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September 13, 2012

BY HAND-DELIVERY

The Honorable Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, SW, Room #100  
Washington, DC 20423-0001



ENTERED  
Office of Proceedings

SEP 13 2012

Part of  
Public Record

Re: 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*

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of the Amended Joint Petition of BNSF Railway Company and G3 Enterprises for Enforcement of Decision No. 44. The Amended Joint Petition deletes Exhibit E to the original Joint Petition as well as references to that exhibit in the Petition and the verified statement of Robert Lubeck.

A CD with the text of the pleading in Word format is also enclosed.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files.

Please contact me if you have any questions. Thank you.

Sincerely yours,

A handwritten signature in black ink that reads 'Adrian L. Steel, Jr.'.

Adrian L. Steel, Jr.

Enclosures

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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

ENTERED  
Office of Proceedings

SEP 13 2012

Part of  
Public Record

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**AMENDED JOINT PETITION OF BNSF RAILWAY COMPANY  
AND G3 ENTERPRISES  
FOR ENFORCEMENT OF DECISION NO. 44**

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Pursuant to Decision No. 44 and Decision No. 21 (General Oversight) in the above-referenced proceeding, BNSF Railway Company (“BNSF”)<sup>1</sup> and G3 Enterprises (“G3”) (collectively “Petitioners”) petition the Surface Transportation Board (“Board”) for enforcement of Decision No. 44, including a mandate that Union Pacific Railroad Company (“UP”) restore competitive rail service to a G3 Enterprises facility (formerly a Procter & Gamble (Charmin) facility also referred to hereinafter as the “P&G/G3 Facility”) at Rogers, CA by reinstating the

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<sup>1</sup> The acronyms used herein are the same as those in Appendix B to Decision No. 44.

facility as open to Modesto and Empire Traction Company (“MET”) for reciprocal switching to and from BNSF or by other appropriate remedy.<sup>2</sup>

In its decision approving the merger between UP and Southern Pacific Transportation Company (“SP”) (collectively “Applicants”), the Surface Transportation Board indicated that “Applicants must adhere to all of their representations.” Dec. No. 44 at 12 n.14. Accordingly, Petitioners seek an order requiring UP to adhere to the representations it made to MET in a letter dated December 13, 1995, from Jim Shattuck, Executive Vice President of Marketing and Sales for UP, that UP had “no intention of diminishing the current switching district of Modesto, California,” and that it also had “no intention of closing UP’s present open customers.”

As set forth below, UP has in contravention of these representations taken action to reduce the switching district in effect in 1995 at Modesto, thereby closing the P&G/G3 Enterprises facility to MET (and indirectly BNSF) via reciprocal switch. In so doing, UP has eliminated all of the pre-merger competitive service alternatives that existed at the P&G/G3 Facility and has effectively converted the facility into a UP exclusively-served facility. Based on UP’s representations to MET made contemporaneously with the UP/SP merger proceeding, there was no need for MET to request or issue merger conditions at that time to protect against UP’s conversion of the P&G/G3 Facility from a three-carrier served facility pre-merger to a sole-

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<sup>2</sup> In Decision No. 21 (General Oversight), the Board stated that, while it was concluding its formal oversight process for the UP/SP merger, it retained “continuing authority to enter supplemental orders and to modify decisions entered in merger and control proceedings under 49 U.S.C. 11323” and that “the conclusion of the formal oversight process does not preclude any party from invoking [the Board’s] jurisdiction to address any merger-related concerns arising out of [the Board’s] conditions.” Dec. No. 21 (General Oversight), at 5-6. Further, in Decision No. 72, the Board stated that “*any* beneficiary of the Decision No. 44 conditions has the right to seek relief from the Board if it believes that these conditions have not been implemented in a manner that achieves their competition-preserving objectives.” Slip op. at 8 (footnote omitted; emphasis added). *See also id.* at 8 n.18 (“We wish to clarify that shippers have rights under the BNSF agreement because we have imposed the terms thereof as a condition of the merger. \* \* \* [S]hippers have recourse to the Board for enforcement of the merger conditions.”)

served UP facility. Now, however, UP has unilaterally and summarily closed the P&G/G3 Facility, contrary to UP's pre-merger representations that it would keep the facility open.

### **BACKGROUND**

Prior to the UP/SP merger, a facility operated by Procter & Gamble (Charmin) located at 2612 Crows Landing Road, Modesto, California (UP station of Rogers) was served by UP, SP, and MET (which connected with BNSF) via UP reciprocal switch. *See* Map attached as Exhibit A. In a letter dated November 21, 1995, to Richard K. Davidson, President of UP, James L. Beard, President of MET, expressed concerns about the potential impact of the pending UP/SP merger on MET and local shippers. Specifically, Mr. Beard advised Mr. Davidson as follows:

M&ET is fearful that with the loss of competition between the UP and SP following their merger, the incentive to maintain open switching at Modesto will disappear to the detriment of M&ET and local shippers. If you believe M&ET has no warrant for its apprehension, I should welcome having your assurance that the switching districts open to M&ET will not be changed following the proposed merger.

A copy of Mr. Beard's November 21, 1995 letter is attached as Exhibit B.

