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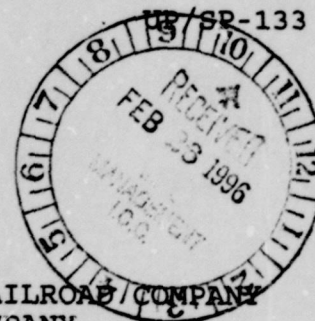
Item No. _____

Page Count 15

Feb # 314

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760



ENTERED
Office of the Secretary

FEB 27 1996

5 Part of
Public Record

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' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO WESTERN RESOURCES, INC.

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The Denver and Rio Grande
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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

February 26, 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' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO WESTERN RESOURCES, INC.

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 Western Resources, Inc. ("Western
Resources").

Responses should be served as soon as possible, and
in no event later than 15 days from the date of service
hereof. Western Resources 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 Western Resources and documents in the possession, custody or control of consultants or others who have assisted Western Resources in connection with this proceeding.

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

X. "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.

XI. "MPRR" means Missouri Pacific Railroad Company.

XII. "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 Western Resources, its counsel, or the consultants or others who have assisted Western Resources 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.

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

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

XV. "SPCSL" means SPCSL Corp.

XVI. "SPR" means Southern Pacific Rail Corporation.

XVII. "SPT" means Southern Pacific Transportation Company.

XVIII. "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. "Western Resources" means Western Resources, Inc.

XXX. 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 Western Resources) 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. Identify and describe in detail any agreements that Western Resources has 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 Western Resources contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

2. For each utility plant operated by Western Resources, separately for each year 1993 through 1995, identify the originating mines for all coal burned at the plant and, as to each such mine, state: (a) the tonnage of coal from that mine burned at the plant; (b) the average delivered price of coal from that mine; (c) the average minehead price of that coal; (d) the rail transportation routings (including origination and interchange points) for all coal shipped from that mine to the plant; and (e) any transportation routings or modes other than rail used in shipping coal to the plant.

DOCUMENT REQUESTS

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that Western Resources makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for Western Resources on or about March 29, 1996 in this proceeding.

2. Produce all documents relating to benefits or efficiencies that will result from the UP/SP merger.

3. Produce all documents relating to potential traffic impacts of the UP/SP merger.

4. Produce all documents relating to competitive impacts of the UP/SP merger, including but not limited to

effects on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options.

5. Produce all documents relating to the BN/Santa Fe Settlement Agreement.

6. Produce all documents relating to the IC Settlement Agreement.

7. Produce all documents relating to the Utah Railway Settlement Agreement.

8. Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

9. Produce all studies, reports or analyses relating to actual or potential competition between UP and SP.

10. Produce all studies, reports or analyses relating to competition between single-line and interline rail transportation.

11. Produce all studies, reports or analyses relating to the benefits of any prior rail merger or rail mergers generally.

12. Produce all studies, reports or analyses relating to the financial position or prospects of SP.

13. Produce all communications with 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.

14. Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of Western Resources or any other party in this proceeding.

15. 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 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.

16. Produce all notes of, or memoranda relating to, any meetings 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 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.

17. Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

18. Produce all documents relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

19. Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

20. 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 might be the subject of a proposed trackage rights condition in this proceeding.

21. Produce all documents relating to any agreement or understanding that Western Resources has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. 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.

22. Produce all presentations to, and minutes of, the board of directors of Western Resources relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

23. Produce all documents in the possession of Western Resources or its members relating to whether Utah and Colorado coal competes with Powder River Basin or Hanna Basin coals, including but not limited to any studies, reports or analyses of the use by utilities of, solicitation by utilities of bids for, or interchangeability in use of, such coals.

24. Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

25. Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights.

26. Produce all documents relating to the effect of the UP/SP merger on coal transportation service, competition or routings to any Western Resources facility.

27. Produce all studies, reports or analyses relating to (a) using a different coal source than is presently used at any Western Resources facility, (b) using a non-coal fuel in lieu of coal at any Western Resources facility, or (c) purchasing power or shifting power generation

among facilities as alternatives to consuming coal at any Western Resources facility.

28. Produce all filings made with state utility commissions or state regulatory agencies that discuss sources of fuel.

29. Produce all studies, reports, analyses, compilations, calculations or evaluations of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared by L.E. Peabody & Associates, and all workpapers or other documents relating thereto.

Respectfully submitted,

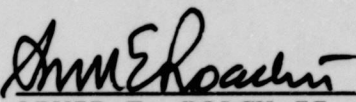
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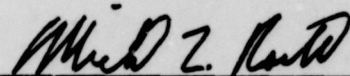
February 26, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 26th day of February, 1996, I caused a copy of the foregoing document to be served by hand on Nicholas J. DiMichael, counsel for Western Resources, Inc., at Donelan, Cleary, Wood & Maser, P.C., 1100 New York Avenue, N.W., Suite 750, Washington, D.C. 20005-3934, 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



Michael L. Rosenthal

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Item No. _____

Page Count 15

Feb 5 318

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' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO THE WESTERN SHIPPERS' COALITION

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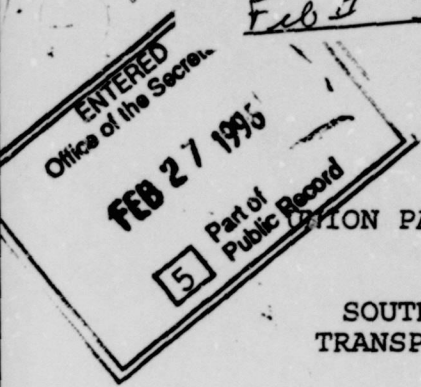
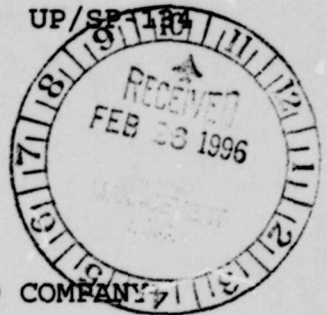
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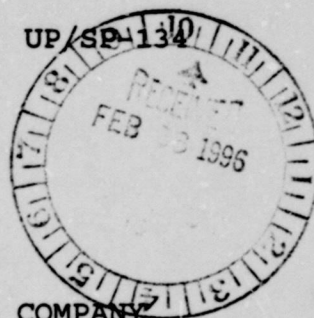
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Corporation, Union Pacific
Railroad Company and Missouri
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February 26, 1996



BEFORE THE
SURFACE TRANSPORTATION BOARD



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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 the Western Shippers' Coalition ("WSC").

Responses should be served as soon as possible, and
in no event later than 15 days from the date of service
hereof. WSC 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,
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III. "BN/Santa Fe" means the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company.

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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 WSC and documents in the possession, custody or control of consultants or others who have assisted WSC in connection with this proceeding.

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

X. "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.

XI. "MPRR" means Missouri Pacific Railroad Company.

XII. "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 WSC, its counsel, or the consultants or others who have assisted WSC 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.

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

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

XV. "SPCSL" means SPCSL Corp.

XVI. "SPR" means Southern Pacific Rail Corporation.

XVII. "SPT" means Southern Pacific Transportation Company.

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

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

XX. "Southern Pacific" means SPR and SP.

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

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

XXIII. "UPC" means Union Pacific Corporation.

XXIV. "UPRR" means Union Pacific Railroad Company.

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

XXVI. "Union Pacific" means UP and UPC.

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

XXVIII. "WSC" means the Western Shippers' Coalition.

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 WSC) 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. 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.

2. With respect to the assertions that WSC's counsel has made at depositions of several of Applicants' witnesses that a UP official stated that "UP didn't intend to do more than essential maintenance on some of the Rio Grande lines for the next five years" (Anschutz Dep., p. 259; see

also, e.g., Rebensdorf Dep., p. 454), (a) identify the UP official, (b) state the date and place of the alleged statement, (c) identify all persons present when the alleged statement was made, and (d) fully describe the alleged statement, including the particular lines about which the alleged statement was made.

3. Identify all members of WSC.

4. Identify all persons or entities that have asked for their names to be removed from lists of members of WSC.

5. Identify the financial contributors to WSC and the amounts contributed.

6. For each utility plant or coal mine operated by any of WSC's members, separately for each year 1993 through 1995, identify the originating mines for all coal transported to any utility plant and, as to each such mine, state:

(a) the tonnage of coal from that mine burned at the plant; (b) the average delivered price of coal from that mine; (c) the average minehead price of that coal; (d) the rail transportation routings (including origination and interchange points) for all coal shipped from that mine to the plant; and (e) any transportation routings or modes other than rail used in shipping coal to the plant.

DOCUMENT REQUESTS

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that WSC makes on or

about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for WSC on or about March 29, 1996 in this proceeding.

2. Produce all documents in the possession of WSC or its members relating to benefits or efficiencies that will result from the UP/SP merger.

3. Produce all documents in the possession of WSC or its members relating to potential traffic impacts of the UP/SP merger.

4. Produce all documents in the possession of WSC or its members relating to competitive impacts of the UP/SP merger, including, but not limited to effects on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options.

5. Produce all documents in the possession of WSC or its members relating to the BN/Santa Fe Settlement Agreement.

6. Produce all documents in the possession of WSC or its members relating to the IC Settlement Agreement.

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11. Produce all studies, reports or analyses in the possession of WSC or its members relating to the benefits of any prior rail merger or rail mergers generally.

12. Produce all studies, reports or analyses in the possession of WSC or its members relating to the financial position or prospects of SP.

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.

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.

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.

16. Produce 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 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.

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.

18. Produce all documents in the possession of WSC or its members relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

19. Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement: Lines or any other line of UP or SP that might be

the subject of a proposed trackage rights condition in this proceeding.

20. 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 might be the subject of a proposed trackage rights condition in this proceeding.

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. 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.

22.. Produce all presentations to, and minutes of, the boards of directors (or other governing bodies) of WSC or its members relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

23. Produce all documents relating to the assertions that WSC's counsel has made at depositions of several of Applicants' witnesses that a UP official stated that "UP didn't intend to do more than essential maintenance on some of the Rio Grande lines for the next five years"

(Anschutz Dep., p. 259; see also, e.g., Rebensdorf Dep., p. 454).

24. Produce all documents in the possession of WSC or its members relating to whether Utah and Colorado coal competes with Powder River Basin or Hanna Basin coals, including but not limited to any studies, reports or analyses of the use by utilities of, solicitation by utilities of bids for, or interchangeability in use of, such coals.

25. Produce all filings by members of WSC made with state utility commissions or state regulatory agencies that discuss sources of fuel.

26. Produce all studies, reports, analyses, compilations, calculations or evaluations of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared by L.E. Peabody & Associates, and all workpapers or other documents relating thereto.

Respectfully submitted,

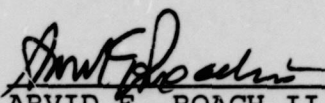
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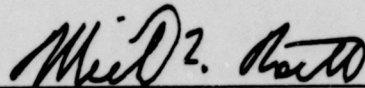
February 26, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 26th day of February, 1996, I caused a copy of the foregoing document to be served by hand on Michael F. McBride, counsel for Western Shippers' Coalition, at LeBoeuf, Lamb, Greene & MacRae, 1875 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20009-5728, 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



Michael L. Rosenthal

STB

FD

32760

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Item No. _____

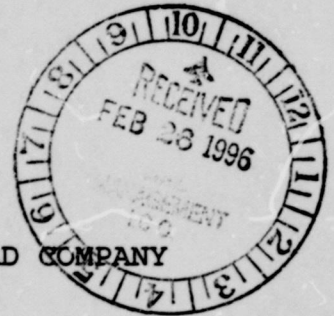
Page Count 14

Feb 2 319

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UP/SP-135



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

ENTERED
Office of the Secretary

FEB 2 / 1996

5 Part of
Public Record

APPLICANTS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO WISCONSIN ELECTRIC POWER COMPANY

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Pacific Railroad Company

February 26, 1996

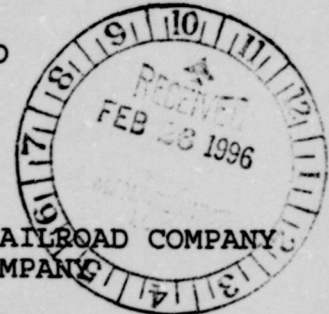
BEFORE THE
SURFACE TRANSPORTATION BOARD

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' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO WISCONSIN ELECTRIC POWER COMPANY

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 Wisconsin Electric Power Company
("Wisconsin Electric").

Responses should be served as soon as possible, and
in no event later than 15 days from the date of service
hereof. Wisconsin Electric 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 Wisconsin Electric and documents in the possession, custody or control of consultants or others who have assisted Wisconsin Electric in connection with this proceeding.

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

X. "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.

XI. "MPRR" means Missouri Pacific Railroad Company.

XII. "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 Wisconsin Electric, its counsel, or the consultants or others who have assisted Wisconsin Electric 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.

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

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

XV. "SPCSL" means SPCSL Corp.

XVI. "SPR" means Southern Pacific Rail Corporation.

XVII. "SPT" means Southern Pacific Transportation Company.

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

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

XX. "Southern Pacific" means SPR and SP.

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

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

XXIII. "UPC" means Union Pacific Corporation.

XXIV. "UPRR" means Union Pacific Railroad Company.

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

XXVI. "Union Pacific" means UP and UPC.

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

XXVIII. "Wisconsin Electric" means Wisconsin Electric Power Company.

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 Wisconsin Electric) 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. Identify and describe in detail any agreements that Wisconsin Electric has 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 Wisconsin Electric contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

2. For each utility plant operated by Wisconsin Electric, separately for each year 1993 through 1995, identify the originating mines for all coal burned at the plant and, as to each such mine, state: (a) the tonnage of coal from that mine burned at the plant; (b) the average delivered price of coal from that mine; (c) the average minehead price of that coal; (d) the rail transportation routings (including origination and interchange points) for all coal shipped from that mine to the plant; and (e) any transportation routings or modes other than rail used in shipping coal to the plant.

DOCUMENT REQUESTS

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that Wisconsin Electric makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for Wisconsin Electric on or about March 29, 1996 in this proceeding.

2. Produce all documents relating to benefits or efficiencies that will result from the UP/SP merger.

3. Produce all documents relating to potential traffic impacts of the UP/SP merger.

4. Produce all documents relating to competitive impacts of the UP/SP merger, including but not limited to effects on (a) market shares, (b) source or destination

competition, (c) transloading options, or (d) build-in options.

5. Produce all documents relating to the BN/Santa Fe Settlement Agreement.

6. Produce all documents relating to the IC Settlement Agreement.

7. Produce all documents relating to the Utah Railway Settlement Agreement.

8. Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

9. Produce all studies, reports or analyses relating to actual or potential competition between UP and SP.

10. Produce all studies, reports or analyses relating to competition between single-line and interline rail transportation.

11. Produce all studies, reports or analyses relating to the benefits of any prior rail merger or rail mergers in general.

12. Produce all studies, reports or analyses relating to the financial position or prospects of SP.

13. Produce all communications with 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.

14. Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of Wisconsin Electric or any other party in this proceeding.

15. 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 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.

16. Produce all notes of, or memoranda relating to, any meetings 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 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.

17. Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any

possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

18. Produce all documents relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

19. Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

20. 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 might be the subject of a proposed trackage rights condition in this proceeding.

21. Produce all documents relating to any agreement or understanding that Wisconsin Electric has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. 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.

22. Produce all presentations to, and minutes of, the board of directors of Wisconsin Electric relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

23. Produce all documents in the possession of Wisconsin Electric relating to whether Utah and Colorado coal competes with Powder River Basin or Hanna Basin coals, including but not limited to any studies, reports or analyses of the use by utilities of, solicitation by utilities of bids for, or interchangeability in use of, such coals.

24. Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

25. Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights.

26. Produce all documents relating to the effect of the UP/SP merger on coal transportation service, competition or routings to any Wisconsin Electric facility.

27. Produce all studies, reports or analyses relating to (a) using a different coal source than is presently used at any Wisconsin Electric facility, (b) using a non-coal fuel in lieu of coal at any Wisconsin Electric facility, or (c) purchasing power or shifting power generation among facilities as alternatives to consuming coal at any Wisconsin Electric facility.

28. Produce all filings made with state utility commissions or state regulatory agencies that discuss sources of fuel.

29. Produce all studies, reports, analyses, compilations, calculations or evaluations of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared by L.E. Peabody & Associates, and all workpapers or other documents relating thereto.

Respectfully submitted,

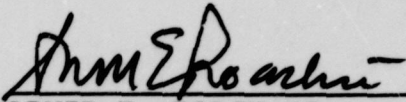
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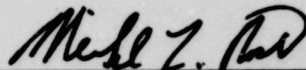
February 26, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 26th day of February, 1996, I caused a copy of the foregoing document to be served by overnight mail on Thomas F. McFarland, Jr., counsel for Wisconsin Electric Power Company, at Belnap, Spencer, McFarland & Herman, 20 North Wacker Drive, Suite 3118, Chicago, Illinois 60606-3101, 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
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Washington, D.C. 20530

Premarmer Notification Office
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Room 303
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Michael L. Rosenthal

STB FD 32760 2-26-96 I 61445

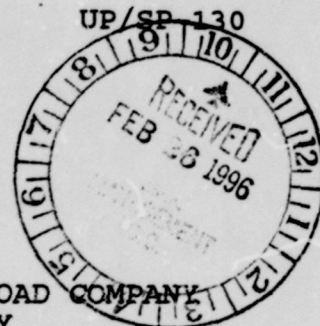
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Item No. _____

Page Count 14

Feb 27 310

FOR THE
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' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS TO TRL, INC.

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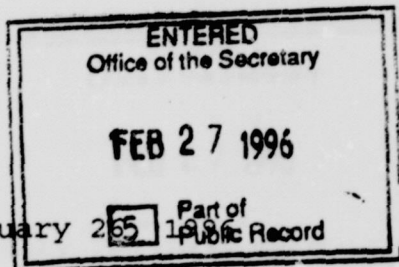
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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company



February 26 1996 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



APPLICANTS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS TO TRL, INC.

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 TRL, Inc. ("TRL").

Responses should be served as soon as possible, and
in no event later than 15 days from the date of service
hereof. TRL 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. "Cen-Tex/South Orient" means Cen-Tex Rail Link, Ltd./South Orient Railroad Company.

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

VIII. "Conrail" means Consolidated Rail Corporation.

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

X. "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 TRL and documents in the possession, custody or control of consultants or others who have assisted TRL in connection with this proceeding.

XI. "KCS" means Kansas City Southern Railway Company.

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

XIII. "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.

XIV. "MPRR" means Missouri Pacific Railroad Company.

XV. "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 TRL, its counsel, or the consultants or others who have assisted TRL 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.

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

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

XVIII. "SPCSL" means SPCSL Corp.

XIX. "SPR" means Southern Pacific Rail Corporation.

XX. "SPT" means Southern Pacific Transportation Company.

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

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

XXIII. "Southern Pacific" means SPR and SP.

XXIV. "TRL" means TRL, Inc.

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

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

XXVII. "UPC" means Union Pacific Corporation.

XXVIII. "UPRR" means Union Pacific Railroad Company.

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

XXX. "Union Pacific" means UP and UPC.

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

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

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

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

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

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

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

INTERROGATORIES

1. Identify and describe in detail any agreements that TRL has 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 TRL contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

2. Identify all owners of and investors in TRL.
3. Identify all members of TRL's management.
4. Describe any prior railroad-related experience of TRL's management, owners and investors.

DOCUMENT REQUESTS

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that TRL makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for TRL on or about March 29, 1996 in this proceeding.
2. Produce all documents relating to benefits or efficiencies that will result from the UP/SP merger.
3. Produce all documents relating to potential traffic impacts of the UP/SP merger.
4. Produce all documents relating to competitive impacts of the UP/SP merger, including but not limited to effects on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options.

5. Produce all documents relating to the BN/Santa Fe Settlement Agreement.

6. Produce all documents relating to the IC Settlement Agreement.

7. Produce all documents relating to the Utah Railway Settlement Agreement.

8. Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

9. Produce all studies, reports or analyses relating to actual or potential competition between UP and SP.

10. Produce all studies, reports or analyses relating to competition between single-line and interline rail transportation.

11. Produce all studies, reports or analyses relating to the benefits of any prior rail merger or rail mergers in general.

12. Produce all studies, reports or analyses relating to the financial position or prospects of SP.

13. Produce all communications with 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.

14. Produce all presentations, solicitation packages, form verified statements, or other materials used to

seek support from shippers, public officials, railroads or others for the position of TRL or any other party in this proceeding.

15. 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 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.

16. Produce all notes of, or memoranda relating to, any meetings 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 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.

17. Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

18. Produce all documents relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

19. Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

20. 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 might be the subject of a proposed trackage rights condition in this proceeding.

21. Produce all documents relating to any agreement or understanding that TRL has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. 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.

22. Produce all presentations to, and minutes of, the boards of directors (or other governing body) of TRL

relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

23. Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

24. Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights.

25. Produce all studies, reports or analyses relating to competition for traffic to or from Mexico (including but not limited to truck competition) or competition among Mexican gateways.

26. Produce all documents, other than the study itself, relating to the January 1996 study by The Perryman Group entitled, "The Impact of the Proposed Union Pacific-Southern Pacific Merger on Business Activity in Texas."

27. Produce TRL's articles of incorporation and all state regulatory filings that describe TRL.

28. Produce all TRL financial statements since its formation.

29. Produce all business plans and other documents relating to TRL's business objectives, plans or strategies.

30. Produce all agreements with KCS, Conrail or Cen-Tex/South Orient to which TRL is a party.

Respectfully submitted,

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Southern Pacific Transportation
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Railway Company, SPCSL Corp. and
The Denver and Rio Grande
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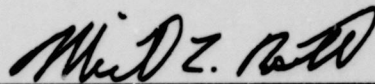
February 26, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 26th day of February, 1996, I caused a copy of the foregoing document to be served by overnight mail on Joel T. Williams, III, President, TRL, Inc., at 4809 Cole Avenue, Suite 350 LB-126, Dallas, Texas 75205, 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
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Washington, D.C. 20580



Michael L. Rosenthal

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Item No. _____

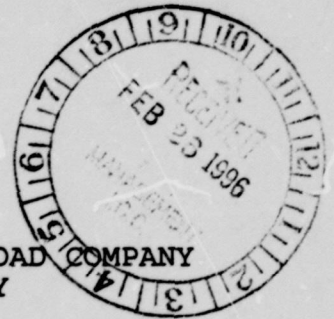
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BEFORE THE
TRANSPORTATION BOARD

UP/SP-131



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' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO UNION CARBIDE CORPORATION

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

Office of the Secretary

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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

February 26, 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' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO UNION CARBIDE CORPORATION

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 Union Carbide Corporation ("Union
Carbide").

