

INTERSTATE COMMERCE COMMISSION 07/01/96

FINANCE DOCKET # 32760

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UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

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ORAL ARGUMENT

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IN THE MATTER OF: :

UNION PACIFIC CORPORATION, :
UNION PACIFIC RAILROAD COMPANY, :
and MISSOURI PACIFIC RAILROAD : Finance Docket
COMPANY : No. 32760
:
- 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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Monday, July 1, 1996

Surface Transportation Board
Hearing Room A
12th Street & Constitution
Ave., N.W.
Washington, D.C.

The above-entitled matter came on for
hearing, pursuant to notice, at 10:00 a.m.

BEFORE:

LINDA J. MORGAN	Chairperson
J. J. SIMMONS, III	Vice Chairperson
GUS OWEN	Commissioner

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Primary Applicants

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P-R-O-C-E-E-D-I-N-G-S

(10:01 a.m.)

CHAIRPERSON MORGAN: Please be seated.

Good morning. Less than a year ago, the former Interstate Commerce Commission held oral argument on the proposed merger of the Burlington Northern and the Santa Fe Railroad Systems; a merger that, when it was approved, created the nation's largest carrier.

As we know, since that time, Congress has abolished the ICC and transferred jurisdiction to decide railroad mergers to an independent board, the Surface Transportation Board.

Today, the Board is considering another significant railroad merger, the consolidation of the Union Pacific and the Southern Pacific Railroad Systems.

If approved, this merger would produce a railroad system even larger than the BN/Santa Fe system.

We are here today to hear parties present oral argument on the merits of the merger. We will discuss and vote on the case in a voting conference on

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1 Wednesday of this week.

2 This case has already been argued and
3 tried in every other forum imaginable: in the print
4 media, on the radio and in Congress. The issues have
5 been memorialized in numerous ads, in press
6 conferences and home-town rallies and in volumes of
7 letters.

8 There has been much rhetoric and much
9 hyperbole on all sides of this case. I have even been
10 asked to comment on the circus-like atmosphere
11 surrounding this matter.

12 Well, this is not a circus. The
13 responsibility of the Board, which it takes seriously,
14 is to conduct a fair proceeding and to reach an
15 informed result that applies the law that we
16 administer to the facts that have been presented on
17 the record.

18 Today, our job, like that of any court, is
19 to get past the hyperbole and the rhetoric and explore
20 one more time the record and the law with the
21 representatives of various parties.

22 This proceeding began to take shape when

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1 the Applicants filed their Notice of Intent on August
2 4, 1995, which was followed by a formal merger
3 application.

4 In a decision served December 27, 1995,
5 the application was accepted and a procedural schedule
6 was set that was designed to produce a decision as
7 expeditiously as possible, while guaranteeing all
8 parties a full opportunity to make their case.

9 I am proud to say that this case has
10 proceeded on schedule. I am also proud to say that
11 during the course of this proceeding, we have amassed
12 a voluminous, high-quality record that thoroughly
13 covers the sharply different views on the many
14 important transportation issues in this case.

15 In our May 9 decision announcing today's
16 oral argument, we indicated that we expected to hold
17 argument for four hours, twice as long as the argument
18 time for the BN/Santa Fe merger.

19 The opponents of the merger, however, got
20 together, for which I commend them, and submitted a
21 proposal regarding how much time each of them would
22 need to make their presentations.

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1 To accommodate the request of the
2 opponents of the merger, in our June 19 decision, the
3 time for today's oral argument was increased to five
4 hours, which reflects the amount of additional time
5 that they had requested.

6 Of the five hours, counsel for the
7 Applicants and certain parties that have entered into
8 settlement agreements with the Applicants will have a
9 total of two hours in which to present their
10 arguments.

11 Counsel for opposing parties and other
12 interested parties will have a total of three hours to
13 make their arguments.

14 We will break for lunch at an appropriate
15 time, and it is possible that we will take other
16 breaks as the need arises.

17 Let me emphasize that during these breaks,
18 as well as at the conclusion of today's oral argument,
19 there will be no contact between Board members and
20 staff and the parties, the media, and the general
21 public about the substance of this case or the oral
22 argument today.

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1 I'll remind each of the speakers today to
2 adhere strictly to the time allotments and to pay
3 close attention to the lights.

4 The green lights indicate that you have
5 one minute. When the red line comes on, your time has
6 expired and you should conclude your argument.

7 Board members may, and I expect they will,
8 ask questions of the speakers either during their
9 arguments or at the close of each argument.

10 Before moving to our first presenter
11 today, I want to announce that Governor Leavitt of
12 Utah is flying in today to participate in the oral
13 argument. When he arrives, I will accommodate him as
14 appropriate.

15 Now, I understand that we have with us
16 Senator Bond from Missouri. And I would be delighted
17 to hear from him at this time.

18 We know of your views, Senator, and have
19 read specifically the letter that you sent us last
20 week. So, I am delighted that you are here today to
21 present your views.

22 SENATOR BOND: Thank you very much, Madam

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1 Chair, and members of the Board. I sincerely
2 appreciate you allowing me to share briefly with you
3 this morning my observations and comments.

4 I am, for the record, Christopher S. Bond,
5 United States Senator for the State of Missouri. I
6 sincerely appreciate this time, and I acknowledge what
7 the Chair has said about everything that possibly
8 could have been -- could be said about this proposed
9 merger, has already been said.

10 But as the Chair will remember from her
11 experience in the Senate, the question is has
12 everybody said it?

13 I have several particular points of view
14 that I wish to share with you because last fall as
15 Chairman of the Senate Small Business Committee, I
16 joined with Chairwoman Jan Meyers in convening a Joint
17 Session of the House/Senate Small Business Committee
18 to hear from small businesses, shippers, regarding
19 their concerns and experiences with large rail mergers
20 like the one you're considering today.

