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Via E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, S.W.
Washington, DC 20423

ENTERED
Office of Proceedings
February 22, 2024
Part of
Public Record

February 22, 2024

**Re: Finance Docket No. 30800, Union Pac. Corp., Union Pac.
R.R. & Missouri Pac. R.R.—Control—Missouri-Kansas-
Texas R.R., et al.**

**Finance Docket No. 30800 (Sub.-No. 22), The Kansas City
S. Ry.—Trackage Rights—Over Missouri Pac. R.R. &
Missouri-Kansas-Texas R.R.**

Dear Ms. Brown:

Union Pacific Railroad Company is filing this letter in response to the letter filed by The Kansas City Southern Railway Company earlier today.

As the Board is aware, after The Kansas City Southern Railway Company petitioned the Board for relief in this matter, Union Pacific filed its own complaint for declaratory relief in the United States District Court for the Western District of Missouri. *See* Letter from Union Pac. to the Board (Aug. 23, 2023). Union Pacific has previously explained to the Board why the parties' dispute involves the interpretation of a negotiated contract term, not a mandatory merger condition, so jurisdiction lies with that court, not the Board. *See* Union Pac. Reply (Aug. 14, 2023); Union Pac. Supp. Br. (Oct. 20, 2023); Union Pac. Supp. Reply (Nov. 20, 2023).

Yesterday, the Court dismissed Union Pacific's complaint without prejudice to refile. The Court's decision turned on the fact that "[t]he same jurisdictional question is pending before the STB," *i.e.*, whether the term at issue is a contract term or merger condition. Order at 1.

First, the Court held that it lacked subject matter jurisdiction because the Board has exclusive jurisdiction to decide this threshold jurisdictional issue. The Court reasoned that the Board has "exclusive jurisdiction to clarify the scope of its own orders when they are in question." Order at 6. "At bottom," the Court held that it "would necessarily have to interpret the scope of the merger approval" to agree with Union Pacific that the term at issue was not within that scope.

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Second, the Court held that even if it had subject matter jurisdiction to decide the jurisdictional issue now pending before the Board, it would still dismiss under the primary jurisdiction doctrine. “The Court defers jurisdiction to the STB” because, among other things, “the issue is already before the STB.” Order at 9.

The Court noted: “If the STB ultimately decided it had jurisdiction over the issue, this lawsuit would be futile. On the other hand, if the STB determined this is a contractual dispute better left for the Court to decide, UP could re-file its Complaint with the Court.” Order at 9 n.5.

Accordingly, the question of whether the term at issue is a negotiated contract term or mandatory merger condition, and thus whether the merits of this dispute are properly resolved by the Court or the Board, is now solely before the Board for decision.

Please contact me if you have any questions.

Sincerely,

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

Michael L. Rosenthal
*Counsel for Union Pacific
Railroad Company*

cc: All counsel of record