Responses should be served as soon as possible, and
in no event later than 15 days from the date of service
hereof. Union Carbide 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 Union Carbide and documents in the possession, custody or control of consultants or others who have assisted Union Carbide in connection with this proceeding.

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

X. "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.

XI. "MPRR" means Missouri Pacific Railroad Company.

XII. "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 Union Carbide, its counsel, or the consultants or others who have assisted Union Carbide 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.

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

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

XV. "SPCSL" means SPCSL Corp.

XVI. "SPR" means Southern Pacific Rail Corporation.

XVII. "SPT" means Southern Pacific Transportation Company.

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

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

XX. "Southern Pacific" means SPR and SP.

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

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

XXIII. "UPC" means Union Pacific Corporation.

XXIV. "UPRR" means Union Pacific Railroad Company.

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

XXVI. "Union Carbide" means Union Carbide Corporation.

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 Union Carbide) 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. Identify and describe in detail any agreements that Union Carbide has 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 Union Carbide contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

DOCUMENT REQUESTS

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that Union Carbide makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for Union Carbide on or about March 29, 1996 in this proceeding.

2. Produce all documents relating to benefits or efficiencies that will result from the UP/SP merger.

3. Produce all documents relating to potential traffic impacts of the UP/SP merger.

4. Produce all documents relating to competitive impacts of the UP/SP merger, including but not limited to effects on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options.

5. Produce all documents relating to the BN/Santa Fe Settlement Agreement.

6. Produce all documents relating to the IC Settlement Agreement.

7. Produce all documents relating to the Utah Railway Settlement Agreement.

8. Produce all documents relating to conditions that might be imposed on approval of the UP/SP merger.

9. Produce all studies, reports or analyses relating to actual or potential competition between UP and SP.

10. Produce all studies, reports or analyses relating to competition between single-line and interline rail transportation.

11. Produce all studies, reports or analyses relating to the benefits of any prior rail merger or rail mergers generally.

12. Produce all studies, reports or analyses relating to the financial position or prospects of SP.

13. Produce all communications with 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.

14. Produce all presentations, solicitation packages, form verified statements, or other materials used to seek support from shippers, public officials, railroads or others for the position of Union Carbide or any other party in this proceeding.

15. 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 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.

16. Produce all notes of, or memoranda relating to, any meetings 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 official, ny 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.

17. Produce all documents relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

18. Produce all documents relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

19. Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

20. 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 might be the subject of a proposed trackage rights condition in this proceeding.

21. Produce all documents relating to any agreement or understanding that Union Carbide has with any other party to this proceeding regarding positions or actions to be taken in this proceeding. 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.

22. Produce all presentations to, and minutes of, the board of directors of Union Carbide relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

23. Produce all studies, reports or analyses relating to collusion among competing railroads or the risk thereof.

24. Produce all studies, reports or analyses relating to the terms for or effectiveness of trackage rights.

25. Produce all documents relating to the possibility of a build-in by SP (or build-out to SP) at Union

Carbide's facility at North Seadrift, Texas, or Union

Carbide's facility at Taft, Louisiana.

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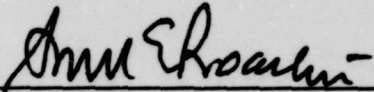
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Attorneys for Southern
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Southern Pacific Transportation
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Railway Company, SPCSL Corp. and
The Denver and Rio Grande
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Respectfully submitted,

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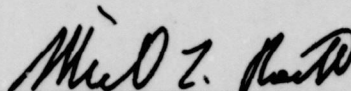
February 26, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 26th day of February, 1996, I caused a copy of the foregoing document to be served by hand on Martin W. Bercovici, counsel for Union Carbide Corporation, at Keller & Heckman, 1001 G Street, N.W., Suite 500W, Washington, D.C. 20001, 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



Michael L. Rosenthal

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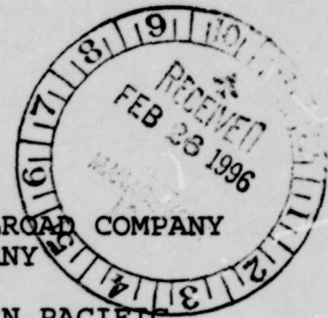
Item No. _____

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BEFORE THE
SURFACE TRANSPORTATION BOARD

UP/SP-132



ENTERED
Office of the Secretary

FEB 27 1996

5 Part of
Public Record

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' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO THE WESTERN COAL TRAFFIC LEAGUE

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The Denver and Rio Grande
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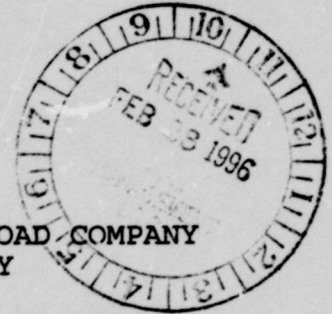
Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

February 26, 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' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS
TO THE WESTERN COAL TRAFFIC LEAGUE

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 the Western Coal Traffic League ("WCTL").

Responses should be served as soon as possible, and
in no event later than 15 days from the date of service
hereof. WCTL 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 WCTL and documents in the possession, custody or control of consultants or others who have assisted WCTL in connection with this proceeding.

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

X. "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.

XI. "MPRR" means Missouri Pacific Railroad Company.

XII. "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 WCTL, its counsel, or the consultants or others who have assisted WCTL 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.

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

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

XV. "SPCSL" means SPCSL Corp.

XVI. "SPR" means Southern Pacific Rail Corporation.

XVII. "SPT" means Southern Pacific Transportation Company.

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

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

XX. "Southern Pacific" means SPR and SP.

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

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

XXIII. "UPC" means Union Pacific Corporation.

XXIV. "UPRR" means Union Pacific Railroad Company.

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

XXVI. "Union Pacific" means UP and UPC.

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

XXVIII. "WCTL" means the Western Coal Traffic League.

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 WCTL) 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. Identify and describe in detail any agreements that WCTL 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 WCTL contends that any such agreement is privileged, state the parties to, date of, and general subject of the agreement.

2. For each utility plant operated by any of WCTL's members, separately for each year 1993 through 1995,

identify the originating mines for all coal burned at the plant and, as to each such mine, state: (a) the tonnage of coal from that mine burned at the plant; (b) the average delivered price of coal from that mine; (c) the average minehead price of that coal; (d) the rail transportation routings (including origination and interchange points) for all coal shipped from that mine to the plant; and (e) any transportation routings or modes other than rail used in shipping coal to the plant.

3. Identify the members of WCTL.

DOCUMENT REQUESTS

1. Produce no later than April 1, 1996 (a) all workpapers underlying any submission that WCTL makes on or about March 29, 1996 in this proceeding, and (b) all publications, written testimony and transcripts, without limitation as to date, of any witnesses presenting testimony for WCTL on or about March 29, 1996 in this proceeding.

2. Produce all documents in the possession of WCTL or its members relating to benefits or efficiencies that will result from the UP/SP merger.

3. Produce all documents in the possession of WCTL or its members relating to potential traffic impacts of the UP/SP merger.

4. Produce all documents in the possession of WCTL or its members relating to competitive impacts of the UP/SP

merger, including, but not limited to effects on (a) market shares, (b) source or destination competition, (c) transloading options, or (d) build-in options.

5. Produce all documents in the possession of WCTL or its members relating to the BN/Santa Fe Settlement Agreement.

6. Produce all documents in the possession of WCTL or its members relating to the IC Settlement Agreement.

7. Produce all documents in the possession of WCTL or its members relating to the Utah Railway Settlement Agreement.

8. Produce all documents in the possession of WCTL or its members relating to conditions that might be imposed on approval of the UP/SP merger.

9. Produce all studies, reports or analyses in the possession of WCTL or its members relating to actual or potential competition between UP and SP.

10. Produce all studies, reports or analyses in the possession of WCTL or its members relating to competition between single-line and interline rail transportation.

11. Produce all studies, reports or analyses in the possession of WCTL or its members relating to the benefits of any prior rail merger or rail mergers in general.

12. Produce all studies, reports or analyses in the possession of WCTL or its members relating to the financial position or prospects of SP.

13. Produce all communications between WCTL 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.

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

15. Produce all presentations, letters, memoranda, white papers or other documents sent or given by WCTL 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.

16. Produce notes of, or memoranda relating to, any meetings of WCTL 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 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.

17. Produce all documents in the possession of WCTL or its members relating to shipper surveys or interviews concerning (a) the UP/SP merger or any possible conditions to approval of the merger, or (b) the quality of service or competitiveness of any railroad.

18. Produce all documents in the possession of WCTL or its members relating to the price to be paid for, or the value of, any UP or SP lines that might be sold as a condition to approval of, or otherwise in connection with, the UP/SP merger.

19. Produce all documents relating to trackage rights compensation for any of the BN/Santa Fe Settlement Agreement Lines or any other line of UP or SP that might be the subject of a proposed trackage rights condition in this proceeding.

20. 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

might be the subject of a proposed trackage rights condition in this proceeding.

21. Produce all documents in the possession of WCTL or its members relating to any agreement or understanding that WCTL or its members have with any other party to this proceeding regarding positions or actions to be taken in this proceeding. 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.

22. Produce all presentations to, and minutes of, the boards of directors (or other governing bodies) of WCTL or its members relating to the UP/SP merger or conditions to be sought by any party in this proceeding.

23. Produce all documents in the possession of WCTL or its members relating to whether Utah and Colorado coal competes with Powder River Basin or Hanna Basin coals, including but not limited to any studies, reports or analyses of the use by utilities of, solicitation by utilities of bids for, or interchangeability in use of, such coals.

24. Produce all documents in the possession of WCTL or its members relating to the effect of the UP/SP merger on coal transportation service, competition or routings to any facility of a WCTL member.

25. Produce all studies, reports, or analysis in the possession of WCTL or its members relating to complaints by electric utility coal users concerning service by any railroad.

26. Produce all projections in the possession of WCTL or its members of future traffic volumes, either in the aggregate or by carrier, of (a) Utah and Colorado coal, (b) Powder River Basin coal, (c) Hanna Basin coal, or (d) other coals.

27. Produce all studies, reports or analyses in the possession of WCTL or its members relating to (a) using a different coal source than is presently used at any facility of a WCTL member, (b) using a non-coal fuel in lieu of coal at any facility of a WCTL member, or (c) purchasing power or shifting power generation among facilities as alternatives to consuming coal at any facility of a WCTL member.

28. Produce all filings made by any WCTL member with state utility commissions or state regulatory agencies that discuss sources of fuel.

29. Produce all studies, reports, analyses, compilations, calculations or evaluations in the possession of WCTL or its members of market or competitive impacts of the UP/SP merger or the BN/Santa Fe Settlement, or of trackage rights compensation under the BN/Santa Fe Settlement, prepared

by L.E. Peabody & Associates, and all workpapers or other documents relating thereto.

Respectfully submitted,

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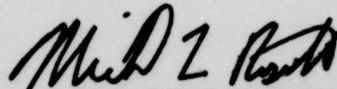
February 26, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 26th day of February, 1996, I caused a copy of the foregoing document to be served by hand on C. Michael Loftus, counsel for Western Coal Traffic League, at Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036, 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



Michael L. Rosenthal

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• 32760

10-11-95

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Item No. _____

Page Count 4

OCT #60

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JOHN W. BUTLER
CINDY G. BUYS
MARC J. FINK
R. FREDERIC FISHER*
JEFFREY F. LAWRENCE
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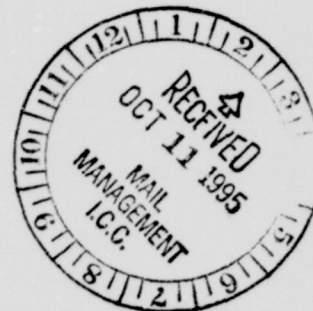
WRITER'S DIRECT DIAL NO.

(202) 463-2510

October 11, 1995

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JERSEY CITY, NJ 07302
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The Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 2215
12th and Constitution Avenue, N.W.
Washington, D.C.

Re: Finance Docket No. 32760

Dear Secretary Williams:

I enclose for filing on behalf of the International Brotherhood of Teamsters an original and twenty (20) copies of (1) Petition for Leave to File Response to Applicants' Reply to IBT's Petition to Reopen Decision No. 3 and (2) International Brotherhood of Teamsters' Response to Applicants' Reply to IBT's Petition to Reopen Motor Carrier Waiver Decision. I also enclose a disk containing IBT's Petition and Response in WordPerfect 5.1 format.

Extra copies of IBT's pleadings are attached. Please date stamp the copies and return them to us via our messenger.

Thank you for your attention to this matter.

Sincerely,

Marc J. Fink /qwb
Marc J. Fink

MJF:rmc ☐ P
Enclosures ☐ P

cc: The Honorable Jerome Nelson

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Page Count 3

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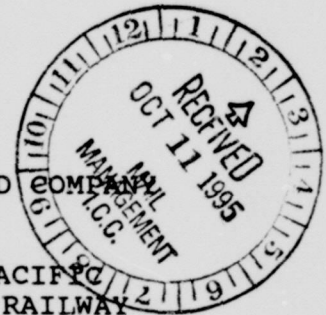
BEFORE THE
INTERSTATE COMMERCE COMMISSION

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



PETITION BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS
FOR LEAVE TO FILE RESPONSE TO APPLICANTS' REPLY TO
IBT'S PETITION TO REOPEN DECISION NO. 3

The International Brotherhood of Teamsters ("IBT"),
through its undersigned attorneys, hereby petitions the
Commission pursuant to 49 C.F.R. § 1117.1 for leave to file a
response to the new arguments raised in Applicants' Reply to
IBT's Petition to Reopen portions of the Commission's Decision
No. 3 in the above-captioned proceeding.

PROCEDURAL BACKGROUND

On September 5, 1995, the Commission granted a waiver
authorizing the Applicants to exclude from the definition of
"applicant carriers" certain wholly-owned motor carrier
subsidiaries of the Applicants. The IBT filed a petition to
reopen and reverse that decision on September 25, 1995. On
October 4, 1995, the Applicants responded to IBT's Petition to
Reopen by setting forth new procedural and substantive legal
arguments. The IBT files this Petition for Leave to File
Response to Applicants' Reply in order to allow the IBT to

address important questions of law and policy raised for the first time by Applicants' Reply.

GROUND~~S~~ FOR ALLOWING IBT TO RESPOND
TO APPLICANTS' REPLY

The Applicants allege that the IBT's Petition to Reopen attempts to "circumvent" the Commission's rule prohibiting replies to waiver petitions, 49 C.F.R. § 1180.4(f)(3).¹ In effect, the Applicants are asking the Commission to rule that no appeal is allowed on a decision that is initially made without an opportunity for interested party comment. This position ignores the plain language of 49 C.F.R. § 1115.4, which states that "[a] person at any time may file a petition to reopen any administratively final action of the Commission." The attached Response is necessary to address Applicants' novel interpretation of the Commission's rules, the effect of which would be to insulate from review any decision ostensibly made under the waiver rule.

Further, Applicants have raised new substantive legal arguments that were not at issue in their original petition for waiver, and therefore were not addressed in IBT's Petition to Reopen. In the interest of due process, fairness, and sound administrative practice, the IBT should be allowed to respond to the substantive arguments set forth by the Applicants in their

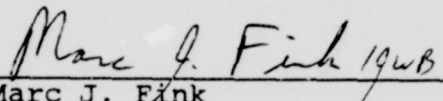
¹ Inasmuch as this part of Applicants' Reply is most properly identified as a petition to strike the IBT's Petition to Reopen, the attached pleading is not a reply to a reply and is therefore allowable as a matter of right.

Reply.

Finally, the IBT's attached Response is necessary to correct factual misstatements made in Applicants' Reply. These misstatements include an irresponsible and reckless allegation that the IBT is not proceeding in good faith and a flatly incorrect statement that the IBT's Petition to Reopen did not address the issue of why discovery cannot replace the information lost through the granting of the waiver. Fundamental fairness dictates that the IBT be allowed to correct these factual inaccuracies. The IBT addresses these issues more fully in the pleading attached hereto.

For the foregoing reasons, the IBT respectfully requests that its Petition For Leave to File Response to the Applicants' Reply be granted and that the attached Response be accepted for filing in this docket.

Respectfully submitted,


Marc J. Fink
John W. Butler
SHER & BLACKWELL
2000 L Street, N.W.
Suite 612
Washington, D.C. 20036
(202) 463-2500

Attorneys for
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Dated: October 11, 1995

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• 60185

Item No. _____

Page Count 5

Oct # 55

60185

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WILLIAM A. MULLINS

Off:

OCT 11 1995

DIRECT: 202-274-2953

October 10, 1995

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 1324
Washington, D.C. 20423



RE: *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*

Dear Secretary Williams:

Enclosed herewith are one original and twenty-one copies of the following two filings:

1. Petition of The Kansas City Southern Railway Company for Leave to File Additional Comments on Proposed Procedural Schedule, designated KCS-4; and
2. Additional Comments of The Kansas City Southern Railway Company on Proposed Procedural Schedule, designated KCS-5.

Please date and time stamp one of the copies of each filing and return them to the courier for return to our offices. Pursuant to the Commission's Decision No. 1, n. 7, also enclosed is a computer diskette formatted in WordPerfect 5.1 containing the filings.

No filing fee is required for these filings. See 49 C.F.R. Part 1002.2(f). Copies have been served on all known parties of record.

Very truly yours,

William A. Mullins

Enclosures

cc: Parties of Record

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

PETITION OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY
FOR LEAVE TO FILE ADDITIONAL COMMENTS
ON PROPOSED PROCEDURAL SCHEDULE

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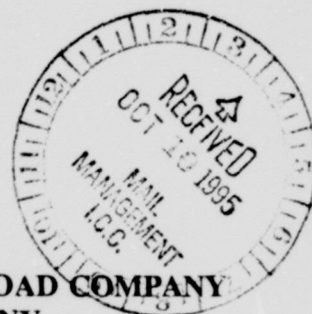
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Fax: (202) 274-2994

October 10, 1995

Attorneys for The Kansas City
Southern Railway Company

**BEFORE THE
INTERSTATE COMMERCE COMMISSION**

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**

**PETITION OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY
FOR LEAVE TO FILE ADDITIONAL COMMENTS
ON PROPOSED PROCEDURAL SCHEDULE**

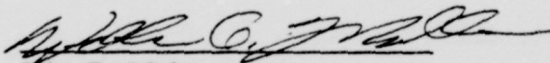
The Kansas City Southern Railway Company ("KCS") hereby petitions the Commission for leave to file additional comments on the proposed procedural schedule. On August 4, 1995, Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, collectively, "Applicants," filed a "Petition to Establish Procedural Schedule" and attached as Appendix A to that petition "Proposed Discovery Guidelines." On August 14, The Kansas City Southern Railway Company ("KCS") filed comments on the proposed procedural schedule and the proposed discovery guidelines (KCS-1). By decision served September 1 (Decision No. 1), the Commission requested comments on Applicants' proposed procedural schedule. The

Commission also requested comments on a proposed modification to the Applicants' procedural schedule. In response to Decision No. 1, KCS, on September 18, 1995, filed comments on the proposed procedural schedule (KCS-3).

Subsequently, on September 26, the Applicants announced a settlement agreement with the Burlington Northern/Santa Fe. UP/SF-14 at 2-4. KCS requests leave to file additional comments in order to address the effects of the Burlington Northern/Santa Fe settlement agreement on the proposed procedural schedule. KCS submits that the filing of these additional comments will not prejudice the rights of any participant in this proceeding. Because the Commission has not yet ruled on the proposed procedural schedule, the filing of these additional comments will not create additional delay or otherwise burden the proceeding. For the foregoing reasons, KCS respectfully requests that the Commission grant its petition to file the additional comments.

Respectfully submitted,

Richard P. Bruening
W. James Wochner
Robert K. Dreiling
The Kansas City Southern
Railway Company
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Fax: (202) 274-2994

Attorneys for The Kansas City
Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "PETITION OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY FOR LEAVE TO FILE ADDITIONAL COMMENTS ON PROPOSED PROCEDURAL SCHEDULE" was served this 10th day of October, 1995, by hand-delivery, facsimile, overnight delivery, or first-class mail, postage prepaid, on counsel for all known parties of record.



William A. Mullins

Attorney for The Kansas City
Southern Railway Company

STB

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U. S. Department of Justice

60146

Antitrust Division

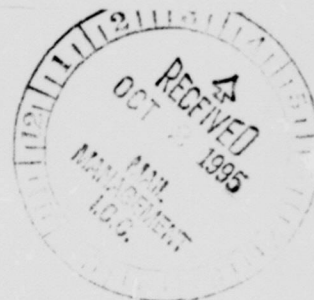
Item No. _____

Page Count 5

555 4th Street, N.W.
Washington, DC 20001

Oct # 4

October 2, 1995



Honorable Vernon A. Williams, Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Room 2215
Washington, D. C. 20423

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

Dear Mr. Williams:

Enclosed for filing in the captioned docket are the original and twenty copies of (1) Petition of the Department of Justice for Leave to File Additional Comments on Procedural Schedule, and (2) Additional Comments of the Department of Justice on Proposed Procedural Schedule. Please have the extra copy of this filing date-stamped and return it to the messenger for our files.

In accordance with the Commission's request contained in Decision No. 1 issued in this proceeding, we also enclose a copy of these documents on a 3.5 inch floppy diskette formatted for Word Perfect 5.1.

Sincerely yours,

Michael D. Billiel
Attorney
Transportation, Energy and
Agriculture Section

CC: Hon. Jerome Nelson
Arvid E. Roach II, Esq.
Paul A. Cunningham, Esq.
All Parties of Record

Office of the Secretary

OCT 03 1995

Filed
Oct 3 1995

DOJ-2



BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

UNION PACIFIC CORP., UNION PACIFIC)
RAILROAD CO. AND MISSOURI PACIFIC)
RAILROAD CO.-- CONTROL AND MERGER --)
SOUTHERN PACIFIC RAIL CORP., SOUTHERN) FINANCE DOCKET
PACIFIC TRANSPORTATION CO., ST. LOUIS) NO. 32760
SOUTHWESTERN RAILWAY CO., SPCSL CORP.)
AND THE DENVER AND RIO GRANDE WESTERN)
RAILROAD CO.)

PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE
TO FILE ADDITIONAL COMMENTS ON THE PROCEDURAL SCHEDULE

Communications with respect to this document should be addressed
to:

Roger W. Fones, Chief
Donna N. Kooperstein, Assistant Chief

Michael D. Billiel
Joan S. Huggler
Robert L. McGeorge
Attorneys

Transportation, Energy &
Agriculture Section
Antitrust Division
U.S. Department of Justice
555 4th Street, N.W.
Washington, D. C. 20001

202-307-6666

October 2, 1995



DOJ-2

BEFORE THE
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D.C.

UNION PACIFIC CORP., UNION PACIFIC)
RAILROAD CO. AND MISSOURI PACIFIC)
RAILROAD CO.-- CONTROL AND MERGER --)
SOUTHERN PACIFIC RAIL CORP., SOUTHERN) FINANCE DOCKET
PACIFIC TRANSPORTATION CO., ST. LOUIS) NO. 32760
SOUTHWESTERN RAILWAY CO., SPCSL CORP.)
AND THE DENVER AND RIO GRANDE WESTERN)
RAILROAD CO.)

PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE
TO FILE ADDITIONAL COMMENTS ON PROCEDURAL SCHEDULE

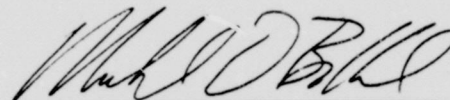
The Department of Justice ("Department") hereby petitions the Commission for leave to file additional comments on the procedural schedule in this matter. On September 18, 1995, pursuant to Decision No. 1, the Department filed comments on the procedural schedule (DOJ-1). Subsequent to the Department's filing, on September 26, the Applicants announced a significant settlement agreement with the Burlington Northern/Santa Fe. UP/SF-14 at 2-4, Attachment. The Department requests leave to file additional comments for the limited purpose of addressing the effect of this important settlement agreement on the procedural schedule. The Department submits that the filing of these additional comments will not prejudice the rights of any participant in this proceeding. For the foregoing reasons, the

Department respectfully requests that the Commission grant its petition to file the appended comments.

Respectfully submitted,

Roger W. Fones, Chief
Donna N. Kooperstein,
Assistant Chief

Transportation, Energy
and Agriculture Section



Michael D. Billiel
Joan S. Huggler
Robert L. McGeorge

Attorneys

Transportation, Energy
and Agriculture Section

Antitrust Division
U. S. Department of Justice
555 Fourth Street, N.W.
Washington, D. C. 20001
(202) 307-6456

October 2, 1995

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 1995, I caused to be served by, by hand or by first class mail, postage prepaid, copies of the foregoing Petition of the Department of Justice for Leave to File Additional Comments on Procedural Schedule in Finance Docket No. 32760 on attorneys for the Applicants, the Honorable Jerome Nelson, and all known parties of record in this proceeding.



Michael D. Billiel

STB FD • 32760 9-25-95 I • 60115

Item No. _____

Page Count 13

Sept #186

WILLIAM G. MAHONEY
JOHN O'B. CLARKE JR.
RICHARD S. EDELMAN
L. PAT WYNNIS
DONALD F. GRIFFIN
MELISSA B. KIRGIS*

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60115

JAMES L. HIGHSAW
1970 1992

September 25, 1995

by messenger

Hon. Vernon A. Williams, Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, DC 20423



Re: Finance Docket No. 32760, Union Pacific Corp.--Control & Merger

Dear Secretary Williams:

Enclosed for filing with the Commission are the original and twenty copies of the enclosed "Petition of the Railway Labor Executives' Association, its affiliated organizations and the United Transportation Union for Modification of Protective Order". Please stamp the extra enclosed copy as received so that the messenger may return it to the undersigned.

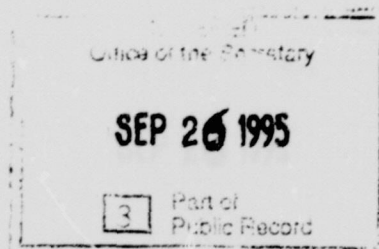
Also enclosed is a 3.5" floppy diskette containing the text of the petition presented in WordPerfect 5.1 format.

Sincerely,

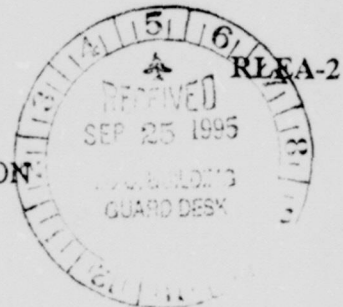
Donald F. Griffin
Donald F. Griffin

an attorney for RLEA/UTU

enclosure



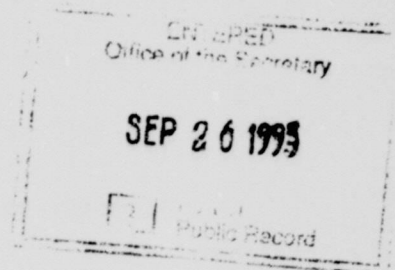
BEFORE THE
INTERSTATE COMMERCE COMMISSION



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

PETITION OF THE
RAILWAY LABOR EXECUTIVES' ASSOCIATION,
ITS AFFILIATED ORGANIZATIONS AND THE
UNITED TRANSPORTATION UNION
FOR MODIFICATION OF PROTECTIVE ORDER



William G. Mahoney
Richard S. Edelman
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Washington, DC 20036
(202) 296-8500

Attorneys for Railway Labor Executives'
Association, its affiliated organizations and United
Transportation Union

Dated: September 25, 1995

PETITION OF THE
RAILWAY LABOR EXECUTIVES' ASSOCIATION,
ITS AFFILIATED ORGANIZATIONS AND THE
UNITED TRANSPORTATION UNION
FOR MODIFICATION OF PROTECTIVE ORDER



In Decision No. 2, served September 1, 1995, this Commission issued the protective order designed to govern the dissemination of proprietary and commercially sensitive information between the Southern Pacific¹ and Union Pacific² and other parties to the proposed merger of the Applicants. Paragraph 9 of the protective order provides that it may be modified by the Commission upon a showing of good cause. The Railway Labor Executives' Association, its affiliated organizations and the United Transportation Union (collectively "RLEA/UTU") respectfully submit the following petition seeking modification of the protective order. RLEA/UTU submits that paragraph 2 of the protective order must be modified because that paragraph applies a blanket prospective finding and order, that the "meetings, conferences, exchanges of data and other cooperative efforts" of the Applicants during the pendency of this proceeding will not violate either Section 11343, 49 U.S.C. §11343, or Section 11910, 49 U.S.C. §11910. The Commission's approval of the present paragraph 2 was arbitrary, capricious and not based upon substantial record evidence.

¹"Southern Pacific" means the Southern Pacific Rail Company; Southern Pacific Transportation Company; St. Louis Southwestern Railway Company; SPCSL Corp.; and The Denver and Rio Grande Western Railroad Company.

²"Union Pacific" means Union Pacific Corporation; Union Pacific Railroad Company; and Missouri Pacific Railroad Company. The Union Pacific and Southern Pacific are collectively referred to as the "Applicants".

ARGUMENT

Section 11343 expressly forbids any person from achieving control of more than one carrier "regardless of how that result is reached" without the approval of the Commission. 49 U.S.C. §11343(b). Any approval of control authority by the Commission must be based upon substantial evidence and according to the standards contained in Section 11344, 49 U.S.C. §11344. E.g., Bowman Trans. Co. v. Arkansas-Best Freight Sys., 419 U.S. 281, 284 (1974). Here, the Commission essentially found, without the Applicants proffering a scintilla of evidence in support, that any prospective "meetings, conferences, exchanges of data and other cooperative efforts" of the "representatives" of the Applicants carried out for the purposes of the proposed proceeding or those related to it will not amount to the unauthorized control of the Southern Pacific by the Union Pacific. Because the Applicants offered no evidentiary basis for the Commission's finding, the findings and conclusions contained in paragraph 2 cannot stand. Additionally, the Commission's finding and conclusions in that paragraph are arbitrary and capricious and otherwise contrary to law.

Section 11343 is the core of "a comprehensive legislative scheme designed to place ownership, management, and operational control over common carriers within the regulatory jurisdiction of the Commission." Gilbertville Trucking Co. v. U.S., 371 U.S. 115, 122 (1962). The definition of control encompasses "every type of control in fact". Id. at 125. Congress designed the language now contained in Section 11343 to ensure that the Commission would aggressively exert jurisdiction over any attempt to defeat the legislative goal of eliminating the unregulated and unsupervised control of rail carriers. Id. at 124.

Here, the Applicants proposed, and the Commission consented to, a paragraph in the protective order that provides that any unspecified "meetings, conferences, exchanges of data and other cooperative efforts" of the Applicants' "representatives" that are "carried out for purposes of this and any related proceedings" are "deemed essential for the disposition of such proceedings and will not be deemed a violation of 49 U.S.C. 11343 or 11910." Decision No. 2 at 4. However, the Applicants did not specify what they intended to do at these meetings or conferences and did not specify the subject matter of the data to be exchanged, nor did they explain what the term "cooperative efforts" mean or what "cooperative efforts" they intend. Moreover, the Applicants did not even argue with any specificity why any of these immunities are essential to the disposition of the proposed proceeding except to include that assertion in the proposed order. In other words, the Applicants asked for a prospective immunity from Section 11343 without specifying what acts should be immunized and why they merited immunity. Nevertheless, the Commission compliantly acceded to the Applicants' request in contravention to its statutory mandate to vigilantly enforce the provisions of Section 11343. The Commission's conclusions and decision are legally infirm.

"Congress designed the Interstate Commerce Commission to benefit the people, not to create protected monopolies for those who profess to serve the public." May Trucking Co. v. U.S., 593 F.2d 1349, 1356 (D.C. Cir. 1979). Paragraph 2 of the protective order certainly protects the interests of the Applicants because it prospectively immunizes them from any claims of violations of either Section 11343 or Section 11910. That paragraph does not protect the interests of the public, particularly the employees of the Applicants, from any harms that

may result from acts of common control of Southern Pacific and Union Pacific taken by the Applicants before the Commission's decision on their proposed merger application.

The Commission should know that persons subject to its jurisdiction sometimes engage in acts of unauthorized control of other carriers. The Gilbertville case concerned the issues of what constituted "control" under the predecessor of Section 11343 and also the Commission's remedial powers once unauthorized control was found to exist. The situation in Gilbertville was not an isolated incident. Recently, the Commission was confronted with a case of intentional unauthorized control in a railroad control case. Finance Docket No. 31545, Clyde S. Forbes, et al.--Control Exemption--Lamoille Valley R.R., slip op. at 4, served October 8, 1991 (not published). Indeed, the Commission's experience with the Southern Pacific during the proposed merger of it and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") shows the dangers of an unsupervised relationship between the buyer and seller in a Class I merger case.

When the holding companies controlling the Southern Pacific and Santa Fe merged, they placed the former's stock in a putative independent voting trust. Santa Fe Southern Pacific Corp.--Control--Southern Pacific Trans. Co., 2 I.C.C.2d 709, 713 (1986). The purpose of the voting trust arrangement was to insulate Southern Pacific from premature control by Santa Fe's parent during the pendency of the merger proceedings. Id. at 715. In October of 1986, the Commission denied the merger application and ordered the "orderly divestiture" of either Southern Pacific or Santa Fe from their corporate parent, Santa Fe Southern Pacific Corporation ("SFSP"). However, in November 1986, SFSP announced a major restructuring of the rail operations of both Southern Pacific and Santa Fe while it sought a reopening of the

merger proceeding.³ The Commission investigated the restructuring and uncovered "contacts in several areas during 1985 and 1986 that we consider undesirable." Finance Docket No. 30400, Santa Fe Southern Pacific Corp.--Control--Southern Pacific Trans. Co., slip op. at 1, served February 27, 1987 (not published). The Commission added (*id.* at 2):

While to date the investigators have not found any evidence of harm to competition, there are indications of possible influence and exchanges of information that we think should not have occurred, which could in the future jeopardize [Southern Pacific's] ability to operate as an independent railroad.

The Commission admonished the managements of both carriers, the holding company and the voting trust trustee that they were responsible for maintaining the independence of Southern Pacific from Santa Fe and ensuring that no violations of the Interstate Commerce Act occurred during the pendency of the merger proceedings. *Id.* Accordingly, the Commission directed the trustee to do the following (*id.*):

to the extent that further exchanges of information may be deemed necessary, the trustee must act as more than a mere conduit of information. It must examine the information to assure that it: (1) may be properly exchanged between competitors; and (2) does not (a) suggest that [Southern Pacific] take some action that is potentially harmful to itself, or (b) provide information to SFSP that it should not have, as parent of [Southern Pacific's] competitor, [Santa Fe].⁴

³The Commission subsequently denied the petition to reopen and ordered SFSP to divest itself of either Southern Pacific or Santa Fe. Santa Fe Southern Pacific Corp.--Control--Southern Pacific Trans. Co., 3 I.C.C.2d 926 (1987).

⁴In a related proceeding, two former Southern Pacific public relations employees, collected over \$1 million each on state law tort claims related to that carrier's termination of their jobs during the pendency of the merger application. Kraus v. Santa Fe Southern Pacific Corp., 878 F.2d 1193 (9th Cir. 1989). In that case, the court summarized the evidence as follows (*id.* at 1199):

The evidence demonstrates a willingness on Southern Pacific's part to find ways

During the subsequent divestiture proceeding in which Southern Pacific was acquired by Rio Grande Industries, Inc., the Commission also was confronted with claims that employees of Southern Pacific were adversely affected by actions of unauthorized control committed by Santa Fe or SFSP during the pendency of the voting trust. That dispute has been to the Ninth Circuit once, Ry. Labor Executives' Ass'n v. ICC, 958 F.2d 242 (9th Cir. 1991), and is presently pending before the Commission, Finance Docket No. 30400 (Sub-No. 21), Santa Fe Southern Pacific Corp. --Control--Southern Pacific Trans. Co., some 7 years after Southern Pacific's divestiture by SFSP.

The foregoing demonstrates that the Commission is both aware of the fact that acts of unauthorized control can occur during the pendency of a merger or control proceeding; that pre-merger activities of unsuccessful applicants can possibly have an adverse affect upon the applicants' employees and that the Commission, previously, had been willing to hold the applicants in a Class I merger proceeding strictly to the obligations contained in Section 11343. Paragraph 2 of the protective order amounts to a complete reversal of the Commission's earlier positions. That reversal is flatly contrary to the Commission's responsibilities in enforcing the Interstate Commerce Act. The Commission's change of heart also creates a substantial prospect for harm to the Applicants' employees.

Paragraph 2 now immunizes the Applicants from any liability flowing from their "meetings, conference, exchanges of data and other cooperative efforts" related to the merger

to comply with the cost-cutting desires of the group that seemed only a regulatory approval away from becoming Southern Pacific's master. The termination plan was put into effect only after the defendants had expressed agreement with it.

proceeding because these acts have been prospectively deemed not violative of Section 11343. If the Commission ultimately approves the merger, employees of the Applicants adversely affected by these pre-merger activities arguably will be protected by Article I, Section 10 of the New York Dock conditions that provide the minimum protections the Commission must impose upon approval of the merger. However, since there is no obligation placed upon the Applicants to keep any record of such "meetings, conferences, exchanges of data and other cooperative efforts", it will be effectively impossible for any such employee to prove his or her case, or, for that matter, even to obtain information necessary to present a claim for protective benefits.

Moreover, should the Commission disapprove the merger, employees adversely affected by any of the immunized activities undertaken by the Applicants could well be left without a remedy for their injuries. Certainly, since any of these "cooperative efforts" already would have been deemed not violative of Section 11343, any adversely affected employee could not proceed with a complaint to the Commission alleging an injury related to a violation of that section of the Act. The only remaining avenue of recovery under the Act would be if the Commission imposed discretionary employee protective conditions under Section 11344(c). See, RLEA v. ICC, 958 F.2d at 258. However, since there would have been no Commission oversight of these "meetings, conferences, exchanges of data and other cooperative efforts" it would be difficult, if not impossible, for an employee to prove his claim even if the Commission imposed protective conditions. Indeed, it would be difficult, if not impossible to make a case for the imposition of discretionary protective conditions in the first instance.

The Applicants may argue that the protective order is identical to that initially approved by the Commission in Finance Docket No. 32549 (BN-Santa Fe Merger). While RLEA/UTU certainly concedes that the disputed language is the same, the Commission's grant of an identically worded protective order in FD No. 32549 provides little support to any argument that its grant here is proper. The Commission did not explain the inclusion of a similar provision in the protective order in FD No. 32549. As RLEA/UTU have demonstrated here, the language contained in paragraph 2 is legally infirm and must be modified, its unexplained inclusion in a protective order issued in an earlier proceeding does not diminish the force of RLEA/UTU's arguments here.

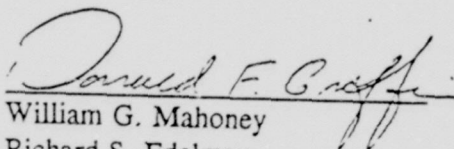
Therefore, RLEA/UTU submits that in order to protect the interests of the Applicants' employees and to ensure the integrity of Section 11343 of the Act, the Commission must modify paragraph 2 of the protective order in the manner specified in Attachment A hereto. First, the Commission must remove any language that immunizes the "representatives" of the Applicants from liability for any violations of Section 11343 that might occur because of the parties "meetings, conferences, exchanges of data and other cooperative efforts". Second, the Commission must re-express those statements made in its February 27, 1987 decision and order in FD No. 30400 that applicants in a merger case remain competitors until the Commission approves their merger. Finally, the Commission must require that the Applicants inform the Commission promptly after any "meetings, conferences, exchanges of data or other cooperative efforts" that have been "carried out for purposes of this and any related proceedings" and inform the Commission of the subject matter of said meetings, conferences,

exchanges of data or other cooperative efforts. Without these changes, the Commission's protective order is infirm.

CONCLUSION

RLEA/UTU submits that it has shown good cause for the proposed modification of paragraph 2 of the protective order. That modification will accomplish two goals. First, it will cure the Commission's arbitrary and capricious approval of the Applicants' protective order. Second, it will protect the interests of the Applicants' employees. While RLEA/UTU may seek additional modifications to the protective order as circumstances warrant, the proposed modifications are essential to the integrity of this proceeding.

Respectfully submitted,



William G. Mahoney
Richard S. Edelman
Donald F. Griffin

HIGHS AW, MAHONEY & CLARKE, P.C.
1050 17th Street, N.W. - Suite 210
Washington, DC 20036
(202) 296-8500

Attorneys for RLEA/UTU

Dated: September 25, 1995

ATTACHMENT A

2. The representatives of the Union Pacific or Southern Pacific and their affiliates are reminded that they are responsible for the maintenance of the independence of each. Representatives of Union Pacific and Southern Pacific and their affiliates must be circumspect in their dealings with one another. Specifically, there should be no communications between those two companies except: (1) as concern pursuing the merger application and related proceedings before the Commission (and the courts if necessary); and (2) those normally carried on by competing railroads in their day-to-day affairs. Specifically, the information exchanged between Southern Pacific and Union Pacific must be information properly exchanged between competitors; and does not suggest that either party take some action that is potentially harmful to itself, or provide information to the other that it, as a competitor, should not have. To the extent that any meeting, conferences, exchanges of data or other cooperative efforts between representatives of the Union Pacific and Southern Pacific or their affiliates are held and carried out for purposes of this and any related proceedings, the representatives so involved must promptly notify the Commission of the subject matter of the meeting, conference, exchange of data or other cooperative effort. It should be noted that a failure to maintain the complete independence of Southern Pacific and Union Pacific and their affiliates that results in a violation of 49 U.S.C. §11343 can subject the involved persons and carriers to the civil and criminal penalties contained in 49 U.S.C. §§11901(a), 11912, 11914(a) and 11915.

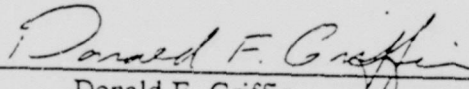
CERTIFICATE OF SERVICE

I hereby certify that today, I served a copy of the foregoing "Petition of the Railway Labor Executives' Association, its affiliated organizations and the United Transportation Union for Modification of Protective Order" upon the following by hand delivery:

Arvid E. Roach, II
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, DC 20044

Paul A. Cunningham
HARKINS CUNNINGHAM
1300 19th Street, N.W.
Suite 600
Washington, DC 20036

and by first class mail delivery to all other known parties to this proceeding.


Donald F. Griffin

September 25, 1995

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Item No. _____

Page Count 19
Sept #79

60108

SHER & BLACKWELL

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September 25, 1995

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Office of the Secretary
Case Control Branch
Attn: Finance Docket No. 32760
Interstate Commerce Commission
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760
Union Pacific/Southern Pacific

Dear Sir/Madam:

With reference to Finance Docket No. 32760, I enclose an original and twenty (20) copies of The International Brotherhood of Teamster's Petition to Reopen Decision No. 3 With Respect to Waiver of Inclusion of Wholly Owned Motor Carriers as Applicants. As instructed by the ICC legal department, also enclosed is a diskette containing the Petition (WordPerfect 5.1).

An additional copy of the Petition to Reopen is enclosed. Please date stamp the copy as filed and return it to us via our messenger.

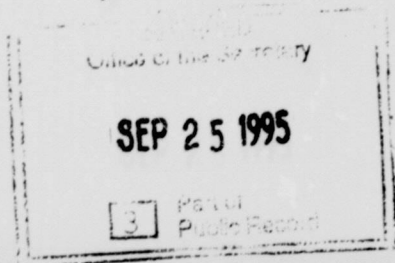
Thank you for your assistance in this matter.

Sincerely,

John W. Butler
John W. Butler

JWB:rmc
Enclosures

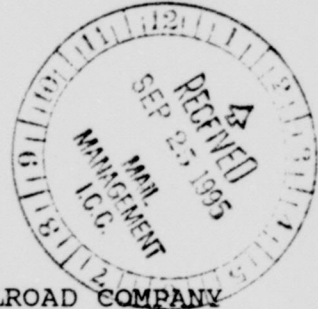
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ORIGINAL

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32760



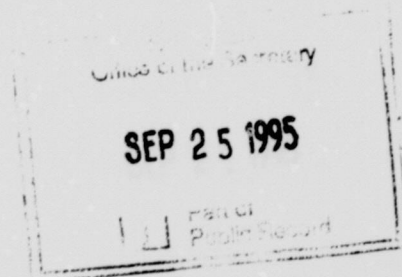
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

PETITION BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO REOPEN DECISION NO. 3 WITH RESPECT TO WAIVER OF
INCLUSION OF WHOLLY OWNED MOTOR CARRIERS AS APPLICANTS

Marc J. Fink
John W. Butler
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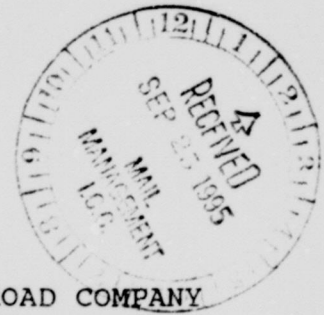
Attorneys for
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

September 25, 1995



BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

PETITION BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO REOPEN DECISION NO. 3 WITH RESPECT TO WAIVER OF
INCLUSION OF WHOLLY OWNED MOTOR CARRIERS AS APPLICANTS

The International Brotherhood of Teamsters ("IBT"), through its undersigned attorneys, hereby petitions the Commission pursuant to 49 C.F.R. § 1115.4 to reopen and reverse that portion of the Commission's Decision No. 3 in the above-captioned proceeding that authorizes the proposed applicants to exclude from the definition of "applicant carriers" Overnite Transportation Company ("Overnite"), a wholly owned subsidiary of Union Pacific Corporation ("UPC"), and Pacific Motor Transport Company ("PMT") and Southern Pacific Motor Trucking Company ("SPMT"), wholly owned subsidiaries of Southern Pacific Transportation Company ("SPTC").