In response to Mr. Beard's letter, Mr. Shattuck assured MET by letter that UP had "no intention of diminishing the current switching district of Modesto, California," which included the Procter & Gamble (Charmin) facility, and that it had "no intention of closing UP's present open customers." A copy of Mr. Shattuck's letter to Mr. Beard dated December 13, 1995, is attached as Exhibit C. The switching tariffs attached to Mr. Shattuck's letter confirmed that the Procter & Gamble (Charmin) facility was within the "current switching district" at Modesto and was one of "UP's present open customers." After receiving Mr. Shattuck's letter, MET did not seek to participate in the UP/SP merger proceeding, and the Board subsequently approved the merger in Decision No. 44.

As set forth in the Amended Verified Statement of Robert Lubeck (“V.S. Lubeck at \_\_\_”) submitted herewith, President & CEO for G3 Enterprises, San Joaquin Valley Express (now G3) conducted a search in 2001 to locate a new warehouse facility to meet G3’s long-term needs.<sup>3</sup> G3 Enterprises provides a variety of products and services for its customers in the wine and spirits industries, generating over \$400 million in annual revenue. Specific operations at the Rogers, CA facility include label manufacturing, bottling, co-packing, general warehousing, leasing warehouse space to third party logistics providers, and boxcar/intermodal/truck transportation. G3 manages approximately 40,000 truck and intermodal shipments from the Rogers facility annually and provides warehousing services for a variety of products. The third party logistics providers who lease space receive and load product from boxcars. In the last 10 years, G3 has invested \$29 million adding an additional 1.5 million sq. ft. of warehouse space on the Rogers site.

According to Mr. Lubeck who was directly involved in the effort in 2001 by G3 to purchase the Rogers property to meet its long-term needs, having access to competitive rail service was a “very important consideration” in San Joaquin Valley Express’s decision to purchase the P&G property in June of 2001. V.S. Lubeck at 2. As Mr. Lubeck has stated, G3 is a major boxcar shipper generating over \$70 million of revenue for U.S. railroads, and dual service was viewed as a key requirement behind the purchase and expansion. G3 was told by P&G that the property was dual served, and G3 was given a copy of the then-current UP tariff

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<sup>3</sup> At the time G3 was considering the purchase of the P&G facility, G3 also considered building a warehouse in Modesto on MET in order to secure two-carrier service. V.S. Lubeck at 2. Had G3 known that the P&G site would be served exclusively by UP, it is unlikely that G3 would have made the purchase and subsequent investments at the site. According to Mr. Lubeck, G3 views dual service as one of its most important criteria in every warehouse location it considers. *Ibid.*

confirming this service. *Ibid.* See Exhibit D to the Amended Joint Petition which is a June 2003 UP tariff that confirms the dual UP and BNSF service.

G3 has recently been approached by two companies seeking boxcar-served warehouse space that is competitively served by both the BNSF and UP. V.S. Lubeck at 1. G3 currently ships via the BNSF and UP railroads approximately 10,000 annual boxcars from another location in Modesto. These customers are asking G3 to provide similar service from the Rogers facility. In order to meet these customers' needs, G3 needs to ship and receive both UP and BNSF boxcars at the Rogers site. *Id.* at 1-2.

However, UP closed the P&G/G3 Facility to reciprocal switching in 2011, some 10 years after G3 Enterprises acquired the facility and took over operations in 2001. See Exhibit E hereto which is a UP tariff issued in June 2011 that has removed Procter & Gamble from the list of open industries. Then, on March 1, 2012, UP denied BNSF's February 6, 2012 (Exhibit F hereto) notice of intention to serve the P&G/G3 Facility. In so doing, UP stated as follows in its March 1st letter:

Prior to the UP/SP merger, Union Pacific offered reciprocal switching to Southern Pacific and to the MET for the customer located at this address - Procter and Gamble. After the merger, Union Pacific continued to offer reciprocal switching to MET for this location. However, Procter and Gamble has left this location and was removed from UP's reciprocal switching circular. G3 has since occupied this facility, and is not listed in UP's reciprocal switch circular therefore, Section 8(i) of the RASA does not apply and this location is not open to BNSF.

A copy of UP's March 1, 2012 letter denying BNSF access is attached as Exhibit G.

### **ARGUMENT**

As established below, UP is obligated by Decision No. 44 to adhere to the express representations it made to MET. Further, UP cannot foreclose pre-merger competition by simply closing a facility to reciprocal switch service contrary to UP's express representations while the

STB merger proceeding was pending. UP's failure to honor its representations completely eviscerates the competition that had historically been available to the P&G/G3 Facility prior to the merger contrary to the applicable laws, regulations, decisions and orders of the Board.

A. UP Must Be Required to Adhere to the Representations that It Made to MET

In Decision No. 44, the Board stated that:

During the course of this proceeding, applicants have made numerous representations to the effect that certain points will be covered, certain services will be provided, and so on. Some of these representations relate to the terms of the BNSF agreement; others do not. Applicants must adhere to all of their representations.

Dec. No. 44, at 12 n.14. UP has clearly failed to adhere to its representations to MET with respect to reciprocal switching service at Modesto. In December 1995, UP told MET that it would not "diminish" the then current switching limit at Modesto. In June 2011, UP did just that.<sup>4</sup> Those facts alone are sufficient to justify the issuance of the order the Petitioners seek.

