C. Enforcement

49 U.S.C. 32912(b) imposes a civil penalty for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacturer in that model year. Credits earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

On March 6, 1997, the civil penalty for manufacturers that violate a fuel economy standard increased from $5.00 to $5.50 pursuant to the inflation adjustment methodology included in the Debt Collection Improvement Act of 1996 (62 FR 5167, February 4, 1997).

Table III–1 shows CAFE fines paid by manufacturers in calendar year 1997. In calendar year 1997, manufacturers paid civil penalties totaling $806,465 for failing to comply with the fuel economy standards of 27.5 mpg for passenger cars in MYs 1994 and 1995. Final CAFE values were not available for manufacturers that may owe fines for MY 1996.

TABLE III–1.—CAFE FINES COLLECTED DURING CALENDAR YEAR 1997

Model Year	Manufacturer	Amount Fined	Date Paid
1994 ..	Panoz	$3,850	8/97
1995 ..	Fiat	801,220	07/97
	Panoz	1,395	08/97

D. Carryback Plans

49 U.S.C. 32903 allows an automobile manufacturer to earn fuel economy credits during any model year in which the manufacturer's fleet exceeds the established CAFE standard. The amount of credits a manufacturer earns is determined by multiplying the number of tenths of a mile per gallon by which the average fuel economy of the manufacturer's fleet in the model year exceeds the standard by the total number of vehicles in the manufacturer's fleet for the model year.

Already earned fuel economy credits are carried forward by the agency, (with affected manufacturers given an opportunity to comment on the agency's allocation of credits) and distributed to any of the three succeeding model years in which the manufacturer's fleet falls below the CAFE standard. For example, credits earned in MY 1994 may be used to offset deficiencies in MYs 1995, 1996, and/or 1997. A manufacturer also may submit to the agency a carryback plan, which demonstrates that it will earn sufficient credits within the following three model years which can be allocated to offset penalties in the model year involved.

General Motors submitted a carryback plan dated August 18, 1997 to the agency for MYs 1994 and 1995 light truck CAFE compliance. General Motor's carryback plan was approved.

E. Contract Activities

- Database Maintenance: Products and Production Capabilities of North American Automobile Manufacturing Plants

During 1997, NHTSA continued to fund the maintenance of a database that details the products and production capacities of North American automobile manufacturing plants. The Volpe National Transportation Systems Center administers this program with annual funding of $60,000.

- Published Report: Fuel Economy Effects and Incremental Cost, Weight and Lead Time Impacts of Employing Variable Valve Timing (VVT) Engine Technology.

In calendar year 1996, NHTSA initiated a study with a consultant to evaluate the fuel economy effects and cost and leadtime impacts of variable valve timing engine technology. The report and an in-house study of retail costs was published in Spring 1997.

The agency awarded Dr. Donald Patterson a contract totaling $52,000 to study the fuel economy effects, cost, and leadtime impacts of variable valve timing engine technology. In May 1997, the study was concluded and final results were published in a report titled, Fuel Economy Effects and Incremental Cost, Weight and Lead Time Impacts of Employing Variable Valve Timing (VVT) Engine Technology (DOT Report Number: HS 808 594). The in-house cost study was published with the same title as DOT Report Number HS 808 589.

In recent years, new mechanical inventions and electronic engine controls have made variable valve timing (VVT) a production possibility. Variable valve timing can improve fuel economy by lowering idle speeds, allowing engine downsizing and improving cycle efficiency under part load operation (mainly by reducing pumping work).

The report presents a paper study of the fuel economy benefits and the incremental manufacturing costs, tooling costs and engine weights as well as production leadtime for a VVT engine. Emission levels are considered. As a base, a 4-valve, V–6 engine of 3.5 liters was used with a 3,750 pounds passenger car. The VVT system applied to that engine was a combination of the Atsugi cam phasing system, a modified Mitsubishi MIVEC long and short duration cam system and intake port throttle. Fuel economy calculations were made as well for a typical light truck of 3,625 pounds with a 3.0 liter engine.

