

**SURFACE TRANSPORTATION BOARD ADOPTS PROTOCOL FOR RESOLUTION OF
STATUS OF RAIL SHIPPER FACILITIES AT 2-TO-1 POINTS**

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**SURFACE TRANSPORTATION BOARD
ADOPTS PROTOCOL
FOR RESOLUTION OF STATUS OF RAIL SHIPPER FACILITIES
AT 2-TO-1 POINTS**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has adopted a protocol for resolution of the status of particular shipper facilities at 2-to-1 points (points where post-merger service options declined from two railroads to one) by the Union Pacific Railroad Company (UP) and The Burlington Northern and Santa Fe Railway Company (BNSF) as part of the Board's oversight of the merger of UP and the "Southern Pacific" railroads.

Among the conditions imposed by the Board in its August 1997 approval of the UP-SP merger was five-year "oversight" to ensure that the conditions are effectively addressing the competitive issues they were intended to remedy. An additional measure imposed in October 1997 was the requirement that UP and BNSF establish a protocol for resolving the status of particular shipper facilities at 2-to-1 points, and for deciding whether BNSF is entitled to serve such facilities. In response to the Board's directive, UP and BNSF agreed to a protocol, except for two provisions sought by BNSF that would have allowed that carrier to provide service on an interim basis while shipper-status disputes are resolved, and would have imposed a presumption in favor of BNSF service. The Board adopted the negotiated protocol, but without those two provisions.

Under the protocol announced today, UP must respond within five business days to any BNSF request for access to a 2-to-1 facility, and within 10 days to BNSF service requests in excess of five requests. Under the agreement, BNSF will immediately gain access to such a facility if UP fails to respond by the deadline.

In reaching its decision, the Board stated that UP's responsiveness required by the agreement, the availability of arbitration, and the Board's continued availability to resolve 2-to-1 disputes expeditiously make it unnecessary that BNSF be permitted to serve shipper facilities pending resolution of disputes, as that carrier proposed.

The Board said that BNSF has not shown that there have previously been problems resolving such disputes, nor has it shown that UP has a record of arbitrarily refusing to admit that particular shippers qualify as 2-to-1 shippers. The Board stated that, if it turns out that, under the protocol adopted today, UP consistently refuses to grant access to 2-to-1 shippers by invoking arbitration or Board adjudication as a delaying tactic, then the Board will further consider BNSF's interim service proposal.

The Board also did not adopt BNSF's other proposal that, unless UP provides specific evidence that a facility was not open to both UP and SP prior to the merger, there should be a presumption that BNSF is entitled to serve a shipper's facility. The Board believes instead that there should be no presumption in favor of any particular party or result, and that all involved parties--including shippers supporting BNSF's access--should be able to draw upon any and all available information to resolve the status of a particular facility.

The Board issued its decision today in the case 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 [Oversight]*(Decision No. 11), STB Finance Docket No. 32760 (Sub-No. 21).

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