B. UP's Actions Are Contrary to Decision No. 44

As explained by the Board in Decision No. 44, one of the "key issues" that it considered in evaluating the potential competitive harm that would result from the proposed UP/SP merger was whether the BNSF settlement agreement would allow BNSF to serve all shippers whose direct access to rail service would go from two railroads to one. *See* Dec. No. 44, at 103 n.97.

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<sup>4</sup> It should be, and is, immaterial that the UP representations were made directly to MET rather than in a pleading submitted in the UP/SP merger proceeding. UP's representations led MET to not raise its concerns with the Board, and UP must adhere to them. Otherwise, merger applicants could secure silence by those with concerns about a proposed merger and then disregard any representations they made to those parties. Moreover, the fact that Procter & Gamble no longer owns the facility and sold it to G3 is irrelevant. Mr. Shattuck's letter clearly stated without limitation that UP had no intention of "diminishing the current switching district of Modesto, California," and its action of leaving the facility open to reciprocal switch for 10 years after the sale to G3 is consistent with that representation. Its recent action in closing the P&G/G3 Facility to reciprocal switching is not.

Thus, the Board was focused on and intended to protect shippers whose post-merger service options would be reduced exclusively to UP/SP.

Yet, by reducing the Modesto switching limit and thereby closing the P&G/G3 Facility to reciprocal switching post-merger, UP has arbitrarily eliminated all competition for a facility that had access to multiple carriers prior to merger. While the pre-merger situation at the facility was a 3-to-2 scenario, UP's post-merger closure of the industry has effectively created a 3-to-1 scenario reducing the facility to a single carrier option by the elimination of SP and BNSF (via MET) as competitive alternatives. Moreover, UP's action at this late date – 16 years after the Board's approval of the merger and 10 years after G3 acquired the facility – unfairly undercuts the justifiable reliance which G3 has placed on the availability of two-carrier competitive service. As Mr. Lubeck has noted, G3 has invested \$29 million on the Rogers site after it purchased the site on the express representation that it could receive dual carrier service. V.S. Lubeck at 2.

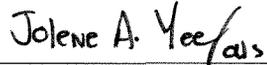
Therefore, BNSF and G3 Enterprises request the issuance of an order by the Board to restore competitive rail service to the P&G/G3 Facility by reinstating the facility as open to the MET via reciprocal switch or by other appropriate remedy. Had UP undertaken to close the facility at the time of the merger or even suggested that it had planned to do so in the future, MET and Procter & Gamble could have no doubt successfully petitioned the Board to afford them express conditions preventing UP from eliminating all competitive service options at Rogers, CA. UP should not be allowed to do so now.

### **CONCLUSION**

For the foregoing reasons, Petitioners request that the Board issue an order requiring (i) UP to adhere to the representations that it made to MET, and (ii) UP to reinstate and maintain

competitive service to the P&G/G3 Facility via reciprocal switch or otherwise so that G3 can enjoy the benefits of the competition that it would have had but for the UP/SP merger.

Respectfully submitted,



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Jolene A. Yee  
Vinum Legal  
23 Corporate Plaza Dr., SE 150  
Newport Beach, CA 92660  
(415) 515-4226

Counsel for G3 Enterprises



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Counsel for BNSF Railway Company

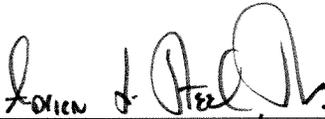
Dated: September 13, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Amended Joint Petition for Enforcement have been served on all parties as listed on the Board's website for the service list in Finance Docket No. 32760.

A copy of the Amended Joint Petition has also been served on counsel for Modesto and Empire Traction Company:

Mark H. Sidman  
Weiner Brodsky Sidman Kider PC  
1300 Nineteenth Street NW, Suite 500  
Washington, DC 20036-1609

  
\_\_\_\_\_  
Adrian L. Steel, Jr.

## Lubeck Amended Verified Statement

**AMENDED VERIFIED STATEMENT  
OF  
ROBERT LUBECK**

My name is Robert Lubeck. I am President & CEO for G3 Enterprises (“G3”). My business address is 502 E Whitmore Ave., Modesto CA 95358. I have held this position with G3 for 10 years and have been employed by G3 for a total of 29 years. Prior to employment with G3, I was employed by E. & J. Gallo Winery. My principal responsibilities as President & CEO for G3 include responsibility for all aspects of the business.

The purpose of my statement is to support the Joint Petition being filed by BNSF Railway Company (“BNSF”) and G3 requesting an order requiring UP to reinstate and maintain competitive service to the G3 facility at Rogers, CA via reciprocal switch or otherwise. As I explain below, two-carrier service to this facility is necessary to enable G3 to enjoy the benefits of the competition that it would have had but for the UP/SP merger.

