

STB

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EXHIBIT 5



BURLINGTON NORTHERN SANTA FE CORPORATION

William K. Anderson
Manager Auxiliary Prices
P.O. Box 961069
Ft. Worth, TX 76161-0069

Phone: (817) 352-2133
Fax: (817) 352-7202

December 17, 1996

Mr. Bert Van Kampen Via Fax: (402) 271-4890
Manager - Switching
Union Pacific Railroad
1416 Dodge Street, Rm. 1130
Omaha, NE 68179-0210

Dear Bert:

In the STB's Decision approving the UP-SP merger, the Board determined that "[i]n essence, the BNSF agreement will permit BNSF to replace, to a large extent, the competitive service that is lost when SP is absorbed into UP." Dec. No. 44 at 103. Throughout the decision, the Board indicated its expectation that BNSF would be able to replace SP's service at every point that was served pre-merger by UP and SP. The Board specifically included in that analysis those points UP or SP reached by reciprocal switching before the merger, stating that "[I]t only makes sense that BNSF should be given, to the maximum extent possible, the rights formerly held by" the carrier it is replacing. One of the areas that the Board specifically identified as a "competitive problem area" is the Houston-to-New Orleans corridor, and one of the "broad-based positive effects of the merger (as conditioned)" that the Board specifically identified was "access for BNSF to New Orleans." Dec. No. 44 at 104.

We believe it is clear that the Board expected BN/Santa Fe to replace SP at points, such as New Orleans, previously served for the purposes of west-bound (or western-originated) traffic by both UP and SP, even if the affected shipper might have access to an eastern carrier for its east-bound (or eastern-originated) traffic. Therefore, we are requesting UP to include BNSF in its reciprocal switching tariffs at New Orleans, specifically in Item 3000 of Tariff MP 8170 series and Item 5060 of Tariff SP 9500 series, and to provide reciprocal switching services to BNSF to the extent such services were provided to SP at locations where UP and SP were competitors for west-bound traffic before the UP/SP merger. This will insure competition for west-bound or western-originated business at New Orleans between BNSF and UP for UP-served customers formerly accessible to SP, as the Surface Transportation Board expects and intends. The Board did not intend to confer on UP a monopoly for west-bound (or western-originated) traffic from UP-served shippers.

BURLINGTON NORTHERN SANTA FE CORPORATION

Please advise when your two switch tariffs will be amended to provide ATSF, our operating carrier, reciprocal switch charges in New Orleans along with the supplement number and effective date.

Sincerely,

W. K. Anderson

William K Anderson

EXHIBIT 6

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET
OMAHA, NEBRASKA 68179

January 20, 1997

Mr. William K. Anderson
Manager Auxiliary Prices
Burlington Northern Santa Fe Corporation
P. O. Box 961069
Ft. Worth, TX 76161-0069

Dear Bill:

Your letter of December 17, 1996, asked that UP include BNSF in New Orleans reciprocal switching tariffs and provide reciprocal switching services to BNSF at New Orleans.

The Surface Transportation Board's decision approving the UP-SP merger required as a condition that BNSF be given access to "2-to-1" customers. After careful review, we have been unable to identify any "2-to-1" customers at New Orleans. Obviously, there are customers who were served by both UP and SP prior to the merger. However, in every case, these customers are also served by another railroad at New Orleans. If you can identify a specific customer who fits the definition of "2-to-1", we will obviously take steps to ensure that you have access to that customer.

Your letter has not identified any customers that will lose two-railroad service if we do not comply with your request. Accordingly, we will not take the actions you have requested.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bert".

Bert Van Kampen
Manager - Switching
(402) 271-3733
(402) 271-4890 (FAX)

EXHIBIT 7



EB 87'97 15125 FR CUST REV SUPPORT

913 435 3881 TO 90527900

P.01

2/7/97

16:19



UNION PACIFIC RAILROAD

Keith Moeller

BNSF

fax 913-435-3013

Dennis Bell

Ralph Cole

UNION PACIFIC RAILROAD

phone 314-992-1807

fax 314-425-4334

Keith:

The switch for AGFX 87591 out of Delta Commodities at Harvey in the
NEW Orleans District: \$127.00 p/c this is the Grain and Grain Products
rate. Verified by an old CNW friend in the switching department: Rich
Kennedy. (314) 992-1963.

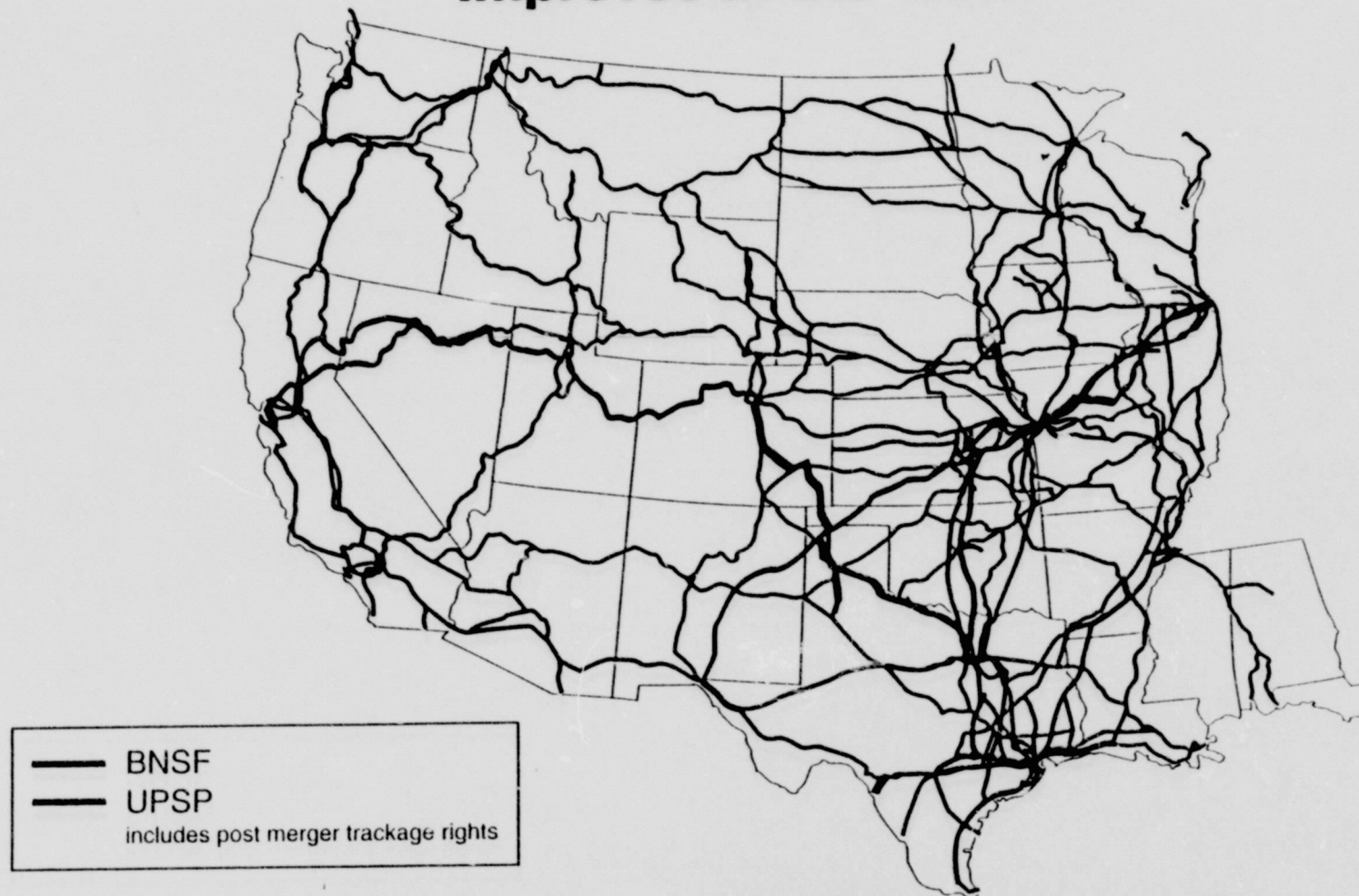
The authority is: MP 8170-a ITEM 2960. Commodities Described in WTL
9230-X take the Grain and Grain Products rate of: \$127.00 P/C.

EXHIBIT 8

Merger Update



Head-to-Head Competition Improves In the West



Reciprocal Switching

Improved Access To More Customers

- Reciprocal switch charges between SP and UP will be eliminated after the merger.
- Reciprocal switch charges between SP and the other railroads will be reduced.
- Customers open to reciprocal switching prior to the merger will continue to be open to reciprocal switching after the merger.



- # Competitive Access

- Improved Competition

- UP/SP have agreements with BNSF and Utah Railways.
- Customers currently served by only UP and SP, will gain access to BNSF.
- BNSF can serve the customers directly or utilize UP for switching or haulage.
- In all cases, competition will be maintained and in most cases competition will be stronger.
- History has demonstrated UP and BNSF will be fierce competitors.





Volume 3 ■ Issue 6
December
1995

CHANGES

A Newspaper for Union Pacific Employees

SPECIAL
EDITION

UP/SP Merger Would Strengthen Competitive Alternatives

THE UNION PACIFIC - SOUTHERN PACIFIC RAILROAD combination - which could become reality by mid-September next year - promises unprecedented opportunities for transportation customers, railroad employees, states and cities west of the Mississippi.

The merger of UP/SP, now before the Interstate Commerce Commission (ICC), would greatly improve transit times throughout the western two-thirds of the nation, take trucks off overcrowded highways and yield direct routing and efficiency benefits never before accomplished in railroad history.

With ICC approval, the UP/SP merger would create \$750 million in efficiency savings and new business opportunities for the two companies and logistical savings for customers, while enhancing rail competition in the western United States.

The merger will attract new business that didn't move by any mode in 1994, but could be drawn to the merged system by better routes.

Merging with SP is the "only way UP can fill in the gaps in our system between Texas and California, Los Angeles and Oakland or improve the efficiency between the California ports and the Mississippi gateways," said UP Corporation President Dick Davidson.

"There is no other way than a merger to achieve the dramatic capacity enhancements, service improvements, and cost reductions that BN/Santa Fe has already achieved by its merger."

In this issue, *Changes* explores the merger application filed November 30 in Washington, D.C. See inside for details of the operating plan, shorter-faster rail routes, customer and government support, facility enhancement, corridor upgrades

and other merger facts.

Historically and physically, UP and SP routes were created to work together. The joint Operating Plan shows numerous places where route structures of each railroad fill in gaps of the other.

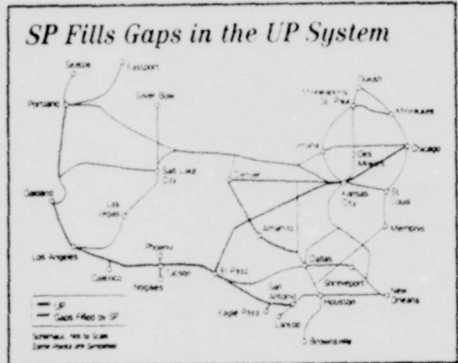
The natural fit will yield unprecedented improvements:

- More direct routes, shaving hundreds of miles off some trips.
- Substantially faster transit times, cutting hours and days from many routes.
- Specialized use of parallel routes in which traffic will flow in one direction on UP track and in the opposite direction on SP track.
- Blocks of customers' freight cars that bypass intermediate terminals, eliminating congestion and frequent interchanges.
- Alternative main-line routes - both east-west and north-south - which will allow planned and unplanned traffic diversion with little or no loss in transit times.
- Improved use of train crews.
- Combined locomotive and freight-car fleets better able to meet customer needs.

To realize maximum benefits, the merging companies are prepared to mount one of the most aggressive redesign and upgrading efforts in railroad history (Please see page 2 for chart listing key corridor and facilities upgrades).

UP/SP will offer literally hundreds of new or improved train services. Many intermodal, automotive and manifest train schedules on the railroads will be replaced or changed.

■ See OPERATING PLAN, page 2



14 Benefits of UP/SP Merger

- Stronger transport competition throughout the Western states through creation of a rail system with the direct routes, service capabilities and financial resources to compete with the BNSF in every major corridor.
- As a result of the settlement with the BNSF system, preservation - indeed, strengthening - of rail competition for every shipper who now has it.
- Expanded single-line service opportunities for shippers throughout the SP and UP systems, including single-line access to all major Mexico gateways.
- Approximately \$1.3 billion in new capital investments to expand, upgrade and improve rail-line capacity and facilities throughout the Western states, including major capacity expansion on SP between Los Angeles and El Paso.
- Solutions to SP's chronic service and reliability problems through access to adequate capital resources, new technology and improved operating systems.
- Assurance of long-term, high-quality rail service to SP shippers without the disabilities resulting from SP capital and earnings weaknesses.
- Solutions to congestion delays on both mainlines as capital investments and operating changes alleviate bottle necks in critical terminals and corridors.
- For the first time in history, single

- line rail service along the Pacific Coast between California and Seattle/Tacoma and other Pacific Northwest points offered by both UP/SP and BNSF.
- Faster, more reliable, more competitive intermodal service between California and New Orleans, Houston, Dallas/Ft. Worth, Memphis, St. Louis, Chicago and the Twin Cities, as well as between the Midwest and Texas and on the West Coast.
- A improved and expedited railroad service, with new through trains and improved brokering of shipments, both on and beyond the system, which reduces transit times by several days.
- Much more direct and efficient routes, saving hundreds of miles for many shipments and resulting in faster transit times and improved equipment turn-around.
- A saving of \$600 million in annual efficient savings, allowing UP/SP to provide service at lower cost.
- Specialized use of parallel routes to reduce congestion, improve reliability and transit time and provide flexibility for track maintenance.
- Terminals, consolidations and improved yards, including new and expanded intermodal terminals in Oakland, California, Kansas City, Portland, St. Louis and other locations.

Merger to Impact Work Centers

"HOW WILL THE MERGER AFFECT ME?" That's the question most on the minds of Union Pacific and Southern Pacific employees. Although the November 30 merger application includes a broad operating plan - combined shops and yards, shorter corridors and routes - these are preliminary and subject to change once the merger is approved. The following summary is probably not as much information as employees would like to know about the impact on major work centers. As developments occur, employees will be kept informed.

UNION PACIFIC RAILROAD

Omaha - About 1,850 employees work in Headquarters, with another 800 at the Harman Dispatching Center. The Headquarters situation is still under study, but transfers of some clerical and nonagreement positions are anticipated.

North Platte, Nebraska - UP's Bailey Yard is the world's largest classification yard. About 2,200 employees work in North Platte, repairing locomotives and rail cars, and moving train traffic. Shops are expected to continue operating at full capacity.

St. Louis - About 1,000 employees work at the National Customer Service Center. Overall, UP has nearly 1,750 employees in the St. Louis area, including 300 at the East St. Louis rail yard. Some clerical and nonagreement positions may be transferred, but no final decision has been made.

North Little Rock, Arkansas - About 2,000 employees perform major locomotive overhauls and other mechanical repairs, or work in transportation. The merger application calls for the shops to continue operating at full capacity, focusing on EMD locomotives.

Chicago - UP's recent merger with CNW brought with it Chicago's east-west rail traffic, major

intermodal facilities and repair shops. About 2,500 work in the area. The UP/SP merger would expedite traffic to and from Chicago.

Kansas City - About 1,400 employees work in a newly opened UP locomotive shop and in transportation. Duplicate UP and SP one-spot car shops in Kansas City would be consolidated at UP's yard.

Salt Lake City - About 1,200 employees work at a locomotive repair shop, technical training center and in transportation. Duplicate UP and SP one-spot car shops in Salt Lake City would be consolidated at SP's yard.

Pocatello, Idaho - About 1,200 employees work in transportation and a car-repair shop. The application sets out plans to move work currently performed at SP's Denver and Pine Bluff car shops to Pocatello and DeSoto shops. Maintenance-of-Way equipment repair work currently done in Pocatello would be transferred to SP's new Denver shop.

Fort Worth - The railroad's equipment repair shops and yard employ 1,200. Light repair work will continue at the Maintenance-of-Way equipment repair shop, but heavy repair will transfer to SP's new Denver facility.

SOUTHERN PACIFIC RAIL CORPORATION

Southern Pacific has about 3,600 employees in California, including about 1,500 at its Headquarters in San Francisco. Some Headquarters clerical and nonagreement positions may be transferred, but no final decision has been made. SP

■ EMPLOYEE IMPACT, from page 4

Merger Review Calendar*

- Nov. 30, 1995**
Merger application filed
- Jan. 2, 1996**
ICC accepts application
- Jan. 15 to May 13, 1996**
Filing of notifications, opposition, responsive applications, comments, protests and rebuttals
- June 3, 1996**
Brets due
- July 2, 1996**
Oral arguments before ICC
- July 5, 1996**
ICC voting conference
- Aug. 12, 1996**
Final decision
- Sept. 11, 1996**
Merger effective date

*Established by the ICC and subject to modification

ATTACHMENT C



Delta

Terminal Services, Inc.

3540 RIVER ROAD
P.O. BOX 581
HARVEY, LOUISIANA 70059
PHONE 504-340-4911
FAX 504-348-1893

Verified Statement Of Delta Terminal Services, Inc.

My name is Bernard Fiest, Jr., and I am the Manager, Transportation for Delta Terminal Services, Inc ("Delta"). My business address is 3540 River Road, Harvey, LA. In my position, I am responsible for coordinating the rail, marine and truck shipments which originate and terminate at this facility. The purpose of my statement is to support the efforts made by the Burlington Northern and Santa Fe Railway Company ("BNSF") to serve our facility at Harvey, Louisiana through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP).

Delta receives, stores, and reships a variety of liquid products such as vegetable oils, petroleum, lube oils and other chemicals using rail, water, and motor transportation options available in the New Orleans area, as a warehouse and transfer operation for the buyers, sellers, and beneficial owners of these commodities. A majority of these commodities arrive via ship or rail and are transferred into our storage tanks under specific contract arrangements with our customers. The ultimate destinations for these commodities varies, but mostly move to those destinations via rail and truck. Destinations for most commodities shipped via rail from Delta which are controlled by the buyers and sellers of these commodities and not Delta, is in the Midwest and Western United States and well as Mexico. Our customers used privately owned or leased railcars for their movements, and competitive and consistent transit times are important to them both in terms of maintaining product quality and sizing their railcar fleets to meet their needs. Many of these commodities, by their nature, are more suited to rail versus truck handling to and from our facility, and access to competitive rail service for our customers and Delta Commodities is a significant reason customers use our facility.

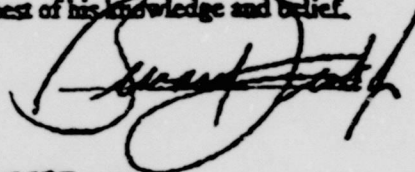
Delta, prior to the UP/SP merger, was directly served by both UP and SP, and was accessible by reciprocal switch using either of those carries to all other railroads serving the New Orleans area. Our facility received two separate industry switches per day, in the morning from SP and in the evening from UP.

Access to both carriers directly at our facility provided our customers with head-to-head competitive rail service to and from points in the western United States by having access to the marketing services, prices, and transportation capabilities of both UP and SP. We and our customers have found that interline routings using two or more carriers, which is now the only option available to us and our users, even to reach jointly-served BNSF/UP points or local BNSF points, is not an attractive cost or service alternative to the single-line service provided by UP and SP, in competition, prior to the UP/SP merger. Since the UP/SP merger, our switch service has decreased and we have been switched primarily by the UP in the evening.

Delta remained neutral in regard to supporting or opposing the UP/SP merger, however, we fully expected that we would be no worse off than had this merger not occurred, particularly with the purchase by BNSF of the SP lines to New Orleans. The recent action by the Union Pacific to eliminate competitive access from the BNSF does not fulfill our expectations of being no worse off in accessing , and providing to customers who use Delta's services, competitive service by two major western rail carriers, as when both UP and SP directly served our facility. It is for this reason that we are providing this statement and request the Surface Transportation Board's assistance in restoring competitive rail service between major western rail carriers at our facility.

VERIFICATION

BERNARD FIEST being duly sworn deposes and says that he has read the foregoing statement and the contents thereof are true and correct to the best of his knowledge and belief.



Subscribed and sworn to before me on this 18 day of SEPT. 1997.

Notary Public

My Commission expires:

THE PERSONALLY SEEN AND ASKED
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THE PRESENCE OF TWO WITNESSES
JURY

AFFIDAVIT BY WITNESSES
STATE OF LOUISIANA
PARISH OF Jeherson
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ARTHUR A. MAURICE
NOTARY PUBLIC
PARISH OF ORLEANS, STATE OF LOUISIANA
MY COMMISSION IS ISSUED FOR LIFE.

ATTACHMENT D

C. & T. Refinery, Inc.

FAX # 704-525-4510
TELEPHONE 704-523-0414

Refiners of VEGETABLE SHORTENINGS AND OILS

P.O. BOX 240457 CHARLOTTE, N.C. 28224

10/23/1997

VERIFIED STATEMENT OF


C. & T. REFINERY, INC.
5000 SOUTH BLVD.
CHARLOTTE, NC 28217

My name is Scot W. Jansen and I am Corporate Traffic Manager for C & T Refinery, Inc. My business address is 5000 South Boulevard, Charlotte, NC 28217. In my position, I am responsible for the transportation activities for two vegetable oil facilities. Both plants operate their own fleet of private tank cars. The purpose of my statement is support the efforts of The Burlington Northern Santa Fe Railway Company ("BNSF") to serve a facility we lease in New Orleans, La., through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP).

- I. C & T Refinery, Inc., originates vegetable oil from Harvey, LA and Avondale, LA
 - a. C & T Refinery stores oil at both the above facilities
 - b. Before merger, SP had access into both facilities through reciprocal switching.
- II. The public storage facilities in New Orleans lost some of their competitive advantages when Union Pacific denied access to public storage facilities located on the Mississippi River. A shipper moving commodities east from New Orleans will have three carriers with access. If the same shipper decides to move west he will only have one choice UP.
- III. I supported the UP/SP merger based on the original settlement agreement that included giving BNSF access to New Orleans, La. I was not aware that when UP stated that BNSF would have access to New Orleans, they intended only giving them interchange rights with southeastern carriers. UP closed these industries after the merger was complete and didn't give shippers any formal notice.

In light of Union Pacific's current track record in regards to supplying reliable service, it is only fair for the shipping community of New Orleans switching district to have more than one option to move traffic west.

Sincerely



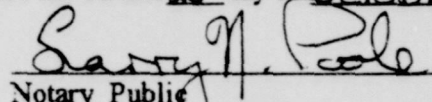
Scot W. Jansen
Corporate Traffic Manager

VERIFICATION

I Scot Jansen, being duly sworn deposes and says that he has read the foregoing statement and the contents thereof are true and correct of the best of his knowledge and belief.



Subscribed and sworn to before me on this 23rd day of October, 1997


Notary Public

My Commission expires: May 9, 1999

ATTACHMENT E

VERIFIED STATEMENT

OF

TERRY J. VOSS

My name is Terry J. Voss. I am Senior Vice President Transportation for Ag Processing, Inc. (AGP). I am responsible for all transportation for AGP and subsidiary companies. AGP is a regional cooperative owned by 330 local cooperatives. They are the largest cooperative soybean processor in the world with eight soybean processing facilities. In addition, they have a pet food company, three vegetable oil refineries and an extensive feed company operation. AGP has grain elevators in the East from Indiana to Ohio and in the Midwest from Nebraska to Missouri and north to Canada. Their 1996 sales were nearly \$3 billion. AGP supports the efforts of Burlington Northern Santa Fe Railway Company (BNSF) to serve the IMT - Delta facilities in the New Orleans area of Harvey, Louisiana.

Prior to the merger of the Union Pacific Railroad Company (UP) and the Southern Pacific Transportation Company (SP), the IMT facility was served by each railroad. Subsequent to the merger this facility has become a two-for-one point as it is served exclusively by UPSP.

AGP's primary business is the processing of soybeans into soybean meal for livestock feed and the refining of soybean oil into edible vegetable oils. The world is the market for vegetable oils and there is much competition from foreign processors and refiners. AGP, in its normal course of business, exports oils to foreign countries. Transportation charges are almost the determining factor in delivering products to the foreign buyer. Any change in transportation

pricing could limit the opportunity to participate in the export market. As example, vegetable oils are traded in increments of one one hundredth of one cent per pound.

AGP has soybean processing or vegetable refining facilities located on BNSF in Missouri, Texas, Minnesota and Iowa. Allowing BNSF access to Harvey, Louisiana would provide us with the opportunity to export vegetable oils for single line service from our BNSF locations. It is common knowledge that where two or more carriers have access to a facility, especially in single line service, the competitive benefits are obvious. Without the BNSF opportunity to serve the facility we fear that our freight will be noncompetitive and hence our international marketing opportunities will be restricted.

AGP participated in and supported the UP/SP merger. We were aware of the Board's intent to correct the loss of the two-to-one facilities and felt the BNSF agreement with UP/SP would correct these situations.

Again, we request that the BNSF be allowed access to this facility.

VERIFICATION

Terry J. Voss, being duly sworn deposes and says that he has read the foregoing statement and the contents thereof are true and correct to the best of his knowledge and belief.

Terry J. Voss

Subscribed and sworn to before me on this 30th day of July, 1997.

Margaret Aclin
Notary Public

My Commission expires:



ATTACHMENT F



**VERIFIED STATEMENT
OF
THE DIAL CORPORATION
15501 NORTH DIAL BOULEVARD
SCOTTSDALE, ARIZONA 85260**

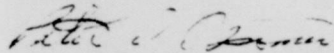
15501 North Dial Boulevard
Scottsdale, AZ 85260-1619
602 754-DIAL

My name is Peter O. Opsomer and I am Transportation Resource Manager for The Dial Corporation. My business address is 15501 N. Dial Boulevard, Scottsdale, AZ 85260. In my position I am responsible for the transportation of rail, intermodal, and truck transportation of raw materials and supplies for all Dial facilities located throughout the country. Dial currently operates their own fleet of private tank cars and leases bulk storage facilities in New Orleans, LA for handling coconut oils and similar products. The purpose of my statement is to support the efforts of the Burlington Northern Santa Fe Railway Company (BNSF) to serve the facilities we utilize in New Orleans, LA, through reciprocal switching in order to restore the competitive situation that existed before the merger of the Union Pacific Railroad Company (UP) and the Southern Pacific Transportation Company (SP).

- I. The Dial Corporation originates in excess of 200 tank car shipments of oils annually from Harvey and Avondale, LA. These shipments move from Delta Commodities and International Matex respectively.
- II. Prior to the UP/SP merger these facilities were served directly by, or open to, reciprocal switching by both the UP and the SP railroads.
- III. Dial was able to obtain competitive proposals from both the UP and SP to assist in maintaining competitive rates and service.
- IV. The New Orleans facilities have lost some of their competitive advantages, due to the Union Pacific denial to access. This is particularly true on shipments moving to the West.
- V. Dial was aware of the BN's original settlement agreements that would have allowed access after the UP/SP merger. We were not aware that the UP had restricted access until we recently requested rate proposals.

In view of the foregoing and, based on the most recent service record of the UP/SP merger, we respectfully request the BNSF be allowed access to the New Orleans switching district.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter O. Opsomer", written in a cursive style.

Peter O. Opsomer
Transportation Resource Manager

VERIFICATION

Peter O. Opsomer, being duly sworn deposes and says that he has read the foregoing statement and the contents thereof are true and correct to the best of his knowledge and belief.

Peter O. Opsomer

Subscribed and sworn to before me on this 5th day of November, 1997.

Marilyn A. Holt
Notary Public

My Commission expires: My Commission Expires Dec. 31, 1999

ATTACHMENT G

VERIFIED STATEMENT OF: JOHN G. BRESLIN

WITCO CORPORATION

My name is John G. Breslin, and I am Director of Logistics for Witco Corporation and have held this position for eight years. My duties include policy, procurement, regulatory compliance in all transportation, warehousing and related activities in all geographies.

The Witco Corporation is a specialty chemicals company. The purpose of my statement is to support the efforts of the Burlington Northern and Santa Fe Railway Company ("BNSF") to serve our facility at Gretna, Louisiana, through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP). We sell to and receive products from customers and suppliers located throughout the world. During 1996, we shipped thousands of carloads/containers/trailers to and from our facility in Gretna. This plant was open to SP and UP directly.

The Witco Corporation will continue to require the services of BNSF at this facility because of the competitive pricing option no longer provided since the merger of SP and UP. There is a distinct need for two competing railroads in the South which own their own track and facilities. As is the case when only one company is able to operate in a particular market, service suffers and price is non-competitive. It is time for customers interested in the Southern market to have service by more than one rail carrier which owns its facilities. Their rail carriers should not be just any rail carriers. They must be comparable in terms of their size, scope and ability to provide a competitive service. From what I

understand of railroad operations, in the 1990s, two carriers of relatively equal size and scope provide the greatest opportunities for seamless service, efficient equipment utilization and synergies.

To summarize, we support the efforts of the Burlington Northern and Santa Fee Railway Company to serve our Gretna, LA facility through reciprocal switching.

I, John G. Breslin, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on September 26, 1997.

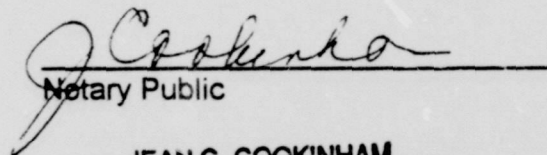
Sincerely,

WITCO CORPORATION



By: John G. Breslin
Title: Director of Logistics

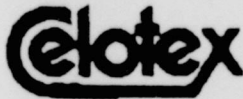
Subscribed and sworn to before me on this 25th day of
September, 1997.


