

SURFACE TRANSPORTATION BOARD CONTINUES MONITORING OF UNION PACIFIC SERVICE, BUT FINDS EMERGENCY IN HOUSTON OVER, AND THUS DOES NOT ISSUE FURTHER EMERGENCY SERVICE ORDER

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that, in response to a request for a further emergency service order, the Board has issued a decision providing for continued operational monitoring of and data filing by the Union Pacific Railroad (UP). However, the Board found that, while service throughout the West is not at uniformly improved levels, the service emergency in Houston is over, and that there is thus no legal basis for issuing a further emergency service order. The Board did provide a 45-day "wind-down" period to ensure a smooth transition.

The provisions of 49 U.S.C. 11123 authorize the Board to issue emergency service orders, but only upon a determination that a "failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States." Late last year, the Board issued an unprecedented emergency service order after finding that there was a transportation emergency affecting service throughout the West, and that it could help mitigate the emergency by adding service options in and around Houston, which the Board found was the source of the crisis.

The service order involving Houston, by law, is set to expire on August 2, 1998. On July 17, 1998, three shipper groups filed a petition asking the Board to extend it or to issue a further emergency service order, on the ground that the service emergency has not ended. The Board determined that it would continue its operational monitoring of the service in the West, particularly in view of the impending need to move grain and seasonal traffic over the next few months; it retained its requirement that the major western railroads file operational data to facilitate the monitoring; and it committed to remain vigilant and to address any significant service issues that may arise in the future, as appropriate. However, based on the operational data that it has been regularly receiving for the past 9 months and on the observations of Board representatives during site visits made to the Houston area on various occasions throughout the period of the emergency order, the Board found that service in the Houston area has improved significantly. Therefore, the Board found no basis on which it could lawfully extend the Houston provisions of the service order.

Recognizing, however, in light of the rail service instability that has existed in the West, that shippers may need some time to reorganize their transportation arrangements in a way that will minimize disruption and re-establish service expectations, the Board did provide a 45-day "wind-down" period, until September 17, 1998, during which the additional service options in and around Houston could be continued. Additionally, the Board noted that it would be moving forward in its review of several pleadings suggesting, on competitive grounds, permanent changes to the ownership and operation of the rail facilities in and around the Houston area, indicating that the decision issued today relates to the issues surrounding the requests for emergency relief and not the merits of the Houston/Gulf Coast oversight proceeding.

The Board also denied requests by individual shippers that are served by UP for emergency service order relief. In one case, Entergy Services, Inc. and Entergy Arkansas, Inc. (Entergy), an electric utility, argued that UP's service to Entergy's coal-fired generating plant near Redfield, Arkansas was inadequate, and it asked the Board to require alternative rail access to the plant. In the other case, Cemex USA Management, Inc. (Cemex), a cement and aggregates shipper, argued that UP's service to Cemex's facility in Dittlinger, Texas, was not up to its expectations, and it too sought alternative rail access to its facility. In each case, the Board found no emergency and thus no basis for engaging the emergency service provisions of the law. In the Cemex case, the Board found not only that service had improved, but that the relief that the shipper sought could in fact be counterproductive. In the case of Entergy, it found the service situation not appropriate for emergency relief, and indicated that it would continue to review Entergy's pending request for permanent relief in the Union Pacific/Southern Pacific merger general oversight proceeding.

The Board's decision denying the request of the three shipper groups, and of Entergy, for emergency service relief was

issued today in *Joint Petition For a Further Service Order*, STB Service Order No. 1518 (Sub-No. 1). The Board's decision denying Cemex's request for emergency service relief was issued today in *Rail Service in the Western United States*, STB Ex Parte 573.

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