

STB FD 32760

3-12-96

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61742

Item No. _____

Page Count 2

Mar. # 256

LAW OFFICES

SCOUTT & RASENBERGER, L.L.P.

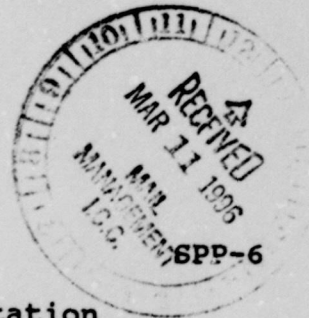
8 SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-3939

TELEPHONE : (202) 298-8660

FACSIMILES: (202) 342-0683

(202) 342-1316



March 11, 1996

To: All Parties of Record on the Surface Transportation
Board's Service List for Finance Docket No. 32760
Listed in Decision No. 17

The Sierra Pacific Power Company and the Idaho Power Company, in compliance with Decision No. 17, served March 7, 1996, hereby provide to you a list of each of their numbered pleadings in this case. Any Party of Record wishing to have copies of any pleading on this list should send a request to:

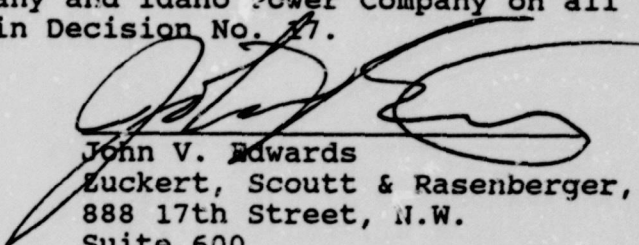
Richard A. Allen
Jennifer P. Oakley
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006

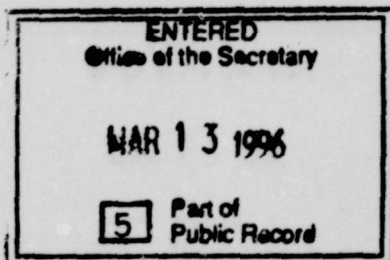
Copies of requested pleadings will be sent within three (3) days of receipt of the request.

Certificate of Service

I certify that I have served by U.S. mail, postage pre-paid, this Notice and the attached List of Numbered Pleadings of the Sierra Pacific Power Company and Idaho Power Company on all Parties of Record listed in Decision No. 17.

Dated: March 11, 1996


John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006



List of Numbered Pleadings for
THE SIERRA PACIFIC POWER COMPANY
and the
IDAHO POWER COMPANY

Designation	Date	Description
IPC-1	Dec. 29, 1995	Notice of Intent of Idaho Power Company to Participate
SPP-1	Dec. 7, 1995	Notice of Intent of Sierra Pacific Power Company to Participate
SPP-2	Dec. 20, 1995	Request to place Representatives of the Sierra Pacific Power Company on the Restricted Service List
SPP-3	Dec. 22, 1995	First Request of Sierra Pacific Power Company and Idaho Power Company to Applicants for the Production of Documents
SPP-4	Dec. 22, 1995	First Interrogatories of Sierra Pacific Power Company and Idaho Power Company to Applicants
*	Feb. 26, 1996	List of Numbered Pleadings by Sierra Pacific Power Company served on all FOLRs
SPP-5	Mar. 4, 1996	Sierra Pacific's Objections to Applicants' First Set of Interrogatories and Request for the Production of Documents

* Document not numbered.

STB FD 32760 3-12-96 J 61741

Item No. _____

Page Count 3
Mar. # 257

LAW OFFICES

COUTT & RASENBERGER, L.L.P.

88 SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-3939

TELEPHONE: (202) 298-8660

FACSIMILES: (202) 342-0683

(202) 342-1316



March 11, 1996

TM-18

To: Parties of Record on the Surface Transportation
Board's Service List for Finance Docket No. 32760
Listed in Decision No. 17

The Texas Mexican Railway Company, in compliance with Decision No. 17, served March 7, 1996, hereby provides to you a list of each of its numbered pleadings in this case. Any Party of Record wishing to have copies of any pleading on this list should send a request to:

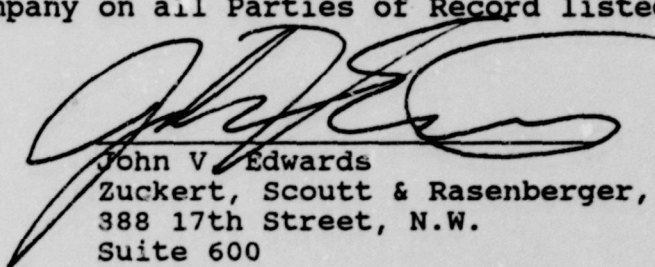
Richard A. Allen
Andrew R. Plump
John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006

Copies of requested pleadings will be sent within three (3) days of receipt of the request.

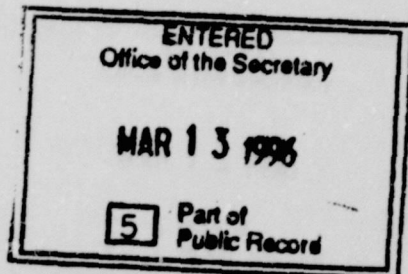
Certificate of Service

I certify that I have served by U.S. mail, postage pre-paid, this Notice and the attached List of Numbered Pleadings of the Texas Mexican Railway Company on all Parties of Record listed in Decision No. 17.

Dated: March 11, 1996



John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
388 17th Street, N.W.
Suite 600
Washington, D.C. 20006



**List of Numbered Pleadings for
THE TEXAS MEXICAN RAILWAY COMPANY**

Designation	Date	Description
TM-1	Aug. 28, 1995	Notice of Intent to Participate
TM-2	Sept. 18, 1995	Comments of the Texas Mexican Railway Company in Opposition to the Proposed Procedural Schedule
TM-3	Dec. 7, 1995	Request to place Representatives of the Texas Mexican Railway Company on the Restricted Service List
TM-4	Dec. 18, 1995	The Texas Mexican Railway Company's First Interrogatories to the Applicants
TM-5	Dec. 18, 1995	The Texas Mexican Railway Company's First Request to the Applicants for the Production of Documents
TM-6	Jan. 24, 1996	The Texas Mexican Railway Company's Comments in Support of the Motion of the Western Shippers Coalition for Enlargement of the Procedural Schedule
TM-7	Jan. 29, 1996	The Texas Mexican Railway Company's Description of Anticipated Responsive Application
TM-8	Jan. 29, 1996	The Texas Mexican Railway Company's Petition for Waiver or Clarification
TM-9	Feb. 2, 1996	The Texas Mexican Railway Company's Second Interrogatories to the Applicants
TM-10	Feb. 2, 1996	The Texas Mexican Railway Company's Second Request to the Applicants for the Production of Documents
TM-11	Feb. 5, 1996	The Texas Mexican Railway Company's First Interrogatories to Burlington Northern Santa Fe
TM-12	Feb. 5, 1996	The Texas Mexican Railway Company's First Request to Burlington Northern Santa Fe for the Production of Documents
TM-13	Feb. 26, 1996	List of Numbered Pleadings by the Texas Mexican Railway Company served on all PORs

TM-14	Feb. 26, 1996	The Texas Mexican Railway Company's Third Interrogatories to the Applicants
TM-15	Feb. 26, 1996	The Texas Mexican Railway Company's Third Request to the Applicants for the Production of Documents
TM-16	Mar. 4, 1996	Objections of the Texas Mexican Railway Company to the Applicants' First Set of Interrogatories and Request for Production of Documents
TM-17	Mar. 4, 1996	Objections of the Texas Mexican Railway Company to the First Interrogatories and Request for Production of Documents of the Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company

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32760

3-12-96

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Item No. _____

Page Count 3

Mar. # 259



U. S. Department of Justice
Antitrust Division

325 7th Street, N.W.
Washington, DC 20530

March 12, 1996



BY HAND

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

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

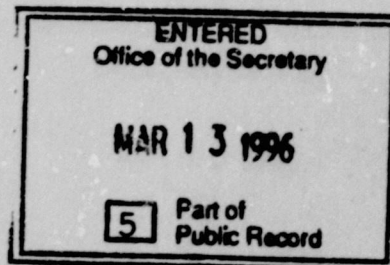
Dear Secretary Williams:

Pursuant to Decision No. 17, I am enclosing an original and five
copies of a certificate of service for a listing of pleadings filed
by the Department of Justice in this proceeding.

Sincerely yours,

Michael D. Billiel
Attorney
Antitrust Division

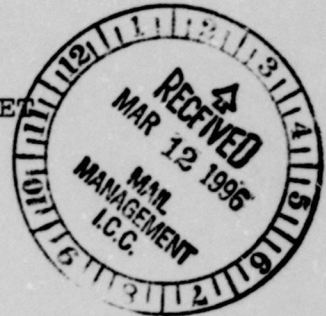
Enclosures



ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

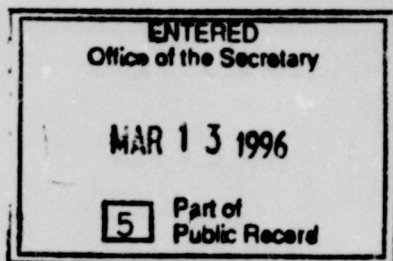
UNION PACIFIC CORP., UNION PACIFIC)
RAILROAD CO. AND MISSOURI PACIFIC)
RAILROAD CO.-- CONTROL AND MERGER --)
SOUTHERN PACIFIC RAIL CORP., SOUTHERN) FINANCE DOCKET
PACIFIC TRANSPORTATION CO., ST. LOUIS) NO. 32760
SOUTHWESTERN RAILWAY CO., SPCSL CORP.)
AND THE DENVER AND RIO GRANDE WESTERN)
RAILROAD CO.)



CERTIFICATE OF SERVICE IN
COMPLIANCE WITH DECISION NO. 17

Pursuant to Decision No. 17 (served March 7, 1996), the Department of Justice hereby certifies that it has served the attached list of pleadings on all parties of record listed in that decision by first class mail. The Department has now served a list of its pleadings on all parties of record.

Respectfully submitted,



A handwritten signature in dark ink, appearing to read "Michael D. Billiel".

Michael D. Billiel

Attorney
Antitrust Division
U.S. Department of Justice
555 Fourth Street, N.W.
Washington, D.C. 20001
(202) 307-6666

March 12, 1996



U. S. Department of Justice
Antitrust Division

325 7th Street, N.W.
Washington, DC 20530

February 26, 1996

To: All Parties of Record

Re: Finance Docket No. 32760

The following is a list of the pleadings filed by the Department of Justice in this proceeding:

DOJ-1: Comments by the Department of Justice on Proposed Procedural Schedule (Sept. 18, 1995);

DOJ-2: Petition of the Department of Justice for Leave to File Additional Comments on the Procedural Schedule (Oct. 2, 1995);

DOJ-3: Additional Comments by the Department of Justice on Proposed Procedural Schedule (Oct. 2, 1995);

DOJ-4: Notice of Intent to Participate (Jan. 16, 1996);

DOJ-5: Response of the United States Department of Justice to Motion for Enlargement of the Procedural Schedule (Jan. 25, 1996).

In addition to these formal pleadings, the Department provided the Applicants with informal discovery requests on November 14, 1995. Any party wishing to receive copies of any of these documents should contact Sasha Foster (202/514-6372) or Shea Bruce (202/307-0177).

Sincerely yours,

Michael D. Billiel
Attorney
Antitrust Division

STB FD 32760

3-12-96

3-12-96

J 61737

HOWRE

Item No. _____

Page Count 2

Mar. # 211

61737

Attorneys at Law

1299 Pennsylvania Ave., N.W.

Washington, D.C. 20004 2402

(202) 783 0800

FAX (202) 383 6610

March 12, 1996

in Los Angeles

(213) 236-1700

Mark L. Josephs
(202) 383-7353

HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20549



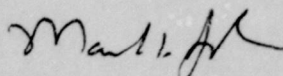
Re: Finance Docket No. 32760

Dear Secretary Williams:

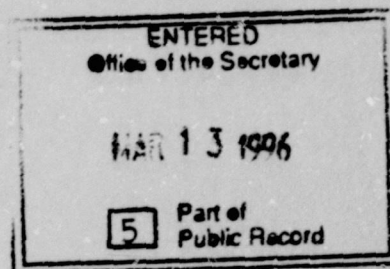
Pursuant to Decision Number 17, enclosed are an original and five copies of the certificate of service indicating that The Coastal Corporation has served each Party of Record designated in Decision Number 17 with copies of each filing Coastal Corporation has made to date in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,

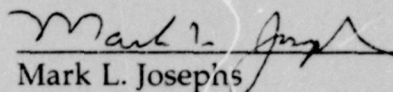

Mark L. Josephs

Enclosures



CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Surface Transportation Board Decision Number 17, copies of the Notice of Appearance of the Coastal Corporation (COAC-1) and the Supplemental Notice of Appearance of the Coastal Corporation (COAC-2), previously filed with the Surface Transportation Board, were served by regular United States mail, postage prepaid, this 12th day of March, 1996 on all Parties of Record designated in Decision Number 17.


Mark L. Josephs

Dated: March 12, 1996

STB

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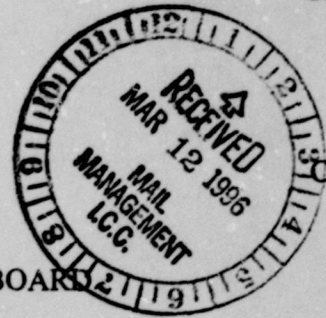
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Item No. _____
Page count 2
Mar. # 264



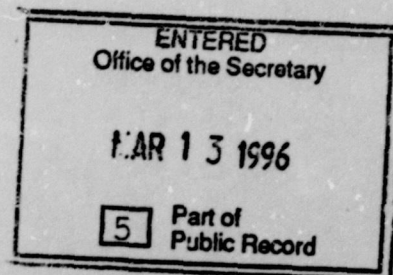
CMTA-6

BEFORE THE
SURFACE TRANSPORTATION BOARD

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


CAPITAL METROPOLITAN TRANSPORTATION
AUTHORITY'S LIST OF NUMBERED PLEADINGS FILED TO DATE

CMTA-1	01/16/96	Notice of Intent to Participate and Request For Service By Capital Metropolitan Transportation Authority
CMTA-2	01/29/96	Description of Responsive Application Anticipated by Capital Metropolitan Transportation Authority
CMTA-3	01/29/96	Petition of Capital Metropolitan Transportation Authority for Clarification of Waiver
CMTA-4	02/26/96	Capital Metropolitan Transportation Authority's First Set of Interrogatories and Document Production Requests to Applicants
CMTA-5	02/26/96	Capital Metropolitan Transportation Authority's First Set of Interrogatories and Document Production Requests to BN/SF



CERTIFICATE OF SERVICE

I certify that on this 12th day of March, 1996, a copy of the foregoing Capital Metropolitan Transportation Authority's List of Numbered Pleadings Filed To Date was served by first class mail to parties of record designated in Decision No. 17.


Monica J. Palko

STB

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3-12-96

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Item No. _____

Page Count 1

Mar. # 262

PORT OF HOUSTON AUTHORITY

MAILING ADDRESS: P.O. BOX 2562 • HOUSTON, TEXAS 77252-2562
TELEPHONE: (713) 670-2400 • FAX: (713) 670-2611

MARTHA T. WILLIAMS
General Counsel
(713) 670-2614

March 12, 1996



Honorable Vernon A. Williams
Office of the Secretary
Attn: Finance Docket No. 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423



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

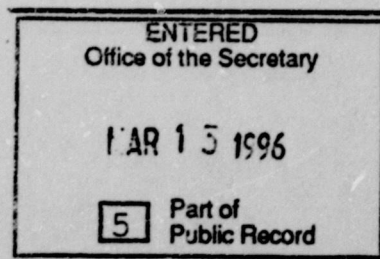
Dear Secretary Williams:

CERTIFICATE OF SERVICE

As required by Decision No. 17, I hereby certify that a copy of the Port of Houston Authority's previous filing in this proceeding has been served by first class U.S. mail, postage prepaid, upon the additional parties of record designated in Decision No. 17. Five copies of this Certificate are enclosed.

Respectfully submitted,

George T. Williamson *GW*
George P. Williamson
Port of Houston Authority
P.O. Box 2565
Houston, Texas 77252-2565
(713) 670-2453



STB FD 32760

3-12-96

J

61732

6732

WEINER, BRODSKY, SIDMAN & KIDER
ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1100 NEW YORK AVENUE, N.W., SUITE 300

WASHINGTON, D.C. 20005-4797

(202) 628-2000

TELECOPIER (202) 628-2011

Item No. _____

Page Count 1

Mar. # 265

March 7,



RICHARD J. ANDREANO, JR.
JAMES A. BRODSKY
JO A. DeROCHE
CYNTHIA L. GILMAN
ELLEN A. GOLDSTEIN*
DON J. HALPERN
CHRISTOPHER E. KACZMAREK*
MITCHEL H. KIDER
SHERRI L. LEDNER
PAUL C. OAKLEY*
BRUCE E. PRIDDY*
MARK H. SIDMAN
RUGENIA SILVER
HARVEY E. WEINER
JOSEPH F. YENOUSKAS

*NOT ADMITTED IN D.C.

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th Street & Constitute Avenue, NW
Washington, D.C. 20423

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

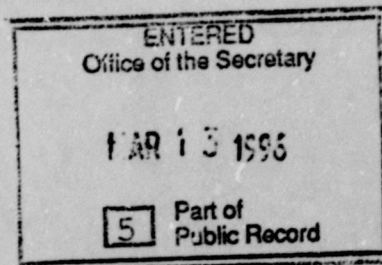
Dear Secretary Williams:

Counsel for Montana Rail Link, Inc., Mark H. Sidman, of Weiner, Brodsky, Sidman & Kider, P.C., is on the Restricted Service List in Finance Docket No. 32760.

Please send us documents relevant to pending discovery matters as soon as possible, and on any matters arising in the future as appropriate.

Very truly yours,

Ellen A. Goldstein



STB

FD

32760

3-12-96

J

61731

Item No. _____

Page 12 of 12
Mar # 220

61731
BN/SF-48

RE THE
PORTATION BOARD

ORIGINAL

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

RESPONSE OF BURLINGTON NORTHERN RAILROAD COMPANY AND THE
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY TO THE APPEAL OF
ENTERGY SERVICES, INC., ARKANSAS POWER & LIGHT CO., GULF STATES
UTILITIES COMPANY AND THE WESTERN COAL TRAFFIC LEAGUE FROM
ADMINISTRATIVE LAW JUDGE NELSON'S ORDER DENYING REQUEST TO
TAKE DEPOSITIONS

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

Burlington Northern
Railroad Company
3800 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102-5384
(817) 333-7954

and

The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173
(708) 995-6887

Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske

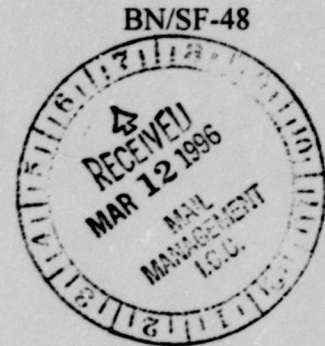
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 463-2000

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

March 11, 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

RESPONSE OF BURLINGTON NORTHERN RAILROAD COMPANY AND THE
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY TO THE APPEAL OF
ENTERGY SERVICES, INC., ARKANSAS POWER & LIGHT CO., GULF STATES
UTILITIES COMPANY AND THE WESTERN COAL TRAFFIC LEAGUE FROM
ADMINISTRATIVE LAW JUDGE NELSON'S ORDER DENYING REQUEST TO
TAKE DEPOSITIONS

Burlington Northern Railroad Company ("BN") and the Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") (collectively, "BN/Santa Fe") respond to the appeal of Entergy Services, Inc., Arkansas Power & Light Co., Gulf States Utilities Company and the Western Coal Traffic League (collectively, "Utility Appellants") from the order of Administrative Law Judge Jerome Nelson denying their petition for an order compelling the deposition of Sami M. Shalah, the BN/Santa Fe coal marketing official who is responsible

for the Entergy account.¹ Because the Utility Appellants have not even approached the showing necessary to entitle them to take the deposition of Mr. Shalah, the ruling of the Administrative Law Judge should be affirmed.

The Board will grant an appeal only in "exceptional circumstances," and only in order "to correct a clear error of judgment or to prevent manifest injustice." 49 C.F.R. § 1115.1(c). Here, however, it is the Utility Appellants who rest entirely on two "clear error[s]" of law. First, the Utility Appellants rely on the proposition that they have a right to deposition testimony to discover any relevant information. See Appeal 9, 12 (claiming that a "mere determination of relevance" governs an order for a deposition). Second, they claim that the Board has already "approv[ed]" the taking of "depositions of non-testifying witnesses in this case" on exactly the same basis as depositions of testifying witnesses. *Id.* at 11-12; see also *id.* at 6 n.5. As we show below, each proposition is in error. Because the Utility Appellants have not shown a need for deposition testimony from a BN/Santa Fe witness about the general topics into which they seek discovery, their appeal must be rejected. Farmland Industries, Inc., supra.

1. It is not enough that the information sought in a deposition is "relevant"; rather, the proponent must demonstrate that there is a need for a particular deposition. Farmland Industries, Inc. v. Gulf Central Pipeline Co., Finance Docket No. 40411, 1993 WL 46942 (served Feb. 24, 1993). And it plainly is not sufficient simply to suggest that the "deposition of [railroad] marketing officials may shed some light" on a topic that is broadly

¹ The appeal also addresses the denial of petitions for orders compelling the depositions of two of Applicants' employees.

relevant to a proceeding. Annual Volume Rates on Coal -- Rawhide Junction, WY to Sergeant Bluff, IA; Burlington Northern R.R. Co. and Chicago and North Western Transportation Co., Finance Docket No. 37021, 1984 ICC LEXIS 47, at *8 (served Jan. 5, 1985).

Further, a party seeking an order to compel discovery not only "must clearly demonstrate the need" for the precise discovery requested, but also must show "that the material sought will aid [the Board] in ruling on the case." G&G Manufacturing Co. -- Petition for Declaratory Order -- Certain Rates and Practices of Trans-Allied Audit Co. and R-W Service Systems, Inc., Finance Docket No. 41015, 1994 WL 617547, at *10 (served Nov. 9, 1994) (citing Trailways Lines, Inc. v. ICC, 766 F.2d 1537, 1546 (D.C. Cir. 1985)); see also Union Pacific Corp.--Control--Missouri Pacific Corp., Finance Docket No. 30000, Decision on Discovery Appeals, slip op. 12 (decided April 22, 1981).

The Utility Appellants have not shown any reason why they need to depose a BN/Santa Fe witness at this time in connection with their concerns about post-merger service to Entergy's Nelson and White Bluff power plants. At present, Kansas City Southern ("KCS") is the only destination carrier serving Entergy's Nelson plant. SP anticipates providing new destination service over a new (not yet constructed) spur. When the spur is completed, there will be two destination carriers -- KCS and SP. BN/Santa Fe is one of two origin carriers capable of providing coal to the Nelson plant, but BN/Santa Fe is not now a destination carrier to the Nelson plant. Although BN/Santa Fe's settlement with UP/SP in this proceeding would result in overhead trackage rights over the current SP line that runs near the Nelson Station, BN/Santa Fe would not appear to have the contractual

right to use those trackage rights to serve the Nelson Station, because that station is not now served by both UP and SP.

Thus, it is not clear -- and the Utility Appellants have not tried to show -- what specific information they seek to obtain from Mr. Shalah, a BN/Santa Fe employee, in light of the fact that the Nelson Station's origin service options from BN/Santa Fe would be unaffected by the merger.

Similar facts apply to Entergy's White Bluff plant, at which UP is currently the sole destination carrier for the plant. Since that plant is not now served by both UP and SP, BN/Santa Fe would not appear to have contractual rights to use the trackage rights it obtained in the settlement with UP/SP in order to serve the White Bluff plant. Once again, the Utility Appellants have not shown why a deposition of a BN/Santa Fe employee is necessary to explore the possible effects of the merger on service to the White Bluff plant.

At best, Mr. Shalah's deposition would provide information that is cumulative to information already obtained (or capable of being obtained) from the Applicants. A proponent of a deposition must show that the information it seeks is "not merely cumulative or in danger of loss." Annual Volume Rates on Coal, supra, at *4. The Utility Appellants have not shown why Mr. Shalah's deposition would not be cumulative of other information about the competitive environment at Nelson and White Bluff that they have already obtained or could obtain from the Applicants.

Judge Nelson was correct to deny the deposition request for Mr. Shalah.

2. Judge Nelson's decision is also consistent with Board precedents regarding depositions. The Utility Appellants proceed (at 6-12) from the erroneous assumption that

they have the right to use depositions to seek any discoverable information that they desire. The Commission recently reaffirmed that, on the contrary, "there is no right to depositions." Farmland Industries, Inc., supra, at *2 (emphasis added). Rather, "an order to take depositions is extraordinary relief." San Antonio v. Burlington Northern R.R. Co., Finance Docket No. 36180, 1986 ICC LEXIS 78, at *3 (Nov. 7, 1986).

In particular, the Board will order a deposition to be taken only if "the deposition will prevent a failure or delay of justice." 49 C.F.R. § 1114.22(c). The Board's rules are unlike the Federal Rules of Civil Procedure: a party seeking a deposition under Board practice cannot simply notice a deposition and require compliance. On the contrary, the proponent of a deposition must submit a petition setting forth "the facts it desires to establish and the substance it expects to elicit" and must "convince" the Board that the need for the deposition meets the proper standard. Id. § 1114.22(b)(1), (c).

Judge Nelson's decision denying the request for Mr. Shalah's deposition is consistent with these authorities.

3. The Utility Appellants rely (at 11-12) on a mischaracterization of the Scheduling Order and Discovery Guidelines in this case when they claim that the Board has "specific[ally] approv[ed]" the taking of "depositions of non-testifying witnesses in this case" on exactly the same basis as the expressly required depositions of testifying witnesses. Ibid.; see also id. at 4 n.3. On the contrary, a distinction between testifying and non-testifying witnesses is apparent on the face of the Order Adopting Discovery Guidelines that was served December 7, 1995. Those Guidelines state (at 4, ¶ 6): "A person who has submitted written testimony shall be made available for deposition on

request" (emphasis added). That provision reflects the parties' understanding, consistent with past Commission practice, that testifying witnesses in this proceeding will be presumed to meet the Board's and the Commission's strict standards for requiring depositions. As to the depositions of "other persons or of parties on a specified subject matter," however, the Discovery Guidelines are quite different. Ibid. Depositions of these non-testifying witnesses "may be taken on reasonable written notice," but parties may object to those depositions. Ibid. In those instances, the Board's rules and Commission precedents interpreting those rules -- not some loose standard of "relevance" -- govern whether a deposition may be taken. And the Discovery Guidelines (at ¶ 2) clearly leave the burden of petitioning for an order compelling a deposition on the proponent of the deposition, as the regulations provide. See 49 C.F.R. § 1114.22.²

The Utility Appellants simply ignore the separate treatment for testifying and non-testifying witnesses that appears on the face of Decision No. 6 in this case. There (at 16), the Commission ordered that each party, upon filing written evidence, "will make its witnesses available for discovery depositions." There is no similar provision for non-testifying witnesses. The Commission followed the same course in other recent merger proceedings; indeed, in pursuing the current Board (and former Commission) policy of

² Judge Nelson certainly cannot be accused of having been too restrictive as a general matter in ordering the depositions of non-testifying witnesses. Notwithstanding the high burden the Commission's Guidelines and precedents place on parties who seek to depose non-testifying witnesses, Judge Nelson has ordered some seven depositions of non-testifying witnesses -- four witnesses from the Applicants (Messrs. Gehring, Witte, Coale and Matthews), and three witnesses from BN/Santa Fe (Grinstein, Bredenberg, and Dealy). In denying requests for still more depositions of non-testifying witnesses, such as Mr. Shalah, Judge Nelson exercised proper discretion and restraint.

timely, expedited consideration of merger proceedings, the scheduling order in this case flatly omits the instruction to the administrative law judge to "be liberal in permitting depositions wherever needed for discovery of pertinent issues" that had been included in earlier scheduling orders. See, e.g., Union Pacific R.R. Co. -- Trackage Rights Over Lines of Chicago & North Western Transportation Co. Between Fremont/Council Bluffs and Chicago, Finance Docket No. 31562, Decision No. 2, note (Jan. 18, 1990). The Commission followed the same course, evidently for the same reason, in providing for an expedited schedule in the BN/Santa Fe case.

There are additional reasons why depositions of non-testifying witnesses should be ordered only for specified, limited discovery into issues that are both clearly relevant to the Board's disposition of the case and unavailable from other sources, including written or document discovery. To begin with, the expedited schedule adopted in this case, and the similar schedule that the Commission proposed as a general matter (see 60 Fed. Reg. 5890 (1995)), make it especially important that discovery "focus strictly on relevant issues" (Decision No. 6, at 8). That policy is served by limiting depositions to testifying witnesses unless the proponent can show some extraordinary need for cross-examination in addition to written discovery. The need for cross-examination of a testifying witness is clear enough, although limited. Far less apparent is the need to cross-examine operations, marketing, and other personnel about the idiosyncratic details of particular business matters. See Rio Grande Industries--Control--Southern Pacific Transportation Co., Finance Docket No. 32000, 1988 WL 224262 (June 21, 1988) (ALJ decision) (denying all depositions of non-testifying witnesses). What is clear is the need to keep depositions within sensible limits in

order to avoid repetition of the seemingly endless proceedings of decades gone by. A strong presumption against depositions of non-testifying witnesses goes far toward accomplishing this goal.

By contrast, there are no limits on the principle on which the Utility Appellants rely -- that any non-testifying employee who is knowledgeable about a broadly "relevant" issue may be deposed. It is easy for merger opponents to identify some piece of information that is known only by a particular employee. Dozens, if not hundreds, of marketing representatives of the Applicants and of BN/Santa Fe have particularized knowledge about the transportation needs of particular shippers. Opponents of the merger and the settlement will claim that the knowledge of each of these persons is "relevant" to the proceeding in a broad sense. Likewise, if the merger and the BN/Santa Fe settlement are approved, dozens if not hundreds of operations employees will be responsible for implementing operations over the merged carrier's lines and over the trackage rights conveyed in the settlement. Any shipper -- indeed, any competitor -- could seek to depose these marketing or operations personnel on the ground that no other witness knows the likely post-merger or post-settlement operations of the railroads with respect to a particular customer or line segment.

Under the standard proposed by the Utility Appellants, any shipper would have a right to depose the marketing persons responsible for its account in any merger proceeding. Indeed, there already have been numerous requests to Applicants and to BN/Santa Fe for depositions of marketing personnel from the shippers whose accounts they serve. With respect to Mr. Shalah, Judge Nelson correctly restrained this effort to obtain deposition testimony from a non-testifying witness based on a bare assertion that the individual may

know some relevant information. The Board should affirm the correctness of Judge Nelson's decision.

For the foregoing reasons, the order of Judge Nelson was well within his discretion; indeed, his ruling was consistent with Board precedent. The order therefore should be affirmed.

Respectfully submitted,

Erika Z. Jones KEO

Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske

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

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

Burlington Northern
Railroad Company
3800 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102-5384
(817) 333-7954

and

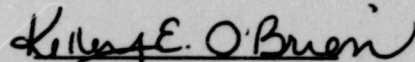
The Atchison, Topeka and Santa Fe
Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173
(708) 995-6887

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

March 11, 1996

CERTIFICATE OF SERVICE

I hereby certify that copies of Responses of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to the Appeal of Entergy Services, Inc., Arkansas Power & Light Co., Gulf States Utilities Company and the Western Coal Traffic League from Administrative Law Judge Nelson's Order Denying Request to Take Depositions (BN/SF-48) have been served this 11th day of March, 1996, by first-class mail, postage prepaid on all persons on the Restricted Service List in Finance Docket No. 32760 and by hand-delivery on counsel for Utility Appellants.



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

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

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

CHICAGO
DALLAS
DENVER
HOUSTON
LONDON
LOS ANGELES
NEW YORK
MEXICO CITY CORRESPONDENT
JAUREGUI, NAVARETTE, NADER Y ROJAS

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

March 11, 1996

ORIGINAL



VIA HAND DELIVERY

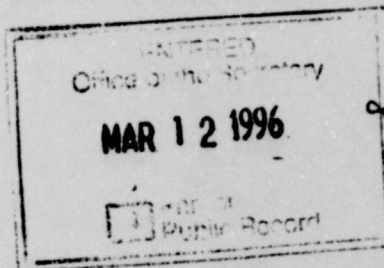
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 20423

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty (20) copies of: Response of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to the Appeal of Entergy Services, Inc., Arkansas Power & Light Company, Gulf States Utilities Company, and the Western Coal Traffic League From Administrative Law Judge Nelson's Order Denying Request to Take Depositions (BN/SF-48); and three letters sent today from Erika Z. Jones to All Counsel On The Restricted Service List.

Also enclosed is 3.5-inch disk containing the text of BN/SF-48 in Wordperfect 5.1 format. I would appreciate it if you would date-stamp the enclosed extra copies of the letters and pleading and return them to the messenger for our files.



Sincerely,

Kelley E. O'Brien
Kelley E. O'Brien

Enclosures

STB

FD

• 32760

3-11-96

J

• 61703

61703

Item No. _____

Page Count 3

Mar. 11 #187

LEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

March 11, 1996

Via Hand Delivery

Honorable Vernon A. Williams

Secretary

Surface Transportation Board

1201 Constitution Avenue, N.W.

Washington, D.C.



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

Dear Secretary Williams:

Pursuant to Decision No. 17, enclosed for filing with the Board is an original and five (5) copies of the Certificate of Service of Institute of Scrap Recycling Industries, Inc. ("ISRI") certifying that a copy of an index listing all numbered documents filed to date by ISRI has been mailed to all additional parties of record in this proceeding.

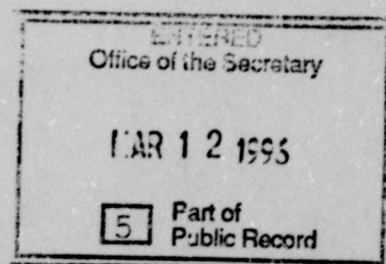
Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John K. Maser III".

John K. Maser III

Attorney for Institute of Scrap
Recycling Industries, Inc.

Enclosures
3310/060



**Index of Documents Filed With the
Surface Transportation Board
By Institute of Scrap Recycling Industries, Inc.
Finance Docket No. 32760**

<u>Document No.</u>	<u>Date Filed</u>	<u>Description</u>
ISRI-1	1/29/96	Notice of Intent to Participate.
ISRI-2	1/29/96	Motion for Leave to Late-File Notice of Intent to Participate.
ISRI-3	2/26/96	Index of Documents filed by ISRI pursuant to Decision No. 16.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Decision No. 17, a copy of the foregoing INDEX OF DOCUMENTS FILED BY INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC. has been served via first class mail, postage prepaid, on all additional parties of record in this proceeding on the 11th day of March, 1996.

Elinor H. Brown
Elinor G. Brown

STB

FD

32760

3-11-96

J.

