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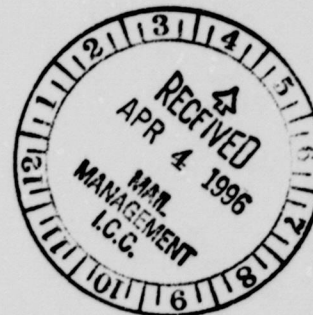
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April 4, 1996

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W., Room 1324
Washington, D.C. 20423

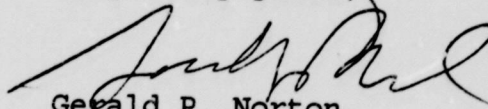


Re: Finance Docket No. 32760, Union Pacific Corp. --
Control and Merger -- Southern Pacific Rail Corp.

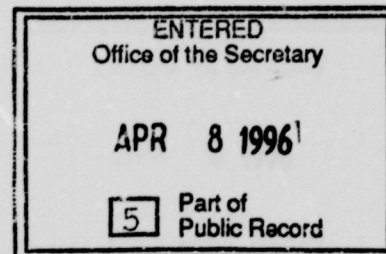
Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding are an original and 20 copies of a document designated as UP/SP-201, Applicants' First Set of Interrogatories and Document Requests To Bartlett Elevator Co.

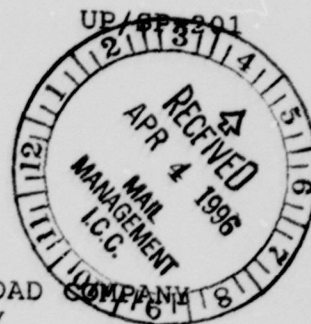
Very truly yours,


Gerald P. Norton

cc: Restricted Service List



BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD
AND MISSOURI PACIFIC RAILROAD COMPANY
-- 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

Docket No. AB-3 (Sub-No. 130)

MISSOURI PACIFIC RAILROAD COMPANY
-- ABANDONMENT --
TOWNER-NA JUNCTION LINE
IN KIOWA, CROWLEY AND PUEBLO COUNTIES, COLORADO

Docket No. AB-8 (Sub-No. 38)

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
-- DISCONTINUANCE OF TRackage RIGHTS --
TOWNER-NA JUNCTION LINE
IN KIOWA, CROWLEY AND PUEBLO COUNTIES, COLORADO

APPLICANTS' FIRST SET OF INTERROGATORIES AND
DOCUMENT REQUESTS TO BARTLETT ELEVATOR CO.

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5	Part of Public Record

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April 4, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
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-- ABANDONMENT --
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IN KIOWA, CROWLEY AND PUEBLO COUNTIES, COLORADO

Docket No. AB-8 (Sub-No. 38)

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
-- DISCONTINUANCE OF TRACKAGE RIGHTS --
TOWNER-NA JUNCTION LINE
IN KIOWA, CROWLEY AND PUEBLO COUNTIES, COLORADO

APPLICANTS' FIRST SET OF INTERROGATORIES AND
DOCUMENT REQUESTS TO BARTLETT ELEVATOR CO.

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, and
the Discovery Guidelines entered in this proceeding on
December 7, 1995, Applicants UPC, UPRR, MPRR, SPR, SPT, SSW,
SPCSL and DRGW direct the following interrogatories and
document requests to Bartlett Elevator Company ("Bartlett").

Responses should be served as soon as possible, and
in no event later than 15 days from the date of service
hereof. Bartlett is requested to contact the undersigned
promptly to discuss any objections or questions regarding

these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

DEFINITIONS AND INSTRUCTIONS

I. "Applicants" means UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW.

II. "Board" means the Surface Transportation Board.

III. "BN/Santa Fe" means the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company.

IV. "The BN/Santa Fe Settlement Agreement" means the agreement between UP and SP and BN/Santa Fe dated September 25, 1994, as supplemented by the November 18, 1995 agreement between those parties.

V. "The BN/Santa Fe Settlement Agreement Lines" means the lines that BN/Santa Fe will receive trackage rights over or purchase under the BN/Santa Fe Settlement Agreement.

VI. "CNW" means Chicago and North Western Railway Company.

VII. "DRGW" means The Denver and Rio Grande Western Railroad Company.

VIII. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda,

contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts, models, statistical statements, graphs, charts, diagrams, plans, drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes.

Further, the term "document" includes

- (a) both basic records and summaries of such records (including computer runs);
- (b) both original versions and copies that differ in any respect from original versions; and
- (c) both documents in the possession, custody or control of Eads and documents in the possession, custody or control of consultants or others who have assisted Eads in connection with this proceeding.

IX. "Bartlett" means Bartlett Elevator Company.

X. "The IC Settlement Agreement" means the agreement between UP and SP and Illinois Central Railroad Company dated January 30, 1996.

XI. "Identify," when used in relation to an individual, corporation, partnership or other entity, means to state the name, address and telephone number thereof.

"Identify," when used in relation to a document, means to

- (a) state the nature of the document (e.g., letter, memorandum, etc.);
- (b) state the author, each addressee, each recipient, date, number of pages, and title of the document; and
- (c) provide a brief description of the contents of the document.

XII. "MPRR" means Missouri Pacific Railroad Company.

XIII. "Produce" means to make legible, complete and exact copies of responsive documents and send them by expedited delivery to the undersigned counsel. The originals of responsive documents should be retained in the files of Bartlett, its counsel, or the consultants or others who have assisted Bartlett in connection with this proceeding and have documents in their possession, and made available if requested. Applicants will pay all reasonable costs for duplication and expedited delivery of documents to their attorneys.

XIV. "Relating to" a subject means referring to, discussing, describing, dealing with, consisting of, or constituting, in whole or in part, the subject.

XV. "SP" means SPT, SSW, SPCSL and DRGW.

XVI. "SPCSL" means SPCSL Corp.

XVII. "SPR" means Southern Pacific Rail Corporation.

XVIII. "SPT" means Southern Pacific Transportation Company.

XIX. "SSW" means St. Louis Southwestern Railway Company.

XX. "Shipper" means any user of rail services, including but not limited to a consignor, a consignee, and a receiver.

XXI. "Southern Pacific" means SPR and SP.

XXII. "This proceeding" means Finance Docket No. 32760 and all subdockets and related dockets.

XXIII. "UP" means UPRR and MPRR, including the former CNW.

XXIV. "UPC" means Union Pacific Corporation.

XXV. "UPRR" means Union Pacific Railroad Company.

XXVI. "The UP/SP merger" means the transactions proposed in this proceeding, including all related applications.

XXVII. "Union Pacific" means UP and UPC.

XXVIII. "The Utah Railway Settlement Agreement" means the agreement between UP and SP and Utah Railway Company dated January 17, 1996.

XXIX. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.

XXX. Documents need not be produced if they have been produced by Applicants in this proceeding.

XXXI. Produce a privilege log in accordance with the guidelines established at the December 20, 1995 discovery conference (Tr., pp. 313-14).

XXXII. References to railroads, shippers, consultants or companies (including Bartlett) include affiliates, subsidiaries, officers, directors, employees, attorneys, agents and representatives thereof.

XXXIII. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa.

XXXIV. Unless otherwise specified, these requests cover the period January 1, 1993 and thereafter.

INTERROGATORIES

1. Provide a short description of the business conducted at Bartlett's Eads facility (for example "grain elevator," "fertilizer distributor").

2. State, by year and type of grain (wheat, corn, etc.), the number of bushels of grain moved out of Bartlett's Eads facility during 1994 and 1995.

3. State, by year and type of grain (wheat, corn, etc.), the number of bushels of grain bought of sold by Bartlett's Eads facility during 1994 and 1995 which was not moved through one of the elevators listed in the answer to Interrogatory No. 1.

4. List the specific locations and types of facilities to which Bartlett's Eads facility shipped the grain identified in response to Interrogatories Nos. 2 and 3.

5. If any of the grain identified in response to Interrogatories Nos. 2 and 3 was not shipped over the Towner-NA Junction rail line, how was it shipped (for example, owned or leased truck, commercial motor carrier, etc.)?

6. List the names and addresses of the motor carriers or truck operators that trucked grain from any of the elevators listed in your response to Interrogatory No. 1 during 1994 and 1995. If there are too many to list separately, you may answer "numerous."

7. State, by year and type of fertilizer (dry, liquid, anhydrous ammonia, etc.), the tons of fertilizer Bartlett's Eads facility purchased in 1994 and 1995.

8. If Eads presently owns or leases any trucks (including truck tractors or trailers), list the type and what

you normally use each truck for. You may exclude small vehicles such as pickup trucks and vans from your answer.

9. State the names and business addresses of the facilities which believed to be competitors for the Bartlett facility at Eads. If the number of competitors is greater than five, so indicate and state the names and addresses of the firms you believe to be your five principal competitors.

DOCUMENT REQUESTS

1. Produce copies of the annual report for Bartlett at Eads for the most recent two years available. If your annual reports are not produced for this facility, any existing financial reports or statements that show the financial results of the operations of Bartlett's Eads facility for these years need be produced. This document production request covers only financial reports or statements that already exist, and does not require any such reports or statements to be created.

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Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad Company

Respectfully submitted,

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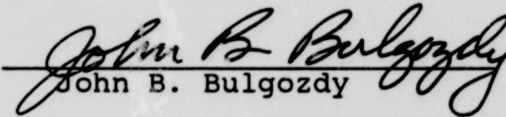
April 4, 1996

CERTIFICATE OF SERVICE

I, John B. Bulgozdy, certify that, on this 4th day of April, 1996, I caused a copy of the foregoing document to be served by facsimile and overnight delivery on Frank B. Miller, Manager, Bartlett & Co. Grain, 1401 Maine Street, P.O. Box 328, Eads, CO 81036, and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 9 of the Discovery Guidelines in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premarmer Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580


John B. Bulgozdy

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32760

4-4-96

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Item No. _____

Page Count 35

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APR # 185 185

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April 4, 1996

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
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Washington, D.C. 20423

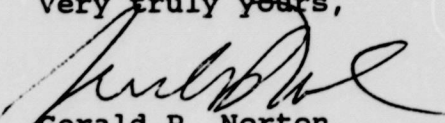


**Re: Finance Docket No. 32760, Union Pacific Corp. --
Control and Merger -- Southern Pacific Rail Corp.**

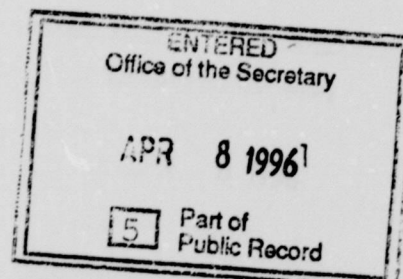
Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding are an original and 20 copies of a document designated as UP/SP-203, Applicants' Third Set of Interrogatories and Requests for Production of Documents.

Very truly yours,


Gerald P. Norton

cc: Restricted Service List



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- 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



APPLICANTS' THIRD SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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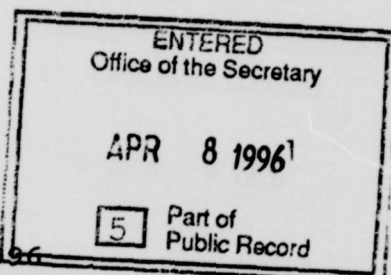
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Pacific Rail Corporation,
Southern Pacific Transportation
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April 4, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- 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

APPLICANTS' THIRD SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to 49 C.F.R. §§ 1114.26 and 1114.30, and the Discovery Guidelines entered in this proceeding on December 7, 1995, and the rulings of Judge Nelson on March 8, 1996 ("March 8 rulings"), Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW direct the following interrogatories and document requests to each party ("you") who made a filing on or about March 29, 1995, and is listed in Appendix A. You should respond to those requests designated for response by you.

Responses should be delivered as soon as possible, and in no event later than 5:00 p.m. on the sixth calendar day from the date of service hereof (see March 8 rulings, Tr. 2061). According to Judge Nelson, claims of undue burden must "be detailed as to time, money, physical limitations, geography, or any other factors making the alleged burden" (id., Tr. 2061), and you must bring documents for which claims

of irrelevance or privilege are made to a hearing on or about April 12, 1996, for review by the Administrative Law Judge and immediate production (id., Tr. 2056). You are requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

DEFINITIONS AND INSTRUCTIONS

Applicants incorporate by reference the definitions and instructions in their first set of interrogatories and requests for production of documents. [A copy of those definitions and instructions is enclosed for parties not served with a first set.]

"March 29 filings" means any filing due March 29, 1996, that you made or served in response to the Application, including documents that were put or due to put in a document depository on or about April 1, 1996, in conjunction with those filings, pursuant to the March 8 rulings, or in response to the first set of discovery requests.

INTERROGATORIES

1. To the extent not done as part of your prior discovery responses or March 29 filings, identify and describe any agreements or understandings that you have with any other party to this proceeding regarding positions or actions to be taken in or otherwise relating to this proceeding, including

any "joint defense" or "common interest" agreement, or any confidentiality agreement on which you rely in objecting to discovery requests or invoking an informers privilege or other privilege. [Routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be identified. If Conrail contends that any aspect of such agreement is privileged, state the parties to, date of, and general subject of the agreement.] [All but CR, Dow, KCS]

2. If you contend in your March 29 filing that reduction from 3-to-2 in the number of railroads serving various shippers or markets as a result of the merger is a reason for denying approval, state whether you contend that two Class I railroads would always compete less vigorously than three Class I railroads would in any given market. [All but CR, Dow, KCS]

3. The testimony of Richard Peterson on behalf of Applicants describes, at pages 172-75, the views of a number of shippers with respect to competition between a merged UP/SP and BNSF. State whether you believe that those shippers are correct or incorrect in the expectations they have expressed in their statements filed in this proceeding concerning the effects of a UP/SP merger on competition and explain the reasons for that answer. [All but CR, Dow, KCS]

4. Identify all shippers who you claim have expressed support for your position in this proceeding in your March 29 filings who are presently served at a point of origin or destination by both UP and SP directly. [All but CR, Dow, KCS]

5. If you contend that there are significant investments in improvements of its railroad that SP could or should have made, or can and should make, identify them and describe any rates of return, hurdle rates, or like standards you use for determining whether to invest in improvements in your business. [All but Govts, Assns]

6. Describe any agreements or understandings entered into between Conrail and Phillips Petroleum since November 30, 1995, relating to rail transportation rates. [Phillips]

7. To the extent not done as part of your prior discovery responses or March 29 filings, as to each power plant that your March 29 filings specifically indicate may be affected by the UP/SP merger, or that is referred to in those filings as recent situations where both SPRB and Colorado/Utah coal have been or are being used successfully in the same power plant, and as to each mine used as a source of coal used at such plant, state the tonnage, average minehead price, average delivered price, BTU content, and percentage sulphur

content of the coal used by that plant. [CPL, PS Colo., PS, S. Ant, TVA]

8. To the extent not done as part of your prior discovery responses or March 29 filings, identify the participants in the meeting referred to in the penultimate sentence on p. 16 of the Verified Statement of William L. Gebo in DOW-11. [Dow]

9. To the extent not done as part of your prior discovery responses or March 29 filings, identify all efforts taken by Dow to pursue the "follow-up discussions" referred to on p. 16 of the Verified Statement of William L. Gebo in DOW-11. [Dow]

10. To the extent not done as part of your prior discovery responses or March 29 filings, summarize the action taken by Dow concerning each item on the agenda for the meeting referred to at p. 14 in the Gebo Verified Statement. [Dow]

11. To the extent not done as part of your prior discovery responses or March 29 filings, describe all discussions between Dow and other companies about ways to finance the project referred to on p. 14 of the Gebo Verified Statement. [Dow]

12. When did Dow first consider the possibility that SP might be purchased by the UP. [See Gebo Verified Statement p. 14] [Dow]

13. To the extent not done as part of your prior discovery responses or March 29 filings, identify the "SP counterpart" referred to in the Verified Statement of Paul Carey et al., at p. 49 and any documents relating to the incident described. [CR]

14. Identify all persons (other than Hunt and Oderwald) who assisted in the preparation of the study discussed in the Hunt/Oderwald statement. [CR, KCS]

15. Identify each new location (as compared to the 1994 Waybill Sample) in the Quantanet Intercarrier Routing Model used in the study produced by Hunt and Oderwald where BN/Santa Fe was treated as able to originate and terminate traffic by reason of the BN/Santa Fe Settlement. [CR, KCS]

16. For each new location identified in response to the preceding question, state whether for purposes of the study presented by Hunt and Oderwald BN/Santa Fe was treated as able to originate or terminate traffic directly. [CR, KCS]

17. Identify and describe any and all limitations imposed as part of the study prepared by ALK Associates, Inc. on the ability of BN/Santa Fe to originate, terminate, or carry traffic, including without limitation: (a) any geographic limitation; (b) any minimum volume thresholds applied to locations; and (c) any limitations related to voluntary haulage agreements. [CR, KCS]

18. State whether railroad origins and destinations as referenced in the first full paragraph of page 4 of the verified statement of Hunt and Oderwald were defined on the basis of Business Economic Area (BEA): (a) for intermodal traffic, and (b) for automobile traffic. [CR, KCS]

19. Identify and describe all adjustments made by ALK Associates, Inc. and used in the study presented by Hunt and Oderwald to the 1994 ICC Waybill Sample or to the network used as part of the ATD model, including, without limitation, adjustments:

- a. to account for changes in railroad ownership, operations, or operating rights that have taken place since 1994.
- b. to account for rebilling of freight traffic.
- c. to model nodes where more than one Standard Point Location Code was assigned to a node.
- d. to account for intermodal traffic to and from truck hub locations. [CR, KCS]

20. Identify and explain any reassignments of tri-level and intermodal movements to new or different nodes by ALK Associates, Inc. in preparing the study presented by Hunt and Oderwald. [CR, KCS]

21. Identify and describe the classification of junction types (e.g., run through; through block; daily switching; less than daily switching) that were assigned in the Quantanet Intercarrier Routing Model used in preparation of the study produced by Hunt and Oderwald, including the basis for those classifications (e.g., average daily volume) and the impedances assigned to each classification in the final calibrated routing model. [CR, KCS]

22. Identify each new interline junction between BN/Santa Fe and another carrier created as part of the study produced by Hunt and Oderwald. [CR, KCS]

23. For each new interline junction identified in response to the preceding question, identify the junction classification and impedance values assigned in the Quantanet Intercarrier Routing Model as used in the study produced by Hunt and Oderwald. [CR, KCS]

24. Identify and describe any differences in impedance assigned to the node or nodes representing the Laredo, Texas gateway with Mexico for traffic interchanged with (a) UP and (b) The Texas Mexican Railway. [CR, KCS]

25. State whether ALK Associates, Inc. had completed its calibration of impedances for the Quantanet Intercarrier Routing Model using the 1994 Waybill (other than the ATD Model Recalibration discussed at pages 8 and 9 of the

verified statement of Hunt and Oderwald) prior to its retention by Conrail for this proceeding. [CR, KCS]

26. Identify all junctions in the waybill sample that were eliminated in the Quantanet Inter-carrier Routing Model used in the study presented by Hunt and Oderwald. [CR, KCS]

27. Identify all measures used by ALK Associates, Inc. to determine whether the Quantanet Inter-carrier Routing Model was unbiased as used in the study presented by Hunt and Oderwald. [CR, KCS]

28. Identify and describe all measurements of the quality of the Quantanet Inter-carrier Routing Model that were performed in preparation of the study presented by Hunt and Oderwald. [CR, KCS]

29. Identify and describe any comparisons that have been made by ALK Associates, Inc. over the past five years of the impact on traffic flows of a proposed change in the rail network estimated by the "ATD Model" referenced in the verified statement of Hunt and Oderwald and the actual changes in traffic flows that resulted from such change. [CR, KCS]

30. Identify any screens used by ALK Associates, Inc. as part of its estimation of market shares to eliminate routes that are considered unlikely to attract traffic, including screens applied at the time the origin, origin carrier, termination, termination carrier "quads" are formed

for the Quantanet routing model and those applied after routes are generated. [CR, KCS]

31. Describe any filtering or other process used by ALK Associates, Inc. to divert traffic from base 1994 routes to new routes after estimates were made of the market share each route is likely to attract. [CR, KCS]

32. Identify all calibrations to the ALK Advanced Traffic Diversion Model ("ATD Model") for each year from 1991 through the present, and produce all documents relating to or setting for the reason(s) for each such calibration. [CR, KCS]

DOCUMENT REQUESTS

1. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents or data relied upon by any person whose verified statement you submitted in your March 29 filings. [All but CR, Dow, KCS]

2. To the extent not done as part of your prior discovery responses or March 29 filings, produce machine-readable versions, if they exist, of documents or data you submitted as part of your March 29 filings, of documents or data included as work papers, or of documents or data relied upon by persons whose verified statement you submitted in your March 29 filings. [All but CR, Dow, KCS]

3. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies,

analyses or reports discussing benefits or efficiencies that may result from the UP/SP merger. [All but CR, Dow, KCS]

4. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, analyses or reports discussing potential traffic impacts of the UP/SP merger. [All but CR, Dow, KCS]

5. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses discussing competitive impacts of the UP/SP merger, including but not limited to effects on the following (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in or build-out options. [All but CR, Dow, KCS]

6. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing the BN/Santa Fe Settlement Agreement, the IC Settlement Agreement, or the Utah Railway Settlement Agreement. [All but CR, Dow, KCS]

7. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents found in the files of officers at the level of Vice President or above, or other files where such materials would more

likely be found, discussing conditions that might be imposed on approval of the UP/SP merger. [All but CR, Dow, KCS]

8. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing actual or potential competition between UP and SP. [All but CR, Dow, KCS]

9. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing competition between single-line and interline rail transportation. [All but CR, Dow, KCS]

10. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing the benefits of any prior Class I rail merger or rail mergers generally. [All but CR, Dow, KCS]

11. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies,

reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing the financial position or prospects of SP, if those filings discussed that subject. [All but CR, Dow, KCS]

12. To the extent not done as part of your prior discovery responses or March 29 filings, produce all communications with other parties to this proceeding discussing the UP/SP merger or the BN/Santa Fe Settlement Agreement, and all documents relating to such communications. [All but CR, Dow, KCS]

13. To the extent not done as part of your prior discovery responses or March 29 filings, produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from public officials, or any shipper or other party in this proceeding, for a position being taken or proposed or considered by you or any other party in this proceeding. [All but CR, Dow, KCS]

14. To the extent not done as part of your prior discovery responses or March 29 filings, produce all presentations, letters, memoranda, white papers or other documents sent or given to DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any other government official, any

consultant, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger. [Even if not producing them, you should identify documents submitted to law enforcement officers under an explicit assurance of confidentiality.] [All but CR, Dow, KCS]

15. To the extent not done as part of your prior discovery responses or March 29 filings, produce all notes or memoranda of any meetings with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any other government official, any consultant, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger. [You should identify but need not produce documents prepared by your counsel.] [All but CR, Dow, KCS]

16. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, analyses or reports discussing or reflecting shipper surveys or interviews concerning the quality of service or competitiveness of any railroad participating in this proceeding. [All but CR, Dow, KCS]

17. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings discussed such a condition or sale, produce all documents discussing the price to be paid for, or the value of, any UP or SP lines that might be sold pursuant to a condition to

approval of, or otherwise in connection with, the UP/SP merger. **[All but CR, Dow, KCS]**

18. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents discussing trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines, or any other line of UP or SP that you believe should or might be the subject of a proposed trackage rights condition in this proceeding. **[All but CR, Dow, KCS]**

19. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents relating to actual or estimated maintenance-and-operating costs, taxes and return-to-capital costs with respect to any of the BN/Santa Fe Settlement Agreement Lines, or any other line of UP or SP that you believe should or might be the subject of a proposed trackage rights condition in this proceeding. **[All but CR, Dow, KCS]**

20. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents relating to any agreement or understanding that is responsive to Interrogatory 1. **[All but CR, Dow, KCS]**

21. To the extent not done as part of your prior discovery responses or March 29 filings, produce all communications with Richard C. Levin, Curtis M. Grimm, James M. MacDonald, Clifford M. Winston, Thomas M. Corsi, Carol A.

Evans or Steven Salop concerning econometric analyses of rail pricing, and all documents relating to such communications, if those filings cite, rely upon, endorse or purport to agree with analyses by any of those persons. [All but CR, Dow, KCS]

22. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings discuss that subject, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing competition for traffic to or from Mexico (including but not limited to truck competition) or competition among Mexican gateways. [All but CR, Dow, KCS]

23. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents sufficient to show your financial support for, establishment of, participation in, or relationship with the "Coalition for Competitive Rail Transportation," which made a March 29 filing denominated CCRT-4. [All but CR, Dow, KCS]

24. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings discussed that subject, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing competition in freight

transportation services for shipments to or from West Coast ports. [All but CR, Dow, KCS]

25. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings disagree in any significant way with the description of SP's financial situation in the Application, produce all documents found in the files of officers at the level of Vice President or above, discussing any possible breakup or bankruptcy of SP. [All but CR, Dow, KCS]

26. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents found in the files of officers at the level of Vice President or above, discussing your reasons for opposing the UP/SP merger or seeking to acquire any portion of SP in connection with the UP/SP merger. [All but CR, Dow, KCS]

27. To the extent not done as part of your prior discovery responses or March 29 filings, produce all documents relating to any proposal you made for possible line sales or trackage rights in your favor or for your benefit as a condition to the UP/SP merger, proposal, including but not limited to (a) documents describing the proposal, (b) any market analysis with respect to the proposal, (c) any operating plan with respect to the proposal, and (d) any pro forma financial statements with respect to the proposal. [All but CR, Dow, KCS]

28. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, analyses or reports discussing the possibility of a build-in by one of the applicants (or build-out to one of the applicants) at any of your facilities referred to in your March 29 filings. [All but CR, Dow, KCS]

29. Produce all presentations to, and minutes of, your board of directors relating to the UP/SP merger or conditions to be sought by you or any party in this proceeding. [All but CR, Dow, KCS]

30. Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof. [All but CR, Dow, KCS]

31. Produce all public statements by your President or other executives at the level of Vice President or above relating to the UP/SP merger. [All but CR, Dow, KCS]

32. Produce your annual reports to stockholders for years 1991 through 1995. [All but CR, Dow, KCS]

33. To the extent not done as part of your prior discovery responses or March 29 filings, produce all presentations to, and minutes of, your board of directors relating to the UP/SP merger or conditions to be sought by you or any other party in this proceeding. [All but govt's, assns.]

34. To the extent not done as part of your prior discovery responses or March 29 filings, produce all your business plans or strategic plans, if those filings referred to the possible impact of the merger on your future business. [All but govt's, assns]

35. To the extent not done as part of your prior discovery responses or March 29 filings, produce documents relating to the meeting referred to in the penultimate sentence on p. 16 of the Verified Statement of William L. Gebo in DOW-11. [Dow]

36. To the extent not done as part of your prior discovery responses or March 29 filings, produce your files relating to (a) the BN rail car barge proposal, including any studies relating to it; (b) each build-in or build-out proposal referred to in the Gebo Verified Statement. [Dow]

37. To the extent not done as part of your prior discovery responses or March 29 filings, produce any documents discussing Mr. Carey's tour of the Harriman Center on November 29, 1994, or relating to the priority table referred to in the Carey Verified Statement at pp. 494-50. [CR]

38. To the extent not done as part of your prior discovery responses or March 29 filings, if the answer to Interrogatory 21 in applicants' second set is affirmative, produce all documents, including computer tapes, that enable the identification of traffic for which SP is the exclusive

serving carrier at the origination or the destination. [KCS]

39. Produce all geo-coded traffic data from the 1994 Carload Waybill Sample. [CR, KCS]

40. Produce all statistical analyses undertaken in developing the "trackage/haulage" coefficients reference on pages 8 and 9 of the Hunt/Oderwald Verified Statement. [CR, KCS]

41. Produce in both a paper output list and in electronic format the uncompiled computer source code and the executable version of the following software:

a. The two most recent versions of the "pre-recalibration" ATD Model, i.e., the code(s) that would have been executed prior to the "recalibration" effort described in the Hunt/Oderwald Verified Statement, including:

(1) All the hard copy and machine-readable input and output files for original runs of the "pre-calibration" program that were used to calibrate it against the 1994 Carload Waybill Sample data, and the coefficients determined from those calibrations.

(2) All the hard copy and machine-readable input and output files for original runs of the "pre-calibration" program that were used by ALK to "test[] the ATC model against the 1994 ICC Carload Waybill Sample" as described on page 6 of the Hunt/Oderwald Verified Statement, and the coefficients determined from those calibrations.

(3) All the hard copy and machine-readable input and output files for original runs of the "pre-recalibration" program that indicated the need for recalibration.

