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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 33 (Sub-No. 277X)

UNION PACIFIC RAILROAD COMPANY
- ABANDONMENT EXEMPTION -
IN LAFOURCHE PARISH, LA

ENTERED
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UNION PACIFIC RAILROAD COMPANY'S
EVIDENCE AND ARGUMENT

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February 9, 2012

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SURFACE TRANSPORTATION BOARD

STB Docket No. AB-33 (Sub-No. 277X)

UNION PACIFIC RAILROAD COMPANY
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**UNION PACIFIC RAILROAD COMPANY’S
EVIDENCE AND ARGUMENT**

Pursuant to the Board’s decision served January 30, 2012, Union Pacific Railroad Company (“UP”) hereby submits the documents referenced or relied upon in its filings to date in this proceeding, which involves an exemption to abandon a portion of a line of railroad known as the Lockport Branch. UP is also submitting additional evidence and argument to demonstrate that BNSF Railway Company (“BNSF”) has never obtained Board authority to operate over the portion of the Lockport Branch proposed for abandonment (the “Line”). Because BNSF has no Board-authorized operations over the Line that must be discontinued before UP could consummate the abandonment, the Board should lift its housekeeping stay.

UP’s argument is supported by the accompanying verified statement of Daniel P. Hartmann, UP’s Senior Director - Interline Marketing, as well as other documents listed in the Appendix to this filing and attached hereto as Exhibits A through F.

I. BACKGROUND

On September 29, 2011, Louisiana & Delta Railroad, Inc. (“LDRR”) and UP filed a Combined Notice of Exemption seeking, respectively, an exemption to discontinue operations over, and abandon, the portion of the Lockport Branch extending from milepost 1.7 near Raceland, Louisiana, to milepost 14.2 near Jay, Louisiana. LDRR had leased and operated the

Lockport Branch since January 17, 1992, under an agreement with a UP predecessor railroad, Southern Pacific Transportation Company (“SP”).¹ In their Combined Notice of Exemption, which was published in the *Federal Register* on November 14, 2011, LDRR and UP certified that no local or overhead traffic had moved over the Line for at least two years.

On December 6, 2011, BNSF filed a letter claiming that it had “Board-sanctioned authority” to serve all present and future shipper facilities on the Line as a result of the Board’s decision in *The Burlington Northern & Santa Fe Railway Company and Union Pacific Railroad Company – Acquisition Exemption – Lines Between Dawes, TX, and Avondale, LA*, STB Finance Docket No. 33630 (STB served Sept. 29, 1998) (the “50/50 Line Decision”).

On January 6, 2012, BNSF filed a letter in which it repeated its claim to have “Board authority” to serve customers on the Line and argued that UP may not consummate the abandonment that is the subject of this proceeding “until such time as BNSF discontinues its operating authority over the line.” However, BNSF disclaimed any ownership interest in the Line, and it did not assert any source for its alleged “operating authority,” apart from its prior reference to the *50/50 Line Decision*.

On December 31, 2011, LDRR consummated its discontinuance of service over the Line. LDRR continues to have common carrier authority to operate between milepost 0.1 and milepost 1.7 of the Lockport Branch.²

¹ The 1992 Lease Agreement expired on December 31, 2011. A copy of the 1992 Lease Agreement is attached hereto as Exhibit A.

² A copy of the letter agreement governing LDRR’s lease of the Lockport Branch between milepost 0.1 and milepost 1.7 after December 31, 2011, is attached hereto as Exhibit B.

II. ARGUMENT

BNSF never obtained Board authority to operate over the Line. Accordingly, BNSF has no Board-authorized operations that must be discontinued before UP could consummate its abandonment of the Line.

A. BNSF Never Obtained Board Authority to Operate Over the Line.

BNSF appears to claim it obtained Board authority to operate over the Line in the *50/50 Line Decision*. However, BNSF neither sought nor obtained such operating authority in the *50/50 Line Decision*. To the contrary, BNSF correctly told the Board that it did not need Board authority to operate over the Line in order to provide service to shippers on the Line.

The *50/50 Line Decision* addressed BNSF's and UP's request that the Board exempt the two railroads' "acquisition of joint ownership of a line of railroad between Dawes, TX, and Avondale, LA." *50/50 Line Decision* at 1. UP and BNSF had agreed to acquire joint ownership of the line in a February 12, 1998, Term Sheet Agreement relating to the railroads' operations in and around Houston and along the Gulf Coast between Houston and New Orleans.³ As one part of the agreement, the parties agreed to exchange 50% ownership interests in their respective mainline segments of the former SP Lafayette Subdivision between Dawes and Avondale (the "50/50 Line"). *See* Ex. C, § I.1.⁴ As another part of the agreement, the parties agreed that "UP and BNSF shall have the right to serve all present and future industries or facilities originating or terminating traffic on the 50/50 Line and on former SP branches and

³ The Term Sheet Agreement is attached hereto as Exhibit C.

⁴ UP owned the 147.5-mile segment between Dawes and Iowa Junction, Louisiana, and BNSF owned the 190.4-mile segment between Iowa Junction and Avondale. BNSF had acquired the Iowa Junction to Avondale segment pursuant to the UP -BNSF Settlement Agreement in the UP/SP merger. *50/50 Line Decision* at 1 n.2.

spurs connecting to the 50/50 Line.” Ex. C, § II.2. The Lockport Branch is one of the former SP branches connecting to the 50/50 Line, and therefore is subject to the industry access provision of the Term Sheet Agreement.

On July 1, 1998, BNSF and UP jointly petitioned the Board for an exemption pursuant to 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323-11325 for the acquisition of joint ownership of the 50/50 Line (the “Petition for Exemption”).⁵ The Petition for Exemption made clear to the Board that the parties were *not* seeking Board authorization for any BNSF operations associated with the industry access provision:

Both railroads will have the right to serve all present and future industries or facilities originating or terminating traffic on the [50/50] Line or on former Southern Pacific branches or spurs, and any new branches or spurs, connecting to the [50/50] Line. (*This access agreement did not require Board approval.*)

Ex. D, p. 6 (emphasis added); *see also id.* at p. 5 n.4 (“BNSF gained access” to shippers located along the 50/50 Line and appurtenant branches “as part of a related agreement between UP and BNSF, *not requiring Board approval, that took effect on March 15, 1998.*”) (emphasis added).⁶

When the Board granted the Petition for Exemption, it authorized only the parties’ exchange of ownership interests in the 50/50 Line; it did not authorize any operations pursuant to the industry access provision of the Term Sheet Agreement. *See 50/50 Line Decision* at 3. The Board recognized that the ownership exchange was “part of a larger agreement” and that BNSF would also “gain access to all present and future shipper facilities” on former SP branches and spurs, but the Board did not authorize any BNSF operations over those branches or spurs. *Id.*

⁵ The Petition for Exemption is attached as Exhibit D.

⁶ UP and BNSF specifically provided in the Term Sheet Agreement that the industry access provision would take effect within 30 days of execution of the agreement – that is, several months before they filed the Petition for Exemption. *See* Ex. C, § V.4.

BNSF could have asked the Board to authorize trackage rights over the former SP branches or spurs, including the Line, but it chose not to pursue that option. The Term Sheet Agreement gave BNSF the option to access shipper facilities directly via trackage rights and seek the necessary authority from the Board. *See* Ex. C, § II.2. The parties agreed “to use their best efforts to promptly complete definitive agreements” and “to cooperate with each other and make and prosecute diligently whatever filings or applications, if any, are necessary to implement the provisions of the Term Sheet Agreement.” *Id.* §§ V.1, V.2. However, BNSF did not seek trackage rights or other operating rights in the Petition for Exemption (or elsewhere).⁷

That BNSF did not obtain Board authority to operate over the former SP branches and spurs in the *50/50 Line Decision* is reinforced by the September 1, 2000, Agreement between BNSF and UP regarding the 50/50 Line.⁸ Section 18 of that agreement provides that, if service to a shipper facility on a former SP branch or spur “requires the operation by one party over the trackage of the other,” the first party would “at its own cost and expense, initiate by appropriate application or petition . . . the procurement of all necessary consent, approval, or authority” from applicable government agencies, such as the Board. *See* Ex. E, § 18. If the *50/50 Line Decision* had provided BNSF with Board authority to operate over the former SP branches and spurs, this provision would have been unnecessary.

As Mr. Hartmann testifies in his verified statement, UP is not aware that BNSF ever sought, or that the Board ever granted, any authority for BNSF to operate over the Line.

⁷ The Board noted in the *50/50 Line Decision* that it had previously exempted the creation of new UP trackage rights over BNSF’s line between Beaumont and Navasota, Texas, which were rights that BNSF granted in another part of the Term Sheet Agreement. *See 50/50 Line Decision* at 2 n.4; *see also* Exhibit C, § III.1 (“BNSF will grant UP overhead trackage rights between Beaumont and Navasota . . .”).

⁸ The Agreement dated September 1, 2000 is attached hereto as Exhibit E.

Moreover, BNSF has not thus far identified any source of Board authority to operate over the Line, apart from its mistaken reference to the *50/50 Line Decision*.

The Board should not be surprised that BNSF never sought authority to operate over the Line. BNSF did not need Board-authorized trackage rights or other operating authority to carry out the parties' intent under the Term Sheet Agreement. The Term Sheet Agreement, as well as the September 1, 2000, Agreement, gave BNSF the ability to serve shippers using several means that did not require any authority from the Board. In particular, BNSF obtained the ability to serve shippers using haulage. *See* Ex. C, § II.2; Ex. E, § 2.2(e). Haulage arrangements do not require Board authorization to institute (or to abandon). *See Union Pac. R.R. – Abandonment Exemption – In Riverside & San Bernardino Counties, CA*, STB Docket No. AB 33 (Sub-No. 296X) (STB served May 3, 2001), at 2. BNSF also obtained the ability to serve shippers on the Line via reciprocal switching by UP, *see* Ex. C, § II.2; Ex. E, § 2.3, and by interchanging traffic with LDRR, *see* Ex. E, § 4.1,⁹ and neither means of providing service requires authorization from the Board.

B. The Precedent Cited by BNSF and Valentine, LLC, Is Inapplicable.

In their filings to date, BNSF and Valentine, LLC, rely on cases that do not apply to BNSF's situation because BNSF does not have Board authority to operate over the Line. The cases establish that a rail carrier cannot consummate an abandonment as long as a trackage rights tenant holds Board authority to operate over the line to be abandoned.¹⁰ However, unlike the

⁹ The Restated and Amended UP-BNSF Settlement Agreement, which is attached hereto as Exhibit F, expressly provides that BNSF may interchange traffic with LDRR at Raceland, which is where the Lockport Branch meets the 50/50 Line. *See* Ex. F, § 5(b).

¹⁰ BNSF cites *Soo Line R.R. d/b/a Canadian Pacific Ry. – Abandonment Exemption – In Bottineau, Rolette, & Towner Counties, ND*, STB Docket No. AB-57 (Sub-No. 56X) (STB served Jan. 10, 2010); *CSX Transportation, Inc. – Abandonment Exemption – In Raleigh* (continued...)

trackage rights tenants in those cases, BNSF never obtained Board authority to operate over the line at issue. BNSF does not have any Board-authorized trackage rights over the Line pursuant to 49 U.S.C. § 11323. Nor has BNSF obtained Board authorization to operate over the Line pursuant to 49 U.S.C. § 10901. In short, BNSF has no operations that require Board authority for their discontinuance before UP can consummate its abandonment of the Line. *See* 49 U.S.C. § 10903(a)(1)(B) (rail carrier seeking to “discontinue the operation” of rail transportation must obtain authorization); *see also Wisconsin & S.R.R. – Lease & Operation Exemption – Soo Line R.R. d/b/a CP Rail Sys.*, ICC Finance Docket No. 32706 (ICC served Aug. 2, 1995) at 2 (“*Thompson [v. Texas Mexican Ry.]*, 328 U.S. 134 (1946)] deals with a discontinuance or displacement of a railroad already operating on a line.”).¹¹

In this case, LDRR was the only rail carrier other than UP that held Board authority to operate over the Line, and LDRR consummated its discontinuance authority on December 31, 2011. Accordingly, there is no regulatory barrier to UP’s consummation of its abandonment of the Line.¹²

County, WV, STB Docket No. AB-55 (Sub-No. 552X) (STB served Nov. 25, 1998); and *Union Pacific R.R. Co. – Abandonment Exemption – In Solano County, CA*, Docket No. AB-33 (Sub-No. 77X) (ICC served Dec. 15, 1992).

Valentine cites *Illinois Central Gulf Ry. – Abandonment*, 360 I.C.C. 104 (1978). Valentine also cites *Thompson v. Texas Mexican Ry.*, 328 U.S. 134 (1946), which is not an abandonment case, but which stands for the principle that Board authority is required to terminate a trackage rights tenant’s operations over a line.

¹¹ BNSF has also made clear it is not asserting an ownership interest in the line. *See* Letter from Courtney Biery Estes to Cynthia A. Brown (Jan. 6, 2012) (“BNSF did not assert an ownership interest in the former SP branches and spurs. . .”).

¹² Contrary to the claim of Valentine, LLC, UP never “conceded” that BNSF would have Board authority to operate over the Line after LDRR’s authority was discontinued. *See* Letter from Thomas F. McFarland, Esq., to Cynthia A. Brown (Feb. 6, 2012). Rather, UP observed that LDRR has long held an exclusive right to operate over the Line.

Moreover, UP could consummate its abandonment regardless of whether BNSF obtained Board authority to operate over the Line, because BNSF never exercised any such authority. *See* Verified Statement of Daniel Hartmann at 2. The Board has held that a railroad may abandon its line, even where another rail carrier has obtained Board authority to operate over the line and has not obtained authority to discontinue its operations, as long as the second rail carrier has not exercised its operating authority. *See Mohall Cent. R.R. – Abandonment Exemption – In Nelson, Ramsey, & Cavalier Counties, ND*, STB Docket No. AB-1003X (STB served Oct. 29, 2007), at 1 n.1.

Finally, BNSF claims in its December 6 letter that it has been “diligently working with a rail-served shipper to have one of its facilities relocated adjacent to the line.” The Board should disregard such self-serving statements because its precedents plainly provide that mere speculation about future traffic is no basis for preventing an abandonment from going forward. *See, e.g., Mid-Michigan R.R., Inc. – Abandonment Exemption – In Kent, Ionia, & Montcalm Counties, MI*, STB Docket No. AB-364 (Sub-No. 14X) (STB served Sept. 26, 2008), at 4. If BNSF is interested in preserving the line, it is free to submit an offer of financial assistance under 49 U.S.C. § 10904.

III. CONCLUSION

The Board should lift its housekeeping stay in this proceeding because BNSF has no Board-authorized operations over the Line that would have to be discontinued before UP could consummate the abandonment of the Line.

Respectfully submitted,



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February 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2012, I caused a copy of Union Pacific Railroad Company's Evidence and Argument to be served by e-mail or first-class mail, postage prepaid on all parties of record in this proceeding.



Spencer F. Walters

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-33 (Sub-No. 277X)

UNION PACIFIC RAILROAD COMPANY
–ABANDONMENT EXEMPTION–
IN LAFOURCHE PARISH, LA

VERIFIED STATEMENT OF DANIEL P. HARTMANN

My name is Daniel Hartmann. I am Senior Director - Interline Marketing for Union Pacific Railroad Company (“UP”). I have been employed by UP for more than 16 years. As Senior Director - Interline Marketing, I am responsible for managing various aspects of UP’s relationships with other Class I railroads, short lines, and regional railroads, including overseeing reciprocal switch agreements, merger access agreements, routing protocols, and abandonments and line sales.

I am submitting this statement to address claims that BNSF Railway Company (“BNSF”) has Board authority to operate over a UP line of railroad called the Lockport Branch. UP is seeking an exemption to abandon the portion of the Lockport Branch that extends from Milepost 1.7 near Raceland, Louisiana, to Milepost 14.2 near Jay, Louisiana (the “Line”).

Louisiana & Delta Railroad, Inc. (“LDRR”), a short line railroad, leased the Lockport Branch from Southern Pacific Transportation Company, a UP predecessor railroad, under a 1992 agreement that expired on December 31, 2011. LDRR obtained Board authority to discontinue its operations over the Line, and it consummated its discontinuance on December 31, 2011. (LDRR still has authority to operate over the Lockport Branch between Milepost 0.1 and

Milepost 1.7, and LDRR and UP have agreed to apply the terms of the expired lease to that segment while they negotiate new lease terms to reflect the changed nature of the premises.)

To the best of my knowledge and the knowledge of others at UP, no carrier other than UP currently holds Board authority to operate over the Line. BNSF never sought and never obtained Board authority to operate over the Line. Moreover, UP has not identified any trackage rights agreement or other operating agreement between UP and BNSF that provides for BNSF operations over the Line. Finally, to the best of my knowledge and the knowledge of others at UP, BNSF never operated over the Line: LDRR is the only rail carrier that has operated over the Line since it leased the Lockport Branch in 1992.

VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, belief and information. Further, I certify that I am qualified and authorized to file this statement.

Executed on February 8, 2012.


Daniel P. Hartmann

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-33 (Sub-No. 277X)

UNION PACIFIC RAILROAD COMPANY
–ABANDONMENT EXEMPTION–
IN LAFOURCHE PARISH, LA

APPENDIX

- Exhibit A Lease Agreement Between Southern Pacific Transportation Company and Louisiana & Delta Railroad, Inc. (January 17, 1992)
- Exhibit B Letter Agreement Concerning the January 17, 1992 Lease Agreement Between Southern Pacific Transportation (Union Pacific as Successor-in-Interest) and the Louisiana & Delta Railroad (December 21, 2011)
- Exhibit C Term Sheet Agreement Covering Ownership and Operation of Lines in and Around Houston, TX (February 12, 1998)
- Exhibit D UP and BNSF Joint Petition for Exemption in *Burlington Northern and Santa Fe Railway Co. and Union Pacific Railroad Co. – Petition for Exemption – Acquisition of Lines Between Dawes, TX, and Avondale, LA* (July 1, 1998)
- Exhibit E Agreement Between BNSF and UP (September 1, 2000)
- Exhibit F UP-BNSF Restated and Amended Agreement (March 1, 2002)

Exhibit A

AGREEMENT

THIS INDENTURE OF LEASE and OPTION TO PURCHASE AGREEMENT is made this 17TH day of JANUARY, 1992, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation ("SPT"), and LOUISIANA & DELTA RAILROAD, INC., a Delaware corporation ("LDR").

WITNESSETH:

WHEREAS, SPT, a rail carrier, is the owner of a segment of line of railroad between approximately Milepost 0.1 at Raceland Junction, Louisiana, and approximately Milepost 14.2 at Jay, Louisiana, and related branch lines of railroad and trackage, facilities, and appurtenances located thereon and affixed thereto; ("Lockport Branch");

WHEREAS, SPT considers said Lockport Branch to be only marginally profitable and under the circumstances cannot justify reinvestment in said Lockport Branch, and considers said Lockport Branch to be a possible future candidate for abandonment;

WHEREAS, as an alternative to abandonment and permanent cessation of freight rail service over said Lockport Branch, SPT desires to lease said Lockport Branch to LDR for continued operation of trackage service and to grant to LDR the option to purchase said line of railroad for continued operation of freight rail service; and

WHEREAS, LDR desires to lease and operate said Lockport Branch as a rail carrier of freight and to acquire the option to purchase said Lockport Branch.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and the other good and valuable considerations set forth herein, SPT and LDR agree as follows:

1. Property To Be Leased

(a) SPT hereby does lease to LDR and LDR hereby does lease from SPT, and all in "AS IS, WHERE IS CONDITION AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS AS TO THE CONDITION OF THE LOCKPORT BRANCH, THE CONDITION OF THE SOIL AND UNDERLYING RIGHT OF WAY, THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS, SUBSTANCES, WASTES, OR OTHER ENVIRONMENTALLY REGULATED SUBSTANCES, OR OTHER CONTAMINANTS IN OR ON THE SOIL, UNDERLYING

RIGHT OF WAY, OR IMPROVEMENTS, WHETHER KNOWN OR UNKNOWN AS OF THE DATE OF THIS AGREEMENT, the real property, railroad right of way, road bed, main tracks, branch tracks, sidings, industrial tracks, culverts, bridges, buildings, structures, communication and signal facilities, fixtures, and all other appurtenances, excepting and reserving unto SPT those rights and properties retained pursuant to Article 6 of this Agreement (collectively, "Premises"), located as follows:

The segment of line of railroad between Raceland Junction at Milepost 0.1 and Milepost 14.2 at the end of track in Jay, Louisiana, including and excluding real property as indicated in Exhibit A, together with rail, ties, other track material, and bridge material located on or adjacent to the Premises on the Commencement Date provided for in Article 11(a) of this Agreement but not affixed to the Premises.

(b) On the Commencement Date provided for in Article 11(a) of this Agreement, SPT will deliver to LDR possession of the Premises for LDR's lease and operation.

2. Term of Lease

(a) The term of the lease of the Premises to LDR will begin on the Commencement Date provided for in Article 11(a) of this Agreement and will end on December 31, 2011, unless terminated earlier pursuant to the provisions of this Agreement. Each calendar year period (beginning January 1 and ending December 31) or fraction thereof during the term of this Agreement is referred to herein as an "Annual Period."

(b) If LDR exercises its option to purchase the Premises or any part thereof granted in Article 4 of this Agreement, LDR's lease of the Premises will terminate on the Closing Date provided for in Article 11(b) of this Agreement.

3. Annual Lease Credits and Rental

(a) As rental for LDR's lease of the Premises, LDR will pay to SPT (or successors and assigns) Thirty Five Thousand Dollars (\$35,000.00) per Annual Period ("Annual Rental"). The Annual Rental shall be adjusted by SPT effective July 1 of each year beginning July 1, 1992, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the final Annual Indexes for Charge-Out Prices and Wage Rates (1977-100), included in the AAR Railroad Cost Indexes issued by the Association of American Railroads. In making such determination, the final "Material prices, Wage rates and supplements combined (excl. fuel) index" for the Western District shall be used, and the final index figure for the calendar year 1990 shall be taken as the

base. Adjustment of the Annual Rental shall be achieved by calculating the percent of change in the index figure for the calendar year ending on the December 31 prior to the July 1 on which the adjustment is to be made as related to the index figure for 1990, multiplying the percent of the change and changing the Annual Rental to the nearest hundredth of a cent by resulting percentage.

By way of example, assuming "A" to be the Material prices, Wage rates and supplements combined (excl. fuel) final index" figure for the calendar year 1990; "B" to be the Material prices, Wages rates and supplements combined (excl. fuel) final index" figure for the calendar year 1991; "C" to be the Annual Rental; and "D" to be the percentage of adjustment, the revised Annual Rental would be determined by the following formula:

$$(1) \quad \frac{B - A}{A} = D$$

$$(2) \quad (D \times C) + C = \text{charge effective July 1, 1992}$$

In the event the base for the AAR Railroad Cost Indexes issued by the Association of American Railroads shall be changed from the year 1977, appropriate revision shall be made in the base (established as herein provided) for the calendar year of 1992. If the Association of American Railroads or any successor organization discontinues publication of the AAR Railroad Cost Indexes, an appropriate substitute for determining the percentage of changes shall be negotiated by the parties hereto.

(b) The Annual Rental may be reduced under the following conditions: For each carload originating and terminating on the Lockport Branch and handled in SPT revenue linehaul service, LDR will receive a Lease Credit of \$87.50 per car, adjusted by the same index as specified in Article 3 (a) above. Lease Credits may be changed at any time by mutual agreement of SPT and LDR.

(c) Neither Annual Rental nor Lease Credits will be assessed for the partial year, if any, from the Commencement Date provided for in Article 11(a), to the closing of the first calendar year.

(d) Within sixty (60) days after the close of the first Annual Period of LDR's operation of the Premises, (and for each subsequent Annual Period) LDR will calculate the number of carloads originating and terminating on the Lockport Branch and handled by SPT in revenue linehaul service. This number will be used to determine the amount, if any, of Annual Rental. Excess Lease Credits cannot be carried forward to the next year, and have no value if the Annual Rental has been reduced to zero by Lease Credits.

(i) If Annual Rental exceeds Lease Credits and any amount is owed to SPT, LDR shall pay no later than ninety days after the end of each Annual Period such amount to SPT; and

(ii) Also within sixty (60) days preceding the close of each Annual Period during which LDR operates the Lockport Branch, LDR will advise SPT in writing, whether LDR intends to (a) continue LDR's lease of the Premises under the terms and conditions of this Agreement; (b) exercise LDR's option to purchase the Premises granted in Article 4 of this Agreement; or (c) terminate LDR's lease of the Premises in compliance with Article 15 of this Agreement.

(e) LDR will have no duty to pay Annual Rental for the period between LDR's filing with the Interstate Commerce Commission ("ICC") (or any other regulatory agency with jurisdiction for any necessary certificate of public convenience and necessity or other approval or exemption from regulation for discontinuance of LDR's operations over all the Premises) and the actual discontinuance of said operations. LDR will prosecute with diligence any such filings. Notwithstanding any of the foregoing, the rental abatement provided in this Article will not be effective if LDR withdraws said filings and continues its operations over all or any part of the Premises or if the necessary regulatory approval or exemption is not obtained.

(f) If LDR fails to pay any Annual Rental to SPT when due, and such failure continues for thirty (30) days, LDR shall pay interest at the rate of 2% over the prime rate of Bank of America, its successors and assigns, in effect on the day the Annual Rental was due, which interest shall accrue from the date it was due until the date of payment.

(g) Acceptance by SPT (its successors, assigns or designees) of rent or other payments shall not be deemed to constitute a waiver of any provision of this Agreement.

(h) Upon receipt by SPT of the report required by Paragraph (d) hereof, SPT shall, upon giving at least fifteen (15) days written notice, have the right, at its sole cost and expense, to review and audit all of LDR's records relating to or forming the basis for such report.

(i) As additional security for the payment by LDR to SPT of any sums of money required hereunder to be paid by LDR, it is agreed that in the event LDR fails, neglects or refuses to timely pay any sums due and owing to SPT hereunder, SPT may use any and all sums which it may collect from any third party and which may, in whole or in part, be payable to LDR, as an offset against any and all payments for which LDR is delinquent. In addition, any sums at any time due and payable to LDR by SPT may also be used by SPT and credited to LDR's account to the extent of any delinquent

payment owed by LDR to SPT. LDR does hereby waive any and all claims, demands and causes of action against SPT which it may have or claim to have as a result of SPT's use or implementation of the provisions of this Paragraph (i) and/or any offset except where the amounts due or owed to SPT are contested by LDR in writing.

4. LDR's Option to Purchase the Premises

(a) SPT hereby grants to LDR, for the term of this Agreement only an option to purchase the Premises at the Purchase Price provided in Article 5(a) herein. LDR must provide SPT notice in writing of its exercise of its option within sixty (60) days prior to the close of each Annual Period during which LDR operates the Lockport Branch. SPT shall have thirty (30) days from receipt of said notice to accept or reject the LDR determination of the Purchase Price. If the Purchase Price cannot be agreed upon by the parties, LDR may elect to take the calculation of the Purchase Price to Arbitration. All rights under this Article 4 with respect thereto shall automatically terminate on the expiration of this Agreement (at SPT's request, LDR shall execute such written terminations as shall be appropriate further to evidence same).

(b) As consideration of LDR's option to purchase the Premises, upon execution and return of this Agreement, LDR simultaneously will transmit to SPT One Hundred Dollars (\$100.00) in the form of a check ("Option Fee").

5. Consideration for Purchase of the Premises

(a) As consideration for sale by SPT of the Premises, LDR will pay SPT the net liquidation value of the Premises as of the Closing Date provided for in Article 11(b) of this Agreement, calculated by the methodology used by the ICC, as of the date of this Agreement, to determine the value of a line of railroad pursuant to 49 USC Section 10905, as adjusted to reflect any Capital Credits earned pursuant to Paragraph (b) of this Article ("Purchase Price"). Notwithstanding the foregoing, the Purchase Price during the first three years after the date of this Agreement shall be \$295,293, exclusive of the real property whose value the parties shall determine through fair market value or appraisal.

(b) SPT and LDR acknowledge that during the term of LDR's lease of the Premises, LDR may be required by law or this Agreement to make capital improvements ("Improvements") to an existing structure, building, fixture or other appurtenance, as more fully described in Article 1 ("Structure") on the Premises or to undertake extraordinary maintenance of an existing Structure on the Premises to permit safe, freight rail operations on the Premises. SPT will permit the Purchase Price to be adjusted as follows to reflect Improvements ("Capital Credit"):

(i) A Capital Credit will be granted only for a capital improvement required by law or an Improvement deemed by SPT in the reasonable exercise of its judgment to be essential to LDR's safe operation of the Premises as a rail carrier of freight. A Capital Credit will not be granted if the need for Improvement is attributable, directly or indirectly, to the acts or inaction of LDR. A Capital Credit will be granted only for an Improvement to a Structure that is a part of the Premises on the Closing Date provided for in Article 11(b) of this Agreement and if LDR has not discontinued or ceased its operations as a rail carrier of freight over the Structure. A Capital Credit will not be granted for an Improvement performed in whole using funds furnished by any governmental entity and in the event an Improvement is performed using in part funds furnished by any governmental entity LDR shall be entitled to a Capital Credit for only that part of the improvement not so funded;

(ii) To obtain a Capital Credit, LDR will submit to SPT a written request for a particular Improvement for a particular Structure on the Premises. Said request will include at minimum the following information and detailed supporting documentation: LDR's estimate of the net liquidation value of said Structure prior to the Improvement, a description of the work proposed for the Improvement, LDR's estimate of the cost of the Improvement including but not limited to separate estimates for labor and materials, and LDR's justification for the Improvement including the basis for LDR's judgment that the Improvement is essential to LDR's safe operation of the Premises as a rail carrier of freight;

(iii) Upon receipt of LDR's written request for a particular Improvement for a particular Structure on the Premises, SPT will determine the net liquidation value of said Structure prior to the Improvement and promptly will notify LDR whether or not SPT will grant the requested Capital Credit, said grant not to be unreasonably withheld;

(iv) If SPT grants a Capital Credit for a particular Improvement for a particular Structure on the Premises, the amount of the Capital Credit will be the difference between the net liquidation value, if any, of said Structure prior to the Improvement and the net liquidation value of said Structure on the Closing Date provided for in Article 11(b) of this Agreement reduced by depreciation using a straight line method. For purposes of this Section, the net liquidation value of an Improvement will include only the cost of materials in the Improvement and will exclude labor costs and other costs of placement of the Improvement on the Premises;

(v) Notwithstanding any other provision of this Article, if the entire net liquidation value of an Improvement will not exceed Twenty-Five Thousand Dollars (\$25,000.00) and if LDR deems the need for the Improvement to be an emergency, LDR may make or

undertake the Improvement and seek a Capital Credit upon completion of the Improvement, subject to the right of SPT to decline to grant a Capital Credit; and

(vi) Upon completion of an Improvement, LDR will provide SPT with the net liquidation value of the Structure after the Improvement. Said statement will be in writing and will include detailed supporting data.