61702

Item No. _____

Page Count PE 2

Mar. 11 #188 **HILTON & SCHEETZ**
ATTORNEYS AT LAW

PHILADELPHIA, PENNSYLVANIA
DETROIT, MICHIGAN
NEW YORK, NEW YORK
PITTSBURGH, PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

THIRTEENTH STREET, N.W.
WASHINGTON, D.C. 20036-1685

(202) 828-1200

TELEX CABLE ADDRESS: 440653 (ITT)
FAX: (202) 828-1665

WILMINGTON, DELAWARE
BERWYN, PENNSYLVANIA
WESTMONT, NEW JERSEY
LONDON, ENGLAND
MOSCOW, RUSSIA

WRITER'S DIRECT NUMBER

(202) 828-1220

March 11, 1996

VIA HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20549

Re: Certificate of Service
Finance Docket No. 32760

Dear Mr. Williams:

In accordance with Decision No. 17 in the above-referenced docket, I enclose Illinois Power Company's Certificate of Service which has been served by first class mail upon the persons who have been added as a party of record [POR].

Sincerely,

Michelle J. Morris

Michelle J. Morris

RECEIVED
Office of the Secretary

MAR 12 1996

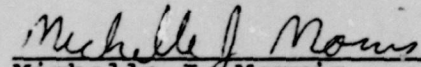
5 Part of
Public Record

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served on the added parties of record pursuant to Decision No. 17 of the Surface Transportation Board the following pleadings previously filed with the Board:

- (1) Illinois Power Company's Notice Of Intent To Participate (ILP-1)
- (2) Illinois Power Company's First Set of Interrogatories and Document Production Requests To Applicants (ILP-2)
- (3) Illinois Power Company's First Set of Interrogatories and Document Production Requests To Burlington Northern Railroad Company And The Atchison, Topeka And Santa Fe Railway Company (ILP-3)
- (4) Objections of Illinois Power Company to Applicants' First Set of Interrogatories and Requests for Production of Documents (ILP-4)

Dated this 11th day of March, 1996


Michelle J. Morris

STB

FD

• 32760

3-11-96

J

• 61701

Item No. _____

Page Count 2
Mar. 11 #189

61701

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. MCANDREW*

LOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036



March 11, 1996

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by Central Power & Light Company was served upon all parties of record identified in Decision No. 17.

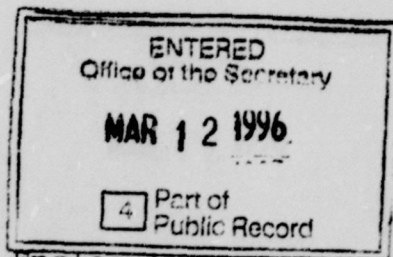
An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

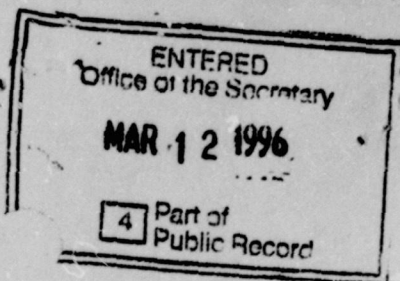
Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for Central Power
& Light Company



Enclosure



CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of Central Power & Light Company was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB

FD

32760

3-11-96

J

61699

Item No. _____

Page Count 2
Mar. # 191

41697

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

LOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

March 11, 1996



347-7170

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by Arizona Electric Power Cooperative, Inc. was served upon all parties of record identified in Decision No. 17.

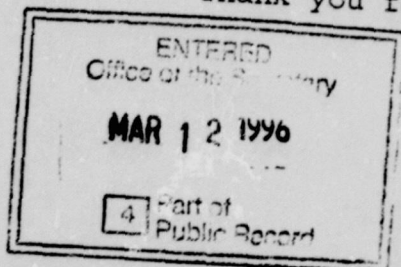
An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for Arizona Electric
Power Cooperative, Inc.



Enclosure

CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of Arizona Electric Power Cooperative, Inc. was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB

FD

• 32760

3-11-96

J

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61698

Item No. _____

Page-Count 2

Mar. 11

#192

ER & LOFTUS

ATTORNEYS AT LAW

1500 SEVENTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*



202 347-7170

March 11, 1996

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

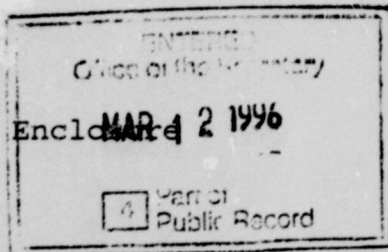
In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by City Public Service Board of San Antonio, Texas was served upon all parties of record identified in Decision No. 17.

An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

John H. LeSeur
An Attorney for City Public Service
Board of San Antonio, Texas



CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of City Public Service Board of San Antonio, Texas was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar

Patricia E. Kolesar

STB

FD

32760

3-11-96

J

61697

Item No. _____

61497

Page Count 2

Mar. 11 # 165 **OVER & LOFTUS**

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

ATTORNEYS AT LAW
SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036



March 11, 1996

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by the Western Coal Traffic League was served upon all parties of record identified in Decision No. 17.

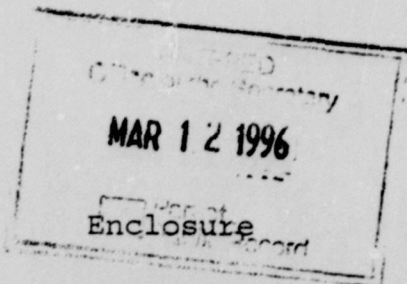
An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for the Western Coal Traffic League



CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of the Western Coal Traffic League was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB

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32760

3-11-96

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61696

Item No. _____

Page Count 2

Mar. 11 # 202

OVER & LOFTUS

ATTORNEYS AT LAW

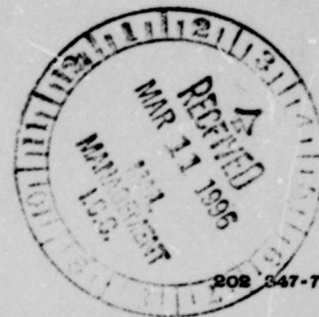
1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. MCANDREW*

* ADMITTED IN PENNSYLVANIA ONLY

March 11, 1996



BY HAND DELIVERY

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

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

Dear Mr. Secretary:

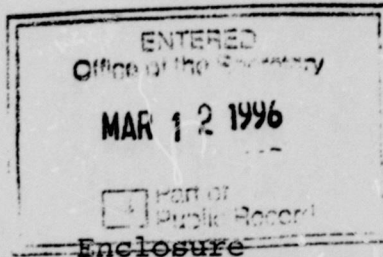
In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by City Utilities of Springfield, Missouri was served upon all parties of record identified in Decision No. 17.

An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

John H. LeSeur
An Attorney for City Utilities of
Springfield, Missouri



CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of City Utilities of Springfield, Missouri was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar

Patricia E. Kolesar

STB

FD

32760

3-11-96

J

61695

Item No. _____

Page Count 3

Mar. 11 #167

International Paper - 7

BEFORE THE
SURFACE TRANSPORTATION BOARD

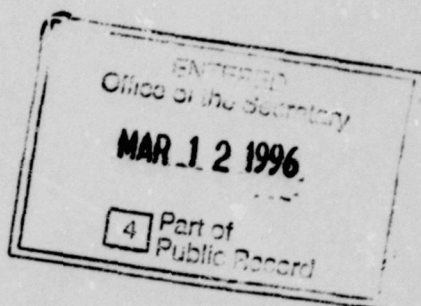
Finance Docket No. 32760



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

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

INTERNATIONAL PAPER COMPANY'S
LIST OF PLEADINGS FILED TO DATE



Edward D. Greenberg
Andrew T. Goodson
GALLAND, KHARASCH, MORSE &
GARFINKLE, P.C.
1054 Thirty- First Street, N.W.
Second Floor
Washington, D.C. 20007
(202) 342-5200

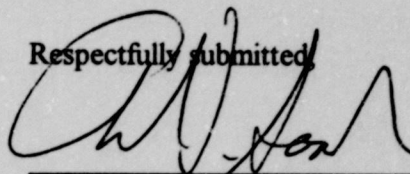
Attorneys for International Paper Company

As of February 26, 1996, International Paper Company has filed the following documents in the Finance Docket 32760:

<u>Document</u>	<u>Document Number</u>	<u>Date Filed</u>
International Paper Company's First Interrogatories and Request for Documents to Burlington Northern Railroad Company	IP-1	12/26/95
International Paper Company's First Interrogatories and Request for Documents to Applicants	IP-2	12/26/95
International Paper Company's Second Interrogatories and Request for Documents to Burlington Northern Railroad Company	IP-3	2/16/96
International Paper Company's Second Interrogatories and Request for Documents to Applicants	IP-4	2/20/96
International Paper Company's List of Pleadings Filed to Date	IP-5	2/28/96
International Paper Company's Objections to Applicants First Set of Interrogatories and Requests for Production of Documents	IP-6	3/5/96
International Paper Company's List of Pleadings Filed to Date	IP-7	3/11/96

Pursuant to Decision No. 16 in Docket 32760, International Paper will provide a copy of any pleading to any party of record upon request.

Respectfully submitted,



Edward D. Greenberg
Andrew T. Goodson
GALLAND, KHARASCH, MORSE &
GARFINKLE, P.C.
1054 Thirty- First Street, N.W.
Second Floor
Washington, D.C. 20007
(202) 342-5200

Attorneys for International Paper Company

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 1996, a copy of the foregoing International Paper Company's List of Pleadings Filed was served, via first-class United States mail, postage prepaid, upon all parties of record listed in Decision No. 15, served February 16, 1996 in Finance Docket 32760.

Stephen D. Alferts
Alfers & Carver
730 17th Street, Suite 340
Denver, CO 80202

John D. Ballas
Agency Engineer
Industry Urban-Develop.
Agency
15651 East Stafford Street
P.O. Box 7089
City of Industry, CA 91744

Sue Ballenski
Physical Resources
P.O. Box 25127
Lakewood, CO 80225

Jane T. Feldman
Asst. Attorney General
State of Colorado
1525 Sherman Street, 5th Fl.
Denver, CO 80203

Kenton Forrest
Secretary
Intermountain Chapter
Natl Railway Historical Soc.
Box 480181 Terminal Annex
Denver, CO 80248

Susan B. Gerson
J. Michael Cavanaugh
Graham & James, LLP
2000 M Street, N.W.
Suite 700
Washington, D.C. 20036

Eric M. Hocky
Gollatz, Griffin & Ewing
213 West Miner Street
P.O. Box 796
West Chester, PA 9381-0796

Russell S. Jones, III
Mountain Coal Company
555 17th Street, 22nd Floor
Denver, CO 80202

William R. Knight
Director-Fuel Services Dept.
Wisconsin Power & Light Co.
P.O. Box 192
222 W. Washington Avenue
Madison, WI 53701-0192

Dick Schiefelbein
7801 Woodharbor Drive
Fort Worth, TX 76179

Anne D. Smith
White & Case
1747 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Richard H. Streeter
Barnes & Thornburg
1401 Eye St., N.W., Suite 500
Washington, D.C. 20005

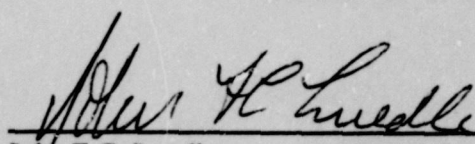
D.E. Thompson
General Chairman
Brotherhood of Locomotive
Engineers
414 Missouri Boulevard
Scott City, MO 63780

J. Tucker
P.O. Box 25181
Arlington, VA 22202

Steve Tucker
President
Denver and Rio Grande
Western
Employees Labor Committee
2048 J Road
Fruita, CO 81521

George T. Williamson
Managing Director
Port of Houston Authority
P.O. Box 2562
111 E. Loop N.
Houston, TX 77029

Tami J. Yellico
Pueblo County Courthouse
215 West 10th Street
Pueblo, CO 81003


John F.C. Luedke

us87506

STB

FD

32760

3-11-96

J

61694

Item No. _____

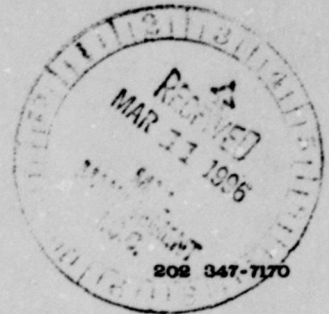
Page Count 2

Mar. 11 # 168

61494

WILLIAM L. SLOVEN
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

EVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036



March 11, 1996

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

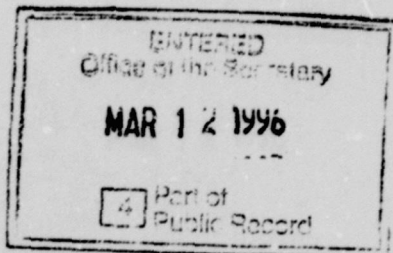
In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by Texas Utilities Electric Company was served upon all parties of record identified in Decision No. 17.

An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

John H. LeSeur
An Attorney for Texas Utilities
Electric Company



Enclosure

CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of Texas Utilities Electric Company was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB FD 32760

3-11-96 J 61693

Item No. _____

Page Count 3

Mar. 11 #166

61693

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

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

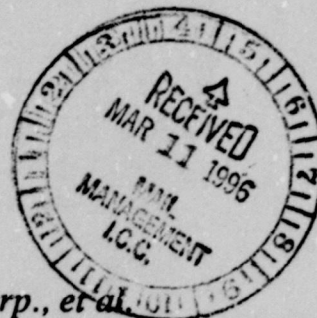
OFFICE: (202) 371-2500

TELESCOPIER: (202) 371-0900

March 11, 1996

Via Hand Delivery

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



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

Dear Secretary Williams:

Pursuant to Decision No. 17, enclosed for filing with the Board is an original and five (5) copies of the Certificate of Service of The National Industrial Transportation League ("NITL") certifying that a copy of an index listing all numbered documents filed to date by the NITL has been mailed to all additional parties of record in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Frederic L. Wood".

Nicholas J. DiMichael

Frederic L. Wood

*Attorneys for The National Industrial
Transportation League*

Enclosures
0124/480

ENTERED	
Office of the Secretary	
MAR 12 1996	
5	Part of Public Record

**Index of Documents Filed With the
Surface Transportation Board
By The National Industrial Transportation League
Finance Docket No. 32760**

<u>Document No.</u>	<u>Date Filed</u>	<u>Description</u>
NITL-1	8/22/95	Request to be added to Service List
NITL-2	9/18/95	Comments of The National Industrial Transportation League on Proposed Procedural Schedule
NITL-3	9/21/95	Petition of The National Industrial Transportation League to Reopen
NITL-4	2/26/96	Index of Documents Filed by The NITL pursuant to Decision No. 16.
NITL-5	3/4/96	The National Industrial Transportation League's Objections to Applicants' First Set of Interrogatories and Requests for Production of Documents.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Decision No. 17, a copy of the foregoing INDEX OF DOCUMENTS FILED BY THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE has been served via first class mail, postage prepaid, on all additional parties of record in this proceeding on the 11th day of March, 1996.

Elinor G. Brown
Elinor G. Brown

STB

FD

32760

3-11-96

J

61692

Item No. _____

Page Count 2

Mar. 11 # 203

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWL
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

March 11, 1996

* ADMITTED IN PENNSYLVANIA ONLY



BY HAND DELIVERY

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

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

Dear Mr. Secretary:

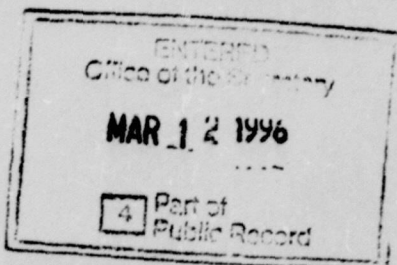
In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by Colorado Springs Utilities was served upon all parties of record identified in Decision No. 17.

An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

John H. LeSeur
An Attorney for Colorado Springs
Utilities



Enclosure

CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of Colorado Springs Utilities was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB

FD

32760

3-11-96

J

61690

Item No. _____

Page Count 2
Mar. 11 # 204

61690

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. MCANDREW*

LOFTUS & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036



March 11, 1996

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by Peabody Holding Company, Inc. was served upon all parties of record identified in Decision No. 17.

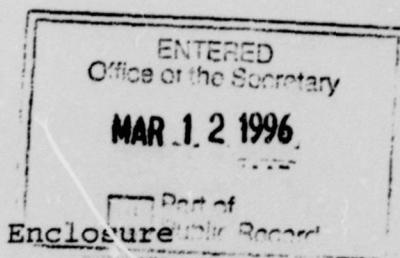
An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for Peabody Holding
Company, Inc.



CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of Peabody Holding Company, Inc. was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB

FD

32760

3-11-96

J

61689

Item No. _____

Page Count _____

Mar. 11 #164

61489

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

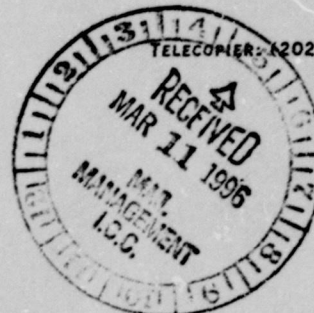
ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

March 11, 1996



Via Hand Delivery

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

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

Dear Secretary Williams:

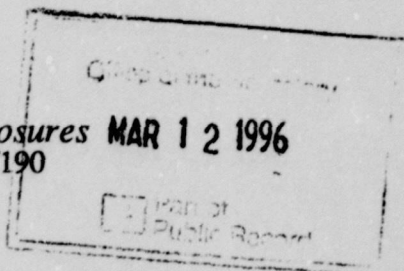
Pursuant to Decision No. 17, enclosed for filing with the Board is an original and five (5) copies of the Certificate of Service of Cargill, Incorporated, ("CARG") certifying that a copy of an index listing all numbered documents filed to date by Cargill has been mailed to all additional parties of record in this proceeding.

Respectfully submitted,

John K. Maser III

John K. Maser III
Attorney for Cargill, Incorporated

Enclosures MAR 12 1996
1200/190



**Index of Documents Filed With the
Surface Transportation Board
By Cargill, Incorporated
Finance Docket No. 32760**

<u>Document No.</u>	<u>Date Filed</u>	<u>Description</u>
CARG-1	1/11/96	Notice of Intent to Participate
CARG-2	2/26/96	Index of Documents filed by Cargill Pursuant to Decision No. 16.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Decision No. 17, a copy of the foregoing INDEX OF DOCUMENTS FILED BY CARGILL, INCORPORATED. has been served via first class mail, postage prepaid, on all additional parties of record in this proceeding on the 11th day of March, 1996.

Elinor G. Brown
Elinor G. Brown

STB

FD

632760

3-11-96

J

61688

Item No. _____

Page Count 3

Mar. 11 #205

61688

EARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

March 11, 1996

Via Hand Delivery

Honorable Vernon A. Williams

Secretary

Surface Transportation Board

1201 Constitution Avenue, N.W.

Washington, D.C.



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

Dear Secretary Williams:

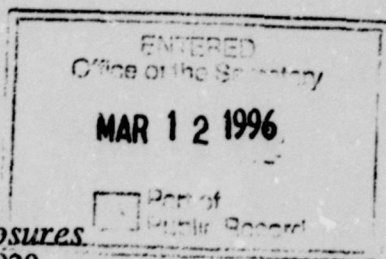
Pursuant to Decision No. 17, enclosed for filing with the Board is an original and five (5) copies of the Certificate of Service of The Dow Chemical Company ("DOW") certifying that a copy of an index listing all numbered documents filed to date by Dow has been mailed to all additional parties of record in this proceeding.

Respectfully submitted,

Nicholas J. DiMichael

Jeffrey O. Moreno

Attorneys for The Dow Chemical Company



Enclosures
1700/020

**Index of Documents Filed With the
Surface Transportation Board
By DOW Chemical Company
Finance Docket No. 32760**

<u>Document No.</u>	<u>Date Filed</u>	<u>Description</u>
DOW-1	1/16/96	Notice of Intent to Participate.
DOW-2	1/26/96	First Set of Interrogatories and Request for Production of Documents of the Dow Chemical Company to Applicants
DOW-3	2/26/96	Index of Documents filed by DOW pursuant to Decision No. 16.
DOW-4	3/4/96	The Dow Chemical Company's Objections to Applicants' First Set of Interrogatories and Requests for Production of Documents.
DOW-5	3/5/96	Notice to the Surface Transportation Board correcting number used on DOW-4.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Decision No. 17, a copy of the foregoing INDEX OF DOCUMENTS FILED BY THE DOW CHEMICAL COMPANY has been served via first class mail, postage prepaid, on all additional parties of record in this proceeding on the 11th day of March, 1996.

Elinor H. Brown
Elinor G. Brown

STB

FD

32760

3-11-96

J

61687

Item No. _____

Page Count 3

Mar. 11 # 163

LEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

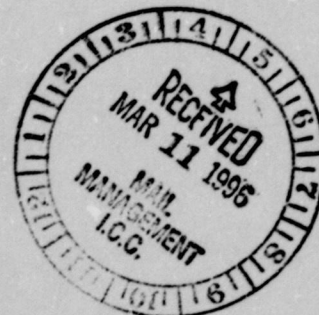
OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

March 11, 1996

Via Hand Delivery

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



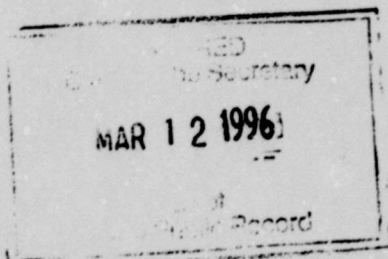
Re: Finance Docket No. 32760, *Union Pacific Corp., et al.*
Control & Merger, Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

Pursuant to Decision No. 17, enclosed for filing with the Board is an original and five (5) copies of the Certificate of Service of Kennecott Utah Copper Corporation and Kennecott Energy Company ("KENN") certifying that a copy of an index listing all numbered documents filed to date by Kennecott has been mailed to all additional parties of record in this proceeding.

Respectfully submitted,

John K. Maser III
Jeffrey O. Moreno
Attorneys for Kennecott Utah Copper
Corporation and Kennecott Energy
Company



Enclosures
3760/020

**Index of Documents Filed With the
Surface Transportation Board
By Kennecott Utah Copper Corporation and
Kennecott Energy Company
Finance Docket No. 32760**

<u>Document No.</u>	<u>Date Filed</u>	<u>Description</u>
KENN-1	12/4/95	Notice of Intent to Participate
KENN-2	1/16/96	First Set of Interrogatories and Requests for Production of Documents of Kennecott Utah Copper Corporation and Kennecott Energy Company to Applicants.
KENN-3	1/29/96	First Set of Interrogatories and Request for Production of Documents of Kennecott Utah Copper Corporation and Kennecott Energy Company to Burlington Northern Railroad Company and the Atchison, Topeka and Santa Fe Railway Company.
KENN-4	2/26/96	Index of Documents filed by Kennecott pursuant to Decision No. 16.
KENN-5	3/4/96	Kennecott Utah Copper Corporation's and Kennecott Energy Company's Objections to Applicants' First Set of Interrogatories and Requests for Production of Documents.
KENN-6	3/5/96	Notice to the Surface Transportation Board correcting number used on Kennecott-5.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Decision No. 17, a copy of the foregoing INDEX OF DOCUMENTS FILED BY KENNCOTT UTAH COPPER CORPORATION AND KENNECOTT ENERGY COMPANY has been served via first class mail, postage prepaid, on all additional parties of record in this proceeding on the 11th day of March, 1996.

Elinor G. Brown
Elinor G. Brown

STB

FD

32760

3-11-96

J

61685

Item No. _____

Page Count 2

Mar. 11 # 162

OVER & LOFTUS

ATTORNEYS AT LAW

1226 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SEEVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. MCANDREW*

* ADMITTED IN PENNSYLVANIA ONLY

March 11, 1996



BY HAND DELIVERY

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

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

Dear Mr. Secretary:

In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by Wisconsin Public Service Corporation was served upon all parties of record identified in Decision No. 17.

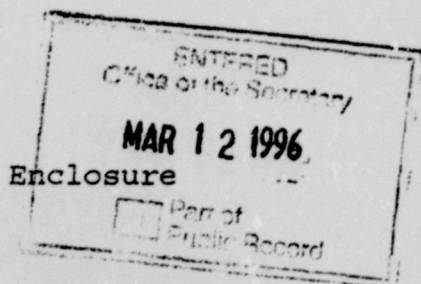
An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Kelvin J. Dowd

An Attorney for Wisconsin Public
Service Corporation



CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of Wisconsin Public Service Corporation was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB

FD

32760

3-11-96

J

61684

Item No. _____

Page Count 2
Mar. 1 # 161

61684

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PEROLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

ER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036



March 11, 1996

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by Lower Colorado River Authority and the City of Austin, Texas was served upon all parties of record identified in Decision No. 17.

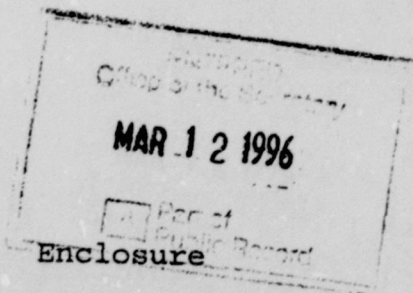
An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for Lower Colorado River
Authority and the City of Austin,
Texas



CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of Lower Colorado River Authority and the City of Austin, Texas was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB

FD

32760

3-11-96

J

61683

Item No. _____

Page Count 2

Mar. 11 - #207

61683

WILLIAM L. SLOVEN
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

ER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036



March 11, 1996

*ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

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

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

Dear Mr. Secretary:

In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by Commonwealth Edison Company was served upon all parties of record identified in Decision No. 17.

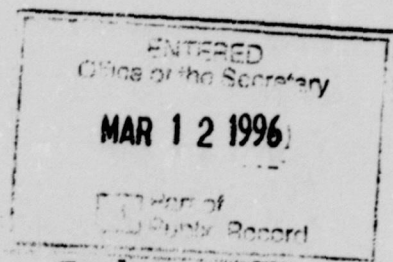
An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Christopher A. Mills

Christopher A. Mills
An Attorney for Commonwealth Edison Company



CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of Commonwealth Edison Company was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB

FD

32760

3-11-96

J

61682

Item No. _____

Page Count: 2

Mar. 11 #160

VER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

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C. MICHAEL LOFTUS
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ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

* ADMITTED IN PENNSYLVANIA ONLY

March 11, 1996



BY HAND DELIVERY

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

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

Dear Mr. Secretary:

In accordance with the Board's Decision No. 17 in the captioned proceeding, enclosed please find an original and five (5) copies of a Certificate of Service which indicates that service of a list of all numbered pleadings and discovery requests which have been filed or served by Entergy Services, Inc., and its affiliates Arkansas Power & Light Company and Gulf States Utilities Company was served upon all parties of record identified in Decision No. 17.

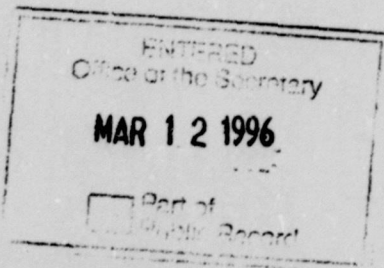
An extra copy of this letter and Certificate of Service is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Christopher A. Mills

An Attorney for Entergy Services, Inc., and its affiliates Arkansas Power & Light Company and Gulf States Utilities Company



Enclosure

CERTIFICATE OF SERVICE

In accordance with the Board's Decision No. 17 in Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al., the undersigned attorney hereby certifies that on the 11th day of March, 1996, a list of all numbered pleadings and discovery requests which were filed or served on behalf of Entergy Services, Inc., and its affiliates Arkansas Power & Light Company and Gulf States Utilities Company was served via first class mail, postage prepaid, upon all parties of record identified in Decision No. 17.

Patricia E. Kolesar
Patricia E. Kolesar

STB

FD

32760

3-7-96

J

61669

Office of the Secretary

MAR 11 1996

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

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LONDON
LOS ANGELES
NEW YORK
MEXICO CITY CORRESPONDENT
JAUREGUI, NAVARETTE, NADER Y ROJAS

ERIKA Z. JONES
202-778-0842

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



March 7, 1996

VIA HAND DELIVERY

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

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

Dear Judge Nelson:

In its Second Discovery Requests directed to Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BN/Santa Fe"), Kansas City Southern sought the production of information and documents relating to studies conducted in 1990 and 1991 by McKinsey & Company for Santa Fe or its then parent, Santa Fe Pacific Corporation. For the reasons outlined below, BN/Santa Fe objected to the production of this material. Kansas City Southern ("KCS") has moved to compel the production of these materials or, in the alternative, seek issuance of a subpoena directing McKinsey & Company to produce them. These matters will be considered at tomorrow's Discovery Conference.

The materials at issue are documents and information produced in the course of strategic deliberations undertaken by Santa Fe **over six years ago**. Any such documents related to this work that might still exist are too remote to be of relevance to this proceeding and are unlikely to lead to any admissible evidence.

In raising this issue, Kansas City Southern seeks to relitigate an issue that you have already decided. In December, you rejected KCS's motion to compel the Applicants in this proceeding to produce strategic and competitive analyses of another merger - in that case the BN/Santa Fe merger. Although

Item No. _____
Page Count 99
MAR # 151

1990 to 1991 time period are irrelevant to the current proposed merger between Union Pacific and Southern Pacific: the structure of the Western rail system in 1990 and 1991 was significantly different from what it is now, and the question before the Surface Transportation Board in this proceeding is whether the proposed combination of UP and SP is in the public interest based on the current rail and market environment. Thus, any work done by McKinsey & Company over six years ago in the context of an entirely different rail system structure is irrelevant to the issues currently before the Board and not reasonably likely to lead to the discovery of admissible evidence. On the other hand, such work contributing to the strategic planning of a company is inherently sensitive, a factor that should be balanced against the requesting party's lack of any demonstrated need for the information.

In addition, KCS's requests were very broad and would impose an unduly burdensome obligation on BN/Santa Fe, which is not a primary applicant in this proceeding.^{1/} As reflected in Mr. Ice's deposition testimony, McKinsey & Company undertook a number of projects for Santa Fe that looked at the restructuring of railroads in the West, and, according to Mr. Ice, McKinsey looked at "just about every combination you could think of" involving railroads in the West. Deposition Transcript of Carl R. Ice, February 14, 1996, at pp. 134-35 (attached as Exhibit C). Mr. Ice also testified that the McKinsey work product "was more like slides," rather than written reports. Ice Transcript at page 135, line 22 & 23. KCS's requests seek information and documents on all of these studies without providing any basis whatsoever as to how, if at all, any of the information or documents would be relevant to this proceeding. Accordingly, KCS has asked BN/Santa Fe to undertake an extensive search of its files to locate all the requested information and documents without providing any basis to justify the imposition of such a burden on BN/Santa Fe.

^{1/} KCS has itself refused to produce its "business plans or strategic plans," objecting, in pertinent part, that the request for such materials is "overbroad and unduly burdensome in that it seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence." Kansas City Southern Railway Company's Objections To Applicants' First Set Of Interrogatories And Requests For Production Of Documents, at p. 20 (responding to Request No. 27) (attached as Exhibit D).

The Honorable Jerome Nelson
March 7, 1996.
Page 3

1990 to 1991 time period are irrelevant to the current proposal for a merger between Union Pacific and Southern Pacific: the structure of the Western rail system in 1990 and 1991 was significantly different from what it is now, and the question before the Surface Transportation Board in this proceeding is whether the proposed combination of UP and SP is in the public interest based on the current rail and market environment. Thus, any work done by McKinsey & Company over six years ago in the context of an entirely different rail system structure is irrelevant to the issues currently before the Board and not reasonably likely to lead to the discovery of admissible evidence. On the other hand, such work contributing to the strategic planning of a company is inherently sensitive, a factor that should be balanced against the requesting party's lack of any demonstrated need for the information.

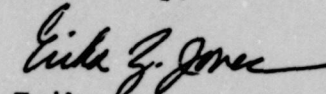
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The Honorable Jerome Nelson
March 7, 1996.
Page 4

Accordingly, KCS's motion to compel and its motion for a subpoena should be denied.

Sincerely,


Erika Z. Jones

cc: Richard E. Weicher
Restricted Service List

INTERSTATE COMMERCE COMMISSION

+ + + + +

DISCOVERY CONFERENCE

-----X
IN THE MATTER OF: :

UNION PACIFIC CORPORATION, :
UNION PACIFIC RAILROAD COMPANY, :
and MISSOURI PACIFIC RAILROAD : Finance Docket
COMPANY : No. 32760
:

- CONTROL AND MERGER -
:

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

Wednesday, December 20, 1995

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

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

BEFORE:

THE HONORABLE JEROME NELSON
Administrative Law Judge

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 It seems to me a whole collateral inquiry into some
2 other proposal that failed, and I'm just not going to
3 get us down that one. Now as to (c), you want to use
4 this case, Mr. Lubel, to find out everything the
5 applicants had to say in the other merger?

6 MR. LUBEL: No, no. We're saying that if
7 these applicants have studies or analysis of the
8 competitive impact of the Burlington Northern/Santa Fe
9 merger, we think that's fair game under the statements
10 from the Commission that I mentioned at the beginning
11 of this.

12 JUDGE NELSON: I'm going to deny that
13 one. Too far afield. 14(a), seems to me, right in
14 the ballpark, and we're back to the question of the
15 privilege. Is there a question here?

16 MR. MILLS: May I inquire about 14(a)?

17 JUDGE NELSON: Haven't ruled on 14(a).

18 MR. MILLS: Oh, you haven't?

19 JUDGE NELSON: No, sir. Doesn't 14(a) get
20 you in the same privilege question that we discussed
21 before?

22 MR. ROACH: I think 14(a) is just the
23 U.P.-S.P. merger, and as to that, I think we discussed
24 it in connection with 4(a).

25 JUDGE NELSON: Let me see if I understand

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

INTERSTATE COMMERCE COMMISSION

DECISION

SERVICE DATE

APR 27 1981

Finance Docket No. 30,000^{1/}

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

DECISION ON DISCOVERY APPEALS

Decided: April 22, 1981

On March 10, 1981, Southern Pacific Transportation Company and its affiliate St. Louis Southwestern Railway Company (collectively SPT) filed interlocutory appeals to four rulings of Administrative Law Judge Paul Cross denying various SPT discovery requests. Applicants (collectively UP) replied on March 12, 1981. Our jurisdiction to hear this appeal was established in the decision served October 15, 1980 in this proceeding.

SPT has appealed the following four specific rulings made on March 3, 1981:

(1) denial of SPT's oral motion to compel production of pre-1979 documents pertaining to internal discussions or analyses of the possibility or desirability of a Union Pacific/Missouri Pacific consolidation;

(2) denial of SPT's oral motion to compel production of certain studies prepared prior to consideration of the Union Pacific/Missouri Pacific consolidations by the Union Pacific board of directors;

(3) denial of SPT's Motion to Compel Answers to Interrogatories and Production of Documents (SPT-19) dated February 2, 1981; and

(4) denial of SPT's Motion to Compel Production of Requested Data and Documents (SPT-20) dated February 6, 1981.

We will address each request in turn.

Oral Motion to Compel Production
of pre-1979 Documents

By oral motion on March 3, 1981, SPT sought production of internal discussions or analyses by Union Pacific staff

^{1/} Embraces F.D. No. 30,000 (Sub-Nos. 1-10, 14-17) and Nos. MC-W-14448 and MC-F-14449.

of the possibility or desirability of a Union Pacific/ Missouri Pacific consolidation. The Judge denied the motion.

SPT based its request on the alleged representation of applicants' counsel that no such discussions had taken place prior to January 1, 1979.^{2/} In reliance upon this representation SPT states that it restricted the scope of its discovery to the time period after January 1, 1979.

