

**SURFACE TRANSPORTATION BOARD ISSUES WRITTEN DECISION CLARIFYING "NEW FACILITIES" CONDITION  
IMPOSED ON 1996 "UNION PACIFIC/SOUTHERN PACIFIC" MERGER**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a written decision clarifying the "new facilities" condition imposed by the Board in its 1996 decision [FOOTNOTE 1: Entitled *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*, Finance Docket No. 32760, Decision No. 44, issued to the public on August 12, 1996.] approving the merger of the "Union Pacific" (UP) and "Southern Pacific" (SP) railroad systems.

In the 1996 decision, the Board imposed a number of procompetitive conditions, including the terms of an agreement between UP/SP and the predecessors of what is now The Burlington Northern and Santa Fe Railway Company (BNSF), giving BNSF generally "overhead" trackage rights over several thousands of miles of UP/SP tracks, and the new facilities condition, giving BNSF the right to serve new facilities (including transload facilities) located anywhere "on" those trackage rights.

In the decision issued today, the Board clarified that a new facility will be deemed to be located "on" a UP/SP trackage rights line, and open to BNSF service, if the facility is either: (1) adjacent to a trackage rights line; or (2) adjacent to a spur, an industrial track, and/or a yard that is itself served by a trackage rights line. However, the Board noted that, if a facility can be reached only by a 49 U.S.C. 10901 "line of railroad" over which BNSF did not acquire trackage rights in the UP/SP merger, that facility will not be regarded as being "on" a trackage rights line, and will not be open to service by BNSF. The Board stated that the new facilities condition is broad, and was intended to be, to replace indirect competition that would otherwise have been lost as SP was absorbed into UP. The Board made this clarification to provide guidance to interested parties and to arbitrators in interpreting the intended scope of the new facilities condition.

The Board declined, however, to determine whether a particular new facility (a new Four Star Sugar Co. facility in El Paso, Texas) is or is not located "on" a UP/SP trackage rights line. The Board indicated that, according to the terms of the BNSF agreement, that determination would have to be sought in an arbitration proceeding.

A printed copy of the Board's decision 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*, Finance Docket No. 32760, Decision No. 86 (STB served July 12, 1999), is available for a fee by contacting: **D.C. News & Data, Inc., Room 210, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 463-8112**. This decision is available for viewing and downloading via the Board's website at **www.stb.dot.gov**.

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