G3 Enterprises provides a variety of products and services for its customers in the wine & spirits industries, generating over \$400 million in annual revenue. Specific operations at the Rogers, CA facility include label manufacturing, bottling, co-packing, general warehousing, leasing warehouse space to third party logistics providers, and boxcar/intermodal/truck transportation. G3 manages approximately 40,000 truck and intermodal shipments from the Rogers facility annually and provides warehousing services for a variety of products. The third party logistics providers who lease space receive and load product from boxcars. G3 has recently been approached by two companies seeking boxcar-served warehouse space that is competitively served by both the BNSF and UP. G3 currently ships via the BNSF and UP railroads approximately 10,000 annual boxcars from another location in Modesto. These customers are asking G3 to provide similar service from the Rogers facility. In order to meet

these customers' needs, G3 needs to ship and receive both UP and BNSF boxcars at the Rogers site.

In 2001, I was directly involved in the effort by G3 to purchase the Rogers property to meet our long-term needs. In the last 10 years, we invested \$29 million adding an additional 1.5 million sq. ft. of warehouse space on the Rogers site. Having access to dual service (UP and BNSF) was a very important consideration when San Joaquin Valley Express (now G3) purchased and expanded the P&G property. As I have stated, G3 is a major boxcar shipper generating over \$70 million of revenue for U.S. railroads and dual service was viewed as a key requirement behind the purchase and expansion. G3 was told by P&G that the property was dual served and G3 was given a copy of the then-current UP tariff confirming this service. (Exhibit D to the Joint Petition is a 2003 UP tariff which confirms the dual UP and BNSF service.)

At the time G3 was considering the purchase of the P&G, G3 also considered building a warehouse in Modesto on the M&ET in order to secure dual service. Had G3 known that the P&G site would be served exclusively by the UP, it is unlikely G3 would have made the purchase and subsequent investments. We view dual service as one of our most important criteria in every warehouse location we consider (we operate in numerous states).

For the reasons stated in BNSF and G3's Joint Petition and in this statement, G3 urges the Board to grant the Joint Petition.



---

Robert Lubeck  
President & CEO  
G3 Enterprises, Inc.

## Exhibit A



## Exhibit B

**MODESTO and EMPIRE TRACTION CO.**  
**MODESTO'S SHORTLINE RAILROAD**



P.O. BOX 3106 • 530 ELEVENTH STREET • MODESTO, CALIF. 95353 • PHONE (209) 524-4631 • FAX (209) 529-0336

November 21, 1995

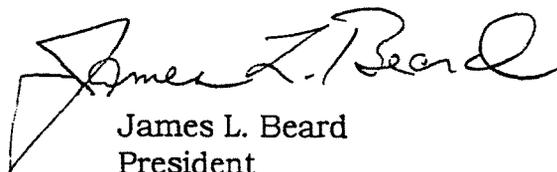
Richard K. Davidson, President  
Union Pacific Corporation  
Martin Tower  
8th and Eaton  
Bethlehem, PA 18018

Dear Mr. Davidson:

The proposed merger of the Union Pacific Railroad (UP) and Southern Pacific Transportation Company (SP) raises a matter of some concern to Modesto & Empire Traction Company (M&ET). M&ET connects with both the UP and SP at Modesto, California. M&ET and certain shippers have benefited from the competition between the two railroads in that the industries on the UP and SP's lines within the railroads' Modesto switching districts are open to M&ET for traffic which can be interchanged with our Burlington Northern Santa Fe (BNSF) connection.

M&ET is fearful that with the loss of competition between the UP and SP following their merger, the incentive to maintain open switching at Modesto will disappear to the detriment of M&ET and local shippers. If you believe M&ET has no warrant for its apprehension, I should welcome having your assurance that the switching districts open to M&ET will not be changed following the proposed merger.

Yours truly,



James L. Beard  
President

JLB/elv

c: Robert D. Krebs  
President & C.E.O.  
Burlington Northern Santa Fe

## Exhibit C

JIM SHATTUCK  
EXECUTIVE VICE PRESIDENT  
MARKETING AND SALES

UNION PACIFIC RAILROAD COMPANY



ROOM 1130  
1416 DODGE STREET  
OMAHA, NEBRASKA 68179  
402-271-3700  
FAX: 402-271-3142

December 13, 1995

Mr. James L. Beard  
President  
Modesto and Empire Traction Company  
P O Box 3106  
530 Eleventh Street  
Modesto, CA 95353

Dear Mr. Beard:

Your letter of November 21 addressed to Dick Davidson has been referred to me. You expressed concern that the present reciprocal switching arrangements with the MET at Modesto, California may disappear following the UP/SP merger.

We can assure you that if the merger is approved, Union Pacific has no intention of diminishing the current switching district of Modesto, California. For your ready reference, attached are copies of Item 1233 of Switching Tariff UP 8005-D and Item 10815 of Switching Tariff SP 9500-C, which define the switching district of Modesto.

With regard to the industries currently served by UP and SP at Modesto, all the industries which are open to reciprocal switching are located on the UP, as provided in Item 1663 of Switching Tariff 8005-D, copy attached for your convenience. Again, following a UP/SP merger, we have no intention of closing UP's present open customers as specifically named in Item 1663.

Thank you for your letter. I hope we have addressed your concerns.

Sincerely,

A handwritten signature in cursive script that reads "Jim Shattuck".

CC: Dick Davidson - Bethlehem, PA

**RECEIVED**  
MODESTO CAL.

DEC 18 1995

MODESTO & EMPIRE  
TRACTION CO.