21 The overwhelming view of those shippers
22 was that only actual, real competition protects them

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1 from the serious consequences of being a captive
2 shipper.

3 Competition, real available actual
4 competition. That's what shippers need, and that's
5 what your Board has been charged by Congress to
6 protect.

7 When Congress passed legislation last year
8 transferring the authority to review proposed rail
9 mergers from the former Interstate Commerce Commission
10 to this Board a major concern was whether or not it
11 should retain exclusive jurisdiction over ensuring
12 that healthy competition is protected before any
13 merger is approved.

14 We decided that the Board would retain
15 that responsibility. This merger is the first
16 opportunity you will have to exercise that.

17 As noted by the Chair, I recently
18 submitted a letter signed by seven of my Senate
19 colleagues. In that letter, we focused on our view
20 that protecting competition for shippers is the
21 central responsibility of the Board.

22 I know you've received numerous letters

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1 from other members of Congress voicing a similar
2 concern. And I think the view comes across that all
3 of us want the Board aggressively to assert its
4 statutory authority, to condition a proposed merger in
5 a manner such that shippers and competition are
6 protected. That is what is most important to us.

7 We believe that in this case, to protect
8 competition, you should require divestiture of the
9 acquired parallel lines that will be created as a
10 result of the merger to independent rail competitors.

11 We do not believe that trackage rights
12 alone are sufficient to protect competition. Clearly,
13 competing railroads operating over lines controlled by
14 an aggressive competitor are at a serious
15 disadvantage.

16 There are simply too many ways that the
17 controller of those trackage rights can limit real
18 competition.

19 The Union Pacific proposes to grant
20 unprecedented trackage rights to the other dominant
21 railroading the west, the BN/Santa Fe to address some
22 of the threats to competition proposed by the merger.

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1 They suggest that this alone will solve
2 all of the competitive problems with the merger.

3 But it seems to me common sense and real
4 experience suggest otherwise. First of all, how could
5 the UP decide whom it will allow to serve as a
6 competitor?

7 This so-called competitor just happens to
8 be the other dominant railroad in the west. Why
9 should the UP determine under what conditions its sole
10 competitor should be allowed to operate?

11 Secondly, given that this arrangement
12 would concentrate 90 percent of all rail traffic in
13 the west between these two dominant carriers, is it
14 any surprise that both UP/SP and BN/Santa Fe prefer
15 this solution.

16 A duopoly is not much better for
17 competition than a monopoly. I do not believe the
18 Board should allow such a concentration of market
19 shares to be the solution to the competitive problems
20 with the merger.

21 We can't have two mega railroads dictating
22 the terms of competition for so many shippers in the

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1 west.

2 Divestiture, on the other hand, ensures
3 that other competitors will continue to provide
4 alternatives to the shippers. That's how you protect
5 competition. I believe that's the solution you should
6 require.

7 Because there is such intense interest in
8 these parallel lines by competing carriers, I have no
9 doubt that there will healthy bids for them.

10 Divestiture would allow the merger to go
11 forward and give the UP and the SP the benefits of the
12 end-to-end efficiency as well as the administrative
13 consolidation they want, while protecting competition
14 for the shippers.

15 As you know, the Departments of Justice,
16 Transportation and Agriculture have voiced similar
17 concerns.

18 Numerous shipper groups in many of the
19 affected states have as well. You'll hear directly
20 from many of them in your proceedings today, I'm quite
21 sure.

22 I'm sure that all of you have seen, or

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1 someone will present for the record, The New York
2 Times article on Friday, June 28th, featuring a lead
3 story in the Business Section quoting many of the
4 groups and their concerns.

5 The article does an outstanding job of
6 outlining the enormous market power the proposed
7 merger would create for the merged railroad and the
8 very real fears that shippers have as a result.

9 If you haven't seen the article, we would
10 make one available. But I'm sure that it will be
11 submitted for the record.

12 We in Congress hope that you will
13 recognize the importance of protecting competition
14 while granting the UP and SP the efficiencies they
15 want. These two objectives are mutually achievable.

16 Congress specifically gave you the power
17 to require divestiture in the law that created the
18 Board. And we urge that you use that power to protect
19 shippers in competition.

20 I thank you sincerely for giving me this
21 opportunity. I flew in late last night to be here and
22 have to leave again. But if you have a question, I'd

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1 be happy to address that.

2 Otherwise, I express my sincere thanks for
3 your gracious consideration of my request.

4 CHAIRPERSON MORGAN: Well, thank you very
5 much, Senator. You do see mergers -- benefits to this
6 merger. Is that --

7 SENATOR BOND: Mergers have benefits in
8 allowing administrative efficiencies. End-to-end
9 competition as we enter new stages of transportation
10 will provide greater opportunities for services of new
11 areas.

12 And as one who eons ago used to practice
13 anti-trust law -- that's one of the reasons I got into
14 politics to get out of anti-trust law.

15 (Laughter.)

16 SENATOR BOND: I saw --

17 CHAIRPERSON MORGAN: And now you're back
18 in it again, right?

19 SENATOR BOND: I also wanted to get out of
20 the law business entirely, but some of my committee
21 assignments have prevented that. But there are
22 benefits. What we feel is very important for the

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1 Board to focus on is the possible detriments to
2 competition.

3 And we believe the parallel lines that
4 could be shut down or controlled by one acquiring
5 railroad are essential for competition.

6 If they are divested, if they are put on
7 the marketplace for other competitors, not just the
8 dominant -- the other dominant carrier in the west,
9 then this would, in my view, ensure the competition
10 that we need to see for efficient transportation.

11 CHAIRPERSON MORGAN: There's a lot in the
12 record that talks about divestiture undermining the
13 benefits of this merger. I presume that you don't see
14 it that way.

