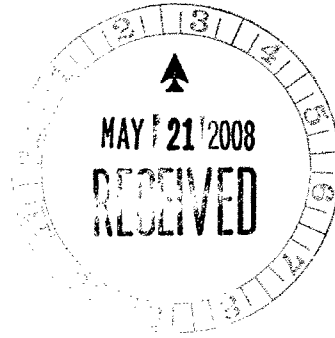


Mayer Brown LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101

Main Tel (202) 263-3000
Main Fax (202) 263-3300
www.mayerbrown.com

Adrian L. Steel, Jr.
Direct Tel (202) 263-3237
Direct Fax (202) 263-5237
asteel@mayerbrown.com



May 21, 2008

BY HAND-DELIVERY

The Honorable Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

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

Dear Acting Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of BNSF Railway Company's Petition for Clarification (BNSF-116). Please note that expedited action has been requested. Also enclosed is a disk containing the text of the filing in Word format.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,

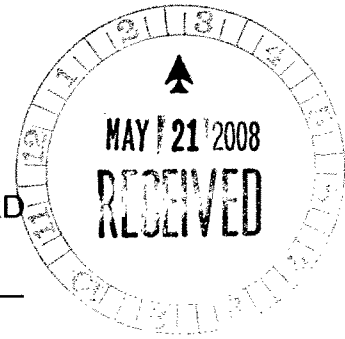
A handwritten signature in black ink that reads 'Adrian L. Steel, Jr.' with a stylized flourish at the end.

Adrian L. Steel, Jr.

Enclosures

cc: All Parties of Record

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

BNSF RAILWAY COMPANY'S
PETITION FOR CLARIFICATION

EXPEDITED ACTION REQUESTED

Richard E. Weicher
David T. Rankin
BNSF Railway Company
2500 Lou Menk Company
Forth Worth, TX 76131
(817) 352-2368

Adrian L. Steel, Jr.
Mayer Brown LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3237

Attorneys for BNSF Railway Company

Dated: May 21, 2008

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

BNSF RAILWAY COMPANY'S
PETITION FOR CLARIFICATION

BNSF Railway Company ("BNSF") submits this Petition for Clarification of the Surface Transportation Board's decision served May 1, 2008 (Decision No. 103), in this proceeding. In Decision No. 103, the Board addressed a petition filed by Union Pacific Railroad Company ("UP") asking for the STB to reform the Restated and Amended BNSF Settlement Agreement ("Restated Agreement") to restore the original traffic rights restrictions on two former Southern Pacific Transportation Company ("SP") lines in Northern California over which BNSF received trackage rights under the Restated Agreement. UP asserted in its petition that the traffic restrictions contained in Section 1(g) of the Restated Agreement were the result of either a unilateral mistake by UP or a mutual mistake by both parties and that the Restated Agreement should accordingly be reformed under applicable contract law.

On May 1, 2008, the Board denied UP's petition for reformation as moot. Decision No. 103 at 8. In so doing, the Board expressly did not address or resolve the

issue of whether UP is entitled to relief on its mistake claims, nor did it resolve the issue of the parties' contractual intent. Id. at 6. Further, the Board did not order or require that the Restated Agreement be modified in any way. Instead, the Board held that, since the parties did not alert the Board to any substantive change in Section 1(g), the Board did not approve any change. Id. at 7. Thus, regardless of what the parties may have intended, "BNSF does not currently have Board authorization to use the Cal-P line for intermodal trains that lack a prior or subsequent movement over the Central Corridor or I-5 Corridor." Id.

The Board was guided in its decision by the scope of the conditions imposed in Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996) ("UP/SP Merger"). The Board noted that it could only impose conditions that were merger-related and that nothing in UP/SP Merger required that UP give BNSF trackage rights over the Cal-P line for intermodal trains lacking a prior or subsequent movement over the Central Corridor or I-5 Corridor. Decision No. 103 at 7. Thus, "the trackage rights accorded in the merger . . . are as stated in the original agreement [between UP and BNSF] rather than as provided in the restated agreement." Id. at 1. The Board concluded: "Should the parties mutually agree to broader trackage rights for BNSF intermodal trains, they would need to obtain Board authorization for such rights, under 49 U.S.C. 11323(a)(6)." Id. at 7.

BNSF seeks clarification of this last statement. The Board appears to confirm in the statement that, when trackage rights are imposed as a condition to a merger, railroads may enter into implementing trackage rights agreements that provide for more than the Board requires. The fact that the initial impetus for the original agreement may

have been a merger obviously does not foreclose voluntary amendments between the carriers that expand the scope of their rights -- as occurred here in this specific instance and also occurred in other areas of negotiation between BNSF and UP in reaching the final terms and conditions of the Restated Agreement¹ -- so long as they seek Board authorization for such expanded rights as may be required. The concern that BNSF has about the Board's conclusion is that it is stated in the present tense. BNSF believes that UP and BNSF already have contractually agreed to broader trackage rights for BNSF intermodal trains on the two UP lines as part of the simplification and clarification of Section 1(g) of the Restated Agreement, and BNSF intends to seek an arbitral decision confirming that agreement. BNSF asks the Board to clarify that it did not intend to foreclose BNSF from seeking authorization from the Board for trackage rights under an agreement that an arbitrator finds BNSF and UP have already made, as well as under future agreements they may make.

