

SURFACE TRANSPORTATION BOARD DENIES REQUEST OF RAILROAD COMMISSION OF TEXAS TO RECONSIDER SERVICE ORDERS AND TO FORCE THE TRANSFER OF UP/SP LINES AND YARDS TO TEX MEX AND PTRA

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Surface Transportation Board (Board) Chairman Linda J. Morgan and Vice Chairman Gus A. Owen announced today that the Board has denied a request filed by the Railroad Commission of Texas (RCT) asking the Board to reconsider, prior to the currently scheduled termination date of March 15, 1998, the emergency service orders that, among other things, permitted the Burlington Northern and Santa Fe Railway Company (BNSF) and the Texas Mexican Railway (Tex Mex) to handle traffic of the Union Pacific Railroad Company/Southern Pacific Transportation Company (UP/SP) in Houston to help mitigate the rail service problems in the western United States. RCT asked the Board to force UP/SP to transfer several of its properties to other railroads as a means of altering the competitive balance in the Houston area.

RCT alleged that the service emergency was caused by inadequate competition in the West, stemming from the Board's failure to order UP to divest, that is, give up to other carriers, several properties involved with the UP/SP merger. RCT argued that if other carriers had been in a position to serve more shippers, they could have stepped in and eased the congestion before it developed into an emergency. Thus, RCT asked the Board to order UP/SP to transfer several of its lines and yards to a "neutral switching carrier" such as the Port Terminal Railroad Association (PTRA), which would then distribute the traffic to UP/SP, BNSF, or Tex Mex. It also asked the Board to order UP/SP to transfer several of its properties to Tex Mex so that Tex Mex could operate over what RCT called a "clear path through Houston."

The Board denied RCT's request. It found:

RCT's . . . proposal must be rejected because it does violence to every one of the guiding principles that we have appropriately followed throughout these emergency service proceedings. First, its forced transfer of a significant amount of private property without any guarantee of a resolution to the service problems would constitute an overreach. Second, its intended alteration of the competitive balance would represent a long-term proposal directed at perceived competitive issues rather than a short-term solution to the current service emergency. And finally, the new structure that it would establish would likely result in downgraded rather than improved infrastructure in Houston; it would not facilitate resolution of the emergency; and in fact, it could cause far more operational trouble than it

would fix.

Specifically, the Board found that RCT's plan for the forced redistribution of private property was an overreach, because the record does not show that the emergency was caused by inadequate competition, or by the Board's failure to order divestiture in the UP/SP merger proceeding, and because RCT's plan would not resolve the service emergency. Rather, the Board concluded that the most significant of the many factors contributing to the emergency was the inadequacy of the rail infrastructure in the Houston area, in particular that previously owned by SP. Thus, it found, this emergency -- or some far more serious service crisis resulting from the continuing deterioration of the SP plant and the likely demise of the SP itself -- would likely have occurred even if there had been no UP/SP merger. Indeed, recognizing that the inadequacy of the Houston infrastructure is a key factor associated with the present sluggishness of the service recovery in Houston, as compared to other portions of the UP/SP system, the Board pointed out that, without significant investment, such as the type proposed by UP/SP in connection with the merger, service will not likely improve substantially. It noted that RCT's proposal would discourage UP/SP's investment in the Houston area, without providing for alternative sources of investment, and thus would likely lead to degraded service.

The Board also found that RCT's proposal, which contemplates long-term structural changes designed to address perceived competitive issues, is not permitted under the emergency service provisions of the statute, which provide for temporary, short-term measures designed to mitigate particular emergencies. RCT's proposal, the Board noted, would require PTRA and Tex Mex to upgrade their plant, augment their equipment, and increase their staffs considerably. To put RCT's proposal into effect quickly, as would be required under the emergency service provisions of the law, could compromise safety.

Finally, the Board found that RCT did not show that its proposal would work. Transferring UP/SP's property to Tex Mex so that it could have a "clear path" through Houston, the Board concluded, would seriously interfere with other Houston operations and would ultimately degrade service for far more shippers than it would help: "[I]f the line that RCT would construct for Tex Mex . . . could be used to breeze right by the congestion without compounding the situation at Houston, then UP/SP would have used it in that manner and averted the crisis entirely."

The neutral switching concept, the Board concluded, also appeared likely to degrade rather than improve service, because it would simply replace inherently more efficient single-carrier service by UP/SP with multiple-carrier operations involving PTRA. Moreover, given the configuration of the trackage in Houston, which is different from the typical belt or terminal railroad configuration, PTRA would not be able to provide service in a manner that would relieve the congestion in Houston. Rather, it would simply take over UP/SP's routes -- a series of discrete lines configured like dead-end streets serving Houston's industries just outside of the city -- each of which has only a single connection to the congested Houston rail complex, and operate them in the same manner that UP/SP operates them today.

Returning to its concern that the RCT proposal would not provide a substitute for UP/SP's investment, the Board stated:

Government action that would discourage private investment in infrastructure without providing alternative funding would degrade rather than improve service, and would be plainly irresponsible. . . . [U]ntil the infrastructure is upgraded, regardless of which carrier operates which lines, the threat of a further crisis will continue.

The Board's decision was issued today in the case entitled *Joint Petition For Service Order*, STB Service Order No. 1518.

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