PREFACE AND SUMMARY OF ARGUMENTS

The IBT's petition challenges the above-referenced motor carrier waivers on three primary grounds.

First, the waiver will make it impossible for the Commission to collect information necessary to make the congressionally mandated findings set forth at 49 U.S.C. § 11344(c). In particular, the waiver will exclude essential information relevant to the analysis of whether "the transaction is consistent with the public interest, will enable the rail carrier to use motor carrier transportation to public advantage in its operations, and will not unreasonably restrain competition." In the absence of the excluded information, these mandatory findings cannot be made and any decision of the Commission thus will be inconsistent with the express requirements of the statute.

Second, the waiver and resulting exclusion of information will preclude the Commission from undertaking the minimum inquiries required by 49 U.S.C. § 11344(b)(1)(A), (D) and (E). As with the mandatory findings required by section 11344(c), failure of the Commission to consider the congressionally prescribed factors at 11344(b)(1) will invalidate any decision eventually reached by the Commission.

Third, the IBT challenges the manner in which the Commission's waiver decision was made. There exists no record evidence or argument supporting the waiver, except for the brief waiver request itself. The decision to grant the waiver is therefore not supported by substantial evidence, and must be reversed.

For these and other reasons set forth more fully in the body of the Petition, the IBT respectfully requests that the motor carrier waiver portion of Decision No. 3 be reopened, and that the waiver be rescinded.

IDENTITY AND INTEREST OF IBT

The IBT is a labor organization representing approximately 1.4 million members. Its members make their living primarily in transportation, including the trucking and railroad industries. The IBT represents approximately 2,000 employees of UPC in 14 cities across the nation. In addition, the IBT represents approximately 3,000 employees of Overnite, and approximately 200 employees of PMT and SPMT. All of these employees have a direct and substantial interest in the transaction that is the subject of this proceeding. The transaction could affect their jobs and livelihood. In addition, more generally, the IBT on behalf of its other 1.4 million members has an interest in the proceeding since it could significantly affect the nature and extent of rail and motor carrier service in numerous markets throughout the United States.

THE DECISION TO BE REOPENED

Decision No. 3 in Finance Docket No. 32760, served September 5, 1995, grants a number of waiver and clarification requests by the proposed applicants. This petition to reopen

addresses only that part of Decision No. 3 that holds that the wholly owned motor-carrier subsidiaries of the applicants -- Overnite, PMT, and SPMT -- shall not be deemed "applicant carriers" as defined at 49 C.F.R. § 1180.3(b). The regulatory authority under which the waiver was granted is found at 49 C.F.R. § 1180.4(f).

The only support for this waiver of the Commission's rules offered by the proposed applicants is that the "Applicants do not anticipate that the operations of these trucking firms will be affected significantly by the common control of UP and SP, and there is therefore no need for them to be included as formal applicants in this proceeding." Petition for Waiver or Clarification of Railroad Consolidation Procedures, and Related Relief (August 4, 1995). The rationale stated by the Commission in granting this request for waiver consists of a single sentence:

This request is reasonable and is similar to others we have granted in the past.

Decision No. 3, at 3. With respect to "similar requests" in the past, Decision No. 3 cites BN/Santa Fe No. 3 and UP/CNW No. 3. BN/Santa Fe No. 3 does not address motor carrier subsidiaries. UP/CNW No. 3, while it granted a waiver for Overnite, states no basis for that waiver. The rationale for the waiver therefore appears to be "ask and ye shall receive."

ARGUMENT

A. The Decision With Regard to The Motor Carrier Subsidiaries Will Necessarily Prevent the Commission From Fulfilling Its Statutory Duties Under 49 U.S.C. § 11344(c)

By excluding Overnite, PMT, and SPMT from the definition of "applicant carriers," the Commission has made it impossible to collect the information necessary to make the findings required by 49 U.S.C. § 11344(c). 49 U.S.C. § 11344(c) states in relevant part:

When a rail carrier, or a person controlled or affiliated with a rail carrier, is an applicant and the transaction involves a motor carrier, the Commission may approve and authorize the transaction only if it finds that the transaction is consistent with the public interest, will enable the rail carrier to use motor carrier transportation to public advantage in its operations, and will not unreasonably restrain competition. (Emphasis added.)

This provision sets forth three mandatory^{1/} findings that the Commission must make before it is authorized to approve any merger application involving a motor carrier in which a rail carrier is an applicant. The application here at issue includes a number of rail carrier applicants and involves three motor carrier subsidiaries. In this regard, PMT and SPMT will, if the application is approved, be owned by UPC, the same company that will own the merged railroads and Overnite.

^{1/} The Commission can act "only" if it makes the specified findings.

By excluding Overnite, PMT, and SPMT from the otherwise applicable definition of "applicant carriers" found at 49 C.F.R. § 1180.3(b), the Commission has exempted these motor carriers from the filing requirements of 49 C.F.R. §§ 1180.6, 1180.7, 1180.8, and 1180.9. These filing requirements only apply to "applicant carriers," and the exemption of the motor carrier subsidiaries means that the information required therein will not be collected with respect to them. Without this information, it is impossible for the Commission to consider the factors required by the statute. By precluding consideration of statutorily mandated factors, therefore, the waiver granted in Decision No. 3 directly conflicts with the portion of subsection 11344(c) quoted above.

The first and third required findings in subsection 11344(c), relating to the public interest and restraints on competition, are "rather imprecise standards."^{2/} International Brotherhood of Teamsters v. I.C.C., 801 F.2d 1423, 1427 (D.C.Cir. 1986), petition for review denied, 818 F.2d 87 (D.C.Cir. 1987). The second standard, that the transaction "will enable the rail carrier to use motor carrier transportation to public advantage

^{2/} The breadth of the public interest and effect on competition concepts does not mean that they can be ignored. On the contrary, their breadth indicates that the Commission will require more, rather than less, information in order to carry out the analysis required by Congress. These considerations are discussed in more detail below in the discussion of section 11344(b)(1).

in its operations," . . . "represents a more precise limitation on the Commission's authority." Id.

The long-established standard for the second criterion is that the Commission, in order to approve a transaction, must find that a railroad will acquire a motor carrier only for operations "auxiliary to or supplemental of" train service in the absence of "special circumstances."^{3/} Id. at 1425. In order to make this determination, it is obvious that the purposes for which the acquired motor carriers will be used must be analyzed. As described above, however, the waiver will prevent (as it is intended to) the filing of the financial, market, and operational information essential for that analysis. The required analysis will therefore not occur and the Commission will not be able to make the reasoned findings required by the statute. It is well-settled that the failure of an agency to make congressionally mandated findings is grounds for overturning an agency decision. Detroit, Toledo & Ironton R. Co. v. U.S., 725 F.2d 47, 50 (6th Cir. 1984) (removal of DT&I conditions without consideration of

3/ The Commission attempted to depart from this standard in Ex Parte No. 438, Acquisition of Motor Carriers by Railroads (July 27, 1984). The revised standard set forth in that decision was, however, rejected by the court in International Brotherhood of Teamsters v. I.C.C., supra, as being inconsistent with the Congressional intent of the statute. Congress, in a rider to the Anti-Drug Abuse Act of 1986, § 3403, Pub. L. No. 99-570, accepted the Ex Parte 438 standard for applications within a two-year window. That window closed on September 30, 1986, and the "special circumstances doctrine" remains the proper test.

statutory criteria renders Commission decision "fatally flawed").^{4/}

Put another way, the application of the waiver rule, 49 C.F.R. § 1180.4(f), will in this instance directly conflict with the statutory requirements enacted by Congress. Where there is such a direct conflict between the statute and an action taken under a regulation, the action taken under the regulation must give way. Salinas v. Rodriguez, 963 F.2d 791, 793 (5th Cir. 1992) ("When the regulations are contrary to the wording of the statute itself, however, this Court must follow the plain statutory language and not the regulations.").^{5/} Thus, the regulatory waiver that directly conflicts with the statutory requirements of section 11344(c) must be reversed.

In addition to being unable to satisfy the three statutory requirements of subsection 11344(c) that specifically apply to rail mergers involving motor carriers, the Commission, because of the lack of information resulting from the waiver,

4/ This analysis applies as well to the effect of the waiver on the Commission's ability to consider the mandatory criteria set forth at section 11344(b)(1). See further discussion infra at pp. 11-12.

5/ It is worth noting that this is not simply a matter of the application of a regulation necessarily giving way to a conflicting statute. It has been held that, even under the broad statutory exemption powers of 49 U.S.C. § 10505, the Commission may not disregard the three specific factors set forth in section 11344(c) with respect to rail transactions involving motor carriers. Regular Common Carrier Conference v. U.S., 820 F.2d 1323 (D.C.Cir. 1987).

will not be able to determine whether it should grant potential requests for discretionary labor protection conditions for motor carrier employees, also authorized under 49 U.S.C. § 11344(c). For the Commission to consciously cut itself off from such relevant information early in the process raises a question of whether any decision made later by the Commission on motor carrier labor conditions may not be held to be arbitrary and capricious or otherwise contrary to law. As a practical matter, by removing the motor carriers as "applicant carriers," the Commission has already exercised its discretion on motor carrier labor protections. It has done so, however, without the benefit of any relevant record evidence and without explaining its decision.

The Commission's apparent intent to ignore the trucking companies in its analysis is particularly difficult to understand in light of the extensive analysis employed eight years ago in Union Pacific Corporation and BTMC Corporation -- Control -- Overnite Transportation Company, 4 I.C.C. 2d 36 (1987) ("Overnite"). That case involved an earlier acquisition of Overnite by Union Pacific, two of the players in the current proceeding. In Overnite, a proceeding conducted as here under sections 11343 and 11344, the Commission collected extensive information about Overnite and the markets it served, as well as information regarding its future relationship with Union Pacific. The Commission then applied that information in a thorough

analysis of market definition, horizontal integration, vertical integration, and labor protection, among other matters. In light of the extensive analysis undertaken in this earlier proceeding, one must ask the question: How can a merger involving one railroad and one motor carrier require an extensive consideration of statutory criteria, but a later merger involving the same parties, plus another class I railroad and two additional motor carriers, require absolutely no information gathering or analysis with respect to the affected motor carriers?

B. The Motor Carrier Waivers Also Will Prevent the Commission From Meeting Its Obligations Under 49 U.S.C. § 11344(b)(1)

For reasons similar to those stated above with respect to 49 U.S.C. § 11344(c), the waivers with respect to wholly owned motor carrier subsidiaries will make it impossible for the Commission to gather the information necessary to fulfill the requirements of 49 U.S.C. § 11344(b)(1). That section states:

In a proceeding under this section which involves the merger or control of at least two class I railroads, as defined by the Commission, the Commission shall consider at least the following:

- (A) the effect of the proposed transaction on the adequacy of transportation to the public.
- (B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

(C) the total fixed charges that result from the proposed transaction.

(D) the interest of carrier employees affected by the proposed transaction.

(E) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

49 C.F.R. § 1180.1(b)(1) repeats the statutory requirements verbatim.

The most important language in subsection (b)(1) for the purposes of this petition is the word "shall." As has been held repeatedly by the courts, "shall . . . is the language of command." Escoe v. Zerbst, 295 U.S. 490, 493 (1935). This means that failure of the Commission to consider those factors listed at 46 U.S.C. § 11344(b)(1) will render any decision under that section invalid. This is precisely the decision reached by the court in Detroit, Toledo & Ironton R. Co. v. U.S., 725 F.2d 47, in which the court reversed an I.C.C. order rescinding "DT&I" conditions from existing mergers because the Commission failed to consider the mandatory factors in section 11344(b)(1). The court there said:

[T]he Commission has apparently lost sight of another part of its mandate -- considering the effect of its proposals on competition within the railroad industry itself. Failure to consider all congressionally mandated factors is clearly grounds for setting aside agency action.

Id. at 51. See also Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (agency decision must be based on consideration

of the relevant factors); Merrit v. U.S., 960 F.2d 15 (2nd Cir. 1992) (failure to consider ability to pay fine where statute states that agency "shall" consider such ability renders fine invalid); Bosma v. United States Department of Agriculture, 754 F.2d 804 (9th Cir. 1984). Here, the motor carrier waivers will similarly invalidate any final decision by preventing consideration of the mandatory criteria in section 11344(b)(1).

It cannot be disputed that the wholly owned motor carrier subsidiaries here at issue are an integral part of this proceeding. The fact that they would be "applicant carriers" in the absence of the disputed waivers is sufficient evidence of that. It therefore follows that there may be significant impacts on the employees of those carriers^{6/} as contemplated by subsection 11344(b)(1)(D) if the proposed merger takes place. For the purposes of this petition to reopen, it is not necessary to address what those effects may be. It is enough that the statute requires the Commission to consider those possible effects, and that the Commission's waiver will prevent the Commission from receiving the information necessary for the task.

The Commission has apparently accepted as proven the unsupported contention of the proposed applicants that the operations of the trucking firms will not be significantly affected. Decision No. 3 at 3. By implication, the Commission

^{6/} "Carriers," as that term is used in subsection 11344(b)(1)(D), clearly covers motor as well as rail carriers. 49 U.S.C. § 10102(2), (4) and (6).

has apparently also decided that the employees of those firms similarly will be unaffected. While it is sincerely to be hoped that the Commission is correct in its conclusion regarding the effects of the proposed merger on the trucking companies and their employees, the plain fact is that there is at this time absolutely no evidence whatever in the record to support that conclusion.

In addition to preventing the Commission from considering the mandatory criterion regarding carrier employees stated at subsection 11344(b)(1)(D), failure to collect and analyze information concerning the motor carriers here involved will also prevent the Commission from making the required findings under subsections 11344(b)(1)(A) and (E).^{7/} Although the concepts of impact on the public and adverse effects on competition are somewhat more broad than the analysis of possible effects on employees, those evaluations nevertheless require information regarding the principal players in the transaction. It is an open question, and one likely to be answered by an appeals court in the negative, whether the public interest and damage to competition criteria can be evaluated in the complete absence of record information concerning the consolidation by two railroads of three major trucking companies.

^{7/} This difficulty applies also to the public interest and effect on competition findings that the Commission must make under section 11344(c), discussed above.

This question is underscored by the comments filed by Kansas City Southern ("KCS") in response to the proposed procedural schedule in this proceeding. In those comments, KCS discusses numerous potentially anti-competitive results of the merger. Not the least of the concerns to be addressed is whether the proposed merger will end viable motor carrier competition with the merged railroads. Particularly given that Overnite is one of the nation's largest motor carriers, the amalgamation of two major railroads under the same umbrella as three motor carriers raises serious issues about whether meaningful competition will remain after the merger. Such possibilities require that more, rather than less, information be studied.

As a final point, it must be noted that in neither the context of subsection 11344(c) nor the context of the mandatory analysis required by subsection 11344(b)(1) will information available through discovery remedy the loss of information occasioned by the waiver. In the first place, the Commission's statutory duties do not vary depending on whether or not parties are able to collect and present information to the Commission. Congress has placed that responsibility on the Commission, and there it shall stay until Congress moves it. Second, discovery as of right under the Commission's rules appears to be limited in this proceeding to interrogatories and requests for admissions by parties to parties. 49 C.F.R. Part 1114, Subpart B. Under the waiver, the motor carrier subsidiaries would not be parties, and

would therefore appear to be immune from discovery. This situation, in conjunction with the release of the motor carriers from the otherwise applicable information filing requirements applicable to "applicant carriers," insures that the Commission will receive none of the information that it needs to make the findings required by the statute.

CONCLUSION

The Commission's grant of the waiver for wholly owned motor carrier subsidiaries, based solely on the unsupported request of the proposed applicants, amounts to decision-making by fiat. Such a process, although quick and cheap, does not comport with either the requirements of the statute or fundamental tenets of administrative law.

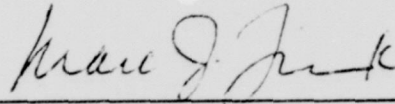
In order to be upheld on appeal, an agency action must be supported by "substantial evidence." That standard has been explained this way:

Substantial evidence has been defined to be "more than a scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. National Labor Relations Bd., 305 U.S. 197, 229, 59 S.Ct. 206, 217, 83 L.Ed. 126 (1938).

Gallagher v. National Transp. Safety Bd., 953 F.2d 1214, 1219 (10th Cir. 1992). It does not require searching or sophisticated analysis to determine that the bald assertion of the applicants seeking merger authority does not meet this test. More

information is needed, information that will not and cannot be obtained if the waiver is allowed to stand. Without this information, any final decision that the Commission makes will be subject to summary reversal on the grounds that the Commission failed to carry out the express will of the Congress as expressed in section 11344. For the reasons stated above, therefore, the International Brotherhood of Teamsters respectfully requests that the Commission reopen and reverse that part of Decision No. 3 that removes Overnite, PMT, and SPMT from the definition of "applicant carrier."

Respectfully submitted,



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Attorneys for
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

September 25, 1995

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September, 1995, a copy of the foregoing Petition By The International Brotherhood of Teamsters to Reopen Decision No. 3 With Respect to Waiver of Inclusion of Wholly Owned Motor Carriers as Applicants was mailed, postage prepaid, to:

Arvid E. Roach, II, Esq.
Covington & Burling
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P. O. Box 7566
Washington, D.C. 20044

Paul A. Cunningham, Esq.
Harkins Cunningham
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

The Honorable Jerome Nelson
Administrative Law Judge
FERC
825 North Capitol Street, N.E.
Washington, D.C. 20426

Rita M. Collins
Rita M. Collins

STB

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Item No. _____

Page Count 8

Sept # 71

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DONELAN, CLEARY, WOOD & MASER, P.C.

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September 21, 1995

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, NW
Washington, DC 20423

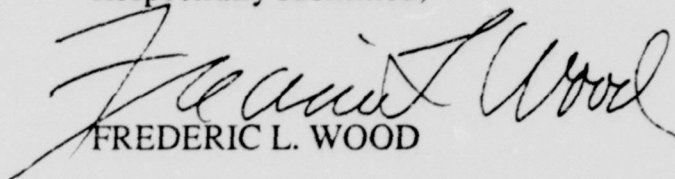


Re: Finance Docket No. 32760, *Union Pacific Corp. et al — Control and Merger — Southern Pacific Rail Corp. et al.*

Dear Mr. Williams:

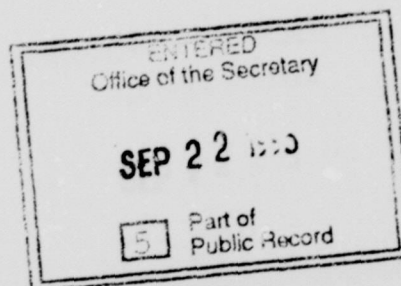
Enclosed for filing with the Commission in the above proceeding are an original and twenty (20) copies of the Petition of The National Industrial Transportation League to Reopen. In accordance with the suggestion in the Prefiling Notification, also enclosed is 3.5" diskette in MS-DOS format with a copy of the petition in WordPerfect 5.1 format.

Respectfully submitted,


FREDERIC L. WOOD

0124-480

FLW/mac
FD 32760 Letter 9/21/95



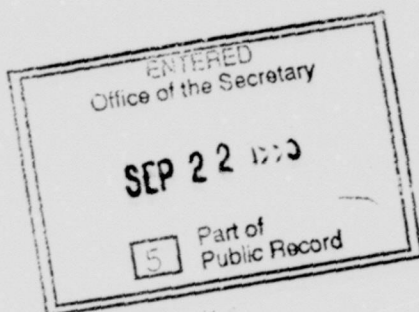
BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32760

*Union Pacific Corp. et al — Control and Merger —
Southern Pacific Rail Corp. et al.*



PETITION OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
TO REOPEN



The National Industrial
Transportation League
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Suite 1900
Arlington, VA 22209

By: Nicholas J. DiMichael
Frederic L. Wood
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW, Suite 750
Washington, DC 20005-3934
Tel. (202) 371-9500

Dated: September 21, 1995
Due Date: September 21, 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Finance Docket No. 32760

Union Pacific Corp. et al — Control and Merger —
Southern Pacific Rail Corp. et al.

PETITION OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
TO REOPEN

Pursuant to the provisions of 49 C.F.R. §1115.3, The National Industrial Transportation League (the League) petitions for reopening of Decision No. 2 in this proceeding (served September 1, 1995). In this decision, the Commission, without receiving comments and replies from all affected and interested parties, adopted a protective order for this proceeding that will unduly and prejudicially interfere with the ability of parties to review and analyze evidence and discovery materials and to prepare meaningful evidence for submission to the Commission. , by approving a protective order that creates a category of "highly confidential" information and restricting access to such information only to a party's outside counsel or outside consultants, involves material error. The National Industrial Transportation League respectfully urges the Commission to modify Decision No. 2 by deleting paragraph number 5 from the protective order.¹

¹ The protective order was adopted by the Commission in response to a petition filed by the applicants on August 4, 1995, (UP/SP-2) at the same time that they filed a petition for adoption of a procedural schedule (UP/SP-4). The League (and possibly other parties) were informed by the Commission staff that these procedural matters would be noticed for public comment, and the League did not reply to the petition for a protective order on the due date of August 24, 1995.

ARGUMENT

It was material error for the Commission's to adopt the applicants' proposed protective order without even soliciting public comment on its likely effect. This protective order, based on the protective order imposed in the recently concluded Finance Docket No. 32549, *Burlington Northern, Inc. et al., — Control and Merger — Santa Fe Pacific Corp. et al.*, (served Aug. 23, 1995) [BN/SF], will have the same effect it had in that proceeding. It will greatly hamper the ability of shippers and other members of the affected public in their ability to determine the competitive impact of the proposed transaction and to prepare their response to the application.

