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BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

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

Dear Secretary Williams:

In its response to the Petition for Clarification filed by The Burlington Northern and Santa Fe Railway Company ("BNSF") (BNSF-97) in this proceeding, the American Chemistry Council ("ACC") has proposed the adoption of a procedure to be followed by BNSF and UP when BNSF proposes to serve a build-in/build-out pursuant to the conditions imposed by the Board on the UP/SP merger. See CMA-14 at 5. BNSF has reviewed the procedure proposed by ACC and, with one exception, is agreeable to ACC's proposal and urges the Board to adopt the procedure. The one exception relates to ACC's proposal concerning how any new facility required to be constructed should be funded. BNSF believes that the costs for any such new facility should be allocated between UP and BNSF pursuant to Section 9(b) of the Restated and Amended BNSF Settlement Agreement. That section provides that the cost of facilities necessary to implement trackage rights granted under the Settlement Agreement shall be borne by the party receiving the trackage rights and that, if the other party decides to utilize such facilities, it shall pay one-half of the original cost of constructing the facilities.

With respect to the need for such a protocol, BNSF notes that, in its Reply to BNSF's Petition for Clarification (UP/SP-391), UP has argued that a protocol such as that proposed by ACC should not be adopted. However, over a year has passed since BNSF first contacted UP concerning its proposed service to the Union Carbide Seadrift facility, and the failure of UP and BNSF to reach agreement in a timely manner concerning BNSF's proposed service confirms the need for such a protocol. This need is particularly clear when UP's September 24, 2001 letter in which it asserted that BNSF's operations could cause no interference whatsoever with UP's existing operations is taken into consideration. Moreover, from a shipper's perspective, the lack of certainty as to the process and as to the time required to resolve any disputes that may arise erodes the effectiveness of the Board's condition in providing replacement competition. Finally, ACC's proposed protocol is similar to the procedures set forth in the Restated and Amended

The Honorable Vernon A. Williams

March 1, 2002

Page 2

BNSF Settlement Agreement relating to UP's review of BNSF's proposed operating plans for serving facilities to which BNSF has access under the Agreement.

Respectfully submitted,

Erika Z. Jones/als

Erika Z. Jones
Counsel for The Burlington Northern
and Santa Fe Railway Company

Enclosures

cc: Chairman Linda J. Morgan
Vice Chairman Wayne Burkes
Mr. David M. Konschnik, Director
Office of Proceedings
All Parties of Record

STB

FD-32760

2-4-02

J

BUSINESS

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

REPLY OF THE
AMERICAN CHEMISTRY COUNCIL
TO BNSF-97, PETITION FOR CLARIFICATION
REGARDING COSTS OF ACCOMMODATING
BNSF BUILD-IN/BUILD-OUT TRAFFIC

The American Chemistry Council ("the Council")¹ respectfully submits this reply to
BNSF-97, which seeks clarification of who should bear the expense of accommodating BNSF
build-in/build-out traffic in the event such traffic interferes with UP system traffic.

¹ The American Chemistry Council (formerly the Chemical Manufacturers Association, or CMA) represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The Council is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$460 billion a year enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for 10 cents out of every dollar in U.S. exports. Chemistry companies invest more in research and development than any other business sector.



UP takes the position that BNSF must fund new connections or other improvements to UP's system whenever BNSF's trackage rights operations "creat[e] any level of interference with the owner's operations and service to its customers." See BNSF-97 at 7. The Council emphatically agrees with BNSF that UP's position is incorrect and untenable. The operation of BNSF's trackage rights trains, by definition, creates some level of interference with UP's operations, because accommodating such trains means that UP cannot schedule its own trains based solely on its own operational convenience.

It was wholly foreseeable that conflicts between UP's traffic and BNSF's trackage rights trains would grow steadily following the merger of SP and UP. UP in its merger presentations espoused the view, strongly concurred in by Board, that the merger would result in substantial growth in traffic on the merged lines, both because UP routes would become more efficient and attract more traffic, and because the BNSF would step into the shoes of the weaker SP as the principal competitor to UP in key parts of the west, including the Gulf Coast. Part of the traffic BNSF was entitled to pursue was build-in/build-out traffic, and there had already been a strong trend towards more of this type of traffic nationwide in the previous 15 years. It was an express goal of the Council and the Board to assist BNSF to acquire a "critical density" of trackage rights traffic (by, among other means, opening up certain existing long-term contracts for bidding, and opening new facilities to BNSF), so that BNSF could provide cost-effective, competitive service more quickly. BNSF has succeeded, as the Board recently observed, in developing the trackage rights traffic "to the size and scale of a Class I railroad in its own right."²

² Fin. Docket No. 32760 (Sub-No. 21) Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Railroad Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company [General Oversight], Dec. No. 21 (Decided: December 19, 2001) at 4.

In sum, it was within the contemplation of UP, the Board and the parties to this proceeding that there would be more trains, including BNSF trains, operating over the trackage rights lines. At the same time, as the Board has observed, rail infrastructure has been pared and rationalized by abandonments and mergers to the point that there is little excess capacity in the major rail systems.³ It was therefore clear, or should have been clear, that the growing BNSF trackage rights operations, when combined with UP's own growing operations, would lead to some level of interference between the desired operations of UP and BNSF. Indeed, the UP, the BNSF and the Board have spent considerable time and effort finding ways of dealing with such interference or potential interference, such as the establishment of the Spring, TX dispatching center to ensure that UP and BNSF trains are afforded equal treatment by dispatchers.

As BNSF shows (BNSF-97 at 7-8), UP's "no interference" position is also inconsistent with the settlement agreements under which the BNSF trackage rights have been conducted. Those agreements call for consultation between UP and BSNF on BNSF trackage rights operations to balance two objectives: (1) minimizing the operational inconvenience to UP/SP while (2) ensuring that BNSF can provide competitive service. A fair reading of these two objectives is that BNSF's ability to compete is the higher priority, because that objective is to be ensured, while operational inconvenience to UP is only to be minimized, not avoided altogether.

Therefore, the Council agrees with BNSF that UP has no right to demand that BNSF undertake expensive capital improvement projects whenever its trackage rights trains create any interference with UP operations.

The Council also agrees with the general principles advocated by BNSF to deal with conflicts between UP and BNSF operations. In a nutshell, the goals of such principles should be

³ See, e.g., Ex Parte No. 582, Public Views on Major Rail Consolidations (slip op. at 6)(served March 17, 2000).

to ensure that (1) the UP and BNSF consult in a timely and cooperative manner concerning BNSF build-in/build-out traffic, (2) every effort be made to accommodate BNSF traffic through dispatching, scheduling, or other operational means, (3) where BNSF operations cannot be accommodated through dispatching, scheduling, or other operational means, that the most efficient construction solution be agreed upon or ordered by a mediator and (4) that the construction be paid for in accordance with the economic benefit it will afford to BNSF and UP, respectively. A model for the funding of any new construction would be the joint facility agreements that exist between BNSF and UP in respect of various shared railroad facilities.

