

INTERSTATE COMMERCE COMMISSION

04/29/96

FINANCE DOCKET # 32760

3228-3266

UNITED STATES OF AMERICA  
SURFACE TRANSPORTATION BOARD

+ \* + \* +

DISCOVERY CONFERENCE

-----X  
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

Monday, April 29, 1996

Federal Energy Regulatory  
Commission  
Hearing Room 3  
Second Floor  
888 First Street, N.E.  
Washington, D.C.

The above-entitled matter came on for  
hearing, pursuant to notice, at 9:00 a.m.

BEFORE:

THE HONORABLE JEROME NELSON  
Administrative Law Judge

**NEAL R. GROSS**

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

(9:01 a.m.)

MR. EDWARDS: John Edwards for Tex-Mex Railroad.

MR. KILLORY: Joseph Killory for Conrail.  
Your Honor, if you'd like, I'll round up Mr. --

JUDGE NELSON: Well, I thought it was supposed to be 9 o'clock. We're taking attendance.

MR. LIVINGSTON: The applicants are here,  
Your Honor, Mr. Livingston and Mr. Norton. I  
apologize for coming in in the middle.

JUDGE NELSON: And here is Mr. Mullins of the KCS.

I have Mr. Mullins' letter of April 26th and I gather this is a dispute about, not about the production of anything, but the time within which the response is due.

Is that what this is all about?

MR. MULLINS: I believe you have to ask the applicants that. That's our position, of course, Your Honor. They have six days to respond. They haven't responded in six days.

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1 JUDGE NELSON: Start at the beginning and  
2 tell me what you did when?

3 MR. MULLINS: Yes sir. On April 18th, we  
4 filed discovery, our seventh set, and I have an extra  
5 copy of that if you would like, Your Honor.

6 JUDGE NELSON: I have a copy of the  
7 Applicant's objections. So that would set the mode.

8 MR. MULLINS: And we fully intended on  
9 using that discovery to the best of our ability even  
10 today because we do have a right to file today  
11 comments. They had until Wednesday, under the six-day  
12 rule, Wednesday of last week, to object or to respond.

13 I saw Mr. Norton, talked to him and he  
14 said oh yeah, I'd be getting responses and Wednesday  
15 came and went and I didn't get any responses.

16 I notified, called him again Thursday  
17 morning, said I expect responses and they said oh  
18 you'll be getting responses today.

19 I then got objections to all the discovery  
20 on Thursday and was informed by Applicant that they  
21 were taking the position that they had five days to  
22 object and 15 days in which to respond.

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1           That, of course, is contrary to the six-  
2           day rule that Applicants themselves have been applying  
3           over the past month. We, of course, then immediately  
4           asked for a conference. You were not available on  
5           Friday. Preferably we would have had one Thursday,  
6           but you weren't available Thursday or Friday. We  
7           wanted them to bring the materials and have them  
8           available.

9           JUDGE NELSON: I had told you I would be  
10          off those two days.

11          MR. MULLINS: I believe you did.

12          JUDGE NELSON: It should not have been a  
13          surprise to you.

14          MR. MULLINS: That's correct. I thought  
15          it was Wednesday and Thursday. That was my mistake.  
16          It was Thursday, Friday.

17                 So now here we are and we would like  
18          responses as soon as possible and we may even use them  
19          today in our filing, if at all possible.

20          JUDGE NELSON: Let's see if we can cut  
21          this short without getting into all this "who struck  
22          John."

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1 Are you prepared to respond right now to  
2 this discovery?

3 MR. LIVINGSTON: Your Honor, we did file  
4 objections last Thursday and we stand on those  
5 objections in a sense -- now we have --

6 JUDGE NELSON: Do you have their  
7 objections?

8 MR. MULLINS: Yes, Your Honor.

9 JUDGE NELSON: What's the fight about?

10 MR. MULLINS: The fight is they objected,  
11 they're claiming to have 15 days to respond and five  
12 days to object and 15 days to fully answer. They've  
13 objected to every single --

14 JUDGE NELSON: How long before you're  
15 going to produce anything?

16 MR. LIVINGSTON: We are not planning on  
17 producing material in addition to what's previously  
18 been produced.

19 JUDGE NELSON: You're not going to give  
20 them anything?

21 MR. LIVINGSTON: We're standing on the  
22 objection.

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1 JUDGE NELSON: Let's go. I'm going to  
2 begin at the beginning with the first interrogatory.

