those eastbound movements with export coal movements. Much of the inbound waste is expected to move in train sets of open top hopper cars dedicated to the service which could be used for coal on the return trip. Interchange with BNSF at Provo expands UTAH's potential market for this service since BNSF directly serves many potential sources of solid waste not served by either UP or SP.

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<sup>4</sup> Savage Industries is the largest coal trucking operator in the US with operations in coal fields and markets in all regions of the country.



Taken together, the UPSP merger and the agreements with UTAH and BNSF should provide the opportunity for UTAH to maintain and improve its price-service offerings to Utah coal producers for export markets. If UTAH exploits that opportunity it could increase its share of export movements and potentially contribute to an increase in exports from Utah coal producers as well.

#### **B. Western Region Markets.**

UTAH's tonnage to western region markets in 1995 was 3.1 million tons of coal for utilities, cogeneration plants, and industrial users (cement, etc.). All of this service was provided via interchange with UP and SP at Provo, the western terminus of the UTAH line. In 1995, as in recent years, UP has dominated as UTAH's partner in this market with only 18,000 tons handled by SP. Some of the movements involved another road - mainly BNSF - for delivery to a final destination. Three line moves involving UTAH, UP and BNSF include service to cogeneration plants in Southern California.

The largest single move originated by UTAH for the western region market is coal for Intermountain Power at Lynndyl, Utah. In 1995 UTAH, in combination with UP, moved 1.95 million tons to Intermountain Power - 35 % of UTAH's total tonnage and 63 % of all of its western region business. UTAH's capabilities as an efficient, low cost, innovative operator is demonstrated by this move since SP is its competition to interchange with UP which provides the delivery connection. In

support of the moves Intermountain Power has invested in a load out facility at an origin in order to expand the capacity and take full advantage of the UTAH - UP combined service.

In the post - merger market environment, including the provisions in the UTAH - UPSP Settlement and the UPSP - BNSF Agreement, UTAH will retain its ability to interchange with UPSP at Provo and continue to provide two line service to all points on those lines as before. In addition, UTAH will have the opportunity to connect with BNSF at Provo and thus serve all BNSF points with two line service. This also will enable UTAH to develop potentially more competitive rates and services for many customers it now reaches with three line service.

In the post - merger environment the interchange with BNSF at Provo will give UTAH an alternative routing to UPSP for some points where it now has only UP or SP. An example of this situation is Sierra Pacific Power's North Valmy Station in north central Nevada. Presently all coal moving to this utility is handled by UP from two mines out of a broad selection of possible mines and routings, several of which could include UTAH as the originating road or SP as the delivering road. The post - merger operating environment will permit UTAH to work with BNSF to develop alternative routing and sourcing combinations to those currently available to North Valmy. Given Utah's low cost, high quality service this is potentially a very effective routing to challenge the current UP dominance.

Currently UTAH competes with both UP and SP as an origin road for coal movements to North Valmy. In the post - merger environment UTAH's relationship with BNSF will be different from the merged UPSP because BNSF will not be in a position to originate coal on its lines and thus will have an incentive to work closely with UTAH to develop competitive two line service.

As with export coal movements to the Los Angeles/ Long Beach port area, the post - merger environment will provide additional opportunities for UTAH to serve customers in the western region market by direct interchange with BNSF and have access to its extensive network on a two line basis. Thus, UTAH and its shippers are well served by BNSF operations as the second alternative in the Central Corridor, including the interchange at Provo. They are much better served than they would be by an independent operator of the Corridor to Stockton which would require three line moves to reach many important potential customers on BNSF or UPSP lines.

### **C. Midwestern Region Market.**

Currently UTAH originates no coal to midwestern or eastern customers, although it has access via interchange with UP at Provo for movement over the UP system and interchange at Utah Railway Junction for movement over the SP network. With both connections, delivery beyond those lines can be accomplished by barge from river terminals e.g. Sauget, Illinois for SP and Cora, Illinois for UP, or by a



third rail line such as CSX or Conrail. A growing amount of coal from Utah is moving on those routings but none is originated by UTAH at this time.

In the post - merger environment UTAH will retain the interchange and routing options now available separately with UP and SP from the merged UPSP. In addition, UTAH will have the opportunity to utilize trackage rights to Grand Junction to interchange with either UPSP or with BNSF. This will greatly increase UTAH's potential for two line service to important coal customers on BNSF lines; in the center of the US from Chicago, to Memphis to Houston.

Access to the Savage Coal Terminal on the CV Spur provided by the UTAH - UPSP Settlement is also an important factor improving UTAH's opportunity to compete in midwestern markets. The Savage Coal Terminal currently handles about 1 million tons, most of which is moved to midwestern customers. The current capacity of the Savage facility is 4 million tons and with UTAH's service it will have the opportunity to increase its volume for midwestern markets.

The midwestern market (and some eastern customers as well) presents a significant opportunity for UTAH. While almost no coal from Utah moved to those markets in 1990, 3.2 million tons were shipped in 1995. The principal factor causing this dramatic increase is the Clean Air Act of 1990 (CAA) and its requirements for reduction in sulfur emissions by utilities and industrial plants. The growth in usage of low sulfur Utah coal by an increasing number of

midwestern users has been slower than anticipated in the early stages of analysis and development of fuel strategies in response to CAA. This is due in part to the limited number of facilities affected in Phase I - only 110 - compared to requirements for sulfur reductions by nearly all plants in excess of 25MW in Phase II (2000). It is also due to the many technological and engineering innovations developed to accommodate a broad range of fuel combinations in existing units. Further, these changes were accomplished at lower costs than initially projected permitting use of lower quality Powder River Basin coals in some plants.

While these factors have slowed the penetration of coal from Utah, particularly in more distant midwestern and eastern markets, the demand for Utah coal is certain to increase as the requirements of Phase II come in force in 2000. The higher BTU content of Utah coal, along with its other favorable combustion properties make it a very desirable fuel for a large number of plants - virtually all with the possible exception of those built specifically for low BTU Powder River Basin coals. Thus, even in face of the significantly higher price for Utah coal its usage by midwestern and eastern plants will increase, in turn increasing the demand for competitive rail service to meet those needs. The delivered cost per BTU is an important determinant of fuel selection but combustion properties also must be considered.

The post - merger environment will provide Utah coal producers and their customers with the opportunity to work with UTAH and its connections to develop creative price - service combinations to meet their increasing needs for

Utah coal. First, UTAH is the low cost, high service level originator of Utah coal and will have the ability to move eastbound coal with its operations to Grand Junction to then interchange with UPSP or BNSF. Second, UTAH's direct access to the ECDC solid waste transfer facility under the UTAH - UPSP Settlement provides the basis for developing backhaul movements for coal with solid waste from midwestern sources near potential coal customers such as St. Louis and Houston.

The developing midwest market for Utah coal is an attractive opportunity for UTAH, particularly in the post - merger environment where UTAH will have expanded origination capability, longer local eastbound haul, the potential to establish innovative backhaul combinations, and the ability to offer two line service to all UPSP and BNSF points. These opportunities again illustrate the important benefit to UTAH of BNSF operation on the Central Corridor in contrast to the limited coverage of an independent operator which would require three line moves to reach most important utility customers in the midwest.<sup>5</sup> It is clear that the competition for that business will be intense and will require at least the same level of aggressive and creative efforts which UTAH has made in developing its export and western markets. As in those markets, Utah's cost efficiencies and

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<sup>5</sup> This further illustrates the difficulties which would be created by the divestiture and independent operation of the Central Corridor (principally the former Denver and Rio Grand Western) as proposed by the inconsistent applicant Montana Rail Link. The former D&RGW suffered from lack of reach which now would be exacerbated by the restructuring of the western rail systems. See statement of John West for additional comments on this issue.



service levels will be critical to successful connections and increased movements with both UPSP and BNSF.

#### V. Conclusions.

The conclusions that I reach regarding the competitive impact of the UTAH Settlement Agreement with the merged UPSP are that:

- ◇ UTAH will be able to offer expanded and more efficient service over an extended service area due to expanded trackage rights;
- ◇ UTAH will be able to expand westward coal shipments due to;
  - ◆ More efficient combined routes on the merged UPSP;
  - ◆ Expanded customer access to potential west coast customers through the BNSF network;
  - ◆ More efficient backhaul opportunities on the UPSP and expanded backhaul customer access on the BNSF;
- ◇ UTAH will provide the market discipline to assure competitive rates for coal customers in the western region by means of its cost efficient operations and access to Utah coal acting either in conjunction with the BNSF or with the UPSP;
- ◇ UTAH will be able to extend to coal markets east of Utah through a more efficient hand off at Grand Junction and expanded direct customer access on the BNSF system. For this reason the BNSF agreement with UPSP is preferable to a single entity operating only along the Central Corridor, e.g. Montana Rail Link.

- ◇ BNSF connections are important to UTAH because BNSF coverage offers substantial opportunity for two line service to many markets for Utah customers (coal and waste);
- ◇ UTAH will be able to develop expanded incoming traffic from both the west and the east from more efficient routes of the combined UPSP and the extended reach of BNSF; and
- ◇ In summary, UTAH will provide the competitive nexus to assure effective competition to a key part of the Central Corridor, particularly the Utah coal fields. This is possible because of its own expanding trackage, access to additional customers, more efficient use of combined UPSP routes and efficient access to the extensive BNSF systems to reach new customers with two line service.

## COLIN C. BLAYDON

### EDUCATION

Ph.D. in Applied Mathematics, Harvard University, 1967  
A.M. in Applied Mathematics, Harvard University, 1965  
B.E.E., University of Virginia, 1962  
M.A. (Honorary), Dartmouth College, 1985

### ACADEMIC EMPLOYMENT & EXPERIENCE

1983 to        *The Amos Tuck School of Business Administration*  
Present       *Dartmouth College*

*1995 - Present, Dean Emeritus*

*1994 - Present, William and Josephine Buchanan Professor of Management*

*1994 - 1995, Dean*

Chief academic and administrative officer. Teaching in Entrepreneurship, Decision Science, International Business and Corporate Governance. Research on corporate governance and on corporate strategies of firms impacted by government policies and regulation.

*1983 - 1990, Dean*

Dean of graduate business school and Professor of Business Administration. Senior academic officer responsible for all financial, administrative, and academic activities of Dartmouth's graduate business school. Presided over a 250 percent expansion of the financial activities of the school, initiated and completed the school's first independent capital campaign, expanded faculty and student body by 20 percent and recruited 80 percent of the current faculty, instituted a joint venture MBA program in Japan, and established an associated international management research institute in Tokyo. Personal research and teaching activities in the areas of corporate governance and control, and the impact of government policies and regulation on the private sector. Private consulting on corporate governance, strategy, and financial analysis.

1990 to        *Visiting Professor of Business Administration*  
1991        *Harvard Business School*

1975 to        *Vice Provost and Professor*  
1983        *Duke University*

Vice Provost for Academic Policy and Planning, and Professor of Policy Sciences and Business Administration. Planning and budgeting for academic sector of the university. Teaching and research in corporate finance, public sector budgeting, and regulatory policy. Acting Director



of the Institute of Policy Sciences, 1978. Chairman, National Academy of Sciences Panel on Vocational Education and Economic Development. Chairman of Inter-agency Task Force on ERISA, President's Reorganization Project. Research and consultation for a number of government agencies and private foundations.

1973 to        *Deputy Associate Director*  
1975        *Office of Management and Budget*  
              *(on leave from Harvard Business School)*

Director of Special Studies and Management Division. Responsible for monitoring department and agency performance under the Presidential Objectives System and for analysis and development of new legislature initiatives in: Health Manpower, National Health Insurance, Pension Reform, Higher Education, and Housing Finance.

1969 to        *Assistant Professor*  
1973        *Harvard Business School*

Teaching and research in Corporate Finance and Managerial Economics.

1966 to        *Staff Assistant to Assistant Secretary of Defense (Systems Analysis)*  
1969        *U.S. Department of Defense*

Participant in design of planning and budgeting systems for Department of Defense Intelligence Resources. Member of Department of Defense Policy and Review Committee of the President's Space Task Group, Member of Secretary of Defense Committee for review of consolidated Intelligence Programs, Member of Joint Committees for Preparation for Strategic Arms Limitations Talks (SALT).

## **CONSULTING EMPLOYMENT & EXPERIENCE**

1981 to        *Director and Senior Advisor*  
Present        *Putnam, Hayes & Bartlett, Inc.*

Responsible for studies on corporate strategy, organization, and management issues with particular emphasis on issues where government policies have impact on the private sector. Served as expert management, financial, and economic witness in business litigation and regulatory proceedings.

1992 to        *Executive Chairman*  
1993        *ITP Systems*

Responsible for leadership of privately-held engineering systems and software firm.

1975 to      *Principal*  
1981      *ICF Incorporated*

Performed public policy and regulatory studies in areas of energy, private pensions, education finance, and regulated utilities.

## **DIRECTORSHIPS**

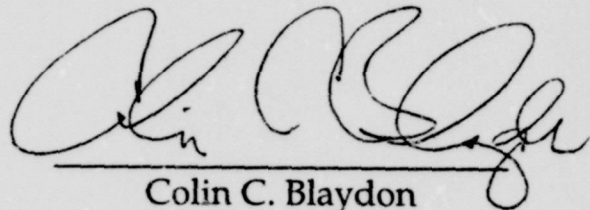
- The LTV Corporation, Member, Board of Directors
- Tom's of Maine, Member, Board of Directors
- Putnam, Hayes & Bartlett, Inc., Board of Directors
- Pacific Southwest Airlines, Member, Board of Directors
- ITP Systems, Inc., Chairman, Board of Directors
- University of Southern California's School of Business Administration, Member, Board of Visitors
- The Whiteman School, Member, Board of Trustees
  
- International Management Research Institute of the International University of Japan, former Vice Chairman of the Board of Advisors
- Computer Consoles, Inc., former Director
- IMEC, Inc., former Director
- Linkletter Enterprises, Inc., former Director
- MICA, Inc., former Director
- Consolidated Power Corp., former Director
- Mainstream Software Corp., former Director
- The Washington Campus, former Member, Board of Directors
- Tuck Educational Loan Corporation, former Chairman
- Board of Trustees, Council for Opportunity in Graduate Management Education, former Chairman

VERIFICATION

(State of New Hampshire)

(County of Grafton )

Colin C. Blaydon, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.



Colin C. Blaydon

Subscribed and sworn to before me on this the 25<sup>th</sup> day of April, 1996.



Notary Public  
GARY L. HUTCHINS, Notary Public  
My Commission Expires July 22, 1997

Commission expires \_\_\_\_\_.



VERIFIED STATEMENT

OF

DR. BARRY L. VANN

**VERIFIED STATEMENT  
OF  
BARRY L. VANN**

I. Background

My name is Barry Vann. I am the co-founder and President of Longhorn Logistics & Consulting, Inc. located at 22 One Main Place, Fort Worth, Texas. My company provides consulting services to shippers and railroads. I have developed several mathematical models of Class-1 railroads costs which I use to advise clients on rail transportation costs and assist in negotiating competitive rates.

I was educated at the University of California at Berkeley where I received a Bachelor's degree in 1972. I began the doctoral program in Economics at the University of Michigan in 1972 and received a Master's degree in 1975. I was Staff Economist to the House of Representatives Committee on the Judiciary, Subcommittee on Monopolies and Commercial Law from 1975 to 1978. In 1979, I received a Ph.D. in Economics from the University of Michigan.

Before founding Longhorn Logistics, I worked for Burlington Northern Railroad for ten years. I had a variety of marketing and analytical positions. From 1989 to 1995, I directed Burlington Northern's rapidly growing waste-by-rail program from a base of approximately \$3 million per year to an annual pace of over \$30 million. My tenure included the inauguration of Burlington Northern's highly successful unit train movements of waste in the Pacific Northwest. (As an aside, I would note that my experience with unit train movements of waste has made me sensitive to the great potential for balancing coal movements presented by the ECDC settlement which Mr. West describes in his testimony.) Over the years, I became an expert in computing both carload and unit

train costs. In addition, I was responsible for making freight rates and negotiating transportation contracts.

I believe that my education, first hand knowledge in the rail industry and my experience with issues of competition while serving in the legislative branch of the U.S. government qualify me to present my views on the future of Utah Railway (UTAH) moving coal on the Central Corridor.

I have been retained by Utah Railway since October 1995, to assist with developing its strategy for responding to the merger of the Union Pacific (UP) and the Southern Pacific (SP). I have performed extensive analysis of the costs of coal service to markets west and east of UTAH's operating area. I have also assisted UTAH in developing marketing plans for transportation of other commodities under the terms of their agreement with UP when the merger is completed.

## II. Purpose of Testimony

I have been requested by UTAH to assess whether Utah coal can be transported competitively via UTAH and Burlington Northern Santa Fe (BNSF) to Western, Midwestern and Southwestern markets under the terms of its agreement with UP and UP's agreement with BNSF. In Western markets (e.g. to Long Beach for export to the Pacific Rim), UTAH currently moves a significant amount of coal on the SP even though the UTAH /SP route is approximately 500 miles longer than the comparable UTAH/UP route to Long Beach. However, as both Dr. Blaydon and John West point out, UTAH has used imaginative marketing to develop this traffic flow. I expect the same level of effort to characterize the UTAH-BNSF marketing of the same route. UTAH will continue to compete in this market through its connections with UP. When we turn to the East, joint moves of coal involving UTAH and BNSF can be successful. I will focus my attention in this testimony on the prospects for moving coal east in combination with BNSF.



UTAH's potential alliance with BNSF for movement of coal to markets in the Midwest and Southwest is an exciting prospect and a real possibility. In this statement, I will demonstrate that high quality Utah coal can (and does) penetrate these markets in competition with Powder River Basin coals which necessarily implies the ability to compete with Appalachian and Colorado coals. PRB coal sets the price for all coal, therefore if the Utah coal is competitive with PRB coals, it will also be competitive with Appalachian and Colorado coals in certain circumstances. And, as discussed below, Utah coals will also complement PRB coals as the utility technology demands.

The coal market is in transition with increasing quantities of Utah coal going to Midwestern markets. From 1990, when the Clean Air Act was passed, the quantity of Utah coal that has moved eastward to utilities has risen from virtually nothing to 3.2 million tons in 1995. We believe that further expansion into these markets is possible. New, more efficient mines together with efficient rail service will enable increasing quantities of Utah coal to reach markets in the Midwest and Southwest.

### III. Coal Fueled Utilities in Transition

The Federal Clean Air Act Amendments of 1990 (CAAA) have created a period of transition for all coal fueled utilities that are not in compliance with the new regulations. Utilities must comply with Phase 2 of the Act's requirements between now and January 1, 2000. Affected utilities must reduce their emissions of sulfur dioxide. Many of the utilities that will be affected are in the Midwest, East, Southwest and Southeast.

During the next four years, utilities can be expected to choose a compliance strategy that enables them to meet the new standards by choosing the most efficient combination of methods. There are a number of compliance methods including: installation of scrubbers, substitution of

western coal or eastern low sulfur coal, coal blending and purchasing allowances. The most economic strategy will depend on coal prices by source and quality, rail and barge transportation costs, transloading and site unloading costs, capital investment for boiler modifications and/or scrubbers, derate costs for western low Btu coal and the market prices and availability of emissions allowances. These methods are not exclusive of each other. A utility can employ one or a combination of these alternatives. The transition period for utilities to meet these standards coincides with the time frame of the proposed UP/SP merger. If the merger is approved, then agreements that UTAH and BNSF have with UP to use the Central Corridor will become effective. These agreements can play an important role in assisting utilities to meet the new standards.

In addition to the changes triggered by the Clean Air Act, the Federal Energy Regulatory Commission has just significantly modified the coal/utility relationship by opening the nation-wide electric grid to all suppliers of electricity under a non-discriminatory tariff system. This move will heighten the need to find the most cost effective combinations of coals and utilities. Although it is too early to make specific predictions, I am convinced that this development also represents a significant opportunity for the superior Utah coal.

#### IV. The Role of Transportation in Choosing Coal Fuels

The cost of rail transportation will be an important determinant in the choice of coal fuels. Rail charges are a significant portion of the delivered cost of coal. Rail charges in the ten to eleven mill range per ton mile to destinations over one-thousand miles distant will yield costs more than \$10 per ton. That is twice the estimated mine price of PRB coal and approximately 60% of the estimated mine price of Utah coal. Transportation prices much higher than these have been common. In addition, barge charges and transloading fees, where applicable, add to the delivered price of coal.

For a number of years, BNSF and UP have created an efficient and successful rail link for low sulfur, low Btu coal from the PRB. Indeed, PRB coal is the dominant source of low sulfur coal. The penetration of Utah and Colorado coal has been relatively small by comparison so far.