The Council believes that it will not be particularly productive for BNSF and UP to attempt to define or debate the meaning of what constitutes "unreasonable and material interference," as suggested by BNSF. Rather, the more important issue is whether interference, of whatever magnitude, can be accommodated by dispatching, scheduling or other operational coordination. BNSF and UP have already shown that they are able to deal cooperatively with dispatching and other operational issues without continuous Board involvement. Even though dispatching and other operational decisions may have economic ramifications for both carriers, they should not be permitted to grow into issues requiring arbitration and Board attention. Hence, the Council would recommend telescoping the procedure suggested by BNSF to get more immediately to the issue of whether interference can be dealt with by dispatching, scheduling or other operational accommodations. If they can, then UP and BNSF should be required to work out the problems themselves. If they cannot, and capital improvements are required, then the clarification given by the Board in this matter should provide guidance on principles for the funding of any needed capital improvements.

To make the Council's position clear, we present it below in a format roughly comparable to the procedure proposed by BNSF in the four bullet points in BNSF-97 at 9-10.

- When BNSF presents an operating plan to UP to serve a build-in/build-out line, UP is required to approve that operating plan unless UP within 60 days presents a detailed written report showing that BNSF's proposed operations would interfere with UP's operations and that the interference cannot be alleviated through the use of dispatching, scheduling, or other operational coordination. The report shall review all reasonable alternative dispatching, scheduling and operational options before concluding that none is feasible in the absence of new construction.
- The aforementioned UP report shall detail any construction of new facilities said by UP to be required, and shall outline BNSF and UP operating plans that would, at the least cost, permit BNSF to conduct its proposed operations competitively using these facilities.
- Any new facility required to be constructed shall be funded on the basis of the degree of use of the facility by UP and BNSF and/or the incremental economic benefit provided to UP and BNSF, respectively, by the facility. Models for such funding would include joint facilities agreements to which UP and/or BNSF are parties.
- If UP and BNSF, after good faith negotiations aimed at reaching the lowest cost solution, cannot agree on the need for a new facility, or the funding for such facility, they may submit the dispute to arbitration, or to the Board, in accordance with the above principles and the principles of ensuring BNSF's ability to provide competitive service while minimizing interference with UP operations.

The above principles, including the principle that funding of new facilities should be in accordance with use and/or economic benefits, attempt to replicate the competitive situation that existed pre-merger, while recognizing the unique nature of BNSF's operating over trackage rights on the UP system. Pre-merger, neither UP nor SP would construct a build in, or serve new traffic, if doing so did not justify the costs involved. Matching costs of new facilities against expected use of and economic benefit from new facilities is the basic free market test of whether an investment makes sense. Those costs would consist principally of the cost of constructing the build-in or build-out line, but might include costs of sidings or other facilities to allow the new build-in or build-out traffic to be accommodated on top of pre-existing traffic. The railroad

constructing the build -in or build-out would find the cheapest, most efficient way to accommodate the new traffic on its pre-existing system, examining first any dispatching or scheduling options before looking at new construction. If that meant changing its operations to find a place for a train that had previously been parked on a main line track, to permit the new traffic to be handled, that is what would have been done.

The wrinkle, post merger, is that BNSF, after obtaining new traffic by means of a build-in or build-out, must carry that traffic not over its own lines, but over trackage rights on UP's system. Hence, the BNSF and UP have partly shared and partly conflicting interests in accommodating the new traffic. Those interests are guided and tempered by the BNSF settlement agreement which contains the balancing objective mentioned above – ensuring that BSNF can provide competitive service while minimizing interference to UP's operations. The UP and BNSF interests, and the interests of shippers and the public, will best be accommodated if UP and BNSF both have incentives to avoid the construction of new facilities if they are not needed, to minimize the costs of any new facilities that are needed, to construct new facilities that will make both UP and BNSF operations more efficient, and to share the cost of the new facilities in accordance with their respective use by and economic benefit to UP and BNSF.

Respectfully submitted,



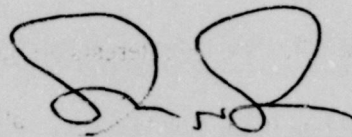
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2550 M Street, N.W.
Washington, D.C. 20037

Counsel for the American
Chemistry Council

CERTIFICATE OF SERVICE

This is to certify that I have, this 14th day of January, 2002, served copies of the foregoing filing by hand upon Washington counsel for the Burlington Northern Santa Fe and Union Pacific and by mail upon other parties of record.

A handwritten signature in black ink, consisting of two large, stylized loops followed by a horizontal line.

Scott N. Stone

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

REPLY OF THE
AMERICAN CHEMISTRY COUNCIL
TO BNSF-98, PETITION FOR CLARIFICATION
REGARDING TRACKAGE FEE ADJUSTMENT

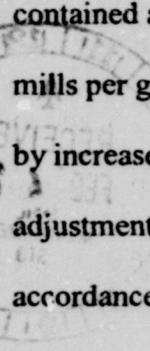


The American Chemistry Council ("the Council")¹ respectfully submits this reply to
BNSF-98, which seeks clarification of whether the mechanism for adjusting trackage rights fees

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paid by BNSF to UP should exclude the initial mark-up to capital assets occasioned by the UP's purchase of the SP at a substantial premium above book value.

The Board's instinct might be to examine previous cases in which the issue of a purchase premium has arisen in other contexts. But the Council submits that those other cases are not instructive in this instance. The issue here turns on the expectations of the parties regarding specific contractual provisions that were incorporated by the Board into its UP/SP merger conditions.



As BNSF recites in its petition (BNSF-98 at 4-5, 9-12), the BNSF Settlement Agreement contained agreed figures for trackage rights fees to be paid by BNSF to UP, most commonly 3.1 mills per gross ton mile. Those fees, negotiated by BNSF and UP, were originally to be adjusted by increases in the Rail Cost Adjustment Factor unadjusted for productivity (RCAF-U). That adjustment factor was changed, however, by Section 7 of the CMA Agreement, to escalate in accordance with actual, productivity-adjusted maintenance and operating costs. The point of this change was to ensure that the 3.1 mills per gross ton mile would not escalate above actual cost inflation over the 99-year term of the BNSF settlement agreement, as it might if it were escalated in accordance with the RCAF-U.

It was certainly not in CMA's (now the Council's) contemplation that the 3.1 mills per gross ton mile would be adjusted upward to reflect UP's writing up of assets owing to its purchase of SP at a price above book value. The Council recognizes that the literal language of Section 7 of the CMA Agreement, which adjusts the fee in accordance with "the difference in the two preceding years in UP/SP's system average URCS costs," could be read as justifying what UP has done, that is, reaching back to compare pre-merger asset values with post-merger asset values. But it was never the Council's intention that the escalation mechanism be a backdoor


means, in effect, of billing BNSF for the change in book value resulting from the UP/SP corporate merger. As BNSF notes (BNSF-98 at 12-13), under section 9c of the original BNSF Settlement Agreement, UP committed to fund all capital expenditures needed to achieve the benefits of the merger. By billing BNSF for a portion of the costs of its acquisition of SP, UP violates the letter and the spirit of that commitment.