Notary Public

JEAN C. COOKINHAM
NOTARY PUBLIC OF CONNECTICUT
MY COMMISSION EXPIRES MAY 31, 2000

My commission expires:

ATTACHMENT H



The Celotex Corporation

Post Office Box 31602
Tampa, Florida 33631-3602
(813) 873-1700

VERIFIED STATEMENT
OF
PAUL ROBBINS

My name is Paul Robbins and I am the Director of Transportation for Celotex Corporation. My business address is 4010 Boy Scout Boulevard, Tampa, Florida 33607-5650. In my position, I am responsible for managing logistics services and costs. The purpose of my statement is support the efforts of The Burlington Northern and Santa Fe Railway Company (BNSF) to serve our facility at New Orleans, Louisiana through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP).

The subject facility of this letter is our manufacturing plant in Marrero, LA, which produces an insulation board used in construction, but primarily as roofing insulation. The board can be shipped in boxcars, bulkhead flatcars, flatbed truck or piggyback. For several years, until the IC retired the units, flatracks were used daily to a major customer in Illinois. Looking a little further back in history, Thrall Door cars were in dedicated use until the SP railroad retired those cars from service. The plant also receives a variety of raw materials for use in the manufacturing process, none of which are presently shipped directly to the plant site by rail. Our facility has always been open to reciprocal switching and the SP and UP took turns handling the switching service, six months at a time, until an agreement was made for the UP to handle all our switching. Marrero product is shipped all over the country with consistent volume into the Southeast and the

ATTACHMENT I



Gardner Smith (U.S.A.) L.L.C.

Commodity House

26877 Northwestern Hwy.
Suite 212
Southfield, MI 48034
Telephone : (810) 357-3880
Facsimile : (810) 357-4288

VERIFIED STATEMENT OF STEVE SILVER

MY NAME IS STEVE SILVER AND I AM TRADING DIRECTOR FOR GARDNER SMITH (USA) L.L.C..

MY BUSINESS ADDRESS IS 26877 NORTHWESTERN HIGHWAY, SUITE 212, SOUTHFIELD, MICHIGAN 48034. IN MY POSITION, I AM RESPONSIBLE FOR ALL ASPECTS OF TRADING VEGETABLE OILS INCLUDING MOTOR AND RAIL TRANSPORTATION. THE PURPOSE OF MY STATEMENT IS TO SUPPORT THE EFFORTS OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF") TO SERVE OUR FACILITIES AT NEW ORLEANS, LOUISIANA OR SUB PORTS OF AVONDALE AND HARVEY, LA., THROUGH RECIPROCAL SWITCHING IN ORDER TO RESTORE THE COMPETITIVE SITUATION THAT EXISTED BEFORE THE MERGER OF THE UNION PACIFIC COMPANY ("UP") AND SOUTHERN PACIFIC TRANSPORTATION COMPANY (SP)

OUR INTEREST IS IN SERVICING THE TANK TERMINAL OPERATIONS AT HARVEY LA., AND AVONDALE, LA. INBOUND WITH VEGOILS ORIGINATING IN THE US MIDWEST AND OUTBOUND FOR TROPICAL OILS (PALM AND COCONUT OILS) TO THE US MIDWEST, AND NORTH TO CANADA. PRIOR TO THE UP/SP MERGER, BOTH THE AVONDALE AND THE HARVEY FACILITY WAS OPEN TO SP VIA RECIPROCAL SWITCHING.

WE NEED SERVICE BY BNSF AT THESE FACILITIES TO REPLACE THE COMPETITIVE OPTIONS AVAILABLE PRIOR TO THE MERGER AND WE BELIEVE THAT BNSF WILL BRING COMPETITIVE RATES TO THESE MOVEMENTS AND PROVIDE BETTER, TIMELY SERVICE FOR SEVERAL OF THE ORIGIN AND DESTINATION LOCATIONS.

WHILE WE DID NOT PARTICIPATE IN THE UP/SP MERGER PROCEEDING, WE EXPECTED THAT BNSF WOULD HAVE ACCESS TO THE AVONDALE AND HARVEY FACILITIES.

VERIFICATION:

STEVE SILVER, BEING DULY SWORN DEPOSES AND SAYS THAT HE HAS READ THE FOREGOING STATEMENT AND THE CONTENTS THEREOF ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

STEVE SILVER
TRADING DIRECTOR
GARDNER SMITH (USA) L.L.C.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 30TH DAY OF JULY, 1997.

NOTARY PUBLIC

MY COMMISSION EXPIRES : 6/30/01

CHERYL E. HENDRY
Notary Public, Oakland County, MI
My Commission Expires: 6/30/01

ATTACHMENT J

VERIFIED STATEMENT

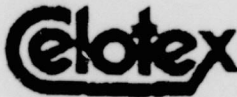
OF

J. RON BRINSON

My name is J. Ron Brinson and I am President and Chief Executive Officer for the Port of New Orleans. My business address is 1350 Port of New Orleans Place. The purpose of my statement is support for the efforts of The Burlington Northern and Santa Fe Railway Company ("BNSF") to serve our Perry Street in New Orleans, Louisiana, through reciprocal switching in order to restore the competitive situation that existed before the merger of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP).

The Perry Street Facility is located on the Westbank of the Mississippi River at mile marker 96 AHP. This terminal is comprised of a wharf with a linear footage over 1,000 feet, a 160,000 square foot transit shed, and an open storage and marshalling area of more than 130,000 square feet. Previously served by both the UP and the SP, Perry Street continues to be accessed by barge and truck lines. However, because of the merger of the UP and the SP and the absence of a reciprocal switching agreement, rail customers are limited to one railroad for movement to and from the Western United States.

As the only port in the United States served by six Class 1 railroads, the Port of New Orleans,



The Celotex Corporation

Post Office Box 31602
Tampa, Florida 33631-3602
(813) 873-1700

Midwest, but with the heaviest volume to Texas. West Coast and Midwest customers could be served by rail if the right competitive factors were introduced, but at this time only truck and piggyback are in use.

During the merger proceedings, we were aware of the settlement agreements made by the BNSF and fully expected that Marrero would be treated like the other "two for one" points were, as far as competitive access is concerned. The BNSF needs to be given access to Marrero to allow at least a minimal level of competition for the UPSP, and giving Celotex the opportunity to be competitive in the markets that the BNSF serves.

VERIFICATION

Pam R Robbins, being duly sworn deposes and says that he has read the foregoing statement and the contents thereof are true and correct to the best of his knowledge and belief.

Pam R Robbins

Subscribed and sworn to before me on this 30th day of JUNE, 1997.

P S Ballantyne
Notary Public

My Commission expires: 1/27/98

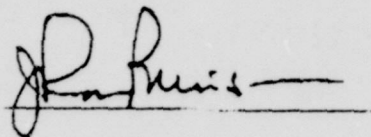


P S BALLANTYNE
My Commission CC344634
Expires Jan. 27, 1998
Bonded by ANG
800-853-6878

its customers, and its tenants have benefitted from the competition that exists among these carriers. Therefore, the Port of New Orleans strongly urges the Surface Transportation Board to look favorably upon the request by BNSF to gain access, through reciprocal switch service, to the Perry Street facility.

VERIFICATION

J. Ron Brinson, being duly sworn, deposes and says that he has read the foregoing statement, and the contents thereof are true and correct to the best of his knowledge and belief.



J. Ron Brinson

Subscribed and sworn to before me on this 10th day of November, 1997.



Notary Public

JOSEPH M. ORLESH, JR.

Notary Public

Parish of Orleans, State of Louisiana

My Commission is dated for life

My commission expires at death.

STB

FD

32760

10-23-97

I

183343

153343

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

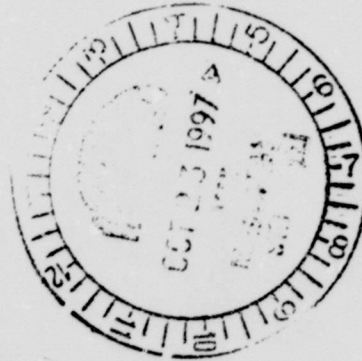
WILLIAM L. SLOVER
MICHAEL LOFTUS
RONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

202 347-7170

October 23, 1997

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423



183343
Re: Finance Docket Nos. 32760 and 32760 (Sub-No. 21) Union Pacific Corporation, et al. --
Control and Merger -- Southern Pacific Rail
Corporation, et al. 183344

Dear Mr. Secretary:

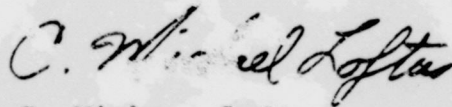
Enclosed for filing in the above-referenced proceeding please find a separately packaged original and twenty-five (25) copies of the HIGHLY CONFIDENTIAL VERSION of the Petition of Entergy Services, Inc. and Entergy Arkansas, Inc. for Modification Of Decision No. 44, Or In The Alternative, For Additional Condition (ESI-28) (the "Petition"), which is being filed under seal in accordance with the procedure set forth at 49 C.F.R. § 1104.14. In addition, please find an original and twenty-five (25) copies of the PUBLIC, REDACTED VERSION of the Petition (ESI-29). In accordance with prior orders in this proceeding, we have also enclosed a Wordperfect 5.1 diskette containing the HIGHLY CONFIDENTIAL VERSION of the Petition.

Extra copies of these filings are enclosed. Kindly indicate receipt and filing by time-stamping these copies and returning them to the sender of this letter.

The Honorable Vernon A. Williams
October 23, 1997
Page 2

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "C. Michael Loftus".

C. Michael Loftus
An Attorney for Entergy Services,
Inc. and Entergy Arkansas, Inc.

CML/raw
Enclosures

cc: Arvid E. Roach II, Esq.
Paul A. Cunningham, Esq.
Parties of Record

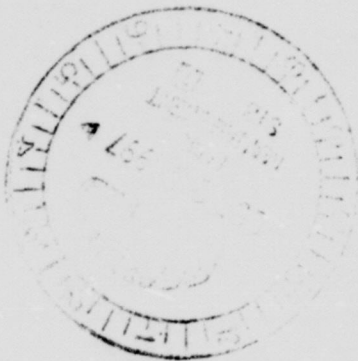
BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket Nos. 32760
and 32760 (Sub-No. 2)

PETITION OF ENTERGY SERVICES, INC.
AND ENTERGY ARKANSAS, INC. FOR
MODIFICATION OF DECISION NO. 1, IN
THE ALTERNATIVE, FOR ADDITIONAL MODIFICATION

PUBLIC, REDACTED VERSION



ENTERGY SERVICES, INC. and its
affiliate ENTERGY ARKANSAS, INC.

By: O. H. Storey
Deputy General Counsel
Entergy Services, Inc.
Mail Unit L-ENT-26D
639 Loyola Avenue
New Orleans, LA 70113

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

C. Michael Loftus
Frank J. Pergolizzi
Andrew B. Kolesar III
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: October 23, 1997

Their Attorneys

ENTERED Office of the Secretary	
OCT 28 1997	
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)

Finance Docket Nos. 32760
and 32760 (Sub-No. 21)

Entergy Services, Inc. ("ESI") and its affiliate Entergy Arkansas, Inc. (formerly known as Arkansas Power & Light Company ("Entergy Arkansas")) (collectively, "Entergy") hereby petition the Board to modify Decision No. 44 in this proceeding served August 12, 1996, approving the common control and merger of Union Pacific Railroad Company and its rail affiliates ("UP") and Southern Pacific Transportation Company and its rail affiliates ("SP") (collectively "Applicants"), to address a critical situation that has resulted from UP's inability to provide Entergy with any semblance of adequate rail transportation service for coal consumed at Entergy Arkansas' power plants.

Specifically, Entergy requests modification of the condition imposed to preserve a competitive rail transportation option for Entergy's White Bluff Steam Electric Station ("White

Bluff") near Redfield, AR, so as to permit Burlington Northern and Santa Fe Railway Company ("BNSF"), on an immediate but temporary basis, to serve the White Bluff plant via its trackage rights over UP between Pine Bluff and Little Rock, AR, rather than via a build-out from the plant to Pine Bluff. Entergy requests that such interim BNSF service be effective for a period of three years, which is the estimated length of time required for Entergy to design, permit and construct a build-out from the White Bluff plant to Pine Bluff.

BACKGROUND

In Decision No. 44, the Board granted Entergy's request for a condition authorizing BNSF's use of its trackage rights between Memphis and Pine Bluff, AR¹ to serve the White Bluff plant upon completion of a 21-mile build-out from the plant to Pine Bluff. See Decision No. 44 at 154, 185, 232. This condition, which will be referred to herein as the "White Bluff condition," was intended to preserve a competitive alternative to UP for the transportation of PRB coal (which can be originated by either UP or BNSF) to the White Bluff plant. Under the White Bluff condition as imposed, however, BNSF cannot use these trackage rights to serve White Bluff independently of UP unless and until Entergy constructs the build-out line.

¹ The Memphis-Pine Bluff line segment is part of SP's line between Memphis and Houston, over which BNSF has obtained trackage rights pursuant to its settlement agreement with Applicants ("BNSF agreement").

The build-out line would parallel UP's existing line between Pine Bluff and Little Rock, which is the line UP presently uses to serve the White Bluff plant. (Entergy has a private spur that connects the plant with UP's Pine Bluff-Little Rock line at Redfield, AR.) Under the BNSF agreement, BNSF also received overhead trackage rights over the UP line between Pine Bluff and Little Rock, but those rights do not include the right to serve any shipper facilities located at intermediate points, such as the White Bluff plant.² A schematic showing these lines and the location of the White Bluff plant is attached hereto as Counsel's Exhibit 1.

After the UP/SP merger was consummated, BNSF began serving Little Rock via haulage. According to its Quarterly Progress Report filed in the merger oversight proceeding on October 1, 1997, BNSF intends in the near future to begin operating its own trains between Pine Bluff and Little Rock using the trackage rights available to it under the BNSF agreement. (BNSF Quarterly progress Report dated October 1, 1997 (BNSF-PR-5), Verified Statement of Ernest L. Hord at 21.)

² Notwithstanding the waste of societal resources entailed in building a duplicate line parallel to an existing line, Entergy did not seek a condition requiring direct BNSF service to the White Bluff plant using its trackage rights over UP's Pine Bluff-Little Rock line because, under existing precedent, such a condition would almost certainly have been denied as putting Entergy in a better position than it was in prior to the UP/SP merger. The build-out condition was intended to preserve, as closely as possible, Entergy's pre-merger competitive transportation options at White Bluff. Cf. Finance Docket No. 32549, Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation, et al., Decision No. 38 (served August 23, 1995) at 68.

As detailed in Entergy's March 29, 1996 Comments (ESI-12), all of the PRB coal traffic presently moving to the White Bluff plant and to Entergy Arkansas' other coal-fired power plant, the Independence Steam Electric Station ("Independence") near Newark, AR, is presently committed to UP (which directly serves both plants) under a rail transportation contract that expires on December 31, 1999 (the "Interim Agreement").³ See Verified Statement of Roy A. Giangrosso in ESI-12 at 6-7. Each of the two plants consumes approximately 6.5 million tons of coal annually under normal conditions; the 13 million tons of coal transported annually to these plants make Entergy Arkansas UP's largest single PRB coal customer. (Id. at 4, 6.)

As the Board is well aware from extensive recent news media coverage,⁴ and as UP has acknowledged in Applicants' Third Quarter 1997 Progress Report (UP/SP-323) in the merger oversight proceeding, UP's service, particularly south of Kansas City and extending into Arkansas, Oklahoma and Texas, has deteriorated

³ Entergy has two rail transportation contracts with UP executed in 1983, referred to as the "1983 Agreements," which have been suspended while the Interim Agreement is in effect but which become effective again (subject to renegotiation of certain rate terms) when the Interim Agreement expires. Under the 1983 Agreements, Entergy is committed to ship to White Bluff and Independence.

⁴ See, e.g., "Wrong Track; A Big Railroad Merger Goes Terribly Awry In a Very Short Time," The Wall Street Journal, October 2, 1997. A copy of this article is attached hereto as Counsel's Exhibit 2.

dramatically in the past few months.⁵ Entergy Arkansas has experienced the effects of this service deterioration first-hand. Its Interim Agreement with UP contains a service standard, under which UP has committed to transporting coal from the PRB mines to White Bluff

"Elapsed Transit Time" (which excludes specified time for loading coal trains at the mines and unloading them at the plants) of hours in the case of White Bluff and hours in the case of Independence. See the accompanying Verified Statement of Charles W. Jewell, Jr. ("Jewell V.S.") at 5.

UP's performance under its contractual service standard has been very poor -- and it is getting worse.

UP's average Elapsed Transit Time was hours for coal trains moving to the White Bluff plant and hours for coal trains moving to the Independence plant; these cycle times exceeded the contractual standard by an average of hours in the case of White Bluff and hours in the case of Independence. UP's average Elapsed Transit Times ballooned to hours for White Bluff and hours for Independence. On average,

⁵ Indeed, the Board itself has indicated that "[t]he recent operational difficulties that have been experienced by UP/SP are well known. . . ." Finance Docket No. 33469, Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(a) -- Union Pacific Railroad Company and Southern Pacific Transportation Company, Decision served September 30, 1997, at 1. UP's present service problems were further acknowledged by the Board in its Decision served October 2, 1997, in Ex Parte No. 573, Rail Service in the Western United States, instituting a proceeding to focus on "the immediate resolution of existing [service] problems." Id. at 1.

. Jewell V.S. at 6-7.'

6

UP
exceeded its service standard by an average of _____ hours, or
. This means that Entergy's trains are taking more than
_____ longer to complete train cycles than they should.

-6-

ing critical proportions and Entergy does not expect UP's service to return to "normal" levels

in the foreseeable future. Id. at 8.

Entergy has repeatedly informed UP of the vital importance of compliance with the contract service standards, and of the worsening situation in terms of inventory and reduced coal burn at the White Bluff and Independence plants. On September 23, 1997, Entergy wrote to UP and informed it that the situation had deteriorated to the point where Entergy believed UP had materially breached its contractual obligations under the Interim Agreement. In the same letter (a copy of which is appended to the Jewell V.S. as Exhibit CWJ-2), Entergy requested UP's permission to waive the 100%-volume requirement of the Interim Agreement and its cooperation in making alternative transportation arrangements with other carriers, in particular BNSF. Finally, Entergy requested assurances from UP as to its ability to meet its contracted service commitments in the future.

On October 3, 1997, UP responded to Entergy's letter. The response, a copy of which is appended to Mr. Jewell's testimony as Exhibit CWJ-3, did not provide the kind of assurances Entergy requested

UP's program for remedying its service meltdown is very general in nature and contains no representations as to when its

PRB coal service will return to normal levels.⁸

9

Given UP's continuing service deterioration and its refusal to respond to Entergy's entreaties, on October 3, 1997, Entergy filed suit in the United States District Court for the Middle District of Louisiana alleging that UP has materially breached both the Interim Agreement and the underlying 1983 Agreements due to its continuing failure to meet the contractual service standards, and seeking both the right to terminate the agreements and damages. Entergy Services, Inc. and Entergy Arkansas, Inc. v. Union Pacific Railroad Company, Civil No. 97-967-B-M3 filed October 3, 1997. A copy of the complaint in this action is appended to Mr. Jewell's testimony as Exhibit CWJ-4.

⁸ It should be noted that the program is set forth in a pleading by counsel with no accompanying sworn testimony. UP's unsworn representations are to be contrasted with the statements in Applicants' Progress Report dated July 1, 1997 (which did contain verified statements by UP operating officials). In its July 1 Progress Report, UP stated that its coal service "has consistently exceeded its own performance goals and contractual performance commitments for Powder River Basin coal shippers in recent months. Indeed, performance levels have reached all-time records." Id. at 42.

9

If the relief requested in its complaint is granted, Entergy will be free from its contractual volume obligations to UP.

The Board should understand that Entergy is not asking it either to interpret Entergy's rail transportation contracts with UP, or otherwise to interject itself into Entergy's contractual relationship with UP. That is clearly a matter for the court in Louisiana, not the Board. Rather, Entergy is seeking the Board's assistance in enabling it to make alternative transportation arrangements for transporting PRB coal to White Bluff during the present UP service emergency. The action by the Board which Entergy requests herein would remove a possible impediment to Entergy's obtaining effective relief from the United States District Court in Louisiana, where its action for breach of contract is pending.

ARGUMENT

- I. THE BOARD SHOULD MODIFY THE CONDITION IMPOSED
for ENTERGY'S BENEFIT BY PERMITTING BNSF TO
USE ITS PRESENT UP OVERHEAD TRACKAGE RIGHTS
TO SERVE THE WHITE BLUFF PLANT

In Decision No. 44, the Board held that conditions to its approval of the UP/SP merger would be imposed if:

the merger produces effects harmful to the public interest (such as a significant loss of competition) that a condition will ameliorate or eliminate. A condition must also be operationally feasible, and produce net public benefits.

Decision No. 44 at 144. See, also, Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 469, 562-565

(1992), aff'd sub. nom. Southern Pacific Transp. Co. v. I.C.C.,
736 F. 2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208
(1985).

The Board applied these criteria in imposing the White Bluff condition. That condition requires UP to permit BNSF to use its overhead trackage rights between Memphis and Pine Bluff (which it obtained under the BNSF agreement) to serve Entergy's White Bluff plant via a build-out if and when the build-out is constructed. Id. at 154, 185. The condition was intended to preserve Entergy's pre-merger option of building out to SP at Pine Bluff, thereby providing an all-rail competitive option to UP in transporting PRB coal to White Bluff. Id. at 154.

In Decision No. 44 the Board also imposed a five-year oversight condition. The express rationale for this condition was to:

retain jurisdiction to impose additional remedial conditions if, and to the extent, we determine that the conditions already imposed have not effectively addressed the competitive harms caused by the merger.

Id. at 146. The oversight condition further required that both Applicants and BNSF submit quarterly progress reports and implementing plans regarding compliance with, and the effectiveness of, the conditions imposed.

On May 7, 1997, the Board instituted a proceeding in Finance Docket No. 32760 (Sub-No. 21) to implement the oversight condition imposed in Decision No. 44. In its Decision No. 1 in the oversight proceeding, the Board reiterated that, by imposing

the oversight condition, it intended to retain jurisdiction to impose additional remedial conditions if necessary to assure the effective resolution of competitive problems created by the merger. Id. at 3.

Entergy submits that the build-out preservation condition imposed for its benefit in Decision No. 44 is inadequate to protect it from competitive harm during the present UP service crisis, and that the public interest requires that the condition be modified to permit BNSF immediate access to the White Bluff plant in order to provide a coal transportation alternative to UP. UP has proved wholly unable, in recent months, to provide service at the level contemplated by its rail transportation contract with Entergy -- with the result that Entergy's coal inventory at both the White Bluff and Independence plants has dwindled to dangerously low levels, requiring curtailment of coal burn (and electric generation) at these plants.

The modified condition requested by Entergy is operationally feasible, and will produce a net public benefit by enabling Entergy to continue to provide its customers throughout Arkansas with the low-cost electricity generated by the White Bluff and Independence plants.¹⁰ With respect to operational

10

feasibility, BNSF already has overhead trackage rights on UP's line between Pine Bluff and Little Rock, which is the very same line used by UP to serve the White Bluff plant.¹¹ In its October 1, 1997 Quarterly Progress Report, BNSF has indicated that it is in the process of converting its present haulage arrangement with UP into a full-fledged trackage rights operation. It would be a simple matter for BNSF coal trains to use this same line in delivering coal to the White Bluff plant, which is connected to the UP line at Redfield, AR, by Entergy's private rail spur.

Moreover, BNSF service to White Bluff would not entail any additional train movements over the Pine Bluff-Little Rock line. The volume of coal moving to White Bluff would not change from normal levels; BNSF trains (using some of Entergy's private trainsets that are now in UP service) would simply replace UP trains. The only operational difference is that BNSF coal trains would enter the line from the east, at Pine Bluff, rather than from the west, at Little Rock, as UP trains do.

Entergy recognizes that its proposed modification to the White Bluff condition would enable BNSF to serve the White Bluff plant sooner than if it were required to wait for Entergy to construct the build-out from the White Bluff plant to Pine Bluff.¹² However, the public interest requires that BNSF be

¹¹ See Counsel's Exhibit 1 which shows the BNSF trackage rights between Memphis-Pine Bluff-Little Rock, as well as the locations of the White Bluff and Independence plants.

¹²

(continued...)

permitted access to White Bluff immediately, so that Entergy can begin the process of restoring the coal inventories at the White Bluff and Independence plants to a level that assures coal burn will not continue to be curtailed.

Moreover, Entergy is not seeking permanent direct access to BNSF using its Pine Bluff-Little Rock trackage rights, but only access during the present UP service crisis. Entergy is not sanguine that UP can return to anything approaching normal service levels in the foreseeable future. Accordingly, it requests that BNSF be permitted to serve the White Bluff plant for a period of three years (the estimated time required to construct and place in service a build-out line to Pine Bluff). If the build-out is not completed within three years, BNSF's ability to serve the plant directly would terminate until such time as the build-out is completed.

In further support of its proposed modification to the White Bluff condition, Entergy notes that in Applicants' Third Quarter 1997 Progress Report filed October 1, 1997 in the merger oversight proceeding, UP has made certain representations concerning its willingness to relieve PRB coal shippers from their contractual obligations in order to help ease its service crisis. In particular, UP states:

Working collaboratively with its utility customers in Texas, UP/SP has allowed shippers to shift coal to other carriers,

¹²(...continued)

including traffic subject to UP/SP contracts. These arrangements include . . . agreeing that movements by BNSF be credited to the uncommitted volume in contracts with volume commitments, and agreeing to relax volume commitments where necessary to allow BNSF to handle traffic. . . .

Id. at 17.¹³ UP has indicated that these measures will shift a total of four million tons of coal off its system over the next 15 months. Id. at 18.

These representations sound good on paper

¹³ UP also represents that it is taking steps to have MNA move empty coal trains from Newport, Arkansas to Pleasant Hill, Missouri. Id.

This is a step that could and should have been taken many months ago. Indeed, prior to UP's sale of its line serving the Independence plant to the MNA in 1993, this shorter route was used by all Independence coal trains, both loaded and empty. Jewell V.S. at 10.

II. ALTERNATIVELY, THE BOARD SHOULD IMPOSE AN
ADDITIONAL CONDITION PERMITTING BNSF TO
SERVE WHITE BLUFF ON AN INTERIM BASIS

If the Board is not inclined to modify the White Bluff condition in the manner requested by Entergy, then it should impose a new condition permitting BNSF to serve the White Bluff plant as a temporary matter. Such a condition should allow direct BNSF service to White Bluff, in the manner described above, for a period of three years from the effective date of the condition. The condition should provide that direct BNSF service to White Bluff will terminate after three years if Entergy has not completed the White Bluff build-out by then.

The Board clearly has the authority to impose such an additional condition if it finds it necessary to ameliorate "effects harmful to the public interest" produced by the UP/SP merger. Decision No. 44 at 144. The Board has retained oversight jurisdiction in the merger proceeding, and expressly reserved jurisdiction to impose "additional remedial conditions"

both in Decision No. 44 (at 146) and in Decision No. 1 in the separate oversight proceeding (at 3).¹⁴

There is no question that Entergy's present predicament at White Bluff and Independence is largely a consequence of UP's failure to implement the UP/SP merger in an orderly manner. Although it puts a somewhat different spin on its service problems in its October 1 Progress Report, UP clearly has failed to plan properly, and has moved far too quickly, in implementing its merger with SP. It makes a number of excuses for this, such as pointing to the "time-consuming New York Dock negotiating process" and its lack of prior understanding of "the fundamental frailty of SP prior to the merger, resulting from more than a decade of financial deprivation." Id. at 10. The bottom line, however, is that the merger clearly is a major factor that has caused UP's service to utility coal shippers such as Entergy to deteriorate to the point where drastic remedial action is required to avoid a real crisis.

Once again, the Board should understand that by imposing an additional condition permitting BNSF to use its existing overhead trackage rights to serve the White Bluff plant, the Board would not be either interpreting Entergy's rail transportation contract with UP or otherwise interfering with the parties' contractual relationship. Entergy has filed a breach of contract

¹⁴ Further support for the Board's authority to grant relief to remedy an emergency situation involving traffic congestion lies in the "directed service" provisions of 49 U.S.C. § 11123.

action in federal district court in Louisiana, and it is for the court to determine if Entergy may terminate its contract with UP. If the court grants the relief requested by Entergy, then Entergy will be in a position to make use of the relief requested from the Board in the instant Petition. On the other hand, absent the relief requested from this Board, Entergy may be unable to obtain an effective remedy from the court in Louisiana.

CONCLUSION

For all of the foregoing reasons, Entergy respectfully requests that the Board either modify the White Bluff condition imposed in Decision No. 44, or impose a new condition, in either case permitting BNSF to use its existing overhead trackage rights between Pine Bluff and Little Rock, AR to serve the White Bluff plant for a period of three years (the period required to design,

permit and construct the build-out contemplated by the original White Bluff condition).

Respectfully submitted,

ENTERGY SERVICES, INC. and its
affiliate ENTERGY ARKANSAS, INC.

