

INTERSTATE COMMERCE COMMISSION

04/12/96

FINANCE DOCKET # 32760

2879-2888 5.

1 communications between Conrail and Phillips to search
2 for. We said well, you don't have to look for every
3 contract, not every \$5 contract. Give us your
4 substantial contracts.

5 And we would be willing for them to just
6 look at their substantial contracts with Phillips and
7 give us the ones that refer to the merger.

8 If there are none, that's the end of the
9 matter. If there are one or two, then they ought to
10 produce them. It's fairly narrow and we have offered
11 to narrow it and I have further narrowed it --

12 JUDGE NELSON: How does Conrail and
13 Phillips and the merger all tie themselves together?

14 MR. LIVINGSTON: It could be an
15 arrangement of support.

16 JUDGE NELSON: You merge, what then?

17 MR. LIVINGSTON: It could be a deal for
18 support in the merger proceeding.

19 JUDGE NELSON: Whose support?

20 MR. LIVINGSTON: Support of Phillips, the
21 support of Conrail.

22 JUDGE NELSON: Has Phillips made a filing

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1 in the proceeding?

2 MR. LIVINGSTON: Yes, I'm told.

3 JUDGE NELSON: Do we have that here?

4 MR. LIVINGSTON: We do not have it.

5 MR. KILLORY: I believe Phillips filed
6 something and said they're not a party and they made
7 that point. There was service in discovery.

8 MR. LIVINGSTON: That may well be correct.

9 MR. KILLORY: They made a point of that,
10 absolutely.

11 JUDGE NELSON: Isn't this a little far
12 afield?

13 MR. LIVINGSTON: It is not right at the
14 heart of the case. I can give you that, Your Honor.
15 We were required to chase down similar types of
16 information, contracts with our customers and this is
17 in the same ballpark.

18 JUDGE NELSON: I have that so-called offer
19 against Conrail claims of great sensitivity when it
20 seemed to me it opened up and went right to the heart
21 of what they were saying about SP. That's hard core
22 stuff.

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1 This seems to me on the fringes of
2 anything. I'm thinking that Phillips is not a party.
3 Conrail's submission says nothing about Phillips. And
4 I just don't see it. I'm going to deny 16.

5 MR. LIVINGSTON: The last one is No. 23,
6 but let me just consult briefly with my colleague here
7 and see what we can do about that.

8 (Pause.)

9 In Tab 14, document request No. 23, this
10 is the last item, excuse me, Your Honor.

11 MR. NORTON: Your Honor, if we can just
12 consult for a moment?

13 JUDGE NELSON: Of course.

14 MR. LIVINGSTON: Maybe we can get this one
15 off the table.

16 (Pause.)

17 MR. LIVINGSTON: Your Honor, the concern
18 here is that the document request talked about their
19 plans to the extent their plans refer to the possible
20 impact of the merger on their future business and the
21 response is that their plans don't discuss the merger.

22 MR. KILLORY: I think maybe we can get

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1 this one of the table. There is no reference
2 whatsoever at all in any shape or form to the merger,
3 the business plan or the strategic plan.

4 MR. LIVINGSTON: Including the impact of
5 the merger.

6 MR. KILLORY: Nothing, no reference.

7 MR. LIVINGSTON: That resolves that.

8 JUDGE NELSON: Anything else?

9 MR. LIVINGSTON: That's it.

10 JUDGE NELSON: So what do we have left
11 over then? We have Union Carbide. Do you want to
12 recite something on that?

13 MR. LIVINGSTON: I think for our purposes
14 it's sufficient to say we have a deal, if Mr.
15 Bercovici wants to put it on the record, that's fine.

16 MR. BERCOVICI: You don't have to put it
17 on the record, if you can just confirm it to me by
18 letter.

19 MR. NORTON: Yes, that's fine.

20 MR. LIVINGSTON: That's fine.

21 JUDGE NELSON: We have the following
22 things left over. A potential 8:30 a.m. session on

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1 Tuesday, April 16th regarding Ms. Nunn and these
2 computer materials.