Upon cross examination of Mr. William S. Cook on March 3, 1981, it was discovered that, while discussions of the present proposal of consolidation of Union Pacific and Missouri Pacific had commenced in 1979, the possibility of such a consolidation had been considered much earlier. On at least two prior occasions Missouri Pacific had approached Union Pacific on the possibility of a merger and Union Pacific had concluded that it was not the right time to pursue such a consolidation.^{3/}

Upon learning of these pre-1979 contacts, counsel for SPT moved for production of documents related to consideration of the earlier proposals. SPT now argues that it was improper for the Judge to deny its motion.

Applicants argue in reply that the earlier consideration of possible mergers is irrelevant to consideration of the proposed transaction which was not negotiated until late 1979. Moreover, applicants find "specious" SPT's allegation that it was misled by the representation that no negotiations occurred prior to January 1, 1979.^{4/} Applicants allege that all railroads have studied restructuring possibilities in recent years, especially after the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4R Act).

^{2/} By letter dated October 2, 1980, counsel for applicants stated:

The time period governing all searches and production shall be January 1, 1979, to ... date In this connection, applicants now state ... that no discussions - either between officers of the applicants or among officers of any individual applicant - pertaining to the transactions that are the subject of the above proceedings occurred prior to January 1, 1979.

^{3/} Transcript p. 267-269.

^{4/} Applicants cite the language of the letter of October 2, 1980 stating that there were no internal discussions prior to January 1, 1979, "pertaining to the transactions that are the subject of these proceedings."

Discussion of possible consolidation of Union Pacific and Missouri Pacific prior to 1979 technically may not pertain to the development of the specific consolidation proposal before us. Nonetheless, consideration of merger with the same partner, a very short period of time prior to the actual consolidation proposal, must necessarily have provided background for negotiating the final proposal. Discovery of documents related to these discussions or analyses may very well lead to introduction of evidence relevant to the Commission's consideration of the public interest in this proceeding, particularly in the area of expected benefits of the transactions.

For this reason we believe SPT's oral motion to compel production of pre-1979 documents pertaining to internal discussions or analyses of the possibility or desirability of a Union Pacific/Missouri Pacific consolidation should have been granted. We will grant the appeal, but limit discovery of such material to the time period after January 1, 1976. Material prior to this time is too remote to be relevant in this proceeding.^{5/}

Oral Motion to Compel
Production of Certain Studies

The testimony of Mr. Cook also revealed the existence of certain studies on potential consolidations prepared by Union Pacific prior to consideration of the consolidations by its board of directors. SPT argues that such studies are relevant to the development of the proposed transaction and should be produced. While applicants noted that they would not object to production of parts of the studies,^{6/} they argued that the studies were dated, of little usefulness and that portions of the studies dealt with sensitive considerations of possible mergers with railroads other than Missouri Pacific and should not be subject to discovery in this proceeding.

The Judge denied SPT's motion.

For the reasons discussed above regarding production of pre-1979 documents, we believe the portions of the post January 1, 1976 studies specifically dealing with Missouri Pacific should be made available to SPT.^{7/} We

^{5/} In addition, materials prepared before 1976 would not reflect the effectiveness of the 4R Act. See also transcript page 273.

^{6/} Transcript p. 315-316 and 848-849.

^{7/} The interlocutory appeal did not request material for other than Missouri Pacific.

agree with applicants that material not related specifically to Missouri Pacific may be sensitive and need not be revealed in this proceeding.

SPT's motion should have been granted to the extent described above. SPT's appeal is granted.

Motion to Compel Production of
Requested Data and Documents (SPT-20)

SPT-20 was filed on February 6, 1981. In this motion, SPT sought orders compelling applicants to respond to, and to produce, the documents requested in several outstanding discovery requests. Some of the items remained in dispute at the commencement of hearings on March 3, 1981, when the Judge denied the motion. We will address each item raised in SPT's appeal.

SPT First Set of Interrogatories, Requests 12 and 13:^{8/} These requests deal with material submitted to or used in any presentation made to the various boards of directors of applicants. Applicants allege in their reply that they have produced all materials covered by these requests. Accordingly, SPT's appeal with regard to these requests is moot.

SPT Request for Drafts of Verified Statements: By letter dated January 27, 1981, counsel for SPT requested a copy of the initial drafts of each verified statement for each witness sponsored by applicants, since all of the applicants' top officers and policy witnesses have no underlying work papers supporting their testimony. In this context, SPT alleges, the drafts are necessary for adequate cross examination of these witnesses.^{9/}

In reply applicants cite the decision in this proceeding served December 10, 1980, in which draft verified statements were denied: the Missouri-Kansas-Texas Railroad Company, and the decision in Finance Docket No. 28799 (Sub-No. 1), St. Louis Southwestern Railway Company - Purchase (Portion) (not printed) (October 12, 1979) barring discovery of draft verified statements.

8/ "12. Identify and produce all documents submitted to the Board of Directors of each applicant herein referring or relating to the transaction proposed herein."

"13. Identify and produce all documents used in connection with any presentation made to the Board of Directors of each applicant herein concerning the proposed transaction."

9/ If the request is denied SPT seeks, "at the very least," that the Judge conduct an in camera inspection to determine whether the drafts should be protected. The request for in camera inspection will be discussed infra.

Draft verified statements, whether written originally by the witnesses or by an attorney, are refined and focused by the interaction of the witness and the attorney. As such the drafts are indicative of the process followed by the attorney in preparation for litigation and deserve protection under the work product doctrine. See United States v. Nobles, 422 U.S. 225, 238-39 (1975), and Hickman v. Taylor, 329 U.S. 495, 510-11 (1947).

Moreover, the absence of work papers and unavailability of draft verified statements do not preclude SPT's cross examination of each witness based upon the submitted statements.

The Judge did not abuse his discretion in denying the motion, and SPT's appeal seeking draft verified statements will be denied.

SPT's Ninth Set of Discovery Requests, February 2, 1981: SPT's Ninth Set of Discovery Requests is set forth in Appendix A. It calls for production of all correspondence and other materials exchanged between and among the top executive officers within each of the three carrier applicants and their respective parent organizations concerning the proposed transactions. SPT states in its appeal that the purpose of these discovery requests was to obtain any documents or correspondence sent to or received by these executives. SPT cites the lack of any work papers describing the evolution of the verified statements of applicants' executives as justifying the need for discovery of these items. SPT alleges that compliance with its request would require a search only of the files of seven top executives of applicants.

In reply applicants offer the following points. First, the requests are extremely broad. Second, SPT has allegedly already discovered against applicants with regard to Union Pacific's proposed acquisitions of both Missouri Pacific and Western Pacific.^{10/} Third, applicants allege that compliance with SPT's request would require a search of the files of 48 executives, including all the vice-presidents set forth in the request.

The verified statements with which SPT is concerned were filed along with the primary applications in these

^{10/} Requests 15 and 16 of SPT's First Set of Discovery Requests called for "all documents which refer or relate to the possible acquisition or control of MP (and WP) by UP or merger or consolidation of UP and MP (or WP)." See also Requests 12 and 13 (documents used in connection with presentation to applicants' Boards of Directors regarding the transactions) and Request 21 (documents generated by UP in connection with its review of the business or property of MP and WP) in SPT's First Set of Interrogatories and Requests for Production.

proceedings on September 15, 1980. The statements have been available to SPT for 6 months. Additionally, SPT has discovered numerous documents related to consideration of the proposed consolidation by applicants' witnesses pursuant to its other discovery requests. While applicants did not keep files by individual witnesses, they did categorize working papers and material by subject matter and an extensive index in this form was made available to SPT.^{11/}

We do not believe further discovery is necessary to allow SPT to cross examine applicants' witnesses effectively. The Judge was within his discretion to deny the motion and the appeal will be denied.

Motion to Compel Answers to Interrogatories and
the Production of Documents (SPT-19)

SPT-19 was filed on February 2, 1981. In its motion SPT sought orders compelling production of a number of disputed documents as well as answers to described interrogatories. The motion was denied by the Judge on March 3, 1981. We will address each item raised in SPT's appeal.

Specific Documents: Since the time SPT-19 was filed applicants have produced a number of documents to SPT. There remain 58 documents which have not been produced.^{12/}

In denying SPT's motion to produce these documents, the Judge cited the reasoning set forth by applicants in their reply to the motion.^{13/}

Applicants rely on three grounds to justify their withholding of the remaining documents: (1) attorney-client privilege, (2) the work product doctrine, and (3) confidentiality.

The disputed documents include 44 for which the attorney-client privilege is invoked to preclude

^{11/} Transcript, January 6, 1981, page 124-25.

^{12/} These documents are described by affidavits of counsel which are Attachments F, G and H to UP-42, applicants' reply to SPT-19. Sixty-two documents are described. Three were ordered produced by the Judge on March 3, 1981 (F-16 and 34, and G-2) and one (F-53) has since been voluntarily produced by applicants. See UP-57, Applicants' Reply to Interlocutory Appeal, at page 22, footnote 4. Document G-2 was ordered produced by the Judge after counsel for MP volunteered to make it available. See Transcript page 230.

^{13/} Transcript page 171.

discovery.^{14/} The work product doctrine is invoked to protect 40 documents, 32 of which are also included under attorney-client privilege.^{15/} The work product doctrine without the attorney-client privilege is invoked to protect 8 documents.^{16/} Applicants continue to withhold 11 documents because of their confidential nature.^{17/} Of these, nine are commercially sensitive^{18/} and two relate to confidential settlement negotiations.^{19/}

(1) The Attorney-Client Privilege.

The attorney client privilege exists "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests and the observance of law and the administration of justice." Upjohn Co. v. United States, 66 L. Ed. 2d 584, 591 (1981). Our rules comprehend privileged material at 49 C.F.R. 1100.55.^{20/} The Supreme Court in Upjohn, *supra*, recently noted that "the privilege exists to protect not only the giving of professional advice to those who can act on it, but also the giving of information to the lawyer to enable him to give sound and informed advice." 66 L. Ed. 2d. at 592.

SPT argues that the attorney client privilege does not apply to a lawyer acting outside of his responsibilities as a lawyer, and that in this proceeding applicants' counsel may have been evaluating the information in the withheld documents in a business rather than legal sense.

^{14/} Documents F-1-11, 14, 15, 17-21, 30-33, 35-46 and 48-52; G-1; and H-1-4.

^{15/} Documents F-1-11, 14, 15, 17-21, 30-33, 35, 48-52; G-1; and H-2-4.

^{16/} Documents F-12, 13 and 25-29.

^{17/} Documents F-22-28, 52, 54 and 55; and H-5.

^{18/} Documents F-22-28, and 52; and H-5.

^{19/} Documents F-54, 55.

^{20/} See General Rules of Practice, 346 I.C.C. 603 (1974).

We find this argument unconvincing. The affidavits produced by applicants describe in detail the nature of the documents involved. It appears unmistakable that they relate to the preparation, filing and prosecution of the application in this proceeding. The factual nature of some documents does nothing to affect the privilege.^{21/}

The Judge did not abuse his discretion in denying discovery of those items allegedly protected by the attorney client privilege.

(2) The Work Product Doctrine.

The work product doctrine is a long recognized rule protecting work done in anticipation of litigation.^{22/} The doctrine is presently codified in Rule 26(b)(3) of the Federal Rules of Civil Procedure, which allows a qualified protection to documents " . . . prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer or agent)" Such documents are discoverable only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Mental impressions, conclusions, opinion, or legal theories of "an attorney or other representative of a party concerning the litigation" are not to be disclosed.

SPT argues that our rules do not specifically apply the work product doctrine to Commission proceedings. Moreover, it argues, application of the work product doctrine in administrative proceedings is not justified and would result in all workpapers related to Commission applications being shielded from discovery.

We disagree. While our rules do not specifically adopt the work product doctrine, it has been previously applied in administrative proceedings.^{23/} We are specifically charged

^{21/} See Upjohn, *supra*, at 592 where the Supreme Court cites ABA Code of Professional Responsibility, Ethical Consideration 4 - 1.

^{22/} Hickman v. Taylor, 329 U.S. 495 (1947).

^{23/} See Natta v. Hogan, 392 F.2d 686, 693 (10th Cir. 1968) (patent interference proceedings); Upjohn, *supra* (administrative subpoena); and Finance Docket No. 30,000, Union Pacific Corp. - Control (decision served December 10, 1980).

with conforming our rules and procedures as nearly as possible to those in use in the courts of the United States. General Rules of Practice, 346 I.C.C. 603, 619 (1974). There is no reason the work product doctrine should not apply to Commission proceedings, and we see no need for the dire consequences predicted by SPT to flow from its application. However, following the Supreme Court's example in Upjohn, 66 L.Ed. at 591, we will not "lay down a broad rule or series of rules to govern all conceivable future questions" in the area of privilege. The work product doctrine can be applied on a case by case basis in Commission proceedings.

The documents withheld by applicants pursuant to the work product doctrine appear properly withheld. One document (F-47) reflects the legal opinions of applicants' counsel. The remaining documents are summaries of specific shippers' volumes which do not appear necessary to SPT's case in light of the voluminous materials otherwise provided regarding traffic.

The Judge did not abuse his discretion regarding those items protected by the work product doctrine.

(3) Confidentiality.

Confidential business information is not discoverable unless the relevancy of the information is sufficient to outweigh its commercial sensitivity. Confidential business matters are similar to trade secrets and the courts are loath to order their disclosure absent a clear showing of immediate need for the information requested. Duplan Corp. v. Derring Millikin, Inc., 397 F. Supp. 1146, 1185 (D.S.C. 1975). The Duplan court went on to say "[o]nce the [trade secrets] privilege is asserted . . . the party seeking discovery must make a clear showing that the documents are relevant to the issues involved in the litigation. In doubtful situations production will not be ordered." 397 F. Supp. at 1185, emphasis in original.

SPT in its appeal does not address the specific relevance of the confidential documents withheld. Instead it argues that applicants should have the burden of showing the need for protection of the documents under 49 C.F.R. 1100.55(c).^{24/}

^{24/} SPT seems to argue that Requests 12 and 13 and Item 72 of its First Set of Interrogatories require production. These items seem unrelated to confidentiality. Requests 12 and 13 are discussed, supra.

We disagree. The determination of whether or not to allow or require discovery of confidential material requires a balancing of interest. While SPT's discovery of the withheld UP documents may have been useful, in either a tactical or commercial sense, it does not appear necessary in light of the materials already made available to SPT.^{25/}

Confidential material related to settlement negotiations clearly should not be discoverable in order to encourage private settlement of disputes. See Reichenbach v. Smith, 528 F. 2d. 1072 (5th Cir. 1976).

The Judge did not abuse his discretion in denying the motion regarding confidential documents.

(4) In camera inspection.

SPT has requested generally that all documents withheld by applicants be subject to an in camera inspection to determine whether applicant's characterization of the documents is correct and whether the documents should be protected. While in camera inspection is occasionally a useful tool, we do not believe it is necessary for these documents. Applicants have provided a sworn description of each withheld document and both parties have thoroughly argued the issues related to their discovery in motions, appeals and replies. This is sufficient information to determine the discoverability of the disputed documents without an in camera inspection. See Dura Corporation v. Milwaukee Hydraulic Products, Inc., 37 P.R.D. 470 (1965).

Moreover, an inspection places an additional burden upon the Commission's resources in this proceeding which is not justified by the circumstances. This proceeding is governed by the strict time limits of 49 U.S.C. 1134b; additional adjudicative burdens, which may affect the schedule of hearings, will not be placed on Commission resources without good cause.

In light of the material already discovered in this proceeding, the sworn description by applicants of the withheld documents, the discernable relation of the documents to the various privileges claimed, and the alternative sources for much of the protected information (such as traffic studies), the Judge did not abuse his discretion and the appeal is denied with respect to all of the specific documents.

^{25/} SPT alleges that an inconsistency exists regarding the production of document G-2 and the withholding of other documents. We find no inconsistency since document G-2 was voluntarily produced by applicants after discussion with the Judge, transcript page 230, and with certain confidential material masked, transcript page 1548-9.

Documents Referring to Other Possible Mergers Involving UP: In SPT-19, SPT sought an order compelling applicants' response to Request 17 of SPT's First Set of Discovery Requests.^{26/} SPT renews its request on appeal, alleging that discovery of Union Pacific's plans regarding other railroads is necessary to allow SPT to present the antitrust issues involved in this proceeding.

Applicants argue that, by definition, this request focuses on matters outside the scope of this proceeding and seeks documents not "relevant to the subject matter of the pending proceeding" within the meaning of 49 C.F.R. 1100.55(a).

SPT states that this argument by UP is inconsistent with what Union Pacific argued in support of its Motion for Dismissal in Southern Pacific Transportation Company v. Union Pacific Corporation, Civil Action No. 80-5281 MRP (Tx), Central District of California, filed November 25, 1980.^{27/}

Applicants respond that there is no justification for SPT's attempt to bootstrap support for its discovery request in this proceeding by reference to its District Court antitrust action against applicants. The antitrust action, like this proceeding, addresses the proposed consolidation of Union Pacific, Missouri Pacific and Western Pacific. It does not address the potential acquisition of some other railroad company.

SPT makes no effort to show how the information requested would support its allegations of monopolization, particularly regarding carriers other than those involved in this proceeding, since no discussions of these possible consolidations ever reached the point of negotiations.^{28/} Moreover, any consolidation of other carriers would require Commission approval, and in the proceeding to obtain such approval the Commission would carefully review the transaction to determine its competitive effect.

To the extent the request indirectly seeks information about how the proposed consolidations might weaken other carriers (so that those carriers were susceptible to takeover), the Commission and the parties have already endeavored to obtain more direct and probative evidence. Indeed the Commission's intent to focus on the impact of the

^{26/} "17. Identify and produce all documents referring and relating to the possible acquisition of control by UP or merger or consolidation with UP of any other railroad company or company owning or controlling a railroad company. As used in this interrogatory the term "UP" refers to Union Pacific Railroad Company or its parent subsidiary."

^{27/} UP argued that matters raised in the District Court antitrust proceeding were within the primary and exclusive jurisdiction of the Commission and should be considered in this proceeding.

^{28/} Transcript pages 265-9.

proposed transaction on competition among carriers has been made clear from the very first decisions in this proceeding. See decision of August 25, 1980. Thus, if the proposed acquisitions were found likely to monopolize the transcontinental movement of freight, the Commission would carefully examine the transaction to determine whether there is any counterbalancing public interest. See McLean Trucking Co. v. United States, 321 U.S. 67 (1944). Should the Commission approve the transaction despite any perceived monopolization, the applicants' consummation of the transaction as approved by the Commission would be exempt from the operation of the antitrust laws. See 49 U.S.C. 11341(a) and Minneapolis & St. L. Ry. Co. v. United States, 361 U.S. 173 (1959), reh. den. 361 U.S. 945 (1960).

In making its inquiry on the competitive effect of a transaction, the Commission focuses its attention on the particular transaction in issue. The fact that Union Pacific may have considered other possible transactions is not likely to assist the Commission in determining the effect of the transaction ultimately proposed. The discovery request seeks documents not relevant to the subject matter of this proceeding and, therefore, is not proper discovery under 49 C.F.R. 1100.55(a).^{29/}

The Judge did not abuse his discretion in denying this motion, and the appeal is denied.

Oral Communications Concerning the Proposed Merger: In SPT-19 an order was sought compelling applicants' response to request 18 of SPT's First Set of Discovery Requests.^{30/}

^{29/} The Judge did allow cross examination on these matters.

^{30/} "18. Identify each communication, meeting, conference, discussion, or telephone conversation wherein the possible or proposed merger, consolidation or control of UP, MP and/or WP was discussed by any officer or employee of applicants. For each such discussion state: (a) the participants; (b) the date and time of discussion; (c) the subject of the discussion; and (d) a description or summary of the contents of the discussion."

SPT argues that this information is made necessary by applicants' instructions to its personnel not to prepare written memoranda of meetings involving the consolidation.^{31/}

Applicants objected to the request, alleging it to be unreasonably broad, burdensome and vague. Applicants state that complying with this request would be overwhelming, for each of applicants' officers may have had thousands of oral communications regarding the consolidation.

Because of the volume of material already made available to SPT and the extraordinary difficulty of complying with the request, the motion was properly denied by the Judge. The appeal is denied.

Request 47 of SPT's First Set of Discovery Requests: By this request SPT seeks to compel production by UP of all documents concerning Union Pacific's relationship with Chicago and North Western Transportation Company (CNW).^{32/} The requested information is allegedly necessary to determine the status of CNW as a friendly connection if SPT's request for trackage rights over Union Pacific is granted. Additionally, SPT argues the discovery request is relevant to whether CNW will continue to function if the merger is approved, to CNW's role as a coal carrier, and to the present ability of Union Pacific and CNW to conduct coordinated operations short of merger. Finally, SPT argues this information is relevant to its antitrust claim against Union Pacific.

^{31/} SPT's reference is to a document obtained in discovery entitled "Procedures for Handling Confidential Materials" attached as Exhibit F to SPT-19. The document sets forth procedures for controlling written material; it notes that "memoranda containing speculative personal opinions or memorializing meetings often cannot be protected from discovery and may confuse issues in the ICC proceedings." The document appears to be an appropriate guide to preparation of materials related to this proceeding.

^{32/} SPT defines "relationship" as:

- (a) Ownership or purchase by UP of stock of CNW; ownership or purchase by any other applicant of the stock of CNW;
- (b) intention of any applicant to purchase or otherwise acquire any ownership interest in CNW stock or assets of any kind;
- (c) any loan or advance of funds or planned or possible loan or advance of funds by any applicant to CNW;
- (d) any discussions with CNW officers or employees concerning the use of federal funds by CNW for improvements; and
- (e) any dealings or plans concerning the Powder River Basin.

Applicants argue that the request focuses exclusively on matters outside the scope of this proceeding.

We agree that the request exceeds the scope of this proceeding. A separate consolidation proceeding would be required to approve any acquisition of CNW. No matter what security interest in CNW properties, Union Pacific might obtain, UP cannot lawfully take possession of or operate any segment of CNW's rail line without Commission approval. Separate proceedings are presently ongoing regarding CNW's role in the Powder River Basin.^{33/} Moreover, SPT has already discovered against applicants with regard to the effect of the proposed transaction on CNW.^{34/} Applicants also have provided, in response to the Commission's information requests, detailed information regarding the effect of the merger on the ability of CNW to provide essential services.^{35/} Applicants' traffic diversion studies and underlying work papers address in detail the impact of the proposed transaction on CNW.

The ability of Union Pacific and CNW to closely coordinate their operations is a matter properly explored in this proceeding as it may reflect on the potential benefits of the transaction. See Ex Parte No. 282 (Sub-No. 5), Railroad Consolidation Procedures - General Policy Statement, 363 F.C.C. 784 (1981). However, the discovery requests are much broader than operating relationships and entail a much greater burden. Accordingly, the Judge did not abuse his discretion in denying the motion.

Requests 3 and 4 of SPT's Third Set of Discovery Requests: In its Third Set of Discovery Requests, SPT sought production of documents related to applicants' Responses to Requests for Additional Information.^{36/} SPT argues that these requests may produce material which may be inconsistent with applicant's responses.

^{33/} Finance Docket Nos. 28934 and 29066.

^{34/} Request 45 of SPT's First Set of Discovery Requests.

^{35/} Applicants' Responses to Request for Additional Information, UP-19A/MP-18A/WP-16A. SPT alleges the request for additional information regarding the merger's impact on CNW's continued ability to provide essential service necessarily makes inquiry into existing or planned relations between CNW and Union Pacific relevant to this proceeding. We do not agree.

^{36/} "3. Identify and produce all documents in the possession of applicants referring or relating to the said Responses, any related material or any part thereof.

"4. Identify and produce all documents in the possession of applicants referring to or relating to the Order of the Commission served August 15, 1980, in these proceedings which required the filing of the said Responses by applicants "

Applicants reply that these requests are burdensome, and, in light of the voluminous material already produced to SPT, unnecessary.

We agree. SPT's requests represent a classic "fishing expedition." The Judge properly denied the motion. The appeal will also be denied.

Summary. We have discussed each of the four SPT motions ruled upon by the Judge on March 3, 1981. Upon reconsideration, we will grant the appeal from each of the denials of the oral motions, to compel production of pre-1979 documents pertaining to internal discussions or analyses of the possibility or desirability of the proposed consolidation and to compel production of certain studies prepared prior to consideration of the consolidation by the Union Pacific board of directors, with both limited in time to the period after January 1, 1976. We will deny the appeal from the denials of SPT-19 and SPT-20.

It is ordered:

(1) The interlocutory appeal of Southern Pacific Transportation Company is granted to the extent set forth above.

(2) This decision is effective upon service.

By the Commission, Division 2, Commissioners Gresham, Trantum and Alexis. Commissioner Trantum was absent and did not participate.

(SEAL)

AGATHA L. MERGENOVICH
Secretary

Carl R. Ice February 14, 1996 **HIGHLY CONFIDENTIAL**

PAGE 1 TO PAGE 276

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

Page 127

- (1) there was a routine established. We had a group
 (2) of people that looked at potential responses, as
 (3) I mentioned earlier, which we've covered several
 (4) times what those were, oppose, settle or look at
 (5) other mergers. Once UP contacted us and asked if
 (6) we were interested in settlement discussions,
 (7) then Mr. Weicher and I worked on -- we had those
 (8) negotiations with UP.

- Q. And so the record is clear, because I'm
 (10) not sure if this was established earlier, it was
 (11) UP that contacted Burlington Northern/Santa Fe
 (12) about some agreement in connection with the UP/SP
 (13) merger?
 (14) A. I believe so, yes.
 (15) Q. Let me go back a little in history and
 (16) try to come through some things chronologically.
 (17) What was your position in 1988?
 (18) A. 1988?
 (19) Q. Yes.
 (20) A. I'll have to think about that for a
 (21) minute.
 (22) Q. I've got your statement in front of
 (23) me. You could look at page 1 and try to
 (24) determine where you fell in there.
 (25) A. That would be helpful. I think I was

Page 128

- (1) an assistant director in the industrial
 (2) engineering department.
 (3) Q. And at that time were you aware of the
 (4) merger application of Southern Pacific and Santa
 (5) Fe?
 (6) A. I was aware of it.
 (7) Q. Did you have any role in any activities
 (8) relating to that merger application that was
 (9) before the ICC?
 (10) A. No.
 (11) Q. Just to follow up on that, you alluded
 (12) earlier to knowledge of the ICC's view of what
 (13) might be competitive concerns. Did any of that
 (14) knowledge or was any of that knowledge based on
 (15) the ICC's determination not to approve the merger
 (16) between SP and Santa Fe?
 (17) A. I was aware that they -- or am aware
 (18) that the merger wasn't approved and some of the
 (19) reasons. The body of knowledge I have is the
 (20) body of knowledge I have.
 (21) Q. So that would be included within your
 (22) body of knowledge?
 (23) A. Probably would, yes.
 (24) Q. And just to come forward, what was your
 (25) position in 1990?

Page 129

- (1) A. I was assistant vice president of
 (2) finance and I think also I was assistant vice
 (3) president of management services in the same
 (4) year.
 (5) Q. And let's just try to come forward in
 (6) terms of what your various positions were. By
 (7) 1993, were you vice president, administration?
 (8) A. Yes.
 (9) Q. And when did you become vice president,
 (10) car load commodities?
 (11) A. January 1 of '94.
 (12) Q. So that was after you were vice
 (13) president of administration?
 (14) A. Yes, sir.
 (15) Q. And, correct, that you held that
 (16) position, vice president, car load commodities,
 (17) until you became your current position, chief
 (18) mechanical officer?
 (19) A. No, I was VP executive in between.
 (20) Q. You were --
 (21) A. VP, dash, executive.
 (22) Q. Was that in the 1994 time period?
 (23) A. It was late in '94 and the first months
 (24) of '95.
 (25) Q. Just as a predicate, if the UP/SP

Page 130

- (1) merger is approved, and, in light of the fact
 (2) that the Burlington Northern/Santa Fe merger was
 (3) approved, and again, if the UP/SP merger is also
 (4) approved, it's true, isn't it, that there will be
 (5) two major class 1 railroads in the United States?
 (6) A. Assuming they're approved, that's
 (7) generally true. There would be other people at
 (8) some locations and we wouldn't both be at all
 (9) locations but that's generally true.
 (10) MR. MCGEORGE: I'm sorry?
 (11) MR. LUBEL: I think he qualified it
 (12) assuming it's approved, that's generally true.
 (13) And there would be other people at some locations
 (14) and they wouldn't be at all locations but that's
 (15) generally true.
 (16) BY MR. LUBEL:
 (17) Q. Again, going backward, when is the
 (18) first time that you recall having any discussion
 (19) of a concept of the structure of rail competition
 (20) in the west like that, such that there would be
 (21) two major class 1 carriers?
 (22) A. I think subsequent to the announcement
 (23) of UP and SP. Subsequent to UP and SP's
 (24) announcement of their merger.
 (25) Q. And just to test that, going back

Page 131

- (1) through the early '90s, you don't recall any
 (2) discussion of the possible structuring of rail
 (3) competition in the west between just two major
 (4) railroads?
 (5) A. It's possible someone may have
 (6) mentioned that but I don't recall really having
 (7) any significant strategic discussions about that.
 (8) Q. Santa Fe, when you were there on
 (9) occasion, used outside consultants, didn't it?
 (10) A. Yes.
 (11) Q. And this ALK study marked as Exhibit 1
 (12) is an example of that, isn't it?
 (13) A. Yes.
 (14) Q. Are you familiar with a company known
 (15) as McKenzie & Company?
 (16) A. Yes, I am.
 (17) Q. Do you know a Mr. John Anderson?
 (18) A. Yes. I know a John Anderson.
 (19) Q. There is a John Anderson that's
 (20) currently employed by Burlington Northern/Santa
 (21) Fe.
 (22) A. There is a couple but yes.
 (23) Q. Is there one particular gentleman who
 (24) not only has that characteristic but also has the
 (25) characteristic of having formerly worked at

Page 132

- (1) McKenzie & Company?
 (2) A. I believe that John Q. Anderson, who is
 (3) our senior VP of coal, previously worked at
 (4) McKenzie.
 (5) Q. And help us. Was he with the
 (6) Burlington Northern or the Santa Fe side?
 (7) A. Burlington Northern.
 (8) Q. And were you aware of or have you ever
 (9) heard of -- let me break that down. Were you
 (10) aware of a study prepared by McKenzie & Company
 (11) prior to 1994 that discussed this structure that
 (12) I've been talking about, the possible structuring
 (13) of rail competition in the western United States
 (14) where there would be just two major class 1
 (15) carriers?
 (16) A. Prepared for who?
 (17) Q. Prepared for anyone.
 (18) A. No, I don't think so.
 (19) Q. I made that broad. Let me be
 (20) specific. Are you aware of such a study prepared
 (21) for the Santa Fe Railroad?
 (22) A. I thought you just narrowed it. No.
 (23) Q. Not to belabor it, can you help us in
 (24) any way? Do you have any awareness of any such
 (25) study prepared for anyone by McKenzie & Company?

Page 133

- (1) MR. WEICHER: Are you saying any study
(2) by McKenzie or study directed to two railroads?
(3) MR. LUBEL: Richard, I'm sorry if I
(4) wasn't clear on that because I thought and I
(5) would guess most of us here knew that I was
(6) talking about a study of the structure of the
(7) west and two railroads, but I apologize if I
(8) didn't make that clear.
(9) THE WITNESS: You're talking about two
(10) railroads.
(11) BY MR. LUBEL:
(12) Q. I'm talking about some study that
(13) posited the possibility of structured rail
(14) competition in the United States being basically
(15) made up of two major class 1 railroads.
(16) A. I am not aware of that, that I recall.
(17) Q. And when you say you don't recall, are
(18) you saying that you know there wasn't such a
(19) thing or there may be but you just don't recall?
(20) A. I believe there was not such a study
(21) directed at two railroads in the West.
(22) Q. You're qualifying that. Are you aware
(23) of some McKenzie study that dealt with that
(24) general topic or dealt with its structure of rail
(25) competition?

Page 134

- (1) A. McKenzie did a number of studies for
(2) Santa Fe and Santa Fe alone that looked at the
(3) restructuring of railroads in the West.
(4) Q. Identify as many of those studies as
(5) you know of. When were they done, who were they
(6) directed to?
(7) A. The vast majority of them I think were
(8) done in the 1990 time frame. Maybe some in '91.
(9) They were primarily directed at our senior
(10) management.
(11) Q. Do you know if Mr. John Q. Anderson was
(12) involved in those studies on behalf of McKenzie &
(13) Company?
(14) A. I believe he was not involved.
(15) Q. Do you know who was involved on behalf
(16) of McKenzie & Company?
(17) A. Yes.
(18) Q. And who was that?
(19) A. Larry Lawrence was the engagement
(20) manager. Dick Ashley, who is one of their senior
(21) partners, I'm not sure how they titled people,
(22) was also involved.
(23) Q. And when you say the studies were
(24) directed toward senior management, would you
(25) include Mr. Krebs in that group?

Page 135

- (1) A. Yes, I would.
(2) Q. And who else would you include?
(3) A. At that point in time, I would have
(4) included Mr. Haverty and I'm sure some of the
(5) other VPs were involved. I'm not sure who all it
(6) was discussed with.
(7) Q. And how do you know that those studies
(8) existed?
(9) A. I provided - I had some discussions
(10) with McKenzie when they were in the process of
(11) preparing them and I participated in some reviews
(12) of those studies.
(13) Q. And what's your best recollection of
(14) how many there were? You used the plural.
(15) A. I'm not sure how many specific
(16) engagements there may have been. I think they
(17) looked at just about every combination you could
(18) think of of railroads in the West.
(19) Q. And these were written reports or
(20) studies by McKenzie & Company?
(21) A. They were on paper. They weren't
(22) written as testimony is written. They were more
(23) like slides.
(24) Q. And you believe there was more than
(25) one?

Page 136

- (1) A. I'm not certain of that. I believe
(2) there was multiple scenarios analyzed. Whether
(3) it was one or two studies, I'm not certain.
(4) Q. And do you know, other than to Santa Fe
(5) executives, do you know what distribution was
(6) made of these studies, or this study?
(7) A. I don't think they got distribution
(8) beyond our executives.
(9) Q. And what's the basis of your concluding
(10) that?
(11) A. As I said, I had some involvement in
(12) the discussions and in the review and it was my
(13) impression that once we had the discussions, that
(14) that was it, that they wouldn't distribute them
(15) any further.
(16) Q. And what was your position at the time?
(17) A. I would have been assistant vice
(18) president of finance or management of services,
(19) depending upon, I think, when they were done.
(20) Q. Have you retained a copy of the study
(21) or studies?
(22) A. No.
(23) Q. Do you know if Santa Fe corporation has
(24) retained copies of those studies?
(25) A. No, I don't.

Page 137

- (1) MR. WEICHER: Mr. Lubel, can I object
(2) and ask what the relevance of this questioning
(3) is?
(4) MR. LUBEL: Well, not to go on at
(5) length about it but if it talks about the
(6) structure of rail competition in the West and it
(7) was done by Santa Fe, it may have some bearing on
(8) the competitive issues before the Commission in
(9) this case. But I'm about through with this area.
(10) MR. WEICHER: I'll permit him to answer
(11) but it's not clear what we're doing here. But go
(12) ahead.
(13) MR. LUBEL: Well, you could possibly
(14) help us with that. Let me make a formal request
(15) for any copies of the studies that the witness
(16) has just been referring to. And I make that
(17) request of Burlington Northern and Santa Fe.
(18) MS. JONES: You can make that through
(19) the proper channels of written interrogatories
(20) and let us have the chance to review it.
(21) MR. WEICHER: The witness has responded
(22) appropriately to what he knows.
(23) MR. LUBEL: I will. But I informally,
(24) just to speed things along, make that request
(25) now.