Moreover, the Council agrees with BNSF that it is wholly anomalous, when BNSF is deemed to be "stepping into the shoes of SP" and replicating the competition offered by SP pre-merger, for BNSF to have to bear the UP's costs of the merger premium.

CONCLUSION

For the foregoing reasons – to respect the intentions of the parties in crafting the adjustment mechanism, to hold UP to its promise to pay for merger related capital costs, and to permit BNSF to stand in the shoes of the SP without the need to bear a portion of UP's merger related expense – the Board should grant BNSF the clarification requested at page 16 of BNSF-98.

Respectfully submitted,




David F. Zoll
Thomas E. Schick
American Chemistry Council
Commonwealth Tower
1300 Wilson Boulevard
Arlington, VA 22209

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Scott N. Stone

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BUSINESS

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Galveston Bay Conservation & Preservation Association

P.O. Box 323 Seabrook, Texas 77588

January 16, 2002

VIA FAX: 202/565-9004 and Overnight Delivery
Mr. Vernon Williams, Secretary
Surface Transportation Board
ATTN: STB Finance Docket No. 32760_0
1925 K Street, NW
Washington, DC 20423-0001

Dear Secretary Williams:
RE:

STB Finance Docket No. 32760_0
Union Pacific Corporation et al - Control and Merger - Southern Pacific Rail
Corporation et al

Letter for placement in record

GBCPA's concerns with Petitioners' desire for national rail transportation policy
"clarification" on accommodating build in/build out traffic

GBCPA notes that on December 17, 2001, the Burlington Northern-Santa Fe Railway (BNSF) submitted a petition to FD_32760_0 requesting Board guidance in their favor pertaining to required capital investments on lines they operate over but do not own (e.g. trackage rights lines). This past week, supporting parties Atofina, Basell, Equistar, and Lyondell (January 14, 2002), among others, joined them. Though GBCPA is not a party to this proceeding, filings to date on the nationally significant guidance proposed by the Petitioners have discounted or failed to mention many potentially serious implications. We seek to bring some of these implications to the Board's attention through this letter.

I. A summary of the issue as posed by the Petitioners

BNSF and supporting parties request clarification of when or even if they should fund rail infrastructure improvements on lines they plan to operate over but do not own¹. Union

¹ For the uninitiated who may receive copies of this letter, a railroad may operate in such a manner when the owner of the line, typically a competing railroad, grants what are known as trackage rights.



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FD-32760

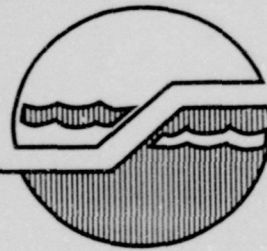
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BUSINESS

Galveston Bay Conservation & Preservation Association

P.O. Box 323 Seabrook, Texas 77586



January 16, 2002

VIA FAX: 202/565-9004 and Overnight Delivery
Mr. Vernon Williams, Secretary
Surface Transportation Board
ATTN: STB Finance Docket No. 32760_0
1925 K Street, NW
Washington, DC 20423-0001



Dear Secretary Williams:
RE:

STB Finance Docket No. 32760_0
Union Pacific Corporation et al - Control and Merger - Southern Pacific Rail
Corporation et al

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Pacific (UP), the owner of the lines, has stated that BNSF should pay for such improvements wherever BNSF's traffic would interfere with their own operations. BNSF replies that because UP allowed BNSF to operate over certain lines as an outcome of the UP/SP merger, UP has already agreed to interference with its operations on these lines. Further, BNSF maintains that UP has already agreed to interference even if new traffic arises from build-outs or new rail construction.

In addition, BNSF maintains that there is no statutory or Surface Transportation Board (Board) language that defines an acceptable or unacceptable level of interference. Rather, BNSF claims that the carrier must demonstrate material financial harm based on the Application, even if it is likely that interfering traffic levels will grow considerably beyond levels stated therein. Only then would infrastructure improvements be considered, rather than as a result of safety or secondary impact concerns a carrier might also have.

Therefore, since UP has already agreed to interference, BNSF claims, it can only request infrastructure improvements that are "consistent with ensuring that BNSF can provide competitive service." That is to say, if BNSF found the required infrastructure improvements too costly to generate an acceptable rate of return on a new project - regardless of the need the project would generate for the improvements - it could refuse to fund them.

Essentially, BNSF seeks to exploit the tension between the need for competitive rail service and the need for safe, efficient, rail infrastructure to provide that service. Captive shippers want rate relief. The Board has approved a provision negotiated by the shippers in April 1996 (the Chemical Manufacturers Agreement) authorizing new rail construction (build-outs) from existing lines as one solution. Investing in existing lines, however, particularly ones owned by a different railroad, is capital intensive. Each railroad's dominant strategy involves acquiring trackage rights on competitors' lines, then defecting and resisting when the time comes to make capital investments. If the situation gets bad enough for the line's owner, they will fund the improvements themselves or lose business, while the free rider keeps on benefiting as the name implies.

Due to the present nature of the United States rail industry, it was only a matter of time before one carrier became the first to request Board approval of this strategy as national policy. The industry needs to modify its cost structure, which may require legislation. Until that occurs, we will continue to see cynical, punitive efforts such as this to do away with one part of U.S. rail transportation policy (rail safety) in favor of another (economic viability for competing carriers). With this petition, BNSF and its counterparts further the creation of trackage rights railroads - all the revenue benefits, none of the investment responsibilities.

II. A railroad must take responsibility for its incremental increases in traffic on another railroad's line

GBCPA believes that when a railroad is not willing to make the necessary investments to support a project, it should not seek to change the law or the national policy. Here, the Petitioners - who as we implied earlier, could speak for any railroad seeking to build out off a trackage rights line - are attempting just that.

The Petitioners' rhetoric has generated, albeit falsely, a hostage situation for communities near build-outs, asking "Your money or your life?" If a railroad is not allowed to build, despite the existence of other rate reduction options, it will maintain that the rail competition portion of U.S. rail transportation policy at 49 USC §10101 is not being fulfilled. Alternatively, once it seeks to build, it adopts the dominant strategy of capital investment refusal, thus subverting the rail safety (49 USC §10101(8)), public convenience, and efficient transport portions of the policy, among others.

The rail transportation policy of the United States must not be undermined by recalcitrance.

III. At some point, infrastructure disinvestment ceases to be about money, and starts becoming an issue of public safety, environmental justice, and community mobility

Central to the Petitioners' argument is the notion that such a tipping point does not exist. Rather, Petitioners frame the issue in terms of their own perceived right to operate without undue burden. Such a right, which they request the Board to expand and justify through guidance, overemphasizes, as we stated above, one part of U.S. rail transportation policy at the expense of the whole. By proposing one carrier's ability to provide competitive service as the test for funding infrastructure improvements, the Petitioners are opening several disputable issues that will take the Board years to decide, including:

- What constitutes the ability to provide competitive service?
- What constitutes minimum harm to a line's owner?
- What is the upper limit to minimum harm that distinguishes unreasonableness?
- What types of interference may require infrastructure investments even though they do not generate direct material harm?
- At what point will the Board step in to prevent or address degraded service and/or safety conditions due to disinvestments by both carriers over the same line?