This is an important clarification. BNSF has for some time relied on the expanded rights provided in the Restated Agreement to provide competitive intermodal service to the Oakland International Gateway ("OIG"). More importantly and broadly, BNSF and other railroads have long believed themselves to be free to agree to amend merger-related trackage rights agreements to broaden their terms as a result of subsequent negotiations and agreements between the carriers, as well as in response to subsequent Board decisions on merger-specific issues where the parties were unable to reach agreement. There is no reason they should not be able to do so. Indeed, there is every reason why the Board should want to encourage voluntary agreements

¹ In fact, the fifth and sixth "Whereas" clauses in the Restated Agreement confirm that the parties included agreements they had reached concerning "other matters".

that reduce trackage rights restrictions and enhance competition. BNSF has no quarrel with the Board's point that it must authorize significant trackage rights changes, and BNSF has and will continue to seek such authority from the Board as may be required by the Board's rules.

Further, the Board's decision presents an important policy and legal issue for the Board to address and clarify with respect to the status of modifications that have been made to merger settlement agreements which expand access and other service rights to the benefit of shippers, and which were entered into in implementing agreements subsequent to the initial master merger settlement agreements. These may have been submitted in exemption proceedings or otherwise progressed without explicit Board acknowledgment, but are nonetheless part of agreements the parties have assumed are valid. If the Board determines not to clarify its decision as BNSF requests, it would place a cloud on the validity of such agreements, amendments and rights.

For example, UP currently seeks to implement a connection for a new intermodal facility outside Chicago on trackage rights stemming from an SP-BNSF settlement agreement reviewed by the Interstate Commerce Commission in the BN/ATSF merger proceeding. Burlington Northern et al.—Merger—Santa Fe Pacific et al., 10 I.C.C.2d 661 (1995). The original settlement agreement did not contain such a right to connect to a new facility, but a subsequent implementing agreement appears to, with no explicit review by the Commission to BNSF's knowledge. The Board's decision here in this proceeding raises the question whether such a right is valid or should be similarly deemed unauthorized by the Board.

REQUEST FOR EXPEDITED ACTION

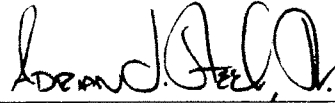
As indicated, BNSF has been using the expanded rights granted to it by the Restated Agreement to move intermodal trains over the Cal-P and Elvas-Stockton lines. Such a routing has enhanced the competitiveness of BNSF intermodal service to and from OIG and has enabled BNSF to avoid operating its trains on industry-support trackage through the congested Richmond, CA area, where there has been much criticism and concern as to the traffic delays, blocked intersections, horn noise, and safety risks caused by the lengthy BNSF intermodal trains. On May 31, 2008, when Decision No. 103 becomes effective, BNSF will no longer be able to use the two UP lines as it has been doing for this traffic. Since BNSF firmly believes that its right to use the two lines for all intermodal trains without corridor restrictions is clear and unambiguous in the Restated Agreement -- the controlling contractual document between the parties -- BNSF requests that the Board act expeditiously on this Petition so that, once BNSF has received an arbitral decision in its favor, BNSF can return to the Board to obtain the requisite trackage rights authority under Section 11323(a)(6) and the pro-competitive and other public benefits of the rights BNSF secured pursuant to the Restated Agreement can once again flow.

CONCLUSION

In conclusion, for the reasons discussed above, BNSF respectfully requests that the Board clarify that it did not intend to foreclose BNSF from seeking authorization from the Board for the expanded trackage rights granted to BNSF by Section 1(g) of the Restated Agreement in the event BNSF's position is confirmed in arbitration. BNSF is not requesting that the Board reconsider its finding that the expanded trackage rights provided by Section 1(g) were not compelled as a merger condition and were not

authorized by the Board. BNSF is also not requesting that the Board resolve the underlying contractual dispute between BNSF and UP under the Restated Agreement.

Respectfully submitted,



Richard E. Weicher
David T. Rankin
BNSF Railway Company
2500 Lou Menk Company
Forth Worth, TX 76131
(817) 352-2368

Adrian L. Steel, Jr.
Mayer Brown LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3237

Attorneys for BNSF Railway Company

May 21, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May 2008, a true and correct copy of the foregoing Petition for Clarification is being served as follows:

By E-mail And UPS Overnight Delivery:

Lawrence E. Wzorek
William G. Barr
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

By Regular First-Class Mail Postage Prepaid:

William A. Mullins
Robert A. Wimbish
Baker and Miller PLLC
Suite 300
2401 Pennsylvania Avenue, NW
Washington, DC 20037

Christopher A. Mills
Slover & Loftus
1224 17th Street, NW
Washington, DC 20036-3003

Gordon P. MacDougall
1025 Connecticut Avenue, N.W.
Suite 919
Washington, DC 20036

