

**SURFACE TRANSPORTATION BOARD ISSUES 1ST OVERSIGHT DECISION  
REVIEWING COMPETITIVE IMPACTS OF "UP/SP" MERGER; ORDERS UP/SP TO  
ALLOW COMPETITIVE SERVICE AT NEW "TRANSLOAD" FACILITY**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued its first decision in its "oversight" proceeding reviewing the competitive impacts of the "UP/SP" merger. In a related but separate decision, the Board has directed UP/SP to allow competitive service at a new "transload" facility.

A. UP/SP Oversight. In a decision issued in August 1996, the Board approved the merger of Union Pacific and Southern Pacific railroads (UP/SP). To remedy potential competitive problems, the Board imposed numerous conditions addressing the competitive harm that the merger would otherwise have produced. The key competitive condition required UP/SP to grant extensive trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF).

In addition to specific mitigation measures, one of the conditions provided for a 5-year oversight process focusing on whether the conditions have effectively addressed the competitive issues they were intended to remedy. To facilitate oversight, the Board directed UP/SP and BNSF to file extensive reports, to which other interested parties filed comments.

On reviewing the extensive record compiled, the Board found that, thus far, the merger, with the conditions imposed, has not caused any substantial competitive harm. The Board noted that, while BNSF's use of the trackage rights condition started slowly with regard to certain lines, BNSF had initiated by July 15, 1997, what appear to be viable competitive operations over each of its key trackage rights lines. The Board further noted evidence of rate reductions both on the UP/SP system and on the BNSF trackage rights segments.

The Board considered whether to impose additional competitive conditions or to modify existing competitive conditions as suggested by some commenters, but it concluded that, for the most part, such actions are not supported by the record and are unnecessary at this time. The Board did, however, impose certain additional requirements and include certain directives to ensure that the existing conditions are implemented more efficiently; moreover, agreeing with numerous commenters that it is too early in the process to determine with certainty how vigorous the competition between UP/SP and BNSF will be over the long term, the Board emphasized that its conclusions are preliminary, and that oversight is continuing. In addition, the Board reminded parties that it will continue to resolve expeditiously, on a case-by-case basis, individual disputes involving implementation of the competitive conditions. The Board noted that several commenters had addressed the service problems recently experienced in the West, and pointed out that those problems are being addressed in a separate proceeding [*Rail Service in the Western United States*, STB Ex Parte No. 573], in which an extensive hearing is being held today.

B. The "Transload Facility" Proceeding. One of the competitive conditions imposed in the merger proceeding allows BNSF to serve new facilities (including "transload facilities") on both SP-owned and UP-owned track over which BNSF has received

trackage rights. The purpose of the condition was to replace competition that would have been lost pursuant to the merger.

Parties may have disagreements as to whether allowing BNSF to serve a particular facility such as a transload facility would ameliorate the loss of competition that the condition was intended to address, or rather, whether it would amount to an overreach that would open up UP's and SP's exclusively served traffic to direct BNSF service. In its oversight decision, the Board noted that it would not further specify precisely which facilities qualify for the new facilities condition, but, rather, that it would quickly resolve any specific controversies as they arose.

Such a controversy arose when BNSF and a shipper, R.R. Donnelley & Sons Company (Donnelley), sought a ruling from the Board that a particular transloading facility was a "new facility" within the meaning of the condition. The facility at issue, which is located near a "dormant" rail spur, was not newly constructed, but it was previously used as a warehouse served exclusively by truck; indeed, the facility has not been served by rail for at least 4 or 5 years. A prospective new lessee, Sprint, Inc., now wants to convert the facility, at a cost of \$50,000, to a rail-to-truck transfer facility.

The Board found that the new facility would be a transload facility that BNSF could serve under the transload condition. The Board noted that, prior to the merger, SP would have been able to offer a transloading alternative in competition with a direct UP movement into Donnelley's plant. It found that the proposed operation was not a "contrivance" to obtain a competitive option not available before the merger. And it concluded that the facility was indeed subject to the new facility condition:

**Donnelley is not a successor in interest to the previous tenant of the facility. The transloading operation will be entirely different in nature and purpose from that of the facility's prior use. The particular facility has not been served by rail for four to five years. . . . Finally, the proposed operation, which will entail construction and ongoing operational and maintenance costs over and above those that would be incurred for the resumption of rail service, including the costs of a 14-mile truck haul, qualifies as a "legitimate transload operation."**

The Board's decisions were issued today in the cases entitled *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 Railway Company [Oversight]*, STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 10; and *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 Railway Company*, STB Finance Docket No. 32760, Decision No. 75.

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