Page 138

- (1) BY MR. LUBEL:
(2) Q. And in the early '90s when this study
(3) or study of alternatives may have been done by
(4) McKenzie & Company, what if any document
(5) retention policy was observed by Santa Fe?
(6) A. I'm not sure.
(7) Q. Do you know if there was a written
(8) policy on how long materials should be retained,
(9) particularly any strategic studies?
(10) A. No, I don't.
(11) Q. Have you made any attempt, in recent
(12) months, to locate a copy of this McKenzie study
(13) or studies?
(14) A. Yes. I looked through my files as part
(15) of this proceeding.
(16) Q. Do you know if any other employees or
(17) officers of Burlington Northern or Santa Fe have
(18) a copy of this study?
(19) A. No, I do not.
(20) Q. Let's come forward chronologically now
(21) and talk about the Burlington Northern/Santa Fe
(22) merger. Now, the application for that merger was
(23) filed with the ICC in approximately October of
(24) '94, is that correct?
(25) A. That's correct.

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
OBJECTIONS TO APPLICANTS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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Attorneys for The Kansas City Southern
Railway Company

March 4, 1996

Request No. 25.: Produce the files for KCS' 25 largest Kansas grain shippers and 10 largest plastics shippers.

Objection: KCS objects to this request as overbroad and unduly burdensome in that it seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. KCS further objects to this request to the extent that it seeks production of documents subject to the attorney-client or work product privilege.

Request No. 26.: Produce all publications, written testimony and transcripts of Curtis M. Grimm, Thomas O'Connor and Joseph Plaistow, and all merger analyses that have been conducted by Snavely, King & Associates, without limitation as to date.

Objection: KCS objects to this request as being overly broad and burdensome in that it seeks "all publications, written testimony and transcripts," without limitation to date and apparently without limitation to subject matter. KCS further objects to this request to the extent it requests documents readily available to the public, such as published materials. KCS further objects to this request to the extent it seeks materials subject to the attorney client or work product privilege in this or any other proceeding and to the extent it seeks testimony and transcripts (1) that are subject to a protective order or (2) that are equally or more accessible to Applicants than to KCS.

Request No. 27.: Produce all KCS business plans or strategic plans.

Objection: KCS objects to this request as overbroad and unduly burdensome in that it seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. KCS further objects to this request to the extent that it seeks production of documents subject to the attorney-client or work product privilege.

Request No. 28.: Produce all computerized 100% KCS traffic data for 1994, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets, together with documentation explaining the record layout and the

MAYER, BROWN & PLATT

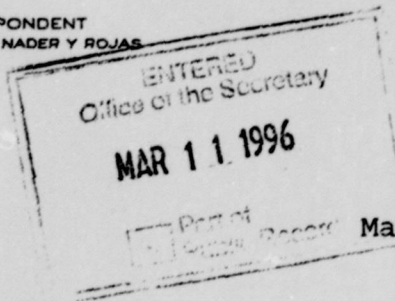
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BY FACSIMILE AND HAND DELIVERY

Honorable Jerome Nelson
Administrative Law Judge
FERC
Room No. 11F21
888 First Street, N.E.
Washington, D.C. 20426

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

Dear Judge Nelson:

This is to respond to the issue of the alleged prematurity of the written discovery propounded by BN/Santa Fe raised by two parties for consideration at the Friday, March 8, 1996 conference.^{1/} The grounds for objecting to BN/Santa Fe's limited written discovery are that such discovery is premature in light of the Procedural Schedule in this proceeding and that it is contrary to the discovery moratorium as provided in the Discovery Guidelines.^{2/}

^{1/} The parties which have objected to BN/Santa Fe's discovery and specifically requested your Honor to place this issue on the agenda for the discovery conference are Tex-Mex and Conrail. See Letters from Richard A. Allen dated March 4 and 6, 1996; Letter from S. Hut, Jr. dated March 6. Two other parties, Montana Rail Link and KCS, have objected to pending discovery by BN/Santa Fe, and KCS has served a letter supporting Conrail's objections and request for a protective order.

^{2/} Montana Rail Link, Tex-Mex Railway, Conrail and KCS (hereinafter collectively referred to as the "Parties") filed
(continued...)

Honorable Jerome Nelson
March 6, 1996
Page 2

As described more fully below, BN/Santa Fe's position is that these bases for objection to its written discovery are without merit. Accordingly, BN/Santa Fe requests your Honor to overrule such objections and require the Parties to file their responses in a timely fashion.

Contrary to the Parties' contentions, BN/Santa Fe's discovery is not premature because it is not discovery on the Parties' inconsistent or responsive applications, comments, protest and requests for conditions. Rather, BN/Santa Fe's limited discovery requests (which total only four interrogatories and document requests to Tex-Mex and Montana Rail Link and seven interrogatories and document requests to Conrail and KCS) directly relate to BN/Santa Fe's development of information to prepare its own evidence for submission to the Board.

The parties in this proceeding have focused considerable attention in discovery on the terms and conditions of the Settlement Agreement between BN/Santa Fe and the Applicants. In particular, one area of inquiry during discovery has been the level of trackage rights compensation to be paid by BN/Santa Fe to Applicants under the Settlement Agreement. Thus, one issue on which BN/Santa Fe may want to submit additional evidence -- whether or not such issue is presented in any inconsistent or responsive application, comments or protests filed by these Parties -- is to compare the trackage rights compensation it will pay under the Settlement Agreement to that paid by other tenants in trackage rights agreements. To that end, BN/Santa Fe has sought to obtain information from the Parties relevant to this issue.

Inasmuch as BN/Santa Fe's discovery is not related to any inconsistent or responsive application or comments or protests that the Parties may file on March 29, it is clearly not proscribed by the Procedural Schedule as the Parties contend. See Procedural Schedule, Decision Nos. 6 at 16 (served October 19, 1995).

BN/Santa Fe's discovery also was timely served upon on the parties on February 26. See Discovery Guidelines ¶ 5 at 4 ("No written discovery shall be served after February 26, 1995, through March 29, 1995.") When your Honor adopted these

2/(...continued)
objections to BN/Santa Fe's First Set Of Interrogatories and Document Production Requests on March 4, 1996.

discovery guidelines, all of these Parties agreed to the discovery moratorium with full knowledge that written discovery could be served by any party up until February 26, with responses due no later than March 12, 1996. See Statement of Mr. Livingston, Transcript of December 1, 1995 Discovery Conference at 129 ("We finally ended up with an agreement that there will be a moratorium on the service of written discovery requests by any party during the period between February 26 and March 29.") (emphasis supplied).

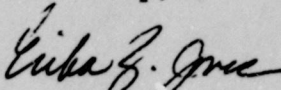
Thus, it is totally disingenuous for the Parties to argue now that they had an expectation during the moratorium of having "unhindered opportunity to fully concentrate their time and resources on the preparation of comprehensive inconsistent or responsive" filings. Objections of Montana Rail Link, Inc. (MRL-6) at 2; see also Conrail's Objections To BN/Santa Fe's First Set of Interrogatories and Document Production Requests at 2; Objections of the Tex-Mex To BN/Santa Fe's First Set of Interrogatories and Document Production Requests at 2; Objections of KCS to BN/Santa Fe's First Set of Interrogatories and Document Production Requests at 2. This purported expectation is also at odds with the views of at least one shipper, International Paper, which has conceded the propriety of the discovery by stating that the written discovery could have been served weeks before its actual date of service instead of waiting until February 26. See Objections of International Paper's to Applicants First Set of Interrogatories and Document Request at 4, General Objection 11. What International Paper's General Objection overlooks is that, just as your Honor and other parties have stated on the record, written discovery could properly be served up to February 26 and that is exactly what BN/Santa Fe has done.

It would be fundamentally unfair were your Honor to sustain these Parties' objections to written discovery or to enter a protective order while at the same time requiring BN/Santa Fe to respond during the moratorium to written discovery served on it on or before February 26 by eight different parties, including Conrail and KCS, two of the Parties objecting to BN/Santa Fe's discovery. Also, the Parties' claims as to burden are simply not borne out by the facts. BN/Santa Fe narrowly tailored its limited written discovery to solicit information only from a few parties in order to prepare its own case. Such discovery is in

Honorable Jerome Nelson
March 6, 1996
Page 4

complete conformity with the Procedural Schedule and the
Discovery Guidelines.

Sincerely,


Erika Z. Jones

cc: Restricted Service List
Richard E. Weicher

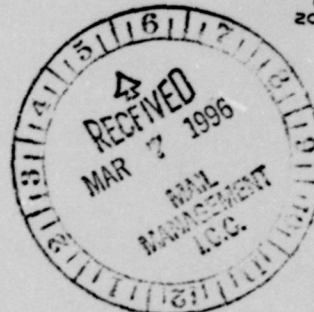
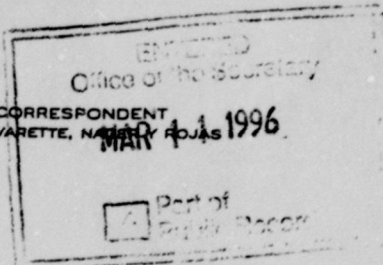
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ERIKA Z. JONES
202-778-0642



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TELEX 892603
FACSIMILE
202-861-0473

March 7, 1996

VIA HAND DELIVERY

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

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

Dear Judge Nelson:

The Kansas City Southern Railway ("KCS"), by its letter to you of March 6, 1996 (KCS Letter), has given notice that it intends to move for an order to compel the deposition of Robert D. Krebs, President and Chief Executive Officer of the Burlington Northern Santa Fe Corporation. For the reasons set forth below, the Burlington Northern Railroad and the Atchison, Topeka and Santa Fe Railway (collectively, "BN/Santa Fe") oppose the motion of KCS. This matter will be considered at tomorrow's Discovery Conference.

KCS has utterly failed to show what information -- other than cumulative information -- it can obtain from the deposition of Mr. Krebs. It has not shown that less intrusive means of discovery are not adequate. It has not shown why it has not gotten -- or could not have gotten -- whatever information it purports to seek from the depositions of Gerald Grinstein, Carl Ice, or Richard Davidson. And it has not shown why BN/Santa Fe should be deprived of its CEO for the period of a deposition and its preparation, when BN/Santa Fe has already made available its chairman at the time the settlement with the Applicants was negotiated, the senior executive who negotiated that settlement, and will shortly produce two additional vice-presidents.

The Honorable Jerome Nelson
March 7, 1996
Page 2

To begin with, KCS misstates the rules of the Surface Transportation Board as well as the discovery guidelines in this case when it claims that there is a "presumption" that non-testifying witnesses may be deposed. KCS Letter at 1. On the contrary, the guidelines (at ¶ 6) clearly establish such a presumption only for persons who have "submitted written testimony in this proceeding"; nothing in the guidelines that alters the Board's rules with respect to the standard for compelling a deposition of a non-testifying witness.

Contrary to KCS's representation, (KCS Letter at 1), the proponent of a deposition bears a heavy burden to show (1) "that the information it seeks may not be obtained through other means of discovery, such as interrogatories, request for the production of documents, or inspection visits to [a party's] offices, that are readily available and less disruptive than depositions"; and (2) "that the material" sought to be discovered by deposition "is not merely cumulative or [is] in danger of loss." Annual Volume Rates on Coal -- Rawhide Junction, WY to Sergeant Bluff, IA; Burlington Northern R.R. Co. and Chicago and North Western Transportation Co., No. 37021, 1984 ICC LEXIS 47, at *4 (served Jan. 5, 1985). It is plainly not sufficient simply to suggest that a deposition "may shed some light" on a topic that is broadly relevant to a proceeding. Id. at *8. And it is not enough that the information sought in a deposition is "relevant"; rather, the proponent must demonstrate that there is a need for a particular deposition. Farmland Industries, Inc. v. Gulf Central Pipeline Co., No. 40411, 1993 WL 46942 (served Feb. 24, 1993).

Moreover, Mr. Krebs' position as CEO -- particularly as a non-testifying CEO of a party that is not a primary applicant in this case -- and the attendant burden his deposition places on BN/Santa Fe heightens the showing of "need" required to order that deposition. Even under the far more liberal standards of the Federal Rules of Civil Procedure and their state-law counterparts, the CEO of a corporation normally may be deposed only where the party seeking the deposition demonstrates that the executive has unique or superior personal knowledge of particular, material information. See, e.g., Thomas v. IBM, 48 F.3d 478, 483-484 (10th Cir. 1995) (in light of oppressive burden on chairman, proponent of deposition must demonstrate that necessary information cannot be gathered from other personnel); Baine v. General Motors Corp., 141 F.R.D. 332, 334-335 (M.D. Ala. 1991); Crown Central Petroleum Corp. v. Garcia, 904 S.W.2d 125, 128 (Tex. 1995); Liberty Mutual Insurance Co. v. Superior Court, 10 Cal. App. 4th 1284, 1289, 13 Cal. Rptr. 2d 363, 367 (1992).

The reasons for these limitations on the depositions of CEOs are obvious. The CEO of a corporation of the magnitude of BN/Santa Fe is a "unique and important individual who can easily be subjected to unwarranted harassment and abuse." Mulvey v. Chrysler Corp., 106 F.R.D. 364, 366 (D.R.I. 1975). See also Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 741 (1975). Under the circumstances, KCS at the very most could be allowed to use written interrogatories to ascertain whether Mr. Krebs' knowledge extends beyond that of other witnesses in any meaningful sense. See, e.g., Baine, 141 F.R.D. at 336; Mulvey, 106 F.R.D. at 366; Mitchell v. American Tobacco Co., 33 F.R.D. 262, 263 (M.D. Pa. 1963); Colonial Capital Co. v. General Motors Corp., 29 F.R.D. 514, 518 (D. Conn. 1961). But KCS has not requested that relief here.

KCS's showing here falls far short of carrying its burden of justifying an order to compel the deposition of Mr. Krebs. KCS begins with an erroneous assertion (KCS Letter at 4): Mr. Krebs is not the "current Chairman" of BN/Santa Fe. Mr. Daniel P. Davison is the current chairman. KCS has already deposed Gerald Grinstein, who was chairman at the time the settlement was negotiated and executed. The remainder of KCS's assertions do not contradict -- indeed, they often clearly confirm -- that the information KCS seeks is cumulative, that it is readily available by other means, and that it will not materially "aid [the Board] in ruling on the case." G&G Manufacturing Co., *supra*, 1994 WL 617547, at *10.

First, KCS notes that Mr. Krebs was involved in various conversations relating to BN/Santa Fe's agreement with the Applicants in this case. KCS Letter at 3. KCS has known of Mr. Krebs' involvement since December 15, 1995. Applicants' Depository Document No. N37-000003 (attached). Carl Ice, whom KCS admits was BN/Santa Fe's "chief negotiator" of that agreement, has been deposed for two days, and was questioned about his contacts with and instructions from Mr. Krebs. So far as it is relevant to this case, and not otherwise protected by the work product doctrine, Mr. Krebs' policies and instructions regarding the settlement have been fully available to KCS through the deposition of Mr. Ice, who carried out Mr. Krebs' instructions, and otherwise are apparent from what BN/Santa Fe actually did in response to the proposed merger. As for the conversation mentioned in the Skinner call report, Mr. Bredenburg (who claims to have been present) will be deposed tomorrow morning. Mr. Richard Davidson of the Union Pacific also has been deposed, as have other of Applicants' executives who met or talked with Mr. Krebs during the negotiations.

KCS does not specifically identify what it hopes to add by subjecting Mr. Krebs to a deposition. KCS could have asked whatever it wanted of Mr. Ice, Mr. Grinstein, or Mr. Davidson. In claiming that it needs to depose Mr. Krebs simply because he "was to inherit the mantle of leadership" (KCS Letter at 3), KCS admits that it has nothing to learn from Mr. Krebs that is not cumulative.

Second, KCS places its greatest reliance (KCS Letter 3-4) on the Board's stated intention to consider the cumulative impacts of the BN/Santa Fe merger and the proposed UP-SP merger. But KCS does not attempt to demonstrate why it needs to depose Mr. Krebs for this point. The Board's consideration of cumulative impacts will rely largely on market facts available through other means, and on expert economic analysis. To the limited extent live testimony on this issue is relevant, Mr. Grinstein, Mr. Ice, Mr. Owen, and Mr. Lawrence all have been available to testify on these and related issues. KCS has not even attempted to show in what specific way the testimony of Mr. Krebs would add to these depositions and the extensive written and document discovery conducted in this case.

Finally (KCS Letter at 4), KCS attempts to inflate its request for documents related to the stale McKinsey & Co. project into a justification for deposing Mr. Krebs. Under separate cover we have explained why the study is not discoverable. Mr. Ice already has been deposed on the significance of that study to Santa Fe's strategic planning as it relates to this proceeding. In any event, the Board's evaluation of the effects of the UP-SP merger will rely on market facts, not on an individual's subjective reaction to a five-year-old consultant's project.

At most -- although we do not believe it has achieved even that modest goal -- KCS has indicated that Mr. Krebs might possibly, in some unspecified way, "shed some light" on some topic that might be relevant to this proceeding. That is not enough to carry KCS's burden, and its motion should be denied.

Once the burden on BN/Santa Fe is considered, however, the inappropriateness of the deposition becomes even more clear. Mr. Krebs is the CEO of a company that is not a primary applicant here, and he did not submit testimony in this proceeding. He should not be required to make himself available for testimony in light of the substantial daily obligations and responsibilities he must meet in combining the operations of BN and Santa Fe and otherwise implementing the merger to achieve the public benefits recognized by the ICC.

But there is more. It would be particularly burdensome, oppressive, and intrusive to require Mr. Krebs to sit for a deposition when BN/Santa Fe already has or will make available for testimony four persons who are or were senior executives. BN/Santa Fe has made available for testimony, Gerald Grinstein, the former Chairman of Burlington Northern Santa Fe Corporation and the Chairman at the time the BN/Santa Fe settlement with UP/SP was negotiated and executed, who was able to testify concerning matters at the executive level of the corporation during that period. We have also produced Carl Ice, the chief negotiator of the settlement agreement between UP/SP and BN/Santa Fe, who was able to answer relevant questions concerning that agreement and its impact. In addition to the deposition of Mr. Ice, the depositions of two more BN/Santa Fe officers of vice-presidential rank, Mr. Dealey and Mr. Bredenberg, have been ordered. In all, the merger opponents already have deposed, or shortly will depose, the chairman of BN/Santa Fe and three additional senior executives at the vice-presidential level. Four depositions of the officers of a non-applicant is enough.

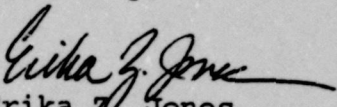
An ICC Administrative Law Judge confronted an earlier attempt by KCS to harass an applicant's officers; that Judge sharply reined in KCS's attempts to expand discovery beyond permissible bounds. See Rio Grande Industries--Control--Southern Pacific Transportation Co., Fin. No. 32000, 1988 WL 224262 (June 21, 1988) (ALJ decision). The ALJ denied depositions of six of seven officers because KCS had not shown that it could not get -- or had not gotten -- equivalent information from other sources. The ALJ denied the depositions of all non-testifying witnesses, and also denied the depositions of two witnesses who had submitted verified statements because KCS proposed to depose them on subjects not related to their verified statements. Id. at *4. The ALJ granted only one deposition only "to assure that KCS is not deprived of the opportunity to question a top officer." Ibid. That concern is not present here, where BN/Santa Fe's chief negotiator has been deposed for two long days, and the company's chairman at the time of the settlement also has been deposed.

KCS has failed to meet Surface Transportation Board standards for ordering any deposition at all, much less the deposition of the CEO of a party that is not a primary applicant here. Mr. Krebs' testimony is plainly cumulative and is not necessary to the determination of any issue before the Board. Moreover, the burden imposed upon Mr. Krebs and upon BN/Santa Fe is substantial and unjustifiable. The motion should be denied.

The Honorable Jerome Nelson
March 7, 1996
Page 6

I have circulated a copy of this letter to the restricted service list.

Sincerely,


Erika Z. Jones

cc: Restricted Service List
The Honorable Vernon Williams

12/15/95

KCS INTERROGATORY 12
DOJ INTERROGATORY NO. 1.b(ii)

According to the best recollection of those UP/SP personnel principally involved, the following meetings were held to negotiate the BN/Santa Fe settlement.

<u>Date</u>	<u>Location</u>	<u>Medium</u>	<u>Participants</u>	
			<u>BNSF</u>	<u>UP/SP</u>
Mid-August	Omaha	Tele-Call	G. Grinstein	R. K. Davidson
08/23-25/95	Omaha	Tele-Call	R. Krebs	R. K. Davidson
08/28/95	Omaha	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/05/95	Schaumburg	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/08/95	Schaumburg	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/19/95	Omaha	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/20/95	Palwaukee	Conference	R. Krebs C. Ice	R. K. Davidson J. H. Rebensdorf J. Gray
09/21/95	Omaha	Tele-Call	C. Ice	J. H. Rebensdorf
09/22-25/95	Omaha	Conference	C. Ice R. Weicher R. Krebs (via phone)	J. H. Rebensdorf J. V. Dolan P. A. Conley J. Gray R. K. Davidson M. F. Kelly J. H. Ransom

See response to DOJ interrogatory 1.b(i) for positions and tenures of Messrs. Davidson, Rebensdorf, and Gray. Mr. Dolan has been Vice President-Law for UP for 12 years. Mr. Conley has been AVP-Law for UP for 12 years.

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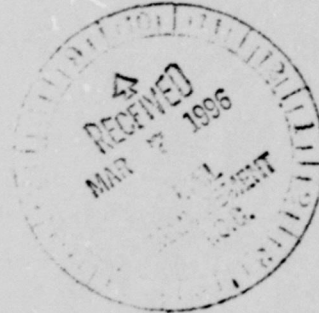
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ERIKA Z. JONES
202-778-0642

CORRECTED COPY

March 7, 1996



VIA HAND DELIVERY

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

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

Dear Judge Nelson:

The Kansas City Southern Railway ("KCS"), by its letter to you of March 6, 1996 (KCS Letter), has given notice that it intends to move for an order to compel the deposition of Robert D. Krebs, President and Chief Executive Officer of the Burlington Northern Santa Fe Corporation. For the reasons set forth below, the Burlington Northern Railroad and the Atchison, Topeka and Santa Fe Railway (collectively, "BN/Santa Fe") oppose the motion of KCS. This matter will be considered at tomorrow's Discovery Conference.

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The Honorable Jerome Nelson
March 7, 1996
Page 2

To begin with, KCS misstates the rules of the Surface Transportation Board as well as the discovery guidelines in this case when it claims that there is a "presumption" that non-testifying witnesses may be deposed. KCS Letter at 1. On the contrary, the guidelines (at ¶ 5) clearly establish such a presumption only for persons who have "submitted written testimony in this proceeding"; nothing in the guidelines alters the Board's rules with respect to the standard for compelling a deposition of a non-testifying witness.

Contrary to KCS's representation, (KCS Letter at 1), the proponent of a deposition bears a heavy burden to show (1) "that the information it seeks may not be obtained through other means of discovery, such as interrogatories, request for the production of documents, or inspection visits to [a party's] offices, that are readily available and less disruptive than depositions"; and (2) "that the material" sought to be discovered by deposition "is not merely cumulative or [is] in danger of loss." Annual Volume Rates on Coal -- Rawl de Junction, WY to Sergeant Bluff, IA; Burlington Northern R.R. Co. and Chicago and North Western Transportation Co., No. 37021, 1984 ICC LEXIS 47, at *4 (served Jan. 5, 1985). It is plainly not sufficient simply to suggest that a deposition "may shed some light" on a topic that is broadly relevant to a proceeding. Id. at *8. And it is not enough that the information sought in a deposition is "relevant"; rather, the proponent must demonstrate that there is a need for a particular deposition. Farmland Industries, Inc. v. Gulf Central Pipeline Co., No. 40411, 1993 WL 46942 (served Feb. 24, 1993).

Moreover, Mr. Krebs' position as CEO -- particularly as a non-testifying CEO of a party that is not a primary applicant in this case -- and the attendant burden his deposition places on BN/Santa Fe heightens the showing of "need" required to order that deposition. Even under the far more liberal standards of the Federal Rules of Civil Procedure and their state-law counterparts, the CEO of a corporation normally may be deposed only where the party seeking the deposition demonstrates that the executive has unique or superior personal knowledge of particular, material information. See, e.g., Thomas v. IBM, 48 F.3d 478, 483-484 (10th Cir. 1995) (in light of oppressive burden on chairman, proponent of deposition must demonstrate that necessary information cannot be gathered from other personnel); Baine v. General Motors Corp., 141 F.R.D. 332, 334-335 (M.D. Ala. 1991); Crown Central Petroleum Corp. v. Garcia, 904 S.W.2d 125, 128 (Tex. 1995); Liberty Mutual Insurance Co. v. Superior Court, 10 Cal. App. 4th 1284, 1289, 13 Cal. Rptr. 2d 363, 367 (1992).

The reasons for these limitations on the depositions of CEOs are obvious. The CEO of a corporation of the magnitude of BN/Santa Fe is

The Honorable Jerome Nelson.
March 7, 1996
Page 3

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First, KCS notes that Mr. Krebs was involved in various conversations relating to BN/Santa Fe's agreement with the Applicants in this case. KCS Letter at 3. KCS has known of Mr. Krebs' involvement since December 15, 1995. Applicants' Depository Document No. N37-000003 (attached). Carl Ice, whom KCS admits was BN/Santa Fe's "chief negotiator" of that agreement, has been deposed for two days, and was questioned about his contacts with and instructions from Mr. Krebs. So far as it is relevant to this case, and not otherwise protected by the work product doctrine, Mr. Krebs' policies and instructions regarding the settlement have been fully available to KCS through the deposition of Mr. Ice, who carried out Mr. Krebs' instructions, and otherwise are apparent from what BN/Santa Fe actually did in response to the proposed merger. As for the conversation mentioned in the Skinner call report, Mr. Bredenberg (who Mr. Skinner claims was present) will be deposed tomorrow morning. Mr. Richard Davidson of the Union Pacific also has been deposed, as have other of Applicants' executives who met or talked with Mr. Krebs during the negotiations.

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The Honorable Jerome Nelson

March 7, 1996

Page 4

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Second, KCS places its greatest reliance (KCS Letter 3-4) on the Board's stated intention to consider the cumulative impacts of the BN/Santa Fe merger and the proposed UP/SP merger. But KCS does not attempt to demonstrate why it needs to depose Mr. Krebs for this point. The Board's consideration of cumulative impacts will rely largely on market facts available through other means, and on expert economic analysis. To the limited extent live testimony on this issue is relevant, Mr. Grinstein, Mr. Ice, Mr. Owen, and Mr. Lawrence all have been available to testify on these and related issues. KCS has not even attempted to show in what specific way the testimony of Mr. Krebs would add to these depositions and the extensive written and document discovery conducted in this case.

Finally (KCS Letter at 4), KCS attempts to inflate its request for documents related to the stale McKinsey & Co. project into a justification for deposing Mr. Krebs. Under separate cover we have explained why the study is not discoverable. Mr. Ice already has been deposed on the significance of that study to Santa Fe's strategic planning as it relates to this proceeding. In any event, the Board's evaluation of the effects of the UP/SP merger will rely on market facts, not on an individual's subjective reaction to a five-year-old consultant's project.

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The Honorable Jerome Nelson
March 7, 1996
Page 5

persons who are or were senior executives. BN/Santa Fe has made available for testimony, Gerald Grinstein, the former Chairman of Burlington Northern Santa Fe Corporation and the Chairman at the time the BN/Santa Fe settlement with UP/SP was negotiated and executed, who was able to testify concerning matters at the executive level of the corporation during that period. We have also produced Carl Ice, the chief negotiator of the settlement agreement between UP/SP and BN/Santa Fe, who was able to answer relevant questions concerning that agreement and its impact. In addition to the deposition of Mr. Ice, the depositions of two more BN/Santa Fe officers of vice-presidential rank, Mr. Dealey and Mr. Bredenberg, have been ordered. In all, the merger opponents already have deposed, or shortly will depose, the chairman of BN/Santa Fe and three additional senior executives at the vice-presidential level. Four depositions of the officers of a non-applicant is enough.

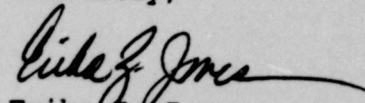
An ICC Administrative Law Judge confronted an earlier attempt by KCS to harass an applicant's officers; that Judge sharply reined in KCS's attempts to expand discovery beyond permissible bounds. See Rio Grande Industries--Control--Southern Pacific Transportation Co., Fin. No. 32000, 1988 WL 224262 (June 21, 1988) (ALJ decision). The ALJ denied depositions of six of seven officers because KCS had not shown that it could not get -- or had not gotten -- equivalent information from other sources. The ALJ denied the depositions of all non-testifying witnesses, and also denied the depositions of two witnesses who had submitted verified statements because KCS proposed to depose them on subjects not related to their verified statements. Id. at *4. The ALJ granted only one deposition, and solely "to assure that KCS is not deprived of the opportunity to question a top officer." Ibid. That concern is not present here, where BN/Santa Fe's chief negotiator has been deposed for two long days, and the company's chairman at the time of the settlement also has been deposed.

KCS has failed to meet Surface Transportation Board standards for ordering any deposition at all, much less the deposition of the CEO of a party that is not a primary applicant here. Mr. Krebs' testimony is plainly cumulative and is not necessary to the determination of any issue before the Board. Moreover, the burden imposed upon Mr. Krebs and upon BN/Santa Fe is substantial and unjustifiable. The motion should be denied.

The Honorable Jerome Nelson
March 7, 1996
Page 6

I have circulated a copy of this letter to the restricted service list.

Sincerely,



Erika Z. Jones

cc: Restricted Service List
The Honorable Vernon Williams

**KCS INTERROGATORY 12
DOJ INTERROGATORY NO. 1.b(ii)**

12/15/95

According to the best recollection of those UP/SP personnel principally involved, the following meetings were held to negotiate the BN/Santa Fe settlement.

<u>Date</u>	<u>Location</u>	<u>Medium</u>	<u>Participants</u>	
			<u>BNSE</u>	<u>UP/SP</u>
Mid-August	Omaha	Tele-Call	G. Grinstein	R. K. Davidson
08/23-25/95	Omaha	Tele-Call	R. Krebs	R. K. Davidson
08/28/95	Omaha	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/05/95	Schaumburg	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/08/95	Schaumburg	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/19/95	Omaha	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/20/95	Palwaukee	Conference	R. Krebs C. Ice	R. K. Davidson J. H. Rebensdorf J. Gray
09/21/95	Omaha	Tele-Call	C. Ice	J. H. Rebensdorf
09/22-25/95	Omaha	Conference	C. Ice R. Weicher R. Krebs (via phone)	J. H. Rebensdorf J. V. Dolan P. A. Conley J. Gray R. K. Davidson M. F. Kelly J. H. Ransom

See response to DOJ interrogatory 1.b(i) for positions and tenures of Messrs. Davidson, Rebensdorf, and Gray. Mr. Dolan has been Vice President-Law for UP for 12 years. Mr. Conley has been AVP-Law for UP for 12 years.

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Item No. _____

Page Count 4

Mar. 7 # 149

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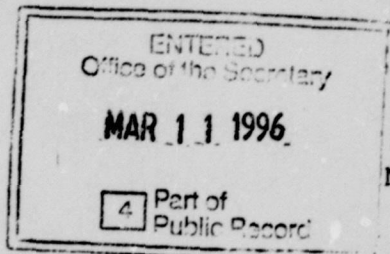
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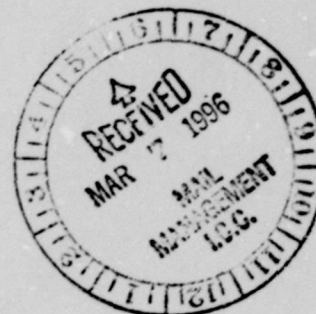
WASHINGTON, D.C. 20006-1882

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

ERIKA Z. JONES
202-778-0642



March 7 1996



BY FACSIMILE AND HAND DELIVERY

Honorable Jerome Nelson
Administrative Law Judge
FERC
Room No. 11F21
888 First Street, N.E.
Washington, D.C. 20426

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

Dear Judge Nelson:

This is to respond to the issue of the alleged prematurity of the written discovery propounded by BN/Santa Fe raised by two parties for consideration at the Friday, March 8, 1996 conference.^{1/} The grounds for objecting to BN/Santa Fe's limited written discovery are that such discovery is premature in light of the Procedural Schedule in this proceeding and that it is contrary to the discovery moratorium as provided in the Discovery Guidelines.^{2/}

^{1/} The parties which have objected to BN/Santa Fe's discovery and specifically requested your Honor to place this issue on the agenda for the discovery conference are Tex-Mex and Conrail. See Letters from Richard A. Allen dated March 4 and 6, 1996; Letter from S. Hut, Jr. dated March 6. Two other parties, Montana Rail Link and KCS, have objected to pending discovery by BN/Santa Fe, and KCS has served a letter supporting Conrail's objections and request for a protective order.

^{2/} Montana Rail Link, Tex-Mex Railway, Conrail and KCS (hereinafter collectively referred to as the "Parties") filed
(continued...)

Honorable Jerome Nelson
March 6, 1996
Page 2

As described more fully below, BN/Santa Fe's position is that these bases for objection to its written discovery are without merit. Accordingly, BN/Santa Fe requests your Honor to overrule such objections and require the Parties to file their responses in a timely fashion.

Contrary to the Parties' contentions, BN/Santa Fe's discovery is not premature because it is not discovery on the Parties' inconsistent or responsive applications, comments, protest and requests for conditions. Rather, BN/Santa Fe's limited discovery requests (which total only four interrogatories and document requests to Tex-Mex and Montana Rail Link and seven interrogatories and document requests to Conrail and KCS) directly relate to BN/Santa Fe's development of information to prepare its own evidence for submission to the Board.

The parties in this proceeding have focused considerable attention in discovery on the terms and conditions of the Settlement Agreement between BN/Santa Fe and the Applicants. In particular, one area of inquiry during discovery has been the level of trackage rights compensation to be paid by BN/Santa Fe to Applicants under the Settlement Agreement. Thus, one issue on which BN/Santa Fe may want to submit additional evidence -- whether or not such issue is presented in any inconsistent or responsive application, comments or protests filed by these Parties -- is to compare the trackage rights compensation it will pay under the Settlement Agreement to that paid by other tenants in trackage rights agreements. To that end, BN/Santa Fe has sought to obtain information from the Parties relevant to this issue.

Inasmuch as BN/Santa Fe's discovery is not related to any inconsistent or responsive application or comments or protests that the Parties may file on March 29, it is clearly not proscribed by the Procedural Schedule as the Parties contend. See Procedural Schedule, Decision Nos. 6 at 16 (served October 19, 1995).

BN/Santa Fe's discovery also was timely served upon on the parties on February 26. See Discovery Guidelines ¶ 5 at 4 ("No written discovery shall be served after February 26, 1995, through March 29, 1995.") When your Honor adopted these

2/(...continued)

objections to BN/Santa Fe's First Set Of Interrogatories and Document Production Requests on March 4, 1996.

Honorable Jerome Nelson
March 6, 1996
Page 3

discovery guidelines, all of these Parties agreed to the discovery moratorium with full knowledge that written discovery could be served by any party upon any party up until February 26, with responses due no later than March 12, 1996. See Statement of Mr. Livingston, Transcript of December 1, 1995 Discovery Conference at 129 ("We finally ended up with an agreement that there will be a moratorium on the service of written discovery requests by any party during the period between February 26 and March 29.") (emphasis supplied).