3 Mr. Livingston, I don't need to hear this.  
4 We're wasting time.

5 You've got interrogatories here. You want  
6 to produce nothing. Let's begin at the beginning.

7 MR. LIVINGSTON: Your Honor, that is not  
8 a fair characterization.

9 JUDGE NELSON: You tell me. Let's start  
10 with the first one. Where is your first -- I don't  
11 have them here. I've got only the answers.

12 MR. MULLINS: Your Honor, let me give you  
13 a copy.

14 JUDGE NELSON: Number 83. "Describe with  
15 particularity all correspondence or contacts with,  
16 presentations to, or other communications by or on  
17 behalf of Applicants with any representative from the  
18 following agencies, departments or entities."

19 MR. MULLINS: Your Honor, we're willing to  
20 limit all of this to the contacts made after March 29,  
21 because this is similar questions to what we've asked  
22 before the March 29th filing, so we're willing to

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1 limit it to anything after March 29th.

2 JUDGE NELSON: All right. The rulings  
3 previously made with regard to matters of this kind  
4 have recognized a qualified privileged rooted in the  
5 first amendment for such communications, a privilege  
6 which can yield depending upon showings as to  
7 relevance, need or relative hardship of getting this  
8 material and so forth. So I guess the burden is on  
9 you, with No. 83, Mr. Mullins, to tell me why type  
10 privilege would yield?

11 MR. MULLINS: Until we see the materials  
12 this is the exact types of materials they've requested  
13 for us last month.

14 JUDGE NELSON: Exactly we've been through  
15 it.

16 MR. MULLINS: And you required us to bring  
17 the documents.

18 JUDGE NELSON: We've had some information.

19 MR. MULLINS: You've looked at the  
20 documents and decided whether or not to respond and  
21 we're asking a similar thing --

22 JUDGE NELSON: All right, the first one is

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1 83A, the Department of Justice. Do you have any  
2 material here now that responds to 83A?

3 MR. LIVINGSTON: No, I do not.

4 JUDGE NELSON: How soon can you have that  
5 in my hands for in camera inspection?

6 MR. NORTON: Your Honor, could I be heard  
7 on that?

8 JUDGE NELSON: Let me tell you, Mr.  
9 Livingston, I don't want a long story. I'm going to  
10 apply to you -- it's a two-way street here. Your side  
11 has done a lot of discovery. I think I've been fairly  
12 liberal with it. I think we've had discovery going  
13 both ways. This is some of the same kind of stuff  
14 that you sought. Sometimes I've protected it.  
15 Sometimes we got some information and I was able to  
16 release something about it. But I'm not going to just  
17 entertain a series of recitals about the rules and the  
18 times and the this and the that.

19 The time is short. The man wants to make  
20 a filing today. Whenever those time periods are, I  
21 have discretion to shorten them and I'm going to  
22 exercise that discretion.

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1                   How soon can you be ready with respect to  
2 papers responding to Interrogatory 83A?

3                   MR. LIVINGSTON: I think I can do that  
4 today.

5                   JUDGE NELSON: How about 83B which is the  
6 Department of Defense?

7                   MR. NORTON: Your Honor, can we confer  
8 just briefly?

9                   MR. LIVINGSTON: Your Honor --

10                  JUDGE NELSON: The name of the game here,  
11 gentlemen, is discovery, not nondiscovery. So papers  
12 are going to be produced if I am persuaded that they  
13 ought to be. You start out with a privilege for these  
14 materials. You can claim it. You may win on it.

15                  MR. LIVINGSTON: Your Honor --

16                  JUDGE NELSON: But the one thing I don't  
17 want to hear is a lengthy argument about how you're  
18 going to produce nothing because the time isn't right.  
19 The time is now and we're making it now.

20                  Do you have anything else?

21                  MR. LIVINGSTON: I do have something to  
22 say.

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1 JUDGE NELSON: After we get done with all  
2 these rules, you can recite and you can take it to the  
3 Surface Transportation Board and then to the Court of  
4 Appeals if you want. Indeed, you can file for the  
5 certiorari if you want to seek Supreme Court review of  
6 these matters.

7 In a case in which time is of the essence,  
8 which I've tried to work with both sides, to  
9 facilitate discovery in a very tight time schedule, to  
10 come in here and find nothing and nothing ready and  
11 you can't even have it for a day is discouraging when  
12 this stuff has been in your hands since what?