3 MR. LIVINGSTON: With the parties
4 committing to try to work it out.

5 JUDGE NELSON: That would be the best
6 solution. We have a conversation I'm to have with Mr.
7 Konschnik regarding an order that would reflect the
8 need for five copies, deposition pages reproduced and
9 it would be retroactive to March 29 filings and take
10 effect thereafter.

11 We have a session scheduled for --

12 MR. LIVINGSTON: Your Honor, if he wants
13 more than five from the applicant's point of view, if
14 he wants five.

15 JUDGE NELSON: He's going to print five.
16 It's as good as 50.

17 MR. LIVINGSTON: We'll give him as many as
18 he wants.

19 JUDGE NELSON: The cost is probably not
20 that much different. Others think it may be.

21 Then we have a session scheduled April
22 18th at 9:30 to go over the DOT, DOJ submissions.

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1 MR. LIVINGSTON: Right.

2 JUDGE NELSON: Made by who? Shippers?

3 MR. LIVINGSTON: I think it's just the
4 railroads now, Conrail, Tex-Mex and KCS, although KCS
5 made some assertion that perhaps --

6 JUDGE NELSON: They've given you things.
7 They said they gave you everything they had and if
8 they didn't give you something that said "Justice" on
9 it, all Justice had was what --

10 MR. LIVINGSTON: Maybe we're down to Tex-
11 Max --

12 JUDGE NELSON: Tex-Mex and Conrail.

13 MR. LIVINGSTON: Right.

14 JUDGE NELSON: That's at 9:30 a.m. on the
15 18th.

16 MR. KILLORY: Yes, Your Honor.

17 JUDGE NELSON: Will you give out notices
18 as your firm has done that in the past?

19 MR. LIVINGSTON: As to both of these --

20 JUDGE NELSON: As to these matters, yes?

21 MR. LIVINGSTON: Yes.

22 JUDGE NELSON: Because you have the

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1 facility and equipment to do it which we don't.

2 MR. LIVINGSTON: I don't personally.

3 JUDGE NELSON: I don't either, but I'll
4 get my law clerk to, she talks with some associates
5 over there that do it, I think.

6 MR. LIVINGSTON: I can alert them.

7 JUDGE NELSON: She'll call and we'll alert

8 --

9 MR. LIVINGSTON: It's Friday, we'll try to
10 get the notice out today, but --

11 JUDGE NELSON: It may not happen until
12 Monday.

13 As far as the business with Tuesday's
14 meeting, it's all with KCS and you and everybody here
15 knew about it. Nothing else is on Tuesday except the
16 Ms. Nunn business, so we do need a notice of the DOT,
17 DOJ submissions and recite that the counsel ought to
18 bring the relevant papers with them to facilitate in
19 camera inspection as is necessary and so forth.

20 All right, that concludes -- yes sir.

21 MR. STEEL: Potentially, we have the 8:30
22 resolution on Thursday morning with Conrail about some

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1 computer materials relating to ALK.

2 JUDGE NELSON: That's that other question
3 you raised. When will that be?

4 MR. STEEL: I assume 8:30 so we can get
5 out of their way for the other materials.

6 JUDGE NELSON: On Thursday.

7 MR. STEEL: Right, as Mr. Hut points out,
8 they're having depositions taken that day so if
9 there's a dispute we can come in, have it resolved --

10 JUDGE NELSON: You want to put that in the
11 fax?

12 MR. STEEL: No, we're not --

13 MR. LIVINGSTON: You let me know about it.

14 MR. STEEL: As I understand it, there
15 won't be a need for it.

16 JUDGE NELSON: It involves only these two
17 parties.

18 MR. STEEL: These two parties and they may
19 have some more computer material.

20 JUDGE NELSON: So I may see the applicants
21 and KCS at 8:30 Tuesday. I hope I don't have to and
22 otherwise I will see other parties at least 9:30 on

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1 thursday the 18th.

2 (Whereupon, at 2:22 p.m. the discovery

3 conference was concluded.)

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CERTIFICATE

This is to certify that the foregoing transcript in
the matter of:

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

Before: Surface Transportation Board
Finance Docket No. 32760

Date: April 12, 1996

Place: Washington, DC

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

Charles P. Poyett