(4) All other computer programs, input files, and output files, in both paper and machine-readable form, that were used to explore the sensitivity of the coefficients in the "market share equation" to various strategies of recalibration.

b. The current version of the recalibrated ATD Model, and all intermediate versions of the ATD Model run by ALK to finalize and "tune" the final recalibrated model, including input, output, and program listings, in both paper and machine-readable form, and all machine readable versions of the input files and output files from these runs.

c. All runs of the recalibrated ATD that form the basis for the opinions expressed by Hunt/Oderwald in their Verified Statement, with these runs specifically identified as such, including input, output, and program listings, in both paper and machine-readable form, and all machine-readable versions of the input files and output files from these runs.

d. The two most recent versions of PC*Rail

e. The two most recent versions of the Princeton Transportation Network Model and the Graphic Information System ("PTNM/GIS").

f. All programs and files, both input and output, that form the basis of Figures I, Ia, Ib, Ic, Id, II, IIa, IIb, IIc, IID, in the Hunt/Oderwald Verified Statement.
[CR, KCS]

42. To the extent not done as part of your prior discovery responses or March 29 filings, produce studies, analyses, and reports concerning the blending of coals from different areas. [PS Colo, PS S. Ant., CP&L, TVA]

43. Produce studies, analyses, and reports concerning past sales or projections of future sales to Central Power & Light, and the contracts governing current coal movements to that customer. [CP&L]

44. Produce all studies, analyses or reports discussing coal sources for the blending facility at Coletto Creek, including in particular the 1992 study by Sargent & Lundy. [CP&L]

45. Produce studies, analyses and reports discussing coal sources for PSC's three Denver area power plants -- the Cherokee, Arapahoe, and Valmont Power Stations.
[PS Colo]

46. Produce a listing of each of the fossil fuel plants owned by the Tennessee Valley Authority, other than the Shawnee and Allen fossil fuel plants, where Western bituminous or sub-bituminous coal has been burned. [TVA]

47. Produce all studies, analyses or reports discussing the "developments [that] enabled Enterprise to become competitive in new markets involving rail shipments to or from Mont Belvieu" described on page 6 of the verified statement of Rudy A. Nix. [Enterprise]

48. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings discussed those subjects, produce all studies, reports or analyses, found in the files of officers at the level of Vice President or above, or other files where such materials would more likely be found, discussing (a) transport pricing or competition for chemicals or petrochemicals (i.e., any STCC 28 or STCC 29 commodity, or such commodities generally), (b) the handling of such commodities by railroads, (c) the handling of such commodities by other modes, (d) storage-in-transit of such commodities, or (e) source or destination competition, shifting of production or shipments among facilities, modal alternatives or shipper leverage as constraints on rail rates or service for such commodities. [Montell, Quantum, Shell Formosa, Geon, Chems.]

49. To the extent not done as part of your discovery responses or March 29 filings, produce all plans, studies, and analyses relating to capacity, capacity expansion, or the relocation of capacity for the production of

polyethylene or polypropylene. [Montell, Quantum, Shell, Formosa, Geon]

50. To the extent not done as part of your discovery responses or March 29 filings, produce all plans, studies and analyses relating to the transload of polyethylene or polypropylene from truck to rail at the rail origin, or from rail to truck at the rail destination. [Montell, Quantum, Shell, Formosa, Geon]

51. With respect to the statement at p. 6 of QCC-2 that, "After that merger [BN-Santa Fe] Quantum noticed that rates for the tended to migrate upwards;"

(a) provide all documents that support, qualify or contradict the statement;

(b) for all contracts for movement by rail to or from Quantum's Strang, Texas facility, entered into since the BN-Santa Fe merger, identify the rates in the winning and each losing bid, the revenues per car mile in the winning and each losing bid, date of contract and period for which the contract was or is in effect, commodity by STCC code, number of carloads, origin and destination, and routing, including the identity of any other railroads participating in the movement.

(c) for the twenty most recent contracts entered into prior to the BN/Santa Fe merger for movement by rail to or from Quantum's Strang, Texas facility, identify the

rates in the winning and each losing bid, the revenues per car mile in the winning and each losing bid, date of contract and period for which the contract was or is in effect, commodity by STCC code, number of carloads, origin and destination, and routing, including the identity of any other railroads participating in the movement.

(d) state whether you contend that after the Burlington Northern/Santa Fe merger, the winning bids for rail movements to or from Quantum's Strang, Texas, facility, migrated upwards; and, if so, provide all documents that support, qualify, or contradict that contention, and identify all movements to or from Strang that, Quantum contends, illustrate or support that contention, providing the same information as requested in (b) above. [If all such movements are included in the response to (b), then it will be sufficient to identify such movements by some clear marking in that response.] [Quantum]

52. To the extent not done as part of your prior discovery responses or March 29 filings, produce any studies, analyses or reports supporting or discussing the feasibility, cost, or any other aspect of the proposal for "neutral terminal railroads" set forth in RCT-4, e.g., pp. 19-29. [RC Tex]

53. To the extent not done as part of your prior discovery responses or March 29 filings, if those filings

address a sale of all or part of SP, produce all documents found in the files of officers at the level of Vice President or above, discussing the value or profitability of SSW. [R.C. Tex]

54. To the extent not done as part of your prior discovery responses or March 29 filings, produce all studies, reports, analyses, or plans discussing all or any part of the SP line between Lewisville, Arkansas, and Houston, Texas.

[R.C. Tex]

or records of conferences or meetings, records or reports of negotiations, diaries, calendars, photographs, maps, tape recordings, computer tapes, computer disks, other computer storage devices, computer programs, computer printouts, models, statistical statements, graphs, charts, diagrams, plans, drawings, brochures, pamphlets, advertisements, circulars, trade letters, press releases, invoices, receipts, financial statements, accounting records, worksheets, drafts, revisions of drafts, and original or preliminary notes.

Further, the term "document" includes

- (a) both basic records and summaries of such records (including computer runs);
- (b) both original versions and copies that differ in any respect from original versions; and
- (c) both documents in the possession, custody or control of Conrail and documents in the possession, custody or control of consultants or others who have assisted Conrail in connection with this proceeding.

X. "The IC Settlement Agreement" means the agreement between UP and SP and Illinois Central Railroad Company dated January 30, 1996.

XI. "Identify," when used in relation to an individual, corporation, partnership or other entity, means to state the name, address and telephone number thereof.

"Identify," when used in relation to a document, means to

Respectfully submitted,

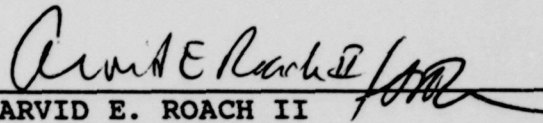
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April 4, 1996

ATTACHMENT A

DEFINITIONS AND INSTRUCTIONS

- I. "Applicants" means UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW.
- II. "Board" means the Surface Transportation Board.
- III. "BN/Santa Fe" means the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company.
- IV. "The BN/Santa Fe Settlement Agreement" means the agreement between UP and SP and BN/Santa Fe dated September 25, 1994, as supplemented by the November 18, 1995 agreement between those parties.
- V. "The BN/Santa Fe Settlement Agreement Lines" means the lines that BN/Santa Fe will receive trackage rights over or purchase under the BN/Santa Fe Settlement Agreement.
- VI. "CNW" means Chicago and North Western Railway Company.
- VII. "Conrail" means Consolidated Rail Corporation.
- VIII. "DRGW" means The Denver and Rio Grande Western Railroad Company.
- IX. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda, contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes

- (a) state the nature of the document (e.g., letter, memorandum, etc.);
- (b) state the author, each addressee, each recipient, date, number of pages, and title of the document; and
- (c) provide a brief description of the contents of the document.

XII. "MPRR" means Missouri Pacific Railroad Company.

XIII. "Produce" means to make legible, complete and exact copies of responsive documents and send them by expedited delivery to the undersigned counsel. The originals of responsive documents should be retained in the files of Conrail, its counsel, or the consultants or others who have assisted Conrail in connection with this proceeding and have documents in their possession, and made available if requested. Applicants will pay all reasonable costs for duplication and expedited delivery of documents to their attorneys.

XIV. "Relating to" a subject means referring to, discussing, describing, dealing with, consisting of, or constituting, in whole or in part, the subject.

XV. "SP" means SPT, SSW, SPCSL and DRGW.

XVI. "SPCSL" means SPCSL Corp.

XVII. "SPR" means Southern Pacific Rail Corporation.

XVIII. "SPT" means Southern Pacific Transportation Company.

XIX. "SSW" means St. Louis Southwestern Railway Company.

XX. "Shipper" means any user of rail services, including but not limited to a consignor, a consignee, and a receiver.

XXI. "Southern Pacific" means SPR and SP.

XXII. "This proceeding" means Finance Docket No. 32760 and all subdockets and related dockets.

XXIII. "UP" means UPRR and MPRR, including the former CNW.

XXIV. "UPC" means Union Pacific Corporation.

XXV. "UPRR" means Union Pacific Railroad Company.

XXVI. "The UP/SP merger" means the transactions proposed in this proceeding, including all related applications.

XXVII. "Union Pacific" means UP and UPC.

XXVIII. "The Utah Railway Settlement Agreement" means the agreement between UP and SP and Utah Railway Company dated January 17, 1996.

XXIX. Discovery responses should be supplemented when a supplemental response is required pursuant to 49 C.F.R. § 1114.29.

XXX. Documents need not be produced if they have been produced by Applicants in this proceeding.

XXXI. Produce a privilege log in accordance with the guidelines established at the December 20, 1995 discovery conference (Tr., pp. 313-14).

XXXII. References to railroads, shippers, consultants or companies (including Conrail) include affiliates, subsidiaries, officers, directors, employees, attorneys, agents and representatives thereof.

XXXIII. All uses of the conjunctive include the disjunctive and vice versa. Words in the singular include the plural and vice versa.

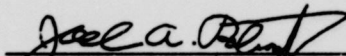
XXXIV. Unless otherwise specified, these requests cover the period January 1, 1993 and thereafter.

CERTIFICATE OF SERVICE

I, Joel A. Rabinovitz, certify that, on this 4th day of April, 1996, I caused a copy of the foregoing document to be served by hand or facsimile transmission on all parties to whom it is directed so as to be received by 5 p.m., and by first-class mail, postage prepaid, or a more expeditious form of delivery, on all other parties of record appearing on the restricted service list in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premarmer Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580;



Joel A. Rabinovitz

STB

FD

32760

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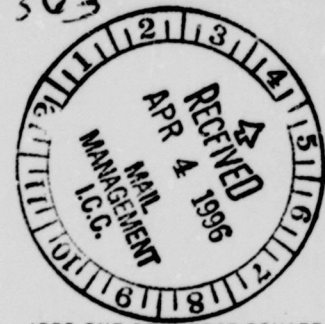
81363

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HARKINS CUNNINGHAM

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PHILADELPHIA, PA 19103-7042
215 851-6700
FACSIMILE 215 851-6710

April 4, 1996

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W., Room 1324
Washington, D.C. 20423

Re: Finance Docket No. 32760, Union Pacific Corp. --
Control and Merger -- Southern Pacific Rail Corp.

Dear Mr. Williams:

Attached for filing in the above case is an original and 20 copies of Exhibit A to UP/SP-200, Applicants' Second Set Of Interrogatories And Requests For Production Of Documents, which was inadvertently omitted from the original filing. We apologize for any inconvenience this may have caused.

Very truly yours,

Joel A. Rabinovitz

cc: Hon. Jerome Nelson
Parties of record appearing on the restricted service list

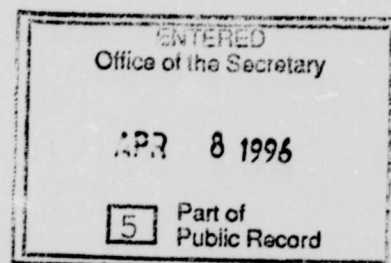


Exhibit A

SK&A

Executive Consultants
Telephone No. (202) 371-1111
Telex No. (202) 843-4888

**WORK PRODUCT
PREPARED UNDER DIRECTION
OF OUTSIDE COUNSEL
PRIVILEGED & CONFIDENTIAL**

**SHIPPER QUESTIONNAIRE
COMPETITIVE CONCERNS OF THE
PROPOSED UNION PACIFIC/SOUTHERN PACIFIC MERGER**

Company Name:	Date:
Address:	SKA Surveyor:
Contact Name:	
Contact Title:	
Telephone No: ()	
Fax No: ()	
Notes (e.g. will call back at 4)	

My name is David Fetsuga and I am working with Sammis, King & Associates, which is a transportation consulting firm in Washington, D.C. We have been retained by the Kansas City Southern Railroad to survey shippers concerning competitive issues regarding the proposed Union Pacific/Southern Pacific ("UP/SFP") merger. We believe that the merger could significantly reduce your transportation options and create rail transportation price increases throughout North America, but we are taking a survey to determine your views on this merger.

- o Have you considered the potential impact of the UP/SFP merger on your business?

Yes _____
No _____

- o Has anyone contacted you regarding the pending merger?

Yes _____
No _____

If so, who? _____

The survey consists of a few short statements. For consistency and with a focus on brevity, these can be answered as either agree, disagree, or I don't know. The survey is designed to reflect your company's overall view of the impact effects on competition. To ensure that your answers are treated confidentially, the survey results will be compiled and presented to the Transportation Board at a summary level. These things will not be available to officers or employees of any railroad. They will be seen only by the surface Transportation Board (previously known as the ICC) and outside counsel who have signed a protective order. The survey is very short and should only take a few minutes of your time, but if you would like me to FAX you a copy of the survey before we begin, I will be happy to do so now.

(1) Do UP and SP compete with each other?

Agree _____ Disagree _____ Don't know _____

If agree,

A. Does your company benefit from competition between UP and SP?

Yes _____ No _____

B. What rail corridors are affected by this competition?

C. What commodities are affected by this competition?

2. Would you agree that rail competition in general results in either lower rates or better service to shippers.

Agree _____ Disagree _____ Don't know _____

If agree,

Does your company benefit directly from rail competition by having either lower rates or better service?

Yes _____ No _____

PRIVILEGED & CONFIDENTIAL

- (3) For your company is either truck or water an effective substitute for rail competition?

Yes _____ No _____ Don't know _____

If so, to what degree? _____

- (4) Do you agree that any shippers receive significant value from having current SP&SF competition and may be harmed by the merger, even though they are also served by a third railroad on some routes.

Agree _____ Disagree _____ Don't know _____

- (5) Do you agree that shippers who are served by either SP or UP and have the other railroad located nearby receive significant value from having UP&SF competition? (e.g., this could be through actual or threat of: truck trans-loading; build-out of a rail spur; ability to shift production across multiple plants located on SP or UP; competition in product market with a firm located on the other railroad.)

Agree _____ Disagree _____ Don't know _____

- (6) The previous Burlington Northern ("BN") merger settlement, provided service through trackage rights to some shippers who are now served directly by either SP or UP. Given the current proposed UP&SF merger, do you believe that trackage rights are an effective remedy for the reduced competition due to the merger. (An example of trackage rights is BN's trains operating on UP&SF track usually controlled by SP&SF.)

Agree _____ Disagree _____ Don't know _____

- (7) Do you believe that competition between BN&SF and UP&SF will not be vigorous.

Agree _____ Disagree _____ Don't know _____

Do you believe that many shippers could be harmed by tacit collusion between these dominant railroads.

Agree _____ Disagree _____ Don't know _____

- (8) Do you believe that shippers need additional competitive rail access, preferably provided by a railroad which owns the tracks, to lessen the competitive harms from the merger.

Agree _____ Disagree _____ Don't know _____

- (9) Do you believe that UP and/or SP used either leverage or have "cut deals" to an attempt to win support from shippers.

Agree _____ Disagree _____ Don't know _____

We suggest that the most effective way for you to express your competitive concerns about the LSPRP merger would be for you to file a Verified Statement from your company with the Federal Surface Transportation Board (STB). (STB is the surviving agency of the ICC.) A Verified Statement is simply a letter which is signed and notarized by a representative of your company stating your concerns and the remedy you request. Your Verified Statement will not be subject to cross examination in hearings. These filings will not be available to officers or employees of any railroad. They will be seen only by the Surface Transportation Board (previously known as the ICC) and outside counsel who have signed a protective order.

We will be glad to help you prepare the statement at no cost to you. We can also provide you with an outline and a sample Statement if you wish. Because of the time limit on filings, we believe that a target date for the preparation of an initial Statement draft should be no later than February 20, 1988.

If you would like our assistance in the Statement preparation or simply a review of your filing, we encourage you to FAX your draft to us for review on 202-342-4028. Can we count on your support in this area and do you wish to take advantage of our offer of assistance in your Statement preparation?

Support: Yes _____ No _____ Other _____

Assistance: Yes _____ No _____ Other _____

Type: _____

VERIFIED STATEMENT OUTLINE

1. Submitted on your company letterhead.
2. Identify the following:
 - * Person signing document
 - * Position and responsibilities of person signing document
 - * Brief background of his or her transportation experience
3. Identify the following:
 - * Name and address of your company
 - * Name of parent company if applicable
 - * Relative size of your company
 - * Annual volume of rail shipments if known (in dollars or weight)
4. Brief description of the company and its operations.
5. Briefly describe the UP and/or SP service provided to your company and indicate whether UP and SP compete on service and/or price.
6. Briefly describe the negative competitive impact of the merger on your company.
7. Briefly describe the action you wish the Surface Control Board to consider.
8. After the Statement is finalized, have it either notarized or sworn to.

Please provide a draft Verified Statement by FAX (202-642-4966) to Snively, King & Associates - Attn. J.W.Currin. Mr. Currin will see that it is reviewed and make arrangements to provide you with any recommended changes. You may wish to file your statement with the Surface Transportation Board ("STB") directly, but to expedite the process, Mr. Currin can arrange to have your Statement filed with the STB as a confidential document. This will protect your Statements from disclosure to officers or employees of the rail roads or other third parties who have not signed a Confidential Agreement.

THE SURFACE TRANSPORTATION BOARD, THE SUCCESSOR AGENCY TO THE ICC, IN PERFORMING ITS COMPETITIVE ANALYSIS, WILL RELY ON EVIDENCE AND EXAMPLES IN SUPPORT OF THE FOLLOWING POINTS:

1. UP and SP compete with each other.
2. This competition provides lower rates and better service to shippers.
3. Truck and water competition are ineffective substitutes for rail for many shippers.
4. Many shippers receive significant value from current SP/UP competition, and will be harmed by the merger, even though they are also served by a third railroad.
5. Many shippers who are served by SP or UP only, but have the other railroad located nearby, receive significant value from UP/SP competition. This could be through actual or threat of: truck transloading; build-out of a rail spur; ability to shift production across multiple plants located on SP or UP; competition in product market with a firm located on the other railroad.
6. The BN settlement, which provides service through trackage rights to many shippers now served by SP and UP, will not effectively ameliorate the reduction in competition from the merger.
7. Competition between BN/SP and UP/SP will not be vigorous; many shippers will be harmed by track collisions between these dominant railroads.
8. Shippers need additional competitive access, ideally by a railroad which owns the tracks, to ameliorate the competitive harms from the merger.
9. The merger applicants have used leverage or "cut deals" to attempt to win support from shippers.

BE AS SPECIFIC AS POSSIBLE WITH RESPECT TO THOSE COMMODITIES AND THOSE CORRIDORS WHERE YOU, THE SHIPPER, BENEFIT FROM UP AND SP COMPETITION

YOUR LETTERHEAD

Verified Statement
Example 1

**VERIFIED STATEMENT
OF
JOHN DOE
on behalf of
XYZ PRODUCTS, INC.**

My name is John Doe and I am Transportation Manager of XYZ Products, 1000 USA Drive, Suite 300, Houston, Texas. I am responsible for managing our transportation service. I am also responsible for negotiating shipping rates for our company. I have been employed in the widget business for fifteen years and have a vast understanding of how to get our products from mill origin to customer destinations.

XYZ Products, Inc. is a wholesale widget company whose parent company is Very Large Widget Company of Austin, Texas. XYZ, Inc. supplies large widget products to all areas of the United States. We ship widgets all across the United States with a large percentage of our shipments going to Peoria, IL. Our sales volume is approximately \$50,000,000 per year, of which approximately 50% of our products are shipped by Rail. We also buy from other mills in the inland northwest, (Portland, St. Maries, Plummer, Silverbow, Kamiah, Baker, Lewiston, Eastport).

Our primary mill is located on the UP mainline with an SP line nearby. We also have the ability to ship by SP. Our SP shipments are either trucked to the SP terminal facilities or loaded directly at our spur and then switched to the SP track. Our decision on whether we ship by UP or SP is determined by the service availability and/or rates charged by each carrier. If the proposed UP/SP merger is approved, we will lose our ability to seek lower rates or improved service from these now competing rail carriers, therefore we strongly oppose the UP/SP merger.

This merger will limit our alternative rail service availability unless another rail carrier is allowed to provide us competitive service over the tracks being eliminated by the merger. Rather than abandoning the tracks, which will no longer be needed by a combined UP/SP company, they should be sold to other rail companies at a very minimum price, as they are a national infrastructure resource which should not be lost.

XYZ Products, Inc. feels that a UP/SP merger would harm our sales efforts and decrease our competitiveness by providing more limited service to our markets at a potentially higher cost. Currently our ability to get competitive rates to SP destinations is somewhat hampered by the SP's lack of interest in negotiating joint sales due to prior agreements with the BN. We are concerned that the UP/SP merger will further limit competition as there will now be even fewer shipping alternatives.

We, at XYZ Products, Inc. believe that the proposed merger will create real harm while providing only very limited benefits if any to us or our customers. Our company does not support the UP/SP merger application.

I, John Doe, declare under penalty of perjury that the foregoing is true and correct. Further I certify that I am qualified and authorized to file this verified statement on behalf of XYZ Products, Inc. Executed on February 29, 1995.

John Doe

YOUR LETTERHEAD

**Verified Statement
Example ii**

**Verified Statement
of
John D. Doe
on behalf of
Widget Processing Company
and its affiliate,
Widget Transportation Service**

As Director of Transportation for Widget Transportation Company (WTC) and its affiliate, Large Widget Transportation Service, I am responsible for the freight activities for the corporation. I have a degree in Transportation from Texas A&M University and fifteen years of experience in transportation management.

WTC is the largest manufacturer of Automotive "after market" parts in the United States. Our finished product is shipped to automotive parts centers all over the U.S. In addition to truck service, we utilize intermodal service on inbound raw materials and box cars on outbound shipments of finished products. WTC has twenty facilities located in four states. The facilities that are directly served by the UP and/or the SP and are located in Chicago, Houston, Laredo and Kansas City.

Our decision on whether we ship by UP or SP is determined by the service availability and/or rates charged by each carrier. If the proposed UP/SP merger is approved, we will lose our ability to seek lower rates or improved service from these now competing rail carriers, therefore we strongly oppose an UP/SP merger.

We believe that the proposed merger will impact the following areas:

- o We believe that the elimination of a competitor will only increase transit times.
- o We believe that there will be a decrease in equipment availability as one of our equipment supply alternatives will be eliminated.
- o The combined UP/SP will be less inclined to provide real price competition to the BN/SF, than if they stand alone, since any decrease in rates by either dominant railroad will be met by the other.

Page 2

- o We believe that our shipping cost will increase as the combined UP/SP Company will now have a monopoly on some of our shipping routes, where truck shipments are not a viable alternative.

This merger will limit our alternative rail service availability unless another rail carrier is allowed to provide us competitive service over the tracks being eliminated by the merger. Rather than abandoning the tracks, which will no longer be needed by a combined UP/SP company, they should be sold to other rail companies at a very minimum price, as they are a national infrastructure resource which should not be lost.

We believe that the proposed merger between the UP and SP would not be in our best interests, or in the interests of our suppliers and customers, therefore, we strongly oppose the UP/SP merger.

Signature: _____

Page 3

VERIFICATION

STATE OF _____)

COUNTY OF _____)

John D. Doe being first duly sworn, deposes and says that he has read the foregoing document, knows the facts asserted therein, and that the same are true as stated.

John D. Doe

Subscribed and sworn before me this 29 day of February, 1986

Notary Public

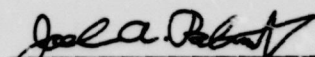
My Commission Expires:

CERTIFICATE OF SERVICE

I, Joel A. Rabinovitz, certify that, on this 4th day of April, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or a more expeditious form of delivery, on all parties of record appearing on the restricted service list in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premarmer Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580;



Joel A. Rabinovitz

STB

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32760

4-4-96

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Item No. _____

Page Count 4

Apr #190

ORIGINAL

81362



Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760, et al.

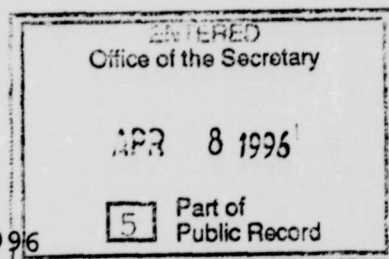
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND
MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--SOUTHERN
PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION
COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

PETITION TO INTERVENE,
AND TO FILE COMMENTS

Comes now Clarence R. Ponsler, ^{1/} for and on behalf of General
Committee of Adjustment-United Transportation Union for The Alton
and Southern Railway Company (ALS), and petitions for leave to
intervene in these consolidated proceedings, to file the attached
verified statement, and to become a party of record.

This protestant is primarily concerned with F.D. No. 32760
(Sub-No. 3). Protestant intends to submit a brief after full
development of the record.

The attached verified statement indicates that good cause exists
for granting intervention at this time, so as to file comments
contained in the verified statement, and to otherwise become a party
of record.



April 4, 1996

Respectfully submitted,

Gordon F. MacDougall
GORDON F. MACDOUGALL
1025 Connecticut Ave., N.W.
Washington, DC 20036

Attorney for Clarence R. Ponsler

1/ General Chairman for UTU on The Alton and Southern Railway Company,
with offices at 1017 W. Main Street, Belleville, IL 62220. Tel:
(618) 257-8174.

VERIFIED STATEMENT
OF CLARENCE R. PONSLER

My name is Clarence R. Ponsler. I serve as General Chairman for General Committee of Adjustment, United Transportation Union (UTU), for The Alton and Southern Railway Company (ALS).

I am a switchman on ALS, and commenced service in February, 1962. Beginning in the late 1960's, I have held a number of offices in Local 1929 of UTU, or its predecessors, representing ALS employees. I became General Chairman only very recently, on January 30, 1996. My UTU duties are on a part-time basis. I am a working General Chairman.

The reasons I seek to intervene in these proceedings, and to file these comments in the form of a verified statement, a few days after the March 29, 1996 deadline is owing to several factors. Foremost, it was our understanding in UTU on the ALS that the UTU International would be handling the opposition, and that our interests would be protected by that organization in its opposition. I was not advised until after the deadline that the UTU International would be supporting the Union Pacific-Southern Pacific merger. The second factor is that I only recently became General Chairman, and was not fully aware of procedures for submitting evidence to protect the interest of our unit.

I have read the operating plan and other information contained in Volume 3 of the Application. It is clear that the Union Pacific and Southern Pacific plan would create havoc for personnel employed by ALS in train operations. I noted the pages which indicate these changes to include the following, but not limited to the following:

Pages 21-2, 32-3, 36, 42-8, 50, 53, 67-8, 74-8, 81, 83, 85, 91, 93, 118, 124-7, 129-30, 132-3, 135-9, 141, 158-50, 154, 156-9, 161-3, 178-9, 181, 183, 185-93, 197, 207-9, 222-7, 230-1, 239, 241, 255, 260, 265, 365-6, 373, 379, 390-1, 401, 409, 411-2, 415, 417-9, 422.

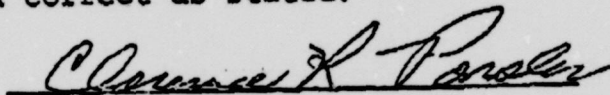
I am advised that Union Pacific and Southern Pacific propose to control ALS in Finance Docket No. 32760 (Sub-No. 3), Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company--Control Exemption--The Alton & Southern Railway Company. (Appl., Vol. 5, pp. 75-81).

Because of the substantial rerouting of traffic, and diversion of business from ALS, it is important that the ALS control phase of these proceedings be considered with the employee concerns in the primary application, in determining whether certain implementing agreements should be required should the Board approve the applications and impose employee conditions. ALS today is jointly owned by Union Pacific and Southern Pacific or their affiliates. I anticipate that our brief will develop this point when the complete record is made by all parties.

ALS employees would be seriously impacted by the unification of Union Pacific with Southern Pacific, and common control of ALS. The applications should be denied. If the applications are denied, employee conditions (which have never been fully adequate in the past) would be unnecessary.

VERIFICATION

Under the penalties of perjury, I affirm that the foregoing verified statement is true and correct as stated.

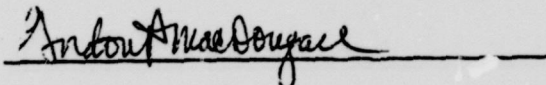


CLARENCE R. PONSLER

Dated at
Belleville, IL
April 4, 1996

CERTIFICATE OF SERVICE

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.