13 MR. MULLINS: April 18th.

14 JUDGE NELSON: April 18th.

15 MR. NORTON: Your Honor, if I might just  
16 add --

17 JUDGE NELSON: We're already at the  
18 situation where you're going to defeat his filing  
19 today.

20 MR. NORTON: The request that they posed  
21 is extremely extensive and burdensome. There's no way  
22 we could have had everything that they asked for here

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1 today. We are in the midst of finalizing our filing,  
2 getting depository documents ready that have to be  
3 complete today. They knew that. They could have  
4 filed a different time. There's no way we could have  
5 everything here today that they've asked for.

6 MR. LIVINGSTON: We're making a major  
7 filing today. We're putting work papers into the  
8 depository so that the parties who have to respond in  
9 two weeks, the parties who do not include KCS, KCS has  
10 made its last filing in the case. They're not --

11 JUDGE NELSON: They cannot make a filing  
12 on May 14th?

13 MR. LIVINGSTON: They cannot because they  
14 have not filed an inconsistent application. They do  
15 not have any further rights to make filings on May  
16 14th. They do not have open season rights on  
17 discovery.

18 JUDGE NELSON: Do they have a right to  
19 file today?

20 MR. MULLINS: A limited --

21 MR. LIVINGSTON: Yes, a limited right. I  
22 don't know whether they are actually planning to file

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1 today or not.

2 JUDGE NELSON: Well, this nonresponse is  
3 frustrating the filing of today.

4 What do you say about this May 14th?

5 MR. LIVINGSTON: Your Honor, if the 5th  
6 was critical to a response they would not have waited  
7 until April 18th to file it.

8 JUDGE NELSON: Mr. Mullins, do you think  
9 you have a right to file on May 14th?

10 MR. MULLINS: It's possible, Your Honor.

11 JUDGE NELSON: What is there that says you  
12 can't?

13 MR. MULLINS: Technically, because we did  
14 not file an inconsistent response to the application,  
15 technically we're not allowed to file on May 14th.

16 JUDGE NELSON: Did anyone file an  
17 inconsistent application?

18 MR. LIVINGSTON: Many parties did.

19 MR. MULLINS: Tex-Mex did, Your Honor.

20 JUDGE NELSON: Where in the Commission's  
21 orders or the Board's order is there anything about  
22 what may be filed on May 14th? Where does that

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1 appear?

2 MR. MULLINS: The recent, I guess the best  
3 decision on that would have been the recent decision  
4 issued on April 19th.

5 MR. MULLINS: That's decision 31.

6 JUDGE NELSON: What page?

7 MR. MULLINS: Beginning of page 3.

8 JUDGE NELSON: I see that.

9 MR. MULLINS: It discusses what the  
10 various filings can and can't be.

11 JUDGE NELSON: Movants are aware that out  
12 of the procedural schedule only inconsistent and  
13 responsive applicants are entitled to file rebuttal  
14 evidence.

15 So you're not an inconsistent and  
16 responsive applicant?

17 MR. LIVINGSTON: That's correct.

18 MR. MULLINS: That's correct.

19 JUDGE NELSON: So where's your filing that  
20 can occur on May 14th?

21 MR. MULLINS: We have a filing that can  
22 occur today.

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1 JUDGE NELSON: That's correct.

2 MR. MULLINS: And we have a filing that --  
3 my argument to the Board and this is an argument to  
4 the Board not to you, Your Honor, is that we should  
5 have a right to file on May 14th. In fact, I filed a  
6 motion today, Your Honor, arguing that I do have the  
7 right to file additional evidence on May 14th and I  
8 have a copy of that motion, if you would like to see  
9 that as well.

10 That's a crucial issue because if the  
11 Board rules in my --

12 JUDGE NELSON: I can't help you on that.

13 MR. MULLINS: No, but if the Board rules  
14 --

15 JUDGE NELSON: Then you come back to talk  
16 to me. Right now we're in a regime where your filing  
17 is today?

18 MR. MULLINS: That's correct.

19 JUDGE NELSON: And the Applicants will  
20 give you nothing today, is that correct?

21 MR. MULLINS: They could have given me  
22 something Wednesday, which would have given me all

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1 week to look at it, decide what to put in my filings  
2 and quite frankly I'm a little upset that the  
3 Applicants have taken the position that they have and  
4 the fact that we have tried to respond, we gave them  
5 our presentations in the Department of Justice and the  
6 Department of --

7 JUDGE NELSON: Let's see if we can't get  
8 you something today. You have until midnight to make  
9 this --

10 MR. MULLINS: That's correct, Your Honor.

11 JUDGE NELSON: What is in here -- Mr.  
12 Mullins, I assume you're going to make a filing today?

13 MR. MULLINS: We would like to make a  
14 filing. Of course -- right now we're drafting a  
15 filing and it depends on what we do and say and it  
16 depends on what happens.