By: O. H. Storey
Deputy General Counsel
Entergy Services, Inc.
Mail Unit L-ENT-26D
639 Loyola Avenue
New Orleans, LA 70113

OF COUNSEL:

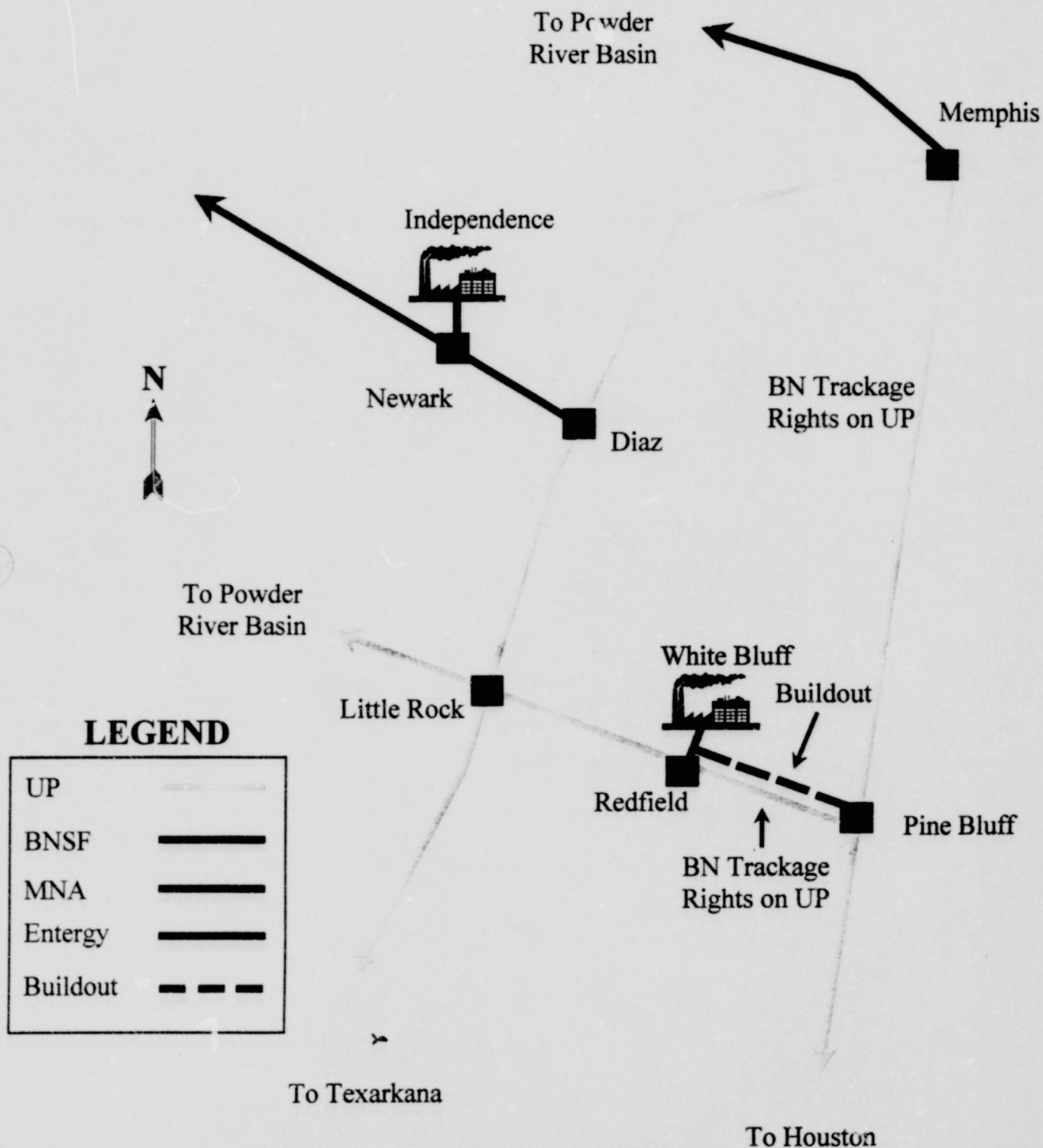
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: October 23, 1997

C. Michael Loftus
Frank J. Pergolizzi
Andrew B. Kolesar III
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Schematic of Principal Rail Lines in Arkansas



THE WALL STREET JOURNAL THURSDAY, OCTOBER 2, 1997

Wrong Track

A Big Railroad Merger Goes Terribly Awry In a Very Short Time

**Union Pacific Is Hammered
Over Service and Safety;
Have Patience, It Says
Have You Seen Our Rice?**

By DANIEL MACIALABA

Staff Reporter of THE WALL STREET JOURNAL

Its railroad safety record, marred by three fatal crashes in three months, is being characterized as a "fundamental breakdown" by federal regulators. Its route system west of the Mississippi River has slipped into near gridlock in many places, with thousands of freight cars backed up in the Houston area alone. Its chairman was forced to publicly apologize in August to its big customers.

So bad has service become that customers say Union Pacific Corp., the nation's largest railroad, can't account for millions of dollars of shipments for weeks at a time. Riviana Foods Corp., a Texas rice producer, tried to ship a freight car full of rice from Missouri to Tennessee in early August. A month later, the car was spotted on a track in Devil's Slide, Utah. The latest word is that it was somewhere in Texas. "I still don't know where it's at," says Terry Nickens, Riviana's distribution manager.

Is this any way to run a railroad?

A Major Debacle

Union Pacific's attempts to put together the biggest railroad merger in history is fast becoming one of the industry's biggest debacles. With high hopes last year, the company bought Southern Pacific Rail Corp. for \$3.9 billion and promised to begin merging the systems this summer into a seamless link between the West Coast and the Midwest.

Instead, with amazing speed, the merger has unraveled in recent weeks into a series of service and safety snafus. Analysts estimate the carrier has already lost about \$125 million in revenue as customers diverted shipments. Hundreds of customers have threatened to take away business, and the Federal Railroad Administration could well impose stiff fines on the company for safety violations. The company concedes that its service problems will reduce its third-quarter earnings by 10% to 15%. And the stock price has fallen 13% in the past month.

Yesterday, things got worse. The Dallas-based company said it would abandon an embarrassing plan to move goods by ship through the Panama Canal—a plan that was rejected this week by its customers. Instead, in an even-more-remarkable step, it agreed to hand over some of its business to competing railroads and to "borrow" the services of dozens of former managers from Eastern railroads to help untangle the mess.

Surprised Observers

The setbacks have startled industry observers, who only a few months ago expected the merger to go smoothly, especially because Union Pacific had had a sterling reputation in railroading.

"They thought they could conquer the world," says William Withuhn, transportation curator at the Smithsonian Institution in Washington and a widely recognized expert on railroads. "They were counting on having a great success. But they just didn't plan it right. It fell apart."

Union Pacific acknowledges that it has been caught by surprise—and humbled by the experience. Richard Davidson, its chief executive, said in an interview after a recent meeting with more than 200 angry chemicals-company officials and other shippers in Houston: "I never imagined in my wildest dreams that I'd be down here apologizing for our service." Yesterday, a Union Pacific spokesman said, "There's no denying we have severe service problems, but we are making headway."

Problems Acknowledged

The carrier's executives concede that they overestimated their ability to combine giant rail systems operating hundreds of thousands of freight cars. Its own long record of success, unmatched through much of the late 1980s and early 1990s, may have bred overconfidence. "We are arrogant," Greg Garrison, Union Pacific's Houston superintendent, said last month. "We consider ourselves the best."

Union Pacific's woes raise troubling questions about how well railroads can transport goods in the nation's ever-growing economy. For more than a decade, the industry has been on an unprecedented merger binge that was supposed to give the remaining five powerful railroads a better chance at competing against trucks, which now earn nearly 80% of the nation's freight revenues. That improvement, in turn, was supposed to help reduce everything from highway congestion to air pollution to fuel consumption. Consumers would gain, too, because railroads can haul goods about 20% more cheaply than trucks can, with much of the saving to be passed on to the public.

But Union Pacific's problems suggest that the railroads are a long way from fulfilling this promise and that shippers may be discouraged from using them. Chemicals companies on the Gulf Coast have been switching to trucks whenever possible because Union Pacific's delays have cost them an estimated \$100 million in plant closings, lost revenues and extra expenses.

In Waverly, Ohio, Mill's Pride Inc., a maker of prefabricated kitchens that had turned to railroads to save money, says it

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Big Railroad Merger Quickly Goes Awry

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has dropped Union Pacific and the railroad industry entirely. "They give us excuses. They have derailments, floods, breakdowns, snow, just stuff you wouldn't think would happen," says Armando Sanchez, the distribution manager. "You would think, if a truck can get through, why can't they?"

Moreover, Union Pacific's headaches pose a threat to the next great railroad merger—the \$10 billion breakup of Conrail Inc. between Norfolk Southern Corp. and CSX Corp. Once considered almost certain to be cleared by the government's Surface Transportation Board, the merger is now raising questions from members of Congress, labor unions and community leaders worried about a repeat performance.

An Enormous Challenge

To be sure, Union Pacific faced an enormous challenge in trying to create a system with 36,000 miles of track and more than 150,000 freight cars. What's more, the company it was buying, Southern Pacific, was the weakest of the major railroads; it suffered from inadequate investment in freight yards and locomotives. Some industry executives, who jokingly called it "the Suffering Pacific," say it couldn't have survived on its own over the long haul.

Nevertheless, Union Pacific officials hoped that the merger, which became effective in September 1996, would yield huge rewards, not only through major cost savings but by increasing freight business with more-direct routes between the Midwest and West Coast. Southern Pacific's major routes stretch in a great arc from Portland, Ore., to Los Angeles, Houston, St. Louis and Chicago; Union Pacific forms a large funnel-like system, from the Midwest to Salt Lake City, with branches to Seattle, Oakland, Calif., and Los Angeles. Combining the two, Union Pacific promised, would slash delivery times as much as 20%, more than enough to win new business.

But company officials concede that they badly underestimated the number of crews and locomotives they would need; in part, they relied on their past success in acquiring other railroads. Those mergers allowed Union Pacific to lay off great numbers of employees and still keep the trains running. But instead of adding to a combined work force of 53,000, the company offered buyouts to more than 1,000 workers at a time when freight shipments were booming nationwide.

"We miscalculated," says Mr. Garrison, the Houston superintendent. "It upset a lot of customers."

The Houston Trouble

The company also cut back operations at an important railyard near Houston, shifting 300 freight cars a day to the bigger but overtaxed Englewood yard in Houston 20 miles away. The result: Within a few weeks, the bigger yard was swamped, causing delays of as long as a month in various areas. "The yard is like a coffee cup that's already too filled," says Rick

Carswell, a yard manager at Englewood. "It just overflowed."

In a railroad, delays at a hub can quickly spread throughout the system—and this one did in a big way. By August, at the start of the peak season for shipping holiday merchandise, trains were backed up for miles along the Gulf Coast.

In one 7-mile stretch outside Houston recently, five Union Pacific freight trains—each with about 100 cars—were backed up nose to tail; frustrated crews were simply taken off, leaving the trains unmanned. "Finally, you throw up your hands and say the heck with this," says Bert Hohit, a Union Pacific crew member after a particularly grueling run aboard a Texas-to-Chicago freight train.

A Union Pacific spokesman says floods in Texas as well as hurricane-related damage in the Gulf Coast region compounded the problems. The company tried to persuade its labor unions to agree to new flexible work rules, but the unions didn't go along until last month. By then, the snarl had spread to Union Pacific's facilities in the Los Angeles/Long Beach harbor complex, where as many as 3,000 containerized shipments have been piling up for lack of freight cars. "I've never seen it this bad," says David McLean, director of global marketing for Circle International Inc., of San Francisco, which arranges freight transportation for major firms.

Through its buyouts, Union Pacific also encouraged an exodus of many Southern Pacific executives and managers, whom industry officials said were skilled at keeping the weaker line going. "They lost a lot of institutional knowledge," says Ed Emmett, president of the National Industrial Transportation League, which represents about 1,200 rail and truck customers.

What's more, the exodus aggravated the clash of corporate cultures that a merger would be sure to provoke. Led by the 6-foot-4-inch Mr. Davidson, who surrounded himself with equally imposing subordinates, Union Pacific runs a well-heeled and aggressive rail operation out of its Omaha, Neb., rail headquarters. Executives there, accustomed to using the latest equipment to dispatch trains and repair tracks, were skeptical about the talents of many Southern Pacific people. Former Southern Pacific executives say many of their suggestions were ignored. "You are merging two cultures, one that had no money and one that had a lot of money," says Art Shoener, who resigned last week as Union Pacific's executive vice president for operations.

Traditions Slighted

Most merging railroads, to bolster morale, have tried hard to preserve the traditions of their predecessors. But recently, Union Pacific replaced the name of a famous Southern Pacific high-speed freight train, the Memphis Blue Streak, with the symbol "IMELB" (standing for Intermodal Memphis to Long Beach train). "It was an inspirational thing," says Fred

Frailay, who wrote a book about the Blue Streak. "The Memphis Blue Streak was the heart and soul of the Southern Pacific. But all that was lost on the Union Pacific." In response, a Union Pacific spokesman says: "That's the least of our concerns right now."

Yesterday, the company hit what analysts described as rock bottom: It announced a service-recovery plan that appears to mirror parts of a rescue operation outlined by its chief rival, Burlington Northern Santa Fe Corp. Union Pacific said it would temporarily divert certain business, including coal, grain and automobile shipments, to other railroads throughout the western two-thirds of the country, including Burlington Northern. In addition, Union Pacific plans to reroute trains around congested hubs and use less-busy freight yards to handle more of its business. It also said it would operate fewer trains and reduce the number of locomotives on its faster trains and spread them around the system.

"Everyone at our company is working hard on restoring service to levels that will satisfy our customers," Mr. Davidson said in a statement yesterday.

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

As Director, Coal Supply for ESI, I am responsible for the acquisition of coal and related transportation for all of the electric utility operating subsidiaries of Entergy Corporation.

Entergy Corporation is an investor-owned public utility holding company registered pursuant to the Public Utility Holding Company Act of 1935. The Entergy operating companies include Entergy Arkansas, Inc. ("Entergy Arkansas", formerly known as Arkansas Power & Light Company); Entergy Gulf States, Inc. (formerly Gulf States Utilities Company); Entergy Louisiana, Inc. (formerly Louisiana Power & Light Company); Entergy Mississippi, Inc. (formerly Mississippi Power & Light Company); and Entergy New Orleans, Inc. (formerly New Orleans Public Service, Inc.). ESI is a wholly-owned subsidiary of Entergy Corporation, and acts as agent for the above-named operating companies in acquiring fuel and related transportation for their coal-fired power plants. In this Verified Statement I will focus in particular on Energy Arkansas.¹

The purpose of this testimony is to provide the Surface Transportation Board ("Board") with facts concerning the present critical situation faced by Entergy as a result of UP's continuing and very severe service problems in transporting coal to Entergy Arkansas' two large coal-fired plants in Arkansas, the White Bluff Steam Electric Station ("White Bluff") and the Independence Steam Electric Station ("Independence"). I will also demonstrate Entergy's need for modification of the White Bluff build-out preservation condition imposed by the Board in granting merger authority to Union Pacific Railroad Company

¹ I will refer to ESI and Entergy Arkansas, Inc. collectively as "Entergy" in my testimony.

("UP") and Southern Pacific Transportation Company ("SP") in 1996. This condition, which I will refer to as the "White Bluff condition", is described in more detail on page 2 of Entergy's accompanying Petition for Modification in this proceeding.

I. BACKGROUND

Entergy Arkansas produces, distributes and sells electric power to approximately 600,000 residential, commercial and agricultural customers located in 63 counties in Arkansas, and also engages in the wholesale power market. Its White Bluff and Independence plants collectively consist of four units (two at each plant), with a combined capacity of approximately 3,337 megawatts. Each plant normally burns approximately 6.5 million tons of coal annually, or 13 million tons in total, all of which is produced in the southern Powder River Basin of Wyoming, and all of which is transported to the plants by rail (specifically, by UP). Entergy's present coal supply and transportation arrangements for the White Bluff and Independence plants are described at pp. 5-8 of the Verified Statement of Roy A. Giangrosso (who was then ESI's Director, Coal Supply) in Entergy's Comments in this proceeding served March 29, 1996.

Entergy's present rail transportation contract with UP, known as the "Interim Agreement", whose term runs through

requires that 100% of the coal

be destined to White Bluff and Independence be transported by UP. Unfortunately, the level of service

provided by UP in transporting coal to these plants under the Interim Agreement is abysmal. As I will describe in more detail below, UP is completely failing to meet the service standards set forth in the Interim Agreement, with the result that Entergy is unable to receive all the coal these plants need to meet their generation requirements. Entergy has been forced to curtail burn (and thus generation) at these plants, and either purchase more expensive power from the grid or use more expensive gas generation.

In order to remedy the present situation, which is growing to near-critical proportions due to UP's continuing service crisis in the south-central part of the nation, Entergy must supplement UP's inadequate coal transportation service with transportation by other rail carriers, in particular the Burlington Northern and Santa Fe Railway Company ("BNSF") -- which also serves the PRB mines in Wyoming -- at White Bluff.² It is for this reason that Entergy is requesting the Board to modify the White Bluff condition previously imposed in approving the UP/SP merger to enable BNSF to serve the White Bluff plant immediately, without waiting for construction of the build-out.

² BNSF service to White Bluff would enable UP to concentrate on providing service to Independence.

The build-out involves construction of a 21-mile line to a connection with the former SP Memphis-Houston line at Pine Bluff, AR. BNSF was granted trackage rights over this line as a condition to the UP/SP merger, and the White Bluff condition will enable BNSF to use these trackage rights to access the White Bluff plant after the build-out is completed. It will take approximately three years to construct the build-out, from engineering design to final completion, so completion will not occur until approximately the year 2001. In the interim, without the relief requested herein, Entergy must rely on UP to haul coal to its Arkansas power plants -- a totally unacceptable situation considering UP's failure to meet Entergy's coal delivery requirements.

II. UP's CONTRACTUAL SERVICE COMMITMENTS

Entergy presently operates 18 trainsets, each consisting of 115 high-capacity aluminum cars acquired by Entergy in 1995, in PRB coal service to the White Bluff and Independence plants. The economics of acquiring and using this equipment are dependent on an assured level of rail service. Thus, Entergy's Interim Agreement with UP (which became effective in 1990) contains a service standard, under which UP has committed to transporting coal from the PRB mines to White Bluff

"Elapsed Transit Time" (excluding specified time for loading coal trains at the mines and unloading them at the plants) of hours in the case of White Bluff and hours in

the case of Independence. If UP fails to meet its
Elapsed Transit Time , it then
has a deficit, which it must make up
If UP incurs a deficit and
fails to make it up it is obligated to pay
Entergy liquidated damages

UP is also under an express contractual obligation to exercise good faith in avoiding the creation of deficits. It is Entergy's position that the make-up and liquidated damages provisions of the Interim Agreement are not intended to be used as substitutes for contract transit time requirements in the chronic, pervasive manner that UP has resorted to in recent years.³

³ Virtually identical service standards are also contained in Entergy's original rail transportation contracts with UP and its then-partner, the Chicago and North Western ("CNW"), and with Missouri Pacific, which were signed in 1983. These agreements are also described in Mr. Giangrosso's Verified Statement filed as part of Entergy's Comments of March 29, 1996.

UP's average Elapsed

UP's average Elapsed Transit Times ballooned to hours

these transit times soared

UP exceeded its contractual

UP exceeded its service standard by an

These poor cycle times resulted in deficit tonnages --

. In

, and the cumulative deficit stood at about

. We are seeing

no improvement in UP's cycle times

and the deficit is growing at an accelerated rate.

As a direct result of UP's dismal performance in transporting coal to the White Bluff and Independence plants, the inventory of coal stockpiled at the plants, which Entergy attempts to keep at a level equal to days' projected coal burn, has rapidly dwindled. At present, the inventory amounts to only days at White Bluff and days at Independence. The reduced inventories, with no prospect of improvement in UP's service, have resulted in Entergy Arkansas' curtailing burn (and thus the generation of electricity) at these plants. As a result, the Entergy system (which is economically dispatched) has had to purchase more expensive power from the grid and shift more generation to its expensive gas-fired plants. Given UP's virtual service meltdown south of Kansas City, which Entergy does not expect UP to be able to remedy in the foreseeable future, the situation is becoming critical for Entergy (and, I understand, for other utilities particularly in Texas).

III. ENTERGY'S ATTEMPTS TO USE ALTERNATE RAIL SERVICE

Entergy has repeatedly informed UP of the vital importance of compliance with its service commitments under the Interim Agreement, and of the worsening situation in terms of inventory and reduced coal burn at the White Bluff and Independence plants. Entergy has had several meetings and conference calls with UP, to no avail. Finally, on September 23, 1997, I

wrote to UP's Senior Vice President in charge of coal marketing and transportation, Art Peters, and informed him that the situation had deteriorated to the point where Entergy believed UP had materially breached its contractual obligations under the Interim Agreement. A copy of my letter to Mr. Peters is attached hereto as Exhibit CWJ-1.

My September 23 letter also requested UP's permission to waive the 100%-volume requirement of the Interim Agreement, and sought UP's cooperation in making alternative transportation arrangements with other carriers, in particular BNSF. Finally, we requested definitive assurances from UP as to its ability to meet its contracted service standard in the future, and indicated that the matter had to be resolved by September 30, 1997.

Mr. Peters did not respond to my September 23 letter until late on October 3, 1997 (after the lawsuit discussed below had been filed). A copy of Mr. Peters' October 3 letter is attached hereto as Exhibit CWJ-2. To say the least, his response did not provide the kind of assurances Entergy had requested

Equally important, Mr. Peters' October 3 letter rejected Entergy's request that UP waive the volume requirements of the Interim Agreement and cooperate with Entergy in arranging alternative transportation service with other carriers to help Entergy through the present crisis.

Given UP's continuing service deterioration⁵ and its refusal to respond in a meaningful way to our requests for cooperation in resolving the present crisis, on October 3, 1997, Entergy filed suit in the United States District Court for the Middle District of Louisiana alleging that UP has materially breached both the Interim Agreement and the underlying 1983 Agreements due to its continuing failure to meet the contractual service standards, and seeking both the right to terminate the agreements and damages. Entergy Services, Inc. and Entergy Arkansas, Inc. v. Union Pacific Railroad Company, Civil No. 97-967-B-M3 filed October 3, 1997. A copy of the complaint in this action is attached hereto as Exhibit CWJ-3.

The modified condition being sought here would remove an impediment to Entergy obtaining effective relief through the federal court action. With the modified condition, Entergy would be able to make alternative transportation arrangements with BNSF.

IV. CONCLUSION

UP's present service difficulties are a direct result of its haste and failure to plan adequately in implementing its merger with SP. Entergy urgently needs the Board's help in

⁵ As an example of how bad things are, on September 29, 1997 one of our trains was released after unloading at the White Bluff plant. UP then took the empty train to Durand, KS, where it arrived on September 30. The train was then parked on a siding and the locomotives removed. This train was finally returned to service on October 11, but other trains either are not moving or have been removed from service from time to time.

obtaining substitute rail service to make up for UP's merger-related inability to keep the White Bluff and Independence plants supplied with coal.

On behalf of Entergy, I respectfully urge the Board to modify the White Bluff build-out condition to enable BNSF to serve the White Bluff plant directly, using its existing trackage rights over the UP line that passes right by the plant, until Entergy is able to construct the build-out.



Entergy Services, Inc.
Parkwood II Building, Suite 300
10055 Groqans Mill Road
The Woodlands, TX 77380
Tel 281 297 3562

Charles W. Jewell, Jr.
Director
Coal Supply

September 23, 1997

VIA FACSIMILE AND
CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Mr. Art Peters
Senior Vice President
& General Manager
Union Pacific Railroad Company
1416 Dodge Street, Room 500
Omaha, NE 68179

RE: Breach of Railroad's Service Commitments

Dear Mr. Peters:

Entergy Arkansas, Inc. currently receives rail transportation services to its Arkansas coal plants from Union Pacific Railroad Company pursuant to Interim Rail Transportation Agreement ICC-WRPI-C-0065, dated October 1, 1991, which superseded certain provisions of Agreement ICC-UP-C-0505 and Agreement ICC-MP-C-0430. Upon termination of the interim agreement, the terms of Agreements ICC-UP-C-0505 and ICC-MP-C-0430 again are applicable, subject to amendment/renegotiation.

Entergy's coal plants in Arkansas have experienced significant shortages in coal deliveries from Union Pacific. As a result of these delivery shortages and Union Pacific's failure to meet the service standards set forth in the agreement, Entergy, among other things, has been forced to curtail its coal burns, seek alternate fuel sources and purchase electric power from other sources, all to the detriment of Entergy and its ratepayers.

Based on Union Pacific's actions and its inadequate responses to concerns expressed by Entergy representatives, Entergy believes that Union Pacific has breached its contractual obligations under the agreement. Specifically, Entergy believes that Union Pacific, among other things, has failed and refused to abide by the contractual obligations with respect to cycle times, minimum train lading weight and the good faith obligation to avoid creating deficit tonnages.

Mr. Art Peters
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While the agreement provides for deficit service payments, such payments do not provide an adequate remedy. Union Pacific's persistent and continuing failure to meet its cycle time commitments under the agreement, and its continued failure and refusal to make good faith efforts to avoid deficit tonnages as required by our agreement are unacceptable. Such failure and refusal are causing Entergy substantial and irreparable harm, and constitute a material breach of the agreement. Among other things, and without waiving any other alternatives available to it, given the current near-emergency situation with respect to the coal inventory at the White Bluff and Independence plants, Entergy will explore immediately options (1) with respect to the movement of coal to the Independence plant via Burlington Northern Santa Fe and Missouri & Northern Arkansas Railroads; (2) for the barge delivery of coal to the White Bluff plant, and (3) for the movement of coal via BNSF to Pine Bluff, Arkansas, and thence via Union Pacific to the White Bluff Plant.

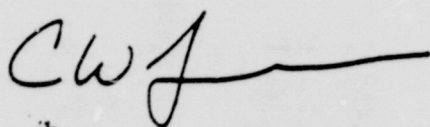
Entergy expects that Union Pacific will cooperate with it in every respect in its efforts to make alternative transportation arrangements with alternate providers. You are requested to provide information with respect to any restrictions that may exist with respect to the M&NA's delivery of coal to White Bluff in connection with BNSF, and to waive such restrictions. You are also requested to provide Entergy with a rate for the movement of trainloads of coal in Entergy cars between a point of interchange with BNSF at Pine Bluff, Arkansas, and the White Bluff plant, that can be used in combination with a BNSF rate from the Powder River Basin mines to Pine Bluff.

Additionally, Entergy demands adequate assurances from the Union Pacific as to its ability to meet its cycle time commitments under the agreement from this date forward, and as to its ability to transport all deficit tonnage that has accrued and that will accrue so as to become completely current and remain current. In order to receive adequate assurances with respect to these issues, it will be necessary for Union Pacific to provide documentation sufficient to enable Entergy to perform a due diligence review of Union Pacific's operations with a view toward satisfying itself with reasonable certainty as to Union Pacific's ability to perform in accordance with any such assurances. Entergy expects that Union Pacific will cooperate in making information available for this purpose.

Mr. Art Peters
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While Entergy will be pursuing these alternatives, it in no way considers these to be the only remedies available to it. Under the circumstances, Entergy intends to evaluate all of its remedies. We plan to resolve this matter no later than September 30, 1997. Please contact me immediately so that we may discuss this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "CWJ", followed by a long horizontal flourish.

jb

cc: James F. Kenney

bcc: Ms. Kelly Cupero
Mr. Chris Mills, Slover & Loftus
Mr. Bud Storey

EXHIBIT CWJ-2

REDACTED

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

97 OCT -3 PM 4:16

RICHARD T. MARTIN
CLERK

ENTERGY SERVICES, INC. AND
ENTERGY ARKANSAS, INC.,

PLAINTIFFS,

VERSUS

UNION PACIFIC RAILROAD COMPANY,

DEFENDANTS.

CV NO. 97-967-B-M3

C O M P L A I N T

Plaintiffs, Entergy Services Inc. ("ESI") and Entergy Arkansas, Inc. ("Entergy Arkansas") (collectively referred to herein as "Entergy"), complain of defendant Union Pacific Railroad Company ("UP") as follows:

Jurisdiction and Venue

1.

This is a civil action in which the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. This Court has jurisdiction of the parties and the subject matter pursuant to 28 U.S.C. § 1332.

2.

Venue is properly in this Court pursuant to 28 U.S.C. §1391(a), because UP_u resides in this judicial district; UP owns, controls and operates railroad lines and other facilities

throughout the State of Louisiana, including extensive business operations and properties in parishes included within the Middle District of Louisiana.

The Parties

3.

Entergy Arkansas, formerly known as Arkansas Power & Light Company, is an Arkansas corporation with its principal place of business in Arkansas. It operates and holds title to an interest in the electric generating stations described below in ¶ 6, and is a wholly-owned subsidiary of Entergy Corporation, an investor-owned public utility holding company organized and existing under the laws of Delaware and registered pursuant to the Public Utility Holding Company Act of 1935, and having its principal place of business in New Orleans, Louisiana. Entergy Arkansas produces, distributes and sells electric power at retail in Arkansas, engages in wholesale sale of power, and through a system of entitlements to energy produced by each Entergy operating company, distributes electric power throughout Entergy's service area in the states of Louisiana, Texas, Mississippi and Arkansas.

4.

Plaintiff ESI is a wholly-owned subsidiary of Entergy Corporation. ESI is a corporation organized and existing under the laws of the State of Delaware, and having its principal place of business in New Orleans, Louisiana. ESI acts as an agent for Entergy Corporation's public utility operating subsidiaries, including Entergy Arkansas, and Entergy Gulf States, Inc., and is

responsible for acquiring fuel and related transportation for coal-fired power plants operated by its electric utility affiliates. In particular, ESI is responsible for procuring and arranging transportation of approximately 13 million tons of coal annually for transportation to, and use by, Entergy Arkansas at its coal-fired electric generating stations in Arkansas.

5.

Defendant UP is a corporation organized under the laws of the State of Utah having its principal place of business in Omaha, Nebraska. UP engages in interstate for-hire rail transportation in Louisiana, Arkansas and other states in the midwestern and western United States.

Background

6.

