

INTERSTATE COMMERCE COMMISSION 04/23/96

FINANCE DOCKET # 32760

3206-3227

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

+ + + + +

DISCOVERY CONFERENCE

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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. :
-----X

Tuesday, April 23, 1996

Federal Energy Regulatory
Commission
Hearing Room 4
Second Floor
888 First Street, N.E.
Washington, D.C.

The above-entitled matter came on for
hearing, pursuant to notice, at 2:30 p.m.

BEFORE:

THE HONORABLE JEROME NELSON
Administrative Law Judge

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

APPEARANCES:

On Behalf of Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company:

MICHAEL L. ROSENTHAL, Esq.
ARVID E. ROACH, II, Esq.
S. WILLIAM LIVINGSTON, Jr., Esq.
KAREN KRAMER, Esq.
EUGENE D. GULLAND, Esq.
TIMOTHY C. HESTER, Esq.

of: Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566
[202] 662-5388

LOUISE A. RINN, Esq.
General Attorney
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
[402] 271-4227

JAMES V. DOLAN, Esq.
Vice President - Law
of: Union Pacific Railroad, Missouri Pacific Railroad
Omaha, Nebraska
[402] 271-5357

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APPEARANCES (cont.):

On Behalf of Southern Pacific Rail Corporation,
Southern Pacific Transportation Company, St. Louis
Southwestern Railway Company, SPCSL Corp., and the
Denver and Rio Grande Western Railroad Company:

PAUL A. CUNNINGHAM, Esq.
 GERALD P. NORTON, Esq.
 JOHN B. BULGOZDY, Esq.
 of: Harkins Cunningham
 1300 19th Street, N.W.
 Suite 600
 Washington, DC 20036-1609
 [202] 973-7600

CAROL A. HARRIS, Esq.
 Southern Pacific Transportation Company
 One Market Plaza
 San Francisco, California 94105
 [415] 541-1000

CANNON Y. HARVEY, Esq.
 Executive Vice President
 of: Southern Pacific Rail Corporation
 1860 Lincoln Street
 Denver, Colorado 80295
 [303] 812-5005

On Behalf of Kansas City Southern Railroad
Company:

WILLIAM A. MULLINS, Esq.
 of: Troutman Sanders, Attorneys at Law
 601 Pennsylvania Avenue, N.W.
 Suite 640
 Washington, DC 20004
 [202] 274-2953

ALAN E. LUBEL, Esq.
 DAVID FOSHEE, Esq.
 of: Troutman Sanders, Attorneys at Law
 Nationsbank Plaza, Suite 5200
 600 Peachtree Street, N.E.
 Atlanta, Georgia 30308-2216
 [404] 885-3174 (ALSO SEE NEXT PAGE)

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COURT REPORTERS AND TRANSCRIBERS
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 WASHINGTON, D.C. 20005-3701

APPEARANCES (cont.):

On Behalf of Kansas City Southern Railroad Company:

VIRGINIA METALLO, ESQ.
of: Collier, Shannon, Rill & Scott
3050 K Street, N.W.
Washington, D.C. 20007
(202) 342-8400

On Behalf of Texas Mexican Railway Company and Sierra Pacific Power Company:

RICHARD A. ALLEN, Esq.
JENNIFER OAKLEY, Esq.
JOHN V. EDWARDS, Esq.
of: Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Washington, DC 20006-3959
[202] 298-8660

On Behalf of Railway Labor Executives Association and United Transportation Union:

DONALD F. GRIFFIN, Esq.
RICHARD S. EDELMAN, Esq.
of: Highsaw, Mahoney, & Clarke, P.C.
Suite 210
1050 17th Street, N.W.
Washington, DC 20036
[202] 296-8500

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APPEARANCES (cont.):

On Behalf of International Paper Company and
Utah Railway Corporation:

ANDREW T. GOODSON, Esq.
EDWARD D. GREENBERG, Esq.
CHARLES H. WHITE, Jr., Esq.
of: Galland, Kharasch, Morse & Garfinkle, P.C.
1054 31st Street, N.W.
Washington, DC 20007
[202] 342-6750

On Behalf of the Department of Justice:

JOAN S. HUGGLER, Esq.
MICHAEL D. BILLIEL, Esq.
ANGELA HUGHES, Esq.
ROBERT McGEORGE, Esq.
MICHELE B. FELASCO, Esq.
Trial Attorneys
Antitrust Division
of: The Department of Justice
555 Fourth Street, N.W.
Room 9409
Washington, DC 20001
[202] 307-6666

On Behalf of the Save the Rock Island Committee,
Inc.:

WILLIAM P. JACKSON, Jr., Esq.
JOHN T. SULLIVAN, Esq.
of: Jackson and Jessup, P.C.
3426 North Arlington Blvd.
Arlington, Virginia 22201
[703] 525-4050

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APPEARANCES (cont.):

On Behalf of the Society of the Plastics Industry, Inc. and Union Carbide Corporation:

DOUGLAS J. BEHR, Esq.
MARTIN W. BERCOVICI, Esq.
ARTHUR S. GARRETT, III, Esq.
of: Keller and Heckman
1001 G Street, N.W.
Washington, DC 20001
[202] 434-4144

On Behalf of Geneva Steel:

JOHN W. ONGMAN, Esq.
of: Pepper, Hamilton & Scheetz
1300 Nineteenth Street, N.W.
Washington, DC 20036
[202] 828-1415

On Behalf of Coastal Corporation:

ROBERT M. BRUSKIN, Esq.
ROSEMARY H. MCENERY, Esq.
MARK JOSEPHS, Esq.
of: Howrey & Simon
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2402
[202] 783-0800

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APPEARANCES (cont.):

On Behalf of Burlington Northern Railroad Company, and Atchison, Topeka & Santa Fe Railway:

RICHARD WEICHER, Esq.
of: Burlington Northern Santa Fe
1700 East Golf Road
Schaumburg, Illinois 60173
[708] 995-6887

ROY T. ENGLERT, JR., Esq.
ERIKA Z. JONES, Esq.
ADRIAN L. STEEL, Jr., Esq.
KATHRYN A. KUSSKE, Esq.
KELLEY E. O'BRIEN, Esq.
DONALD M. FALK, Esq.
of: Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006
[202] 463-2000

On Behalf of the International Union of Machinists and Aerospace Workers:

DEBRA L. WILLEN, Esq.
of: Guerrieri, Edmond & Clayman, P.C.
1331 F Street, N.W.
Washington, DC 20004

On Behalf of the Transportation Communications International Union:

LARRY R. PRUDEN, Esq.
3 Research Place
Rockville, MD 20850
[301] 948-4910

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1323 RHODE ISLAND AVE., N.W.
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APPEARANCES (cont.):

On Behalf of Illinois Central Railroad:

KEVIN M. SHEYS, Esq.
of: Oppenheimer, Wolff and Donnelly
1020 19th Street, N.W.
Suite 400
Washington, DC 20036
[202] 293-6300

On Behalf of Consolidated Rail Corporation:

WILLIAM J. KOLASKY, Esq.
A. STEPHEN HUT, Jr., Esq.
STEVEN P. FINIZIO, Esq.
JOSEPH E. KILLORY, JR., Esq.
of: Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037
[202] 663-6235

On Behalf of the International Brotherhood of Teamsters:

MARC J. FINK, Esq.
of: Sher & Blackwell
Suite 612
2000 L street, N.W.
Washington, DC 20036
[202] 463-2503

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APPEARANCES (cont.):

On Behalf of Kennecott Utah Copper Corp., Kennecott Energy Company, Dow Chemical Company, and the National Industrial Transportation League:

FREDERICK L. WOOD, Esq.
JEFFREY O. MORENO, Esq.
JOHN K. MASER, III, Esq.
NICHOLAS J. DiMICHAEL, Esq.
of: Donelan, Cleary, Wood & Maser, P.C.
Suite 750
1100 New York Avenue, N.W.
Washington, DC 20005
[202] 371-9500

On Behalf of Arizona Electric Power Cooperative, Central Power and Light Company, City of Austin, Texas, Commonwealth Edison Company, Lower Colorado River Authority, Western Coal Traffic League, Entergy, Inc., and Texas Utilities Electric Company:

C. MICHAEL LOFTUS, Esq.
CHRISTOPHER A. MILLS, Esq.
JOHN H. LESEUR, Esq.
PATRICIA E. KOLESAR, Esq.
KELVIN J. DOWD, Esq.
FRANK J. PERGOLIZZI, Esq.
of: Slover & Loftus
1224 17th Street, N.W.
Washington, DC 20036
[202] 347-7170

On Behalf of The Western Shippers Coalition:

MICHAEL F. McBRIDE, Esq.
DANIEL ARONOWITZ, Esq.
LINDA BREGGIN, Esq.
of: LeBoeuf, Lamb, Greene & MacRae
Suite 1200
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009-5728
[202] 986-8030

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APPEARANCES (cont.):

On Behalf of the State of Texas

REBECCA FISHER, Esq.
AMY KRASNER, Esq.
of: Consumer Protection Division
Antitrust Section
P.O. Box 12548
Austin, Texas 78711-2548
[512] 463-2185

On Behalf of Montana Rail Link:

ELLEN A. GOLDSTEIN, Esq.
CHRISTOPHER E. KACZMAREK, Esq.
of: Weiner, Brodsky, Sidman & Kider
Suite 800
1350 New York Avenue, Northwest
Washington, D.C. 20005-4797
[202] 628-2000

On Behalf of Coalition for Competitive Railway Transportation :

JOHN T. ESTES, Esq.
Managing Director
Estes Associates
1615 L Street, N.W.
Washington, D.C. 20036
(202) 466-6356

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APPEARANCES (cont.):

On Behalf of the Railroad Commission of Texas :

RICHARD H. STREETER, Esq.
of: Barnes & Thornburg
Suite 500
Franklin Tower
1401 Eye Street, N.W.
Washington, D.C. 20005
(202) 408-6933

ALSO PRESENT:

HARRILEE MOLM, Paralegal
of: Troutman Sanders, Attorneys at Law

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

(2:33 p.m.)

JUDGE NELSON: Let's make a record of what is going on.

MR. LIVINGSTON: I am here for Union Pacific and the Applicants, Bill Livingston. With me is John Bulgozdy from Harkins Cunningham, representing Southern Pacific. And I think that's it for today.

JUDGE NELSON: I have letters from Mr. Estes of the Coalition for Competitive Rail Transportation, and Mr. Mullins of Troutman Sanders for KCS, saying that they have not had proper notice and can't be here but that they are available tomorrow.

Then I have a letter from Mr. Pergolizzi that was the TUE counsel who says that has all been settled.

MR. LIVINGSTON: We've settled that, and the Montana Railway has also been settled.

JUDGE NELSON: So, then, the only thing we could do today involves CCRT and KCS, who say they can't be here.

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1 MR. LIVINGSTON: Right. And both involve,
2 in fact, the same issue.

3 JUDGE NELSON: That's this matter of the
4 finances?

5 MR. LIVINGSTON: It's a matter of KCS is
6 -- KCS has a parent, KCS Industries, which is a
7 holding company, which we believe has -- I think it's
8 clear it provides funding to CCRT in connection with
9 this merger proceeding. That much has been admitted
10 by KCS.