By avoiding this morass, the Board can rely on a simpler test - either the railroads will budget for and raise the private and public capital necessary to fully support their projects, or they will not. This is a matter of the railroads first taking, and being permitted to take, steps to adjust their cost structures that they have been avoiding for years. Second, it is a matter of railroads fully and honestly disclosing the level of potential traffic associated with their new construction, which should constitute the same level of traffic justifying the investment. Communities and other carriers could then propose infrastructure needs accordingly.

Perhaps most importantly, the information gap as to the "reasonableness" of these needs could be addressed in the EA/EIS process. That is the true handicap facing the Board now. It confronts a transportation merits process during which various parties concerned with parts of U.S. rail transportation policy face varying burdens to 1) identify infrastructure concerns, and 2) to justify their infrastructure proposals in terms of the policy.

Under this system, a trackage rights holding applicant proposing a build out faces few burdens, if any. It doesn't have to identify infrastructure needs or, if the Petitioners are ultimately successful here, pay for any improvements that would threaten its rate of return. The line owner, on the other hand, has every incentive to identify needs on a potentially anti-

competitive scale. Some of these needs, however, will be justifiable and entirely necessary to support the additional traffic. The public and rail shippers may also have legitimate concerns based on various elements of U.S. rail transportation policy, including safety.

Unfortunately, if the Petitioners' plan is adopted, the Board will have even fewer means to distinguish legitimate needs and uphold the rail transportation policy of the U.S. The Board presently has the power to distinguish legitimate needs on the part of a line owner, the public, or any party. It should either continue to exercise this discretion under the terms of previous mergers and case law, or abolish the process and utilize the EA/EIS to provide the information necessary to make a decision. Likewise, it should halt the game of passing the information burden from the applicant to the public to the competitor to the agency, and place it squarely on the shoulders of the independent contractor where it belongs. The Board should not allow the Petitioners to define a more restrictive set of limits, based on a single element (viability of competitive service) of U.S. rail transportation policy.

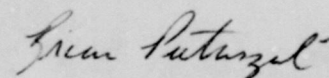
Such limits, based solely in the financial realm, deny the true impacts of disinvestments on trackage rights lines. We understand and agree with the Board that competition from build-outs can improve infrastructure conditions under some circumstances. However, if the Board adopts the petition, it will wave the green flag for a national policy of disinvestments along trackage right build-ins. Traffic on the trackage right lines leading to these build-ins will continue to grow, long after both sides have defected from making necessary investments. Eventually, safety and/or service will deteriorate, likely hand-in-hand with increases in delays and mobility restrictions in the communities these lines pass through. Why should these communities bear disproportionate costs when the railroads refuse to pay?

Now is not the time for the Board to cede its authority through a national policy change. It must act to prevent the railroads from unleashing such hellish scenarios in the future.

For now, the issues that Petitioners complain about are extremely benign. Instead of building necessary connections at junctions, they propose reverse movements that are absurd and dangerous, particularly in urban areas. Instead of building sidings to accommodate head-on traffic, they propose delaying trains, which often end up parked in front of someone's street or neighborhood. For all the money they spend paying lawyers and lobbyists to change national policy, they probably could have made the investments many times over. Now and in the future, please continue to enforce the rail transportation policy of the United States - all of it.

I urge that you deny the terms of the petition.

Sincerely,



Brian Pietruszewski
Galveston Bay Conservation
and Preservation Association

STB

FD-32760

1-14-02

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January 14, 2002

By Messenger

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

ENTERED
Office of the Secretary

JAN 15 2002

Part of
Public Record

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

Dear Mr. Williams:

This letter is submitted on behalf of The National Industrial Transportation League in support of the relief sought by Burlington Northern and Santa Fe Ry. Company in its Petition for Clarification filed on December 21, 2001, in this proceeding ("BNSF-98").¹ In the principal decision in this proceeding, the Board imposed as a condition the terms of the BNSF agreement. That agreement provided for BNSF to obtain the right to conduct extensive trackage rights operations over the lines of the merged UP and SP. The purpose of those rights was to preserve the competitive options available to shippers prior to the merger. *UP/SP*, 1 S.T.B. at 252-254.

The level of the trackage rights fees charged by UP to BNSF for its operations was also a matter that received intensive consideration during the proceeding. *UP/SP*, 1 S.T.B. at 413-417. Indeed, the applicants (and BNSF), in response to the CMA agreement, agreed to modify the procedure for periodic adjustment of the level of the trackage rights charges contained in the BNSF agreement. *UP/SP*, 1 S.T.B. at 416, n. 169 and BNSF-98 at 5. In essence, the adjustment mechanism agreed to between UP and BNSF involved the comparison of certain elements of the actual costs for the merged system generated by the Uniform Rail Costing System ("URCS"). See Section 12 of the BNSF agreement.

The issue raised by BNSF in the petition for clarification involves whether the periodic adjustment to the level of the trackage rights may include any amount reflecting either: (1) the so-called "acquisition premium" paid by UP for the assets of SP, or (2) any amount reflecting the capital costs incurred for certain merger-related investments. BNSF-98 at 6. The League concurs with and supports BNSF's contention that neither of these elements should be included in the mechanism for adjusting the trackage rights fees under the BNSF agreement.

The Board's extensive discussion of the level of the trackage rights fees in principal decision indicates that it was very aware of the need to ensure that the charges were not so high that BNSF could not effectively replace the competition lost when UP absorbed SP. *UP/SP*, 1 S.T.B. at 413. It is plainly obvious that SP, prior to the merger would not have to bear capital costs for merger-related

¹ Abbreviations used in this reply are the same as those used in Decision No. 44 in Docket No. 32760, *Union Pacific Corp., et al. — Control and Merger — Southern Pacific Rail Corp., et al.* 1 S.T.B. 233, 557 (1996) ("*UP/SP*"), *aff'd*, *Western Coal Traffic League v. STB*, 169 F.3d 775 (D.C. Cir. 1999).

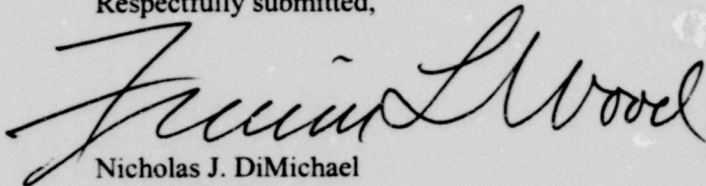
January 14, 2002

Page 2

improvements. It is also obvious that but for the merger, there would be no impact on the incumbent carrier's costs from any merger-related acquisition premium. The technical details of how, under the STB's accounting and cost-finding procedures, those costs might have an impact on the elements of URCS unit costs that are relevant to the adjustment mechanism in the BNSF agreement are certainly complicated. Nonetheless, they should not obscure the fundamental policy imperative articulated in the Board's principal decision. As the Board stated, "the BNSF trackage rights will allow BNSF to replicate the competition that would otherwise be lost when SP is absorbed into UP." *UP/SP*, 1 S.T.B. at 419. *See also UP/SP*, 1 S.T.B. at 368.