The potential for these coals to penetrate distant markets is great. Over the past few years, SP has inaugurated creative rail service that has enabled Utah and Colorado coal to reach eastward. By utilizing equipment in two-way hauls, SP has offered low "back haul" rates for Utah and Colorado coal. It is my position that these back hauls do not represent aberrant movements of coal that will ultimately be limited by the availability of back hauls. The agreements BNSF and UTAH have with UP can be one means to enable Utah coal to penetrate these markets. Based on my analysis of a range of possible rail transportation rates, Utah coal can compete effectively in cycled unit trains with all cars returning empty. It certainly can compete using the backhaul potential created by the ECDC access which Mr. West describes in his testimony.

The criterion for determining whether or not Utah coal can be competitive is the delivered price per million Btu (MMBTU) when compared with PRB coal. This is not to say that all utilities can burn either coal. In fact, in the near term, some utilities will be tied to one type of coal for either technical or contractual reasons. However, recent actions by utilities indicate that long term fuel commitments at many coal fired plants shift between low Btu PRB coal and higher Btu Utah and Colorado coal on the basis of delivered prices per MMBTU. Rail transportation charges are an important determinant of delivered prices.

In addition to rail charges, there are a variety of factors that determine whether or not Utah coal can compete with PRB coal on a delivered basis. At the outset, Utah and Colorado coals are at a disadvantage because they are more costly to mine and somewhat further from markets. This



disadvantage may be offset by their higher Btu content. The interplay of all of these elements determines whether or not Utah and Colorado coals are competitive with PRB coal. It is not trivial to note that if transportation costs were zero, then PRB coal would always have a lower delivered Btu price. Similarly, we could set a transportation rate so high that the delivered prices of Utah and Colorado coals were always lower. The question is where, in between these two values, are the delivered Btu prices nearly the same? I will show that over a range of likely prices, Utah coal coming off UTAH can compete with PRB coal.

The initial setting confers no clear winner. The locations of the mines in the PRB and Utah are distant from utilities in the Midwest and Southwest. For the two destinations we will consider to represent transportation to these markets, St. Louis and Houston, the PRB is closer. A train originating at Utah Railway Junction, Utah, for example, is 1,274 miles from St. Louis. A train originating at Gillette, Wyoming is only 1,141 miles away. Similarly, Houston is closer to the PRB. The route from Utah is 1,534 miles from Utah Railway Junction while it is 1,488 miles from Gillette.

The methodology I will use is the following: I will examine the costs of moving both types of coal to St. Louis and Houston for a range of transportation rates. The range will be from seven mills per ton mile to fifteen mills. Seven mills are approximately the average variable costs I estimate for BNSF and UP for moves in excess of one-thousand miles. Fifteen mills is a realistic upper bound for normal moves over a thousand miles. The actual rail charge can generally be expected to fall within this range.

To begin the analysis of delivered prices of PRB vs. Utah coals, we assume that the essential cost structures of the routes are the same and that BNSF and UP will charge the same price per mill to move Utah coal as charged to move PRB coal. This will provide a basis for analyzing the delivered

prices of coal from both areas. Following this analysis, I will consider how delivered prices are affected when the transportation charges for Utah coal are higher for two reasons: 1) the three mills charge that BNSF and UTAH must pay for use of the Central Corridor between Utah Railway Junction and Denver, and 2) the general proposition that the Central Corridor is a more costly route.

#### V. Comparing Delivered Prices

Tables 1 and 2 below show how Btu content, mine prices, rail charges and miles interact to make a delivered Btu price of PRB and Utah coal.

<b>Table 1: Delivered Prices for PRB Coal* (Dollars/MMBTU)</b>						
<b>Mills/ net ton mile</b>	<b>Miles</b>					
	1,000	1,100	1,200	1,300	1,400	1,500
7	0.7143	0.7560	0.7976	0.8393	0.8810	0.9226
8	0.7738	0.8214	0.8690	0.9167	0.9643	1.0119
9	0.8333	0.8869	0.9405	0.9940	1.0476	1.1012
10	0.8929	0.9524	1.0119	1.0714	1.1310	1.1905
11	0.9524	1.0179	1.0833	1.1488	1.2143	1.2798
12	1.0119	1.0833	1.1548	1.2262	1.2976	1.3690
13	1.0714	1.1488	1.2262	1.3036	1.3810	1.4583
14	1.1310	1.2143	1.2976	1.3810	1.4643	1.5476
15	1.1905	1.2798	1.3690	1.4583	1.5476	1.6369

\*The mine price used is \$5.00/ton and the energy content is 8,400 Btu's per pound.

Table 2: Delivered Prices for Utah Coal* (Dollars/MMBTU)						
Mills/ net ton mile	Miles					
	1,000	1,100	1,200	1,300	1,400	1,500
7	0.8907	0.9190	0.9474	0.9757	1.0040	1.0324
8	0.9312	0.9636	0.9960	1.0283	1.0607	1.0931
9	0.9717	1.0081	1.0445	1.0810	1.1174	1.1538
10	1.0121	1.0526	1.0931	1.1336	1.1741	1.2146
11	1.0526	1.0972	1.1417	1.1862	1.2308	1.2753
12	1.0931	1.1417	1.1903	1.2389	1.2874	1.3360
13	1.1336	1.1862	1.2389	1.2915	1.3441	1.3968
14	1.1741	1.2308	1.2874	1.3441	1.4008	1.4575
15	1.2146	1.2753	1.3360	1.3968	1.4575	1.5182

\*The mine price used is \$15.00/ton and the energy content is 12,350 Btu's per pound.

The highlighted portions of Table 2 reflect the cases when Utah coal has a lower delivered price compared to PRB coal for moves of the same distance. The tables show that higher general rail charges and further distances favor Utah coal. In fact, any charge similar to rail that affects the per ton cost of both coals equally, will favor Utah coal.

The next two tables present the delivered prices for two specific destinations, St. Louis and Houston. The St. Louis origin represents the possibility of accessing utilities via the Mississippi River through a transfer terminal for barge delivery to a utility. The Houston example represents a move of either coal directly to a utility in the Southwest. The examples tell us a good deal about the relative competitiveness of both coals in actual market settings. Consider Table 3.



Table 3			
Estimated Delivered Prices St. Louis*			
Rail Rate	PRB Coal \$5/ton	Utah Coal	
		\$15/ton	\$14/ton
Mills/ton mile	Dollars / MMBTU		
7.0	1.160	1.232	1.191
8.0	1.228	1.283	1.243
9.0	1.296	1.335	1.294
10.0	1.364	1.386	1.346
11.0	1.432	1.438	1.397
12.0	1.500	1.489	1.449
13.0	1.567	1.541	1.501
14.0	1.635	1.593	1.552
15.0	1.703	1.644	1.604

\*The delivered cost includes a barge charge of \$5.00 per ton and a transloading fee of \$1.50 per ton.

Utah coal is competitive with PRB coal into Midwestern markets served by rail and barge when the rail transportation rate is between eleven and twelve mills, \$14.01 to \$15.28 per ton. These rates are not out of line with rail charges currently in effect for PRB coal. If we reduce the mine mouth cost of coal from \$15.00 to \$14.00 per ton, then the results are more striking. Utah coal becomes competitive with PRB coal at nine mills. The shaded portions of Table 3 show all the cases where the delivered price of Utah coal is approximately equal to or less than the delivered price of PRB coal. The results confirm our expectation that any charges, in this case barge and transfer charges, that affect both coals equally, result in Utah coal becoming more competitive.

Table 4 contains the identical analysis going to the Houston market. It shows what happens when the market for both types of coal is further and when the mileage advantage for PRB coal is lower.

Table 4			
Estimated Delivered Prices Houston <sup>1/</sup>			
Rail Rate	PRB Coal	Utah Coal	
	\$5 / ton	\$15 / ton	\$ 14 / ton
Mills /ton mile	Dollars / MMBTU		
7	0.918	1.042	1.002
8	1.006	1.104	1.064
9	1.095	1.166	1.126
10	1.183	1.228	1.188
11	1.272	1.290	1.250
12	1.360	1.353	1.312
13	1.449	1.415	1.374
14	1.538	1.477	1.436
15	1.626	1.539	1.498

Once again, the shaded portions of the table represent the cases when the delivered price of Utah coal is less than the delivered price of PRB coal. When the mine price is \$15 per ton, the delivered price of Utah coal is lower than PRB coal at twelve mills. However, if the mine price of Utah coal is reduced by one dollar per ton, then the delivered price of Utah coal is less than PRB coal at eleven mills.

<sup>1/</sup> The numbers developed in Tables 3 and 4 assumed a Utah coal with 12,350 Btu per pound. This is consistent with tests at Cyprus' Willow Creek mine which UTAH expects to be a major shipper. The Btu content of this coal is somewhat higher than many other Utah and Colorado coals. If the Btu content of Utah coal is lower, and PRB coal is the same or higher, then the Utah coal will only become competitive with higher rail rates.

The foregoing analysis shows that with identical rail charges, Utah coal can be competitive with PRB coal at a range of likely transportation rates. The next question is whether it is reasonable to expect that transportation rates will be equal if the Central Corridor is a more costly route and under the terms of the agreements.

VI. Three Mills: Is it Workable?

The agreements UTAH and BNSF have with UP provide that both pay a fee of three mills per gross ton mile for trackage rights. Utah coal moving over a route that includes the UTAH and BNSF could be at a disadvantage vis-a-vis UP/SP movements of the same coals due to the three mills charge.<sup>2/</sup> The millage charge is just one of many factors that contribute to the delivered Btu price of coal including the Btu content of the coal and the mine price. We must therefore consider its magnitude against the overall mix of factors leading to the cost of delivered Btu's.

Any disadvantage attributable to the three mills charge is substantially determined by two factors: 1) the portion of the move subject to the three mills charge, and 2) the internal cost a competing route charges for the same service.

The millage charge represents a payment for use of a railroad system that includes track, roadbed and dispatching service. All railroads have an internal cost for providing this service to themselves. A tenant railroad paying a millage fee is only at a disadvantage when the millage fee is greater than the internal cost it is competing against. In the case at hand, UTAH and BNSF are only at a disadvantage due to the millage charge if three mills is greater than UP's own internal

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<sup>2/</sup> I am aware that UP/SP's settlement with CMA calls for a five-year oversight condition. Perhaps the Board could address the fairness of the trackage rights rates during these oversight hearings.



cost for the same service. My experience suggests that both BNSF and UP may use an internal cost as low as 1.5 mills for the services covered by trackage.<sup>3/</sup> If this is the case, then UTAH and BNSF are at disadvantage of 1.5 mills over the portion of the route this fee must be paid.

We can estimate the impact on the delivered price for coal originating on UTAH simply by calculating how much this disadvantage is for the portion of the total haul that the millage charge applies. The absolute amount of the disadvantage will be the same regardless of the destination. The disadvantage is determined by same number of miles between Utah Railway Junction and Denver. This distance is 453 miles. However, its relative importance will be lower for more distant destinations because the total rail cost will be higher. Table 5 shows the amount of the disadvantage when the internal cost varies between one and three mills. The potential disadvantage is computed in dollars per ton and in dollars per million Btu. The internal cost corresponding to 1.5 mills is highlighted. It represents the upper bound of any disadvantage.

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<sup>3/</sup> Thomas Crowley, in his Verified Statement on behalf of the Western Coal Traffic League, suggested a trackage fee of 1.48 mills. Mr. Crowley testified that such a charge would offset the costs UP/SP would incur when BNSF uses its system. If we accept this number, and UP has internal costs of 1.48 mills, then the row corresponding to 1.5 mills in Table 5 most closely represents a likely upper bound on UTAH/BNSF's disadvantage.

Table 5				
Impact of UP Trackage Rights Charge on Delivered Prices of Utah Coal <sup>4/</sup>				
Internal Cost	Steel Cars		Aluminum Cars	
Mills	\$/ton	\$/MMBTU	\$/ton	\$/MMBTU
1.00	1.45	0.0587	1.2355	0.0500
1.25	1.27	0.0514	1.0810	0.0438
1.50	1.09	0.0440	0.9266	0.0375
1.75	0.91	0.0367	0.7722	0.0313
2.00	0.72	0.0293	0.6177	0.0250
2.25	0.54	0.0220	0.4633	0.0188
2.50	0.36	0.0147	0.3089	0.0125
2.75	0.18	0.0073	0.1544	0.0063
3.00	0.00	0.0000	0.0000	0.0000

If we assume that BNSF and UP have an internal cost of 1.5 mills, then the disadvantage due to the three mills charge is not likely to exceed between \$1.09 and \$0.93 per ton, or between \$0.0375 and \$0.044 per million Btu.

#### VII. The Central Corridor: A More Costly Route?

The general question is whether or not operating rail service on the Central Corridor, over the portions that are relevant, puts Utah coal at a competitive disadvantage compared to PRB coal. I estimate that if the Central Corridor is a more costly route, then the additional costs are not

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<sup>4/</sup> The millage charge applies for the 453 miles between UTAH Junction and Denver. The Willow Creek coal is assumed with an average of 12,350 Btu per pound. Steel cars have a tare weight of approximately 30 tons and a lading weight of approximately 100 tons. Prospective aluminum cars will have a tare weight of 22 tons and a lading weight of 121 tons.

likely to exceed \$0.48 per ton, \$0.18 per MMBTU. In order to arrive at this estimate, it is useful to divide the route a typical coal train will follow into four sections:

- 1) Utah Railway Junction to Grand Junction, Colorado
- 2) Grand Junction, Colorado to Denver, Colorado
- 3) Denver to Lincoln, Nebraska
- 4) Lincoln, Nebraska to St. Louis, Missouri

UTAH will operate the first section in any move of coal east. The trackage between Utah Railway Junction and Grand Junction is flat and straight. UTAH does not believe the route poses any operating difficulties. There is no reason why UTAH should not operate as efficiently as trains out of the PRB. BNSF will operate over the second section between Grand Junction and Denver. This is the section that BNSF will operate under their trackage rights agreement with UP. It has some difficult terrain for railroading. There are mountains and there are curves. When a train gets to Denver, then it is on the BNSF mainline all the way to St. Louis. In addition, when a train gets to Denver, it will run over the same track that PRB trains run. So, it is only section two that can be expected to have higher operating costs than the PRB route (and SP is moving coal over this route today).

In order to account for the higher cost of running over this section, I conducted two simulations. In the first simulation, I estimated the cost for one train with 105 cars on flat terrain. In the second simulation, I split the train in half and estimated the costs of running two trains with 53 cars. The second simulation has twice the number of locomotives and crews. I calculated the total costs in both simulations. The difference represents an upper bound on the likely disadvantage for operations on the route. In fact, since helper service would be used over only



a portion of the route, we would expect the increase in costs to be lower. In any case, I estimate that splitting the trains in the manner I have described adds \$0.48 per ton to the costs, \$0.018 per MMBTU. It is not a trivial amount, but it is not so high that it cannot be offset by other factors.

#### VIII. Utah Coal: A Premium Fuel

We must not lose sight of a most important consideration in this delivered Btu analysis: Utah coal is a premium fuel. Utilities may be willing to pay more for it than is indicated by its delivered Btu equivalent price with PRB coal. Delivered Btu equivalence allows us to consider the mine prices and transportation costs to utilities only. Such factors as site handling and storage, boiler modifications, capital charges and derate costs are not reflected in this comparison. In fact, Btu equivalence may not tell the whole story. Complications from burning the low-Btu, PRB coal frequently prevents utilities from burning one-hundred percent of this coal or means that a utility doing so must be derated. Moreover, utilities must consider other compliance methods. Using higher Btu Utah coal solely or in a blend with PRB coal represents one alternative. Moreover, it may be less expensive, all else equal, to generate electricity using Utah coal rather than PRB coal. If this is the case, then we would expect Utah coal to command a premium price on a delivered Btu basis.

#### IX. Conclusion

My analysis shows that Utah coals from mines on UTAH can be delivered to major markets in the Midwest and the Southwest at delivered prices that are competitive with PRB coals. Importantly, the reach of the new operating relationship with BNSF will also allow the superior Utah coals to compete successfully with Colorado and Appalachian coals at utilities on a delivered Btu basis. This is possible over the Central Corridor with the millage charge that is contained in

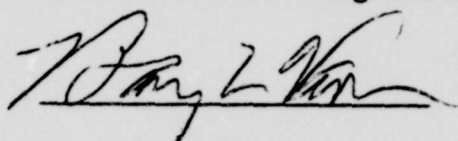
UTAH's and BNSF's agreements with UP. To the extent that Utah coal is a premium fuel, or that it must be burned in conjunction with PRB coal at some utilities enhances its marketability in these markets.

**VERIFICATION**

State of Texas )

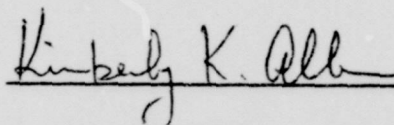
County of Tarrant )

Barry L. Vann, being duly sworn, deposes and says that he has read the foregoing statement, and the contents thereof are true and correct to the best of his knowledge and belief.



Barry L. Vann

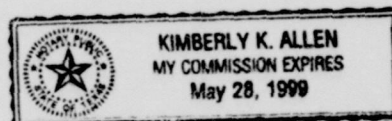
Subscribed and sworn to before me on the 24<sup>th</sup> Day of April 1996.



Notary Public

My commission Expires:

5/28/99





VERIFIED STATEMENT

OF

JOHN E. WEST, III

**VERIFIED STATEMENT  
OF  
JOHN E. WEST, III**

My name is John West. I provided a verified statement on behalf of Utah Railway ("UTAH") during the first phase of evidentiary submissions. The purpose of this statement is to present UTAH's position in light of the changing circumstances of the record as the case has developed, and to emphasize UTAH's ability to seize the competitive opportunities created by its settlement agreement with UP/SP.

From our geographic vantage point, the Central Corridor, the most significant changed circumstance is Montana Rail Link's ("MRL") inconsistent application to compel a Board-ordered divestiture and sale of SP's property to MRL. This is a drastic "remedy" appropriate only where there is a failure of competition under a proposed transaction. It is wholly inappropriate here. As Dr. Vann and Professor Blaydon show in their accompanying statements, there will be greatly heightened competition for the movement of the high quality Utah coals on the Corridor as a result of the merger and the BNSF and UTAH settlement agreements. This simply is not an instance of market failure calling for administrative intrusion on behalf of a self-anointed third party.

As my colleagues and I showed in our opening statements of March 29, 1996, UTAH has every incentive, and the wherewithal, to fully activate its settlement agreement rights. We know how to move heavy coal trains in the mountains; we have done it for more than eighty years. We know how to work smart. Our train crews and support personnel are proud of their efficiency. I believe the nation's Class I railroads would envy our efficiency shown

as a tonnage per employee measure in my opening testimony (West V.S., App. C). We know how to operate in coordinated service with the large carriers as our joint line service with both UP and SP demonstrates. And we know how to market in territories far beyond Utah. Both the export westbound and domestic eastbound markets are growing. We are convinced that our marketing efforts, together with our customers' efforts coupled with growth opportunities will be more than sufficient to excite both UP/SP and BNSF to compete for this business. Today more than 55 percent of Western U.S. coal moving to the countries on the Pacific Rim through Long Beach and Los Angeles harbors is originated by UTAH. Interestingly, in 1995 the bulk of this tonnage originating on UTAH, 1.7 million tons, moved via SP's more circuitous routing; 0.7 million tons moved in joint line service with UP. I am convinced that we, along with BNSF's marketing staff, can find ways to keep long-haul carrier competition for UTAH-originated export coal robust. And I am equally convinced that a healthy, and shipper-beneficial, competition will develop to assure Corridor competition for the movement of superior Utah coals eastward. Indeed, I have already engaged in planning strategies with senior BNSF officials to develop this competitive service.

As Drs. Blaydon's and Vann's attached statements point out, a combination of factors will create vigorous competition for the eastward movement of Utah coal. The continued productivity improvements at the Utah mines, coupled with the changing requirements of the Clean Air Act will create increased opportunities for high quality Utah coal during the implementation phase of the underlying merger and the BNSF and UTAH Settlement



Agreements.<sup>1/</sup> UTAH's extension to Grand Junction along with its competitive long-haul partnerships with UP/SP and BNSF brings both new operating relationships, and incentives, for Utah coals to continue, and indeed increase, competition with Colorado and Appalachian coals now serving electric utilities in the Midwest.

I am also aware of situations in which Uintah Basin coal has successfully competed with and displaced Powder River Basin (PRB) coal. In many cases Utah coal is a deemed necessity for blending with PRB coal. As UTAH's principal marketing officer, I can assure the Board that we will fully exploit our position as originating carrier to help an important and growing segment of Utah coal to penetrate new markets in the Midwest.