15 SENATOR BOND: Well, let me just lay it
16 out for you very clearly. There are legitimate
17 benefits to be achieved by a merger: administrative,
18 end-to-end, economies of scale.

19 But if the benefits of the merger are that
20 they shut down competing lines, if the benefits sought
21 from the merger are the benefits of monopoly power,
22 that's a no-no. That is an unacceptable benefit.

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1 The others, fine, that's great. Let's
2 have it as an efficient a transportation as we can
3 with full competition.

4 But if you tell me that the merger only
5 makes sense because they can shut down parallel lines
6 and administer monopoly powers over rail shipments in
7 areas where there currently is competition, then I
8 would say to you that is not a legitimate, free-market
9 benefit.

10 And the -- if that is what makes the
11 merger appear economically viable, that is an
12 unacceptable reason for the merger.

13 So, I say let the benefits from
14 efficiencies, scale, administration, end-to-end,
15 acquisitions go forward, but not the competitive
16 elimination of competing routes for rail transport.

17 CHAIRPERSON MORGAN: Thank you very much,
18 Senator.

19 SENATOR BOND: And Chair, I thank you and
20 members of the Board.

21 VICE CHAIRPERSON SIMMONS: Thank you.

22 SENATOR BOND: Thank you.

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1 CHAIRPERSON MORGAN: Next, we will hear
2 from Congressman Lloyd Doggett from Texas, who I
3 believe is here to make a statement. We would be
4 pleased to hear from you at this time.

5 CONGRESSMAN DOGGETT: Thank you very much,
6 Madam Chairman and members of the Board. I did stay
7 over this weekend before rushing off to Texas this
8 morning to convey the depth of my concern.

9 This may be one of the few issues on which
10 there is substantial agreement in the Texas
11 Congressional Delegation these days. And that is
12 about the impact, the very adverse impact, that we
13 believe that this merger would have on our state.

14 As the newspaper in my hometown and the
15 state capital of Texas, The Austin American Statesman,
16 noted in a recent editorial, appropriately entitled
17 "Derailed Merger," Texans would be particularly hard-
18 hit by this merger, which could lead to higher rail
19 costs and potential job loss.

20 The Board, of course, is charged with
21 looking at the law, as the Chair has indicated. And
22 it seems to me that under the enabling legislation,

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1 you have the statutory responsibility to determine
2 whether the record indicates that this merger would be
3 inconsistent with the public interest.

4 I'm here to comment very briefly on that
5 interest as we perceive it from Texas, and of course
6 to be mindful of the intent expressed in the Staggers
7 Act to avoid undue concentration of market power and
8 to ensure effective competition among rail carriers.

9 I believe that this merger fails to meet
10 that standard, since it subjects most Texas commerce
11 to a powerful monopoly.

12 If we look at the area that will, now in
13 the red on the chart, be served with traffic
14 controlled 90 percent or more by the -- actually, I
15 think in the red area 100 percent -- of two carriers.

16 It looks a little like a new form of
17 manifest destiny, a large part of the country that
18 will be pretty dependent on only one form of
19 transportation.

20 And in Texas -- you can pull up Chart B,
21 some 90 percent of the rail access to Mexico and 90
22 percent of the storage capacity for transporting raw

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1 materials from the Gulf Coast would be covered by this
2 merged company.

3 Of the entire 35,000 miles of track
4 involved in the merger, about a fourth of them are in
5 Texas, which is one of the reasons we're particularly
6 concerned about this.

7 I know that you have in the record
8 documents from the Texas Railroad Commission, the
9 Texas Attorney General, the Texas Department of
10 Transportation, as well as many manufacturer and
11 industries that have expressed their feeling that the
12 great weight of evidence shows the merger would
13 negatively impact our state.

14 Our all-Republican Texas Railroad
15 Commission described the merger as incurably anti-
16 competitive and spoke of the effect on shipping rates,
17 consumer prices, and increased competition of having
18 this merger approved.

19 In addition, as noted in a final chart,
20 there is the impact on NAFTA. We've had quite a
21 struggle over getting NAFTA in effect. Mexico is our
22 number one trading partner in Texas.

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1 I believe you have a smaller version of
2 this chart in the record before you. But it's
3 designed to show the rail traffic going through Texas.

4 And NAFTA has substantially increased
5 trade in this area in a wide variety of commodities.
6 The future of NAFTA we believe ought not to be
7 dependent on the practices of a single railroad, which
8 we believe would occur under this merger proposal.

9 One of the cornerstones of the NAFTA
10 treaty is free and open competition. And we would
11 suddenly under the merge proposal find about 90
12 percent of our access to and from Mexico with one
13 railroad.

14 That will leave places like the Port of
15 Houston, the City of San Antonio, the Central Texas
16 area that I represent, served by only one railroad.

17 This combination would place thousands of
18 miles of track throughout Texas and Mexico in the
19 hands of the very few, and I think would be contrary
20 to the concept of promoting promotion discussed in the
21 Staggers Act.

22 Our concerns in Texas are certainly

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1 intensified by the conclusions that the Board is very
2 familiar with from the Department of Justice, from
3 Agriculture Secretary Glickman about the impact on
4 farmers and ranchers, and the possibility of an \$800
5 million increase in consumer prices.

6 At a minimum, we believe that the
7 Department of Transportation's proposal for divestiture
8 of parallel lines to an independent railroad should be
9 a condition of approval which is essential in
10 preserving competition.

11 In Texas, in short, this merger is about
12 as welcome as the drought we're enduring down there.
13 I know that the term "being railroaded" is something
14 I hear mentioned in Congress from time to time. But
15 its origins are sometimes forgotten.

16 Over the years, rail monopolies have not
17 shown an abundance of affection for consumers. And
18 I'm here to say, in short, please don't have us be
19 railroaded in Texas by this merger. Protect the
20 public interests and derail this merger. Thank you
21 very much.