GORDON P. MacDOUGALL

Dated at
Washington, DC
April 4, 1996

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Item No. _____

Page Count 2

Mar # 545

JAM

COMMISSIONER DIST. NO. 1

DR. RICHARD A. MARTINEZ
COMMISSIONER DIST. NO. 2

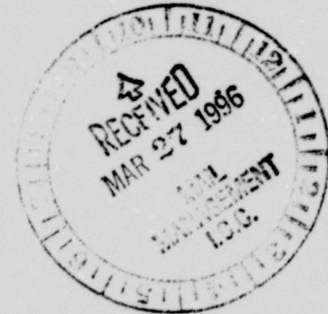
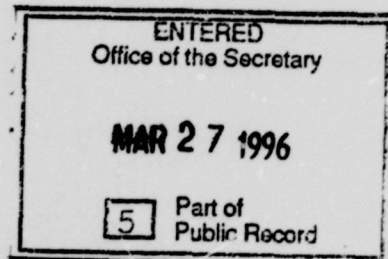
KATHY FARLEY
COMMISSIONER DIST. NO. 3



BOARD OF COUNTY COMMISSIONERS

March 26, 1996

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Attn: Finance Docket 32760
1201 Constitution Avenue NW
Washington, D.C. 20423



FD 32760

RE: UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND
MISSOURI PACIFIC RAILROAD COMPANY - - 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 - - NOTICE OF PUEBLO COUNTY JOINING THE
MOUNTAIN-PLAINS COMMUNITIES AND SHIPPERS COALITION

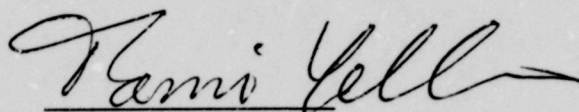
Dear Secretary Williams:

As directed by Julia Fahr of your office, we are enclosing an original and five (5) copies of this letter. Pueblo County filed its Notice of Intent to Participate in the above-captioned proceeding on January 12, 1996. By this written Notice, Pueblo County, hereby withdraws as a party of record in the above-captioned proceeding and serves notice that Pueblo County is joining the Mountain - Plains Communities and Shippers Coalition which is already a party to said proceeding. Legal Counsel for the Coalition is the Law Firm of McFarland and Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606-2902.

Should you have any questions about the above information, please do not hesitate to contact me at (719) 583-6630.

PUEBLO COUNTY COURT HOUSE
215 W. 10TH ST., PUEBLO, CO 81003-2992
(719) 583-6000
FAX. (719) 583-6549

Respectfully Submitted,
Office of the Pueblo County Attorney



TAMI J. YELLICO

Registration No. 019417

Chief Assistant Pueblo County Attorney

215 West 10th Street

Pueblo, Colorado 81003

Telephone: (719) 583-6630

pc: Mountain-Plains Communities and Shippers Coalition
Thomas Mc Farland, Esquire

MLTY01.SAM
T:\PD\LET

STB

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Item No. _____

Page Count _____

MAR # 423

JUTMAN SANDERS
ORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

801 PENNSYLVANIA AVENUE, N.W.
SUITE 640
NORTH BUILDING
WASHINGTON, D.C. 20004
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2957

JOHN R. MOLM

DIRECT: 202-274-2957

March 22, 1996



HAND DELIVERED

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control & 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*

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are an original and twenty copies of The Kansas City Southern Railway Company Motion for an Order Requiring the Submission of a Preliminary Draft Environmental Assessment ("KCS-31").

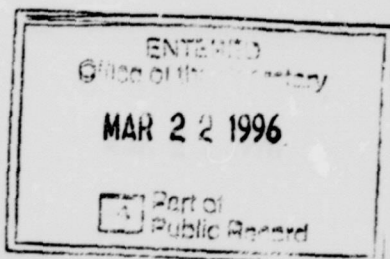
Also enclosed is a 3.5 inch Word Perfect diskette containing the text of KCS-31.

Sincerely yours,

John R. Molm

Enclosures

cc: The Honorable Jerome Nelson



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL 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

**MOTION FOR AN ORDER REQUIRING THE SUBMISSION OF
A PRELIMINARY DRAFT ENVIRONMENTAL ASSESSMENT**

Richard P. Bruening
Robert K. Dreiling
The Kansas City Southern
Railway Company
114 West 11th Street
Kansas City, Missouri 64105
Tel: (816) 556-0392
Fax: (816) 556-0227

John R. Molm
William A. Mullins
Margaret L. Claiborne
Fitzgerald A. Veira
Troutman Sanders LLP
601 Pennsylvania Avenue, N.W.
Suite 640 - North Building
Washington, D.C. 20004-2609
Tel: (202) 274-2950
Fax: (202) 274-2994

March 22, 1996

Attorneys for
The Kansas City Southern Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Union Pacific Corporation, Union)
Pacific Railroad Company, and)
Missouri Pacific Railroad Company)
-- Control and Merger --)
Southern Pacific Transportation)
Company, St. Louis Southwestern)
Railway Company, SPCSL Corp., and)
the Denver and Rio Grande Western)
Railroad Company)

Finance Docket No. 32769

**MOTION FOR AN ORDER REQUIRING THE SUBMISSION OF
A PRELIMINARY DRAFT ENVIRONMENTAL ASSESSMENT**

Pursuant to Rule 49 C.F.R. § 1117.1, The Kansas City Southern Railway Company ("Kansas City Southern" or "KCS") respectfully requests that the Surface Transportation Board ("STB"), through the Section of Environmental Analysis ("SEA"), (1) find that the Environmental Report, as submitted, is inadequate and (2) require submission of a Preliminary Draft Environmental Assessment ("PDEA") or comparable Environmental Report, in connection with operations proposed under the (i) Notice of Exemption for Settlement-Related Trackage Rights (Sub-No.1); (ii) Petition for Exemption for Settlement-Related Line Sales (Sub-No.2); (iii) Application for Terminal Trackage Rights (Sub-No.9); and (iv) related access by BNSF over the New Orleans Public Belt Railroad (hereinafter collectively referred to "Related Trackage Proposals").

While KCS recognizes that UP and SP "Applicants" filed an environmental report^{1/} concerning their merger, no Environmental Report or PDEA was filed concurrent with the Related Trackage Proposals. The Environmental Report submitted in support of the proposed merger of UP and SP does not address the significant operational changes and safety issues presented by the Related Trackage Proposals. Thus, the Merger Environmental Report is completely deficient.

A PDEA or comparable Environmental Report must be prepared because the Related Trackage Proposals involving UP/SP, BNSF, KCS and the New Orleans Public Belt Railroad ("NOPB") result in significant operational changes that will, at a minimum, exceed the energy and air thresholds established by the Interstate Commerce Commission ("ICC") at 49 C.F.R. §§ 1105.6(b)(4) and 1105.7(e)(4)-(5). Moreover, notwithstanding the thresholds, the potential impact of the Related Trackage Proposals on the quality of the human environment alone warrants environmental documentation. 49 C.F.R. § 1105.6(b)(4)(ii).

The Related Trackage Proposals impact the quality of the human environment because of the numerous and substantial operational changes on the Houston to Memphis

^{1/} In support of the application for approval of the Union Pacific-Southern Pacific merger, UP and SP have submitted to the Surface Transportation Board ("STB") an Environmental Report prepared by Dames & Moore and dated November 30, 1995 (hereinafter referred to as the "Merger Environmental Report"). The Merger Environmental Report, however, does not address changes in operations, increases in rail traffic and densities, and the potential impacts on shipments of hazardous commodities as a result of the Related Trackage Proposals.

and Houston to New Orleans rail lines. These operational changes highlight the need for the SEA to examine and analyze the potential for accidents, incidents and derailments due to increased rail traffic and increased maintenance, and changes in dispatch and directional flow which result in congestion and increased delays within municipal limits and at grade crossings. These concerns are heightened by the fact that many of the operational changes involve the transportation of hazardous commodities.

A verified statement regarding the Related Trackage Proposals is simply not an option in this case as such a statement is precluded by the significant changes in the carrier operations. Accordingly, Kansas City Southern requests that the STB require, at a minimum, preparation of a PDEA that will address the changes in operations and safety issues attendant to the Related Trackage Proposals.

I. Background

Concurrent with the UP and SP primary control and merger application, UP, SP, and BNSF filed Related Trackage Proposals in order to fully implement the trackage rights settlement agreement between UP/SP and BNSF. The Related Trackage Proposals would, among other things, (1) grant BNSF limited trackage rights over UP/SP rail lines between Houston and Memphis and between Houston and Iowa Junction, Louisiana; (2) give BNSF the right to acquire the rail line currently owned by SP between Iowa Junction, Louisiana and Avondale, Louisiana, with the reservation of full trackage rights along that corridor for UP/SP; and (3) grant BNSF terminal trackage rights in

Shreveport, Louisiana and Beaumont, Texas. In addition, BNSF will seek access over the NOPB in order to reach Eastern carriers at New Orleans. As explained by Neal Owen, a BNSF witness, in his deposition, "UP/SP has an obligation in terms of the settlement agreement to make sure that BN/SF does have a route to interchange with eastern carriers at New Orleans." In addition, the Illinois Central has agreed to support any request by BNSF to use NOPB. See redacted Agreement between UP/SP and Illinois Central Railroad Company, dated January 30, 1996, art. 3.

According to Applicants, the Related Trackage Proposals are necessary to address competitiveness issues along various corridors, including the Houston to Memphis and Houston to New Orleans corridors. Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., Finance Docket No. 32760 (Decision No. 9) (ICC Served December 27, 1995).

Applicants and BNSF, however, failed to file a PDEA or any other Environmental Report concerning these Related Trackage Proposals. In support of their application for approval of the UP and SP merger, UP and SP have submitted to the STB a Merger Environmental Report prepared by Dames & Moore and dated November 30, 1995. However, because the Merger Environmental Report fails to address the effects of BNSF operations under the Related Trackage Proposals, and fails to address the environmental significance of these related proposals on BNSF, UP/SP, KCS and NOPB (including changes in operations, increases in rail traffic and densities, and the potential impact of

accidents, incidents and derailments), the Merger Environmental Report is wholly inadequate.

A. Proposed Changes in Operations

The full scope of the operational changes is impossible to predict, at this time, because BNSF has not submitted an operating plan as part of the record in this proceeding. Thus, the facts set forth in this subsection of this Motion for a PDEA reflect a limited review of the total operational impacts resulting from the Related Trackage Proposals.

The primary Trackage Rights Agreement establishes a landlord/tenant-type relationship between UP/SP and BNSF and results in major operational changes on rail segments between Houston and Memphis, and between Houston and Avondale, Louisiana. Under the Agreement, BNSF will be subject to the dispatching and operating schedules of UP/SP while operating on UP/SP rail segments between Houston and Memphis and Houston and Iowa Junction. Likewise, UP/SP will be subject to the dispatching and operating schedules of BNSF while operating on the BNSF rail segment between Iowa Junction and Avondale. Moreover, BNSF (and UP/SP) will be subject to KCS dispatch and scheduling in Beaumont and Shreveport. In New Orleans, the NOPB will be in control of dispatching and scheduling. These changes will present severe operating problems. As Mr. Richard Peterson testified in deposition:

[UP has centralized its] dispatchers at the Harriman dispatching Center in Omaha. It is very advantageous to have a dispatcher control a contiguous line of railroad, sort of the way air traffic controllers work. We would find a lot of problems develop at points of interface. . . . For example, we would be dispatching our trains . . . and then all of sudden the train would have to change his radio frequency and pick up the BNSF . . . and talk to him for 100 miles . . . and then talk to the railroad dispatcher for the 100 miles and then change again to another dispatcher. And that's just the kind of thing we're trying to avoid . . . you want controlled movement for the through movement of trains so that you can make the proper decisions on priorities and you don't want that black hole kind of thing created in the middle there. So just the initial going back and forth between our control and another railroads control Its just too many changes from one to the other in a short distance would cause problems. (Deposition Tr. at 1053-1055).

Similarly, in connection with scheduling, BNSF witness Neal Owen was asked to elaborate on his use of the term "operating conflict." Mr. Owen testified in deposition that:

If you have to use a main track at a particular time when there are a large number of through trains on that main track, you may have an operating conflict The same thing is true with shipper loading practices. Many shippers will have a loading line or unloading line And they want that disturbed only once a day or whatever period is involved And they don't want disruption to that loading line two or three times a day, they would prefer it only once a day. (Deposition Tr. at 97-98).

Mr. Owen testified that in Shreveport BNSF would be required to get permission from the KCS yard master to move onto the KCS tracks. (Deposition Tr. at 218). Mr. Owen also stated that the "control of the UP/SP dispatcher is superseded by KCS control over [the Shreveport] segment. And the settlement agreement would give way to whatever agreement exists between SP and KCS on the dispatch on that particular territory (Shreveport)." (Deposition Tr. at 220).

In addition, along the Houston to Memphis corridor, the UP and SP propose to change the primary directional flow of rail traffic. As proposed by UP and SP, the SP line between Houston and Memphis will operate in a southerly direction. The UP line that runs parallel to the SP line would be operated in a northerly direction. This planned directional flow for UP and SP, however, contains an exception for local traffic and for BNSF's operation between Houston and Memphis. Under this exception, BNSF's and SP's local rail traffic will be authorized to operate both north and south along the rail line with a southerly directional flow.

B. Increases in Rail Traffic and Densities

As with the operational changes, increases in rail traffic resulting from the Related Trackage Proposals are impossible to predict because BNSF has not submitted an operating plan into the record. The facts set forth in the Merger Environmental Report, as submitted, fail to comprehensively address the increases in rail traffic because there are no facts presented about BNSF operations. First, there is no evidence in the record about the amount of traffic BNSF estimates that it will capture from UP/SP. Nor is there any evidence about increased BNSF traffic which results from growth. Finally, the evidence relating to internal re-routing is not based on a BNSF operating plan or traffic data in this proceeding. Whatever evidence exists is based on UP/SP estimates and certain data from the BNSF merger proceeding. (Deposition Tr. at 62-65). In this regard, Mr. Owen testified that he had no specific knowledge about how much SP traffic

is open to BNSF competition. (Deposition Tr. at 15-16). As Mr. Owen testified in his deposition, his verified statement:

was not designed to be . . . an operating plan per se in the context of ICC regulations. (Deposition Tr. at 24). [The statement] was not shipper specific, we conducted no shipper interviews in conjunction with this, we did not have a traffic study . . . (Deposition Tr. at 37, 49-50, and 55-56). And growth traffic is really treated separately in plans such as this. So there has been no consideration of growth in what I've stated here, economic growth. (Deposition Tr. at 252).

As it is, the merger of UP and SP alone will result in a significant increase in rail traffic along a number of rail segments within the UP/SP system. Merger Environmental Report, Vol. 6, Part 1 at p. 7. The increased traffic is derived from a number of sources including the rerouting of train traffic within the consolidated system, diversions from other rail and non-rail carriers, and abandonment of certain rail segments. Merger Environmental Report, Vol. 6, Part 1 at p. 7.

Due to these new traffic sources, the Merger Environmental Report estimates that 70 lines will experience increases in rail traffic in excess of the STB thresholds at 49 C.F.R. § 1105.7(e)(4-5), including, for example, the segment between Iowa Junction, Louisiana and Beaumont Texas. Merger Environmental Report, Vol. 6, Part 1, Table 1, pp. 11-13. The merger will increase rail traffic between Iowa Junction and Beaumont, by 73.9%,^{2/} an increase of 11 trains per day. Merger Environmental Report, Vol. 6, Part 2, Section 1.1.3, p. 7. Traffic at the Lake Charles Rail Yard, which is located

^{2/} This percentage increase is measured in gross ton miles per year.

between Iowa Junction and Beaumont, would increase 85.9%, an increase of over 100 cars per day. Merger Environmental Report, Vol. 6, Part 3, Table 1-5, p. 16.

Additionally, the traffic increases between Texas and points north and east is significant. Evidence in this proceeding indicates that the corridors between Texas, Louisiana, and Illinois will handle the second largest traffic flow within the combined UP/SP system.^{3/} Verified Statement of Richard Barber, Tables 5 & 6, pp. 414, 416. Clearly absent from the above data is the additional impact of rail traffic associated with the Related Trackage Proposals.

While the UP/SP merger alone will result in a significant increase in rail traffic along a number of rail segments within the UP/SP system, the Related Trackage Proposals with BNSF will exacerbate the situation. The Trackage Rights Agreement will impact traffic levels between Houston and Memphis and Houston and New Orleans by adding an additional carrier to those corridors. In some cases, the increase in traffic occurs on already over-burdened rail lines. For example, a 1995 Louisiana Department of Transportation study noted that at the East Bridge Junction, located on the NOPB rail line entering New Orleans, is the "principal bottleneck in Louisiana's railroad network."

^{3/} In 1994, 22,557,000 tons of freight were moved by rail from Texas to Louisiana and 27,608,000 tons were moved from Louisiana to Texas]. The volume of freight transported from Illinois to Louisiana was 47,516,000 tons and from Illinois to Texas was 22,557,000 tons. Except for the Washington to Oregon flow (41,614,000 tons), the movement of freight between Texas, Louisiana and Illinois represent, by far and away, the largest flows of traffic. Verified Statement of Richard Barber, Table 4, p. 412.

Statewide Intermodal Transportation Plan, State of Louisiana Department of Transportation and Development, October 1995, p. 51. As stated in the study:

The Junction is owned by the New Orleans Public Belt Railroad (NOPB), and links directly with Illinois Central trackage. Maintenance and operation of the Junction is governed principally by agreements between these two railroads. East Bridge Junction is, however, the state's major rail gateway because it provides, in close proximity, linkage among the Southern Pacific and Union Pacific (via NOPB's Huey Long Bridge), the Norfolk Southern (and via the NS, CSX), NOUPT (Amtrak), and NOPB's mainline. The actual movement of trains across the Junction involves decisions by NS, IC and UP officials. In addition, several high volume roadway grade crossings are located nearby. As a result, the safety and efficiency of both highway and rail operations (both private and public), for both freight and passengers, are affected.

The addition of BNSF traffic to this NOPB line will make this existing problem worse.

UP, SP and BNSF have proposed no rail upgrades in the Houston to New Orleans and Houston to Memphis corridors in or to handle the increase in traffic from BNSF operations. A number of rail construction projects are proposed in conjunction with the UP/SP merger to accommodate certain increases in rail traffic. However, the only measures proposed along the Houston to New Orleans line and the Houston to Memphis line are common point connections which involve the connection of one existing rail line to another existing rail line (usually connections between UP and SP lines). Merger Environmental Report Vol. 6, Part 1, Section 1, Table 5, pp. 17-22. See also Vol. 6, Part 5, Section 2.2, p. 28. These common point connections do nothing to help handle the increase in traffic from BNSF operations.

C. Shipments of Hazardous Commodities

Because of increased traffic density, and operations by two carriers under the control of constantly shifting dispatchers, there is a need for the SEA to conduct a thorough examination and analysis of the increased risks, safety issues, and real and potential environmental impacts associated with shipments of hazardous commodities. These issues and potential impacts have not been addressed by the Applicants or BNSF in a PDEA or other Environmental Report. Again, due to the lack of a BNSF operating plan, the facts set forth in this subsection reflect a limited view of these problems.

The second largest volume of rail traffic in the consolidated UP/SP system would move between Texas, Louisiana and Illinois. Texas, Louisiana and Illinois are ranked first, third and fourth respectively in terms of chemical production in the U.S.,^{4/} and are among the top U.S. producers of petroleum products.^{5/} According to the U.S. Chemical Industry Statistical Handbook, 1995, rail was used to ship 142 million tons of chemicals and allied products. *Id.* at 157. However, due to the lack of an operating plan, the anticipated shipments of hazardous commodities and any potential risks resulting from the operations of BNSF under the Related Trackage Proposals remain unknown. These issues and a comprehensive factual analysis must be addressed by Applicants and BNSF in a

^{4/} U.S. Chemical Industry Statistical Handbook, 1995, p. 155.

^{5/} In 1995, Harris County, Texas (which includes Houston) alone produced over 3.4 million barrels of crude oil. Railroad Commission of Texas Statistics on Monthly Crude Oil Production by County. Over 84 million barrels of crude oil were produced in Louisiana in 1995. State of Louisiana Department of Natural Resources, 1995 Annual Oil and Gas Report.

PDEA or other Environmental Report. In this regard it is important to note the fact that the segment of track that runs between Iowa Junction and Beaumont passes through the center of at least six towns (including Lake Charles, Louisiana and Beaumont, Texas) and passes through a number of residential areas. Merger Environmental Report Vol.6, Part 2, Section 2.39.2, pp. 52-54.

II. The BNSF Failed to File a PDEA or other Environmental Report Required by the Expedited Schedule and/or 49 C.F.R. Part 1105

Under the STB's expedited procedural schedule requirements, and in order for the STB to fulfil its responsibilities under the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., the STB requires that merger applications contain certain environmental information. See Union Pacific Corporation, et al. -- Control And Merger -- Southern Pacific Rail Corporation, et al., Finance Docket No. 32760 (Decision No. 6), 1995 ICC LEXIS 273 (ICC Served October 19, 1995). The regulations require an Environmental Report for (i) "[o]perational changes that would exceed any of the thresholds established in § 1105.7(e)(4) or (5);" or (ii) "[a]n action that would normally require environmental documentation." 49 C.F.R. § 1105.6(b)(4)(i),(ii). Even for actions that generally require no environmental documentation, "the Commission may decide that a particular action has the potential for significant environmental impacts." 49 C.F.R. § 1105.6(d). "Environmental Report" is defined as "a document filed by the applicant(s) that: (1) provides notice of the proposed action; and (2) evaluates its environmental impacts and

any reasonable alternatives to the action." 49 C.F.R. § 1105.4(g). Section 1105.7(e) outlines the minimum elements that must be included in an Environmental Report.

Applications involving significant operational changes must include a PDEA. See Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., Finance Docket No. 32760 (Decision No. 6), 1995 ICC LEXIS 273 (ICC Served October 19, 1995). Normally a PDEA is required at the outset of a proceeding because of the limited time-frame. Id. In fact, the filing of a PDEA normally is a predicate to the expedited schedule. See Burlington Northern, Inc., et al. -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (Decision No. 9) (ICC Served February 3, 1995).

Although a PDEA may be viewed as somewhat less burdensome than an Environmental Report, the PDEA must include (1) a detailed description of the proposed action and alternatives considered; (2) a description of the existing environment; (3) a discussion of the potential environmental impacts; (4) a summary of responses by various federal, state, and local environmental agencies; and (5) any recommended mitigation.^{6/} See Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail

^{6/} Generally, a PDEA must include all the information required by 49 C.F.R. § 1105.7 and § 1105.8, - the same type of information required for the traditional Environmental Report. See New Procedures in Rail Acquisitions, Mergers and Consolidations, Ex Parte No. 282 (Sub-No. 19), 1995 ICC LEXIS 5 (Jan. 27, 1995). Thus, the basic requirements of a PDEA and an Environmental Report are essentially the same.

Corporation, et al., Finance Docket No. 32760 (Decision No. 12), 1996 ICC LEXIS 10 (ICC Served February 15, 1996).

In the discussion of potential environmental impacts, a PDEA or Environmental Report must include, among other things, the effects of the proposed action on public health and safety. 49 C.F.R. § 1105.7(e)(1) and (7). If hazardous materials are expected to be transported, the report must identify the materials, the quantities, frequency of service, whether the chemicals when mixed could react to form more hazardous compounds, the applicant's safety record, the applicant's spill response contingency plans, and the likelihood of an accidental release of hazardous materials. 49 C.F.R. § 1105.7(e)(7).

A PDEA or Environmental Report must also describe actions proposed to mitigate any adverse environmental impacts. 49 C.F.R. § 1105.7(e)(10). The PDEA or Environmental Report must include all of the above information "except to the extent that the applicant explains why any portion(s) are inapplicable." 49 C.F.R. § 1105.7(e).

The Applicants have not submitted any documentation that meets these requirements. In fact, neither the Applicants nor BNSF have submitted any evidence that addresses the issues concerning the operations to be taken under the Related Trackage Proposals. The PDEA or Environmental Report that Applicants and BNSF must prepare and submit must address, perhaps most importantly, any increased risk to public health and safety that will result from the increases in rail traffic and changes in operations associated with the Related Trackage Proposals. The PDEA or Environmental Report

must also address reasonable alternatives to the Related Trackage Proposals other than the "no action" alternative.

The following discussion addresses each of these elements.

A. The PDEA or Environmental Report Must Describe the Proposed Action

A discussion of the proposed action and alternatives must be included in the PDEA or Environmental Reports. According to 49 C.F.R. § 1105.7(e), the PDEA or Environmental Report must "[d]escribe the proposed action, *including the commodities transported . . . and any possible changes in current operations or maintenance practices.*" 49 C.F.R. § 1105.7(e)(1) (emphasis added).

1. The Description of the Proposed Action Must Set Forth the Commodities Transported on the Tracks Affected by the Related Trackage Proposals as well as the Overall Impact within the Consolidated System

Applicants must submit information describing the commodities to be shipped under the Related Trackage Proposals, and must describe the impact of these shipments on the proposed UP/SP rail system. As stated above, in 1994, UP made 420,000 shipments of hazardous materials and SP made 305,000 shipments of hazardous materials. Merger Environmental Report, Vol. 6, Section 7.2.3, p. 54. Applicants admit that the quantities of commodities shipped likely will increase as a result of the merger. Merger Environmental Report, Vol. 6, Part 1 (Executive Summary), p.3. A significant

percentage of the increased traffic as a result of the merger likely will include chemicals and/or petroleum products classified as "hazardous commodities." This fact, coupled with a significant increase in rail traffic resulting from BNSF operations under the Related Trackage Proposals, indicates a need for the SEA to conduct a thorough examination and analysis of any safety precautions that are needed along corridors that carry such freight.

This essential information regarding the types and quantities of commodities shipped, and the mechanisms and plans in place to assure they are handled responsibly, must be included in the PDEA. Without this information, the STB cannot conduct a complete environmental analysis.

2. The Discussion of the Proposed Action in the PDEA or Environmental Report Must Fully Address Changes in Operation & Maintenance that Will be Made in Connection with the Related Trackage Proposals

Because BNSF failed to submit an operating plan regarding the Related Trackage Proposals,^{2/} it is impossible to determine the full scope and effect of these proposals. Despite their failure to file an operating plan, Applicants and BNSF must prepare a PDEA or Environmental Report that, at a minimum, addresses the addition of BNSF as a new carrier to tracks currently owned and operated by UP, SP, KCS and NOPB. It

^{2/} Given the increase in rail traffic on many of these lines, the change in dispatching and scheduling rights, the changes in dispatchers and directional flow, the STB should require BNSF to submit an Operating Plan pursuant to 49 C.F.R. §1180.8(a).

also must address the impact of significant changes to rail operations under the Related Trackage Proposals.

As discussed above, the proposed Related Trackage Proposals will create a landlord/tenant-type relationship between the grantor and grantee pursuant to which the grantee of the rights will be subject to the dispatching and operating schedules of the grantor. Also, as a result of the Related Trackage Proposals, both UP/SP and BNSF will be subject to constant changes in dispatching operations along the corridors between Houston and Memphis and, particularly, Houston and New Orleans, as aptly explained by Mr. Peterson. These are significant operational changes which could result in delays and increases in safety-related risks.

The PDEA or Environmental Report also must address issues such as the change from two-way traffic to a system of primarily one way traffic, particularly where BNSF and UP/SP local traffic will not be subject to the directional restrictions. The significant operational changes resulting from the Related Trackage Proposals must be examined and analyzed by the SEA and must be addressed in the PDEA or Environmental.

B. The PDEA or Environmental Report Must Assess the Existing Environment and Potential Impacts Thereto by Adequately Addressing the Public Health and Safety Issues Presented by Increased Rail Traffic Resulting from the Related Trackage Proposals

The potential public health and safety issues associated with the Related Trackage Proposals must not be given short shrift when rail safety is an important consideration.

In fact, an express goal of Congress in regulating the railroad industry is "to operate transportation facilities and equipment without detriment to the public health and safety." 49 U.S.C. § 10101a(8).

The ICC rules provide that the PDEA or Environmental Report must "[d]escribe *any* effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings)." 49 C.F.R. § 1105.7(e)(7) (emphasis added). As discussed above, the PDEA or Environmental Report must address increases in traffic associated with the proposed Related Trackage Proposals. Also to be taken into account is the condition of any of the tracks on which the increased traffic will run.^{8/}

The PDEA or Environmental Report must address safety issues associated with the shipment of hazardous commodities to be transported or handled. Specifically, the PDEA or Environmental Report must provide substantial evidence of any increased risk of accidents involving hazardous commodities as a result of increased rail traffic or operational changes in order to allow the STB to undertake a thorough examination and analysis. In addition, there needs to be evidence and an analysis of any consequences of such accidents and means of prevention.

^{8/} While some of these issues, such as the condition of the tracks, are conditions that predate the Agreement, the ICC has addressed pre-existing conditions in Environmental Assessments and Impact Statements in the past and has exercised its discretion to require mitigation of those conditions where they are compounded by the proposed action. Burlington Northern, Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (ICC Served August 23, 1995).

