Thank you.

SECRETARY WILLIAMS: Chairman Morgan?

CHAIRMAN MORGAN: I don’t usually make long statements, but given the importance of this case, I’m going to keep you a little bit longer.

The sun keeps coming in and going out. I don’t know what that means, but anyway, I will proceed.

The merger case that we have considered today is a true test of the Board’s statutory authority to permit transportation-related transactions that are in the public interest.

In determining the public interest in a merger case, the Board must carefully balance the benefits flowing from the consolidation against the anti-competitive consequences that may result.

In this case, the transportation benefits are clear and the anticompetitive effects of approving this merger without conditions are significant.

Throughout this merger proceeding, the Board has heard from a broad cross-section of interests about the impacts, both positive and
negative, associated with this merger.

We have heard from shippers who support the merger and shippers who oppose the merger.

We have heard from railroads who are for the merger and railroads who are against it.

We have heard from states that are for it, and states that are against it.

The Board has considered a variety of options in resolving this matter. The Board’s challenge, as I saw it, was to weigh all of the evidence and arrive at a balanced decision ensuring that the harm could be addressed and the transportation benefits could be preserved.

I believe that we have met that challenge here today. We heard at oral argument on Monday that this case should be easy to decide. If there is a competitive problem, you just say no and deny the whole merger, leaving it to the parties to move to the next resolution acceptable to government.

With all due respect, while that may be an easy answer here, particularly with the opposition, I do not believe that that is the right answer here.
Government's role in today's world in my view should be to work more in partnership with industry of all types, to empower it to take the steps necessary to compete.

When private industry comes forward in good faith with what it believes to be a benefit for economic growth and development, we should not pursue collusion in the first instance, but dismiss the proposal altogether.

Rather we must attempt to craft a response that balances the many competing interests.

There are real pluses to this merger.

First, the merger permits UP and SP to achieve tremendous efficiencies. History has shown that restructuring in the rail industry has strengthened the rail transportation system in the form of better service and lower rates, and this merger should be no exception.

Second, the merger ensures that shippers on the SP system will continue to receive competitive service. We heard some at the oral argument say do not worry about SP; however the State of California on
behalf of its shippers and the United Transportation Union on behalf of its employees are worried.

Denying the merger and risking a downsized SP or an SP broken up in pieces is not what they want; and it is not a risk that we should be willing to take. We should do all that we can to allow the efficiencies promised by this merger and to save the SP system as a viable competitive force.

We also heard at oral argument that there is another simple, quick, and obvious way to fix the competitive problems associated with this merger. Divestiture.

Divestiture may be an obvious fix for some, but it is not an obvious fix for me in this case.

First, it would be a dramatic solution, one that must be pursued only if there is clearly no other viable alternative. Railroads with their network economies are different from other industries; and if you take away part of their network, you can take away part of their economies of operation.

There is clear evidence on this record
that divestiture would significantly undercut the efficiencies associated with this merger. The divestiture proposals discussed in this case are far-reaching, with one suggestion even suggesting a divestiture of 1200 miles. This remedy goes beyond the harm to be addressed and does not distinguish between those shippers that will lose direct and indirect competition and the shippers whose competitive position will not be substantially affected by the merger.

The government remedies must be specifically tailored to the identifiable harm. Furthermore, divestiture is not simple and quick. To the contrary, it could lead to more government intrusion, more regulatory oversight, and ultimately, more litigation when the unsuccessful suitors seek relief.

This is particularly true given the fact that certain divestiture proposals were not even formally presented in the record of this proceeding. Divestiture could mean another proceeding and more delay, creating the type of uncertainty and
unpredictability for business that the government of today and certainly this Board is trying to avoid.

This risk might be worth taking if there were no other way to fix the competitive harm in this case; however, there are other ways. The applicants admit that there is much overlapping track and they have sought to address this competitive issue by providing a private sector solution through the granting to BN/Santa Fe of extensive trackage rights.

Parties have complained that those trackage rights will not produce as much competition as an independent SP. I disagree. BN/Santa Fe is a strong competitor that has the desire to and knows how to compete.

Trackage rights are used successfully throughout the industry and there is no evidence that because of their scope, the trackage rights here would not be an effective, competitive alternative. If managed properly, and we have the means and the mandate to make sure that they are, these trackage rights can replicate SP's existing competitive presence and can provide market discipline to the
merged UP/SP system.