I think the data I provided in my opening statement demonstrates that UTAH understands the importance of density in railroad economics. I assure the Board that we will make every effort to provide the competitive effort to make Utah coal increasingly attractive and to warrant the creative attention of the long-reach joint-line BNSF and UP/SP systems. Everybody (the mines, carriers, and utilities) benefits from the efficiencies of heavier traffic flows.

In the context of advising the Board of factual developments, I am very pleased to report that UTAH has benefited from further competitive opportunities beyond coal. While

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<sup>1/</sup> In addition to the Clean Air Act, the Federal Energy Regulatory Commission has just changed the coal/utility relationship by effectively opening the nation's electricity grid to all suppliers of electricity under a tariff system. This move will increase the need to find the most cost effective mixture of coals and boilers. Although it is too early to make specific predictions, I am convinced this represents a significant opportunity for the superior Utah coals.

UTAH has abided by its Settlement Agreement not to initiate further demands on the applicants, some of the important shippers, in their negotiations with UP/SP, have requested and received pro-competitive assurances by means of new grants of Utah Railway access to significant non-coal traffic flows. For instance, ECDC Laidlaw -- owner of a major waste materials dump site in Utah -- negotiated and received access by Utah Railway. That access, combined with UTAH's new eastern connection at Grand Junction, Colorado, will allow us to move unit waste trains from either eastern or western origins. Similarly, Moroni Feed, a cooperative of approximately 100 independent family farms in Central Utah, sought and received UTAH service to its facilities, thereby creating long-haul competition between BNSF and UP/SP for UTAH's delivering service. Again, I emphasize UTAH did not instigate these developments but, rather, stood ready to serve and to provide additional competition on the Corridor. We so stand today if there are pockets of identifiable need.

That aside, as a railroader who has spent his entire thirty-year career on the Central Corridor, I am convinced that the BNSF and UTAH Settlement Agreements will bring a whole new level of competition to the Corridor. Competition has been significantly enhanced, not decreased, as some may claim. Where UTAH does not compete, BNSF will be able to go head-to-head with UP/SP on all "two-to-one" points on the Corridor, and UTAH will be able to act as a competitive "broker" for long-haul competition -- both east and westbound -- for the important and expanding Utah business which it will originate. Given the magnitude of that business, the phenomenal growth of the Pacific Rim economies the lower cost at the Utah mines, the opportunities created by backhauls, and the advent of

the next phase of the Clean Air Act, this is no small addition to competition on the Corridor. With the western giants competing on the Corridor, and with UTAH playing a more significant role in conjunction with the long haul carriers in the position of a major joint-line coal originator, there certainly will be no dearth of competition which would somehow warrant the intrusion of a self-appointed inconsistent applicant into the market.

**The Inconsistent Application  
Is Inappropriate.**

Not only is the competitive situation wrong for MRL's inconsistent intrusion, the would-be solution itself is flawed. It seems strange to me that MRL would seek to replace competition between carriers with a monopoly, and attack the negotiated rate for trackage rights while asking for the same rates. While I do not pretend to be a legal expert, it seems to me, as an experienced railroader, that MRL would essentially substitute a monopolistic situation for a robust "two-to-one" competitive solution. MRL seeks essentially to eliminate the additional competition that has been created by the efforts of the UTAH, BNSF, UP/SP and the shipping community since the merger was announced. MRL would reserve the Central Corridor market to itself, while allowing UP/SP the crumb of overhead trackage rights. This is in sharp contrast to the full competitive standing BNSF would enjoy under the UP/SP scenario, not to mention UTAH's strong potentiating role in the UP/SP setting. Further, in its application, MRL has chosen to ignore UTAH, which we find not only demonstrative of an intent to eliminate competition, but also of MRL's complete lack of understanding of the railroad situation and relationships on the Corridor. It overlooks



entirely the important operating agreement between UTAH and its would-be acquisition (the former DRGW).

The irony of an inconsistent application offering measurably less competition than would exist in the market intended to be "cured" speaks for itself. Moreover, the reach of the intended inconsistent solution itself is also fraught with problems. As a railroader who began his career on the Denver & Rio Grande Western and as the son of a DRGW professional, I am keenly aware of the problems of reach in today's long-haul rail market. While Dr. Blaydon separately points out the history of DRGW problems due to its insufficient scope, I would emphasize that those problems are compounded today in this era of megasystems. A recreated (and somewhat expanded) DRGW flying the colors of MRL simply does not reach enough destinations to be competitively equivalent to, much less a more competitive inconsistent alternative to, the UTAH and BNSF under the "two-to-one" formula. Creating a "new" carrier with far fewer options than SP or BNSF under its settlement agreement certainly cannot be a solution to anything. Representing an originating joint-line carrier, I would much prefer to interline with BNSF in terms of market reach, especially with respect to targeted utilities in the Midwest. A MRL presence on the Central Corridor would only be an intermediate link to the same market, actually reducing rail competition and increasing rates. Moreover, MRL has no operating or market experience in the Central Corridor and in this regard (as well as many others) cannot be considered as a replacement for the UP/SP and BNSF.

Additionally, substitution of a new interim link carrier such as MRL in the Central Corridor, especially between Denver, CO and Stockton/Oakland, CA area, would greatly lessen any incentive either UP/SP or BNSF may have to route overhead business across this line. This would greatly reduce traffic density and could potentially harm UTAH and all shippers in the Central Corridor dependent on UTAH service. Under UTAH's current Joint Trackage Agreement with SP (DRGW) submitted in our March 29, 1996 filing (Barker V.S. App A), UTAH pays a proportional share of maintenance, dispatching and supervision across the joint track territory. A measurable reduction in overhead traffic would significantly increase our operating costs as we would foot a larger percentage of these costs. It is important to keep major railroads operating across this line. In the long run the more tonnage put on the line, the more the shippers will win. The lower internal cost per ton ultimately works for the benefit of the shippers.

Finally, as UTAH's principal marketing officer, I would again stress that we will bring our best efforts and imagination to the development of more competition on the Central Corridor. For instance, our new access to ECDC waste traffic itself presents significant opportunities for creative backhaul service. ECDC owns or leases six open top hopper train sets (as well as many sets of container and other equipment). Use of these sets in outbound coal and inbound waste presents excellent opportunities for creative two-way moves -- both west for export and east for utility service. Backhaul pricing has proven helpful in the penetration of the Midwest utility markets and may help provide more direct competition with PRB coal. In short, our ECDC access is an important marketing tool for coal moves.

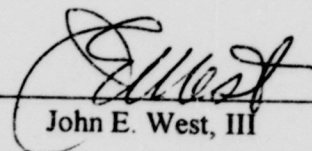
UTAH presently may not be a large carrier, but it will become an important competitive force in conjunction with its and BNSF's Settlement Agreements. As Drs. Vann and Blaydon show, UTAH has the desire, the will, and the tools as demonstrated by our service commitments and our steady growth. Competition on the Central Corridor will ratchet up under the present arrangements. In my judgment this is incomparably superior to MRL's self-serving and selfish attempt to crate a monopolistic "solution" for a problem which does not exist.



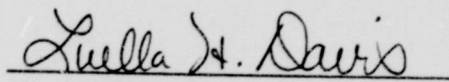
**VERIFICATION**

State of Utah       )  
                              )  
County of Carbon    )

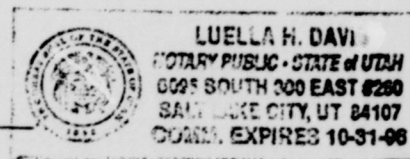
John E. West, III, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.

  
John E. West, III

Subscribed and sworn to before me on this the 24<sup>th</sup> day of April 1996.

  
Notary Public

My commission expires Oct. 31, 1996



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WINN, MOERMAN & DONOVAN  
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3506 IDAHO AVENUE, N. W.  
WASHINGTON, D. C. 20016  
TELEPHONE (202) 362-3010  
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April 10, 1996

**BY HAND**

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Twelve Street and Constitution Avenue, N.W.  
Room 2215  
Washington, DC 20423

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

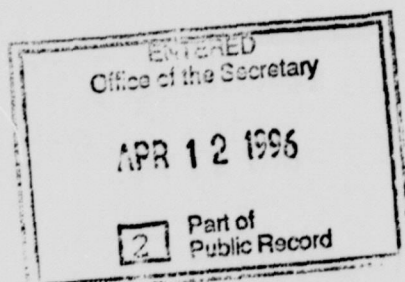
Dear Secretary Williams:

Enclosed please find the original and twenty copies of The  
Geon Company's Responses to Applicant's Third Set of Interrogato-  
ries.

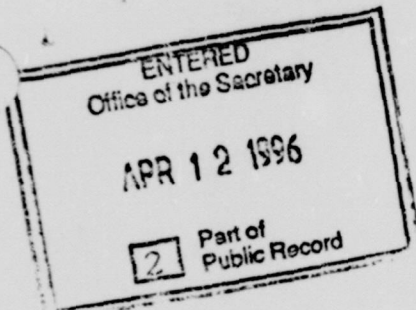
Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul M. Donovan".

Paul M. Donovan







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 RAILROAD COMPANY

---

RESPONSES OF THE GEON COMPANY TO APPLICANTS'  
THIRD SET OF INTERROGATORIES

---

WOODROW W. BAN  
Senior Corporate Counsel  
and Assistant Secretary  
The Geon Company  
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Avon Lake, Ohio 44012  
(216) 930-3825

PAUL M. DONOVAN  
LaRoe, Winn, Moerman & Donovan  
3506 Idaho Avenue, N.W.  
Washington, DC 20016  
(202) 362-3010

Attorneys for The Geon Company

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

RESPONSES OF THE GEON COMPANY TO APPLICANTS'  
THIRD SET OF INTERROGATORIES

Applicants have notified Geon that only Interrogatory  
Numbers 1 through 5 need be answered by Geon.

Interrogatory No. 1: To the extent not done as part of your  
prior discovery responses or March 29 filings, identify and  
describe any agreements or understandings that you have with any  
other party to this proceeding regarding positions or actions to  
be taken in or otherwise relating to this proceeding, including  
any "joint defense" or "common interest" agreement, or any  
confidentiality agreement on which you rely in objecting to  
discovery requests or invoking an informers privilege or other  
privilege.

Response: No such agreement exists.

Interrogatory No. 2: If you contend in your March 29 filing  
that reduction from 3-to-2 in the number of railroads serving  
various shippers or markets as a result of the merger is a reason

for denying approval, state whether you contend that two Class I railroads would always compete less vigorously than three Class I railroads in any given market.

Response: No.

Interrogatory Number 3: The testimony of Richard Peterson on behalf of Applicants describes, at pages 172-75, the views of a number of shippers with respect to competition between a merged UP/SP and BNSF. State whether you believe that those shippers are correct or incorrect in the expectations they have expressed in their statements filed in this proceeding concerning the effects of a UP/SP merger on competition and explain the reasons for that answer.

Response: Geon is unaware of the contents of the Peterson testimony.

Interrogatory Number 4: Identify all shippers who you claim have expressed support for your position in this proceeding in your March 29 filings who are presently served at a point of origin or destination by both UP and SP directly.

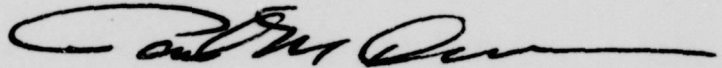
Response: Geon made no such claim.

Interrogatory Number 5: If you contend that there are significant investments in improvements of its railroad that SP could or should have made, or can and should make, identify them and describe any rates of return, hurdle rates, or like standards you use for determining whether to invest in improvements in your business.

Response: Geon made no such contention.



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and Assistant Secretary  
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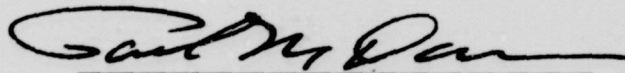


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(202) 362-3010

Attorneys for The Geon Company

CERTIFICATE OF SERVICE

I, Paul M. Donovan, certify that on this 10th day of April, 1996,  
I caused a copy of the foregoing document to be served by hand or  
facsimile transmission on Messrs. Paul A. Cunningham and Arvid E.  
Roach II, Counsel for Applicants.

  
Paul M. Donovan

STB

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UP/SP-204

Office of the Secretary

APR 09 1996

Part of  
Public 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

APPLICANTS' SUBMISSION OF SETTLEMENT AGREEMENTS  
WITH GATEWAY WESTERN AND WISCONSIN CENTRAL

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

April 8, 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

---

APPLICANTS' SUBMISSION OF SETTLEMENT AGREEMENTS  
WITH GATEWAY WESTERN AND WISCONSIN CENTRAL

Applicants Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"), Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and The Denver and Rio Grande Western Railroad Company ("DRGW"),<sup>1/</sup> hereby submit copies of the settlement agreements that they have reached in this proceeding with Gateway Western Railway Company (Exhibit A hereto) and Wisconsin Central Ltd. (Exhibit B hereto).

I. SETTLEMENT WITH GATEWAY WESTERN

Applicants have entered into a settlement agreement with Gateway Western in order to resolve Gateway Western's

---

<sup>1/</sup> UPC, UPRR, and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP." SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SP, SSW, SPCSL and DRGW are referred to collectively as "SP."

pre-existing concerns about its operations under the terms of two agreements with SP. As Gateway Western explained in its Comments supporting the merger (GWWR-6), the settlement resolves Gateway Western's concerns, and will allow Gateway Western to provide shippers with improvements in service that would not be possible absent the merger. Applicants' settlement with Gateway Western is not intended to resolve any competitive issue raised by the UP/SP merger.

## II. SETTLEMENT WITH WISCONSIN CENTRAL

Applicants have entered into a settlement agreement with Wisconsin Central providing that, in the event Applicants were required to divest trackage in the Central Corridor or the State of Wisconsin as a result of this proceeding, Applicants would provide Wisconsin Central with an opportunity to negotiate to purchase those lines if no agreement were reached with BN/Santa Fe or Illinois Central. Applicants of course do not believe that there is any basis for imposing such a divestiture requirement in this proceeding, and Wisconsin Central has made clear in its Comments filed on March 29, 1996 that, on the basis of its review of the facts, it supports the merger and is not arguing for a divestiture condition.

Respectfully submitted,

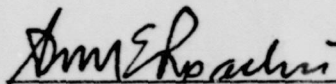
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Railway Company, SPCSL Corp. and  
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Pacific Railroad Company

April 8, 1996

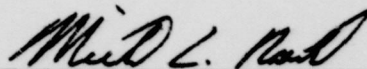


CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 8th day of April, 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

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



\_\_\_\_\_  
Michael L. Rosenthal

**EXHIBIT A**

March 28, 1996

## AGREEMENT

This Agreement ("Agreement") is entered into this 29th day of March, 1996, between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP", with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Gateway Western Railway Company and its affiliates and subsidiaries including Gateway Eastern Railway Company (collectively referred to as "Gateway Western"), on the other hand, concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Surface Transportation Board ("STB") in 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 (the "Control Case").

WHEREAS, Gateway Western is participating in the Control Case proceeding in order to ensure that its interests are not adversely affected by the Control Case;

WHEREAS, Gateway Western has agreed with UP/SP on a variety of operational issues that will enhance Gateway Western's capabilities and competitiveness;

WHEREAS, after carefully reviewing the record in the Control Case, Gateway Western has concluded that common control of UP and SP, as conditioned by the Agreement dated September 25, 1995 and the Supplemental Agreement dated November 18, 1995 between UP/SP on the one hand and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, on the other hand, is in the public interest and should be supported by Gateway Western.

NOW, THEREFORE, in consideration of their mutual promises, UP/SP and Gateway Western agree as follows:

1. Ridgely Yard Interchange Agreement

Union Pacific will remove the prohibition on Gateway Western ownership/control by a Class I carrier.



2. Springfield-Chicago: Divisions and Haulage Agreement and 1991 First Supplement Agreement

Union Pacific will relinquish its option to buy the Roodhouse to Springfield line and will remove the prohibition on Gateway Western ownership/control by a Class I carrier. Union Pacific will also extend the Chicago-Springfield haulage agreement for ten (10) years. The terms of the 1993 settlement agreement between SPCSL and Gateway Western will also be incorporated into the haulage agreement.

3. Godfrey-E. St. Louis Joint Facility Agreement (JFA)

a) Union Pacific will remove the restriction on ownership/control of Gateway Western by a Class I carrier and will remove the restriction on transferring Gateway Western's interest in the JFA to another carrier.

b) Union Pacific will transfer to Gateway Western dispatching of the Joint Track between WR Tower (SPCSL MP 275.5) and Q Tower (SPCSL MP 281.0) and from Hole in the Wall (SPCSL MP 281.7) to Valley Junction (SPCSL MP 283.6) provided, however, that at any time upon thirty (30) days written notice Union Pacific has the unilateral right to take back dispatching on these segments of the Joint Facility at its sole discretion and option and with no recourse or right of appeal by Gateway Western. Gateway Western's charges to Union Pacific for dispatching the Joint Facility will be based on the provisions of the current JFA.

c) Union Pacific will transfer to Gateway Western maintenance responsibility (excluding grade crossing signal protection maintenance) on the No. 1 track between Q Tower (SPCSL MP 281.0) and Valley Junction (SPCSL MP 283.6) provided, however, that at any time upon ninety (90) days written notice Union Pacific has the unilateral right to take back maintenance on the No. 1 track at its sole discretion and option and with no recourse or right of appeal by Gateway Western. Gateway Western will maintain the line to at least the standard of maintenance on the line today but no lower than FRA Class I. Union Pacific's responsibility for capital and maintenance expenses on the line will be determined based on the provisions of the JFA governing the line, but in any calendar year will be capped at \$50,000 for capital and \$100,000 for maintenance; provided, however, that if the annual capital and maintenance cap is exceeded in any given year, the parties will negotiate in good faith to bring the cap in line with actual expenses and required maintenance levels. Any invoices from other railroads or work ordered by federal, state or local authorities, will be excluded from the annual capital and maintenance cap on No. 1 track.

d) Union Pacific will allow Gateway Western to have constructed at its sole cost and expense a turnout and trackage connecting with and extending from the turnout ("Connection") off of the Joint Facility main line at or near SPCSL MP \_\_\_\_\_ to access a

limestone quarry (such quarry is accessible from the Gateway Eastern Railway, but the cost of the connection would be greater). Gateway Western will be responsible for maintaining the Connection and will be solely responsible for the cost of maintaining the turnout from the Joint Facility main line, with such turnout being maintained by UP. Gateway Western will allow Union Pacific to utilize the Connection and serve any customers on the Connection without contributing to any portion of the cost of construction. If Union Pacific uses the Connection (including any trackage that may be connected therefrom in the future) to serve customers located on the Connection, it will pay its prorata share of maintenance costs of the connection and the main line turnout. It is agreed by both Union Pacific and Gateway Western that Gateway Western's accessing an industry from the Joint Track in this specific instance will not establish any precedent for further access, including other connections, off of the Joint Facility by Gateway Western.

4. Alton Branch

Within six (6) months after consummation of the common control of UP and SP, Union Pacific and Gateway Western will evaluate switching on the Alton Branch with the intent being to determine if Gateway Western can more efficiently perform switching on the line while maintaining the necessary customer service levels for both Union Pacific and Gateway Western customers. In the meantime, Gateway Western will work with Southern Pacific to develop a proposal for submittal to both Union Pacific and Southern Pacific for switching of the Alton Branch by Gateway Western.

5. Alton & Southern River Track

a) Union Pacific will allow Gateway Western to use the Alton & Southern River Track between MP\_\_\_\_\_ and MP\_\_\_\_\_ solely for the purpose of accessing and serving Cerro Copper, Peavey and American Milling, and their successors and assigns. Gateway Western use of this line will be limited to moves to and from Mexico, Missouri which originate or terminate at the Cerro Copper facility; and moves which originate or terminate at Gateway Western local points as Gateway Western is configured as of March 15, 1996, (excluding connections and excluding the Kansas City terminal and connections in the Kansas City terminal, but including those industries accessed by Gateway Western directly prior to taking over the Kansas City Terminal switching operations), and destined to or originating at the Peavey and American Milling facilities. Gateway Western will pay an access fee of \$10 per car (loaded and empty) and \$15 per locomotive for use of the Alton & Southern River Track. The charge will include maintenance (ordinary and program) and operations, taxes and interest rental with annual adjustment at 70% of the RCAF(U) beginning as of January 1, 1997.

b) Union Pacific will allow Gateway Western to construct a connecting track to access the A&S's River Track between the joint facility track known as the "Tolson main" and the River Track along the alignment of the former GM&O-A&S interchange track in



Sauget, or an alternative alignment suitable to both parties, said track to be designed, constructed, and maintained at Gateway Western's sole expense. The new turnouts and track will not be considered an addition to the joint facility, but instead will be governed by Section 5C of the JFA.