The study suggests that the incorporation of VVT features into a modern V–6 engine will be costly to the vehicle buyer, at an estimated retail price increase of $392 (1997 dollars). Fuel economy gains will be significant over the life of the vehicle, estimated as up to 10.4 percent for a passenger car and up to 8.8 percent for a light truck.

The study presents these general findings of VVT:

- VVT allows idle speed reduction due to reduced valve overlap at idle.
- VVT produces higher mid-speed torque.
- VVT allows oxides of nitrogen (NO_x) control by internal gas recirculation.
- VVT provides significant fuel economy gains but is accompanied by significant costs.
- Fuel economy gains with VVT were similar for the passenger car and light truck, the light truck benefits being lower.

[FR Doc. 98–8410 Filed 4–2–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32760 (Sub-No. 21) [1]]

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]

AGENCY: Surface Transportation Board.

ACTION: Decision No. 12; Notice of oversight proceeding. Requests for additional conditions to the UP/SP Merger for the Houston, Texas/Gulf Coast area.

[1] This decision embraces the proceeding in Finance Docket No. 32760, 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.

SUMMARY: Pursuant to a petition filed February 12, 1998, by the Texas Mexican Railway Company and the Kansas City Southern Railway Company (Tex Mex/KCS) and a request filed March 6, 1998, by the Greater Houston Partnership (GHP), the Board is instituting a proceeding as part of the 5-year oversight condition that is imposed 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, SCPSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance docket No. 32760 (UP/SP Merger), Decision No. 44 (STB served Aug. 12, 1996), to examine their requests, and others that may be made, for additional remedial conditions to the UP/SP merger as they pertain to rail service in the Houston, Texas/Gulf Coast region. The Board is establishing a procedural schedule (attached) for the submission of evidence, replies, and rebuttal. The Board requests that persons intending to participate in this oversight proceeding notify the agency of that intent. A separate service list will be issued based on the notices of intent to participate that the Board receives.

DATES: The proceeding will commence on June 8, 1998. On that date, all interested parties must file requests for new remedial conditions to the UP/SP merger regarding the Houston/Gulf Coast area, along with all supporting evidence. The Board will publish a notice of acceptance of requests for new conditions in the **Federal Register** by July 8, 1998. Notices of intent to participate in the oversight proceeding are due July 22, 1998. All comments, evidence, and argument opposing the requested new conditions are due August 10, 1998. Rebuttal in support of the requested conditions is due September 8, 1998. The full procedural schedule is set for at the end of this decision.

ADDRESSES: An original plus 25 copies [2] of all documents, referring to STB Finance Docket No. 32760 (Sub-No. 21), must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 32760 (Sub-No. 21), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.

Electronic Submissions

In addition to an original and 25 copies of all paper documents filed with the Board, the parties shall also submit, on 3.5 inch IBM-compatible diskettes or compact discs, copies all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual material must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0.

The data contained on the diskettes or compact discs submitted to the Board may be submitted under seal (to the extent that the corresponding paper copies are submitted under seal), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data is necessary for efficient review of these materials by the Board and its staff. The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527, 61 FR 52710, 711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).[3]

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In UP/SP Merger, Decision No. 44, served August 12, 1996, the Board approved the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company) (collectively UP/SP), subject to various conditions. Common control was consummated on September 11, 1996. The Board imposed a 5-year oversight condition to examine whether the conditions imposed on the merger effectively addressed the competitive concerns they were intended to remedy, and retained jurisdiction to impose, as necessary, additional remedial conditions if the Board determined that the conditions already imposed were shown to be insufficient. In its initial oversight proceeding, the Board concluded that, while it was still too early to tell, there was no evidence at the time that the merger, with the conditions that the agency had imposed, had caused any adverse competitive consequences.[4] Nevertheless, the Board indicated that its oversight would be ongoing, and that it would continue vigilant monitoring.[5]

