



Robert T. Opal
General Commerce Counsel

March 8, 2006

Via E-Filing

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

**Re: Ex Parte No. 575 Review of Rail Access and Competition Issues - Renewed
Petition of the Western Coal Traffic League**

Dear Mr. Williams:

Enclosed for filing in the above proceeding is the Statement of Warren C. Wilson, Senior Director-Rail Line Planning, Union Pacific Railroad Company.

Union Pacific joins in the comments being filed by the Association of American Railroads. The enclosed Statement by Mr. Wilson represents Union Pacific's additional comments.

As provided in the Board's February 1, 2006 decision, we are not serving this submission on the other participants in this proceeding. Any participant desiring a hard copy should contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. T. Opal", written over a horizontal line.

Robert T. Opal
General Commerce Counsel
Direct dial: 402/544-3072
Fax: 402/501-0132

cc: (w/attachments)

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 575

REVIEW OF RAIL ACCESS AND COMPETITION ISSUES --
RENEWED PETITION OF THE WESTERN COAL TRAFFIC LEAGUE

STATEMENT OF WARREN C. WILSON
SENIOR DIRECTOR - RAIL LINE PLANNING
UNION PACIFIC RAILROAD COMPANY

UNION PACIFIC RAILROAD
COMPANY

J. Michael Hemmer
Louise A. Rinn
Robert T. Opal
1400 Douglas Street
Mail Stop 1580
Omaha, NE 68179
Tel: 402/544-3072
Fax: 402/501-0132

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CONTENTS

I.	Introduction	3
II.	Responses to Issues Raised By the Board's February 1, 2006 Decision.....	5
	A. Board Authority to Address Pre-existing Interchange Commitments....	5
	B. Identification and Description of Existing Interchange Commitments...	7
	C. Problems Experienced by Shippers.	11
	D. Short and Long Term Impacts of Interchange Commitments.....	12
	E. Effectiveness of Existing AAR/ASLRRA Agreement.	12
	Exhibit A - Ex Parte No. 582 (Sub-No. 1), Verified Statement of Warren C. Wilson, June 5, 2000.....	15

My name is Warren C. Wilson. I am Senior Director Rail Line Planning for Union Pacific Railroad Company ("UP").

I have worked in the railroad industry for 38 years, and have worked in UP's shortline group since 1987, when UP completed its first shortline transaction in the post-Staggers era. Prior to 1987, I held various marketing and operating positions with the Missouri Pacific Railroad and the Pennsylvania Railroad.

I am responsible for UP's relationships with shortline and regional railroads. In that connection, I am familiar with the contractual arrangements between UP and its shortline connections, as well as the process by which many of the shortlines were created to operate lines that were part of the UP system. I participated in the industry negotiations which resulted in the Railroad Industry Agreement in 1998 as well as the Revised Agreement in 2004. I have served on the Railroad Industry Working Group ("RIWG") since its creation.

I. Introduction

This proceeding arises from a proposal which was originally filed by the Western Coal Traffic League ("WCTL") in 1998, and refiled in 2005. The WCTL proposal is directed against interchange commitment provisions which appear in certain shortline spinoff contracts (sometimes, though inaccurately, called "paper barriers") which require or incent the shortline to interchange traffic with the selling or leasing railroad. WCTL wants the Board to adopt a rule which would brand these provisions as "inherently anti-competitive", and "presumptively unreasonable," and make them subject to challenge by the shortlines and shippers. The new standard would apply not only to new shortline transactions,

but also to the shortline transactions which were authorized and consummated long ago. The shortline and regional railroads themselves largely oppose what WCTL is requesting.