Entergy Arkansas operates two large coal-fired power plants, the White Bluff Steam Electric Station and the Independence Steam Electric Station (respectively referred to herein as "White Bluff" and "Independence"). White Bluff is located near Redfield, in Jefferson County, Arkansas, and consists of two generating units with a combined generating capacity of 1,659 megawatts ("MW") of electric power. Independence is located near Newark, in Independence County, Arkansas, and also consists of two generating units, with a combined generating capacity of 1,678 MW.

7.

In generating electric power, Entergy Arkansas burns approximately 6.5 million tons of coal at each station, for a total of

approximately 13.0 million tons annually at both plants. All of the coal burned at White Bluff and Independence is produced in the southern Powder River Basin of Wyoming ("PRB") and is transported to White Bluff and Independence by rail.

8.

Since August of 1984, Entergy Arkansas' PRB coal has been transported to its White Bluff and Independence plants pursuant to long-term rail transportation agreements. The first of these agreements was entered by and between Entergy Arkansas, UP, and two UP predecessor companies, Western Railroad Properties, Incorporated ("WRPI") and Chicago and North Western Transportation Company ("CNW"), on July 22, 1983, and provided for the transportation of coal originating in the PRB and destined for Entergy Arkansas' White Bluff and Independence plants (the "UP Agreement"). A related agreement was executed the same day by and between Entergy Arkansas and another UP predecessor company, Missouri Pacific Railroad Company ("MP") (the "MP Agreement"). (The UP Agreement and the MP Agreement are collectively referred to herein as the "1983 Agreements"). The 1983 Agreements became effective upon their approval by the Interstate Commerce Commission ("ICC") pursuant to 49 U.S.C. § 10713, and are identified as Contract Numbers ICC-UP-C-505 and ICC-MP-C-0403.

9.

The UP Agreement provided for the transportation of coal between the PRB mines and Kansas City, Missouri/Kansas; the MP Agreement provided for the transportation of the same coal from

Kansas City, Missouri/Kansas to the White Bluff and Independence plants. Use of both agreements was necessary to provide for the continuous rail carriage of coal from the PRB to the White Bluff and Independence plants.

10.

On October 1, 1991, Entergy Arkansas, UP, WRPI, CNW and MP entered an Interim Rail Transportation Agreement ("Interim Agreement"), ICC-WRPI-C-0065, which was also approved by the ICC. The Interim Agreement is currently in effect. A recent amendment to the Interim Agreement provides that the parties will negotiate market-based rates for the movement of PRB coal to White Bluff and Independence by rail starting in the year 2000.

11.

Both the 1983 Agreements and Interim Agreement set forth the rates, services and other terms and conditions governing transportation of coal by UP between PRB mine origins in Wyoming and the White Bluff and Independence plants. The agreements contain confidential provisions that prohibit disclosure of certain information regarding these agreements, and Entergy has therefore framed in general terms portions of this pleading relating to the agreements.

12.

The 1983 Agreements represented the first agreements entered by UP and WRPI/CNW for the transportation of PRB coal. The first movements under these agreements occurred in August of 1984, when WRPI first instituted service to the PRB mines from which Entergy

Arkansas purchased (and purchases) coal for use in generating electricity at the White Bluff and Independence plants.

13.

Pursuant to the terms of the 1983 Agreements and the Interim Agreement, Entergy Arkansas is obligated to ship, and UP is obligated to transport, a certain minimum volume of coal each year.

14.

Both the 1983 Agreements and the Interim Agreement include a number of provisions that describe UP's commitments concerning the service to be provided in connection with the contract movements to White Bluff and Independence, including but not limited to the following:

- (a) UP has a duty to transport all coal tendered by Entergy Arkansas within a defined average elapsed transit time.
- (b) If UP fails to meet the transit time standard, and as a result, fails to transport the required volume of coal during a defined time period, UP must transport (in its own railcars) the shortfall to Entergy Arkansas within a certain time thereafter. If UP fails to do so, UP must pay a prescribed amount of liquidated damages to Entergy Arkansas.
- (c) UP is expressly obligated to exercise good faith efforts to avoid creating any deficit tonnages.

15.

Among other things, the purpose of the contract provisions described in paragraph 14, herein, is to optimize the productivity

of Entergy Arkansas' railcar fleet and to assure an adequate and continuous supply of coal to maintain electric generation at Entergy Arkansas' White Bluff and Independence plants. As the parties expressly stated in the 1983 Agreements, it was their "desire that the contractual arrangement promote maximum equipment utilization and transportation efficiency and provide all parties with economic incentives."

16.

In reliance on the service standards and other contractual provisions described in paragraphs 14 and 15 herein (collectively referred to herein as "the service standards"), in 1995 Entergy Arkansas replaced its fleet of steel railcars used for the transportation of coal from the PRB to the White Bluff and Independence plants with a fleet of higher-capacity aluminum railcars, and made certain modifications to the coal unloading facilities at both plants, at a total capital cost in excess of \$100 million.

The Controversy

17.

In spite of the stated intent to promote maximum equipment utilization and transportation efficiency, and the obligation to make a good faith effort to avoid creating deficit tonnages, UP has consistently ignored its contractual service commitments to Entergy Arkansas, and has breached, and continues to breach, the service standards by:

- (a) Continually failing to meet the transit time standard.

- (b) Continually failing to comprise trains of the required length.

18.

Entergy has repeatedly informed UP of the vital importance of compliance with the service standards, and the consequent impact of UP's failure to meet these standards on Entergy Arkansas' ability to plan and provide electric utility service to its customers.

19.

Despite Entergy's efforts, UP has refused to either correct the service deficiencies, or provide adequate assurances that it would (or could) take the necessary steps to assure its ability to comply with its contractual service commitments to the end that Entergy is confronted with an escalating deficit in its coal supply which has forced curtailment of power production and reduced reserves to a critical level.

20.

Entergy Arkansas has fully complied with all of its obligations and responsibilities under its contracts with UP.

21.

Under the terms of the 1983 Agreements and the Interim Agreement, Entergy is not free to seek alternative transportation of coal for the White Bluff and Independence plants. Unless Entergy is freed from this restriction, Entergy is precluded from taking action to ensure the reliability of its system, and as a consequence, both Entergy and its customers may suffer irreparable harm.

COUNT I

BREACH OF CONTRACT

22.

Entergy hereby realleges and incorporates by reference ¶¶ 1-21 of this Complaint.

23.

In entering the 1983 Agreements and the Interim Agreement, Entergy Arkansas reasonably expected that UP would substantially perform its contractual promises relating to the service standards, and particularly the stated intent to promote maximum equipment utilization and transportation efficiency and the express commitment to exercise good faith efforts to avoid the creation of deficit tonnages.

24.

Rather than promote maximum equipment utilization and transportation efficiency and exercise good faith, UP has instead persistently failed to meet its duty to comply with the service standards.

25.

UP's persistent failure to meet the service standards has caused, and is continuing to cause, substantial hardship to Entergy and has substantially impaired, and will continue to impair, the ability of Entergy Arkansas to serve its ratepayers.

26.

In entering the 1983 Agreements and the Interim Agreement, Entergy Arkansas relied on UP's agreement to provide service in

accordance with the service standards and did not expect that UP would persistently fail to comply with the service standards.

27.

Entergy also reasonably relied on UP's commitment in the Interim Agreement to exercise good faith to avoid creating deficit tonnages, and reasonably did not expect that UP would engage in a practice of creating and cumulating (rolling over) deficit tonnages in lieu of meeting the contractual elapsed transit time standard.

28.

As a direct and proximate result of UP's failure to meet the service standards, Entergy and Entergy Arkansas have been deprived of maximum equipment utilization and transportation efficiencies in entering the 1983 Agreements and the Interim Agreement.

29.

The liquidated damages remedy contained in the 1983 Agreements and the Interim Agreement was not intended to apply to chronic, pervasive failures to meet the railroad service standards, such as have occurred.

30.

By persistently failing to meet the service standards, UP has materially breached and repudiated the 1983 Agreements and the Interim Agreement.

31.

Entergy has provided UP with an opportunity to cure the above-described breach and UP has exhibited an inability, or unwillingness, to correct the same.

32.

As a direct and proximate result of this breach, Entergy has incurred damages relating to, inter alia, the cost of replacement power, the loss of sales and revenues associated with curtailing production from the plants in question, and other costs and expenses associated with the UP's failure to provide adequate rail transportation service, in an amount in excess of \$1 million.

COUNT II

BREACH OF COVENANT OF GOOD FAITH

33.

Entergy hereby realleges and incorporates by reference ¶¶ 1-32 of this Complaint.

34.

In entering the 1983 Agreements and the Interim Agreement, the parties stated their desire to promote maximum equipment utilization and transportation efficiency and UP expressly committed to exercise good faith to avoid the creation of deficit tonnages.

35.

Under its contractual commitments to Entergy, UP has both an implied and express duty to cooperate with Entergy in order to accomplish the stated objectives set forth in paragraph 34 herein.

36.

UP has refused to comply with the service standards, which were intended to ensure maximum equipment utilization and transportation efficiency, and has been unable, or unwilling, to correct past deficiencies in service.

37.

UP has engaged in a practice of creating and cumulating (rolling over) deficit tonnages, rather than fulfilling its contractual commitment to act in good faith to avoid the creation of such deficit tonnages.

38.

While UP has neglected to comply with its contractual service standards and refused to correct such deficiencies, UP's service to other PRB coal shippers has, in UP's words, "consistently exceeded [UP's] own performance goals and contractual performance commitments...in recent months." Though service to Entergy has continued to deteriorate, UP's "performance levels" for other customers "have reached all-time records." See Applicants' Report on Merger Condition Implementation, Surface Transportation Board Docket No. 32760 (Sub-No. 21), Union Pacific Corporation, Union Pacific Company and Missouri Pacific 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 [OVERSIGHT] at 42 (filed July 1, 1997).

39.

In ignoring and/or refusing to comply with its duty to satisfy the express service standards and stated intent set forth in its contractual commitments to Entergy, while at the same time choosing to provide "record level" service to other PRB coal shippers, UP has breached the covenant of good faith and fair dealing, and has otherwise failed to act in compliance with standards of commercial reasonableness.

40.

As a direct and proximate result of UP's breach of the duty of good faith and fair dealing, Entergy has incurred damages relating to, inter alia, the cost of replacement power, the loss of sales and revenues associated with curtailing production from the plants in question, and other costs and expenses associated with the UP's failure to provide adequate rail transportation service, in an amount in excess of \$1 million; but such monetary damages may be inadequate to fully compensate Entergy for the losses and harm which may be experienced by Entergy and its customers.

PRAYER FOR RELIEF

WHEREFORE, Entergy prays for the following relief:

(a) that on the basis of Counts I and II, the Court enter a judgment (i) declaring that UP has materially breached the 1983 Agreements and the Interim Agreement, that because of the material breach those agreements are unenforceable by UP, and that Entergy is excused from performance under those agreements; and (ii)

ordering UP to pay damages relating to the failure to meet the service standards set forth in those agreements;

(b) that the Court, alternatively, order UP to pay all direct, consequential and incidental damages incurred by Entergy as a result of UP's material breach of the 1983 Agreements and the Interim Agreement; and

(c) that the Court award such other and further relief as it deems just and proper.

TAYLOR, PORTER, BROOKS & PHILLIPS, L.L.P.


BY: Tom F. Phillips

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Fredrick R. Tulley #7534
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202-347-7170

Attorneys for Entergy Arkansas, Inc. and
Entergy Services, Inc.

VERIFICATION

STATE OF TEXAS)
) SS:
COUNTY OF MONTGOMERY)

Charles W. Jewell, Jr., being duly sworn, deposes and says that he has read the foregoing verified statement, knows the contents thereof, and that the same are true as stated, except as to those statements made on information and belief, and as to those, that he believes them to be true.

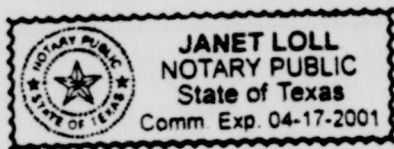
CWJ

Subscribed and sworn to before me
this 22 day of October, 1997.

Janet Loll

Notary Public for Montgomery County, Texas

My Commission expires 04-17-2001.



CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of October, 1997, caused HIGHLY CONFIDENTIAL copies of the foregoing Petition to be served by hand upon Applicants' counsel:

Arvid E. Roach II, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

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

I further certify that I caused REDACTED, PUBLIC copies of the foregoing to be served by first class mail, postage prepaid, on:

The Hon. Rodney E. Slater
Secretary
U.S. Dept. of Transp.
400 7th Street, S.W.
Suite 10200
Washington, D.C. 20590

The Hon. Janet Reno
Att'y Gen. of the United States
U.S. Dept. of Justice
10th & Constitution Ave., N.W.
Room 4400
Washington, D.C. 20530

all other parties of record in Finance Docket No. 32760 and Finance Docket No. 32760 (Sub-No. 21).

Andrew B. Kolesar III

STB

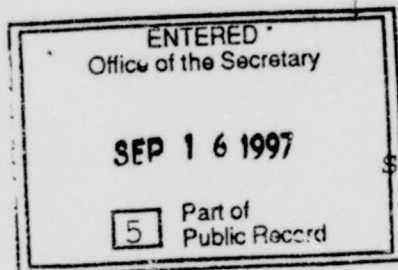
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32760

9-15-97

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UP/SP-321/CPSB-14/BNSF-83

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

JOINT SUBMISSION OF THE PARTIES
CONCERNING THE CPSB CONDITION

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Attorneys for The Burlington
Northern and Santa Fe
Railway Company

September 15, 1997

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

JOINT SUBMISSION OF THE PARTIES
CONCERNING THE CPSB CONDITION

On August 23, 1996, Applicants^{1/} and CPSB jointly submitted to the STB proposed terms implementing the CPSB Condition. UP/SP-273/CPSB-9 ("UP-CPSB Submission"). Those terms consisted of agreed-upon amendments to the BNSF Agreement and the Sealy Agreement. These amendments were set forth in Exhibit A to the UP-CPSB Submission.

On August 30, 1996, BNSF submitted a reply to the UP-CPSB Submission. Therein, BNSF agreed with all of the UP-CPSB Submission terms, except the Track No. 2 facilities restriction. That restriction precluded BNSF from serving new industries or transloading facilities on UP's Track No. 2 line between Craig Junction and SP Junction (Tower 112).

^{1/} Acronyms used herein are the same as those used by the STB in Decision Nos. 44, 52 and 61. MPRR merged into UPRR on January 1, 1997. DRGW and SPCSL merged into UPRR on June 30, 1997.

In Decision No. 52, served on September 10, 1996, the STB directed BNSF to accept the UP-CPSB implementing terms; reserved judgment on BNSF's objection to the Track No. 2 facilities restriction; and authorized UP, CPSB and BNSF, "upon agreement of all three parties," to amend the UP-CPSB implementing terms. Decision No. 52, p. 6.

In Decision No. 61, served on November 20, 1996, the STB held that BNSF could serve new industries and transloading facilities on Track No. 2. This ruling "effectively nullifie[d]" the Track No. 2 facilities restriction set forth in the UP-CPSB Submission. Decision No. 61, p. 12 n.34. The STB directed UP, CPSB and BNSF to make "conforming amendments to the BNSF agreement and the Sealy Trackage Rights Agreement" to remove the facilities restriction. Id.

Pursuant to the STB's directive in Decision No. 61, the parties have agreed upon revisions to the Sealy Agreement, and UP and BNSF have incorporated those revisions into an agreement entitled "First Supplement to the Sealy, Texas to Waco and Eagle Pass, Texas Trackage Rights Agreement." The First Supplement removes the Track No. 2 facilities restriction and make other agreed-upon conforming changes. The First Supplement is appended as Exhibit A hereto.

The First Supplement is intended by the parties to supersede the provisions of the Sealy Agreement approved by the STB in Decision No. 52.

Pursuant to the STB's Decision No. 46, UP and BNSF are filing simultaneously herewith a 49 C.F.R. 1180.2(d)(7) class exemption notice covering the Sealy Agreement.

On July 1, 1997, UP submitted an amended and restated version of the BNSF Agreement. Although UP and BNSF are still attempting to resolve certain disagreements, UP, BNSF and CPSB have agreed on the amendments designed to conform that Agreement, insofar as it applies to the CPSB Condition, to Decision Nos. 52 and 61, which amendments are reflected in the July 1 filing.

Respectfully submitted,

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Pacific Rail Corporation,
Southern Pacific Transportation
Company and St. Louis
Southwestern Railway Company

September 15, 1997

CERTIFICATE OF SERVICE

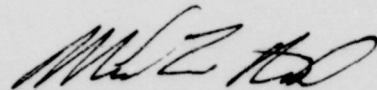
I, Michael L. Rosenthal, certify that, on this 15th day of September, 1997, I caused a copy of the foregoing document, to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery upon:

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

John H. Leseur
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

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

Erika Z. Jones
Mayer, Brown & Platt
Suite 6500
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1882



Michael L. Rosenthal

**FIRST SUPPLEMENT TO THE
SEALY, TEXAS TO WACO AND EAGLE PASS, TEXAS
TRACKAGE RIGHTS AGREEMENT**

THIS FIRST SUPPLEMENTAL AGREEMENT, made and entered into as of the 28th day of August, 1997, by and between UNION PACIFIC RAILROAD COMPANY, a Utah corporation ("UPRR"), and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SPT") (UPRR and SPT are hereinafter referred to collectively as "Owner"), on the one hand, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BNSF") (BNSF is hereinafter referred to collectively as "User"), on the other hand.

WITNESSETH:

WHEREAS, pursuant to an agreement dated September 25, 1995, as amended (the "Settlement Agreement"), between Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR") (UPC, UPRR and MPRR are hereinafter referred to collectively as "UP"), Southern Pacific Rail Corporation ("SPC"), SPT, St. Louis Southwestern Railway Company ("SSW"), The Denver and Rio Grande Western Railroad Company ("DRGW"), and SPCSL Corp. ("SPCSL") (SPC, SPT, SSW, DRGW and SPCSL are hereinafter referred to collectively as "SP") (UP and SP are hereinafter referred to collectively as "UP/SP"), on the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka & Santa Fe Railway Company ("Santa Fe"), on the other hand, UP/SP agreed to grant certain rights to User, including overhead bridge rights between Sealy and Waco and Eagle Pass, Texas, and the right to access industries presently served either directly or by reciprocal switching, joint facility or other arrangement by both UP and SP and no other railroad at points listed in the Settlement Agreement, as well as the right to access City Public Service Board of San Antonio ("CPSB") plants at Elmendorf, TX, except as otherwise provided, such rights to be effective upon UP's acquisition of control of SP pursuant to the application to the STB in Finance Docket No. 32760.

WHEREAS, there is now in effect an agreement dated June 1, 1996 (the "Original Agreement"), entered into between the parties in compliance with the Settlement Agreement, pursuant to which Owner granted to User trackage rights over certain of Owner's tracks between Sealy, Waco and Eagle Pass, Texas (hereinafter referred to as the "Joint Trackage"), including the right to access CPSB's Elmendorf plants under certain specified terms.

WHEREAS, in the STB's Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) approving the merger of UP and SP, the STB imposed a condition in favor of CPSB that required Owner to modify the trackage rights that had been granted to

allow User to access CPSB's Elmendorf plants (the "CPSB Condition").

WHEREAS, UP/SP and CPSB reached an agreement on amendments to the Original Agreement to allow User the right to access CPSB's Elmendorf Plants, that was (i) submitted to the STB on August 23, 1996, and (ii) accepted by the STB in Decision No. 52 in Finance Docket No. 32760 (served September 10, 1996), as fulfilling the CPSB Condition.

WHEREAS, the STB ruled in Decision No. 61 in Finance Docket No. 32760 (served November 20, 1996) ("Decision No. 61") that the new facilities and transload conditions imposed in Decision No. 44 applied to the lines over which Owner had agreed to grant User trackage rights to access CPSB's Elmendorf facilities.

WHEREAS, Owner has agreed to grant BNSF trackage rights over UPRR's line between Craig Junction and SP Junction (SP Tower 112), and over SPT's line between SP Tower 105 and SP Junction (SP Tower 112) to satisfy the CPSB Condition and comply with Decision No. 61.

NOW, THEREFORE, it is mutually agreed, by and between the parties hereto, as follows:

I. AMENDMENTS TO THE ORIGINAL AGREEMENT.

The Original Agreement is hereby amended as follows:

(a) The first "WHEREAS" clause shall be amended, by adding after the fifth subparagraph:

"UPRR's main track no. 2 at Craig Junction, Texas, in the vicinity of UPRR's Milepost 235.9 and SP Junction (Tower 112) in the vicinity of UPRR's Milepost 259.8."

(b) The first "WHEREAS" clause shall be amended, by inserting at the beginning of the seventh subparagraph after the colon:

"a line of railroad of SPT between San Antonio, in the vicinity of SPT's Del Rio Subdivision, Milepost 212.7 (Tower 105) and SP Junction (Tower 112), in the vicinity of SPT's Milepost 211.0, and"

(c) The first "WHEREAS" clause shall be amended by deleting the three lines following the seventh subparagraph and replacing them with the following:

"as shown by bold and dash lines on the attached prints (identified as Exhibit "A") (Figures, 4-1, 4-2 and 4-3), and further described in Section 1.7 of Exhibit "B", which shall be referred to herein as the "Joint Trackage"; and"

(d) Subparagraph (b) of Section 2 of the Original Agreement shall be deleted in its entirety and replaced with the following:

"(b) The rights granted in Section 2(a) shall be for all rail traffic of all kinds and commodities, both carload and intermodal, of all commodities."

(e) Section 2(g) is amended by striking the first two sentences and inserting:

"(g) User shall have the right to (a) access all existing industries which are served by UP and SP and no other railroad directly, by reciprocal switching, joint facility or other arrangements, (b) access City Public Service Board of San Antonio ("CPSB") facilities at Elmendorf, Texas, including expansions of or additions to these facilities and any new CPSB facilities at Elmendorf, (c) serve any new shipper facility (including any new transloading facility), to the extent permitted by STB Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and STB Decision No. 61 in Finance Docket No. 32760 (served November 20, 1996), on any SP-owned or UP-owned line over which BNSF received trackage rights pursuant to Section 2(a) of this Agreement, and (d) subject to the geographic limitations set forth below, serve new shipper facilities and existing and future transloading facilities and establish and exclusively serve intermodal and auto facilities at points listed in Exhibit A to the Settlement Agreement. The geographic limitations applicable to subparagraph (d) above shall generally correspond to the territory within which, prior to the merger of UP and SP, a new customer could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch."

(f) Section 2 shall be amended by adding after subparagraph (l):

"(m) User shall also have the right, at City Public Service Board of San Antonio, Texas' option, to connect for movement to and from Elmendorf, TX, where its trackage rights granted pursuant to this Agreement intersect at SP Junction (Tower 112) with the existing trackage rights SP has granted to City Public Service Board of San Antonio, TX."

(g) Exhibit "A" to the Original Agreement shall be amended by adding the revised Figures 4-1, 4-2 and 4-3.

(h) A new Section 9 shall be added to the Original Agreement immediately following Section 8, as follows:

"9. Pending Appeal.

Owner has appealed to the United States Court of Appeals for the District of Columbia Circuit the STB's denial in Decision No. 61 of Owner's Petition for Clarification as to the applicability of certain of the STB conditions. The parties agree that the provisions of subsection (c) of Section 2(g) of this Agreement shall be null and void and of no force and effect to the extent the STB conditions challenged by Owner are overturned or modified on appeal."

II. EFFECT ON ORIGINAL AGREEMENT.

This First Supplement is supplemental to the Original Agreement and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

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[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this First Supplement to be duly executed as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: James V. Dean
Its: Vice President & Gen. Mgr.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: James V. Dean
Its: Vice President & Gen. Mgr.

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: _____
Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this First Supplement to be duly executed as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Its: _____

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____
Its: _____

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: E. W. Woolley
Its: Alvin C. Cline & J. S. Fullerton