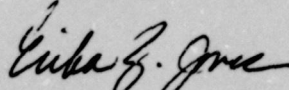
Thus, it is totally disingenuous for the Parties to argue now that they had an expectation during the moratorium of having "unhindered opportunity to fully concentrate their time and resources on the preparation of comprehensive inconsistent or responsive" filings. Objections of Montana Rail Link, Inc. (MRL-6) at 2; see also Conrail's Objections To BN/Santa Fe's First Set of Interrogatories and Document Production Requests at 2; Objections of the Tex-Mex To BN/Santa Fe's First Set of Interrogatories and Document Production Requests at 2; Objections of KCS to BN/Santa Fe's First Set of Interrogatories and Document Production Requests at 2. This purported expectation is also at odds with the views of at least one shipper, International Paper, which has conceded the propriety of the discovery by stating that the written discovery could have been served weeks before its actual date of service instead of waiting until February 26. See Objections of International Paper's to Applicants First Set of Interrogatories and Document Request at 4, General Objection 11. What International Paper's General Objection overlooks is that, just as your Honor and other parties have stated on the record, written discovery could properly be served up to February 26 and that is exactly what BN/Santa Fe has done.

It would be fundamentally unfair were your Honor to sustain these Parties' objections to written discovery or to enter a protective order while at the same time requiring BN/Santa Fe to respond during the moratorium to written discovery served on it on or before February 26 by eight different parties, including Conrail and KCS, two of the Parties objecting to BN/Santa Fe's discovery. Also, the Parties' claims as to burden are simply not borne out by the facts. BN/Santa Fe narrowly tailored its limited written discovery to solicit information only from a few parties in order to prepare its own case. Such discovery is in

Honorable Jerome Nelson
March 6, 1996
Page 4

complete conformity with the Procedural Schedule and the
Discovery Guidelines.

Sincerely,

A handwritten signature in cursive script, appearing to read "Erika Z. Jones".

Erika Z. Jones

cc: Restricted Service List
Richard E. Weicher

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Page Count 27

Mar. 7 #150 OWN & PLATT

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JAUREGUI, NAVARRETE, NADER Y ROJAS

ANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

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TELEX 892603
FACSIMILE
202-861-0473

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

March 7, 1996



BY HAND

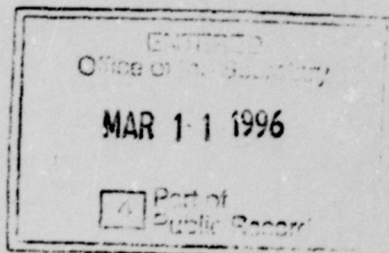
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 20423

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

Dear Secretary Williams:

Enclosed please find twenty (20) copies each of three letters that were sent today from Erika Z. Jones to Administrative Law Judge Jerome Nelson.

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



Sincerely,

Kelley O'Brien
Kelley O'Brien

Enclosures

CHICAGO
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DUSTON
LONDON
LOS ANGELES
NEW YORK
MEXICO CITY CORRESPONDENT
JAUREGUI, NAVARETTE, NADER Y ROJAS

Chicago Secretary

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TELEX 892603
FACSIMILE
202-661-0473

ERIKA Z. JONES
202-776-0642

March 7, 1996

VIA HAND DELIVERY

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

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

Dear Judge Nelson:

In its Second Discovery Requests directed to Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BN/Santa Fe"), Kansas City Southern sought the production of information and documents relating to studies conducted in 1990 and 1991 by McKinsey & Company for Santa Fe or its then parent, Santa Fe Pacific Corporation. For the reasons outlined below, BN/Santa Fe objected to the production of this material. Kansas City Southern ("KCS") has moved to compel the production of these materials or, in the alternative, seek issuance of a subpoena directing McKinsey & Company to produce them. These matters will be considered at tomorrow's Discovery Conference.

The materials at issue are documents and information produced in the course of strategic deliberations undertaken by Santa Fe **over six years ago**. Any such documents related to this work that might still exist are too remote to be of relevance to this proceeding and are unlikely to lead to any admissible evidence.

In raising this issue, Kansas City Southern seeks to relitigate an issue that you have already decided. In December, you rejected KCS's motion to compel the Applicants in this proceeding to produce strategic and competitive analyses of another merger - in that case the BN/Santa Fe merger. Although



1990 to 1991 time period are irrelevant to the current proposed merger between Union Pacific and Southern Pacific: the structure of the Western rail system in 1990 and 1991 was significantly different from what it is now, and the question before the Surface Transportation Board in this proceeding is whether the proposed combination of UP and SP is in the public interest based on the current rail and market environment. Thus, any work done by McKinsey & Company over six years ago in the context of an entirely different rail system structure is irrelevant to the issues currently before the Board and not reasonably likely to lead to the discovery of admissible evidence. On the other hand, such work contributing to the strategic planning of a company is inherently sensitive, a factor that should be balanced against the requesting party's lack of any demonstrated need for the information.

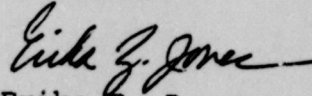
In addition, KCS's requests were very broad and would impose an unduly burdensome obligation on BN/Santa Fe, which is not a primary applicant in this proceeding.^{1/} As reflected in Mr. Ice's deposition testimony, McKinsey & Company undertook a number of projects for Santa Fe that looked at the restructuring of railroads in the West, and, according to Mr. Ice, McKinsey looked at "just about every combination you could think of" involving railroads in the West. Deposition Transcript of Carl R. Ice, February 14, 1996, at pp. 134-35 (attached as Exhibit C). Mr. Ice also testified that the McKinsey work product "was more like slides," rather than written reports. Ice Transcript at page 135, line 22 & 23. KCS's requests seek information and documents on all of these studies without providing any basis whatsoever as to how, if at all, any of the information or documents would be relevant to this proceeding. Accordingly, KCS has asked BN/Santa Fe to undertake an extensive search of its files to locate all the requested information and documents without providing any basis to justify the imposition of such a burden on BN/Santa Fe.

^{1/} KCS has itself refused to produce its "business plans or strategic plans," objecting, in pertinent part, that the request for such materials is "overbroad and unduly burdensome in that it seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence." Kansas City Southern Railway Company's Objections To Applicants' First Set Of Interrogatories And Requests For Production Of Documents, at p. 20 (responding to Request No. 27) (attached as Exhibit D).

The Honorable Jerome Nelson
March 7, 1996
Page 4

Accordingly, KCS's motion to compel and its motion for a subpoena should be denied.

Sincerely,

A handwritten signature in cursive script, appearing to read "Erika Z. Jones", followed by a horizontal line.

Erika Z. Jones

cc: Richard E. Weicher
Restricted Service List

INTERSTATE COMMERCE COMMISSION

+ + + + +

DISCOVERY CONFERENCE

-----X
IN THE MATTER OF: :

UNION PACIFIC CORPORATION, :
UNION PACIFIC RAILROAD COMPANY, :
and MISSOURI PACIFIC RAILROAD : Finance Docket
COMPANY : No. 32760
:

- CONTROL AND MERGER - :
:

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

Wednesday, December 20, 1995

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

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

BEFORE:

THE HONORABLE JEROME NELSON
Administrative Law Judge

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

you have permitted discovery into the crossover effects of the BN/Santa Fe merger, you ruled that discovery into "studies or analysis of the competitive impact of" the BN/Santa Fe merger itself is not relevant to this proceeding, describing such studies as "[t]oo far afield". See Transcript of Discovery Conference, December 20, 1995, at pg. 200 (attached as Exhibit A). KCS's discovery focuses on hypothetical business and strategic planning documents from over five years ago that are even more "far afield," than the material at issue in your December ruling. KCS seeks discovery of material that is completely irrelevant to the matters under consideration before the Board.

Your December 20th ruling is consistent with Interstate Commerce Commission precedent. See Union Pacific Corp. et al. -- Control -- Missouri Pac. Corp. et al., Fin. Dkt. 30,000, Decision on Discovery Appeals (Decided April 22, 1981) (hereinafter "UP-MP Discovery Appeals") (attached as Exhibit B) In UP-MP Discovery Appeals, the Commission affirmed the ALJ's denial of a motion to compel the production of documents referring or relating to other transactions contemplated by Union Pacific. The Commission held that "[t]he fact that Union Pacific may have considered other possible transactions is not likely to assist the Commission in determining the effect of the transaction ultimately proposed." Slip op. at 12. The Commission also held that Union Pacific should not be compelled to produce any studies of potential consolidations with railroads other than the other applicant. "We agree with applicants that material not related specifically to Missouri Pacific may be sensitive and need not be revealed in this proceeding." Slip op. at 3-4. And the Commission held that Union Pacific should not be compelled to produce any studies that had been prepared more than five years before the decision, because such material "is too remote to be relevant in this proceeding." Slip op. at 3. The material sought by KCS does not concern the merger at issue in this proceeding and is as stale as the material at issue in UP-MP Discovery Appeals -- and much more stale than the material that you found "too far afield" on December 20th.

In deposition questioning, KCS has indicated that it is searching for a "study of the structure of the West and two railroads." See, Deposition of Carl Ice at p. 133, lines 6 & 7 (questions of Alan Lubel on behalf of Kansas City Southern) (attached as Exhibit C). But, as Carl Ice, Vice President and Chief Mechanical Officer for the Burlington Northern Santa Fe Corporation, testified on deposition, McKinsey & Company did not conduct "a study directed at two railroads in the West." Ice deposition transcript at p. 133, lines 20 & 21.

Mr. Ice confirmed, however, that McKinsey had performed numerous other studies related to the general question of restructuring of Western railroads. See Ice deposition transcript at p. 134, lines 1 & 2. Any such projects that McKinsey & Company may have performed for Santa Fe during the

1 It seems to me a whole collateral inquiry into some
2 other proposal that failed, and I'm just not going to
3 get us down that one. Now as to (c), you want to use
4 this case, Mr. Lubel, to find out everything the
5 applicants had to say in the other merger?

6 MR. LUBEL: No, no. We're saying that if
7 these applicants have studies or analysis of the
8 competitive impact of the Burlington Northern/Santa Fe
9 merger, we think that's fair game under the statements
10 from the Commission that I mentioned at the beginning
11 of this.

12 JUDGE NELSON: I'm going to deny that
13 one. Too far afield. 14(a), seems to me, right in
14 the ballpark, and we're back to the question of the
15 privilege. Is there a question here?

16 MR. MILLS: May I inquire about 14(a)?

17 JUDGE NELSON: Haven't ruled on 14(a).

18 MR. MILLS: Oh, you haven't?

19 JUDGE NELSON: No, sir. Doesn't 14(a) get
20 you in the same privilege question that we discussed
21 before?

22 MR. ROACH: I think 14(a) is just the
23 U.P.-S.P. merger, and as to that, I think we discussed
24 it in connection with 4(a).

25 JUDGE NELSON: Let me see if I understand

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

INTERSTATE COMMERCE COMMISSION

DECISION

SERVICE DATE

APR 27 1981

Finance Docket No. 30,000¹/

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

DECISION ON DISCOVERY APPEALS

Decided: April 22, 1981

On March 10, 1981, Southern Pacific Transportation Company and its affiliate St. Louis Southwestern Railway Company (collectively SPT) filed interlocutory appeals to four rulings of Administrative Law Judge Paul Cross denying various SPT discovery requests. Applicants (collectively UP) replied on March 12, 1981. Our jurisdiction to hear this appeal was established in the decision served October 15, 1980 in this proceeding.

SPT has appealed the following four specific rulings made on March 3, 1981:

(1) denial of SPT's oral motion to compel production of pre-1979 documents pertaining to internal discussions or analyses of the possibility or desirability of a Union Pacific/Missouri Pacific consolidation;

(2) denial of SPT's oral motion to compel production of certain studies prepared prior to consideration of the Union Pacific/Missouri Pacific consolidations by the Union Pacific board of directors;

(3) denial of SPT's Motion to Compel Answers to Interrogatories and Production of Documents (SPT-19) dated February 2, 1981; and

(4) denial of SPT's Motion to Compel Production of Requested Data and Documents (SPT-20) dated February 6, 1981.

We will address each request in turn.

Oral Motion to Compel Production
of pre-1979 Documents

By oral motion on March 3, 1981, SPT sought production of internal discussions or analyses by Union Pacific staff

¹/ Embraces F.D. No. 30,000 (Sub-Nos. 1-10, 14-17) and Nos. MC-P-14448 and MC-F-14449.

of the possibility or desirability of a Union Pacific/Missouri Pacific consolidation. The Judge denied the motion.

SPT based its request on the alleged representation of applicants' counsel that no such discussions had taken place prior to January 1, 1979.^{2/} In reliance upon this representation SPT states that it restricted the scope of its discovery to the time period after January 1, 1979.

Upon cross examination of Mr. William S. Cook on March 3, 1981, it was discovered that, while discussions of the present proposal of consolidation of Union Pacific and Missouri Pacific had commenced in 1979, the possibility of such a consolidation had been considered much earlier. On at least two prior occasions Missouri Pacific had approached Union Pacific on the possibility of a merger and Union Pacific had concluded that it was not the right time to pursue such a consolidation.^{3/}

Upon learning of these pre-1979 contacts, counsel for SPT moved for production of documents related to consideration of the earlier proposals. SPT now argues that it was improper for the Judge to deny its motion.

Applicants argue in reply that the earlier consideration of possible mergers is irrelevant to consideration of the proposed transaction which was not negotiated until late 1979. Moreover, applicants find "specious" SPT's allegation that it was misled by the representation that no negotiations occurred prior to January 1, 1979.^{4/} Applicants allege that all railroads have studied restructuring possibilities in recent years, especially after the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4R Act).

^{2/} By letter dated October 2, 1980, counsel for applicants stated:

The time period governing all searches and production shall be January 1, 1979, to ... date In this connection, applicants now state ... that no discussions - either between officers of the applicants or among officers of any individual applicant - pertaining to the transactions that are the subject of the above proceedings occurred prior to January 1, 1979.

^{3/} Transcript p. 267-269.

^{4/} Applicants cite the language of the letter of October 2, 1980 stating that there were no internal discussions prior to January 1, 1979, "pertaining to the transactions that are the subject of these proceedings."

Discussion of possible consolidation of Union Pacific and Missouri Pacific prior to 1979 technically may not pertain to the development of the specific consolidation proposal before us. Nonetheless, consideration of merger with the same partner, a very short period of time prior to the actual consolidation proposal, must necessarily have provided background for negotiating the final proposal. Discovery of documents related to these discussions or analyses may very well lead to introduction of evidence relevant to the Commission's consideration of the public interest in this proceeding, particularly in the area of expected benefits of the transactions.

For this reason we believe SPT's oral motion to compel production of pre-1979 documents pertaining to internal discussions or analyses of the possibility or desirability of a Union Pacific/Missouri Pacific consolidation should have been granted. We will grant the appeal, but limit discovery of such material to the time period after January 1, 1976. Material prior to this time is too remote to be relevant in this proceeding.^{5/}

Oral Motion to Compel
Production of Certain Studies

The testimony of Mr. Cook also revealed the existence of certain studies on potential consolidations prepared by Union Pacific prior to consideration of the consolidations by its board of directors. SPT argues that such studies are relevant to the development of the proposed transaction and should be produced. While applicants noted that they would not object to production of parts of the studies,^{6/} they argued that the studies were dated, of little usefulness and that portions of the studies dealt with sensitive considerations of possible mergers with railroads other than Missouri Pacific and should not be subject to discovery in this proceeding.

The Judge denied SPT's motion.

For the reasons discussed above regarding production of pre-1979 documents, we believe the portions of the post January 1, 1976 studies specifically dealing with Missouri Pacific should be made available to SPT.^{7/} We

^{5/} In addition, materials prepared before 1976 would not reflect the effectiveness of the 4R Act. See also transcript page 273.

^{6/} Transcript p. 315-316 and 848-849.

^{7/} The interlocutory appeal did not request material for other than Missouri Pacific.

agree with applicants that material not related specifically to Missouri Pacific may be sensitive and need not be revealed in this proceeding.

SPT's motion should have been granted to the extent described above. SPT's appeal is granted.

Motion to Compel Production of
Requested Data and Documents (SPT-20)

SPT-20 was filed on February 6, 1981. In this motion, SPT sought orders compelling applicants to respond to, and to produce, the documents requested in several outstanding discovery requests. Some of the items remained in dispute at the commencement of hearings on March 3, 1981, when the Judge denied the motion. We will address each item raised in SPT's appeal.

SPT First Set of Interrogatories, Requests 12 and 13:^{8/} These requests deal with material submitted to or used in any presentation made to the various boards of directors of applicants. Applicants allege in their reply that they have produced all materials covered by these requests. Accordingly, SPT's appeal with regard to these requests is moot.

SPT Request for Drafts of Verified Statements: By letter dated January 27, 1981, counsel for SPT requested a copy of the initial drafts of each verified statement for each witness sponsored by applicants, since all of the applicants' top officers and policy witnesses have no underlying work papers supporting their testimony. In this context, SPT alleges, the drafts are necessary for adequate cross examination of these witnesses.^{9/}

In reply applicants cite the decision in this proceeding served December 10, 1980, in which draft verified statements were denied the Missouri-Kansas-Texas Railroad Company, and the decision in Finance Docket No. 28799 (Sub-No. 1), St. Louis Southwestern Railway Company - Purchase (Portion) (not printed) (October 12, 1979) barring discovery of draft verified statements.

^{8/} "12. Identify and produce all documents submitted to the Board of Directors of each applicant herein referring or relating to the transaction proposed herein."

"13. Identify and produce all documents used in connection with any presentation made to the Board of Directors of each applicant herein concerning the proposed transaction."

^{9/} If the request is denied SPT seeks, "at the very least," that the Judge conduct an in camera inspection to determine whether the drafts should be protected. The request for in camera inspection will be discussed infra.

Draft verified statements, whether written originally by the witnesses or by an attorney, are refined and focused by the interaction of the witness and the attorney. As such the drafts are indicative of the process followed by the attorney in preparation for litigation and deserve protection under the work product doctrine. See United States v. Nobles, 422 U.S. 225, 238-39 (1975), and Hickman v. Taylor, 329 U.S. 495, 510-11 (1947).

Moreover, the absence of work papers and unavailability of draft verified statements do not preclude SPT's cross examination of each witness based upon the submitted statements.

The Judge did not abuse his discretion in denying the motion, and SPT's appeal seeking draft verified statements will be denied.

SPT's Ninth Set of Discovery Requests, February 2, 1981: SPT's Ninth Set of Discovery Requests is set forth in Appendix A. It calls for production of all correspondence and other materials exchanged between and among the top executive officers within each of the three carrier applicants and their respective parent organizations concerning the proposed transactions. SPT states in its appeal that the purpose of these discovery requests was to obtain any documents or correspondence sent to or received by these executives. SPT cites the lack of any work papers describing the evolution of the verified statements of applicants' executives as justifying the need for discovery of these items. SPT alleges that compliance with its request would require a search only of the files of seven top executives of applicants.

In reply applicants offer the following points. First, the requests are extremely broad. Second, SPT has allegedly already discovered against applicants with regard to Union Pacific's proposed acquisitions of both Missouri Pacific and Western Pacific.^{10/} Third, applicants allege that compliance with SPT's request would require a search of the files of 48 executives, including all the vice-presidents set forth in the request.

The verified statements with which SPT is concerned were filed along with the primary applications in these

^{10/} Requests 15 and 16 of SPT's First Set of Discovery Requests called for "all documents which refer or relate to the possible acquisition or control of MP (and WP) by UP or merger or consolidation of UP and MP (or WP)." See also Requests 12 and 13 (documents used in connection with presentation to applicants' Boards of Directors regarding the transactions) and Request 21 (documents generated by UP in connection with its review of the business or property of MP and WP) in SPT's First Set of Interrogatories and Requests for Production.

proceedings on September 15, 1980. The statements have been available to SPT for 6 months. Additionally, SPT has discovered numerous documents related to consideration of the proposed consolidation by applicants' witnesses pursuant to its other discovery requests. While applicants did not keep files by individual witnesses, they did categorize working papers and material by subject matter and an extensive index in this form was made available to SPT.^{11/}

We do not believe further discovery is necessary to allow SPT to cross examine applicants' witnesses effectively. The Judge was within his discretion to deny the motion and the appeal will be denied.

Motion to Compel Answers to Interrogatories and
the Production of Documents (SPT-19)

SPT-19 was filed on February 2, 1981. In its motion SPT sought orders compelling production of a number of disputed documents as well as answers to described interrogatories. The motion was denied by the Judge on March 3, 1981. We will address each item raised in SPT's appeal.

Specific Documents: Since the time SPT-19 was filed applicants have produced a number of documents to SPT. There remain 58 documents which have not been produced.^{12/}

In denying SPT's motion to produce these documents, the Judge cited the reasoning set forth by applicants in their reply to the motion.^{13/}

Applicants rely on three grounds to justify their withholding of the remaining documents: (1) attorney-client privilege, (2) the work product doctrine, and (3) confidentiality.

The disputed documents include 44 for which the attorney client privilege is invoked to preclude

^{11/} Transcript, January 6, 1981, page 124-25.

^{12/} The documents are described by affidavits of counsel which are Attachments F, G and H to UP-42, applicants' reply to SPT-19. Sixty-two documents are described. Three were ordered produced by the Judge on March 3, 1981 (F-16 and 34, and G-2) and one (F-53) has since been voluntarily produced by applicants. See UP-57, Applicants' Reply to Interlocutory Appeal, at page 22, footnote 4. Document G-2 was ordered produced by the Judge after counsel for MP volunteered to make it available. See Transcript page 230.

^{13/} Transcript page 171.

discovery.^{14/} The work product doctrine is invoked to protect 40 documents, 32 of which are also included under attorney-client privilege.^{15/} The work product doctrine without the attorney-client privilege is invoked to protect 8 documents.^{16/} Applicants continue to withhold 11 documents because of their confidential nature.^{17/} Or these, nine are commercially sensitive^{18/} and two^{19/} relate to confidential settlement negotiations.^{19/}

(1) The Attorney-Client Privilege.

The attorney client privilege exists "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests and the observance of law and the administration of justice." Upjohn Co. v. United States, 66 L. Ed.

2nd 584, 591 (1981). Our rules comprehend privileged material at 49 C.F.R. 1100.55.^{20/} The Supreme Court in Upjohn, *supra*, recently noted that "the privilege exists to protect not only the giving of professional advice to those who can act on it, but also the giving of information to the lawyer to enable him to give sound and informed advice." 66 L.Ed. 2d. at 592.

SPT argues that the attorney client privilege does not apply to a lawyer acting outside of his responsibilities as a lawyer, and that in this proceeding applicants' counsel may have been evaluating the information in the withheld documents in a business rather than legal sense.

^{14/} Documents F-1-11, 14, 15, 17-21, 30-33, 35-46 and 48-52; G-1; and H-1-4.

^{15/} Documents F-1-11, 14, 15, 17-21, 30-33, 35, 48-52; G-1; and H-2-4.

^{16/} Documents F-12, 13 and 25-29.

^{17/} Documents F-22-28, 52, 54 and 55; and H-5.

^{18/} Documents F-22-28, and 52; and H-5.

^{19/} Documents F-54, 55.

^{20/} See General Rules of Practice, 346 I.C.C. 603 (1974).

We find this argument unconvincing. The affidavits produced by applicants describe in detail the nature of the documents involved. It appears unmistakable that they relate to the preparation, filing and prosecution of the application in this proceeding. The factual nature of some documents does nothing to affect the privilege.^{21/}

The Judge did not abuse his discretion in denying discovery of those items allegedly protected by the attorney client privilege.

(2) The Work Product Doctrine.

The work product doctrine is a long recognized rule protecting work done in anticipation of litigation.^{22/} The doctrine is presently codified in Rule 26(b)(3) of The Federal Rules of Civil Procedure, which allows a qualified protection to documents " . . . prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer or agent)" Such documents are discoverable only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Mental impressions, conclusions, opinion, or legal theories of "an attorney or other representative of a party concerning the litigation" are not to be disclosed.

SPT argues that our rules do not specifically apply the work product doctrine to Commission proceedings. Moreover, it argues, application of the work product doctrine in administrative proceedings is not justified and would result in all workpapers related to Commission applications being shielded from discovery.

We disagree. While our rules do not specifically adopt the work product doctrine, it has been previously applied in administrative proceedings.^{23/} We are specifically charged

^{21/} See Upjohn, *supra*, at 592 where the Supreme Court cites ABA Code of Professional Responsibility, Ethical Consideration 4 - 1.

^{22/} Hickman v. Taylor, 329 U.S. 495 (1947).

^{23/} See Natta v. Hogan, 392 F.2d 686, 693 (10th Cir. 1968) (patent interference proceedings); Upjohn, *supra* (administrative subpoena); and Finance Docket No. 30,000, Union Pacific Corp. v. Control (decision served December 10, 1980).

with conforming our rules and procedures as nearly as possible to those in use in the courts of the United States. General Rules of Practice, 346 I.C.C. 603, 619 (1974). There is no reason the work product doctrine should not apply to Commission proceedings, and we see no need for the dire consequences predicted by SPT to flow from its application. However, following the Supreme Court's example in Upjohn, 66 L.Ed. at 591, we will not "lay down a broad rule or series of rules to govern all conceivable future questions" in the area of privilege. The work product doctrine can be applied on a case by case basis in Commission proceedings.

The documents withheld by applicants pursuant to the work product doctrine appear properly withheld. One document (F-47) reflects the legal opinions of applicants' counsel. The remaining documents are summaries of specific shippers' volumes which do not appear necessary to SPT's case in light of the voluminous materials otherwise provided regarding traffic.

The Judge did not abuse his discretion regarding those items protected by the work product doctrine.

(3) Confidentiality.

Confidential business information is not discoverable unless the relevancy of the information is sufficient to outweigh its commercial sensitivity. Confidential business matters are similar to trade secrets and the courts are loath to order their disclosure absent a clear showing of immediate need for the information requested, Duplan Corp. v. Derring Millikin, Inc., 397 F. Supp. 1146, 1185 (D.S.C. 1975). The Duplan court went on to say "[o]nce the [trade secrets] privilege is asserted . . . the party seeking discovery must make a clear showing that the documents are relevant to the issues involved in the litigation. In doubtful situations production will not be ordered." 397 F. Supp. at 1185, emphasis in original.

SPT in its appeal does not address the specific relevance of the confidential documents withheld. Instead it argues that applicants should have the burden of showing the need for protection of the documents under 49 C.F.R. 1100.55(c).^{24/}

^{24/} SPT seems to argue that Requests 12 and 13 and item 72 of its First Set of Interrogatories require production. These items seem unrelated to confidentiality. Requests 12 and 13 are discussed, supra.

We disagree. The determination of whether or not to allow or require discovery of confidential material requires a balancing of interest. While SPT's discovery of the withheld UP documents may have been useful, in either a tactical or commercial sense, it does not appear necessary in light of the materials already made available to SPT.^{25/}

Confidential material related to settlement negotiations clearly should not be discoverable in order to encourage private settlement of disputes. See Reichenbach v. Smith, 528 F. 2d. 1072 (5th Cir. 1976).

The Judge did not abuse his discretion in denying the motion regarding confidential documents.

(4) In camera inspection.

SPT has requested generally that all documents withheld by applicants be subject to an in camera inspection to determine whether applicant's characterization of the documents is correct and whether the documents should be protected. While in camera inspection is occasionally a useful tool, we do not believe it is necessary for these documents. Applicants have provided a sworn description of each withheld document and both parties have thoroughly argued the issues related to their discovery in motions, appeals and replies. This is sufficient information to determine the discoverability of the disputed documents without an in camera inspection. See Dura Corporation v. Milwaukee Hydraulic Products, Inc., 37 F.R.D. 470 (1965).

Moreover, an inspection places an additional burden upon the Commission's resources in this proceeding which is not justified by the circumstances. This proceeding is governed by the strict time limits of 49 U.S.C. 11345; additional adjudicative burdens, which may affect the schedule of hearings, will not be placed on Commission resources without good cause.

In light of the material already discovered in this proceeding, the sworn description by applicants of the withheld documents, the discernable relation of the documents to the various privileges claimed, and the alternative sources for much of the protected information (such as traffic studies), the Judge did not abuse his discretion and the appeal is denied with respect to all of the specific documents.

^{25/} SPT alleges that an inconsistency exists regarding the production of document G-2 and the withholding of other documents. We find no inconsistency since document G-2 was voluntarily produced by applicants after discussion with the Judge, transcript page 230, and with certain confidential material masked, transcript page 1548-9.

Documents Referring to Other Possible Mergers Involving UP: In SPT-19, SPT sought an order compelling applicants' response to Request 17 of SPT's First Set of Discovery Requests.^{26/} SPT renews its request on appeal, alleging that discovery of Union Pacific's plans regarding other railroads is necessary to allow SPT to present the antitrust issues involved in this proceeding.

Applicants argue that, by definition, this request focuses on matters outside the scope of this proceeding and seeks documents not "relevant to the subject matter of the pending proceeding" within the meaning of 49 C.F.R. 1100.55(a).

SPT states that this argument by UP is inconsistent with what Union Pacific argued in support of its Motion for Dismissal in Southern Pacific Transportation Company v. Union Pacific Corporation, Civil Action No. 80-5281 MRP (Tx), Central District of California, filed November 25, 1980.^{27/}

Applicants respond that there is no justification for SPT's attempt to bootstrap support for its discovery request in this proceeding by reference to its District Court antitrust action against applicants. The antitrust action, like this proceeding, addresses the proposed consolidation of Union Pacific, Missouri Pacific and Western Pacific. It does not address the potential acquisition of some other railroad company.

SPT makes no effort to show how the information requested would support its allegations of monopolization, particularly regarding carriers other than those involved in this proceeding, since no discussions of these possible consolidations ever reached the point of negotiations.^{28/} Moreover, any consolidation of other carriers would require Commission approval, and in the proceeding to obtain such approval the Commission would carefully review the transaction to determine its competitive effect.

To the extent the request indirectly seeks information about how the proposed consolidations might weaken other carriers (so that those carriers were susceptible to takeover), the Commission and the parties have already endeavored to obtain more direct and probative evidence. Indeed the Commission's intent to focus on the impact of the

^{26/} "17. Identify and produce all documents referring and relating to the possible acquisition of control by UP or merger or consolidation with UP of any other railroad company or company owning or controlling a railroad company. As used in this interrogatory the term "UP" refers to Union Pacific Railroad Company or its parent subsidiary."

^{27/} UP argued that matters raised in the District Court antitrust proceeding were within the primary and exclusive jurisdiction of the Commission and should be considered in this proceeding.

^{28/} Transcript pages 265-9.

proposed transaction on competition among carriers has been made clear from the very first decisions in this proceeding. See decision of August 25, 1980. Thus, if the proposed acquisitions were found likely to monopolize the transcontinental movement of freight, the Commission would carefully examine the transaction to determine whether there is any counterbalancing public interest. See McLean Trucking Co. v. United States, 321 U.S. 67 (1944). Should the Commission approve the transaction despite any perceived monopolization, the applicants' consummation of the transaction as approved by the Commission would be exempt from the operation of the antitrust laws. See 49 U.S.C. 11341(a) and Minneapolis & St. L. Ry. Co. v. United States, 361 U.S. 173 (1959), reh. den. 361 U.S. 945 (1960).

In making its inquiry on the competitive effect of a transaction, the Commission focuses its attention on the particular transaction in issue. The fact that Union Pacific may have considered other possible transactions is not likely to assist the Commission in determining the effect of the transaction ultimately proposed. The discovery request seeks documents not relevant to the subject matter of this proceeding and, therefore, is not proper discovery under 49 C.F.R. 1100.55(a).^{29/}

The Judge did not abuse his discretion in denying this motion, and the appeal is denied.

Oral Communications Concerning the Proposed Merger: In SPT-19 an order was sought compelling applicants' response to request 18 of SPT's First Set of Discovery Requests.^{30/}

^{29/} The Judge did allow cross examination on these matters.

^{30/} "18. Identify each communication, meeting, conference, discussion, or telephone conversation wherein the possible or proposed merger, consolidation or control of UP, MP and/or WP was discussed by any officer or employee of applicants. For each such discussion state: (a) the participants; (b) the date and time of discussion; (c) the subject of the discussion; and (d) a description or summary of the contents of the discussion."

SPT argues that this information is made necessary by applicants' instructions to its personnel not to prepare written memoranda of meetings involving the consolidation.^{31/}

Applicants objected to the request, alleging it to be unreasonably broad, burdensome and vague. Applicants state that complying with this request would be overwhelming, for each of applicants' officers may have had thousands of oral communications regarding the consolidation.

Because of the volume of material already made available to SPT and the extraordinary difficulty of complying with the request, the motion was properly denied by the Judge. The appeal is denied.

Request 47 of SPT's First Set of Discovery Requests: By this request SPT seeks to compel production by UP of all documents concerning Union Pacific's relationship with Chicago and North Western Transportation Company (CNW).^{32/} The requested information is allegedly necessary to determine the status of CNW as a friendly connection if SPT's request for trackage rights over Union Pacific is granted. Additionally, SPT argues the discovery request is relevant to whether CNW will continue to function if the merger is approved, to CNW's role as a coal carrier, and to the present ability of Union Pacific and CNW to conduct coordinated operations short of merger. Finally, SPT argues this information is relevant to its antitrust claim against Union Pacific.

^{31/} SPT's reference is to a document obtained in discovery entitled "Procedures for Handling Confidential Materials" attached as Exhibit P to SPT-19. The document sets forth procedures for controlling written material; it notes that "memoranda containing speculative personal opinions or memorializing meetings often cannot be protected from discovery and may confuse issues in the ICC proceedings." The document appears to be an appropriate guide to preparation of materials related to this proceeding.

^{32/} SPT defines "relationship" as:

- (a) Ownership or purchase by UP of stock of CNW; ownership or purchase by any other applicant of the stock of CNW;
- (b) intention of any applicant to purchase or otherwise acquire any ownership interest in CNW stock or assets of any kind;
- (c) any loan or advance of funds or planned or possible loan or advance of funds by any applicant to CNW;
- (d) any discussions with CNW officers or employees concerning the use of federal funds by CNW for improvements; and
- (e) any dealings or plans concerning the Powder River Basin.

Applicants argue that the request focuses exclusively on matters outside the scope of this proceeding.

We agree that the request exceeds the scope of this proceeding. A separate consolidation proceeding would be required to approve any acquisition of CNW. No matter what security interest in CNW properties, Union Pacific might obtain, UP cannot lawfully take possession of or operate any segment of CNW's rail line without Commission approval. Separate proceedings are presently ongoing regarding CNW's role in the Powder River Basin.^{33/} Moreover, SPT has already discovered against applicants with regard to the effect of the proposed transaction on CNW.^{34/} Applicants also have provided, in response to the Commission's information requests, detailed information regarding the effect of the merger on the ability of CNW to provide essential services.^{35/} Applicants' traffic diversion studies and underlying work papers address in detail the impact of the proposed transaction on CNW.

The ability of Union Pacific and CNW to closely coordinate their operations is a matter properly explored in this proceeding as it may reflect on the potential benefits of the transaction. See Ex Parte No. 282 (Sub-No. 6), Railroad

Consolidation Procedures - General Policy Statement, 363 F.C.C. 784 (1981). However, the discovery requests are much broader than operating relationships and entail a much greater burden. Accordingly, the Judge did not abuse his discretion in denying the motion.

Requests 3 and 4 of SPT's Third Set of Discovery Requests: In its Third Set of Discovery Requests, SPT sought production of documents related to applicants' Responses to Requests for Additional Information.^{36/} SPT argues that these requests may produce material which may be inconsistent with applicant's responses.