17 JUDGE NELSON: Let's see if there's  
18 something here that you particularly need. There are  
19 many, many interrogatories. Obviously, they can't get  
20 you all this today.

21 MR. MULLINS: That's correct.

22 JUDGE NELSON: What is in here that you

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1 need most, right now, that I might order them to  
2 produce today? You have the right to file until  
3 midnight.

4 MR. MULLINS: We'd like any presentations  
5 that they've given to, since March 29th to the various  
6 parties. They've gone since March 29th, the filings  
7 that where March 29th, and they've gone to all the  
8 parties that filed March 29th and tried to say -- to  
9 cut a deal. Cut a deal with those parties. We want  
10 to know who the parties are --

11 JUDGE NELSON: Which interrogatory is  
12 this?

13 MR. MULLINS: That would be interrogatory  
14 86 and 87. We also CSX and Canadian National had  
15 indicated they want to file today as well, so we would  
16 like to know what communications they have had with  
17 CSX and Canadian National.

18 JUDGE NELSON: Why wouldn't that be  
19 covered by 86 or 87?

20 MR. MULLINS: 86 and 87 focuses on shipper  
21 and shipper groups.

22 JUDGE NELSON: I see. 87 doesn't. It

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1 says "any other party."

2 MR. MULLINS: I guess they could take the  
3 position that CSX or Canadian National hasn't filed.

4 JUDGE NELSON: Oh, they're not parties.

5 MR. MULLINS: They're not parties.

6 JUDGE NELSON: Well --

7 MR. MULLINS: If they would stipulate that  
8 they're parties, then it would be 87.

9 JUDGE NELSON: I don't know that we're  
10 going to get them to respond by midnight on all these  
11 contacts unless they're in documentary form.

12 MR. MULLINS: That is part of the problem.  
13 I expect they have a brochure or a handout. We  
14 certainly had handouts and brochures that we gave to  
15 all these parties that we produced. They've got them  
16 in their files right now. They can give them to me in  
17 three hours or whatever.

18 JUDGE NELSON: Let me also hear from the  
19 Tex-Mex. What is it that you want me to do here and  
20 why do you want anything?

21 MR. EDWARDS: Your Honor, sometime today  
22 the Applicants will be filing comments on the Tex-Mex

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1 responsive application. Part of that will most likely  
2 address the CMA settlement and how the CMA settlement  
3 changes.

4 JUDGE NELSON: You did file a responsive  
5 application?

6 MR. EDWARDS: Yes.

7 JUDGE NELSON: So you do have a right to  
8 make a filing on May 14th?

9 MR. EDWARDS: Yes, we do, Your Honor, but  
10 if we wait until we have had an opportunity to review  
11 the comments that they're going to file any time up to  
12 midnight tonight and then wait another 5 days or 6  
13 days for them to object, and then come back in --  
14 we're going to lose our --

15 MR. LIVINGSTON: We have no objection to  
16 that.

17 JUDGE NELSON: We're going to go work out  
18 a schedule, Mr. Edwards, is it?

19 MR. EDWARDS: Yes sir.

20 JUDGE NELSON: Which is going to see that  
21 you're going to get this discovery in sufficient time  
22 to make your filing on May 14th.

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1 MR. LIVINGSTON: He asked --

2 JUDGE NELSON: I'll tell you what I'm  
3 going to do, gentlemen.

4 MR. LIVINGSTON: Your Honor, we have no  
5 dispute with Tex-Mex.

6 JUDGE NELSON: I sense here a great deal  
7 of friction and tension on the part of the parties.  
8 I'm going to take a recess with the guidelines that I  
9 want something produced today in time to enable KCS to  
10 make a midnight filing should they so choose.