C. The PDEA or Environmental Report Must Address Reasonable Alternatives to the Proposed Action

Given the increases in rail traffic and changes in operational conditions, the PDEA or Environmental Report must include reasonable, feasible alternatives that could improve safety and reduce the risk of accidents. As a result of increases in rail traffic and densities created by the merger, the predicted increase of accidents on the UP/SP system is at least 25 accidents per year. Merger Environmental Report, Vol. 6, Part 1, Section 7.2.2, p. 53.

Thus, the PDEA or Environmental Report should identify alternatives to those actions that will increase traffic, especially along those segments where the risk of occurrence and potential severity of accidents is greatest. To this end, the PDEA or Environmental Report should evaluate alternatives to the trackage rights arrangements along the Gulf Coast rail lines where the granting of such rights will significantly increase rail traffic and densities and significantly change operations. KCS submits that the primary alternative to be evaluated is the alternative of divestiture or sale of the proposed trackage rights lines between Houston and Memphis and Houston and New Orleans.

D. The PDEA or Environmental Report Must Identify Sufficient Mitigation Measures to Address Public Health and Safety Issues Associated with Increased Traffic on Existing Lines

Finally, the PDEA or Environmental Report must identify measures that will mitigate the potential public health and safety issues associated with increased traffic due

to the Related Trackage Proposals. For example, BNSF must prepare an Emergency Response Plan to cover the line segments to which it will gain access.

IV. The Related Trackage Proposals Do Not Qualify for a Verified Statement as such Statements are Precluded when Significant Operational Changes are involved

A verified statement that the Trackage Rights Agreement meets an exemption is simply not an option in this case, as such a statement is precluded by the significant changes in the carrier operations outlined in Sections I, II and III above. 49 C.F.R. 1105.6(c)(2).

V. The STB Should Exercise Its Authority to Require UP, SP, and BNSF to Prepare and Submit a Preliminary Draft Environmental Assessment With Respect To the Related Trackage Proposals Between UP/SP and BNSF

In reviewing the Application, the STB has a duty to ensure that adequate consideration is given to environmental factors and that the analysis of environmental impacts satisfies the requirements of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4332, as implemented by the Board at 49 C.F.R. § 1105.1 *et seq.* For merger Applications and related Applications, the PDEA or Environmental Report is the first step in the STB's analysis of the environmental impacts associated with the proposed action.

As mentioned above, under the STB's expedited procedural schedule requirements, and in order for the STB to fulfil its responsibilities under the National Environmental

Policy Act, 42 U.S.C § 4332(2)(c), the STB requires applications involving significant operational changes to include a PDEA. If a PDEA or other adequate Environmental Report is not submitted, the STB is authorized to refuse to process the application.

Moreover, the STB has explicit authority to find that the PDEA or Environmental Report is inadequate under 49 C.F.R. Part 1105. Section 1105.2 specifically grants the Chief of the Section of Energy and Environment (now the Section of Environmental Analysis) the authority "to recommend [to the Commission] rejection of environmental reports not in compliance with these rules." 49 C.F.R. §1105.2. Furthermore, Section 1105.7(f) specifically provides that the "Commission may require applicants to submit additional information regarding the environmental or energy effects of the proposed action."

A PDEA (which UP, SP and BNSF have failed to submit) is necessary for the STB to fully evaluate the potential environmental impacts associated with the proposed action, the alternatives to the proposed actions, and whether approval of the Application would significantly affect the quality of the human environment.

KCS recognizes that the STB is operating under an expedited schedule to review the proposed UP/SP merger. Therefore, KCS is raising these environmental issues at this point to minimize delay to the expedited schedule.^{2/}

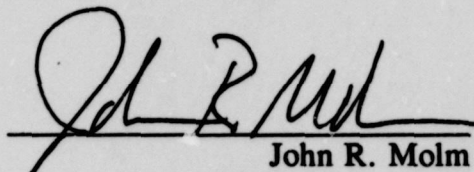
^{2/} Nonetheless, the STB itself has acknowledged that the need to satisfy the Board's obligations under NEPA significantly outweighs the public interest in expediting approval of proposed actions. See, e.g., Burlington Northern Railroad Company -- Construction and Operation Exemption -- Macon and Randolph Counties, MO, Finance Docket No. 32229, September 13, 1993.

VI. Conclusion

For the foregoing reasons, KCS respectfully requests that the STB require UP, SP and BNSF to prepare and submit a Preliminary Draft Environmental Assessment or comparable Environmental Report in connection with the Related Trackage Proposals.

Respectfully submitted this 22nd day of March, 1996

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The Kansas City Southern
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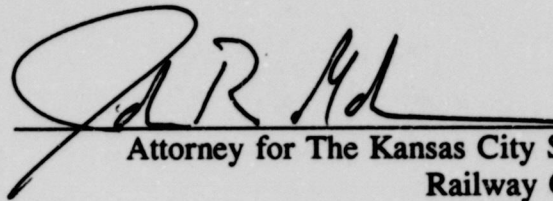
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March 22, 1996

Attorneys for
The Kansas City Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Motion For An Order Requiring The Submission Of A Preliminary Draft Environmental Assessment" was served this 22nd day of March, 1996, by hand delivery, to attorneys for Applicants and by depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party of record.



Attorney for The Kansas City Southern
Railway Company

PROCEDURAL SCHEDULE

November 30, 1995	Primary application filed.
December 29, 1995	Commission notice of acceptance of primary application and related applications published in the <u>Federal Register</u> on or before this date.
January 16, 1996	Notice of intent to participate in proceeding due.
January 29, 1996	Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due.
March 29, 1996	Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. DOJ and USDOT comments due.
April 12, 1996	Notice of acceptance (if required) of inconsistent and responsive applications published in the <u>Federal Register</u> .
April 29, 1996	Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application and related applications due.
May 14, 1996	Rebuttal in support of inconsistent and responsive applications due.
June 3, 1996	Briefs due, all parties (not to exceed 50 pages).
July 2, 1996	Oral argument (at Commission's discretion).
July 3, 1996	Voting Conference (at Commission's discretion).
August 12, 1996	Date of service of final decision.

STB

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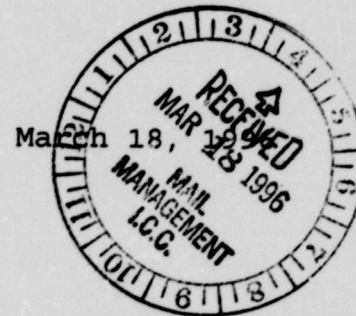
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ORIGINAL

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VIA HAND DELIVERY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

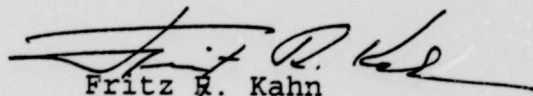
Enclosed for filing in Finance Docket No. 32760, Union Pacific Corporation, et al.,--Control and Merger--Southern Pacific Rail Corporation, et al., are the original and twenty copies of the Petition to Reopen of Eagle County, Colorado, et al.

Extra copies of the Petition and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed envelope.

By copy of this letter, service is being effected upon counsel for each of the parties.

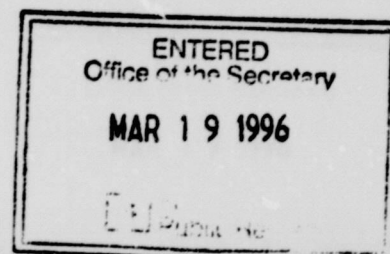
If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: All parties
Arvid E. Roach, II, Esq. (additional copy by fax)
Paul A. Cunningham, Esq. (additional copy by fax)
Mr. George J. Roussos (additional copy by fax)



ORIGINAL

EGL-5

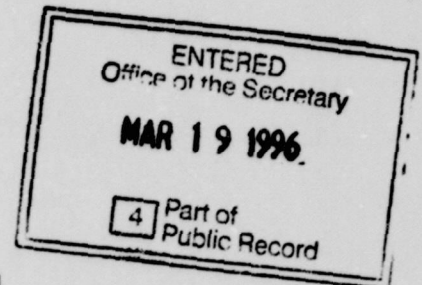
BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423



Finance Docket No. 32760

UNION PACIFIC CORPORATION, et al.,
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, et al.

EXPEDITED ACTION REQUESTED



PETITION TO REOPEN
OF EAGLE COUNTY, COLORADO, et al.

Petitioners, the Boards of County Commissioners of the Counties of Eagle and Lake, State of Colorado, and the Towns of Avon, Eagle, Gypsum, Minturn, Red Cliff and Vail, pursuant to 49 C.F.R. 1115.3(b)(3), petition for reconsideration of the Decision of the Board, served March 15, 1996, Decision No. 19, on the ground that it involved material error, and in support thereof Petitioners state, as follows:

1. By their Petition and Notice, filed March 4, 1996, Petitioners sought leave to file a responsive application to acquire the Tennessee Pass line; neither the Applicants nor anyone else opposed the granting of the relief Petitioners sought.

2. The filing of the Petition and Notice was prompted by the filing of the notices of intent to file responsive applications submitted by Montana Rail Link ("MRL") and Wisconsin Central Ltd. ("WC"), each of which had indicated an interest in acquiring the Colorado railroad lines formerly operated by the Denver and Rio Grande Western Railroad Company and now owned by the Southern Pacific Transportation Company ("SP"), with the notable exception of the Tennessee Pass line.

3. In its decision, the Board noted that in the meantime MRL filed a clarification, noting its interest in acquiring the Tennessee Pass line. WC, however, has filed no such clarification and, therefore, must be assumed to have no interest in acquiring the Tennessee Pass line.

4. The Board's decision does not allow for the possibility that the Board will approve the WC responsive application, for it was in anticipation of such action by the agency that the Petitioners sought the relief that their Petition and Notice was intended to provide them. If the WC responsive application were to be approved by the Board, the fate of the Tennessee Pass Line would be rendered uncertain, for WC would not acquire the property, and SP, which would continue to own it, would have little incentive to render service over it.

5. The Board erred in believing that the financial assistance provisions of 49 U.S.C. 10905 afford Petitioners adequate relief, for, even though the Board may authorize the proposed abandonment of the Tennessee Pass Line, there is no assurance that the SP will

consummate the abandonment. As the Board well knows, its abandonment authorizations are permissive and not mandatory, and, unless Petitioners were able to file their responsive application, there would be no way for Petitioners to acquire the Tennessee Pass line if the SP chose not to abandon it.

WHEREFORE, Petitioners request that the Board reconsider and reverse its Decision of March 15, 1996, and that it permit Petitioners to file out of time their notice of intent to file a responsive application.

Respectfully submitted,

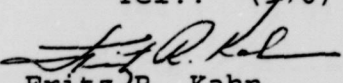
THE BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF EAGLE, STATE OF COLORADO

THE BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF LAKE, STATE OF COLORADO

TOWN OF AVON, MUNICIPAL CORPORATION
TOWN OF EAGLE, MUNICIPAL CORPORATION
TOWN OF GYPSUM, MUNICIPAL CORPORATION
TOWN OF RED CLIFF, MUNICIPAL CORPORATION
TOWN OF VAL, MUNICIPAL CORPORATION

By their attorneys,

James R. Fritze
Eagle County Attorney
P. O. Box 850
Eagle, CO 81631
Tel.: (970) 328-8685

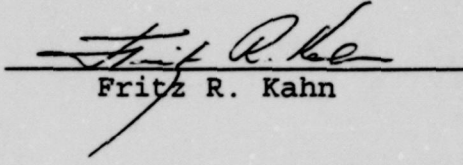

Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-8037

Dated: March 18, 1996

CERTIFICATE OF SERVICE

Copies of the foregoing Petition this day were served by me by mailing copies thereof, with first-class postage prepaid, to counsel for each of the parties.

Dated at Washington, DC, this 18th day of March 1996.


Fritz R. Kahn

STB

FD

32760

3-14-96

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Item No. _____

Page Count 6

Mar # 288

KECK, MAHIN & CATE

FILE NUMBER Z9990-005

DIRECT DIAL (202) 789-8931

61513
1201 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3919
(202) 789-3400
FAX (202) 789-1158

March 12, 1996



Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: F.D. No. 32760-UP-SP Merger Application
Environmental Analysis Project
(City of Reno - Northern Nevada)

Dear Mr. Williams:

Enclosed please find an original and 20 copies of the City of Reno's Motion for Extension of Time (RENO-3) for which expedited consideration is requested.

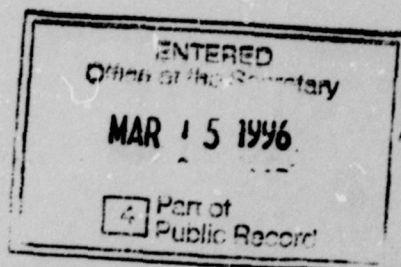
An additional copy is enclosed so that a file-stamped copy may be returned to the City.

Thank you.

Very truly yours,

Paul H. Lamboley

PHL/ss
Enclosures



A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO, ILLINOIS HOUSTON, TEXAS LOS ANGELES, CALIFORNIA NEW YORK, NEW YORK
PEORIA, ILLINOIS SAN FRANCISCO, CALIFORNIA OAKBROOK TERRACE, ILLINOIS SCHÄUMBURG, ILLINOIS

(RENO-3)

UNITED STATES OF AMERICA

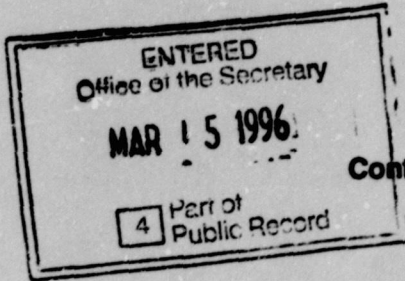
**Before the
SURFACE TRANSPORTATION BOARD**

F.D. No. 32760

**Union Pacific Corporation et al. –
Control and Merger – Southern Pacific Corporation et al.**

MOTION TO EXTEND TIME

(EXPEDITED CONSIDERATION REQUESTED)



The City of Reno, by and through counsel, hereby requests an expansion of time in which to file its comments, now due March 29, 1996 under the procedural schedule of Decision No. 9.

The City requests an extension of time in which to file its initial comments until at least April 29, 1996.

This request is made for principally two reasons:

- (1) Recognizing that the proposed merged operations meet or exceed applicable thresholds, on March 5, 1996 the Union Pacific agreed with the City to undertake an engineering study of options to mitigate the impact on public health, safety and environment; and
- (2) Although the operations permitted under the agreement between the BNSF and merger applicants Union Pacific (UP) and Southern Pacific (SP), meet or exceed applicable thresholds, neither BNSF nor merger applicants UP or SP have filed appropriate environment assessment information required for an agreement of that scope and substance.

On March 6, 1996, City's counsel spoke with UP's counsel to report on the March 5, 1996 meeting and agreement for 30 day study, and to also request extension of time beyond March 29, 1996 for City to file its initial comments because of the study.

UP counsel indicated stipulation was unlikely, but would review the matter with the UP and advise. With no response to date, it is presumed UP does not agree to an extension.

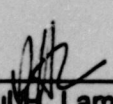
Earlier, by letter to the Section of Environmental Analysis (SEA) dated February 16, the City noted that the BNSF/UP/SP agreement would ordinarily require an environmental assessment unless otherwise exempted. The City inquired of SEA whether an exemption existed in this case. (A copy of the City's February 16, 1996 letter is attached as Item A.)

On March 5, 1996, SEA advised the UP that a preliminary draft environmental assessment (PDEA) must be filed on or before March 29, 1996 for qualifying agreements. It appears the BNSF/UP/SP agreement qualifies by reason of its scope and substance. (A copy of the SEA's March 5, 1996 letter is attached as Item B.)

In order to have the opportunity to adequately address the potential adverse public health and safety, and environmental impacts of the proposed merged operations as well as the BNSF/UP/SP agreement in its initial comments, the City requests extension in order to allow the City and UP to complete engineering studies, and also to obtain BNSF-related environmental data, the submission of which is not due until March 29, 1996.

Respectfully submitted,

Of Counsel:
Keck, Mahin & Cate
1201 New York Avenue, N.W., Ste. PH
Washington, D.C. 20005-3919



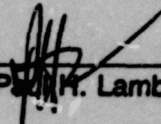
Paul H. Lamboley, Esq.
1201 New York Ave., N.W., Ste. PH.
Washington, D.C. 20005
Telephone: (202) 789-8931
Fax: (202) 789-1158

Counsel for City of Reno

Dated: March 12, 1996

Certificate of Service

I hereby certify that I have served the foregoing notice to Arvid E. Roach II and Paul A. Cunningham, Esq. by facsimile and all parties of record on the service list in this proceeding by first class mail, postage prepaid this 14th day March 1996.



Paul H. Lamboley

1201 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20003-3919
(202) 789-3400
FAX (202) 789-1158

KECK, MAHIN & CATE

FILE NUMBER Z9990-005

DIRECT DIAL (202) 789-8931

February 16, 1996

BY MESSENGER

Elaine K. Kaiser
Chief, Section of Environmental Analysis
Surface Transportation Board
1201 Constitution Avenue, N.W., Room 3219
Washington, D.C. 20423

Re: F.D. No. 32760 UP-SP Merger Application
Environmental Analysis Project.
(City of Reno - Northern Nevada)

Dear Ms. Kaiser:

In reviewing the Comments on the Primary Application filed by the BNSanta Fe (BNSF-1), I noted the projected level of operations anticipated by the BNSF under its agreement with the Union Pacific and Southern Pacific.

The projected BNSF operations in the Central Corridor outlined in BNSF-1 suggest an increase in traffic volume and in train frequency (at least twelve (12) additional trains/day), which will impact Northern Nevada in general and the City of Reno in particular. In combination with UP-SP proposed operations, this would raise train frequency from thirteen (13) trains/day to thirty-five (35) trains/day, not including Amtrak or local service.

I did not find discussion of environmental impact in the Comments. I am unaware of an environmental report having been filed by the BNSF.

I am also not aware of any exemption by the Surface Transportation Board from environmental impact assessment of a system-wide trackage and haulage rights arrangement such as contemplated by the BNSF/UP/SP Agreement. The BNSF/UP/SP Agreement, although conditioned upon merger, nonetheless can be considered a "significant" transaction under applicable rules.

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO, ILLINOIS HOUSTON, TEXAS LOS ANGELES, CALIFORNIA NEW YORK, NEW YORK
PEORIA, ILLINOIS SAN FRANCISCO, CALIFORNIA OAKBROOK TERRACE, ILLINOIS SCHAUMBURG, ILLINOIS

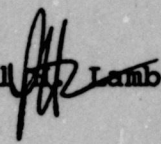
KECK, MAHIN & CATE

Elaine K. Kaiser
February 16, 1996
Page 2

I request your advice whether an environmental report has been filed by BNSF or requested of BNSF, or whether an exemption covers the proposed operations under the BNSF/UP/SP Agreement.

Thank you.

Very truly yours,

Paul  Lamboley

PHL/ss

a:\kaiser.116

STB FD 32760

3-13-96

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Item No. _____

Page Count 2

Mar. 13 # 271

61797



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760

**UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY**

- 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**

MOTION TO INTERVENE

Comes now the Enid Board of Trade, an Oklahoma Corporation located at 2309 N. 10th Street Suite E, Enid, OK 73701, Phone and Fax Numbers are 405-233-1528 and 405-237-2131 respectfully. It will utilize the acronym Enid. Enid states and avers the following.

1. The Board of Directors authorized the canvassing of the members as to their posture on this very important merger and its effect on the members.

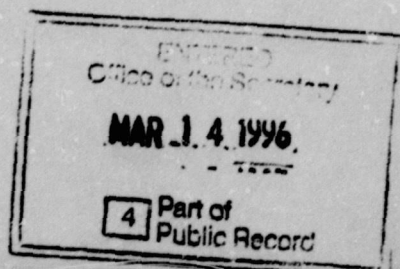
Many of the members were not available to give their opinions as to the merger in order to meet the comment date of February 29th 1996. When said canvas was completed and the results known, the Board of Directors voted to oppose the merger and hired a STB Practitioner to file this motion after a visit to our office for a meeting with General Manager Joe N. Hampton last week.

2. Enid moves to intervene in this case as a party of record in order that the Surface Transportation Board be fully informed of the interests of its members located in Oklahoma. It will not burden the applicants because the involved issues of competitive need for an additional Class I carrier is already in issue herein.

I, James J. Irlandi, STB Practitioner, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and Authorized to file this statement, executed on March 11, 1996.

Respectfully yours,

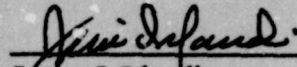
By: James J. Irlandi
STB Practitioner
1809 N. Broadway / Suite F
Wichita, Kansas 67214



Certificate of Service

I, James J. Irlandi, hereby certify that I mailed an original and ten copies of the "Motion To Intervene" this 11th day of March 1996 by express mail delivery address to: Vernon A. Williams Secretary, Surface Transportation Board, Case Control Branch, 12th and Constitution Ave. N.W., Washington, D.C. 20423, and all parties of record including applicant's attorneys by first class mail and/or fax.

Respectfully submitted,



James J. Irlandi
STB Practitioner
1809 N. Broadway / Suite F
Wichita, Kansas 67214

STB FD 32760

3-13-96

I

61796

Item No. _____

Page Court 9
Mar. 13 #272

6 1796

LAW OFFICES
McFARLAND & HERMAN
20 NORTH WACKER DRIVE - SUITE 1330
CHICAGO, ILLINOIS 60606-2902
TELEPHONE (312) 236-0204
FAX (312) 201-9695

THOMAS F. McFARLAND, JR.

STEPHEN C. HERMAN

March 12, 1996

By UPS Overnight Mail

Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation, Rm. 1324
12th & Constitution Avenue, NW
Washington, DC 20423

MAR 13

Re: Finance Docket No. 32805, Southern Pacific Transportation Company --
Corporate Family Reorganization Exemption -- The Denver and Rio Grande
Western Railroad Company

Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and
Merger -- Southern Pacific Rail Corporation, et al.

Dear Mr. Williams:

Enclosed please find an original and 20 copies of Petition To Revoke The Exemption in F.D. No. 32805 And For Consolidation of F.D. No. 32805 and F.D. No. 32760, for filing with the Board in the above referenced matters.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland, Jr.
Attorney for Mountain-Plains
Communities & Shippers Coalition

TMcF:kl:528

cc. All parties of record in F.D. No. 32760, by first-class, U.S. mail

**BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION**

SOUTHERN PACIFIC)	
TRANSPORTATION COMPANY --)	
CORPORATE FAMILY)	FINANCE DOCKET
REORGANIZATION EXEMPTION --)	NO. 32805
THE DENVER AND RIO GRANDE)	
WESTERN RAILROAD COMPANY)	
)	
UNION PACIFIC CORPORATION, ET)	
AL. -- CONTROL AND MERGER --)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL)	NO. 32760
CORPORATION, ET AL.)	

**PETITION TO REVOKE THE EXEMPTION IN
F.D. NO. 32805 AND FOR CONSOLIDATION OF
F.D. NO. 32805 AND F.D. NO. 32760**

MAR 14 1996

☒ Part of
Public Record

**MOUNTAIN-PLAINS COMMUNITIES &
SHIPPERS COALITION
JUNIOR STRECKER, Chairman
123 North Main Street
Hoisington, KS 67544**

Petitioner

**THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive
Suite 1330
Chicago, IL 60606-2902
(312) 236-0204**

Attorney for Petitioner

Date Filed: March 13, 1996

**BEFORE THE
SURFACE TRANSPORTATION BOARD
UNITED STATES DEPARTMENT OF TRANSPORTATION**

SOUTHERN PACIFIC)	
TRANSPORTATION COMPANY --)	
CORPORATE FAMILY)	FINANCE DOCKET
REORGANIZATION EXEMPTION --)	NO. 32805
THE DENVER AND RIO GRANDE)	
WESTERN RAILROAD COMPANY)	
)	
UNION PACIFIC CORPORATION, ET)	
AL. -- CONTROL AND MERGER --)	FINANCE DOCKET
SOUTHERN PACIFIC RAIL)	NO. 32760
CORPORATION, ET AL.)	

**PETITION TO REVOKE THE EXEMPTION IN
F.D. NO. 32805 AND FOR CONSOLIDATION OF
F.D. NO. 32805 AND F.D. NO. 32760**

Pursuant to 49 U.S.C. 10505(d),^v 49 C.F.R. 1121.4(d) and (i) and 49 C.F.R. 1117.1, **MOUNTAIN-PLAINS COMMUNITIES & SHIPPERS COALITION** ("the Coalition") hereby petitions for revocation of the exemption in F.D. No. 32805, and for consolidation of that proceeding with the merger application in F.D. No. 32760, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.* The Coalition submits the following in support of its petition.

^v Reference is to such provision of the Interstate Commerce Act as it existed prior to the January 1, 1996 effective date of the ICC Termination Act of 1995. Proceedings instituted prior to that effective date are governed by provisions of the Interstate Commerce Act as it existed prior that effective date. The proceeding for the involved exemption was instituted prior to November 13, 1995.

BACKGROUND

The Denver and Rio Grande Western Railroad Company ("DRGW") is within the consolidated group of companies of Southern Pacific Transportation Company ("SPT"). *See Rio Grande Industries, et al - Control - SPT Co., et al.*, 4 I.C.C.2d 834 (1988). On or about November 6, 1995, SPT and DRGW jointly filed a notice of exemption pursuant to the class exemption from 49 U.S.C. 11343-11344 at 49 C.F.R. 1180.2(d)(3), otherwise known as corporate family exemption, for a transaction whereby SPT purchased the following DRGW rights-of-way together with adjoining lands and improvements (all milepost [MP] designations are DRGW milepost numbers):

- (1) MP 128.8 at or near Orestod, CO to MP 166.8 at or near Dotsero, CO;
- (2) MP 175.95 at or near Walsenburg, CO to MP 269.72 at or near Monte Vista, CO;
- (3) MP 373.22 at or near Delta, CO to MP 417.83 at or near Oliver, CO;
- (4) MP 603.52 at or near Mounds, UT to MP 17.7 at or near Sunnyside, UT;
- (5) MP 0.0 to MP 3.44 near Wellington, UT;
- (6) MP 644.29 at or near Colton, UT to MP 21.57 at or near Clear Creek, UT;
- (7) MP 695.70 at or near Springville Crossover, UT to MP 33.18 at or near Burgin, UT;
- (8) MP 360.91 at or near Glenwood Springs, CO to MP 393.66 at or near Woody Creek, CO;
- (9) MP 373.20 at or near Delta, CO to MP 350.13 at or near Montrose, CO;
- (10) MP 269.72 at or near Monte Vista, CO to MP 321.0 at or near Creede, CO;
- (11) an easement from MP 373.45 at or near Delta, CO to MP 424.05 at or near Grand Junction, CO.

The exemption was noticed to the public in the Federal Register of December 14, 1995, 60 F.R. 64179. The exemption appears to have become effective and been consummated on November 13, 1995.

Several of the descriptions of anticipated responsive applications filed January 29, 1996 in Finance Docket No. 32760 (UP-SP merger) identify acquisition of some or all of the DRGW lines involved in the above exemption, i.e.:

(1) Description filed by Montana Rail Link, Inc.:

- (a) Mounds to Sunnyside, UT
- (b) Colton to Clear Creek, UT
- (c) Grand Junction to Delta, CO
- (d) Delta to Montrose, CO
- (e) Delta to Oliver, CO
- (f) Glenwood Springs to Woody Creek, CO
- (g) Orestod to Dotsero, CO
- (h) Walsenburg to Monte Vista, CO
- (i) Monte Vista to Creede, CO

(2) Description filed by Wisconsin Central, Ltd.:

- (a) Orestod to Dotsero, CO

(3) Description filed by Commonwealth Edison Company:

- (a) Grand Junction to Delta, CO
- (b) Delta to Montrose, CO
- (c) Delta to Oliver, CO

- (d) Orestod to Dotsero, CO (trackage rights)
- (4) Description filed by Western Shippers' Coalition:
 - (a) Orestod to Dotsero, CO
- (5) Description filed by LSBC Holdings, Inc.:
 - (a) all lines covered by the exemption (described the entire DRGW)

It appears that employees of DRGW also will seek to acquire DRGW.

The Coalition consists of communities and shippers located on the Hoisington Subdivision of the Missouri Pacific Railroad Company (MP), an affiliate of Union Pacific Railroad Company (UP). The Hoisington Subdivision extends between Herington, KS and Pueblo, CO.²¹ DRGW has trackage rights over the Hoisington Subdivision granted in *Union Pacific - Control - Missouri Pacific; Western Pacific*, 366 I.C.C. 462 (1982), to provide essential competitive rail service for transcontinental traffic via the central corridor (at pp. 572-578).