6. Airline Block

Union Pacific will sell to Gateway Western for \$50,000 the Airline Block between Cockrell (MP 192.4) and New KC Junction (at or near MP 190.6) with UP retaining trackage rights to serve all industries. The charge for this segment of trackage rights will be \$0.24 per car mile. The charge will include maintenance (ordinary and program) and operations, taxes and interest rental with annual adjustment at 70% of the RCAF(U) beginning as of January 1, 1997. Gateway Western agrees to provide service for UP to Consolidated Grain and Barge under the terms of its current arrangement with SP and will not terminate the current arrangement without offering UP trackage rights pursuant to the terms of the December 20, 1993 agreement. Gateway Western's use of the Airline Block will continue to be restricted to the terms and conditions of the Ridgely Yard interchange agreement, and all interchange with carriers that operate into Springfield will be conducted in accordance with that agreement.

7. Effective Date

This agreement is effective as of the date hereof; provided, however, that items 1 through 6 of this agreement are contingent upon approval by the Surface Transportation Board of the Union Pacific-Southern Pacific merger in Finance Docket No. 32760, and will become effective when Union Pacific exercises control of Southern Pacific.

8. Gateway Western Position in F.D. 32760

Gateway Western will file a statement with the Surface Transportation Board on March 29, 1996, in FD 32760 supporting the merger of Union Pacific and Southern Pacific and the settlement agreement between Union Pacific and Southern Pacific and Burlington Northern-Santa Fe.

**UNION PACIFIC CORPORATION**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNION PACIFIC RAILROAD COMPANY**

By: Paul C. Conley  
Title: AvP - Law



**MISSOURI PACIFIC  
RAILROAD COMPANY**

By: Paul C. Conley Jr.  
Title: AVP-Law

**THE DENVER & RIO GRANDE  
WESTERN RAILROAD COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ST. LOUIS SOUTHWESTERN  
RAILWAY COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**GATEWAY WESTERN RAILWAY  
COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOUTHERN PACIFIC RAIL  
CORPORATION**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOUTHERN PACIFIC  
TRANSPORTATION COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SPCSL CORP.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Sauget, or in alternative alignment suitable to both parties, said track to be designed, constructed, and maintained at Gateway Western's sole expense. The new turnouts and track will not be considered an addition to the joint facility, but instead will be governed by Section 5C of the JFA.

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Union Pacific will sell to Gateway Western for \$50,000 the Airline Block between Cockrell (MP 192.4) and New KC Junction (at or near MP 190.6) with UP retaining trackage rights to serve all industries. The charge for this segment of trackage rights will be \$0.24 per car mile. The charge will include maintenance (ordinary and program) and operations, taxes and interest rental with annual adjustment at 70% of the RCAF(U) beginning as of January 1, 1997. Gateway Western agrees to provide service for UP to Consolidated Grain and Barge under the terms of its current arrangement with SP and will not terminate the current arrangement without offering UP trackage rights pursuant to the terms of the December 20, 1993 agreement. Gateway Western's use of the Airline Block will continue to be restricted to the terms and conditions of the Ridgely Yard Interchange agreement, and all interchange with carriers that operate into Springfield will be conducted in accordance with that agreement.

7. Effective Date

This agreement is effective as of the date hereof; provided, however, that items 1 through 6 of this agreement are contingent upon approval by the Surface Transportation Board of the Union Pacific-Southern Pacific merger in Finance Docket No. 32760, and will become effective when Union Pacific exercises control of Southern Pacific.

8. Gateway Western Position In E.D. 32760

Gateway Western will file a statement with the Surface Transportation Board on March 29, 1996, in FD 32760 supporting the merger of Union Pacific and Southern Pacific and the settlement agreement between Union Pacific and Southern Pacific and Burlington Northern-Santa Fe.

UNION PACIFIC CORPORATION

By: Carl A. Bensch

Title: SVP & C.C.

UNION PACIFIC RAILROAD COMPANY

By: Paul C. Conley

Title: AVP-Law





**EXHIBIT B**

## AGREEMENT

This Agreement ("Agreement") is entered into this 29th day of March, 1996, between Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP", with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Wisconsin Central Ltd. and its affiliates and subsidiaries including Fox Valley & Western Ltd. (collectively referred to as "WCL"), on the other hand, concerning the proposed acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Surface Transportation Board ("STB") in 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 (the "Control Case").

WHEREAS, WCL is participating in the Control Case proceeding in order to ensure that its interests are not adversely affected by the Control Case itself or as a consequence of conditions in divestiture proposals being sought by opponents to the Control Case;

WHEREAS, UP/SP has advised WCL of its view that (a) the Agreement dated September 25, 1995 and the Supplemental Agreement dated November 18, 1995 between UP/SP on the one hand and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, on the other hand (the "BN/Santa Fe Agreement") fully addresses all competition issues in the Control Case, (b) no competition issue in the Control Case justifies transfer of or a grant of access to any UP/SP property to WCL or any other carrier, and (c) it does not intend to voluntarily transfer or grant access to its properties to WCL or any other carrier in connection with the Control Case;

WHEREAS, after carefully reviewing the record in the Control Case, WCL has concluded the common control of UP and SP, as conditioned by the BN/Santa Fe Agreement is in the public interest and should be supported by WCL subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of their mutual promises, UP/SP and WCL agree as follows:

1. Transfer and Access to Properties

a) WCL's "Description of Anticipated Inconsistent or Responsive Application" designated as "WCL-2" and filed with the STB in the Control Case on January 29, 1996 listed line segments within the Central Corridor over which WCL anticipated filing inconsistent and/or responsive applications, including trackage rights and/or purchase applications. UP/SP agree that (i) if conditions in addition to or in lieu of the BN/Santa Fe Agreement are required as a condition to the merger with respect to the line segments described in WCL-2, or any lines in the Central Corridor (beginning in Kansas City and extending westward through the Denver/Pueblo area, Salt Lake City/Ogden area and on to the vicinity of San Francisco Bay to the west) or in Wisconsin, and (ii) UP cannot satisfy those conditions by negotiation with BN/Santa Fe or with the Illinois Central Railroad Company ("IC"), and (iii) UP/SP decide to go forward with the merger as so conditioned, then to the extent UP/SP have any choice in negotiating with other carriers to satisfy such additional conditions, and (iv) have satisfied their obligations to first negotiate with BN/Santa Fe and IC, they will next negotiate with WCL. Once negotiations with WCL have commenced, UP/SP will not negotiate with any other party until they have been unable to reach agreement with WCL.

b) UP/SP further agree that if prior to the decision of the STB in the Control Case, (i) they entertain the possibility of granting rights to a party other than WCL designed to remedy an alleged competitive problem caused by the common control of UP/SP on the lines identified in WCL-2 or any lines in the Central Corridor (beginning in Kansas City and extending westward through the Denver/Pueblo area, Salt Lake City/Ogden area and on to the vicinity of San Francisco Bay to the west) or in Wisconsin, and (ii) such alleged competitive problems can feasibly be solved by either WCL or such other party, they will negotiate with WCL, but only after having first satisfied any obligations to negotiate with BN/Santa Fe or IC. UP/SP will not, subject to their prior obligations to negotiate with BN/Santa Fe or IC, negotiate with any other party until they have been unable to reach agreement with WCL.

c) In the case of any negotiations conducted with WCL pursuant to the provisions of this Section 1, UP/SP agree that, subject to their prior obligations to negotiate with BN/Santa Fe or IC, if they are unable to reach agreement with WCL and subsequently negotiate with another party for the same rights, they will not offer such other party terms materially more favorable to those last offered to WCL without first offering such more favorable terms to WCL.

d) If WCL should agree to merge or come under common control with any Class 1 railroad, the terms of this section will be of no further force and effect.

2. Arbitration

Unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding



arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

3. Further Assurances

The parties agree to execute such other and further documents and to undertake such acts as shall be reasonable and necessary to carry out the intent and purposes of this Agreement.

4. Third Party Beneficiaries

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.

5. Governmental Approval

The parties agree to cooperate with each other and make whatever filings or applications, if any, are necessary to implement the provisions of this Agreement and whatever filings or applications may be necessary to obtain any approval that may be required by applicable law for the provisions of such agreements. WCL agrees not to oppose the primary application or any related applications in the Control Case, and not to seek any conditions in the Control Case, not to support any requests for conditions filed by others, and not to assist others in pursuing their requests. WCL will file a statement on March 29, 1996 with the STB supporting approval of the Control Case as conditioned by the BN/Santa Fe Agreement. WCL shall remain a party in the Control Case, but shall not participate further in the Control Case other than (a) to support the merger and this Agreement, (b) to protect the commercial value of the rights granted to WCL by this Agreement, and (c) to oppose requests for conditions by other parties which adversely affect WCL. WCL's obligations under this section extend to all contacts of WCL with third parties (including, but not limited to customers; federal, state and local governmental officials, and representatives of the media). WCL may, without violating its obligations under this section, respond to criticism, if any, directed at WCL in the Control Case by other parties to the control case.

**UNION PACIFIC CORPORATION**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**UNION PACIFIC RAILROAD COMPANY**

By: Paul C. Lundy  
Title: AVP-Law

**MISSOURI PACIFIC  
RAILROAD COMPANY**

By: Paul G. Carney  
Title: AVP-Law

**THE DENVER & RIO GRANDE  
WESTERN RAILROAD COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ST. LOUIS SOUTHWESTERN  
RAILWAY COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**WISCONSIN CENTRAL LTD.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOUTHERN PACIFIC RAIL  
CORPORATION**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOUTHERN PACIFIC  
TRANSPORTATION COMPANY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**SPCSL CORP.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**FOX VALLEY & WESTERN LTD.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

3. Further Assurances

The parties agree to execute such other and further documents and to undertake such acts as shall be reasonable and necessary to carry out the intent and purposes of this Agreement.

4. Third Party Beneficiaries

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.

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UNION PACIFIC CORPORATION

By: Carl M. Berner  
Title: SVP & General Counsel

UNION PACIFIC RAILROAD COMPANY

By: Paul C. Linder  
Title: AVP-Law



MAR -29 96(FRI) 14:31 NETWORK & CORP. DEV.

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TO 913638125893

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MISSOURI PACIFIC  
RAILROAD COMPANY

By: [Signature]  
Title: AVP-Law

THE DENVER & RIO GRANDE  
WESTERN RAILROAD COMPANY

By: [Signature]  
Title: Vice President

ST. LOUIS SOUTHWESTERN  
RAILWAY COMPANY

By: [Signature]  
Title: Vice President

WISCONSIN CENTRAL LTD.

By: [Signature]  
Title: President

SOUTHERN PACIFIC RAIL  
CORPORATION

By: [Signature]  
Title: Vice President

SOUTHERN PACIFIC  
TRANSPORTATION COMPANY

By: [Signature]  
Title: Vice President

SPEL CORP.

By: [Signature]  
Title: Vice President

FOX VALLEY & WESTERN LTD.

By: [Signature]  
Title: President

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DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



50 FREMONT STREET, SUITE 300  
SAN FRANCISCO, CA 94105  
(415) 356-6000

FACSIMILE (415) 356-6370  
356-6377

April 4, 1996



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

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

Dear Mr. Williams:

Enclosed for filing are an original and twenty copies of the Statement of Attorney General of California in Support of Proposed Merger. Also enclosed is a 3.5" disk containing the text of the pleading in Word Perfect 5.1.

Sincerely,

DANIEL E. LUNGREN  
Attorney General

*Lindsay Bower*  
LINDSAY BOWER  
Deputy Attorney General

cc: All parties



BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

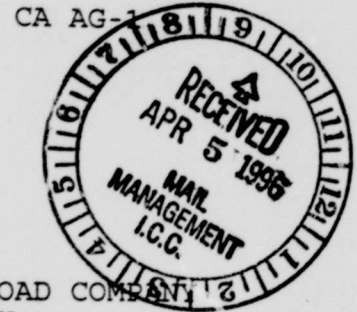
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,  
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

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

STATEMENT OF ATTORNEY GENERAL OF CALIFORNIA  
IN SUPPORT OF PROPOSED MERGER

The proposed merger between Union Pacific and Southern Pacific would unite two of the three major rail carriers operating within California. The Burlington Northern-Santa Fe, which is the third, now has many of the premier routes between this state and the Midwest. The merger will enhance the ability of the applicants to compete with the BN/Santa Fe in many of those markets by strengthening SP's precarious financial condition, introducing certain efficiencies and eliminating duplicate routes and facilities. The applicants' side agreement with the BN/Santa Fe will also open new rail markets and enable the development of the Port of Oakland's Joint Intermodal Facility. These benefits outweigh any theoretically adverse competitive effects related to the consolidation. For that reason, the Attorney General of the State of California supports the proposed merger.



## I. Background

The Southern Pacific and Union Pacific, along with the Burlington Northern/Santa Fe, are the only major railroads operating in the western United States. In many transportation markets, these three railroads compete directly. The Southern Pacific system, traditionally centered in California, provides service between Los Angeles, Oakland, Chicago, St. Louis, Kansas City, Houston, Dallas, New Orleans, and Memphis. Union Pacific serves those same cities.

Both railroads have major routes between Chicago and both Los Angeles and Oakland. Southern Pacific also has major routes between California and the Southwest, while Union Pacific is a major competitor for Pacific Northwest traffic. In addition, both systems compete in major corridors roughly paralleling the Mississippi and connecting various cities between Chicago, Houston and New Orleans. The BN/Santa Fe has a strong presence in all of these markets.

Following announcement of the merger, the applicants entered into negotiations with BN/Santa Fe to address adverse competitive effects of the merger. To prevent the creation of "single firm" monopoly service in markets now served by both of the applicants, the applicants granted trackage rights to BN/Santa Fe in every situation where the number of railroads serving a shipper fell from two to one. The most important of these markets for California shippers were in the "Central Corridor," which runs from Oakland to Chicago through Salt Lake City. In addition, the

applicants and BN/Santa Fe entered into arrangements which will allow both railroads to provide service in the "I-5 Corridor" running between the Canadian and Mexican borders through Seattle and Portland and near Oakland and Los Angeles.

## II. The Benefits of the Merger

### A. The "I-5" Corridor

For California, the most important of the benefits of the merger may be the development of rail service between the Mexican and California borders, paralleling the I-5 and including both of the surviving Western railway systems. Only Southern Pacific currently provides direct service from the San Francisco Bay Area to destinations as far north as Portland. The SP, however, has been unable to obtain access to Seattle and, partially for that reason, has not effectively competed with West Coast truckers.

Neither UP nor the BN/Santa Fe has a viable route between California and either Oregon or Washington. BN/Santa Fe, in fact, has a vital 300 mile "gap" in its system between Stockton and Bieber, California (near the Oregon border). Likewise, Union Pacific does not operate between Portland and Bieber or between Turlock and the Barstow area. The side agreement with BN/Santa Fe will allow both of the surviving railroads to complete their North-South systems.

### B. The Port of Oakland Joint Intermodal Facility

The merger will also enable the long-delayed development of the rail facilities at the Port of Oakland. The UP and the BN/Santa Fe currently carry most of the traffic to or from the



Port. Even so, the BN/Santa Fe must now "dray" containers from the Port to its Richmond intermodal facility over Highway 80, one of the most congested stretches of highway in California. In addition, the small UP facility is operating at capacity, forcing that railroad to divert business to other ports. The Southern Pacific, on the other hand, owns most of the valuable land in and around the Port. Previous attempts by the parties to negotiate a solution have been unsuccessful.

The applicants have been able, however, to negotiate an agreement with BN/Santa Fe and the Port of Oakland that will be operable if the STB approves the merger. For its part, the Port will invest \$600 million in a Joint Intermodal Facility (JIM). This investment will allow the Port to consolidate the intermodal facilities of all three railroads into a single terminal, which will be located next to the Port's marine operations and which will offer direct access to Highway 880. Moreover, trackage agreements will:

guarantee BNSF direct access to Oakland industrial spurs and to the proposed JIT. This will give ocean carriers and other receivers and shippers of goods direct access to two effective, competing railroads and open new markets to shippers using the Port. The merger will [also] allow UPRR to move [its] operations into the existing SPL intermodal yard, expanding [its] capacity and bringing immediate improvements to the facility.<sup>1</sup>

For these reasons, the Port of Oakland supports the proposed merger.

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<sup>1</sup> Verified Statement of Leo R. Brien, at 4-5 (Oct. 13, 1995), submitted in support of UPSP Merger Application.

### C. Operational Efficiencies

The applicants are undoubtedly accurate in asserting that "few matters are more crucial to a railroad's competitiveness than the length of its routes." Verified Statement of Richard B. Peterson, at 21. Accordingly, the merger will provide immediate benefits by allowing the applicants to combine the best parts of their individual systems. This will result in mileage reductions of 189 miles between Oakland and Chicago and 143 miles between Oakland and Kansas City. Likewise, the consolidated route between Los Angeles and Dallas will save 233 miles; and, between Los Angeles and Memphis, the savings will be 283 miles.

The merger will also allow the applicants to combine the best parts of their terminal facilities, including transit yards, auto ramps, and other specialized operations. The Los Angeles to Chicago route provides the clearest example of this type of benefit. See Verified Statement of Richard B. Peterson, at 63-65. This route is the highest volume intermodal lane in the country. Southern Pacific's Intercontinental Container Transit Facility ("ICTF") in Los Angeles and Union Pacific's Global I and Global II terminals in Chicago are modern, efficient facilities. In contrast, the SP yards in Chicago are inconveniently located and in poor condition, while the UP site in Los Angeles is approximately 20 miles from port facilities. By merging, the applicants will be able to offer superior loading and unloading facilities to customers at both ends of this important line.

### III. Competitive Effects

The only possible competitive issue relating to California transportation markets arises from the consolidation of two of the three lines running between Los Angeles and Chicago. Both those cities are, of course, major industrial and commercial centers, and all three western railroads transport an enormous amount of freight between them. The Commission has held that over such long-haul routes (using distances over 1000 miles as a "benchmark"), "trucks could not be considered competitive with rail . . . , even for truck-oriented commodities, such as TOFC [Trailer on Flat Car] freight."<sup>2/</sup> In this particular proceeding, the applicants have presented studies of the Los Angeles to Chicago route which found that intermodal carriage comprises over 90 percent of all traffic between those two cities and which conclude that the 2000 mile route is "an 'ideal' traffic lane for intermodal."<sup>3/</sup> Because the number of firms affects the intensity of competition in a market,<sup>4/</sup> the Commission generally attempts to preserve the number of competitors in any

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<sup>2/</sup> Union Pacific Corp. et al. -- Control -- MO-KS-TX Co. et al. ("UP/MKT"), 4 I.C.C.2d 409, at 434 (1988).

<sup>3/</sup> Verified Statement of Dan P. Ainsworth, at 443, 444.

<sup>4/</sup> See Ordoover, Sykes, and Willig, Herfindahl Concentration, Rivalry, and Mergers, 95 Harv. L. Rev. 1857, at 1858 (1982). See also Santa Fe Southern Pacific Corp. -- Control -- Southern Pacific Transportation Co., 2 I.C.C.2d 709, at 792 (1986) ("Reduction in the number of competitors from two to one, where the merging carriers have been the only competitors, creates the obvious problem of a monopoly. However, the mere reduction rather than elimination of competitors, e.g., from three to two, may create serious anticompetitive problems as well.").



transportation market undergoing a rail merger, at least where there are few suppliers and competition from alternative modes is limited.<sup>5/</sup>

This merger, however, presents overwhelming benefits for California shippers and no demonstrable evidence of anticompetitive effects in the Los Angeles-to-Chicago rail market. For those reasons, the California Attorney General does not request any conditions to the merger. The Attorney General is, in fact, confident that any significant adverse effects which may become apparent in the future can be addressed through the exercise of the Board's continuing jurisdiction over the merger.

#### V. Conclusion

The Attorney General of the State of California supports the application to merge submitted by Union Pacific and Southern Pacific. The merger will provide important benefits to California shippers, including the development of the I-5 Corridor and the Port of Oakland's Joint Intermodal Facility, significant route reductions, consolidations, and an increased

---

<sup>5.</sup> See UP/MKT, supra.

competitiveness in markets now dominated by the BN/Santa Fe.  
Evidence of possibly offsetting adverse competitive effects of  
the merger upon California transportation markets is speculative  
and does not warrant the imposition of conditions.