22 CHAIRPERSON MORGAN: Thank you. You

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1 mentioned NAFTA specifically, which I know is an issue
2 of great interest in the State of Texas. And we have
3 a lot on the record about that.

4 CONGRESSMAN DOGGETT: Right.

5 CHAIRPERSON MORGAN: In particular, we
6 have a proposal from TexMex, if you're familiar with
7 that --

8 CONGRESSMAN DOGGETT: Yes.

9 CHAIRPERSON MORGAN: -- related to
10 ensuring competition through the gateways between
11 Texas and Mexico. Do you have any comment on that
12 particular issue and perhaps their particular
13 proposal?

14 CONGRESSMAN DOGGETT: No, I have not
15 reviewed the specific TexMex proposal. Our main
16 concern is that there be more than one choice
17 available to our shippers in Texas as they increase
18 the volume of shippage as a result of NAFTA.

19 CHAIRPERSON MORGAN: Thank you very much.

20 CONGRESSMAN DOGGETT: Thank you so much.

21 CHAIRPERSON MORGAN: We appreciate your
22 being here.

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1 CONGRESSMAN DOGGETT: I appreciate it.

2 CHAIRPERSON MORGAN: I have also received
3 several other statements from members of Congress who
4 could not be here today, but who have asked me to
5 submit those statements into the record.

6 What I will do, since I have five of them,
7 is to read the Senator or Congressman's name, and then
8 to read the first paragraph of the statement. And
9 then I will submit the rest into the record.

10 The first statement is from Senator Harry
11 Reid from Nevada. His statement reads as follows: "I
12 submit these comments in opposition to the proposed
13 merger of Union Pacific Railroad and Southern Pacific
14 Railroad in my capacity as the Senior Senator from
15 Nevada."

16 "The proposed merger would dramatically
17 alter the City of Reno's identity as a popular resort
18 town. Those interests actively seeking this merger
19 failed to look beyond the balance sheets in their
20 examination of this issue."

21 "Indeed, the questionable bottom-line
22 advantages which may accrue to one industry from such

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1 a merger are far out-weighted by the unquestionable
2 disadvantages to be visited upon Reno's other
3 industries and its residents."

4 I hereby submit the rest of that statement
5 into the record.

6 The next statement is from Senator Mark
7 Hatfield from Oregon. The first paragraph reads as
8 follows: "Thank you for the opportunity to address
9 the matter of the proposed merger of the Union Pacific
10 and the Southern Pacific Railroads. I am please to
11 offer this testimony in strong support of this merger
12 because of its positive impact on Oregon."

13 The rest of his statement will be
14 submitted into the record.

15 The next statement is from Bob Kerry,
16 Senator Bob Kerry or Nebraska. The first paragraph
17 reads as follows: "I am pleased to offer my
18 enthusiastic support for the proposed merger of the
19 Union Pacific and Southern Pacific Railroads and urge
20 the Service Transportation Board to approve its
21 application."

22 "I have studied the proposed merger in

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1 great detail and believe it would have numerous
2 benefits for the nation and for Nebraska."

3 "While this matter is entirely up to the
4 discretion of the STB, I urge the Board's
5 consideration of the proposal."

6 The rest of that statement will be
7 included in the record.

8 The next statement is from Congressman
9 Henry Bonilla from Texas. The first paragraph of that
10 statement reads as follows: "Thank you for the
11 opportunity to address the Board on the benefits of
12 the proposed Union Pacific/Southern Pacific merger."

13 "Both Union Pacific and Southern Pacific
14 are major railroads in the State of Texas and my
15 district. The merged system would be able to meet the
16 competitive challenge of the new BN/Santa Fe system."

17 In addition, many shippers should benefit
18 from the UP/SP agreement with the BN/Santa Fe that
19 should provide BN/Santa Fe with access to various
20 routes and points in Texas."

21 The rest of that statement will be
22 included in the record.

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1 The last statement I have just received is
2 from Congressman Ron Packard from California. And his
3 first paragraph reads as follows: "Thank you for the
4 opportunity to summarize some of the many benefits of
5 the proposed Union Pacific/Southern Pacific merger."

6 And the rest of that statement will be
7 included in the record.

8 Now before proceeding to the other
9 speakers today, there is a unique situation which has
10 been presented to us. I believe that in the audience,
11 there is an individual, Mr. Scott Manatt, who has
12 travelled from Arkansas.

13 He has asked to speak today on a matter of
14 concern to him involving a tragedy in his family.
15 Without objection, please proceed. You have two
16 minutes. Thank you.

17 MR. MANATT: Thank you, Madam Chairman,
18 members of the Commission. The situation, as I come
19 to speak this merger, has not been in the public
20 interest. Specifically, my town has 1.25 miles. The
21 only track in town is a MOPAC Union Pacific.

22 You've had four derailments there, the

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1 most recent of which was June the 21st or 22nd, 1995.
2 And they've put flames in our town as high as 300 feet
3 in the air.

4 The bottom line is we don't think they
5 maintain their rail. According to an affidavit that
6 I have, Union Pacific, that didn't happen.

7 The other reason I'm here is October 5,
8 1993, my son, Spud, got caught in a rail because of
9 lousy maintenance between the rails and the cross tie.
10 An Amtrak train hit and killed him and this is his
11 memorial.

12 No one from Union Pacific said "I'm
13 sorry." No one called his mother and said, "We're
14 sorry." They don't care. It's a matter of a balance
15 sheet. It's a matter of dollars and sense. It's a
16 matter of being crude, rude and socially unacceptable.

17 And that's what we are running into today.
18 Yes, we have them sued in Arkansas for \$100 million.
19 It ain't enough. My son, 19 year old football player
20 from Arkansas, kissed me at 10:02 before he died at
21 4:00 the next morning. And I was glad of it.