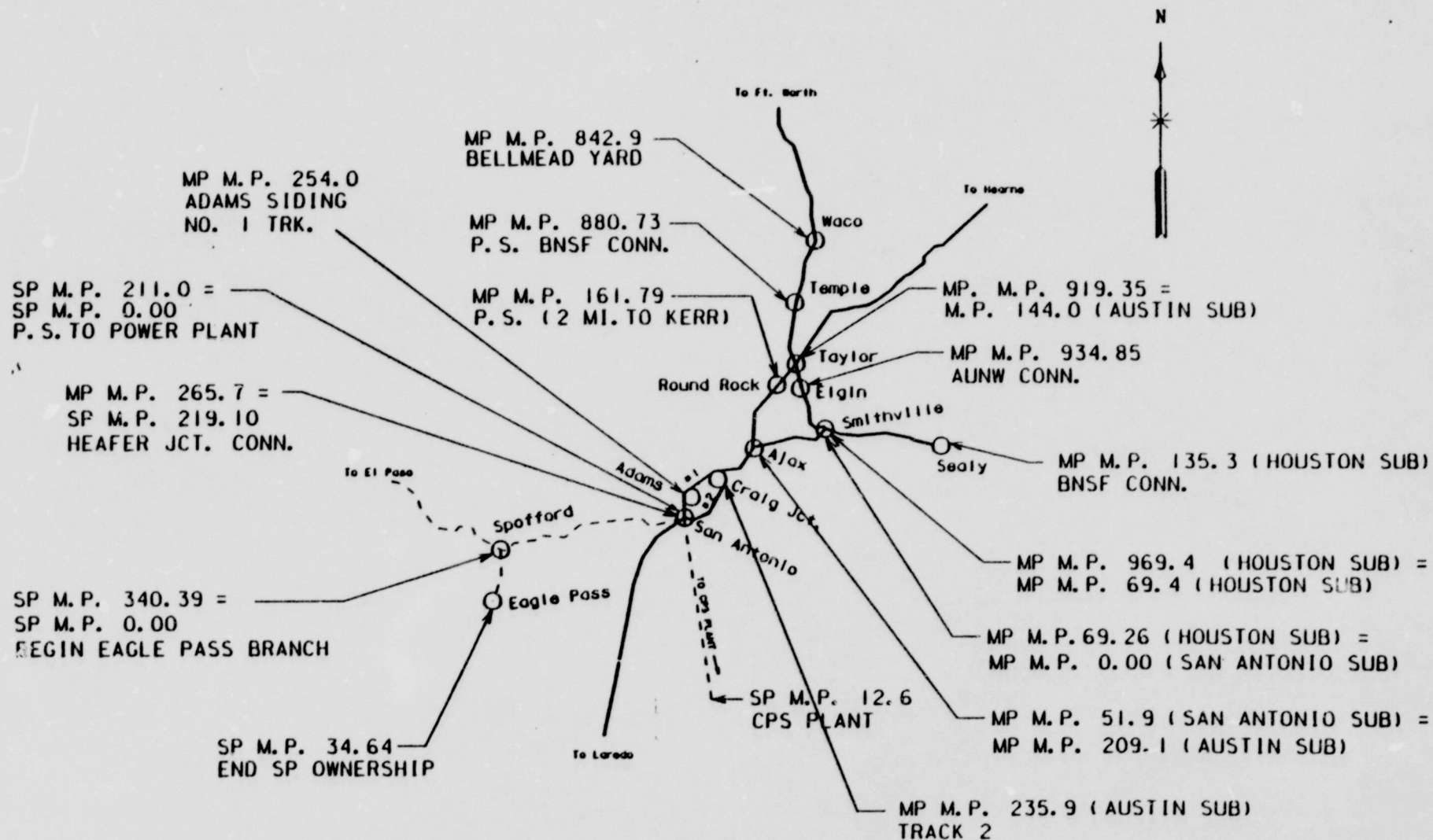


EXHIBIT A
 BNSF TRackage RIGHTS
 CENTRAL TEXAS
 06/01/96 FIGURE 4-1
 REVISED: 05/07/97

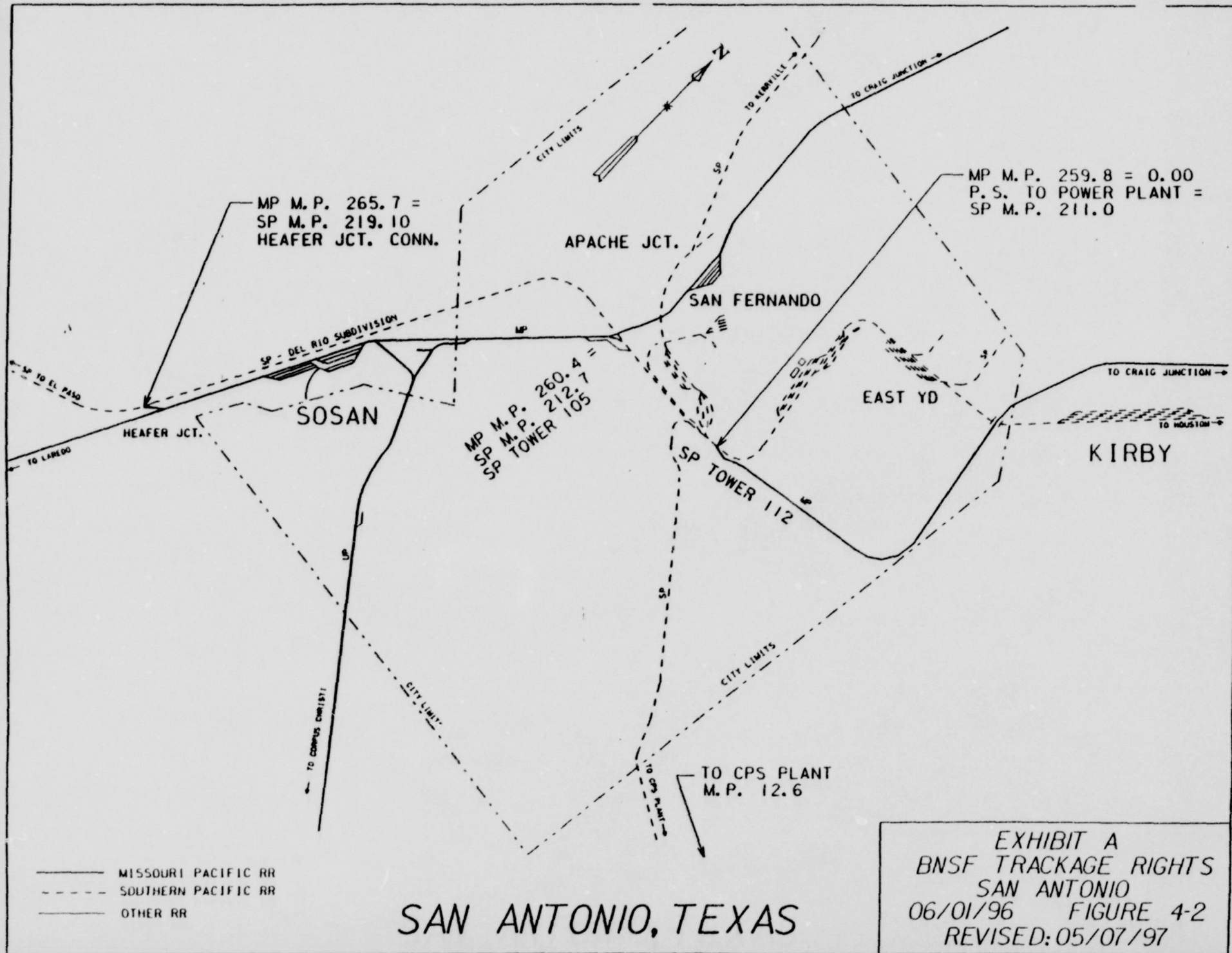
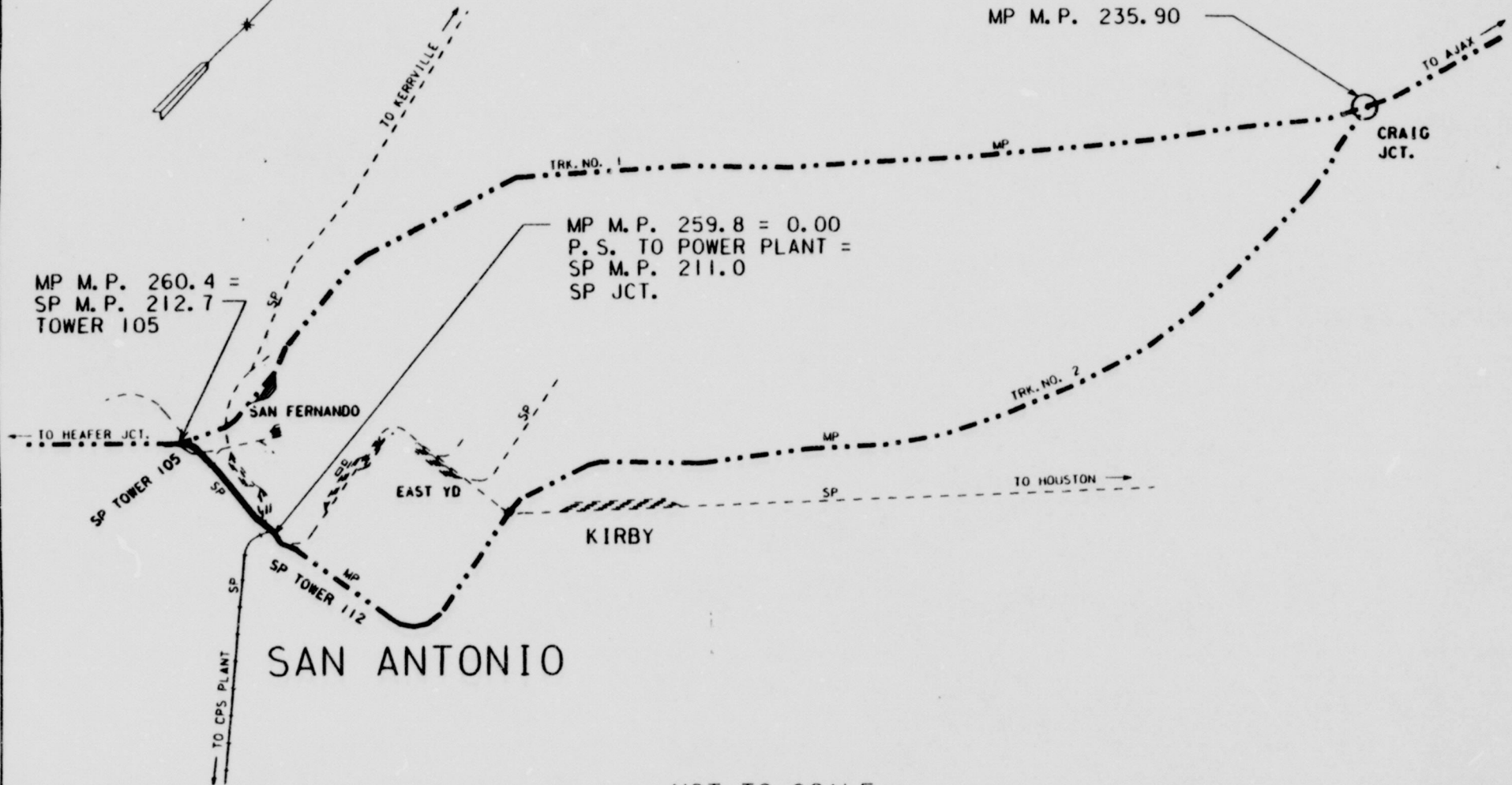
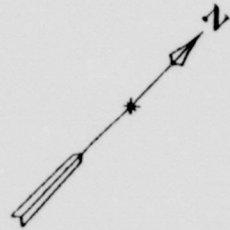


EXHIBIT A
 BNSF TRackage RIGHTS
 SAN ANTONIO
 06/01/96 FIGURE 4-2
 REVISED: 05/07/97

TEXAS



NOT TO SCALE

LEGEND:

- BNSF TRACKAGE RIGHTS ON MISSOURI PACIFIC RR
- BNSF TRACKAGE RIGHTS ON SOUTHERN PACIFIC RR
- - - - - CPSB AND BNSF TRACKAGE RIGHTS ON SOUTHERN PACIFIC RR
- SOUTHERN PACIFIC RR

EXHIBIT A
BNSF TRACKAGE RIGHTS
SAN ANTONIO TO CRAIG JCT.
09/11/96 FIGURE 4-3
REVISED: 05/07/97

STB

FD

32760

8-11-97

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181142

BEFORE THE
Surface Transportation Board
WASHINGTON, D.C. 20423

MONT-14

UNION PACIFIC CORPORATION,
UNION 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



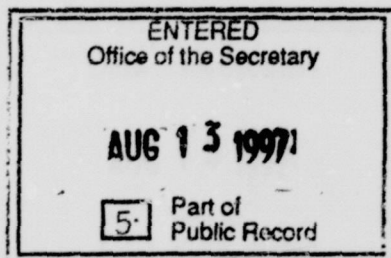
STB FINANCE DOCKET NO. 32760

**ERRATA TO PETITION OF MONTELL USA, INC.
FOR DETERMINATION OF WEST LAKE CHARLES AS A 2-TO-1 POINT**

The July 24, 1997 Petition of Montell USA, Inc. for Determination of West Lake Charles As A 2-To-1 Point was filed inadvertently without a document identification number. Submitted herewith is a corrected first page bearing a sequential number (MONT-13) as appropriate to the captioned proceeding.

Copies of this Errata are being served upon those parties served with the July 24, 1997 Petition of Montell USA, Inc.

Respectfully submitted,



Martin W. Bercovici
Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
(202) 434-4144

August 11, 1997

Attorney for Montell USA, Inc.

Surface Transportation Board

WASHINGTON, D.C. 20423

UNION PACIFIC CORPORATION,
UNION 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

STB FINANCE DOCKET NO. 32760

**PETITION OF
MONTELL USA, INC.
FOR DETERMINATION OF WEST LAKE CHARLES AS A 2-TO-1 POINT**

Montell USA, Inc. ("Montell"), respectfully requests the Surface Transportation Board to resolve a dispute with applicants Union Pacific Railroad and Southern Pacific Transportation Company ("UP/SP") concerning the application of the contract reopening condition imposed in conjunction with approval of the merger of the UP and SP.^{1/}

^{1/} This request is submitted for dispute resolution pursuant to Decision No. 57 at 13-14. Considering that this dispute is specific as to Montell, it is not intended that this be addressed within the context of the oversight, currently in progress, which is being conducted under Sub-No. 21 of this docket.

In consideration of the foregoing, Montell is serving this Petition on applicants and BNSF, on ARCO Chemical (which has purchased the Olin Lake Charles plant) and PPG, as the other Lake Charles area parties, and on KCS, DOJ and DOT. Any other party which may be interested in this Petition may secure a copy upon request. Montell respectfully requests waiver of any requirement that other parties to the proceeding also be served with this Petition.

STB

FD

32760

7-24-97

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180783

BEFORE THE

Surface Transportation Board

WASHINGTON, D.C. 20423

UNION PACIFIC CORPORATION,
UNION 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

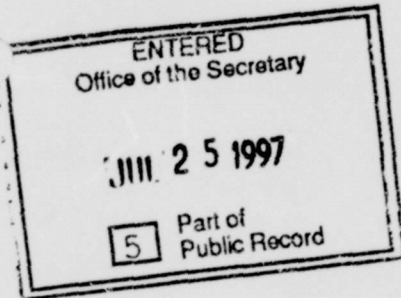
STB FINANCE DOCKET NO. 32760

**PETITION OF
MONTELL USA, INC.
FOR DETERMINATION OF WEST LAKE CHARLES AS A 2-TO-1 POINT**

Montell USA, Inc. ("Montell"), respectfully requests the Surface Transportation Board to resolve a dispute with applicants Union Pacific Railroad and Southern Pacific Transportation Company ("UP/SP") concerning the application of the contract reopening condition imposed in conjunction with approval of the merger of the UP and SP.^{1/}

^{1/} This request is submitted for dispute resolution pursuant to Decision No. 57 at 13-14. Considering that this dispute is specific as to Montell, it is not intended that this be addressed within the context of the oversight, currently in progress, which is being conducted under Sub-No. 21 of this docket.

In consideration of the foregoing, Montell is serving this Petition on applicants and BNSF, on ARCO Chemical (which has purchased the Olin Lake Charles plant) and PPG, as the other Lake Charles area parties, and on KCS, DOJ and DOT. Any other party which may be interested in this Petition may secure a copy upon request. Montell respectfully requests waiver of any requirement that other parties to the proceeding also be served with this Petition.



I. Background

Montell was a party to the UP/SP merger proceeding, addressing the issue of the loss of competitive rail service to its facility located at West Lake Charles, Louisiana. See Decision No. 44 at 66-67. While served by both the SP and KCS, Montell established that KCS does not offer effective competition to the SP due to its need to interline with the UP to provide competitive service to points in the west and to the major eastern gateways. Id. at 66. The CMA settlement with applicants, as amended, provided very limited BNSF access to West Lake Charles, allowing service only to New Orleans and the Mexico gateways. UP/SP-260 at 23, n. 9.

In the decision, the Board granted BNSF direct access to West Lake Charles. While acknowledging the KCS access, the Board concluded that "KCS must interline with UP or SP to provide efficient routings to the New Orleans, Houston and St. Louis gateways. Thus, while these shippers now benefit from direct rail competition, an unconditioned merger would place all the efficient rail routings under applicants' control." Decision No. 44 at 152. "To preserve existing competitive alternatives for shippers in the Lake Charles area," the Board imposed specific conditions opening West Lake Charles and the other Lake Charles area shipping points to BNSF service. Id. at 153.

As a separate condition, the Board imposed, and expanded, the CMA settlement agreement provision allowing shippers at 2-to-1 points to reopen contracts with applicants in order to allow BNSF access to at least 50% of those volumes. Clarification of the contract reopening condition was issued by the Board in Decision No. 57, served November 20, 1996. In that decision, the Board confirmed that it is available to adjudicate disputes which may arise with regard to the contract reopening condition. Decision No. 57 at 13-14. In its first progress report,

filed October 1, 1996, BNSF sought to raise the issue of the status of West Lake Charles, and the other Lake Charles area shipping points, under the contract reopening condition. The Board declined to rule on this issue on the basis that it had not been raised in an adequate manner to give notice to all concerned that such a ruling was requested. *Id.* at 14.

Montell has endeavored to raise the contract reopening provision with applicants on a direct basis. Applicants have advised Montell that they do not consider the West Lake Charles facility to constitute a 2-to-1 point. *See* Exhibit A, a letter of June 27, 1997 from Pat B. Collins, Union Pacific Railroad Company, to B. F. LeBlanc, Montell USA, Inc. Having reached an impasse, Montell accordingly requests the Board to determine whether it is eligible for the contract reopening condition imposed in Decision No. 44.

II. Argument

The discussion by the Board in Decision No. 44 granting Montell's request for additional competitive service at West Lake Charles clearly and convincingly demonstrates that the Board considered West Lake Charles to be a "2-to-1 point." 2-to-1 points are those where shippers have rail service from UP and SP and no other railroad prior to the merger, Decision No. 44 at 16, and therefore lose competitive rail service absent the introduction of another carrier into the marketplace. While KCS serves West Lake Charles, the Board expressly found that "an unconditioned merger would place all [the West Lake Charles shippers'] efficient rail routings under applicants' control." *Id.* at 152. Throughout the UP/SP proceeding, 2-to-1 status extended to any shipper who would lose effective competitive options, regardless of whether that competition was through direct competition between UP and SP or where one carrier provided

direct service and the other carrier provided interline service with a third party, such as occurred at West Lake Charles. Indeed, the trackage rights agreement with BNSF was structured to give BNSF routings where the BNSF's own route was so circuitous as to be non-competitive with the direct UP and SP routes, e.g., Houston to Memphis. See UP/SP-22 at 22, UP/SP-23 at 19; see also MONT-2 at 19, citing to deposition testimony of UP/SP witness Richard Peterson that circuitous routes were treated as 2-to-1 corridors.

There is not a single word in Decision No. 44 or Decision No. 57 which supports the applicant's June 27 rejection of Montell's request for recognition of 2-to-1 status and the power to modify its contract. The Board indirectly addressed this issue in Decision No. 63, served December 4, 1996, rejecting a KCS petition to modify the BNSF access to the Lake Charles area. In that decision, the Board asserted that it imposed the BNSF access "to assure continued competition for Lake Charles area shippers ... [since] KCS lacks a sufficient route structure to be competitive with UP/SP..." Decision No. 63 at 7. The Board further notes the contention of the parties that Lake Charles is a 2-to-1 area, and states "we have chosen BNSF to correct *this....*" *Id.* at 8 (emphasis added). Even the applicants' settlement agreement with CMA alludes to the Lake Charles area being a 2-to-1 point, stating that BNSF access is provided "on the same basis as is provided for ... '2-to-1' points ..." UP/SP-219, Settlement Agreement at ¶ 8.^{2/} The fact that the Board did not dispose of the issue of the 2-to-1 status of West Lake Charles in

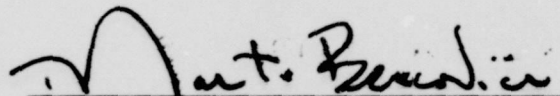
^{2/} Paragraph 8 of the original CMA Settlement Agreement covered only West Lake and Lake Charles; however, as previously noted, paragraph 8 was extended to West Lake Charles at UP/SP-260 at 23, n. 9.

Decision No. 57 was procedural only. The Board specifically stated that "Nothing said in this decision is intended to prejudge those issues." Decision No. 57 at 14.

Treatment of West Lake Charles as a 2-to-1 point is the only logical conclusion based upon the Board's decisional criteria applied in approving the UP/SP merger. The Board specifically found that competition at 3-to-2 points likely would not be diminished or otherwise suffer competitive harm, and that corrective action in the 3-to-2 markets is not required. Decision No. 44 at 119-121. Rather, the conditions imposed by the Board are intended to ameliorate the loss of competition and, as the Board expressly stated with regard to the Lake Charles area, to preserve pre-merger competition. *Id.* at 144-145. Accordingly, Montell's facility at West Lake Charles, Louisiana, must be considered a 2-to-1 point.

WHEREFORE, THE PREMISES CONSIDERED, Montell USA, Inc. respectfully urges the Surface Transportation Board to determine that Montell's plant at West Lake Charles, Louisiana, constitutes a 2-to-1 point under the UP/SP merger decision, and specifically is eligible under the contract reopening condition.

Respectfully submitted,



Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
(202) 434-4144

Attorney for Montell USA, Inc.

July 24, 1997

MARKETING & SALES

PAT COLLINS
BUSINESS MANAGER - CHEMICALS

UNION PACIFIC RAILROAD COMPANY



201 OXFORD ROAD
WEST CHESTER, PA 19380
(215) 429-5666
FAX: (810) 793-0816

June 27, 1997

Mr. B. F. LeBlanc
Director, Transportation & Distribution
North America
Montell Polyolefins
Montell USA, Inc.
Wilmington, DE 19850

Dear Bernie:

This is in response to your letter of June 17 concerning Montell's master contract and related contracts for rail transportation via UP/SP in the Gulf Coast. You refer to the contract modification condition in the UP/SP merger decision. You also indicate that you wish to consider reopening the master contract in the Gulf Coast.

As we advised you at our previous meeting, the contract modification condition is not applicable to Montell's rail transportation contracts. The condition requires UP/SP to modify any contract with shippers "2-to-1" points so that BNSF has access to at least 50% of the volume under contract. The Montell master contract and implementing contracts pertain to your facilities at Bayport, TX and West Lake Charles, LA. Neither of those facilities were served only by UP and SP prior to the UP/SP merger. Therefore, neither location is a "2-to-1" point. Consequently, UP is under no obligation to modify or reopen Montell's contracts to allow BNSF access to at least 50% of the volume. BNSF previously contended before the STB that shippers at West Lake Charles, LA are the "functional equivalent of a 2-to-1 situation for the purpose of the contract modification condition". The STB declined to find in favor of BNSF on this issue in the STB's decision clarifying the contract modification which was issued last November.

UP considers the Montell contracts, including the minimum volume requirements, to continue in full force and effect. We are not inclined to reopen these contracts for discussion at this time.

Sincerely,

A handwritten signature in cursive script that reads "Pat Collins".

Pat B. Collins

cc R. W. Granatelli
Ed Sims
Bob Worrell

EXHIBIT A

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition was served on this 24th day of July, 1997, by hand, upon:

Arvid E. Roach II, Esquire
Covington & Burling
1201 Pennsylvania Avenue, NW
Post Office Box 7566
Washington, DC 20044

Erika Z. Jones, Esquire
Mayer, Brown & Platt
2000 Pennsylvania Avenue, NW
Washington, DC 20006

and, by first-class mail, postage prepaid, upon:

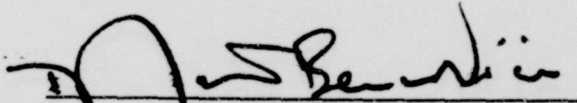
Eugene M. Fitzmaurice, Esquire
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Newtown Square, PA 19073-2387

Michael D. Billiel, Esquire
Antitrust Division
U.S. Department of Justice
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Thomas L. Butera, Esquire
Assistant Counsel & Assistant Secretary
Law Department
PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

Paul Sāmúel Smith, Esquire
U.S. Department of Transportation
400 7th Street, SW
Room 4102 C-30
Washington, DC 20590

William A. Mullins, Esquire
Troutman Sanders, LLP
1300 I Street, NW
Suite 500, East
Washington, DC 20005-3314


Martin W. Bercovici

STB

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• 32760

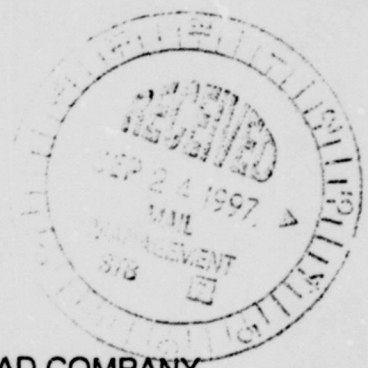
9-24-96

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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

I

CITY OF RENO'S MOTION FOR WAIVER
OF SERVICE REQUIREMENT
FOR DISCOVERY PURPOSES

Paul H. Lamboley
1020 Nineteenth Street, NW
Suite 400
Washington, DC 20036-6105
Telephone: 202-496-4920
Facsimile: 202-293-6200

Patricia A Lynch, City Attorney
Michael K. Halley, Deputy City Attorney
Reno City Hall
490 South City Street
Reno, Nevada 89501
Telephone: (702) 334-2050
Facsimile: (702) 334-2420

September 24, 1997

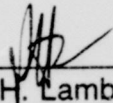
Counsel for The City of Reno

**MOTION FOR WAIVER OF SERVICE
REQUIREMENT TO DISCOVERY PURPOSES**

The City of Reno, hereby moves for waiver of service requirements of 49 C.F.R. § 1104.12(a) for purposes of discovery primarily related to the "Reno Mitigation Study" ordered in Decision No. 44. By waiver request, the City of Reno seeks authorization to limit service to counsel of record for the Union Pacific/Southern Pacific (UP/SP) applicants,¹ for the reason that there are no other parties of record (POR) who have interest or participate in the Reno Mitigation Study.

The Board has previously granted similar waiver requests. See Decision Nos. 45 and 70.

Dated this 24th day of September 1997.



Paul H. Lamboley
1020 Nineteenth Street, NW
Suite 400
Washington, DC 20036-6105
Telephone: 202-496-4920
Facsimile: 202-293-6200

Patricia A Lynch, City Attorney
Michael K. Halley, Deputy City Attorney
Reno City Hall
490 South City Street
Reno, Nevada 89501
Telephone: (702) 334-2050

Counsel for The City of Reno

¹ Union Pacific Corporation is referred to as UPC. Union Pacific Railroad Company (UPRR) and Missouri Pacific Railroad Company (MPRR) were formerly referred to collectively as UP. On January 1, 1997, MPRR merged into UPRR, see Decision No. 67, slip op. at 1 n.3; and, for the period beginning January 1, 1997, the acronym "UP," as used in this motion, shall be understood to refer to UPRR.

Southern Pacific Rail Corporation is referred to as 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) are referred to collectively as SP.

UPC, UP, SPR, and SP are referred to collectively as applicants. See Decision No. 44, slip op. at 7 n.3. Common control was consummated September 11, 1996.

Certificate of Service

This is to certify that I have this 24 day of September, 1997, served a copy of the foregoing City of Reno's Motion for Waiver of Service Requirement for Discovery Purposes, via first class mail, postage prepaid, on:

Cannan Y. Harvey
Louis P. Warchot
Carol A. Harris
Southern Pacific Transportation Co.
One Market Plaza
San Francisco, CA 94105

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins Cunningham
1300 Nineteenth Street, NW
Washington, DC 20036


**Counsel to Southern Pacific Rail Corp.
Southern Pacific Transportation Co.
St. Louis Southwestern Railway Co.
SPCSL Corp. and The Denver and
Rio Grande Western Railroad Co.**

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

James V. Dolan
Paul A. Conley, Jr.
Louise A. Rinn
Law Department
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Arvid E. Roach, II
J. Michael Hemmer
Covington & Burling
1201 Pennsylvania Avenue, NW
P.O. Box 7566
Washington, DC 20044-7566

**Counsel to Union Pacific Corp.
Union Pacific Railroad Co., and
Missouri Pacific Railroad Co.**



Paul H. Lamboley

STB

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TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

WILLIAM A. MULLINS

DIRECT: 202-274-2953

September 9, 1996

HAND DELIVERED

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

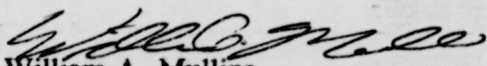
Re: Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control*
Merger -- Southern Pacific Rail Corporation, et al.

Dear Secretary Williams:

Enclosed for filing in the above referenced proceeding are the original and twenty copies of KCS-66, The Kansas City Southern Railway's Errata to the Petition to Reopen/Reconsider of The Kansas City Southern Railway.

Also enclosed is a 3.5 inch Word Perfect diskette containing the text of KCS-66.

Sincerely yours,


William A. Mullins
Attorney for Kansas City Southern
Railway Company

Enclosure
cc: Parties of Record

Item No. _____

Page Count 6
SEP #22

ENTERED
Office of the Secretary

SEP 11 1996

5 Part of
Public Record

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SURFACE TRANSPORTATION
BOARD

SEP 9 11 28 PM '96
ICC
OFFICE OF SECRETARY

ORIGINAL

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
ERRATA TO PETITION TO REOPEN/RECONSIDER (KCS-65)

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

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William A. Mullins
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James F. Rill
Sean F.X. Boland
Virginia R. Metallo
Collier, Shannon, Rill & Scott
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September 9, 1996



Attorneys for The Kansas City
Southern Railway Company

OFFICE OF SECRETARY
ICC

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SURFACE TRANSPORTATION
BOARD

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
ERRATA TO PETITION TO REOPEN/RECONSIDER (KCS-65)

The Kansas City Southern Railway Company hereby submits the following changes to
the Petition to Reopen/Reconsider filed in this proceeding on September 3, 1996 (KCS-65).

ERRATA

- Page 2, line 7 : Add "Westlake and West" before "Lake Charles facilities"
- Page 3, line 10 : Change "interchange cars with each other" to "interchange
with each other cars"
- Page 4, line 2 : Change "1982 bridge washout and SP's high switching charge
for KCS's access over SP's bridge, KCS originates less than
1% of the traffic at Lake Charles. *Id.*" to "1982 washout of
KCS's bridge crossing the Calcasieu River and SP's high
switching charge for KCS's access over SP's bridge, V.S.
Clark at 3, KCS originates less than 1% of the traffic at Lake
Charles, V.S. Grimm, Table 1."
- Page 6, line 9 : Change "restriction" to "restriction:"

- Page 7, line 9 : Add a comma after " either one of these routes,"
- Page 7, line 11 : Change "when it issued its decision. The Board did not have" to "when it issued its decision, the Board did not have"
- Page 7, line 12 : Add the word "million" after "\$11.7"
- Page 7, Line 14 : Change the page number of "V.S. Grimm at 8." to " V.S. Grimm at 7."
- Page 8, line 15 : Change "agreement reached between Applicants and BNSF" to "agreement reached among Applicants, CMA and BNSF"
- Page 9, line 8 : Change "now has" to "would have"
- Page 13, line 7 : Change "would more" to "would be more"
- Page 13, heading C. : Add the word "AREA" after "LAKE CHARLES"
- Page 16, line 3 : Change "It is long standing" to "It is a long standing"
- Page 16, footnote 23 : Change "363 I.C.C. 584 (ICC Decided September 23, 1980; UP/MP/WP, 366 I.C.C. at 574-576;" to "363 I.C.C. 584 (1988); UP/MP/WP, 366 I.C.C. at 574-576 (1982);"
- Page 17, line 2 : Change "absence a terminal" to "absence of a terminal"
- Page 17, line 17 : Change "that terminal trackage rights application makes" to "both the Sub No. 9 and Sub No. 14 terminal trackage rights applications makes"
- Exhibit A, Page 3, line 7 : Add a comma after "result"
- Exhibit A, Page 6, line 17 : Change "KCS/UP" to "KCS/MoPac"
- Exhibit A, Page 6, line 19 : Change "KCS/UP" to "KCS/MoPac"
- Exhibit B, Page 3, line 8 : Add "by the Board" after the "modified,"
- Exhibit B, Page 7, line 12 : Add a comma after the word "traffic"

Exhibit B, Page 11, line 1 : Change "causes bottleneck" to "causes significant bottleneck"


Exhibit B, Page 11 : Change "Lake Charles" to "Lake Charles area"

This 9th day of September, 1996.

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

James F. Rill
Sean F.X. Boland
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3050 K Street, N.W., Suite 400
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Fax: (202) 338-5534

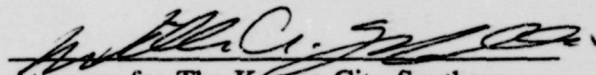
September 9, 1996


John R. Molm
Alan E. Lubel
William A. Mullins
David B. Foshee
Troutman Sanders LLP
1300 I Street, N.W.
Suite 500 East
Washington, D.C. 20005-3314
Tel: (202) 274-2950
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 "The Kansas City Southern Railway Company's ERRATA to Petition to Reopen/Reconsider (KCS-65)" was served this 9th day of September, 1996, by hand delivery to counsel for Applicants and by hand delivering or depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party of record.


Attorney for The Kansas City Southern
Railway Company

STB FD 32760

9-6-96

85853



8 5853

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

202-463-2000
TELEX 892603
FACSIMILE
202-851-0473

CHICAGO
BERLIN
BRUSSELS
HOUSTON
LONDON
LOS ANGELES
NEW YORK
MEXICO CITY CORRESPONDENT
JAUREGUI, NAVARRETE, NADER Y ROJAS

KELLEY E. O'BRIEN
MEMBER OF THE VIRGINIA BAR
NOT ADMITTED IN THE
DISTRICT OF COLUMBIA
202-778-0607

September 6, 1996

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
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:

On Tuesday, September 3, 1996, Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") filed a Petition for Clarification of Decision No. 44 (BN/SF-65). BN/Santa Fe's September 3 filing contained a facsimile copy of the verification of Matthew K. Rose. Enclosed please find the original verification of Matthew K. Rose.

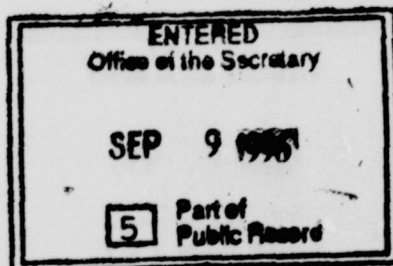
Please date-stamp the enclosed extra copy of this letter and return it to the messenger for our files. Thank you for your time and attention to this matter. Please call me if you have any questions.