DATED: April 4, 1996

Respectfully submitted,

DANIEL E. LUNGREN, Attorney General  
of the State of California  
DAVID STIRLING, Chief  
Deputy Attorney General  
RODERICK E. WALSTON, Chief  
Assistant Attorney General  
THOMAS GREENE,  
Assistant Attorney General  
RICHARD N. LIGHT,  
Supervising Deputy Attorney General  
LINDSAY BOWER,  
Deputy Attorney General

50 Fremont St., Suite 300  
San Francisco, CA 94105  
Telephone: (415) 356-6377

By Lindsay Bower  
LINDSAY BOWER  
Attorneys for the State of California  
State of California

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date caused the foregoing document,

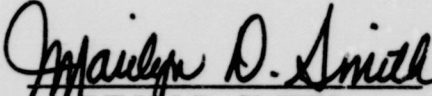
**STATEMENT OF THE ATTORNEY GENERAL OF**

**CALIFORNIA IN SUPPORT OF PROPOSED MERGER**

to be served on all parties of record in Finance Docket No. 32760 by mailing by first class mail, postage prepaid, a copy thereof, properly addressed to each party.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Francisco, California this 4th day of April, 1996.

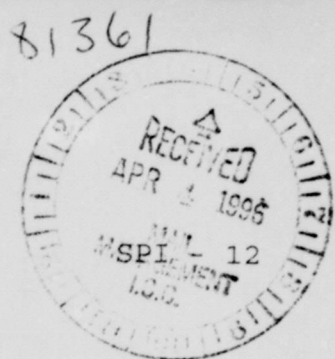
  
MARILYN D. SMITH



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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

ERRATA TO  
COMMENTS OF  
THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

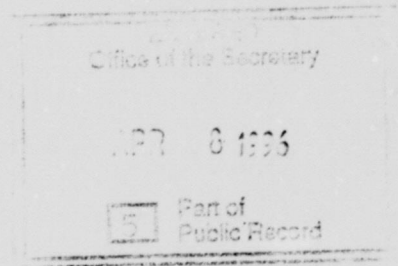
Exhibits/Section III

Should Read

Exhibit 20 (redacted version only)  
Last exhibit (number not shown<sup>1/</sup>)

Exhibit 21  
Exhibit 25

Respectfully submitted,



Martin W. Bercovici  
Douglas J. Behr  
Arthur S. Garrett, III  
Leslie E. Silverman  
KELLER AND HECKMAND  
1001 G Street, NW, Suite 500 West  
Washington, DC 20001  
Tel: (202) 434-4100  
Fax: (202) 434-4646

Attorneys for The Society of  
the Plastics Industry, Inc.

April 4, 1996

<sup>1/</sup> Exhibit number is under the binding. Printer reversed position of page before photocopying Comments.

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**KENN-12**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

— CONTROL AND MERGER —

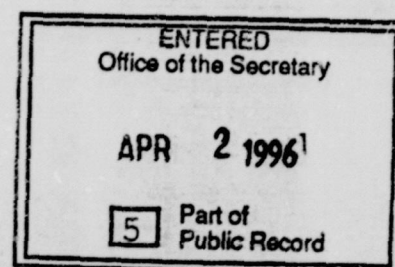
SOUTHERN PACIFIC RAIL CORPORATION,  
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS  
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE  
DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

KENNECOTT UTAH COPPER CORPORATION'S  
AND KENNECOTT ENERGY COMPANY'S  
ADDITIONAL RESPONSES  
TO APPLICANTS'  
FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS

John K. Maser III  
Jeffrey O. Moreno  
Karyn A. Booth  
DONELAN, CLEARY, WOOD & MASER, P.C.  
1100 New York Avenue, N.W.  
Suite 750  
Washington, D.C. 20005-3934  
(202) 371-9500

*Attorneys for Kennecott Utah Copper Corporation  
and Kennecott Energy Company*

April 1, 1996



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 32760

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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

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KENNECOTT UTAH COPPER CORPORATION'S  
AND KENNECOTT ENERGY COMPANY'S  
ADDITIONAL RESPONSES  
TO APPLICANTS'  
FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS

---

Kennecott Utah Copper Corporation and Kennecott Energy Company ("Kennecott") submit the following Additional Responses to the First Set of Interrogatories and Requests for Production of Documents propounded by Applicants on February 27, 1996. On March 4, 1996, Kennecott submitted Objections to this First Set of Interrogatories and Requests for Production of Documents. On March 8, 1996, in a discovery conference, the Administrative Law Judge ("ALJ") in this proceeding ruled that certain of the discovery propounded by Applicants on February 27, 1996 was appropriate, but that certain of the discovery should be reformulated and resubmitted under an accelerated procedural schedule after the filing of evidence in this proceeding on March 29, 1996.

More specifically, in the March 8 discovery conference, the ALJ ruled that the February 27 discovery should be conducted in two "phases," with "Phase I" discovery to be answered on March 12, 1996 and on April 1, 1996, and "Phase II" discovery appropriate for resubmission and

Document Request No. 1

Produce no later than April 1, 1996 (a) all workpapers underlying any submission that Kennecott makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for Kennecott on or about March 29, 1996 in this proceeding.

Response

In the discovery conference on March 8, the ALJ ruled that workpapers underlying submissions made in filings on March 29, 1996 should be produced in Phase I discovery and that such documents are due on April 1. The ALJ also ruled on that date that written testimony and transcripts regarding railroad matters related to issues in the pending proceeding should be produced by April 1. Subject to the objections set forth on March 4, 1996, Kennecott is placing documents responsive to this request in its document depository located in the offices of Donelan, Cleary, Wood & Maser, P.C.

Document Request No. 8

Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

Response

In the discovery conference on March 8, the ALJ ruled that documents relating to specific conditions being sought by the particular parties in this proceeding are Phase I discovery that should be produced by April 1. Subject to the objections set forth on March 4, 1996, Kennecott is placing documents responsive to this request in its document depository located in the offices of Donelan, Cleary, Wood & Maser, P.C.

Document Request No. 14

Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of Kennecott or any other party in this proceeding.

Response

In the discovery conference on March 8, the ALJ ruled that presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers or non-



party railroads or other non-party non-governmental persons are Phase I discovery that should be produced on April 1. Subject to the objections set forth on March 4, 1996, Kennecott states that no responsive, non-privileged documents have been identified.

Document Request No. 17

Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

Response

In the discovery conference on March 8, the ALJ ruled that documents relating to shipper surveys or interviews concerning the UP/SP merger or particular conditions are Phase I discovery that should be produced by April 1. Subject to the objections set forth on March 4, 1996, Kennecott states that no responsive, non-privileged documents have been identified.

Document Request No. 22

Produce all presentations to, and minutes of, the boards of directors (or other governing bodies) of Kennecott relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

Response

In the discovery conference on March 8, the ALJ ruled that presentations to, and minutes of, the boards of directors or other governing bodies relating to the UP/SP merger or particular conditions being sought in this proceeding by Kennecott are Phase I discovery that should be produced by April 1. Subject to the objections set forth on March 4, 1996, Kennecott states that no responsive documents have been identified.

Document Request No. 23

Produce all documents relating to whether Utah and Colorado coal competes with Powder River Basin or Hanna Basin coals, including but not limited to any studies, reports or analyses of the use by utilities.

Response

Subject to the objections set forth on March 4, 1996, Kennecott is placing documents responsive to this request in its document depository located in the offices of Donelan, Cleary, Wood & Maser, P.C.

Document Request No. 26

Produce Kennecott's files regarding the transportation (including the transportation by non-rail modes) of all commodities that Kennecott has moved via UP or SP since January 1, 1993.

Response

At the discovery conference on March 20, 1996, Kennecott and the Applicants entered into a stipulation before the ALJ that Document Request No. 26 would be revised as follows:

This regards commodities from the Colowiya [sic] Mine or Kennecott's magma [sic] copper facilities. And, again, Kennecott will produce documents dated 1/1/93 or later that discuss transportation options, transportation competition, or that compare transportation offers, service, or prices, as well as contracts with other carriers, regardless of mode.

Hearing transcript, March 20, 1996, p. 2266.

As Document Request No. 26 has been revised, and subject to the objections set forth on March 4, 1996, Kennecott states that it is placing documents responsive to this request in its document depository located in the offices of Donelan, Cleary, Wood & Maser, P.C.

Document Request No. 27

Produce all documents relating to the effect of the UP/SP merger on coal transportation service, competition or routings to or from any Kennecott facility or mine.

Response

Subject to the objections set forth on March 4, 1996, Kennecott is placing documents responsive to this request in its document depository located in the offices of Donelan, Cleary, Wood & Maser, P.C.

Document Request No. 28

Produce all studies, reports or analyses relating to build-in by UP to Kennecott's Colowyo mine.

Response

Subject to the objections set forth on March 4, 1996, Kennecott states that no responsive documents have been identified.

Document Request No. 30

Produce all studies, reports, analyses, compilations, calculations or evaluations of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared by L.E. Peabody & Associates, and all workpapers or other documents relating thereto.

Response

Subject to the objections set forth on March 4, 1996, Kennecott is placing documents responsive to this request in its document depository located in the offices of Donelan, Cleary, Wood & Maser, P.C.

Respectfully submitted,



John K. Maser III  
Jeffrey O. Moreno  
Karyn A. Booth  
DONELAN, CLEARY, WOOD & MASER, P.C.  
1100 New York Avenue, N.W.  
Suite 750  
Washington, D.C. 20005-3934  
(202) 371-9500

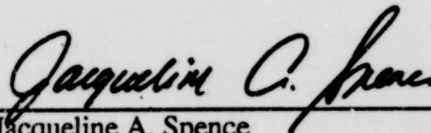
*Attorneys for Kennecott Utah Copper Corporation  
and Kennecott Energy Company*

April 1, 1996



## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing KENNECOTT UTAH COPPER CORPORATION'S AND KENNECOTT ENERGY COMPANY'S ADDITIONAL RESPONSES TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS has been served by First Class Mail, postage prepaid, on all parties on the restricted service list in this proceeding on this 1st day of April 1996, and by facsimile to Washington, D.C. counsel for Applicants.

  
\_\_\_\_\_  
Jacqueline A. Spence

STB

FD

32760

3-31-96

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Bob Item No. \_\_\_\_\_  
Page Count 1  
Committee May #574  
Appropriations \_\_\_\_\_  
Subcommittee:  
Health & Human Services  
Public Health  
Redistricting



State of Texas  
House of Representatives  
March 25, 1996

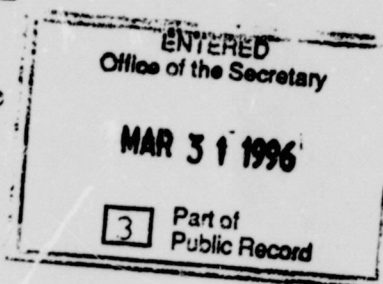
62119  
Capitol Office:  
P.O. Box 2910  
Austin, Texas 78768-2910  
Insurance Bldg., Room 343  
512-463-0580  
1-800-851-1565

District Office:  
P.O. Box 1210  
Gilmer, Texas 75644  
903-843-5792

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

Re: Finance Docket 32760

Dear Secretary Williams:



I want to express my deep concern over the proposed merger between the Union Pacific Railroad Company (UP) and the Southern Pacific Railroad (SP). I urge you to consider the many negative aspects of the merger.

The proposed merger would grant UP control over a reported 90% of rail traffic into and out of Mexico, 70% of the petrochemical shipments from the Texas Gulf Coast, and 86% of the plastics storage capacity in the Texas/Louisiana Gulf Region. One of the proposed partners, UP, has acknowledged that the merger is likely to have a detrimental effect on the State of Texas by reducing competition. UP's solution is a trackage rights agreement with the Burlington Northern-Sante Fe (BNSF) Railroad. A trackage rights agreement, however, simply does not solve the problem.

Outright ownership of a rail line would naturally provide more incentives to invest in the track and to work with local communities to attract economic development. Owners have control over the service they provide -- the frequency, reliability and timeliness. None of these things can be said about railroads that operate on someone else's tracks, subject to someone else's control. Texas does not need a railroad merger that would effectively be a , but rather separate ownership of parallel tracks, to ensure effective rail competition. An owning railroad willing to provide quality service and investment is the best solution for shippers, communities and economic development officials. An owning railroad also offers the best opportunity to retain employment for railroad workers who would otherwise be displaced by the proposed merger.

Again, I urge the Board to carefully review the potential damage that such a merger would have on the Texas economy.

Sincerely,

Bob Glaze

**ADVISE OF ALL  
PROCEEDINGS**

District 5: Smith (part), Upshur, and Van Zandt Counties.



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62103



## STATE OF ARKANSAS

Office of the Attorney General

Winston Bryant  
Attorney GeneralTelephone:  
(501) 682-2007FAX TRANSMITTAL SHEET

## TELEPHONE NUMBERS:

CURAD (501) 682-3649  
ENVIRONMENTAL (501) 682-1090  
FAX NUMBER (501) 682-1021 or (501) 682-8084TRANSMITTING 4 PAGES INCLUDING COVER SHEET

DATE:

3/28/96

TO:

Dennis WatsonOffice of Congressional & Press Services  
Surface Transportation Board(202) 927-6127

FROM:

Shawn McNurrayAsst. AG.If you have any problems receiving this transmission, please  
contact the above at one of the above numbers.COMMENTS: We are also sending the Original and  
10 copies by Federal Express

IMPORTANT: The information contained in this facsimile message is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the address above, via the U.S. Postal Service. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client or work product privilege.

**ADVISE OF ALL  
PROCEEDINGS**

200 Tower Building, 321 Center Street • Little Rock, Arkansas 72201-2610

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MAR 23 5 35 PM '96  
OFFICE OF SECRETARY



# STATE OF ARKANSAS

Office of the Attorney General

Winston Bryant  
Attorney General

Telephone:  
(501) 682-2007

March 28, 1996

BY FEDERAL EXPRESS

Ms. Linda T. Morgan  
Chairman, Surface Transportation Board  
1201 Constitution Ave., N.W.  
Washington, DC 20423

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

Re: Finance Docket No. 32760

Dear Ms. Morgan, Members of the Board, and Secretary Williams:

The Attorney General of the State of Arkansas hereby submits his Public Comments in regard to the proposed merger in the referenced proceeding.

The Attorney General of the State of Arkansas (ARAG) is charged by the Constitution and Code of the State of Arkansas with certain duties and obligations. These duties include, *inter alia*, representing the interests of the State of Arkansas in federal courts (Ark. Code Ann. § 4-75-307), as well as representing the interest of state consumers (under Ark. Code Ann. §§ 4-88-101, *et seq.*), cities and counties, (Ark. Code Ann. § 21-9-304), state boards and commissions (Ark. Code Ann. § 21-2-101), and state agencies and officers (Ark. Code Ann. § 25-16-702). The ARAG is also charged with enforcement of Arkansas statutes regulating and/or prohibiting monopolies and restraint of trade (Ark. Code Ann. § 4-75-307). In these respects, the Attorney General represents the State of Arkansas' interest in protecting its economy and its tax revenues and in assuring beneficial competition to the extent possible.

The vast majority of the State of Arkansas is currently serviced by only two railroads, the Union Pacific (UP) and the Southern Pacific (SP), the two railroads which are seeking to merge in this docket. Many of the SP and UP lines run parallel to each other in the state. Unless certain conditions are imposed upon the merging railroads, the interests of three discrete groups in Arkansas stand to be adversely affected.

First, if the merger proceeds as requested, there will undoubtedly be some SP lines that will become redundant, as they parallel UP lines. UP will shut down many of these lines and reduce the number of daily or weekly trips through Arkansas on the remaining lines. Arkansas railroad



Ms. Linda T. Morgan  
Chair, Surface Transportation Board

March 28, 1996

workers' jobs are therefore at risk. UP's own submission to the Board has projected a net loss of more than 170 Arkansas employees as a consequence of the merger.

In addition to these jobs on the railroads themselves, there are approximately 900 Arkansas citizens who work at SP's machine shop in Pine Bluff. Others work at Yard, Car and Locomotive facilities operated by UP in North Little Rock. These people, too, may lose their livelihood if UP closes down those facilities as redundant.

Finally, the merger as proposed raises anti-competitive concerns to Arkansas' shippers. The ARAG, on behalf of his constituents, is vitally concerned with the preservation and enhancement of competitive rail rates and services. Allowing the merger to go forward without requiring UP/SP to divest themselves of some lines, or at least reach some other arrangement to guarantee that competing Class 1 railroads have access to operate on those lines, will leave Arkansas shippers of freight by rail with only one railroad option. This poses a risk of increased rates and decreased service which would not benefit the citizens of Arkansas.

UP has acknowledged that the proposed merger can reduce competition. It has responded by coming up with a trackage rights agreement with the Burlington Northern- Santa Fe Railroad (BN Santa Fe). However, this is not the same as separate railroad lines owned and operated by competitors. BN Santa Fe's retiring chairman acknowledged in a magazine interview that trackage rights in general are "service with some disability." In this instance, there are specific handicaps to the BN Santa Fe alternative. Most dramatically, in Arkansas, BN Santa Fe trains moving north to carry freight will be forced to run against UP/SP's planned southbound traffic flow for the line. This virtually guarantees delays. Many of the lines are subject to weather and other delays. Finally, under the trackage agreement, BN Santa Fe does not even have to provide service by trackage rights. It can provide service by switching, haulage or via a third carrier. In fact, it does not have to provide alternative service at all. The ARAG submits that this is not a viable alternative for Arkansas shippers.

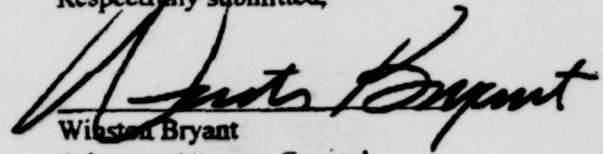
There is a potential for loss of jobs for Arkansas workers, and a potential loss of competitive options for Arkansas shippers, if the merger is allowed as requested. Therefore, the ARAG urges the Board to give serious consideration to these issues in deciding this docket. Specifically, the ARAG requests that the Board consider allowing UP to purchase the SP only if it divests itself of at least a substantial part of the Cotton Belt Line between Chicago and Texas. This would allow interested railroads such as Consolidated Rail Corporation (Conrail) to purchase those lines to compete with UP/SP. Alternatively, the Board could require that UP/SP guarantee competing Class 1 railroads access to the Cotton Belt Lines on an equal footing with UP/SP. Either solution would protect many Arkansas jobs by keeping more lines open, and would assure Arkansas shippers of a truly competitive option for shipping by rail.

Ms. Linda T. Morgan  
Chair, Surface Transportation Board

March 28, 1996

The ARAG is enclosing ten (10) copies of this letter, in order that all appropriate individuals and entities may be apprised of the position of the Arkansas Attorney General.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Winston Bryant", is written over a horizontal line.

Winston Bryant  
Arkansas Attorney General  
323 Center Street  
200 Tower Building  
Little Rock, Arkansas 72201  
(501) 682-2007  
(501) 682-8084 (fax)

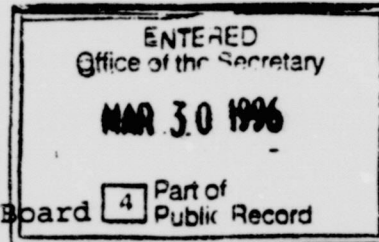
LAW OFFICES  
FRITZ R. KAHN, P.C.  
SUITE 750 WEST  
1100 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-3934

(202) 371-8037  
FAX (202) 371-0900



VIA HAND DELIVERY

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, DC 20423



March 18, 1996

Dear Secretary Williams:

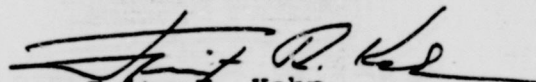
Enclosed for filing in Finance Docket No. 32760, Union Pacific Corporation, et al., --Control and Merger--Southern Pacific Rail Corporation, et al., are the original and twenty copies of the Petition to Reopen of Eagle County, Colorado, et al.

Extra copies of the Petition and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed envelope.

By copy of this letter, service is being effected upon counsel for each of the parties.

If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

enc.

cc: All parties

Arvid E. Roach, II, Esq. (additional copy by fax)  
Paul A. Cunningham, Esq. (additional copy by fax)  
Mr. George J. Roussos (additional copy by fax)

**ADVISE OF ALL  
PROCEEDINGS**



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

---

Finance Docket No. 32760

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

---

EXPEDITED ACTION REQUESTED

---

PETITION TO REOPEN  
OF EAGLE COUNTY, COLORADO, et al.