The Interstate Commerce Act requires the Commission to conduct a "public hearing" before deciding whether or not the proposed transaction can be approved under the applicable statutory standard. 49 U.S.C. §11344(a). This public hearing requirement creates a presumption that factual evidence and discovery materials should be in the public domain, unless it can be shown that specific material should not be disclosed. The burden should be on the applicants and any other party to the proceeding to present and support a claim that particular factual material should be given confidential treatment and withheld from disclosure to any particular category of persons.² There are specific procedures in the Commission's Rules of Practice for requests for confidential treatment of both evidentiary and discovery materials. 49 C.F.R. §1104.14 and §1104.21(c). The essential benefit of this approach to the handling of information that is claimed should be disclosed only to outside counsel and consultants in what is otherwise required to be a public

However, contrary to the League's understanding, the Commission decisions served on September 1, 1995 only requested comments on the proposed schedule (Decision No. 1).

² The League has no objection to ¶4 of the protective order and its treatment of confidential material, because it does not limit the category of persons employed or engaged by a party who may review confidential material under appropriate safeguards against disclosure.

proceeding is that it requires the parties to focus on, and the agency to conduct an inquiry into, the specific circumstances surrounding the claimed need for confidentiality (Including the alleged harm that might occur because of disclosure) and make an appropriate determination.

Instead, applicants have proposed, and the Commission has accepted a protective order that creates broad categories of material that parties may designate as either confidential or highly confidential. The only distinction between the two categories, albeit a highly significant one, is that the latter may only be disclosed to outside counsel or outside consultants of the party requesting the materials. Protective Order ¶5. Experience in the *BN/SF* proceedings has shown that the application of a blanket protective order stands the notion of "public hearings" on its head. The applicants in that proceeding designated enormous quantities of material as highly confidential, thereby foreclosing effective participation and preparation by the parties. In-house counsel and business executives employed by shippers and other parties, who often have the most knowledge and information concerning the impact of the proposed rail merger, were precluded from being made aware of the factual basis for the claims made by the applicants concerning the public benefits and/or absence of competitive harm from the transaction.

The applicants in this proceeding can be expected to follow the same course of action, and similar handicaps against effective public participation will occur under the protective order adopted in this proceeding, unless it is modified to remove the particularly objectionable category of material that may be designated as highly confidential. Applicants claim that the protective order in *BN/SF*, "worked well in that case." UP/SP-7 at 2. This assertion can be given no credence, because both Union Pacific and the Southern Pacific entered into settlement agreements in *BN/SF* and ceased active participation in the proceeding before discovery had barely begun and long before evidentiary submissions were

prepared. They are not in a position to know how the protective order in that proceeding worked.

The error of relying on a protective order with a blanket designation of material that may only be disclosed to outside counsel or consultants is shown by reference to the very case authority relied on by applicants in support of the protective order³. In *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470-72 (9th Cir. 1992), cert denied, 113 S. Ct. 198, the court, noting with approval leading authority,⁴ “cautioned against arbitrary distinctions based on type of counsel employed...” and “concluded that, to evaluate the risk of inadvertent disclosure, a court should examine the factual circumstances of *any* counsel’s relationship to the party demanding access.” The court described the proper approach as follows:

Thus, proper review of protective orders in cases such as this requires the ... court to examine factually all the risks and safeguards surrounding inadvertent disclosure by any counsel, whether in-house or retained. Further, the nature of the claims and of a party’s opportunity to develop its case through alternative discovery procedures factors into decisions on the propriety of such protective orders.

960 F2d at 1470 (emphasis in original). The same principles should apply in this proceeding, especially with the statutory directive that the Commission conduct a public hearing. If there are legitimate concerns about disclosure of confidential material to persons other than outside counsel or consultants, they should be raised on a case-by-case basis rather than by the use of blanket category.

³ The Kansas City Southern Ry. Co. filed a reply to the applicants’ petition for protective order (KCS-2), and the applicants, in violation of the Commission’s rules of practice (49 C.F.R. §11104.13(c)), filed a reply to this reply. UP/SP-7. In this improper pleading, applicants for the first time presented authority supposedly supporting the use of the arbitrary distinctions contained in ¶ of the protective order.

⁴ *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984)

A provision such as ¶5 in the adopted protective order will only invite (as it did in *BN/SF*) wholesale designation of materials as highly confidential, thereby effectively foreclosing the League and other members of the public from effective participation in this important proceeding. Not every person who might wish to participate in this proceeding will be in a position to afford the use of outside counsel or consultants. Even those parties who can afford to commit such resources will be foreclosed from consulting fully with and effectively directing outside consultants and counsel in order to obtain effective assistance in this proceeding.

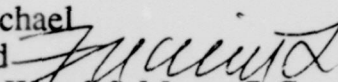
The League has already presented to the Commission its strenuous objection to the proposed procedural schedule, because it would deprive the League and other parties of a fair opportunity to participate in this important proceeding. NITL-2, filed September 18, 1995. The protective order adopted in Decision No. 2 would compound the harm caused by the proposed schedule by greatly limiting the ability of shippers and other members of the public to participate effectively. The Commission must conduct a fair and balanced public hearing in this important proceeding. It should not limit the ability of parties to be fully acquainted with the factual materials that will be such an important part of the Commission's consideration of this merger.

CONCLUSION

In light of the foregoing considerations, the Commission should reopen Decision No. 2 and modify the protective order by removing paragraph 5. The League strongly but respectfully urges the Commission to recognize the need for all interested parties to have equal access to the factual materials that will be utilized in the development of a record for decision on this important proceeding.

Respectfully submitted,

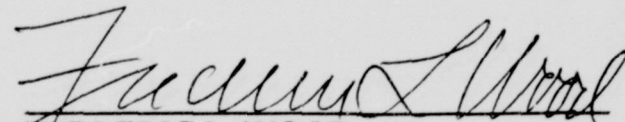
The National Industrial
Transportation League
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By: Nicholas J. DiMichael
Frederic L. Wood 
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Tel. (202) 371-9500

Dated: September 21, 1995
Due Date: September 21, 1995

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of September, 1995, served a copy of the foregoing petition to reopen upon counsel of record for the Applicants both by first-class mail and by telecopy, and upon all other parties of record, by first-class mail, postage prepaid, in accordance with the Commission's Rules of Practice.


FREDERIC L. WOOD

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Page Count 6

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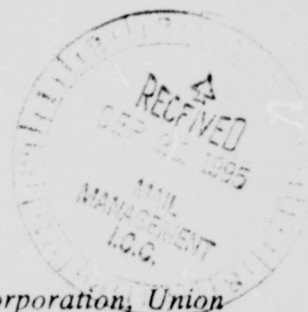
OFFICE: (202) 371-9500

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September 21, 1995

Via Hand Delivery

Honorable Vernon A. Williams, Secretary
Interstate Commerce Commission
Case Control Branch
Room 1324
12th Street & Constitution Avenue, NW
Washington, DC 20423



Re: 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*

Dear Mr. Williams:

Enclosed for filing in the above-captioned case are an original and twenty (20) copies of Western Resources, Inc.'s PETITION FOR RECONSIDERATION OF DECISION NO. 2 (WSTR-3). A 3.5-inch diskette containing this pleading in Word Perfect 5.1 is also enclosed. Additionally, an extra copy of this pleading is enclosed for the purpose of date stamping and returning to our office.

Respectfully submitted,

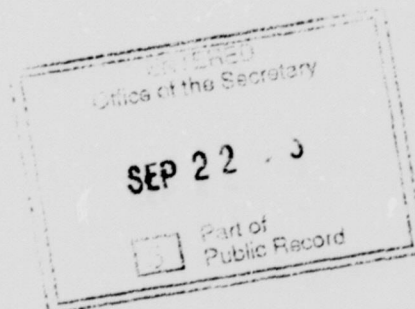
Thomas W. Wilcox

Thomas W. Wilcox
Attorney for Western Resources, Inc.

Enclosures

cc: Arvid E. Roach II, Esquire
Paul A. Cunningham, Esquire
Honorable Jerome Nelson
All Parties of Record
(all with enclosures by mail)

3770-130



BEFORE THE
INTERSTATE COMMERCE COMMISSION

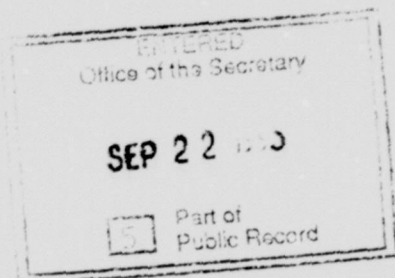
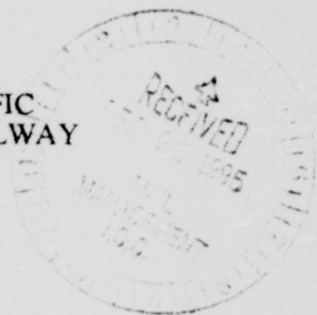
Finance Docket No. 32760

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

PETITION FOR RECONSIDERATION
OF
DECISION NO. 2



Nicholas J. DiMichael
Thomas W. Wilcox
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

T.L. Green
Legal Department
WESTERN RESOURCES, INC.
818 Kansas Avenue
P.O. Box 889
Topeka, Kansas 66612
(913) 575-6300

Attorneys for Western Resources, Inc.

September 21, 1995

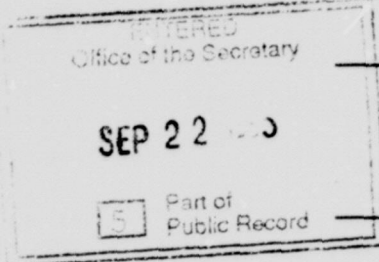
BEFORE THE
INTERSTATE COMMERCE COMMISSION

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



PETITION FOR RECONSIDERATION
OF
DECISION NO. 2

Western Resources, Inc. ("Western") hereby petitions the Commission to reconsider Decision No. 2 in the above-captioned proceeding, served on September 1, 1995. In that decision, the Commission granted the petition of Applicants for a protective order without first seeking public comments on the proposed order attached to the petition. Through this petition, Western asks the Commission to reconsider the portion of Decision No. 2 that restricts the review of documents, which have been designated "Highly Confidential" by the Applicants, to outside counsel and outside consultants only.

The Commission's only stated basis for imposing this restriction is that it is "substantially similar to the one entered in BN/Santa Fe, which adequately served the intended purpose of restricting disclosure of material which is particularly sensitive." Decision No. 2 at 2. The Commission then states that, when necessary, parties may petition for modification.

Western respectfully disagrees with the Commission's assertion that this protective order served its intended purpose or the interests of all the parties in the BN/Santa Fe merger proceeding. In that proceeding, despite the presence of "Confidential" and "Highly Confidential" categories of

documents, over 90% of all documents produced by the applicants were designated "Highly Confidential." This abuse of the protective order prevented the review of applicant documents by the in-house counsel and personnel of affected parties, and in Western's case, hindered its efforts to prepare its case in support of a request for protective conditions. Although the protective order established a procedure for challenging such a designation, the substantially abbreviated procedural schedule adopted by the Commission made it an unproductive use of scarce time and resources to raise such challenges. Even if a party prevailed in its challenge, the time to review and analyze any information obtained would have been extremely minimal under the procedural schedule. In this UP/SP merger proceeding, the Commission has sought comments on an even shorter procedural schedule which subtracts thirty days from the time allotted to shippers and other parties seeking conditions upon the merger.

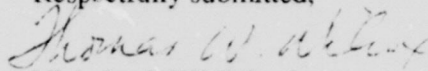
In Decision No. 2, the Commission has not even attempted to address certain arguments raised by the Kansas City Southern Railway Company in opposition to the protective order. Specifically, the Commission has not explained why in-house counsel cannot be trusted to the same extent as outside counsel and consultants who sign the required undertaking. Both classes are subject to the same ethical obligations and legal duties. Based on the modifications to the protective order in the BN/Santa Fe proceeding granted by the Commission, the Commission apparently believes that in-house counsel can be trusted with "highly confidential" documents when they are not represented by outside counsel. There is no rational basis for this distinction.

Western's experience in the BN/Santa Fe merger is that the restriction on access to "Highly Confidential" material is a severe handicap to a party seeking to have conditions imposed on a merger. In-house counsel play critical roles in advising their outside counsel and consultants. Often, only in-house counsel have the knowledge and experience to respond to and rebut evidence submitted by the Applicants. Furthermore, the ability of in-house counsel to participate in critical analysis and case development is curtailed. In essence, the role of the in-house counsel of a shipper participating in the proceeding is reduced to that of a spectator.

Western and many other parties likely to participate in these proceedings are not railroad competitors of the Applicants, but rather are shipper-customers. Unlike railroad participants in this proceeding who may compete with the Applicants generally, Western's business dealings with the Applicants are geographically limited to Western's facilities that are served by the Applicants. Thus, there should be even less concern over access to "Highly Confidential" material by Western. In addition, in-house counsel seldom is involved in the development of rate sensitive materials which are the alleged focus of applicants' concerns for confidentiality. Therefore, it is unlikely that in-house counsel, as a normal part of his routine tasks, would be in a position to use any material disclosed in these proceedings which were "Highly Confidential" and if such an occasion arose in-house counsel could easily identify the conflict and his obligations under the protective order.

WHEREFORE, for the foregoing reasons, Western asks the Commission to reconsider the protective order issued in Decision No. 2 in this proceeding in order to permit in-house counsel, at a minimum, to review "Highly Confidential" material upon execution of the required undertaking.

Respectfully submitted,



Nicholas J. DiMichael

Thomas W. Wilcox

Jeffrey O. Moreno

DONELAN, CLEARY, WOOD & MASER, P.C.

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Washington, D.C. 20005-3934

(202) 371-9500

T.L. Green

Legal Department

WESTERN RESOURCES, INC.

818 Kansas Avenue

P.O. Box 889

Topeka, Kansas 66612

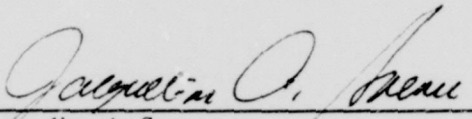
(913) 575-6300

Attorneys for Western Resources, Inc.

September 21, 1995

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITION FOR RECONSIDERATION OF DECISION NO. 2 has been served via first class mail, postage prepaid, on all parties in this proceeding on this 21st day of September, 1995.



Jacqueline A. Spence

STB

FD

• 32760

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• 60038

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HILBURN, CALHOON, HARPER, PRUNISKI & CALHOUN, LTD.
ATTORNEYS AT LAW

AM HILBURN
EN F. CALHOON

EIGHTH FLOOR — THE TWIN CITY BANK BUILDING

TELEPHONE: (501) 372-0110
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Item No. _____

ONE RIVERFRONT PLACE

Page Count 5
Sept # 9

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NORTH LITTLE ROCK, ARKANSAS 72119

SCOTT T. VAUGHN
SUSAN GORDON GUNTER
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MARK K. HALTER
MICHAEL E. HARTJE, JR.
DEAN L. WORLEY
BRUCE D. EDDY
PAMELA A. MOSELEY
RANDY L. GRICE
H. JOHN CHAKALES

September 6, 1995



Vernon A. Williams
Secretary
Interstate Commerce Commission
12th & Constitution Ave., N.W.
Room 2215
Washington, D.C. 20423

VIA FEDERAL EXPRESS

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

Dear Mr. Williams:

Enclosed for filing you will find an original and ten (10) copies of the Notice of Appearance and Objection to Petition for Related Relief of Gulf Rice Arkansas, Inc. Please return any extra file-marked copies of same to me in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter. If you should have any questions or comments, please do not hesitate to contact me.

Sincerely,

Dean L. Worley

ENTERED
Office of the Secretary

SEP 7 1995

☒ Part of
Public Record

DLW:tss
Enclosures

ENTERED
Office of the Secretary

SEP 7 1995

☐ Part of
Public Record



GRA - 1

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

NOTICE OF APPEARANCE AND PARTIAL OBJECTION
TO PETITION FOR RELATED RELIEF

DEAN L. WORLEY

HILBURN, CALHOON, HARPER
PRUNISKI & CALHOUN, LTD.
EIGHTH FLOOR - THE TWIN CITY BANK BUILDING
ONE RIVERFRONT PLACE
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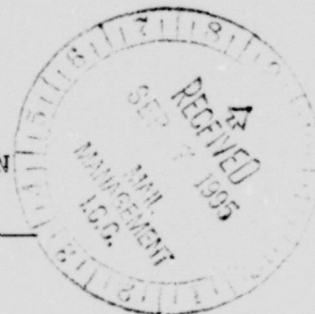
ATTORNEYS FOR GULF RICE ARKANSAS, INC.

ENTERED
Office of the Secretary

SEP 7 1995

3 Part of
Public Record

BEFORE THE
INTERSTATE COMMERCE COMMISSION



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

NOTICE OF APPEARANCE AND PARTIAL OBJECTION
TO PETITION FOR RELATED RELIEF

Gulf Rice Arkansas, Inc. ("Gulf Rice") is a shipper and significant user of lines currently operated by Applicants. Gulf Rice hereby enters its appearance in this proceeding and requests copies of all pleadings, notices and other documents filed herein.

Gulf Rice objects to the related relief requested in Applicants' Petition For Waiver Or Clarification Of Railroad Consolidation Procedures, And Related Relief. Specifically, Gulf Rice objects to the granting of any modifications, waivers, clarifications or exemptions of requirements to submit complete information on proposed abandonments which may affect Gulf Rice's service.

Applicants seek, among other things, waiver of the requirement

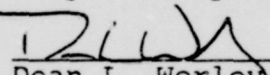
that lines for which abandonment approval is sought be identified at least four (4) months prior to the filing of an abandonment application. 49 C.F.R. § 1152.13(d). Any waiver of this requirement will harm shippers in that it will limit affected shippers' time to formulate a response to the request for abandonment. Applicants seek to justify this waiver by referencing their proposed scheduling order in this proceeding. However, the time frame for shippers to formulate and submit comments, even if the proposed scheduling order is adopted, will be limited by a waiver of this requirement. Accordingly, Gulf Rice objects to the waiver of its right of timely access to information concerning lines to be abandoned and notices of abandonment.

Applicants further seek a waiver of requirements to furnish information concerning levels of service, revenue and cost data and environmental impact information concerning proposed abandonments, as required by 49 C.F.R. § 1152.22. Gulf Rice objects to the waiver of requirement to provide any information to which shippers are entitled concerning proposed abandonments which affect their service. Section 1152.22 requires the provision of information in order to protect shippers' interest.

Applicants have apparently identified the lines for which they will propose abandonment, and are now are seeking to shortcut the procedure for abandoning said lines. 49 C.F.R. Part 1152, Sub-part C was promulgated in order to protect shippers from having their service affected without adequate notice, information and

opportunity to object. Any waiver of these requirements will thwart the purposes of Part 1152.

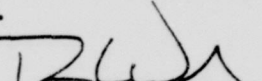
Respectfully submitted,


Dean L. Worley

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Pruniski & Calhoun, Ltd.
One Riverfront Place
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Post Office Box 5551
North Little Rock, AR 72119
Attorneys for Gulf Rice Arkansas,
Inc.

CERTIFICATE OF SERVICE

I, Dean L. Worley, do hereby certify that a true and correct copy of the foregoing document was sent by Federal Express, postage prepaid, to Arvid E. Roach, II, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, D.C. 20044, this 6th day of September, 1995.


Dean L. Worley

STB

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32760

8-22-95

I

60008

Item No. 60008

COVINGTON & BURLING

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MICHAEL L. ROSENTHAL

DIRECT DIAL NUMBER

(202) 662-5448

DIRECT TELEFAX NUMBER

(202) 778-5448

August 22, 1995



BY HAND

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Twelfth Street and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty copies of Applicants' Supplement to Petition for Waiver or Clarification of Railroad Consolidation Procedures, and Related Relief (UP/SP-8). Also enclosed is a 3.5-inch disk containing the text of this pleading in WordPerfect 5.1 format.

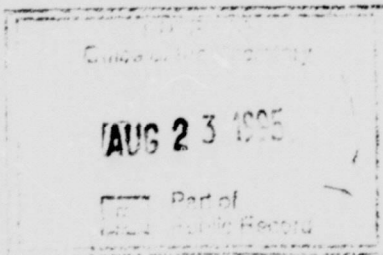
I would appreciate it if you would date-stamp the enclosed extra copy of the pleading and return it to the messenger for our files.

Sincerely,

Michael L. Rosenthal

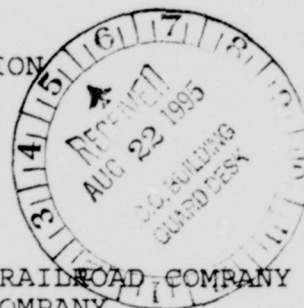
Michael L. Rosenthal

Attorney for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company



Enclosures

BEFORE THE
INTERSTATE COMMERCE COMMISSION



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

SUPPLEMENT TO PETITION FOR WAIVER OR CLARIFICATION
OF RAILROAD CONSOLIDATION PROCEDURES, AND RELATED RELIEF

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LOUIS P. WARCHOT
CAROL A. HARRIS
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JAMES M. GUINIVAN
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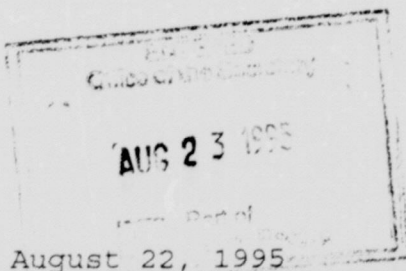
Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp.,
and The Denver and Rio Grande
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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company



BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

SUPPLEMENT TO PETITION FOR WAIVER OR CLARIFICATION
OF RAILROAD CONSOLIDATION PROCEDURES, AND RELATED RELIEF

Union Pacific Corporation ("UPC"), Union Pacific
Railroad Company ("UPRR"), Missouri Pacific Railroad Company
("MPRR"),^{1/} 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"),^{2/} collectively, "Applicants," hereby supplement
their Petition for Waiver or Clarification of Railroad
Consolidation Procedures, and Related Relief (UP/SP-3) to seek
waiver or clarification (1) that the term "applicant carriers"
does not include either Portland Terminal Railway Company
("PTRR") or Central California Traction Company ("CCT"),

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union
Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to
collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW
are referred to collectively as "SP."

carriers in which UP and SP each have interests of less than 50%, but in which the merged company will have an interest of more than 50% following consummation of the transaction; and (2) that, in their merger-related abandonment applications, Applicants are permitted to report costs on a pro forma consolidated post-merger basis.