## SOUTHERN PACIFIC TRANSPORTATION COMPANY

ICC SP 9500-C

RULES --- APPLICATION	ITEM
<p style="text-align: center;"><u>MERCED, CALIFORNIA</u> (SWITCHING LIMITS)</p> <p>From "B" Street on the Fresno Line to west bank of Bear Creek on the Lathrop Line and to a point 3,357 feet north of Milepost 162 on the old Oakdale Line.</p>	10810
<p style="text-align: center;"><u>MODESTO, CALIFORNIA</u> (SWITCHING LIMITS)</p> <p>From a point 1,283 feet south of Milepost 110 on the north to Hatch Road Crossing, 3,030 feet north of Milepost 116 on the south.</p>	10815
<p style="text-align: center;"><u>MOJAVE, CALIFORNIA</u> (SWITCHING LIMITS)</p> <p>On the main line from a point 686 feet north of Milepost 379 on the north to a point 2,270 feet south of Milepost 382 on the south; also to a point 2,534 feet west of Milepost 381 on the Owenyo Branch, including 4,100 feet southeasterly of switch point on spur taking off at a point 2,534 feet west of Milepost 381.</p>	10820
<p style="text-align: center;"><u>MONTAGUE, CALIFORNIA</u> (SWITCHING LIMITS)</p> <p>From a point 528 feet north of Milepost 375 located approximately at switch point at south end of passing track to a point 528 feet north of Milepost 376 located approximately at switch point of north end of passing track.</p>	10825
<p style="text-align: center;"><u>MOSS LANDING, CALIFORNIA</u> (SWITCHING LIMITS)</p> <p>From a point 500 feet north of the northern switch point of siding taking off the main line at Milepost 106.96 to a point 200 feet south of Dolan Road, Milepost 37.5 (Bernardo Avenue) on the east.</p>	10830
<p style="text-align: center;"><u>MOUNTAIN VIEW, CALIFORNIA</u> (SWITCHING LIMITS)</p> <p>From Milepost 33.8 (1,054 feet west of San Antonio Avenue) on the west to Milepost 37.5 (Bernardo Avenue) on the east.</p>	10835
<p style="text-align: center;"><u>MOUNT SHASTA, CALIFORNIA</u> (SWITCHING LIMITS)</p> <p>From Milepost 335 on the south to a point 2,006 feet south of Milepost 338 on the north, including industry tracks and private sidings served jointly by SP and McCloud River Railroad Co. at Mount Shasta, CA west of a point 300 feet east of switch point of Curtis Lumber Co. spur.</p>	10840
For explanation of (other) reference marks, see Item 50000.	
ISSUE DATE :	June 30, 1995
EFFECTIVE DATE:	August 1, 1995
-170-	

PLEMENT 118 TO TARIFF UP 8005-D

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP				
ITEM	STATION	INDUSTRY	GROUP	
117 1658-K	LIST OF INDUSTRIES AT LOS ANGELES, CA	Ace Beverage ADM Cold Storage AIStar Coating Aluminum Co. of America Angelus Furniture Antaky Quilting Archer Daniels Midland Baker Commodities Bandini Fertilizer Bell Foundry Blos John Cal Fiber Cal tax Corn Processors Caco Centennial Mills Clorut City Stores Clorox Coastal Brokerage Coast Converters Coast Packing Continental Commodities Crown Cork and Seal Dart Warehouse Davis Colors Davis Chemical Davis F.D. (E) Dependable Distribution Centers Dorset Jackson Ellis Paint Garden Prints Gelb Lumber Golden West Lumber Plywood Grace Davidson Chemical Grace Zonolite Division GTE Directory Press Hanson Mfg. R.E. Henry W W Hickory Springs California Hokln Katz Metals Service  (E) Expires with July 31, 1993 unless sooner cancelled, changed or extended. (DQ-3052)	Hyboo U.S.A. *** Industrial Wire Jefferson Smurfit Kazan, E Key Container Kolcraft Products Ladish Pacific Louisiana Pacific Macleod Metals Marville Monsanto Nalco Chemical NI Industries Owens Corning Fiberglass PFF Pacific Tube Packaging Corp America Paper Mart Peck & Hills Furniture Pillsbury Plastics Chemical Western Poly Pak America RCA Distributing Saffola Quality Foods Scott Sales Sealright Sears Roebuck SL Warehouse Stationers Distributing Stay Day Paint Materials Technica Totten Tubes Tri M Freight Systems Tube Sales US Envelope US Gypsum Van Waters Rogers Westlectric Castings Winkler Flexible-Products	
121 1660-A	LIST OF INDUSTRIES AT MILTON-FREEWATER, OR	Cancel, account no interchange. (DQ-2296)		
111 1663	LIST OF INDUSTRIES AT MODESTO, CA	General Foods ..... Graystone Block ..... E. J. Lang ..... Proctor & Gamble ..... Snowden Chemical ..... Stanislaus Distribution ..... Varni Brothers ..... (DQ-2174)		

See last page of this supplement for explanation of other reference marks.