^{33/} Finance Docket Nos. 28934 and 29066.

^{34/} Request 45 of SPT's First Set of Discovery Requests.

^{35/} Applicants' Responses to Request for Additional Information, UP-19A/MP-18A/WP-16A. SPT alleges the request for additional information regarding the merger's impact on CNW's continued ability to provide essential service necessarily makes inquiry into existing or planned relations between CNW and Union Pacific relevant to this proceeding. We do not agree.

^{36/} "3. Identify and produce all documents in the possession of applicants referring or relating to the said Responses, any related material or any part thereof.

"4. Identify and produce all documents in the possession of applicants referring to or relating to the Order of the Commission served August 15, 1980, in these proceedings which required the filing of the said Responses by applicants "

Applicants reply that these requests are burdensome, and, in light of the voluminous material already produced to SPT, unnecessary.

We agree. SPT's requests represent a classic "fishing expedition." The Judge properly denied the motion. The appeal will also be denied.

Summary. We have discussed each of the four SPT motions ruled upon by the Judge on March 3, 1981. Upon reconsideration, we will grant the appeal from each of the denials of the oral motions, to compel production of pre-1979 documents pertaining to internal discussions or analyses of the possibility or desirability of the proposed consolidation and to compel production of certain studies prepared prior to consideration of the consolidation by the Union Pacific board of directors, with both limited in time to the period after January 1, 1976. We will deny the appeal from the denials of SPT-19 and SPT-20.

It is ordered:

(1) The interlocutory appeal of Southern Pacific Transportation Company is granted to the extent set forth above.

(2) This decision is effective upon service.

By the Commission, Division 2, Commissioners Gresham, Trantum and Alexis. Commissioner Trantum was absent and did not participate.

(SEAL)

AGATHA L. MERGENOVICH
Secretary

Carl R. Ice February 14, 1996 HIGHLY CONFIDENTIAL

PAGE 1 TO PAGE 276

**CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:**

Page 127

- (1) there was a routine established. We had a group
 (2) of people that looked at potential responses, as
 (3) I mentioned earlier, which we've covered several
 (4) times what those were, oppose, settle or look at
 (5) other mergers. Once UP contacted us and asked if
 (6) we were interested in settlement discussions,
 (7) then Mr. Weicher and I worked on -- we had those
 (8) negotiations with UP.
 (9) Q. And so the record is clear, because I'm
 (10) not sure if this was established earlier, it was
 (11) UP that contacted Burlington Northern/Santa Fe
 (12) about some agreement in connection with the UP/SP
 (13) merger?
 (14) A. I believe so, yes.
 (15) Q. Let me go back a little in history and
 (16) try to come through some things chronologically.
 (17) What was your position in 1988?
 (18) A. 1988?
 (19) Q. Yes.
 (20) A. I'll have to think about that for a
 (21) minute.
 (22) Q. I've got your statement in front of
 (23) me. You could look at page 1 and try to
 (24) determine where you fell in there.
 (25) A. That would be helpful. I think I was

Page 128

- (1) an assistant director in the industrial
 (2) engineering department.
 (3) Q. And at that time were you aware of the
 (4) merger application of Southern Pacific and Santa
 (5) Fe?
 (6) A. I was aware of it.
 (7) Q. Did you have any role in any activities
 (8) relating to that merger application that was
 (9) before the ICC?
 (10) A. No.
 (11) Q. Just to follow up on that, you alluded
 (12) earlier to knowledge of the ICC's view of what
 (13) it be competitive concerns. Did any of that
 (14) knowledge or was any of that knowledge based on
 (15) the ICC's determination not to approve the merger
 (16) between SP and Santa Fe?
 (17) A. I was aware that they -- or am aware
 (18) that the merger wasn't approved and some of the
 (19) reasons. The body of knowledge I have is the
 (20) body of knowledge I have.
 (21) Q. So that would be included within your
 (22) body of knowledge?
 (23) A. Probably would, yes.
 (24) Q. And just to come forward, what was your
 (25) position in 1990?

Page 129

- (1) A. I was assistant vice president of
 (2) finance and I think also I was assistant vice
 (3) president of management services in the same
 (4) year.
 (5) Q. And let's just try to come forward in
 (6) terms of what your various positions were. By
 (7) 1993, were you vice president, administration?
 (8) A. Yes.
 (9) Q. And when did you become vice president,
 (10) car load commodities?
 (11) A. January 1 of '94.
 (12) Q. So that was after you were vice
 (13) president of administration?
 (14) A. Yes, sir.
 (15) Q. And, correct, that you held that
 (16) position, vice president, car load commodities,
 (17) until you became your current position, chief
 (18) mechanical officer?
 (19) A. No, I was VP executive in between.
 (20) Q. You were --
 (21) A. VP, dash, executive.
 (22) Q. Was that in the 1994 time period?
 (23) A. It was late in '94 and the first months
 (24) of '95.
 (25) Q. Just as a predicate, if the UP/SP

Page 130

- (1) merger is approved, and, in light of the fact
 (2) that the Burlington Northern/Santa Fe merger was
 (3) approved, and again, if the UP/SP merger is also
 (4) approved, it's true, isn't it, that there will be
 (5) two major class 1 railroads in the United States?
 (6) A. Assuming they're approved, that's
 (7) generally true. There would be other people at
 (8) some locations and we wouldn't both be at all
 (9) locations but that's generally true.
 (10) MR. MCGEORGE: I'm sorry?
 (11) MR. LUBEL: I think he qualified it
 (12) assuming it's approved, that's generally true.
 (13) And there would be other people at some locations
 (14) and they wouldn't be at all locations but that's
 (15) generally true.
 (16) BY MR. LUBEL:
 (17) Q. Again, going backward, when is the
 (18) first time that you recall having any discussion
 (19) of a concept of the structure of rail competition
 (20) in the west like that, such that there would be
 (21) two major class 1 carriers?
 (22) A. I think subsequent to the announcement
 (23) of UP and SP. Subsequent to UP and SP's
 (24) announcement of their merger.
 (25) Q. And just to test that, going back

Page 131

- (1) through the early '90s, you don't recall any
 (2) discussion of the possible structuring of rail
 (3) competition in the west between just two major
 (4) railroads?
 (5) A. It's possible someone may have
 (6) mentioned that but I don't recall really having
 (7) any significant strategic discussions about that.
 (8) Q. Santa Fe, when you were there on
 (9) occasion, used outside consultants, didn't it?
 (10) A. Yes.
 (11) Q. And this ALK study marked as Exhibit 1
 (12) is an example of that, isn't it?
 (13) A. Yes.
 (14) Q. Are you familiar with a company known
 (15) as McKenzie & Company?
 (16) A. Yes, I am.
 (17) Q. Do you know a Mr. John Anderson?
 (18) A. Yes. I know a John Anderson.
 (19) Q. There is a John Anderson that's
 (20) currently employed by Burlington Northern/Santa
 (21) Fe.
 (22) A. There is a couple but yes.
 (23) Q. Is there one particular gentleman who
 (24) not only has that characteristic but also has the
 (25) characteristic of having formerly worked at

Page 132

- (1) McKenzie & Company?
 (2) A. I believe that John Q. Anderson, who is
 (3) our senior VP of coal, previously worked at
 (4) McKenzie.
 (5) Q. And help us. Was he with the
 (6) Burlington Northern or the Santa Fe side?
 (7) A. Burlington Northern.
 (8) Q. And were you aware of or have you ever
 (9) heard of -- let me break that down. Were you
 (10) aware of a study prepared by McKenzie & Company
 (11) prior to 1994 that discussed this structure that
 (12) I've been talking about, the possible structuring
 (13) of rail competition in the western United States
 (14) where there would be just two major class 1
 (15) carriers?
 (16) A. Prepared for who?
 (17) Q. Prepared for anyone.
 (18) A. No, I don't think so.
 (19) Q. I made that broad. Let me be
 (20) specific. Are you aware of such a study prepared
 (21) for the Santa Fe Railroad?
 (22) A. I thought you just narrowed it. No.
 (23) Q. Not to belabor it, can you help us in
 (24) any way? Do you have any awareness of any such
 (25) study prepared for anyone by McKenzie & Company?

Page 133

- (1) MR. WEICHER: Are you saying any study
(2) by McKenzie or study directed to two railroads?
(3) MR. LUBEL: Richard, I'm sorry if I
(4) wasn't clear on that because I thought and I
(5) would guess most of us here knew that I was
(6) talking about a study of the structure of the
(7) west and two railroads, but I apologize if I
(8) didn't make that clear.
(9) THE WITNESS: You're talking about two
(10) railroads.
(11) BY MR. LUBEL:
(12) Q. I'm talking about some study that
(13) posited the possibility of structured rail
(14) competition in the United States being basically
(15) made up of two major class 1 railroads.
(16) A. I am not aware of that, that I recall.
(17) Q. And when you say you don't recall, are
(18) you saying that you know there wasn't such a
(19) thing or there may be but you just don't recall?
(20) A. I believe there was not such a study
(21) directed at two railroads in the West.
(22) Q. You're qualifying that. Are you aware
(23) of some McKenzie study that dealt with that
(24) general topic or dealt with its structure of rail
(25) competition?

Page 134

- (1) A. McKenzie did a number of studies for
(2) Santa Fe and Santa Fe alone that looked at the
(3) restructuring of railroads in the West.
(4) Q. Identify as many of those studies as
(5) you know of. When were they done, who were they
(6) directed to?
(7) A. The vast majority of them I think were
(8) done in the 1990 time frame. Maybe some in '91.
(9) They were primarily directed at our senior
(10) management.
(11) Q. Do you know if Mr. John Q. Anderson was
(12) involved in those studies on behalf of McKenzie &
(13) Company?
(14) A. I believe he was not involved.
(15) Q. Do you know who was involved on behalf
(16) of McKenzie & Company?
(17) A. Yes.
(18) Q. And who was that?
(19) A. Larry Lawrence was the engagement
(20) manager. Dick Ashley, who is one of their senior
(21) partners, I'm not sure how they titled people,
(22) was also involved.
(23) Q. And when you say the studies were
(24) directed toward senior management, would you
(25) include Mr. Krebs in that group?

Page 135

- (1) A. Yes, I would.
(2) Q. And who else would you include?
(3) A. At that point in time, I would have
(4) included Mr. Haverty and I'm sure some of the
(5) other VPs were involved. I'm not sure who all it
(6) was discussed with.
(7) Q. And how do you know that those studies
(8) existed?
(9) A. I provided - I had some discussions
(10) with McKenzie when they were in the process of
(11) preparing them and I participated in some reviews
(12) of those studies.
(13) Q. And what's your best recollection of
(14) how many there were? You used the plural.
(15) A. I'm not sure how many specific
(16) engagements there may have been. I think they
(17) looked at just about every combination you could
(18) think of of railroads in the West.
(19) Q. And these were written reports or
(20) studies by McKenzie & Company?
(21) A. They were on paper. They weren't
(22) written as testimony is written. They were more
(23) like slides.
(24) Q. And you believe there was more than
(25) one?

Page 136

- (1) A. I'm not certain of that. I believe
(2) there was multiple scenarios analyzed. Whether
(3) it was one or two studies, I'm not certain.
(4) Q. And do you know, other than to Santa Fe
(5) executives, do you know what distribution was
(6) made of these studies, or this study?
(7) A. I don't think they got in motion
(8) beyond our executives.
(9) Q. And what's the basis of your concluding
(10) that?
(11) A. As I said, I had some involvement in
(12) the discussions and in the review and it was my
(13) impression that once we had the discussions, that
(14) that was it, that they wouldn't distribute them
(15) any further.
(16) Q. And what was your position at the time?
(17) A. I would have been assistant vice
(18) president of finance or management of services,
(19) depending upon, I think, when they were done.
(20) Q. Have you retained a copy of the study
(21) or studies?
(22) A. No.
(23) Q. Do you know if Santa Fe corporation has
(24) retained copies of those studies?
(25) A. No, I don't.

Page 137

- (1) MR. WEICHER: Mr. Lubel, can I object
(2) and ask what the relevance of this questioning
(3) is?
(4) MR. LUBEL: Well, not to go on at
(5) length about it but if it talks about the
(6) structure of rail competition in the West and it
(7) was done by Santa Fe, it may have some bearing on
(8) the competitive issues before the Commission in
(9) this case. But I'm about through with this area.
(10) MR. WEICHER: I'll permit him to answer
(11) but it's not clear what we're doing here. But go
(12) ahead.
(13) MR. LUBEL: Well, you could possibly
(14) help us with that. Let me make a formal request
(15) for any copies of the studies that the witness
(16) has just been referring to. And I make that
(17) request of Burlington Northern and Santa Fe.
(18) MS. JONES: You can make that through
(19) the proper channels of written interrogatories
(20) and let us have the chance to review it.
(21) MR. WEICHER: The witness has responded
(22) appropriately to what he knows.
(23) MR. LUBEL: I will. But I informally,
(24) just to speed things along, make that request
(25) now.

Page 138

- (1) BY MR. LUBEL:
(2) Q. And in the early '90s when this study
(3) or study of alternatives may have been done by
(4) McKenzie & Company, what if any document
(5) retention policy was observed by Santa Fe?
(6) A. I'm not sure.
(7) Q. Do you know if there was a written
(8) policy on how long materials should be retained,
(9) particularly any strategic studies?
(10) A. No, I don't.
(11) Q. Have you made any attempt, in recent
(12) months, to locate a copy of this McKenzie study
(13) or studies?
(14) A. Yes. I looked through my files as part
(15) of this proceeding.
(16) Q. Do you know if any other employees or
(17) officers of Burlington Northern or Santa Fe have
(18) a copy of this study?
(19) A. No, I do not.
(20) Q. Let's come forward chronologically now
(21) and talk about the Burlington Northern/Santa Fe
(22) merger. Now, the application for that merger was
(23) filed with the ICC in approximately October of
(24) '94, is that correct?
(25) A. That's correct.

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
OBJECTIONS TO APPLICANTS' FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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Railway Company
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Attorneys for The Kansas City Southern
Railway Company

March 4, 1996

Request No. 25.: Produce the files for KCS' 25 largest Kansas grain shippers and 10 largest plastics shippers.

Objection: KCS objects to this request as overbroad and unduly burdensome in that it seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. KCS further objects to this request to the extent that it seeks production of documents subject to the attorney-client or work product privilege.

Request No. 26.: Produce all publications, written testimony and transcripts of Curtis M. Grimm, Thomas O'Connor and Joseph Plaistow, and all merger analyses that have been conducted by Snavelly, King & Associates, without limitation as to date.

Objection: KCS objects to this request as being overly broad and burdensome in that it seeks "all publications, written testimony and transcripts," without limitation to date and apparently without limitation to subject matter. KCS further objects to this request to the extent it requests documents readily available to the public, such as published materials. KCS further objects to this request to the extent it seeks materials subject to the attorney client or work product privilege in this or any other proceeding and to the extent it seeks testimony and transcripts (1) that are subject to a protective order or (2) that are equally or more accessible to Applicants than to KCS.

Request No. 27.: Produce all KCS business plans or strategic plans.

Objection: KCS objects to this request as overbroad and unduly burdensome in that it seeks information that is neither relevant to this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. KCS further objects to this request to the extent that it seeks production of documents subject to the attorney-client or work product privilege.

Request No. 28.: Produce all computerized 100% KCS traffic data for 1994, containing at least the fields listed in Attachment A hereto, a Rule 11 or other rebilling indicator, gross freight revenue, and freight revenue net of allowances, refunds, discounts or other revenue offsets, together with documentation explaining the record layout and the

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32760

3-7-96

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Item No. _____

Page Count 7

Mar. 7 #143

, BROWN & PLATT

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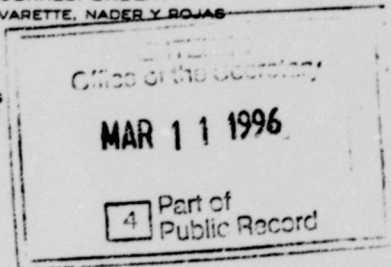
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March 7, 1996



VIA HAND DELIVERY

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

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

Dear Judge Nelson:

The Kansas City Southern Railway ("KCS"), by its letter to you of March 6, 1996 (KCS Letter), has given notice that it intends to move for an order to compel the deposition of Robert D. Krebs, President and Chief Executive Officer of the Burlington Northern Santa Fe Corporation. For the reasons set forth below, the Burlington Northern Railroad and the Atchison, Topeka and Santa Fe Railway (collectively, "BN/Santa Fe") oppose the motion of KCS. This matter will be considered at tomorrow's Discovery Conference.

KCS has utterly failed to show what information -- other than cumulative information -- it can obtain from the deposition of Mr. Krebs. It has not shown that less intrusive means of discovery are not adequate. It has not shown why it has not gotten -- or could not have gotten -- whatever information it purports to seek from the depositions of Gerald Grinstein, Carl Ice, or Richard Davidson. And it has not shown why BN/Santa Fe should be deprived of its CEO for the period of a deposition and its preparation, when BN/Santa Fe has already made available its chairman at the time the settlement with the Applicants was negotiated, along with the senior executive who negotiated that settlement, and will shortly produce two additional vice-presidents.

The Honorable Jerome Nelson
March 7, 1996
Page 2

To begin with, KCS misstates the rules of the Surface Transportation Board as well as the discovery guidelines in this case when it claims that there is a "presumption" that non-testifying witnesses may be deposed. KCS Letter at 1. On the contrary, the guidelines (at ¶ 6) clearly establish such a presumption only for persons who have "submitted written testimony in this proceeding"; nothing in the guidelines alters the Board's rules with respect to the standard for compelling a deposition of a non-testifying witness.

Contrary to KCS's representation, (KCS Letter at 1), the proponent of a deposition bears a heavy burden to show (1) "that the information it seeks may not be obtained through other means of discovery, such as interrogatories, request for the production of documents, or inspection visits to [a party's] offices, that are readily available and less disruptive than depositions"; and (2) "that the material" sought to be discovered by deposition "is not merely cumulative or [is] in danger of loss." Annual Volume Rates on Coal -- Rawhide Junction, WY to Sergeant Bluff, IA; Burlington Northern R.R. Co. and Chicago and North Western Transportation Co., No. 37021, 1984 ICC LEXIS 47, at *4 (served Jan. 5, 1985). It is plainly not sufficient simply to suggest that a deposition "may shed some light" on a topic that is broadly relevant to a proceeding. Id. at *8. And it is not enough that the information sought in a deposition is "relevant"; rather, the proponent must demonstrate that there is a need for a particular deposition. Farmland Industries, Inc. v. Gulf Central Pipeline Co., No. 40411, 1993 WL 46942 (served Feb. 24, 1993).

Moreover, Mr. Krebs' position as CEO -- particularly as a non-testifying CEO of a party that is not a primary applicant in this case -- and the attendant burden his deposition places on BN/Santa Fe heightens the showing of "need" required to order that deposition. Even under the far more liberal standards of the Federal Rules of Civil Procedure and their state-law counterparts, the CEO of a corporation normally may be deposed only where the party seeking the deposition demonstrates that the executive has unique or superior personal knowledge of particular, material information. See, e.g., Thomas v. IBM, 48 F.3d 478, 483-484 (10th Cir. 1995) (in light of oppressive burden on chairman, proponent of deposition must demonstrate that necessary information cannot be gathered from other personnel); Baine v. General Motors Corp., 141 F.R.D. 332, 334-335 (M.D. Ala. 1991); Crown Central Petroleum Corp. v. Garcia, 904 S.W.2d 125, 128 (Tex. 1995); Liberty Mutual Insurance Co. v. Superior Court, 10 Cal. App. 4th 1284, 1289, 13 Cal. Rptr. 2d 363, 367 (1992).

The reasons for these limitations on the depositions of CEOs are obvious. The CEO of a corporation of the magnitude of BN/Santa Fe is

The Honorable Jerome Nelson
March 7, 1996
Page 3

a "unique and important individual who can easily be subjected to unwarranted harassment and abuse." Mulvey v. Chrysler Corp., 106 F.R.D. 364, 366 (D.R.I. 1975). See also Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 741 (1975). Under the circumstances, KCS at the very most could be allowed to use written interrogatories to ascertain whether Mr. Krebs' knowledge extends beyond that of other witnesses in any meaningful sense. See, e.g., Baine, 141 F.R.D. at 336; Mulvey, 106 F.R.D. at 366; Mitchell v. American Tobacco Co., 33 F.R.D. 262, 263 (M.D. Pa. 1963); Colonial Capital Co. v. General Motors Corp., 29 F.R.D. 514, 518 (D. Conn. 1961). But KCS has not requested that relief here.

KCS's showing here falls far short of carrying its burden of justifying an order to compel the deposition of Mr. Krebs. KCS begins with an erroneous assertion (KCS Letter at 4): Mr. Krebs is not the "current Chairman" of BN/Santa Fe. Mr. Daniel P. Davison is the current chairman. KCS has already deposed Gerald Grinstein, who was chairman at the time the settlement was negotiated and executed. The remainder of KCS's assertions do not contradict -- indeed, they often clearly confirm -- that the information KCS seeks is cumulative, that it is readily available by other means, and that it will not materially "aid [the Board] in ruling on the case." G&G Manufacturing Co.--Petition for Declaratory Order--Certain Rates and Practices of Trans-Allied Audit Co. and R-W Service Systems, Inc., No. 41015, 1994 WL 617547, at *10 (served Nov. 9, 1994) (citing Trailways Lines, Inc. v. ICC, 766 F.2d 1537, 1546 (D.C. Cir. 1985)).

First, KCS notes that Mr. Krebs was involved in various conversations relating to BN/Santa Fe's agreement with the Applicants in this case. KCS Letter at 3. KCS has known of Mr. Krebs' involvement since December 15, 1995. Applicants' Depository Document No. N37-000003 (attached). Carl Ice, whom KCS admits was BN/Santa Fe's "chief negotiator" of that agreement, has been deposed for two days, and was questioned about his contacts with and instructions from Mr. Krebs. So far as it is relevant to this case, and not otherwise protected by the work product doctrine, Mr. Krebs' policies and instructions regarding the settlement have been fully available to KCS through the deposition of Mr. Ice, who carried out Mr. Krebs' instructions, and otherwise are apparent from what BN/Santa Fe actually did in response to the proposed merger. As for the conversation mentioned in the Skinner call report, Mr. Bredenberg (who Mr. Skinner claims was present) will be deposed tomorrow morning. Mr. Richard Davidson of the Union Pacific also has been deposed, as have other of Applicants' executives who met or talked with Mr. Krebs during the negotiations.

KCS does not specifically identify what it hopes to add by subjecting Mr. Krebs to a deposition. KCS could have asked whatever it

The Honorable Jerome Nelson.
March 7, 1996
Page 4

wanted of Mr. Ice, Mr. Grinstein, or Mr. Davidson. In claiming that it needs to depose Mr. Krebs simply because he "was to inherit the mantle of leadership" (KCS Letter at 3), KCS admits that it has nothing to learn from Mr. Krebs that is not cumulative.

Second, KCS places its greatest reliance (KCS Letter 3-4) on the Board's stated intention to consider the cumulative impacts of the BN/Santa Fe merger and the proposed UP/SP merger. But KCS does not attempt to demonstrate why it needs to depose Mr. Krebs for this point. The Board's consideration of cumulative impacts will rely largely on market facts available through other means, and on expert economic analysis. To the limited extent live testimony on this issue is relevant, Mr. Grinstein, Mr. Ice, Mr. Owen, and Mr. Lawrence all have been available to testify on these and related issues. KCS has not even attempted to show in what specific way the testimony of Mr. Krebs would add to these depositions and the extensive written and document discovery conducted in this case.

Finally (KCS Letter at 4), KCS attempts to inflate its request for documents related to the stale McKinsey & Co. project into a justification for deposing Mr. Krebs. Under separate cover we have explained why the study is not discoverable. Mr. Ice already has been deposed on the significance of that study to Santa Fe's strategic planning as it relates to this proceeding. In any event, the Board's evaluation of the effects of the UP/SP merger will rely on market facts, not on an individual's subjective reaction to a five-year-old consultant's project.

At most -- although we do not believe it has achieved even that modest goal -- KCS has indicated that Mr. Krebs might possibly, in some unspecified way, "shed some light" on some topic that might be relevant to this proceeding. That is not enough to carry KCS's burden, and its motion should be denied.

Once the burden on BN/Santa Fe is considered, however, the inappropriateness of the deposition becomes even more clear. Mr. Krebs is the CEO of a company that is not a primary applicant here, and he did not submit testimony in this proceeding. He should not be required to make himself available for testimony in light of the substantial daily obligations and responsibilities he must meet in combining the operations of BN and Santa Fe and otherwise implementing the merger to achieve the public benefits recognized by the ICC.

But there is more. It would be particularly burdensome, oppressive, and intrusive to require Mr. Krebs to sit for a deposition when BN/Santa Fe already has or will make available for testimony four

The Honorable Jerome Nelson
March 7, 1996
Page 5

persons who are or were senior executives. BN/Santa Fe has made available for testimony, Gerald Grinstein, the former Chairman of Burlington Northern Santa Fe Corporation and the Chairman at the time the BN/Santa Fe settlement with UP/SP was negotiated and executed, who was able to testify concerning matters at the executive level of the corporation during that period. We have also produced Carl Ice, the chief negotiator of the settlement agreement between UP/SP and BN/Santa Fe, who was able to answer relevant questions concerning that agreement and its impact. In addition to the deposition of Mr. Ice, the depositions of two more BN/Santa Fe officers of vice-presidential rank, Mr. Dealey and Mr. Bredenberg, have been ordered. In all, the merger opponents already have deposed, or shortly will depose, the chairman of BN/Santa Fe and three additional senior executives at the vice-presidential level. Four depositions of the officers of a non-applicant is enough.

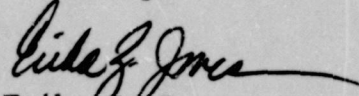
An ICC Administrative Law Judge confronted an earlier attempt by KCS to harass an applicant's officers; that Judge sharply reined in KCS's attempts to expand discovery beyond permissible bounds. See Rio Grande Industries--Control--Southern Pacific Transportation Co., Fin. No. 32000, 1988 WL 224262 (June 21, 1988) (ALJ decision). The ALJ denied depositions of six of seven officers because KCS had not shown that it could not get -- or had not gotten -- equivalent information from other sources. The ALJ denied the depositions of all non-testifying witnesses, and also denied the depositions of two witnesses who had submitted verified statements because KCS proposed to depose them on subjects not related to their verified statements. Id. at *4. The ALJ granted only one deposition, and solely "to assure that KCS is not deprived of the opportunity to question a top officer." Ibid. That concern is not present here, where BN/Santa Fe's chief negotiator has been deposed for two long days, and the company's chairman at the time of the settlement also has been deposed.

KCS has failed to meet Surface Transportation Board standards for ordering any deposition at all, much less the deposition of the CEO of a party that is not a primary applicant here. Mr. Krebs' testimony is plainly cumulative and is not necessary to the determination of any issue before the Board. Moreover, the burden imposed upon Mr. Krebs and upon BN/Santa Fe is substantial and unjustifiable. The motion should be denied.

The Honorable Jerome Nelson
March 7, 1996
Page 6

I have circulated a copy of this letter to the restricted service list.

Sincerely,



Erika Z. Jones

cc: Restricted Service List
The Honorable Vernon Williams

**KCS INTERROGATORY 12
DOJ INTERROGATORY NO. 1.b(ii)**

12/15/95

According to the best recollection of those UP/SP personnel principally involved, the following meetings were held to negotiate the BN/Santa Fe settlement.

<u>Date</u>	<u>Location</u>	<u>Medium</u>	<u>Participants</u>	
			<u>BNSE</u>	<u>UP/SP</u>
Mid-August	Omaha	Tele-Call	G. Grinstein	R. K. Davidson
08/23-25/95	Omaha	Tele-Call	R. Krebs	R. K. Davidson
08/28/95	Omaha	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/05/95	Schaumburg	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/08/95	Schaumburg	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/19/95	Omaha	Conference	C. Ice	J. H. Rebensdorf J. V. Dolan J. Gray
09/20/95	Palwaukee	Conference	R. Krebs C. Ice	R. K. Davidson J. H. Rebensdorf J. Gray
09/21/95	Omaha	Tele-Call	C. Ice	J. H. Rebensdorf
09/22-25/95	Omaha	Conference	C. Ice R. Weicher R. Krebs (via phone)	J. H. Rebensdorf J. V. Dolan P. A. Conley J. Gray R. K. Davidson M. F. Kelly J. H. Ransom

See response to DOJ interrogatory 1.b(i) for positions and tenures of Messrs. Davidson, Rebensdorf, and Gray. Mr. Dolan has been Vice President-Law for UP for 12 years. Mr. Conley has been AVP-Law for UP for 12 years.

STB FD 32760

3-7-96

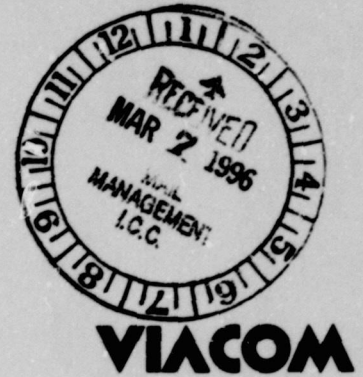
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Viacom Inc.
One Utah Center
201 South Main Street, Suite 1100
Salt Lake City UT 84111-4904

Jeffrey B. Gray
Corporate Counsel/Environmental

Tel 801 578 6972
Fax 801 578 6999



Item No. _____

Page Count 2
Mar. 7 # 152

March 1, 1996

Office of the Secretary
Case Control Branch
Attn: Finance Document No. 32760
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

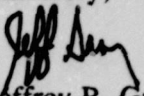
Re: *Compliance with Decision No. 16, issued February 22, 1996 regarding
Finance Docket No. 32760, ICC Dockets AB-12 (Sub-No. 188) and
AB-8 (Sub-No. 39)*

Dear Sir/Madam:

I enclose an original and five copies of a Certificate of Service, which certifies Viacom International Inc.'s compliance with Decision No. 16 of Finance Docket No. 32760 requiring parties to serve all other parties with a list of numbered pleadings they have submitted in the above-referenced matter.

I understand that service of the pleading list was to be completed by February 26, 1996; however, due to a delay in receiving Decision No. 16, service was completed as quickly as possible.

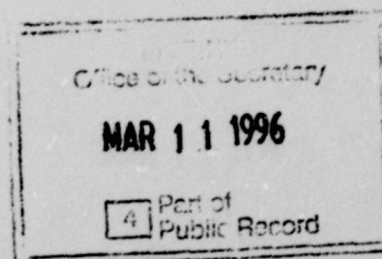
Sincerely,


Jeffrey B. Gray

Enclosures

cc: (w/o encls.)
Felicity Hanney, Esq.
Arvid E. Roach II, Esq.
Paul A. Cunningham, Esq.

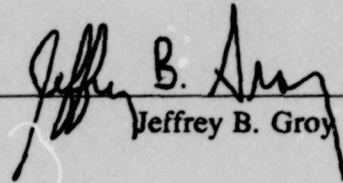
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CERTIFICATE OF SERVICE



Pursuant to Decision No. 16 in Finance Docket No. 32760, I certify that I served a list of numbered pleadings submitted by Viacom International Inc. to all parties of record by causing it to be mailed via U.S. Mail, postage prepaid.



Jeffrey B. Groy

STB

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32760

3-7-96

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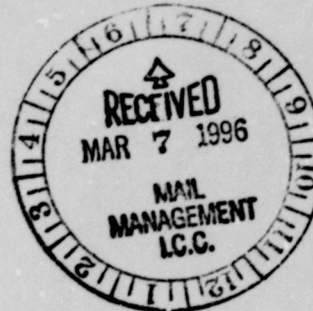
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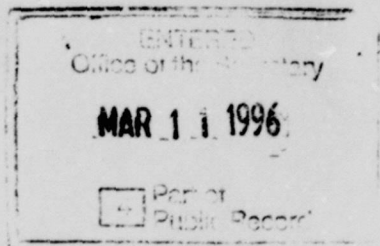
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Steven P. Finizio		
John Ongman	202-828-1665	202-828-1415
Marc D. Machlin		
Erika Jones	202-861-0473	202-463-2000
Adrian Steel		
Roy Englert		
Kathryn Kusske		
C. Michael Loftus	202-347-3619/8292	202-347-7170
John LeSeur		
Christopher Mills		
William Sippel	312-616-5800	312-616-1800
Thomas Litwiler		
Robert Wheeler		
Kevin Sheys	202-293-6200	202-293-6300
Thomas Lawrence		
Peter Shudtz	804-783-1355	804-783-1343
Richard E. Weicher	708-995-6540	708-995-6887
Janice Barber	817-333-5142	817-878-7954
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Lindsay Bower	415-356-6377/6370	415-356-6000
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Michael F. McBride	202-986-8102	202-986-8000
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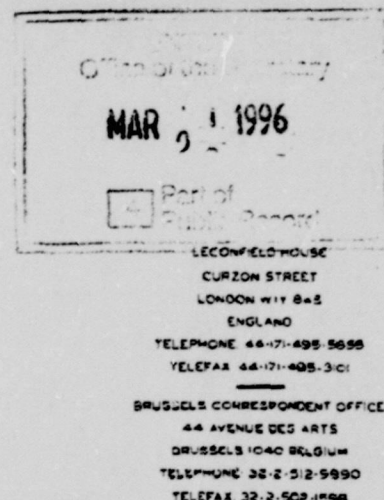
John D. Heffner	202-659-4934	202-785-3700
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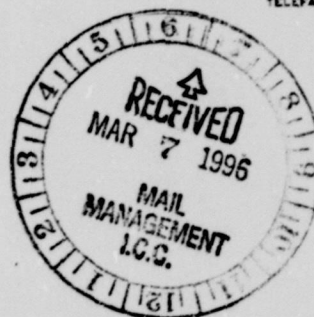
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March 7, 1996

BY FACSIMILE

Hon. Jerome Nelson
Administrative Law Judge
FERC
Room No. 11F21
888 First Street, N.E.
Washington, D.C. 20426



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

Dear Judge Nelson:

This responds to Conrail's letter of March 6 -- and the letters of a number of other parties supporting Conrail's position -- seeking a protective order against Applicants' discovery on the ground that the discovery is "premature." This is nothing more than an effort by parties that have been very actively participating in this proceeding to evade discovery -- indeed, effectively, to evade it altogether.

Applicants' requests are not premature. Applicants are seeking discovery from active parties to this case on matters related to the merger application which have been amply placed at issue by those parties to this proceeding through their discovery requests, depositions, prior filings with the Surface Transportation Board, and public statements. Applicants' discovery is not an attempt to "anticipate" the responsive applications that some of the parties to this case have said they will file. Rather, the discovery is directly relevant to parties' expressions of opposition to Applicants' merger application, and would be relevant even if those parties filed nothing further in this proceeding. This type of discovery was clearly contemplated by the Discovery Guidelines entered in this proceeding and is not precluded by any of the Surface Transportation Board's or ICC's decisions.

Conrail's opposition to this merger is not a secret that will be revealed on March 29. Conrail has stated its

Hon. Jerome Nelson
March 7, 1996
Page 2

position in prior pleadings to the Board and in communications to numerous shippers and to public officials. See, e.g., Exhibit A hereto, p. 2 ("As the Board is aware, Conrail has itself made a proposal to buy [SP's lines in the Gulf Coast/Eastern region]. Conrail's proposal would be an effective market-supplied, structural solution to the anticompetitive effects that will otherwise result from the merger."). Conrail has also indicated the areas that it considers relevant through its discovery requests and extensive questions in depositions. In framing their discovery requests to Conrail (Exhibit B hereto), Applicants have focused on issues that Conrail itself has raised in discovery and in public statements. The discovery that has occurred has helped to frame the issues to which Applicants must respond, and Applicants' ability to respond fully to those issues turns in part on obtaining information from parties to this proceeding through discovery.

