

**Before the
Surface Transportation Board
Washington, DC 20423**

In the Matter of:

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**

SECRETARY
JAN 15 2002
Part of
Public Record
Finance Docket No. 32760
Petition of The Burlington Northern and
Santa Fe Railway Company for
Clarification



COMMENTS OF UNION CARBIDE CORPORATION

Union Carbide Corporation (“UCC”), a wholly owned subsidiary of The Dow Chemical Company, by its attorney, respectfully submits its comments in response to the petition of The Burlington Northern and Santa Fe Railway Company (“BNSF”) seeking clarification of the “build-in/build-out” condition imposed by the Board in approving the merger of the Union Pacific Railroad and Southern Pacific Railway (“UP/SP”), said petition having been filed December 17, 2001 (BNSF-97).

UCC's Seadrift, Texas plant is the subject of a build-in application filed with the Board on January 31, 2001 in Finance Docket No. 34003. Given that the issues raised by BNSF, namely under what circumstances BNSF is required to construct or fund construction of a new connection or other facilities or improvements to serve a build-in/build-out line pursuant to the UP/SP merger conditions, and the operating right of BNSF on the trackage rights line, arose in the context of the Seadrift build-in, UCC has an inherent interest in this matter.

UCC fully supports the position of BNSF and respectfully submits that UP has taken an extreme and unjustified position with regard to BNSF's rights under the build-in/build-out condition. That condition was imposed on UP/SP in order to maintain and replicate, to the maximum extent possible, the pre-merger competition between UP and SP. Consequently, BNSF was given operating rights over the lines of the UP/SP in order to maintain competitive service at points where that service otherwise would have been lost due to the merger.

UP's position that "any level of interference with [UP's] operation and service to its customers by operating rights granted in the UP/SP merger is unacceptable"¹ reflects a circularity of reasoning which is fundamentally inconsistent with the trackage rights granted to BNSF in its settlement agreement with UP and SP, as modified by the CMA Settlement and by the Board in the conditions imposed in approving the UP/SP merger. Any operation by BNSF pursuant to its trackage rights necessarily occupies UP's tracks for a period of time; and therefore, by precluding simultaneous operation, any BNSF train operation has the potential to "interfere" with UP's operations. Necessarily, therefore, BNSF's operations over UP's tracks require coordination between the owning railroad and the tenant. That coordination well may require accommodation on the part of both parties. UP, which sought out BNSF and entered into the settlement entailing extensive trackage rights and then touted the BNSF Settlement in the merger proceeding as enhancing competition in the Gulf Coast, now wants BNSF to operate in a totally subservient manner, with no accommodations by UP to BNSF's exercise of its trackage rights.²

¹ Petition at Attachment B, letter of September 24, 2001 from Steve Barkley, Regional Vice President, Southern Region, UP, to Rollin Bredenberg, Vice President, Service Design & Performance, BNSF.

² UP also ignores the fact that the operation by BNSF to serve the Seadrift facility would offset UP's operations, thereby effectively freeing up some line capacity and reducing UP's operations in serving Seadrift via the same mainline track over which BNSF will operate.

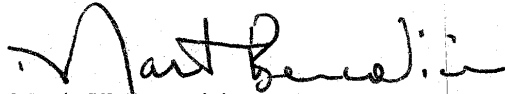
Not only is UP's position inconsistent with the Board's UP/SP merger decision, the BNSF Settlement and the CMA Settlement, but also it is inconsistent with statutory policy. That policy is reflected in three (3) provisions of the ICC Termination Act. Section 11102 provides that the Board may require one carrier to allow another to utilize terminal facilities where the Board finds such use "to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities . . . to handle its own business." 49 USC §11102(a) (emphasis added). Similarly, Section 11103 requires a carrier to maintain a switch connection to enable traffic to move "to the best of its ability without discrimination in favor of or against the shipper when the connection (1) is reasonably practicable . . ." 49 USC §11103(a) (emphasis added). Thirdly, pursuant to the directly analogous circumstance of line crossing for new rail construction, "no other rail carrier may block any construction . . . by refusing to permit the carrier to cross its property if - . . . (B) the operation does not materially interfere with the operation of the crossed line . . ." 49 USC §10901(d)(1) (emphasis added). Accordingly, the statute itself establishes the criteria for intersecting carrier operations based upon reasonable accommodation (or stated alternatively, toleration of reasonable interference), rather than based upon the absolute "no interference" standard asserted by UP.

UCC further is concerned by the issue posed in UP's letter of September 24, 2001, and discussed in the BNSF petition, that UP is entitled to block BNSF's operations on the Placedo-to-Kamey line while it parks rail cars for customer unloading. Again, the trackage rights condition requires that reasonable accommodation be made. The Placedo-to-Kamey line formerly was operated by the SP; and had SP served the Seadrift plant through a build-in/build-out along the route selected by BNSF, which essentially replicates the route formerly considered by UCC and SP for a line to connect to SP, it is inconceivable that SP would have blocked its

own service to Seadrift in the manner that UP claims it is entitled to block BNSF service to Seadrift. Such an approach does not preserve or replicate the competitive opportunity that existed prior to the UP/SP merger, but rather hinders efficient operation and therefore competition.

WHEREFORE, THE PREMISES CONSIDERED, Union Carbide Corporation strongly urges the Surface Transportation Board to grant the BNSF Petition for Clarification, and to direct Union Pacific Railroad to make reasonable accommodation to The Burlington Northern and Santa Fe Railway Company to enable BNSF to render efficient and competitive service pursuant both to the trackage rights granted and to the build-in/build-out condition, particularly including their application to BNSF service to UCC's Seadrift plant.

Respectfully submitted,



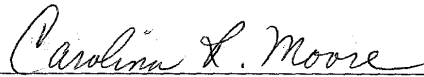
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January 14, 2002

CERTIFICATE OF SERVICE

I, Carolina R. Moore, do hereby certify that on this 14th day of January, 2002, I have caused a copy of the foregoing Comments in Finance Docket Number 32760 to be served, by first class mail, postage paid, upon all parties of record.



Carolina R. Moore