UP/SP has experienced serious service difficulties since the merger, and the Board has issued a series of orders under 49 U.S.C. 11123, effective through August 2, 1998, to mitigate a rail service crisis in the western United States caused, in large measure, by severely congested UP/SP lines in the Houston/Gulf Coast region.[6] In acting to relieve some of the congestion, the Board made substantial temporary changes to the way in which service is provided in and around Houston.[7] The Board found that, although merger implementation issues were involved, a key factor in bringing about the service emergency was the inadequate rail facilities and infrastructure in the region, and, as such, also ordered UP/SP, BNSF, and

[2] In order for a document to be considered a formal filing, the Board must receive an original plus 25 copies of the document, which must show that it has been properly served. As in the past, documents transmitted by facsimile (FAX) will not be considered formal filings and thus are not acceptable.

[3] A copy of each diskette or compact disc submitted to the Board should be provided to any other party upon request.

[4] 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 (Sub-No. 21), Decision No. 10 (STB served Oct. 27, 1997) (UP/SP Oversight).

[5] UP/SP Oversight, Decision No. 10, at 2–3.

[6] STB Service Order No. 1518, Joint Petition for Service Order (Service Order No. 1518) (STB served Oct. 31 and Dec. 4, 1997, and Feb. 17 and 25, 1998).

[7] The Board directed UP/SP to release shippers switched by the Houston Belt & Terminal Railway Company (HB&T) or the Port Terminal Railroad Association (PTRA) from their contracts so that they could immediately route traffic over the Burlington Northern and Santa Fe Railway Company (BNSF) or Tex Mex, in addition to UP/SP. The agency also directed UP/SP to permit BNSF and Tex Mex to modify their operations over UP/SP lines to minimize congestion over UP/SP's ''Sunset Line,'' to move traffic around Houston rather than going through it, and to have full access to UP/SP's Spring, TX dispatching facility as neutral observers. More generally, the Board required UP/SP to cooperate with other railroads and to accept assistance from other railroads able to handle UP/SP traffic.

UP/SP and BNSF recently have agreed to make other changes designed to improve service. In particular, the carriers have agreed to joint ownership of the Sunset Line between Avondale (New Orleans), LA and Houston; joint dispatching in the Houston area; and overhead trackage rights for UP/SP over the BNSF line between Beaumont and Navasota, TX.

other involved railroads to submit to the Board their plans to remedy these inadequacies.[8]

Recognizing the limitations on its authority under the emergency service provisions of the law, the Board rejected proposals offered by certain shipper, carrier, and governmental interests in the Service Order No. 1518 proceeding to force UP/SP to transfer some of its lines to other rail carriers and effect a permanent alteration of the competitive situation in the Houston region; it adopted instead only those measures designed to facilitate short-term solutions to the crisis that did not further aggravate congestion in the area or create additional service disruptions. The Board declared, however, that interested persons could present proposals for longer-term solutions to the service situation—including those seeking structural industry changes based on perceived competitive inadequates—in formal proceedings outside of section 11123, particularly in the UP/SP merger oversight process.[9] Tex Mex/KCS has now requested that we invoke our oversight jurisdiction over the merger for the purpose of considering such proposals, including the transfer to it of various UP/SP lines and yards in Texas.[10] GHP has also requested the Board's intervention to provide for Houston's long-term rail service needs, including the establishment of a neutral switching operation.

That the service emergency in the Houston/Gulf Coast region remains ongoing is well known.[11] Given these circumstances, the Board will invoke its oversight jurisdiction over the UP/SP merger to consider new conditions to the merger of the kind proposed here, and others that may be made. We note that no party as yet has seriously suggested that SP's inadequate infrastructure would not have produced severe service problems in the Houston/Gulf Coast area even if there had been no merger. Nonetheless, the Board believes that, given the gravity of the service situation, it should thoroughly explore anew the legitimacy and viability of longer-term proposals for new conditions to the merger as they pertain to service and competition in that region.