11 JUDGE NELSON: We had something about
12 that, didn't we, that there was some --

13 MR. LIVINGSTON: Well, Mr. Estes had said
14 at one point that CCRT, which is a coalition of
15 Colorado something or other, had received railroad
16 money. Then he changed that to say that they had not
17 received any money from a party, which is perhaps
18 literally true because KCS Industries --

19 JUDGE NELSON: Is a separate corporation.

20 MR. LIVINGSTON: -- Inc. is a holding
21 company which is not a party. It is Kansas City
22 Southern Railway that is the party. But, obviously --

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1 JUDGE NELSON: Well, if it's stipulated
2 that the parent holding company has made contributions
3 to the Coalition, what more do we need?

4 MR. LIVINGSTON: We need the amount and
5 the percentage of the total. KCS knows the amount,
6 whether it -- and we've asked them just for a ballpark
7 figure -- \$500,000, \$50,000, whatever the number is.
8 And the Coalition would know what percentage that is
9 of the treasury of the Coalition, the extent to which
10 they have supported the --

11 JUDGE NELSON: Is it your position that we
12 should go forward on this?

13 MR. LIVINGSTON: Well, we would --

14 JUDGE NELSON: Despite the claims of the
15 respondents here?

16 MR. LIVINGSTON: We would be prepared to
17 come back tomorrow morning at 9:00.

18 JUDGE NELSON: That's fine with me. I'm
19 available.

20 MR. LIVINGSTON: We would prefer, and we
21 think we should have, an order saying that they should
22 simply tell us the information we want, which is the

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1 amount of money the Industries have given -- Kansas
2 City Southern Industries has given to CCRT, and what
3 percentage of CCRT's funding that represents. We
4 would prefer that.

5 JUDGE NELSON: Well, I think we would
6 probably be best positioned to move this along if they
7 were ready with the information, in case I direct that
8 it be produced. It doesn't seem to me like
9 complicated information.

10 MR. LIVINGSTON: I think they probably
11 have it in their --

12 JUDGE NELSON: And ready to give it to me
13 in camera if we should take that turn of events. And
14 you can advise them that I have suggested that, that
15 there's a way of --

16 MR. LIVINGSTON: That they should come
17 here with the information?

18 JUDGE NELSON: To move things along, yes.
19 That is, specifically be ready to answer, or ready to
20 tell me on an in camera basis, what is it you want to
21 know? The percentage in which the contribution bears
22 to the total --

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1 MR. LIVINGSTON: The amount --

2 JUDGE NELSON: -- funds of the Coalition?

3 MR. LIVINGSTON: Right. The amount of the
4 contributions.

5 JUDGE NELSON: Well, which is it, the
6 amount or the percentage?

7 MR. LIVINGSTON: Both. Is it \$50,000?
8 And, if so, is that 50 percent or 80 percent of --

9 JUDGE NELSON: I certainly also want them
10 to be ready on all objections they have to this. And
11 if those objections have merit, I'll sustain them.
12 But I may want to know what we're talking about, and
13 I might even ask for it to be told to me on an in
14 camera basis. If there's a piece of paper that shows
15 it, I might look at it. So you can advise them that
16 they should be ready to that extent.

17 MR. LIVINGSTON: If Your Honor were then
18 to rule --

19 JUDGE NELSON: We --

20 MR. LIVINGSTON: -- in our favor, we would
21 get the information right then and there?

22 JUDGE NELSON: Well, I would hope so.

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1 There's no guarantees in life, but I don't see why it
2 can't be. It doesn't seem to me like a complicated
3 thing.

4 MR. LIVINGSTON: We will advise them --

5 JUDGE NELSON: It may be it shouldn't be
6 produced. There may be other defenses at work here.

7 MR. LIVINGSTON: Well, we will send them
8 a letter that there will be a resumption of the
9 hearing at 9:00 a.m.

10 JUDGE NELSON: Ms. Diciano phoned
11 Mr. Mullins' office and learned that he would be
12 available, I think, tomorrow morning. And she left a
13 message with Mr. Estes' office and have not yet got
14 that confirmed, but Mr. Estes' letter to Mr. Norton,
15 dated today, says in it -- I'll quote the whole
16 sentence.