Sincerely,

Kelley E. O'Brien

Kelley E. O'Brien

Enclosure

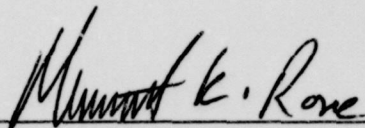


Item No. _____
Page Count 2
Sep # 20

VERIFICATION

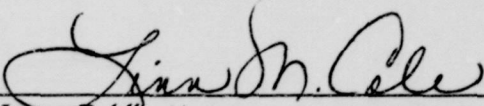
THE STATE OF TEXAS)
)
COUNTY OF TARRANT)

Matthew K. Rose, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.



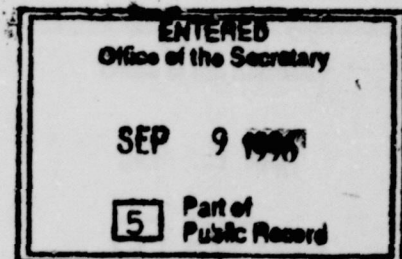
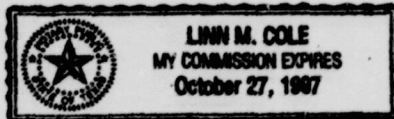
Matthew K. Rose

Subscribed and sworn to before me on this 3rd day of September, 1996.



Notary Public

My commission expires:



STB FD 32760

5-21-96

83625

Item No. _____

Page Count _____

1996 # 125

83625
ORIGINAL

KCS-54

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

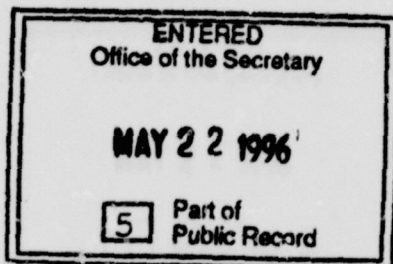
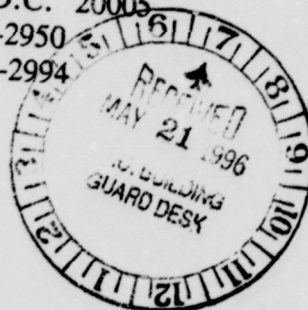
SUPPLEMENT TO THE KANSAS CITY
SOUTHERN RAILWAY COMPANY'S
MOTION TO STRIKE (KCS-53)

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May 21, 1996

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Attorneys for The Kansas City
Southern Railway Company

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

SUPPLEMENT TO THE KANSAS CITY
SOUTHERN RAILWAY COMPANY'S
MOTION TO STRIKE (KCS-53)

On May 8, 1996, The Kansas City Southern Railway Company ("KCS") filed its Motion to Strike portions of the rebuttal filed by Applicants on April 29, 1996.¹ Section I(B)(1)(a) of KCS's Motion to Strike (KCS-53, pp. 9-10) dealt with a new study introduced by R. Douglass Bernheim. On May 16, 1996, Dr. Bernheim's deposition was taken, and he was examined by the U.S. Department of Justice, Conrail and KCS for approximately six hours. Subsequently, on May 20, 1996, Applicants produced an additional 54 pages of workpapers presumably relied upon by Dr. Bernheim in preparing his Rebuttal Verified Statement. These workpapers relate to the "new study" appearing at pages 13 through 21 and Tables 1 and 2 of Dr. Bernheim's Verified Statement that KCS had previously requested

¹ KCS's motion also sought to strike portions of BN/Santa Fe's April 29, 1996 filing, which portions are not affected by this supplement.

to be stricken. Production of these workpapers subsequent to the deposition provides additional basis for striking this portion of Dr. Bernheim's testimony.

The procedural schedule in this matter provides that witness workpapers be put in a party's document depository when the witness' statement is filed (Decision No. 6 at 16). Accordingly, the workpapers relating to Applicants' rebuttal witnesses should have been available by Tuesday, April 30. In order to prepare for the depositions of these rebuttal witnesses, KCS requested a copy of the index of Applicants' document depository, which was faxed to KCS's attorneys on May 2. Because the index did not reflect rebuttal workpapers for Messrs. Barber, Rebensdorf, Butcher, Bernheim and Gazzetta, KCS requested confirmation that there were no workpapers for these witnesses. KCS's attorneys were advised that some additional workpapers for these witnesses did exist and that they would be produced. Among the workpapers produced on May 3, were workpapers for Dr. Bernheim. Applicants gave no indication that any additional workpapers existed.

On May 7, KCS's attorneys again contacted Applicants' attorneys to confirm that Professor Bernheim had no workpapers other than the one study relating to automobile shipments that had been produced. For the first time, Applicants revealed that there in fact was a disk of his workpapers that had "fallen through the cracks." Since the workpapers were to be reviewed by consultants located outside of the D.C. area, KCS requested the disk that day so it could be sent out of town and evaluated by KCS's consultants prior to the deposition scheduled for May 9. That disk was not delivered until 7:15 p.m., after the Federal Express packages had left for the day. Additionally, at approximately 8:30 p.m., Applicants faxed another twenty-nine pages of Professor Bernheim's workpapers that had not

previously been identified. Further, the disk that was provided was not in a readable format.²

Because of Applicants' dilatory conduct in providing Dr. Bernheim's workpapers, the deposition was postponed until May 15, 1996, and the deposing parties were prejudiced by having to take this deposition by telephone. Of greater significance, however, is the fact that the parties' preparation for, and the actual conduct of the deposition was based on Applicants' representation that all Dr. Bernheim's workpapers had been produced.³ Based upon the fact that only yesterday an additional 54 pages of Bernheim workpapers were produced, KCS now knows Applicants' representation to be inaccurate. Thus, Mr. Bernheim's Rebuttal Verified Statement regarding this study as well as his deposition testimony regarding this subject should be stricken. The relevant deposition testimony appears at page 8, line 23 through page 32, line 10; page 39, line 6 through page 58, line 8; page 123, line 7 through page 142, line 25; and page 175, line 4 through page 178, line 22. (Five copies of these excerpts are being filed herewith pursuant to Administrative Law Judge Jerome Nelson's April 16, 1996 Order as KCS-54A.)

Applicants first identified no workpapers for Dr. Bernheim. Then, only after inquiry by KCS, they produced one study. After a second inquiry by KCS, Applicants identified a disk and without explanation sent an additional twenty-nine pages. Applicants' repeated negligence in producing Dr. Bernheim's workpapers as required by Decision No. 6 has risen

² Neither KCS's attorneys nor Applicants' attorneys were equipped with the computer hardware to read the disk.

³ At the deposition of Dr. Bernheim, Applicants' attorney stated, "I have - we ought to have here somewhere all of his workpapers." (Bernheim Dep., p. 42, lines 8-9.)

to the level of intentional disregard for the rules of practice before the Board. This belated production of workpapers over three weeks late and only after the witness has been deposed is not conduct that should be sanctioned. Part II of Dr. Bernheim's Verified Statement, including Tables 1 and 2, and his deposition testimony dealing with the 1994 UP Traffic Data therefore should be stricken.

Applicants likely will oppose this motion and offer to reconvene Dr. Bernheim's deposition to allow cross-examination regarding these workpapers. The Board should not accept this "compromise," however. To do so would be to reward Applicants for producing documents over three weeks late, only after the witness had been deposed, and with little or no time to take such a deposition for inclusion in the June 3rd brief. The Board should be aware that attorneys for the Department of Justice, Conrail and KCS invested a significant amount of time in preparing for Dr. Bernheim's deposition. Additionally, their own consultants analyzed the workpapers produced by Applicants in preparation for the cross-examination. An important element in this preparation was analysis of the workpapers in order to test the accuracy of the conclusions in Dr. Bernheim's Rebuttal Verified Statement. If these tardy workpapers had been available prior to the deposition they could have been factored into the analysis conducted in preparation for the deposition. To make use of these workpapers for a reconvened deposition would be far more time consuming than the incremental time involved in including them in the original analysis. Consequently, the expense to the parties for both lawyer time and consultant time will be more than the incremental increase they would have incurred if the documents had been timely produced. Thus, if the Applicants suggest re-convening Dr. Bernheim's deposition and the Board

accepts that proposal, the granting of that proposal should be conditioned upon the deposition's being conducted in Washington, D.C. (on a day other than Saturday, Sunday or a holiday) and upon Applicants' reimbursement to the affected parties of their attorneys' and consultants' fees incurred in preparation for and conducting this subsequent deposition.

CONCLUSION

As set forth in KCS's Motion to Strike, Dr. Bernheim's testimony regarding his analysis of UP Traffic Data for 1994 should be stricken based upon its being a new study and not appropriate for rebuttal. *Pittsburgh & Lake Erie R.R. v. I.C.C.*, 796 F.2d 1534, 1543 (D.C. Cir. 1986). Even if the Board does not consider Dr. Bernheim's testimony regarding this study as a new study and properly stricken for that reason, the Board should strike Section II and Tables 1 and 2 of Dr. Bernheim's Rebuttal Verified Statement because of Applicants' delay in producing workpapers relating to the study until after the witness' deposition, which foreclosed the parties' opportunity to conduct a thorough cross-examination of the witness. Finally, Dr. Bernheim's deposition testimony regarding the 1994 Traffic Data also should be stricken.

This 21st day of May, 1996.

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Attorneys for The Kansas City
Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Supplement to The Kansas City Southern Railway Company's Motion to Strike (KCS-53)" was served this 21st day of May, 1996, by hand delivery to counsel for Applicants and by hand delivering or depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party of record.

William A. Mullins
Attorney for The Kansas City Southern
Railway Company

(carrollbh)\wpdocs\molmhc\kcs\upsp\kcs54

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32760

5-10-96

83324

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Item No. _____

Page Count 8

May # 69

ORIGINAL

Before the

SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760, et al.

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

PETITION TO INTERVENE
AND TO FILE COMMENTS
IN RESPONSE TO SETTLEMENT AGREEMENT

Comes now Charles W. Downey, ^{1/} for and on behalf of General
Committee of Adjustment for United Transportation Union (UTU), on
lines of SPCSL Corp. (SPCSL), Gateway Western Railway Company (GWW),
and Illinois Central Railroad Company (IC), and petitions for leave to
intervene in these consolidated proceedings, and to file the attached
verified statement, and to become a party of record.

This protestant is primarily concerned with the settlement agree-
ment between applicants and GWW. (UP/SP-204, dated April 8, 1996). He
intends to submit a brief after full development of the record.

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

Respectfully submitted,

Gordon P. MacDougal
GORDON P. MacDOUGAL
1025 Connecticut Ave., N.W.
Washington, DC 20036

May 10, 1996

Attorney for Charles W. Downey

1/ General Chairman for UTU on SPCSL, GWW, and IC, with offices at
1301 1/2 Morrissey Drive, Unit 4, Bloomington, IL 61701. Tel: (309)
662-1622.

VERIFIED STATEMENT
OF
CHARLES W. DOWNEY

My name is Charles W. Downey, with offices at 1301½ Morrissey-Unit 4, Bloomington, IL 61701. I serve as General Chairman for the General Committee of Adjustment of the United Transportation Union (UTU) for lines of SPCSL Corp. (SPCSL), Gateway Western Railway Company (GWW), and Illinois Central Railroad Company (IC). This is an elective office which I have held since April 1987.

I commenced railroad service in 1963 with the former Gulf, Mobile & Ohio Railroad Company, and its successor carriers Illinois Central Gulf Railroad Company (IC), Chicago, Missouri & Western Railway Company (CMW), and SPCSL. I am a member of UTU Local 234, based at Bloomington, IL. I am fully familiar with the lines of the former GM&O operating between the Chicago, St. Louis, and Kansas City areas.

I was not active in this proceeding involving the Union Pacific Railroad Company (UP) proposal to acquire Southern Pacific Transportation Company (SP). However, I became aware of the settlement agreement between UP/SP and Gateway Western Railway Company (GWW), and the supporting verified statement of Richard B. Peterson. (UP/SP-204 and UP/SP-206). Although these documents are stated to have been filed on April 8, 1996, I was not able to review them until April 24, 1996. These materials were not circulated in the normal process to affected General Chairmen within UTU inasmuch as the International UTU some 10 days earlier had taken a position favoring the unification of UP and SP. Moreover, I was unable to secure counsel, and to present my thoughts for legal evaluation, until May 1, 1996. This delay was due, in part, to delay in mail service, but also because counsel advised

some research would be necessary into the background of prior Interstate Commerce Commission (ICC) proceedings involving the acquisition of these lines and allocation of responsibilities between the SP, GWW, and IC systems. Clearly, I could not file a verified statement by the April 29, 1996 deadline established for the present parties.

The UP/SP-GWW settlement agreement would wreak havoc upon the understandings and rights of persons employed by SPCSL and GWW in the Chicago-St. Louis territory of the former CMW. The ICC in its supplemental order in F.D. No. 31522, Rio Grande Industries, Inc., Et Al.--Purchase and Trackage Rights--Chicago, Missouri & Western Railway Company Line Between St. Louis, MO and Chicago, IL, dated and served October 31, 1989, passed upon the existing arrangements now sought to be revised by the UP/SP-GWW settlement agreement. I was an active participant in the implementation process arising out of the ICC's consideration of the arrangements in F.D. No. 31522.

The UP/SP-GWW settlement agreement would radically revise the present work arrangements. For example, the ICC noted in its 1989 decision that GWW will provide switching service in Granite City and south to Church and Tolson, and SPCSL will provide switching service north of Granite City, and would serve the Alton Branch. F.D. No. 31522, p. 2, n.6. This is to be altered by the UP/SP-GWW settlement agreement, to give the work to GWW. (UP/SP-204, items 3-4). Further, Class 1 railroad control of GWW presently would result in according all of the work south of Granite City to SPCSL crews, as mentioned by the ICC in its decision. F.D. No. 31522, p. 3, n.7. Yet this is to be changed by the UP/SP-GWW settlement agreement, so as to remove that condition.

I have attached the October 31, 1989 ICC decision in its F.D. No. 31522. I would emphasize the ICC noted the terms were believed to be acceptable to Atchison, Topeka and Santa Fe Railway Company (ATSF). F.D. No. 31522, p. 3.

I have reviewed the Rio Grande Industries, et al. submissions in F.D. No. 31522, in particular, the verified statement of K.R. Peifer of SP, in the carrier's October 25, 1989 RGI-16/CMW-16, together with counsel's October 26, 1989 transmittal of the amendments to asset purchase agreement.

The loss of the Alton Branch work, alone, would in my estimate eliminate three engineers, three conductors, and three helper-brakemen positions, plus two extra board positions, a total of eleven SPCSL jobs. Moreover, it is likely GWW may seek to utilize its non-union subsidiary, Gateway Eastern Railway Company, which would compound a difficult situation.

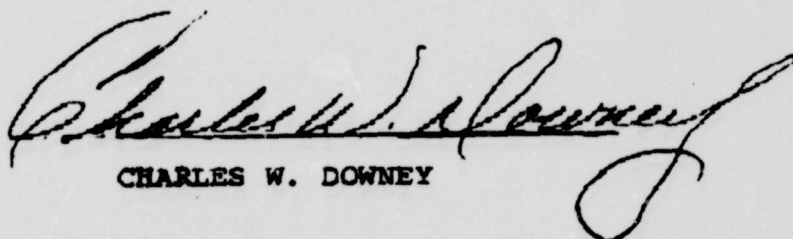
My concern is not whether GWW or SPCSL is entitled to the work. I represent employees on both carriers. Fairness to employees of these carriers requires that an implementing agreement be arrived at for the UP/SP-GWW settlement agreement prior to consummation of the UP/SP transaction, and that the settlement agreement be subject to the full reach of the New York Dock conditions.

VERIFICATION

STATE OF ILLINOIS
COUNTY OF MCLEAN

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

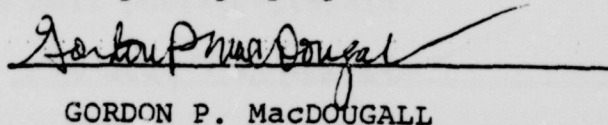
Dated at
Bloomington, IL
May 10, 1996


CHARLES W. DOWNEY

Certificate of Service

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

Washington, DC


GORDON P. MACDOUGALL

~~DATA RELEASE~~

SERVICE DATE

OCT 31 1989

EC

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 31522¹

RIO GRANDE INDUSTRIES, INC. ET AL.
-- PURCHASE AND TRACKAGE RIGHTS --
CHICAGO, MISSOURI & WESTERN RAILWAY COMPANY LINE
BETWEEN ST. LOUIS, MO AND CHICAGO, IL

Decided: October 31, 1989

Rio Grande Industries, Inc. (RGI), Southern Pacific Transportation Company (SPT), The Denver and Rio Grande Western Railroad Company (DRGW), St. Louis Southwestern Railway Company (SSW), SPCSL Corp. (SPCSL), and Daniel R. Murray (Trustee), Trustee of the Chicago, Missouri & Western Railway Company (CMW) (Applicants) have petitioned the Commission for limited reopening of the above-captioned proceeding (the Rio Grande decision);² simultaneously, Applicants request that the instant petition be dismissed on the grounds that the matters being brought to the Commission's attention are not material to its Rio Grande decision and/or have already been addressed and decided there.

Applicants seek an expedited review of the petition because they currently contemplate an accelerated closing of the sale of CMW's East St. Louis-Chicago line (the North-South line) on Tuesday, October 31, 1989, or as soon as possible thereafter.³ For reasons stated below, Applicants' motion to dismiss the petition will be granted.

Applicants bring to the Commission's attention several changes in the terms governing the proposed RGI/CMW transaction. First, SPCSCL will assume an additional \$6.5 million in CMW indebtedness to Illinois state agencies. While this assumption significantly enhances the value of SPCSCL's offer to CMW for the North-South line, it also creates additional debt for SPCSCL and raises the question of whether we need to reopen the proceeding for reconsideration in light of that fact.

Although the total debt burden being assumed by SPCSCL is increased, other countervailing modifications in the financing improve the total financial picture. We are satisfied, therefore, that the financing is now on such favorable terms that

¹ Embraces Finance Docket No. 31522 (Sub-Nos. 1-9).

² 5 I.C.C.2d 952, served September 29, 1989.

³ Applicants explain that this date is determined in part by the fact that the Bankruptcy Court's order extending the Trustee's access to cash collateral expires on October 31, and that the Bankruptcy Court has indicated it will rule on the proposed purchase by that date. The parties and the State of Illinois also favor a prompt closing in lieu of interim directed service. See Directed Service Order No. 1507, St. Louis Southwestern Railway Company -- Directed Service -- Chicago, Missouri and Western Railway Company, Debtor (Daniel R. Murray, Trustee) (not printed), served October 16, 1989.

the accrual of additional debt will not significantly adversely affect SPCSL's financial stability, if at all.⁴

Another financial change in the terms of the proposed transaction also will not significantly impact SPCSL's financial status. Applicants explain that SPCSL will not acquire CMW's trackage right to Jacksonville or supporting CMW-owned trackage, and that Jacksonville access will be acquired from the debtor's estate by the purchaser of CMW's Kansas City-East St. Louis line (the East-West line). Accordingly, SPCSL will pay \$1 million less towards the purchase price.⁵ However, because the decreased purchase price will be offset by a comparable loss in revenue from the Jacksonville trackage rights, this modification will likely have no real financial impact.

The modifications to the financial aspects of the transaction are not grounds for reopening the Rio Grande proceeding. The Rio Grande decision was founded on the statutory criteria set forth in 49 U.S.C. 11344(d). See Rio Grande, 5 I.C.C.2d at 967-68. As we explained there, the decisional criteria applicable to this transaction do not require a finding about the financial aspects of the transaction. Id. at 969, n.17. We are concerned about debt only to the extent it may cause a diminishment or elimination of competition. Id. However, we concluded in Rio Grande that our examination of the financial evidence submitted by Applicants assured us that the proposal should result in a viable operation and hence competition will not be diminished. Id. Nothing presented by Applicants suggests a different conclusion; thus, reopening on this basis is not warranted.

In another change to the proposal, the parties have agreed that switching responsibilities within the Godfrey-East St. Louis joint facility will be split.⁶ This divided switching responsibility will continue until such time as the East-West owner becomes a Class I railroad or its interest in the joint

⁴ Applicants explain that approximately \$2.5 million of the debt will, upon closing, be converted to State grants. Another \$1 million will be owed at simple interest of 3 percent which does not accrue until the beginning of the eleventh year after closing. Principal will be payable in a lump sum on the nineteenth anniversary of the purchase. The remaining \$10 million reflects a loan from the Illinois Department of Finance Authority, which has also agreed to favorable modifications of the prior repayment terms (6 percent simple interest, and payment of principal in a single lump sum upon the tenth anniversary of the closing). Applicants indicate there will be adequate cash flow to cover these obligations.

⁵ The cash price received by CMW will remain at \$22 million, however, because the State of Illinois will fund \$1 million for purposes of preserving passenger service on the line.

⁶ The owner of the East-West line will provide switching services in Granite City and south of Granite City to Church and Tolson, and SPCSL will provide switching services north of Granite City and on the Alton Branch. Each owner will have direct access for all movements into and out of the Mead plant at Godfrey. Each co-owner will provide switching on the portion of the joint facility to be served by it on the terms specified in the Rio Grande decision. 5 I.C.C.2d at 974-75.

facility comes under the control of a Class I railroad.⁷ Applicants explain that these revised terms are the result of further negotiations among the Trustee, Wertheim Schroder and Co., and RGI and that they are believed to be acceptable to The Atchison, Topeka and Santa Fe Railway Company (ATSF). Other changes to the joint facility agreement include measures which will improve the viability of the East-West line operation, upon its purchase,⁸ and which resolve problems identified in our Rio Grande decision concerning access to the Illinois Central and Burlington Northern trackage rights. See 5 I.C.C.2d at 981-984.⁹

As we suggested in Rio Grande (5 I.C.C.2d 987), the parties have amicably resolved many of the problems presented by the original proposal. The proposed changes all improve the prospect that this transaction will not adversely affect the purchase of CMW's East-West line and that switching arrangements in the joint facility area will be conducted in a nondiscriminatory manner. They are fully consistent with the conditions we imposed on our approval of the transaction. See 5 I.C.C.2d at 974-75. Therefore, there is no need to reopen the proceeding to address these concerns.

The last change contemplated by Applicants flows from the changes in the switching arrangements within the joint facility to be created between Godfrey and East St. Louis, and the decision that SPCSL will not acquire CMW's Jacksonville trackage rights or supporting CMW trackage. As a consequence, SPCSL will not hire 15 CMW train and engine service employees who work in the joint facility area or in the Jacksonville area. It is expected that these employees will remain with CMW and may eventually be employed by the successor owner of the East-West line.¹⁰ This proposed change does not require reopening the proceeding because the affected employees will receive protection from the Trustee pursuant to the modified New York Dock conditions already imposed on the transaction. See 5 I.C.C.2d at 987-89; see also Rio Grande, stay denial (not printed), served October 31, 1989.

For all the foregoing reasons, Applicants' petition raises no matters requiring reopening and their motion to dismiss will be granted.

⁷ If this should occur, switching by the East-West line owner will terminate and SPCSL will do all switching within the joint facility on the basis and terms originally approved in Rio Grande.

⁸ Although we have not received any application for approval of the sale of the East-West line, the Trustee has applied to the bankruptcy court for authority to sell the East-West line to Wertheim Schroder and Co. and ATSF.

⁹ The original agreement between the parties only transferred existing rights. Therefore, SPCSL sought our approval to acquire or expand rights not presently held by CMW. See 5 I.C.C.2d at 984-85 (discussion of Sub-Nos. 5, 6 & 7). Those rights were denied. Id. We note that there is nothing in the proposed modifications to the agreement which attempts to undermine or circumvent those denials.

¹⁰ Specifically, Applicants present that four enginemen and eight trainmen at East St. Louis, IL together with one engineman and two trainmen at Springfield (serving Jacksonville) will remain with CMW rather than being assumed by SPCSL.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The motion to dismiss the petition for reopening is granted.
2. This decision is effective on October 31, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

(SEAL)

Noreta R. McGee
Secretary

STB

FD

32760

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I

Item No. _____

Page Count 19

May # 60

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
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FACSIMILE: 202-274-2994

WILLIAM A. MULLINS

DIRECT: 202-274-2953

May 8, 1996

HAND DELIVERED

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



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

Dear Secretary Williams:

Enclosed for filing in the above-captioned case are an original and twenty copies of The Kansas City Southern Railway Company's Motion to Strike Portions of Applicants' Rebuttal and Accompanying Verified Statements (UPSP 230-234) and to Strike Portions of BN/Santa Fe's Response to Inconsistent and Responsive application; Response to Comments, Protests, Requested Conditions and Other Oppositions; and Rebuttal in Support of Related Applications to which BN/Santa Fe is a Party (BN/SF 54) ("KCS-53").

Also enclosed is a 3.5 inch Word Perfect diskette containing the text of KCS-53.

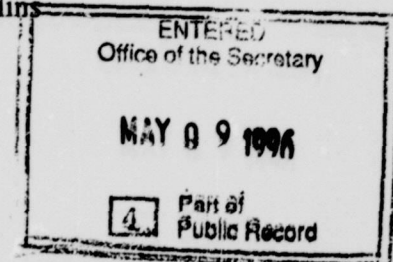
Sincerely yours,

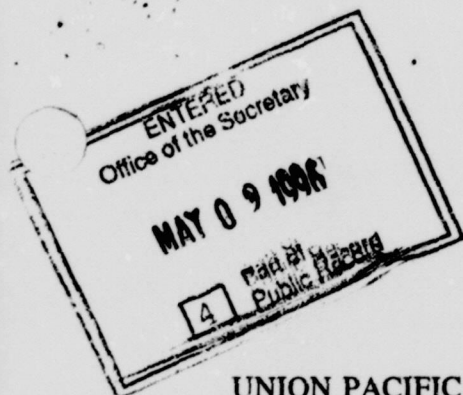
William A. Mullins

Enclosures

cc: The Honorable Jerome Nelson
All Parties of Record

(carroll)\wpdocs\molmhc\kcs\upsp\williams.reg





KCS-53

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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
MOTION TO STRIKE PORTIONS OF APPLICANTS' REBUTTAL AND
ACCOMPANYING VERIFIED STATEMENTS (UPSP 230-234) AND TO STRIKE
PORTIONS OF BN/SANTA FE'S RESPONSE TO INCONSISTENT AND RESPONSIVE
APPLICATION; RESPONSE TO COMMENTS, PROTESTS, REQUESTED CONDITIONS
AND OTHER OPPOSITIONS; AND REBUTTAL IN SUPPORT OF RELATED
APPLICATIONS TO WHICH BN/SANTA FE IS A PARTY (BN/SF 54)

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Attorneys for The Kansas City
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May 8, 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

THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
MOTION TO STRIKE PORTIONS OF APPLICANTS' REBUTTAL AND
ACCOMPANYING VERIFIED STATEMENTS (UPSP 230-234) AND TO STRIKE
PORTIONS OF BN/SANTA FE'S RESPONSE TO INCONSISTENT AND RESPONSIVE
APPLICATION; RESPONSE TO COMMENTS, PROTESTS, REQUESTED CONDITIONS
AND OTHER OPPOSITIONS; AND REBUTTAL IN SUPPORT OF RELATED
APPLICATIONS TO WHICH BN/SANTA FE IS A PARTY (BN/SF 54)

On April 29, 1996, Applicants filed their rebuttal and accompanying verified statements.¹ On that same day, BN/Santa Fe filed its Response to Inconsistent and Responsive Application; Response to Comments, Protests, Requested Conditions and other Oppositions; and Rebuttal in Support of Related Applications To Which BN/Santa Fe is a Party (BN/SF 54). The Board's rules and procedures limit the content of a party's rebuttal to "issues raised in reply statements to which they are directed." 49 C.F.R. § 1112.6. For purposes of this proceeding, this rule means that any material, issues, comments or verified

¹ Although Applicants' rebuttal is contained in Volumes 1 through 5, the rebuttal actually consists of seven Volumes due to Volume 2 being in three parts, *i.e.*, Volume 2, parts A, B, and C.

statements contained within UP/SP 230-234 and BN/SF 54 must be specifically directed to issues contained within the comments and responsive applications filed by other parties. As will be established herein, both UP/SP's and BN/SF's filings on April 29 contained numerous portions that are inappropriate at this stage of this proceeding and which therefore should be stricken.

The most extensive discussion of the criteria for testimony submitted on rebuttal is set forth in a proceeding to which both Applicants were parties, *i.e.*, *Union Pacific Corporation, et al. -- Control -- Chicago and Northwestern Transportation Co., et al.*, Docket No. 32133, 1994 ICC LEXIS 168 (September 12, 1994).² The *UP/CNW* decision further refines the Section 1112.6 criteria of material that is appropriate for rebuttal. The procedural posture of the *UP/CNW* proceeding was somewhat different than in the instant proceeding; however, the principles applied by the Commission are applicable herein. There, in response to UP's application to merge with CNW, SP and CC&P filed responsive applications, which UP opposed. SP and CC&P then filed rebuttal in support of their responsive applications. In response to SP's and CC&P's rebuttal in support of their responsive applications, UP filed a motion to strike portions of the purported rebuttal as inappropriate rebuttal testimony. In response to UP's motion, the Commission struck many verified statements in their entirety, and portions of other statements. This motion adheres to the categories of inappropriate rebuttal testimony established by the Commission in the *UP/CNW* proceeding.

² In the interest of brevity, references to this opinion will be abbreviated to "*UP/CNW*, 1994 ICC LEXIS 168 at *___."