I previously submitted a verified statement in Ex Parte No. 582 (Sub. No. 1) Major Rail Consolidation Procedures that extensively discussed similar proposals on shortline interchange commitments which were made in that proceeding.¹ That statement explained the reasons for shortline interchange commitments, and why these commitments were in the interests of both railroads and rail customers. Rather than repeat that discussion, I have attached a copy of that Verified Statement as Exhibit A ("2000 Statement"). In the remainder of my present statement, I will focus primarily on the issues raised by the Board in its February 1, 2006 decision. But the point I want to make at the outset is that the interchange commitments WCTL is attacking are entirely legitimate, and usually essential to make the economics of a shortline "spin-off" transaction work for both the Class I road and the shortline. There is nothing inherently anti-competitive about them. Indeed, they are not anti-competitive at all. They do not result in any rail customers losing competitive options which they would have had the shortline transaction not taken place. Without interchange commitments, most shortline transactions would never have taken place at all.

¹ My statement was included in "Union Pacific's Reply Comments" dated June 5, 2000.

II. Responses to Issues Raised By the Board's February 1, 2006 Decision

A. Board Authority to Address Pre-existing Interchange Commitments.

I am not a lawyer, so I cannot address whether the Board has the legal authority to alter interchange commitments in shortline transactions that were previously authorized and implemented. I would, however, like to comment on this issue from a business perspective. When UP evaluates a shortline proposal, a key element is the financial impact of any traffic that could be lost to UP as a result of the deal, which primarily consists of traffic now being handled by UP that the shortline could interchange to another railroad. This has a material effect on the price we are willing to accept either to sell or to lease the line. If the shortline can divert this traffic away from UP and interchange it with other carriers, then the purchase or lease payments must be high enough to compensate UP for the revenue it would lose, or there will be no deal.

On the other hand, if the shortline chooses to have a cooperative business relationship with UP and is willing to agree to an interchange commitment that assures UP that it will continue to handle this traffic (or that, if it does not, UP will receive additional compensation), then we don't have to build compensation for this traffic into the lease. This means that the price paid by the shortline to acquire the property can be relatively low. In fact, in most of our shortline leases, the shortline pays nothing to use our assets if it interchanges most of the traffic generated by the leased lines to UP. The reason the shortline pays nothing is that UP is not losing the income stream generated by the assets. This allows the

shortline to use its available resources in providing service and keeping the line in shape.

If the Board were to start voiding interchange commitments in consummated shortline agreements while leaving the rest of the agreements unchanged (which appears to be what WCTL is seeking), the effect would be a repricing of the original transactions by allowing the shortline to use our property without any form of compensation for the property or its income stream. The 1992 UP lease to the Missouri & Northern Arkansas Railroad ("MNA") highlighted in previous submissions in this proceeding is an excellent example of how such a policy would deprive UP of its property without compensation in order to artificially create intramodal competition that did not exist before.²

The MNA lease eliminated no competitive options that customers or the leased lines had prior to the lease. It simply replaced UP (MP) with MNA as the serving carrier. As can be seen by the excerpt from the lease attached as Attachment 3 to WCTL's latest filing, MNA pays no rent to UP if it interchanges 95-100% of its interline traffic with UP (excluding local traffic, traffic which had competitive options prior to the lease and certain intermodal traffic). In the event MNA chooses to interchange less than 95% of its business with UP, a schedule of rental payments applies which increases as the percentage of UP interchange traffic decreases.

MNA has never paid UP any rent for the approximately 400 miles of track it is leasing from UP. The only reason it makes economic sense for UP to lease

² Arkansas Electric Cooperative Corp. and Entergy Arkansas Inc., May 2, 2005.

400 miles of track to MNA for no rent is because UP has not lost the income stream represented by the MNA interchange traffic, so UP does not need to obtain compensation for this. Were the Board to simply void the interchange commitments in these leases, the result would be that UP would be leasing these assets to MNA with no compensation for the value of the assets or the income stream they produce.³ No rational business would make a deal like this. If the ICC had taken exception to the interchange commitments in the MNA lease in 1992, we would never have done the transaction.

I can guarantee that, were the Board to start voiding interchange commitments in consummated shortline deals, we would terminate most of our existing shortline leases as quickly as possible. I can also guarantee that we would do very few shortline deals in the future. They would essentially be limited to transactions where the shortline was willing and able to compensate us up front for the net present value of the traffic that would be put at risk, or transactions where there was no traffic at risk.

