

**SURFACE TRANSPORTATION BOARD DENIES AMERENUE'S PETITION FOR RECONSIDERATION SEEKING TO VOID 1999 TRANSPORTATION CONTRACT WITH "UNION PACIFIC"**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has denied AmerenUE's petition for reconsideration of the Board's June 1, 2000 decision finding that the "contract modification" condition the Board imposed as part of its approval of the 1996 "Union Pacific-Southern Pacific" (UP-SP) merger is not applicable to a particular contract.

The Board found that the contract in question between AmerenUE and Union Pacific was renegotiated and significantly modified in April 1999, and thus was a new contract, not a pre-merger contract, for purposes of the UP-SP merger conditions. The Board noted that, although most of the details of the AmerenUE-Union Pacific agreement were submitted under seal (and so should not be revealed on the public record), UP agreed to rate reductions, to a 1-year extension of the contract that otherwise would have soon expired, and to modification of other material terms. The Board concluded that AmerenUE "cannot fairly claim that it expected to retain the right to reopen a bargain struck in 1999" some 3 years after the merger was consummated.

In reaching its decision, the Board rejected AmerenUE's argument that certain boilerplate language in the new agreement--that "nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided"--precludes construction of the agreement as a new contract. The Board found that this language merely preserves terms not amended, and does not address the issue of whether modifications made are substantial enough to constitute a new contract.

The Board noted that, as a result of this new contract, AmerenUE must wait until the contract's expiration at the end of 2001 to take full advantage of the opportunity to pursue service by a second railroad for traffic it has dedicated to UP under the contract. This opportunity became available as a result of the Board's finding in its June 1, 2000 decision that AmerenUE is a "2-to-1" shipper under the competitive conditions imposed by the Board in its decision approving the UP-SP merger.

Today's decision was issued in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760, Decision No. 90 (STB served Oct. 30, 2000). Vice Chairman Burkes commented with a separate expression.

A printed copy of today's decision is available for a fee by contacting: **D~To-D~ Office Solutions, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 466-5530**. Today's decision is also available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>

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