It is essential that the terms of the BNSF agreement, and the adjustment mechanism for the trackage rights fees that are a vital component of the competitive structure, not be interpreted and applied in such a manner that, over time, BNSF is exposed to cost increases that impair its ability to replicate the lost competition from SP. For this reason, the League urges the Board to grant the relief requested in BNSF-97.

Respectfully submitted,



Nicholas J. DiMichael
Frederic L. Wood

Attorneys for The National Industrial Transportation League

STB

FD-32760

10-11-01

J

BUSINESS

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J. MICHAEL HEMMER
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FAX 202.778.5578
MHHEMME@COV.COM

October 11, 2001

HAND DELIVERY

The Honorable Vernon A. Williams,
Secretary
Surface Transportation Board
1925 K Street, N.W.
Mercury Building, Room 711
Washington, D.C. 20423-0001



Re: Finance Docket Nos. 32760 and 34079

Dear Secretary Williams:

On October 9, 2001, Union Pacific Railroad Company filed "Comments on Infrastructure and Safety for the Build-Out to the Bayport Loop" in Finance Docket No. 34079, San Jacinto Rail Limited -- Authority to Construct -- and The Burlington Northern and Santa Fe Railway Company -- Authority to Operate -- Petition for an Exemption From 49 U.S.C. § 10901 -- Build-Out to the Bayport Loop Near Houston, Harris County, Texas, and in Finance Docket No. 32760, Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al.

We understand that filing Union Pacific's Comments in Finance Docket No. 32760 would require the Surface Transportation Board to open a new proceeding. As Union Pacific is not requesting relief at this time, no new proceeding is necessary, and we authorize you not to file the document in Finance Docket No. 32760.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael L. Rosenthal".

J. Michael Hemmer
Michael L. Rosenthal
Counsel for Union Pacific Railroad Company

cc: Adrian L. Steel, Jr.

STB

FD-32760

10-11-01

J

203722

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October 11, 2001

HAND DELIVERY

The Honorable Vernon A. Williams,
Secretary
Surface Transportation Board
1925 K Street, N.W.
Mercury Building, Room 711
Washington, D.C. 20423-0001



Re: Finance Docket Nos. 32760 and ~~34079~~

Dear Secretary Williams:

On October 9, 2001, Union Pacific Railroad Company filed "Comments on Infrastructure and Safety for the Build-Out to the Bayport Loop" in Finance Docket No. 34079, San Jacinto Rail Limited -- Authority to Construct -- and The Burlington Northern and Santa Fe Railway Company -- Authority to Operate -- Petition for an Exemption From 49 U.S.C. § 10901 -- Build-Out to the Bayport Loop Near Houston, Harris County, Texas, and in Finance Docket No. 32760, Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Rail Corp., et al.

We understand that filing Union Pacific's Comments in Finance Docket No. 32760 would require the Surface Transportation Board to open a new proceeding. As Union Pacific is not requesting relief at this time, no new proceeding is necessary, and we authorize you not to file the document in Finance Docket No. 32760.

ENTERED
Office of the Secretary

OCT 12 2001

Part of
Public Record

Sincerely,

J. Michael Hemmer
Michael L. Rosenthal
Counsel for Union Pacific Railroad Company

cc: Adrian L. Steel, Jr.

STB FD

32760

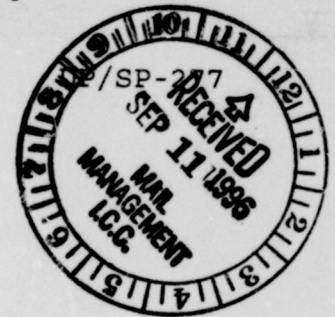
9-11-96

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BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' NOTICE OF CONSUMMATION

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Southern Pacific Transportation
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Railway Company, SPCSL Corp. and
The Denver and Rio Grande
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MICHAEL L. ROSENTHAL
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(202) 662-5388

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

ENTERED
Office of the Secretary

SEP 11 1996

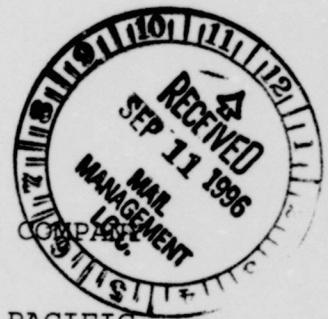
5 Part of
Public Record

September 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



APPLICANTS' NOTICE OF CONSUMMATION

Pursuant to ordering paragraph 7 of Decision No. 44 in this proceeding, the primary Applicants, Union Pacific Corporation ("UPC"), Union Pacific Railroad Company ("UPRR"), Missouri Pacific Railroad Company ("MPRR"),^{1/} Southern Pacific Rail Corporation ("SPR"), Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"), and The Denver and Rio Grande Western Railroad Company ("DRGW"),^{2/} hereby advise that the control authorized by that Decision was consummated today, when SPR was merged with and into UP Holding Company, Inc., a direct wholly-owned subsidiary of UPC.

As required by ordering paragraph 7 of Decision No. 44 in this proceeding, three copies of the journal entries that will be made in connection with the merger are being

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

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

submitted to the Board together with the original of this pleading.

Respectfully submitted,

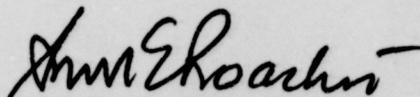
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Railway Company, SPCSL Corp.
and The Denver and Rio Grande
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Attorneys for Union Pacific
Corporation, Union Pacific
Railroad Company and Missouri
Pacific Railroad Company

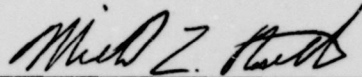
September 11, 1996

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 11th day of September, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

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

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



Michael L. Rosenthal

Southern Pacific Rail Corporation ("SPR") Acquisition
Journal Entries

(in millions)

Balance Sheet:

	<u>Dr.</u>	<u>Cr.</u>
Cash	\$1,562	
Long-Term Debt		\$1,562
Investment in SPR	\$4,038	
Cash		\$1,562
Paid-in Capital		\$2,381
Common Stock		\$95

Records the acquisition of 39.0 million shares of SPR purchased by UP Acquisition Corporation in the first-step cash tender offer at \$25 per share, and 23.4 million shares of SPR acquired for \$25 cash and 93.7 million shares of SPR acquired for 0.4065 shares of Union Pacific Corporation ("UPC") common stock for each share of SPR common stock in the second-step merger of SPR with and into UP Holding Company, Inc. The first step was financed through existing UPC debt facilities, and the second step was financed through existing UPC debt facilities and the issuance of UPC common stock.