B. Identification and Description of Existing Interchange Commitments.

UP is made up of a number of predecessor roads which handled interchange arrangements in different ways, which I will describe below. However, there are some important similarities.

³ I note that, under WCTL's proposal, the Board would not be permitted to consider "the revenues earned by the selling carrier for handling traffic originating or terminating on those properties [the shortline] over other parts of its system" (WCTL 12-28-98 comments, Appendix B, p. 2). This is economically irrational, as the market value of assets must be derived from the revenue stream those assets can generate.

First, the kind of interchange commitment the Board is concerned with appears only in "spin-off" contracts, where the shortline is operating a former UP or UP-predecessor line. We do not have these kinds of arrangements with shortlines which were historically independent, or which are operating lines acquired from non-UP roads.

Second, in no case do these provisions eliminate any competitive options which shippers had before the spin-off. As such, it is simply not accurate for WCTL to say these arrangements are "inherently anti-competitive". They are not anti-competitive at all. They usually make rail service more competitive, by reducing the costs of providing service and improving service quality.

Third, "interchange commitments" in UP or UP predecessors' shortline deals normally do not stand in isolation. They are typically part of a bundle of provisions which establish an ongoing, cooperative business venture between UP and the shortline. In most of our shortline leases, for example, UP markets the shortline routings to offline customers, treats shortline-served points as UP points in its pricing documents, makes arrangements with connecting carriers beyond UP for pricing shortline traffic, and provides the shortline with a wide variety of support functions such as equipment supply, interline settlements, etc.⁴

With these points in mind, let's look at UP's principal component roads.

⁴ WCTL seems to be treating shortline transactions as if they were "walk-away" transactions between a buyer and seller of a business subject to contractual "no compete" clauses (e.g., Joe sells his grocery store to Sam, and "walks away" from the business; Sam gets a commitment that Joe won't open a competing store in the area for a period of time, but they have no continuing business arrangement). A better analogy would be McDonald's leasing a restaurant to a franchisee for free, subject to a requirement that the franchisee operate it as a McDonald's restaurant, not a Burger King.

Union Pacific - the "old" UP (including Missouri Pacific) normally structured its post-Staggers shortline spin-offs as leases for fixed terms. The older deals typically have longer terms than the newer ones. The lease agreements generally allow shortlines to choose between interchanging a high percentage of traffic with UP or paying a cash rent for use of the property. Rents vary widely dependent on the size of the property. If the shortline chooses to interchange a high percentage of traffic to UP, the cash rent payment drops to zero. In these agreements, the shortline may interchange a small percentage of traffic to another Class I without payment of rent. Given the size of some of these operations the "small percentage" can run into the thousands of carloads annually.

Southern Pacific - SP had a somewhat different way of handling interchange commitments. SP's major shortline deals were leases, combinations sale-leases, or sales of track with SP retaining the underlying real estate. SP's contracts provide a "Going Business Concern" ("GBC") charge. Cars interchanged to another Class I were subject to this charge for the use of SP's assets or franchise without benefit to SP.

Chicago & North Western - CNW did not do as many shortline spin-offs as UP or SP, but some of its deals (DM&E and FRVR) were major. Unlike UP and SP, CNW structured most of its shortline spin-offs as sales. Its most common approach to dealing with potential loss of interchange traffic was to retain segments of track in selected locations, and then grant the shortline overhead trackage rights on these segments.

I've listed below the shortlines (including regional roads) which have agreements with UP with various types of interchange commitments. Note that in many cases the interchange commitments apply only to a portion of a railroad. This typically occurs where only a portion of the road is a UP spin-off. In these cases, the interchange commitments apply only to the portion of the road which was "spun-off" from UP.