What Applicants are doing is no different from discovery in any other type of case where discovery is allowed on relevant issues even though the dispute may become still more focused as the case proceeds. It is possible to judge whether discovery requests are relevant before other parties have filed their opposition, just as Your Honor has been able to do to date. Parties have indicated which issues are relevant through their questioning of Applicants' witnesses, their pursuit of discovery (often before Your Honor), and their statements to the Board and the public. And discovery of this type plays an important role in narrowing the issues that will ultimately be presented to the Board.

If Applicants are required to wait until after March 29 to begin discovery, it will be virtually impossible to conduct any meaningful discovery. Assuming that Applicant serve discovery on April 1, responses to Applicants' requests would be due on April 16. This would leave just 13 days for Applicants to review discovery material and complete and file their rebuttal case, due on April 29 -- not including the time that will inevitably be required to negotiate over objections and to bring discovery disputes to Your Honor's attention. Applicants would have virtually no opportunity to use the fruits of discovery during depositions -- as our adversaries have extensively done -- or in their rebuttal evidence. Neither the decisions of the Board or ICC nor the Discovery Guidelines require that Applicants be placed in this position. In fact, both the Discovery Guidelines and the Board's decisions point in the opposite direction.

Hon. Jerome Nelson
March 7, 1996
Page 3

The Discovery Guidelines establish that Applicants are permitted to begin discovery before April 1. All parties clearly understood this when the Guidelines were adopted. The Guidelines are written in terms applicable equally to discovery conducted by Applicants and all other parties.

The best evidence of the parties' understanding of the "discovery moratorium" provision contained in paragraph 1 of the Guidelines. When describing the moratorium provision to Your Honor, Applicants explained:

"MR. LIVINGSTON: Your Honor had talked about a deadline for discovery against the Applicants. That was one of the issues.

ADMINISTRATIVE LAW JUDGE NELSON: That is what I thought people wanted, one day --

MR. LIVINGSTON: As we discussed that the issue became more complicated. We finally ended up with an agreement that there will be a moratorium on the service of written discovery requests by any party during the period between February 26 and March

December 1, 1995, Tr., p. 129 (emphasis added). It is clear from both the language of the provision and the transcript of the discovery conference that this was to be a bilateral moratorium, a concept that makes no sense unless the Applicants were permitted to conduct discovery prior to the commencement of the moratorium. In fact, as the quoted portion of the transcript shows, the initial discussion at the December 1 conference focused on a cutoff of discovery against the Applicants. See also Tr., pp. 83, 89. It was during the record discussions that other parties recognized that Applicants could serve them with discovery -- Mr. Mullins specifically referred to the prospect that Applicants would serve parties with discovery near the time when those parties were due to file their submissions -- and this was reflected in both the date chosen for the cut-off and the fact the discovery cut-off was to be bilateral.

Applicants have sought this discovery in the least burdensome way possible. Applicants gave the other parties a clear field for three months to review the application and develop their theories through a massive campaign of several weeks of depositions and more than 1,200 written discovery demands. Instead of serving these parties with waves of discovery during that period, Applicants let them pursue their cases. In the meantime, Applicants answered upwards of 1,

Hon. Jerome Nelson
March 7, 1996
Page 4

formal discovery requests and a substantial number of in requests for additional information, and presented 21 witnesses for depositions.

All of this discovery allowed parties opposing merger to develop their lines of argument and theories. theories have emerged through their discovery requests, deposition questioning, and statements they have made to Surface Transportation Board and the public regarding the merger. It is on these issues that Applicants' discovery requests focus.

The language on which Conrail and other parties object to providing discovery before April 1 rely does not address the question at hand, and did not purport to preclude discovery by Applicants at this time. Conrail relies on language from Decision No. 6, served Oct. 19, 1995, p. 16 which states: "Discovery on responsive and inconsistent applications will begin immediately upon their filing." (Emphasis added.)^{1/} But this language does not bar the discovery Applicants are now seeking. The provision does more than require parties filing such applications to provide discovery related to their applications immediately upon filing (as opposed to requiring Applicants to seek an order from the Board to conduct discovery, as the Board's regulations would otherwise require).

If Applicants were not allowed to conduct discovery against Conrail until Conrail filed a responsive or inconsistent application, Applicants would never be able to conduct meaningful discovery against Conrail in this proceeding, because Conrail has informed the Board that it will not file a responsive or inconsistent application in this proceeding.

The term "responsive or inconsistent application" is a term of art with a very specific meaning. The Board's merger rules define "responsive applications" as:

"Applications filed in response to a primary application seeking affirmative relief either as a condition to or in lieu of the approval of the primary application. Responsive applications

^{1/} Conrail also points to somewhat broader language in the Commission's Decision No. 1, where the Commission presented that language for comment. Notably, that broader language was not adopted by the Commission in Decision No. 6.

Hon. Jerome Nelson
March 7, 1996
Page 5

include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application to be filed with the Commission (such as trackage rights, purchases, construction, operation, pooling, terminal operations, abandonment, etc.)."

49 C.F.R. § 1180.3(h). Responsive applications must contain information much like that contained in Applicants' primary application. See 49 C.F.R. § 1180.4(d)(4).

The deadline for providing notice that a responsive or inconsistent application would be filed passed on January 29, 1996. See Decision No. 6, p. 15. Conrail filed a statement with the Board clearly stating that it will not be filing a responsive or inconsistent application. See Exhibit A. KCS did the same. In fact, in its letter to Your Honor, Conrail goes so far as to suggest that, because of this fact, it should not be subject to any discovery in this proceeding (p. 4).

Parties that do not plan to file responsive or inconsistent applications may nonetheless seek conditions, present testimony opposing the merger, and otherwise participate in this proceeding, and Applicants fully expect Conrail, KCS and others to submit that sort of evidence and briefs to the Board. Discovery related to the issues raised by the primary application is appropriate at any time after the merger application has been filed.

Conrail's suggestion that Applicants have violated the spirit of the moratorium is misguided. While Applicants served 70 discovery requests on Conrail, and fewer than that on most other parties, Applicants were served on February 26, the day the moratorium began, with more than 150 document requests and interrogatories (pushing the total to nearly 1,250). Applicants will answer those discovery demands as they have answered all others, and has not sought a protective order against them.

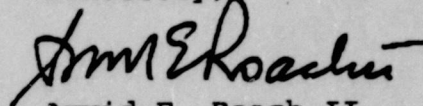
Conrail's arguments regarding burden ask Your Honor to ignore reality. Conrail is a very large company. Conrail has made no showing that it is unable to respond to Applicants' discovery requests and prepare for their March 29 filing as well. It has had three months already in which to work, while Applicants have been kept busy responding to the nearly 1,250 discovery requests they have received.

Hon. Jerome Nelson
March 7, 1996
Page 6

Finally, this situation is completely different from the situation Applicants faced when KCS propounded its discovery requests before Applicants had filed their application. Applicants objected to responding to requests that would have been due just as Applicants were filing their Application, noting that parties would be allowed several months thereafter to conduct discovery. No one pressed this timing point -- and a massive amount of discovery ensued promptly after the application was filed. Conrail and the other parties have now had three months since the filing of the Application to pursue discovery, and seven months to work on their cases. Applicants have withheld all discovery during this period.

Applicants have waited until issues have been refined through the discovery process, and have given other parties an opportunity to conduct discovery and assess whether to remain active in the case. Now Applicants seek discovery on the issues that the various active parties have identified as relevant, and Applicants' right to conduct such discovery is clearly supported by the Discovery Guidelines and the Board's discovery rules.

Sincerely,



Arvid E. Roach II

cc (w/o att.): Restricted Service List (by facsimile)

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March 7, 1996

BY FACSIMILE

Hon. Jerome Nelson
Administrative Law Judge
FERC
Room No. 11F21
888 First Street, N.E.
Washington, D.C. 20426

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

Dear Judge Nelson:

This responds to KCS' letter of March 6 regarding the depositions of Drew Lewis, Chairman of the Board and CEO of Union Pacific Corporation, and L. White Matthews, III, Executive Vice President-Finance of UPC. (While KCS claims -- mistakenly -- that Mr. Matthews "has been referred to throughout discovery, both in depositions and documentary evidence," KCS calls him "Dwight Matthews" throughout its letter.)

The depositions KCS seeks are completely unjustified, and would unnecessarily interfere with and disrupt Mr. Lewis' and Mr. Matthews' duties as top officials of Union Pacific Corporation.

Mr. Lewis has an extremely tight schedule, and he is involved in numerous important matters, including many matters unrelated to this merger. As Chairman of the Board and CEO of UPC, Mr. Lewis' responsibilities encompass not only the Union Pacific Railroad's affairs, but also those of UP Resources and other UPC subsidiaries. Mr. Matthews' responsibilities encompass a similarly broad range of affairs and UPC subsidiaries.

KCS does not and cannot point to any particular reason that it needs to depose either Mr. Lewis or Mr. Matthews. Any deposition of Mr. Lewis or Mr. Matthews would

Hon. Jerome Nelson
March 7, 1996
Page 2

simply be cumulative. KCS has already taken lengthy depositions of Philip F. Anschutz, Chairman of the Board of Southern Pacific Rail Corporation, Richard K. Davidson, President and Chief Operating Officer of UPC and Chairman of the Board of UP, and John H. Rebensdorf, Vice President-Strategic Planning for UP, as well as Richard B. Peterson, Senior Director-Interline Marketing of UP, regarding the negotiation of the UP/SP merger and the settlement with BN/Santa Fe.

Moreover, as the discovery and depositions that KCS has already taken in this proceeding have established, while Mr. Lewis' brief telephone calls with Mr. Anschutz opened the door to formal negotiations between UP and SP, Mr. Davidson and Mr. Rebensdorf were more deeply involved in the details of the merger negotiations, and Messrs. Lewis and Matthews had no involvement in assessing the competitive impact of the merger. Nor did Messrs. Lewis and Matthews have any role in the negotiations of the settlement with BN/Santa Fe.

At the depositions that have occurred, a tremendous amount of time was wasted by KCS with questions regarding matters already fully set out in public securities disclosures, and by KCS' pursuit of bizarre "conspiracy" theories. But Applicants have already categorically denied KCS' requests for admissions regarding its "conspiracy" theories. KCS has also pursued this line of questioning with Messrs. Anschutz, Davidson and Rebensdorf, and received the same negative answers each time. KCS will not receive different answers from Mr. Lewis or Mr. Matthews, and there is absolutely no reason to subject these gentlemen to burdensome depositions to prove that point.

KCS states that it wants to depose Mr. Matthews because he was involved in merger discussions and he made a presentation to the UPC Board in February 25 regarding the merger. Applicants have already presented witnesses who testified about the February 25 meeting and have answered discovery requests and produced documents related to that meeting. KCS does not point to any reason why it needs to question Mr. Matthews. KCS points to one document that was part of Mr. Matthews' presentation, but they do not explain why Mr. Davidson, who attended the board meeting, could not fully address that document or why they need any further witnesses to explain it.

KCS also states that Mr. Matthews was present at certain merger negotiation meetings. This does not explain why KCS believes it is necessary to depose Mr. Matthews. KCS has already deposed Mr. Anschutz and Mr. Davidson, who

Hon. Jerome Nelson
March 7, 1996
Page 3

attended the same meetings. KCS also says that Mr. Matthews worked closely with "UP's financial advisor, Morgan Stanley" (p. 3). UP's financial advisor was CS First Boston, not Morgan Stanley. It is difficult to take KCS' claim that it considers Mr. Matthews a vital figure in this case seriously when KCS has not yet learned Mr. Matthews' name and has not yet determined the identity of UP's financial advisor. In any event, KCS has deposed both Stephan C. Month of CS First Boston and James A. Runde of Morgan Stanley.

KCS has not presented a single reason why its proposed depositions will not be cumulative and a waste of time. And KCS has given no reason that justifies the disruption and interference with Mr. Lewis' duties as Chairman of the Board of UPC and Mr. Matthews' duties as Executive Vice President-Finance of UPC that would be caused by these depositions.

Finally, Applicants continue to believe that non-testifying witnesses should not be subject to depositions to the same extent as testifying witnesses. Applicants have pointed Your Honor to ICC precedent squarely on point, No. 37021, Annual Volume Rates on Coal -- Rawhide Junction, WY to Sergeant Bluff, IA, served Jan. 4, 1985, which establishes that the Commission disfavors depositions as a means of conducting discovery where, as is clearly the case in regard to these proposed depositions, other forms of discovery are adequate.

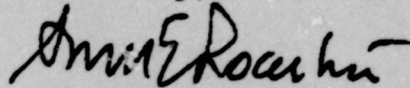
As we have already stressed, parties do not have the right to depose all individuals who may have the slightest knowledge about anything arguably relevant to the merger application. This is not a multi-year, wide-open, old-style federal court case in which depositions can be taken by the scores or hundreds if they meet bare standards of relevance. It is a highly expedited proceeding before an agency whose law disfavors depositions, and which has specifically instructed that discovery be strictly restricted to relevant matters. Applicants have received requests to depose 16 non-testifying witnesses in addition to the 21 witnesses Applicants have made available for 7 weeks of depositions. KCS' prediction in its letter of January 25 that the number of depositions requested would "grow geometrically with each witness" has proven true. The new requests for depositions undermine the principle established in the Discovery Guidelines that parties could use the month of March to prepare their upcoming filings.

Applicants believe that it is important for Your Honor to draw the line on purely cumulative and burdensome depositions. The depositions of Messrs. Lewis and Matthews

Hon. Jerome Nelson
March 7, 1996
Page 4

are just the type of depositions that are not justified and
should not be required.

Sincerely,



Arvid E. Roach II

cc: Restricted Service List (by facsimile)

STB

FD

32760

3-6-96

J

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Texas Department of Transportation

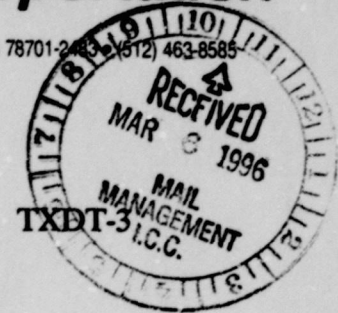
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Page Count 1

February 26, 1996

March # 140



TO: All Parties of Record (POR)

RE: Finance Docket No. 32760

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

--CONTROL AND MERGER--

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

The following is a list of all filings by the Texas Department of Transportation in this proceeding:

TXDOT-1 Comments Regarding the Proposed Procedural Schedule.
TXDOT-2 Notice of Intent to Participate.

Any party seeking copies of the above filings should contact my office at (512) 305-9547 or (512) 416-2341.

Sincerely,

Thomas A. Griebel
Assistant Executive Director
Multimodal Transportation
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

ENTERED	
Office of the Secretary	
MAR 08 1996	
5	Part of Public Record

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Minnesota Department of Transportation

Office of Railroads and Waterways

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St. Paul, MN 55155

Item No. _____

Page Count 14

Mar # 136

2/ 296-0355
Fax: 612/ 297-1887

61641

March 5, 1996

Mr. Vernon A. Williams, Secretary
Case Control Branch
Attn. Finance Docket No. 32/60
Surface Transportation Board
1201 Constitution Avenue NW
Washington, D.C. 20423

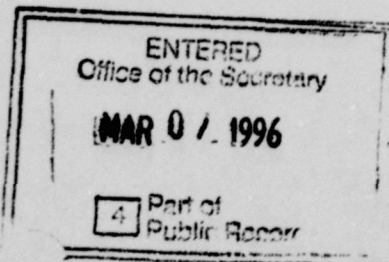


Dear Secretary Williams:

Pursuant to Decision No. 15 and Decision 16 in this proceeding, enclosed for filing are the original and five (5) copies of Certificate of service submitted on behalf of the Minnesota Department of Transportation, in accordance with 49 C. F. R. 1180.4 (a) (2).

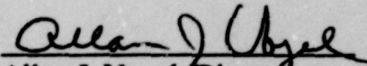
Sincerely,

Allan J. Vogel, Director
Office of Railroads & Waterways
Minnesota Department of Transportation
Suite 925 Kelly Annex
Transportation Bldg.
St. Paul, MN. 55155



CERTIFICATION OF SERVICE

Copies of Comments for the State of Minnesota by the Minnesota Department of Transportation have been served this February 26, 1996, by first-class mail, on all persons designated by the Board as parties of record in Finance Docket No. 32760.


Allan J. Vogel, Director
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Suite 925 Kelly Annex
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Dated: February 26, 1996



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[POR] KELVIN J. DOWD
SLOVER & LOFTUS
1224 17TH STREET, N. W.
WASHINGTON DC 20036
Represents: WISCONSIN PUB. SVC. CORP.

[POR] ROBERT K DREILING
K.C. SOUTHERN RWY CO.
114 WEST 11TH STREET
KANSAS CITY MO 64105

[MOC] HON. RICHARD J. DURBIN
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515
Represents: HON RICHARD J DURBIN

[POR] RICHARD S EDELMAN
HIGHSAW MAHONEY CLARKE
SUITE 210
1050 SEVENTEENTH STREET, N. W.
WASHINGTON DC 20036
Represents: RAILWAY LABOR EXEC ASSOC

[POR] JOHN EDWARDS, ESQ.
ZUCKERT, SCOUTT ET AL.
888 17TH STREET, N. W., STE. 600
WASHINGTON DC 20006-3939
Represents: TEXAS MEXICAN RLWY CO.

[POR] KRISTA L EDWARDS
SIDLEY & AUSTIN
1722 EYE STREET, N. W.
WASHINGTON DC 20006

[POR] MAYOR DELCARL EKENBERG
TOWN OF HASWELL
P. O. BOX 206
HASWELL CO 81045-0206
Represents: TOWN OF HASWELL, CO

[POR] DANIEL R ELLIOTT, III
UNITED TRANSP. UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107
Represents: UNITED TRANSPORTATION UNION

[POR] RICHARD J. ELSTON
CYPRUS AMAX CORP
9100 EAST MINERAL CIRCLE
ENGLEWOOD CO 80112
Represents: CYPRUS AMAX COAL SALES CORP.

[POR] ROY T. ENGLERT, JR
MAYER, BROWN & PLATT
SUITE 6500
2000 PENNSYLVANIA AVE., N. W.
WASHINGTON DC 20006
Represents: SANTA FE PACIFIC CORP. ET. AL.

[POR] ROBERT V. ESCALANTE
SUITE 470
2010 MAIN STREET
IRVINE CA 92714-7204
Represents: RIO BRAVO POSO/JASMIN

[POR] JOHN T. ESTES
SUITE 400
1029 NORTH ROYAL STREET
ALEXANDRIA VA 22314
Represents: COALITION FOR COMPET RAIL

[POR] G. W. FAUTH & ASSOCIATES INC.
P. O BOX 2401
ALEXANDRIA VA 22301
Represents: G.W. FAUTH & ASSOC.

[POR] BRIAN P. FELKER
SHELL CHEMICAL COMPANY
P. O. BOX 2463
ONE SHELL PLAZA
HOUSTON TX 77252-2463
Represents: SHELL CHEMICAL COMPANY

[POR] MARC J. FINK
SHER & BLACKWELL
SUITE 612
2000 L STREET, N. W.
WASHINGTON DC 20036
Represents: INTL BROTHERHOOD OF TEAMSTERS

[POR] REBECCA FISHER
ASST ATTY GENERAL
PO BOX 12548
AUSTIN TX 78711-2548
Represents: STATE OF TEXAS

[POR] THOMAS J. FLORCZAK
CITY OF PUEBLO
127 THATCHER BUILDING
PUEBLO CO 81003
Represents: CITY OF PUEBLO, CO, ET AL.

[POR] ROGER W. FONES
US DEPT. OF JUSTICE
555 4TH STREET, NW
WASHINGTON DC 20001
Represents: U S DEPT OF JUSTICE

[POR] JOE D. FORRESTER
C/O CO MTN COLLEGE
901 S. HWY. 24
LEADVILLE CO 80461
Represents: LEADVILLE COALITION

[POR] JEANNE M FOSTER
UPPER ARKANSAS VALLEY RTB
P. O. BOX 837
SALIDA CO 81201

[POR] THOMAS W. FOSTER, CHAIRMAN
COM. TO PRESERVE PROPERTY
P. O. BOX 681
SALIDA CO 81201
Represents: COMMITTEE TO PRESERV PROPERTY

[POR] JAMES R. FRITZ
EAGLE COUNTY ATTORNEY
P. O. BOX 850
EAGLE CO 81631

[POR] BARRETT HATCHES
8300 COLLEGE BLVD
OVERLAND PARK KS 66210
Represents: NORTH AMERICAN SALT CO.

[POR] TIMOTHY HAY
727 FAIRVIEW DRIVE
CARSON CITY NV 89710
Represents: PUBLIC SVC COMM OF NEVADA

[POR] THOMAS J HEALEY
OPPENHEIMER, WOLFF, ETAL
180 N. STETSON AV., 2 PRUDENTIAL PL
CHICAGO IL 60601
Represents: GATEWAY WESTERN Rwy CO

[POR] JOHN D. HEFFNER, ESQ.
REA, CROSS & AUCHINCLOSS
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P. O. BOX 7566
1201 PENNSYLVANIA AVE., N.W.
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Represents: UNION PACIFIC CORP ET AL

[POR] P. C. HENDRICKS
UTU, STATE LEG. DIR.
317 EAST 5TH STREET, STE. 11
DES MOINES IA 50309
Represents: UNITED TRANSP. UNION

[POR] RONALD J. HENEFELD
PPG INDUSTRIES, INC.
ONE PPG PLACE - 35 EAST
PITTSBURGH PA 15272-0001
Represents: PPG INDUSTRIES, INC.

[POR] STEPHEN C. HERMAN
20 N WACKER DRIVE - SUITE 3118
CHICAGO IL 60606-3101
Represents: I B P INC

[POR] ROGER HERMANN
MALLINCKRODT CHEMICAL
16305 SWINGLEY RIDGE DRIVE
CHESTERFIELD MO 63017-1777
Represents: MALLINCKRODT CHEMICAL

[POR] RICHARD B HERZOG
HARKINS CUNNINGHAM
1300 19TH ST., N.W. SUITE 600
WASHINGTON DC 20036-1609

[POR] RICHARD L. HESTER
CITY UTIL. OF SPRINGFIELD
P. O. BOX 551
SPRINGFIELD MO 65801

[POR] JEFFERY W. HILL
SIERRA PACIFIC POWER CO.
P. O. BOX 10100
6100 NEIL ROAD
RENO NV 89520
Represents: SIERRA PAC. POWER CO.

[POR] CLAUDIA L. HOWELLS
OREGON, DEPT. OF TRANS.
MILL CREEK OFC. BLDG.
555 13TH STREET, NE
SALEM OR 97310
Represents: STATE OF OREGON - DOT

[POR] JOAN S. HUGGLER
U. S. DEPT. OF JUSTICE
ANTITRUST DIVISION
555 4TH STREET, N. W., RM. 9104
WASHINGTON DC 20001
Represents: U.S. DEPARTMENT OF JUSTICE

[POR] RONALD E. HUNTER
CARGILL, INCORPORATED
LAW DEPARTMENT
15407 MCGINTY ROAD WEST
WAYZATA MN 55391

[POR] A. STEPHEN HUT, JR.
WILMER CUTLER PICKERING
2445 M STREET, N. W.
WASHINGTON DC 20037-1420
Represents: CONSOLIDATED RAIL CORP, ET AL

[POR] HON. EARL HUTTO
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515

[POR] EDWARD B. HYMSON
CONSOLIDATED RAIL CORP.
2001 MARKET STREET, 16-A
PHILADELPHIA PA 19101-1416

[POR] JACK HYNES
P.O. BOX 270
CAPITOL AVE. AT JEFFERSON ST.
JEFFERSON CITY MO 65102
Represents: MISSOURI HWY & TRANSP. DEPT.

[POR] TERENCE M. HYNES
SIDLEY & AUSTIN
1722 EYE STREET, NW
WASHINGTON DC 20006-5304
Represents: CANADIAN PACIFIC LTD, ET AL

[POR] JAMES J. IRLANDI
SKILL TRANS. CONSUL. INC.
1809 N. BROADWAY / SUITE H
WICHITA KS 67214
Represents: KANSAS SHIPPERS ASSOC, ET AL

[POR] THOMAS F. JACKSON
800 LINCOLN WAY
AMES IA 50010
Represents: IA, DEPT OF TRANSPORTATION

[POR] WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
P. O. BOX 1240
3426 NORTH WASHINGTON BLVD.
ARLINGTON VA 22210
Represents: SAVE THE ROCK ISLAND COMM

[POR] THOMAS R. JACOBSEN
TU ELECTRIC
1601 BRYAN STREET, STE 11-060
DALLAS TX 75201-3411

[POR] LARRY T. JENKINS
ARCO CHEMICAL COMPANY
3801 WEST CHESTER PIKE
NEWTON SQUARE PA 19073-3280
Represents: ARCO CHEMICAL CO.

[POR] EDWIN C. JERTSON
INTERSTATE POWER CO
P. O. BOX 769
1000 MAIN STREET
DUBUQUE IA 52004

[POR] KENNETH C. JOHNSON
GENEVA STEEL COMPANY
V. PRES. & GEN. COUNSEL
P. O. BOX 2500
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[MOC] HONORABLE J. BENNETT JOHNSTON
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OPPENHEIMER WOLFF ETAL
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[POR] S WILLIAM LIVINGSTON JR
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[POR] C. MICHAEL LOFTUS
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WASHINGTON DC 20036
Represents: LOWER CO RIVER, ET AL

[POR] JUDY LOHNES
UACOG
P. O. BOX 510
CANON CITY CO 81215-0510
Represents: UPPER AR, AREA COUCIL OF GOV

[POR] ALAN E LUBEL
TROUTMAN SANDERS
NORTH BLDG., SUITE 640
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[POR] GORDON P. MACDOUGALL
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Represents: THOMAS M BERRY, ET AL

[POR] MARC D. MACHLIN
PEPPER, HAMILTON, ET AL
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WASHINGTON DC 20036-1658

[POR] DAVID N. MAGAW
YOLO SHORTLINE RR CO
3344 BRAEBURN STREET
SACRAMENTO CA 95821-4037
Represents: YOLO SHORTLINE RR CO

[POR] O KENT MAHER
33 WEST FOURTH ST
PO BOX 351
WINNEMUCCA NV 89446
Represents: CITY OF WINNEMUCCA

[POR] WILLIAM G. MAHONEY
HIGHS AW, MAHONEY & CLARKE
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1050 SEVENTEENTH STREET, N.W.
WASHINGTON DC 20036
Represents: RLWY LABOR EXEC'S ASSN.

[POR] SCOTT MANATT
ATTORNEY AT LAW
P. O. BOX 473
CORNING AR 72422
Represents: SCOTT MANATT

[POR] NANCY MANGONE, ENFORCEMENT
ATTORNEY
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DENVER CO 80202-2466
Represents: US EPA REGION VIII'S

[POR] ANTHONY M. MARQUEZ
CO, PUBLIC UTIL. COMM.
1525 SHERMAN STREET, 5TH FLOOR
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Represents: CO, PUB. UTIL. COMM.

[POR] JERRY L. MARTIN, DIRECTOR RAIL DIV.
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P. O. BOX 12967
1701 N CONGRESS
AUSTIN TX 78711
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[POR] JOHN K. MASER, III
DONELAN, CLEARY, WOOD, MASER
1100 NEW YORK AVE., N.W. SUITE 750
WASHINGTON DC 20005-3934
Represents: KENNECOTT UTAH COPPER ET AL.

[POR] TINA MASINGTON, PLAN. ANAL.
"K" LINE AMERICA, INC.
535 MOUNTAIN AVENUE
MURRAY HILL NJ 07974
Represents: "K" LINE AMERICA INC

[POR] MICHAEL MATTIA
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1325 G STREET, NW, STE 1000
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[POR] DANIEL K. MAYERS
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WASHINGTON DC 20037-1420

[POR] GEORGE W MAYO, JR.
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555 THIRTEENTH STREET, N.W.
WASHINGTON DC 20004-1161
Represents: SOUTHERN PACIFIC CORP ETAL

[POR] MICHAEL F. MCBRIDE
LEBOEUF LAMB GREENE, ETAL
1875 CONNECTICUT AVE., N.W.
WASHINGTON DC 20009
Represents: FARMLAND INDUSTRIES INC., ET AL.

[POR] R. MICHAEL MCCORMICK
HUMBOLDT COUNTY DA
P. O. BOX 909
50 WEST FIFTH STREET
WINNEMUCCA NV 89446

[POR] ROSEMARY H. MCENERY
HOWREY & SIMON
1299 PENNSYLVANIA AVE., N.W.
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Represents: THE COASTAL CORP.

[POR] THOMAS F MCFARLAND, JR.
BELNAP SPENCER MCFARLAND
20 NORTH WACKER DRIVE, SUITE 3118
CHICAGO IL 60606-3101
Represents: WISCONSIN ELECTRIC POWER CO., ET AL

[POR] GARY L. MCFARLEN
KENNECOTT ENERGY COMPANY
DIRECTOR-TRANSP.
505 SOUTH GILLETTE AVENUE
GILLETTE WY 82716

[POR] ROBERT L. MCGEORGE
U. S. DEPT. OF JUSTICE
ANTITRUST DIVISION
555 4TH STREET, N.W., RM. 9104
WASHINGTON DC 20001

[MOC] SENATOR DAVID PRYOR
ATTN: CARMIE HENRY
330 FEDERAL BLDG
LITTLE ROCK AR 72201
Represents: HONORABLE DAVID PRYOR

[POR] JAMES T. QUINN
CA, PUBLIC UTILITIES COMM
505 VAN NESS AVENUE
SAN FRANCISCO CA 94102-3298
Represents: CA, PUBLIC UTILITIES COMM

[POR] STEVEN G. RABE, CITY MANAGER
CITY OF FLORENCE
300 W. MAIN STREET
FLORENCE CO 81226
Represents: CITY OF FLORENCE

[POR] HONORABLE MARC RACICOT
GOV'S OFFICE, STATE CAP.
P. O. BOX 200801
HELENA MT 59620-0801
Represents: STATE OF MONTANA
Represents: HON MARC RACICOT

[POR] KENT M RAGSDALE
INTERSTATE POWER CO
PO BOX 769
DUBUQUE IA 52004
Represents: INTERSTATE POWER CO

[POR] DEBRA RAVEL, STAFF ATTORNEY
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P. O. BOX 12967
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[POR] JEANNA L. REGIER
UNION PACIFIC RR CO.
1416 DODGE STREET, RM. 830
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[MOC] HON. HARRY REID
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WASHINGTON DC 20510-0001

[POR] RONALD L. RENCHER
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136 SOUTH MAIN STREET, STE 1000
SALT LAKE CITY UT 84101-1672

[POR] RICHARD J. RESSLER
UNION PACIFIC CORP.
MARTIN TOWER
EIGHTH AND EATON AVENUES
BETHLEHEM PA 18018

[POR] REED M. RICHARDS
STATE OF UTAH
236 STATE CAPITOL
SALT LAKE CITY UT 84114

[POR] ROBIN L. RIGGS, GENERAL COUNSEL TO
GOVERNOR
STATE OF UTAH
210 STATE CAPITOL
SALT LAKE CITY UT 84114

[POR] LOUISE A. RINN
UNION PACIFIC RR CO.
LAW DEPARTMENT, ROOM 830
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OMAHA NE 68179

[POR] ARVID E. ROACH II
COVINGTON & BURLING
P. O. BOX 7566
1201 PENNSYLVANIA AVE., N.W.
WASHINGTON DC 20044-7566
Represents: UNION PACIFIC, ET AL.

[POR] JOHN ROESCH
BENT COUNTY
PO BOX 350
LAS ANIMAS CO 81054
Represents: BENT COUNTY

[POR] SCOTT A. RONEY
P. O. BOX 1470
4666 FARIES PARKWAY
DECATUR IL 62525
Represents: ARCHER DANIELS MIDLAND CO.

[POR] MICHAEL E. ROPER
BURLINGTON NORTHERN RR
3800 CONTINENTAL PL.
777 MAIN STREET
FT. WORTH TX 76102
Represents: BURLINGTON NORTHERN RR

[POR] JOHN JAY ROSACKER
KS, DEPT OF TRANSP
217 SE 4TH ST., 2ND FLOOR
TOPEKA KS 66603
Represents: KANSAS DEPT OF TRANSP

[POR] MICHAEL L. ROSENTHAL
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1201 PENNSYLVANIA AVE., N.W.
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Represents: UNION PACIFIC CORP ET AL

[POR] CHRISTINE H. ROSSO
ASSISTANT ATTORNEY GEN
100 W. RANDOLPH ST.
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Represents: STATE OF ILLINOIS

[POR] ALLAN E. RUMBAUGH
P. O. BOX 1215
COOS BAY OR 97420
Represents: OR INT'L PORT OF COOS BAY

[POR] HON. NANCY SANGER, MAYOR
CITY OF SALIDA
P. O. BOX 417
124 E STREET
SALIDA CO 81201
Represents: CITY OF SALIDA

[POR] ROBERT M. SAUNDERS
P. O. BOX 2910
AUSTIN TX 78768-2910
Represents: STATE OF TEXAS

[POR] MARK SCHECTER
HOWREY & SIMON
1299 PENNSYLVANIA AVE., N.W.
WASHINGTON DC 20004

[POR] THOMAS E. SCHICK
CHEMICAL MANUF. ASSOC.
1300 WILSON BOULEVARD
ARLINGTON VA 22209
Represents: CHEMICAL MANUF ASSOC

[POR] THOMAS A. SCHMITZ
THE FIELDSTON CO., INC.
1920 N STREET, N.W., STE. 210
WASHINGTON DC 20036-1613
Represents: THE FIELDSTON CO., INC.

[POR] ALICIA M. SERFATY
HOPKINS & SUTTER
888 - 16TH STREET, N.W.
WASHINGTON DC 20006-4103
Represents: SOUTHERN CA, REGIONAL RAIL

[POR] LARRY W. TELFORD
ONE EMBARCADERO CTR
SEVERSON & WERSON
SAN FRANCISCO CA 94111
Represents: TOWN OF TRUCKEE

[POR] THE TEXAS MEXICAN RAILWAY CO.
PO BOX 419
LAREDO TX 78042-0419

[POR] STEVE THACKER
BOX 1460
CANON CITY CO 81215-1460
Represents: CITY OF CANON CITY

[POR] LYNETTE W. THIRKILL, LOGISTICS
MANAGER
GR. SALT LAKE MINERALS
P. O. BOX 1190
OGDEN UT 84402
Represents: GREAT SALT LAKE MINERALS CORP.