SUPPLEMENT 118 TO TARIFF UP 8005-

SECTION 1 - SWITCHING DISTRICTS, CONNECTING ROADS OR INDUSTRIES ON UP		
ITEM	STATION	APPLICATION
20 1220-A	DESCRIPTION OF LOS ANGELES, CA SWITCHING DISTRICT	<p>MAIN LINE EAST: Mile Post 6 plus 3000 feet (approximately at Gerhart Avenue).</p> <p>MAIN LINE SOUTH; Mile Post 8 plus 1355 feet (approximately to but not including Southern Avenue.)</p> <p>GLENDALE BRANCH: Mile Post 3 Glendale Junction, north to Mile post 4.311 plus approximately 1643.2 feet.</p> <p>PASADENA BRANCH: Mile Post 3.10 (approximately to but not including Avenue 38.) (File DQ-2274)</p> <p>ALL INCLUSIVE</p>
27 1226	DESCRIPTION OF LIVERMORE, CA SWITCHING DISTRICT	From Mile Post 46.7 on the west to and including Mile Post 52.07 (located at Greenville Road) on the east, including Treveno, CA.
27 1226.05	DESCRIPTION OF LYOTH, CA SWITCHING DISTRICT	From Mile Post 73.77 on the west to Mile Post 74.02 on the east, including interchange track with industry located north of the main line, connecting with a spur which leads from a siding opposite Mile Post 73.86 on the main line.
11 1227	DESCRIPTION OF MANTECA, CA SWITCHING DISTRICT	From Mile Post ④ 4.14 (Alameda Street) on the north, to and including Mile Post ④ 6.6 (including tracks of Spreckels Sugar Co.) on the south. ④ Branch Line Mile Posts. (DQ-2174)
27 1228-A	DESCRIPTION OF MARYSVILLE, CA SWITCHING DISTRICT	From east end of Feather River Bridge to E Street. Between Mile Post 178.12 on the south bank of the Yuba River and the western, northern and eastern city limits.
11 1233	DESCRIPTION OF MODESTO, CA SWITCHING DISTRICT	From Mile Post 29.7 (Coldwell Avenue) on the north, to and including Mile Post 34.74 (Hackett Road) on the south, including tracks of the Charmin Paper Products Company. (DQ-2174)
27 1247	DESCRIPTION OF NORTH RENO, NV SWITCHING DISTRICT	From Mile Post 22 on the north to Mile Post 30.5 on the south, including trackage serving PARR Industrial Park.
27 1249	DESCRIPTION OF OAKLAND, CA SWITCHING DISTRICT	<p>From Union Pacific Mole to and including Mile Post 16.71 (approximately 1850 feet east of the center line of 143rd Avenue), including the ferry slip connection with ABL at Alameda, CA.</p> <p>NOTE. When UP receives a line haul to or from Oakland, CA, the following districts may be considered as separate stations in the application of transit privileges published in tariffs lawfully on file with the ICC or CalPUC:</p> <p>(a) The district extending from the city boundary line of Oakland and San Leandro, CA, to and including Mile Post 16.71 (Zone 4 as described in item 545).</p> <p>(b) Other districts within the switching limits of Oakland, CA, (Zones 1, 2 and 3 as described in item 545).</p>

See last page of this supplement for explanation of other reference marks.

## Exhibit D



# UP Reciprocal Switching Circular

**New Version Issued: June 3, 2003  
Effective: June 3, 2003**

**Please see changes on pages 11 (Dallas, TX); 14 (Enid, OK); 22 (Los Angeles);  
29 (Port Edwards, WI) and 31 (Seattle, WA)**

Effective January 1, 2001 all reciprocal switching items and charges published in UP Tariff 8005-E were cancelled in their entirety and replaced by this new circular. Remaining active provisions of UP Tariff 8005-E were transferred to UP Accessorial Tariff 6004 or cancelled, account obsolete.

On June 1, 2001, CHTT reciprocal switch charges and roster of open industries were transferred to this circular from CHTT Tariff 8001-J. Remaining active provisions of CHTT Tariff 8001-J were transferred to UP Accessorial Tariff 6004 or cancelled, account obsolete.

**MEMPHIS, TN (Continued)**

Robinson-Arn Co  
 Ronco Foods  
 Rose Warehouse No. 3  
 Ross, F. H., Co  
 Ruleman, C. A., Marble & Tile Co  
 Rullin Wilson Co  
 St Louis Terminal & Distributing Co  
 Scott Appliances Co  
 Sears, Roebuck & Co (Annex)  
 Sharp \* Dohme Co  
 Sharvania Oil & Grease Corp  
 Shelby Precasting Co  
 Shelby Skipwith Co  
 Shell Oil Co  
 Sinclair Refining Co  
 Slumber Products Corp  
 Smith, Carlton, Industries  
 Southern Boiler & Tank Works Co  
 Southern Chemical Co  
 Southern Cotton Oil Co  
 Southern Cotton Oil Mill Co  
 Southern Foam Sales Co  
 Southern Parts Corp  
 Southern Products Co  
 Southern Terminal & Storage Co  
 Southern Transfer Co  
 Southern Trucking Co  
 South Memphis Stock Yards, Inc  
 Southwest Wine Co  
 Speas Co  
 Stanley Home Products Co  
 Stewart's Inc  
 Stratton-Warren Hardware Co  
 Stuck, H. B., Co  
 Swift & Co Feed Mill  
 Tall, K., Warehouse  
 Tennessee Quick Freeze & Storage Co  
 Tenn-Penn Oil Co  
 Tennessee Valley Authority  
 Tennessee Veneer Co., Inc  
 Texas Automatic Sprinkler Co  
 Texas Company  
 Textile Products Co  
 Tri-State Iron Works Co  
 Triton Transport Services  
 Trojan Luggage Co  
 Trumbo Welding Co  
 Trumbull Asphalt Co of Delaware  
 Turner, L. G. Plaster Co  
 Turner Wood Products Co  
 Union Barge Line Co  
 Union Texas Natural Gas Co  
 United Cement  
 United Paint Co  
 U.S. Steel Co  
 Virginia-Carolina Chemical Co