17 It says, "I understand the discovery
18 guidelines. Your somewhat casual remark last night
19 regarding issues to be raised at the hearing this
20 afternoon is insufficient notice to bring any issue
21 involving CCRT before Judge Nelson. And in any event,
22 I am, unfortunately, not available but could be

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1 tomorrow." This is dated April 23rd. So I'm going to
2 assume that he can be here.

3 Will you get a fax notice out to these
4 people?

5 MR. LIVINGSTON: We will fax to both of
6 them.

7 JUDGE NELSON: In which you advise them of
8 exactly what's going on, and what it is you want, and
9 of my request that it be ready so that I could at
10 least consult with it on -- in an in camera basis, and
11 because time is running out for your filings.

12 MR. LIVINGSTON: We had also scheduled
13 Mr. Estes' deposition, which would not be necessary if
14 he would simply give us this information. It was
15 scheduled for tomorrow at 9:00, and in view of having
16 the hearing at 9:00 --

17 JUDGE NELSON: Does he know that?

18 MR. LIVINGSTON: He knows his deposition
19 is scheduled.

20 JUDGE NELSON: I know that. But does he
21 know that it's not necessary if he gives this
22 information?

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1 MR. LIVINGSTON: I'm sure he does.

2 MR. BULGOZDY: Yes.

3 MR. LIVINGSTON: And then --

4 JUDGE NELSON: I was going to suggest you
5 may want to repeat that in the fax, that you --

6 MR. LIVINGSTON: Right.

7 JUDGE NELSON: -- advised me that there's
8 no need for his deposition if this information
9 appears.

10 MR. LIVINGSTON: And we will postpone that
11 -- obviously, that would not start at 9:00, and we'll
12 postpone the deposition by, what, 24 hours?

13 MR. BULGOZDY: We could probably resume
14 the deposition immediately after the hearing, if
15 necessary.

16 MR. LIVINGSTON: We'll tell him that the
17 deposition is postponed until 2:00 tomorrow afternoon.

18 JUDGE NELSON: Well, you work it out at a
19 time that works for both of you, but I hope to see him
20 here tomorrow. And we'll start at 9:00 a.m.?

21 MR. LIVINGSTON: 9:00 a.m. I actually
22 won't be here, and I'm not sure Mr. Bulgozdy will be

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1 either, but Mr. Norton will be.

2 JUDGE NELSON: Well, I hope you'll send
3 somebody.

4 MR. LIVINGSTON: Fully informed.

5 JUDGE NELSON: All right.

6 MR. LIVINGSTON: Thank you, Your Honor.

7 JUDGE NELSON: And we'll see counsel for
8 the Applicants tomorrow at 9:00 a.m.

9 Just a moment while we see what this is.
10 A messenger has arrived with an envelope for
11 Mr. Bulgozdy, so we want to see if it's anything
12 that --

13 MR. BULGOZDY: I suspect it's --

14 JUDGE NELSON: -- bears on today's --

15 MR. BULGOZDY: It's probably Mr. Mullins'
16 letter, which I had not received before I came to the
17 hearing, and it indeed appears to be.

18 JUDGE NELSON: It's a letter dated
19 April 23rd to you?

20 MR. BULGOZDY: Yes.

21 JUDGE NELSON: From Mr. Mullins?

22 MR. BULGOZDY: Yes.

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1 JUDGE NELSON: And it runs a page and then
2 a small paragraph on the second page?

3 MR. BULGOZDY: Yes.

4 JUDGE NELSON: That's it. All right.
5 Then we're all up to speed on everything, and we will
6 see someone here tomorrow at 9:00 a.m., and
7 Mr. Livingston will get out an appropriate fax to
8 Mr. Estes and to the Troutman Sanders firm, and
9 particularly Mr. Mullins.

10 MR. LIVINGSTON: Yes.

11 JUDGE NELSON: Thank you.

12 (Whereupon, at 2:41 p.m., the discovery
13 conference was adjourned.)
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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 23, 1996

Place: Washington, DC

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