[POR] ERIC W. TIBBETTS
P. O. BOX 3766
1301 MCKINNEY ST.
HOUSTON TX 77253
Represents: CHEVRON CHEMICAL COMPANY

[POR] W. DAVID TIDHOLM
HUTCHESON & GRUNDY
1200 SMITH STREET (#3300)
HOUSTON TX 77002-4579

[POR] MARK TOBEY
P. O. BOX 12548
AUSTIN TX 78711-2548
Represents: STATE OF TEXAS, AG

[POR] MYLES L. TOBIN
ILLINOIS CENTRAL RAILROAD
455 NORTH CITYFRONT PLAZA DRIVE
CHICAGO IL 60611-5504

[POR] GARY L. TOWELL
TOLEDO, PEORIA & WESTERN
1990 EAST WASHINGTON STREET
EAST PEORIA IL 61611-2961
Represents: TOLEDO PEORIA & WESTERN Rwy

[POR] B. K. TOWNSEND, JR
EXXON CHEMICAL AMERICAS
P. O. BOX 3272
HOUSTON TX 77253-3272
Represents: EXXON CHEMICAL

[POR] MERRILL L. TRAVIS
ILLINOIS DEPT. OF TRANSP.
2300 SOUTH DIRKSEN PARKWAY
SPRINGFIELD IL 62703-4555

[POR] ANNE E. TREADWAY
CONSOLIDATED RAIL CORP.
P. O. BOX 41416
2001 MARKET STREET
PHILADELPHIA PA 19101-1416
Represents: CONSOLIDATED RAIL CORP

[POR] BERNICE TUTTLE
KIOWA COUNTY WIFE
CHAPTER #124
13775 C.R. 78.5
TOWNER CO 81071-9619
Represents: KIOWA COUNTY WIFE

[POR] UNION PACIFIC CORPORATION
MARTIN TOWER
EIGHTH AND EATON AVENUES
BETHLEHEM PA 18018

[VIS] GILBERT VAN KELL
MORTON INT'L INC.
100 NORTH RIVERSIDE PLAZA
CHICAGO IL 60606-1597

[POR] GERALD E. VANINETTI
RESOURCE DATA INT'L
1320 PEARL STREET, STE 300
BOULDER CO 80302

[POR] GREGORY M. VINCENT, VICE PRESIDENT
TENNESSEE VALLEY AUTH
LOOKOUT PLACE, 1101 MARKET STREET
CHATTANOOGA TN 37402

[POR] ALLEN J VOGEL, MINNESOTA DOT
SUITE 925, KELLY ANNEX
395 JOHN IRELAND BLVD TRANSP. BLDG
ST PAUL MN 55155
Represents: MINNESOTA DOT

[POR] ROBERT P. VOM EIGEN
HOPKINS AND SUTHER
888 16TH STREET, N.W.
WASHINGTON DC 20006
Represents: CANADIAN NATIONAL Rwy CO.

[POR] ERIC VON SALZEN
HOGAN & HARTSON
555 THIRTEENTH STREET, N.W.
WASHINGTON DC 20004-1161

[POR] CHARLES WAIT
BACA COUNTY
PO BOX 116
SPRINGFIELD CO 81073
Represents: COUNTY COMMISSIONERS

[POR] TIMOTHY M WALSH
STEPTOE & JOHNSON
1330 CONNECTICUT AVENUE, N.W.
WASHINGTON DC 20036-1795

[POR] JEFFREY A. WALTER
WATERFALL TOWERS, 201-B
2455 BENNETT VALLEY ROAD
SANTA ROSA CA 95404
Represents: CITY OF MARTINEZ

[POR] LOUIS P. WARCHOT
SOUTHERN PACIF. TRANS. CO.
ONE MARKET PLAZA
SOUTHERN PACIFIC BLDG., RM. 815
SAN FRANCISCO CA 94105

[POR] PHILIP D. WARD, ET AL.
P. O. BOX 351
200 FIRST STREET, SE
CEDAR RAPIDS IA 52406-0351
Represents: IES UTILITIES, INC.

[POR] RICHARD E. WEICHER
SANTA FE PAC. CORP. ETAL.
1700 EAST GOLF ROAD
SCHAUMBURG IL 60173

[POR] MARTIN A. WEISSERT
BAKER & DANIELS
111 E. WAYNE STREET, STE. 800
FORT WAYNE IN 46802
Represents: GOLDEN CAT DIVISION

[POR] CHARLES H. WHITE, JR.
1054 THIRTY-FIRST STREET., N.W.
WASHINGTON DC 20007-4492
Represents: UTAH RAILWAY COMPANY
[POR] WILLIAM W. WHITEHURST, JR
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030-1711

STB

FD

32760

3-6-96

J

61640

Law Offices

HOLLAND & KNIGHT

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202
202-955-3000
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Item No. _____

Page Count 2
March # 118

A Partnership Including Professional Corporations

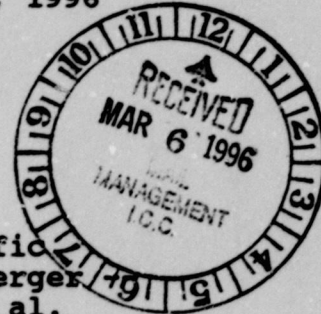
Atlanta
Fort Lauderdale
Jacksonville
Lakeland
Miami

Orlando
St. Petersburg
Tallahassee
Tampa
West Palm Beach

February 26, 1996

To: All Parties of Record

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



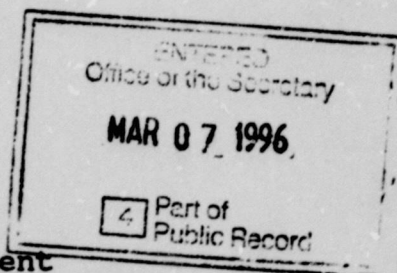
In accordance with the Surface Transportation Board's Decision No. 15 in the above-referenced proceeding, the attached document has been filed with the Board on behalf of Sunkist Growers, Inc.

- Notice of Intent to Participate

A copy of this letter has been served on all parties of record to this proceeding.

Very truly yours,

David H. Baker
Attorney for
Sunkist Growers



Attachment
WAS-153019

Law Offices

HOLLAND & KNIGHT

A Partnership Including Professional Corporations

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202
202-955-3000
FAX 202-955-5594

Atlanta	Orlando
Fort Lauderdale	St. Petersburg
Jacksonville	Tallahassee
Lakeland	Tampa
Miami	West Palm Beach

January 11, 1996

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

Re: Notice of Intent to Participate of Sunkist Growers

Dear Mr. Secretary:

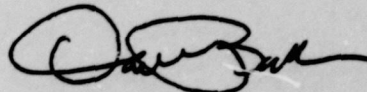
Pursuant to the Commission's order of December 27, 1995 in Finance Docket No. 32760, this letter constitutes a notice of intent to participate in this proceeding on behalf of **Sunkist Growers, Inc.** of Sherman Oaks, California.

As directed in the Commission's order, an original and 20 copies of this notice are being filed with the Office of the Secretary. In addition, a copy of this notice is being sent to applicants' representatives, Arvid E. Roach and Paul A. Cunningham, at their respective addresses, by first class mail.

Thank you for your assistance in this matter.

Very truly yours,

HOLLAND & KNIGHT



David H. Baker
Attorney for Sunkist Growers

Enclosures
WAS-141785

STB

FD

32760

3-5-96

J

61618

Gene Schulter

61418

Item No. _____

ALDERMAN, 47th WARD

Page Count 3

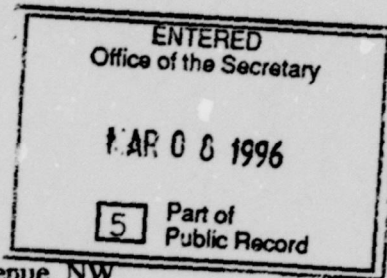
Mar # 115



City Hall • Room 209
121 N. LaSalle Street
Chicago, Illinois 60602
Telephone: 744-4021

Public Service Office
4740 N. Lincoln 60625
Telephone 271-4423

February 29, 1996



Mr. Vernon Williams
Secretary
Surface Transportation Board
12th Street and Construction Avenue, NW
Washington, DC 20423

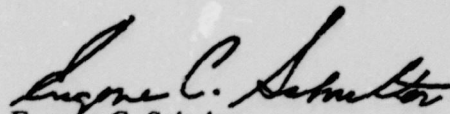
RE: Finance Docket 32760 - Union Pacific/Southern Pacific

Dear Mr. Williams:

The Chicago City Council unanimously passed the enclosed Resolution supporting the proposed merger of the Union Pacific and Southern Pacific railroads.

Please make sure our Resolution is included with other resolutions and letters supporting this merger.

Sincerely,


Eugene C. Schalter
Alderman, 47th Ward

Enclosure

cc: Thomas Zapler
Special Representative
Union Pacific Railroad
165 N. Canal, S-N
Chicago, Illinois 60606

CITY COUNCIL COMMITTEE MEMBERSHIPS

Committee on Licenses and
Consumer Protection (Chairman)

Committee on the Budget and
Government Operations

Committee on Finance

Committee on Committees,
Rules and Ethics

Committee on Traffic Control
and Safety

Committee on
Transportation and Public Way

Committee on Zoning

Committee on Parks and Recreation



ADVISE OF ALL PROCEEDINGS

Help Keep The 47th Ward Clean



A resolution

adopted by The City Council
of the City of Chicago, Illinois

Presented by ALDERMAN EUGENE C. SCHULTER on FEBRUARY 7, 1996

Whereas, the City of Chicago has a long history as the premier rail center of the United States; and

WHEREAS, the economic health of our great city depends heavily on strong, efficient rail service which connects Chicago to points throughout North America; and

WHEREAS, the Union Pacific and Southern Pacific railroads have announced plans to merge their operations -- a merger that is likely to improve rail service to and from the City of Chicago, and to strengthen competition for freight service to and from the City;

BE IT RESOLVED, that the City Council of the City of Chicago does hereby voice its support of the proposed merger of the Union Pacific and Southern Pacific railroads as being in the best interests of the people of Chicago; and

BE IT FURTHER RESOLVED, that we urge federal authorities to act favorably on the application for approval of the merger of the Union Pacific and Southern Pacific railroads; and

BE IT FURTHER RESOLVED, that a suitable copy of this resolution be prepared and presented to the United States Interstate Commerce Commission.



Richard M. Daley
MAYOR

James J. Leake
CITY CLERK

STB

FD

32760

3-5-96

J

61617

Item No. _____

Page Count 3

Mar # 114

61617



MISSOURI HIGHWAY AND TRANSPORTATION DEPARTMENT

Capitol Ave. at Jefferson St., P.O. Box 270, Jefferson City, MO 65102 Telephone (573) 751-2551 Fax (573) 751-8555

February 26, 1996

Honorable Vernon A. Williams
Secretary, Room 1324
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, DC 20423



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

Dear Secretary Williams:

The Missouri Highway and Transportation Department has served a copy of our filing - MHTD-1 - with those persons as designated as Party of Record (POR) on the Surface Transportation Board's Decision No. 15 pursuant to the above-mentioned proceeding.

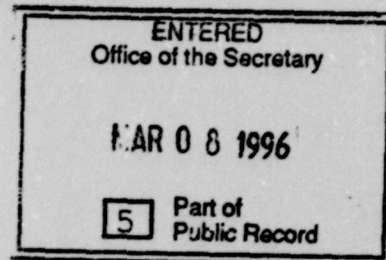
Enclosed please find an original and five (5) copies of our Certificate of Service regarding this matter.

All POR's have been properly served with a copy of our filing MHTD-1 by first class mail, postage prepaid.

Sincerely,

Jack Hynes /sd/

Jack Hynes
Administrator of Railroads



cc: POR's, Finance Docket No. 32760, Decision No. 15

Enclosures: Certificate of Service and five copies



Missouri Highway and Transportation Department

Capitol Ave. At Jefferson St., P.O. Box 270, Jefferson City, MO 65102 (314) 751-2551 Fax (314) 751-6555

January 5, 1996

Honorable Vernon A. Williams
Secretary, Room 1324
Surface Transportation Board
12th Street & Constitution Avenue, NW
Washington, DC 20423



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

Dear Secretary Williams:

The Missouri Highway and Transportation Department (MHTD) requests to be made a "Party of Record" in the above-mentioned proceeding.

MHTD has not determined a position of support or opposition to the proposed transaction at this time. Determination of a position will depend upon a review of comments and evidence submitted by other parties in response to the application. MHTD will indicate its position and submit evidence, if appropriate, by the due dates established for subsequent filings, depending upon the definitive position taken.

Service List Mailing Address

Jack Hynes, Administrator of Railroads
Missouri Highway and Transportation Department
Capitol Avenue at Jefferson Street
P.O. Box 270
Jefferson City, MO 65102
573-751-7476 Fax 573-526-4709

Sincerely,

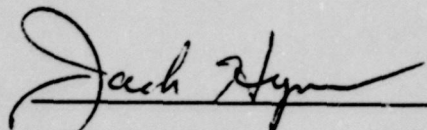
Jack Hynes
Administrator of Railroads

cc: Arvid E. Roach II, Covington & Burling (UP)
Paul A. Cunningham, Harkins Cunningham (SP)
USDOT
USDOT

Enclosures: 20 Copies

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Missouri Highway and Transportation Department's Notice of Intent to Participate - MHTD-1 has been served via first class mail, postage prepaid, on all parties of record in this proceeding as designated in the Surface Transportation Board's Decision No. 15 on February 26, 1996.



Jack Hynes
Administrator of Railroads

STB

FD

32760

3-5-96

J

61616

Item No. _____

Page Count 16

March #117

~~FIS~~ FOR
61416



CITY OF INDUSTRY

Incorporated June 18, 1957

FACSIMILE TRANSMITTAL SHEET

Date: MARCH 5

Time: _____

PLEASE DELIVER TO:

JULIA FARR



Fax No.: (202) 927-6419

From: John Bailas

Message: Thanks for your help!
Original + 20 copies to
follow.

Office of the City Clerk

MAR 06 1996

☒ Part of
Public Record

John Bailas

Number of Pages (including this cover sheet): 11

Original will X will not _____ follow.

FAX TELEPHONE NUMBER (818) 961-6795 OR (818) 333-3591
INFORMATION TELEPHONE NUMBER (818) 333-2211

**IF YOU DO NOT RECEIVE THE ENTIRE TRANSMISSION,
PLEASE CALL THE SENDER IMMEDIATELY.**



INDUSTRY URBAN-DEVELOPMENT AGENCY

Members:

Scolla Harrison, Chairman
Annie Fauro, Secretary
Mary V. Handorf
Philip Iriarte
Rolene Harrison

Administrative Offices
16651 East Stafford Street
Post Office Box 7089
City of Industry, California 91744
(818) 961-6341

March 5, 1996



Ms. Julia M. Farr
Surface Transportation Board
Office of Proceedings, Room 2116
1202 Constitution Avenue N.W.
Washington D.C. 20423-0001

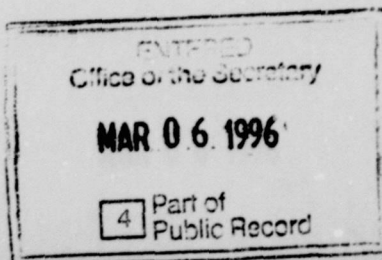
FD 32760

Re: Request to be Party of Record for the Union Pacific/Southern Pacific Merger

Dear Ms. Farr:

The Industry Urban-Development Agency presently owns parcels of land which have historically been served by both the Southern Pacific and Union Pacific rail lines. Shortly after the announcement of the proposed merger between these entities, a representative from the Southern Pacific Railroad notified the Agency that certain businesses were consider to be "joint served" and as such would be allowed to ship their commodities via the Burlington Northern/Santa Fe Lines.

In November of 1995, The Agency submitted a written request to the Director of National Accounts for the Southern Pacific Lines here in Monterey Park, California requesting confirmation on the status of being classified as the owners of joint served property. The response received just recently is that the subject property is not listed in the agreement between the applicants and the BN & Santa Fe Railroads as a joint served parcel. The previous owner of the subject property, Mr. Roy F. Benton has provided cancel checks as evidence that shipments were made by both the Union Pacific and Southern Railroads via an interconnecting railine.

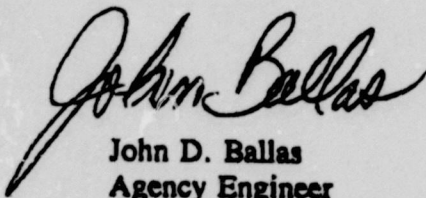


Ms. Julia M. Farr
Surface Transportation Board
March 5, 1996
Page 2

The Agency is the redevelopment arm of the City of Industry and is responsible for the real estate transactions for the City. The request is hereby made that the Industry-Urban Development Agency be considered a Party of Record (POR) and as such be added to the final list of POR's for this merger identified as Finance Docket # 32760. Attached for your information and use is a copy of the correspondence sent to earlier to the Southern Pacific Lines, a copy of the 1966 U.S. Geological Survey Map which shows the innerconnecting spur line and a copy of the referenced cancelled checks. The Agency will forward a complete formal "Request for Condition" by March 29, 1996.

Thank you for your assistance in this matter.

Sincerely,



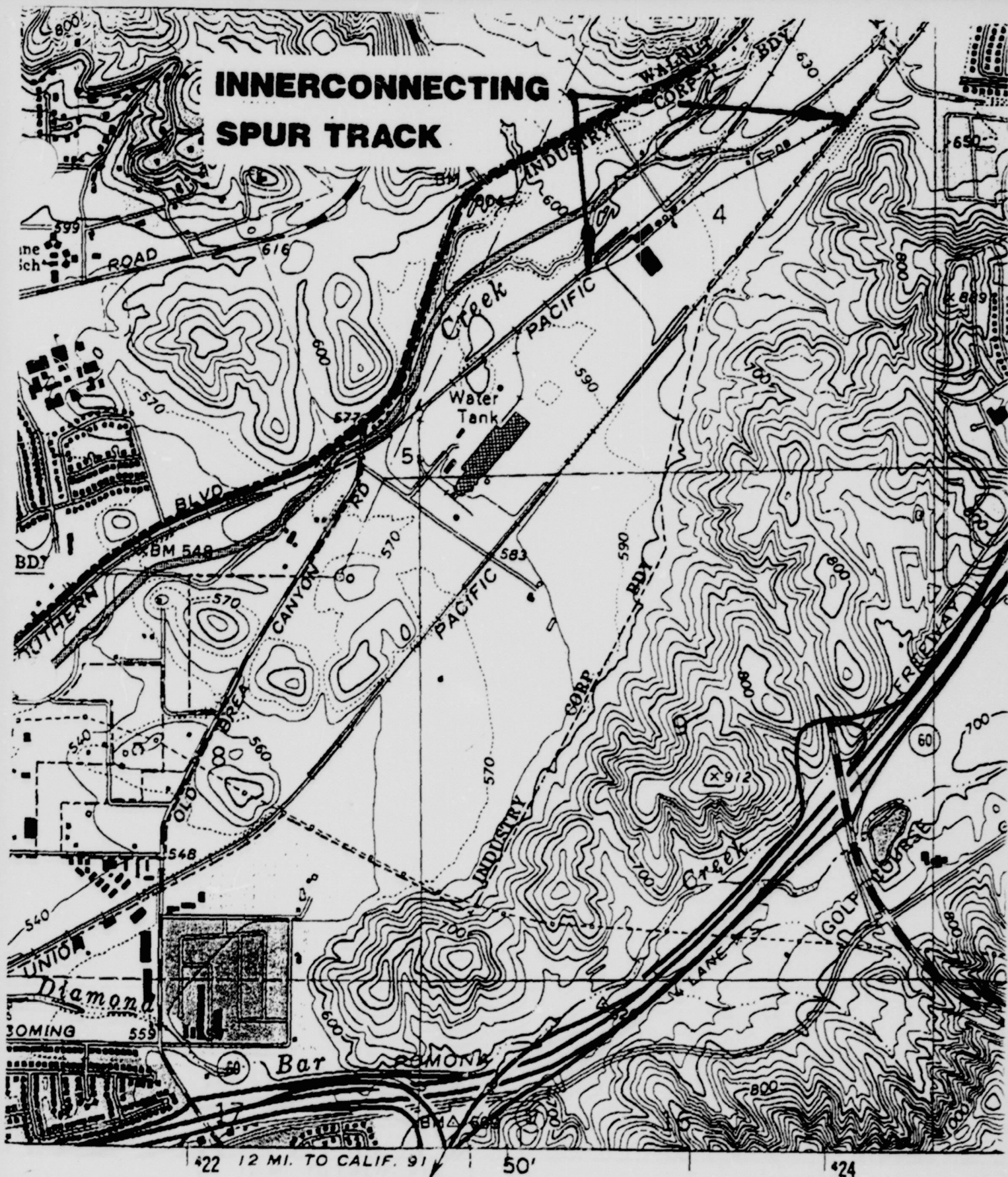
John D. Ballas
Agency Engineer

JDB:kat

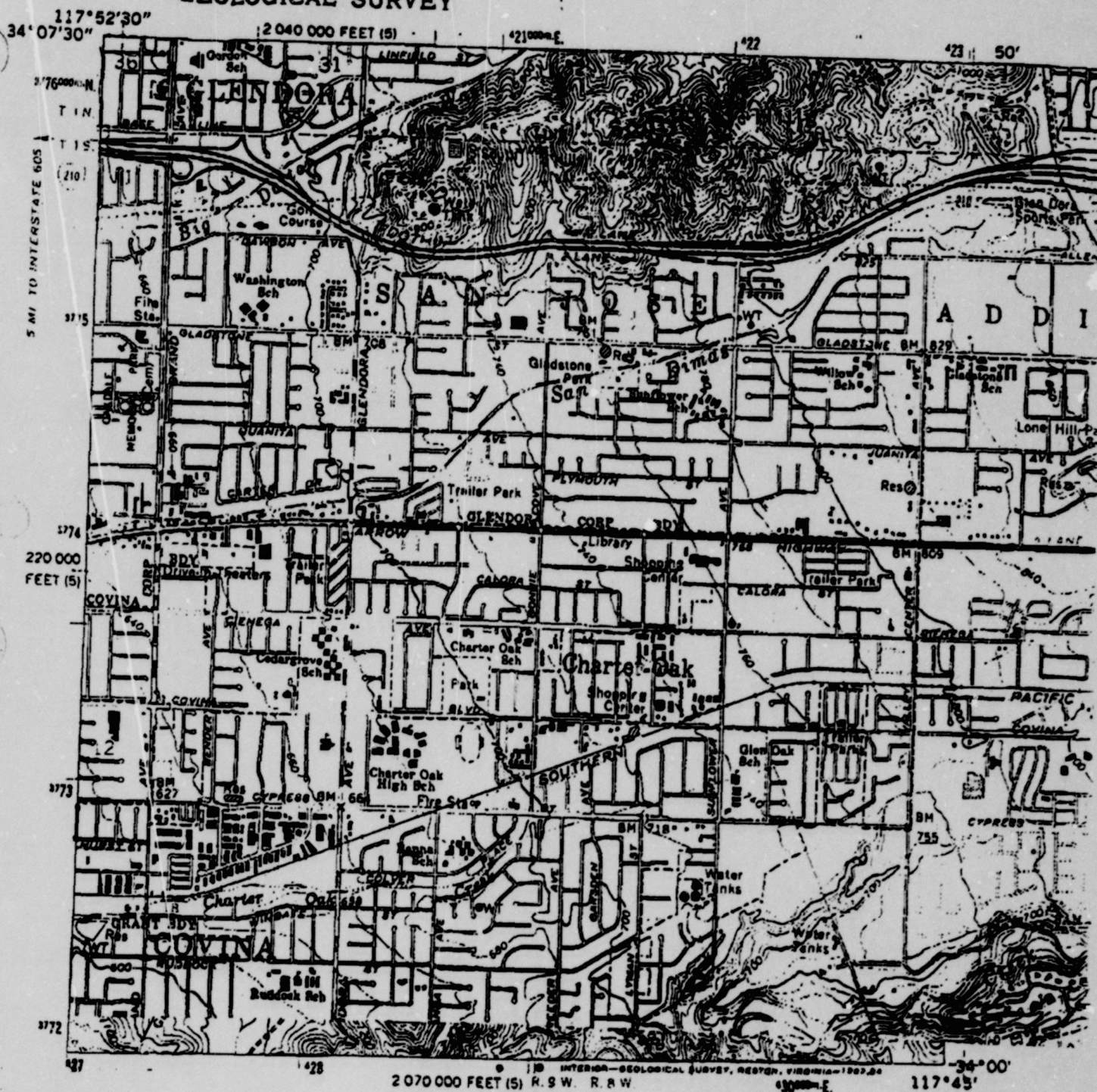
Enclosure

xc: Carl Burnett, Ex. Dir, IUDA
Chris Rope, City Manager

INNERCONNECTING SPUR TRACK



UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY



ROAD CLASSIFICATION

Heavy-duty ——— Light-duty ———
Medium-duty ——— Unimproved dirt ———
○ Interstate Route ○ U.S. Route ○ State Route



QUADRANGLE LOCATION

SAN DIMAS, CALIF.
N3400—W11745/7.5

Dollars

PAY TO THE ORDER OF
 Bank of America
 ONLY
 REGIONAL PAYMENT PLANS
 LOS ANGELES

14 OCT 1961

PAY TO THE ORDER OF
 Bank of America
 PACIFIC ELECTRIC RY.
 P. H. GARRETT
 SOUTHERN PACIFIC R. R.
 SOUTHERN PACIFIC RY.
 REGIONAL PAYMENT PLANS
 LOS ANGELES

30 NOV

3961

30

Y BANK, P.E.G. 12 A
 America, NT & SA 12 A
 LOS ANGELES

PAY TO THE ORDER OF
 Bank of America
 PACIFIC ELECTRIC
 P. H. GARRETT
 SOUTHERN PACIFIC
 SOUTHERN PACIFIC
 REGIONAL PAYMENT PLANS
 LOS ANGELES

28 NOV 1961
 PAY TO THE ORDER OF
 Bank of America
 ONLY

PAY TO THE ORDER OF
 Bank of America
 PACIFIC ELECTRIC
 P. H. GARRETT
 SOUTHERN PACIFIC
 SOUTHERN PACIFIC
 REGIONAL PAYMENT PLANS
 LOS ANGELES

NO 33452

[illegible]

**DAY
TO THE
ORDER OF**

STOREROOM 100 DOLS 00 CTS

DOLLARS



CROCKER NATIONAL BANK
CENTRAL MANUFACTURING DISTRICT OFFICE
4480 DOWNEY RD., VERNON, CALIF. 90068

ROY F. BENTON FEED YARD

Betty S. Brink

1103345211 +1: 1 2 20 00081:

3 2 2003 259 3333 000000 000000

NO '79' 16 P.E.O.
UCB-LA
PAY ANY BANK

00 001244

8037

127039266

131455497

M...ko
f...nes
1995

uested, below are the names and addresses of the former feed lots:

Machlin Feed Yard
21832 E. Valley Blvd.
City of Industry, CA 91744

2. Roy F. Benton Feed Yard
21830 E. Valley Blvd
Walnut, CA 91789

[Handwritten signature]

cer

un...at, Ex. Dir, IUDA
Rope, City Manager

ROY F. BENTON FEED YARD

PAY TO THE ORDER OF
 Bank of America
 ONLY
 REG. U.S. PAT. & TM. OFF.
 LOS ANGELES

14 OCT

361

Bank of America
 Los Angeles

PAY TO THE ORDER OF
 Bank of America
 PACIFIC ELECTRIC RY.
 P. H. GARRETT
 SOUTHERN PACIFIC R. R.
 SOUTHERN PACIFIC RY.
 REGIONAL PAYMENT PLANS
 LOS ANGELES

30 NOV

1961

50

BY BANK, P.E.G. 1961
 AMERICA, NT & SA
 LOS ANGELES

PAY TO THE ORDER OF
 Bank of America
 PACIFIC ELECTRIC
 P. H. GARRETT
 SOUTHERN PACIFIC
 SOUTHERN PACIFIC
 REGIONAL PAYMENT PLANS
 LOS ANGELES

26 OCT
 1961
 Bank of America
 Los Angeles

PAY TO THE ORDER OF
 Bank of America
 PACIFIC ELECTRIC
 P. H. GARRETT
 SOUTHERN PACIFIC
 SOUTHERN PACIFIC
 REGIONAL PAYMENT PLANS
 LOS ANGELES

2452 III NW
(2452 III NW)

UNITED STATES DEPARTMENT OF THE INTERIOR GEOLOGICAL SURVEY

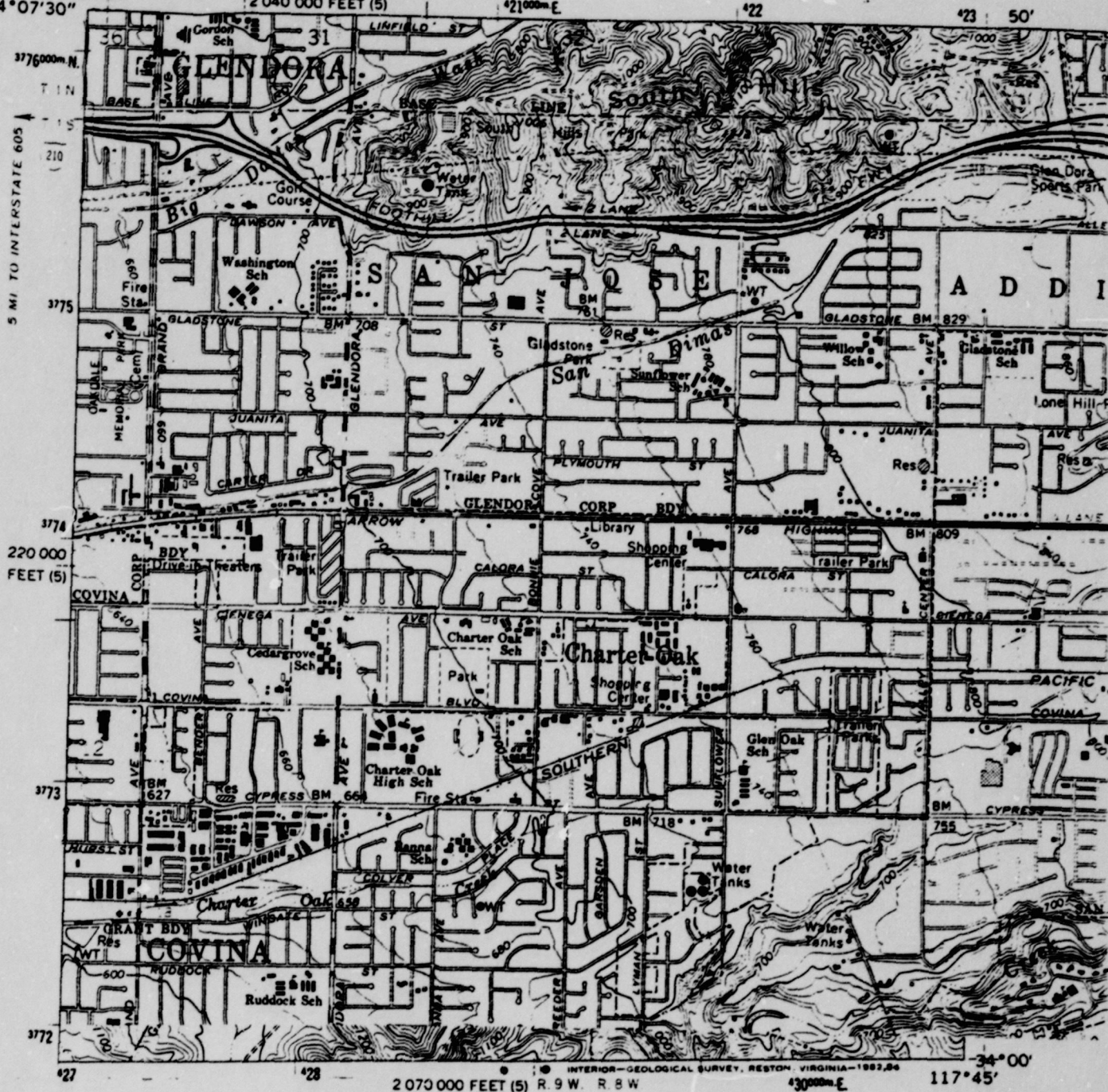
117°52'30"
34°07'30"

2 040 000 FEET (5)

210000m E

422

423 50'



5 MI TO INTERSTATE 605

220 000
FEET (5)

5'

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QUADRANGLE LOCATION

ROAD CLASSIFICATION

- | | |
|------------------|-----------------|
| Heavy-duty | Light-duty |
| Medium-duty | Unimproved dirt |
| Interstate Route | U.S. Route |
| | State Route |

SAN DIMAS, CALIF.

N3400—W11745/7.5

1966

PHOTOREVISED 1981

DMA 2452 III SE-SERIES V895

(PRADO DAM)
251' NW

[illegible]

422 12 MI. TO CALIF. 91 50' 424



BY ENDORSEMENT THIS CHECK WHEN PAID IS ACCEPTED
IN FULL PAYMENT OF THE FOLLOWING ACCOUNT


DATE	AMOUNT

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

ROY F. BENTON FEED YARD
P. O. BOX 410
WALNUT, CALIFORNIA 91789

No 33452

11/9 1979 16-8
1220
PAY TO THE ORDER OF Union Pacific Railroad \$100⁰⁰
REGISTERED 100 DOLLARS DOLLARS

 **CROCKER NATIONAL BANK**
CENTRAL MANUFACTURING DISTRICT OFFICE
4480 DOWNEY RD., VERNON, CALIF. 90058

ROY F. BENTON FEED YARD

Bette S. Benton
322003259 3333 0000010000

033452 1220 0008

NO '79' 16 P.E.G. 16-21
12-21 **UCB-LA**
PAY ANY BANK

000001

80371

80371

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32760

3-4-96

J

61558

Item No. _____

Page Count 2

Mar # 91

61558

Radermacher, Whiteside & Associates

Transportation & Marketing Consultants

February 29, 1996

Vernon A. Williams, Secretary
Attn. Finance Docket 32760
Surface Transportation Board
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 AND MERGER - SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,

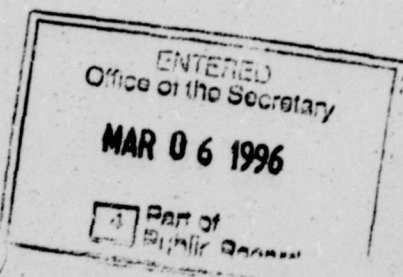
Dear Sir:

Enclosed please find the original and 5 copies of the Montana Wheat and Barley Committees' Certificate of Service filed pursuant to Decision No. 16, in the above-styled proceeding.

Please receipt duplicate copy of this transmittal and return to address below.

Sincerely,

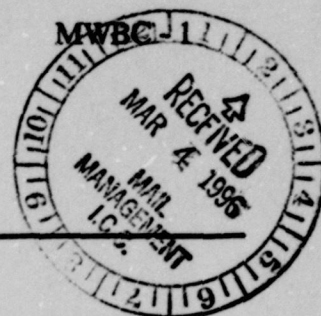
Terry C. Whiteside



3203 Third Avenue North, Suite 301
Billings, Montana 59101
Phone: (406) 245-5132
FAX: (406) 252-3778

ORIGINAL

Before The
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C. 20423



Finance Docket No. 32760

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

Pursuant to the Board's decision, served February 16, 1996, and received February 29, 1996, the Montana Wheat and Barley Committee (MWBC) herewith lists the pleading filed to date in the above-styled proceeding:

1. Petition for Leave to Intervene - filed January 10, 1996.

Further pursuant to the Board's decision, petitioner, will, upon request, serve a copy of the above described pleading.

CERTIFICATE OF SERVICE

Pursuant to the Board's decision, this document has been served upon each of the parties of record, by mailing them by first-class mail, postage prepaid.

Dated at Billings, MT this 29th day of February, 1996.

Terry Whiteside,
Registered Practitioner
Radermacher, Whiteside & Associates
3203 Third Avenue North, Suite 301
Billings, MT 59101
Phone: (406) 245-5132