Petitioners, the Boards of County Commissioners of the Counties of Eagle and Lake, State of Colorado, and the Towns of Avon, Eagle, Gypsum, Minturn, Red Cliff and Vail, pursuant to 49 C.F.R. 1115.3(b)(3), petition for reconsideration of the Decision of the Board, served March 15, 1996, Decision No. 19, on the ground that it involved material error, and in support thereof Petitioners state, as follows:

1. By their Petition and Notice, filed March 4, 1996, Petitioners sought leave to file a responsive application to acquire the Tennessee Pass line; neither the Applicants nor anyone else opposed the granting of the relief Petitioners sought.

consummate the abandonment. As the Board well knows, its abandonment authorizations are permissive and not mandatory, and, unless Petitioners were able to file their responsive application, there would be no way for Petitioners to acquire the Tennessee Pass line if the SP chose not to abandon it.

WHEREFORE, Petitioners request that the Board reconsider and reverse its Decision of March 15, 1996, and that it permit Petitioners to file out of time their notice of intent to file a responsive application.

Respectfully submitted,

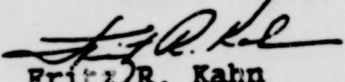
THE BOARD OF COUNTY COMMISSIONERS OF  
THE COUNTY OF EAGLE, STATE OF COLORADO

THE BOARD OF COUNTY COMMISSIONERS OF  
THE COUNTY OF LAKE, STATE OF COLORADO

TOWN OF AVON, MUNICIPAL CORPORATION  
TOWN OF EAGLE, MUNICIPAL CORPORATION  
TOWN OF GYPSUM, MUNICIPAL CORPORATION  
TOWN OF RED CLIFF, MUNICIPAL CORPORATION  
TOWN OF VAL, MUNICIPAL CORPORATION

By their attorneys,

James R. Fritze  
Eagle County Attorney  
P. O. Box 850  
Eagle, CO 81631  
Tel.: (970) 328-8685

  
Fritz R. Kahn  
Fritz R. Kahn, P.C.  
Suite 750 West  
1100 New York Avenue, NW  
Washington, DC 20005-3934  
Tel.: (202) 371-8037

Dated: March 18, 1996

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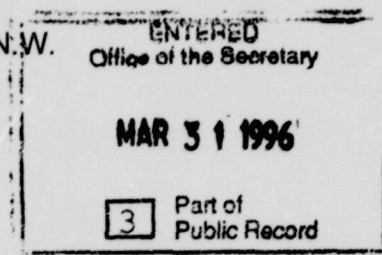
Item No. \_\_\_\_\_

576  
BUTTE, MONTANA 59701 (406) 723-4081



62117  
March 26, 1996

The Honorable Vernon A. Williams  
Secretary Surface Transportation Board  
Case Control Branch  
12th St. and Constitution Avenue N.W.  
Washington D.C. 20423



Dear Secretary Williams:

Montana Resources has learned that an entity controlled by the majority shareholder of Montana Rail Link will be filing with the Surface Transportation Board an inconsistent or responsible application in which that entity will propose acquiring one of the Union Pacific or Southern Pacific routes between California and Kansas City (the "MRL Proposal"). In our opinion, without the MRL proposal or a comparable solution, the UP / SP proposal eliminates rail competition in the Central Corridor of the United States. The trackage rights UP / SP have agreed to grant to BNSF are unlikely to result in BNSF's providing meaningful competition in the Central Corridor. It will cost BNSF nothing if it elects not to use those rights. Competition can only be assured with an independent third party owner / operator acquiring one of the Union Pacific or Southern Pacific routes between California and the Kansas City area. We, therefore, condition our support of the merger on sale of a Central Corridor route to an independent party that would have to provide competitive service in order to justify its investment in that rail line.

Montana Resources, a Montana general partnership, owns and operates the Continental Mine, an open pit copper / molybdenum mining operation located in Silver Bow County, Montana. Our annual volume of rail service is 190,000 tons of copper concentrates with destinations of Hayden, Arizona, El Paso, Texas, Vancouver, Washington and Flin Flon Canada.

We also ship 9,100 tons of molybdenum concentrates annually to Montreal, Quebec, Canada, Lanceloth, Pennsylvania and Chicago, Illinois.

We also receive 25,000 tons of supplies by rail, for our operations annually.

The railroads presently used for this business are Burlington Northern, Canadian National, Union Pacific, Southern Pacific, Montana Rail Link, Montana Western, and Rarus.

**ADVISE OF ALL  
PROCEEDINGS**

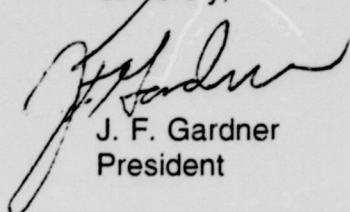
The Honorable Vernon A. Williams  
March 26, 1996  
Page Two

Montana Resources strongly supports the proposed acquisition of the Union Pacific line between Silver Bow, Montana, and Pocatello, Idaho as a strategic element of the Central Corridor solution. The Silver Bow - Pocatello line ties together the present MRL system with the Central Corridor route at Ogden, Utah, providing important traffic to support the new Central Corridor System and affording the economic synergies of tying both systems together. The MRL Proposal will provide routing options on both Union Pacific and Burlington Northern Santa Fe as well as direct routing via the new MRL proposed system.

There are many benefits to the Union Pacific's proposed merger with Southern Pacific. The MRL proposal maintains the benefits of both the UP / SP merger including the proposed trackage rights agreement with Burlington Northern Santa Fe, and at the same time ensures true competition in the Central Corridor through sale of one of the routes to an independent operator.

Our company conditions its support of the UP / SP merger application on sale of a Central Corridor route as described in the MRL Proposal.

Sincerely,



J. F. Gardner  
President

JFG:db

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**WEINER**  
ATTORNEYS AT LAW

Item No. \_\_\_\_\_

Page Count 7

Mar. 7

#142

**IDER**  
CORPORATION

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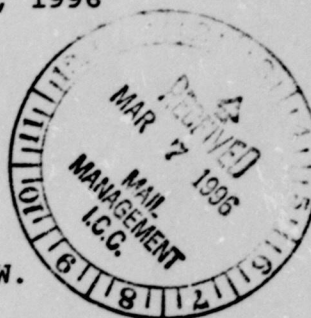
1350 NEW YORK AVENUE, N.W., SUITE 800  
WASHINGTON, D.C. 20005-4797  
(202) 628-2000  
TELECOPIER (202) 628-2011

RICHARD J. ANDREANO, JR.  
JAMES A. BRODSKY  
JO A. DeROCHE  
CYNTHIA L. GILMAN  
ELLEN A. GOLDSTEIN\*  
DON J. HALPERN  
CHRISTOPHER E. KACZMAREK\*  
MITCHEL H. KIDER  
SHERRI L. LEDNER  
PAUL C. OAKLEY\*  
BRUCE E. PRIDDY\*  
MARK H. SIDMAN  
RUGENIA SILVER  
HARVEY E. WEINER  
JOSEPH F. YENOUSKAS

March 7, 1996

**BY HAND DELIVERY**

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



\* NOT ADMITTED IN D.C.

**MRL-7**

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 Secretary Williams:

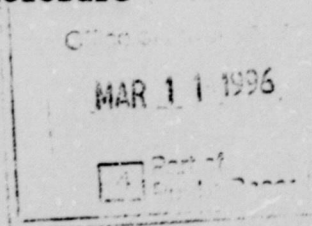
Enclosed for filing in the above-captioned proceeding are an  
original and 20 copies of the Clarification of Montana Rail Link,  
Inc., to its Description of Anticipated Inconsistent or  
Responsive Application (MRL-7).

Please acknowledge receipt of this letter by date-stamping  
the enclosed acknowledgement copy and returning it to our  
messenger.

Very truly yours,

Paul C. Oakley

Enclosure



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

CLARIFICATION OF MONTANA RAIL LINK, INC., TO  
ITS DESCRIPTION OF ANTICIPATED INCONSISTENT  
OR RESPONSIVE APPLICATION

Mark H. Sidman  
Jo A. DeRoche  
Paul C. Oakley  
Weiner, Brodsky, Sidman &  
Kider, P.C.  
1350 New York Avenue, N.W.  
Suite 800  
Washington, D.C. 20005  
(202) 628-2000

ATTORNEYS FOR  
MONTANA RAIL LINK, INC.

Dated: March 7, 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

---

CLARIFICATION OF MONTANA RAIL LINK, INC., TO  
ITS DESCRIPTION OF ANTICIPATED INCONSISTENT  
OR RESPONSIVE APPLICATION

By this pleading, Montana Rail Link, Inc., ("MRL") seeks to clarify and to amend its previously filed Description of Anticipated Inconsistent or Responsive Application (MRL-2), filed with the Surface Transportation Board (the "Board") January 29, 1996.

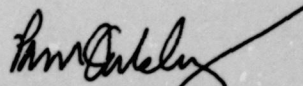
In MRL-2, two line segments, both in Colorado, were inadvertently excluded from maps showing rail lines MRL will seek authority to acquire; the primary applicants in this proceeding seek to abandon both segments. Those line segments, known as the Malta-Canon City Line and the Sage-Leadville Line, are described in Docket Nos. AB-12 (Sub-No. 188X) and AB-12 (Sub-No. 189X) respectively, which are contained in primary applicants' merger application. MRL's revised map showing the Colorado rail lines is attached as Exhibit A.

MRL wishes to clarify to the Board and to interested parties that, as stated in MRL-2, MRL is seeking authority to acquire the



rail lines of The Denver and Rio Grande Western Railroad Company  
in their entirety.

Respectfully submitted,



---

Mark H. Sidman  
Jo A. DeRoche  
Paul C. Oakley  
Weiner, Brodsky, Sidman &  
Kider, P.C.  
1350 New York Avenue, N.W.  
Suite 800  
Washington, D.C. 20005  
(202) 628-2000

**ATTORNEYS FOR  
MONTANA RAIL LINK, INC.**

Dated: March 7, 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

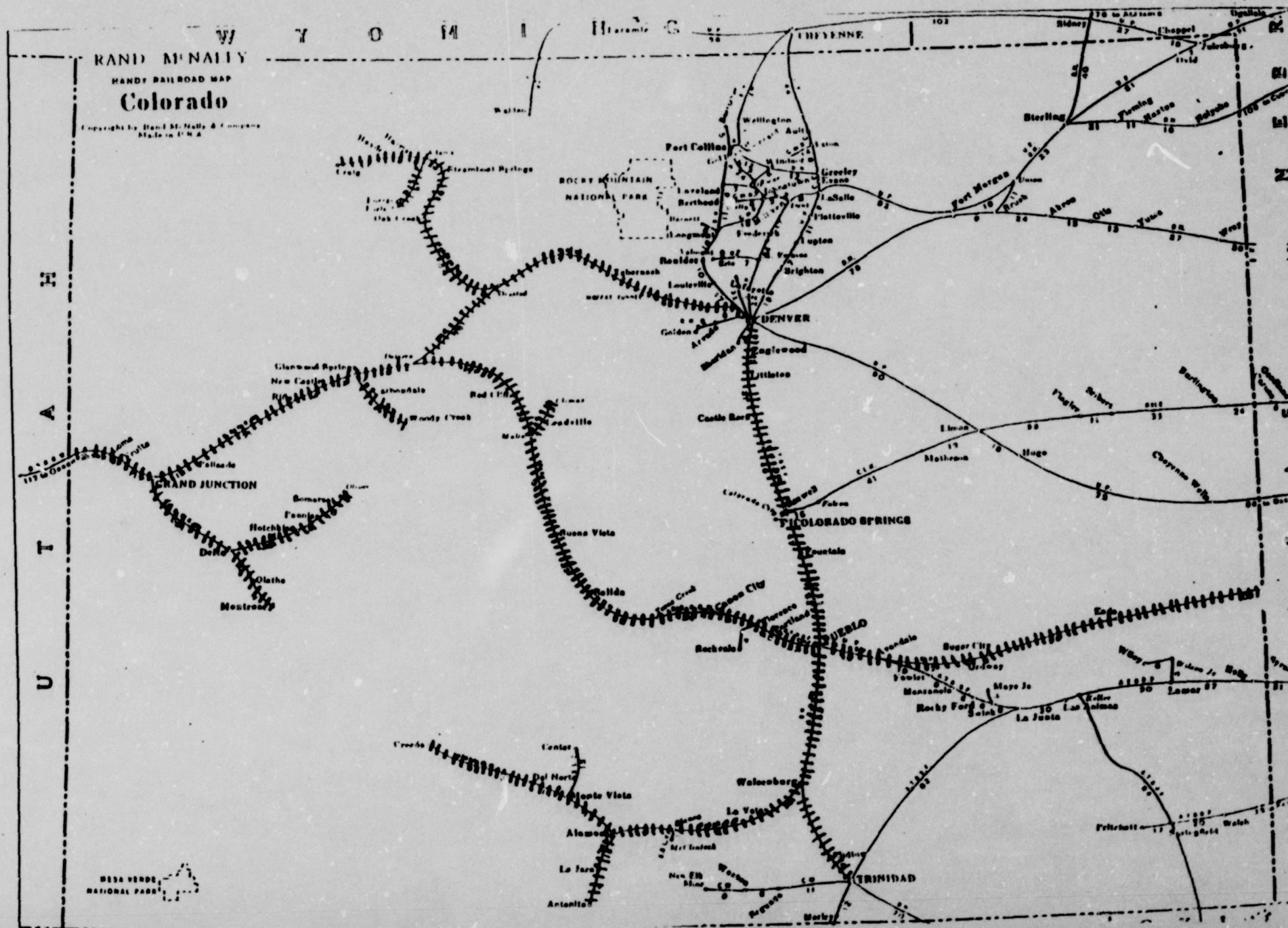
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EXHIBIT A

REVISED MAP OF COLORADO LINES

RAND McNALLY  
HANDY RAILROAD MAP  
**Colorado**

Copyright by Rand McNally & Company  
Made in U.S.A.





**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of March, 1996, a copy of the foregoing Clarification of Montana Rail Link, Inc., to its Description of Inconsistent or Responsive Application was served by hand delivery upon:

Arvid E. Roach, II, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20044

Paul A. Cunningham, Esq.  
Harkins Cunningham  
1300 Nineteenth Street, N.W.  
Washington, D.C. 20036

and by first class mail upon:

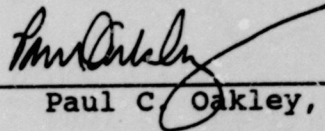
Hon. Jerome Nelson  
Administrative Law Judge  
Federal Energy Regulatory Commission  
825 North Capitol Street, N.W.  
Washington, D.C. 20426

Carl W. Von Bernuth, Esq.  
Union Pacific Corporation  
Martin Tower  
Eighth and Eaton Avenues  
Bethlehem, Pennsylvania 18018

James V. Dolan, Esq.  
Law Department  
Union Pacific Railroad Company  
1416 Dodge Street  
Omaha, Nebraska 68179

Cannon Y. Harvey, Esq.  
Southern Pacific Transportation Company  
One Market Plaza  
San Francisco, California 94105

and all other known parties of record.

  
\_\_\_\_\_  
Paul C. Oakley, Esq.

STB

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32760

3-6-96

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ENTERED  
Office of the Secretary

MAR 07 1996

ENTERED  
Office of the Secretary

MAR 11 1996

4 Part of  
Public Record

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE  
SURFACE TRANSPORTATION BOARD

ESI-8  
WCTL-7



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, GULF STATES  
UTILITIES COMPANY and the  
WESTERN COAL TRAFFIC LEAGUE

By: C. Michael Loftus  
Christopher A. Mills  
Andrew B. Kolesar III  
Patricia E. Kolesar

OF COUNSEL:

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

1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Attorneys and Practitioners

Dated: March 6, 1996



BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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.<sup>1</sup> 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

---

<sup>1</sup> 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,<sup>2</sup> Judge Nelson denied Entergy/WCTL's request to take the depositions in question.<sup>3</sup> Judge Nelson based this ruling from the bench upon (i) his perception

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<sup>2</sup> 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.").

<sup>3</sup> 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.<sup>4</sup> 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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<sup>4</sup> 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."<sup>5</sup>

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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<sup>5</sup> 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 "[did] 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.<sup>6</sup> 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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<sup>6</sup> 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.<sup>7</sup> 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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<sup>7</sup> 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.<sup>8</sup> 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.

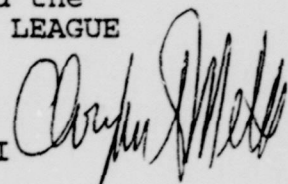
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<sup>8</sup> Given the fact that Entergy will file an Inconsistent Application, and will therefore have the right to file rebuttal evidence on May 14, 1996, the Board should not decline this appeal on the basis of mootness, should the Board be unable 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

By: C. Michael Loftus  
Christopher A. Mills  
Andrew B. Kolesar III  
Patricia E. Kolesar  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
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OF COUNSEL:

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1224 Seventeenth Street, N.W.  
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Attorneys for Entergy  
Services, Inc. and its  
affiliates Arkansas Power &  
Light Company and Gulf States  
Utilities Company

Dated: March 6, 1996

**APPENDIX I**



SLOVER & LOFTUS

ATTORNEYS AT LAW

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\* ADMITTED IN PENNSYLVANIA ONLY

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.

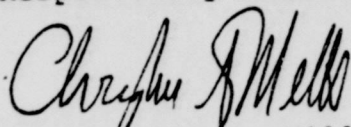
While Paragraph 6 of the Discovery Guidelines in this proceeding appears to place the burden of seeking resolution of discovery disputes concerning objections to a deposition on the objecting party (in this case BN/Santa Fe), we believe it is appropriate to bring the matter before you directly rather 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.

Honorable Jerome Nelson  
January 31, 1996  
Page 2

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.  
Restricted Service List

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\* ADMITTED IN ILLINOIS ONLY

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.

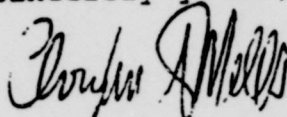
We understand that Mr. Shalah has responsibility for the Entergy account at BN/Santa Fe, and that he was involved in the 1995 bidding for the movement of Powder River Basin coal to Gulf States Utilities' Nelson Station. Additional areas of inquiry for Mr. Shalah include the 1995 Nelson bidding, the feasibility 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



Erika Z. Jones, Esq.  
February 15, 1996  
Page 2

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)

FEB 28 '96 14:37 FR MAYER BROWN PLATT

TO 1563#95210647#34 P.04/21

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ERMA Z. JONES  
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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

FEB 28 '96 14:37 FR MAYER BROWN PLATT

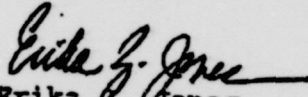
TO 1563#95210647#34 P.05/21

MAYER, BROWN & PLATT

Christopher A. Mills, Esq.  
February 28, 1996  
Page 2

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

Sincerely,

  
Erika E. Jones

cc: The Honorable Jerome Nelson  
The Honorable Vernon Williams  
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\* ADMITTED IN PENNSYLVANIA ONLY

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.

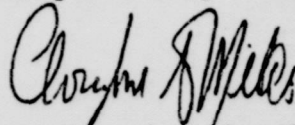
This letter is to advise that, on behalf of the same clients, we also wish to bring before you at tomorrow's discovery conference the Applicants' refusal to make two individuals from the UP's and SP's coal marketing departments, Mr. F.M. Gough and Mr. J.T. Hutton, available for deposition.

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.

Honorable Jerome Nelson  
February 29, 1996  
Page 2

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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202 347-7170

February 16, 1996

VIA TELECOPIER

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Paul Cunningham, Esq.  
Harkins Cunningham  
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Suite 600  
Washington, D.C. 20036

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



Messrs. Roach and Cunningham  
February 16, 1996  
Page 2

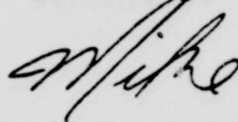
concerning the Operating Plan, and we wish to inquire into the same areas with Mr. Hutton.

Messrs. Peterson and Sharp, at their depositions, both also identified 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)  
Restricted Service List (via telecopier)

**COVINGTON & BURLING**

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BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-0000

TELEFAX: 32-2-512-0000

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.

C. Michael Loftus, Esq.  
February 28, 1996  
Page 2

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."

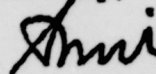


COVINGTON & BURLING

C. Michael Loftus, Esq.  
February 28, 1996  
Page 3

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

Sincerely,

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

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.