**Southern Pacific Rail Corporation ("SPR") Acquisition
Journal Entries**

(in millions)

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Southern Pacific Rail Corporation ("SPR") Acquisition
Journal Entries

(in millions)

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	<u>Dr.</u>	<u>Cr.</u>
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MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

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

202-463-2000
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

September 10, 1996

VIA HAND DELIVERY

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

RECEIVED
SURFACE TRANSPORTATION
BOARD
SEP 10 4 18 PM '96
ICC
OFFICE OF SECRETARY

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

Dear Secretary Williams:

On Monday, September 9, 1996, Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") filed BNSF's Reply to Applicants' Motion For Leave to File Reply (BN/SF-66). BN/Santa Fe's September 9 filing contained a facsimile copy of the verification of Frank D. Clifton. Enclosed please find the original verification of Frank D. Clifton.

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

Sincerely,

Kelley E. O'Brien

Kelley E. O'Brien

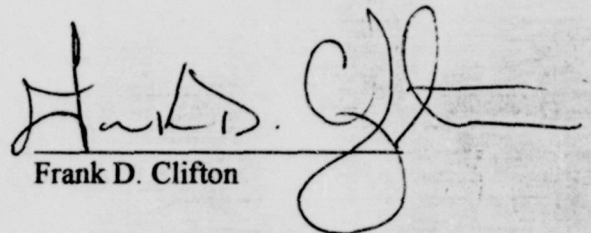
Enclosure

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Office of the Secretary	
SEP 11 1996	
5	Part of Public Record

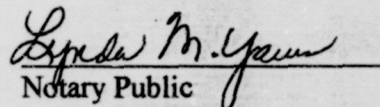
VERIFICATION

THE STATE OF TEXAS)
)
COUNTY OF TARRANT)

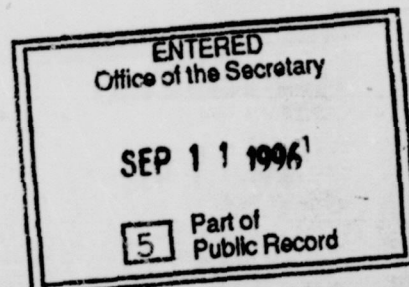
Frank D. Clifton, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.


Frank D. Clifton

Subscribed and sworn to before me on this 9th day of September, 1996


Notary Public

My commission expires: 09/30/96



STB FD 32760

9-3-96

J 85579

85579

PEPPER, HAMILTON & SCHEETZ

ATTORNEYS AT LAW

PHILADELPHIA, PENNSYLVANIA
DETROIT, MICHIGAN
NEW YORK, NEW YORK
PITTSBURGH, PENNSYLVANIA
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LONDON, ENGLAND
MOSCOW, RUSSIA

WRITER'S DIRECT NUMBER

(202) 828-1220

September 3, 1996

Via 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 Mr. Williams:

Enclosed for filing in the above referenced proceeding are the original and 20 copies of Geneva Steel's Petition for Clarification (GS-3). In addition, we are simultaneously filing the original and 20 copies of the highly confidential Appendix to the Petition for Clarification (GS-4) to be filed under seal. Also, enclosed is a 3.5 inch diskette containing the Petition for Clarification in WordPerfect 5.1.

Geneva Steel ("Geneva") has served the highly confidential Appendix to the Petition only on outside counsel where Geneva is aware that such counsel have executed the highly confidential undertaking issued in Decision No. 2 in the above referenced docket. The unrestricted Petition for Clarification has been served on all parties of record.

Geneva Steel will provide the Highly Confidential Appendix to the outside counsel of any party who is eligible to receive highly confidential material and who provides Geneva with copies of an executed highly confidential undertaking. In order to receive such copies, please contact Michelle Morris at (202) 828-1220.



PEPPER, HAMILTON & SCHEETZ

September 3, 1996
Page 2

An extra copy of the Petition for Clarification and Appendix is also enclosed. Please date stamp this additional copy and return it to our messenger.

Thank you for your assistance.

Sincerely,

Michelle J. Morris

Michelle J. Morris

cc: All parties of record

Enclosure

STB FD 32760

6-25-96

J

84406

84406

HARKINS CUNNINGHAM

ATTORNEYS AT LAW

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PHILADELPHIA, PA 19103-7042

215 851-6700

FACSIMILE 215 851-6710

Item No.

June 24, 1996

Page Count 1JUNE, 1996 # 159VIA FACSIMILE AND HAND DELIVERY

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



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

Dear Mr. Williams:

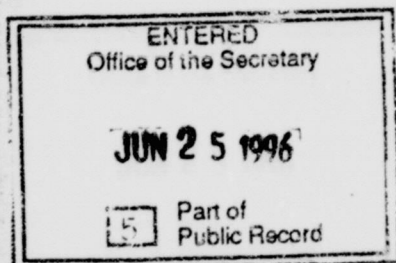
We are counsel for Southern Pacific, one of the applicants in this proceeding. It is our understanding that, as participant, we have been allotted two reserved seats for both the Oral Argument on July 1 and the Voting Conference on July 3. This is to request that seats also be reserved on both dates for the following Southern Pacific officers:

Philip A. Anschutz, Chairman
 Jerry R. Davis, Chairman and Chief Executive Officer
 Robert F. Starzel, Vice Chairman

Thank you very much for your consideration.

Very truly yours,

Paul A. Cunningham
 Counsel for
 Southern Pacific Corp., et al



STB FD

32760

6-24-96

J

84397

84397

WEINER, BRODSKY, SIDMAN & KIDER

ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800

WASHINGTON, D.C. 20005-4797

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RICHARD J. ANDREANO JR.
JAMES A. BRODSKY
JO A. DeROCHE
CYNTHIA L. GILMAN
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

June 24, 1996

BY HAND DELIVERY

*NOT ADMITTED IN D.C.

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

Item No. _____

Page Count 1
JUNE, 1996 # 156

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

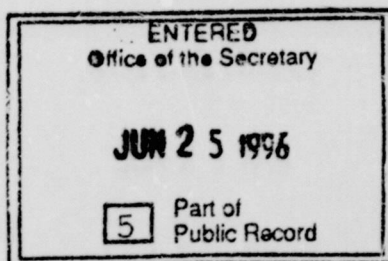
Dear Secretary Williams:

In connection with the above-reference proceeding, this will confirm that those representing Montana Rail Link, Inc. plan to use a visual display during oral argument.

Please acknowledge receipt of this confirmation by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

Paul C. Oakley



STB FD

32760

6-18-96

J

84316

84316

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

KECK, MAHIN & CATE

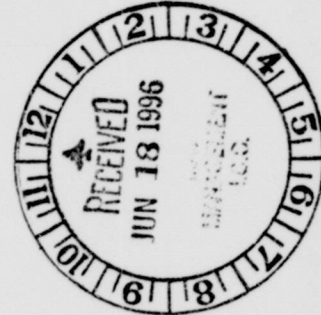
Item No. _____

Page Count 1JUNE 1996 #153

FILE NUMBER 48189-001

DIRECT DIAL 202-789-8931

June 17, 1996



Vernon A. Williams
Secretary, Surface Transportation Board
1201 Constitution Ave., NW.
Rm. 2223
Washington, D.C. 20423

Re: F.D. No. 32760 UP/SP Merger

Dear Secretary Williams:

Enclosed please find three (3) 3.5 inch disks in Word Perfect 5.1 format containing the following previously filed documents of the City of Reno:

- (1) Reno-4, Comments filed March 29, 1996
- (2) Reno-5, Comments filed May 3, 1996
- (3) Reno-7, Brief filed June 3, 1996

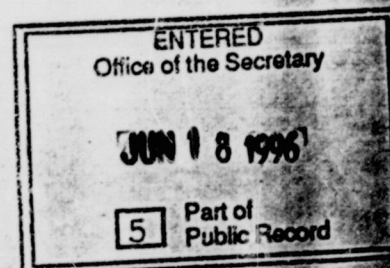
If you have any questions, you can call me at 202-789-8931 direct.