- Albany & Eastern *
- Arkansas Oklahoma *
- California Northern
- Central Oregon & Pacific
- Dakota, Minnesota & Eastern *
- Dallas Garland & Northeastern
- Fort Smith
- Fort Worth & Western *
- Kansas & Oklahoma *
- Kyle Railway *
- Missouri & Northern Arkansas
- Missouri Central (now Central Midland)⁵
- Modoc Northern
- Nebraska Central *
- New Orleans & Gulf Coast *
- Palouse River & Coulee City
- Portland & Western *
- Progressive Rail *
- Richmond Pacific *
- Rio Valley Switching
- Salt Lake City Southern
- San Joaquin Valley *
- San Luis & Rio Grande
- South Kansas & Oklahoma *
- Texas Northeastern
- Tulsa-Sapula Union *
- Wichita, Tillman & Jackson
- Willamette Valley
- Wisconsin Southern *

* Indicates that only a portion of the property is subject to an interchange commitment.

⁵ The Missouri Central sale agreement prohibits termination of coal traffic at Labadie, MO. The line was sold at a price based on the net liquidation value of the property and the price did not include going concern value of the coal traffic, because the line did not move this traffic.

It is interesting to note that, while WCTL is a trade association of coal shippers and consumers, only one of the above railroads - the Missouri & Northern Arkansas (MNA) - provides unit coal train service to electric utilities, specifically the KCP&L plant at Ladue, MO and the Entergy plant at Newark, AR. MNA leases the rail lines which serve these plants from UP. At the time the lease was made in 1992, UP (through its then subsidiary Missouri Pacific) was the only railroad that served either power plant. The lease to the MNA did not reduce competition at either plant. The picture WCTL tries to paint is that the lease somehow eliminated MP's ability to interchange with either UP or BNSF. WCTL ignores the fact that UP acquired control of MP in 1983, and the MNA lease was made in 1992, after MP had been part of the UP system for nearly 10 years. As such, the lease did not eliminate any competitive options which MNA customers had prior to the lease. In fact, at those locations on the leased lines where another railroad had access to UP customers through reciprocal switching arrangements prior to the lease, those arrangements were preserved to prevent any reduction in competition.

C. "Problems" Experienced by Shippers.

The main "problem" WCTL and its allies seem to be complaining about is that they would prefer to have more railroads serving their facilities (directly or indirectly) and they characterize "paper barriers" (i.e., interchange commitments) as the villain standing in the way of that outcome. The trouble with this view is that it assumes that, "but for" the interchange commitment, they would have had more access to other railroads in the shortline transactions that they are

complaining about. The reality is that, "but for" the interchange commitments most of the shortline transactions would never have occurred at all. The correct way to look at this alleged problem is to ask whether the shortline transactions eliminated any competitive options shippers previously had, and the answer to that question is "no".

D. Short and Long Term Impacts of Interchange Commitments.

The ability of shortlines to successfully operate rests primarily on the value of their traffic and their ability to generate the capital needed to maintain the equipment and the facilities they are using. As I have previously discussed, the interchange commitments used by UP allow shortlines to concentrate their resources on providing service and maintaining equipment and facilities rather than paying lease payments or debt service on a purchase price that compensates UP for the value of the traffic. In my experience, the vast majority of shortlines desire this kind of arrangement to avoid the need to pay out cash for lease payments or to raise acquisition capital to fund a purchase.

E. Effectiveness of Existing AAR/ASLRRRA Agreement.

The main "objective" of the RIA agreement, as it relates to interchange commitments, is to provide a means for a shortline to handle traffic that the Class I with an interchange commitment won't handle, or can't handle. Necessarily, any such business would be "new business" that the Class I road is not presently handling, which is the reason the RIA's provisions on waiver of interchange commitments are limited to this traffic. The RIA was never intended as a means to achieve "open access" which would undermine the economics of the

underlying shortline agreements. It is designed to give the shortline an opportunity to handle traffic that the Class I road isn't going to handle.

In my view, the agreement has been successful in accomplishing this objective. UP itself has granted all but a handful of the waiver requests it has received. As mentioned in the RIWG comments which are being separately filed, a large majority of the shortline waiver requests that have been filed under the agreement have been granted.