Definition of "Applicant Carriers"

In their Petition for Waiver or Clarification of Railroad Consolidation Procedures, and Related Relief (UP/SP-3, pp. 8-9), Applicants have requested waiver or clarification that the term "applicant carriers" does not apply to three carriers, The Ogden Union Railway & Depot Company, Portland Traction Company and The Alton & Southern Railway Company, in which UP and SP each hold 50% interests. Applicants wish to supplement that request for waiver or clarification to include PTRR and CCT. As with the three carriers described in Applicants' Petition, the application will fully describe the effects, if any, of the control transaction on the operations of the PTRR and CCT, and petitions for exemption authorizing control of both of these carriers will be filed as related applications to the primary application. Including financial and other data for these carriers throughout the primary application would be extremely burdensome, and would contribute nothing of value to the primary application.

Accordingly, Applicants request waiver or clarification that these entities need not be treated as "applicant carriers."^{3/}

Merger-Related Abandonment Applications

The Commission's regulations require that abandonment applications include information about costs attributable to traffic on the line to be abandoned for a "forecast" year, for a "base" year, and for the two most recent historical years. 49 C.F.R. § 1152.22. Applicants request clarification (or, if necessary, a waiver) that they are permitted to report costs on a pro forma consolidated post-merger basis, using the same consolidated cost data that are to be used in the operating plan and in other parts of the application.

The purpose of the cost data in an application for a merger-related abandonment is to permit an assessment of the traffic that might remain on the line after the merger and the cost of handling that traffic.^{4/} Obviously, for this purpose the relevant cost data are those of the merged system, and thus it makes sense for the "forecast" year in the application

^{3/} Similar waivers were granted in prior cases. See, e.g., Finance Docket No. 32549, Burlington Northern, Inc., & Burlington Northern R.R. -- Control & Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry., Decision served Oct. 3, 1994, pp. 2-3 (The Wichita Union Terminal Railway).

^{4/} Applicants' Petition for Waiver (UP/SP-3, pp. 17-18) requested permission to exclude overhead traffic on the abandoned line that will be rerouted and retained by the consolidated system.

to be based on the consolidated cost data of the merged system. It likewise makes sense to use the same consolidated cost data for the "base" year and other historical years, so that comparisons on a common basis can be made between those years and the forecast year.^{5/} In addition, use of the same consolidated data for the abandonment applications as will be used in the merger application will simplify the process of preparing the abandonment applications.

For the reasons stated above, the requested clarification should be granted.

^{5/} The use of consolidated cost data for the merged system is consistent with Applicants' request (UP/SP-3, pp. 19-20) for a waiver to allow costs in the abandonment applications to be reported on a pro forma basis, rather than on an actual basis, to reflect the exclusion of overhead traffic.

Respectfully submitted,

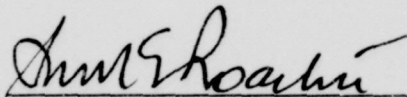
CANNON Y. HARVEY
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Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
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Railway Company, SPCSL Corp.,
and The Denver and Rio Grande
Western Railroad Company

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Missouri Pacific Railroad Company
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Omaha, Nebraska 68179
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J. MICHAEL HEMMER
MICHAEL L. ROSENTHAL
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P.O. Box 7566
Washington, D.C. 20044
(202) 662-5388

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

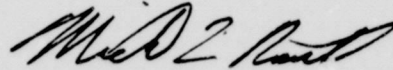
August 22, 1995

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 22nd day of August, 1995, I cause a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

Director of Operations
Antitrust Division
Room 3218
Department of Justice
Washington, D.C. 20530

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



Michael L. Rosenthal

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• 32760

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Item No. 59999

Page Count 8

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

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TOKYO
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202-463-2000
TELEX 892603
FACSIMILE:
202-861-0473

August 11, 1995

ROY T. ENGLERT, JR.
202-778-0657

BY HAND

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 20423



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

Dear Secretary Williams:

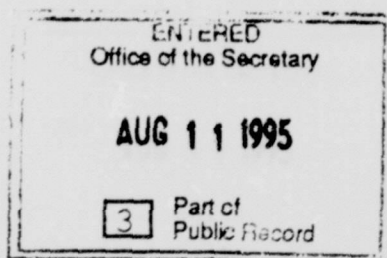
Enclosed for filing in the above-captioned docket are the original and twenty (20) copies of the following pleadings: Notice of Appearance of Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company (SF-1); and Partial Objection to Notice of Intent (SF-2). Also enclosed is a 3.5-inch disk containing the text of these pleadings in WordPerfect 5.1 format.

Copies of SF-1 and SF-2 are being served via hand delivery or overnight mail on Applicants' counsel. I would appreciate it if you would date-stamp the enclosed extra copy of each of the pleadings and return them to the messenger for our files.

Sincerely,

Roy T. Englert, Jr.
Roy T. Englert, Jr.

Attorney for Santa Fe Pacific
Corporation & The Atchison,
Topeka and Santa Fe Railway Co.



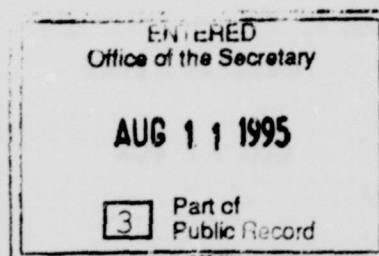
BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

NOTICE OF APPEARANCE OF
SANTA FE PACIFIC CORPORATION AND
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

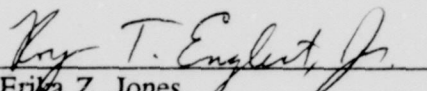
Please enter the appearances in this proceeding of the below-named attorneys on
behalf of the Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway
Company (collectively "Santa Fe"). Santa Fe intends to participate in this proceeding as a



party of record. Accordingly, please place the named attorneys, at the addresses provided, on the service list to receive all pleadings and decisions in this proceeding.

Respectfully submitted,

Jeffrey R. Moreland
Richard E. Weicher
Santa Fe Pacific Corporation and
The Atchison, Topeka and
Santa Fe Railway Company
1700 East Golf Road
Schaumburg, IL 60173
(708) 995-6000


Erika Z. Jones
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Attorneys for Santa Fe Pacific
Corporation and The Atchison,
Topeka and Santa Fe Railway Company

August 11, 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

PARTIAL OBJECTION TO NOTICE OF INTENT

On August 4, 1995, 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., and The Denver and Rio Grande Western Railroad Company ("DRGW") (hereinafter collectively referred to as "Applicants") filed a Notice of Intent to File Railroad Control Application ("Notice of Intent"). See UP/SP-1. In their Notice of Intent, Applicants stated that they intend to submit an impact analysis based on 1993 data. Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company (collectively "Santa Fe") request that the Commission require Applicants to submit an impact analysis based on 1994 data.

The proposal before the Commission in this Finance Docket involves the merger of two of the largest rail companies in the United States. The Commission should therefore have

available the most relevant information necessary to assess changes in railroad operations and competitive impacts that will result from the proposed merger. Certainly 1994 data, the most recent data available, will provide the Commission with the most relevant information. It is apparent from currently available information that 1994 revenue and volumes for the western railroads were markedly greater than those for 1993. Those differences may affect market impact analyses for the proposed merger, including the transaction's impact on competition and on other carriers.

On July 8, 1994, Santa Fe, together with Burlington Northern Inc. and Burlington Northern Railroad Company (collectively "BN"), filed a Notice of Intent similar to the August 4, 1995, filing by the Applicants in this matter, and BN and Santa Fe filed their full Railroad Control and Merger Application on October 13, 1994, more than 13 months before Applicants' projected filing date of December 1, 1995. In the BN/Santa Fe case, commenced more than a full year earlier than the present case, 1993 data were used. There is no apparent reason why now, 13 months later, Applicants must use the same 1993 data, instead of more up-to-date 1994 data that should be available in ample time for this proceeding.

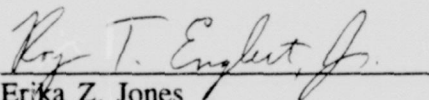
Applicants' notice does not indicate whether they intend to use the ICC Waybill Sample for their market impact analyses. If they intend to use the 1994 Sample, it will be available at the end of August or the start of September. If they do not intend to use the Sample, there is no apparent reason why they could not use their own 1994 data for the market impact analyses. The Commission's preference is to use the most current data available when possible. See, e.g., Illinois Central Corporation and Illinois Central Railroad Company -- Control -- Midsouth Corporation, Midsouth Rail Corporation, F.D. 31801 (Waiver and Clarification decided

February 20, 1991) (applicants permitted to rely on 1989 data *to the extent that 1990 data were not available* for an application that was filed in February 1991). Applicants in this proceeding have shown no reason why they are not able to conduct impact analyses using data from the year immediately preceding the filing of the Notice of Intent and application.

For the foregoing reasons, Santa Fe respectfully requests that the Commission require Applicants to submit impact analyses based on 1994 data.

Respectfully submitted,

Jeffrey R. Moreland
Richard E. Weicher
Santa Fe Pacific Corporation and
The Atchison, Topeka and
Santa Fe Railway Company
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Attorneys for Santa Fe Pacific
Corporation and The Atchison,
Topeka and Santa Fe Railway Company

August 11, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August, 1995, copies of SF-1 and SF-2 were served on the following parties via hand delivery:

Paul A. Cunningham
Harkins Cunningham
1300 Nineteenth Street, NW
Washington, DC 20036

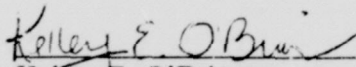
Arvid A. Roach
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, DC 20044

I further certify that copies of SF-1 and SF-2 were served on the following parties via overnight mail:

Cannon Y. Harvey
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

Carl W. Von Bernuth
Union Pacific Corporation
Martin Tower
Eighth and Eaton Avenues
Bethlehem, PA 18018

James V. Dolan
Union Pacific Railway
1416 Dodge Street
Omaha, NE 68179


Kelley E. O'Brien
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2000 Pennsylvania Ave., NW
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(202) 778-0607

STB

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• 59995

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AUG 07 1995

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Public Record

August 4, 1995

LECONFIELD HOUSE

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TELEPHONE: 44-171-495-5655

TELEFAX: 44-171-495-3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1598

AUG 07 1995

Part of
Public Record

EXPEDITED CONSIDERATION REQUESTED

BY HAND

Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
Room 2215
Twelfth Street and Constitution Avenue, N.W.
Washington, D.C. 20423



Re: Request for Informal Opinion --
Voting Trust Agreement

Dear Secretary Williams:

On behalf of Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR") and Missouri Pacific Railroad Company ("MPRR"),^{1/} and pursuant to 49 C.F.R. § 1013.3(a), we are submitting a Voting Trust Agreement (the "Voting Trust Agreement") proposed to be entered into by and between UPC, UP Acquisition Corporation ("Acquisition"), an indirect wholly-owned subsidiary of UPC, and Southwest Bank of St. Louis, an institutional trustee. (Exhibit A hereto.) The Voting Trust Agreement provides for the placement of all of UPC's and its affiliates' interest in the voting stock of Southern Pacific Rail Corporation ("SPR"), the parent holding company of Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL") and The Denver and Rio Grande Western Railroad

Item No. _____

Page Count 6

AUG #5

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

Honorable Vernon A. Williams
August 4, 1995
Page 2

Company ("DRGW"),^{2/} into an irrevocable independent voting trust. The proposed transactions are more fully described in the Agreement and Plan of Merger (the "Merger Agreement") entered into by UPC, Acquisition, UPRR and SPR on August 3, 1995, a copy of which is attached to the Voting Trust Agreement. We believe that Acquisition's planned purchase of 25% of the outstanding voting stock of SPR will not give UPC and its affiliates the power to exercise control of SPR and its affiliates. Nonetheless, to eliminate completely any issue of unauthorized control, we are requesting that the Commission staff issue an informal, non-binding opinion stating that the Voting Trust Agreement and the arrangements described therein will effectively insulate UPC (the settlor of the trust) and its affiliates from any violation of the Interstate Commerce Act and Commission policy against unauthorized acquisition of control of SPR's carrier subsidiaries.

Expedited Consideration

Expedited consideration is necessary because Acquisition will not be able to consummate its shortly-to-be-commenced tender offer for 25% of the shares of SPR without an approved Voting Trust. Purchase of these shares promptly for cash is an integral part of the consideration that SPR bargained for in the overall merger transaction. If the tender offer cannot be consummated on or before its termination date, the entire proposed merger transaction could be frustrated.

Description of Proposed Transaction

Acquisition will shortly initiate a cash tender offer for approximately 25% of SPR's voting stock on a fully diluted basis. The tender offer will be subject to a number of conditions that are set forth in Annex A to the Merger Agreement. Shareholders deciding to accept the tender offer will tender their SPR stock to a depository. The depository will release SPR's stock to the trustee of the Voting Trust. If no Voting Trust is in place by the tender deadline, expected to be approximately September 5, 1995, the tender offer may fail.

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."

Honorable Vernon A. Williams
August 4, 1995
Page 3

The Voting Trust will be employed as a temporary device during the pendency of Commission review of a UP/SP control and merger proceeding. The control application is expected to be filed on or before December 1, 1995. Acquisition will acquire the remainder of SPR's stock, and UPRR will be merged with SPR, only upon Commission approval of the control application.

The proposed transaction does not involve any movement of UPC's or its affiliates' executives into positions at SPR or its affiliates, or any hiring of SPR or its affiliates' executives by UPC or its affiliates, while the Voting Trust remains in effect. Consequently, the proposed transaction does not raise any of the unique concerns identified by the proposal, in connection with the since-abandoned proposed merger of Illinois Central and Kansas City Southern, to shift IC executives to KCS while IC was placed in a voting trust. See Finance Docket No. 32556, Illinois Central Corp. -- Common Control -- Illinois Central R.R. & Kansas City Southern Ry. ("IC/KCS"), Decision served Oct. 21, 1994, pp. 3-6.

The proposed transaction involves the placement of only 25% of SPR's outstanding voting stock in the proposed Voting Trust, and, as discussed further below, the voting of that stock in proportion to the votes of other holders of SPR stock on all issues other than the merger and any permitted disposition of the Trust Stock. During the trust period, therefore, SPR will continue to be controlled by shareholders other than the Trustee and managed entirely independently of UPC. Accordingly, this transaction does not raise any of the concerns as to alleged premature control identified by various parties, but ultimately rejected by the Commission, in connection with UPC's proposal last year to acquire Santa Fe Pacific Corporation ("SFP"), the parent holding company of the Atchison, Topeka and Santa Fe Railway Company, or in connection with the placement of SPT in trust in 1986. See Finance Docket No. 32619, Union Pacific Corp. -- Request for Informal Opinion -- Voting Trust Agreement ("UP/Santa Fe"), Decision served Dec. 20, 1994, pp. 4-7; Finance Docket No. 30400, Santa Fe Southern Pacific Corp. -- Control -- Southern Pacific Transportation Co. ("SFSP"), Decision served Dec. 23, 1983, pp. 10-17.

Description of the Proposed Voting Trust Agreement

The proposed Voting Trust Agreement is modelled on both the agreement that UPC employed in its proposal to acquire SFP last year and the agreement that UPC employed when

Honorable Vernon A. Williams
August 4, 1995
Page 4

it acquired Overnite Transportation Company in 1986. Copies of the Santa Fe and the Overnite voting trust agreements are attached hereto as Exhibits B and C, respectively, and copies of the letters granting informal, non-binding staff approval to each agreement are attached as Exhibits D and E, respectively. See also Exhibit F (Commission Order formally approving SFP voting trust agreement).

The Voting Trust is irrevocable (§ 4) and requires the Trustee to act independently of UPC and its subsidiaries and affiliates (§ 5). In accordance with 49 C.F.R. § 1013.1(e), the Trustee may remit cash dividends or distributions paid by SPR to Acquisition or other holders of trust certificates, but shall hold all non-cash dividends or distributions in the Trust (§ 7). The Trustee is directed to vote the stock in favor of UPRR's merger with SPR (subject to the Commission's review of a UP/SP control application) and against transactions incompatible with the merger, and in favor of any proposal necessary or desirable in connection with permitted dispositions of Trust Stock (§ 3). In all other circumstances, the Trustee is required (§ 3) to vote in accordance with the Shareholders Agreement among UPC, Acquisition and SPR dated August 3, 1995 (the "Shareholders Agreement"), a copy of which is attached to the Voting Trust Agreement, which requires the Trustee to vote the stock in proportion to the votes cast by other holders of Common Stock on matters presented for a vote of shareholders of SPR.

Limitation on Communication of Confidential Information

The Merger Agreement (§ 5.3) also ensures that any confidential information communicated between UPC its subsidiaries and affiliates and SPR and its subsidiaries and affiliates for due diligence purposes will be held in confidence and used solely for that purpose. Also, UPC, SPR and their rail subsidiaries are petitioning the Commission contemporaneously with the submission of this letter for the entry of a protective order permitting them to share confidential information for purposes of preparing their control application. See Finance Docket No. 32760, Petition for Protective Order (UP/SP-2). Again, these protections should obviate concerns raised with respect to the voting trusts in UP/Santa Fe, IC/KCS and SFSP. See UP/Santa Fe, Decision served Dec. 20, 1994, p. 7; IC/KCS, Decision served Oct. 21, 1994, p. 5; SFSP, Decision served Feb. 27, 1987.

Honorable Vernon A. Williams
August 4, 1995
Page 5

Divestiture in the Event the Transaction Does Not Take Place

The Voting Trust Agreement (§ 8) provides, in substance, that in the event that the Commission issues an order denying the proposed transaction or approving it subject to unacceptable conditions, UPC shall use its best efforts to dispose of the Trust Stock, consistent with its rights under and the restrictions imposed by the Shareholders Agreement, and such disposition shall be subject to any jurisdiction the Commission may have to oversee the divestiture.^{2/} This provision is consistent with UPC's acknowledgment in UP/Santa Fe that its disposition of voting trust stock would be subject to the Commission's oversight power. See UP/Santa Fe, Decision served Dec. 20, 1994, p. 6.

The Trustee

UPC proposes to designate Southwest Bank of St. Louis (the "Bank") as the trustee of the independent Voting Trust. The Bank has agreed to serve as trustee of a Voting Trust in the form attached hereto upon Commission approval of the Voting Trust. The Voting Trust (§ 9) prohibits common officers or directors, or business arrangements or dealings, between the Trustee and UPC or its subsidiaries or affiliates. The Bank satisfies these terms and has no affiliation with UPC or any of its subsidiaries and affiliates.

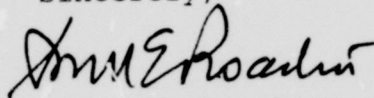
^{2/} Union Pacific reserves the right to seek a declaratory order that its direct ownership of some or all of the SPR stock to be acquired in the tender offer would not give it control of SPR (which will clearly be the case so long as, as is now true, a controlling interest in SPR's stock is held by The Anschutz Corporation and its affiliates), and that the Voting Trust should therefore terminate and the Commission need exercise no oversight over any disposition of the Trust Stock. However, absent the entry of such a declaratory order, Union Pacific acknowledges the Commission's jurisdiction over any divestiture of Trust Stock.

COVINGTON & BURLING

Honorable Vernon A. Williams
August 4, 1995
Page 6

We look forward to your prompt action on this matter. Please call the undersigned if you have any questions.

Sincerely,



Arvid E. Roach II

Enclosures

cc (w/enc's): Honorable David M. Konschnik
Director
Office of Proceedings
Room 2118

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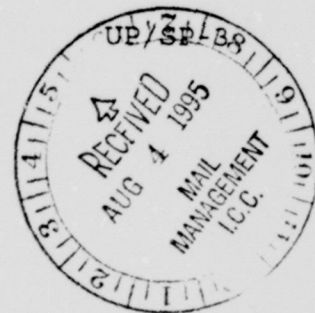
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EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
INTERSTATE COMMERCE COMMISSION



AUG 07 1995

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

PETITION FOR WAIVER OR CLARIFICATION
OF RAILROAD CONSOLIDATION PROCEDURES, AND RELATED RELIEF

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Attorneys for Southern
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Company, St. Louis Southwestern
Railway Company, SPCSL Corp.,
and The Denver and Rio Grande
Western Railroad Company

Item No. _____

Page Count 23

Aug # 3

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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

August 4, 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

PETITION FOR WAIVER OR CLARIFICATION
OF RAILROAD CONSOLIDATION PROCEDURES, AND RELATED RELIEF

Union Pacific Corporation ("UPC"), Union Pacific
Railroad Company ("UPRR"), Missouri Pacific Railroad Company
("MPRR"),^{1/} 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"),^{2/} collectively, "Applicants," are today notifying
the Commission of their intention to file an application
seeking Commission authorization under 49 U.S.C. §§ 11343-45
for the acquisition of control of SPR by UP Acquisition
Corporation ("Acquisition"), an indirect wholly-owned
subsidiary of UPC, the merger of SPR into UPRR, and the

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."

resulting common control of UP and SP by UPC. See Notice of Intent to File Railroad Control Application (UP/SP-1), filed this date. Pursuant to 49 C.F.R. § 1180.4(f),^{2/} Applicants seek in this petition waiver or clarification of certain requirements of the Commission's Railroad Consolidation Procedures, 49 C.F.R. pt. 1180, subpt. A.

It is contemplated that the control application will be filed on or before December 1, 1995. Applicants are in the process of preparing the application, and require waivers or clarifications from the Commission in order to facilitate its preparation.

SUMMARY

Applicants seek the following waivers or clarifications of requirements of the Commission's Railroad Consolidation Procedures:

A. Waiver or clarification of Section 1180.3(a)'s definition of "applicant" as not including UP Acquisition Corporation ("Acquisition"), Union Pacific Holdings Corp. ("Holdings"), Chicago and North Western Railway Company ("CNW"), Philip F. Anschutz or The Anschutz Corporation ("TAC").

B. Waiver or clarification of Section 1180.3(b)'s definition of "applicant carriers" as including only those rail carriers in which either UP or SP now holds a majority

^{2/} All references are to Title 49 of the Code of Federal Regulations unless otherwise noted.

interest, and as not including UPC's trucking subsidiary, Overnite Transportation Company ("Overnite"), or SPT's licensed motor carrier subsidiaries, Pacific Motor Transport Company ("PMT") and Southern Pacific Motor Trucking Company ("SPMT"). Also, where the Commission's rules require the submission of information or data pertaining to "applicant carriers," waiver or clarification to permit Applicants to submit, as appropriate, information or data pertaining to UP and SP and their respective majority- or wholly-owned rail subsidiaries on a consolidated basis, as rail systems.

C. Waiver or clarification of Section 1180.6(a)(2)(v) to permit Applicants to submit employee impact data by classifications, and in a format, described below.