I. PORTIONS OF APPLICANTS' REBUTTAL NARRATIVE AND
ACCOMPANYING VERIFIED STATEMENTS SHOULD BE STRICKEN

- A. Portions Of Applicants' Rebuttal Do Not Seek To Controvert Evidence Submitted By Other Parties In Their Comments Or Responsive Applications, But Rather Are An Attempt To Bolster Their Application And Contain Material That Should Have Been Submitted At That Time

In *UP/CNW*, the Commission struck the statement of CC&P's president describing it on the whole as "inappropriate rebuttal." *UP/CNW*, 1994 ICC LEXIS 168 at *7. The Commission criticized the statement for not pointing out any specific evidence to which [it] was in reply." *Id.* at *6. The Commission also struck many other statements (or portions thereof) due to their containing information that should have been in the original responsive application and therefore submitted merely as an attempt to bolster their case-in-chief. For instance, the latter portion of CC&P witness Amy's statement was stricken for this reason (*Id.* at *13), and CC&P witness Voss' testimony was also deemed inappropriate for this reason. *Id.* at *18. The testimony of numerous SP witnesses also was stricken because it did not controvert evidence opposing SP's responsive application. The entire statements of Messrs. Ordoover and Baumol were stricken, as were the statements of Barclay/Garell and Gilason, all of which were described as not rebutting evidence submitted in opposition to SP's responsive application. *Id.* at *20-22. Except for one section, the entire statement of witness Baumel was stricken for not containing facts that controverted the opposition evidence (*Id.* at 25-26), as were three parts of witness Nelson's statement (*Id.* at 27-28). Witness Bosanko's testimony suffered the same fate and for the same reason (*Id.* at 28-29), as did section 5 of witness Gehring's testimony (*Id.* at 39-40). Witness Gehring's testimony, was stricken because it not only provided no evidence in rebuttal to opposition testimony, but

it was described as an expansion of arguments already made by SP. *Id.* at *43-44. SP witness Harris and ten witnesses on service discrimination also had testimony stricken for this very reason. On November 17, 1994, the ICC affirmed the prior order in UP/CNW and again reiterated that, "much of the evidence . . . could and should have been submitted . . . in support of its responsive application." *UP/CNW*, 1994 ICC LEXIS 250 at *23.

Similarly, Applicants herein submitted the rebuttal verified statement of Bernard J. La Londe. The testimony in pages 1 through 11 of Mr. La Londe's verified statement adds nothing, it rebuts nothing, and it contains material that should have been contained in their original Application. Particular attention should be directed to pages 7 through 9, where witness La Londe does nothing more than quote from shipper letters that were contained in UP/SP-25. Sections 1 and 2 may clearly be described as an attempt to bolster Applicants' case-in-chief and contained material that should have been submitted at that time. Further, Section III (c) on pages 19 and 20 and Exhibit 5 should be stricken as inappropriate for rebuttal. By the witness' own admission, KCS did not use this survey in its comments nor did it submit any shipper letters in support of its position. (p. 20, lines 16 through 21) What then would Applicants contend this testimony rebuts? Indeed, nothing in Mr. La Londe's rebuttal statement rebuts any criticism or attack of his original statement because no other party's comments were directed to his original testimony. This "rebuttal" statement is therefore but a second attempt to make points he wanted to make in his original statement submitted with the Application.

The statement of Michael E. Uremovich should be stricken in its entirety. While Mr. Uremovich has impressive credentials and is certainly qualified to testify regarding his four

years at SP where he was heavily involved in the attempts to improve the financial and market performance of SP (pp. 2-3), even he does not describe his testimony as being in response to any testimony proffered in opposition to the Application. This testimony, in its entirety, should have appeared in the original application, and is nothing more than an attempt by Applicants to bolster their Application. Like the statement of CC&P's president in the *UP/CNW* proceeding, Mr. Uremovich's testimony "does not point out any specific evidence to which [it is] in reply." *Id.* at *6. Rebuttal evidence from new witnesses should directly and specifically controvert statements made in opposition to the Application. *Id.* at *71. Mr. Uremovich's statement is therefore inappropriate for rebuttal and should be stricken in its entirety.

B. Portions Of Applicants' Rebuttal Should Be Stricken As Relating To Theories Not Previously Advocated By Applicants Or Because They Introduce New Studies, Which Are Inappropriate For Rebuttal Testimony

1. References to the CMA Settlement Agreement Should Be Stricken, and the Settlement Agreement Itself Disregarded

On April 18, 1996, Applicants entered into a settlement agreement with the Chemical Manufacturers Association ("CMA"), the effect of which was massive amendments to the previous agreement entered into between Applicants and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BN/Santa Fe"). The original agreement between Applicants and BN/Santa Fe formed the cornerstone of the original Application. As set forth in KCS's previous motion to require amendment of the Application to enlighten the Board and the parties as to the true effects of the CMA Agreement (KCS-49), the significant changes to the original BN/Santa Fe Agreement warrant an amendment of the Application itself. Presentation of the CMA Settlement Agreement at

this juncture as a basis for the Board's consideration of the Application is unwarranted. As argued by Applicant UP in its motion to strike CCP and SP rebuttal testimony in the *UP/CNW* proceeding (*UP/CNW-126*), a party is not entitled to insert entirely new factual issues into the case on rebuttal. (*UP/CNW-126*, p.15) Similarly, Applicants herein "should not be permitted to introduce entirely new subjects and disputes into what is supposed to be a rebuttal filing." *Id.* The CMA agreement is analogous to part 6 of CC&P witness Trout's statement in the *UP/CNW* proceeding in that it relates to a theory not previously advocated by Applicants. Although Applicants will likely repeat their favorite refrain that KCS is only attempting to delay or somehow divert the Board's attention from relevant matters, that refrain has become stale and should be ignored. Applicants themselves have repeatedly emphasized the financial impact of this merger and the scope of the effect on rail transportation in this country. What the eleventh hour CMA agreement purports to achieve is a "fix" to the issues raised by the many parties opposing the merger. As an initial matter, it should be noted that the CMA agreement does not even purport to "fix" all of the issues raised by the party whose name is affixed thereto, *i.e.*, most of the concerns raised even by CMA and its members are not even addressed.³

Further, the purported "fixes" are not supported by operating plans, financial analyses, environmental analyses,⁴ labor impacts, or the myriad of other analyses required by the Board's rules, nor have Applicants amended their Application to include the effects of

³ See, SPI-16; CR-37; and DOW-19.

⁴ See Comments of The Kansas City Southern Railway Company on the Environmental Assessment (KCS-50).

the CMA Agreement. For instance, the CMA Agreement would have significant impact upon the Operating Plan submitted by Applicants.⁵ Witness Saltzman's rebuttal verified statement acknowledges the importance of the BN/Santa Fe operations to formulation of Applicants' Operating Plan. (pp. 27-28) It thus follows that significant changes to the original BN/Santa Fe Agreement would result in significant changes to the Operating Plan. Since Applicants have not submitted a revised Operating Plan to reflect the changes occasioned by the CMA Agreement and the Board must rely on an Operating Plan that does not reflect these revisions, the CMA Agreement should not be considered at all in the Board's deliberations. Accordingly, any attempt by Applicants to portray the CMA agreement as being in "rebuttal" to the comments and responsive applications is quite simply a false description, and it should therefore be disregarded when the Board is attempting to determine whether this merger is in the public interest.⁶

Similarly, like the analysis submitted in part 4 of witness Gray's testimony in *UP/CNW*, the parties herein will have no opportunity to analyze and rebut the purported benefits of the CMA Settlement Agreement. *Id.* at 39-40. Accordingly, the following portions of Applicants' rebuttal dealing with the CMA Agreement should be stricken:

- a. Volume 1 - Narrative (UP/SP-230);
 - (1) pp. 12-21

⁵ It should be noted, however, that Applicants and BN/Santa Fe are still negotiating the agreement to implement the terms of the settlement, and that no plan for implementation has been agreed upon. *See* Rebuttal Verified Statement of Carl Ice, p. 5.

⁶ As pointed out by Conrail (CR-37), the CMA Agreement is a request for condition that was not filed on March 29, 1996, as required by Decision No. 6. It should therefore be stricken as untimely filed.

- (2) p. 27, third sentence
- (3) p. 61, lines 5-14
- (4) pp. 93-99 (portions of section 5(B)(1)(a) dealing with CMA Agreement, *e.g.*, extended trackage to St. Louis)
- (5) p. 138, lines 6-13
- (6) p. 142, lines 11-17
- (7) p. 150, lines 13 through p. 152, line 17
- (8) p. 155, line 10 through p. 163
- (9) p. 168, lines 11-14
- (10) p. 215, lines 6-10
- (11) p. 269, lines 16-18
- (12) p. 270, lines 11-16
- (13) p. 292, line 22 through p. 294, line 2
- (14) p. 294, lines 3-14
- (15) Settlement Agreement following page 323

b. Volume 2, Part A (UP/SP-231)

- (1) Rebuttal Verified Statement of Richard K. Davidson, pp. 3-5
- (2) Rebuttal Verified Statement of Jerry R. Davis, p. 23
- (3) Rebuttal Verified Statement of Richard J. Barber, pp. 59-65

c. Volume 2, Part B (UP/SP-231)

- (1) Rebuttal Verified Statement of Richard B. Peterson, pp. 144 and 160
- (2) Rebuttal Verified Statement of John H. Rebensdorf, pp. 5-11 and Exhibit 1

d. Volume 3

- (1) Rebuttal Verified Statement of Bradley King, pp. 5-6, 7-9 and Exhibit 1

2. New Studies Are Not Appropriate Rebuttal Testimony

It is well settled that due process does not permit a party to submit new studies on rebuttal. *Arizona Electric Power Cooperative, Inc. v. Atchison, Topeka & Santa Fe*, Docket No. 37437, May 22, 1987, pp. 2-3. See also *Pittsburgh & Lake Erie R.R. v. I.C.C.*, 796 F.2d 1534, 1543 (D.C. Cir. 1986) (verified statement containing new study based on new method of analysis was properly stricken). As Applicant UP pointed out to the Commission in its motion to strike in the *UP/CNW* proceeding "to receive these statements now, under the guise of rebuttal, would make a mockery of the procedure established by the Commission for the conduct of this case." *UP/CNW*, Finance Docket No. 32133 (*UP/CNW-126*), p. 30.

KCS therefore moves that the following new studies be stricken.

- a. Rebuttal Verified Statement of R. Douglass Bernheim, pp. 13-21 and Tables 1 and 2 following p. 30:

For the first time Mr. Bernheim submits his analysis of UP traffic for 1994. Mr. Bernheim admits that this is a new study based upon the 1994 UP traffic tapes, which contain records for all of the loaded movements by UP for 1994 (p. 14). This study clearly could

have been done earlier in the proceeding as part of the initial application. Further, even though Mr. Bernheim's deposition has been scheduled, and the parties will have the opportunity to rely on that deposition testimony in their briefs, parties will not have an opportunity to submit verified statements or any evidence to point out any flaws that may surface in the deposition testimony. Accordingly, this study should be stricken.

b. Rebuttal Verified Statement of John H. Rebensdorf:

Appendix A to Mr. Rebensdorf's statement is a study compiled from the Joint Facility Agreements that were contained in his workpapers and that were omitted from his original statement. On its face, this Appendix A is untimely and comes as too little too late. It does not rebut evidence submitted in opposition to the Application because the evidence was in Mr. Rebensdorf's possession when the Application and his original Verified Statement were prepared. Appendix A to Mr. Rebensdorf's statement therefore should be stricken.

c. Rebuttal Verified Statement of Richard B. Peterson, pages 88-93:

Mr. Peterson conducted a new study involving UP'S long-haul automotive business "to supplement the rate comparisons in the application." (p. 88, lines 19-22). Like the Bernheim study, this analysis was based upon data that was in UP's possession when the Application was filed. It was not based on data obtained from other parties in the discovery process, and, in fact, no other party submitted any analysis of UP automobile shipments. This is clearly a new study that rebuts nothing submitted by any other party, and, as Mr. Peterson acknowledges, merely supplements the Application.

C. Matters As To Which Parties Were Denied Discovery By Applicants Should Be Stricken

As strenuously argued by UP in the *UP/CNW* proceeding and as confirmed by the Commission in that proceeding, a party should not be able to introduce on rebuttal matters as to which that party denied discovery in the discovery period. Thus, portions of Applicants' references to build-ins and build-outs should be stricken. This information is contained in witness Barber's statement at pages 22-23; witness Gehring's statement at pages 2 and 14 through 23; and witness Peterson's testimony at pages 51-53 and 58-64. In response to KCS interrogatory nos. 27 and 28 relating to build-in and build-outs that Applicants had considered, Applicants identified only the projects that they viewed as being "of any substance." (UP/SP-33, pp. 25-26). Applicants vigorously resisted providing further discovery on this issue, and Judge Nelson sustained that objection.⁷ In Mr. Peterson's deposition, however, he referred to data gathered by UP on possible build-in/build-out situations in connection with the merger and to an earlier "study" of possible build-ins. Based on Mr. Peterson's testimony, it did not appear that production of the data and study would be burdensome. Therefore, by letter dated February 8, 1996, KCS requested the study and the data. A second request was made by letter dated February 15, 1996. On February 20, 1996, KCS brought the request before Judge Nelson. Prior to Judge Nelson's ruling, Applicants agreed to produce the documents. When the documents had not been produced by Friday, February 23, 1996, KCS requested that the documents be sent that day so that the documents could be used in Mr. Gray's deposition on Monday, February 26,

⁷ See, Transcript of December 20, 1995 Discovery Conference at pp. 307-311.

1996. That request was ignored. Another request was made by letter dated February 28, 1996. On March 8, 1996, one month after the first request, and over two weeks after Applicants committed to provide the documents, KCS received a copy of the "study." Applicants had committed to provide both the study and the data on February 20, 1996, two weeks after KCS's request and presumably after they had looked for the "data" referred to by Mr. Peterson. In the March 8, 1996 transmittal letter, however, Applicants counsel stated that, "no body of written 'data gathered' by Mr. Peterson" existed and that any notes Mr. Peterson made in the process of gathering the data, "would have been produced as part of Mr. Peterson's workpapers, which are located in Applicants' document depository," with no reference to the location of this data within the close to 7,000 pages of Mr. Peterson's workpapers produced. The above-cited testimony by witnesses Barber, Gehring and Peterson was not reflected in the documents produced by Applicants, and it therefore should be stricken.

II. PORTIONS OF BN/SANTA FE'S FILING AND ACCOMPANYING VERIFIED STATEMENTS (BN/SF 54) THAT RELATE TO THE CMA AGREEMENT SHOULD BE STRICKEN

BN/Santa Fe, who is a party to both Agreements on which Applicants so heavily rely, has submitted no operating plan or documentation relating to the environmental impact of the trackage rights that it will gain as a result of the settlement agreements. In its April 29 filing, however, BN/Santa Fe also relies heavily on the CMA Settlement Agreement. For the same reasons set forth in Section I(B)(1) above, BN/Santa Fe's testimony and comments relating to the CMA Agreement should be stricken.

A. Comments

1. p. 2, paragraph 3
2. p. 4, lines 16 through 19
3. p. 7, lines 15 through 18
4. p. 9, lines 16 through 21
5. p. 13, line 21 through p. 14, line 11 (including fn 4)
6. p. 20, line 18 through p. 21, line 2

B. Verified Statement of Carl R. Ice

1. p. 1, references to CMA Agreement in lines 10 through 19
2. p. 2 through p. 6, line 16
3. p. 8, lines 13 through 19
4. p. 9, lines 7 through 8
5. p. 9, lines 11 through 13
6. p. 12, lines 6 and 7

C. Verified Statement of Matthew K. Rose

1. p. 1, lines 17 through 18
2. p. 2, lines 4 through 8
3. p. 2, lines 9 through 13 (to extent CMA Agreement factored in calculations)
4. p. 3, lines 8 through 16
5. p. 3, lines 19 through 21 (to extent CMA Agreement factored in calculations)

6. p. 4, lines 6 through 8 (to extent CMA Agreement factored in calculations)
7. p. 4, lines 12 through 15 (to extent CMA Agreement factored in calculations)
8. p. 4, lines 15 through 18 (to extent routes in CMA Agreement are included)
9. p. 5, lines 2 through 6

D. Verified Statement of Frank D. Clifton

1. p. 1, fn 1 (references to CMA Agreement)
2. p. 4, lines 21 through 22
3. p. 5, lines 1 through 2
4. p. 5, lines 20 through 22
5. p. 6, lines 1 through 5
6. p. 6, lines 14 through 17
7. p. 7, lines 4 through 7
8. p. 7, lines 10 through 12
9. p. 9, lines 5 through 18
10. p. 10, lines 16 through 20
11. p. 11, lines 7 through 9

E. Second Verified Statement of Neal D. Owen

1. p. 1, fn 1 (references to CMA Agreement)
2. p. 2, lines 5 through 7

3. p. 4, fn 4
4. p. 19, line 12 through p. 22
5. p. 24 (all)

F. Verified Statement of Joseph P. Kalt

1. p. 3, fn 1 (references to CMA Agreement)
2. p. 6, lines 16 through 21
3. p. 8, line 21 through p. 9, line 12
4. p. 9, lines 15 through p. 10, line 3
5. p. 51, line 16 through p. 53, line 11
6. p. 54, lines 9 through 15
7. p. 59, lines 17 through 19 (to the extent CMA Agreement factored in)

G. Verified Statement of Christopher Kent and Jon Klick

1. p. 19, line 11 through p. 21, line 1

III. CONCLUSION

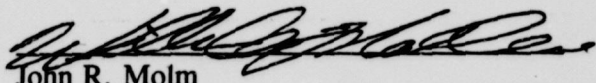
Rebuttal pleadings and testimony are designed to address matters raised by opposing parties in response to a party's original filing and not to advance new arguments. The above-cited testimony and arguments of witnesses La Londe and Uremovich do not seek to controvert evidence submitted by parties in response to the Application, but rather are an attempt to bolster the Application with material that should have been submitted at that time. Further, Messrs. Bernheim, Rebensdorf and Peterson have submitted new studies that could have been conducted at the time the Application was filed. New studies based on new methods of analysis are not proper rebuttal material and should be stricken. *Pittsburgh &*

Lake Erie R.r. v. I.C.C., 796 F.2d 1534, 1543 (D.C. Cir. 1986). This testimony therefore should be stricken. Also new to this rebuttal is the massive amount of testimony and argument that relies on the CMA Settlement Agreement. This is an entirely new agreement that is not supported by the analyses required for material contained in a merger application, and it should be stricken. Finally, Applicants permitted only limited discovery related to potential build-ins and build-outs, and testimony related to those instances where discovery was not provided should be stricken.

This 8th day of May, 1996.

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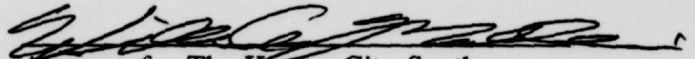
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Attorneys for The Kansas City
Southern Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Motion to Strike Portions of Applicants' Rebuttal (UPSP 230-234) and Accompanying Verified Statements and to Strike Portions of BN/Santa Fe's Response to Inconsistent and Responsive Application; Response to Comments, Protests, Requested Conditions and other Oppositions; and Rebuttal in Support of Related Applications to Which BN/Santa Fe is a Party (BN/SF 54)" was served this 8th day of May, 1996, by hand delivery to counsel for Applicants and by hand delivering or depositing a copy in the United States mail in a properly addressed envelope with adequate postage thereon addressed to each other party of record.


Attorney for The Kansas City Southern
Railway Company

(carrolbh)\wpdocs\molmhc\kcs\upsp\kcs53

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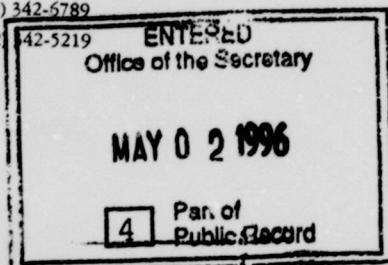
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May 12

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April 29, 1996



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Interstate Commerce Commission Building
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

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

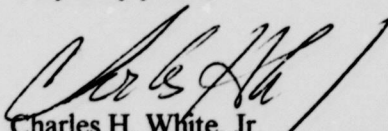
Dear Mr. Williams:

Enclosed for filing please find an original and twenty copies of Motion to Compel Further Explanation or Correction Re Western Shippers' Coalition Position on Montana Rail Link Inc.'s Inconsistent Application.

I have served counsel for applicants by hand, and have mailed true copies of the foregoing to counsel for parties of record by first-class mail, postage prepaid.

Will you kindly stamp and return the enclosed copy of this service letter when the documents are filed.

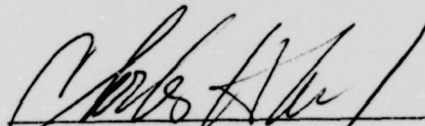
Very truly yours,


Charles H. White, Jr.
Counsel for Utah Railway Company

Enclosures

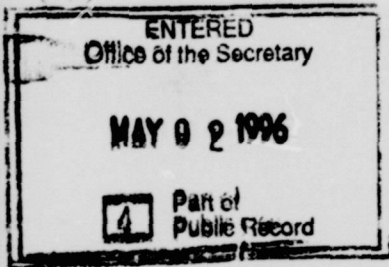
CERTIFICATE OF SERVICE

I, Charles H. White, Jr. certify that on this the 29th day of April, 1996 I served true copies of Motion to Compel Further Explanation or Correction Re Western Shippers' Coalition Position on Montana Rail Link Inc.'s Inconsistent Application on counsel for applicants by hand delivery, and on counsel for parties of record by first-class mail, postage prepaid.

A handwritten signature in dark ink, appearing to read 'Charles H. White, Jr.', written over a horizontal line.

Charles H. White, Jr.

Counsel for Utah Railway Company



UTAH -4

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 CORPORATION AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

MOTION TO COMPEL FURTHER
EXPLANATION OR CORRECTION RE
WESTERN SHIPPERS' COALITION
POSITION ON MONTANA RAIL LINK INC'S
INCONSISTENT APPLICATION

ORIGINAL

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April 29, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORP., et al. --)	
CONTROL AND MERGER --)	Finance Docket
SOUTHERN PACIFIC RAIL CORP.,)	No. 32760
et al.)	

MOTION TO COMPEL FURTHER
EXPLANATION OR CORRECTION RE
WESTERN SHIPPERS' COALITION
POSITION ON MONTANA RAIL LINK INC'S
INCONSISTENT APPLICATION

On March 29, 1996, a pleading entitled "Joint Shippers' Statement in Opposition to Merger Unless Conditioned As Proposed In Responsive Application of Montana Rail Link, Inc." was filed before the Board. The first listed shipper group is the Western Shippers' Coalition ("WSC" or "Coalition"). A list of the Coalition's purported membership is attached as Appendix A to the Joint Shippers' Statement and to this pleading. Footnote 1, p. 1, of the Shippers' Statement states that, "In addition to participating in this Joint Statement, some participants are filing individual comments on the proposed merger." Serious questions are raised by the shippers' pleading as to whether these individual members of WSC are "participating" in the Statement. Indeed, even the question of "membership" in WSC itself is raised by the list of parties purporting to support Montana Rail Link's proposal.

For instance, the President of Moroni Feed Company wrote a letter unequivocally and unconditionally supporting the UP/SP merger and BNSF settlement agreement on March 18,

1996, and that letter was submitted to the Board on March 29, 1996 as part of a pleading entitled "Comments of Governors, Shippers and Others in Support of the Primary Application." UP/SP-195.

More specifically, the Intermountain Power Agency ("IPA") -- an important consortium of municipalities, rural electric cooperatives, and Utah Power & Light/Pacific Corp. -- filed separate comments supporting the merger in light of the Utah Railway Company's ("UTAH") settlement agreement. As IPA stated, if " the rights granted to the Utah thereunder be adversely affected by a grant of one or more of the proposed inconsistent or responsive applications," it reserves the right to change its overall support position. (Appendix B). IPA's position supporting the UTAH settlement agreement flatly contradicts its listing among the WSC membership which connotes purported support for Montana Rail Link's inconsistent application.

These clear examples have raised serious doubt as to the level of support for MRL within WSC. Upon information and belief we would also assert the following:

- ECDC Laidlaw Environmental: has negotiated a settlement agreement with UP whereby Utah Railway can participate in movements of waste materials to a site in Utah.
- Geneva Steel: has negotiated a settlement agreement with UP/SP
- PacifiCorp: reportedly was never a member of WSC
- Utah Mining Association: upon information and belief we allege that the executive board of the Association was never asked to take a position on the issue of support for MRL's inconsistent application.

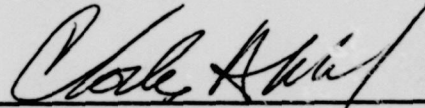
We submit the above at least raises the issue of fairness in listing the full membership of WSC -- if, indeed, it is that -- with the inference that they all support MRL's inconsistent intrusion into the Central Corridor. Moreover, the opening footnote that WSC's members may have filed individual comments while "additional[ly] participating in this Joint Statement" is disingenuous at best. We submit that the commentators and settlement agreement negotiators supporting the UP/SP merger among the WSC list will be surprised to learn that they are now simultaneously "participating" in its opposition.

The MRL/WSC tactic is particularly unfortunate in what has largely become a "body count" approach to evidentiary submissions. Not only does it misserve the Board in its balancing role, it also approaches the borders of propriety.

Counsel for MRL and WSC rightly enjoy outstanding reputations at this bar. Perhaps they were unaware of the substantial *and growing* support for the merger among the parties listed as members of WSC. In that light we respectfully suggest that counsel be given the opportunity to canvass each purported member of WSC and report on its individual position *vis-a-vis* the Montana Rail Link inconsistent application. Alternatively, the director of WSC could supply a statement detailing both its membership and the results of a vote authorizing the MRL position.

The Board, however, should exercise extreme caution in assuming the listed entities in the WSC appendix as being uniformly supportive of the MRL inconsistent application.

Respectfully submitted,



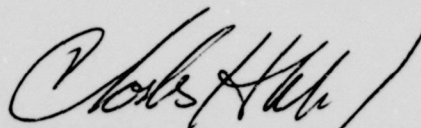
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Counsel for Utah Railway Company

April 29, 1996

CERTIFICATE OF SERVICE

I, Charles H. White, Jr., certify that on this the 29th day of April, 1996, I served true copies of the foregoing MOTION TO COMPEL FURTHER EXPLANATION OR CORRECTION RE WESTERN SHIPPERS' COALITION POSITION ON MONTANA RAIL LINK INC.'S INCONSISTENT APPLICATION on counsel for Applicants, for the Western Shippers Coalition, and on counsel for Montana Rail Link by first-class mail, postage prepaid.



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Counsel for Utah Railway Company

WESTERN SHIPPERS' COALITION

COMPANY

AKZO Nobel Salt
Andalex Resources Inc.
ARCO Coal Company
Ash Grove Cement
Circle Four Farms
Coastal Coal
Colorado Mining Assoc.
Continental Lime
C.W. Mining Company (a/k/a Co-Op Mining Company)
Eagle Picher Minerals, Inc.
ECDC Laidlaw Environmental
Farmland Industries, Inc.
Geneva Steel
Intermountain Power Project
Interwest Mining
Kennecott Utah Copper
Magma Copper
Metropolitan Stevedore Company
Moab Salt
Moroni Feed Company
PacifiCorp
Public Service Company of Colorado
Savage Industries, Inc.
Sierra Pacific Power
Utah Mining Association
Western Coal Transportation Association
White Oak Mining (a/k/a Kiscaden Brothers)

BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.

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

**COMMENTS OF THE
INTERMOUNTAIN POWER AGENCY**

The Intermountain Power Agency ("IPA"), by its undersigned counsel, hereby submits its comments on the proposed merger application filed by the Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company ("UP") and the Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company (the "SP") (collectively referred to herein as the "Applicants") in this docket on November 30, 1995.

IPA is a political subdivision of the State of Utah, with thirty-six members located primarily in Utah and California.¹ In the early 1980's, IPA was created

¹ The members of IPA are: (1) six municipal purchasers from California, including the Los Angeles Department of Water and Power (the operating agent for the Intermountain Power Project); (2) twenty-three municipal purchasers from Utah; (3) six rural electric cooperative purchasers; and (4) Utah Power & Light/Pacific Corp., which is an investor owned purchaser.

to build and operate a power generating plant located at Lynndyl, Utah. IPA required coal to operate the plant and entered into agreements with various coal suppliers in Utah to satisfy that need. IPA also entered into agreements with three railroad carriers to transport the coal to Lynndyl: (1) with the Denver & Rio Grande Western Railroad Company ("DRGW") (which was acquired subsequently by the SP) to transport coal from sources served by DRGW to Provo, Utah; (2) with the Utah Railway Company ("Utah") to transport coal from sources served by Utah to Provo, Utah; and (3) with UP, which connected with DRGW and Utah at Provo, to transport the coal from Provo to the power generating plant at Lynndyl.

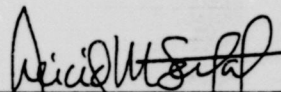
The proposed UP-SP merger will directly affect the transportation of coal under the agreements with UP, DRGW and Utah. Subsequent to the merger, UP will have a distinct advantage over the Utah Railway because it will be able to provide single line service directly from the coal sources it serves to Lynndyl. As a result, UP would have the incentive to price transportation services from coal sources served directly by it -- a longer haul -- more favorably than transportation from coal sources served by the Utah and interchanged with UP at Provo. Moreover, the strength and market power of the combined UP-SP could seriously jeopardize the competitive balance in the area.