The RIA also provides for renegotiation of shortline agreements, including the modification of interchange commitments and additional compensation that may be due the "large railroad" for such a modification. While this applies to all of our shortline arrangements, we have had only one shortline inquire about an interchange commitment modification under this provision, and it did not pursue the matter. We have, however, successfully negotiated the modification of the interchange commitment applicable to the DM&E at Owatonna, MN mentioned at pp 73-64 of my 2000 statement, although these negotiations were not under the auspices of the RIA.

VERIFICATION

Warren C. Wilson, Senior Director-Rail Line Planning of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the statement in Ex Parte No. 575, knows the facts stated therein, and that said facts are true as stated.

Dated: March 6, 2006.


Warren C. Wilson

**VERIFIED STATEMENT
OF
WARREN C. WILSON**

My name is Warren C. Wilson. I am Senior Manager – Rail Line Planning for Union Pacific Railroad Company (“UP”). I have worked in UP’s Shortline Group since 1987, when UP completed its first shortline transaction in the post-Staggers era. For the preceding 20 years, I held various marketing and operating department positions with the Missouri Pacific and Pennsylvania Railroads.

I am responsible for UP’s relationships with shortline and regional railroads. In that connection, I am familiar with the contractual relationships between UP and its shortline connections, as well as the process by which many of those shortlines were created to operate lines that were part of the UP system.

This statement addresses the comments made by various parties in Ex Parte No 582 (Sub-No. 1) proposing that the Board adopt rules eliminating – or requiring Class I carriers affirmatively to justify the continued existence of – so-called “paper barriers.” The term “paper barriers” is a misleading one used by some to describe a wide variety of contractual provisions between shortlines (and sometimes Class II railroads) and the Class I carriers out of whose systems they were formed that address the interchange of traffic between the shortline and other carriers.

The Board should not adopt rules that would modify or extinguish these contractual provisions. They represent a fundamental part of the transactions freely entered into by the shortlines to acquire their line (by purchase or lease) from the Class I railroad. Altering this aspect of the deal reached voluntarily between these carriers would amount, in essence, to a re-pricing by the Board of the original transaction, either to increase the cash purchase price or

rental paid by the shortline, to the shortline's disadvantage, or to deprive the Class I of the value of its asset as reflected in the purchase price (or rental terms) negotiated at arm's length with a willing buyer or lessee.

UP's Shortline Relationships

I begin by explaining what "paper barriers" really are and why they are beneficial to the Class I railroads, shortline railroads, and the shipping community.

Many of the comments in this proceeding create the impression that "paper barriers" are pervasive and onerous restrictions on the interchange options of shortlines that lack any valid justification. Those comments imply that shortlines purchased rail lines for their full going concern value, but nevertheless must abide by interchange restrictions imposed by the selling carrier or pay significant penalties. In fact, most of the UP lines subject to contractual interchange provisions are merely leased, and they remain UP's property. In a few instances, UP sold rail lines for substantially less than their market value based on UP's expectation that it would continue to receive revenues from the traffic generated by the line. Some commenters acknowledge that the contractual limitations on interchange were fair when shortlines were formed, but suggest that the justifications may have disappeared with the passage of time. In fact, contractual provisions addressing interchange serve important ongoing purposes and provide important benefits to the shortline, its Class I connection and the shippers that they serve.

I am familiar with all of the 164 shortlines that connect with UP's system. The vast majority of those shortlines – 88% – are not subject to *any* contractual provisions affecting their ability to interchange with carriers other than UP. Of the remaining lines, many are UP shortline spin-offs which operate on trackage which is still owned by UP and leased to the

shortline. UP's lease agreements with these shortlines do *not* prohibit the shortline's interchange of traffic with other carriers. To the contrary, under UP's shortline leases, the shortline is free to interchange traffic with carriers other than UP. Lease provisions addressing interchange with other carriers provide attractive financial terms designed to encourage the shortline to interchange with UP so that UP can share in the revenue generated by the line's traffic. But these incentives *benefit* the shortline, which can choose to reduce or eliminate its rental obligations to UP by interchanging a higher percentage of traffic with UP. In effect, the shortline can choose to pay rent to UP in the form of interchange traffic or in cash. In the 13 years since UP started spinning off branch lines, no leased line has *ever* paid cash. As one shortline operator put it to me, if he has 10,000 carloads annually, he can deliver all of them to UP and pay no rent, or split the traffic between UP and other carriers and pay UP rent.