6. Retained Property and Easements

(a) Excepted and reserved unto SPT from the Premises will be any and all track equipment, locomotives, and other rolling stock, communications and signal maintenance material and equipment, switch and other padlocks, and station signs, located on the Premises on the Commencement Date provided for in Article 11(a) of this Agreement ("Retained Property").

(b) Prior to the Commencement Date provided for in Article 11(a) of this Agreement, SPT will have the right (i) to remove Retained Property from the Premises; or (ii) to gather, segregate, and mark Retained Property at one (1) or more locations on or adjacent to the Premises and remove Retained Property from said locations within sixty (60) days after said Commencement Date. If SPT fails to complete said removal within sixty (60) days after said Commencement Date and SPT fails to request from LDR an additional sixty (60) days period to remove the Retained Property, which request shall not be unreasonably withheld, LDR may (i) take title thereto without consideration of any kind therefor or claim by SPT or anyone claiming an interest by or through SPT or (ii) give notice to SPT to remove any Retained Property within sixty (60) days and in the event of SPT's failure to so remove LDR may affect effect such removal and delivery to SPT of the Retained Property at SPT's sole cost.

(c) During the term of LDR's lease of the Premises, SPT will have the right to convey by deed of easement to itself, to its parent corporation, to its subsidiaries or affiliates, or to its designees one (1) or more non-exclusive easements ("Retained Easements") to install, construct, operate, maintain, repair, renew, replace and remove pipelines, fiber optics lines or wirelines over, under, on, along or across the Premises, including among other things the right to install, construct, operate, maintain, repair, renew, replace, and remove associated and related facilities; the right to attach the pipelines and wirelines and associated and related facilities to existing bridges; and the right of ingress and egress for access purposes provided, however, such retained easements or the grantee's use or operation thereunder shall not interfere with LDR's use of the leased Premises for railroad operations.

(d) If LDR exercises its option to purchase the Premises, SPT will have the right to convey Retained Easements, to itself, to its parent corporation, to its subsidiaries or affiliates, or to its designees.

(e) SPT shall not be required to pay any monies to LDR for SPT's removal and retention of the Retained Property. Said removal will be effected without damage to the Premises or reduction in the usefulness of the Lease Property to LDR; provided, however, that any such removal will not interfere with rail operations on the Premises.

(f) Retained Easements will not require payments to LDR for their creation or use. Each Retained Easement will be exercised in a manner that does not interfere unreasonably with the rail operations of LDR, except to the extent that effective exercise of any easement reasonably entails such interference; provided, however, that any such exercise will not interrupt rail operations, on the Premises; and provided, further that at least thirty (30) days prior to exercise of any Retained Easement, SPT will provide or cause to be provided to LDR written notice of said exercise including but not limited to a plan or description of any construction or other work on the Premises necessitated by said exercise.

(g) If any Retained Easement is granted or reserved and thereafter is not used within twenty (20) years after the date of grant or reservation, said Retained Easement will be deemed abandoned and any document of conveyance of any Retained Easement shall be provided.

(h) (i) During the term of LDR's lease of the Premises, LDR may enter into agreements, easements, or licenses with third parties pertaining to the Premises, including but not limited to land leases and sales and pipeline, wireline, crossing, and grade separation agreements, whether or not any said agreement, easement, or license is necessary for or related to rail operations;

(ii) LDR will not enter into any said agreement, easement, or license that will prevent or interfere with LDR's rail operations on the Premises; affect any property of SPT other than the Premises; obligate SPT to incur any expense or liability or take any action other than to consent to any said agreement, easement, or license; result in any default by or failure of LDR to perform any of its obligations under this Agreement; or without the prior written consent of SPT, has a term longer than the term of LDR's lease of the Premises;

(iii) LDR will be responsible for negotiation, preparation (using SPT's standard forms of agreement then in effect), recordation, and all other handling of said lease of the Premises. Upon request by LDR, SPT will make available to LDR

SPT's records necessary for negotiation, preparation, recordation, and all other handling of said agreements, easements, and licenses. Said records will be available for inspection, and for a reasonable fee to cover costs, photocopying during normal business hours at SPT offices where they are maintained;

(iv) If any said agreement, easement, or license contemplates or permits construction on the Premises, LDR will require all construction contractors or subcontractors to enter into a separate Contractor's Right of Entry Agreement with LDR, the format and terms and conditions of which are agreeable to SPT, obtain and maintain in effect for the duration of said construction a Railroad Protective Liability Insurance Policy naming LDR and SPT as insured parties and to provide certificates of insurance to LDR and SPT;

(v) The written consent of SPT will be required to enter into any said agreement, easement, or license if SPT's consent is legally necessary to effectuate said agreement, easement, or license or if the term of any said agreement, easement, or license is longer than the term of LDR's lease of the Premises. To obtain SPT's consent to any said agreement, easement, or license, LDR will submit a written request to SPT at least thirty (30) days prior to the proposed execution date of said agreement, easement, or license. Said consent will not be withheld unreasonably; and

(vi) Except as provided in this Subparagraph, agreements, easements, or licenses entered into by LDR pursuant to this Paragraph will not require payments to SPT for their creation or during the term of LDR's lease of the Premises. If during the term of LDR's lease of the Premises, LDR desires to convey all or any part of the Premises to a third party, the purchase and sale agreement and other conveyance documents will require payment to SPT of ninety percent (90%) of the total proceeds of said conveyance on the date of the closing of said conveyance.

7. Certain Obligations of LDR

(a) On the Commencement Date provided for in Article 11(a) of this Agreement, LDR will assume all common carrier responsibility and obligation for the Premises, including but not limited to performance of freight rail carrier service along the Premises, and will relieve SPT of said common carrier responsibility and obligation during the term of LDR's lease of the Premises, to the extent permitted by law.

8. Certain Obligations of SPT

(a) SPT represents and warrants that there are no liens or encumbrances against the Premises, except as otherwise noted.

(b) Until the Commencement Date provided for in Article 11(a) of this Agreement, SPT will (i) maintain the Premises in condition suitable for its current operations; (ii) refrain after the date of this Agreement from changing or removing tracks or other facilities included in and affixed to the Premises without the consent of LDR, which consent will not be withheld unreasonably; and (iii) continue to conduct its business along with the Premises in the current manner and (iv) insure that LDR shall have the quiet enjoyment of the Premises so long as it is not in breach of this Lease.

(c) SPT will not perform and will not be required to perform any rehabilitation or extraordinary maintenance on the Premises during SPT's continued operation pursuant to Paragraph (b) of this Article.

(d) SPT represents that it is not, as of the date of this Agreement, and will not become during the term of this Agreement a party to any agreement or arrangement, except as set forth in this Agreement, that gives any third party a right superior to that of LDR to lease and operate or to purchase the Premises.

(e) SPT will cooperate with and assist LDR to fulfill the reporting requirements set forth at 49 CFR Section 1105.7(c)(10)(i) and (ii) or any successor regulations.

9. Regulatory Approvals

(a) Upon termination or expiration of LDR's lease of the Premises or any part thereof or upon LDR's notice to SPT of its intention to terminate, LDR promptly will apply for and obtain from the ICC and any other regulatory agency with jurisdiction any necessary approvals or exemptions from regulation for discontinuance of its operations over the Premises, and SPT will cooperate with and promptly assist LDR in its applications for and efforts to obtain said regulatory approvals or exemptions.

(b) Unless SPT and LDR elects to terminate this Agreement pursuant to Article 15, upon request by SPT or LDR, SPT and LDR will seek judicial review if the ICC or any other regulatory agency with jurisdiction declines or fails to grant any said regulatory approvals or exemptions or grants any said regulatory approval or exemption subject to any condition not acceptable to SPT or LDR. Upon mutual agreement, SPT and LDR will defend (each party paying its own costs) any judicial action brought by any person challenging or otherwise contesting any said regulatory approval or exemption. Nothing in this Paragraph will constitute or be deemed an obligation of SPT or LDR to become a party to any judicial action to which it is not a necessary party or a waiver by SPT or LDR of any right under the Federal Rules of Civil Procedure or the rules of any other court to oppose joinder in any judicial action to which it is not a necessary party.

10. Interchange, Trackage Rights Agreements and other Exhibits

Interchange is to be accomplished with LDR's current interchange at Shriever, LA., under the terms of the current Interchange Agreement, dated November 6, 1986, current Trackage Rights Agreement, dated November 6, 1986 (as amended, Exhibit B), and current Commercial Agreement, dated November 6, 1986 (as amended, Exhibit C).

The following related agreements are attached hereto as exhibits and are incorporated herein by reference.

- Exhibit A - Real Estate Exclusion
- Exhibit B - Trackage Rights Amendment
- Exhibit C - Commercial Agreement Amendment
- Exhibit D - Assignment of Agreements
(Track Leases)
- Exhibit E - Assignment of Agreements
(Leases, crossings, etc.)

11. Commencement Date and Closing Dates

(a) Unless otherwise agreed by the parties, LDR will begin operation as a rail carrier of freight and will assume common carrier obligation and responsibility for the Premises within thirty (30) days after the date of this Agreement first written above ("Commencement Date").

(b) If LDR exercises its option to purchase the Premises and unless otherwise agreed by the parties, transfer of title to the Premises or any part thereof and all matters relating thereto will occur within thirty (30) days after the effective date of the necessary regulatory approvals or exemptions for LDR's purchase and continued operation of the Premises or any part thereof ("Closing Date").

(c) Closing for the sale of the Premises will be at a time and place mutually and reasonably agreed upon by SPT and LDR.

12. Other Closing Matters

(a) On the Closing Date and in exchange for delivery by LDR of the Purchase Price minus the Option Fee, SPT will deliver possession to LDR of the Premises or the part thereof to be purchased by LDR and will execute and deliver to LDR a quitclaim deed conveying SPT's right, title and interest in and to all or said part of the Premises, subject to taxes and assessments not then due and payable and to easements and restrictions as may appear of record or from an examination of the Premises

(b) SPT has heretofore delivered to LDR the following:

(i) Copies or originals of valuation maps, track charts, bridge and other drawings, bridge inspection reports, deeds, agreements, leases, and licenses directly affecting the Premises or the part thereof purchased by LDR and in the possession of SPT, its parent corporation, or its affiliates; provided, however, that at the sole discretion of SPT, copies of said maps, charts, drawings, and documents that apply in part to property not purchased by LDR or in which SPT retains an interest may be delivered to LDR in lieu of originals;

(ii) An assignment of all known leases, side and industrial track agreements, public and private grade crossing agreements, pipeline and wire agreements, licenses, and other agreements directly affecting the Premises purchased by LDR to which SPT is a party as of the Closing Date and which were not previously assigned to LDR.

(c) Proration of income, rents, and payments accrued under all leases, agreement, licenses, and easements directly affecting the Premises will be governed by Article 13 of the Agreement.

13. Allocation of Income and Expenses

(a) Prior to the Commencement Date, SPT will arrange for assignment to LDR of those third party agreements or parts thereof directly affecting the Premises, excepting and reserving unto SPT those agreements governing Retained Easements, and said assignment will be for a period equal to the term of LDR's lease of the Premises. Upon assignment to LDR of said agreements, easements, and licenses, it will be the obligation of LDR to collect any rents and payments and to pay or otherwise to resolve any claims, expenses, and liabilities therefrom.

(b) Any income accrued prior to the Commencement Date from the Premises, and rents and payments accrued prior to Commencement Date from any agreements, easements, or licenses pertaining to the Premises, and any claims, expenses, and liabilities accrued prior to the Commencement Date in respect of the Premises will belong to, be paid to, and be the responsibility of SPT, and it will be the obligation of SPT to collect said income, rents, and payments and to pay or otherwise resolve said claims, expenses, and liabilities.

(c) Any income accrued on or subsequent to the Commencement Date and during LDR's lease of the Premises will be the obligation of LDR to collect said income and to pay or otherwise to resolve said claims, expenses, and liabilities.

(d) Any income, rents, and payments accrued and any claims, expenses, and liabilities that arise or are accrued on or

subsequent to the Commencement Date and during the term of LDR's lease of the Premises from or in respect of any Retained Easements will belong to, be paid to, and be the responsibility of SPT, and it will be the obligation of SPT to collect said income, rents, and payments and to pay or otherwise to resolve said claims, expenses, and liabilities.

(e) The provisions of this Article will survive the closing of the sale of the Premises.

(f) Beginning on the Commencement Date, LDR will pay, or promptly reimburse SPT if SPT pays, all bills or portions of bills for water, sewer, gas, and electric service to the Premises, excluding service attributable solely to Retained Easements.

(g) If during the term of LDR's lease of the Premises, the Premises or any part thereof is appropriated by a governmental body or agency thereof or by a quasi-public body, all awards or compensation for said appropriation or acquisition will be paid solely to SPT and LDR's lease of the Premises and option to purchase the Premises will terminate as to said property, with an appropriate abatement of rental to be applied in the case of a partial taking.

14. Responsibility for Taxes

(a) Property taxes and assessments relating to the Premises will be prorated on a daily basis as of the Commencement Date. All special taxes or assessments for improvements to the Premises made prior or subsequent to the Commencement Date and due and payable on or after the Commencement Date will be paid by LDR.

(b) After the Commencement Date LDR will pay when due, and prior to the imposition of any penalty, all licenses, taxes, levies, or assessments of whatever kind or nature that may be a lien against the Premises, and LDR will indemnify SPT against any liability for payment of said licenses, taxes, levies, and assessments. Nothing in this Paragraph will be construed to diminish any right of LDR to contest any said license, tax, levy, or assessment in appropriate judicial or administrative proceedings, and unless required by law, LDR will not be required by this Agreement to pay any said license, tax, levy, or assessment so long as LDR is contesting in good faith the validity thereof by appropriate legal proceeding. SPT shall cooperate fully with LDR in LDR's contesting of such validity. If LDR is contesting in good faith the validity of any said license, tax, levy, or assessment relating to the Premises and if it is judicially determined that said license, tax, levy, or assessment is valid and binding or if said proceeding is discontinued, LDR forthwith will pay said license, tax, levy, or assessment together with all costs, interests, and penalties attached thereto. SPT will promptly

forward to LDR any notice it receives concerning licenses, taxes, levies and assessments relating to the Premises.

(c) Upon request by SPT, LDR will present to SPT for inspection the official receipts (or photocopies thereof) showing the payment of any of said licenses, taxes, levies, and assessments relating to the Premises.

(d) Promptly upon receipt of an itemized statement, LDR will reimburse SPT for any said licenses, taxes, levies, or assessments paid by SPT and upon request by LDR, SPT will present to LDR for inspection the official receipts (or photocopies thereof) showing the payment of any of said licenses, taxes, levies and assessment.

15. LDR's Use of and Discontinuance of
Operations over the Premises

(a) During the term of LDR's lease of the Premises, LDR will use the Premises to provide service as a rail carrier of freight and for any other lawful purpose consistent with maintaining rail carrier service along the Premises. In said use LDR will enjoy all rights of a common carrier providing rail transportation in interstate commerce, except as otherwise provided in this Agreement.

(b) During the term of LDR's lease of the Premises, LDR will not suspend or discontinue its operation as a rail carrier of freight over all or any part of the Premises without first applying for and obtaining any necessary approvals or exemptions from regulation for said discontinuance of operations or abandonment; provided, however, that LDR will not seek said regulatory authority, or if no regulatory authority is needed or sought, take any action to discontinue its operations over all or any part of the Premises, without prior consultation with SPT or first giving SPT sixty (60) days' notice of LDR's intent to do so.

(c) During the term of LDR's lease of the Premises, upon discontinuance of LDR's operations as a rail carrier of freight over all or part the Premises pursuant to necessary and proper regulatory authority or upon cessation of LDR's operations as a rail carrier of freight over all or part of the Premises, LDR promptly will (i) relinquish to SPT possession of the Premises or that part thereof over which LDR discontinued or ceased operations, and (ii) this Agreement will terminate or no longer will apply to said part of the Premises, as provided in Article 25 of this Agreement. For purposes of this Article 15(c), LDR will be considered to have ceased its operations over said line of railroad or any part thereof if (i) for a period of two (2) consecutive months, no freight traffic originates or terminates on the Premises, and said absence of revenue traffic is not attributable to lawful embargo, strike, temporary plant closing, force majeure,

or action of SPT; or (ii) for a period of twelve (12) consecutive months, no freight traffic originates or terminates on the Premises or any part thereof, regardless of cause.

16. Maintenance

(a) During the term of LDR's lease of the Premises, LDR at its sole cost and expense shall properly maintain the Premises to at least the following standards:

Lockport Branch -- Class 1, as specified in Federal Railroad Administration Safety Standards of October 16, 1972; as amended; and

Any rehabilitation or reconstruction, including but not limited to that necessitated by an Act of God, shall be performed by LDR at its sole cost and expense. Such maintenance will include any function which SPT would be required to perform pursuant to applicable federal, state and municipal laws, ordinances and regulations, capable of operating speeds of at least 10 miles an hour. Nothing herein shall preclude LDR, at its sole cost and expense, from maintaining the Premises to a standard higher than the minimum herein provided, but LDR shall not be required to do so. LDR shall comply with all applicable federal, state or local laws, ordinances and regulations and shall protect the Premises against all encroachments or unauthorized uses.

(b) During the term of LDR's lease of the Premises, LDR, without the prior written consent of SPT, will not replace existing track and other track material ("OTM") with substitute or replacement track or OTM having a lighter weight, of lesser quality or having a lower fair market value. Any repair or replacement of welded rail shall also be welded. LDR may make any replacement and any substitute with any material having the same weight and quality of the materials being replaced, without the prior written consent of SPT, provided that the work being performed by LDR and the materials being provided by LDR are sufficient to maintain the trackage to then FRA Class 1 standards.

(c) During the term of LDR's lease of the Premises, LDR may relocate switches and industrial tracks from locations on the Premises to other locations on the Premises with any necessary and proper regulatory authority and after ten (10) days' written notice to SPT.

(d) LDR will pay, satisfy, and discharge all claims for liens for material and labor or either of them used, contracted for, or employed by LDR during the term of LDR's lease of the Premises in the construction, repair, maintenance, or removal of the Premises and any improvements located thereon, whether said improvements are the property of SPT or of LDR, and LDR will indemnify and save

harmless SPT from all said claims, liens, or demands whatsoever.

(e) At least once a year SPT shall have the right to inspect the Premises, SPT shall notify LDR in writing of any failure to maintain the Premises in accordance with Article 16 hereof and LDR shall, within ninety (90) days of its receipt of such notice, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence.

(f) LDR's maintenance obligations hereunder shall include, but shall not be limited to, highway grade crossings, grade crossing signal protection devices, bridges, culverts and other structures and such-roadbed. LDR agrees that all grade crossings and grade crossing protection devices will be given a high priority in Lessee's maintenance program.

(g) During the term of LDR's lease of the Premises, SPT shall have no obligation to perform any maintenance upon, or furnish any materials for the maintenance of the Premises.

(h) In the event of a dispute between SPT and LDR with respect to LDR's fulfillment of its duties under this Article, it is agreed between the parties that an inspection shall be made by a qualified inspector acceptable to LDR and SPT; such inspection shall be arranged by SPT and such representative shall inspect those segments or portions of track in dispute and his findings in this regard shall be binding upon the parties.

17. Compliance with Laws

(a) During the term of LDR's lease of the Premises, LDR will comply with applicable federal, state, and municipal laws, ordinances, and regulations, including but not limited to all federal, state and local laws, rules, regulations, and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste or other pollutants.

(b) SPT warrants that to the best of the available knowledge that SPT is in compliance with applicable federal, state, and municipal laws, ordinances, and regulations, including but not limited to all federal, state and local laws, rules, regulations, and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste or other pollutants.

18. Pollution and Other Environmental Matters

(a) In addition to SPT's disclaimer of express or implied warranties or representations as to the condition of the soil, underlying right of way, and improvements constituting the Premises and as to the presence of absence of contaminants in or on said soil, underlying right of way, and improvements, LDR and SPT acknowledge that owners or users of property adjacent to the Premises may have contaminated the soil, underlying right of way, and underground water that flows beneath the Premises. SPT makes no representation as to the existence, actual source, or type or degree of any contamination of said soil, underlying right of way, or underground water or any cleanup or remedial efforts by third parties to eliminate any such contamination.

(b) As of the date of this Agreement, SPT has not received any notice from any governmental agency, of any alleged violation of environmental law, rule, regulation, or ordinance or any judgment pursuant to any environmental law, rule, regulation, or ordinance relating to the Premises.

(c) During the term of LDR's lease of the Premises and thereafter if LDR exercises its option to purchase the Premises and at its own expense, LDR will (i) make all modifications, repairs, or additions to the Premises, (ii) install and bear the expense of any and all structures, devices, or equipment on the Premises, and (iii) implement and bear the expense of any remedial action concerning the Premises required under any said law, rule, regulation, ordinance, or judgment and attributable to LDR's lease, operation, and use of ownership of the Premises or any pollution or other contamination of the Premises that is the result of an act, occurrence, or omission during LDR's lease, operation, and use or ownership thereof.

During the term of LDR's lease of the Premises and thereafter if LDR exercises its option to purchase the Premises, SPT, at its own expense, will (i) make all modifications, repairs or additions to the Premises (ii) install any and all structures, devices or equipment on the Premises, and (iii) implement any remedial action concerning the Premises required under any said law, rule, regulation, ordinance, or judgment and which is attributable solely to SPT's ownership, operation or use of the Premises or any pollution or other contamination of the Premises that is the result of an act, occurrence or omission of SPT. SPT has not and will not dispose or knowingly permit disposal of any wastes of any kind, whether hazardous or not, on the Premises.

(d) During the term of LDR's lease of the Premises, LDR will not dispose or knowingly permit disposal of any hazardous wastes on the Premises.

(e) Either party will furnish to the other written notice of any and all (i) releases of hazardous wastes or substances of which such party is or becomes aware that occur on or adjacent to the Premises during the term of LDR's lease of the Premises whenever said releases are required to be reported to any federal, state, or local authority; and (ii) alleged water or air permit condition violations on or adjacent to the Premises of which either party is or becomes aware during the term of LDR's lease of the Premises whenever said releases are required to be reported to any federal, state, or local authority.

(f) The written notices required by Paragraph (e) of this Article will (i) identify the substance released, the amount released, the measures undertaken to clean up and remove the released material and any contaminated soil or water from the Premises, the nature and extent of the alleged violation, and the measures taken to eliminate a violation on or adjacent to the Premises; and (ii) certify that the condition has been or is being remedied. Either party also will provide the other with copies of any and all reports made to said governmental agencies concerning said releases or said alleged violations on, in or adjacent to the Premises during the term of LDR's lease of the Premises.

(g) During the term of LDR's lease of the Premises, SPT will have the right to enter the Premises (in addition to the right granted pursuant to Article 16) during regular business hours and on advance written notice to LDR to inspect the Premises to ensure compliance with the requirements of this Article. If SPT detects any violation, including any contamination of the Premises attributable to an act, occurrence, or omission during LDR's lease, operation or use of the Premises, SPT will notify LDR of the violation. Upon receipt of said notice, LDR promptly will take steps to remedy the violation. In the event that LDR's failure adequately to remedy any such violation has been finally adjudicated, then SPT or its representative will have the right to enter the Premises and to take whatever corrective action SPT deems necessary to eliminate said violation, at the sole expense of LDR.

(h) Regardless of any acquiescence by SPT, LDR will (i) Indemnify and hold harmless SPT from all liabilities, damages, costs, expenses, fines, penalties, claims, demands, causes of action, or liens resulting from any violation of any federal, state, or local law, rule, regulation, or ordinance concerning, air, water, noise, hazardous waste, solid waste, or other pollution or the storage, transport, release, or disposal of hazardous materials, substances, wastes, or other pollutants, including but not limited to any and all costs, expenses, and attorneys', consultants', and experts' fees at the trial and appellate levels, and penalties, fines, or civil judgments, whether incurred voluntarily or by court or administrative order or direction, sought or obtained against SPT, if said violation (A) is attributable to an act, occurrence, or omission attributable to

LDR's lease, operation, and use or ownership of the Premises, other than an act, occurrence, or omission by SPT; or (B) is attributable to any release or disposal of any hazardous material, substance, waste, or other pollutant onto or into the ground or into the water or air from or upon the Premises, other than a release or disposal by SPT during the term of LDR's lease of the Premises and thereafter if LDR exercises its option to purchase the Premises; or (C) is the result of any violation of this Article other than a violation by SPT.

(ii) Reimburse SPT for all costs and expenses incurred by SPT in elimination or remedying said violation, pollution, or contamination; and

(iii) Procure and maintain in effect during the term of LDR's lease of the Premises and during the five (5) years after termination of LDR's lease of the Premises a comprehensive general and automobile liability policy or policies of insurance with combined single limit of not less than Five Million Dollars (\$5,000,000) covering without limitation, bodily injury and property damage liability to which LDR is or may be subject under this Agreement. Such insurance shall name SPT as additional insured. If such insurance is not available in the commercial insurance market for any portion of the liability to which LDR is or may be subject under this Article, LDR will procure and maintain the maximum such insurance available in the commercial insurance market, and if insurance for all or the remainder of the liability to which LDR is or may be subject under this Article becomes available in the commercial insurance market during the term of LDR's lease of the Premises, LDR will procure and maintain such additional insurance. Failure by or inability of LDR to procure and maintain such insurance will not in any way relieve LDR from any liability to which LDR is or may be subject under this Article. Notwithstanding any other provision of this Agreement, LDR will not be required to provide insurance to cover non-sudden, non-accidental release of pollutants.

(i) Regardless of any acquiescence by LDR, SPT will (i) Indemnify and hold harmless LDR from all liabilities, damages, costs, expenses, fines, penalties, claims, demands, causes or action, or liens resulting from any violation of any federal, state or local law, rule, regulation, or ordinance concerning air, water, noise, hazardous waste, solid waste, or other pollution or the storage, transport, release, or disposal of hazardous materials, substances, wastes, or other pollutants, including but not limited to any and all costs, expenses, and attorneys', consultants', and experts' fees at the trial and appellate levels, and penalties, fines, or civil judgments, whether incurred voluntarily or by court of administrative order or direction, sought or obtained against LDR, if said violation (A) is attributable to or the result of an act, occurrence, or omission prior to the Commencement Date or

after SPT has repossessed the Premises; or (B) is attributable to any release or disposal of any hazardous material, substance, waste, or other pollutant onto or into the ground or into the water or air from or upon the Premises prior to the Commencement Date or after the term of this Agreement.

(ii) Reimburse LDR for all costs and expenses incurred by LDR in elimination or remedying said violation, pollution, or contamination.

(j) As between the parties, LDR waives and will not assert as a defense any statute of limitations applicable to any liability of LDR under this Article, and LDR will not raise or plead a statute of limitations defense in any action arising out of LDR's failure to comply with this Article.

(k) If LDR exercises its option to purchase the Premises, the provisions of this Article will survive the closing of the sale of the Premises.

(l) LDR and SPT reserve all rights they have or at any time may have against all third parties for contribution under any federal or state statute or under any principle of common law.

19. Liability

Except as otherwise provided, pursuant to Article 18 of this Agreement, the liability of the parties hereto, only as between themselves, for death, personal injury, or property damage will be determined as follows:

(a) Except where the sole proximate cause of such injury, death, loss, or damage is the negligence of SPT, LDR will indemnify and save harmless SPT from and against any and all loss, damage, claim, expense including attorneys' fees, or liability for: (i) injury to or death of any person occurring on or about the Premises during the term of and in connection with LDR's lease of the Premises and thereafter if LDR exercises its option to purchase the Premises or operation and use or ownership of the Premises; (ii) loss of or damage to any property whatsoever, including but not limited to the Premises where said injury, death, loss, or damage is caused by, arises out of, results from, or is incident to LDR's lease, operation and use or ownership of the Premises or any part thereof; (iii) LDR's violation of or failure to comply with any provision of this Agreement; and (iv) agreements, easements, or licenses entered into by LDR pursuant to Article 6(h) of this Agreement.

(b) Nothing in this Article or in Article 18 of this Agreement will impose upon LDR liability or obligation or duty of indemnification of any nature for any injury, death, loss, damage,

penalty, or fine occurring prior to the Commencement Date or resulting from, arising out of, or attributable solely to any act, occurrence, or omission prior to the Commencement Date.

(c) The party hereto responsible for any loss, damage, or expense pursuant to this Agreement may assert on behalf of the other party any right, claim, demand, or cause of action of the other party against a third party resulting from, arising out of, incidental to, or occurring in connection with such loss, damage, or expense; provided, however, the responsible party may not settle or compromise any such right, claim, demand, or cause of action without the concurrence of the other party if the consideration for such settlement or compromise exceeds Ten Thousand Dollars (\$10,000.00).