22 An outstanding football player, I'll never

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1 know if he plays for the Dallas Cowboys. I'll never
2 knew if he'd have made it in the pros.

3 But I know one thing, if you put a
4 standard on public safety as the airline industry has,
5 and you require these railroads to put asphalt in
6 where kids can't their foot caught in the rail, and
7 they can't trip over cross-ties two inches too high,
8 and if you make them be accountable to the public for
9 the safety in the public interest, then you will have
10 done your job.

11 In opposition to the merger and very
12 grateful to the Chair for this opportunity, I thank
13 you. I will take questions.

14 CHAIRPERSON MORGAN: Thank you very much,
15 and we are sorry for what has happened. And we will
16 keep your views in mind. And I appreciate your being
17 here.

18 MR. MANATT: Madam Chair, for the record
19 can I call attention to the fact that my comments are
20 noted in "The Environmental Assessment," AG pages 69
21 through 72, inclusive.

22 CHAIRPERSON MORGAN: Yes, that will be

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1 noted, thank you. We will now turn to arguments from
2 the primary applicants. Mr. Roach, please proceed.

3 MR. ROACH: Thank you very much, Madam
4 Chairman. Let me say first that -- let me express
5 first our sincere grief at Mr. Manatt's loss. I know
6 that nothing else I can say will assuage that, but I
7 will say to you that UP is struggling all the time to
8 improve safety.

9 UP was one of the founders of Operation
10 Lifesaver and is a heavy contributor to it. And this
11 merger will promote safety. We're committed to abide
12 by the mitigation measures of SEA to improve crossing
13 safety. And I just repeat our sorrow and grief at
14 that personal tragedy.

15 I want to focus today, this morning, on
16 key points in the record and in the law as you have
17 urged, Madam Chairman.

18 I want to talk about the public benefits
19 of this merger, and in particular and including the
20 public benefit of solving the problem of SP's
21 financial and operating weakness.

22 I want to talk about the categories of

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1 traffic that have come to be known as three-to-two and
2 two-to-one during this litigation of this case.

3 I want to talk about grain, chemicals,
4 coal, Mexican traffic, and I want to tell you why
5 divestiture is unjustified and would be terribly
6 destructive and should be rejected.

7 The basic question before you is simple,
8 perhaps deceptively simple. It's the merger and the
9 settlement with BN/Santa Fe versus the alternatives.
10 Where does the public interest lie?

11 The answer we submit is absolutely clear.
12 Only the merger and the settlement have the tremendous
13 public benefits that are shown in this record. Only
14 the merger and the settlement will provide a real
15 competitor for BN/Santa Fe in the west, stronger
16 competition for all shippers throughout and across the
17 west, and preserve and enhance SP services.

18 CHAIRPERSON MORGAN: Let me stop you right
19 there, Mr. Roach. Your discussion about benefits, now
20 obviously UP has been involved in several other
21 mergers over the past number of years. What
22 specifically has been the experience with mergers in

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1 terms of anticipated benefits, real benefits and so
2 forth?

3 MR. ROACH: There's a lot in the record on
4 that. and the experience has been very, very positive.
5 The Union Pacific has kept the commitments that it
6 made in its applications for merger approval and in
7 its projections as to marketing and operating
8 efficiency benefits.

9 We acquired, Union Pacific acquired, the
10 Missouri Pacific, extended single-line service
11 throughout large portions of the south-central United
12 States, achieved tremendous efficiency improvements;
13 acquired the Western Pacific, committed to upgrade it
14 \$90 million in capital outlays, and in fact spent
15 almost \$200 million; introduced new, strong
16 competition into the northern California trans-
17 continental rail market.

18 We came before you and proposed the
19 acquisition of the Missouri/Kansas/Texas Railroad. We
20 said that we would preserve and improve the services
21 of the KD, and that has happened.

22 The KD has been upgraded, not only all the

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1 lines that were promised to be upgraded, but
2 additional lines as well.

3 There were no -- essentially very few
4 abandonments in the KD merger even though it was
5 parallel. We achieved capacity improvements, great
6 improvements in grain transportation directly from the
7 Kansas area into Texas are other benefits.

8 I stood here eight years ago at this very
9 podium and argued with the Justice Department about
10 what the effect of that merger would be in markets
11 that went from three railroads to two.

12 We heard the same arguments that we're
13 going to hear today about that from Justice and other
14 parties. And they said, "Don't allow that to happen.
15 Impose conditions. Keep three railroads in the
16 markets that will go to two: San Antonio, Abilene and
17 Salida Kansas grain and Houston area rock aggregates,
18 traffic, major markets that went from three to two."

19 I stood here and I argued to you that
20 putting together the UP and the KD would yield a
21 stronger railroad, would intensify competition.
22 Justice said it wouldn't.

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1 The Commission ruled for the Applicants
2 and rejected Justice's argument. What happened? We
3 know what happened. We don't have to speculate. We
4 don't have to listen to anti-trust theorists.

5 We know what happened to the rates. They
6 have come down in every one of those markets by 25
7 percent or more.

8 And the only reason that can have happened
9 is the competition has remained strong and indeed
10 stronger in those two railroad markets.

11 CHAIRPERSON MORGAN: Now, how about with
12 the CN&W merger? Obviously, there's been a lot of
13 discussion about that merger, how it has gone, what
14 problems have arisen in the consolidation. Could you
15 talk about that merger since that's the most recent
16 one?

17 MR. ROACH: Sure. We're still in the
18 process of implementing that merger, of course. And
19 there have been service problems that UP has
20 acknowledged from perhaps a little bit of over-
21 aggressive or over-enthusiastic effort to implement
22 that merger.