Very truly yours,

Paul H.  Tamboley

Enclosures
PHL/dph

WILLIAMS, LTR



A LAW PARTNERSHIP INCLUDING PROFESSIONAL

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

STB FD

32760

6-14-96

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BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1598

June 14, 1996

HAND DELIVERY

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



Re: UP/SP Merger, Finance Docket No. 32760

Dear Mr. Williams:

Enclosed for filing is a diskette in WordPerfect 5.1 format containing the Highly Confidential text of UP/SP-263, "Applicants' Submission of Verified Statement Concerning Modification of Settlement Agreement with CMA," filed by Applicants on June 11, 1996.

Sincerely,

Ann R. Homan

Ann R. Homan,
Transportation Specialist

Enclosure

ENTERED	
Office of the Secretary	
JUN 17 1996	
5	Part of Public Record

STB FD 32760 6-14-96 J 84273

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Item No. _____

Page Count 1 Plus Diskette
JUNE, 1996 * 146

June 14, 1996

HAND DELIVERY

The Honorable Vernon A. Williams

Secretary

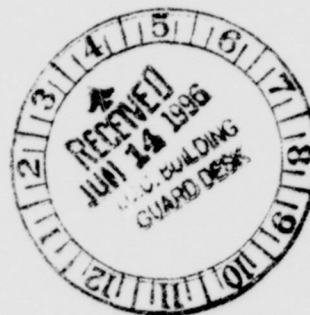
Surface Transportation Board

Room 2215

1201 Street and Constitution

Avenue, N.W.

Washington, D.C. 20423



Re: UF/SF Merger, Finance Docket No. 32760

Dear Mr. Williams:

Enclosed for filing is a diskette in WordPerfect 5.1 format containing the text of pleadings filed by the American President Companies on May 31, 1996.

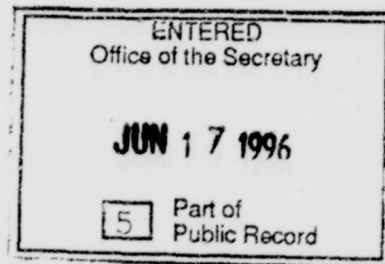
Sincerely,

Ann R. Homan

Ann R. Homan,

Transportation Specialist

Enclosure



STB FD

32760

6-12-96

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PATTON BOGGS, L.L.P.
2550 M STREET, N.W.
WASHINGTON, D.C. 20037-1350
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Item No. _____

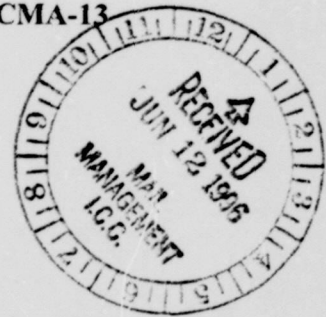
Page Count 1

JUNE, 1996 #134

June 12, 1996

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W. Room 2215
Washington, DC 20423

CMA-13



Re: Finance Docket No. 32760 - Oral Argument

Dear Mr. Williams:

The Chemical Manufacturers Association notes that various parties and groups of parties have submitted to the Board suggestions for allocating the time for oral argument. At least one of the proposals, which was offered by a group of opponents of the merger, does not list CMA as among the parties requesting oral argument. Perhaps this is because, after consulting with your office, we were advised that we did not need to serve our request for oral argument on all parties.

Lest CMA's silence be taken to imply that it agrees with any of these proposals, CMA would like to reaffirm that it requests 5 minutes to explain its settlement agreement with the Applicants and the BNSF.

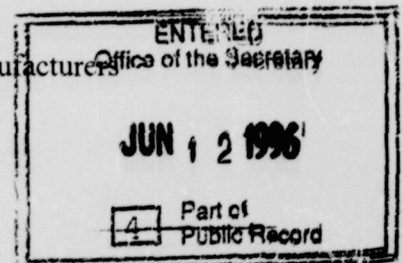
CMA initially opposed the merger, but in accordance with its settlement has withdrawn its opposition (CMA-12). CMA is therefore in a position akin to that of the BNSF, neutral on the merits of the merger but strongly of the view that if the merger is approved, the conditions of the BNSF Settlement, as modified by the CMA settlement, should be adopted by the Board, and that the Board should schedule annual oversight proceedings for five years. CMA leaves to the Board's judgment at what point in the argument CMA should speak.

Sincerely,

Scott N. Stone

Counsel for Chemical Manufacturers Association
Office of the Secretary

cc: Thomas E. Schick, Esq.



STB FD 32760 6-12-96 J 84212

84212

UP/SP-264

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' REPLY TO THE "SUPPLEMENTAL RESPONSE OF
INTERESTED PARTIES" CONCERNING ORAL ARGUMENT TIME

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PAUL A. CUNNINGHAM
RICHARD B. HERZOG
JAMES M. GUINIVAN
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Washington, D.C. 20036
(202) 973-7601

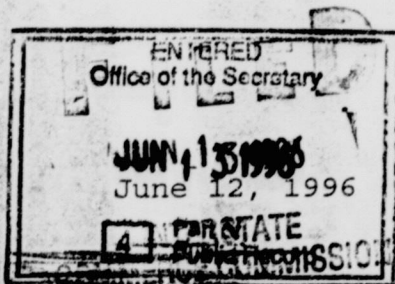
Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
Company, St. Louis Southwestern
Railway Company, SPCSL Corp. and
The Denver and Rio Grande
Western Railroad Company

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(202) 662-5388

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



Item No. _____

Page Count 5

JUNE, 1996 # 138

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

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

APPLICANTS' REPLY TO THE "SUPPLEMENTAL RESPONSE OF
INTERESTED PARTIES" CONCERNING ORAL ARGUMENT TIME

Union Pacific Corporation ("UPC"), Union Pacific
Railroad Company ("UPRR"), Missouri Pacific Railroad Company
("MPRR"),^{1/} Southern Pacific Rail Corporation ("SPR"),
Southern Pacific Transportation Company ("SPT"), St. Louis
Southwestern Railway Company ("SSW"), SPCSL Corp. ("SPCSL"),
and The Denver and Rio Grande Western Railroad Company
("DRGW"),^{2/} collectively, "Applicants," submit this reply to
the "Supplemental Response of Interested Parties to Motion of
Western Shippers' Coalition for Clarification or Reconsidera-
tion of Decision No. 36," filed June 7, 1996.