The Coalition believes that the merger of UP and SP-DRGW would adversely affect competitive rail service for transcontinental rail traffic via the central corridor, requiring a condition to any approval of the merger or divestiture of the Hoisington Subdivision and DRGW to an independent rail carrier for provision of rail service in competition with UP-SP between Kansas City and California via Pueblo, CO.²²

²¹ A 26-mile segment of the Hoisington Subdivision between Pueblo Junction and NA Junction, east of Pueblo, is operated as joint trackage by MP and Burlington Northern Santa Fe Railroad Company (BNSF).

²² The Coalition does not believe that trackage rights for BNSF between Denver, CO and Oakland, CA would provide the required competitive service. BNSF has its own transcontinental routes via both the northern corridor and southern corridor, which limits its incentive to handle traffic over the central corridor.

ARGUMENT

As a result of the class exemption for corporate family transactions, SP-DRGW have not been required to explain the reason(s) for DRGW's substantial sell-off of rail lines to SP. Ordinarily, such a sell-off would be of little moment in that service to the public would not be affected. But this sell-off comes on the eve of a major rail merger that would substantially realign rail lines and operations in the western half of the United States. The sell-off involves a substantial portion of the rail lines of DRGW, whose lines have been identified by numerous parties in the UP-SP merger as potentially subject to divestiture or trackage rights for provision of essential competitive rail service for transcontinental traffic via the central corridor. For those reasons, this is not the kind of run-of-mill corporate family transaction to which the class exemption was intended to apply.

In this circumstance, the class exemption for SP's acquisition of these DRGW rail lines (and easement) should be revoked, and the proposed SP acquisition of those lines should be consolidated for consideration with the UP-SP merger case. Under 49 U.S.C. 10505(d), revocation is appropriate where the national rail policy requires more careful consideration of a transaction. Several components of the national rail policy of 49 U.S.C. 10101a dictate revocation here: subparagraph (1), favoring competition to establish reasonable rail rates; subparagraph (4), favoring effective competition between rail carriers; and subparagraph (13), favoring means to avoid undue concentrations of market power. SP's acquisition of DRGW lines could affect divestiture of DRGW in the UP-SP merger. SP and DRGW should be required to explain the reason(s) for SP's acquisition of the involved DRGW rail lines (and easement) and whether (and if so how) such acquisition would affect the proposed UP-SP merger, or would be

affected by that merger.

WHEREFORE, the exemption in F.D. No. 32805 should be revoked and the proposed transaction in that docket should be consolidated for consideration with the proposed UP-SP merger.

Respectfully submitted,

MOUNTAIN-PLAINS COMMUNITIES &
SHIPPERS COALITION
JUNIOR STRECKER, Chairman
123 North Main Street
Hoisington, KS 67544

Petitioner

Thomas F. McFarland Jr.

THOMAS F. McFARLAND, JR.
McFARLAND & HERMAN
20 North Wacker Drive
Suite 1330
Chicago, IL 60606-2902
(312) 236-0204

Attorney for Petitioner

Date Filed: March 13, 1996

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 1996, I served the foregoing document, Petition To Revoke The Exemption in F.D. No. 32805 And For Consolidation of F.D. No. 32805 and F.D. No. 32760, by U.P.S. overnight mail on applicants' representative in F.D. No. 32805, i.e.,

Louis P. Warchot
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, CA 94105

and on all parties of record in Finance Docket No. 32760, by first-class, U.S. mail, postage prepaid.

Thomas F. McFarland Jr.
THOMAS F. McFARLAND, JR.

STB

FD

• 32760

3-6-96

I

• 61662

LEBOEUF LAMB, GREENE & MACRAE
L.L.P.

41662

Item No. 4 PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
NEW YORK CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20009-5728
ALBANY #121 (202) 986-8000
BOSTON ENTERED
DENVER Office of the Secretary
HARRISBURG
HARTFORD MAR 1 1996
JACKSONVILLE
TELEX 440274 FACSIMILE (202) 986-8102
WRITER'S DIRECT DIAL
(202) 986-8060

LOS ANGELES
NEWARK
PITTSBURGH
PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO
BRUSSELS
MOSCOW
ALMATY
LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)

March 6, 1996

VIA FACSIMILE AND HAND DELIVERY

The Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
Room 11F21
888 First Street, N.E.
Washington, D.C. 20426

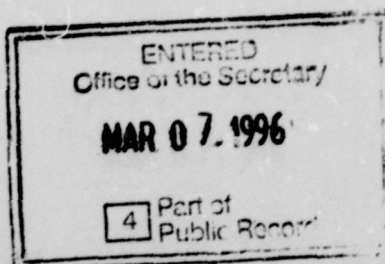


Re: Union Pacific Corp., et al. -- Control and Merger --
Southern Pacific Corp., et al. -- Surface
Transportation Board Finance Docket No. 32760

Dear Judge Nelson:

Western Shippers' Coalition ("WSC") wishes to raise one issue at Friday's discovery conference in the above-referenced proceeding:

WSC supports the argument presented by Conrail and others that Applicants' discovery requests, served February 26, 1996 on WSC and others, are premature. See Decision No. 1 at 4 ("Discovery on responsive and inconsistent applications, comments, protests, and requests for conditions shall begin immediately upon their filing."); see also Decision No. 6 at 16 ("Discovery on responsive and inconsistent applications will begin immediately upon their filing."). The Interstate Commerce Commission's instruction as to the appropriate timing for such discovery requests in the language just quoted from Decision Nos. 1 and 6 would justify discovery, if any, by Applicants only after the filing of any comments, protests, or inconsistent or responsive application by WSC, not before.



The Honorable Jerome Nelson
March 6, 1996
Page 2

Moreover, Applicants' discovery requests cannot be shown to be relevant without reference to whatever evidence or comments WSC may file on or about March 29, 1996. Should WSC file nothing by March 29 (or whenever its filing may ultimately be due), it would follow that all discovery of WSC would have been premature and impermissible under the applicable decisions in this proceeding. Furthermore, even if any argument were made by Applicants that WSC is uniquely in possession of information that is required for a just decision in this proceeding, Applicants could not now make that showing, because they now take the position that their application and evidence filed on November 30, 1995 satisfies their obligations under the statutes and regulations and is adequate to compel the STB to grant the relief they seek.

Therefore, Applicants' only claimed right to discovery now relates to what WSC might file, not information that might be useful to Applicants' rebuttal case (which cannot be decided until WSC's evidence and comments is filed). Any need for discovery on WSC, whether with respect to what it files on March 29, 1996 or otherwise, could not be justified until after the date of WSC's filing. Stated otherwise, "relevance" cannot be shown "in the air," but rather only with respect to the matters put at issue in this proceeding. WSC has not yet put any matters at issue, because it has filed no evidence or argument. Therefore, Applicants' discovery requests propounded to WSC and other parties are premature, and violate the ICC's Decision Nos. 1 and 6.

Respectfully submitted,

Michael F. McBride

Michael F. McBride
Linda K. Breggin
Daniel Aronowitz

Attorneys for Western
Shippers' Coalition

cc: Restricted Service List

1875 Connecticut Avenue, N.W.

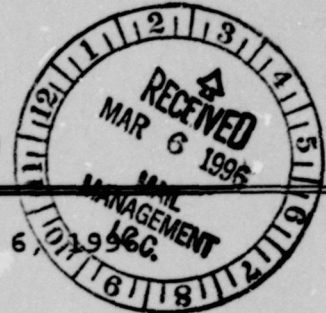
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From: Daniel Aronowitz

Date: March 6, 1996

Last 6-digit ID#: 007652

Page 1 of 4

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Fritz Kahn	(202) 371-0900	"
William Cottrell	(312) 814-2549	"
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Carl W. von Bernuth	(610) 861-3111	"
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Comments/Message:

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Page Count 6March# 123A. STEPHEN RUT, JR.
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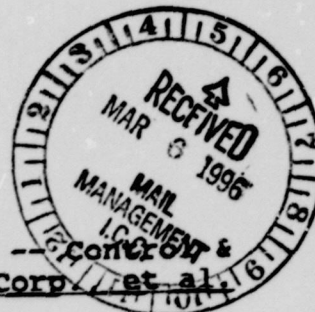
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BRIEFKASTEN 29
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FACSIMILE 011 49301 2643-3630

March 6, 1996

The Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426

Re: Finance Docket No. 32760,
Union Pacific Corp., et al. --
Merger -- Southern Pacific Corp. et al.



Dear Judge Nelson:

At the discovery conference scheduled for March 8, 1996, Consolidated Rail Corporation ("Conrail") intends to request a protective order directed to the written discovery served on Conrail late on the evening of February 26 by the Applicants and by the Burlington Northern and Santa Fe Railroads ("BNSF"). Conrail has attempted to resolve this matter with Applicants and BNSF without success.

The grounds for Conrail's motion are that this discovery by Applicants and BNSF is, at a minimum, entirely premature. It also is contrary to the ground rules established for this proceeding by the Discovery Guidelines and the ICC decisions governing the Procedural Schedule, and will serve to impede Conrail from preparing and completing its comments due March 29.

Responding to the 29 pages of discovery requests at issue here would require massive document searches and reviews. The requests are scattershot and overbroad and extraordinarily burdensome, in large part precisely because the requests are, at best, premature, served before Conrail has even prepared, let alone filed, its comments. Much of what Applicants and BNSF demand will be shown to have no relevance to the comments and verified testimony Conrail ultimately will file.

The timing of these requests can hardly be accidental. Applicants and BNSF must know that responding will directly interfere with the preparation and seriously jeopardize the completion of Conrail's March 29 submission, thus impeding the development of as full a factual record as possible for the STB. Responding will require an enormous undertaking by the very same

The Honorable Jerome Nelson
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Page 2

individuals who are responsible for preparing Conrail's comments and testimony due March 29.

The underlying premise of these discovery requests by Applicants and BNSF -- that a party to this proceeding may be subject to wide-ranging discovery before it has even made its first substantive filing -- was first vigorously attacked by Applicants themselves in their November 15, 1995 letter to your Honor. In that letter, counsel for Applicants contested Kansas City Southern Railway Company's ("KCS") service of formal discovery on Applicants several weeks before their Application was to be filed.

Applicants strenuously attacked KCS' pre-filing discovery request as "unprecedented" and argued that it would "seriously jeopardize the Applicants' ability to file the application on schedule." (11/15/95 Letter from Arvid E. Roach, II, Esq. to the Honorable Jerome Nelson, at 1.) Applicants further protested that "KCS must be aware that it has interposed these discovery requests at the most critical juncture in the application process," and complained of the delay between KCS' initial inquiries and its last minute discovery requests "timed to disrupt Applicants' preparation of the application." Id., at 2.

The principles Applicants argued so vigorously with regard to pre-filing discovery of the Applicants apply with far greater force to Applicants' last-minute (and in fact untimely) attempt here to serve pre-filing discovery on Conrail (and other parties) before it has even prepared, let alone filed, its comments. While the "schedule" on which Applicants aimed to file -- and which they sought to have uninterrupted -- was internally devised by them entirely for their own convenience, Conrail must comply with a rigorous schedule, with extremely tight deadlines, that has been ordered by the ICC at Applicants' behest.

This proposed discovery to Conrail also violates Applicants' own stated view as to the effect of the February 27-March 29 discovery moratorium on discovery agreed to by the parties, and set forth at Paragraph 5 of the Discovery Guidelines: "No written discovery requests shall be served after February 26, 1995, through March 29, 1995."

The animating premise of this agreed moratorium on discovery is that the parties should not be distracted by the time-consuming task of responding to discovery during the crucial period in which comments and other filings are being prepared. It reflects the understanding by the parties that the very

The Honorable Jerome Nelson
March 6, 1996
Page 3

individuals who must supervise and conduct document searches and prepare interrogatory responses are the same individuals (business people and lawyers) who must prepare the filings due on March 29. As Applicants have only recently reiterated,

principles established in the Guidelines contemplate that parties will be able to use the month of March to prepare their upcoming filings. This is just as important to the Applicants -- who must file their rebuttal at the end of April -- as to other parties, and that is why the Guidelines establish a month-long bilateral "moratorium" on written discovery.

(February 28, 1996 Letter from Arvid E. Roach, II, Esq. to C. Michael Loftus, Esq. (counsel for WCTL), at 2 emphasis added.) Again, at the March 1 hearing before Your Honor, Applicants could not have been clearer on the point. In arguing that the March moratorium also extended to depositions, counsel said:

Now, it's a moratorium on written discovery. . . . That's what it's a moratorium on. But its purpose was broader than just keeping us from having to write on pieces of paper for a month.

The purpose of it was so that both sides in this case could devote March to digesting this massive deposition record we have, this massive discovery record we have.

And we need March just as much as they need March to get our rebuttal case together and prepare.

3/1/96 Tr. 1506 (Emphasis added). As Your Honor well knows, counsel echoed this same point even at today's hearing.

Accordingly, Applicants cannot seriously challenge the proposition that forcing Conrail to spend the critical weeks preceding its March 29 submission responding to written discovery would violate the spirit and letter of the Guidelines.

Even apart from Applicants' oft-restated understanding as to the breadth of the moratorium, the fact that, under its terms, discovery resumes the day after Conrail and other parties file comments and create their document depositories demonstrates the parties' understanding of the proper sequence of discovery. That logical sequence -- with discovery against commenters

The Honorable Jerome Nelson
March 6, 1996
Page 4

beginning only after the filing of their comments -- was exactly what Applicants requested in their proposed Procedural Schedule, as recited by the ICC in Decision No. 1, at 4 (August 24, 1995):

Discovery on responsive and inconsistent applications, comments, protests, and requests for conditions shall begin immediately upon their filing.

It does not appear that any party took issue with this aspect of Applicants' proposal. In fact, the Department of Justice's comments proposing a short extension of time took the commencement-of-discovery-upon-filing principle as a given. Comments by the Department of Justice on Proposed Procedural Schedule, at 5 (emphasis added) (September 18, 1995). Applicants, in their September 28 and October 4, 1995 reply comments to DOJ and other parties, voiced no reservations as to this sequence of discovery.

In Decision No. 6 (October 24, 1995), the ICC discussed the responses it had received to Applicants' proposed schedule -- with no discussion of any suggestion that the commencement date for discovery against non-Applicants be changed -- and formalized the Procedural Schedule governing this proceeding in summary form. The ICC's notes to that calendar state that: "Discovery on responsive and inconsistent applications will begin immediately upon their filing." Id.

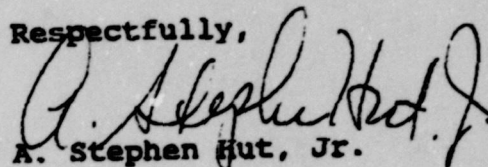
The discovery served on Conrail by Applicants and BNSF violates the ICC's ruling in Decision No. 6. There would be no conceivable reason for permitting discovery against commenters to begin earlier than discovery against simultaneous filers of responsive or inconsistent applications, and neither Decision No. 6 nor the Guidelines do so. Certainly the Applicants make no such distinction: in violation of the clear terms of Decision No. 6, they have served pre-filing discovery not only on commenters, but also on those who have clearly indicated that they intend to file responsive and inconsistent applications. If anything, Decision No. 6 may indicate that, in this extraordinarily expedited procedure, while Applicants may obtain discovery from responsive and inconsistent applicants -- and then, only "upon their filing" -- they may not do so from commenters and others at all.

The proper remedy, consistent with the rules of this proceeding, is to require that this premature discovery be withdrawn and that, "upon th[e] filing" of Conrail's comments and verified testimony on March 29, Applicants and BNSF resubmit

The Honorable Jerome Nelson
March 6, 1996
Page 5

discovery requests that are actually based on the comments
Conrail actually files on that date.

Respectfully,

A handwritten signature in dark ink, appearing to read "A. Stephen Hut, Jr.", written in a cursive style.

A. Stephen Hut, Jr.

cc: Restricted Service List

WILMER, CUTLER & PICKERING

2445 M Street, N.W.
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Date: March 6, 1996

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4. Arvid E. Roach II	(202) 778-5388	(202) 662-6000
5. William Cottrell	(312) 814-2549	(312) 814-4323
6. Mark Tobey	(512) 320-0975	(512) 463-2135
7. James F. Rill	(202) 338-5534	(202) 342-8466
8. Honorable Vernon Williams	(202) 927-5984	(202) 927-7428
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COUNSEL

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MARCUS W. SISK, JR.

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*ALSO ADMITTED IN MARYLAND
*ONLY ADMITTED IN MARYLAND
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Office of the Secretary
Case Control Branch
ATTN: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

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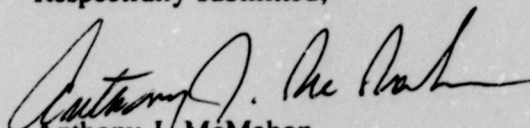


RE: Finance Docket No. 32760
Union Pacific Corporation, et al. --
Control and Merger -- Southern Pacific
Rail Corporation, et al

Dear Sir or Madam:

Please withdraw my appearance on behalf of the Town of Avon, Colorado.

Respectfully submitted,


Anthony J. McMahon

AJM:dac

cc: John W. Dunn, Esquire

common\tw\al\002\03.ltr

61644

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Page Count 27

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BEFORE THE
SURFACE TRANSPORTATION BOARD

BN/SF-43



Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- 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

RESPONSES AND OBJECTIONS OF
BURLINGTON NORTHERN RAILROAD COMPANY AND
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO INTERNATIONAL PAPER COMPANY'S SECOND INTERROGATORIES AND
REQUEST FOR DOCUMENTS TO BURLINGTON NORTHERN RAILROAD
COMPANY

Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively "BN/Santa Fe") answers and objects as follows to International Paper Company's ("IP") "Second Interrogatories and Request For Documents To Burlington Northern Railroad Company." These responses and objections are being served pursuant to the Discovery Guidelines Order entered by the Administrative Law Judge in this proceeding on December 5, 1995 ("Discovery Guidelines").

Subject to the objections set forth below, BN/Santa Fe will produce non-privileged documents responsive to International Paper Company's Second Interrogatories and Request

For Documents To Burlington Northern Railroad Company. If necessary, BN/Santa Fe is prepared to meet with counsel for IP at a mutually convenient time and place to discuss informally resolving these objections.

Consistent with prior practice, BN/Santa Fe has not secured verifications for the interrogatory responses herein, but is willing to discuss with counsel for IP any particular response in this regard.

GENERAL OBJECTIONS

BN/Santa Fe answers and objects to IP's Second Interrogatories and Request For Documents on the following grounds:

1. **Privilege.** BN/Santa Fe objects to IP's Second Interrogatories and Request For Documents to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.
2. **Relevance/Burden.** BN/Santa Fe objects to IP's Second Interrogatories and Request For Documents to the extent that they seek information or documents that are not directly relevant to this proceeding and to the extent that a response would impose an unreasonable burden on BN/Santa Fe.
3. **Settlement Negotiations.** BN/Santa Fe objects to IP's Second Interrogatories and Request For Documents to the extent that they seek information or documents prepared in connection with, or related to, the negotiations leading to the Agreement entered into on September 25, 1995, by BN/Santa Fe with Union Pacific and Southern Pacific, as supplemented on November 18, 1995.

4. Scope. BN/Santa Fe objects to IP's Second Interrogatories and Request For Documents to the extent that they attempt to impose any obligation on BN/Santa Fe beyond those imposed by the General Rules of Practice of the Interstate Commerce Commission ("Commission"), 49 C.F.R. § 1114.21-31, the Commission's scheduling orders in this proceeding, or the Administrative Law Judge assigned to this case.

5. Definitions. BN/Santa Fe makes the following objections to IP's definitions:

3. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intracompany communications; electronic mail; correspondence; telegrams, memoranda; contracts; instruments; studies; projections; forecasts; summaries, notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings, computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records- and workpapers and worksheets. Further, the term "document" includes:

- a. both basic records and summaries of such records (including computer runs);
- b. both original versions and copies that differ in any respect from original versions, including notes; and
- c. both documents in the possession, custody, or control of Applicants and documents in the possession, custody, or control of consultants or others who have assisted Applicants in connection with the Transaction,

BN/Santa Fe objects to the definition of "Document" as overly broad and unduly burdensome to the extent that (i) it calls for the production of materials and documents that are as readily, or more readily, available to IP as to BN/Santa Fe; and (ii) it calls for the production of routine operating and accounting documents such as invoices and receipts.

6. Instructions. BN/Santa Fe makes the following objections to IP's instructions:

7. In responding to any request for data regarding intermodal traffic, indicate separately data for trailers and for containers.

BN/Santa Fe objects to this instruction to the extent that BN/Santa Fe's records kept in the ordinary course of business do not differentiate data regarding intermodal traffic by trailers and by containers.

RESPONSES AND OBJECTIONS TO INTERROGATORIES

1. Identify all BN employees who attended a meeting with IP employees on or about December 13, 1995 concerning service to IP mills in Camden and Pine Bluff, Arkansas. Identify all documents which relate to that meeting, including but not limited to any notes of those who attended, and any subsequent memoranda or correspondence discussing the meeting or BN's plan for servicing those mills.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 1 to the extent that it is vague, overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that BN/Santa Fe will add a document to the BN/Santa Fe document depository containing the information responsive to Interrogatory No. 1. Further, BN/Santa Fe will produce non-privileged, responsive documents relating to the December 13, 1995 meeting in accordance with the Discovery Guidelines.

2. Identify all BN employees who attended a meeting with employees of Applicants on or about December 20, 1995 in Omaha concerning service to IP mills in Camden and Pine Bluff, Arkansas. Identify all documents which relate to that meeting, including but not limited to any notes of those who attended, and any subsequent memoranda or correspondence discussing the meeting or an operating plan for servicing those mills.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Interrogatory No. 1 to the extent that it is vague, overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that BN/Santa Fe will add a document to the BN/Santa Fe document depository containing the information responsive to Interrogatory No. 2. Further, BN/Santa Fe will produce non-privileged, responsive documents relating to the December 20, 1995 meeting in accordance with the Discovery Guidelines.

RESPONSES AND OBJECTIONS TO REQUEST FOR DOCUMENTS

1. All documents identified in response to Interrogatory No. 1.

Response: See Response to Interrogatory No. 1.

2. All documents identified in response to Interrogatory No. 2.

Response: See Response to Interrogatory No. 2.

3. The map which, during his deposition on February 14, 1996, Carl Ice testified he was given by John Rebensdorf during their negotiations leading to the Settlement Agreement.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Document Request No. 3 to the extent that it requests documents protected by the settlement negotiations privilege.

Subject to and without waiving the foregoing objections, BN/Santa Fe states that BN/Santa Fe does not have a copy of the map which, during his deposition on February 14, 1996, Carl Ice testified he was given by John Rebensdorf during their negotiations leading to the Settlement Agreement.

4. All documents relating to, or used to calculate, rates recently proposed by BN to IP for single line service to IP mills in Camden and Pine Bluff, Arkansas.

Response: Subject to and without waiving the General Objections stated above, BN/Santa Fe objects to Document Request No. 4 on the ground that it is overly broad and unduly burdensome and that it calls for the production of documents the release of which would unduly interfere with the on-going commercial negotiations between BN/Santa Fe and IP.

Respectfully submitted,

Jeffrey R. Moreland
Richard E. Weicher
Janice G. Barber
Michael E. Roper
Sidney L. Strickland, Jr.

Burlington Northern
Railroad Company
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and

The Atchison, Topeka and Santa Fe
Railway Company
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Erika Z. Jones ^{KEO}

Erika Z. Jones
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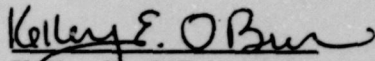
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 463-2000

Attorneys for Burlington Northern Railroad Company
and The Atchison, Topeka and Santa Fe Railway Company

March 4, 1996

CERTIFICATE OF SERVICE

I hereby certify that copies of Responses and Objections of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to International Paper Company's Second Interrogatories and Request for Documents to Burlington Northern Railroad Company (BN/SF-43) have been served this 4th day of March, 1996, by fax and by first-class mail, postage prepaid on all persons on the Restricted Service List in Finance Docket No. 32760 and by hand-delivery on counsel for International Paper Company.


Kelley B. O'Brien
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Suite 6500
Washington, D.C. 20006
(202) 778-0607

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- 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

RESPONSES AND OBJECTIONS OF BURLINGTON NORTHERN
RAILROAD COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY TO INTERNATIONAL PAPER COMPANY'S SECOND
INTERROGATORIES AND REQUEST FOR DOCUMENTS TO BURLINGTON
NORTHERN RAILROAD COMPANY

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Documents relating to routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be produced."

Grounds for Protective Order: The documents requested in this Request are protected from disclosure for the same reasons described with respect to Interrogatory 1.

Conclusion

WSC respectfully requests that Your Honor issue a protective order that the matters addressed by Applicants' Interrogatories 1 and 5, and Document Requests 13, 14, 15, 16, 17, and 21, propounded to WSC, may not be inquired into, and further that Applicants show cause why they should not be sanctioned for such obvious abuses of the discovery process.

Respectfully submitted,

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Enclosures

cc (w/ Utah Resolution,
w/o UP/SP-134): Restricted Service List

**RESOLUTION EXPRESSING CONCERNS REGARDING
THE MERGER OF UNION PACIFIC AND
SOUTHERN PACIFIC RAILROADS**

1996 GENERAL SESSION

STATE OF UTAH

Sponsor: Charles H. Stewart

**A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR
EXPRESSING CONCERNS REGARDING THE MERGER OF THE SOUTHERN PACIFIC
AND UNION PACIFIC RAILROADS UNLESS COMPETITIVE CONCERNS ARE
PROPERLY ADDRESSED.**

Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:

**WHEREAS the Union Pacific Railroad, a Utah corporation, filed with the Interstate
Commerce Commission (now the Surface Transportation Board) on November 30, 1995 the Union
Pacific/Southern Pacific merger application;**

**WHEREAS the proposed merger would combine two largely overlapping railroad systems
that compete vigorously for traffic to and from the state of Utah;**

**WHEREAS the Union Pacific and Southern Pacific Railroads are the only class I railroads
in Utah;**

**WHEREAS if approved, this merger would result in Utah being one of three states in the
U.S. with only one class I railroad owning tracks within the state;**

**WHEREAS the Union Pacific Railroad is proposing an agreement that will grant trackage
rights to the Burlington Northern Santa Fe Railroad (BNSF) as a solution to the anticompetitive
impact of the rail merger;**

**WHEREAS The BNSF will have access to only those customers who have been served by
both the Union Pacific and Southern Pacific Railroads;**

WHEREAS the relevant operating rights granted to the BNSF include operating over the

LEGISLATIVE GENERAL COUNSEL

1 Union Pacific/Southern Pacific merged line from Denver to Ogden via the former Southern Pacific
2 line and from Salt Lake City to Oakland over portions of both the Union Pacific and the Southern
3 Pacific lines;

4 WHEREAS the Western Shippers Coalition, an organization that includes numerous Utah
5 firms that ship coal, copper, chemicals, grains, cement, lime, iron ore, coke, steel, and municipal
6 and solid waste, opposes the Union Pacific-Southern Pacific merger unless conditions that will
7 make the merger less anticompetitive are met;

8 WHEREAS railroad employees in Utah are also opposed to the merger unless these issues
9 are appropriately addressed; and

10 WHEREAS the state of Utah has serious concern regarding the anticompetitive impact of
11 this merger including reasonable and variable compensation millage, restrictions on location of
12 sites allowed for competing BNSF and incentives to assure competition to railroad users in the
13 state of Utah:

14 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the
15 Governor concurring therein, express concerns regarding the planned Union Pacific/Southern
16 Pacific Railroad merger unless the carriers provide acceptable solutions to the competitive
17 concerns expressed in this resolution.

18 BE IT FURTHER RESOLVED that copies of this resolution be sent to the Surface
19 Transportation Board, the members of Utah's congressional delegation, Union Pacific Railroad,
20 Southern Pacific Railroad, the Burlington Northern Santa Fe Railroad, and the Western Shippers
21 Coalition.

II.

BASIS FOR ISSUANCE OF PROTECTIVE ORDER.

Based on the foregoing analysis of the law, the discovery requests as to which WSC seeks a protective order, and the additional specific factual bases⁷ for the protective order, are as follows:

1. **Interrogatory 1:** "Identify and describe in detail any agreements that WSC or its members have with any other party to this proceeding regarding positions or actions to be taken in this proceeding. Routine procedural agreements, such as agreements concerning the order of questioning at depositions or the avoidance of duplicative discovery, need not be identified. If WSC contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement."

Grounds for Protective Order: While obviously overbroad and objectionable on that ground alone, this Interrogatory also infringes on WSC's right to petition the Government and to protect work product accumulated in a common effort with other parties sharing common goals in this proceeding and common adversaries. Any agreements struck by WSC or its members in the course of this litigation are protected common interest work product which is not subject to disclosure. WSC's strategy and tactics are also not subject to disclosure. Applicants would certainly howl if discovery were sought of communications between

⁷ WSC also objects to each of the listed Interrogatories and Document Requests as irrelevant and unduly burdensome, which alone justifies a protective order protecting WSC from this discovery. In addition, the need to prepare this memorandum, and to discuss these issues with counsel for other parties similarly affected by the same type of discovery, has already substantially deprived WSC's counsel of time that they had intended to devote to preparation of evidence and argument, now due on March 29. In this respect, WSC supports the effort of other parties to seek a stay of all discovery of parties whose evidence is due on March 29. Applicants' outrageous discovery requests, and the "chilling effect" they have had, also may provide the basis for seeking an enlargement of the procedural schedule in this proceeding.

them or their counsel; they have no right to seek different treatment of WSC, its members, and parties whose interests are common with WSC. See also counsel's representations under Document Request 14, infra.