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1 However, those service problems are under
2 control and service is improving, and is improved
3 beyond the level that it was before the merger. And
4 that is stable and that is solid. That is not just
5 some short-term phenomenon.

6 VICE CHAIRPERSON SIMMONS: What do you
7 think actually went wrong?

8 MR. ROACH: I think that, as I say, some
9 of the problem was over-enthusiasm. But a large part
10 of the problem was also weather-related and grain-
11 related.

12 There was a very large overhang of grain
13 in the market. Also, one of the big marketing
14 benefits of that merger was providing new, long-haul,
15 single-line marketing opportunities for the feed
16 grains of Iowa and Minnesota.

17 But nobody anticipated the incredible
18 volumes that the railroad would be deluged with when
19 they put in place these new rates and these attractive
20 new markets.

21 Now, there are a lot of shippers in this
22 record who have encomiums to sing about that merger

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1 because they made a lot of money, because their grain
2 rights went up. The price for the grain that they
3 sold on the farm went up as these new markets, direct
4 markets, were opened up.

5 But it led to operating problems. And
6 we've overcome those operating problems. UP is out
7 adding second track to the CN&W in Iowa, as we
8 promised we would do.

9 We have improved the Powder River Basin
10 lines as we promised we would do. We have centralized
11 the dispatching of those lines and the marketing of
12 those lines as we promised we would do.

13 We have cut employment substantially in
14 the management ranks by many hundreds of people, again
15 more than we projected, perhaps a little too much.

16 But those are real benefits. They have
17 brought costs down, and rates have been continuing to
18 come down.

19 So I submit to you, Madam Chairman, that
20 the history of rail mergers, and not just UP's rail
21 mergers which I know a good deal about, but others as
22 well, has been really unalloyedly positive.

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1 If you look at the last 15 years, the
2 number of class one railroads has declined by two-
3 thirds in this country.

4 Now, has that led to increases in rates as
5 the anti-trust theorists of the Justice Department
6 might argue? No, it hasn't. There has been a 50
7 percent decline in real rates, real rail rates.

8 And that can only happen if competition is
9 vigorous. You can't say well, it's because of
10 productivity or its because of deregulation because it
11 wouldn't be passed on to the shipper in lower rates if
12 the competition weren't forcing it to happen.

13 Now, you have ruled again and again that
14 two strong railroads is what is the sine qua non of
15 competition in the rail industry.

16 Now, railroading isn't like widget making.
17 You don't need and you can't have dozens of producers
18 in a market. We had a Mr. Sheppard here for some of
19 these parties and say there isn't any competition in
20 the market unless you have five players in the market.

21 Well, he hasn't seen railroading if that's
22 his opinion. Railroading is incredibly resource-

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1 capital intensive, tremendous fixed costs. And the
2 only way to achieve many efficiencies, not all
3 efficiencies, but many efficiencies, is through
4 merger.

5 You don't want to merge down to one.
6 Competition is vital. We are in favor of competition.
7 This merger is pro-competitive. We are not
8 eliminating rail option for any shipper in the west
9 through this merger.

10 Every shipper that has a choice today will
11 have a choice after this merger, and a better choice.

12 And I'm not denigrating competition. I'm
13 in favor of it. We believe in it. We think and
14 believe we're promoting it through this transaction.

15 CHAIRPERSON MORGAN: But there are
16 opponents to this merger that are supporting
17 divestiture and indicate that divestiture would not
18 undercut the principal benefits of this merger. Would
19 you care to comment on that?

20 MR. ROACH: I'd love to comment on that.
21 They are dead wrong. Divestiture will gut the
22 benefits of this merger. All the divestiture

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1 proposals that are on the table will gut the benefits
2 of this merger. Now why --

3 CHAIRPERSON MORGAN: And why is that?

4 MR. ROACH: -- is that? Why is that?
5 First of all divestiture will wipe-out single-line
6 service for hundreds of thousands of customers,
7 hundreds of thousands of shipments per year.

8 What you're doing is you're re-Balkanizing
9 the railroads. Instead of consolidating them and
10 achieving single-line service increases, you are
11 eliminating single-line service.

12 You are taking all those coal shippers in
13 Utah and Colorado, for example the MRLs divestiture
14 proposal, who today -- even today, before this merger,
15 have single-line routes over the SP out of those
16 states and into the midwestern gateways, the west
17 coast, the south-central United States.

18 And you're eliminating those single-line
19 routes. You're saying, well now we're going to take
20 this line, the Rio Grande Line, and against your will,
21 involuntarily -- because all the Utah coal producers
22 oppose divestiture.

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1 We're going to take that and we're going
2 to force the Applicants to sell it to a fellow named
3 Dennis Washington who would like to make a lot of
4 money out of this transaction and run his own
5 railroad.

6 At that point, those coal shippers have
7 two line rail routes instead of single-line. And
8 furthermore, they've got routes that are must more
9 circuitous and much less efficient than the routes
10 that they'll have with this merger.

11 We're going to create a new coal route
12 straight out of Utah and Colorado across Kansas on
13 what UP called the KP line, which will be upgraded,
14 that saves hundreds of miles of mountainous circuitry
15 that the SP has to do now across either the Tennessee
16 Pass or down from Denver to Pueblo and back across
17 Kansas.

18 Mr. Washington's proposal would
19 reinstitute all those bad routes, plus add
20 interchanges in the middle of the congested Kansas
21 City terminal.

22 And you have the same thing at the west

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1 end. Where we achieve mileage savings in the central
2 corridor and the divestiture wipes out those mileage
3 savings.

4 Now, what about in the south-central
5 region from Houston up to Memphis, for example, where
6 some of these parties would like to see divestiture?

7 We have serious capacity constraints in
8 those markets. One of the big benefits of this merger
9 is that we will be able to run the lines from Memphis
10 down to Houston and various other lines in Texas on
11 what's called a directional basis.