D. Waiver or clarification of Section 1180.6(b)(1), (2) and (4) to permit Applicants to file the most recent Securities and Exchange Commission ("SEC") Form 10-K's for MPRR, SPT, UPC and SPR; the SEC Schedule 14D-9 relating to Acquisition's forthcoming tender offer for 25% of SPR's stock; the Form S-4 and proxy materials that will be filed with the SEC in connection with shareholder approval of the parties' merger agreement; and the most recent annual reports to shareholders of UPC and SPR.

E. Waiver or clarification of Section 1180.6(b)(3), (6) and (8), relating to matters of corporate structure and intercorporate relationships, to permit

Applicants to exclude data, described below, that are not relevant to a thorough evaluation of the control application.

F. Waiver or clarification of Section 1130.4(b) to provide that Applicants may advise the Commission's Section of Environmental Analysis ("SEA") by no later than September 18, 1995 of any merger-related construction projects that will be the subject of applications for approval or exemption submitted together with the primary application, and will not be required to comply with the six-month notice and consultation requirements contained in Sections 1150.1(b) and 1105.10(a).

Applicants also request related relief, discussed below, to permit the filing of merger-related abandonment applications as part of the control application and the processing of any such abandonment applications on the same schedule as the control case, as well as the waiver or clarification pursuant to Section 1152.24(e)(5) of certain abandonment regulations.

DISCUSSION

I. WAIVERS OR CLARIFICATIONS OF RAILROAD CONSOLIDATION PROCEDURES

A. Definition of "Applicant." Section 1180.3(a) defines "applicant" as one of the "parties initiating a transaction." Applicants seek confirmation that, in the context of their control application, this term includes UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW, but not UP Acquisition Corporation ("Acquisition"), Union Pacific

Holdings Corp. ("Holdings"), or Chicago and North Western Railway Company ("CNW").^{4/} There is no need for Acquisition, an indirect wholly-owned subsidiary of UPC whose sole function is to hold stock in SPR to be a formal applicant. Holdings is an intermediate subsidiary between UPC and UPRR/MPRR in the corporate structure, and there is also no need for it to be a formal applicant. Nor is there any need for CNW to be an applicant. CNW (along with its immediate parent, Chicago and North Western Transportation Company) is scheduled to be merged into UPRR on October 1, 1995 and will thus have no role

^{4/} Similar requests were granted in Finance Docket No. 32133, Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Chicago & North Western Holdings Corp. & Chicago & North Western Transportation Co., Decision served Oct. 26, 1992, pp. 1-2 ("UP/CNW, Decision No. 3"); Finance Docket No. 31700, Canadian Pacific, Ltd. -- Purchase & Trackage Rights -- Delaware & Hudson Ry., Decision served July 3, 1990, pp. 1-2 ("CP/D&H"); Finance Docket No. 31562, Union Pacific R.R. & Missouri Pacific R.R. -- Trackage Rights Over Lines of Chicago & North Western Transportation Co. Between Fremont, NE/Council Bluffs, IA & Chicago, IL, Decision served Nov. 30, 1989, p. 4 ("Haulage"); Finance Docket No. 31522, Rio Grande Industries, Inc. -- Purchase & Trackage Rights -- Chicago, Missouri & Western Ry. Line Between St. Louis, MO & Chicago, IL, Decision served Aug. 18, 1989, pp. 2-3 ("RGI/CMW"); Finance Docket No. 31505, Rio Grande Industries, Inc. -- Purchase & Related Trackage Rights -- Soo Line R.R. Line Between Kansas City, MO & Chicago IL, Decision served Aug. 16, 1989, pp. 1-2 ("RGI/Soo"); Finance Docket No. 32000, Rio Grande Industries, Inc., SPTC Holding, Inc., & Denver & Rio Grande Western R.R. -- Control -- Southern Pacific Transportation Co., Decision served Jan. 22, 1988, pp. 1, 2 ("RGI/SPT, Decision No. 3"), & Decision served May 11, 1988, pp. 3-4; and Finance Docket No. 31000, Union Pacific Corp. & BTMC Corp. -- Control -- Overnite Transportation Co., Decision served Dec. 15, 1986, p. 1 ("UP/Overnite"); and Finance Docket No. 30500, Norfolk Southern Corp. -- Control -- North American Van Lines, Inc., Decision served Aug. 7, 1984, p. 2 ("NS/NAVL").

in the present transaction.^{5/} CNW operations and finances will be fully reflected in the application.

Applicants also seek clarification or waiver that its application need not characterize Philip F. Anschutz or TAC as "applicants." Such a characterization would impose unnecessary burdens on Applicants, without enhancing the Commission's ability to evaluate the proposed merger. Mr. Anschutz controls TAC, which in turn holds some 32% of the outstanding common stock of SPR. Mr. Anschutz and TAC are noncarriers. Clarification or waiver would be consistent with the similar waivers granted in other proceedings.^{6/}

B. Definition of "Applicant Carriers." Section 1180.3(b) defines "applicant carriers" to include not only an applicant, but "all carriers related to the applicant and all other carriers involved in the transaction." UP and SP have interests of 50% or less in a number of railroads, all of which are operated independently of UP and SP and maintain their own records (e.g., terminal, switching or short-line

^{5/} CNW's former railroad subsidiary, Western Railroad Properties Incorporated, was merged into UPRR on August 1, 1995.

^{6/} For example, the Commission granted an almost identical waiver in the UP/CNW case, ruling that "applicants," for purposes of SP's responsive applications in that case, need not include Mr. Anschutz, TAC, SPR (then known as Rio Grande Industries), or two holding companies that no longer exist. UP/CNW, Decision served June 8, 1993, pp. 1-2 ("UP/CNW, Decision No. 7").

railroads owned jointly with other railroads).^{1/} Applicants seek confirmation that, in the context of the application, the definition's reference to "all carriers related to the applicant" refers to UP, SP and the rail subsidiaries in which either has a majority interest.^{2/}

Applicants also seek clarification that information and data pertaining to UP or SP that are required by the Commission's Railroad Consolidation Procedures may be submitted on a consolidated basis (i.e., on the basis of UP-and-majority-owned-subsidiaries and SP-and-majority-owned-subsidiaries). Applicants respectfully submit that separate information and data pertaining to each of the individual majority-owned subsidiaries of UP and SP are not pertinent to the Commission's disposition of the common control application. Applicants have in place record-keeping systems that allow them to generate information and data pertaining to UP and SP and their majority-owned subsidiaries on a consolidated basis. Utilization of such systems will avoid the unnecessary burden and redundancy of preparing and

^{1/} All such railroads will be identified for the Commission either in the corporate chart (Exhibit 11) pursuant to Section 1180.6(b)(6) or in the statement of direct or indirect intercorporate or financial relationships pursuant to Section 1180.6(b)(8).

^{2/} Similar requests were granted in Finance Docket No. 32549, Burlington Northern, Inc. & Burlington Northern R.R. -- Control & Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry., Decision served Oct. 3, 1994, pp. 1-2 ("BN/Santa Fe"); and UP/CNW, Decision No. 3, p. 2.

providing the information and data on a carrier-by-carrier basis.^{2/}

In this same connection, Applicants also seek waiver or clarification that the term "applicant carriers" does not include any of the following carriers in which UP and SP each hold 50% interests: The Ogden Union Railway & Depot Company ("OUR&D"), Portland Traction Company ("PTRC") and The Alton & Southern Railway Company ("ASR"). As to these terminal and switching carriers (as well as terminal and switching carriers in which UP or SP already holds a majority interest), the application will fully describe the effects, if any, of the control transaction on operations. Petitions for exemption

^{2/} Similar requests were granted in BN/Santa Fe, pp. 3-4; UP/CNW, Decision No. 3, p. 2; Finance Docket No. 31801, Illinois Central Corp. & Illinois Central R.R. -- Control -- MidSouth Corp., MidSouth Rail Corp., MidLouisiana Rail Corp., & Southrail Corp., Decision served Feb. 22, 1991, p. 3 ("IC/MidSouth"); CP/D&H, pp. 2-3; RGI/CMW, p. 3; Haulage, pp. 3-4; RGI/Soo, pp. 2-3; Finance Docket No. 31247, CSX Corp. & American Commercial Lines, Inc. -- Control -- SCNO Acquisition Corp., Decision served May 25, 1988, p. 2; RGI/SPT, Decision No. 3, p. 1, & Decision No. 8, served Mar. 25, 1988, pp. 1-2; Finance Docket No. 31088, Southern Ry. & Norfolk Southern Corp. -- Purchase -- Illinois Central Gulf Co. Line Between Fulton, KY & Haleyville, AL, Decision served Oct. 2, 1987, pp. 1-2 ("Southern/ICG"); UP/Overnite, pp. 2-3; Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Missouri-Kansas-Texas R.R., Decision served Oct. 24, 1986, p. 1 ("UP/MKT, Decision No. 6"), & Decision served Mar. 17, 1987, p. 1 ("UP/MKT, Decision No. 10"); NS/NAVL, p. 2; Finance Docket No. 30400, Santa Fe Southern Pacific Corp. -- Control -- Southern Pacific Transportation Co., Decision served Feb. 3, 1984, p. 1 ("SFSP, Decision No. 3"), Decision served July 3, 1984, p. 2 ("SFSP, Decision No. 8"), & Decision served July 9, 1984, p. 1 ("SFSP, Decision No. 10"); and Finance Docket No. 30000, Union Pacific Corp. & Union Pacific R.R. -- Control -- Missouri Pacific Corp. & Missouri Pacific R.R., Decision served Aug. 25, 1980, pp. 5-6, 8-9.

authorizing control of each of these three terminal or switching carriers will be filed as related applications to the primary application. Including financial and other data for these carriers throughout the primary application would be extremely burdensome, and would contribute nothing of value to the primary application. Accordingly, Applicants request waiver or clarification that these entities need not be treated as "applicant carriers."^{10/}

Finally, Applicants request waiver or clarification of the definition of "applicant carriers" to exclude Overnite, PMT and SPMT. Applicants do not anticipate that the operations of these trucking firms will be affected significantly by the common control of UP and SP, and there is no need for them to be included as formal applicants in this proceeding.^{11/}

C. Classification and Format of Employee Impact Data. Section 1180.6(a)(2)(v) requires an applicant to discuss the "effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached." Standing

^{10/} Similar waivers were granted in prior cases. See e.g., BN/Santa Fe, pp. 2-3 (The Wichita Union Terminal Railway).

^{11/} Similar requests were granted in BN/Santa Fe, p. 3; UP/CNW, Decision No. 7, p. 2; UP/CNW Decision No. 3, pp. 2-3; and Haulage, p. 4. See also NS/NAVL, p. 2.

alone, the requirement that employees be classified by "class and craft" is ambiguous, and Applicants therefore seek confirmation that they may use the system of classification shown in Appendix A hereto. Applicants also seek confirmation that, in presenting the required employee impact data, they may use the format presented in Appendix B hereto.^{12/}

D. Form 10-K's, Form S-14's and Annual Reports.

Section 1180.6(b) (1), (2) and (4) require applicant carriers to submit their most recent Form 10-K and Form S-14 (now S-4) filings with the SEC as Exhibits 6 and 7, respectively, and their two most recent annual reports as Exhibit 9. Any Form 10-K's, Form S-4's, and annual or quarterly reports to stockholders issued during the pendency of the proceeding are also to be submitted. Applicants request a waiver or clarification of these requirements as follows:^{13/}

1. Though MPRR and SPT continue to file Form 10-K's, UPRR, DRGW and SSW have not filed such forms for many years and SPCSL has never filed one. In addition to submitting the most recent Form 10-K for MPRR and SPT, Applicants request permission to submit, in lieu of the most recent Form 10-K's for UPRR, DRGW and SSW, the most recent

^{12/} The Commission granted similar requests in BN/Santa Fe, p. 4; UP/CNW, Decision No. 3, p. 3; Haulage, pp. 4-5; RGI/SPT, Decision No. 8, p. 3; UP/MKT, Decision No. 6, p. 2, & Decision No. 10, p. 1; and SFSP, Decision No. 10, p. 1.

^{13/} The Commission granted requests similar to these in UP/CNW, Decision No. 3, p. 3; Haulage, pp. 5-6; CP/D&H, pp. 3-4; RGI/Soo, p. 4; RGI/SPT, Decision No. 3, pp. 1-2; UP/Overnite, p. 7; and UP/MKT, Decision No. 6, p. 2.

Form 10-K's for UPC and SPR. Applicants will also submit any Form 10-K's issued by any of the Applicants during the course of the proceeding.

2. Applicants request that the requirement that Applicant carriers file past Form S-4's be waived. No Applicant carrier has filed a Form S-4 for at least fifteen years. Financial information relevant to this proceeding will be contained in the various Form 10-K's and annual reports, as well as the SEC Schedule 14D-9 to be filed by SPR relating to the tender offer, and the UPC Form S-4 and proxy material relating to shareholder approval of the parties' merger agreement, copies of which Applicants propose to submit with the application. Applicants will also submit any Form S-4's filed by any of the Applicants during the pendency of this proceeding.

3. As none of the Applicant carriers issues annual reports to stockholders or has done so for a number of years, Applicants propose instead to submit (and update as appropriate) the two most recent annual reports to stockholders of UPC and SPR.

E. Corporate Information and Reports. Section 1180.6(b) requires applicants to submit a substantial amount of information on their corporate structure, and a number of related documents. Applicants request that the Commission authorize the omission or modification of the following items:

1. Section 1180.6(b)(3) requires applicants to list any change in officers not indicated on the most recent Form R-1. Applicant railroads and their subsidiaries have hundreds of officer positions that might be within the scope of this requirement. Compiling this list would be burdensome and of little or no value to this proceeding. Applicants ask that they be required to list only the principal six officers of UP, SP and their majority-owned subsidiaries.^{14/}

2. Section 1180.6(b)(6) requires applicants to submit a corporate chart which includes, for each company identified in the chart, a statement indicating any directors or officers which that company has in common with any other company on the chart. Applicants seek a partial waiver or clarification of this requirement. In order to present the information on the corporate chart in a concise and intelligible manner, Applicants propose to list only those officers and directors who are (a) common to both UP (including majority-owned subsidiaries) and SP (including majority-owned subsidiaries), or (b) common to UP, SP or any

^{14/} Similar requests were granted in BN/Santa Fe, p. 5; UP/CNW, Decision No. 3, p. 4; Haulage, p. 6; RGI/CMW, p. 3; RGI/Soo, p. 4; Southern/ICG, p. 2; NS/NAVL, p. 3; and Finance Docket No. 30300, CSX Corp. -- Control -- American Commercial Lines, Inc., Decision served Oct. 19, 1983, pp. 7-8 ("CSX/ACL").

of their majority-owned subsidiaries and any carrier outside the UP or SP corporate families.^{15/}

3. Section 1180.6(b)(8) requires applicants to disclose intercorporate relationships between applicant carriers or affiliated persons and other carriers or any persons affiliated with them. Applicants request clarification that this requirement pertains only to significant intercorporate or financial relationships. Applicants propose to describe only those relationships involving ownership by Applicants or their affiliates of more than 5% of a non-affiliated carrier's stock, including those relationships in which a group of people affiliated with Applicants own more than 5% of a non-affiliated carrier's stock.^{16/}

F. Merger-Related Construction Applications.

Applicants anticipate that they may have certain modest merger-related construction projects, probably involving the construction of connections, for which they will wish to seek approval or exemption in applications submitted together with

^{15/} Similar requests were granted in BN/Santa Fe, p. 5; UP/CNW, Decision No. 3, p. 4; CP/D&H, p. 4; Haulage, p. 6; RGI/CMW, p. 3; RGI/Soo, p. 4; RGI/SPT, Decision No. 3, p. 2, & Decision No. 8, p. 2; Southern/ICG, p. 2; UP/Overnite, p. 7; UP/MKT, Decision No. 6, p. 3; NS/NAVL, pp. 3-4; SFSP, Decision No. 10, p. 2; and CSX/ACL, p. 8.

^{16/} Similar requests were granted in BN/Santa Fe, p. 5; UP/CNW, Decision No. 3, pp. 4-5; IC/MidSouth, p. 6; CP/D&H, p. 4; Haulage, pp. 6-7; RGI/CMW, pp. 3-4; RGI/Soo, p. 4; RGI/SPT, Decision No. 3, p. 2, & Decision No. 8, p. 2; UP/Overnite, pp. 7-8; UP/MKT, Decision No. 6, p. 3; SFSP, Decision No. 3, p. 2; and CSX/ACL, pp. 8-9.

the primary application. Applicants will be identifying these projects as they progress in their preparation of the application. Normally, Section 1150.1(b) requires consultation with SEA six months before the filing of a construction application, and Section 1105.10(a) requires that a written notice be provided to SEA at least six months in advance of the filing of a construction application if the proposed construction might require preparation of an environmental impact statement ("EIS"). The Commission has previously recognized, however, that such requirements need not be applied to merger-related construction projects.

UP/MKT, Decision No. 6, p. 3.

Applicants anticipate that any merger-related construction projects for which they will seek approval or exemption in this proceeding will, as has consistently been true of such projects in past merger proceedings, have minor, if any, adverse environmental impacts, and that preparation of an EIS clearly will not be required. Applicants have commenced the process of consulting with SEA with regard to the primary application and all related applications, and will advise SEA as soon as specific merger-related construction projects are identified and provide SEA with any information it requires in regard to those projects. Applicants will identify all such projects by no later than September 18, 1995, which will provide at least two months in advance of the filing of the application for SEA to move forward on its

environmental analysis of these projects. Applicants will also be filing their own detailed environmental report together with the application.

Applicants request that the Commission waive or clarify the merger-related pre-filing notice provisions of Section 1180.4(b) to provide that this advance notice to SEA of merger-related construction projects will be satisfactory, and that Applicants need not comply with the six-month requirements in Sections 1105.10(a) and 1150.1(b).^{17/}

II. RELIEF IN REGARD TO MERGER-RELATED ABANDONMENT APPLICATIONS

A. Filing of Merger-Related Abandonment Applications. Applicants anticipate that there may be some merger-related abandonments for which they will seek either exemption or approval in connection with the control application. However, it will not be possible to identify these abandonments and the extent to which approvals, as distinguished from exemptions, will be sought for them until the process of preparing the merger application is further along toward completion. It will thus not be possible, if the abandonment applications are to be filed with the control application on or before December 1, to comply with the requirement in 49 U.S.C. § 10904(e) and 49 C.F.R. § 1152.13(d) that a line for which abandonment approval is sought be identified in Category 1 on the abandoning railroad's System

^{17/} A similar waiver was granted in BN/Santa Fe, p. 6.

Diagram Map at least four months prior to the filing of the abandonment application.

Applicants request that the Commission modify this requirement. This could be done by way of a waiver or clarification of Section 1180.4(b), as suggested above in connection with merger-related construction projects, or through an exemption pursuant to 49 U.S.C. § 10505 and waiver pursuant to 49 C.F.R. § 1152.24(e)(5). A Section 10505 exemption is in order because, as with the statutory time provisions of 49 U.S.C. § 11345 from which the Commission is proposing a blanket exemption to facilitate expeditious handling of railroad control applications,^{18/} the four-month requirement of 49 U.S.C. § 10904(e) and 49 C.F.R. § 1152.13(d) will interfere unnecessarily with the expeditious processing of this case. The rail transportation policy will thus be furthered by establishing a timely procedure for this proceeding, and the four-month requirement, in the context of this proceeding, is of limited scope.^{19/}

Applicants are prepared to identify and include in Category 1 on their System Diagram Maps by no later than September 18, 1995 all proposed merger-related abandonments for which approval will be sought. This will give at least two months' notice of these proposed abandonments prior to the

^{18/} See Ex Parte No. 282 (Sub-No. 19), New Procedures in Rail Acquisitions, Mergers & Consolidations, Decision served Jan. 26, 1995, 60 Fed. Reg. 5890, 5891 (1995).

^{19/} See Ex Parte No. 282 (Sub-No. 19), supra, p. 6.

filing of the control application, and, together with the six-month schedule that Applicants are proposing contemporaneously herewith for the control proceeding, will give affected shippers ample opportunity to formulate and submit comments on any proposed abandonments as part of the principal proceeding.

B. Information to Accompany Abandonment Applications. Part 1152, subpart C, of the Commission's regulations delineates the information railroads are required to supply in conjunction with abandonment applications. Applicants intend to file any abandonment applications in accord with those regulations. However, certain information normally required for abandonment applications is unnecessary in the context of merger-related abandonments. Consequently, Applicants seek the following waivers of the abandonment regulations pursuant to Section 1152.24(e)(5):^{20/}

1. Section 1152.22(c) requires an applicant for abandonment authority to file detailed information with respect to the level of service the applicant has provided over the line. Applicants request that, where the overhead traffic on the line to be abandoned will be retained by the consolidated system, the Commission waive this requirement to the extent that it might be interpreted to call for information on other than local train service provided for traffic originating and/or terminating on the line.

^{20/} Similar requests were granted in UP/MKT, Decision No. 6, p. 4.

Any abandonment applications filed by Applicants will be directly related to the control application, which will include an operating plan for the consolidated lines. In many or all cases, the combined system will continue to provide service for overhead or bridge traffic currently moving over the lines to be abandoned. Therefore, Applicants ask that they be relieved of the burden of including in the abandonment applications any information on overhead or bridge traffic moving over the line if such traffic will continue to move over the combined system. Section 1152.22(c)(5). Applicants also request that they be excused from supplying any information pertaining to service for that traffic, e.g., number of trains, average crew size, etc.

Information pertaining to bridge traffic would not change the outcome of an abandonment application. See Illinois v. ICC, 698 F.2d 868, 873 (7th Cir. 1983). The Commission has waived the requirement for information on bridge traffic in other circumstances where the overhead traffic will be retained by the abandonment applicant by rerouting it over other line segments of the same rail system. Docket No. AB-3 (Sub-No. 57), Missouri Pacific R.R. -- Abandonment -- Between Lomax & Topeka, KS, Decision served July 3, 1985, p. 1. A similar waiver should be granted here.

Finally, Applicants request that the Commission waive subparagraph (8) of Section 1152.22(c), which requests information on any important changes in train service during

the five years preceding the abandonment application. Much of the trackage that could be the subject of Applicants' abandonment applications is mainline track. Numerous changes in train service undoubtedly occurred without any relation to the local traffic on the line segments to be abandoned. The requirement in subparagraph (8) would result in the burdensome accumulation of data which would be of little or no value. Therefore, Applicants ask that subparagraph (8) be limited to important changes in local train service.