2. Interrogatory 5: "Identify the financial contributors to WSC and the amounts contributed."

Grounds for Protective Order: As shown more fully above, Interrogatory 5 infringes on WSC's right of association and its right to protect the anonymity of its contributors, as well as the amount of their contributions (both of which constitute protected "speech" under the case law). The request is even more intrusive than the request struck down in NAACP seeking the NAACP's membership list in Alabama. Here, although WSC has already voluntarily disclosed its membership list, Applicants also seek to learn the identity of financial contributors who are entitled to remain anonymous. Because the contribution of money is protected speech under the First Amendment, the request infringes on the free speech rights of WSC's members and contributors. Disclosure of the identity of all WSC contributors has the potential impact of chilling participation of potential or existing members in WSC.

It follows that the discovery here at issue, to the extent that it would compel disclosure of the source of funds to WSC, its communications with its members, its communications with "any consultants," other parties to this proceeding, and its communications to governmental agencies which may or may not be parties to this proceeding, would adversely affect WSC's and its members' rights and "may induce members to withdraw from [WSC] and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure." NAACP v. Alabama, 357 U.S. at 463. Applicants are attempting to encourage WSC's members to withdraw from WSC.

As the Supreme Court recognized in Buckley v. Valeo, "virtually every means of communicating ideas in today's society requires the expenditure of money." 424 U.S. at 19. Financial contributors are crucial to the ability of WSC to function, which is why the identity of its contributors must be protected to ensure WSC's survival. The undersigned can further represent to Your Honor that he is aware of one electric utility, who is a customer of UP but not a member of WSC, which is considering

providing WSC financial support but which does not want to be listed as a member of WSC for fear of retaliation by UP, on whom it depends for substantial transportation of coal. The undersigned further represents to Your Honor that another electric utility has provided him with advice and assistance in conducting discovery of Applicants' witnesses but instructed the undersigned not to disclose its identity for fear of retaliation by Applicants, on whom it also depends for substantial transportation of coal. Those types of fears of retaliation are precisely why Applicants' efforts at intimidation must not succeed.

3. Document Request No. 13: "Produce all communications between WSC or its members and other parties to this proceeding relating to the UP/SP merger or the BN/Santa Fe Settlement Agreement, and all documents relating to such communications. This request excludes documents already served on Applicants."

Grounds for Protective Order: Again, in addition to its undue burdensomeness, and the irrelevance of such communications qua communications (as opposed to facts which may have been part of the communications), this Request improperly seeks WSC's work product, a privilege under which Applicants themselves have sought protection. To the extent WSC has sought contributions to its efforts from other parties, these communications are protected by the common interest doctrine. They are also protected by the attorney-client privilege, and the "informer's privilege" referred to above; and would chill WSC's First Amendment rights.

4. Document Request 14: "Produce all presentations, solicitation packages, form verified statements, or other materials used by WSC or its members to seek support from shippers, public officials, railroads or others for the position of WSC or any other party in this proceeding."

Grounds for Protective Order: This Document Request infringes all of the Constitutional and common law rights described above. First, the request attempts to discover WSC's strategy in this proceeding, which is protected by the work product and common interest doctrine. To the extent this request seeks WSC's interactions with governmental entities, that information is protected from disclosure for the reasons

previously stated. Any of WSC's communications with governmental officials and governmental parties to the proceeding are protected from disclosure, except to the extent they merely convey facts, or were not intended to be kept confidential.

Examples of confidential communications which the undersigned represents to Your Honor as having occurred include (a) conversations the undersigned has had with counsel for member companies of WSC about case strategy and sharing of discovery efforts (consistent with the Discovery Guidelines), and (b) communications that WSC's Director has had with the Governor and Attorney General of Utah. I further represent that the undersigned intended to attempt to set up a meeting with the Department of Justice on February 27, 1996, the very day he first saw these discovery requests, about whether WSC and DOJ had common interests in this proceeding, but decided against doing so because of the pending discovery requests. The undersigned informed counsel for DOJ on Thursday, February 29, that he wanted to meet with it to discuss this proceeding, but would not seek to arrange such a meeting until the discovery requests at issue are addressed by Your Honor. That is the sort of "chilling effect" that Applicants' discovery requests have had on WSC.

5. Document Request 15: "Produce all presentations[,]
letters, memoranda, white papers, or other documents
sent or given by WSC or its members to DOJ, DOT, any
state Governor's, Attorney General's or Public
Utilities Commission's (or similar agency's) office,
any Mexican government official, any other government
official, any security analyst, any bond rating agency,
any consultant, any financial advisor or analyst, any
investment banker, any chamber of commerce, or any
shipper or trade organization relating to the UP/SP
merger."

Grounds for Protective Order: The discovery sought here goes to the heart of WSC's efforts, together with its members, some of whom are parties to the proceeding in their own right, or with other parties to the proceeding, to present evidence and argument to the STB. The discovery sought also explicitly seeks disclosure of communications with governmental officials, during the "homestretch" for preparing and presenting evidence and argument to the STB in this proceeding on March 29, for the obvious purpose both of "chilling" such communications despite WSC's First Amendment rights and to distract WSC, its members,

and other parties from those efforts by responding to or objecting to such discovery requests. See discussion supra at page 3.

6. **Document Request 16:** "Produce all notes of, or memoranda relating to, any meetings of WSC or its members with DOJ, DOT, any state Governor's, Attorney General's or Public Utilities Commission's (or similar agency's) office, any Mexican government official, any other government officials any security analyst, any bond rating agency, any consultant, any financial advisor or analyst, any investment banker, any chamber of commerce, or any shipper or trade organization relating to the UP/SP merger."

Grounds for Protective Order: This Request implicates many of the other common law and constitutional privileges discussed above, including the work product doctrine, and the common interest/joint defense privilege, as well as WSC's Constitutional right to petition the government for the redress of grievances and to meet with government officials to discuss this proposed merger. WSC, as UP and SP well know, has been engaged in seeking passage by the Utah Legislature of a Resolution opposing this proposed merger, and it has had numerous confidential meetings with governmental officials, up to and including the Governor and the Attorney General of Utah, to discuss the matter. Notes of such meetings, if any, should not be the business of Applicants.

7. **Document Request 17:** "Produce all documents in the possession of WSC or its members relating to shipper surveys or interviews concerning the UP/SP merger or any possible conditions to approval of the merger."

Grounds for Protective Order: Although this request is overbroad and vague, it is also defective in that it seeks protected speech, work product, and communications otherwise protected from disclosure by the Constitutional, work product, and "common interest/joint defense" privileges, as discussed above.

8. **Document Request 21:** "Produce all documents in the possession of WSC or its members relating to any agreement or understanding that WSC or its members have with any other party to this proceeding regarding positions or actions to be taken in this proceeding."

e.g., Roviaro v. United States, 353 U.S. 53, 59 (1957). WSC understands that the Department of Justice will brief this issue separately and, therefore, WSC will not address it in further detail.

A ruling in favor of WSC on the non-Constitutional issues would obviate the need for a ruling on the Constitutional objections with respect to most but not all of the discovery requests at issue.

WSC wishes to emphasize that it will answer certain Interrogatories (such as 2, 3, 4, and 6) and certain Document Requests propounded to it. There is thus no basis for any argument that Applicants' counsel may make that WSC is obstructing arguably legitimate discovery requests.

I.

APPLICANTS' DISCOVERY REQUESTS WOULD VIOLATE THE CONSTITUTIONAL RIGHTS AND COMMON LAW PRIVILEGES OF WSC AND ITS MEMBERS.

A. The Constitutional Rights at Issue.

Several discovery requests seek information about WSC's and its members' communications with government officials, including state legislators, and entities that are parties to this proceeding. In addition, the offensive requests seek information about WSC's members, including the amount of their financial contributions to WSC, and about internal communications among WSC members. These requests improperly deter WSC and its members from exercising their First Amendment rights and, therefore, should not be permitted.

The First Amendment to the United States Constitution protects three separate rights that are violated by the Applicants' requests:

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The right of petition for redress of grievances, along with the right of assembly, is closely related to the rights of freedom of speech and press. Those rights are often merged

together in the case law and, in fact, "all four rights may well be considered as elements of an inclusive right to freedom of expression." J. Killian, The Constitution of the United States of America: Analysis and Interpretation, 1145 (1987) (Library of Congress).

"[T]he right to petition [the Government for redress of grievances] is 'among the most precious of the liberties guaranteed by the Bill of Rights,' . . . and except in the most extreme circumstances citizens cannot be punished for exercising this right 'without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions.'" McDonald v. Smith, 472 U.S. 479, 486 (1985) (Brennan, J. concurring) (citations omitted). As early as 1876, the Supreme Court recognized: "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." United States v. Cruikshank, 92 U.S. 542, 552 (1876).

The Supreme Court has consistently recognized the importance of protecting the right to petition the Government for redress of grievances. For example, in Eastern Railroad Presidents' Conference v. Noerr Motor Freight, 365 U.S. 127 (1961), a group of railroad companies instituted a publicity campaign to influence legislators to enact laws that would restrict the trucking industry. Even though the railroads' motive was understood to be reduction of competition to the railroad industry from the trucking industry, the Court held that the actions did not violate the Sherman Act and noted that such an interpretation of the Sherman Act would "raise important constitutional questions," Id. at 138, clearly referring to the First Amendment privileges quoted in bold above. Apparently, UP and SP do not have the same respect for the First Amendment rights of their adversaries in this proceeding that their railroad compatriots vindicated in Noerr.

The right to petition applies equally to all branches of government, including administrative agencies. See, e.g., California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972) (holding that it "would be destructive of rights of association and of petition to hold that groups with common interests may not, without violating the antitrust laws, use channels and procedures of state and federal agencies and courts to advocate their causes and points of view respecting resolution

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of their business and economic interests vis-a-vis their competitors.") (emphasis added).

The other First Amendment rights put at risk by Applicants' discovery requests are the freedoms of speech and assembly. Applicants' Document Requests seek communications between WSC or its members and various governmental officials, other parties, and between and among WSC and its members, about the proposed merger. They even go so far as to seek the sources of financing of WSC. Applicants are plainly trying to inquire about matters which WSC and its members have a right to conduct in private, and about which confidentiality has been and is traditionally expected.

The Supreme Court has recognized that abusive discovery requests can have a "deterrent" or "chilling" effect on the exercise of First Amendment rights, which it will not permit. In NAACP v. Alabama, 357 U.S. 449, 466 (1958), the Supreme Court held that it would be unconstitutional for a court to require an organization to respond to a discovery request that violated its First Amendment right to freedom of association, which is derived from the guarantees of freedom of speech and assembly. Specifically, the Court held that the NAACP could not be required to produce information about its membership list and that the lower court's order to produce "must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association." The Court further explained:

it is apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of the petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.

Id. at 462-63.

The Supreme Court has also recognized that the expenditure of funds constitutes protected "speech" under the

First Amendment. Buckley v. Valeo, 424 U.S. 1 (1976).⁵ Both "commercial speech" and political speech are protected by the First Amendment. Central Hudson Gas & Electric Corp. v. Public Service Comm'n, 447 U.S. 557 (1980) (test for commercial speech); First Nat'l Bank v. Belotti, 435 U.S. 765 (1978) (political speech rights of corporations recognized).

Although First Amendment rights are not absolute,⁶ Applicants have not carried -- and could not carry -- their burden of proof that the Government's potential interest in compelling disclosure of all of these types of information from WSC or its members is sufficient to justify the deterrent effect that such an order would have on WSC's and its members' Constitutional rights. Once a fundamental Constitutional right is implicated by a discovery request, the burden is on the party seeking the discovery (here, the Applicants) to justify an order compelling the discovery sought. See NAACP v. Alabama, 357 U.S. at 463; see also Bates v. Little Rock, 361 U.S. 516, 524 (1960) ("where there is a significant encroachment upon personal

⁵ The Supreme Court has recognized a legitimate interest in the compelled disclosure of contributions to candidates for federal office who receive federal matching funds, as compared to those candidates who finance their own campaigns. The contrast between the potential public interest in knowing the sources of contributions to those candidates for Federal office who seek Federal matching funds and the lack of public interest in knowing who might be contributing to WSC is obvious. Under Buckley, those contributions constitute political as well as commercial "speech" of WSC's members entitled to First Amendment protection. The information Applicants seek is irrelevant to any issue the STB might decide, but is apparently designed to keep customers (or potential customers) of Applicants from contributing to WSC's efforts. As explained infra, certain shippers fear UP or SP knowing of their support, or possible support, for WSC.

⁶ See McDonald v. Smith, 472 U.S. 479, 486 (1985) (right of petition is not an absolute immunity from damages for libel); Bill Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731, 743 (1983) (baseless litigation is not immunized by the First Amendment right to petition); California Motor Transport Co., supra, 404 U.S. at 515 (First Amendment rights are not immunized from regulation when they are used as integral part of conduct which violates a valid statute).

liberty, the state may prevail only upon showing a subordinating interest which is competing."); Buckley v. Valeo, 424 U.S. at 64 ("We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest.")

B. The Common Law Rights Or Privileges at Issue.

Applicants' discovery requests also infringe upon WSC's common law rights and privileges which apply to protect from disclosure WSC's preparation of its case in this proceeding. (These rights and privileges may in turn be based on the Sixth Amendment right to counsel, but the origin is not important here.)

1. The Work Product Doctrine.

The materials sought by the Applicants in their discovery requests are, for the most part, work product that is protected from discovery. The "work product doctrine" provides that materials prepared in anticipation of litigation or for trial are not discoverable unless a showing has been made that the party seeking the materials is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Even if the requisite showing is made, however, the disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation should be protected from disclosure. See Fed. R. Civ. P. 26(b)(3); Hickman v. Taylor, 329 U.S. 495 (1947); Upjohn Co. v. United States, 449 U.S. 383 (1981).

The work product doctrine applies in the context of administrative proceedings and covers not only materials provided by an attorney but also materials prepared by a party's representative, such as a consultant. Upjohn Co., 449 U.S. at 395-96.

Again, Applicants have the burden to show that they have a substantial need for the materials requested and an inability to obtain the substantial equivalent of the information without undue hardship. Despite the fact that Applicants recognize that their own work product is not discoverable and have objected to discovery requests that they allege seek such information, they nevertheless request work product from WSC and

its members without providing any justification. See, e.g., Applicants' Objections to WSC's Second Set of Interrogatories and Requests for Production of Documents and First Request for Admissions filed February 29, 1996 (UP/SP-143). That is wrong.

2. The "Common Interest/Joint Defense" Privilege.

In many of its discovery requests, Applicants have also attempted to discover the tactics and strategies of WSC and its member companies in this proceeding and related matters, including requests for shipper surveys and interviews. Applicants also seek all of WSC's communications with its members or any other party to this proceeding. Both types of discovery requests are protected from disclosure by the "common interest" and "joint defense" privileges (or doctrines, as they are sometimes called).

The "common interest/joint defense" privilege extends the work product doctrine to communications between parties who share common interest "in sharing the fruit of the trial preparatory efforts . . . against a common adversary." United States v. American Tel. and Tel. Co., 642 F.2d 1285, 1299 (D.C. Cir. 1980); SCM v. Xerox Corp., 70 F.R.D. 508, 513 (D. Conn. 1976) ("the shared interest necessary to justify extending the privilege to encompass intercorporate communications appears most clearly in cases of co-defendants and impending litigations"). The common interest doctrine protects "consultation on tactics and strategy, the very things the work product privilege is designed to protect." United States v. American Tel. and Tel. Co., 642 F.2d at 1300 (citation omitted). The D.C. Circuit has held that this privilege from disclosure must be read broadly. Id.; see also, United States v. McPartlin, 595 F.2d 1321, 1337 (7th Cir.), cert. denied, 444 U.S. 833 (1979) ("The privilege protects pooling of information for any defense purpose common to the participating defendants. Cooperation between defendants in such circumstances is often not only in their own best interests but serves to expedite the trial or . . . trial preparation.").

Accordingly, the "common interest/joint defense" privilege protects against disclosure of work product and communications between WSC and its members, as well as between WSC and other parties, in their common defense of the existing competition between UP and SP put at issue in this proceeding by Applicants' merger proposal.

- (2) between WSC and other parties to this litigation;
- (3) between WSC and public officials who represent governmental entities that are not currently parties to this proceeding but that could become parties at a later date;
- (4) between WSC and "any consultant;" and
- (5) the sources of financing of WSC.²

Specifically, WSC seeks a ruling, at the hearing specially scheduled for that purpose on Wednesday March 6, 1996, that Applicants' Interrogatories 1 and 5 and Document Requests 13, 14, 15, 16, 17, and 21,³ propounded to WSC, are not appropriate discovery requests, and that a protective order should be issued precluding Applicants from inquiring into the subjects of those Interrogatories and Document Requests. In addition to the lack of relevance of these requests to any issue that the Surface Transportation Board ("STB") must address and the unduly burdensome nature of several of the Requests,⁴ WSC is

¹(...continued)

purport to seek discovery from WSC concerning information and documents that may be in possession of its members, WSC must be entitled to assert its members' rights and privileges, as well as its own rights and privileges.

² Ironically, the one relevant Government agency that Applicants did not inquire about, or seek documents concerning was the Surface Transportation Board!

³ In the interests of brevity, and for ease of reference by Your Honor, all of Applicants' discovery requests to WSC, including the offensive Interrogatories and Document Requests, are enclosed with Your Honor's copy of this letter. They are not enclosed with the copies served on the other parties, because they were served on the Restricted Service List. For the convenience of the other parties, those discovery requests are marked "UP/SP-134".

⁴ Many of the discovery requests are irrelevant to the issues in this proceeding and pose an undue and unjustified
(continued...)

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outraged by these Requests, and considers them an abuse of the discovery process and an obvious effort at intimidation of those opposed to Applicants. We sincerely appreciate Your Honor's willingness to hear our objections so promptly.

These offensive discovery requests violate several of WSC's constitutional and common-law rights and privileges, and the mere pendency of those discovery requests is having, or could have, a "chilling" or "deterrent effect" on the exercise of those rights by WSC, its members, and potential members. It was that "chilling" or "deterrent effect" that gave rise to the undersigned's request for an expedited hearing on this matter. Specifically, the discovery requests listed above infringe common-law privileges (including the attorney-client privilege), the attorney work product and "common interest/joint defense privilege" doctrines and, most importantly, WSC's and its members' First Amendment rights (a) to petition the government for redress of grievances and (b) of free speech and association.

Perhaps the best illustration of Applicants' effort to "chill" the free exercise of WSC's and its members' First Amendment rights is WSC's recent efforts to seek adoption by the Utah Legislature of a Resolution opposing this merger. (The Resolution is enclosed.) The discovery at issue was served after passage of the Resolution by the Utah Senate (where it passed 23-0) but before consideration by the Utah House (where it did not get voted on before adjournment on February 29, 1996.) The same Resolution may be considered by other Western Legislatures. Applicants' objectionable discovery would inquire into communications about such legislative efforts, and seek notes of meetings involving such efforts. Applicants are thus explicitly attempting to "chill" the exercise of WSC's and its members' First Amendment rights. See e.g., Document Requests 15 and 16.

Applicants' discovery requests also implicate the "informer's privilege" which protects communications with the Department of Justice and other law enforcement agencies. See,

⁴(...continued)

burden on WSC. WSC did not seek an expedited hearing to be heard on its relevance or undue burden objections, however, because those issues can be handled in the ordinary course of the discovery process.

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

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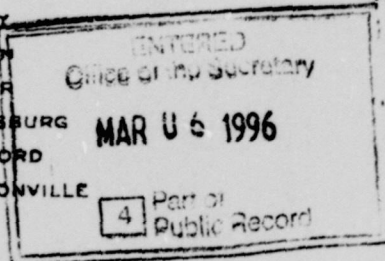
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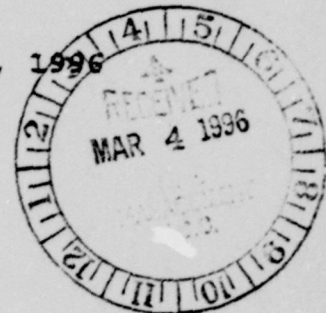
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March 4, 1996



VIA FACSIMILE AND HAND DELIVERY

The Honorable Jerome Nelson
Administrative Law Judge
Federal Energy Regulatory Commission
Room 11F21
888 First Street, N.E.
Washington, D.C. 20426

Re: Union Pacific Corp., et al. -- Control and Merger
-- Southern Pacific Corp., et al. -- Surface
Transportation Board Finance Docket No. 32760

Dear Judge Nelson:

Western Shippers' Coalition ("WSC") hereby objects to discovery requests served by Applicants Union Pacific Railroad Company, et al. ("Applicants") on February 26, 1996 which seek, inter alia, information and documents relating to communications:

- (1) between WSC and its members;¹

¹ Whether WSC is subject to discovery on behalf of its members is a separate issue on which WSC does not now seek an expedited ruling from Your Honor. For the record, WSC has objected to Applicants' efforts to compel WSC to respond to discovery on behalf of its members, but those objections can be heard if need be on the usual schedule for seeking a ruling on discovery objections. For now, however, because Applicants

(continued...)

To:

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(202) 371-0900

George W. Mayo, Jr. & Eric A. Von Salzen

(202) 637-5910

Honorable Vernon Williams

(202) 927-5984

Richard Bruening & Robert Dreiling

(816) 556-0227

Scott Stone

(202) 457-6315

Richard Allen, Andrew R. Plump,
& John V. Edwards

(202) 342-0683/1316

Jeff Hill

(702) 689-4659

Charles Spitulnik & Alicia Serafty

(202) 835-8136

Constance Abrams, Jonathan Broder,
Edward Hymson, & Anne Treadway

(215) 209-4817

William Sippel, Thomas Litwiler,
& Robert Wheeler

(312) 616-5800

Peter Shudtz

(804) 783-1355

Mark Tobey

(512) 320-0975

Lindsay Bower

(415) 356-6377/6370

Fritz Kahn

(202) 371-0900

William Cottrell

(312) 814-2549

Debra Ravel

(512) 463-6684

Carl W. von Bernuth

(610) 861-3111

Cannon Harvey

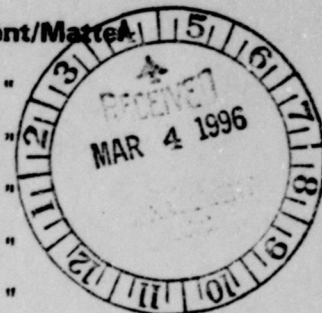
(303) 812-4159

Carol Harris & Louis Warchot

(415) 495-5436

Paul A. Conley & James Dolan

(402) 271-5610/5625



Comments/Message:

Dear Judge Nelson:

Although the deadline for filing was 5 p.m., we are filing as early as possible as an accommodation to Mr. Roach.

Michael McBride

THIS FACSIMILE TRANSMISSION CONTAINS CONFIDENTIAL AND/OR LEGALLY PRIVILEGED INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL(S) NAMED ON THE TRANSMISSION SHEET. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS FACSIMILE TRANSMISSION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE CALL US COLLECT IMMEDIATELY SO THAT WE CAN ARRANGE FOR RETURN OF THE DOCUMENTS TO US AT NO COST TO YOU. THANK YOU.

Southern Pacific Rail Corporation
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
(415) 541-1000

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
(415) 541-1000

St. Louis Southwestern Railway Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
(415) 541-1000

SPCSL Corp.
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
(415) 541-1000

The Denver and Rio Grande Western Railroad Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105
(415) 541-1000

Counsel to whom questions regarding this application may be addressed are shown on the cover of the application and at page 93 below.

SECTION 1180.6(a)(1)(ii)

PROPOSED TIME SCHEDULE

The proposed transaction will be consummated as quickly as possible after the effectiveness of a final order of the Commission authorizing it. Full integration of UP and SP rail operations is expected to be completed within five years.

STB

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32760

3-4-96

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61312

Item No. _____

Page Count 9

MAR. # 44

BAKER & DANIELS
EST. 1863

111 E. WAYNE STREET, SUITE 800 · FORT WAYNE, INDIANA 46802 · (219) 424-8000 · FAX (219) 460-1700

MARTIN A. WEISSERT
DD (219) 460-1623

INDIANAPOLIS
FORT WAYNE
SOUTH BEND
ELKHART
WASHINGTON, D.C.

February 29, 1996



Office of the Secretary
Case Control Branch
ATTN: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue, NW
Washington, DC 20423

Re: **REQUEST FOR EXPEDITED CONSIDERATION**
Finance Docket No. 32760
Union Pacific Corporation, et al. - Control and Merger
- Union Pacific Rail Corporation, et al.

Dear Sir:

I am enclosing the original and twenty copies of the Motion to Consolidate the Record in Docket No. 41550 With The Instant Proceeding and Request for Expedited Consideration (GCRP-1) on behalf of Golden Cat Division of Ralston Purina Company. Golden Cat is already a Party of Record (POR).

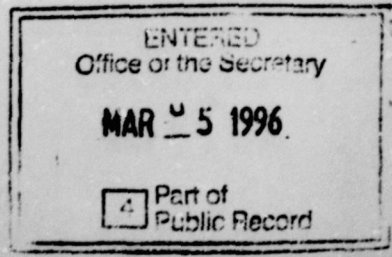
As directed by Decision No. 15, the pleading bears a certificate that all POR's are being served by first-class mail.

Sincerely,

BAKER & DANIELS

Martin A. Weissert
Martin A. Weissert

MAW/ml
Enclosure



ORIGINAL

GCRP-1

REQUEST FOR EXPEDITED CONSIDERATION

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
Office of the Secretary

MAR 5 1996

Finance Docket No. 32760

RECEIVED
Public Room

UNION PACIFIC CORPORATION, ET AL.
-CONTROL AND MERGER-
SOUTHERN PACIFIC RAIL CORPORATION, ET AL.

MOTION TO CONSOLIDATE THE RECORD
IN DOCKET NO. 41550 WITH THE
RECORD IN THE INSTANT PROCEEDING

Date: February 29, 1996

Martin A. Weissert
BAKER & DANIELS
111 E. Wayne Street, #800
Fort Wayne, IN 46802
(219) 460-1633

Attorneys for Golden Cat Division
of Ralston Purina Company

COMES NOW Golden Cat Division of Ralston Purina Company ("GCRP"), pursuant to §1117.1 of the Rules of Practice, and moves that the Surface Transportation Board ("Board") consolidate the record in its Docket No. 41550 with the record in the instant proceeding.

GCRP has heretofore filed its notice of intent to participate in this proceeding in order to propose a condition; and it intends to file its Proposal for Conditions on or before the due date of March 29, 1996. An expedited ruling by the Board on this Motion, in advance of March 29, will assist GCRP immeasurably in the preparation of its Proposal for Conditions.

BACKGROUND

GCRP manufactures and ships catbox filler, packaged and in bulk, from its clay mine and production facility at a site near Bloomfield, MO to distribution centers and customers throughout the United States and Canada. It also receives raw clay at the Bloomfield location for use in manufacturing finished product. The inbound and outbound rail volume at Bloomfield consists of more than 2,300 carloads per year.

The Bloomfield facility is located adjacent to a mainline track of the St. Louis Southwestern Railway Company ("SSW"). The Missouri Pacific Railroad Company ("MPRR"), an affiliate of the Union Pacific Railroad Company ("UPRR"), has existing trackage rights over the SSW mainline track. See, Finance Docket No. 18637, decision of November 2, 1954. However,

the trackage rights agreement prohibits MPRR, or its affiliate UPRR, from serving the Bloomfield location as an intermediate point. Accordingly, GCRP has been a captive shipper of SSW for rail traffic originating or destined to that location.

For a number of years the service of SSW at the Bloomfield facility has been totally inadequate, causing GCRP excessive waste, expense and lost sales. After fruitless negotiations with SSW, GCRP was left with no alternative but to invoke the remedial jurisdiction of the ICC.

By complaint dated February 24, 1995, GCRP asked the ICC under 49 U.S.C. 11103(a)¹ to require that the terminal facilities of SSW at the Bloomfield location be made available to UPRR for the purpose of providing competitive rail service for GCRP. The ICC denominated the proceeding "No. 41550, Golden Cat Division of Ralston Purina Company v. St. Louis Southwestern Railway Company," and by order served April 24, 1995, directed that the proceeding be heard under the modified procedure, with the opening statement, reply and rebuttal due on or before August 9, 1995. Those documents were duly filed by the parties, but the case was not decided by the ICC prior to the agency's demise on January 1, 1996. Accordingly, the proceeding is now before the

¹Recodified as 49 U.S.C. 11102(a) by the ICC Termination Act of 1995. That section provides in part: "The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier...to be used by another rail carrier...if the Board finds the use to be practicable and in the public interest."