12 UP has a single-line, single-track line.
13 SP has a single-track line. Today, they're both
14 operated in both directions, which yields a lot of
15 interference, train meets. It can be done. It's done
16 all the time. Dispatchers put trains in sidings, but
17 it limits your capacity sharply when you have to run
18 a single-track line in both directions.

19 With the merger, we can take one of those
20 routes and make it the northbound route, and one of
21 them to make it the southbound route.

22 We have two large, excellent,

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1 classification yards: one in Pine Bluff and one in
2 Little Rock. Today, they're used by UP for both north
3 and southbound traffic, which complicates and lowers
4 the capacity of the yard.

5 And the same thing with SP. Under our
6 plan, the yard would be specialized for blocking in
7 one direction, tremendously increasing its capacity.

8 Now, you force us to divest one of those
9 lines, we're back with the inefficient operation.
10 We're back having to spend a lot of capital to add
11 capacity. We no longer can achieve the tremendous
12 improvements in blocking that this merger will bring
13 about.

14 Now "blocking" sounds sort of, you know,
15 technical and unexciting. But blocking is really one
16 of the parts of efficient railroading and switching.

17 You don't want to switch a car any more
18 times that you have to. It adds tremendously to
19 delay, tremendously to cost.

20 What you want to do is to pre-block as
21 early in the shipment as possible for as far down the
22 road as you can pre-block. You want to pre-block in

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1 Houston to take it all the way to New York City or
2 Albany and so forth.

3 We can do that with this merger because we
4 consolidate volumes while preserving competition for
5 every shipper that has it now and retaining enough
6 traffic for BN/Santa Fe to be fully competitive.

7 But if you force the divestiture, you're
8 handing over a large chunk of the traffic that has
9 exclusively served. It's not competitive traffic.

10 What these divestiture people want is to
11 take over non-competitive traffic.

12 CHAIRPERSON MORGAN: But why then are many
13 of the shippers in that area not supporting this
14 merger? If the benefits are clear, then why are they
15 not supporting this merger?

16 MR. ROACH: Well, I've asked myself that
17 question a lot. And I wish I had a simple sound-byte
18 answer, but I think the answer is a little more
19 complicated than that.

20 I think some of the opposition that we're
21 facing here is driven by other agendas. We have a lot
22 of shipper organizations that would like to achieve

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1 what they call "competitive access." They would like
2 to see exclusively-served shippers opened up to
3 multiple carriers.

4 And I think there's a notion that
5 divestiture that would promote that. Somehow the
6 local shippers on these lines would end up with
7 perhaps joint service.

8 And then we have other opponents that
9 specifically want a second railroad introduced into a
10 solely-served plant as their condition request.

11 I think some of the opposition too is
12 based on good faith error. I think that some
13 shippers, not most, not a lot -- because most shippers
14 support this merger. A large, large majority of
15 shippers support this merger.

16 But some shippers have listened to the
17 public relations that they have heard from our friends
18 at KCS and Conrail and others, who have gone around
19 and said things like -- there was a -- Conrail took a
20 survey of shippers and called them up and said, "This
21 merger is going to put 90 percent of western rail
22 traffic under the control of one railroad. Do you

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1 think that's bad?"

2 Now, if I got that call, I'd probably say
3 "Yes, I think that's pretty bad." It's also false.
4 It's not going to put 90 percent under one railroad.

5 It's going to put something like 40
6 percent UP/SP and 40 percent BN/Santa Fe.

7 They say again and again, even today
8 you'll probably hear it, that we'll control 90 percent
9 of the traffic to Mexico. Well, that's just absolute
10 hogwash.

11 BN/Santa Fe, under the settlement
12 agreement, is going to serve every eastern Mexican
13 gateway, and it's going to get a healthy share of the
14 business.

15 What they do is they put up these colored
16 maps that ignore the settlement. And they say, "Well,
17 this merger is going to yield these very high
18 percentages of the market." Well, that's ridiculous.
19 It's false.

20 CHAIRPERSON MORGAN: Well, some of the
21 opponents claim that the shippers who are supporting
22 this merger are generally shippers that already have

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1 some sort of competitive environment in which they
2 work: inter-modal, automotive, et cetera. Now, how
3 do you respond to that?

4 MR. ROACH: I respond to that by saying
5 that the support spans every commodity group without
6 exception. If you look at our brief, there's an
7 Appendix C that lists in small type for page after
8 page after page 1,300 shippers that support this
9 merger.

10 And then there's a section that classifies
11 them by commodity. And you've got the chemicals.
12 You've got the metals. You've got grain, all of which
13 will maintain that they are heavily rail-oriented.

14 And you've got inter-modal, which is more
15 truck-oriented. Those inter-modal shippers too will
16 say that for long hauls, double stack has a
17 significant advantage over truck.

18 So you know, it spans the entire range.
19 You have shippers in there who are exclusively served
20 by UP or SP who see big benefits out of this merger,
21 competitive benefits. And that isn't an oxymoron.

22 If you're solely served, but you can

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1 achieve single-line service to a wide array of new
2 destinations at lower cost, with the railroad having
3 every incentive to build your business and get you
4 into those markets, that's a competitive benefit.

5 But there are lots of competitive shippers
6 in there too. There are lots of shippers that go from
7 two to one that are supporting this merger. And they
8 support it because they have fought about BN/Santa Fe,
9 they've talked to BN/Santa Fe. And they've concluded
10 that BN/Santa Fe will be highly competitive and highly
11 effective.

12 Now, Exxon has plants that go from two to
13 one. It filed a brief in this case and said, "We've
14 spent a lot of time studying this. We've talked to
15 BN/Santa Fe at length. We have found that they will
16 be vigorous and effective competitor for our business.
17 We want this merger to go through. It has tremendous
18 benefits, and we are desperately concerned about what
19 will happen if it doesn't go through because we depend
20 on SP for service at a number of exclusive locations.