US/SP and BNSF argue that Tex Mex/KCS' request for conditions that have been previously rejected, without any new evidentiary justification, is insufficient grounds for the Board to begin a new oversight proceeding. We disagree. Our 5-year oversight of the UP/SP merger is not a static process, but a continuing one, so that the Board's prior rejection of Tex Mex/KCS' or any other party's requested conditions—whether in the Board's approval of the merger or in a subsequent oversight proceeding—does not preclude their fresh consideration now. Through our oversight condition, we have retained jurisdiction to monitor the competitive consequences of this merger; to re-examine whether our imposed conditions have effectively addressed the consequences they were intended to remedy; and to impose additional remedial conditions if those previously afforded prove insufficient, including, if necessary, divestiture of certain of the merged carriers' property.

The virtual shutdown of rail service in the Houston/Gulf Coast area that occurred after the UP/SP merger—and which, after many months, has yet to be normalized—is unprecedented. In our judgment, those circumstances alone are sufficient for the Board to commence this proceeding now. Clearly, our 5-year oversight jurisdiction permits us to examine—and, if necessary, re-examine at any time during this period—whether there is any relationship between the market power gained by UP/SP through the merger and the failure of service that has occurred here, and, if so, whether the situation should be addressed through additional remedial conditions. UP/SP Merger, Decision No. 44, at 100.

We caution, however, that we will not impose conditions requiring UP/SP to divest property that would substantially change the configuration and operations of its existing network in the region in the absence of the type of presentation and evidence required for ''inconsistent applications'' in a merger proceeding; i.e., parties must present probative evidence that discloses ''the full effects of their proposals.'' UP/SP Merger, Decision No. 44, at 157. Divestiture is only available ''when no other less intrusive remedy would suffice,'' and we will impose it only upon sufficient evidentiary justification. Id.

The Board will confine this proceeding under its continuing oversight jurisdiction to examining requests for new conditions to the merger relating to rail service in the Houston/Gulf Coast area. As we have noted, the service crisis in this region, and its significant impact on the regional economy, clearly warrant our discrete treatment of these matters now. As a result, the procedures set forth here will be separate from those in the more general oversight proceeding that, pursuant to UP/SP Oversight, Decision No. 10, will begin July 1, 1998.[12]

As set forth in the attached schedule, parties that wish to request new remedial conditions to the UP/SP merger as they pertain to the Houston/Gulf Coast region must file them, along with their supporting evidence, by June 8, 1998.[13] The Board will publish a notice in the **Federal Register** accepting such requests by July 8, 1998. Any person who intends to participate actively in this facet of oversight as a ''party of record'' (POR) must notify us of this intent by July 22, 1998. In order to be designated a POR, a person must satisfy the filing requirements discussed above in the **ADDRESSES** section. We will then compile and issue a final service list.

Copies of decisions, orders, and notices will be served only on those persons designated as POR, MOC (Members of Congress), and GOV (Governors) on the official service list. Copies of filings must be served on all persons who are designated as POR. We note that Members of the United States Congress and Governors who are

[8] Service Order No. 1518, Feb. 17, 1998 decision, at 5–7; Feb. 25, 1998 decision, at 5. The railroads' plans are due May 1, 1998; replies are due June 1.

[9] Service Order No. 1518, Feb. 17, 1998 decision, at 8; Feb. 25, 1998 decision, at 4.

[10] The Railroad Commission of Texas (RCT) has previously announced its intent to seek similar relief. See Service Order No. 1518, Feb. 17, 1998 decision, at 8.

[11] In its progress report of March 9, 1998, US/SP announced that it would take drastic action in 30 days—including the refusal of new business and the transfer of existing business to its competitors—if the steps it has taken to deal with the emergency are not successful. On March 24, 1998, the carrier announced an embargo of a significant portion of its southbound traffic destined for the Laredo, TX gateway to clear a backlog of 5,500 cars waiting to cross into Mexico.