Board and the evidentiary record therein is in the possession of the Board.²

The Applicants in the instant proceeding profess they will protect all "two-to-one" customers by virtue of the Settlement Agreement entered into between UP/SP and BN/SF. A "two-to-one" customer is one who is served by both UP and SP, but by virtue of the merger, will be served by only one integrated rail system in the future. To remedy that diminution of competitive service, UP/SP has agreed to grant BN/SF trackage rights and certain other concessions so that "two-to-one" customers will continue to be served by two competitive rail systems after the merger is consummated. See, e.g., the written statement of John Rebensdorf for UPRR [UP/SP-22 (Vol. I) at pages 291-294]; and the "omnibus" clause of Sec. VIII(i) of the Settlement Agreement [UP/SP-22 (Vol. I) at page 353].

Under ordinary circumstances GCRP would qualify today as a de facto "two-to-one" customer. If the complaint in Docket No. 41550 had been acted on by the ICC, GCRP would likely have received an order by now requiring SSW to grant trackage rights to UPRR in order to provide competitive service at Bloomfield. Had that occurred as anticipated, GCRP would automatically be

²Sec. 204(b) of the ICC Termination Act of 1995 continues under the jurisdiction of the Board those proceedings which were formerly under the jurisdiction of the ICC "insofar as those functions are retained...by this Act." As noted in footnote 1, the former provisions of 49 U.S.C. 11103(a) regarding terminal facilities are retained and transferred to the Board by virtue of the new provisions of 49 U.S.C. 11102(a).

entitled to protection by UP/SP and BN/SF under the Settlement Agreement; and GCRP would not have to intervene in this proceeding.

For whatever reason, however, the ICC did not issue a decision in Docket No. 41550 prior to the agency's demise. No doubt the uncertainty surrounding the future of the ICC during the debate on the ICC Termination Act of 1995, and the reduction of the ICC's manpower and funding during the fall and early winter of 1995, contributed in large part to the administrative delay.

GCRP should not be penalized for those circumstances over which it had no control. Its contention is that because of its inadequate service situation for which it duly sought a competitive remedy in Docket No. 41550 in early 1995, and the unforeseen legislative events which delayed that remedy, it should be treated equitably in this proceeding as a de jure "two-to-one" shipper entitled to the protections of the Settlement Agreement. That will be the basis of its Proposal for Conditions which will be filed subsequently in this docket.

BASIS FOR CONSOLIDATION OF THE RECORDS

In order to advance its Proposal for Conditions, it is necessary for GCRP to refer to the record which has already been made in Docket No. 41550. In so doing, GCRP could physically duplicate that record and file the written material as an attachment to its Proposal. However, reproduction of that record

would appear to be duplicative, wasteful and unnecessary for the following reasons:

- (1) The evidentiary record is extensive, consisting of verified statements, exhibits and attachments of perhaps one hundred pages or more.
- (2) The record is already in the hands of counsel who represent Applicants. For example, SSW is represented in Docket No. 41550 by, inter alia, Carol A. Harris, John MacDonald Smith and Barbara A. Sprung of the SPT legal department. Ms. Harris is also a Party of Record in this proceeding. See, Decision No. 15 at page 4. GCRP assumes those counsel have already shared or will share the copy of the record in Docket No. 41550 with their other associates who represent Applicants in this proceeding.
- (3) The record is also in possession of the Board by virtue of the transfer of those files from the ICC.
- (4) Further reproduction of the record would needlessly consume additional file space of all concerned, including the Board itself.

Accordingly, GCRP proposes that the record in Docket No. 41550 be consolidated with the record in this proceeding so that GCRP may refer to that record in its Proposal for Conditions without having to reproduce and physically file the record again in this proceeding.

Such a motion may not be absolutely necessary because §1114.4 of the Rules of Practice provides that if a party offers in evidence any matter open to public inspection in the Board's files, that matter need not be made available again at a hearing. The record in Docket No. 41550 would seem to be embraced within that rule because it has long been open to public inspection in the files of the ICC and the Board.

On the other hand, §1112.7 and §1114.5 of the Rules of Practice provide that if any portion of the record in any proceeding other than the proceeding at issue is offered in evidence, a true copy should be presented for the record. Contrary to §1114.4, those additional rules seem to imply that short of consolidation of dockets, the record in No. 41550 should be physically reproduced by GCRP and filed once again with the Board as part of this proceeding. Given the apparently conflicting Rules of Practice, GCRP is filing the instant Motion out of an abundance of precaution.

MOTION AND EXPEDITED CONSIDERATION

GCRP moves that the record in Docket No. 41550 be consolidated with the record in this proceeding, and that the parties be entitled to refer to that record in this proceeding without having to file another copy herein. GCRP also requests that this Motion be granted expeditiously so that it knows in advance of the March 29 deadline whether it is necessary to attach a copy of the record in Docket No. 41550 to its Proposal for Conditions in this proceeding.

Respectfully submitted,

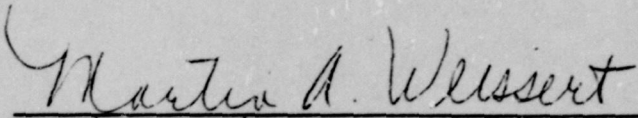
GOLDEN CAT DIVISION OF
RALSTON PURINA COMPANY

By: Martin A. Weissert

Martin A. Weissert
BAKER & DANIELS
111 E. Wayne Street, #800
Fort Wayne, IN 46802
(219) 460-1633

CERTIFICATE OF SERVICE

I certify that on the 29th day of February, 1996, I served a copy of the foregoing Motion upon each Party of Record (POR's) herein as listed in Decision No. 15, and on counsel of record in Docket No. 41550, by mailing the same to each of them by first-class mail, postage prepaid.


Martin A. Weissert

STB

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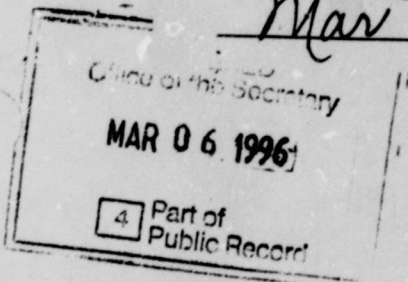
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Item No. _____

Page Count 5

Mar # 45



LAW OFFICES

FRITZ R. KAHN, P.C.

SUITE 750 WEST

1100 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-3934

(202) 371-8037

FAX (202) 371-2900

61611
ORIGINAL



March 4, 1996

VIA HAND DELIVERY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

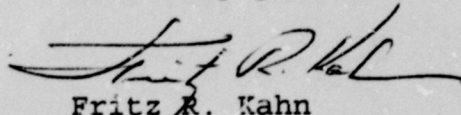
Enclosed for filing in Finance Docket No. 32760, Union Pacific Corp., et al., --Control and Merger--Southern Pacific Rail Corp., et al. are the original and twenty copies of the Petition and Notice of Eagle County, Colorado, et al.

Extra copies of the Petition and Notice and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed envelope.

By copy of this letter, service is being effected upon counsel for each of the parties.

If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,



Fritz R. Kahn

enc.

cc: All parties

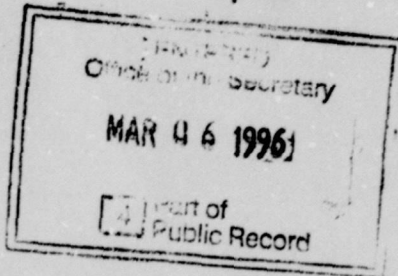
Arvid E. Roach, II, Esq. (additional copy by fax)

Paul A. Cunningham, Esq. (additional copy by fax)

Mr. George J. Roussos (additional copy by fax)

ORIGINAL

EGL-4



BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Finance Docket No. 32760

UNION PACIFIC CORP., et al.,
--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORP., et al.



PETITION AND NOTICE
OF EAGLE COUNTY, COLORADO, et al.

Petitioners, the Boards of County Commissioners of the Counties of Eagle and Lake, State of Colorado, and the Towns of Avon, Eagle, Gypsum, Minturn, Red Cliff and Vail, pursuant to 49 C.F.R. 1117.1, request leave to file out of time their notice of intent to file a responsive application, and in support thereof they state, as follows:

1. Petitioners have an interest in the preservation of the Tennessee Pass railroad line, between Sage and Canon City, Colorado, which, as a part of their control and merger proposal, Applicants seek to abandon. See, No. AB-12 (Sub-No. 189X), Southern Pacific Transportation Company--Abandonment Exemption--Sage-Leadville Line in Eagle and Lake Counties, Colorado, and No. AB-12 (Sub-No. 188), Southern Pacific Transportation Company--Abandonment--Malta-Canon City Line in Lake, Chafee and Freemont Counties, Colorado.

2. Notices of intent to file responsive applications have been filed by, among others, Montana Rail Link ("MRL") and Wisconsin Central Ltd. ("WC"), in which they have indicated in interest in acquiring the Colorado railroad lines formerly operated by the Denver and Rio Grande Western Railroad Company and now owned by the Southern Pacific Transportation Company ("SP"), with the notable exception of the Tennessee Pass line.

3. If the responsive application of MRL or WC were to be approved by the Board, the status and fate of the Tennessee Pass Line would be rendered uncertain, for neither MRL nor WC would acquire the property, and SP, which would continue to own it, obviously would have neither the interest nor the desire to operate it.

4. Petitioners could not have known of this development until after the deadline for filing notices of intent to file responsive applications had passed, and, in the meantime, they have considered the consequences of the MRL and WC filings; only today did the last of the Petitioners authorize the filing of this Petition and Notice.

5. Accepting this late filing of the Petitioners' notice of intent to file a responsive application will not prejudice Applicants or any other party to this proceeding; nearly a month remains until the responsive applications are due to be filed.

6. Petitioners have concluded that they need to file a responsive application themselves to acquire the Tennessee Pass Line, at a minimum between Milepost 335.00 near Sage and Milepost

276.1 near Leadville.

7. Pursuant to 49 C.F.R. 1180(d)(4)(ii) and (iv), Petitioners request that their responsive application be designated a minor transaction. The Tennessee Pass Line sought to be acquired is only 69.1 miles long. It is situated in what is largely a rural area, and, as the Applicants themselves have asserted, the railroad line carries little or no local traffic.

8. Petitioners, being a noncarrier, would be able to acquire the Tennessee Pass Line, pursuant to 49 C.F.R. 1150.1, et seq. Petitioners are unable to furnish some of the information that the Board's regulations call for. Thus, for example, they are unable to say how much they are prepared to pay for the property, for the Southern Pacific Transportation Company steadfastly has refused to provide Petitioners with the data permitting the calculation of the Tennessee Pass Line's net liquidation value. Accordingly, Petitioners request that the requirement that they submit an the information called for by 49 C.F.R. 1150.4(a) and 1150.6 be waived. Additionally, Petitioners ask that the submission of an operating plan, in accordance with 49 C.F.R. 1150.5, be waived. Clearly, the operation of the Tennessee Pass Line will need to be coordinated with whoever may be successful in having its responsive application approved, that is, either MRL or WC, and, until the Applicants have had the opportunity to discuss interchange arrangements, train schedules and similar considerations with the successful applicant, preparation of an operating plan would be premature and

meaningless.

Respectfully submitted,

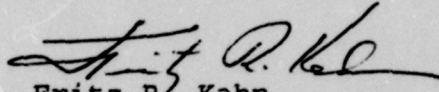
THE BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF EAGLE, STATE OF COLORADO

THE BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF LAKE, STATE OF COLORADO

TOWN OF AVON, MUNICIPAL CORPORATION
TOWN OF EAGLE, MUNICIPAL CORPORATION
TOWN OF GYPSUM, MUNICIPAL CORPORATION
TOWN OF MINTURN, MUNICIPAL CORPORATION
TOWN OF RED CLIFF, MUNICIPAL CORPORATION
TOWN OF VAIL, MUNICIPAL CORPORATION

By their attorneys,

James R. Fritze
Eagle County Attorney
P. O. Box 850
Eagle, CO 81631
Tel.: (970) 328-8685



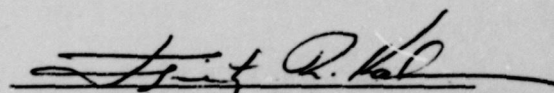
Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-8037

Dated: March 4, 1996

CERTIFICATE OF SERVICE

Copies of the foregoing pleading this day were served by me by mailing copies thereof, with first-class postage prepaid, to counsel for each of the parties.

Dated at Washington, DC, this 4th day of March 1996.


Fritz R. Kahn

STB

FD

32760

3-4-96

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Item No. _____

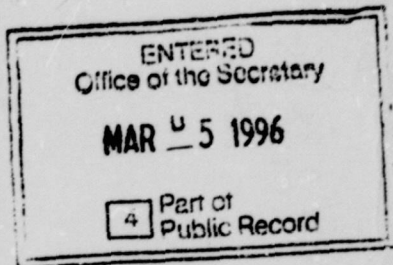
Page Count 3

Mar #46

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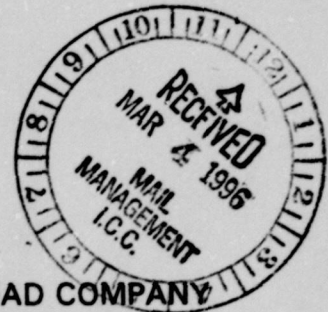
Belated Expedited Consideration Requested

ICC-307



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- 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

REQUEST FOR MODIFICATION
OF DECISION NO. 15

In Decision No. 15, each party of record was ordered to serve a copy of all filings submitted to date on each other party of record as designated on the service list as POR and submit original plus five (5) copies of a certificate of service to the Secretary of the Board within 10 days of the Notice service date.

I am the BLE General Chairman representing the contract for the engineers and firemen on the St. Louis Southwestern Railway Company and strongly believe that the vested interest we have in this proposed merger entitles us to be a party of record (POR) rather than interested party (VIS). To supply each of the parties of record with each document filed by all parties of record would be extremely burdensome and in most cases it would require material of no interest that would go unread with no response. Documents such as this pleading to be a party of record is an example that would have no interest to any party of record in these proceedings.

Given the other equally important duties of this office, I was out of the office until Friday, February 23, 1996, which did not allow me to timely comply. Upon receipt, if I had been in the office, it would have been timely and physically impossible to comply with the order in Decision No. 15, thus this belated request.

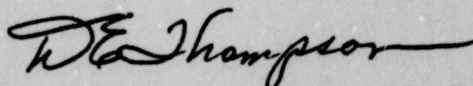
Given this is the first service list that we have received, the only document we have filed in this matter is the request to become a party of record (POR), therefore, copies were not mailed to the other parties of record.

Under the Procedural Schedule in Decision No. 9, Service Date December 27, 1995, we have until March 29, 1996 to file a responsive application, which may protest the propose merger or make requests for conditions should the merger be approved. Decision No. 15 would deny us that right given the service list in which we have been removed as a party of record. We have no interest in receiving anything other than any changes in the Merger Application as jointly filed by the Union Pacific/Southern Pacific Companies and all decisions of the Surface Transportation Board. Without these documents, we would be unable to make an educated decision as to filing any future pleadings.

We would respectfully request a modification in Decision No. 15, which would allow us to remain a party of record by receiving only the above listed documents and providing any and all future pleadings to the service list.

Without the requested modifications it would be impossible to comply which would deny us the right to duly represent the membership of this General Committee in this matter to the fullest extent. The requested modification would allow us to receive the necessary documents to properly represent the interest of the membership and such a request would free a small committee from the impossible task and expense necessary to comply with Decision No. 15.

Respectfully submitted,



D. E. Thompson, General Chairman
Brotherhood of Locomotive Engineers
414 Missouri Blvd.
Scott City, MO 63780

CERTIFICATE OF SERVICE

I, David E. Thompson, certify that, on this 26th day of February 1996, I have provided a copy of the foregoing document to be served by first-class mail, on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Divisions
Room 9104-TEA
Department of Justice
Washington, DC 20530

Premarmer Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, DC 20580

David E. Thompson
David E. Thompson

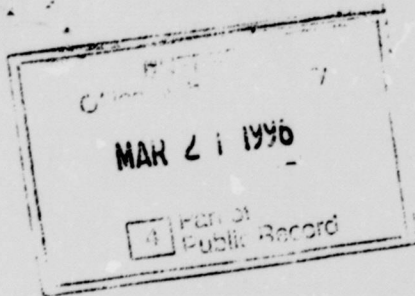
STB FD

32760

3-20-96

I

61901



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Union Pacific Corporation, Union Pacific	§	
Railroad Company, and Missouri Pacific	§	
Railroad Company -- Control and Merger	§	
-- Southern Pacific Rail Corporation,	§	
Southern Pacific Transportation Company,	§	Finance Docket No. 32760
St. Louis Southwestern Railway Company,	§	
SPCSL Corp., and the Denver and Rio	§	
Grande Western Railroad Company	§	

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY'S MOTION
FOR LEAVE TO AMEND DESCRIPTION OF RESPONSIVE APPLICATION
AND PETITION FOR CLARIFICATION OR WAIVER**

-- EXPEDITED HANDLING REQUESTED --

Albert B. Krachman
Monica J. Palko
Bracewell & Patterson, L.L.P.
2000 K Street, N.W., Suite 500
Washington, D.C. 20006
(202) 828-5800

Attorneys for Capital Metropolitan
Transportation Authority

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Union Pacific Corporation, Union Pacific	§	
Railroad Company, and Missouri Pacific	§	
Railroad Company -- Control and Merger	§	
-- Southern Pacific Rail Corporation,	§	
Southern Pacific Transportation Company,	§	Finance Docket No. 32760
St. Louis Southwestern Railway Company,	§	
SPCSL Corp., and the Denver and Rio	§	
Grande Western Railroad Company	§	

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY'S MOTION
FOR LEAVE TO AMEND DESCRIPTION OF RESPONSIVE APPLICATION
AND PETITION FOR CLARIFICATION OR WAIVER**

Pursuant to 49 C.F.R. § 1104.11, Capital Metropolitan Transportation Authority ("CMTA") respectfully moves the Surface Transportation Board ("STB") for an Order granting CMTA leave to amend CMTA's Description of Responsive Application (CMTA-2) and Petition for Clarification or Waiver (CMTA-3), both timely filed on January 29, 1996. The limited amendments conform the pleadings to evidence obtained in written discovery responses on March 12 and 13, 1996, and if permitted, will conserve the resources of the STB and the parties by eliminating a contested issue. CMTA has not previously requested any amendments to its pleadings, and no party will be prejudiced by granting this Leave to Amend. The proposed amended pleadings are attached as Exhibits A and B.

CMTA is the Austin, Texas regional transit authority which is, and, at the time of filing CMTA-2 and -3, was the owner of a mass transit easement along the Giddings-Llano line in Travis County, Texas. Also at the time of filing CMTA-2 and -3, CMTA believed there was a high probability that the Burlington Northern and Santa Fe Corporation Railroad

("BN/SF") would pursue trackage and interchange rights over a 7 mile segment from Kerr (near Round Rock) to McNeil, which would permit BN/SF to serve shippers along the Giddings-Llano line. Because there was some uncertainty over the CMTA's ownership status, potential common carrier duties, and BN/SF's position, which might (or might not) have necessitated a later amendment to CMTA-2 and -3, CMTA afforded the STB advance notice of the amendment potential in both pleadings. *See* Footnotes 1 to CMTA-2, CMTA-3.

As a result of written discovery received from BN/SF on March 12, 1996, and the City of Austin's recent plan to convey the line to CMTA, CMTA believes that limited amendments to CMTA-2 and -3 are warranted. The proposed limited amendments to both pleadings add the phrase "an unnamed rail carrier unaffiliated with Applicants" in lieu of "BN/SF" as the holder of the new trackage rights from Kerr to McNeil.¹ This alternative accommodates the diminished potential that BN/SF will pursue the trackage rights at issue, and obviates potential litigation between CMTA, BN/SF and the Applicants on that issue. The amendment also affords CMTA and the STB additional flexibility in connection with an alternate carrier assuming the relevant trackage and interchange rights.

Because CMTA itself is not a carrier and cannot furnish information from an "applicant carrier" which has yet to be identified, CMTA requests, consistent with STB precedent in this case and ICC precedent in the BN/Santa Fe merger proceeding, Finance Docket No. 32549, that in conjunction with this amendment, the STB waive the requirements

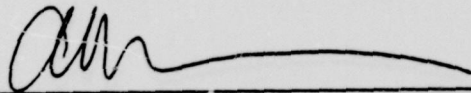
¹ The amended pleadings also clarify that the "primary interchange rights" sought at McNeil for future mass transit is intended to convey priority for mass transit over freight traffic at the interchange. In addition, the amended pleadings reflect that the City of Austin expects to award a contract to a successor operator within "several weeks," rather than "within a few months" of the filing.

of 49 C.F.R. § 1180 for the inclusion of information from the applicant carrier. *See* Decision No. 12 in this proceeding (granting similar requests of IBP, Inc., Wisconsin Electric Power Co., Commonwealth Edison Company, and Entergy Services, Inc., Arkansas Power & Light Company, and Gulf States Utility Company (collectively, "Entergy"); *Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company*, Finance Docket 32549, Decision No. 15, served April 20, 1995). This waiver would not prejudice any other parties, would streamline the primary merger proceeding, and will conserve the limited resources of CMTA and the STB.

Wherefore, CMTA respectfully requests that the STB grant leave for CMTA to amend its Description and Petition to conform to the evidence, streamline the proceeding, and conserve resources, and waive the requirements of 49 C.F.R. § 1180 for inclusion of applicant carrier information regarding an unidentified applicant carrier.

Respectfully submitted,

CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY



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Attorneys for Capital Metropolitan
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CERTIFICATE OF SERVICE

I certify that on this 20th day of March, 1996 a copy of the foregoing Consolidated Motion for Leave to Amend Description of Responsive Application Anticipated and Petition for Clarification or Waiver was served by hand-delivery to:

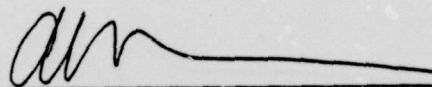
The Honorable Jerome Nelson
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 11F-21
Washington, D.C. 20426

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Harkins Cunningham
1300 19th Street, N.W.
Washington, D.C. 20036

and by first class mail to all other parties of record listed on the service list attached to Decision No. 15, as amended and supplemented by Decision No. 17.



Albert B. Krachman

BEFORE THE
SURFACE TRANSPORTATION BOARD

Union Pacific Corporation, Union Pacific	§	
Railroad Company, and Missouri Pacific	§	
Railroad Company -- Control and Merger	§	
-- Southern Pacific Rail Corporation,	§	Finance Docket No. 32760
Southern Pacific Transportation Company,	§	
St. Louis Southwestern Railway Company,	§	
SPCSL Corp., and the Denver and Rio	§	
Grande Western Railroad Company	§	

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY'S
AMENDED DESCRIPTION OF RESPONSIVE APPLICATION ANTICIPATED**

I. Introduction

Capital Metropolitan Transportation Authority ("CMTA") hereby submits this Amended Description of Responsive Application in the above proceeding. The purpose of the responsive application will be to request certain interchange and trackage rights.

II. Description of Responsive Application

CMTA is a regional transit authority, a body politic and a political subdivision of the State of Texas. The City of Austin ("the City") owns the Giddings/Llano Railroad, which is about 162 miles long, running from Giddings, Texas, to Llano, Texas. CMTA owns a mass transit easement on and over the Giddings/Llano Railroad from Manor, Texas to Bertram, Texas. CMTA is also the manager of the Giddings/Llano Railroad, pursuant to an agreement between the City and CMTA.

Rail freight operations are currently provided by The Austin and Northwestern Railroad Co. ("AUNW") which extends common carrier service to shippers along the Giddings/Llano Railroad. The City has executed an agreement with a successor contractor to the AUNW. CMTA expects services by the new contractor to commence within several weeks of this filing.

On the Giddings/Llano Railroad, the City and AUNW have three interchange points with two Class I railroad carriers: Southern Pacific Railroad and Union Pacific Railroad. These interchange points are located at Giddings, Elgin, and McNeil. The McNeil interchange is located between Manor and Bertram.

The proposed merger would leave only one common carrier -- the merged railroad company, Union Pacific/Southern Pacific ("UPSP") -- to handle freight carriers who desire access to the McNeil interchange for North/South service. Without an alternative carrier, the merger threatens the economic viability of the Giddings/Llano Railroad, since the ability to interchange with more than one railroad carrier fosters competition for shipping prices. This competition is most critical for the McNeil interchange, which is located on the most active portion of the line. Elgin and Giddings interchanges are located on a portion of the line that has been discontinued, although from time to time parties propose to reopen it. CMTA believes the merger's anticompetitive effect can be offset by UPSP's granting trackage rights to another rail carrier unaffiliated with Applicants, from Round Rock to McNeil, and interchange rights at McNeil, and by granting interchange rights at McNeil, Elgin and Giddings for the City of Austin, its successors and assigns, and third party freight operators.

In addition, pursuant to its mass transit easement, CMTA is undertaking long and short range planning, which includes future mass transit through the McNeil interchange. However, such service would be premised upon CMTA's obtaining primary trackage and interchange rights to afford

priority to mass transit service over freight service, especially during peak passenger transport hours. Accordingly, through its responsive application, CMTA will request primary interchange rights at McNeil for its future mass transit operations. The public interest in a future mass transit operation to serve the Austin metropolitan area necessitates the primary interchange rights at the McNeil junction. Without priority interchange rights, commuter service through the McNeil interchange to the City of Austin could be interrupted at peak travel times, during morning rush hours, for example, without recourse or alternatives for CMTA. The interchange rights necessary for future mass transit operations would not have any anticompetitive effects and would contribute to the public interest by meeting significant transportation needs.

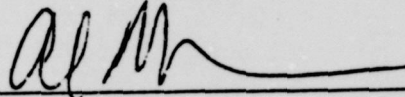
In accordance with Decision No. 9 in this proceeding, unless CMTA reaches prior voluntary agreements with the pertinent carriers, CMTA will seek through its responsive application:

- i) interchange rights at McNeil, Elgin and Giddings for the City of Austin, its successors and assigns, and third party freight operators;
- ii) primary (or priority) interchange rights at McNeil for its future mass transit operations; and
- iii) trackage rights to an unnamed rail carrier unaffiliated with the Applicants, from Round Rock to McNeil;
- iii) interchange rights at McNeil and/or Round Rock, as appropriate, for the designated unaffiliated carrier; and

- iv) that Southern Pacific and Union Pacific amend any and all proposed merger agreements between them in order to effect these conditions.

Respectfully submitted,

CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY

A handwritten signature in dark ink, appearing to read 'Al M', followed by a horizontal line.

Albert B. Krachman, Esq.
Monica J. Palko, Esq.
Bracewell & Patterson, L.L.P.
2000 K Street, N.W.
Suite 500
Washington, D.C. 20006
(202) 828-5800

Attorneys for Capital Metropolitan
Transportation Authority

CERTIFICATE OF SERVICE

I certify that on this 20th day of March, 1996 a copy of the foregoing Consolidated Amendment to Description of Responsive Application Anticipated and Petition for Clarification or Waiver was served by hand-delivery to:

The Honorable Jerome Nelson
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 11F-21
Washington, D.C. 20426

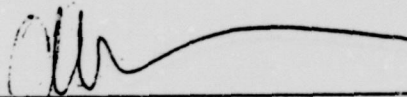
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and by first class mail to all other parties of record listed on the service list attached to Decision No.

15, as supplemented and amended by Decision No. 17.



Albert B. Krachman

BEFORE THE
SURFACE TRANSPORTATION BOARD

Union Pacific Corporation, Union Pacific	§	
Railroad Company, and Missouri Pacific	§	
Railroad Company -- Control and Merger	§	
-- Southern Pacific Rail Corporation,	§	Finance Docket No. 32760
Southern Pacific Transportation Company,	§	
St. Louis Southwestern Railway Company,	§	
SPCSL Corp., and the Denver and Rio	§	
Grande Western Railroad Company	§	

**AMENDED PETITION OF CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY FOR CLARIFICATION OR WAIVER**

I. Introduction

Pursuant to Order No. 9 in the above case and 49 C.F.R. § 1180.4(d) (1995), Capital Metropolitan Transportation Authority ("CMTA") hereby files this Amended Petition for Clarification or Waiver. This Petition establishes that the relief CMTA will request through its responsive application is a "minor" transaction as that term is defined in 49 C.F.R. § 1180.2(c), and in the alternative, that CMTA should be relieved of various filing requirements applicable to "significant" transactions, as defined in 49 C.F.R. § 1180.2(b). In addition, it establishes that CMTA should be relieved of submitting "applicant carrier" information, to the extent CMTA seeks rights on behalf of an unnamed, unaffiliated rail carrier.