IPA is aware of the settlement agreement executed by Utah and the Applicants on January 17, 1996 and filed with this Board on February 2, 1996. The agreement appears to resolve some of the competitive concerns that IPA has relating to the proposed merger. Under the agreement, Utah will have access to additional sources of coal not heretofore served, although not as many as the DRGW/SP currently has access to. This additional access will reduce some,

though not all, of the adverse competitive impacts that will likely result from the proposed merger. Because of this agreement, IPA will not make any specific objections to the merger proceeding at this time. However, should: (1) the settlement agreement be challenged during the comment process; (2) the rights granted to the Utah thereunder be adversely affected by a grant of one or more of the proposed inconsistent or responsive applications; or (3) the settlement agreement fail to ameliorate competitive concerns as anticipated, IPA reserves the right to file rebuttal comments on April 29, 1996 or return to the Board at a later date and reopen the merger proceeding to request conditions if and when it determines that impact of the merger transaction is adversely impacting competition for transportation services in the area.

Dated: March 29, 1996

Respectfully submitted,



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Alicia M. Serfaty

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Counsel for Intermountain
Power Agency

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 1996, a copy of the foregoing Comments Of The Intermountain Power Agency (IPA-2) was served by first-class U.S. mail, postage prepaid upon all parties of record in this proceeding.

I further certify that two copies of the aforementioned pleading were served by Federal Express, unless otherwise indicated, upon the following:

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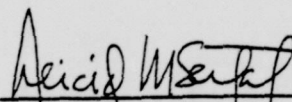
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I also certify that three copies of the aforementioned pleading were served by hand upon the following:

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STB

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Office of the Secretary

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UP/SP-220

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' FIFTEENTH SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

April 18, 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' FIFTEENTH SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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

Responses, including all responsive documents,
should be served as soon as possible, and in no event later
than 5:00 p.m. on the sixth calendar day from the date of
service hereof (April 24, 1996) (see March 8 rulings,
Tr. 2061). According to Judge Nelson, claims of undue burden
must "be detailed as to time, money, physical limitations,
geography, or any other factors making the alleged burden"
(*id.*, Tr. 2061), and you must bring documents for which claims
of irrelevance or privilege are made to a hearing to be set at
a later date, for review by the Administrative Law Judge and
immediate production. DOJ 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. "DOJ" means the United States Department of Justice.

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

IX. "Document" means any writing or other compilation of information, whether printed, typed,

handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda, contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes 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 DOJ and documents in the possession, custody or control of consultants or others who have assisted DOJ in connection with this proceeding.

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

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

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

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

XII. "MPRR" means Missouri Pacific Railroad Company.

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

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

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

XVI. "SPCSL" means SPCSL Corp.

XVII. "SPR" means Southern Pacific Rail Corporation.

XVIII. "SPT" means Southern Pacific Transportation Company.

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

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

XXI. "Southern Pacific" means SPR and SP.

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

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

XXIV. "UPC" means Union Pacific Corporation.

XXV. "UPRR" means Union Pacific Railroad Company.

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

XXVII. "Union Pacific" means UP and UPC.

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

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

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

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

XXXII. References to railroads, shippers, consultants or companies (including DOJ) 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 the "over 40 shippers or associations of shippers" referred to in DOJ-8 at p. 3 of the Verified Statement of Dr. W. Robert Majure ("Dr. Majure") to whom Dr. Majure "spoke directly" (DOJ-8, Majure, p. 3) regarding the UP/SP merger.

2. Identify the "over 300 additional shippers ... who were interviewed under [Dr. Majure's] direction." (DOJ-8, Majure, p. 3.)

3. With respect to Dr. Majure's workpapers, identify the document numbers that correspond to all of Dr. Majure's notes from his interviews "with over 40 shippers or associations of shippers." (DOJ-8, Majure, p. 3.)

4. With respect to Dr. Majure's workpapers, identify separately by shipper the document numbers of Dr. Majure's notes relating to the "over 300 additional shippers ... who were interviewed under [his] direction." (DOJ-8, Majure, p. 3.)

5. With respect to Dr. Majure's notes from interviews with the "over 40 shippers or associations of shippers" with whom he "spoke directly" (DOJ-8, Majure, p. 3), state the following:

- (a) which of the "over 40 shippers or associations of shippers" (DOJ-8, Majure,

- p. 3) they relate to, separately by shipper;
- (b) which notes were taken during telephone interviews;
- (c) which notes were taken during face-to-face interviews; and
- (d) whether the notes were taken contemporaneously.

6. Describe how the "over 40 shippers or associations of shippers" with whom Dr. Majure "spoke directly" were selected. (DOJ-8, Majure, p. 3.) Include in your description any sampling process or selection criteria that were utilized.

7. Describe how the "over 300 additional shippers . . . who were interviewed under [Dr. Majure's] direction" were selected. (DOJ-8, Majure, p. 3.) Include in your description any sampling process or selection criteria that were utilized.

8. For each of the "over 300 additional shippers . . . who were interviewed under [Dr. Majure's] direction," (DOJ-8, Majure, p. 3), specify the following:

- (a) which shippers were interviewed by telephone;
- (b) which shippers were interviewed face-to-face; and

- (c) how the interviews were conducted, including but not limited to:
 - (1) whether a standard interview form was used;
 - (2) whether all interviewers read identical questions to each shipper interviewed;
 - (3) whether the interviewers recorded, verbatim, only what the shipper said; and
 - (4) whether the interviewers discussed the UP/SP merger with the shipper beyond what was recorded on the interview form.

9. Specify the background (e.g., education, age, years of employment with DOJ) of each individual who conducted "interviews with over 300 additional shippers . . . under [Dr. Majure's] direction." (DOJ-8, Majure, p. 3.)

10. Specify whether any of the interviews with the "over 40 shippers or associations of shippers" with whom Dr. Majure "spoke directly" (DOJ-8, Majure, p. 3) were terminated, either by Dr. Majure or the shipper, prior to completion of the interview. For any such interviews, identify the shipper that was the subject of the interview and state specifically the reason(s) the interview was terminated.

11. Specify whether any of the interviews with the "over 300 additional shippers . . . who were interviewed under [Dr. Majure's] direction" (DOJ-8, Majure, p. 3) were terminated, either by the interviewer or the shipper, prior to completion of the interview. For any such interviews, identify the shipper that was the subject of the interview and state specifically the reason(s) the interview was terminated.

12. Specify whether any of the interviews with the "over 40 shippers or associations of shippers" with whom Dr. Majure "spoke directly" (DOJ-8, Majure, p. 3) did not result in completion of an interview form. For any such interviews, identify the shipper that was the subject of the interview.

13. Specify whether any of the interviews with the "over 300 additional shippers . . . who were interviewed under [Dr. Majure's] direction" (DOJ-8, Majure, p. 3) did not result in completion of an interview form. For any such interviews, identify the shipper that was the subject of the interview.

14. Identify any shippers that declined to be interviewed.

15. State whether any recordings were made of interviews with the "over 40 shippers or associations of shippers" with whom Dr. Majure "spoke directly" or with the "over 300 additional shippers . . . who were interviewed under [Dr. Majure's] direction." (DOJ-8, Majure, p. 3.)

16. State whether there are any records of the titles or responsibilities of the "over 40 shippers or associations of shippers" with whom Dr. Majure "spoke directly" or the "over 300 additional shippers . . . who were interviewed under [Dr. Majure's] direction." (DOJ-8, Majure, p. 3.)

DOCUMENT REQUESTS

1. Produce all documents that have not already been provided in Dr. Majure's workpapers relating to the methodology and conduct of interviews with the "over 40 shippers or associations of shippers" with whom Dr. Majure "spoke directly" or the "over 300 additional shippers . . . who were interviewed under [Dr. Majure's] direction," (DOJ-8, Majure, p. 3), including but not limited to:

- (a) instructions to the interviewers;
- (b) notes or records of the interviews; and
- (c) documents relating to the selection of shippers to be interviewed.

2. Produce all records of the titles or responsibilities of the "over 40 shippers or associations of shippers" with whom Dr. Majure "spoke directly" or the "over 300 additional shippers . . . who were interviewed under [Dr. Majure's] direction." (DOJ-8, Majure, p. 3.)

Respectfully submitted,

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Railroad Company and Missouri
Pacific Railroad Company

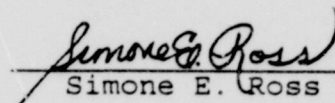
April 18, 1996

CERTIFICATE OF SERVICE

I, Simone E. Ross, certify that, on this 18th day of April, 1996, I caused 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
Suite 500
Department of Justice
Washington, D.C. 20530

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



Simone E. Ross

STB

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32760

4-12-96

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81344 I

HARKINS CUNNINGHAM

ATTORNEYS AT LAW

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1800 ONE COMMERCE SQUARE

2005 MARKET STREET

PHILADELPHIA, PA 19103-7042

215 851-6700

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April 12, 1996

HAND DELIVERED

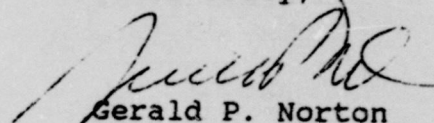
Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W., Room 1324
Washington, D.C. 20423

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

Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding
are an original and 20 copies of a document designated as UP/SP-
213, Applicants' Ninth Set of Discovery Requests.

Yours truly,


Gerald P. Norton

cc: The Honorable Jerome Nelson
Restricted Service List

ENTERED
Office of the Secretary

APR 17 1996

5 Part of
Public Record



BEFORE THE
SURFACE TRANSPORTATION BOARD

UP/SP-213

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' NINTH SET OF DISCOVERY REQUESTS

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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
Western Railroad Company

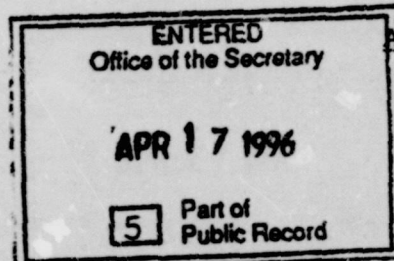
CARL W. VON BERNUTH
RICHARD J. RESSLER
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Eighth and Eaton Avenues
Bethlehem, Pennsylvania 18018
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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

April 12, 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' NINTH SET OF DISCOVERY REQUESTS

Pursuant to 49 C.F.R. §§ 1114.21 et seq., and the Discovery Guidelines entered in this proceeding on December 7, 1995, and the rulings of Judge Nelson on March 8, 1996 ("March 8 rulings"), Applicants UPC, UPRR, MPRR, SPR, SPT, SSW, SPCSL and DRGW direct the following interrogatories and document requests to each party ("you") who made a filing on or about March 29, 1995, and is listed in the Appendix. You should respond to those requests designated for response by you.

Responses should be delivered as soon as possible, and in no event later than 5:00 p.m. on the sixth calendar day from the date of service hereof (see March 8 rulings, Tr. 2061). According to Judge Nelson, claims of undue burden must "be detailed as to time, money, physical limitations, geography, or any other factors making the alleged burden" (id., Tr. 2061), and you must bring documents for which claims of irrelevance or privilege are made to a hearing, for review by the Administrative Law Judge and immediate production (id., Tr. 2056). You are

requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

DEFINITIONS AND INSTRUCTIONS

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

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

INTERROGATORY

1. State the basis for the statement in Club 20's March 27, 1996 letter to the STB, that "one of the lines originally proposed to be abandoned . . . provides the only shipping available for coal from the Somerset and Paonia areas," and identify all documents referring or relating to that statement. [Club 20]

2. Identify all evidence to support the proposition that abandonment of the Tennessee Pass line would increase truck

traffic on Interstate 70, and identify all documents referring or relating to that statement. [Club 20]

3. Identify and describe all studies, reports or analyses performed by, commissioned by, relied upon, or reviewed by, Club 20, in connection with its analysis of its position regarding the UP/SP merger, or conditions to be sought by any other party in this proceeding. [Club 20]

4. State whether your members have been polled in some manner to indicate their views about what position you should take concerning the application in March 20 filings, and identify all results and documents referring or relating thereto. [Club 20]

5. State approximately how many of your members (number or percentage) (a) support the position taken in your March 29 filings, (b) do not support that position, or (c) have expressed no view to you about that position. [Club 20]

6. Identify and describe any agreements or understandings you have with any other party to this proceeding regarding positions or action to be taken in or otherwise related to this proceeding, and all documents referring or relating to such agreements. [Club 20]

7. Identify and describe all studies or analyses performed by Club 20 in arriving at the views expressed in its March 27 letter and all documents referring or relating to such studies. [Club 20]

DOCUMENT REQUEST

1. Produce all presentations to, and minutes of, your board of directors relating to your position on the UP/SP merger, or conditions to be sought by any other party in this proceeding.

[Club 20]

2. Produce all documents identified in your responses to the above interrogatories. [Club 20]

Respectfully submitted,

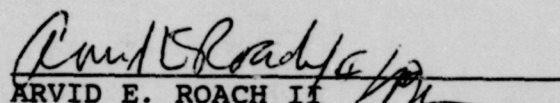
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Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

April 12, 1996

Finance Docket No. 32760

Appendix to Applicants' Ninth Set of Discovery Requests

Party	Interrogatory	Document Request
Club 20	1-7	1-2

ATTACHMENT A

DEFINITIONS AND INSTRUCTIONS

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

II. "Board" means the Surface Transportation Board.

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

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

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

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

VII. "Conrail" means Consolidated Rail Corporation.

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

IX. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to intra-company communications, correspondence, telegrams, memoranda, contracts, instruments, studies, projections, forecasts, summaries or records of conversations or interviews, minutes

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

Further, the term "document" includes

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

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

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

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

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

XII. "MPRR" means Missouri Pacific Railroad Company.

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

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

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

XVI. "SPCSL" means SPCSL Corp.

XVII. "SPR" means Southern Pacific Rail Corporation.

XVIII. "SPT" means Southern Pacific Transportation Company.

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

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

XXI. "Southern Pacific" means SPR and SP.

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

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

XXIV. "UPC" means Union Pacific Corporation.

XXV. "UPRR" means Union Pacific Railroad Company.

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

XXVII. "Union Pacific" means UP and UPC.

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

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

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

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

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

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

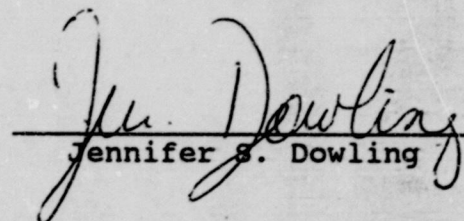
XXXIV. Unless otherwise specified, these requests cover the period January 1, 1993 and thereafter.

CERTIFICATE OF SERVICE

I, Jennifer S. Dowling, certify that, on this 12th day of April, 1996, I caused a copy of the foregoing document to be served by hand or facsimile transmission on all parties to whom it is directed so as to be received by 5:00 p.m., and by first-class mail, postage prepaid, or a more expeditious form of delivery, on all other parties of record appearing on the restricted service list in Finance Docket No. 32760, and on

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

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


Jennifer S. Dowling

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April 12, 1996

HAND DELIVERED

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



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

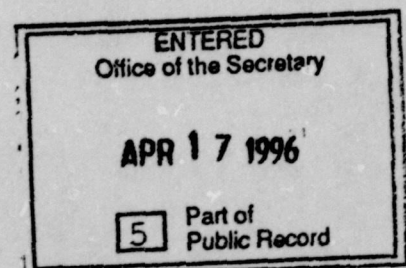
Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding
are an original and 20 copies of a document designated as UP/SP-
214, Applicants' Tenth Set of Discovery Requests.

Yours truly,

Gerald P. Norton
Gerald P. Norton

cc: The Honorable Jerome Nelson
Restricted Service List



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' TENTH SET OF DISCOVERY REQUESTS

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(202) 973-7601

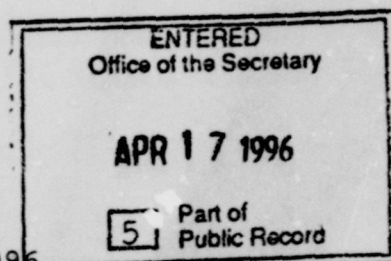
Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp. and
The Denver and Rio Grande
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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
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April 12, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
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APPLICANTS' TENTH SET OF DISCOVERY REQUESTS

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INTERROGATORY

1. To the extent not answered in your previous discovery responses, identify any communications or agreements between Conrail and KCS or their representatives, concerning any desires, plans or efforts of KCS or Conrail to bid on the purchase of all or of any portion of the lines of applicants.

[CR, KCS]

DOCUMENT REQUEST

1. Produce any documents relating to or reflecting the communications or agreements referred to in Interrogatory No.

1. [CR, KCS]

Respectfully submitted,

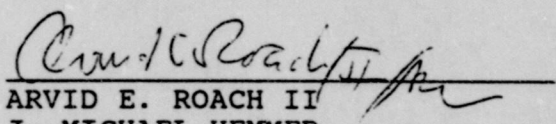
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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

April 12, 1996

Finance Docket No. 32760

Appendix to Applicants' Tenth Set of Discovery Requests

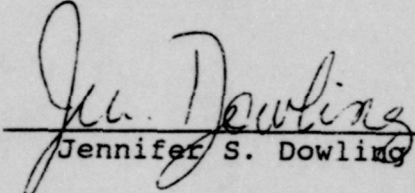
Party	Interrogatory	Document Request
CR	1	1
KCS	1	1

CERTIFICATE OF SERVICE

I, Jennifer S. Dowling, certify that, on this 12th day of April, 1996, I caused a copy of the foregoing document to be served by hand or facsimile transmission on all parties to whom it is directed so as to be received by 5:00 p.m., and by first-class mail, postage prepaid, or a more expeditious form of delivery, on all other parties of record appearing on the restricted service list in Finance Docket No. 32760, and on

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Premarmer Notification Office
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Federal Trade Commission
Washington, D.C. 20580


Jennifer S. Dowling

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UP/SP-205

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Office of the Secretary

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3 Part of
Public RecordBEFORE 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 COMPANYAPPLICANTS' SUBMISSION OF VERIFIED STATEMENT
CONCERNING SETTLEMENT AGREEMENT WITH WISCONSIN CENTRALCANNON Y. HARVEY
LOUIS P. WARCHOT
CAROL A. HARRIS
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(202) 662-5388Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

April 8, 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' SUBMISSION OF VERIFIED STATEMENT
CONCERNING SETTLEMENT AGREEMENT WITH WISCONSIN CENTRAL

Applicants submit herewith the Verified Statement of
Richard B. Peterson concerning Applicants' settlement with
Wisconsin Central Ltd.

Respectfully submitted,

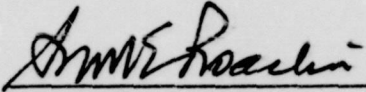
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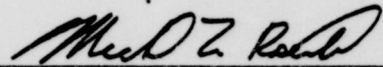
April 8, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 8th day of April, 1996, I caused 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
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

VERIFIED STATEMENT

OF

RICHARD B. PETERSON

My name is Richard B. Peterson. I am Senior Director-Interline Marketing of UP. My educational background and relevant work experience are set forth in my verified statement in Volume 2 of the merger application (UP/SP-23).

This statement is submitted in response to a letter dated March 5, 1996 from the Chief of the Section of Environmental Analysis ("SEA") of the Surface Transportation Board concerning possible environmental effects of executed settlement agreements. The letter states: "[Applicants] may file a Verified Statement [rather than a Preliminary Draft Environmental Assessment ("PDEA")] for a settlement agreement if the agreement involves no substantive operational changes and no abandonment or construction projects. If after reviewing the operating plans for each settlement agreement, you determine that a Verified Statement is appropriate, you must certify that the agreement meets the exemption criteria under 49 CFR 1105.6(c)(2). Each Verified Statement must include supporting operating data."

This statement discusses the settlement agreement that Applicants executed with Wisconsin Central Ltd., which was entered into on March 29, 1996 and submitted to the Board on April 8, 1996.

VERIFICATION

DISTRICT OF COLUMBIA) ss:

I, Richard B. Peterson, being duly sworn, state that I have read the foregoing statement, that I know its contents, and that those contents are true as stated.

Richard B. Peterson
Richard B. Peterson

Subscribed and sworn to before me
this 8th day of April, 1996.

Harley Balandier
Notary Public

My Commission expires:

My Commission Expires July 14, 2000

STB

FD

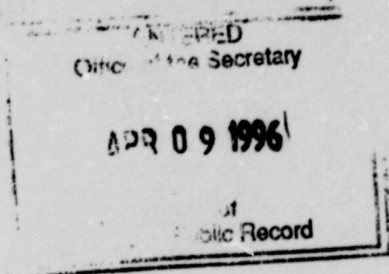
32760

4-8-96

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HARKINS CUNNINGHAM

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202 973-7600
FEDERAL IDENTIFICATION NUMBER 52-1793723



(202) 973-7605

April 8, 1996

HAND DELIVERED

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

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

Dear Mr. Williams:

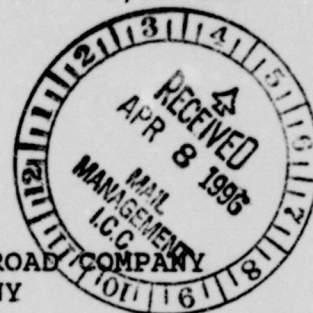
Enclosed for filing in the above-captioned proceeding
are an original and 20 copies of a document designated as UP/SP-
209, Applicants' Fifth Set of Interrogatories and Requests for
Discovery Requests for Production of Documents.

Yours truly,

Gerald P. Norton

cc: The Honorable Jerome Nelson
Restricted Service List

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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

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

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April 8, 1996

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
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APPLICANTS' FIFTH SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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

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

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

DEFINITIONS AND INSTRUCTIONS

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

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

INTERROGATORIES

1. Do you have any information about any offers made by or on behalf of any party to this proceeding opposing the UP/SP merger, or anyone affiliated with such party, to provide funds or other consideration to another such party to help finance its opposition efforts, and, if so, state that

information and identify (and produce) any documents referring or relating to such offers. [You may exclude offers made to an association party by its members, or offers to finance work which was proffered to the Board as being jointly sponsored by the parties involved in the offer.] [Cen-Tex, CR, KCS, MRL, Tex Mex, CCRT, CMA, NITL, SPI, STRICT, WCTL, WSC]

DOCUMENT REQUESTS

1. Provide the tonnage data supporting each of the percentages listed in Figure Nos. 1, 2, 3 and 4 (pp. 11-12, 16-17) of the Verified Statement of Thomas D. Crowley (SPI V.S.-4). [SPI]

2. To the extent not done as part of your prior discovery responses or March 29 filings, with respect to the joint verified statement of Patteye J. Simpson and H. Lynn Turner, identify any instances relied on to support their statements in:

(a) the second bullet-point on p. 96, including for each instance (1) the name of the shipper, (2) the local carrier (3) the rail origination, local destination, and final destination city and state, (4) the date of any shipments, and (5) the name and seven-digit STCC code of the chemical shipped;

(b) the third bullet-point on p. 96, including for each instance (1) the name of the shipper, (2) the city and state of each manufacturing facility, (3) the relevant

dates of operation of each facility, and (4) the name and seven-digit STCC code of any chemicals subject to such rescheduled production;

(c) the first bullet-point on p. 97, including for each instance (1) the name of the shipper, (2) the local carrier, (3) the rail origination, local destination, and final destination city and state, (4) the date of any shipments, and (5) the name and seven-digit STCC code of the chemical shipped;

(d) the second bullet-point on p. 97, including for each instance (1) the name of the shipper, (2) the rail origination and destination city and state, (3) the date of any shipments, and (4) the name and seven-digit STCC code of the chemical shipped;

(e) the third bullet-point on p. 97, including for each instance (1) the name of the shipper, (2) the rail origination and destination city and state, (3) the date of any shipments, and (4) the name and seven-digit STCC code of the chemical shipped; and

(f) the first bullet-point on p. 98, including for each instance (1) the name of the shipper, (2) the rail origination and destination city and state, (3) the date of any shipments, and (4) the name and seven-digit STCC code of the chemical shipped. [KCS]

Respectfully submitted,

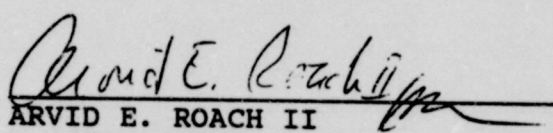
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Railroad Company and Missouri
Pacific Railroad Company

April 8, 1996

APPENDIX TO APPLICANTS' FIFTH SET OF DISCOVERY REQUESTS

Parties upon whom this request is served:

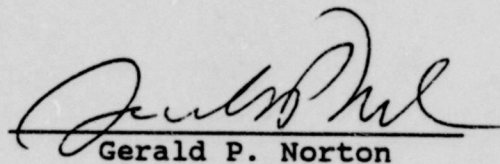
Party	Interrogatory	Document Requests
Cen-Tex	1	
CCRT	1	
CMA	1	
CR	1	
KCS	1	2
MRL	1	
NITL	1	
SPI	1	1
STRICT	1	
TEX MEX	1	
WCTL	1	
WSC	1	

CERTIFICATE OF SERVICE

I, Gerald P. Norton, certify that, on this 8th day of April, 1996, I caused a copy of the foregoing document to be served by hand or facsimile transmission on all parties to whom it is directed so as to be received by 5:00 p.m., and by first-class mail, postage prepaid, or a more expeditious form of delivery, on all other parties of record appearing on the restricted service list in Finance Docket No. 32760, and on

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

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


Gerald P. Norton

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ENTERED
Office of the Secretary

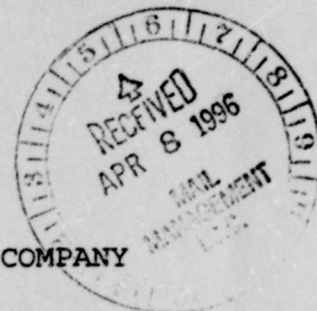
APR 09 1996

3 Part of
Public Record

UP/SP-206

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' SUBMISSION OF VERIFIED STATEMENT
CONCERNING SETTLEMENT AGREEMENT WITH GATEWAY WESTERN

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Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

April 8, 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' SUBMISSION OF VERIFIED STATEMENT
CONCERNING SETTLEMENT AGREEMENT WITH GATEWAY WESTERN

Applicants submit herewith the Verified Statement of
Richard B. Peterson concerning Applicants' settlement with
Gateway Western Railway Company.

Respectfully submitted,

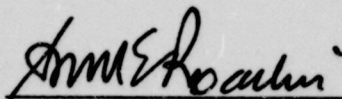
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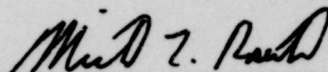
April 8, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 8th day of April, 1996, I caused 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
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Premarmer Notification Office
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Room 303
Federal Trade Commission
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Michael L. Rosenthal

VERIFIED STATEMENT

OF

RICHARD B. PETERSON

My name is Richard B. Peterson. I am Senior Director-Interline Marketing of UP. My educational background and relevant work experience are set forth in my verified statement in Volume 2 of the merger application (UP/SP-23).

This statement is submitted in response to a letter dated March 5, 1996 from the Chief of the Section of Environmental Analysis ("SEA") of the Surface Transportation Board concerning possible environmental effects of executed settlement agreements. The letter states: "[Applicants] may file a Verified Statement [rather than a Preliminary Draft Environmental Assessment ("PDEA")] for a settlement agreement if the agreement involves no substantive operational changes and no abandonment or construction projects. If after reviewing the operating plans for each settlement agreement, you determine that a Verified Statement is appropriate, you must certify that the agreement meets the exemption criteria under 49 CFR 1105.6(c)(2). Each Verified Statement must include supporting operating data."

This statement discusses the settlement agreement that Applicants executed with Gateway Western Railway Company, which was entered into on March 29, 1996 and submitted to the Board on April 5, 1996.

As explained below, the agreement with Gateway Western does not involve substantive operational changes or rail line abandonments or construction projects. Applicants hereby certify that the agreement meets the exemption criteria under 49 C.F.R. § 1105.6(c)(2).

In general, the settlement with Gateway Western will allow Gateway Western to provide shippers with improvements in service that would not be possible absent the merger.

The settlement agreement does not provide for or require any rail line abandonments, and none is planned as a result of the agreement. The agreement also does not require any construction projects. However, the agreement provides Gateway Western with the right to have constructed a turnout and trackage connecting with and extending from a turnout off a joint facility mainline to access a limestone quarry, which would also be accessible from another line, but at a higher cost.

The agreement also provides Gateway Western with the right to construct a connecting track to access the Alton & Southern's River Track between the joint facility track known as the "Tolson main" and the River Track along the alignment of the former GM&O-A&S interchange track in Sauget, or an alternative alignment suitable to both parties.

The agreement also provides Gateway Western with the right to use the Alton & Southern River Track solely for the

purpose of accessing and serving Cerro Copper, Peavy and American Milling, and their successors and assigns. Gateway Western's use of this line will be limited to moves to and from Mexico, Missouri which originate or terminate at the Cerro Copper facility, and moves which originate or terminate at Gateway Western local points (excluding certain points and connections as defined in the agreement) as Gateway Western is configured as of March 15, 1996, and destined to or originating at the Peavy and American Milling facilities. Gateway Western may also purchase the "Airline Block," with Applicants retaining trackage rights to serve all industries.

Applicants do not anticipate that the agreement will have a material effect on traffic, or cause any of the traffic threshold limits in 49 C.F.R. § 1105.7(e)(4), (5) to be exceeded. The agreement should not result in material traffic diversions from other carriers. We do not expect that there will be any significant rerouting of traffic, and the agreement would not require any changes in UP/SP's operating plan.

VERIFICATION

DISTRICT OF COLUMBIA) ss:

I, Richard B. Peterson, being duly sworn, state that I have read the foregoing statement, that I know its contents, and that those contents are true as stated.

Richard B. Peterson
Richard B. Peterson

Subscribed and sworn to before me
this 8th day of April, 1996.

Harle Balourdas
Notary Public

My Commission expires:

My Commission Expires Feb 14, 2000