20. Entire Agreement

Except as provided in Article 10 of this Agreement, this Agreement constitutes the entire agreement between SPT and LDR relating to LDR's lease and operation of, option to purchase, and purchase of the Premises, and no other representation, warranties, or agreements, either oral or written, will be binding upon SPT or LDR. This Agreement may be modified only by an instrument in writing signed by authorized officers of SPT and LDR.

21. Assignment

This Agreement may be assigned by LDR only with the written consent of SPT, signed by an authorized officer, which consent will not be unreasonably withheld. To obtain SPT's consent to such an assignment, LDR will provide written notice to SPT of its desire to assign this Agreement, including a letter signed by an authorized officer of the intended assignee stating that the assignee agrees to said assignment and agrees to be bound by all the terms of said assignment and this Agreement. This Agreement will be binding upon and inure to the benefit of successors and assigns of SPT and successors and permitted assigns of LDR.

22. Notices

Except as otherwise provided in this Agreement, all notice required by or given under this Agreement will be sufficient in all respects if in writing and delivered personally, by registered or certified mail, or by commercial courier service to the address shown in this Article. Evidence of the giving of said notice will be a certified U.S. Postal Service return receipt or a completed courier receipt.

To SPT: Executive Vice President
 Southern Pacific Transportation Company
 One Market Plaza
 San Francisco, CA 94105

With a Copy To:

Director - Contracts and Joint Facilities
Southern Pacific Transportation Company
One Market Plaza, Room 1004-P
San Francisco, CA 94105

To LDR:

General Manager
Louisiana & Delta Railroad, Inc.
402 W. Washington Street
New Iberia, LA 70560

With a Copy To:

President
Genesee & Wyoming Industries, Inc.
71 Lewis Street
Greenwich, CT 06830

23. Confidentiality

Except as provided by law or by rule, order, or regulation of any court, regulatory agency, or arbitration panel with jurisdiction over the subject matter of this Agreement or any matter arising out of or related to this Agreement, during the term of this Agreement and during the five (5) years after termination of this Agreement, SPT and LDR will use their best efforts to keep confidential and to prevent disclosure to any third party of any otherwise confidential information to which access is provided or obtained hereunder, other than disclosure to the parties' officers, agents, and employees, the parties' lessors, parent corporations, subsidiaries, affiliates, successors, and assigns, and their officers, agents, and employees, except with the prior written approval of the other parties hereto.

24. Termination

(a) This Agreement may be terminated on or at any time prior to the Commencement Date upon mutual agreement of SPT and LDR. In the event of such termination, SPT promptly will refund to LDR without interest the Option Fee.

(b) This Agreement may be terminated at any time during the term of LDR's lease of the Premises upon mutual agreement of SPT and LDR. In event of such termination, SPT promptly will refund to LDR without interest the Option Fee.

(c) If for a period of thirty (30) days, LDR fails to keep or perform any one (1) or more of LDR's material covenants or

obligations under this Agreement and if said failure continues for a period of ten (10) days after the date of receipt of written notice from SPT to LDR of said failure without substantial effort by LDR to remedy said failure, upon giving an additional ten (10) days' written notice to LDR of said failure, SPT may terminate LDR's lease of the Premises, remove LDR from the Premises, retake possession of the Premises, and hold the Premises as if this Agreement had not been made, subject to receipt by LDR of any necessary regulatory approval or exemption.

(d) If for a period of thirty (30) days, SPT fails to keep or perform any one (1) or more of SPT's material covenants or obligations under this Agreement and if said failure continues for a period of ten (10) days after the date of receipt of written notice from LDR to SPT of said failure, upon giving an additional ten (10) days written notice to SPT of said failure, LDR may terminate this Agreement.

(e) The notification provisions of Article 3(d)(ii) herein apply.

25. Return of Premises to SPT

Upon expiration of LDR's lease of all or any part of the Premises or if LDR's lease of all or any part of the Premises is terminated pursuant to Article 24 of this Agreement, except upon exercise by LDR of its option to purchase the Premises, LDR will comply with the following requirements:

(a) LDR promptly will apply for an exercise any necessary approvals or exemptions from regulation for discontinuance of its operations over all or said part of the Premises.

(b) LDR will restore the Premises to its condition on the Commencement Date, normal wear and tear excepted consistent with LDR's maintenance obligation hereunder.

(c) If all sums due SPT under this Agreement have been paid and all LDR's obligations and covenants under this Agreement have been performed, LDR promptly will remove from all or said part of the Premises any and all structures or other property belonging to LDR or that LDR caused or permitted to be placed or erected on the Premises and permitted to be placed or erected on the Premises. Said removal will be effected without avoidable damage to the property of SPT.

If LDR fails to complete said removal from all or said part of the Premises within sixty (60) days after the date of said termination, SPT may take title thereto without consideration of any kind therefor or claim by LDR or anyone claiming an interest by or through LDR or SPT may remove all or any part of said structures

and/or property and restore the Premises to its former condition, at the sole expense of LDR, and LDR will reimburse SPT for said expense within thirty (30) days of receipt of a bill or bills therefor; and

If said improvements are necessary to continuity of the Premises said improvements will become the property of SPT, and unless SPT and LDR agree in writing to the contrary, without the payment of compensation by SPT to LDR.

(d) Upon request of SPT, LDR will execute a release of LDR's lease of all or said part of the Premises and of LDR's option to purchase the Premises in recordable form satisfactory to SPT.

(e) Subject to the approvals set forth in Paragraph (a) of this Article, LDR promptly will vacate all or said part of the Premises and promptly will surrender all or said part of the Premises to SPT.

26. Arbitration

In the event an dispute involving this Agreement arises as between the parties hereto which either party believes to be of such magnitude that it must resort to litigation in order to resolve it, such party may first submit the issue(s) in writing to the other party with a request that such issues be submitted to arbitration pursuant to this Article. such other party shall respond to such request within fifteen (15) days and if such parties thereby agree to arbitration, the provisions of this Article shall govern, unless modified by mutual agreement. Nothing contained herein, however, shall prevent either party from seeking legal redress through the courts if they do not agree to arbitrate.

If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, and the parties agree to arbitration, such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such a single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party. If the parties cannot so agree, the party demanding such arbitration (the demanding party) shall notify the other party (the noticed party) in writing of such demand, stating the question or questions to be submitted for decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator, notify the demanding party in writing of such appointment, and at its option submit a counter-statement of question(s). Should the noticed party fail within twenty (20) days

after receipt of such notice to name its arbitrator, the arbitrator for the demanding party shall select one for the noticed party so failing. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge of the United States District Court for whose district includes New Orleans upon application by any party after ten (10) days' written notice to the other party.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in the parties' statements, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on all parties to the arbitration when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon question submitted for arbitration, performance under the Agreement shall continue in the matter and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

Each party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

27. Accounting

During the term of this Agreement and for at least three (3) years thereafter, LDR shall maintain records pertaining to this Agreement of a kind and in a manner LDR uses generally for its own records and shall allow SPT's agent or authorized representative to have access to such records. The records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by SPT's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payment or claims submitted by LDR or any of its payees pursuant to the execution of the Agreement. Such records subject to examination shall also include, but not be

limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement.

In order to conduct audits in compliance with this Article, SPT's agent or its authorized representative upon reasonable advance notice to LDR shall have access to LDR's facilities, shall have access to all necessary record, and shall be provided adequate and appropriate work space.

28. Sale of Property Centerline of Lockport Branch

Nothing in this Agreement shall prevent SPT from selling any portion of the Premises which is located beyond fifty (50) feet of the centerline of any branch track, including areas of any station grounds provided such areas are not being used in connection with LDR's rail freight operations. All proceeds from such real estate sales shall accrue solely to SPT and LDR shall execute a lease amendment deleting any such sale property from the description and terms hereof or any other document reasonably necessary to remove the encumbrance of this lease from such property.

29. Miscellaneous

(a) Time is of the essence in all matters pertaining to this Agreement.

(b) This Agreement will be construed in accordance with the laws of the United States of America and the State of Louisiana.

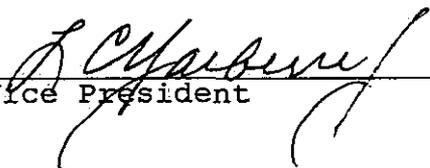
(c) This Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

(d) All headings in this Agreement are inserted for convenience only and will not affect construction of interpretation of this Agreement.

(e) Both parties agree to execute a memorandum of this agreement.

IN WITNESS WHEREOF, the parties hereto duly executed this Agreement as of the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

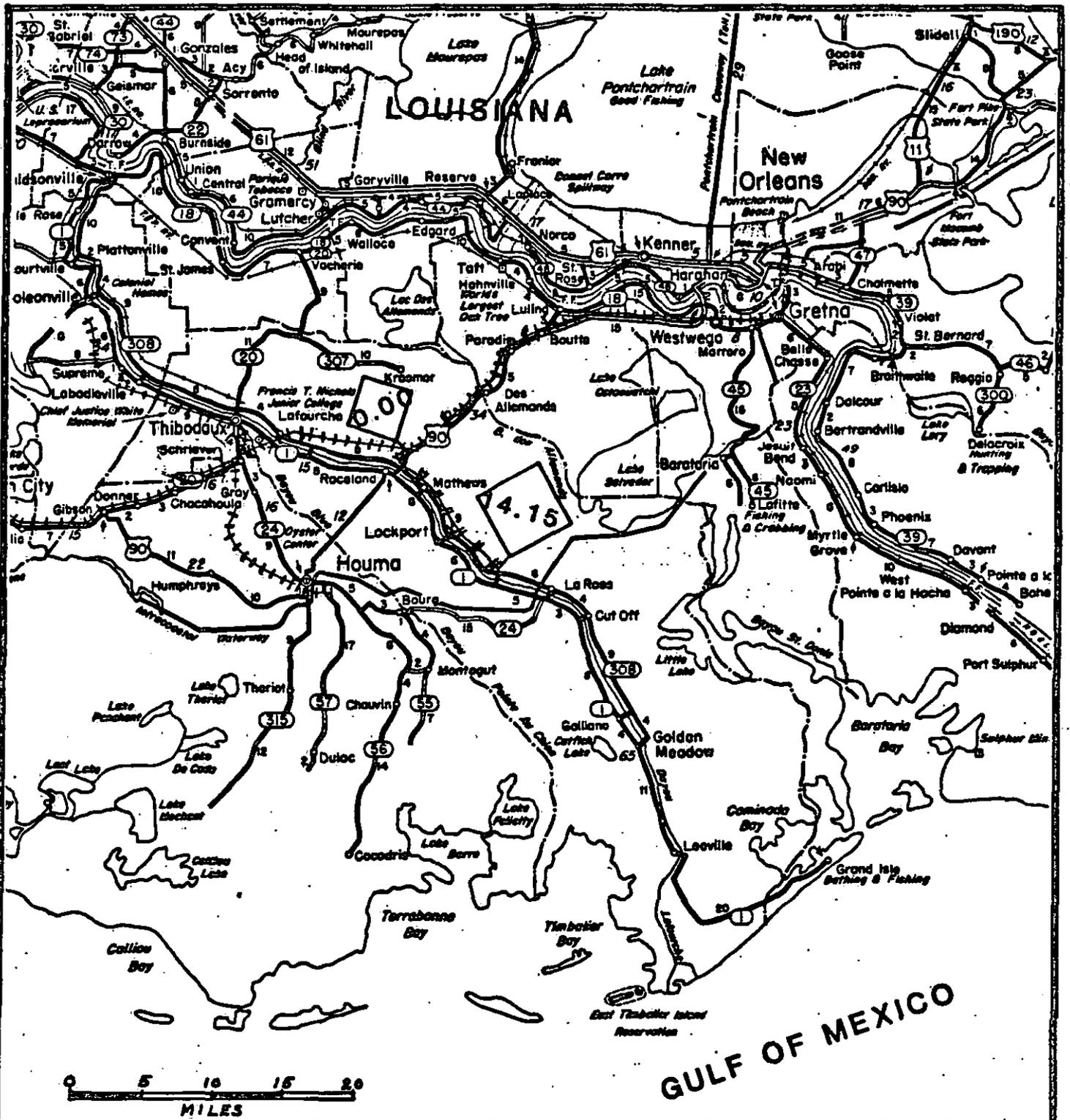


Vice President

LOUISIANA & DELEWARE RAILROAD



President



LOCKPORT BRANCH



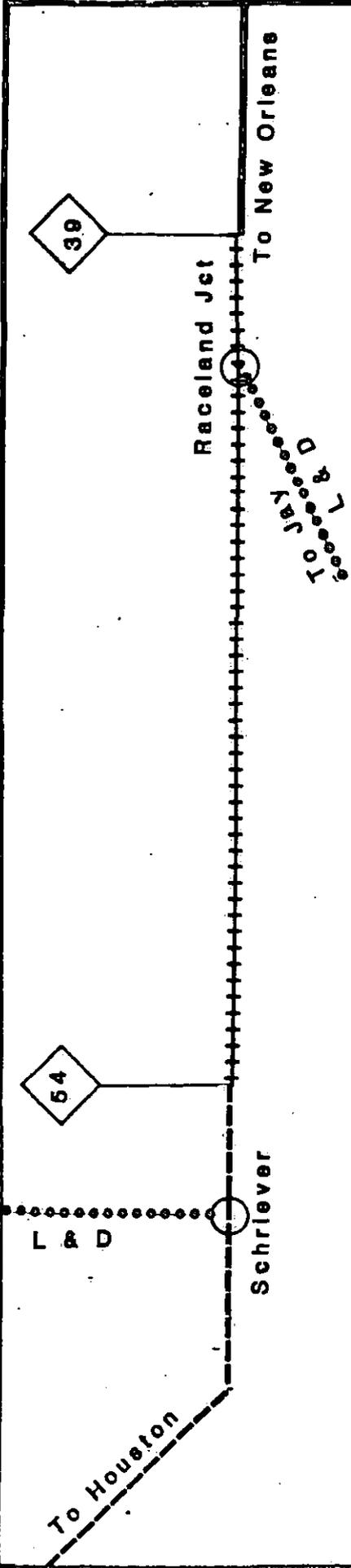
S.P.T. CO.

SOUTHERN PACIFIC



LEASE TO L&DR

TRANSPORTATION CO.



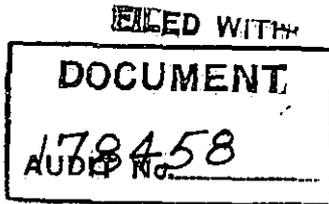
- Legend**
- S.P.T. Co Trackage
 - ++++++ Proposed L&D Trackage Rights
 - Existing L&D Trackage Rights

SOUTHERN PACIFIC LINES

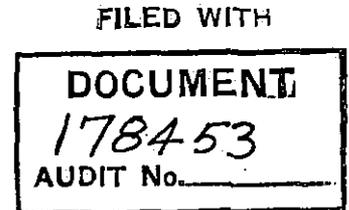
Trackage Rights

Schriever to Raceland Jct., LA

No Scale



**EXHIBIT B
SUPPLEMENTAL AGREEMENT
TO
TRackage RIGHTS AGREEMENT
(EXHIBIT E)**



THIS SUPPLEMENTAL AGREEMENT, made this 17TH day of January 1992, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, (hereinafter "Owner") and LOUISIANA & DELTA RAILROAD, INC., a Delaware corporation (hereinafter "User");

RECITALS:

By a separate sales agreement dated November 6, 1986 (hereinafter "Branch Lines Sale Agreement"), Owner and User set forth their understandings and agreements with respect to the sale by Owner to User of various rail branch lines located in the state of Louisiana. In order to facilitate User's rail carrier operations over said branch lines, Owner granted User approximately 74 miles of trackage rights between Owner's Milepost 128.00, near New Iberia, Louisiana, and Owner's Milepost 54.00, near Schriever, Louisiana, pursuant to Exhibit E of the Branch Lines Sale Agreement (hereinafter "Trackage Rights Agreement").

By a separate indenture of an even date herewith (hereinafter "Lease Option"), Owner and User set forth their agreements and understandings with respect to User's lease of and option to purchase the rail lines of Owner otherwise known as the Lockport Branch (hereinafter "Lockport Branch"). In order to facilitate User's rail carrier operations over the Lockport Branch, Owner agrees to extend the rail lines covered by the Trackage Rights Agreement for a distance of approximately 15 miles from Schriever, Louisiana, Milepost 54.00, to Raceland Junction, Louisiana, Milepost 39.00, subject to the following terms and conditions:

AGREEMENT:

1. This Supplemental Agreement shall take effect as of JANUARY 20, 1992, and shall remain in effect until terminated in accordance with the terms and conditions of the Trackage Rights Agreement.

2. Section 1.B. of the Trackage Rights Agreement is hereby

deleted in its entirety, with the following inserted in lieu thereof:

"B. The term "Joint Facility" shall refer to trackage as defined in Section 1.A. of this agreement, approximately 89 miles in length, between Owner's Milepost 128.00, near New Iberia, Louisiana, and Owner's Milepost 39.00 near Raceland Junction, Louisiana, and certain connecting trackage as illustrated by the green lines on the attached Drawings 85-0072, Sheets 1 through 5, dated May 22, 1985, collectively referred to as Exhibit A and Exhibit A-1, dated November 4, 1991."

3. The Trackage Rights Agreement is hereby amended to include Exhibit A-1, dated November 4, 1991, attached and made a part hereof.

4. Except as otherwise provided herein, all of the terms and conditions of the Trackage Rights Agreement shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed in duplicate counterparts as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By WE Fowler
(Title) Director

Contracts and Joint Facilities

LOUISIANA & DELTA RAILROAD, INC.

By [Signature]
(Title) President

FILED WITH
DOCUMENT
178453 SP#
AUDIT No. _____

FILED WITH
DOCUMENT
~~178456~~ SP#
AUDIT No. _____

EXHIBIT C
SUPPLEMENTAL AGREEMENT
TO
COMMERCIAL AGREEMENT
(EXHIBIT C)

THIS SUPPLEMENTAL AGREEMENT, made this 17th day of January 1992, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, (hereinafter "Owner") and LOUISIANA & DELTA RAILROAD, INC., a Delaware corporation (hereinafter "User");

RECITALS

By a separate sales agreement dated November, 6, 1986 (hereinafter "Branch Lines Sales Agreement"), Owner and User set forth their understandings and agreements with respect to the sale by Owner to User of various rail branch lines located in the state of Louisiana. In order to facilitate User's rail carrier operations over said branch lines, Owner and User entered into a commercial agreement dated March 11, 1986 (hereinafter "Commercial Agreement") pursuant to Exhibit C of the Branch Lines Sales Agreement.

By a separate indenture of an even date herewith (hereinafter "Lease Option"), Owner and User set forth their agreements and understandings with respect to User's lease of and option to purchase the rail lines of Owner otherwise known as the Lockport Branch (hereinafter "Lockport Branch"). In order to facilitate User's rail carrier operations over the Lockport Branch and to arrange the commercial affairs between parties, the parties agree to the following terms and conditions:

AGREEMENT

1. This Supplemental Agreement shall take effect as of JANUARY 20, 1992, and shall remain in effect until terminated in accordance with the terms and conditions of the Lease Option.
2. Attachment 2 referenced in paragraph 8 of the Commercial Agreement is hereby supplemented by the following:

Maximum absorption by Owner of User's switch charge shall be:

Interchange Point: Schriever, Louisiana

Stations Served on Lockport Branch:

Raceland Jct.
Raceland
Mathews

Godchaux
Jay

Maximum Absorption: \$275.00

3. Except as otherwise provided herein, all of the terms and conditions of the Commercial Agreement shall be and remain in full force and affect.

In witness whereof, the parties have caused this Supplemental Agreement to be executed in duplicate counterparts as of the day and year herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By M. S. Sanders
(Title) Managing Director Marketing Network Development

LOUISIANA & DELTA RAILROAD, INC.

By [Signature]
(Title) President

**EXHIBIT D
TEMPORARY ASSIGNMENT AGREEMENT
LOCKPORT BRANCH
(Track Leases)**

THIS AGREEMENT, made this 17th day of January, 1992 by and between **SOUTHERN PACIFIC TRANSPORTATION COMPANY**, a Delaware corporation, hereinafter referred to as "SPT" or "Assignor" and **LOUISIANA & DELTA RAILROAD, INC.**, a Delaware corporation, hereinafter referred to as "LDR" or "Assignee";

RECITALS:

By a separate indenture of an even date herewith (hereinafter "Lease Option"), SPT and LDR set forth their agreements and understandings with respect to LDR's lease of and option to purchase the rail lines of SPT otherwise known as the Lockport Branch (hereinafter "Lockport Branch"). In accordance with the terms and conditions of Article 13 of the Lease Option, SPT agrees to transfer and assign, for a temporary period, its rights and obligations under those third party agreements affecting the Lockport Branch, subject to the following terms and conditions.

ASSIGNMENT:

1. Assignor hereby transfers and assigns to Assignee all of its rights, duties and obligations excluding its interests related to property which arise under the following agreements (collectively hereinafter "Assigned Agreements") for the term as specified in Section 3 hereof:

<u>Document Audit No.</u>	<u>Station</u>
120702	Jay
T-21745	Mathews
T-20122	Mathews
T-22073	Mathews
T-30042	Jay
T&L-31319	Godchaux

2. Subject to the terms and conditions hereof, Assignee hereby accepts the above assignment and agrees to perform and abide by all of the terms, covenants and conditions contained in the Assigned Agreements as they relate to Assignee's lease of and rail operations over the Lockport Branch. In the event of a conflict between the terms and conditions of this Agreement and those contained in the Assigned Agreements, the terms and conditions of this Agreement shall govern.

3. This Agreement shall take effect as of JANUARY 20, 1992 and shall remain in effect until terminated in accordance with the terms and conditions of the Lease Option.

4. Each notice given pursuant to or in connection with this Agreement shall be effective when delivered personally, by registered or certified mail, or by commercial courier service to the address set forth below, or such other address as may be established by either party upon notice to the other party:

If intended for SPT:

Executive Vice President-Operations
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

With a copy to:

Director-Contracts & Joint Facilities
Southern Pacific Transportation Company
One Market Plaza, Room 1004-P
San Francisco, CA 94105

If intended for LDR:

General Manager
Louisiana & Delta Railroad, Inc.
402 W. Washington Street
New Iberia, LA 70560

President
Genesee & Wyoming Industries, Inc.
71 Lewis Street
Greenwich, CT 06830

5. Except as herein otherwise provided, all of the terms, covenants and conditions of the Assigned Agreements shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate counterparts as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By WE Fowler
(Title) Director

Contracts and Joint Facilities

LOUISIANA & DELTA RAILROAD, INC.

By [Signature]
(Title) President

EXHIBIT E
TEMPORARY ASSIGNMENT AGREEMENT
LOCKPORT BRANCH
(Leases, crossings, etc.)

THIS AGREEMENT, made this 17th day of January, 1992 by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, hereinafter referred to as "SPT" or "Assignor" and LOUISIANA & DELTA RAILROAD, INC., a Delaware corporation, hereinafter referred to as "LDR" or "Assignee";

RECITALS:

By a separate indenture of an even date herewith (hereinafter "Lease Option"), SPT and LDR set forth their agreements and understandings with respect to LDR's lease of and option to purchase the rail lines of SPT otherwise known as the Lockport Branch (hereinafter "Lockport Branch"). In accordance with the terms and conditions of Article 13 of the Lease Option, SPT agrees to transfer and assign, for a temporary period, its rights and obligations under those third party agreements affecting the Lockport Branch, subject to the following terms and conditions.

ASSIGNMENT:

1. Assignor hereby transfers and assigns to Assignee all of its rights, duties and obligations excluding its interests related to property which arise under the agreements as shown on Attachment A (collectively hereinafter "Assigned Agreements"), attached hereto and made a part hereof, for the term as specified in Section 3 hereof.
2. Subject to the terms and conditions hereof, Assignee hereby accepts the above assignment and agrees to perform and abide by all of the terms, covenants and conditions contained in the Assigned Agreements as they relate to Assignee's lease of and rail operations over the Lockport Branch. In the event of a conflict between the terms and conditions of this Agreement and those contained in the Assigned Agreements, the terms and conditions of this Agreement shall govern.
3. This Agreement shall take effect as of JANUARY 20, 1992 and shall remain in effect until terminated in accordance with the terms and conditions of the Lease Option.
4. Each notice given pursuant to or in connection with this Agreement shall be effective when delivered personally, by registered or certified mail, or by commercial courier service to

the address set forth below, or such other address as may be established by either party upon notice to the other party:

If intended for SPT:

Executive Vice President-Operations
Southern Pacific Transportation Company
One Market Plaza
San Francisco, CA 94105

With a copy to:

Director-Contracts & Joint Facilities
Southern Pacific Transportation Company
One Market Plaza, Room 1004-P
San Francisco, CA 94105

If intended for LDR:

General Manager
Louisiana & Delta Railroad, Inc.
402 W. Washington Street
New Iberia, LA 70560

President
Genesee & Wyoming Industries, Inc.
71 Lewis Street
Greenwich, CT 06830

5. Except as herein otherwise provided, all of the terms, covenants and conditions of the Assigned Agreements shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate counterparts as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By WE Fowler
(Title) Director
Contracts and Joint Facilities

LOUISIANA & DELTA RAILROAD, INC.

By [Signature]
(Title) President

ATTACHMENT A TO EXHIBIT E
LOCKPORT BRANCH

EASE NUMBER	NAME	LESSEE NUMBER	MILE POST	CITY & STATE	BILL CYCLE	RATE
156232	South Coast Gas Co	2000725	2.67	Raceland, LA	A	\$25
131045	Transcontinental Gas Pipe Line Corp	2000820	0.4	Raceland Jct, LA	A	\$25
135657	South Coast Gas Co	2000725	1.26	Godchaux, LA	A	\$10
135658	South Coast Gas Co	2000725	1.39	Godchaux, LA	A	\$15
179725	South Coast Corporation	1034628	1.47	Godchaux, LA	F	\$75
135648	The South Coast Corp	2000724	1.65	Raceland, LA	A	\$36
191353	Exxon Pipeline Co	1045810	1.66	Raceland Jct, LA	A	\$50
135659	South Coast Gas Co	2000725	1.77	Godchaux, LA	A	\$10
136645	Police Jury of Parish of LaFourche	1010486	1.77	Raceland, LA	POS	\$5
191318	Exxon Pipeline Co	1045101	1.9	Raceland, Tx	A	\$85
138728	Exxon Pipeline Co	2000939	2.1	Raceland	A	\$85
130088	United Gas Pipe Line Co	2000841	2.61	Raceland, LA	A	\$10
137762	United Gas Pipe Line Co	2000841	2.61	Raceland, LA	A	\$25
132735	Columbia Gulf Transmission Co	2000160	3.03	Raceland, LA	A	\$10
126200	Texaco Inc.	2000965	3.92	Jay	A	\$50
137731	Texaco Inc.	2000965	4.13	McLeod	A	\$10
138727	Exxon Pipeline Co	2000939	4.95	Mathews	A	\$85
177685	South Coast Gas Co Inc	1029231	5.59	Mathews	F	\$75
128074	Landry Mrs R. & Louis J	1006700	5.7	Mathews	A	\$138
157550	Landry Louis J	3002216	5.71	Mathews, LA	F	\$0
191326	South Coast Gas Co Inc	1045270	5.99	Mathews, LA	F	\$125
204736	South Louisiana Electric Cooperative Association	3009504	6.83	Mathews	A	\$65
154445	Southern Bell T & T	3000915	7.29	Mathews, LA	F	\$0
205809	South Central Bell Tel Co	3009921	7.3	Lockport	F	\$250
198588	LaFourche Parish Water Dist # 1	3008158	9.54	Lockport	F	\$0
131030	Texaco Inc.	2000965	11.45	Jay	A	\$10
188478	Texaco Inc.	1042263	11.62	Lockport	A	\$20
135496	Columbia Gulf Transmission Co	2000160	11.92	Jay, LA	A	\$10
191335	South Central Bell Telephone Co	1045431	11.95	Valentine, LA	W	\$0
191313	South Coast Gas Co Inc	1045045	12.02	Jay, LA	F	\$125
137732	Texaco Inc.	2000965	12.68	Lockport	A	\$10
129833	Columbia Gulf Transmission Co	2000160	13.28	Lockport, LA	W	\$0
189842	Energy Sources	1044401	13.29	Jay	A	\$20
135680	Texaco Inc.	2000965	13.48	Jay	A	\$2
189845	Energy Sources Inc	1044486	13.52	Jay	F	\$125
153576	Texaco Pipeline Inc	1013551	9.83	Lockport, LA	A	\$85
196898	United Gas Pipe Line Co	1049794	10.19	Jay	F	\$200
185364	Texaco Inc	1039376	12.66	Jay	F	\$125
166777	United Gas Pipe Line Co	1023634	13.28	Jay	F	\$1,940
166729	United Gas Pipe Line Co	1022965	14.14	Jay	F	\$250
132809	LaFourche Parish Water District	2000428	0	Lockport, LA	A	\$11
139135	Texaco Pipeline Inc	1013542	0.98	Raceland, LA	POS	\$85
128980	United Gas Pipe Line Co	2000841	2.61	Raceland	W	\$0
132882	South Coast Gas Co	2000725	9.69	Lockport, LA	A	\$10
209333	Pierce, Jr.	1063968	9.73	Lockport	A	\$500
145424	Texaco Inc	2000965	11.77	Jay	A	\$50
198628	Goodrich Oil Co	3008495	11.95	Lockport Jct	F	\$0
209315	Edgewood Exploration, Inc	1063590	12.03	Valentine	A	\$75
137711	South Coast Gas Co	2000725	9.63	Lockport, LA	A	\$10
155098	Louisiana Power & Light Co	3001164	13.09	Jay, LA	F	\$0
207086	Raceland Concrete Company Inc	1063559	1.83	Raceland	A	\$392
167824	LaFourche Communications Inc	1024213	1.88	Raceland	F	\$50
207087	Raceland Bank & Trust Company	1063560	1.92	Raceland	POS	\$25
196087	South Central Bell Telephone Co	3005930	11.23	Jay	W	\$0
30042	Technographics Valentine Pulp & Paper	4006177	53.7	Jay	F	\$225
157949	Lamar Outdoor Advertising	3364	1.77	Raceland	A	\$125

NOTE : * Agreement Missing

B^{ill} Cycle : A = Annually
 POS = Period of 5 yrs
 F = Full Term
 W = Waived

Exhibit B



December 21, 2011

John M. Newman
AVP Network & Industrial Development
Union Pacific Railroad
1400 Douglas Street, Stop 1350
Omaha, NE 68179

Letter agreement concerning the January 17, 1992 Lease Agreement between Southern Pacific Transportation Company (Union Pacific ("UP") as successor-in-interest) and the Louisiana & Delta Railroad, Inc., a Delaware corporation ("LDRR") ("Lease Agreement").