As reflected in CMTA's Description of Responsive Application (CMTA-2) filed on January 29, 1996, CMTA anticipates that it will file a responsive application in this proceeding, through which it will request certain interchange and trackage rights. The relief

CMTA seeks through this Petition for Clarification or Waiver will not impair the Surface Transportation Board's ("the Board") ability to reach a decision on the relief that CMTA will seek through its responsive application.

II. Discussion

Under 49 C.F.R. § 1180.4(d)(ii) and (iv)(4), CMTA's anticipated responsive application may be presumed to be a "significant" transaction. By this Petition, to the extent CMTA's responsive application is presumed to be a significant transaction, CMTA requests that the Board find CMTA has rebutted the presumption and determine that CMTA's responsive application will constitute a "minor" transaction. In the alternative, CMTA requests a waiver of the requirements of 49 C.F.R. §§ 1180.7 and 1180.8(a).

1. The Responsive Application is a Minor Transaction

The trackage and interchange rights application CMTA anticipates it will file would be a minor transaction within the meaning of 49 C.F.R. § 1180.2(c), since it clearly will not have any anticompetitive effects, *see* 49 C.F.R. § 1180.2(b)(1), and in fact will have beneficial effects on competition.

CMTA is a regional transit authority, a body politic and a political subdivision of the State of Texas. The City of Austin ("the City") owns the Giddings/Llano Railroad, approximately 162 miles long, running from Giddings, Texas, to Llano, Texas. CMTA holds a mass transit easement on and over the Giddings/Llano Railroad from Manor, Texas to Bertram, Texas. CMTA is also the manager of the Giddings/Llano Railroad, pursuant to an agreement between the City and CMTA.

Rail freight operations are currently provided by The Austin and Northwestern Railroad Co. ("AUNW") which extends common carrier service to shippers along the

Giddings/Llano Railroad. The City executed an agreement with a successor contractor to the AUNW. CMTA expects services by the new contractor to commence within several weeks of this filing.

On the Giddings/Llano Railroad, the City and AUNW have three interchange points with two Class I railroad carriers: Southern Pacific Railroad and Union Pacific Railroad. These interchange points are located at Giddings, Elgin, and McNeil. The McNeil interchange is located between Manor and Bertram.

The proposed merger will leave one common carrier -- the merged railroad company, Union Pacific/Southern Pacific ("UPSP") -- to handle freight carriers who desire access to the McNeil interchange for North/South service. Without an alternative carrier, the merger threatens the economic viability of the Giddings/Llano Railroad, since the ability to interchange with more than one railroad carrier fosters competition for shipping prices. This competition is most critical for the McNeil interchange, which is located on the most active portion of the line. Elgin and Giddings interchanges are located on a portion of the line that has been discontinued, although from time to time parties propose to reopen it. CMTA believes that this anticompetitive effect can be offset by granting trackage rights to another rail carrier unaffiliated with the Applicants, from Round Rock to McNeil, and interchange rights at McNeil, and by granting interchange rights at McNeil, Elgin and Giddings for the City of Austin, its successors and assigns, and third party rail freight operators.

In addition, pursuant to its mass transit easement, CMTA is undertaking long and short range planning, which includes future mass transit through the McNeil interchange. However, such service would be premised upon CMTA's obtaining primary (or priority) interchange trackage rights to afford priority to mass transit service over freight service,

especially during peak passenger transport hours. Accordingly, through its responsive application, CMTA may request priority interchange rights at McNeil for its future mass transit operations. The public interest in a future mass transit operation to serve the Austin metropolitan area necessitates these interchange rights at the McNeil junction. Without the priority interchange rights, commuter service through the McNeil interchange to the City of Austin could be interrupted at peak travel times, during morning rush hours, for example, without recourse or alternatives for CMTA. The primary interchange rights necessary for future mass transit operations would not have any anticompetitive effects, and would contribute to the public interest by meeting significant transportation needs.

In sum, in its responsive application (as described in CMTA's Description of Responsive Application) CMTA will seek interchange rights at McNeil, Elgin and Giddings for the City of Austin, its successors and assigns, and third party rail freight operators, and primary interchange rights at McNeil for CMTA's future mass transit operations. In addition, CMTA will request that the Surface Transportation Board grant an unnamed rail carrier unaffiliated with Applicants trackage rights from Round Rock to McNeil, over UPSP's line, and interchange rights at McNeil and/or Round Rock, as appropriate, depending on the designated carrier.

Since CMTA's responsive application would not only have no anticompetitive effects, but would in fact benefit competition, CMTA has rebutted the presumption that its responsive application would be "significant." Therefore, CMTA asks the Board to determine that the anticipated responsive application would be a "minor" transaction, and that the Board's regulations for minor transactions apply.

2. If the Board Determines the Transaction Would Be Significant, CMTA Requests a Waiver of Compliance with 49 C.F.R. §§ 1180.7 and 1180.8(a)

Section 1180.7 of the Board's consolidation regulations requires detailed market impact analyses for major and significant transactions. While CMTA expects to provide the Board with market information to support its responsive application, impact analyses of the detail required by Section 1180.7 would be unduly costly and burdensome for CMTA's transaction, which is limited in scope.

The proposed operating plan to be submitted under Section 1180.8(a) is to be based on the impact analyses to be performed under Section 1180.7. If the Board waives compliance with Section 1180.7, inferentially a waiver of Section 1180.8(a) requirements is appropriate. In any event, CMTA would provide the Board the operating data required for minor transactions under Section 1180.8(b), which should provide ample information to allow the Board to evaluate CMTA's operating plan.

3. CMTA Requests a Waiver of All Requirements in 49 C.F.R. § 1180 for the Inclusion of Applicant Carrier Information

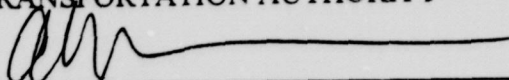
CMTA seeks a waiver of all requirements in 49 C.F.R. § 1180 for the inclusion of information from applicant carrier for that portion of its responsive application that seeks, for a rail carrier unaffiliated with the Applicants, to have trackage rights from Round Rock to McNeil, with interchange rights at McNeil and/or Round Rock, as appropriate. In this case, CMTA is a noncarrier seeking trackage and interchange rights on behalf of a suitable carrier unaffiliated with Applicants, the identity of which is uncertain at this time. CMTA asserts that this request is reasonable and similar to that which the Surface Transportation Board has granted in the past.

III. Conclusion

For the foregoing reasons, CMTA requests that the Board determine that CMTA's anticipated responsive application would constitute a minor transaction or, if the Board declines to do so, that it waive CMTA's obligation to comply with the requirements of 49 C.F.R. §§ 1180.7 and 1180.8(a). In addition, CMTA requests that, with regard to the interchange and trackage rights CMTA will seek on behalf of an unnamed, unaffiliated rail carrier, the Board waive CMTA's obligation to provide applicant carrier information required by 49 C.F.R. § 1180.

Respectfully submitted,

CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY



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(202) 828-5800

Attorneys for Capital Metropolitan
Transportation Authority

CERTIFICATE OF SERVICE

I certify that on this 20th day of March, 1996 a copy of the foregoing Amended Petition of Capital Metropolitan Transportation Authority for Clarification or Waiver was served by hand-delivery to:

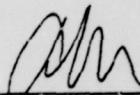
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and by first class mail to all other parties of record listed on the service list attached to Decision No. 15, as supplemented and amended by Decision No. 17.



Albert B. Krachman

PROPOSED

**ORDER GRANTING CONSOLIDATED MOTION FOR
LEAVE TO AMEND DESCRIPTION AND PETITION AND GRANTING
REQUESTED WAIVER OF "APPLICANT CARRIER" INFORMATION**

SURFACE TRANSPORTATION BOARD¹

DECISION

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND
MISSOURI PACIFIC RAILROAD COMPANY -- 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

[Decision No.]

Decided: March , 1996

BACKGROUND

On January 29, 1996, pursuant to Decision No. 9, Capital Metropolitan Transportation
Authority ("CMTA") filed a Description of Anticipated Inconsistent and Responsive Application²

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to sections 11323-25 of the Act. Therefore, this decision applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

² In the primary application filed November 30, 1995, applicants -- Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR), Southern Pacific Rial Corporation (SPR), Southern Pacific Transportation Company (SPT), St. Louis Southwestern Railway Company (SSW), SPCSL Corp. (SPCSL), and The Denver and Rio Grande Western Railroad Company (DRGW) (collectively applicants) -- seek approval and authorization under 49 U.S.C. 11343-45 for: (1) the acquisition of control of SPR by UP Acquisition Corporation (Acquisition), an indirect wholly owned subsidiary of UPC; (2) the merger of SPR into UPRR; and (3) the resulting common control of UP and SP by UPC. In Decision No. 9, served and published in the Federal Register on December 27, 1995, the ICC accepted the primary application for consideration.

(continued...)

CMTA-2 ("Description") and a Petition for Waiver or Clarification CMTA-3 ("Petition").³

CMTA indicated in CMTA-2 that it may file a responsive application requesting certain interchange rights at McNeil, Elgin, and Giddings, TX, for the City of Austin, its successors and assigns, and third party rail freight operators; trackage rights for Burlington Northern and Santa Fe Corporation Railroad (BN/Santa Fe) for track from Round Rock, TX, to McNeil, TX over the UP/SP line, and interchange rights at McNeil; and finally, "primary" or "priority" interchange rights at McNeil for CMTA's future mass transit operations. In both pleadings, CMTA noted the potential for future amendment of the Description and Petition based on changing circumstances during the pendency of the proceeding.

On March 20, 1996, CMTA filed a consolidated motion for leave to amend its Description of Responsive Application and related Petition for Clarification or Waiver.⁴ In sum, CMTA seeks to amend its Description to effect a change from the BN/Santa Fe as a designated recipient of certain trackage and interchange rights. CMTA desires to instead seek those same trackage and interchange rights on behalf of an unnamed rail carrier unaffiliated with the Applicants. Accordingly, CMTA seeks to amend its Petition to reflect the uncertainty of the applicant carrier by seeking Board waiver of what would otherwise be CMTA's obligation to file information regarding the "applicant carrier."

² (...continued)

UPC, UPRR and MPRR are referred to collectively as Union Pacific. UPRR and MPRR are referred to collectively as UP. SPR, SPT, SSW, SPCSL, and DRGW are referred to collectively as Southern Pacific. SPT, SSW, SPCSL, and DRGW are referred to collectively as SP. SPT is a wholly owned subsidiary of SPR. SPCSL and DRGW are wholly owned subsidiaries of SPT. SPT owns 99.9% of SSW.

³ The Board approved CMTA-3 in Decision No. 13, served on February 15, 1996.

⁴ CMTA designated its pleadings CMTA-7 (Motion for Leave to Amend Description of Responsive Application and Petition for Clarification or Waiver), CMTA-8 (Amended Description of Responsive Application Anticipated) and CMTA-9 (Amended Petition for Clarification or Waiver).

CMTA then seeks approval of the requested amended Petition.

DISCUSSION AND CONCLUSION

As grounds for the proposed amendment, CMTA asserts that at the time of filing CMTA-2 and -3, CMTA believed there was a high probability that the BN/Santa Fe would pursue trackage and interchange rights over a 7 mile segment from Kerr (near Round Rock) to McNeil, which would permit BN/Santa Fe to serve shippers along the Giddings-Llano line. Because there was uncertainty over CMTA's potential common carrier duties, and BN/Santa Fe's position, CMTA afforded the STB advance notice of the potential for a future amendment of the Description and the Petition. See Footnotes 1 to CMTA-2, CMTA-3.

CMTA adds that, as a result of written discovery received from BN/SF on March 12, 1996, and the City of Austin's recent plan to convey the line to CMTA, CMTA further believes that limited amendments to CMTA-2 and -3 are warranted. The proposed limited amendments to both pleadings add the phrase "an unnamed rail carrier unaffiliated with Applicants" as an alternative to "BN/SF" as the holder of the new trackage rights from Kerr to McNeil.⁵ This alternative accommodates the diminished potential that BN/Santa Fe will pursue the trackage rights at issue, and obviates potential litigation between CMTA, BN/Santa Fe and the Applicants on that issue. The amendment also affords CMTA and the STB additional flexibility in connection with an alternate carrier assuming the relevant trackage and interchange rights.

CMTA proposes that a responsive application for the same trackage and interchange rights to be granted to an unnamed carrier will not prejudice any party to this proceeding, and will in

⁵ The amended pleadings also clarify that the interchange rights at McNeil for future mass transit, denominated as "primary interchange rights," is intended to convey priority for mass transit over freight traffic at the interchange. In addition, the amended pleadings reflect that the City of Austin has entered into a contract with a successor operator to Austin & Northwest.

streamline efforts to resolve this merger swiftly. Any matters not resolved in the present proceeding could be resolved in a follow-up proceeding, which we stated in Decision No. 12 would not delay the consummation of the primary UP/SP merger. We agree and will accept the amended pleadings and grant the requested waiver.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

IT IS ORDERED:

1. CMTA's Consolidated Motion for Leave to Amend Description of Responsive Application Anticipated and Petition for Clarification or Waiver is granted.
2. CMTA's amended Petition for Clarification or Waiver is granted.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams
Secretary

STB

FD

32760

2-26-96

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Item No. _____

Page Count 19

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4 Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND
MISSOURI PACIFIC RAILROAD COMPANY

-- 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

BROWNSVILLE AND RIO GRANDE INTERNATIONAL'S
SECOND SET OF INTERROGATORIES
AND INFORMAL REQUEST FOR PRODUCTION OF DOCUMENTS
TO THE APPLICANTS

Pursuant to 49 C.F.R. §§ 1114.21-1114.31, the
Brownsville and Rio Grande International Railroad ("BRGI")
directs the following interrogatories and informal document
production requests to the Union Pacific Corporation ("UPC"),
Union Pacific Railroad Company ("UPRR"), Missouri Pacific
Railroad Company ("MPRR"), Southern Pacific Rail Corporation
("SPR"), Southern Pacific Transportation Company ("SPT"), St.
Louis Southwestern Railway Company ("SSW"), SPCSL Corp.
("SPCSL"), and the Denver and Rio Grande Western Railroad Company
("DRGW") (collectively, the "Applicants").

BRGI requests that, within 15 days after service of
these requests, Applicants serve their responses on BRGI's
counsel and make the requested documents available for inspection

and copying by BRGI or its representatives at the document depository established by Applicants in this proceeding. Alternatively, Applicants may produce legible, complete, and exact copies of responsive documents so long as the documents themselves are retained and will be made available if requested. In such case, the copies should be sent by expedited delivery to the undersigned attorneys. BRGI will pay all reasonable costs for duplication and expedited delivery of documents to its attorneys.

• Applicants should contact the undersigned promptly to discuss any objections or questions with a view to resolving any points of dispute or issues of interpretation informally and expeditiously.

DEFINITIONS

1. The "Agreement" means the agreement between UPC, Acquisition (a direct wholly-owned subsidiary of UPRR), UPRR and SPR to merge, as provided in Exhibit 2 in Volume 7 of the Application (UP/SP-28).

2. "Applicants" mean the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"), Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and the Denver and Rio Grande Western Railroad Company ("DRGW"), any divisions, departments, subsidiaries, affiliates, related companies, present and former employees, agents, counsel,

officers, directors, advisors, consultants, divisions, all other persons or entities acting on behalf of any or all of the above-identified companies, and the Consolidated System that would result from the Transaction.

3. "Application" means the application filed in this proceeding on November 30, 1995, by the Applicants, including, where relevant, any amendment or supplemental information submitted by Applicants to the Board.

4. "BNSF" means any and all of following: the Burlington Northern Inc. ("BNI"), Burlington Northern Railroad Company ("BN"), Santa Fe Pacific Corporation ("SFP") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), any divisions, departments, subsidiaries, affiliates, related companies, present and former employees, agents, counsel, officers, directors, advisors, consultants, divisions, all other persons or entities acting on behalf of any or all of the above-identified companies, as well as any and all successor entities resulting from the merger of the above-identified companies as approved pursuant to Finance Docket No. 32549.

5. "Board" or "STB" means the Surface Transportation Board and/or its predecessor, the Interstate Commerce Commission.

6. "BRGI" means the Brownsville and Rio Grande International Railroad.

7. "Brownsville" means any and all of the following: the City of Brownsville, Texas, the immediate vicinity (within a radius of 10 miles from the City of Brownsville), and the Port of

Brownsville, Texas.

8. "Competition" includes both intramodal and intermodal competition and also includes source competition.

9. "Consolidated System" means UP and SP operated as an integrated system after the Transaction, or the entity created by the merger of UP and SP.

10. "Depository" means the depository established by Applicants in accordance with the Interstate Commerce Commission's order of December 7, 1995 ("Order Adopting Discovery Guidelines") in these Proceedings, to contain "all documents relevant to [each evidentiary] filing (other than documents that are privileged or otherwise protected from discovery)".

11. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries, notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or interviews; minutes, summaries, notes, or records of conferences or meetings; record or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams, plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters;

press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further, the term "document" includes:

- (a) both basis records and summaries of such records (including computer runs);
- (b) both original versions and copies that differ in any respect from original versions, including notes; and
- (c) both documents in the possession, custody, or control of Applicants and documents in the possession, custody, or control of consultants or others who have assisted Applicants in connection with this proceeding.

12. "Identify,"

(a) when used in relation to an individual, means to state the name, address, and home and business telephone number of the individual, the position and employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;

(b) when used in relation to a corporation, partnership, or other entity, means to state the name, address, and telephone number of the corporation, partnership, or entity;

(c) when used in relation to a document, means to:

- (1) state the nature of the document (e.g., letter, memorandum, report, chart);
- (2) identify the author, each addressee, and

references to "interchange" or "interline" traffic includes potential as well as actual interchange or interline traffic.

15. "1982 Memorandum of Understanding" means that agreement entitled: "Memorandum of Understanding: An Agreement for Relocation of Railroad Facilities and for Related Improvements at and Near Brownsville, Texas," dated August 6, 1982 among the Missouri Pacific Railroad Company, the Southern Pacific Transportation Company, the Brownsville Navigation District of Cameron County, Texas, the Texas State Department of Highways and Public Transportation, the City of Brownsville, Texas, and Cameron County, Texas.

16. "Person" means an individual, company, partnership, or other entity of any kind.

17. "Provide" (except where the word is used with respect to providing service or equipment), "set forth", "list", or "describe" means to supply a narrative response in accordance with 49 C.F.R. § 1114.26. If the information sought in a particular interrogatory is contained in existing documents, those documents may be specifically identified and produced as an alternative to supplying a narrative response.

18. "Rates" include contract rates and tariff rates.

19. "Relating to" a subject means making a statement about, referring to, or discussing, the subject, including, as to actions, any decisions to take, not take, defer, or defer decision on the action.

20. "Settlement Agreement" means the following agreements

between the Applicants and BNSF:

(a) the agreement dated September 25, 1995, and attached as Appendix 1 to the Verified Statement of Carl R. Ice (BN/SF-1);

(b) the supplemental agreement dated November 18, 1995, and attached as Appendix 2 to the Verified Statement of Carl R. Ice (BN/SF-1); and

(c) any additional supplemental agreements between these parties which relate to the agreement described in 24(a), above.

21. "Shipper" means a user of rail services, including a consignor, a consignee, or a receiver.

22. "SP" means SPT, SSW, SPCSL, and any divisions, departments, subsidiaries, affiliates, or related companies, present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, and all other persons or entities acting on behalf of any or all of them.

23. "Studies, analyses, and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.

24. "This proceeding" means Finance Docket No. 32760 and any sub-dockets that may be established.

25. "Transaction" means the actions for which approval is sought in the Application, as generally described at UP/SP-22 pp. 1-6, or any one of such actions or any combination of such

actions, and any related transactions (including tender offers and agreements to incur debt).

26. "UP" means UPRR, MPRR, Chicago and North Western Transportation Company and Chicago and North Western Railway Company, and any divisions, departments, subsidiaries, affiliates, or related companies, present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, and all other persons or entities acting on behalf of any or all of them.

INSTRUCTIONS

1. To the extent that Applicants consider any of the following interrogatories or document requests objectionable, respond to each part thereof that is not objectionable, separately identify that part of the interrogatory or document request that Applicants find objectionable and state the grounds for each such objection.

2. Unless otherwise specified, these discovery requests cover the period beginning January 1, 1994, and ending with the date of response.

3. When producing documents, indicate the specific request in response to which the documents are produced.

4. Where a request contains subparts denominated by letters, (e.g., (a), (b)), respond separately to each subpart.

5. If Applicants have information that would permit a partial answer to any interrogatory, but would have to conduct a

special study to obtain information necessary to a more complete response to that interrogatory, and if the burden of conducting such special study would be greater for Applicants than for BRGI, then:

- (a) state that fact;
- (b) provide the partial answer that may be made with information available to Applicant; and
- (c) as provided in 49 C.F.R. § 1114.26(b), produce such business records, or compilation, abstract, or summary based thereon, as will permit BRGI to derive or ascertain a more complete answer.

6. If a document responsive to any part of a document request is not presently available:

- (a) state that fact;
- (b) identify the document to the extent possible;
- (c) state when the document was most recently in Applicants' possession or subject to Applicants' control and what disposition was made of it;
- (d) identify each person currently in possession or control of the document; and
- (e) furnish whatever other responsive documents are available.

7. If the answer to an interrogatory may be derived from documents in Applicants' possession, and deriving the answer

would be no more burdensome for BRGI than for Applicants, then Applicants may respond to the interrogatory by referring to this Instruction and identifying and producing the documents, indicating specifically by document date, page and, if possible, line number where the information can be found.

8. To the extent that any response refers to or consists of documents in the depository, identify the documents by Bates number(s) and specific line number(s) as relevant.

9. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,

(a) identify the information or document; and

(b) state the basis for the claim that it is privileged or otherwise not discoverable.

10. Where any interrogatory or document request refers to "Applicants" or to any "Applicant", and the response for UP alone would be different from the response for SP alone, give separate responses for UP and SP.

11. In responding to any request for data regarding intermodal traffic, indicate separately data for trailers and for containers.

12. Where the response to a request is found in the response to another request, in the Application, or in documents in the Depository, it will be sufficient to refer specifically to relevant portions thereof.

13. All documents requested and other information requested herein should be supplied or made available in printed or hard

each recipient; and

- (3) state the number of pages, title, and date of the document and the specific page number(s), and line number(s), if possible, where the relevant information can be found.

(d) when used in relation to an oral communication or statement, means to:

- (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
- (2) state the date and place of the communication or statement;
- (3) describe in detail the contents of the communication or statement; and
- (4) identify all documents relating to the communication or statement;

(e) when used in relation to traffic flows, means to identify relevant traffic movements by commodity (including 5-digit STCC code), origin, and destination; and

(f) when used in any other context means to describe or explain.

13. "Including" means encompassing without limitation.

14. "Interchange" or "interline" includes all forms of interchange, including run-through trains and haulage. All

copy form.

14. Please note that pursuant to 49 C.F.R. § 1114.29 these discovery requests are continuing and that there is an obligation to supplement such responses as may be required.

15. References to railroads, shippers, and other companies (including Applicants) include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; agents; consultants; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

16. Unless otherwise specified, all users of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

17. In answering each of the interrogatories, Applicants are to:

- (a) Identify all source documents from which the information has been or can be obtained or which form a basis for answers given or corroborate the answers given. For each source document identified, state the name, title and address of the custodian of such document, and state whether such source document may be inspected and copied by Applicants; and
- (b) State whether the information furnished is within the personal knowledge of the person answering and, if not, the name of each person to whom the information is a matter of personal knowledge.

BROWNSVILLE AND RIO GRANDE INTERNATIONAL RAILROAD'S
SECOND SET OF INTERROGATORIES

14. Please provide the following information concerning SP's existing operations to and from the Brownsville area:

- (a) total inbound carloads handled by SP into Brownsville (including traffic delivered to the UP and interchanged to the Mexican rail system) during 1994 and also for 1995;
- (b) total outbound carloads handled by SP out of Brownsville (including traffic delivered to the SP by the UP and traffic interchanged from the Mexican rail system) during 1994 and also for 1995;
- (c) with respect to the carload data requested in interrogatories 14(a) and (b), please identify, by carload quantities, the commodities handled by SP both into and out of Brownsville in 1994 and also in 1995;
- (d) describe the train service SP currently provides to Brownsville, including train frequency, train numbers, and the originating and terminating points of each train.

15. By or about April of 1996, BRGI expects to enjoy a direct connection with the SP as a result the imminent completion of a track relocation project. (This relocation project represents a phase of the work to be undertaken in connection with the 1982 Memorandum of Understanding.) Please provide the

following information concerning SP's anticipated operational changes in Brownsville as a result of the new connection between SP and BRGI:

- (a) identify the train(s) that will interchange with BRGI;
- (b) with respect to the trains identified in interrogatory number 15(a), provide the schedules for such trains, as well as origin and destination points; and
- (c) please provide detailed information with respect to any additional operational changes SP plans to undertake upon completion of above-described track relocation project.

16. Please provide the following information concerning UP's existing operations to and from the Brownsville area:

- (a) total inbound carloads handled by UP into Brownsville (including traffic delivered to the SP and traffic interchanged with the Mexican rail system) during 1994 and also for 1995;
- (b) total outbound carloads handled by UP out of Brownsville (including traffic delivered from the SP and traffic interchanged from the Mexican rail system) during 1994 and also for 1995;
- (c) with respect to the carload data requested in interrogatories 14(a) and (b), please identify, by carload quantities, the commodities handled by UP both

- into and out of Brownsville in 1994 and also in 1995;
- (d) describe the train service UP currently provides to Brownsville, including train frequency, train numbers, and the originating and terminating points of each train.

17. Have the applicants determined that the proposed merger will have an impact upon of the scope of the projects and goals contained in the 1982 Memorandum of Understanding? If so, please explain with particularity how the proposed merger will change the projects and goals described in the Memorandum of Understanding. If not, please explain in detail how the proposed merger will not affect the projects and goals described in that agreement.

18. Do the Applicants contend that the BNSF should not be made a party to the 1982 Memorandum of Understanding? If so, please explain the grounds for your position.

19. If the proposed merger is approved, the Applicants will possess two rail routes to and from Brownsville (one via the former SP from Harlingen to Brownsville, and a parallel route via the former UP from Harlingen to Brownsville). With respect to these two lines, please provide the following information:

- (a) whether the Applicants intend to abandon any portion of either of these two lines after the merger;
- (b) whether, following the merger, the current SP line will be utilized for through train service between

Houston and Brownsville;

- (c) whether the SP line between Harlingen and Brownsville will experience a reduction in the frequency of local service and through train service, and if so, the extent of such reductions;
- (d) indicate over which of the two lines BNSF would exercise trackage rights (in the event that BNSF makes such an election).

20. In the event that BNSF should elect to exercise trackage rights between Houston (Algoa) and Brownsville, what capital improvements would be necessary to accommodate BNSF's train operations over Applicant's lines? If no improvements are necessary, please explain why.

21. Do Applicants intend to promote or develop intermodal service to and from the Brownsville area? If so, please identify and describe all of the studies and marketing research conducted on this topic, and describe how such service would be implemented following the merger of the UP and SP.

22. Have Applicants undertaken any studies which, in whole or in part, concern the rail service they plan to provide to the various ports they will serve, as a merged system, along the Gulf of Mexico? If so, please identify any documentation prepared in connection with such studies, including any proposed or existing marketing plans or operating strategies resulting therefrom, and identify the individual or individuals who prepared such studies and related documents.

23. BRGI understands that SP currently possesses certain rights that enable it to access the Mexican rail system at Brownsville (Matamoros, Mexico). Following completion of the track relocation project described in interrogatory number 15, above, will SP be able to provide switching services for BRGI, which would enable BRGI to route cars for interchange with the Mexican rail system at Brownsville? If SP cannot provide such services for BRGI and its customers, please explain in detail what would prohibit such a service arrangement.

24. In connection with interrogatory number 23, above, if SP will be able to provide such switching services for BRGI and its customers (following completion of the aforementioned track relocation), will other anticipated track relocations, pursuant to the 1982 Memorandum of Understanding, adversely affect SP's ability to serve as a connection for BRGI to the Mexican rail system at Brownsville? If so, please explain the cause and nature of each such adverse impact which may be occasioned by further projects undertaken pursuant to the 1982 Memorandum of Understanding.

BROWNSVILLE AND RIO GRANDE INTERNATIONAL RAILROAD'S
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

6. Produce all documents identified in response to any of the foregoing interrogatories, and provide all documents relied upon in responding to the foregoing interrogatories.

Respectfully submitted,

Robert A. Wimbish

Robert A. Wimbish

John D. Heffner

Keith G. O'Brien

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Counsel for the Brownsville
and Rio Grande International
Railroad

DATED: February 26, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of February, 1996, served the foregoing document on counsel for the Applicants and both the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company (by messenger) and on all other parties listed on the Restrictive Service List (by first class mail, postage prepaid, or by more expeditious manner of delivery).

Robert A. Wimbish
Robert A. Wimbish