

the control authority requested in Finance Docket No. 32760.

Applicants and BN/Santa Fe filed a petition for exemption from regulation under 49 U.S.C. 10505 for the acquisition and operation of trackage in the states of California, Texas, and Louisiana [Finance Docket No. 32760 (Sub-No. 2)]. This petition is also filed pursuant to the settlement agreements applicants reached with BN/Santa Fe.

Applicants seek exemption from regulation under 49 U.S.C. 10505 for the merged entity to control the Alton & Southern Railway Company [Finance Docket No. 32760 (Sub-No. 3)], Central California Traction Company [Finance Docket No. 32760 (Sub-No. 4)], The Ogden Union Railway & Depot Company [Finance Docket No. 32760 (Sub-No. 5)], Portland Terminal Railroad Company [Finance Docket No. 32760 (Sub-No. 6)], and Portland Traction Company [Finance Docket No. 32760 (Sub-No. 7)]. Applicants also seek exemption from regulation under section 10505 for the merged entity to control the following motor carriers: Overnite Transportation Company, Southern Pacific Motor Trucking Company, and Pacific Motor Transport Company [Finance Docket No. 32760 (Sub-No. 8)].

Applicants and BN/Santa Fe also filed an application for terminal rights requesting that we enter an order under 49 U.S.C. 11103 permitting BN/Santa Fe to use two segments of Kansas City Southern Railway Company terminal trackage in Shreveport, LA, and Beaumont, TX [Finance Docket No. 32760 (Sub-No. 9)]. Applicants and BN/Santa Fe allege that BN/Santa Fe's use of these tracks is necessary for BN/Santa Fe to promote stronger rail competition to a merged UP/SP system in the Houston-Memphis and Houston-New Orleans corridors, pursuant to the settlement agreements.

Various applicants seek exemption from regulation under 49 U.S.C. 10505 for abandonments related to the primary application. MPRR seeks exemption for two related abandonments [Docket No. AB-3 (Sub-Nos. 129X and 133X)]; SPT for two related abandonments [Docket No. AB-12 (Sub-Nos. 184X and 185X)], and UPRR for one related abandonment [Docket No. AB-33 (Sub-No. 98X)]. DRGW and SPT filed a merger-related petition for exemption from regulation under section 10505 to abandon and discontinue service on another line [Docket No. AB-8 (Sub-No. 36X) and Docket No. AB-12 (Sub-No. 189X)].

MPRR filed notices of exemption pursuant to 49 CFR 1152, Subpart F, for two abandonments related to the primary application [Docket No. AB-3

(Sub-Nos. 132X and 134X)]; SPT filed a notice for one related abandonment [Docket No. AB-12 (Sub-No. 187X)]; and UPRR filed notices for four related abandonments [Docket No. AB-33 (Sub-Nos. 93X, 94X, 97X, and 99X)].

MPRR and DRGW filed two applications for abandonment and discontinuance of trackage rights pursuant to 49 CFR 1152.22 [Docket No. AB-3 (Sub-No. 130) and Docket No. AB-8 (Sub-No. 38)], [Docket No. AB-3 (Sub-No. 131) and Docket No. AB-8 (Sub-No. 37)].

DRGW and SPT filed an application pursuant to 49 CFR 1152.22 to permit discontinuance of operations on and abandonment of a portion of railroad [Docket No. AB-8 (Sub-No. 39) and Docket No. AB-12 (Sub-No. 188)]. UPRR filed an application pursuant to 49 CFR 1152.22 to permit abandonment of and discontinuance of service on a railroad line [Docket No. AB-33 (Sub-No. 96)].

According to applicants, the proposed transaction involves the acquisition and exercise of control of SPR and its subsidiaries, including those which are carriers by rail, by UPC and its wholly owned subsidiaries, UPRR and MPRR.<sup>9</sup> Applicants submitted an operating plan detailing how they will consolidate UP and SP rail operations upon consummation of the transaction. UPC, Acquisition, UPRR, and SPR are parties to an Agreement and Plan of Merger dated August 3, 1995 (the Merger Agreement).<sup>10</sup> Applicants state that the Merger Agreement calls for Acquisition to acquire all of the common stock of SPR, and for SPR to be merged with and into UPRR. The separate corporate existence of SPR will cease and UPRR will be the surviving corporation.<sup>11</sup>