In a very small number of other cases, UP or its predecessors spun off lines to shortlines or Class II railroads through outright sales. In some of those situations the shortline and UP entered agreements addressing the shortline's interchange of traffic with other carriers, usually in return for a reduced sale price to the shortline.

The rent provisions in UP's shortline lease arrangements that allow payment in traffic rather than cash – and analogous provisions in sale agreements – provide significant ongoing benefits to shortlines. When UP “spins off” a line to form a shortline – whether by sale or by lease – it is providing an asset (*i.e.*, ownership and/or use of the railroad's branch lines) that has going concern value to UP. The aim of these shortline transactions – from the perspective of both UP carrier and the shortline – is to make the line more profitable under shortline operation, as a result of the shortline's better cost structure, more intense focus on on-

line shippers and high service levels. But no railroad would voluntarily relinquish such an asset unless the purchaser (or lessee) was willing to compensate the owner for the asset's full value.

By agreeing to accept less cash up-front in exchange for interchange traffic, UP makes it easier for the shortline to acquire use of the line. In the case of a lease, the shortline does not need to pay an up-front purchase price at all. It thereby avoids the need to finance that purchase, which might discourage the acquisition altogether or at least require debt service payments that would have to be recouped in the rates the shortline charges its shippers. Those costs would make the shortline less competitive with other transportation modes and reduce its growth opportunities. This method of financing also allows the shortline to spend more of its resources on upgrading the line to improve service and attract new traffic. Once the line has been leased and the shortline is operating it, this arrangement also lets the shortline reduce or eliminate its rental costs by interchanging with UP, thereby allowing it to charge lower rates (or lower divisions) and invest in improved service. UP's approach to compensation for shortline spin-offs also insulates the shortline from the risk that traffic on the line will not meet expectations, since the shortline can meet its rental obligation by providing a *percentage* of whatever traffic it generates, rather than making a fixed rental payment every month or every year. In the case of a sale, similar benefits are realized when the shortline pays a sharply reduced up-front purchase price.

Contrary to the negative view of those who perceive "paper barriers" as restrictions, contractual benefits to the shortline do not disappear soon after the shortline acquires or leases its line, but continue throughout the period of its operation of the line (and provide a crucial part of the value and consideration to which UP is entitled). Without these arrangements, many of these transactions could never have been closed. UP certainly would not

have been willing to lease its lines for nothing if the shortline was to be free to interchange its traffic with all connections and cut UP out of any share of the revenue generated by its leased asset. From the shortline's perspective, leases or acquisitions often would not have been viable if the shortline had been required to service debt or make significant rental payments out of the revenue realized from on-line traffic. The burden of cash rental payments or debt service that reflect the full going concern value of leased lines would drive up shortline costs to the point where their rates or division requirements would render their shippers non-competitive and require the return of the lines to UP or lead to the abandonment of the property.

In light of these substantial benefits associated with the contractual arrangements between UP and its connecting shortlines, it should not be surprising that, of the many comments seeking rules addressing "paper barriers" that were submitted in this proceeding, none were submitted by UP's lessee shortline connections. The shortlines with whom I have discussed these issues much prefer having the option of paying UP in traffic rather than cash.

No Rule Is Required

Even if there were contractual provisions in certain agreements between Class I railroads and shortlines that limited the shortline's ability to make efficient interchange with other carriers, a sweeping new rule would not be an appropriate means of addressing those situations. Such situations are best addressed on a case-by-case basis through negotiations between the individual carriers involved.