As Applicants have previously indicated, the
management of oral argument is a matter for the discretion
of the Board. However, should the Board elect to adopt the

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

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

proposal in the "Supplemental Response," or something similar to it, Applicants would respectfully request that their time be increased by an amount commensurate with the increase in time for opponents of the merger. Also, in light of the withdrawal by WSC of its request to participate in oral argument and the withdrawal by many of WSC's members, including Andalex, ARCO, Coastal, Geneva Steel, Intermountain Power Project, Kennecott and Moroni Feed, of their opposition to the merger, the Board may wish to consider whether it is appropriate to permit WSC's counsel to substitute a request to participate in oral argument on behalf of new parties.

Respectfully submitted,

CANNON Y. HARVEY
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CAROL A. HARRIS
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One Market Plaza
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JAMES M. GUINIVAN
Harkins Cunningham
1300 Nineteenth Street, N.W.
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Attorneys for Southern
Pacific Rail Corporation,
Southern Pacific Transportation
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Railway Company, SPCSL Corp.
and The Denver and Rio Grande
Western Railroad Company

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RICHARD J. RESSLER
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JAMES V. DOLAN
PAUL A. CONLEY, JR.
LOUISE A. RINN
Law Department
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
(402) 271-5000

And E. Roach II / KWK
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J. MICHAEL HEMMER
MICHAEL L. ROSENTHAL
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

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

June 12, 1996

CERTIFICATE OF SERVICE

I, Karen W. Kramer, certify that, on this 12th day of June, 1996, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all parties of record in Finance Docket No. 32760, and on

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

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

Karen W. Kramer
Karen W. Kramer

STB FD

32760

6-7-96

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ORIGINAL

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-0738

June 7, 1996

Item No. _____
Page Count 1
JUNE, 1996 #126

Vernon A. Williams, Secretary
Room 2223
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, DC 20423

Re: F.D. No. 32760, et al.
Oral Argument - July 1, 1996

Dear Mr. Williams:

This letter is to withdraw my request for time allotment at oral argument. A conditional request was made May 24, in response to Decision No. 36, which is hereby withdrawn.

Very truly yours,

Gordon P. MacDougall

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Office of the Secretary	
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OFFICE OF SECRETARY

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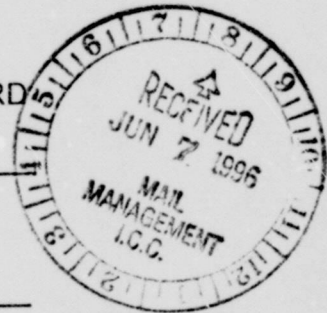
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Item No. 84105

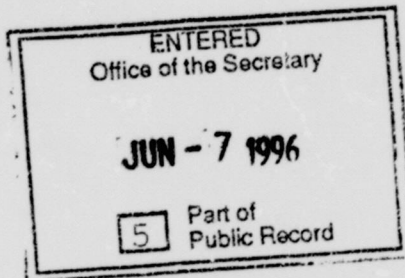
Page Count 2

JUNE 1996 #121

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

PORT OF TACOMA'S PETITION TO INTERVENE,
FOR LEASE TO FILE BRIEF AND TO BECOME PARTY OF RECORD

Pursuant to C.F.R. 1112.4, the Port of Tacoma ("POT"), a municipal corporation of the State of Washington, seeks leave to intervene in this proceeding, to file the accompanying brief and to become a party of record. POT previously provided a verified statement in support of the UP/SP merger dated March 8, 1996.

POT together with the Port of Seattle ("POS"), now enjoy the ranking of the second largest container load center in North America with 2.4 million containers annually moving through the ports, largely by rail. A recent study projects that container traffic (20 foot equivalents) moving through both ports will double by 2015 to 2.6 million, and Midwest corn exports through Washington State ports could grow 66 percent, exceeding 10 million metric tons by 2015. Thus, POT is, and will increasingly be, dependent upon rail service to ensure competitiveness.

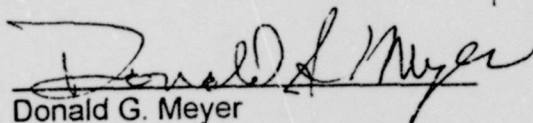
The POT Commission voted on March 7, 1996, to support the merger between UP and SP, POS, POT, and UP have established a cooperative effort to resolve future rail needs and infrastructure development in the Pacific Northwest. The merger between UP and SP will restore competitive balance in the western United States and enhance competition. POS, POT, and the entire Northwest will

receive the direct and immediate benefits of the improvements to be produced by the UP/SP merger.

POT previously participated in this proceeding by filing a verified statement. Its intervention, therefore, will not broaden the issues raised in the proceeding or affect the procedural schedule. Acceptance of the brief will not prejudice any party and will assist the Board in its deliberations.

POT requests that it be allowed to intervene and that the accompanying brief be accepted.

Respectfully submitted,



Donald G. Meyer
Deputy Executive Director
Port of Tacoma
PO Box 1837
Tacoma WA 98401
(206) 383-9410

Dated this 3rd day of June, 1996.

STB FD 32760 6-3-96 J

83945

HOWREY & SIMON

Item No. _____

Page Count 1

JUNE, 1996 #19

June 3, 1996

COAC-5

83945
Attorneys at Law
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2402
(202) 783-0800
FAX (202) 383-6610

Rosemary McEnery
(202) 383-6659

HAND DELIVERY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Twelfth Street and Constitution Ave., N.W.
Washington, D.C. 20423



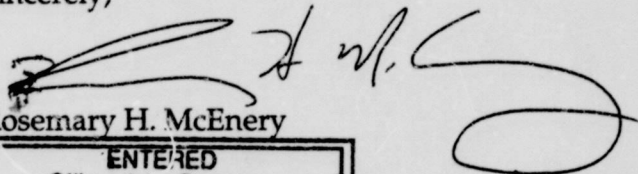
Re: Finance Docket No. 32760, Union Pacific Corp., et al. --
Control & Merger -- Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

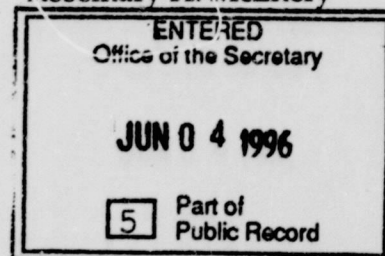
I am writing on behalf of The Coastal Corporation ("Coastal")¹ to express its support for the proposed merger of the Union Pacific and Southern Pacific railroads. Coastal's position is based on lengthy discussions with UP and BNSF personnel regarding their plans for handling coal traffic originating in Utah (where Coastal's substantial western coal mining operations are located).

In addition, Coastal strongly **opposes** any proposed divestiture of rail lines in the Central Corridor as a condition to approval of the merger. It is Coastal's view that the **only** viable competitor to a combined UP-SP in the Central Corridor would be BNSF -- and **not** a third carrier.

Sincerely,


Rosemary H. McEnery

cc: All Parties Of Record



¹ Coastal has participated as a party of record in this proceeding and has, until recently, also participated as a member of the Western Shippers Coalition.