<sup>9</sup> SPT, and its majority owned railroad subsidiaries—SPCSL, DRGW, and SSW—are an integrated, single system railroad. As such, the acquisition of control of SPR by UPRR involves the control of a single carrier within the meaning of 49 U.S.C. 11343. See *Robert W. Bethge & Raymond K. Wilson—Control Exemption—Canal Cartage Co.*, Finance Docket No. MC-F-19525 (ICC served Nov. 29, 1989); *Burlington Northern, Inc.—Control and Merger—St. Louis-San Francisco Ry.*, 366 I.C.C. 862, *aff'd sub nom. Brotherhood of Ry. & Airline Clerks v. Burlington Northern Inc.*, 722 F.2d 380 (8th Cir. 1983); *Katy Indus., Inc.—Control—Missouri-Kansas-Texas R.R.*, 331 I.C.C. 405, 410-411 (1967); *Kansas City Southern Indus. Inc.—Control—Kansas City S. Ry.*, 317 I.C.C. 1, 4 (1962); *Woods Indus., Inc.—Control—United Transports, Inc.*, 85 M.C.C. 672, 675 (1960); *Louisville & Jeffersonville B. & R. Co. Merger*, 295 I.C.C. 11, 17-18 (1955), *aff'd sub nom. Alleghany Corp. v. Breswick & Co.*, 353 U.S. 151 (1957).

<sup>10</sup> Applicants state that, at a special meeting of stockholders expected to be held in December 1995, SPR stockholders will consider the merger pursuant to the Merger Agreement.

<sup>11</sup> As noted, applicants intend to consolidate the railroad operations of UP and SP through the merger of SPR into UPRR. However, they state that, depending upon tax, financial and other

Pursuant to the Merger Agreement, Acquisition made a tender offer on August 9, 1995, for up to 25% of SPR common stock at \$25.00 per share in cash. On September 7, 1995, the tender offer was completed for 39,034,471 shares. On September 15, 1995, Acquisition purchased the shares accepted for payment under the tender offer for approximately \$976 million.<sup>12</sup> These shares are being held in a voting trust pending approval of the merger.

According to applicants, upon satisfaction of all conditions to the merger, SPR's stockholders will have the right to submit a request specifying the number of shares that they desire to have converted into (a) .4065 shares of the common stock of UPC per share, and (b) the right to receive \$25.00 per share in cash, without interest. The aggregate number of shares to be converted into cash consideration at the time of the merger, together with shares tendered in the tender offer, will be equal as nearly as possible to 40% of all shares outstanding as of the date immediately prior to the date on which the merger becomes effective, applicants state. To the extent that SPR stockholders elect in the aggregate to receive either cash consideration or stock consideration in excess of such proportions, the Merger Agreement requires the cash or stock component to be prorated in order to achieve the specified proportions. Applicants request that, pursuant to *Schwabacher v. United States*, 334 U.S. 192 (1948), we determine that the agreed-upon terms for the purchase of the common stock of SPR by Acquisition are fair to both the stockholders of UPC and the stockholders of SPR.<sup>13</sup>

circumstances, they may effect the consolidation by other means, including, for example, the merger of SPR into MPRR or the lease of all of SP's properties to UPRR and/or MPRR. Applicants also maintain that they intend to merge SPT, SSW, SPCSL and DRGW into UPRR, although these SPR subsidiaries may retain their separate existence for some time. Further, applicants state that it is possible that, instead of the expected mergers, some or all of the entities will be merged into, or their assets leased to, MPRR, or applicants may use other means to accomplish their consolidation into the merged system.

<sup>12</sup> In *Union Pacific Corp.—Securities Exemption (Tender Offer)*, Finance Docket No. 32761 (ICC served Aug. 21, 1995), we granted an exemption for the issuance of debt securities to finance the purchase price of these shares.

<sup>13</sup> According to applicants, SSW has a small number of minority equity holders, and the Federal Railroad Administration also holds certain SSW redeemable preference shares. At this time, applicants state, they are not requesting a fairness determination pursuant to *Schwabacher* with respect to the compensation that might be paid to SSW security holders in connection with a merger of SSW into UPRR or MPRR because tax and other considerations need to be resolved before applicants can determine whether such a merger