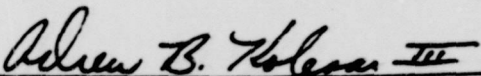
Arvid E. Roach II, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20044

Paul A. Cunningham, Esq.  
Harkins Cunningham  
1300 Nineteenth Street, N.W.  
Washington, D.C. 20036

Carol A. Harris, Esq.  
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Union Pacific Railroad Company  
Law Department  
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Erika Z. Jones  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

  
Andrew B. Kolesar III

STB FD

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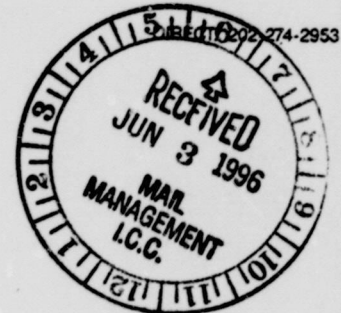
# TROUTMAN SANDERS LLP

ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.  
SUITE 500 EAST  
WASHINGTON, D.C. 20005-3314  
TELEPHONE: 202-274-2950  
FACSIMILE: 202-274-2994

WILLIAM A. MULLINS

June 3, 1996



## HAND DELIVERED

Mr. Vernon A. Williams  
Surface Transportation Board  
Case Control Branch  
Room 2215  
1201 Constitution Avenue, N.W.  
Washington, D.C. 20423

Item No. \_\_\_\_\_  
Page Count 2  
Jun 4 32

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are:

1. The original and twenty copies of The Brief of The Kansas City Southern Railway Company (KCS-60) in the above referenced proceeding. KCS's brief is being filed only as a public document. There is not a Highly Confidential version of KCS's brief.
2. Twenty copies of a Highly Confidential Appendix containing copies of all deposition pages and workpapers that are referenced in the Brief. The Highly Confidential Appendix is not being served on parties of record. Parties of record who are represented by outside counsel and such counsel have signed the Protective Order issued in this proceeding may request a copy of the Highly Confidential Appendix by calling Meg Andrews at (202) 274-2968.
3. Included with this filing is a 3.5 inch Word Perfect diskette, Version 5.1, containing the text of KCS-60.
4. The original and twenty copies of pages to be inserted into the Public Version of KCS-33 to replace pages that inadvertently disclosed Highly Confidential information. We ask that all Parties of Record also replace these pages in their copies of KCS-33. The

TROUTMAN SANDERS LLP  
ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

Mr. Vernon A. Williams

June 3, 1996

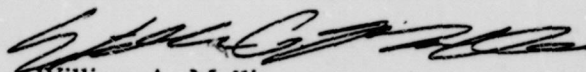
Page 2

following pages in the original Public Version of KCS-33 should be destroyed and the enclosed redacted pages substituted in their place:

- a. KCS-33, Vol. I, p. 43; and
- b. KCS-33, Vol. II, pp. 337 and 339.

Please feel free to contact me if you have any questions.

Sincerely yours,



William A. Mullins  
Attorney for The Kansas City Southern  
Railway Company

Enclosures

cc: The Honorable Jerome Nelson  
Parties of Record (w/o Appendix)

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Item No. \_\_\_\_\_

Page Count 2  
File # 118

**DISTRICT OFF**

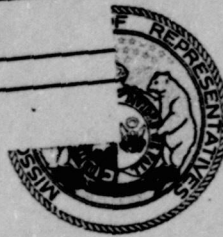
10205 Gravois R.  
St. Louis, MO 631  
314•849-3704  
FAX 314•849-4351

ENTERED  
Office of the Secretary

FEB 16 1996

5 Part of  
Public Record

February 12, 1996



**MAY E. SCHEVE**  
State Representative • District 98  
Majority Caucus Secretary

**STATE CAPITOL**

House Post Office  
Jefferson City, MO 65101-6806  
314•751-9472  
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FD 32760

The Honorable Vernon A. Williams  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Ave NW  
Washington, D.C. 20423

## ADVISE OF ALL PROCEEDINGS

Dear Mr. Williams:

I am writing to strongly support the pending merger between the Union Pacific and Southern Pacific Railroads. The Missouri Pacific Railroad, as predecessor to today's Union Pacific Railroad, has a long history and presence in our state, and has contributed greatly to our state's economic development. The merger of the Union Pacific and Southern Pacific Railroads will continue that tradition by strengthening competition with the recently merged Burlington Northern Santa Fe Railroad.

Missouri shippers will benefit from faster, more reliable intermodal service to and from California, saving hundreds of miles over current routes. New, single-line service to northern California, the Intermountain region and the Pacific Northwest will also provide greater speed, reliability and frequency for Missouri carload shippers.

\$360 million will be spent to upgrade the lines between Kansas City and southern California, to increase capacity and improve service. \$16.7 million will be spent to develop a new intermodal terminal in the Kansas City area. Almost \$38 million will be spent to expand UP's Dupo intermodal terminal.

Increased traffic as a result of the merger should result in increased jobs for Missouri.

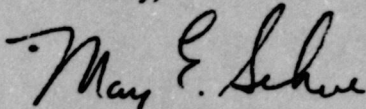
Southern Pacific has significant shipper coverage in Missouri, and many of SP's customers are exclusively served by SP. These customers have had to cope with service problems and

Vernon A. Williams  
February 12, 1996  
page 2

uncertainties as to SP's finances. The merger of Union Pacific and Southern Pacific will provide SP shippers with the assurance of top-quality service with a financially strong railroad that can afford the capital investments necessary to build new capacity, implement new technology, and continue to improve its operations.

I strongly urge approval of the merger of Union Pacific and Southern Pacific Railroads.

Sincerely,

A handwritten signature in cursive script, reading "May E. Scheve".

May E. Scheve  
State Representative  
District 98

MS/lr

STB

FD

32760

2-3-97

89383

D



**SLOVER & LOFTUS**

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036

WILLIAM L. SLOVER  
C. MICHAEL LOFTUS  
DONALD G. AVERY  
JOHN H. LE SEUR  
KELVIN J. DOWD  
ROBERT D. ROSENBERG  
CHRISTOPHER A. MILLS  
FRANK J. PERGOLIZZI  
ANDREW B. KOLESAR III

February 3, 1997

202 347-7170

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: 89383

Enclosed for filing please find an executed original and twenty (20) copies of pleadings denominated TUE-21, TUE-22 and TUE-23. An extra copy of each pleading is enclosed. Kindly indicate receipt and filing by time-stamping this copy and returning it to the bearer of this letter.

Also enclosed is a diskette in Word Perfect 5.1 format containing the text of these pleadings.

Thank you for your attention to this matter.

Sincerely,

John H. LeSeur

ENTERED Attorney for Texas Utilities  
Office of the Secretary of the Electric Company

FEB 4 1997

☒ Part of  
Public Record

JHL:mfw  
Enclosures

STB

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1-29-96

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61115

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**TROUTMAN SANDERS**  
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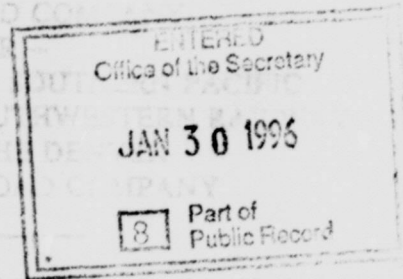
WILLIAM A. MULLINS

DIRECT: 202-274-2953

January 29, 1996

*Via Hand Delivery*

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Room 2215  
12th and Constitution Ave., N.W.  
Washington, D.C. 20423



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

Dear Secretary Williams:

Enclosed herewith are one original and twenty-one copies of the Notice of The Kansas City Southern Railway Company submitted on behalf of The Kansas City Southern Railway Company and identified as KCS-18. Also enclosed is a 3.5-inch diskette containing the text of the enclosed pleading in Wordperfect 5.1 format.

Please date and time stamp one of the copies and return it to the courier for return to our offices. (816) 336-0227

Very truly yours,

*William A. Mullins*  
William A. Mullins

Enclosures

cc: Hon. Jerome Nelson  
Parties of Record

January 29, 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

---

NOTICE OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

---

Richard P. Bruening  
W. James Wochner  
Robert K. Dreiling  
THE KANSAS CITY SOUTHERN  
RAILWAY COMPANY  
114 West 11th Street  
Kansas City, Missouri 64105  
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Fax: (816) 556-0227

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Sean F.X. Boland  
Virginia R. Metallo  
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SCOTT  
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John R. Molm  
Alan E. Lubel  
William A. Mullins  
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Tel: (202) 274-2950  
Fax: (202) 274-2994

January 29, 1996

Attorneys for The Kansas City Southern  
Railway Company

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO. 32760

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**NOTICE OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

---

Pursuant to the procedural schedule issued by the Interstate Commerce Commission ("ICC")<sup>1</sup> in Decision No. 6<sup>2</sup> and the procedural regulations contained at 49 C.F.R. § 1180.4(d)(4), all interested parties who plan to file a responsive or inconsistent application must file a description of their anticipated application, as well as any petition for waiver or clarification related to such an application, by today, January 29, 1996. The Kansas City Southern Railway Company ("KCS") provides the following notice to all interested parties.

KCS believes that the proposed transaction is not consistent with the public interest. KCS intends, on or before March 29, 1996, to file comments opposing the merger. KCS will contend that approval of the merger should be denied, or if not denied, it must be conditioned on the divestiture, through sale by Applicants, of one of two parallel and

---

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, took effect on January 1, 1996 (the "Act"). The Act abolished the ICC and transferred certain functions and proceedings, including this proceeding, to the Surface Transportation Board ("STB").

<sup>2</sup> *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 (ICC served Oct. 19, 1995). "Applicants" are defined as consisting of the Union Pacific Railroad Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company (collectively "UP"), and Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (collectively "SP"). Decision No. 6 at 2, 3.

duplicate lines and facilities, where sale is feasible. Where UP/SP currently share lines and facilities and there are no duplicate lines or facilities to be sold, divestiture should consist of the grant to an independent rail carrier of trackage rights over such lines.<sup>3</sup> Areas that should be subject to divestiture should include: lines between St. Louis and Memphis, on the one hand, and Houston, on the other hand; and the SP line from Houston to New Orleans. KCS believes these lines should be divested to a qualified buyer in a market driven process, subject only to such later approval of the Surface Transportation Board as may be necessary to implement whatever market supplied transaction is agreed upon.

KCS also believes that a third carrier should be given trackage rights access to the rights granted to SP in the Burlington Northern/Santa Fe merger<sup>4</sup> in the Central Kansas grain areas, including access to Wichita, Topeka, Hutchinson, and the trackage rights over the BNSF from those areas to Ft. Worth, TX.<sup>5</sup> Such a substitution of a qualified third carrier for the rights gained by SP in the BNSF proceeding will restore the competitive

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<sup>3</sup> For example, KCS understands that Texas Mexican Railway Company ("Tex Mex") will file a responsive application and seek trackage rights from Robstown, TX to a connection with KCS at Beaumont, TX. SP operates over portions of this track, and thus, while UP and SP operate over parallel routes, they do not own parallel tracks. KCS intends to support Tex Mex's request.

<sup>4</sup> See *Burlington Northern Inc. & Burlington Northern R.R. -- Control and Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry.*, Finance Docket No. 32549 (ICC served Mar. 7, 1995). The merged entity resulting from this transaction will be herein referred to as "BNSF."

<sup>5</sup> These rights were granted to SP in Section 3 of the Agreement dated April 13, 1995, between Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, on the one hand, and Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp., on the other hand.



balance for Kansas grain shippers that will be lost as a result of the cumulative effects of the BNSF merger and the proposed UP/SP merger.

KCS believes these conditions, and possibly others, must be imposed on the transaction in order to alleviate the anticompetitive effects of the proposed transaction, and if not imposed, the merger should be denied. These anticompetitive effects are not sufficiently addressed in the agreement reached between Applicants and the BNSF. Furthermore, KCS is prepared to quickly bid on, purchase, and operate over any lines ordered divested by the STB and is prepared to quickly operate any trackage rights also granted in this proceeding.

KCS will not be asking the STB to grant approval to a specific carrier to purchase the lines that should be divested or to give approval to a specific carrier to "step into the shoes" of the SP with regard to the rights granted SP in Kansas in the BNSF proceeding. Instead, KCS will be requesting such a divestiture and trackage rights be ordered as a condition to the merger and then a market supplied solution to be provided.<sup>6</sup> KCS does not believe its request for such conditions are "affirmative relief" within the meaning of 49 C.F.R.

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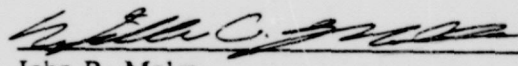
<sup>6</sup> Allowing a market supplied solution to a competitive problem is precisely what the ICC in effect did in the *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control -- Missouri-Kansas-Texas Railroad Company, et al.*, 4 I.C.C.2d 409 (1988) case. In that case, the ICC found an adverse impact on competition in the movement of grain originating in the area north and west of Kansas City. The ICC concluded that the adverse impact on grain movements would be alleviated by a grant of trackage rights to either ATSF, SP or KCS and did not specify what carrier should get the access. The applicants were required to negotiate a trackage rights agreement with one of the three railways. 4 I.C.C.2d at 417, 452-458. KCS eventually acquired these rights.

§ 1180.3(h). Accordingly, KCS will not be filing a responsive or inconsistent application, but instead, KCS will file comments in opposition and a request for conditions.<sup>7</sup>

Respectfully submitted,

Richard P. Bruening  
W. James Wochner  
Robert K. Dreiling  
THE KANSAS CITY SOUTHERN  
RAILWAY COMPANY  
114 West 11th Street  
Kansas City, Missouri 64105  
Tel: (816) 556-0392  
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Sean F.X. Boland  
Virginia R. Metailo  
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John R. Molm  
Alan E. Lubel  
William A. Mullins  
TROUTMAN SANDERS LLP  
601 Pennsylvania Ave. N.W.  
Suite 640 - North Building  
Washington, D.C. 20004-2608  
Tel: (202) 274-2950  
Fax: (202) 274-2994

January 29, 1996

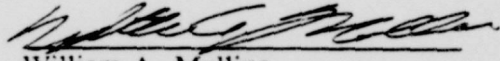
Attorneys for The Kansas City Southern  
Railway Company

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<sup>7</sup> Because KCS is not seeking affirmative relief as defined by 49 C.F.R. § 1180.3(h), KCS was not required to file any notice, description, or petition today within the meaning of Decision No. 6. Nonetheless, while technically not required in Decision No. 6 to file today, KCS has voluntarily chosen to give notice to the shipping public and the STB of its requested conditions.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "NOTICE OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY" was served this 29th day of January, 1996, by hand-delivery, facsimile, overnight delivery, or first-class mail, postage prepaid, on counsel for all known parties of record.

  
William A. Mullins

Attorney for The Kansas City  
Southern Railway Company



STB

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32760

1-24-96

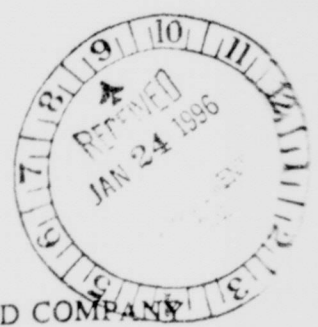
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KCS-17

BEFORE THE  
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 32760

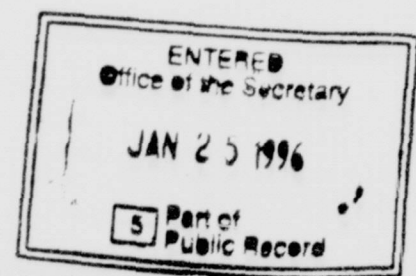
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY  
AND MISSOURI PACIFIC RAILROAD COMPANY  
--CONTROL AND MERGER --  
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC  
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY  
COMPANY, SPCSL CORP. AND THE DENVER  
AND RIO GRANDE WESTERN RAILROAD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

COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY  
IN SUPPORT OF THE MOTION BY WESTERN SHIPPERS' COALITION FOR  
ENLARGEMENT OF THE PROCEDURAL SCHEDULE

Richard P. Bruening  
W. James Wochner  
Robert K. Dreiling  
THE KANSAS CITY SOUTHERN  
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January 24, 1996

Attorneys for The Kansas City Southern  
Railway Company

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 32760

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**COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY  
IN SUPPORT OF THE MOTION BY WESTERN SHIPPERS' COALITION FOR  
ENLARGEMENT OF THE PROCEDURAL SCHEDULE**

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On January 22, 1996, the Western Shippers' Coalition ("WSC") filed a motion, designated WSC-2, requesting the Surface Transportation Board to enlarge by 60 days the procedural schedule issued by the Interstate Commerce Commission (ICC) in Decision No. 6, which provides for issuance of a final decision no later than August 12, 1996. Pursuant to the comments of KCS and others, the ICC, recognizing the difficulties associated with Applicants'<sup>1</sup> originally proposed procedural schedule of 195 days, granted 60 additional days to the time proposed for comments in opposition and the filing of inconsistent or responsive applications.

Actual experience in discovery in this proceeding has demonstrated that the time periods contained within Decision No. 6 are inadequate for KCS and others to conduct discovery and prepare their comments and/or responsive or inconsistent applications. As has been demonstrated by the WSC and the other shippers who have filed comments in support of WSC, the procedural schedule has proven inadequate. Accordingly, KCS concurs with

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<sup>1</sup> Applicants are defined as consisting of the Union Pacific Railroad Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company. Decision No. 6 at 2, 3.



WSC's request that 60 days be added to the procedural schedule so that the January 29 filing date would become March 29 and respective changes made to the subsequent dates. Such a 60 day enlargement is necessary for all interested parties to conduct adequate discovery, take depositions, review documents, and prepare its comments and/or responsive or inconsistent application. In support of this request, KCS provides the following comments regarding the difficulties shippers, the Department of Justice, and KCS are experiencing with the procedural schedule.

While Administrative Law Judge (ALJ) Jerome Nelson is doing a remarkably good job in resolving discovery disputes and grasping the difficulties associated with such a complex case, Applicants are resisting discovery efforts at every turn, even for the most basic information.<sup>2</sup> Applicants object to virtually all interrogatories or document requests of all parties on the basis of relevance, burden, or privilege. See UP/SP-30 through UP/SP-56. Accordingly, for most document requests or interrogatories, the requester is forced to take such requests to Judge Nelson. The clearest sign of Applicants' resistance to discovery is the

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<sup>2</sup> Two examples will suffice: (1) on as basic an issue as 100% Waybill revenues, although they have provided basic 100% Waybill traffic information, Applicants have refused to provide end of year revenue adjustments on the basis that it is too burdensome and time consuming; (2) on as central an issue as the BNSF agreement, which is the mainstay of their application upon which they rely as the key to resolve admitted competitive problems with an unconditioned merger, Applicants they have resisted discovery on the basis of settlement privilege. Thus, they seek to have it both ways--describing their public and self-serving version of the agreement as the "fix," while resisting a thorough examination of the genesis, motives, and internal analysis of the effectiveness of the agreement in maintaining competition.

fact that (except for the holidays and weather interferences), discovery conferences on motions to compel by interested parties against Applicants have been required almost every week since the discovery guidelines were established (December 20, 1995, January 2, 1996, January 17, 1996, and January 26, 1996 [scheduled]). At such conferences, two, three, and sometimes more parties, including a broad base of carriers, shippers, and unions, have required orders by the ALJ to pry information out of the Applicants. Even after the requesting parties prevail on an argument on the relevance issue, Applicants then object on the basis of purported burden, privilege, or other objection. Although Judge Nelson has denied or placed some limits on some of the requests, even when finally ordered to provide discovery, further delays by Applicants ensue.<sup>3</sup>

For an example of this process, KCS first requested information from Applicants by letters dated September 26, 1995; and these requests were formalized in KCS's First Set of Interrogatories served on November 13, 1995. Pursuant to the ICC's discovery rules, Applicants had until November 30 to file their responses, but KCS agreed to extend the response date to December 15, 1995. Few documents or meaningful answers were forthcoming, necessitating a discovery conference on December 20 at which Judge Nelson ordered Applicants to respond with certain limitations. As of this writing, almost four months after it was initially requested, much of the ordered discovery, including basic

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<sup>3</sup> Although Applicants' comprehensive objections to discovery and their delays are hard to square with their professed willingness to be open and cooperate, KCS does not assert that Applicants are acting in bad faith. Rather, given the scope of the proposed merger, Applicants face a near impossible task of providing relevant information within the limited time allowed by the current schedule.

information on competition between UP and SP for the traffic of specific shippers, still has not been produced. This process is repeating itself with regard to KCS's second and third set of discovery requests. Under this process, KCS will not even have responses to all of its discovery requests until after the March 29th filing date, which is the relevant date for which this information is useful.

By Applicants own admission, this merger is the largest railroad merger in the history of the United States. For a merger of this size and scope, nothing should be rushed to judgment, and the STB should be fully informed before reaching its decision. Indeed, at the first discovery conference, Applicants themselves said we are here "to test the application." December 1, 1995 Discovery Conference. It is virtually impossible, however, for the STB and the other parties in this proceeding to "test the application" without access to the most basic information regarding the areas where UP and SP compete and where such competition will be harmed as a result of the merger.