2. Section 1152.22(d) requires abandonment applicants to submit detailed revenue and cost data relating to the line to be abandoned. Applicants request that, where overhead traffic will be retained by the combined system, a waiver be granted permitting them to exclude data on revenues and costs associated with overhead traffic and to prepare cost data on a pro forma basis reflecting the exclusion of overhead traffic. Since overhead traffic currently moving over the UP or SP lines to be abandoned will in many or all cases continue to be served by the consolidated system on other mainline tracks, revenue and costs from that traffic are not germane to an abandonment application. Revenues unaffected by abandonment are not revenues of the abandoned line. Illinois v. ICC, 722 F.2d 1341, 1346 (7th Cir. 1983). Accumulation and submission of financial data on overhead traffic would merely impose an unnecessary burden on Applicants without serving any useful purpose. See, e.g., Docket No. AB-3 (Sub-No. 57),

supra. Pro forma costing is appropriate where historical train operations and maintenance cost data are affected by overhead operations, as where local traffic has been handled in through trains or maintenance practices have been geared to overhead traffic. See, e.g., Docket No. AB-1 (Sub-No. 230), Chicago & North Western Transportation Co. -- Abandonment -- Between Norfolk & Chadron, NE, Decision served Oct. 9, 1991; UP/MKT, 4 I.C.C.2d at 493.

3. Section 1152.22(f) requires abandonment applicants to submit information regarding the environmental impact of a proposed abandonment in compliance with Section 1105.7. Applicants request waiver or clarification to make clear that they need not submit environmental information relating to the overhead traffic covered by the foregoing waivers. The Commission has previously waived submission of environmental data relating to overhead traffic that would be retained over other rail routings. See, e.g., Docket No. AB-1 (Sub-No. 230), supra; Docket No. AB-1 (Sub-No. 217), Chicago & North Western Transportation Co. -- Abandonment -- Between Steamboat Rock & Hampton, IA, Decision served July 20, 1988, p. 1.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the waivers and clarifications specified in this petition be granted.

Respectfully submitted,

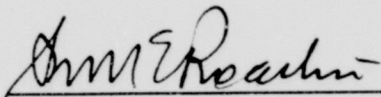
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August 4, 1995

APPENDIX A

CLASSIFICATION OF JOBS SHOWN IN
LABOR IMPACT DATA, SECTION 1180.6(a)(2)(v)

Blacksmiths

Boilermakers

Carmen

Clerks

Dispatchers

Electricians

Enginemen

Laborers

Machinists

Maintenance of Way

Nonagreement

Railway Supervisors

Sheet Metal Workers

Signalmen

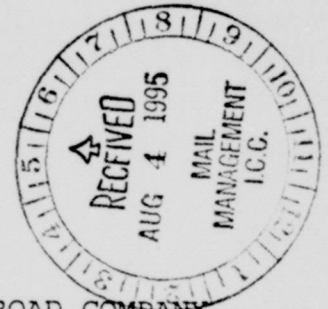
Trainmen

Yardmasters

EXPEDITED CONSIDERATION REQUESTED

UP/SP-4

BEFORE THE
INTERSTATE COMMERCE COMMISSION



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

PETITION TO ESTABLISH PROCEDURAL SCHEDULE

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Item No. _____

Page Count 13

Aug #4

August 4, 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

PETITION TO ESTABLISH PROCEDURAL SCHEDULE

Union Pacific Corporation ("UPC"), Union Pacific
Railroad Company ("UPRR"), Missouri Pacific Railroad Company
("MPRR"),^{1/} 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"),^{2/} collectively, "Applicants," are today notifying
the Commission of their intention to file an application
seeking Commission authorization under 49 U.S.C. §§ 11343-45
for the acquisition of control of SPR by UP Acquisition
Corporation ("Acquisition"), an indirect wholly-owned
subsidiary of UPC, the merger of SPR into UPRR, and the
resulting common control of UP and SP by UPC. See Notice of

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."

Intent to File Railroad Control Application (UP/SP-1), filed this date. Applicants hereby request that the Commission establish the following schedule to govern the proceeding on their application. The term "F" designates the date of filing of the application and "F+n" means "n" days following that date:

PROPOSED PROCEDURAL SCHEDULE

- F Primary application and related applications filed.
- F + 30 Commission notice of acceptance of primary application and related applications published.
- F + 60 Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification with regard to such applications due.
- F + 90 Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and arguments due. DOJ and DOR comments due.
- F + 105 Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.
- F + 120 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.
- F + 130 Rebuttal in support of inconsistent and responsive applications due.
- F + 140 Briefs due, all parties (not to exceed 50 pages).
- F + 155 Oral argument.
- F + 156 Voting conference.
- F + 195 Date for service of final decision.

Notes: Immediately upon each evidentiary filing, the filing party shall place all documents relevant to the filing (other than documents that are

privileged or otherwise protected from discovery) in a depository open to all parties, and shall make its witness available for discovery depositions. Access to documents subject to protective order shall be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive and inconsistent applications, comments, protests and requests for conditions shall begin immediately upon their filing.

As the Commission has recognized, the establishment of a schedule at the outset of the proceeding provides guidance to all parties and promotes efficient and orderly consideration of the issues presented.

The proposed schedule is modelled closely upon that followed by the Commission in its recent, very successful expeditious handling of the control application in BN/Santa Fe. See Finance Docket No. 32549, Burlington Northern Inc. & Burlington Northern R.R. -- Control & Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry., Decision served Mar. 7, 1995, App. A. Applicants' proposal is also consistent with the procedure to govern major and significant rail combinations proposed by the Commission for public comment in Ex Parte No. 282 (Sub-No. 19), New Procedures in Rail Acquisitions, Mergers & Consolidations, Decision served Jan. 26, 1995.

The strikingly successful experience with this schedule in BN/Santa Fe demonstrated that the schedule provides all parties with a fair opportunity to be heard while

accommodating the primary applicants' interest in obtaining an expeditious decision on an important rail restructuring initiative.

A word on merger-related abandonments is in order. Applicants are proposing that any applications for authority for, or for exemption of, such abandonments, including supporting verified statements, be filed with the primary application^{2/} and be treated as related applications, with any opposition evidence, comments, rebuttal and briefing on those applications to be submitted under the same schedule as the primary application. This would involve modest departures from the procedures and timetables prescribed in 49 C.F.R. § 1152.25(d)(6) and (7), and Applicants request that the Commission grant a waiver under 49 C.F.R. § 1152.24(e)(5) to permit these modifications.^{4/}

Applicants also request that the Commission establish the guidelines set forth in Appendix A hereto to govern discovery in this proceeding. These guidelines are modelled closely upon those developed by the parties and the presiding administrative law judge in BN/Santa Fe. Those

^{2/} In their Petition for Waiver or Clarification of Railroad Consolidation Procedures, and Related Relief (UP/SP-3), being filed contemporaneously herewith, Applicants are requesting certain relief that will ensure that this is possible.

^{4/} The Commission approved such departures, in a merger-related context, from the usual timetable for processing abandonment applications in Finance Docket No. 30800, Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Missouri-Kansas-Texas R.R., Decision served Mar. 19, 1987.

guidelines -- and their early establishment -- were central to the smooth progress of that case. The guidelines provided all parties with a fair opportunity to conduct discovery and effectively curtailed abusive practices that had caused delays in prior control proceedings. The establishment of discovery guidelines at the outset of the proceeding will provide guidance to all parties and promote an efficient and orderly proceeding.

Accordingly, Applicants request that the Commission adopt their proposed schedule and discovery guidelines.

Respectfully submitted,

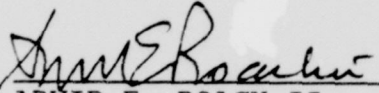
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August 4, 1995

APPENDIX A

PROPOSED DISCOVERY GUIDELINES

1. In consideration of the expedited procedural schedule that has been adopted by the Commission for this proceeding, all discovery requests must be tailored to be consistent with the procedural schedule in this proceeding. The parties shall avoid any duplicative discovery requests. All objections to discovery requests shall be made within five business days from the date of service of the discovery request by means of a written objection containing a general statement of the basis for the objection. Unless objected to, all discovery requests shall be answered within fifteen days after service of the requests. See 42 C.F.R. §§ 1114.26(a), 1114.27(a). The responding party shall endeavor, to the greatest extent possible, to produce documents with its written discovery responses within the fifteen-day response period. If the responding party is not able to produce such documents with its written discovery responses, it shall contact the propounding party at the earliest possible time within the fifteen-day response period and indicate its best judgment as to the date the documents will be provided. Upon request by the propounding party, the responding party shall produce documents as on "as-available" basis rather than in a lump-sum production. In framing document requests, parties should keep in mind the fact that the Commission has required each party to place all documents relevant to an evidentiary filing into a depository open to all parties on the date of

the evidentiary filing. All discovery requests, responses and objections shall be served in the most expeditious manner possible, by hand delivery in the Washington, D.C. area and by overnight mail outside the Washington, D.C. area, or by facsimile.

2. Any party that objects to a discovery request shall promptly attempt to resolve its concerns with the party propounding the discovery. If the objection has not been resolved by the parties or through a motion to compel filed after the receipt of the initial general objections that has been ruled upon by the Administrative Law Judge ("ALJ"), then the objection shall be resubmitted by the objecting party with specificity in its discovery responses. If the parties cannot thereafter resolve the specific objection within three business days of the service of the discovery responses, motions to compel discovery responses shall be made no later than three business days after the initial three-day period by sending a copy of the discovery request and the written objection to the ALJ along with a concise written statement explaining the grounds for the discovery and the fact that it was objected to, which statement shall also be served on the objecting party by the most expeditious means possible. Within the same time period, the objecting party shall file with the ALJ a concise written statement explaining the grounds for its objection to the discovery, which statement shall also be served on the propounding party, and on any

other party that has submitted a written request for such responses, by the most expeditious means possible. Following the filings made by the parties, the ALJ may, in his discretion, initiate a conference with the parties in an effort to informally resolve the discovery dispute. If discovery is ordered, the ALJ shall require its production as soon as production can practicably be accomplished.

3 Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (i.e., workpapers supporting the filing and documents relied upon by the witnesses), other than documents that are privileged or otherwise protected from discovery, in a depository open to all parties. Parties maintaining depositories shall provide suitable indices which identify the general classes of documents in their depositories and which identify with specificity documents relating to each witness statement contained in their evidentiary filings. Such indices shall be made available to any party utilizing the depository.

4. All depositories shall be maintained in the Washington, D.C. area, unless a party requests and receives written permission from the ALJ, after notice to all other parties and for good cause shown, to maintain its depository outside of the Washington, D.C. area. All depositories shall be open to any other party during normal business hours on weekdays and, on notice of a request to visit, Saturdays. The

party maintaining the depository shall establish reasonable procedures for the operation of the document depository, which may include requirements that notice be provided in advance of a planned visit and that persons reviewing documents marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" first execute an appropriate undertaking pursuant to the protective order entered in this proceeding. Parties maintaining depositories shall provide services for making copies of all documents contained therein, may charge a reasonable amount for reimbursement of duplication expenses, and shall use their best efforts to provide copies of documents in their depositories within two business days of receiving a request from a party for such documents.

5. Parties may not propound more than fifty initial written discovery requests (interrogatories and/or document requests) on Applicants. Following those initial written discovery requests, no party may propound more than fifty additional written discovery requests on Applicants during the remainder of the proceeding. Applicants may not propound more than fifty initial written discovery requests on any other party. Following these initial written discovery requests propounded by Applicants, Applicants may not propound more than fifty written discovery requests on any one party during the remainder of the proceeding.

6. No person who has not submitted testimony in this proceeding shall be deposed unless (a) the party seeking

the deposition advises the party from whom deposition testimony is sought that it requests such testimony on a specific subject matter relevant to the issues raised in this proceeding which has not been specifically addressed by a witness who has submitted written testimony, or (b) a petition to conduct that deposition is filed pursuant to 49 C.F.R. § 1114.22 and approved by the ALJ. Absent agreement among all parties or prior approval from the ALJ, all depositions shall be conducted in the Washington, D.C. area. Absent agreement among all parties or prior approval from the ALJ for good cause shown, no witness shall be deposed more than one time as to each written statement (initial or rebuttal) submitted by that witness in this proceeding, and parties shall use their best efforts to complete depositions as promptly as practicable, and if possible within two days. If a deposition is noticed, the party seeking the deposition testimony shall to the extent reasonably practicable advise the party being deposed at least twenty-four hours prior to the scheduled deposition of the documents the questioning will concern.

7. Any discovery response containing confidential information or data as defined in the protective order issued in this proceeding shall be designated and stamped "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY" and shall be handled pursuant to the procedures contained in the protective order. Discovery responses containing information designated as

"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be served only in redacted form on parties who have not executed the protective order.

8. Discovery requests are to be served on all parties, and discovery responses and statements concerning objections need only be served on the party that propounded the discovery and any party requesting copies of such responses in writing, except that documents produced by a party in response to a discovery request shall be placed in the depository in lieu of being served unless the party propounding the discovery or any other party requests copies, which shall be supplied at a reasonable cost. All discovery responses shall immediately be placed in the depository of the responding party, and that party shall simultaneously provide written notice to all parties of record that it has responded to a particular discovery request of another party (which shall be identified in the notice) and that it has placed its responses in its depository.

9. The Commission's discovery rules set forth at 49 C.F.R. pt. 1114 apply to this proceeding except as modified by Commission decision or by these discovery guidelines. Any of the discovery guidelines contained herein may be varied by agreement between any two or more parties (except if such a variance would adversely affect any third party), and the ALJ may vary any discovery guideline contained herein for good cause.

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EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
INTERSTATE COMMERCE COMMISSION



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

PETITION FOR PROTECTIVE ORDER

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Item No. _____

Page Count 15

Aug. #2

Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
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August 4, 1995

BEFORE THE
INTERSTATE COMMERCE COMMISSION

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

PETITION FOR PROTECTIVE ORDER

Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"),^{1/} 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"),^{2/} collectively, "Applicants," are today notifying the Commission of their intention to file an application seeking Commission authorization under 49 U.S.C. §§ 11343-45 for the acquisition of control of SPR by UP Acquisition Corporation ("Acquisition"), an indirect wholly-owned subsidiary of UPC, the merger of SPR into UPRR, and the resulting common control of UP and SP by UPC. See Notice of

^{1/} UPC, UPRR and MPRR are referred to collectively as "Union Pacific." UPRR and MPRR are referred to collectively as "UP."

^{2/} SPR, SPT, SSW, SPCSL and DRGW are referred to collectively as "Southern Pacific." SPT, SSW, SPCSL and DRGW are referred to collectively as "SP."

Intent to File Railroad Control Application (UP/SP-1), filed this date. Applicants hereby request that the Commission enter a protective order for this proceeding, in the form provided in Appendix A to this petition. The proposed order is necessary for two reasons.

First, in order to prepare the application, personnel of the Applicants and their affiliates must exchange information, including shipper-specific material such as traffic data and tapes. The proposed protective order is necessary to protect confidential information and to facilitate compliance with 49 U.S.C. §§ 11343 and 11910. The proposed order will allow Applicants and their affiliates to prepare and present all relevant materials that may be required for the Commission's analysis of the application.

Second, the proposed order will facilitate any necessary discovery at subsequent stages of the proceeding by protecting the confidentiality of materials reflecting the terms of contracts, shipper-specific traffic data, and other confidential and proprietary information in the event that such materials are produced.

The proposed protective order is modelled substantially on those entered by the Commission in recent control proceedings.^{2/} Following the Commission's adoption

^{2/} See, e.g., Finance Docket No. 32549, Burlington Northern Inc. & Burlington Northern R.R. -- Control & Merger -- Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry. ("BN/Santa Fe"), Decision served July 15, 1994; Finance Docket (continued...)

of a protective order in such cases, further orders have often been entered allowing the applicants (and other parties) to establish a category of material that contains highly confidential competitive information. Such information has been restricted to use by outside counsel or outside consultants for the parties. In order to obviate the need for a subsequent order, Applicants have added a provision governing the production of such highly confidential material in discovery to the Commission's standard protective order. See App. A hereto, ¶ 5. That provision is modelled substantially on orders that have been entered by presiding administrative law judges in a number of recent control cases, and was entered by the Commission in BN/Santa Fe.

Accordingly, Applicants request that a protective order be entered in the form provided in Appendix A hereto, including the forms of undertakings that accompany it.

2/ (...continued)

No. 32167, Kansas City Southern Industries, Inc., Kansas City Southern Ry. & K&M Newco, Inc. -- Control -- MidSouth Corp., MidSouth Rail Corp., MidLouisiana Rail Corp., SouthRail Corp. & TennRail Corp., Decision served Nov. 3, 1992; Finance Docket No. 32133, Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Chicago & North Western Holdings Corp. & Chicago & North Western Transportation Co., Decision served Aug. 24, 1992; Finance Docket No. 30800, Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control -- Missouri-Kansas-Texas R.R., Decision served July 16, 1986.

Respectfully submitted,

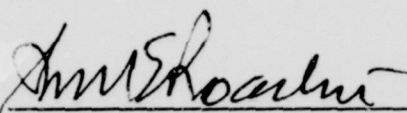
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Pacific Railroad Company

August 4, 1995

APPENDIX A

PROTECTIVE ORDER

1. For purposes of this Protective Order, "confidential information and data" means traffic data (including but not limited to waybills, abstracts, study movement sheets and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets and cost workpapers), the identification of shippers and receivers in conjunction with shipper-specific traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information. Personnel of Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR") and their affiliates, collectively, "Union Pacific," and of 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") and their affiliates, collectively, "Southern Pacific," including outside consultants and attorneys, may exchange confidential information and data for the purpose of this and any related proceedings, but not for any other business, commercial or other competitive purpose, unless and until their joint application is approved.

2. To the extent that any meetings, conferences, exchanges of data or other cooperative efforts between

representatives of Union Pacific and Southern Pacific or their affiliates are held and carried out for purposes of this and any related proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the disposition of such proceedings and will not be deemed a violation of 49 U.S.C. §§ 11343 or 11910.

3. If the control application is ultimately denied, or if control is not effected, or if no application is filed, all confidential information and data exchanged by Union Pacific with Southern Pacific, or by their representatives, in preparing the application for filing and in the course of this and any related proceedings will be returned to the originating party or destroyed. However, outside counsel for a party are permitted to retain file copies of all pleadings filed with the Commission.

4. To the extent that materials reflecting the terms of contracts, shipper-specific traffic data, other traffic data or other confidential or proprietary information are produced pursuant to a request for discovery by any party to this or any related proceedings, or are submitted in pleadings, such materials must be treated as confidential. Such materials, any copies, and any data derived therefrom:

(a) Shall be designated and stamped as "CONFIDENTIAL" and shall be used solely for the purpose of this and any related proceedings, and any judicial review

proceeding arising therefrom, and not for any other business, commercial or competitive purpose.

(b) Shall not be disclosed in any way or to any person without the written consent of the party producing the materials or an order of the Commission or the Administrative Law Judge presiding in this and any related proceedings, except: (i) to employees, counsel or agents of the party requesting such materials, solely for use in connection with this and any related proceedings, and any judicial review proceeding arising therefrom, provided that such employee, counsel or agent has been given and has read a copy of this Protective Order and agrees to be bound by its terms prior to receiving access to such materials; and (ii) to any participant in this or any related proceedings who is not an employee, counsel or agent of the requesting party, only in the course of public hearings in such proceedings.

(c) If produced through discovery, must be destroyed, and notice of such destruction served on the Commission and the presiding Administrative Law Judge and the party producing the materials, at such time as the party receiving the materials withdraws from this or any related proceedings, or at the completion of this and any related proceedings and any judicial review proceeding arising therefrom, whichever comes first. However, outside counsel for a party are permitted to retain file copies of all pleadings filed with the Commission.

(d) If contained in any pleading filed with the Commission, shall, in order to be kept confidential, be filed only in pleadings submitted in a package clearly marked on the outside "Confidential Materials Subject to Protective Order." See 49 C.F.R. § 1104.14.

5. Any party producing material in discovery to another party to this or any related proceedings, or submitting material in pleadings, may in good faith designate and stamp particular material, such as material containing shipper-specific rate or cost data or other competitively sensitive information, as "HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY." If any party wishes to challenge such designation, the party may bring such matter to the attention of the Administrative Law Judge presiding in this and any related proceedings. Material that is so designated shall not be disclosed except to outside counsel or outside consultants of the party requesting such materials, solely for use in connection with this and any related proceedings, and any judicial review proceeding arising therefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order and agree to be bound by its terms prior to receiving access to such materials. Material designated as "HIGHLY CONFIDENTIAL" and produced in discovery under this provision shall be subject to all of the other provisions of this Protective Order, including without limitation paragraph

4. However, this paragraph shall not apply to exchanges of information pursuant to paragraph 1 of this Protective Order.

6. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material at hearings in this or any related proceedings, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material to the Administrative Law Judge, the Commission or the reviewing court, as appropriate, under seal, and shall accompany such submission with a written request to the Administrative Law Judge, the Commission or the court to (a) restrict attendance at the hearings during discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material, and (b) restrict access to the portion of the record or briefs reflecting discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with this Protective Order.

7. If any party intends to use "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in the course of any deposition in this or any related proceedings, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent and all other counsel attending the deposition, and all portions of the deposition at which any such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material is used shall be restricted to persons who may review

that material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material shall be kept under seal and treated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.

8. To the extent that materials reflecting the terms of contracts, shipper-specific traffic data, other traffic data or other proprietary information are produced by a party in this or any related proceedings and held and used by the receiving person in compliance with paragraphs 1, 2 or 4 above, such production, disclosure and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. §§ 11343 or 11910.

9. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Commission, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

[CONFIDENTIAL MATERIAL]

I, _____, have read the Protective Order served on _____, 1995 governing the production of confidential documents in ICC Finance Docket No. 32760, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in Finance Docket No. 32760 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of the Order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for

breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

UNDERTAKING

[HIGHLY CONFIDENTIAL MATERIAL]

As outside [counsel] [consultant] for _____, for which I am acting in this proceeding, I have read the Protective Order served on _____, 1995 governing the production of confidential documents in ICC Finance Docket No. 32760, understand the same, and agree to be bound by its terms. I also understand and agree that, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY," I will limit my use of those documents and the information they contain to this proceeding and any judicial review thereof, that I will take all necessary steps to assure that said documents and information will be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said documents or information by personnel of my client, its subsidiaries, affiliates, or owners, that at the conclusion of this proceeding, I will promptly return or destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me to counsel for the originating party, provided, however, that outside counsel may retain file copies of pleadings filed with the Commission. I further understand that I must destroy all other notes or other documents containing such highly confidential information in compliance

with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY" by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____