Dear Mr. Newman:

Pursuant to the Lease Agreement, LDRR has common carrier authority to provide rail service over the Lockport Branch between Milepost 0.1 at Raceland Junction, Louisiana, and Milepost 14.2 at Jay, Louisiana. In STB docket No. AB-318 (Sub-No. 7X), LDRR has obtained authority to discontinue service over the portion of the rail line between Milepost 1.7 and Milepost 14.2 (the "Discontinued Segment"), and intends to consummate its discontinuance of the Discontinued Segment as of December 31, 2011.

The term of the Lease Agreement will expire on December 31, 2011. At that time, LDRR will continue to have common carrier authority to operate over the line between Milepost 0.1 and Milepost 1.7 (the "Remaining Segment"). In order to give UP and LDRR sufficient time to negotiate mutually acceptable terms regarding the Lease Agreement, LDRR is requesting a holdover period for this Lease Agreement, and all of its terms, as they relate to the Remaining Segment, for a period of up to three (3) months, or through March 31, 2012. This will allow sufficient time for the UP and the LDRR to consummate a new lease or amend the current lease, as the case may be, to reflect the change in the leased premises, rents and other terms, as necessary and acceptable to both railroads. During this three-month holdover period, both UP and LDRR will operate under the terms and provisions of the Lease Agreement as it relates to the Remaining Segment; provided however, that notwithstanding anything in the Lease Agreement to the contrary, no rent will be due during the holdover period.

If UP concurs with the foregoing, please so indicate by signing, dating and returning the duplicate original of this Letter Agreement to me at Louisiana & Delta Railroad Company, Attn: President, c/o GWI Southern Region, 13901 Sutton Park South, Suite 175 Building C,

Louisiana & Delta Railroad 402 W. Washington Street New Iberia, LA 70560
Phone: 337-364-9625 Fax: 337-369-1487

Jacksonville, FL 32224; ggates@gwrr.com, by electronic mail, with an original to follow by US mail.

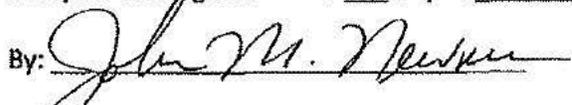
Sincerely,



Gerard T. Gates
President
Louisiana & Delta Railroad Company

Union Pacific Railroad

Accepted and Agreed to this 21 day of December, 2011

By: 

Title: VP N.D.

Exhibit C

2-12-1998

**TERM SHEET AGREEMENT
COVERING OWNERSHIP AND OPERATION
OF LINES IN AND AROUND HOUSTON, TX**

I. GENERAL CONCEPT

1. UP and BNSF agree that they will jointly own and operate the former SP Lafayette Subdivision between Dawes (MP 352.8) and Avondale (MP 14.9) (the "50/50 Line"), on a basis similar to that found in the Powder River Basin Agreement except for dispatching. Trackage between MP 14.9 and 10.5 owned by UP and by BNSF shall be jointly dispatched and used by both parties without charge but otherwise shall be subject to typical joint facility provisions.
2. BNSF will grant UP overhead trackage rights between Beaumont and Navasota.

II. SPECIFIC TERMS COVERING JOINT OWNERSHIP AND DISPATCHING OF FORMER LAFAYETTE SUB

1. UP and BNSF will exchange 50 percent interests in their respective main lines, including operating sidings used for meeting and passing trains, which constitute the former SP Lafayette Subdivision, with each party having a 50 percent interest in the resulting operating corridor. A listing of such operating sidings is provided at Exhibit A.
2. It is the intention of the parties that UP and BNSF shall have the right to serve all present and future industries or facilities originating or terminating traffic on the 50/50 Line and on former SP branches and spurs connecting to the 50/50 Line or any new branches or spurs connecting to these lines. These industries and facilities shall be open to BNSF on the same basis that BNSF serves "2-to-1" customers per Section 5 of the Settlement Agreement, as amended and supplemented, or on a haulage basis for the fee called for in Section 8j of the Settlement Agreement, and calculated as shown on the Example attached as Exhibit B.
3. Except for existing rights, neither BNSF nor UP can admit a third party or provide haulage without the other's approval on the 50/50 Line; provided, however, that either party may use the Louisiana & Delta Railroad as its agent to provide service over the 50/50 Line without obtaining the approval of the other party. As of the date hereof, UP shall not impose or enforce any requirement (a) contained in any agreement entered into after execution of

the Settlement Agreement and (b) covering traffic which BNSF had access to under the terms of the Settlement Agreement, that the L&DRR pay any additional rental or other fee if traffic is routed via BNSF.

4. On the 50/50 Line, capital additions and betterments will be split on a user (i.e., 50/50) basis, and maintenance capital (track replacement), ordinary maintenance, and operations will be split on an annualized usage basis (gross ton miles). Except as to capital additions and betterments agreed to by the parties prior to the date of this Term Sheet Agreement as payable out of the Capital Improvements Fund established by the Settlement Agreement, capital additions and betterments will be subject to the mutual agreement of the parties in the same manner as they are agreed to under procedures established in the Powder River Basin Agreement.
5. Capital costs of projects which benefit only one party shall be paid for solely by such party. If, for any reason, the other party desires to use such facility it will pay 50% of the actual cost plus interest.
6. Exchange is subject to TexMex' existing trackage rights. TexMex trackage rights charges shall be paid to UP for UP's sole benefit. TexMex usage of the line shall be considered UP usage for purposes of allocating liability, calculating UP and BNSF's respective usage shares, etc. The parties' contracts with Amtrak shall not be affected by this Term Sheet Agreement. Amtrak usage of the 50/50 Line shall be considered the usage of the respective owner of the segment in question prior to the exchange of ownership for all purposes including, but not limited to, compensation, liability, and all other provisions of the parties' respective contracts with Amtrak.
7. BNSF and UP agree on a consolidated regional dispatching center encompassing BNSF, UP, HB&T and PTRRA (between Bridge 5A and Deer Park) lines, and including KCS and TexMex participation as appropriate, as described in Exhibit C.
8. Field management, facility maintenance, and improvements to the 50/50 Line will continue to be performed by UP or BNSF on segments each owned prior to the exchange of ownership.
9. BNSF and UP agree to establish reasonable joint service standards, including a joint service standards committee for operations pursuant to this Term Sheet Agreement.

10. UP shall not be required to pay for any expenditures made by BNSF to meet the line condition standard in Section 10c of the Settlement Agreement and Section 6(b) of the Purchase and Sale Agreement up to the amount in the escrow account (principal of \$10.5 million plus interest). After the expenditures equal the amount in the escrow account, further expenditures shall be allocated pursuant to this Term Sheet Agreement. The cash and interest in the escrow account will be divided between the parties pursuant to their agreement settling the dispute over the condition of the Iowa Jct. to Avondale segment of the 50/50 Line.

III. SPECIFIC TERMS COVERING BEAUMONT-NAVASOTA TRACKAGE RIGHTS

1. BNSF will grant UP overhead trackage rights between Beaumont and Navasota at the same mill rate and the same general terms as provided for such trackage rights in the Settlement Agreement.
2. UP shall have the right to enter/exit at Cleveland and Conroe.
3. UP will make capital contributions to capacity related improvements to the trackage rights line on a usage basis (gross ton miles).

IV. STRANG/PASADENA INTERCHANGE

1. UP shall continue interchange of traffic originating between Sinco and Bayport through the PTRA at Pasadena for movement by BNSF. BNSF will be responsible for PTRA charges resulting from this service. The parties agree to reconsider this issue in 6 to 8 weeks after UP's directional operations and terminal changes are in place and operational. The adequacy of interchange service provided subsequent to the reinstatement of the prior interchange after such reconsideration shall be subject to review by the Service Standards Committee. The Pasadena interchange shall be reinstated in the event the Service Standards Committee finds that interchange service standards have not been met for a reasonable period of time.

V. OTHER

1. The parties agree to cooperate with each other and make and prosecute diligently whatever filing or applications, if any, are necessary to implement the provisions of this Term Sheet Agreement.

2. The parties agree to use their best efforts to promptly complete definitive agreements reflecting the intent and provisions of this Term Sheet Agreement.
3. Unresolved disputes and controversies concerning any of the terms and provisions of this Term Sheet Agreement shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.
4. The provisions of Section II.2, Industry Access, Section II.7, Joint Dispatching Center, and Section III, Beaumont-Navasota Trackage Rights, shall be effective and implementation shall begin as soon as practical but no later than 30 days from execution, and remain in effect thereafter, and the remaining provisions of this Term Sheet Agreement shall be implemented as soon as possible upon receipt of required governmental approval or exemption, if any.
5. The parties intend that the undertakings in this Term Sheet Agreement constitute legally enforceable obligations.

AGREED TO:

UNION PACIFIC RAILROAD COMPANY

By: James V Delan
Title: VICE President - L&N
Date: Feb 12 1995

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: _____
Title: _____
Date: _____

2. The parties agree to use their best efforts to promptly complete definitive agreements reflecting the intent and provisions of this Term Sheet Agreement.
3. Unresolved disputes and controversies concerning any of the terms and provisions of this Term Sheet Agreement shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.
4. The provisions of Section II.2, Industry Access, Section II.7, Joint Dispatching Center, and Section III, Beaumont-Navasota Trackage Rights, shall be effective and implementation shall begin as soon as practical but no later than 30 days from execution, and remain in effect thereafter, and the remaining provisions of this Term Sheet Agreement shall be implemented as soon as possible upon receipt of required governmental approval or exemption, if any.
5. The parties intend that the undertakings in this Term Sheet Agreement constitute legally enforceable obligations.

AGREED TO:

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____
Date: _____

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: 
Title: Vice President, UP/SP Lines
Date: February 12, 1998

EXHIBIT A
OPERATING SIDINGS

I. BNSF Segment

- (a) Salix
- (b) Raceland Jct.
- (c) Schriever
- (d) Berwick
- (e) Bayou Sale
- (f) Baldwin
- (g) New Iberia
- (h) Cade
- (i) Lafayette (only track 902, not Lafayette yard)
- (j) Crowley Siding
- (k) Midland
- (l) Roanoke

II. UP Segment

- (a) Fauna
- (b) Crosby
- (c) Dayton
- (d) Ames
- (e) Devers
- (f) China
- (g) Connell
- (h) Francis
- (i) N. Echo
- (j) S. Echo
- (k) Brimstone
- (l) Lockmore
- (m) Iowa Siding (to be constructed)

EXHIBIT B*

<u>Between:</u>	<u>Mileage</u>	<u>Roundtrip</u>	<u>Charges</u> <u>On/Off+Miles+Recip=Total/Car</u>
Origin and Destination	15	30	\$100 + \$15 + \$130 = \$245
Reciprocal Switch (per load) within Switching District	--	--	NA + NA + \$130 = \$130

* Provided for illustrative purposes only. Charges subject to annual adjustment in accordance with the Settlement Agreement.

Exhibit C

Consolidated Dispatching Center

- a) The lines to be dispatched by the Consolidated Dispatching Center are shown on the map attached hereto. Each railroad will control, manage and dispatch its own lines and the 50/50 Line will be dispatched jointly. BNSF shall be provided necessary office space and facilities in the Consolidated Dispatch Center.
- b) See attached organizational chart for management structure.
- c) A Joint Director, reporting to Service Standards Committee, will be retained by UP and BNSF's respective Vice Presidents-Transportation. Each railroad shall submit the names of two potential candidates and then mutually agree on the person to fill the position. BNSF and UP will mutually agree upon a process to change the Joint Director which permits either to remove the incumbent. The parties shall agree upon a written description of the Joint Director's job duties, two of which will include responsibility for ensuring compliance with (1) dispatching protocol standards and (2) standards for the gathering and distribution of cars to/from industries on the 50/50 Line, former SP branches and spurs, to either railroad. The Joint Director's job description and performance shall be reviewed/evaluated periodically by both railroads. Either railroad shall have the right to remove the Joint Director at its sole discretion.
- d) Until UP implements CAD III, UP will support its dispatching using Digacon. UP's server is located in Omaha and during emergency outages UP will take control of its lines and the 50/50 Line from Omaha. During emergency outages BNSF will control its lines from Ft. Worth.
- e) BNSF and UP agree that KCS/Tex Mex should be offered the opportunity to dispatch their lines in the Gulf Coast area from the Consolidated Dispatching Center.
- f) Cost allocation shall be subject to customary joint facility arrangements.
- g) Consolidated Dispatching Center will be located in the first floor of UP's Spring, Texas, regional offices. UP will develop and furnish proposed office layout.

Exhibit D

7/1/98

FIL

FD 33630
BURS
P. A. G.
JUL 7 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33630

BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
AND UNION PACIFIC RAILROAD COMPANY --
PETITION FOR EXEMPTION -- ACQUISITION OF LINES
BETWEEN DAWES, TEXAS, AND AVONDALE, LOUISIANA

PETITION FOR EXEMPTION

In this petition, The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP") (collectively, "Petitioners") request, pursuant to 49 U.S.C. § 10502, that the Board exempt from 49 U.S.C. §§ 11323, et seq., the following acquisitions of joint ownership:

(1) BNSF's acquisition of an undivided 50% interest in UP's line (including operating sidings) from Dawes, Texas, at Milepost 352.8, to Iowa Junction, Louisiana, at Milepost 205.3 (the "Beaumont Segment"); and

(2) UP's acquisition of an undivided 50% interest in BNSF's line (including operating sidings) from Avondale, Louisiana, at Milepost 14.9, to Iowa Junction, Louisiana, at Milepost 205.3 (the "Avondale Segment").

The two segments are shown on the map attached hereto as Exhibit A.

This petition is supported by the Verified Statements of Peter J. Rickershauser, BNSF's Vice President, Marketing on the UP/SP Lines (Exhibit B hereto), Ernest L.

Hord, BNSF's Vice President, Operations on the UP/SP Lines (Exhibit C hereto), and Jerry S. Wilmoth, UP's Director-Joint Facilities (Exhibit D hereto).

I. INTRODUCTION

On February 12, 1998, BNSF and UP entered into a Term Sheet agreement (Exhibit E hereto) relating to the two railroads' operations in and around Houston, Texas, and along the Gulf Coast between Houston and New Orleans, Louisiana. As one part of the Term Sheet agreement, BNSF and UP agreed to exchange 50% ownership interests in their respective mainline segments, including operating sidings used for meeting and passing trains, that together constitute the former Southern Pacific's Houston-New Orleans mainline, with each party having a 50% interest in the resulting operating corridor (the "50/50 Line" or "Line").^{1/}

Under the Term Sheet agreement, BNSF will acquire an undivided 50% interest in UP's approximately 148-mile line running from just east of Houston in Dawes, Texas, to Iowa Junction, Louisiana. BNSF presently operates over this line

^{1/} Approval or exemption of Petitioners' plans to conduct operations over the 50/50 Line is not required. BNSF and UP have been operating over the respective segments owned by the other railroad under exempted trackage rights agreements, and the new operating agreement merely reflects adjustments appropriate to the change in ownership status. See, e.g., Finance Docket No. 23957 (Sub-Nos. 1 & 2), Amtrak, MTA & LIRR -- Petition for Exemption of Joint Venture; Amtrak & LIRR -- Petition for Exemption of Joint Facility Agreement, Decision served July 28, 1988.

using trackage rights. UP will acquire an undivided 50% interest in BNSF's approximately 190-mile line between Iowa Junction and Avondale, Louisiana. UP presently operates over this line using trackage rights.

The proposed exchange of ownership interests is one element of an arrangement between BNSF and UP relating to the two railroads' operations in and around Houston and along the Gulf Coast, most elements of which did not require Board action. These other elements include the establishment of a regional dispatching center in Spring, Texas, for UP and BNSF lines in and around Houston and between Houston and New Orleans; BNSF access to all present and future shipper facilities on the 50/50 Line, including on former SP branches or spurs connecting to the 50/50 Line and on new branches and spurs to the Line; and the creation of new UP trackage rights over BNSF's line between Beaumont and Navasota, Texas.^{2/} This arrangement represents the culmination of discussions between UP and BNSF that began late last year regarding the creation of a joint dispatching center for UP and BNSF lines in the Houston area and along the Gulf Coast to New Orleans.

The proposed exchange of ownership interests was an important commercial element in the overall agreement, but it will have little or no impact, in and of itself, on

^{2/} These trackage rights were the subject of a separate exemption petition.

competitive conditions or day-to-day operations.^{3/} This petition requests that the Board exempt from the prior approval requirements of 49 U.S.C. §§ 11323, et seq., the exchange of ownership interests, because that transaction falls within the parameters of 49 U.S.C. § 10502.

Exemption of a transaction is mandated under Section 10502(a) when regulation is not necessary to carry out the goals of the Rail Transportation Policy, and either (1) the transaction is of limited scope, or (2) regulation is not necessary to protect shippers from abuse of market power.

The goals of the Rail Transportation Policy will be furthered by exempting the exchange of ownership interests. This transaction will promote several of the elements of the Rail Transportation Policy, while not running afoul of any others. The transaction is also of limited scope, involving the mere exchange of ownership interests in relatively short connecting segments of the extensive BNSF and UPRR systems. Finally, there is no need for regulation to protect shippers from an abuse of market power. To the extent that this transaction will have any competitive effect, that effect will

^{3/} As discussed in the Verified Statement of Mr. Hord, BNSF operations over the 50/50 Line will increase as a result of the agreement between UP and BNSF, which is already in effect, to create new BNSF access to additional customers located along the 50/50 Line and appurtenant branches and spurs. That agreement is separate from the ownership exchange and does not require Board action. In any event, the increase in traffic will not trigger environmental thresholds. See Hord V.S., p. 6.

be to promote competition by ensuring that each railroad has smoother Houston-New Orleans operations and by allowing each railroad to use the Louisiana & Delta Railroad as its agent to provide service over the 50/50 Line.^{4/}

II. BACKGROUND

Both BNSF and UP presently operate over the connecting segments that form the 50/50 Line to provide service between Houston and New Orleans. Prior to the UP/SP merger, the 50/50 Line was Southern Pacific's mainline between Houston and New Orleans. In the UP/SP merger, as part of the UP/SP-BNSF Settlement Agreement, BNSF acquired the Avondale Segment, with UP/SP retaining trackage rights including the right to serve all local industries, providing many of these customers with access to a second carrier for the first time. In addition, BNSF received overhead trackage rights on the Beaumont Segment between Houston and Iowa Junction, with access to only "2-to-1" and new facilities customers as well as to Lake Charles area customers.^{5/} BNSF's Avondale-Iowa

^{4/} In addition, as noted above and as discussed in Mr. Rickershauser's Verified Statement, competition for many shippers located along the 50/50 Line and appurtenant branches and spurs will increase because BNSF gained access to all such shippers as part of a related agreement between UP and BNSF, not requiring Board approval, that took effect on March 15, 1998.

^{5/} The Board exempted BNSF's acquisition of the Avondale Segment in Finance Docket No. 32760 (Sub-No. 2). The trackage rights grant was accomplished through a notice of exemption in Finance Docket No. 32760 (Sub-No. 1).

Junction line purchase and Houston-Iowa Junction trackage rights, together with an additional short segment of trackage rights BNSF obtained over UP lines in the New Orleans area, created a new BNSF through route from Houston to New Orleans that it shared with UP.

As the Verified Statements of Messrs. Rickershauser, Hord and Wilmoth explain, after consummation of the proposed exchange of ownership interests, BNSF and UP will jointly own the entire 50/50 Line and provide both through and local service over the entire Line. Both railroads will have the right to serve all present and future industries or facilities originating or terminating traffic on the Line or on former Southern Pacific branches or spurs, and any new branches or spurs, connecting to the Line. (This access agreement did not require Board approval.) The ownership exchange will be made subject to the existing trackage rights of the Texas Mexican Railway Company ("Tex Mex") between Houston and Beaumont, as well as Amtrak's service over the entire Line.

As the Verified Statements of Messrs. Rickershauser, Hord and Wilmoth further explain, under the proposed operating agreement, capital additions and betterments on the 50/50 Line will be split on a user basis, and maintenance capital, ordinary maintenance, and operations costs will be split on an annualized usage basis. Either railroad will be permitted to use the Louisiana & Delta Railroad as its agent to provide

service over the Line. Tex Mex trackage rights charges will be paid to UP, and Tex Mex usage of the Line will be considered UP usage. BNSF's and UP's contracts with Amtrak will not be affected by the ownership exchange. Amtrak usage will be considered usage of the pre-exchange owner of the particular segment.

As discussed above and in the Verified Statements, the exchange of ownership interests is an element of an arrangement that will provide significant benefits to Houston-area and Gulf Coast shippers. In particular, UP and BNSF agreed to create a regional dispatching center in Spring, Texas. In the new dispatching center, UP and BNSF have been jointly dispatching since March 15 the 50/50 Line, the lines of the Houston Belt & Terminal Railway Company, the lines of the Port Terminal Railroad Association between Bridge 5A and Deer Park, and the trackage in the Houston terminal area that was formerly dispatched by the control operator at SP Tower 68. UP and BNSF personnel engaged in joint dispatching are located in the same area, operating from the same system, under the supervision of a neutral joint director.

The railroads are also conducting consolidated dispatching of other area lines from the Spring facility: UP and BNSF dispatchers control from Spring their respective lines along the entire Gulf Coast region from New Orleans through Houston to Brownsville and radiating north and south

from Houston.^{6/} Lines subject to joint and consolidated dispatching are shown in Exhibit F. By placing each railroad's dispatching operations for these lines in one location, the railroads will be able to increase coordination and improve operations by reducing on-line congestion, permitting trains of both UP and BNSF to operate more reliably and more in accord with customers' expectations. These steps will fulfill a vital need to coordinate and improve UP and BNSF operations in the Houston area, and the operations of both KCS and Tex Mex will benefit from this consolidated dispatching.

The exchange of ownership interests will not impact operations over the Line, as both BNSF and UP presently operate over the Line, but it will improve coordination between the two railroads of maintenance and improvements on this important Line, particularly coordination in the imposition of "maintenance windows," which has been an issue between UP and BNSF in the Houston-New Orleans corridor.

III. THE REQUESTED EXEMPTION SHOULD BE GRANTED

Under Section 10502(a), the Board must grant an exemption if regulation under an otherwise applicable provision of the statute

^{6/} Provisions have also been made for Tex Mex dispatchers to operate out of the new center. Kansas City Southern Railway Company was offered the opportunity to participate in the regional dispatching center, but it has declined.

"(1) is not necessary to carry out the transportation policy of Section 10101 of [Title 49]; and

(2) either (A) the transaction or service is of limited scope, or (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power."

49 U.S.C. § 10502(a). There is no doubt that the exemption provision was intended to give the Board very broad authority to eliminate unnecessary regulation. Coal Exporters Association v. United States, 745 F.2d 76, 82 (D.C. Cir. 1984), cert. denied, 471 U.S. 1072 (1985). When measured against this congressional mandate, the proposed exemption should clearly be granted.

A. Regulation of the Ownership Exchange Is Not Necessary To Carry Out the Rail Transportation Policy

Exempting the ownership exchange will promote significant provisions of the Rail Transportation Policy and not run counter to any of the Policy goals. Detailed scrutiny under Sections 11323, et seq., is not necessary.

BNSF and UP already conduct competitive operations over the 50/50 Line, and their respective competitiveness will be promoted by the proposed joint ownership. The ownership exchange is thus fully consistent with the development and continuation of a competitive rail system. See Section 10101(1), (4). The ownership exchange, and the resulting increased coordination in maintenance and improvements of the Line, are also consistent with and will promote development

and continuation of a sound and efficient rail transportation system. See Section 10101(4), (5), (9). The exchange of ownership interests will not in itself involve any changes in physical operations over the Line and thus will create no safety risk; increased maintenance coordination means that the impact of the transaction on safety, if any, would be positive. See Section 10101(8). Finally, an exemption will minimize the need for Federal regulatory control over this transaction and expedite resolution of the regulatory decision. See Section 10101(2), (15). No aspect of the Rail Transportation Policy will be affected adversely. See, e.g., Finance Docket No. 33362, Paducah & Louisville Ry. -- Control Exemption -- Paducah & Illinois R.R., Decision served Aug. 25, 1997, p. 3 (exemption for joint ownership consistent with rail transportation policy); Finance Docket No. 31812, Northern Indiana Commuter Transportation District -- Acquisition Exemption -- Chicago SouthShore & South Bend R.R., Decision served Dec. 31, 1990, p. 2 (regulation not necessary for transfer of ownership in rail line from freight railroad to passenger railroad, where both would continue to operate but freight railroad, rather than passenger railroad, would do so through trackage rights); Finance Docket No. 31797, Southrail Corp. -- Acquisition Exemption -- Brookho Co. Line Between Brookwood & Holt, AL, Decision served December 21, 1990, p. 1

(regulation not necessary for purchase of line formerly operated under lease).

The transaction for which exemption is sought is straightforward and simple, involving an exchange of 50% ownership interests in lines over which both railroads operate today. The transaction does not raise any concerns about the ability of either railroad to acquire or operate over the segments at issue.

B. The Transaction Is Limited in Scope and Regulation Is Not Needed to Protect Shippers From the Abuse of Market Power

The proposed exchange of ownership interests is limited in scope. The ownership exchange involves relatively small segments of the large BNSF and UP rail systems, and the ownership exchange will not in itself result in changes in the rail operations of either carrier. See, e.g., Finance Docket No. 31827, CSX Transportation, Inc. -- Acquisition & Lease Exemption -- Pittsburgh & Lake Erie R.R., Decision served June 28, 1991, p. 12 (transaction that involved "only 61 miles of track with no new securities issuances and no change in operations" was of limited scope); Northern Indiana Commuter Transportation District, supra, p. 3 (transaction that involved "only 76.95 miles of track with no new securities issuances and no change in operations" was limited in scope); Finance Docket No. 31644, Mid Michigan R.R. -- Lease & Operation -- Missouri Pacific R.R., Decision served Aug. 28,

1990, p. 2 (transaction involving "approximately 200 miles of local rail line" was limited in scope).

Moreover, the transaction merely involves an exchange of ownership interests in a line over which both UP and BNSF operate today through a combination of ownership and trackage rights. See, e.g., Finance Docket No. 32157, Burlington Northern R.R. -- Purchase & Operation Exemption -- Southern Pacific Transportation Co., Decision served Jan. 11, 1993, p. 2 (transaction that "involves merely a transfer of ownership, without significant changes in operations" is of limited scope); Southrail, supra, p. 1 (transaction in which the "purchase merely shifts ownership of the line to the rail carrier that has been the physical provider of rail service" is of limited scope); cf. Finance Docket No. 32602, Indiana & Ohio Central R.R. -- Lease & Operation -- West Central Ohio Port Authority, Decision served Mar. 15, 1995, p. 2 (transaction that "is largely the substitution of a lease agreement for trackage rights" is of limited scope).

The proposed exchange of ownership interests likewise does not present a situation in which regulation is necessary to protect shippers from abuse of market power. Both UP and BNSF already operate today over the line through a combination of ownership and trackage rights. See, e.g., Finance Docket No. 33362, Paducah & Louisville, supra, p. 4 (mere substitution of ownership interests creates "little

potential, if any, for market power abuse"); Northern Indiana Commuter Transportation District, supra, p. 2 (exchange of trackage rights for ownership interest "will have no impact on competition"). The ownership exchange will not result in any changes to BNSF or UP operations over the Line. See, e.g., Paducah & Louisville, supra, p. 4 (no risk of market power abuse where rail operations are not expected to change); CSX Transportation, supra, p. 12 (no potential for market abuse because shippers "will not be affected as there will be no change in service"); Northern Indiana Commuter Transportation District, supra, p. 3 (regulation not necessary to protect shippers from abuse of market power where shippers "will continue to receive service from the same operator . . . as at present").

The agreement between BNSF and UP also preserves Tex Mex's existing trackage rights and will not have any adverse impact on Tex Mex's operations over its trackage rights but should instead benefit Tex Mex through reduced congestion. Indeed, the Operating Agreement actually expands each carrier's competitive options by allowing either carrier to use the Louisiana & Delta Railroad as its agent to provide service over the entire Line. All shippers to, from, or via the 50/50 Line will continue to receive at least the same level of rail service and the same competitive options or more that they enjoy today. See Rickershauser V.S., pp. 4-6_;

Wilmoth V.S., p. 5. See also Finance Docket No. 31448, Joint Use by CSX Transportation, Inc., & Burlington Northern R.R. of Facilities at Memphis, TN -- Petition for Exemption Under 49 U.S.C. 10505, Decision served June 19, 1989, p. 2 ("[n]o shipper will be left with fewer rail service options after this transaction than exist today"); Burlington Northern, supra, p. 2 ("neither of the parties' competitive stances will change appreciably either in relation to each other or to other carriers" as a result of transfer of ownership); Northern Indiana Commuter Transportation District, supra, p. 3 ("Shippers will not be affected as there will be no change in freight service.").

IV. LABOR PROTECTION

Under 49 U.S.C. § 10502(g), the Board may not use its exemption power to relieve a rail carrier of its obligation to protect the interests of employees. This transaction will have no effect on the rail operations of either BNSF or UP, and therefore petitioners do not anticipate that it will have any effect on employees. However, petitioners have no objection to imposition of the labor protective conditions normally imposed in Section 11323 transactions as a condition to granting the exemption.

V. ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

No environmental documentation is necessary because the proposed exchange of ownership interests will not result

in significant changes in carrier operations, as defined by the Board's regulations, at 49 C.F.R. § 1105.6(c)(2). See Hord V.S., p. 6; Wilmoth V.S., p. 5. See also Burlington Northern, supra, p. 2 (transaction that "does not involve a change in carrier operations and will have no effect on historic properties" is exempt from environmental and historic reporting requirements); Northern Indiana Commuter Transportation District, supra, p. 3 (as "the proposed purchase transaction will not result in any material change in rail operations and therefore will not adversely affect either the quality of the human environment or the conservation of energy resources, it is exempt under 49 CFR 1105.6(c)(2)"). No historic documentation is required because the ownership exchange will not result in any action identified in 49 C.F.R. § 1105.6(a) or (b). There are no plans to alter properties subject to Board jurisdiction that are 50 years old or older.

VI. CONCLUSION

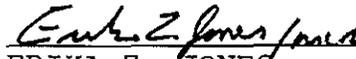
For the foregoing reasons, BNSF and UP request that the Board grant an exemption from the provisions of 49 U.S.C. §§ 11323, et seq., for the exchange of ownership interests involving the Line.

Respectfully submitted,

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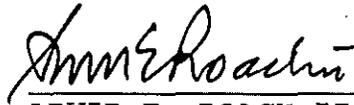
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July 1, 1998

EXHIBIT A

Houston-New Orleans Line Ownership Exchange

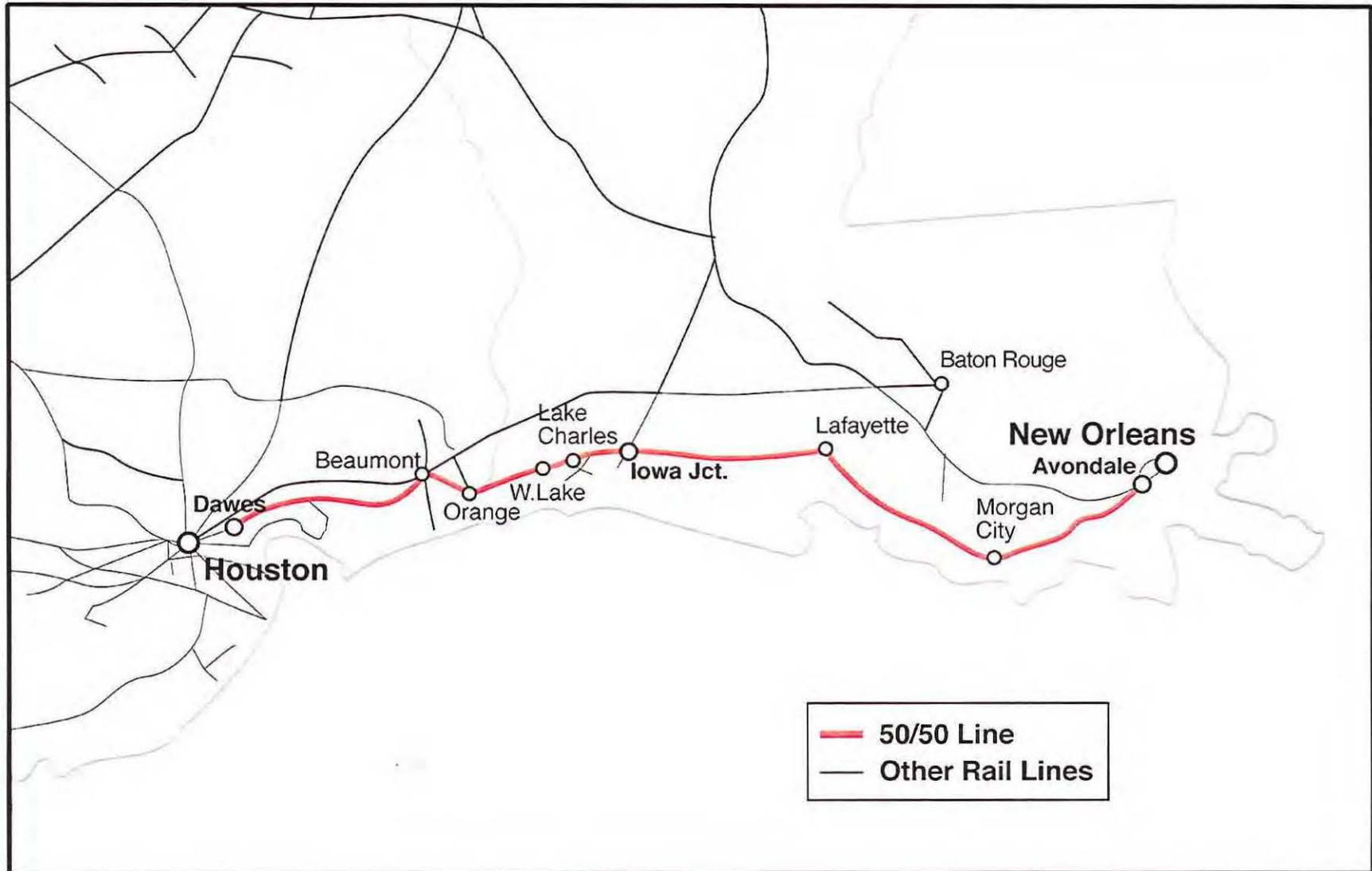


EXHIBIT B

**VERIFIED STATEMENT
OF
PETER J. RICKERSHAUSER**

My name is Peter J. Rickershauser. I am Vice President, Marketing of The Burlington Northern and Santa Fe Railway Company ("BNSF") on the UP/SP Lines. My business address is 2600 Lou Menk Drive, Fort Worth, Texas 76131.

I joined BNSF in October 1996 as Vice President, Marketing, UP/SP Lines. In this capacity, I oversee and coordinate BNSF's efforts to market and implement the service opportunities BNSF offers pursuant to the rights it acquired in the Union Pacific Railroad ("UP") and Southern Pacific Rail Corporation ("SP") merger proceeding.

Prior to joining BNSF, I was Vice President, Sales, with Southern Pacific Rail Corporation in Denver, Colorado, where I directed SP's field carload sales force in the United States and Canada. From 1991 to 1995, I was Managing Director, Regional Sales-Midwest, in Lisle, Illinois, for SP. My responsibilities in that position included planning and directing sales activities for SP's largest domestic carload sales region.

From 1982 to 1991, I held a number of sales and marketing management positions with Norfolk Southern Railroad, including Vice President, Sales and Marketing, for Triple Crown Services, Inc., a Norfolk Southern subsidiary; Director, Intermodal Marketing; and district sales manager positions. Previous to that, I held a series of positions in railroad operations and maintenance-of-way departments with Conrail predecessors Central Railroad Company of New Jersey and the New York & Long Branch Railroad Co. in the Northeast, followed by sales representative and district sales manager positions in Iowa with the Norfolk & Western Railway Co.

I earned a Bachelor of Arts degree from Franklin & Marshall College in 1971, and a Master of Arts degree in 1974 from Syracuse University.

The purpose of this Verified Statement is to describe the Term Sheet Agreement of February 12, 1998 ("Agreement"), between UP and BNSF that includes the parties' agreement to exchange 50% ownership interests in their respective main lines (including operating sidings) which constitute the former SP Lafayette Subdivision between Dawes, TX and Avondale, LA (the "50/50 line"). In particular, I will address the provisions of the Agreement that the parties were able to implement without seeking Board approval -- those that provide for access by BNSF to all present and future industries and other shipper facilities on the 50/50 line, as well as on the former Southern Pacific branches and spurs (now owned by Union Pacific) as well as on any new branches and spurs, which connect with any of these lines. Further, I will describe BNSF's plans to enhance competition using the rights that BNSF was granted pursuant to the Agreement, as well as BNSF's plans to serve the more than 140 new customers and facilities to which it has gained access on the 50/50 line as well as the connecting former SP branches and spurs.

Summary of Agreement and Expected Service Improvements

On February 12, 1998, UP and BNSF entered into the Agreement to allow greater coordination between railroads along the Gulf Coast and to improve operations and reduce congestion. The Agreement allows BNSF to improve service options for rail shippers using BNSF into and out of the Houston area by permitting BNSF to restore our scheduled train operations to meet our customers' transportation expectations of

competitive service by BNSF in the place of SP following the UP/SP merger, and it has increased competitive alternatives for all rail shippers along the 50/50 line and its branches and spurs by providing those shippers with access to BNSF as well as UP for their linehaul rail transportation needs. Finally, the additional assets, such as crews, locomotives, and cars, which have been required because of the Gulf Coast congestion can be redeployed to other areas of need, increasing rail capacity in the region and across the nation overall.

The Agreement provides for the establishment of a regional dispatching center at UP's command center in Spring, TX. As discussed in more detail in the Verified Statement of Ernest L. Hord submitted herewith, the dispatching center allows UP and BNSF to minimize train and service delays and congestion in the Houston terminal area and between Houston and New Orleans, and rail customers and the general public are benefiting from better train flows along this critical Gulf Coast corridor.

Under the Agreement, BNSF has also agreed to grant UP overhead trackage rights over the BNSF line between Beaumont and Navasota, TX, with the additional right to enter and exit the line at Cleveland and Conroe, TX to and from UP/SP lines. This additional routing will improve Houston area rail operations by allowing UP to bypass the Houston terminal for trains containing traffic neither originating or terminating in the Houston area, moving through the region between the north, east and west of Houston. This "bypass" option gives UP something they and their customers have heretofore not had, and that is the ability to route regional and transcontinental traffic around, not through, the Houston terminal.

For purposes of this Verified Statement, the key provision of the Agreement provides BNSF with access to all present and future industries and other shipper facilities, including teamtracks and transloads, located on the 50/50 line and on all former Southern Pacific branches and spurs, and on any new branches and spurs, appurtenant to any of this trackage.

Effect of Agreement On Competition

As indicated, the Agreement increases competition in the Gulf Coast area. Prior to the Agreement, BNSF had access to "2-to-1" and new facilities customers along the Dawes-Iowa Junction main line and on the former SP Baytown Branch. BNSF also had access, pursuant to the Chemical Manufacturers Association Agreement dated April 18, 1996, to customers in the Lake Charles, LA area. The Agreement, however, allows BNSF to access over 140 additional customers and facilities which are locally-served by UP and, in some cases, other carriers on portions of the 50/50 line, as well as on branches and spurs to the line formerly owned by the Southern Pacific and on any future branches and spurs connecting to any of this trackage. A list of the customers and facilities that BNSF has identified to date will gain access to BNSF under the Agreement is attached hereto as Attachment 1.

In addition to gaining access to the over 140 additional customers and facilities presently located on the 50/50 line and its branches and spurs as identified in Exhibit A, BNSF gained access to customers and facilities that locate along the 50/50 line and its branches and spurs in the future, or on branches and spurs which may be built off of any of this trackage by UP or any other party, including, but not limited to, new customers

and facilities locating on the Harbor Spur, the Sabine Branch, the Cedar Bayou Branch, the Chaison and Sheldon (also known as the Channelview Spur) spurs, and the West Lake (LA) Branch.

For example, BNSF gained access to:

- * The large number of iron and steel pipe, and other receivers which use the Sheldon, TX teamtrack facilities located at the end of the Sheldon (or Channelview) Spur;
- * Facilities jointly and directly served by both UP (formerly SP) and KCS, including industries at Chaison, Korf and in the Port Arthur, TX area;
- * Access to the Southern Gulf Railway Company buildout spur from the Roy S. Nelson Generating Station near Mossville, LA (Nelson) to a point on the 50/50 line at Sulphur, LA;
- * Access to the Sabine River & Northern Railway Company, a shortline connecting with the 50/50 line at Echo, TX; and
- * Customers locating new facilities in the future on new branches and spurs which may be constructed off connections to the former SP 50/50 line as well as any of the branches and spurs connecting to it.

BNSF's access to these customers is on the same basis that BNSF serves "2-to-1" customers per Section 5 of the Settlement Agreement, as amended and supplemented, or on a haulage basis for the fee called for in Section 8. Working with each individual customer as well as UP, and in response to each individual customer's local transportation needs, BNSF may elect to serve these customers (a) directly, with BNSF performing the industry switching service, (b) through reciprocal switching (involving haulage as necessary) provided by UP, or (c), with UP's prior agreement, through the use of a third party to perform switching for BNSF, or for both railroads. As in the BNSF Settlement Agreement, BNSF must inform UP as to how BNSF proposes

to provide service for these new customers. Once the election is made, it can only be changed once every five years upon 180 days prior written notice to UP and upon reimbursement of UP for any costs incurred by UP in the changed local service election.

The Agreement between BNSF and UP, signed February 12, 1998, provides that BNSF may begin implementing service to these customers thirty days after signing of the Agreement, or as of March 15, 1998.

Customers on the 50/50 line and its branches and spurs have gained a new competitive service option. In addition to benefitting from competition in obtaining rail transportation equipment, pricing, and service packages to meet their rail transportation needs over the long term, these shippers also gained the benefit of alternative routing options to route traffic on BNSF around UP congestion in the near term. Communities and rail customers potentially planning new rail-served facilities along these lines have gained the benefit of having competitive service by both UP and BNSF to meet their rail transportation needs.

Efforts to Market BNSF's New Service to Customers

BNSF has prepared and communicated detailed information on the access to BNSF service for customers on the 50/50 line between Houston and Lake Charles, including main lines, spurs and associated branch lines.

Further, on February 23, 1998, BNSF marketing personnel began to contact the customers to whom BNSF has gained access, acquainting them with their ability to access BNSF as well as UP in the near term for meeting their transportation requirements, and determining, from them, where BNSF could provide transportation

services in response to their transportation needs. As with any survey, each contact reveals additional contacts which need to be made, as well as questions and concerns which need to be addressed. While this is an ongoing process, all initial, in person or telephone contact with these customers had been made by March 6, 1998. Our dialogue with these new BNSF customers will continue to insure we can meet their rail transportation expectations before commencing service to them.

Conclusion

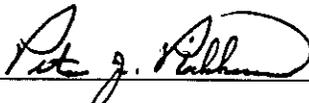
As a result of the implementation of the Agreement between BNSF and UP, rail users in the Gulf Coast area as well as BNSF and UP will realize significant productivity and commercial gains. BNSF and UP, through the joint line ownership and implementation of the joint and coordinated dispatch center at Spring, have begun working together to reduce Gulf Coast congestion and restore viable, reliable and competitive rail service in the region. Rail customers overall gain by implementation of one more process to relieve Gulf Coast congestion, which will ripple its benefits through the region. Rail customers on the 50/50 line as well as the former SP branches and spurs connecting to it, served only by one rail carrier, formerly SP and now UP, gain access to a vigorous second competitor, BNSF, for their transportation needs.

VERIFICATION

THE STATE OF TEXAS

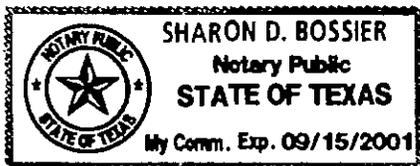
COUNTY OF TARRANT

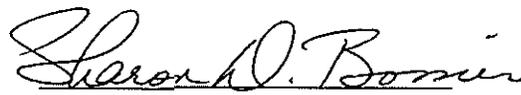
Peter J. Rickershauser, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.



Peter J. Rickershauser

Subscribed and sworn to before me this 26 th day of June, 1998.





Notary Public

My Commission expires:

Customers Accessed By BNSF As A Result Of
The '98 "50/50" Line Agreement

Customer	Station	State	Status
Dresser Magcobar	Harbor	LA	98 Agreement
Butcher Distributing	Lake Charles	LA	98 Agreement
East Lake Oil Terminal	Lake Charles	LA	98 Agreement
Milpark Drilling Fluids (Baker Hughes Co)	Lake Charles	LA	98 Agreement
Polycom Huntsman	Lake Charles	LA	98 Agreement
Port of Lake Charles Bulk Terminal 1	Lake Charles	LA	98 Agreement
PPG Ind (Sulphur Brine Field Office)	Lake Charles	LA	98 Agreement
Transit Mix Concrete & Matl Co of LA	Lake Charles	LA	98 Agreement
Century Steps Inc	Sulphur	LA	98 Agreement
Condea Vista Co, Ethylene Dome	Sulphur	LA	98 Agreement
Conoco (Gulf Coast Lube Plant)	Sulphur	LA	98 Agreement
Entergy Inc	Sulphur	LA	98 Agreement
Arco Chemical (Common St)	West Lake	LA	98 Agreement
B W Services	West Lake	LA	98 Agreement
Certainteed Corp	West Lake	LA	98 Agreement
M I Drilling Fluids	West Lake	LA	98 Agreement
Betz Dearborn Hydrocarbon	Amelia	TX	98 Agreement
Doguet Rice Milling Co	Amelia	TX	98 Agreement
Koppers Ind	Amelia	TX	98 Agreement
Pipe Distributors	Amelia	TX	98 Agreement
Huntsman Petrochemical Corp	Audrey	TX	98 Agreement
Sunbelt Works Inc	Audrey	TX	98 Agreement
Amoco Chemical Co	Baytown	TX	98 Agreement
Houston Light & Power Co	Baytown	TX	98 Agreement
Inman Services	Baytown	TX	98 Agreement
International Group Inc	Baytown	TX	98 Agreement
Baxter Oil Co	Beaumont	TX	98 Agreement
Beaumont Brick & Stone	Beaumont	TX	98 Agreement
Beaumont Rice Mills Inc	Beaumont	TX	98 Agreement
Burriss Lumber	Beaumont	TX	98 Agreement
C L Sherman & Son Lumber	Beaumont	TX	98 Agreement
Chevron Chemical	Beaumont	TX	98 Agreement
Continental Grain Co	Beaumont	TX	98 Agreement
Cowboy Concrete	Beaumont	TX	98 Agreement
Eastex Farm & Home	Beaumont	TX	98 Agreement
Elf Atochem North America	Beaumont	TX	98 Agreement
Giglio Distributing Co	Beaumont	TX	98 Agreement
Gilchrist Polymer Center	Beaumont	TX	98 Agreement
L D Construction	Beaumont	TX	98 Agreement
Mobil Chemical, Petrochemical Div	Beaumont	TX	98 Agreement
National Concrete	Beaumont	TX	98 Agreement
Neches Industrial Park	Beaumont	TX	98 Agreement
Olin Corp	Beaumont	TX	98 Agreement
OxyChem (Poly Glycol)	Beaumont	TX	98 Agreement
Port of Beaumont	Beaumont	TX	98 Agreement

R J Gallagher Co	Beaumont	TX	98 Agreement
Sampson Steel Corp	Beaumont	TX	98 Agreement
Southern Iron & Metal Co	Beaumont	TX	98 Agreement
Transit Mix Concrete & Matl (Dollinger)	Beaumont	TX	98 Agreement
Transit Mix Concrete & Matl (Longhorn Rd)	Beaumont	TX	98 Agreement
Transit Mix Concrete & Matl (South Plant)	Beaumont	TX	98 Agreement
Wilson Warehouse Co	Beaumont	TX	98 Agreement
Gulf States Utilities	Bobsher	TX	98 Agreement
Martin Gas Sales Inc	Chaison	TX	98 Agreement
Mobil Chemical Specialty (Mobil Oil Corp)	Chaison	TX	98 Agreement
Entergy Services	China	TX	98 Agreement
Wedco	China	TX	98 Agreement
Trinity Industries Inc	Connell	TX	98 Agreement
A to Z Terminal Corp	Crosby	TX	98 Agreement
Enfab Industries Inc	Crosby	TX	98 Agreement
KMCO Inc	Crosby	TX	98 Agreement
Redland Stone	Dayton	TX	98 Agreement
Seaberg Rice Co	Dayton	TX	98 Agreement
Trevor Boyce	Dayton	TX	98 Agreement
Amoco Chemical Co	Dayton SIT	TX	98 Agreement
Chevron Chemical Co	Dayton SIT	TX	98 Agreement
Dayton Plastic Storage	Dayton SIT	TX	98 Agreement
Exxon Chemical Americas	Dayton SIT	TX	98 Agreement
Fina Oil & Chemical Co	Dayton SIT	TX	98 Agreement
Millennium Petrochemicals Inc	Dayton SIT	TX	98 Agreement
Montell USA Inc	Dayton SIT	TX	98 Agreement
Phillips Chemical	Dayton SIT	TX	98 Agreement
Engineered Carbons (Div of Ameripol Synpol)	Echo	TX	98 Agreement
Baychem International	Eldon	TX	98 Agreement
Engineered Carbons (Div of Ameripol Synpol)	Eldon	TX	98 Agreement
Progress Rail Service	Eldon	TX	98 Agreement
Shanagon Industries	Eldon	TX	98 Agreement
AMF/Turboscope	Fauna	TX	98 Agreement
Cole Chemical/Houston Cheers	Fauna	TX	98 Agreement
Tekrap, Inc	Fauna	TX	98 Agreement
Transit Mix Concrete & Materials	Francis	TX	98 Agreement
Wilson Warehouse Co of Texas	Francis	TX	98 Agreement
X L Systems	Guffey	TX	98 Agreement
Houston Brick & Tile	Houston	TX	98 Agreement
Texas Steel Compressor	Houston	TX	98 Agreement
Tuboscope Vetco Intl	Houston	TX	98 Agreement
Horsehead Resource Development	Korf	TX	98 Agreement
North Star Steel Co	Korf	TX	98 Agreement
Liberty Forge, Inc.	Liberty	TX	98 Agreement
Mississippi Chemical	Liberty	TX	98 Agreement
Enterprise Products	Mont Belvieu	TX	98 Agreement
Ferrell North America	Mont Belvieu	TX	98 Agreement
Poltex International	Mont Belvieu	TX	98 Agreement
Texas Eastern	Mont Belvieu	TX	98 Agreement
Ultramar Diamond Shamrock (Martin Gas)	Mont Belvieu	TX	98 Agreement
Warren Petroleum Co	Mont Belvieu	TX	98 Agreement

Bayer Fibers Additives/Rubber	Orange	TX	98 Agreement
Offshore Pipeline	Orange	TX	98 Agreement
Rescar Inc	Orange	TX	98 Agreement
Rescar Inc (Mini Repair Shop)	Orange	TX	98 Agreement
Trinity Industries	Orange	TX	98 Agreement
County of Jefferson	Port Acres	TX	98 Agreement
Chevron Chemical Co	Port Arthur	TX	98 Agreement
City of Port Arthur	Port Arthur	TX	98 Agreement
Clark Refining & Marketing	Port Arthur	TX	98 Agreement
Davidson Construction Materials	Port Arthur	TX	98 Agreement
Gulf Maritime Whse Co	Port Arthur	TX	98 Agreement
KM Tex	Port Arthur	TX	98 Agreement
Port of Port Arthur	Port Arthur	TX	98 Agreement
Star Enterprise (Texaco)	Port Arthur	TX	98 Agreement
Transit Mix Concrete & Materials	Port Arthur	TX	98 Agreement
Exxon Chemicals Americas	Raywood	TX	98 Agreement
A & A Tubular Services Inc. (was A&A Rail)	Sheldon	TX	98 Agreement
Arrow Trucking Co	Sheldon	TX	98 Agreement
Baker Hughes Inteq	Sheldon	TX	98 Agreement
Champion Intl	Sheldon	TX	98 Agreement
Champion Pipe & Supply	Sheldon	TX	98 Agreement
Champion Recycling Corp	Sheldon	TX	98 Agreement
Cypress Creek Pipe	Sheldon	TX	98 Agreement
Delta Tubular Processing	Sheldon	TX	98 Agreement
E L Farmer & Co	Sheldon	TX	98 Agreement
Evans Cooperage Co Inc	Sheldon	TX	98 Agreement
Five Star Transportation	Sheldon	TX	98 Agreement
ICO Tubular Services	Sheldon	TX	98 Agreement
J D Fields & Co	Sheldon	TX	98 Agreement
LA Utilities	Sheldon	TX	98 Agreement
Luzenac America	Sheldon	TX	98 Agreement
Mandel Kahn Industries	Sheldon	TX	98 Agreement
North Star Steel of Houston	Sheldon	TX	98 Agreement
Premier Pipe Inc	Sheldon	TX	98 Agreement
Quality Trucking Inc	Sheldon	TX	98 Agreement
Quality Tubing Inc	Sheldon	TX	98 Agreement
Sheldon Pipe Yard	Sheldon	TX	98 Agreement
T K Pipe & Rail Inc	Sheldon	TX	98 Agreement
Tex Fab Inc	Sheldon	TX	98 Agreement
Texas Oilfield Pipe Svcs	Sheldon	TX	98 Agreement
Total Pipe Service Inc	Sheldon	TX	98 Agreement
Trans America	Sheldon	TX	98 Agreement
Triad Transport Inc	Sheldon	TX	98 Agreement
Tuboscope Vetco - Grant Prideco EVI	Sheldon	TX	98 Agreement
Turner Brothers Trucking Co	Sheldon	TX	98 Agreement
Uni Form Components	Sheldon	TX	98 Agreement
Union Tank Car	Sheldon	TX	98 Agreement
Venture Trucking	Sheldon	TX	98 Agreement
W M Dewey & Son Inc	Sheldon	TX	98 Agreement
Woodard Transportation	Sheldon	TX	98 Agreement
Dupont de Nemours, E I	Tulane	TX	98 Agreement

BASF Corp Ag Prod Div
Equistar (Millennium Petrochemical)

Viterbo
Williams

TX
TX

98 Agreement
98 Agreement

EXHIBIT C

**VERIFIED STATEMENT
OF
ERNEST L. HORD**

My name is Ernest L. Hord. I am Vice President, Operations of The Burlington Northern and Santa Fe Railway Company ("BNSF") on the UP/SP Lines. My work address is 24125 Aldine Westfield Road, Spring, Texas 77373.

I joined BNSF in October 1996. Prior to that time, I was employed by the Southern Pacific for 31 years and held various positions in the Operations Department, including General Manager and Assistant Vice President-Transportation, culminating in my last position as Assistant to Executive Vice President-Operations.

Since joining BNSF, I have had responsibility for the start-up and implementation of service on the track and territory to which BNSF gained access under the Board's Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996). As part of that responsibility, I have been directly involved in the management of BNSF's operations in the Gulf Coast area. My current duties include serving as a BNSF representative for the establishment and start-up of a regional dispatching center in Spring, TX. The dispatching center director reports to me as BNSF's representative and to my UP counterpart.

I am submitting this statement in support of the Joint Petition for Exemption of BNSF and UP with respect to the exchange of 50% ownership interests by BNSF and UP in their respective main lines (including operating sidings) which constitute the former SP Lafayette Subdivision between Dawes, TX and Avondale, LA (the "50/50 line") pursuant to the parties' February 12, 1998 Term Sheet Agreement ("Agreement"). The purpose of this statement is to discuss the ownership exchange itself, which requires

Board approval or exemption, and to provide a comprehensive overview of BNSF's operations that have been implemented on the portion of the 50/50 line between Dawes, TX and Iowa Junction, LA to serve the shipper facilities to which it gained access as part of the Agreement that did not require Board action.

Before addressing the specific operations that BNSF is conducting on the 50/50 line, I would like first to address some related matters concerning the Agreement.

A. Joint Dispatching and Trackage Rights

Part of the Agreement was the establishment of a regional dispatching center at UP's command center in Spring, TX. The dispatching center has responsibility for jointly dispatching the 50/50 line, the lines of the Houston Belt & Terminal Railway Company ("HBT"), the lines of the Port Terminal Railroad Association ("PTRA") previously dispatched by UP, and the trackage in the Houston terminal area that was owned and dispatched by SP.

Joint dispatching was implemented on March 15, 1998, on the 50/50 line, HBT's lines, and the former SP lines immediately after the necessary technology was put in place and the necessary training completed. Joint dispatching of the PTRA lines described above began on March 17, 1998. The jointly dispatched lines are being dispatched by UP and BNSF employees under the supervision of a neutral joint director who, as I previously indicated, reports to me and my UP counterpart. Tex Mex and KCS have been invited to participate in this dispatching center. Tex Mex has stationed a supervisor in the center and will relocate its dispatching to the center in September.

Under the Agreement, BNSF and UP have agreed to use the dispatching protocol previously adopted by BNSF and UP as a part of the Chemical Manufacturers Association Agreement dated April 18, 1996, which provides that trains of the same class will be treated equally, so that all carriers will be able to provide the same quality of service to Houston area shippers as well as other shippers. In Houston, the goal is to maximize overall train performance, not individual railroad performance. The dispatching center also coordinates operations on routes in and out of Houston to regulate flows and avoid route and terminal congestion by better planning and coordination. The coordinated dispatched lines continue to be dispatched by employees of the owner of the line pursuant to the CMA dispatching protocol, but increased face-to-face communication between those employees at the Spring center has allowed for better coordination and has improved the fluidity of the Houston terminal and the surrounding area. In the near future, I expect that faster transit times and more predictable service should prevail.

BNSF has also agreed to grant UP overhead trackage rights over the BNSF line between Beaumont and Navasota, TX, with the additional right to enter and exit the line at Cleveland and Conroe, TX. This will improve Houston area rail operations by allowing UP to bypass the Houston terminal for trains moving between the north, east and west of Houston.

B. Operations on the Line Between Dawes, TX and Iowa Junction, LA

Another part of the Agreement was the opening to service by BNSF of all present and future industries and other shipper facilities located on the 50/50 line and on all former Southern Pacific branches and spurs to the line and on any new branches and spurs to the line. The accompanying Verified Statement of Peter J. Rickershauser discusses BNSF's plans to serve the nearly 150 shippers on that line. As detailed in this section of my Statement, BNSF is ready, willing and able to provide service to those shippers, and BNSF service to specific customers began in March.