11 I also want a schedule for response to Mr...  
12 Edwards' request so that he can make a meaningful  
13 filing on May 14th, and when you are ready I'll ask  
14 either Mr. Edwards or Mr. Mullins to give me a call  
15 and I suggest you work out something you can live  
16 with, otherwise it's going to be one I'll hand down  
17 that you'll have to live with and that's going to be  
18 tougher.

19 So Mr. Mullins, I don't want you to sit  
20 there insisting on every scrap of paper.

21 MR. MULLINS: Yes sir.

22 JUDGE NELSON: Because you're not going to

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1 get it and that's a dream world. I want you to focus  
2 on some particularized thing. You started now with  
3 these submissions to other parties. Maybe there are  
4 certain parties you want. Maybe you want three or  
5 four of them instead of 82, ones that are more  
6 significant where you suspect they may have said  
7 something or you have some reason to believe that you  
8 get that down and we'll see what they say about it.

9 And Mr. Edwards, your problems are going  
10 to be procedural, really, to work out the schedule  
11 that fits your May 14th filing. That's there for a  
12 reason, that filing. It's going to have to be done in  
13 such a way that you can make a meaningful filing and  
14 we're going to tailor our discovery schedule that will  
15 work out.

16 As I say, if the Applicants aren't  
17 prepared to cooperate on this, then they'll have to  
18 live with whatever I hand down which is not going to  
19 advance the ball.

20 I have nothing more to say not. I'm at  
21 the call of Mr. Mullins or Mr. Edwards and you may use  
22 this phone to call me in the office when you want to

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1 resume.

2 (Off the record.)

3 JUDGE NELSON: How do things stand now?

4 MR. LIVINGSTON: Your Honor, we have, I  
5 think, an arrangement first with regard to Tex-Mex.  
6 They wanted six calendar days for us to respond to  
7 discovery that they might serve discovery that has not  
8 yet been prepared, but would be served based on our  
9 April 29th filing. And their expectation is that  
10 they will serve that discovery on Wednesday. The six  
11 calendar days would make the discovery responses due  
12 on Tuesday. We've agreed to that. We've agreed to  
13 that assuming they will be duly filed, their discovery  
14 responses, on Wednesday and not later. And they will  
15 also file the discovery responses by --

16 JUDGE NELSON: Wednesday, May 1.

17 MR. LIVINGSTON: May 1, by 5 p.m., they  
18 will serve their discovery responses and we will serve  
19 our responses, six business, excuse me, six calendar  
20 days which would be Tuesday, the 7th. Then in  
21 anticipation that there will be disputes, Tex-Mex  
22 would like to have a hearing scheduled and their

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1 preference is to have it Thursday morning, the 9th, at  
2 9 a.m. or soon thereafter.

3 JUDGE NELSON: That's fine. I brought my  
4 calendar here.

5 Is everyone available then?

6 MR. LIVINGSTON: It's just Tex-Mex and us.

7 JUDGE NELSON: That's correct.

8 MR. LIVINGSTON: Yes, we're free to do  
9 that.

10 JUDGE NELSON: 9 a.m. on May 9th.

11 MR. EDWARDS: And we, of course, will give  
12 notice to Your Honor if we are able to cancel that.

13 JUDGE NELSON: Do that by the day before,  
14 but what's our normal -- 4 p.m.?

15 MR. EDWARDS: We will do so.

16 JUDGE NELSON: Do it so that we know  
17 what's going on.

18 MR. EDWARDS: Yes, Your Honor.

19 JUDGE NELSON: In other words, I will need  
20 a fax from you that says we will need that conference  
21 tomorrow morning and here are the issues.

22 MR. EDWARDS: Yes, Your Honor.

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1 JUDGE NELSON: Or we have resolved our  
2 problems and won't need that conference. We have to  
3 book the room, call the reporter, etc.

4 MR. EDWARDS: Yes, Your Honor.

5 JUDGE NELSON: So we'll hear from you by  
6 4 p.m. on May 8th.

7 MR. EDWARDS: Yes.

8 JUDGE NELSON: As to what your intentions  
9 are on the 9th.

10 MR. EDWARDS: Yes.

11 JUDGE NELSON: All right. And that takes  
12 care of your difficulties?

13 MR. EDWARDS: Yes, Your Honor.

14 JUDGE NELSON: How do we stand now with  
15 reference to KCS and some turnover that will help them  
16 with this midnight filing?

17 MR. LIVINGSTON: We have discussed that at  
18 some length and we've reached an arrangement and I'll  
19 try to summarize it.

