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Contact: Dennis Watson
(202) 565-1596
FIRS 1 (800) 877-8339
www.stb.gov

SURFACE TRANSPORTATION BOARD ISSUES DECISION IN ITS 4TH ANNUAL "UP-SP" OVERSIGHT PROCEEDING, FINDS NO COMPETITIVE PROBLEMS RESULTING FROM MERGER

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision finding that, after reviewing all of the public comments and evidence submitted in the fourth annual round of general oversight in the 1996 "Union Pacific-Southern Pacific" merger, there have been no demonstrable competitive problems resulting from the combination of the Union Pacific Railroad Company (UP) and the former Southern Pacific Transportation Company (SP). While the Board found no negative competitive effects stemming from the merger, the agency provided for continued oversight and monitoring and imposed a schedule for the fifth year of general oversight in the proceeding.

In today's decision, the Board found that, based on the public record, the UP-SP merger has produced vigorous competition and improved service in the West. Although several parties in the oversight proceeding expressed concern over The Burlington Northern and Santa Fe Railway Company's (BNSF) market share in the Nation's Central Corridor, the Board noted that the U.S. Department of Transportation (DOT) considers rail rates--not market share--to be the relevant focus, and added that rail freight rates have declined significantly during the past three years. The Board agreed with DOT that BNSF has enough traffic to provide an important competitive constraint on UP, and noted DOT's observation that no shipper had complained about UP's rates or services.

The Board also dealt with several other issues raised in the oversight proceeding. The Board found that UP has spent substantial funds to provide service on behalf of coal shippers in Utah and Colorado and that, contrary to some concerns expressed, UP has not de-emphasized such traffic. The decision found that BNSF's trackage rights (track rental) fee over UP's rail lines has previously been reviewed and upheld and that the fee does not prevent BNSF from competing effectively for western coal, or for coal shipments to the White Bluff, Arkansas electric-generating plant operated by the Entergy Corporation. The decision also addressed the requests of the Kansas City Southern Railway Company (KCS) calling for a special rate study for Houston, Texas and the Board's reconsideration of the agency's grant to BNSF of access to Lake Charles, Louisiana. After reviewing each of these requests separately, the Board explained that shippers in the Houston area have not complained about UP's rates in this oversight proceeding and that shippers located at Lake Charles, who have benefitted from BNSF access, oppose KCS's request for reconsideration.

The Board additionally considered the California Public Utilities Commission's (CPUC) requests for: (1) a study of rail-to-rail competition along the State's Interstate Route 5 (I-5) Corridor; (2) additional conditions to improve competition in California in light of the Board's Notice of Proposed Rulemaking concerning proposed new railroad merger rules in the proceeding entitled *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1); (3) a study of whether UP realized its projected merger benefits and whether they have been passed on to shippers; and (4) holding UP to its commitments to upgrade rail routes to and from the State. The Board reviewed each of CPUC's recommendations in detail, but ultimately found that the requests were inappropriate or not sufficiently related to the merger or with oversight. In particular, the Board noted that its prior decisions have explained that competition along the I-5 Corridor is new competition created by the terms of the UP-SP merger, rather than by the exercise of the Board's power to impose conditions to mitigate the loss of competition; the Board thus found that CPUC has not shown that there could be any merger-related harm in the Corridor. The Board also found that it would be clearly inappropriate for the agency to apply its newly proposed merger guidelines retroactively to impose additional conditions on mergers that are already approved. The Board stated that it already has verified, through a staff rail rate study, that the western railroads have achieved significant efficiency gains over the past several years and have passed the gains along to their customers in terms of reduced rates. And the Board noted that UP, which will have spent $1.25 billion by the end of the year and plans on spending approximately $1.3 billion over the next four years to upgrade its facilities, assemble more direct routes, build new terminals and yards, and improve service, is on target in making promised investments.

The Board issued its decision today in *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 [General Oversight]*, STB Finance Docket No. 32760 (Sub-No. 21), Decision No.16.

A printed copy of today's decision is available for a fee by contacting: **D~-To-D~ Office Solutions, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone(202) 466-5530**. Today's decision is also available for viewing and downloading via the Board's Website at **http://www.stb.dot.gov** . **[STOP]**