BNSF's access to these customers is on the same basis that BNSF serves "2-to-1" customers per Section 5 of the Settlement Agreement, as amended and supplemented, or on a haulage basis for the fee called for in Section 8. Working with each individual shipper as well as UP, and in response to each individual shipper's local transportation needs, BNSF may elect to serve these customers (a) directly, with BNSF performing the industry switching service, (b) through reciprocal switching (involving haulage as necessary) provided by UP, or (c), with UP's prior agreement, through the use of a third party to perform switching for BNSF, or for both railroads. As in the BNSF Settlement Agreement, BNSF must inform UP as to how BNSF proposes to provide service for these new shippers. Once the election is made, it can only be changed once every five years upon 180 days prior written notice to UP and upon reimbursement of UP for any costs incurred by UP in the changed local service election.

BNSF is continuing its current through and local train operations on the line east of Iowa Junction to Avondale. On the line between Dawes and Iowa Junction,

operations to provide service to the shipper facilities to which BNSF has gained access under the Agreement have been established as follows:

- The local switcher currently operating between Houston and Dayton provides service six days per week with one crew from Houston to Dayton, returning to Houston daily. A separate local operates daily (except Mondays) from Dayton to Silsbee, returning to Dayton daily. This separate local moves traffic from Baytown Branch customers for all destinations to Silsbee for placement on the appropriate destination train.
- On the Baytown and Cedar Bayou Branches, BNSF has established a local to serve shippers interested in receiving direct BNSF service.
- Between Beaumont and Dayton, BNSF's Dayton-Silsbee train provides service to shippers on that line segment six days per week.
- On the Sabine and Chaison Branches, BNSF is using UP haulage between Beaumont and Port Arthur, TX in the near term while plans for trackage rights operations are explored. Traffic to and from those branches will be handled in conjunction with existing BNSF train service from Beaumont.
- Shippers on the Lake Arthur Branch will continue to be provided service using UP haulage.
- At Korf, TX, BNSF's existing Beaumont switcher is serving Korf shippers.
- At Orange, TX, BNSF will continue to use UP's haulage services for BNSF traffic for the foreseeable future.
- At Echo, TX, BNSF plans to seek authority to establish an interchange with the Sabine River and Northern Railway Company.
- For shippers between Korf and West Lake Charles (other than shippers at Orange, TX), BNSF will continue to provide service on existing through trains unless the volume of traffic grows to necessitate adding dedicated local service.

- In the Lake Charles area, while BNSF expects to continue to use UP's haulage services for BNSF traffic that area, it is continuing to study the feasibility of providing direct service to facilities there.

BNSF has elected wherever possible to serve its new shippers directly to ensure maximum control over the quality of service. Where shippers require continued local switching by UP, BNSF will work with UP to coordinate such service and to ensure those shippers will have quality BNSF service. In addition, it is BNSF's intention to base the number of trains providing local and through service on the lines on the volume of traffic; however, it is not expected in the foreseeable future that the number of trains needed to provide such service will be increased to three trains a day on any segment of rail line.

BNSF and UP have also agreed on how the 50/50 line will be operated. Capital additions and betterments on the 50/50 line are to be split on a user basis. Maintenance capital, ordinary maintenance, and operations are to be split on an annualized usage basis. In addition, either carrier is permitted to use the Louisiana & Delta Railroad as its agent to provide service over the line. Tex Mex trackage rights charges are to be paid to UP, and Tex Mex usage of the line is to be considered UP usage in allocating costs. With regard to Amtrak, the Agreement provides that BNSF's and UP's contracts with Amtrak will not be affected by the proposed acquisitions. Amtrak usage is to be considered usage of the pre-exchange owner of the particular segment.

VERIFICATION

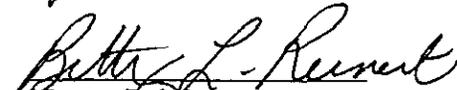
THE STATE OF TEXAS)

COUNTY OF TARRANT)

Ernest L. Hord, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.


Ernest L. Hord

Subscribed and sworn before me on this 29th day of June, 1998.


Notary Public

My Commission expires:

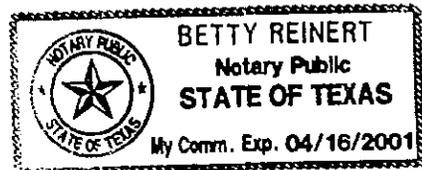


EXHIBIT D

VERIFIED STATEMENT

OF

JERRY S. WILMOTH

My name is Jerry S. Wilmoth. I am Director-Joint Facilities for Union Pacific Railroad Company ("UP"). I am submitting this statement in support of the petition for exemption filed by UP and the Burlington Northern and Santa Fe Railway Company ("BNSF") with respect to the railroads' proposed exchange of undivided 50% ownership interests in their respective mainlines, including operating sidings used for meeting and passing trains, that constitute the former Southern Pacific's Houston-New Orleans mainline (the "Line"). Under the proposed transaction, BNSF will purchase an undivided 50% interest in UP's line from Dawes, Texas, to Iowa Junction, Louisiana, over which it presently has trackage rights, and UP will purchase an undivided 50% interest in BNSF's line from Iowa Junction, Louisiana, to Avondale, Louisiana, over which it presently has trackage rights.

I. BACKGROUND

On February 12, 1998, UP and BNSF entered into a Term Sheet agreement dealing with the ownership and operation of lines in and around Houston, Texas. The agreement represented the culmination of discussions between UP and BNSF that began late last year regarding the creation of a joint dispatching center for UP and BNSF lines in the Houston area and between Houston and New Orleans. UP entered into those discussions because it believed that the service crisis had

demonstrated the importance of creating a true joint dispatching center in the areas surrounding Houston, with unified personnel, unified technology, and full access by the joint dispatchers to information about movements of the trains of both railroads.

In the Term Sheet, UP and BNSF agreed to a consolidated regional dispatching center encompassing lines of BNSF, UP, Houston Belt & Terminal Railway Company, and Port Terminal Railroad Association. UP and BNSF also agreed that the Kansas City Southern Railway Company and the Texas Mexican Railway Company would be offered the opportunity to participate in the consolidated dispatching center. BNSF further agreed to grant UP overhead trackage rights over the BNSF line between Beaumont and Navasota, Texas, which will help improve Houston-area rail operations by allowing UP to bypass the Houston terminal for trains moving between points north and east of Houston. UP believes that these agreements, and the regional dispatching center in particular, will contribute importantly to resolving the service crisis.

The Term Sheet also contained commercial "quid pro quo's" unrelated to improving Houston-area operations. Most notably, BNSF insisted that UP grant it the right to serve all shipper facilities on the former Southern Pacific's Houston-Iowa Junction line and all appurtenant branches -- a major commercial concession by UP, but one that UP concluded was

warranted by the overriding need to coordinate UP and BNSF operations in the Houston area. As an additional commercial component of the overall transaction, BNSF and UP agreed to the exchange of ownership interests at issue here.

II. THE OWNERSHIP EXCHANGE

Pursuant to BNSF's and UP's agreement to exchange ownership interests, BNSF will acquire an undivided 50% interest in UP's line from Dawes, Texas, at Milepost 352.8, to Iowa Junction, Louisiana, at Milepost 205.3 (the "Beaumont Segment"). UP will acquire an undivided 50% interest in BNSF's line from Avondale, Louisiana, at Milepost 14.9, to Iowa Junction, Louisiana, at Milepost 205.3 (the "Avondale Segment").

As a result of the exchange of ownership interests, BNSF and UP will jointly own both segments of the Line, rather than operate using a combination of ownership and trackage rights. UP's operations over the Line will not be affected by the exchange, and UP does not expect that BNSF operations will be affected either. UP presently has the right to operate over both segments of the Line and to serve all shippers on the Line and its appurtenant branches between Houston and New Orleans. BNSF has been operating over the Beaumont Segment for more than a year using trackage rights it obtained under the UP/SP-BNSF Settlement Agreement in the UP/SP merger, which allow overhead operations and access to "2-to-1" shipper

facilities and new facilities, including transloading facilities. As described above, UP has also now extended BNSF's access to all shippers located on the Beaumont Segment and appurtenant branches. UP retained trackage rights over the Avondale Segment, including the right to serve local industries, after UP sold the segment to BNSF as part of the merger settlement agreement.

The ownership exchange is made subject to the existing trackage rights of the Texas Mexican Railway Company ("Tex Mex") between Houston and Beaumont. UP granted Tex Mex these rights in order to allow Tex Mex to participate in directional running. As the exchange of ownership interests will not affect operations on the Line, the transaction will not have any impact on Tex Mex's operations over these trackage rights.

The Term Sheet also provides the basic terms under which the Line will be operated. First, capital additions and betterments on the Line will be split on a user basis. Maintenance capital, ordinary maintenance, and operations will be split on an annualized usage basis. Second, either railroad will be permitted to use the Louisiana & Delta Railroad as its agent to provide service over the Line. Third, the Term Sheet provides that Tex Mex trackage rights charges will be paid to UP, and Tex Mex usage of the Line shall be considered UP usage. Fourth, the Term Sheet ensures

that BNSF's and UP's contracts with Amtrak will not be affected by the proposed acquisitions. Amtrak usage will be considered usage of the pre-exchange owner of the particular segment.

III. IMPACT OF THE OWNERSHIP EXCHANGE

As explained above, UP agreed to the ownership exchange as one commercial quid pro quo in order to establish a joint dispatching center for the Houston area and secure the Beaumont-Navasota trackage rights. The ownership exchange in itself will not result in any changes in UP operations over the Line. Nor are there any plans to alter any properties subject to Board jurisdiction. The ownership exchange should, however, help improve coordination between the two railroads of maintenance and improvements on this important line, particularly coordination in the imposition of "maintenance windows." In UP's view, lack of coordination between BNSF and UP involving BNSF's imposition of maintenance windows on the Avondale Segment has contributed significantly to UP's service problems in the Houston area.

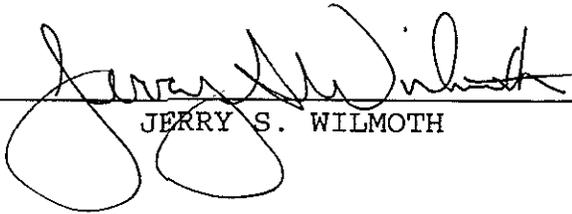
The ownership exchange will not affect service or competition for shippers to, from or via the Line. BNSF and UP already conduct competitive operations over the Line and have the right to serve shippers on the Line and appurtenant branches, and this competition will not be impacted by the exchange. The only possible competitive impact of the

ownership exchange is to expand each carrier's competitive options by allowing either carrier to use the Louisiana & Delta Railroad as its agent to provide service over the entire Line.

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, Jerry S. Wilmoth, being duly sworn, state that I have read the foregoing statement, that I know its contents and that those contents are true as stated.



JERRY S. WILMOTH

Subscribed and sworn to before me this
26 day of June, 1998.



Notary Public



EXHIBIT E

**TERM SHEET AGREEMENT
COVERING OWNERSHIP AND OPERATION
OF LINES IN AND AROUND HOUSTON, TX**

I. GENERAL CONCEPT

1. UP and BNSF agree that they will jointly own and operate the former SP Lafayette Subdivision between Dawes (MP 352.8) and Avondale (MP 14.9) (the "50/50 Line"), or, a basis similar to that found in the Powder River Basin Agreement except for dispatching. Trackage between MP 14.9 and 10.5 owned by UP and by BNSF shall be jointly dispatched and used by both parties without charge but otherwise shall be subject to typical joint facility provisions.
2. BNSF will grant UP overhead trackage rights between Beaumont and Navasota.

II. SPECIFIC TERMS COVERING JOINT OWNERSHIP AND DISPATCHING OF FORMER LAFAYETTE SUB

1. UP and BNSF will exchange 50 percent interests in their respective main lines, including operating sidings used for meeting and passing trains, which constitute the former SP Lafayette Subdivision, with each party having a 50 percent interest in the resulting operating corridor. A listing of such operating sidings is provided at Exhibit A.
2. It is the intention of the parties that UP and BNSF shall have the right to serve all present and future industries or facilities originating or terminating traffic on the 50/50 Line and on former SP branches and spurs connecting to the 50/50 Line or any new branches or spurs connecting to these lines. These industries and facilities shall be open to BNSF on the same basis that BNSF serves "2-to-1" customers per Section 5 of the Settlement Agreement, as amended and supplemented, or on a haulage basis for the fee called for in Section 8j of the Settlement Agreement, and calculated as shown on the Example attached as Exhibit B.
3. Except for existing rights, neither BNSF nor UP can admit a third party or provide haulage without the other's approval on the 50/50 Line; provided, however, that either party may use the Louisiana & Delta Railroad as its agent to provide service over the 50/50 Line without obtaining the approval of the other party. As of the date hereof, UP shall not impose or enforce any requirement (a) contained in any agreement entered into after execution of

the Settlement Agreement and (b) covering traffic which BNSF had access to under the terms of the Settlement Agreement, that the L&DRR pay any additional rental or other fee if traffic is routed via BNSF.

4. On the 50/50 Line, capital additions and betterments will be split on a user (i.e., 50/50) basis, and maintenance capital (track replacement), ordinary maintenance, and operations will be split on an annualized usage basis (gross ton miles). Except as to capital additions and betterments agreed to by the parties prior to the date of this Term Sheet Agreement as payable out of the Capital Improvements Fund established by the Settlement Agreement, capital additions and betterments will be subject to the mutual agreement of the parties in the same manner as they are agreed to under procedures established in the Powder River Basin Agreement.
5. Capital costs of projects which benefit only one party shall be paid for solely by such party. If, for any reason, the other party desires to use such facility it will pay 50% of the actual cost plus interest.
6. Exchange is subject to TexMex' existing trackage rights. TexMex trackage rights charges shall be paid to UP for UP's sole benefit. TexMex usage of the line shall be considered UP usage for purposes of allocating liability, calculating UP and BNSF's respective usage shares, etc. The parties' contracts with Amtrak shall not be affected by this Term Sheet Agreement. Amtrak usage of the 50/50 Line shall be considered the usage of the respective owner of the segment in question prior to the exchange of ownership for all purposes including, but not limited to, compensation, liability, and all other provisions of the parties' respective contracts with Amtrak.
7. BNSF and UP agree on a consolidated regional dispatching center encompassing BNSF, UP, HB&T and PTRR (between Bridge 5A and Deer Park) lines, and including KCS and TexMex participation as appropriate, as described in Exhibit C.
8. Field management, facility maintenance, and improvements to the 50/50 Line will continue to be performed by UP or BNSF on segments each owned prior to the exchange of ownership.
9. BNSF and UP agree to establish reasonable joint service standards, including a joint service standards committee for operations pursuant to this Term Sheet Agreement.

10. UP shall not be required to pay for any expenditures made by BNSF to meet the line condition standard in Section 10c of the Settlement Agreement and Section 6(b) of the Purchase and Sale Agreement up to the amount in the escrow account (principal of \$10.5 million plus interest). After the expenditures equal the amount in the escrow account, further expenditures shall be allocated pursuant to this Term Sheet Agreement. The cash and interest in the escrow account will be divided between the parties pursuant to their agreement settling the dispute over the condition of the Iowa Jct. to Avondale segment of the 50/50 Line.

III. SPECIFIC TERMS COVERING BEAUMONT-NAVASOTA TRACKAGE RIGHTS

1. BNSF will grant UP overhead trackage rights between Beaumont and Navasota at the same mill rate and the same general terms as provided for such trackage rights in the Settlement Agreement.
2. UP shall have the right to enter/exit at Cleveland and Conroe.
3. UP will make capital contributions to capacity related improvements to the trackage rights line on a usage basis (gross ton miles).

IV. STRANG/PASADENA INTERCHANGE

1. UP shall continue interchange of traffic originating between Sinco and Bayport through the PTRA at Pasadena for movement by BNSF. BNSF will be responsible for PTRA charges resulting from this service. The parties agree to reconsider this issue in 6 to 8 weeks after UP's directional operations and terminal changes are in place and operational. The adequacy of interchange service provided subsequent to the reinstatement of the prior interchange after such reconsideration shall be subject to review by the Service Standards Committee. The Pasadena interchange shall be reinstated in the event the Service Standards Committee finds that interchange service standards have not been met for a reasonable period of time.

V. OTHER

1. The parties agree to cooperate with each other and make and prosecute diligently whatever filing or applications, if any, are necessary to implement the provisions of this Term Sheet Agreement.

2. The parties agree to use their best efforts to promptly complete definitive agreements reflecting the intent and provisions of this Term Sheet Agreement.
3. Unresolved disputes and controversies concerning any of the terms and provisions of this Term Sheet Agreement shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.
4. The provisions of Section II.2, Industry Access, Section II.7, Joint Dispatching Center, and Section III, Beaumont-Navasota Trackage Rights, shall be effective and implementation shall begin as soon as practical but no later than 30 days from execution, and remain in effect thereafter, and the remaining provisions of this Term Sheet Agreement shall be implemented as soon as possible upon receipt of required governmental approval or exemption, if any.
5. The parties intend that the undertakings in this Term Sheet Agreement constitute legally enforceable obligations.

AGREED TO:

UNION PACIFIC RAILROAD COMPANY

By: James V. DeLan
Title: Vice President - L&N
Date: Feb 12 1998

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: _____
Title: _____
Date: _____

2. The parties agree to use their best efforts to promptly complete definitive agreements reflecting the intent and provisions of this Term Sheet Agreement.
3. Unresolved disputes and controversies concerning any of the terms and provisions of this Term Sheet Agreement shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.
4. The provisions of Section II.2, Industry Access, Section II.7, Joint Dispatching Center, and Section III, Beaumont-Navasota Trackage Rights, shall be effective and implementation shall begin as soon as practical but no later than 30 days from execution, and remain in effect thereafter, and the remaining provisions of this Term Sheet Agreement shall be implemented as soon as possible upon receipt of required governmental approval or exemption, if any.
5. The parties intend that the undertakings in this Term Sheet Agreement constitute legally enforceable obligations.

AGREED TO:

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____
Date: _____

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

By: 
Title: Vice President, UP/SP Lines
Date: February 12, 1998

EXHIBIT A
OPERATING SIDINGS

I. BNSF Segment

- (a) Salix
- (b) Raceland Jct.
- (c) Schriever
- (d) Berwick
- (e) Bayou Sale
- (f) Baldwin
- (g) New Iberia
- (h) Cade
- (i) Lafayette (only track 902, not Lafayette yard)
- (j) Crowley Siding
- (k) Midland
- (l) Roanoke

II. UP Segment

- (a) Fauna
- (b) Crosby
- (c) Dayton
- (d) Ames
- (e) Devers
- (f) China
- (g) Connell
- (h) Francis
- (i) N. Echo
- (j) S. Echo
- (k) Brimstone
- (l) Lockmore
- (m) Iowa Siding (to be constructed)

EXHIBIT B*

<u>Between:</u>	<u>Mileage</u>	<u>Roundtrip</u>	<u>Charges</u> <u>On/Off+Miles+Recip=Total/Car</u>
Origin and Destination	15	30	\$100 + \$15 + \$130 = \$245
Reciprocal Switch (per load) within Switching District	--	--	NA + NA + \$130 = \$130

* Provided for illustrative purposes only. Charges subject to annual adjustment in accordance with the Settlement Agreement.

Exhibit C

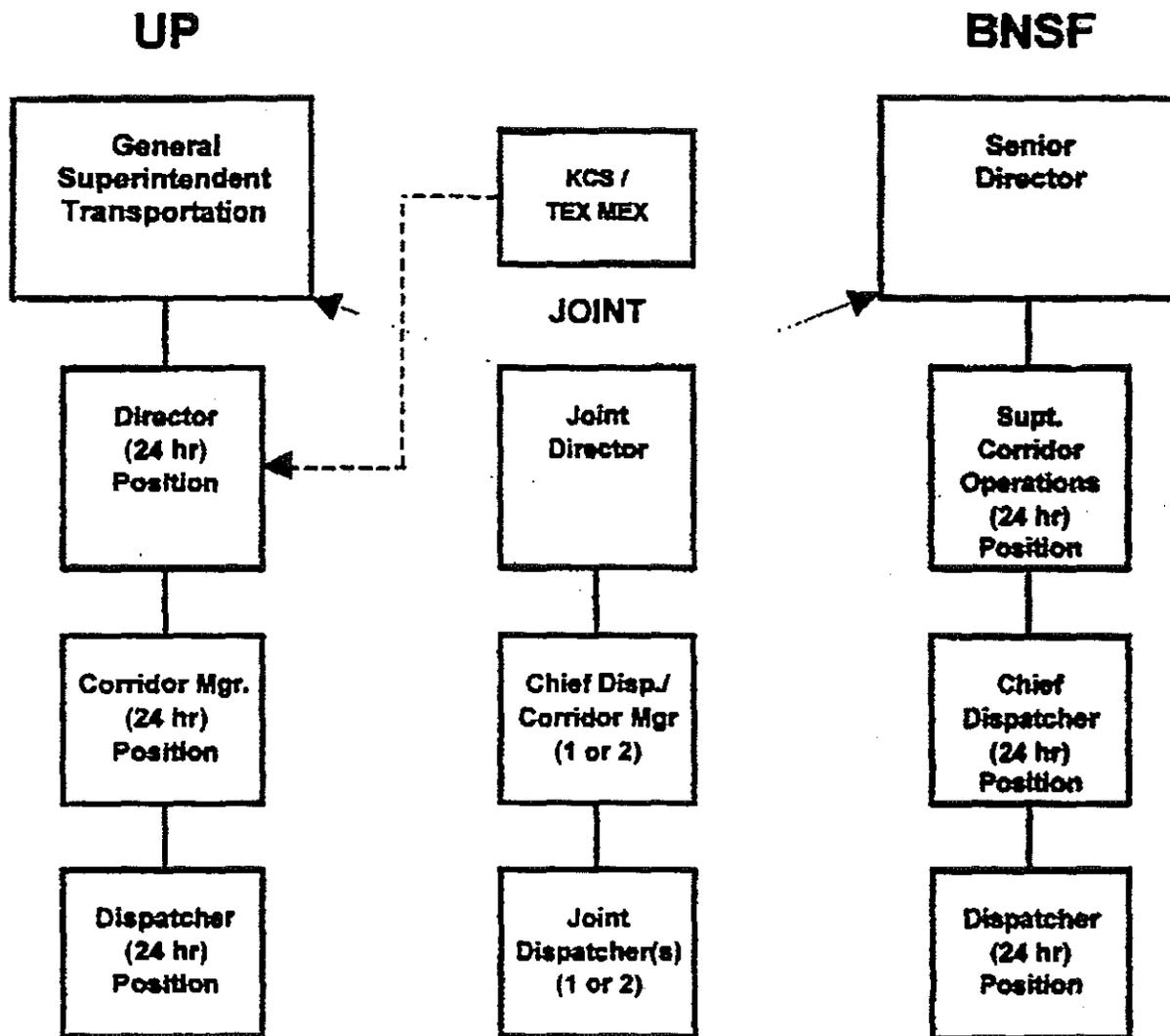
Consolidated Dispatching Center

- a) The lines to be dispatched by the Consolidated Dispatching Center are shown on the map attached hereto. Each railroad will control, manage and dispatch its own lines and the 50/50 Line will be dispatched jointly. BNSF shall be provided necessary office space and facilities in the Consolidated Dispatch Center.
- b) See attached organizational chart for management structure.
- c) A Joint Director, reporting to Service Standards Committee, will be retained by UP and BNSF's respective Vice Presidents-Transportation. Each railroad shall submit the names of two potential candidates and then mutually agree on the person to fill the position. BNSF and UP will mutually agree upon a process to change the Joint Director which permits either to remove the incumbent. The parties shall agree upon a written description of the Joint Director's job duties, two of which will include responsibility for ensuring compliance with (1) dispatching protocol standards and (2) standards for the gathering and distribution of cars to/from industries on the 50/50 Line, former SP branches and spurs, to either railroad. The Joint Director's job description and performance shall be reviewed/evaluated periodically by both railroads. Either railroad shall have the right to remove the Joint Director at its sole discretion.
- d) Until UP implements CAD III, UP will support its dispatching using Digacon. UP's server is located in Omaha and during emergency outages UP will take control of its lines and the 50/50 Line from Omaha. During emergency outages BNSF will control its lines from Ft. Worth.
- e) BNSF and UP agree that KCS/Tex Mex should be offered the opportunity to dispatch their lines in the Gulf Coast area from the Consolidated Dispatching Center.
- f) Cost allocation shall be subject to customary joint facility arrangements.
- g) Consolidated Dispatching Center will be located in the first floor of UP's Spring, Texas, regional offices. UP will develop and furnish proposed office layout.