The BN/Santa Fe agreement is clearly strengthened by the privately negotiated agreement with the Chemical Manufacturers Association. However the Board has concluded, and rightfully so, that more is needed to address the competitive harm.

The Board has augmented conditions in the important areas of build-ins and build-outs, transloads, new facilities, storage and transit facilities and contract service.

We have responded to the concerns of various shipper groups and specific shippers, particularly coal, plastic, petrochemical shippers, grain, and others in the NAFTA trade.

Our conditions are carefully crafted to preserve competitive alternatives existing today without undermining the benefits of the merger.

We also provide for five years of oversight.

At the oral argument, oversight was attacked on the one hand as a meaningless gesture, and on the other hand as burdensome overregulation. Well,
which is it? The answer is neither. The condition
which the Board is imposing today requires the
applicants and their business partners to report
periodically to demonstrate to us that the protective
conditions are, in fact, working.

The Board will not depend upon shippers
and affected parties to do the monitoring for us. If
competitive harm appears imminent, we can and will
act. The divestiture option will remain available
during the entire oversight period. The Board has
taken this case very seriously from the beginning and
it will continue to do so.

I believe that the decision that we are
rendering today is a balanced one that recognizes the
many competing issues in this case. It preserves the
benefits of the transaction, benefits that cannot be
ignored. It ensures a strong competitive alternative
for shippers and communities served by SP. We owe
them no less.

It recognizes the importance of the
transaction to the employees, for it is they who have
much at stake. It mitigates the competitive harm
without the risk of potentially more intrusive
governmental action.

It recognizes the importance of
market-based plans and private sector negotiations.

On balance, this decision is a sound one.
It represents good government. It is good for
transportation and it is good for the economy.

Now, before I cast my vote, in case there
is no doubt, I want to echo what has been said about
the Staff and I could name all the Staff people who
have been involved in this case and I cannot do that
because we would be here quite a bit longer, but I
will try to highlight the groups that have been
involved in this and for which we all owe a great deal
of gratitude.

First of all, I want to thank the team led
by Julia Farr. This is a team that a year ago worked
on another important case. They have once again done
outstanding work. I thank all of you.

I want to thank the Secretary's office led
by Vernon Williams. They have done a tremendous job
in handling these two days. This has not been easy.

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They have done it with grace and professionalism. I thank you.

I also thank Don Hirst and his Staff. He has helped with security and other coordination. Again, this has not been easy to coordinate.

I also want to thank Rich Fitzsimmons and Dennis Watson for all of the press and the media setup that has also not been easy, but I am proud that we have handled that as well as we have.

I also want to thank my fellow Board members. I reiterate what the Vice Chairman has said: this is a fine Board, and all of you should be happy and proud to have the Board that you have for this case and other cases.

I would like to thank Commissioner Owen and Vice Chairman Simmons for the continued collegiality, cooperation, interest, professionalism, and support. These last several months have not been easy ones, not only because of this case, but because of a lot of other issues that have faced the people at the Board.

And I would say that what we have been
able to accomplish has only been because of these Board members.

I also want to thank the Board member staffs. I know my own staff, I have two sitting behind me, and one, Mary Turek, is not here, who has done a tremendous amount of work on these last two days. But I also want to recognize the other Board member staffs, Frank Wilner, Dennis, Ricky, as well as Craig and Richard behind me.

This has been a tremendous effort and it is for those of you who may not agree with what we have done today, and I'm sure there are those, I just want to say to you that this has been a professional, hard-working effort. We took it seriously. We feel very good about what is being done here. I think it is a credit to everyone that we have gotten to where we are.

With that, I vote aye.

SECRETARY WILLIAMS: The motion to accept the Staff recommendation passes.

The merger has been approved.

VICE CHAIRMAN SIMMONS: Madam Chairwoman,
if there is any doubt why I voted the way I did, I
will submit my comments for the report.

CHAIRMAN MORGAN: Very good.

I believe there is no more business before
us today.

The Board members and Staff will be
available briefly for any questions from the press.
Without further ado, the meeting is adjourned.

(Whereupon, at 12:30 p.m., the hearing was
concluded.)
CERTIFICATE

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

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

Before:
Surface Transportation Board
Finance Docket No. 32760

Date:
July 1, 1996

Place:
Washington, DC

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

[Signature]