Many times, Applicants, after losing the argument on relevancy, will then argue that given the time frames available, it would be too burdensome for them to conduct a search for the relevant information.<sup>4</sup> However, Applicants cannot, and should not, have it both ways. It is Applicants who advocated the shortened procedural schedule. UP/SP-1, Petition to

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<sup>4</sup> See e.g., Statement of Louise Rinn, Esquire, UP's in-house attorney: "[O]ur people only have 24 hours in a day and only seven days in a week." January 17, 1996 discovery conference, p. 599; statement of Arvid Roach, Esquire, attorney for Applicants: "Production of a log of documents as to which Applicants assert the attorney-client or work product privilege would take 'weeks.'" December 20, 1995 discovery conference, p. 314 [No log has been produced as of this filing despite KCS's agreeing, at the conference, to accept a log by categories rather than identification of specific documents].



Establish Procedural Schedule. If responding to discovery requests that are deemed relevant by Judge Nelson is too burdensome due to the shortened schedule, that is a problem of their own making. The simple solution is to either produce the documents or to extend the procedural schedule.

In addition to the problems associated with obtaining appropriate documents within a useful time frame, shippers and KCS are experiencing further problems associated with depositions. Beginning, January 16 and ending on approximately February 29, there is a deposition almost every weekday, and on some days more than one deposition may be scheduled creating a quandary for many parties with limited resources. These depositions are only for the witnesses who submitted written testimony. Numerous additional depositions will be required. For example, three more depositions are being scheduled for the BNSF<sup>5</sup> witnesses who submitted testimony on December 29 (BN/SF-1), as well as the depositions of BN's outgoing Chairman, Mr. Gerald Grinstein, whom Judge Nelson has indicated should be deposed. There is simply inadequate time to prepare for each deponent.

During depositions, it is critical to have reviewed all of the workpapers associated with each witness, the answers to interrogatories related to that witness, and all documents related to that witness that have been produced as a result of document production requests. Given that Applicants have 15 days to respond to interrogatories and document requests (and Applicants have taken significantly longer to make available relevant information), it is

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<sup>5</sup> BNSF refers to the combined Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company.

simply mathematically impossible to have received all of the relevant information in time for the depositions, yet alone reviewed it in order prepare for such depositions.

We have also learned, during the depositions of Mr. James Runde and Mr. Donald Ainsworth that the document depository reportedly containing the "workpapers" used by such witnesses does not in fact contain the entire universe of such papers relied on by the witnesses in forming the opinions that are the basis for their statements.<sup>6</sup> Mr. Ainsworth also admitted that some of the documents from his company in the document depository seemed to be out of normal sequence. Ainsworth Dep. Tr. 54-56. As numerous consultants could explain, there is a lack of continuity to the documents within the depository. In the middle of workpapers on Mr. Peterson, for example, there may be workpapers related to Mr. Rebensdorf. Presumably, the lack of the entire universe of workpapers and the continuity of such workpapers will occur for many witnesses. If interested shippers and other parties are told to "review the workpapers" or that "the answer is in the document depository," it is not unreasonable to request that all papers provided to, gathered, or

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<sup>6</sup> Runde Dep. Tr. 112-114:

Q. Now, you mentioned that there were memos and blue books and that there [sic] were documents prepared by Morgan Stanley people that you then threw away; is that correct?

A. Correct.

Ainsworth Dep. Tr. 47-49 109(documents placed in the depository as "workpapers" did not include the universe of documents which Morgan Stanley (1) was provided by Applicants (2) gathered themselves or (3) generated, in order to perform the engagement reflected in Ainsworth's statement.

generated by the witnesses in performing the analysis reflected in their statements be placed in the depository.

KCS has also learned during the course of discovery and depositions so far that the persons that Applicants have put forth as the witness are not the individuals who actually performed the analysis or who are the experts on the subject of their statements. As is shown in a letter from the Department of Justice ("DOJ") to the Applicants, Exhibit A, DOJ has discovered that the witnesses put forth on certain subjects are unable to describe the actual work. For example, Applicants put forth Mr. Runde as their financial analysis witness, but Mr. Runde did not sign the Morgan Stanley opinion letter and was unable to describe the analysis that went into the opinion letter. Again, as DOJ notes, additional depositions will need to be scheduled.

Furthermore, as the depositions of Mr. Rebensdorf and Applicants' responses to KCS's second discovery requests have revealed, at least six additional persons who appear to have significant knowledge of the facts underlying the Application (see Exhibits B and C attached hereto) will need to be deposed. Of particular significance is the fact that this number of additional witnesses has emerged after only one month of discovery and four depositions.

While many of the issues identified above have been or will be raised with Judge Nelson, the time constraints of the current procedural schedule severely limit the time period to implement any relief he may grant. Only the STB may grant relief from the procedural schedule.



Finally, the recent delays caused by the weather have hampered the ability to conduct adequate discovery. As most law and consulting firms follow the federal government guidelines, when the government is shut down due to weather, support and professional staff are unable to come to work. KCS lost at least one week due to the inability of our consultants to travel to Washington and review the workpapers in the document depository. Applicants themselves were forced to cancel the deposition of Mr. Month, scheduled for January 18, due to weather concerns. The Christmas, New Year, and Martin Luther King holidays also interrupted the discovery process. Thus, at the very least, there should be an adjustment in the schedule to reflect weather related problems.

Discovery is an important part of any rail merger proceeding. It has become even more important since oral hearings are no longer conducted and procedural schedules have become shorter. Accordingly, the most meaningful time parties adverse to the merger can utilize information gained in discovery is either in the comments or the responsive/inconsistent application to be filed on March 29 or in the briefs. Since briefs are limited to 50 pages and a party cannot raise new issues, briefs cannot effectively serve as the vehicle by which to use all of the information that bears on the Application. The March 29 date thus becomes the date on which most, if not all, discovery becomes relevant. Accordingly, under the proposed schedule, a party, within 120 days, must analyze all of the workpapers, serve and receive all relevant discovery requests, prepare for depositions, conduct depositions, and then utilize that information in preparing its comments or a responsive/inconsistent application. One hundred and twenty days is simply not enough time

to perform such a task without all of the appropriate background materials. Applicants have refused, in a timely manner, to provide such background materials.

The STB needs to understand that there is a significant disconnect between the structure of the current schedule and the realities of conducting a party's evidentiary case. In previous cases, where oral hearings were held before the Commissioners themselves or before an ALJ who had the authority to issue an initial decision,<sup>7</sup> the 120 day filing deadline was not an important deadline because the parties would then have a long period of time, sometimes close to two years, to file interrogatories and document production requests, review the documents produced, review the document depository, and prepare for the oral hearing. It was at this oral hearing that the complete evidentiary case-in-chief was presented and witnesses cross examined. Parties then had opening and closing briefs in which to make the relevant arguments.

In less complicated cases where the ICC or an ALJ did not conduct oral hearings, the shortened procedural schedule did not present a problem. In fact, KCS has supported the efforts of the ICC to shorten lengthy procedural schedules in less complex cases.<sup>8</sup>

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<sup>7</sup> *Union Pacific Corporation, Pacific Rail System, Inc., and Union Pacific Railroad Company - Control - Missouri Pacific Corporation and Missouri Pacific Railroad Company*, 366 I.C.C. 459 (1982); *Santa Fe Southern Pacific Corporation -- Control-- Southern Pacific Transportation Company*, 2 I.C.C.2d 709 (1986).

<sup>8</sup> *Kansas City Southern Industries, Inc., The Kansas City Southern Railway Company, and K&M Newco, Inc. --Control-- MidSouth Corporation, MidSouth Rail Corporation, MidLouisiana Rail Corporation, Southrail Corporation, and Tennrail Corporation*, Finance Docket No. 32167 (ICC served Nov. 6, 1992).

However, for a case of this magnitude and complexity, such a process is simply unworkable if any meaningful discovery is to be taken.

While a 60 day extension of the relevant filing dates may add some delay, such delay is well justified given the scope of this proceeding and the corresponding scope of discovery. Congress, realizing the difficulties associated with processing major railroad merger applications and acknowledging that the old statutory language provided too lengthy of a procedural schedule, set forth a 15 month procedural schedule in the ICC Termination Act of 1995.<sup>9</sup> At the time, Congress was fully aware of the schedules adopted in the BNSF merger proceeding<sup>10</sup> and this proceeding, yet Congress chose to adopt a longer timeframe. Congress specifically rejected the time frames established in H.R. 2539, which were patterned after those adopted by the ICC in the BNSF proceeding and this proceeding, and instead, adopted the longer 15 month schedule.<sup>11</sup> Adding 60 days is completely consistent with the intent of Congress and would allow all parties additional time to conduct adequate discovery.

While it is unclear whether Congress understood all of the technical nuances associated with a rail merger proceeding, new section 11325(b)(3) gives the STB 1 year after

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<sup>9</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, Section 11325.

<sup>10</sup> *Burlington Northern Inc. & Burlington Northern R.R. -- Control and Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry.*, Finance Docket No. 32549 (ICC served Mar. 7, 1995)

<sup>11</sup> ICC Termination Act of 1995, H.R. Conf. Rep. No. 422, 104th Cong., 1st. Sess. 192 (1995).



the notice of acceptance of the application in which to conclude the evidentiary proceedings and then 90 days for the STB to issue a final decision. As noted, because parties in this proceeding who submit only opposition comments may not have a rebuttal opportunity, all of their evidentiary case must be submitted by March 29. Likewise, for those parties that submit an inconsistent or responsive application and thus are entitled to rebuttal, the evidentiary phase in this proceeding must be concluded by March 29 because a party is not allowed to put forth new evidence in rebuttal testimony. Certainly giving such parties only 120 days to conduct all discovery and make such an evidentiary filing, when the statute specifically calls for 1 year, is inconsistent with congressional intent.<sup>12</sup> Accordingly, adding 60 more days to allow for the filing of any comments in opposition and responsive or inconsistent applications is well within the congressional intent to allow 1 year for the evidentiary phase of the proceeding.

### CONCLUSION

As demonstrated by the WSC and these comments, the procedural schedule has proven inadequate. Within the time frames established, KCS and others are unable to conduct adequate discovery and rely upon such discovery. This is because of the vast scope

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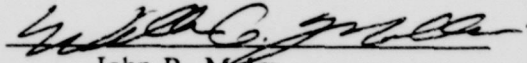
<sup>12</sup> To the extent section 11325(b)(2) requires that inconsistent or responsive applications be filed within 90 days of acceptance of the application, *i.e.* March 29 for purposes of this proceeding, the STB should consider bifurcating the process and extending the date for comments in opposition while maintaining the requirement that inconsistent or responsive applications be filed by March 29. There is no specific statutory mandate for when comments in opposition need to be filed. To the extent section 11325(b)(1) is applicable, the statute says "may" as compared to "shall" (the language contained within section 11325(b)(2)) and in reality refers to the old notion of written comments as contained within 49 C.F.R. § 1180.4(d)(1)(i).

of the proposed merger, the mass of information involved, complexity of the issues, the failure by Applicants to cooperate with discovery, and delays caused by weather and other problems. Congress has given parties 1 year to file their evidentiary case and an extension of time as requested by WSC would be well within this period and consistent with the intent of Congress. Accordingly, KCS concurs with WSC's request that 60 days be added to the procedural schedule.

Respectfully submitted,

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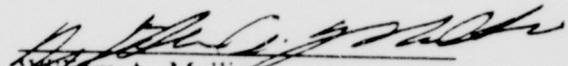
  
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January 24, 1996

Attorneys for The Kansas City  
Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY IN SUPPORT OF THE MOTION BY WESTERN SHIPPERS' COALITION FOR ENLARGEMENT OF THE PROCEDURAL SCHEDULE" was served this 24th day of January, 1996, by hand-delivery, facsimile, overnight delivery, or first-class mail, postage prepaid, on counsel for all known parties of record.

  
William A. Mullins

Attorney for The Kansas City  
Southern Railway Company



**EXHIBIT A**

JAN 19 1996 FRI 11 31

P 002



U. S. Department of Justice

Antitrust Division

325 4th Street, N.W.  
Washington, D.C. 20001

January 19, 1996

TRANSMITTED BY FACSIMILE

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Covington & Burling  
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Paul Cunningham, Esq.  
Harkins Cunningham  
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Re: Finance Docket No. 32760

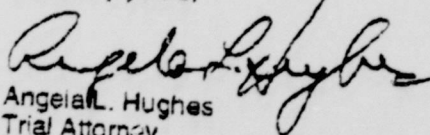
Dear Messrs. Roach and Cunningham:

As I stated during Mr. Runde's deposition, the Department of Justice would like to take the depositions of Nelson S. Walsh, Mahmoud A. Mamdani, and Mark C. Eichorn. Given Mr. Runde's inability to describe the work done by individual members of the Morgan Stanley team and his statement that he oversaw the work of the others on the team, but did not perform the analyses himself, it is necessary to take the depositions of Messrs. Walsh, Mamdani, and Eichorn to enable us to understand the analysis performed by Morgan Stanley for Southern Pacific. Since Mr. Mamdani signed the opinion letter, I propose that his deposition be scheduled first. We can then assess if we have to proceed with the Walsh and Eichorn depositions.

We also would like to take the deposition of Cannon Harvey of Southern Pacific. Mr. Runde identified him most often as the Southern Pacific source for data given to Morgan Stanley. Additionally, in preparing for Mr. Month's deposition, it has become clear that we will need to depose David DeNunzio, since he signed the opinion letter for CS First Boston and attended the Union Pacific board meetings in the summer of 1995.

Please let me know as soon as possible when the depositions can be scheduled, as well as when Mr. Month's deposition can be rescheduled. Also let me know if any additional documents have been found in the Morgan Stanley files or in its voice mail or computer systems relating to the analysis performed by Morgan Stanley for Southern Pacific.

Sincerely yours,

  
Angela L. Hughes  
Trial Attorney

cc: Restricted Service List

**EXHIBIT B**



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January 24, 1996

**VIA FACSIMILE AND U.S. MAIL**

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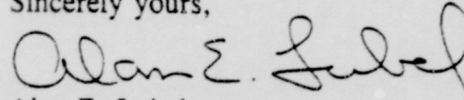
Re: Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control & Merger -- Southern Pacific Rail Corporation, et al.*

Gentlemen:

On behalf of Kansas City Southern Railway, and in the nature of a request pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, we request that Southern Pacific designate the persons most knowledgeable to testify concerning the highly confidential documents which appear at HC62000003 through HC62000007. The designation should include the persons who sent and received the communications, who appear to us to be Messrs. Gil Jara, Jim Gehring and Sam Meade. In conjunction with these depositions, we request a copy of Mr. Uremovich's June 21, 1994 memorandum referred to on page HC62000004.

We believe these depositions will not be lengthy and can all be scheduled on the same day. We look forward to your prompt response.

Sincerely yours,



Alan E. Lubel  
Attorney for Kansas City Southern  
Railway Company

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**EXHIBIT C**

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January 24, 1996

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

Gentlemen:

The deposition of Mr. Rebensdorf has identified additional witnesses with relevant information whose depositions we request on behalf of Kansas City Southern Railway.

The first is Mr. Richard Kauders, to whom Mr. Rebensdorf repeatedly deferred on cost questions.

In addition, we wish to depose the marketing personnel relied on by Mr. Rebensdorf for his assertions at page 293 in his Verified Statement that UP began to hear from customers and that "BN/Santa Fe appeared to be the leading candidates in the minds of most customers . . . ." We also request the marketing personnel identified by Mr. Rebensdorf as helping him come up with the list of 2-to-1 points under the definition used by Applicants. These additional UP employees include, at least, J.A. Shattuck, M.F. Kelly, Mr. Bill Rody, Mr. Art Peters, and H.L. Arms. We anticipate these depositions will not be lengthy and that a number of them can be taken on the same day.

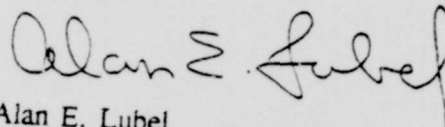


TROUTMAN SANDERS  
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A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION

Arvid Roach, Esquire  
Paul Cunningham, Esquire  
January 24, 1996  
Page 2

We look forward to hearing from you concerning scheduling these additional depositions.

Sincerely yours,



Alan E. Lubel  
Attorney for Kansas City Southern  
Railway Company

cc: Restricted Service List

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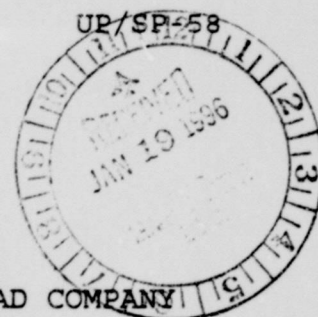
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Office of the Secretary

JAN 20 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 COMPANYAPPLICANTS' RESPONSES TO IAM'S FIRST SET OF INTERROGATORIESCANNON Y. HARVEY  
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Corporation, Union Pacific  
Railroad Company and Missouri  
Pacific Railroad Company

January 19, 1996



BEFORE THE  
SURFACE TRANSPORTATION BOARD

UP/SP-58

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 IAM'S FIRST SET OF INTERROGATORIES

UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW,  
collectively, "Applicants," hereby respond to IAM's First Set  
of Interrogatories.

GENERAL RESPONSES

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

1. Applicants have conducted a reasonable search  
for documents responsive to the interrogatories. Except as  
objections are noted herein,<sup>1/</sup> all 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 IAM to locate particular  
responsive documents to the extent that the index to the

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<sup>1/</sup> Thus, any response that states that responsive documents  
are being produced is subject to the General Objections, so  
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.

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 Commission 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 IAM from its own files.

7. Applicants object to the extent that the interrogatories 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 inclusion of Philip F. Anschutz and The Anschutz Corporation in the definition of "Applicants" as overbroad.

9. Applicants object to Instructions Nos. 2, 3, 4, and 5 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 as unduly burdensome.

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

#### SPECIFIC RESPONSES AND ADDITIONAL OBJECTIONS

##### Interrogatory No. 1

"Identify which of the officers, employees or other representatives of the Applicants who are presently scheduled for deposition can explain fully the effect of the proposed merger on employees represented by the IAM, including, but not limited to, anticipated or potential separations, relocations, redeployments, transfers, assignments to other duties, attrition, and severance arrangements."

##### Response

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



The Labor Impact Exhibit and the Verified Statement of Michael A. Hartman in Volume 3 of the application, and the related workpapers, contain the full information on this subject that is presently available. Mr. Hartman can be questioned regarding the Labor Impact Exhibit at his deposition.

Interrogatory No. 2

"If none of the witnesses presently scheduled for deposition have such knowledge or information, identify an officer, employee, or other representative of the Applicants who does have such knowledge or information."

Response

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

See Response to Interrogatory No. 1.

Interrogatory No. 3

"With respect to the 27 machinists jobs which the Applicants' Labor Impact Exhibit (Application, Vol. III, p. 413) indicates will be abolished:

- a. identify each of the 27 jobs slated to be abolished by Applicant (UPRR, MPRR, SSW, SPT, DRGW or SPCSL); and
- b. indicate whether any of the work previously performed by the individuals holding these jobs will be assigned to another position and if so, identify that position."

Response

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

This information cannot be provided prior to the completion of the process of negotiating implementing agreements, and possibly carrying out arbitrations, pursuant to New York Dock. Also, subpart (b) appears to be based on a misconception that the work of abolished positions is somehow "reallocated" to other employees. The merger will cause changes in the nature of the work to be done on the combined system, with attendant impacts on the number and locations of jobs, not a reallocation of pre-merger work in some static sense.

Interrogatory No. 4

"With respect to the 182 machinists jobs which the Applicants' Labor Impact Exhibit (Application, Vol. III, p. 413) indicates will be transferred:

- (a) identify each of the 182 jobs slated to be transferred by Applicant (UPRR, MPRR, SSW, SPT, DRGW or SPCSL); and
- (b) identify each transfer location by Applicant (UPRR, MPRR, SSW, SPT, DRGW or SPCSL)."

Response

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

This information cannot be provided prior to the completion of the process of negotiating implementing agreements, and possibly carrying out arbitrations, pursuant to New York Dock.

Not necessarily. This depends on the course of the  
New York Dock implementation process, and other contingencies.

Respectfully submitted,

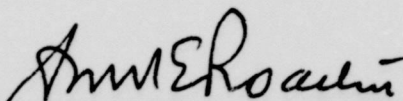
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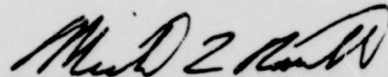


CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 19th day of January, 1996, I caused a copy of the foregoing document to be served by hand on Debra L. Willen, Esq., counsel for IAM Guerrieri, Edmond & Clayman, P.C., 1331 F Street, N.W., Suite 400, Washington, D.C. 20004, 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

Premarmer Notification Office  
Bureau of Competition  
Room 303  
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Michael L. Rosenthal