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ENTERED
Office of Chief Counsel
November 16, 2026
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
-CONTROL-
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

COMMENTS OF JOHN STEPHEN THORNE
(JST-2)

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SUMMARY

Union Pacific's main line through Marshall, Texas, part of the proposed combined system, began as the line of the Southern Pacific Railroad Company, a Texas corporation unrelated to the Southern Pacific system Union Pacific acquired in 1996. In prior federal litigation, Union Pacific relied on court-ordered sales held in 1868 to say that the original stockholders' interests had ended. A former federal bankruptcy judge, as an expert, concluded that the October 1868 foreclosure sale was a nullity, and the case ended on laches without any court deciding whether the sales were valid. **The Commenter asks only that this be noted on the record, and that the Applicants state whether Union Pacific still maintains that the 1868 sales ended the original stockholders' interests, whether those sales form any part of the basis for its present title to that line, and, if they do not, what basis it relies on for that title.**

I. INTEREST OF THE COMMENTER

John Stephen Thorne is a party of record in this proceeding, having filed a notice of intent to participate on August 10, 2026. He holds Certificate No. 1656, issued at Marshall, Texas, in 1859 for 300 shares of the Southern Pacific Railroad Company (the "Southern Pacific"), a Texas railroad corporation chartered in 1852

and unrelated to the Southern Pacific system that Union Pacific acquired in 1996. Union Pacific is the successor to the Texas and Pacific Railway Company, which acquired the Southern Pacific's line and franchise at Marshall in 1872. That line is now part of Union Pacific's main line. These comments are submitted under the procedural schedule the Board adopted in August 2026, which set November 18, 2026, as the date for comments on the Revised Application.

II. THE HALL SALES AND THE COURT RECORD

In 1868 the Southern Pacific's property was the subject of a series of court-ordered sales, known as the Hall sales. In federal litigation, Union Pacific relied on those sales, maintaining that they extinguished the rights of the Southern Pacific's original stockholders.[1]

In that litigation, Leif M. Clark, who served as a United States Bankruptcy Judge for the Western District of Texas from 1987 to 2012, examined the 1868 Hall sales as an expert. In his amended report of March 31, 2017, Judge Clark concluded that the October 1868 foreclosure sale was a nullity.[2]

No court in that litigation decided whether the Hall sales were valid, and the Commenter is aware of no court that has. The district court dismissed the action on November 21, 2017, on the ground of laches alone, stating that it was unnecessary to consider the other arguments in Union Pacific's motion, including its argument that the stock had been extinguished. The United States Court of Appeals for the Fifth Circuit affirmed on laches alone.[3] Judge Clark's conclusion is an expert opinion, not a judicial determination, and neither court adopted or rejected it.

Beginning in 1907, Union Pacific's own correspondence file reflects repeated responses to holders of Southern Pacific stock attributing the end of their interests to the 1868 Hall sales. The Commenter is aware of no case before 2015 that asked a court to decide whether those sales were valid.[4]

1. *Thorne v. Union Pacific Corp.*, No. 1:15-CV-561-RP (W.D. Tex.).
2. Leif M. Clark, Amended Expert Report at 7 (Mar. 31, 2017), *Thorne v. Union Pacific Corp.*, No. 1:15-CV-561-RP (W.D. Tex.).
3. *Thorne v. Union Pacific Corp.*, No. 1:15-CV-561-RP, Dkt. 118 (W.D. Tex. Nov. 21, 2017), *aff'd*, No. 18-50019 (5th Cir. Nov. 20, 2018) (per curiam), *cert. denied*, No. 18-1169 (U.S. Apr. 15, 2019).
4. Union Pacific produced its file of that correspondence in *Thorne v. Union Pacific Corp.*, No. 1:15-CV-561-RP (W.D. Tex.).

III. WHY THE QUESTION BELONGS ON THIS RECORD

In a major transaction the Board must determine whether the transaction is consistent with the public interest. 49 U.S.C. § 11324(b), (c). Title is a matter for the courts, and the Commenter does not ask the Board to decide it. Union Pacific's main line through Marshall would be part of the combined system, and the Board and the parties rely on the Applicants' representations about the lines that system would include. Because Union Pacific relied on the Hall sales in prior litigation, the Applicants are best placed to say whether those sales form any part of the basis for its present title to that line.

For more than a century, the Hall sales were cited in correspondence as the reason the original stockholders' interests had ended, yet no court has decided whether those sales were valid. Whether Union Pacific relies on those sales for its present title to the Marshall line is a separate question. It belongs on this record, where the Board, the parties, the Department of Justice, the Department of Transportation and the public can see the question and whatever answer the Applicants provide.

IV. REQUESTED ACTION

The Commenter respectfully asks the Board to:

1. Take notice that a former federal bankruptcy judge, serving as an expert in prior litigation, concluded that the October 1868 Hall foreclosure sale was a nullity, and that the courts in that litigation did not decide whether the Hall sales were valid; and

2. Request that the Applicants state on the record whether Union Pacific still relies on the 1868 Hall sales as having ended the original stockholders' interests, whether those sales form any part of the basis for its present title to the former Southern Pacific line at Marshall, Texas, and, if they do not, the basis on which it does rely.

VERIFICATION

I, John Stephen Thorne, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file these Comments. Executed on November 16, 2026.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on November 16, 2026, I served a copy of these Comments on the following, by electronic mail where the recipient has consented to electronic service and otherwise by first-class mail:

The Secretary of Transportation, United States Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590;

The Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530;

Michael L. Rosenthal, Covington & Burling LLP, One CityCenter, 850 Tenth Street NW, Washington, DC 20001, representative of Union Pacific Corporation and Union Pacific Railroad Company;

Raymond A. Atkins, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005, representative of Norfolk Southern Corporation and Norfolk Southern Railway Company;

Hon. Jenifer Soulikias, Administrative Law Judge, alj.soulikias.inbox@stb.gov; and

All other parties of record in Docket No. FD 36873.



John Stephen Thorne