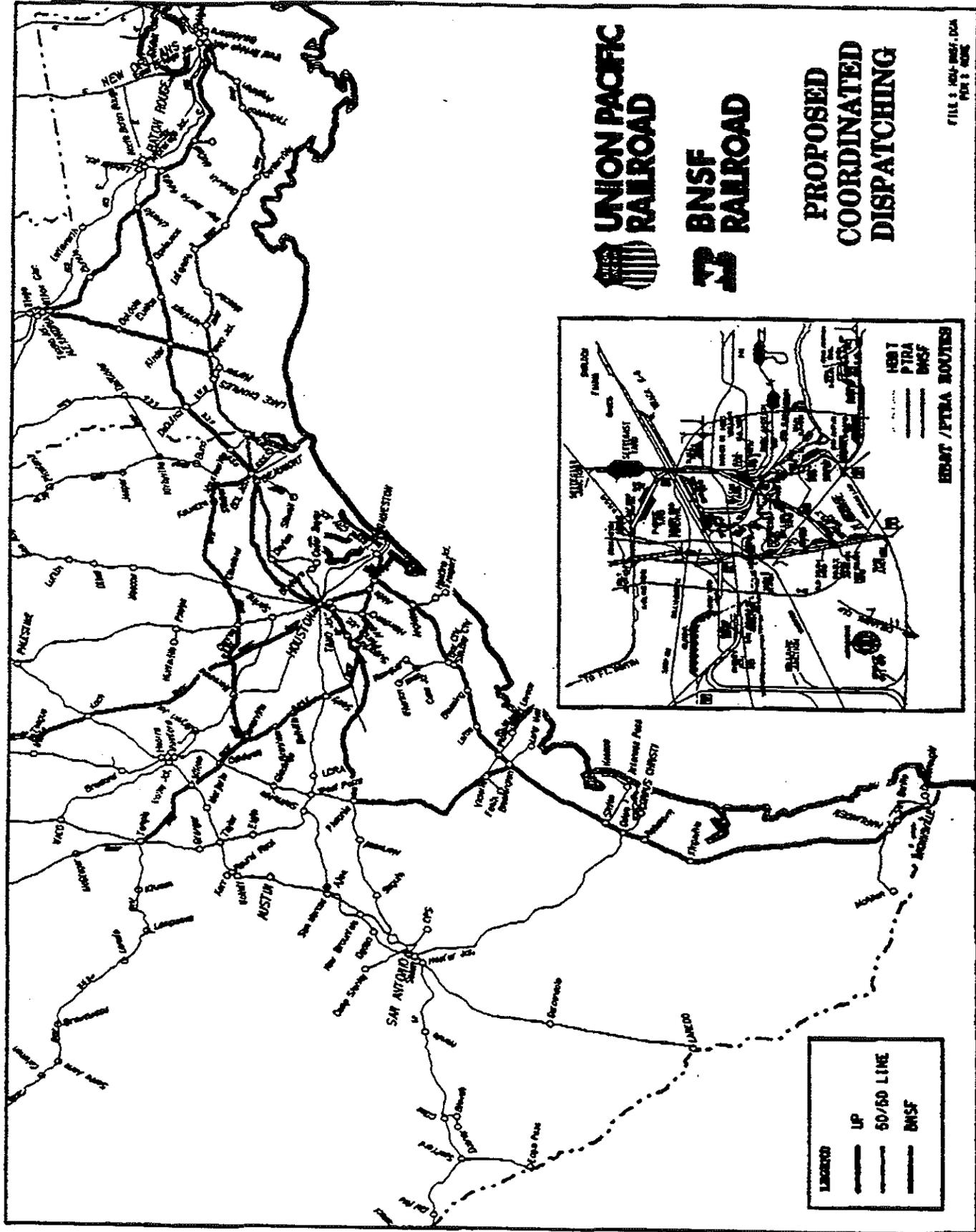
CONSOLIDATED DISPATCHING CENTER

HOUSTON, Texas

Organization Chart



February 12, 1998

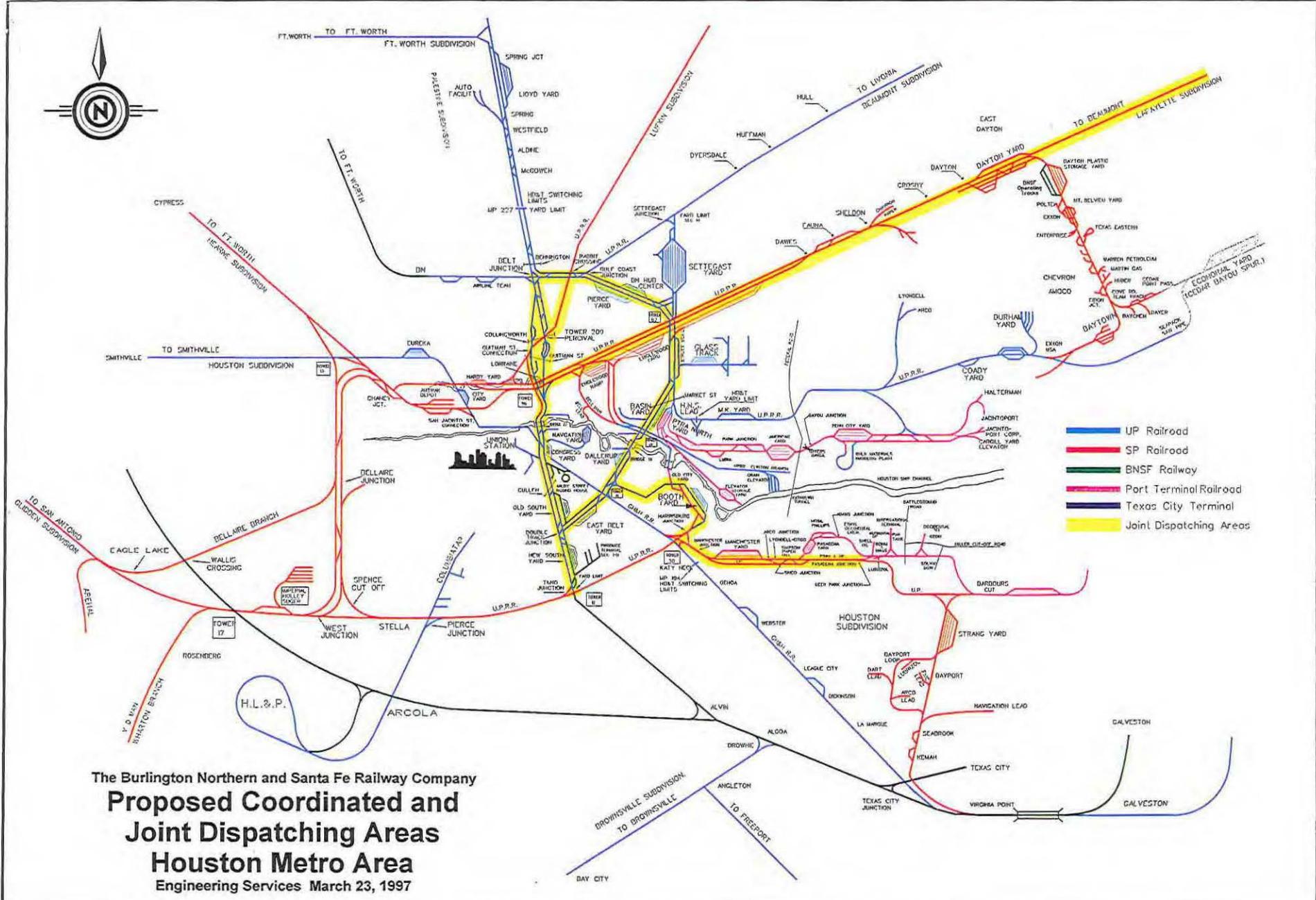


**UNION PACIFIC
RAILROAD**

**BNSF
RAILROAD**

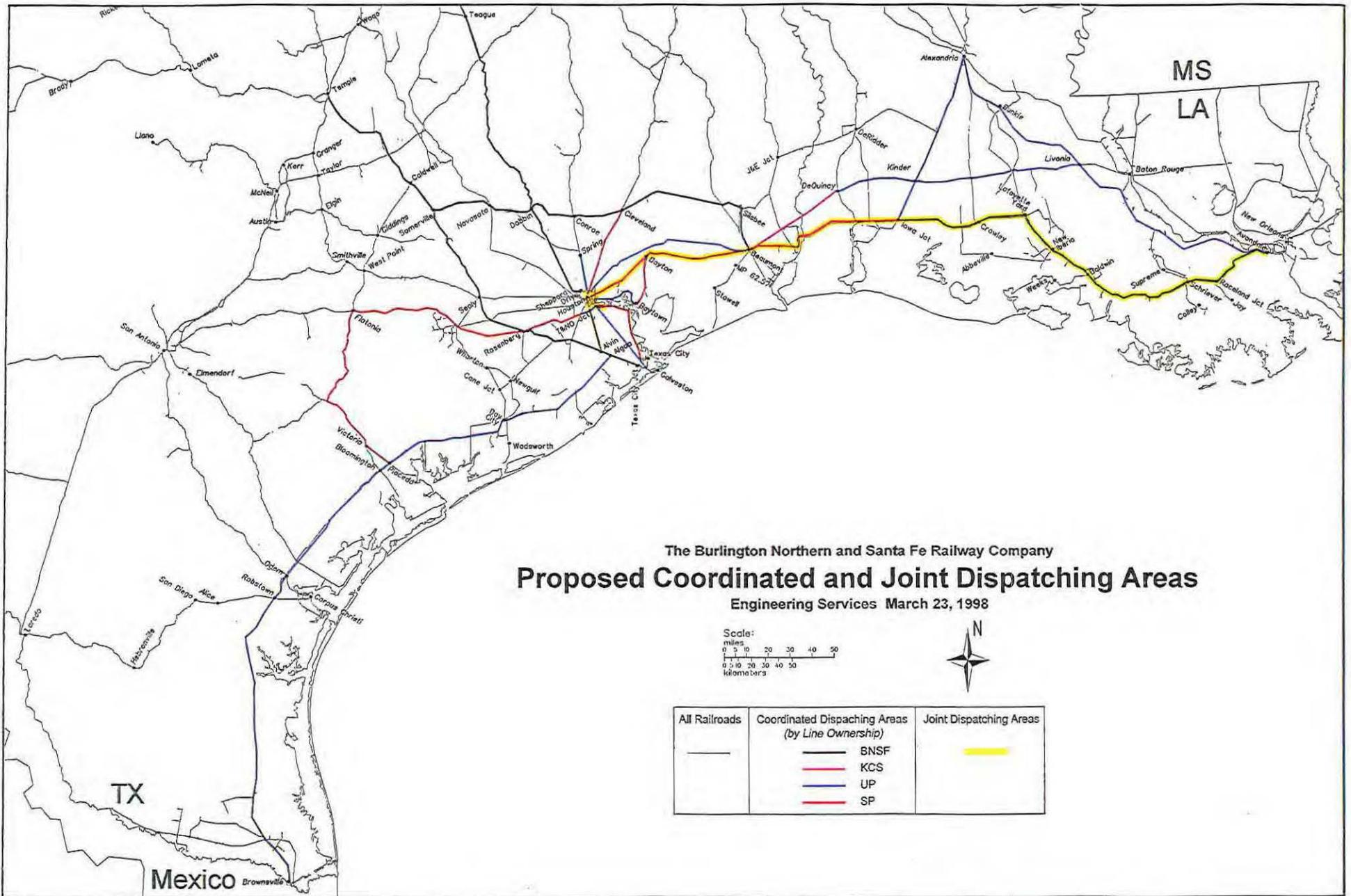
**PROPOSED
COORDINATED
DISPATCHING**

EXHIBIT F

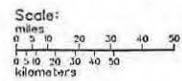


- UP Railroad
- SP Railroad
- BNSF Railway
- Port Terminal Railroad
- Texas City Terminal
- Joint Dispatching Areas

The Burlington Northern and Santa Fe Railway Company
**Proposed Coordinated and
Joint Dispatching Areas
Houston Metro Area**
Engineering Services March 23, 1997



The Burlington Northern and Santa Fe Railway Company
Proposed Coordinated and Joint Dispatching Areas
 Engineering Services March 23, 1998



All Railroads	Coordinated Dispatching Areas (by Line Ownership)	Joint Dispatching Areas
	BNSF	
	KCS	
	UP	
	SP	

Exhibit E

AGREEMENT

AGREEMENT made this 1st day of September, 2000, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter called "BNSF," and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, hereinafter called "UPRR."

WITNESSETH:

WHEREAS, BNSF owns a line of railroad between Iowa Junction, Louisiana and Avondale, Louisiana and UPRR owns a line of railroad between Dawes, Texas and Iowa Junction, Louisiana; and

WHEREAS, by conveyance simultaneous with the entry into this Agreement, but separate and apart from this Agreement, BNSF is acquiring an undivided one-half interest in certain of the UPRR Trackage (as hereinafter defined) and UPRR is acquiring an undivided one-half interest in certain of the BNSF Trackage (as hereinafter defined); and

WHEREAS, the parties desire to set forth in this Agreement the manner in which the Joint Trackage (as hereinafter defined) will be managed, maintained and operated subsequent to acquisition by (1) UPRR of a one-half interest in that portion of the BNSF Trackage to be conveyed to it, and (2) BNSF of a one-half interest in that portion of the UPRR Trackage to be conveyed to it.

NOW, THEREFORE, it is mutually agreed:

Section 1. DEFINITIONS

1.1 For the purposes of this Agreement, the following definitions and terms shall apply:

Additions and Betterments shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts under principles of railroad retirement and betterment ("RRB") accounting.

BNSF Trackage shall mean ~~(a)~~ the portion of the mainline track of the former Southern Pacific Transportation Company ("SP") Lafayette Subdivision between Iowa Junction, Louisiana, in the vicinity of BNSF Milepost 205.3, and Avondale, Louisiana, in the vicinity of BNSF Milepost 14.94, as shown on the print dated February 12, 1998, attached as Exhibit "A" and by reference made a part of this Agreement (the "Print"), including the right of way and operating sidings used for passing and meeting trains shown on "Exhibit 'A'," and trackage appurtenances, together with signals and communications facilities required for the control of operations over such track (for purposes of management and use of such signals and communications facilities only, and not ownership), and all Additions and Betterments or Improvements, in which UPRR has participated pursuant to this Agreement, to any of the foregoing, and (b) such of the Customer Access Trackage (as defined below) as is now owned or controlled by BNSF or as is added to the ownership or control of BNSF.

Consolidated Dispatching Center or CDC shall mean a consolidated regional dispatching center, established and operated pursuant to the provisions of an agreement entered into between the parties, located in UPRR's Spring, Texas facility, encompassing BNSF, UPRR, Houston Belt & Terminal Railway Company ("HBT") and Port Terminal Railroad Association ("PTRA") (between Bridge 5A and Deer Park Junction) lines generally as shown on Exhibit "A" attached thereto, and lines of The Kansas City Southern Railway Company ("KCS") and Texas Mexican Railway Company ("TexMex") in the same general area if KCS and TexMex elect to participate in consolidated dispatching.

Customer Access Trackage shall mean trackage which is not included in subsection (a) of the above definition of BNSF Trackage or in subsection (a) of the below definition of UPRR Trackage, and which from time to time would be utilized to provide access to present and future industries or facilities originating or terminating traffic on the former SP Lafayette Subdivision between Dawes (MP 353.0) and Avondale (MP 14.94) and on former SP branches and spurs connecting to the said section of the Lafayette Subdivision or any new branches and spurs connecting to these lines, together with the right of way for such trackage, and trackage appurtenances, signals and communications facilities for the control of operations thereover (for purposes of management and use of such signals and communications facilities only, and not ownership); it being agreed that such trackage is included in the definition of "Customer Access Trackage" (and as such is subject to the terms of this Agreement) only during the time period that such trackage is to be utilized for access.

Equipment shall mean trains, locomotives, rail cars (loaded or empty), trailers and containers (loaded or empty), cabooses, vehicles and machinery which are

capable of being operated on railroad tracks or on adjacent right-of-way for purpose of the maintenance or repair of such railroad tracks or right-of-way.

Exclusive BNSF Trackage shall mean that portion of the track of the former SP Lafayette Subdivision between Iowa Junction, Louisiana, in the vicinity of BNSF Milepost 205.3, and Avondale, Louisiana, in the vicinity of BNSF Milepost 14.94, and all Additions and Betterments thereto, not included at any given time within the definition of BNSF Trackage.

Exclusive UPRR Trackage shall mean that portion of the track of the former SP Lafayette Subdivision between Dawes, Texas in the vicinity of UPRR Milepost 353.0, and Iowa Junction, Louisiana, in the vicinity of UPRR Milepost 205.3, and all Additions and Betterments thereto, not included at any given time within the definition of UPRR Trackage.

GTM shall mean gross ton mile, which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Trackage.

GTM Handled Proportion shall mean the GTMs operated by one of the parties over the Joint Trackage divided by the total GTMs operated by both parties over the Joint Trackage during the same time period. All movements over the Joint Trackage shall be counted for the purposes of computing such GTM Handled Proportion; provided, however, that (1) Equipment engaged in work service pertaining to inspection, construction, maintenance or operation of the Joint Trackage or changes in and/or Additions and Betterments or Improvements to the Joint Trackage shall not be so counted, and (2) GTMs of third parties (other than Louisiana & Delta Railroad, Inc., or its successors, ("L&D") whose use shall be attributed as provided at Section 4.1 below) shall be attributed to the party that admitted such third party or for whose benefit such third party was so admitted.

Joint Service Standards Committee shall mean a committee comprised of the chief transportation officers (or their designees) of UPRR and BNSF which shall be responsible for establishing appropriate rules or standards to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Trackage.

Joint Trackage shall mean the BNSF Trackage and the UPRR Trackage, collectively.

Light Engines shall mean one or more locomotive units not coupled to cars.

Management Services shall mean (1) the field management of, facility maintenance of, and making of Additions and Betterments or Improvements to, the Joint

Trackage, (2) provision and performance of all work and services necessary to facilitate, or incidental to, the operation and use of the Joint Trackage pursuant to and in accordance with the terms of this Agreement, and (3) provision and furnishing of all Equipment and employees in the management, control and maintenance of the Joint Trackage. The Management Services do not include any of the services to be provided under the Property Management Agreement.

Manager shall mean UPRR with reference to the performance of Management Services on the UPRR Trackage, and BNSF with reference to the performance of Management Services on the BNSF Trackage.

Project shall mean the establishment of the CDC and the relocation of certain existing dispatching functions of the parties to the CDC.

Property Accounts shall mean the accounts so designated in the applicable STB accounting classification for railroad companies in effect from time to time.

Property Exchange Agreement shall mean the Property Exchange Agreement of September 1, 2000, between BNSF and UPRR.

Property Management Agreement shall mean the Property Management Agreement of September 1, 2000, between BNSF and UPRR.

Purchase and Sale Agreement shall mean the Purchase and Sale Agreement of December 11, 1996, between BNSF and Southern Pacific Transportation Company.

Settlement Agreement shall mean that Agreement dated September 25, 1995, as amended and supplemented by the parties hereto and as conditioned by the STB, between Union Pacific Corporation, UPRR, Missouri Pacific Railroad Company (collectively referred to as "UP"), and Southern Pacific Rail Corporation ("SPRC"), Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp. (collectively referred to as "SP"), on the one hand, and The Burlington Northern Railroad Company ("BN") and The Atchison, Topeka & Santa Fe Railway Company ("Santa Fe"), on the other hand, concerning the proposed acquisition of SPRC by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to an application to the Interstate Commerce Commission 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.

STB shall mean the Surface Transportation Board or successor agency.

Term Sheet shall mean that Term Sheet Agreement between UPRR and BNSF covering Ownership and Operation of Lines In and Around Houston, Texas dated February 12, 1998.

UPRR Trackage shall mean (a) the portion of the mainline track of the former SP Lafayette Subdivision between Dawes, Texas in the vicinity of UPRR Milepost 353.0, and Iowa Junction, Louisiana, in the vicinity of UPRR Milepost 205.3, as shown on the Print, including the right of way and operating sidings used for passing and meeting trains shown on "Exhibit 'A'," and trackage appurtenances, together with signals and communications facilities required for the control of operations over such track (for purposes of management and use of such signals and communications facilities only, and not ownership), and all Additions and Betterments or Improvements, in which BNSF has participated pursuant to this Agreement, to any of the foregoing, and (b) such of the Customer Access Trackage (as defined above) as is now owned or controlled by UPRR or as is added to the ownership or control of UPRR.

User shall mean (1) BNSF with reference to BNSF's operation over the UPRR Trackage and (2) UPRR with reference to UPRR's operation over the BNSF Trackage.

Section 2. ACCESS

2.1 (a) UPRR and BNSF shall each have the right to serve all present and future industries or facilities originating or terminating traffic on the Joint Trackage.

(b) In the event that UPRR shall locate a New Customer Facility (as such term is defined at Section 2.2 (a) below) on or adjacent to the Exclusive UPRR Trackage, BNSF shall have the right to serve such New Customer Facility; provided, however, that BNSF shall not have the right to locate a New Customer Facility on or adjacent to the Exclusive UPRR Trackage.

(c) In the event that BNSF shall locate a New Customer Facility on or adjacent to the Exclusive BNSF Trackage, UPRR shall have the right to serve such New Customer Facility; provided, however, that UPRR shall not have the right to locate a New Customer Facility on or adjacent to the Exclusive BNSF Trackage.

(d) Whenever a New Customer Facility is to be located on the Joint Trackage, the Manager of that portion of the Joint Trackage shall notify the other party that such New Customer Facility is to be so located. Such notice shall be given as soon as

practicable after agreement between the Manager and the customer has been reached for the location of the New Customer Facility.

(e) At least forty-five (45) days prior to initiating service to an industry or facility, the non-Manager must elect, in writing, whether its service shall be (1) direct, (2) through reciprocal switch, (3) on a haulage basis for the fee calculated as shown on the example attached as Exhibit B, or (4) with the Manager's prior written agreement, using a third party contractor to perform switching for the non-Manager alone or both parties. If the party electing to provide service is not also the Manager of that section of Joint Trackage on which the customer to be served is located, such electing party shall provide its proposed rail service plan for the customer to the Manager in its notice of election on the manner in which service is to be provided, and the Manager shall within twenty-two (22) days of its receipt of such notice either (i) notify the electing party of its approval or disapproval of such rail service plan, which approval shall not be unreasonably withheld, or (ii) if the Manager disapproves of such rail service plan, submit to the electing party a revised rail service plan as to such customer. In the event such revised rail service plan is unacceptable to the electing party, the Manager shall provide service, comparable to its own, on behalf of the electing party on an interim basis at a fee determined by the election choices of this Agreement until the parties mutually agree upon a rail service plan or one is established by arbitration pursuant to Section 10 below. The non-Manager, having elected to initiate service pursuant to this Agreement or when already providing service to a customer under a previous election pursuant to the Settlement Agreement, shall have the right, upon one hundred eighty (180) days' notice to the Manager, to change its election; provided, however, that the Non-Manager (x) shall not change its election more often than once every five (5) years and (y) shall reimburse the Manager for any costs incurred by the Manager in connection with such changed election.

2.2 (a) A party to this Agreement ("Party X"), unless it elects in writing not to participate, shall pay fifty percent (50%) of the other party's ("Party Y") cost and expense of (1) constructing any connecting and access tracks and switches (each, a "New Customer Improvement") for new industries or facilities originating or terminating traffic on the Joint Trackage other than exclusively owned or leased facilities as set forth at Section 5.3 below (each, a "New Customer Facility") upon Party X's election to serve a New Customer Facility, and/or (2) upgrades ("Existing Customer Improvements") to connecting and access tracks and switches required to serve an existing industry or facility originating or terminating traffic on the Joint Trackage other than exclusively owned or leased facilities as set forth at Section 5.3 below (each, an "Existing Customer Facility") (New Customer Facilities and Existing Customer Facilities are hereinafter collectively referred to as "Customer Facilities", while Existing Customer Improvements and New Customer Improvements are hereinafter collectively referred to as "Improvements").

(b) Improvements that Party X elects to participate in the cost and expense of constructing shall progressively during construction become a part of the Joint Trackage either: (i) if the Improvement itself connects directly to any portion of the Joint Trackage defined in subsection (a) of the definition of BNSF Trackage or subsection (a) of the definition of UPRR Trackage, become a jointly owned part of the Joint Trackage; or (ii) if the Improvement itself does not connect directly as described in (i) above, become Customer Access Trackage. Party Y shall promptly execute the necessary conveyances to transfer one-half ownership of any Improvements that become jointly owned under the foregoing sentence. Should Party X decline to participate in the cost and expense of constructing Improvements, Party X shall be denied access to the Customer Facility served by such and the Improvements then shall not become a jointly owned part of the Joint Trackage (except that if any part of the same was already a part of the jointly owned Joint Trackage, it will remain so), but will become Customer Access Trackage.

(c) Should Party X elect at a later date to serve a Customer Facility served by Improvements the cost and expense of constructing it previously declined to participate in (and thus was denied access to), such right shall be granted to Party X by Party Y upon payment of fifty percent (50%) of Party Y's cost and expense of the Improvements plus per annum interest equal to the rate paid on 90-day Treasury bills of the United States government as of the date of completion. On the date of use by Party X, such Improvements shall become part of the Joint Trackage as described in Section 2.2 (b) above. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the access to such industry or industries. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest (i.e., adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate).

Section 3. MAINTENANCE, OPERATION, AND CONTROL

3.1 UPRR shall manage the UPRR Trackage and BNSF shall manage the BNSF Trackage. Manager shall have sole charge of the maintenance and repair of its respective portions of the Joint Trackage, including, without limitation, ordinary and routine replacement of ties, rails and other track and signal equipment, with its own supervisors, labor, materials and Equipment. Any work projects performed pursuant to this Section 3.1 shall become a part of the Joint Trackage or, in the case of retirements, shall be excluded from the Joint Trackage. By September 1 of each year during the term of this Agreement (1) UPRR will advise BNSF of its anticipated programmed maintenance on the UPRR Trackage for the succeeding calendar year, and (2) BNSF will advise UPRR of its

anticipated programmed maintenance on the BNSF Trackage for the succeeding calendar year.

3.2 Unless otherwise mutually agreed to by the parties in writing, Manager shall, (1) keep and maintain the Joint Trackage on a consistent basis at no less than the track standard designated in the timetable in effect on the date of the Term Sheet, including any special instructions for the Joint Trackage as of the date of the Term Sheet, (2) maintain at least the physical capacity of the Joint Trackage as of the date of the Term Sheet (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (3) be responsible, as provided for in Section 5.1, for any Additions and Betterments to the Joint Trackage as shall be necessary to accommodate the traffic of the parties while maintaining existing service standards (including transit times) in effect on the date of the Term Sheet. Manager shall also make such Additions and Betterments to its respective portion of the Joint Trackage as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction. Additions and Betterments to the Joint Trackage that are for the exclusive benefit of User shall be performed by Manager at User's sole cost and expense. In the event that either party desires to perform Additions and Betterments to the Joint Trackage to improve it to a condition in excess of the standard set forth in this Section 3.2, such Additions and Betterments shall be referred to the Joint Service Standards Committee for approval. Any question or controversy arising with respect to the undertaking of Additions and Betterments pursuant to this Section 3.2 that cannot be resolved by the Joint Service Standards Committee within sixty (60) days following its submission shall be submitted for arbitration pursuant to Section 10 below.

3.3 Manager shall employ all persons necessary to construct, operate, maintain, repair and renew its respective portion of the Joint Trackage. Manager shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Trackage and in management of the same. Manager shall make its best effort to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Manager's personnel.

3.4 Field management of the Joint Trackage shall at all times be under the exclusive direction and control of Manager. Operation (including dispatching) of the Joint Trackage and the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of the CDC in accordance with the Consolidated Dispatching Center Agreement dated March 15, 1998, and such reasonable operating rules as Manager shall from time to time institute; provided, however, that in the management, operation (including dispatching) and maintenance of the Joint Trackage, Manager and User shall be treated equally. User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with the CDC's dispatching and signaling facilities. The parties

shall consult with each other prior to the adoption of new communication or signaling systems to be employed on the Joint Trackage which have not theretofore been generally adopted in the railroad industry.

3.5 The Joint Service Standards Committee shall meet on a regular basis, including an annual meeting to be held on or about September 15 of each year during the term of this Agreement; provided, however, that during the first year of operation under this Agreement the Joint Services Standards Committee shall meet not less often than every three (3) months. Thereafter, the Joint Service Standards Committee shall meet when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Trackage, conflicts, if any, experienced between trains of Manager and trains of User, grievances over the handling of particular trains or operational events, maintenance of the Joint Trackage, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Trackage and such other relevant matters as the Joint Service Standards Committee may decide to consider. The Joint Service Standards Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Trackage by either party or otherwise ensure fair and equal treatment as between Manager and User. Either party may request a special meeting of the Joint Service Standards Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Joint Service Standards Committee where appropriate to address immediate concerns of either party. It is expected that the work of the Joint Service Standards Committee shall be undertaken in a spirit of mutual cooperation consistent with the principle of non-discrimination in service expressed in this Agreement.

3.6 The annual Additions and Betterments program for the next year shall be prepared and submitted by the Manager to the Joint Service Standards Committee prior to September 1 of each year during the term of this Agreement.

3.7 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other party for loss, damage or expense caused by or resulting from such interruption or delay.

3.8 Manager may from time to time provide any track or tracks other than those delineated in Exhibit A to this Agreement for use by User hereunder provided there shall at all times be afforded User a continuous route of equal utility for the operation of its Equipment between the termini of the Joint Trackage. When such tracks which are not part of the Joint Trackage are used as provided herein, this Agreement shall govern for purposes of direction and control and liability as if all movement had been made over the Joint Trackage.

3.9 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party furnishes such labor, fuel or train and other supplies to the other party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

3.10 User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

3.11 Except as otherwise may be provided in this Agreement, User shall operate its Equipment over the Joint Trackage with its own employees, but before said employees are assigned or permitted to operate Equipment over the Joint Trackage as herein provided, and from time to time thereafter as and when reasonably requested by Manager, they shall be required to pass the applicable rules examinations required by Manager of its own employees. Manager shall delegate to specified User officers the conduct of such examinations in the event User chooses to conduct such examinations. If an officer of Manager conducts such examinations of employees of User, User shall pay Manager a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, User shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations.

3.12 If any employee of a party shall neglect, refuse or fail to abide by rules, instructions and restrictions governing the operation on or along the Joint Trackage, such employee shall, upon written request of the other party, be prohibited by the party employing such employee from working on the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee, then upon such notice presented in writing, the parties shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such investigations to a party's employees shall be given by the officers of such party, and such investigation shall be conducted in accordance with the terms and conditions of labor agreements between such party and its employees. If, in the judgment of the party not employing such employee, the result of such investigation warrants, such employee shall, upon written request by such party, be withdrawn by the employing party from service on the Joint Trackage, and the employing party shall release and indemnify the other party from and against any and all claims and expenses arising from such withdrawal.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Trackage by reason of such disciplinary action.

3.13 If any Equipment of User is bad ordered en route on the Joint Trackage and (1) it is necessary that it be set out, and (2) only light repairs to the Equipment are required, such bad ordered Equipment shall be promptly repaired and picked up by User. Manager may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Manager while in any manner so engaged or while en route to or returning to Manager's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User. However, should Manager's employees after repairing such bad ordered Equipment for User move directly to perform service for Manager's benefit rather than return to Manager's terminal, then User's exclusive time and liability will end when Manager's employees depart for work to be performed for Manager's benefit. In the case of such repairs by Manager to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR") (the "Interchange Rules"), in effect on the date of performance of the repairs. Manager shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under the Interchange Rules, and Manager shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. Manager also shall submit billing to and collect from User any charges for repair to freight cars that are User's car owner responsibility items as determined under the Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 7 of this Agreement.

3.14 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be railed or cleared by Manager, except that employees of User may rerail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required; however, in any such case employees of User shall consult with and be governed by the directions of Manager. Manager reserves the right to rerail Equipment of User when, in the judgment of Manager, Manager deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked or disabled Equipment shall be borne by the parties in accordance with Section 9 of this Agreement. Services provided under this section shall be billed in accordance with Section 7 of this Agreement.

3.15 In the event Equipment of either party shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among such party's employees, or due to mechanical failure of such Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 3.13), or to any other cause not resulting from an accident or derailment (including the failure of such party to promptly repair and clear bad ordered Equipment pursuant to Section 3.13), and such Equipment is unable to proceed, or if a train of either party fails to maintain the speed required by Manager on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of a party's trains on the Joint Trackage, the other party shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew the train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. Any Equipment or Employee of a party so furnished shall for purposes of liability be considered the Sole Property and Sole Employee of the other party. The reasonable costs and expenses of rendering such assistance shall be borne by the party receiving assistance from the other party. Services provided under this section shall be billed in accordance with Section 7 of this Agreement.

3.16 User, at Manager's request, shall be responsible for reporting to Manager the statistical data called for in this Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Trackage.

3.17 User shall have the right to establish crew points at various locations along the Joint Trackage as may be mutually agreed to in writing between the parties from time to time. However, User agrees that if sufficient trackage is not available at such location(s) to facilitate crew changes of User, Manager may require User to construct additional trackage in the vicinity of such location as may be required in the reasonable judgment of Manager, the cost and expense of which shall be borne by User. In the event such trackage is constructed at the cost and expense of User, and Manager shall choose to use such trackage, Manager shall pay User fifty percent (50%) of the cost of constructing such trackage, plus interest as calculated pursuant to Section 2.2 above. In addition, Manager shall lease to User by separate written agreement, existing facilities, for office, locker, change and lunchroom purposes by User's personnel upon request of User to Manager, and as reasonably available, or property as reasonably available for User to establish its own facilities.

3.18 The terms and conditions applicable to the management of the real property underlying the Joint Trackage which is subject to the Property Exchange Agreement shall be contained in a separate agreement to be entered into between the parties.

Section 4. ADMISSION OF THIRD PARTIES; PROVISION OF HAULAGE SERVICES.

4.1 Except for rights in existence on February 12, 1998, neither party shall admit a third party to the use of the Joint Trackage or provide haulage services thereover without the prior written consent of the other party; provided, however, that either party may use L&D as its agent to provide service over the Joint Trackage without obtaining the prior written consent of the other party with the following understandings:

- (a) Any agreement entered into between either party and L&D subsequent to the effective date hereof shall fully comply with all terms and conditions of this Agreement;
- (b) BNSF shall assume and guarantee all liabilities arising from L&D's operations as BNSF's agent;
- (c) UPRR shall assume and guarantee all liabilities arising from L&D's operations as UPRR's agent;
- (d) L&D usage of the Joint Trackage for the benefit of one party shall be considered the usage of such party for purposes of allocating liability and calculating the parties' respective usage shares;
- (e) L&D usage of the Joint Trackage for the benefit of both parties shall be considered the usage of each party to the extent each benefits from such usage (e.g., on a GTM proportion basis) for purposes of allocating and calculating the parties' respective usage shares; and
- (f) Either party may interchange with L&D at Lafayette, Louisiana and other locations as agreed by the parties in writing from time to time.

As of the date hereof, UPRR shall not impose or enforce any requirement (a) contained in any agreement entered into after execution of the Settlement Agreement and (b) covering traffic which BNSF had access to under the terms of the Settlement Agreement, that the L&D pay any additional rental or other fee if traffic is routed via BNSF.