[12] In Decision No. 10, at 18–19, the Board provided that general oversight would commence July 1 upon the filing by UP/SP and BNSF of their quarterly merger progress reports accompanied by comprehensive summary presentations. We provided that, as part of that proceeding, UP/SP and BNSF must make their 100% traffic tapes available by July 15, 1998; that comments of interested parties concerning oversight issues are due August 14, 1998; and that replies are due September 1, 1998. The general oversight proceeding will continue as planned.

[13] Tex Mex/KCS stated that it would file its supporting evidence 45 days after its petition. Petition at 5. If it does so, it need not file its evidence anew on June 8th, although it may supplement its filing as appropriate. We decline, however, petitioner's request (Petition at 11 n. 6) to incorporate by reference its pleadings in Finance Docket Nos. 33507, 33461, 33462, and 33463 (titles omitted). In those proceedings, Tex Mex/KCS has complained that, after the merger, UP/SP (either singly or jointly with BNSF) unlawfully acquired control of HB&T in violation of 49 U.S.C. 11323, and has petitioned that a series of exemptions the carriers filed to restructure HB&T's operations leading to that control should be voided and/or revoked. We will proceed to consider the discrete matters in those cases—including Tex Mex/KCS' petition for consolidation and motion to compel discovery, and UP/SP's motion to dismiss—separately from our consideration in the oversight proceeding of requests by Tex Mex/KCS and others for new remedial conditions to the merger.

designated MOC and GOV are not parties of record and they need not be served with copies of filings; however, those who are designated as a POR must be served with copies of filings. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions to persons who request this service. The telephone number for DC News is: (202) 289–4357.

A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in Finance Docket No. 32760 (Sub-No. 21). This decision will serve as notice that persons who were parties of record in the previous oversight proceeding (leading to Decision No. 10) will not automatically be placed on the service list as parties of record for this facet of oversight unless they notify us of their intent to participate further.

Finally, while the requested remedial conditions (and those reasonably anticipated from other parties) could, if imposed, result in a transfer of ownership of certain UP/SP rail property or changes in the way that such properties are operated, they appear unlikely to produce the kind of significant operational changes that, under 49 CFR 1105.6(b)(4), requires the filing of a preliminary draft environmental assessment (PDEA).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 30, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

Procedural Schedule

June 8, 1998: Requests for new remedial conditions (with supporting evidence) filed.

July 8, 1998: Board notice of acceptance of requests for new conditions published in the **Federal Register.**

July 22, 1998: Notice of intent to participate in proceeding due.

August 10, 1998: All comments, evidence, and argument opposing requests for new remedial conditions to the merger due. Comments by U.S. Department of Justice and U.S. Department of Transportation due.

September 8, 1998: Rebuttal evidence and argument in support of requests for new conditions due.

The necessity of briefing, oral argument, and voting conference will be determined after the Board's review of the pleadings.

[FR Doc. 98–8827 Filed 4–2–98; 845 am]

BILLING CODE 4915–00–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

As required by the Federal Advisory Committee Act, the VA hereby gives notice that the Special Medical Advisory Group has scheduled a meeting on April 14, 1998. The meeting will convene at 8:30 a.m. and end at about 3:00 p.m. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, N.W., Washington, D.C. The purpose of the meeting is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussion of transformation highlights, quality management and safety, consumer bill of rights, transfer pricing regional variation in medical practice, and end of life care issues.

All sessions will be open to the public up to the seating capacity of the meeting room. Those wishing to attend should contact Brenda Goodworth, Office of the Under Secretary for Health, Department of Veterans Affairs. Her phone number is 202.273.5878.

Dated: March 27, 1998.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–8730 Filed 4–2–98; 8:45 am]

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