20 First, they wanted presentation made by  
21 the Applicants to a number of different entities,  
22 including a group of governmental entities. One was

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1 the Department of Justice and there has been a  
2 presentation to the Department of Justice and I will  
3 endeavor to produce that today as soon as we get back.  
4 It's a highly confidential document. The request for  
5 presentation is limited to presentations after March  
6 29, 1996 but what I'm saying is the deal is in the  
7 context of post-March 29, 1996 presentation. We will  
8 give them what we have.

9 There are four other governmental  
10 entities, the Texas Railroad Commission, the DOT,  
11 Louisiana Attorney General, Louisiana Governor. They  
12 made the same request for presentations. As to those,  
13 I indicated to and where we thought -- my preliminary  
14 look was there was nothing and where there might be  
15 something, although it's possible, there's nothing in  
16 all cases. We will check on that, get back to him as  
17 promptly as week can. That's the governmental bodies.

18 He then had a list of what started as 10  
19 private entities one of which was CMA with which we  
20 have entered a settlement agreement.

21 JUDGE NELSON: Who is CMA?

22 MR. LIVINGSTON: Chemical Manufacturers

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1 Association.

2 JUDGE NELSON: Oh.

3 MR. LIVINGSTON: And that will be  
4 addressed in filings that will be made today and  
5 that's withdrawn which leaves 9 other private parties.  
6 I indicated to him where I thought there had been no  
7 presentations based on a preliminary phone call I made  
8 to somebody who is in a reasonably decent position to  
9 know, but does not have perfect knowledge. As to  
10 others, I indicated where there were discussions which  
11 would have been of a settlement kind and identified  
12 those parties for him.

13 JUDGE NELSON: How many of the 9 are we  
14 talking about where there would have been  
15 conversations.

16 MR. LIVINGSTON: Of the settlement kind?

17 JUDGE NELSON: Yes.

18 MR. LIVINGSTON: Four. And then there was  
19 one that was in sort of a category by itself where we  
20 had written a letter which I think is in fact part of  
21 the filing today with Union Carbide and he can  
22 certainly have that, of course.

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1           In addition, Mr. Mullins asked after he  
2           went through the presentations that we respond to  
3           interrogatory 91 which asks for the names and  
4           identities of various individuals and I said we would  
5           make every effort to answer that. He wanted that  
6           answered by Friday, but he thought he might refer to  
7           that in his brief, so we will try to get that to him  
8           by Friday and that really shouldn't be a problem. So  
9           that -- the sum of it where we are and I think we have  
10          -- that's the end of the dispute.

11           MR. MULLINS: We would like, in addition  
12          to that, we would like them to, Mr. Livingston to  
13          check on the production of a privilege line which  
14          we've asked for four months and never had been  
15          produced and Mr. Livingston said he would check on and  
16          get back to me. But if it exists, we would stress  
17          that it should be produced and Mr. Roach has  
18          established to Your Honor that he would produce it  
19          months ago and it never has been produced. So we've  
20          asked for production of that as well.

21           MR. LIVINGSTON: Mr. Mullins is quite  
22          right and I did undertake in our meeting a few minutes

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1 ago to check and call him back as to the status of  
2 that.

3 JUDGE NELSON: All right, anything else?

4 MR. MULLINS: And you make all good faith  
5 effort to produce those as soon as possible.

6 MR. LIVINGSTON: Well, what I'm going to  
7 try to produce today are the DOJ presentations and the  
8 other governmental entity presentations or --

9 JUDGE NELSON: If they exist.

10 MR. LIVINGSTON: Right. Now it may be  
11 that some of the governmental entities there are no  
12 documents in Washington and there may be practical  
13 problems. I just can't speak to that, but I will get  
14 the DOJ thing, I can get it today and as soon as I get  
15 back to the office. I can confirm these others.

16 JUDGE NELSON: Is there anything else then  
17 --

18 MR. MULLINS: That's fine, Your Honor.

19 JUDGE NELSON: All right.

20 MR. MULLINS: We appreciate it.

21 JUDGE NELSON: That's fine and I will see  
22 you again, I guess or somebody again possibly on May

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1 9th, if not before. But that resolves today's  
2 dispute.

3 (Whereupon, at 10:29 a.m., the meeting was  
4 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 29, 1996

Place:

Washington, DC

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

Charles R. Pyatt