UP has cooperated with its shortline and Class II connections in making reasonable accommodations to permit wider interchange with other carriers. For example, one Class II railroad – Dakota, Minnesota & Eastern ("DM&E") – has complained about "barriers" in its contracts with the UP predecessor (CNW) from which DM&E purchased its line. In

CNW's original agreement with DM&E, CNW granted DM&E trackage rights over a segment of CNW track through Owatonna, Minnesota. These rights did not generally permit interchange with other carriers via the CNW track at that location. But UP has nevertheless offered to allow DM&E, for a modest payment reflecting a portion of the construction cost savings DM&E would realize, to construct a new interchange track at Owatonna within the trackage rights limits to handle DM&E's planned Powder River Basin coal traffic with IMRL. UP also allowed DM&E to interchange grain traffic with Iowa Northern via Mason City, Iowa, which was not permitted in the original CNW agreement.

The AAR-ASLRRRA Railroad Industry Agreement ("RIA"), signed in 1998, provides a further mechanism for addressing "paper barriers." Under the RIA, all Class I railroads agreed to a process for the renegotiation of any shortline (or Class II) sale or lease agreement that included contractual limits on interchange in exchange for the shortline's agreement to compensate the larger railroad for the value of the lost traffic. The Class I railroads also agreed to permit shortlines to interchange new traffic with other carriers, provided that the "parent" carrier was given an opportunity to handle the traffic.

Despite their RIA rights, no leased shortline has approached UP to renegotiate its agreement under the RIA to secure greater interchange "freedom" in exchange for additional compensation to UP. While certain organizations, like the ASLRRRA, argued during the RIA negotiations that all contractual limits on interchange should be eliminated, the fact remains that shortlines enter into agreements containing such limits not because they are coerced, but because the traffic commitments reflected in such provisions offer an innovative, way of reducing their costs of acquiring and operating the Class I's line.

Finally, I want to emphasize that the UP-shortline relationship is not a one-way street. Shortlines have called on UP many times for assistance with economic or physical difficulties. Also, as UP's service has continued to improve and exceed pre-UP/SP merger service levels, we have extended our service offerings in cooperation with shortlines. One example is our new "Express Lane" California-New York perishables service, for which shortlines provide significant traffic. In advance of the train's start-up, UP coordinated the train's service requirements with shortlines to assure that shippers served by the shortlines would benefit. This was a team effort between UP and at least five shortlines to create new traffic, benefiting all the railroads involved. While some may desire to focus their attention on securing new regulations that re-distribute existing traffic, which would add cost to the rail system, it is new manifest traffic obtained through low cost and improved service that will make the industry successful. This was the spirit in which the RIA was signed less than two years ago.

UP strongly believes that UP's leased property cannot be taken from us and used by third parties without regard to the economic terms mutually agreed to at the time of the lease. Although parties to this proceeding have not specifically sought to breach or extinguish contractual obligations between UP and its leased shortlines, the general comments about extinguishing "paper barriers" have caused us to reflect on our future course were the Board to enact a rule purporting to alter the terms of those agreements. If confronted with the choice of accepting less compensation as a result of a breach or elimination of the contractual provisions governing rental obligations, UP in most cases would have no choice but to terminate the contracts and resume operations of its leased lines. Class I operations have become much more efficient since the modern shortline movement first started, and the benefits of shortline

operation of UP-owned branches are not as great as they once were. Indeed, in some cases UP believes that it could operate its former-branches at lower cost than the shortline operators. While UP has every intention of honoring its lease agreements and continuing to develop business in cooperation with its connecting “spinoff” shortlines, we would (in all likelihood) be in a position to, and would, choose a different course if we were faced with the requirement of accepting less compensation from – or paying higher divisions to – the incumbent shortline operators.

Verification

I, Warren C. Wilson, declare and certify under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief. I further declare and certify that I am authorized to file this statement.

6/2/2020
Date


Warren C. Wilson