21 And we're already receiving bad service,
22 and we're worried that it's going to get a lot worse.

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1 Now, I'm really capsuling the benefits here in this
2 answer, and I have a little bit more of a sort of an
3 organized march through the benefits that I wanted to
4 do with you. And I can do that much more briefly, but
5 --

6 VICE CHAIRPERSON SIMMONS: Mr. Roach, back
7 to the CN&W, and I'm --

8 MR. ROACH: Yes sir?

9 VICE CHAIRPERSON SIMMONS: -- one of the
10 few people that were around when that began, you stood
11 at that podium, unless I'm mistaken, and said, "They
12 would forever remain independent." That didn't
13 happen.

14 But that's not the important thing. I
15 certainly hope we don't have a repetition of what
16 actually happened.

17 I am well aware -- I have an abiding
18 interest in the grain shipment. I'm well aware of the
19 weather problems that you had. I'm well aware that
20 some people made some money, as you said.

21 But, I want you to assure me that
22 operationally this will succeed.

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1 MR. ROACH: First of all, I dearly hope I
2 didn't mislead you about CN&W. I hope and think that
3 what I said was that we didn't have any plan to take
4 over the CN&W back when we were talking about it.

5 VICE CHAIRPERSON SIMMONS: You said they
6 would be independent.

7 MR. ROACH: But to answer your question in
8 absolute earnest and sincerity because it's a very
9 important question --

10 VICE CHAIRPERSON SIMMONS: It is an
11 important question.

12 MR. ROACH: I participated in the
13 preparation of the operating plan for this case along
14 with a lot of other people. I was there when people
15 met to work on it.

16 Like everything else in this case, the
17 amount of effort, the number of people, the amount of
18 energy that went into that exceeds by orders of
19 magnitude --

20 VICE CHAIRPERSON SIMMONS: I agree.

21 MR. ROACH: -- what we've ever seen
22 before. And part of that, and this is the key point,

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1 was because of a deep concern about being conservative
2 and being credible. We don't want to fall on our nose
3 again.

4 VICE CHAIRPERSON SIMMONS: I should say
5 not. This is awesome in size.

6 MR. ROACH: Absolutely. And that's why we
7 have a five-year implementation period.

8 VICE CHAIRPERSON SIMMONS: And we'll be
9 looking at you every year.

10 MR. ROACH: Not -- well, that's the
11 oversight and that's fine. But I'm referring to the
12 implementation period in the operating plan, and
13 that's five year, which is unusual. It's
14 traditionally three years.

15 We concluded we need five. WE need five
16 partly to just understand everything fully out there,
17 and part of it to achieve the capital investments
18 which are tremendous and very extensive to upgrade the
19 Southern Pacific system and get the potential out of
20 those routes that's sitting there unachieved for the
21 United States and international economy.

22 CHAIRPERSON MORGAN: And let me stop you

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1 there on oversight because there's a lot in the record
2 about oversight being meaningless and window-dressing
3 and so forth.

4 Is there a way to make that kind of
5 oversight provision have more meaning to it, if that
6 indeed is a concern. I know it's in the CMA
7 agreement.

8 MR. ROACH: Well, I've got to tell you
9 that Union Pacific views the oversight process as
10 tremendously meaningful, indeed daunting if you like,
11 because really what it says is we may end up having
12 five more of those proceedings where all my friends in
13 the rail bar and Washington are having at us.

14 If we don't deliver for the shippers, if
15 BN/Santa Fe doesn't deliver, we're going to have
16 another proceeding. You're going to hear about it.
17 The shippers will come to you with complaints.

18 Now, you may be asking how do you need to
19 design the process to obtain information and how much
20 should you reach out? And that's important.
21 Although again, my first response is I don't think
22 you're going to have to try very hard. I think they

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1 will come to you if they have concerns.

2 But secondly, I think it's fairly
3 straight-forward what you can do. You can direct
4 inquiries to UP/SP with respect to rates and service.

5 You can inquire of BN/Santa Fe. You can
6 inquire of the key shippers that have been parties in
7 this case.

8 And you will have unrestricted power to
9 impose additional conditions if appropriate. That is
10 not the case under the statute normally. There has to
11 be a showing of new evidence or material error or
12 significant change in circumstances.

13 So, this is a significant provision and a
14 significant proposal by the Applicants. That would
15 include divestiture.

16 We think divestiture is a horrendous idea.
17 We vigorously oppose it. But there's no reason that
18 in a year or two or three, if you conclude that it is
19 appropriate, you can't require it.

20 This isn't like a lot of anti-trust
21 lawyers would normally say you can't unscramble the
22 omelette. You can't order divestiture. These rail

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1 lines are very discreet and distinct.

2 Locomotives are discreet and distinct.

3 And if two years from now you conclude that you want
4 to order the SP line from Houston to Memphis and an
5 appropriate number of locomotives, et cetera, to be
6 divested, there's no reason you can't do that.

7 COMMISSIONER OWEN: Mr. Roach, along that
8 line, then why did Mr. Davidson be quoted in The
9 Washington Post recently about the divestiture and
10 then exactly what lines might you be talking about?

11 MR. ROACH: Commissioner Owen, I have
12 notebook where I've collected all the false reports
13 during this case. I should say, a set of notebooks.

14 COMMISSIONER OWEN: I have a few of those.

15 MR. ROACH: I don't know the exact
16 quotation you're referring to, but the position of the
17 Applicants and what, to my knowledge, Mr. Davidson has
18 said to anyone who has asked, is that we vigorously
19 oppose divestiture. We have serious questions about
20 whether we could go forward with this transaction if
21 the divestiture proposals that have been put on the
22 table by Conrail or KCS or MRL were granted.

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