

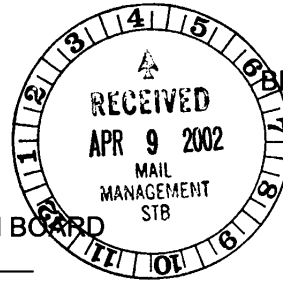
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BEFORE THE
SURFACE TRANSPORTATION BOARD



BNSF-102

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

OBJECTIONS AND RESPONSES OF THE
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO UNION PACIFIC RAILROAD COMPANY'S
REQUESTS FOR THE PRODUCTION OF DOCUMENTS

The Burlington Northern and Santa Fe Railway Company ("BNSF") objects as follows to Union Pacific Railroad Company's ("UP") Requests for the Production of Documents.

Subject to the objections set forth below and pursuant to the Protective Order entered in this proceeding, BNSF will produce non-privileged documents responsive to UP's Document Production Requests. If necessary, BNSF is prepared to meet with counsel for UP at a mutually convenient time and place to discuss informally resolving these objections. BNSF is continuing its efforts to locate and identify responsive documents and will supplement its response to the Document Production Requests when any such documents are located and identified.

GENERAL OBJECTIONS

BNSF objects to UP's Document Production Requests on the following grounds:

1. Privilege. BNSF objects to UP's Document Production Requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.

2. Relevance/Burden. BNSF objects to UP's Document Production Requests to the extent that they seek information or documents that are not directly relevant to this proceeding, to the extent that a response would impose an unreasonable burden on BNSF, and to the extent that they seek information or documents that are as readily, or more readily, available to UP as BNSF.

3. Settlement Negotiations. BNSF objects to the production of documents prepared in connection with possible settlements of this or any other proceeding. Notwithstanding this objection, as UP has requested documents relating to settlement agreements to which it is a party, BNSF will produce such documents based on its agreement with UP (i) that UP will not reveal any such documents or their contents to other persons unless UP is ordered to provide such information by the Surface Transportation Board and (ii) that, if UP reveals any such documents or their contents in a submission to the Board, it will file its submission under seal along with a request for an appropriate protective order.

4. Scope. BNSF objects to UP's Document Production Requests to the extent that they attempt to impose any obligation on BNSF beyond those imposed by the General Rules of Practice of the Surface Transportation Board ("Board"), 49 C.F.R. § 1114.21-31.

OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

1. Produce all documents created prior to 1997 supporting BNSF's assertion that "when UP and BNSF agreed to the negotiated level of BNSF's mills per ton-mile charges in 1995, they were fully aware of the purchase premium, and the premium was to be part of the all-inclusive GTM mill rate.

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF states that the fact that UP had agreed to pay a purchase premium with respect to its acquisition of SP was reflected in a number of publicly-available documents issued by UP and/or SP in August and September of 1995, including, without limitation, press releases, filings with the Securities and Exchange Commission, and reports in the trade and general press. The fact of the purchase premium was also evident from a comparison of the price per share which UP agreed to pay for SP stock (\$25.00 per share) with the price per share of SP stock at the time of the August 4, 1995 announcement of the transaction (approx. \$19.62 per share). The fact that the purchase premium was to be included in the GTM mill rate is reflected in Section 9(a) of the BNSF Settlement Agreement.

Because the documents referenced above are as readily, if not more readily, available to UP as to BNSF, BNSF is not producing the documents at this time but is willing to discuss with counsel for UP the production of any of such documents.

2. Produce all documents created prior to 1997 reflecting communications, discussions or agreements between BNSF and UP, or among BNSF, UP and any third parties, regarding whether one or both of "the disputed items (i.e., costs related to the acquisition premium and costs related to Section 9(c)(i) and (iii) capacity improvements) should be excluded (in the years in which they would otherwise be included) from the URCS calculations required to create the Section 12 adjustment factor."

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF states that Sections 9(a) and 9(c)(i) and (iii) of the BNSF Settlement Agreement reflect the parties' agreement that the

disputed items should be excluded from the URCS calculations required to create the Section 12 adjustment factor.

3. Produce all documents created prior to 1997 regarding whether one or both of "the disputed items (i.e., costs related to the acquisition premium and costs related to Section 9(c)(i) and (iii) capacity improvements) should be excluded (in the years in which they would otherwise be included) from the URCS calculations required to create the Section 12 adjustment factor.

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF states that Sections 9(a) and 9(c)(i) and (iii) of the BNSF Settlement Agreement reflect that the disputed items should be excluded from the URCS calculations required to create the Section 12 adjustment factor.

4. Produce all documents, regardless of date, supporting BNSF's assertion that "the inclusion of the purchase premium and the capital expenditures UP was solely to fund" would increase the trackage rights fees that BNSF pays UP under the BNSF Settlement Agreement "in the range of approximately 0.2 mills."

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF is producing documents responsive to this request.

5. If BNSF files a pleading in response to the Surface Transportation Board's order to show cause why the Board should not dismiss the BNSF-98 clarification petition for failure to state a claim, produce when it serves its pleading all documents supporting any calculations and assertions about the intent of any party to any agreement that BNSF includes in its pleading.

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF states that it will produce documents as it is required to do by the Board's rules and regulations.

Respectfully submitted,

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April 9, 2002

CERTIFICATE OF SERVICE

I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Objections and Responses to Union Pacific Railroad Company's Requests for Production of Documents (BNSF-102) are being served as follows:

By Hand:

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and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all other parties of record in Finance Docket No. 32760 (Sub-No. 21).