Volney Felts Mills, Inc  
 Western Tar Products Co., Inc  
 Weyerhaeuser  
 Wilson Lumber Co  
 Wilson Steel Products Co  
 Work, C. F. & Sons, Inc

**MILWAUKEE, WI**

A-1 Recycling, 2101 W. Morgan Ave  
 Alpine Plywood  
 American Can Company, 6000 N. Teutonia Ave  
 Bliffert Inc., 10733 W. Bluemound Road  
 Continental Grain Co. (KK Elevator),  
 732 N. Jackson  
 Crown Cork & Seal Co. Inc.  
 4801 W. Woolworth Ave  
 DCS Color and Supply Co. Inc., 1050 E. Bay St.  
 Delta Resins & Refractories  
 6263 N. Tuetonia Ave  
 Elements LTP, 546 S. Water St  
 Federal Marine Terminal  
 Municipal Docks No. 50, Piers 2, 3 and 4  
 Frantz & Company, 12314 W. Silver Spring  
 Grossman Brothers, 4777 W. Lincoln  
 H&R Scrap Metals, 9000 W. Fon du Lac  
 Avenue  
 Hansen Storage Co.-No. 112,  
 2880 N. 112th Street  
 Kellogg's Miller Compressing,  
 900 S. Water St (Plant No. 8)  
 Kohl's Foods, 11100 W. Burleigh Street  
 Ladish Co., 5481 S. Packard Avenue  
 Larkin Lumber  
 Milwaukee Sewerage Commission,  
 Jones Island Sewerage Plant  
 National Warehouse Corp., 531 S. Water St  
 Obyrne Distribution Centers  
 Peltz, 1514 East Thomas St  
 Penney, J. C. Co., 11800 W. Burleigh St  
 Roundy's Inc., 11300 W. Burleigh St  
 Tex Par Energy, Inc., 3443 W. Mill Rd  
 Weyerhaeuser Co., 2960 N. 112th St  
 Wisconsin Cold Storage 344 E. Florida Street  
 Wisconsin Color Press, Inc.,  
 5400 W. Good Hope Rd  
 Wisconsin Paperboard Corp. 1514 E. Thomas

**MODESTO, CA**

General Foods  
 J.S. West Milling (S)  
 Proctor & Gamble  
 Snowden Enterprises

## Exhibit E



# UP Reciprocal Switching Circular

New Version Issued: June 1, 2011  
Effective Date\*: July 1, 2011

Updates have been made on pages  
8, 9, 11, 14, 16 - 18, 23 - 25, 27 - 29

If you would like to receive notifications on switching circular updates,  
please send an e-mail to [reciprocalswitch@up.com](mailto:reciprocalswitch@up.com).

**LONG BEACH, CA**

Vopak

**LOS ANGELES, CA**

ADM Cold Storage  
 ADM Milling  
 Baker Commodities  
 Cargill Sweeteners, 2800 Lynwood,  
 Lynwood, CA  
 Cargill Refined Oils, 2750 Jewel Ave.,  
 Vernon, CA  
 Cereal Food Processors, 1861 East 55th St  
 City Fibers  
 Clorox  
 Coast Packing  
 D & S Ingredient Transfer Company  
 Dart Warehouse  
 Dorset Jackson  
 Grace Davidson Chemical  
 Grace Zonolite Division  
 Hanson Mfg. R.E.  
 Hickory Springs California  
 Hokin Katz Metals Service  
 Horizon Milling LLC  
 Hybco U.S.A  
 Jefferson Smurfitt  
 Los Angeles Times  
 Mission Foods  
 Nalco Chemical  
 Pacific Resource Recovery  
 Packaging Corp America  
 Poly Pak America  
 Scott Sales Co., 3451 Randolph St  
 Sweetner Products (Vernon Warehouse)  
 US Gypsum  
 Ventura Foods

**MASON CITY, IA**

Ag-Processing (Soybean Processing Div)  
 American Crystal Sugar Co  
 Holnam Incorporated  
 Lehigh Portland Cement  
 Mason City Iron & Metal

**MC PHERSON, KS**

Chemstar Products  
 McPherson Concrete Products Co

**MEMPHIS, TN**

Allenberg Cotton (ACMD), 237 W Olive St  
 Ashland Chemicals  
 Bluff City Commodities, 1054 Kansas St  
 Boise Cascade Corp  
 Canale, D  
 ConAgra Foods, 1351 Williams Ave  
 (former ConAgra Grocery Products)  
 Harcros Chemicals

Jorgensen-Bennett Mfg. Co  
 Koppers Co, Inc  
 McMillen Feed Mill Div of Central Soya Co  
 Macaroy Distributing Co  
 Owen Lumber Co  
 Owens Corning  
 Southern Cotton Oil Co  
 Southern Cotton Oil Mill Co  
 Trumbull Asphalt Co of Delaware  
 U.S. Steel Co  
 Weyerhaeuser

**MILWAUKEE, WI**

A-1 Recycling, 2101 W. Morgan Ave  
 Alpine Plywood, 12210 W Silver Spring Rd  
 Elementis LTP, 546 S. Water St  
 Federal Marine Terminal  
 Municipal Docks No. 50, Piers 2, 3 and 4  
 H&R Scrap Metals, 9000 W. Fon du Lac Ave  
 Hansen Storage Co.-No. 112, 2880 N. 112th St  
 Miller Compressing,  
 900 S. Water St (Plant No. 8)  
 Ladish Co., 5481 S. Packard Avenue  
 Milwaukee Sewerage Commission,  
 Jones Island Sewerage Plant  
 National Warehouse Corp., 531 S. Water St  
 Nidera/Chicago Illinois River Mktg,  
 960 E. Bay St  
 Obyrne Distribution Centers, 5855 N 94th St.  
 Olsen Warehouse (Waukeshaw, WI)  
 Timber Creek Resource - 5059 N. 119th  
 Weyerhaeuser Co., 2960 N. 112th St

**MODESTO, CA**

General Foods  
 J.S. West Milling (S)  
 Snowden Enterprises

**MONROE, LA**

Gulf South Warehouse  
 Kitchen Brothers Manufacturing  
 Monroe Warehouse - Jackson,  
 2019 Jackson St.  
 Monroe Warehouse - Riverbarge,  
 801 Riverbarge St.

**MT. VERNON, IL**

Continental Tire  
 Mt Vernon Elevator

**MUSKOGEE, OK**

Griffin Grocery  
 Munding Milling  
 Yaffee Iron & Metal Co

## Exhibit F



**Chris Bigoness**

*Manager Merger Customer  
Access  
Network Strategy*

**BNSF Railway Company**

2500 Lou Menk Drive  
AOB 3rd Floor  
Fort Worth, TX 76131  
Phone: 817-867-6697  
Fax: 817-352-7154  
Email: [chris.bigoness@bnsf.com](mailto:chris.bigoness@bnsf.com)

February 6, 2012

Mr. Daniel P. Hartmann  
Senior Director Interline  
Union Pacific Railroad Company  
1400 Douglas Street, STOP 1350  
Omaha, NE 68179

Re: Restoration of Pre-Merger Competitive Service to Shipper Facility at Omnibus Point –  
2612 Crows Landing Road, Modesto CA 95358 (station of Rogers CA)

Dear Dan,

Pursuant to the Restated and Amended Settlement Agreement between BNSF and UP dated March 1, 2002, Section 8(i) and applicable law, this letter shall serve as notice of BNSF's intention to restore competitive service to 2612 Crows Landing Road, Modesto, CA 95358 (UP's station of Rogers). This facility is currently operated by G3 Enterprises and was previously operated by Proctor & Gamble (Charmin).

BNSF intends to restore competitive service arrangements to this industry by means of BNSF interchange to the Modesto & Empire Traction Company for reciprocal switch by UP. Service is planned to commence as soon as possible.

Sincerely,

Christopher P. Bigoness  
Manager Merger Customer Access  
BNSF Railway

## Exhibit G

UNION PACIFIC RAILROAD  
1400 Douglas Street Omaha, Nebraska 68179

March 1, 2012

Mr. Chris Bigoness  
Manager Network Development  
BNSF Railway  
2500 Lou Menk Drive, 3rd Floor AOB-3  
Fort Worth, TX 76131

**Re: Service to G3 Enterprises, 2612 Crows Landing Road, Modesto, CA**

Dear Chris:

Union Pacific has received your letter of February 6, 2012 concerning BNSF's intent to serve the customer located at 2612 Crows Landing Road, Modesto, CA. In your letter, it is stated that the Restated and Amended Settlement Agreement ("RASA") between BNSF and UP dated March 1, 2002, Section 8(i) and applicable law would allow BNSF such access.

Section 8(i) states

It is the intent of the parties that this Agreement result in the preservation of competition by two rail carriers for (a) all "2-to-1" Shipper Facilities at points listed on Exhibit A to this Agreement and (b) all other shippers who had direct competition or competition by means of siting, transload or build-in/build-out from **only** UP and SP pre-merger.

Prior to the UP/SP merger, Union Pacific offered reciprocal switching to Southern Pacific and to the MET for the customer located at this address - Proctor and Gamble. After the merger, Union Pacific continued to offer reciprocal switching to MET for this location. However, Proctor and Gamble has left this location and was removed from UP's reciprocal switching circular. G3 has since occupied this facility, and is not listed in UP's reciprocal switch circular therefore, Section 8(i) of the RASA does not apply and this location is not open to BNSF.

Regards,



Daniel Hartmann  
Senior Director – Interline Marketing  
Network and Industrial Development  
402 544 3169

dphartma@up.com

CC: L. Wzorek, J. Newman, G. Sturm, E. Davies, C. Sanford, M. White