Section 5. ADDITIONS AND BETTERMENTS

5.1 Manager shall construct such Additions and Betterments to the Joint Trackage with an estimated cost of One Hundred Thousand Dollars (\$100,000) or less per project as Manager or User shall deem desirable for the safe, efficient and economical use of the Joint Trackage by both parties. Before commencing construction of Additions and Betterments with an estimated cost greater than One Hundred Thousand Dollars (\$100,000) per project for use by both parties, Manager shall secure the written approval of User. Neither party shall unreasonably withhold its written approval of any project

proposed by the other party for the safe, efficient and economical use of the Joint Trackage by both parties. All Additions and Betterments to the Joint Trackage shall progressively during construction become part of the Joint Trackage. Manager shall have the right to include as a part of the cost of Additions and Betterments any engineering costs related to Additions and Betterments to the Joint Trackage.

5.2 Either party shall have the right to construct, or have constructed for it, Additions and Betterments, Improvements (in accordance with Section 2 above), industrial trackage or, subject to the conditions set forth in Section 5.3 below, other trackage and facilities connecting to the Joint Trackage, provided that such construction is performed in such a manner as not to impair the other party's use of the Joint Trackage. Except as provided in Section 5.3 below, the party not constructing, or having the construction performed for it, shall have the right to jointly use such industrial trackage or other trackage and facilities or any portion thereof (1) as soon as it is placed in service and upon payment of one-half of the cost of construction, or (2) at any time subsequent to such construction by payment of an amount equal to (a) one-half of such cost of construction, plus Additions and Betterments, less retirements, and (b) per annum interest equal to the rate paid on 90-day Treasury bills of the United States government as of the date of completion. On the date such party's use commences, said Additions and Betterments, Improvements (in accordance with Section 2 above), industrial trackage or, subject to the conditions set forth in Section 5.3 below, other trackage or facilities shall become part of the Joint Trackage. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the access to such industry or industries. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest (i.e., adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate.) Upon the exercise of such election to take use and the payment as prescribed, such industrial trackage or other trackage and facilities or portion thereof shall be deemed equally jointly owned, and become a part of the Joint Trackage.

5.3 Either party shall have the right to construct, or have constructed for it, for its sole use exclusively owned or leased facilities, including, without limitation, automobile and intermodal facilities, along the Joint Trackage pursuant to the following terms and conditions:

- (a) The party wishing to construct such exclusively owned facilities for its sole use shall submit its plans to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed;

- (b) Such ~~exclusively owned or leased and used facilities~~ shall not (i) impair the other party's use of the Joint Trackage, (ii) prevent or unduly hinder the other party's access to existing or future customers or facilities served from the Joint Trackage, or (iii) impair access to other exclusively owned facilities then in existence; and
- (c) If jointly owned or leased and used property is to be used for the construction of such exclusively owned or leased and used facilities, the party so constructing such exclusively owned or leased and used facilities shall reimburse the other party for its ownership of the jointly owned property so utilized at 50% of its then current fair market value, except for properties identified in Exhibit "C" .

Each party has identified in Exhibit "C" any area or areas where it currently anticipates it will need such exclusively owned or leased and used facilities. Each party hereby agrees to reserve for the construction of such exclusively owned or leased and used facilities property currently owned by it at the area(s) identified with its name in Exhibit "C".

Section 6. SETTLEMENT AGREEMENT ESCROW ACCOUNT

Notwithstanding any other provision of this Agreement to the contrary, UPRR shall not be required to pay for any expenditures made by BNSF to meet the line condition standard in Section 10c of the Settlement Agreement up to the amount in the escrow account established pursuant to Section 10c of the Settlement Agreement (approximately principal of \$10.5 million plus interest) (the "Escrow Account"). After the expenditures equal the amount in the Escrow Account, further expenditures shall be allocated as set forth above in this Agreement.

Section 7. COMPENSATION AND BILLING

7.1 Accounting as prescribed by the STB from time to time will be followed for purposes of this Agreement, except as provided in Sections 1.1 and 7.5.

7.2 Each of the parties shall bear one-half of the costs properly chargeable to capital account and its cost (or other accounting treatment) for retirement of its one-half of any depreciable property in connection with the Joint Trackage. Either party incurring costs properly chargeable to capital account in constructing Additions and Betterments or Improvements to the Joint Trackage shall progressively bill the other party hereto one-half of the cost incurred subject to adjustment when the Roadway Completion Report is received. The progressive billing shall be made not more frequently than monthly within thirty (30) days of the close of the month in which the billing party charges its fifty percent

(50%) of the cost to its appropriate capital account and the amount of such progressive billing shall not exceed the fifty percent (50%) so charged by the billing party.

7.3. Except as otherwise provided in Section 7.5, Manager will, on the first day of each month, render to User a bill for User's estimated share of the estimated cost incurred by Manager in controlling operations over, maintaining, repairing and renewing the Joint Trackage for that month. User shall pay that bill by the twentieth day of the same month. Each party shall furnish to the other within fifteen (15) days subsequent to the close of each calendar month during the term of this Agreement a statement of its usage (in GTMs) of the Joint Trackage during such month. Since User's actual GTM Handled Proportion for the month will not be known until the end of the month and since the actual costs will similarly not be known until some later date, the bill rendered to User shall be an estimate derived from the latest preceding month for which actual cost and User's actual GTM Handled Proportion of such cost is known. Promptly after identifying the actual costs and User's actual GTM Handled Proportion for the month covered by the estimated bill, Manager shall render to User a statement showing User's actual GTM Handled Proportion of such actual cost for the month. In the event User's actual GTM Handled Proportion of such cost for any month shall exceed its estimated payment for that month, Manager shall include a bill for such difference with a statement of actual cost and User shall pay said bill within thirty (30) days of its receipt thereof. In the event User's actual GTM Handled Proportion of such cost for any month shall be less than its estimated payment for that month, Manager shall include a refund payment for such difference with a statement of actual cost. In the event User shall fail to provide Manager with User's GTMs for any particular month by the 15th day as provided for in this Section, Manager may compute User's actual GTM Handled Proportion by using the latest monthly GTM Handled Proportion available and make the appropriate adjustment in subsequent monthly billing.

7.4 Each of the parties hereto shall pay one-half of any taxes or assessments levied by any governmental body, municipal or otherwise, on the Joint Trackage.

7.5 The parties hereto agree that the current cost of replacement in kind of track materials replaced under AFE or similar programmed work authority will be shared between them on an annual Gross Ton Mile Proportion for the calendar year in which the expense is incurred for the replacement in kind.

7.6 In the event either party hereto shall fail to receive any monies due from the other party hereto within the time period specified in this Agreement, or if not specified, within thirty (30) days of receipt of billing, the party so failing shall add an amount to the payment of such delinquent monies equal to 1/365th of the sum of the (1) effective annual rate of return on 180-day U. S. Treasury Bills plus (2) two percent (2%), for each day the payment is delinquent commencing with the date the payment was due and continuing until and including the date the payment is received. The rate of return on the first issue of

such Treasury Bills in January of any year shall be used for the period January through June 30 of such year, and in July of any year shall be used for the period July 1 through December 31 of such year. The delinquent payment additive provided for herein shall be (1) compounded monthly, and (2) the lesser of (a) the amount calculated as set forth above, or (b) the maximum amount permitted by law.

7.7 Bills containing clerical errors will not be deemed a valid reason for delaying payments. Any bills containing minor errors (errors of less than \$5,000) shall be paid subject to adjustment in subsequent billing. Bills containing major errors (errors of \$5,000 or more) may be reduced by the amount of the major error. Adjustments of clerical errors of less than \$5,000 requested by either party and not made within sixty (60) days after receipt of such request shall thereafter become subject to the same delinquent payment additive provided for in Section 7.6. Disputed items in excess of \$5,000 shall be subject to the same delinquent payment additive as provided in Section 7.6 if payment is due and withheld, or a similar credit if paid and subsequently refunded; provided, however, that no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month in which the expense covered thereby is incurred, except that there will not be any time limitation in connection with liability and casualty claims or capital expenditures and related operating expenses accounted for under authority for AFEs or in the case of claims disputed as to amount or liability. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims. Notwithstanding the delinquent payment additive provisions hereinbefore provided, in the event either of the parties shall fail to make one or more payments within six (6) months of the date the same became due and payable and the matter is not the subject of arbitration, such failure or nonpayment shall constitute a default and thereafter the party hereto not in default shall have the right to exercise any and all of the actions, remedies or privileges hereinafter provided for defaults.

7.8 Except as otherwise specifically provided for in this Agreement, bills rendered pursuant hereto shall be prepared in conformance with the standard practices of the party rendering the bill. Such billings, including surcharges, Equipment rental and other rates, will be based on cost, and such surcharges, Equipment rental and other rates will be subject to revision from time to time to reflect changes in costs. A one percent (1%) surcharge will be applied in lieu of the material surcharge in the billing party's standard billing practice to material placed under AFE or similar programmed work authority when the material is delivered to the job site from suppliers or processors such as rail welders or tie treaters and not from existing stock. Secondhand material prices, including, without limitation, rail, shall be equal to fifty percent (50%) of the cost of new materials at the time the materials are applied to or released from the Joint Trackage. Scrap materials shall be priced at the current market scrap prices received by Manager at the time of removal from

the Joint Trackage. Either of the parties shall have the option to receive fifty percent (50%) of the amount(s) received from the salvage of any retired depreciable property or a portion of the salvage from any retired non-depreciable facilities equal to its GTM Handled Proportion for the calendar year in which the retirement occurred in lieu of receiving a credit for the value of the salvage in the maintenance and operation bills. For the purposes of this Section, salvage from track materials replaced in kind or the value thereof shall be apportioned on an annual GTM Handled Proportion basis for the calendar year in which salvage occurred.

7.9 So much of the books, accounts, and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the other party hereto.

Section 8. COMPLIANCE WITH LAWS

8.1 With respect to operation of Equipment on the Joint Trackage pursuant to this Agreement, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

8.2 Each party (i) agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials") and covenants that it shall not treat or dispose of Hazardous Materials on the Joint Trackage.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 8.2 and Section 8.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by a party to this Agreement (the "Derailing Party") carrying Hazardous Materials shall occur on any segment of the Joint Trackage, any report required by federal, state or local authorities shall be the responsibility of the Derailing Party. The Derailing Party shall also immediately advise the owner/shipper of the Hazardous Materials involved in the Derailment, and Manager, if other than the Derailing Party.

Manager shall assume responsibility for cleaning up any release of Hazardous Materials from Equipment involved in a Derailment on that section of the Joint Trackage for which it provides Management Services in accordance with all federal, state, or local regulatory requirements. The Derailing Party may have representatives at the

scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 9 of this Agreement.

If a Hazardous Materials release caused by a Derailment results in contamination of real property or water on the Joint Trackage or on real property or water adjacent to the Joint Trackage (whether such real property or water is owned by a party to this Agreement or a third party), Manager shall assume responsibility for emergency cleanup conducted to prevent further damage. The Derailing Party shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be borne in accordance with Section 9 of this Agreement.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a Derailment, the Derailing Party shall perform the transfer; provided, however, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Manager, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 9 of this Agreement. Transfers of Hazardous Materials by a Derailing Party shall only be conducted after being authorized by Manager.

8.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 9 of this Agreement.

8.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 8.2 and 8.3 of this Agreement.

Section 9. LIABILITY

9.1. The provisions of this Section 9 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 9, no provisions hereof shall be deemed to deprive either party of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this

Agreement as a result of the other party's failure to perform or observe any other obligation or duty created by this Agreement. The provisions of this Section 9 shall apply as between the parties hereto irrespective of the terms of any other agreements between the parties hereto and other railroads using the Joint Trackage, and the allocation of liabilities provided for herein shall control as between the parties hereto.

9.2 The parties agree that for the purposes of this Section 9:

- (a) The term "Employee(s)" of a party shall mean all officers, agents, employees and contractors of that party. Such Employees shall be treated either as "Sole Employees" or "Joint Employees", as hereinafter specified;
- (b) "Sole Employees" and "Sole Property" shall mean one or more Employees, Equipment, tools and other equipment and machinery while engaged in, en route to or from, or otherwise on duty incident to performing service for the exclusive benefit of one party. Pilots furnished by one party to assist in operating Equipment of the other party shall be considered the Sole Employees of such other party while engaged in such operations. Equipment shall be deemed to be the Sole Property of the party receiving the same at such time as deemed interchanged under AAR rules or applicable interchange agreements, or when such party is responsible for the car hire or per diem for the Equipment under agreement between the parties;
- (c) "Joint Employee" shall mean one or more Employees while engaged in maintaining, repairing, constructing, renewing, removing, inspecting or managing the Joint Trackage or making Additions and Betterments or Improvements to the Joint Trackage for the benefit of both of the parties hereto, or while preparing to engage in, en route to or from, or otherwise on duty incident to performing such service for the benefit of both parties;
- (d) "Joint Property" shall mean the Joint Trackage and all appurtenances thereto, and all Equipment, tools and other equipment and machinery while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, managing or making Additions and Betterments or Improvements to the Joint Trackage for the benefit of both of the parties hereto, or while being prepared to engage in, en route to or from, or otherwise incident to performing such service;

- (e) "Loss and/or Damage" shall mean ~~injury to or death of any person,~~ including Employees of the parties hereto, and loss or damage to any property, including property of the parties hereto and property being transported by the parties, which arises out of an incident occurring on the Joint Trackage and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except (other than as provided in Section 9.5(c)) liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any Third-Party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment;
- (f) Operating Employees of a party whose service may be jointly used by the parties hereto for the movement of trains over the Joint Trackage, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;
- (g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 9.4. shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;
- (h) "Third Party" shall mean any person or entity other than (i) a party hereto, (ii) a Sole Employee of either party, (iii) a Joint Employee, or (iv) an invitee of either party;
- (i) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Trackage, shall, as between the parties hereto, be regarded in the same light as a Third Party. Without limiting the generality of the foregoing, neither of the

~~parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Trackage;~~

- (j) For the purpose of this Section 9, Equipment of foreign lines being detoured over the Joint Trackage, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

9.3 The parties agree that:

- (a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 9, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgments shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses shall be reimbursed by the other party as allocated pursuant to this Agreement;
- (b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by Third Party or Parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;

- (c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 9, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 9;
- (d) User shall provide written notice to the other party of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;
- (e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 9 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other parties so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other parties and allocated in accordance with Section 9.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.
- (f) In case a claim or suit shall be commenced against any party hereto for or on account of Loss and/or Damage for which another party hereto is or may be solely liable or Co-Liable under the provisions of this Section 9, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows:
If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to Third Parties, Joint Employees or the Joint Trackage, the party whose Sole Employees or Equipment were

involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to Third Parties, Joint Employees or the Joint Trackage and neither or both party's Equipment and Sole Employees were involved in the incident, Manager shall investigate and defend such claim or suit unless resulting from an incident covered under Section 9.5(c) in which case said Section shall govern; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

- (g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

9.4 The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailling Equipment (and the costs of repair or renewal of damaged Joint Trackage or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or derailments or engaged in repair or renewal of the Joint Trackage subsequent to any such wreck, disability or derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or derailments or repairing or renewing the Joint Trackage to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or derailment.

9.5 Allocation.

- (a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property).
- (b) Loss and/or Damage to Third Parties or their property (other than Third Parties involved in any crossing accident on the Joint

Trackage), to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:

- (i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, or only one party is involved (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property), that party shall bear and pay all of such Loss and/or Damage.
- (ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, or occurs in such a way that it cannot be determined how such Loss and/or Damage came about, such Loss and/or Damage (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property) shall be apportioned between the two (2) parties to this Agreement, and any other party(ies) authorized to use the Joint Trackage as a trackage rights tenant, on a usage basis considering each party's gross ton miles over the Joint Trackage for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of this Agreement, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of this Agreement. User shall not bear or incur any liability for claims, suits, demands, judgments, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.
- (c) As to claims by Third Parties against either party hereto for grade crossing accidents, it is understood and agreed that a number of vehicular crossings of the Joint Trackage presently exist, or may be constructed. Each party agrees, as an equal owner of the Joint Trackage, to accept all crossings in whatever condition they may be during the term of this Agreement, and that neither party will assert any claim, demand or cause of action against the other party hereto that a crossing is inadequate, defective, or extra hazardous. In any crossing accident on the Joint Trackage in which only one party's Sole Property is involved, that party will investigate, defend,

indemnify, and hold harmless the other from and against any claim, demand or cause of action by any Third Party for actual damages arising out of the crossing accident on the Joint Trackage. Notwithstanding anything in this Section to the contrary, in any crossing accident in which only one party's Sole Property is involved, and that same party, pursuant to this Agreement, is responsible for maintenance of the portion of the Joint Trackage on which the crossing accident occurred, then that party will additionally investigate, defend, indemnify, and hold harmless the other party from and against any claim by a Third Party for punitive damages arising from the crossing accident.

- (d) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage suffered by those Employees. Except as specified in this Section 9.5. (which provides for the allocation of certain Loss and/or Damage between the parties without regard to fault), no party shall be liable or allocated fault for the acts or omissions (negligent or otherwise) of any other party's Employee.

9.6 THE PARTIES EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; AND (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS.

Section 10. ARBITRATION, PROCEEDINGS AND AWARD

10.1 If at any time a question or controversy shall arise between the parties hereto touching the construction of any part of this Agreement or concerning the business or manner of transacting business carried on under its provisions, or concerning the

observance or performance of any of the conditions herein contained, or the rights or obligations of any party under or arising from this Agreement upon which question or point in controversy the parties cannot agree, such question or controversy shall be submitted for arbitration to a disinterested person or persons familiar with such business and experienced in railway management as hereinafter provided. Such question or controversy shall be submitted to a single competent disinterested arbitrator if the parties hereto are able to agree upon such single arbitrator within twenty (20) days after the party desiring such arbitration shall notify in writing the other party to such question or controversy. If such single arbitrator cannot be agreed upon before the expiration of such period of twenty (20) days, such arbitration shall be had before a board of three competent and disinterested persons to be named as follows: The party demanding such arbitration shall give the other party notice of demand, stating specifically the question or questions to be submitted for decision or the point or points in controversy, and nominating a person who has the required qualifications to act as one (1) arbitrator. The party hereto to whom such notice is given shall appoint a second arbitrator and give the party hereto demanding arbitration notice in writing of such appointment within twenty (20) days from the time of such notice. If at the expiration of twenty (20) days from the receipt of such notice the party receiving it has not notified the party demanding the arbitration of its nomination of a second arbitrator having like qualifications, the party making the demand may make such selection. The first and second arbitrators chosen shall select a third, and if the arbitrators chosen shall be unable to agree upon a third arbitrator within a period of twenty (20) days from the date of appointment of the second arbitrator, the third arbitrator may be appointed upon ten (10) days' notice upon motion or application of either party hereto by the Chief Judge (or Judge acting as Chief Judge) of the United States District Court for the Southern District of the State of Texas.

10.2 Upon the selection of the single arbitrator if there shall be just one (1), or upon completion of the selection of such board of three (3) arbitrators, the said arbitrator, or board, shall proceed at once with reasonable diligence to inquire into and determine the questions and controversies at issue as disclosed in the notice of arbitration and shall give to both parties reasonable notice of the time and place (of which the arbitrator or arbitrators shall be the judge) where the arbitrator or arbitrators may take such evidence as may be deemed reasonable or as either party may submit, without requiring witnesses to be sworn, and may hear arguments of counsel or others. If any arbitrator shall decline or fail to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering the evidence and hearing the testimony and arguments which may be submitted by each party, said single arbitrator, or the majority of such board of arbitrators (as the case may be), shall state such decision or award in writing within ninety (90) days of the final submissions by the parties, which decision or award, when delivered to both parties, shall be final, binding and conclusive upon both parties, and each party hereby expressly agrees to be bound conclusively thereby as to any of the matters submitted to arbitration. Until the single

arbitrator, or board of arbitrators, as the case may be, shall issue the first decision or make the first award upon any question or controversy so submitted for arbitration, the business, settlements and payments to be transacted and made under the terms of this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such questions. Immediately after such first decision or award, each party shall forthwith make such changes in the conduct of its business, or such payments or restitution, as the case may be, as are in and by such decision or award required of it to be made.

10.3 The books and papers of both parties as far as they relate to any matter submitted to arbitration shall be open to the examination of the arbitrator or arbitrators, as the case may be. Each party to the arbitration shall pay all compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

Section 11. DEFAULT

11.1. In the event of default by either of the parties with respect to the payment of monies due the other pursuant to the terms of this Agreement, the party to whom such money is owed shall have the right to offset against any monies whatsoever, except divisions of revenues, it may then or thereafter owe the party in default. This right to offset shall be in addition to any other rights or remedies available to the party not in default and shall prevail notwithstanding provisions, if any, in any other agreements to the contrary.

11.2. In the event either of the parties shall fail to make one or more payments of monies due the other party pursuant to this Agreement within six (6) months of the date the same became due and payable and the matter is not the subject of arbitration, such failure or non-payment shall constitute a non-payment default. In the event of a non-payment default, and provided the non-defaulting party delivers notice of its intention to rely on this Section 11.2 in connection with such default to the other party in default not less than thirty (30) or no more than sixty (60) days prior to the expiration of the six month default period specifying the bill or bills payment of which is overdue, the non-defaulting party may file an application with the appropriate authorities, if necessary, seeking authority for the party in default to cease operations over the Joint Trackage. The party in default shall cooperate with the non-defaulting party in seeking authority for such cessation of operations, and if such authority is obtained, or if such authority is not required, the party in default shall cease operations over the Joint Trackage as quickly as it can legally do so and continue such cessation until the default has been cured.

Section 12. NOTICES

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, by facsimile transmission, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UPRR:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for BNSF:

Sr. Vice President-Operations
2600 Lou Menk Drive
P.O. Box 961034
Ft. Worth, Texas 76161-0034

With a copy to:

-AVP Joint Facilities
2600 Lou Menk Drive
P. O. Box 961034
Ft. Worth, Texas 76161-0034

Notice of address change may be given any time pursuant to the provisions of this Section 12.

Section 13. SECTION HEADINGS

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 14. EFFECTIVE DATE AND TERM

This Agreement shall become effective as of the date first hereinabove written and shall remain in full force and effect for a term of ninety-nine (99) years.

Section 15. LAWS GOVERNING

This Agreement shall be interpreted in accordance with the laws of the State of Texas.

Section 16. ASSIGNABILITY

16.1 Except as provided in the sentence immediately following, this Agreement and any rights granted hereunder may not be assigned in whole or in part by either party hereto without the prior written consent of the other. This Agreement may be assigned by either party without the prior written consent of the other only (1) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (2) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled, controlling or under common control with the assigning party. In the event of an authorized assignment, this Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties

16.2 This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against either of the parties hereto.

Section 17. ENTIRETY, AMENDMENTS, AND WAIVERS

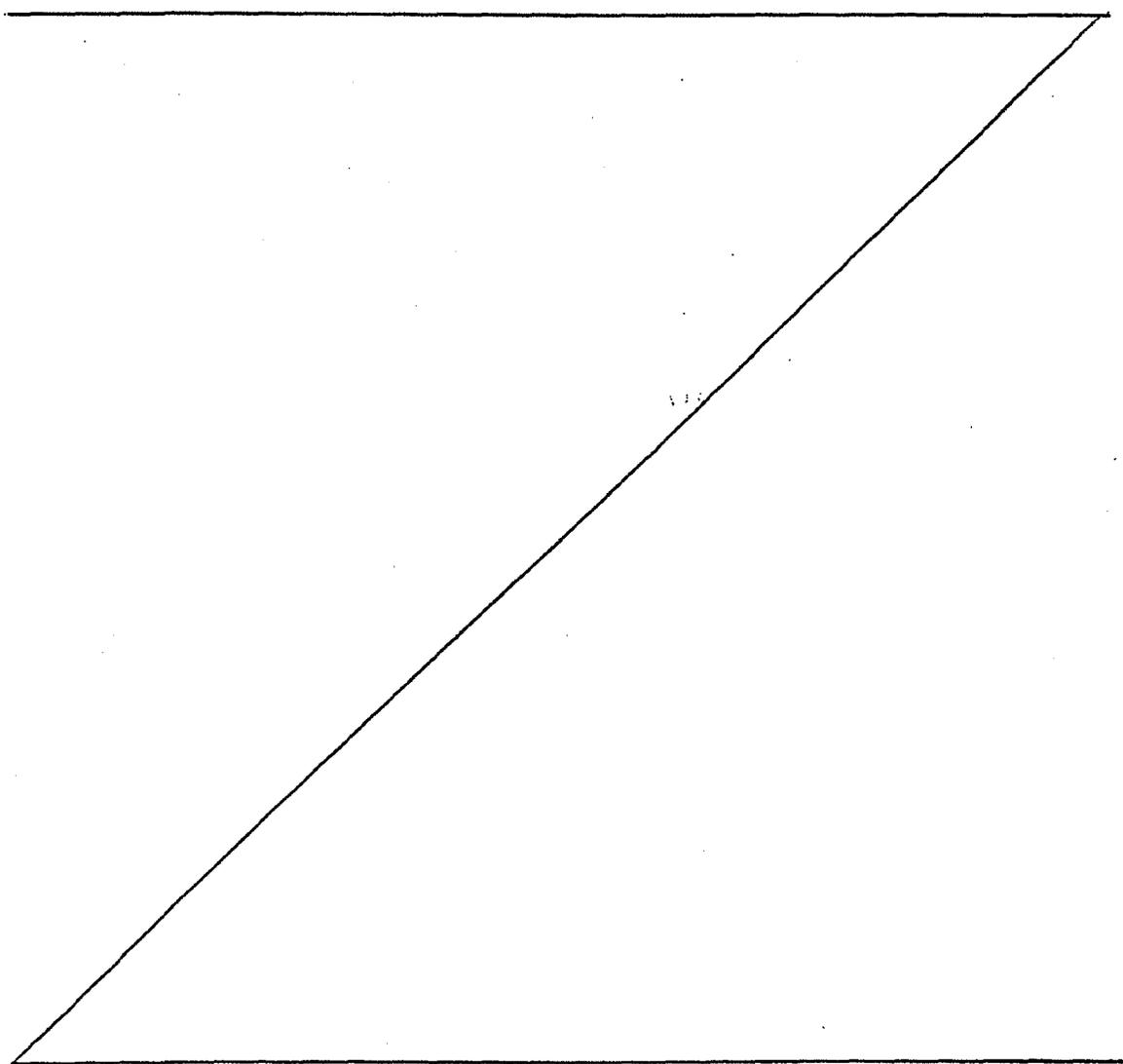
17.1 This Agreement is entered into to implement certain provisions of the Term Sheet. The provisions of the Term Sheet shall govern in the event of any conflict with the provisions of this Agreement except as to Sections 3 and 9. Notwithstanding the first sentence of this Section 17.1, nothing in this Agreement shall affect, expand or diminish the rights and obligations of the parties under the Property Exchange Agreement and the Purchase and Sale Agreement. All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.

17.2 The parties acknowledge that they have previously entered into a trackage rights agreement dated June 1, 1996 (the "June 1, 1996 Agreement"), providing for BNSF operation over UPRR trackage between Houston, Texas and Iowa Junction, Louisiana as well as BNSF operation over UPRR's Baytown Branch, and (2) a trackage rights agreement dated September 10, 1998 (the "September 10, 1998 Agreement"), providing for BNSF operation over UPRR trackage between Beaumont, Texas and Port Arthur, Texas. The June 1, 1996 Agreement and the September 10, 1998 Agreement will be modified, by actions separate from this Agreement, to reflect changes required by the Term Sheet and shall continue in existence pursuant to their terms as so modified. The agreement between UPRR and BNSF dated as of June 1, 1996, by which BNSF granted UPRR trackage rights over BNSF trackage between Iowa Junction, Louisiana (BNSF MP205.3) and Avondale, Louisiana (BNSF MP 14.94) is hereby terminated.

17.3 Any branches and spurs constructed after the date of this Agreement (i) on the former SP Lafayette Subdivision between Dawes, Texas (MP 353.0) and Avondale,

Louisiana (MP 14.94), or (ii) on its former SP branches and spurs, shall be treated as Improvements and governed by this Agreement. Obtaining any STB approval required for such construction shall be the responsibility of the constructing party.

17.4 The failure of either party hereto to insist in any one or more instances upon strict performance of any of the obligations of the other pursuant to this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligations or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.



Section 18. GOVERNMENTAL APPROVAL

In the event that service to any Customer Facilities hereunder requires the operation by one party over trackage of the other which is subject to the jurisdiction of the STB, the party proposing to so operate shall, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval, or authority from any governmental agency for the sanction of the operations to be carried on and any agreement between the parties with respect thereto. The other party, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval, or authority. Each of the parties agrees to cooperate fully to procure all such necessary consent, approval, or authority.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date and year first hereinabove written.


Attest: Sarah W. White
Assistant Secretary

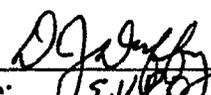


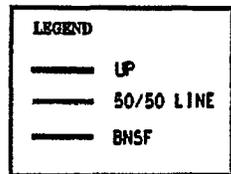
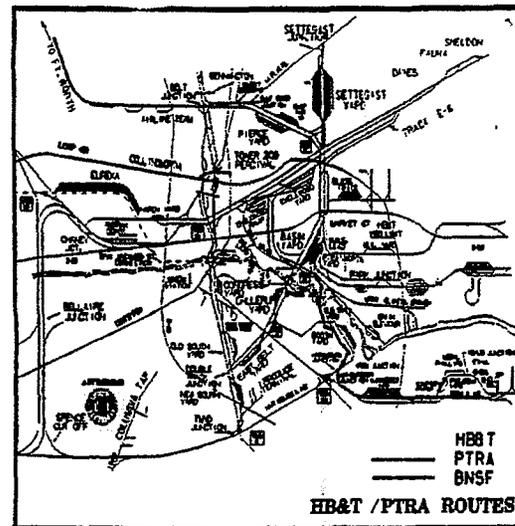
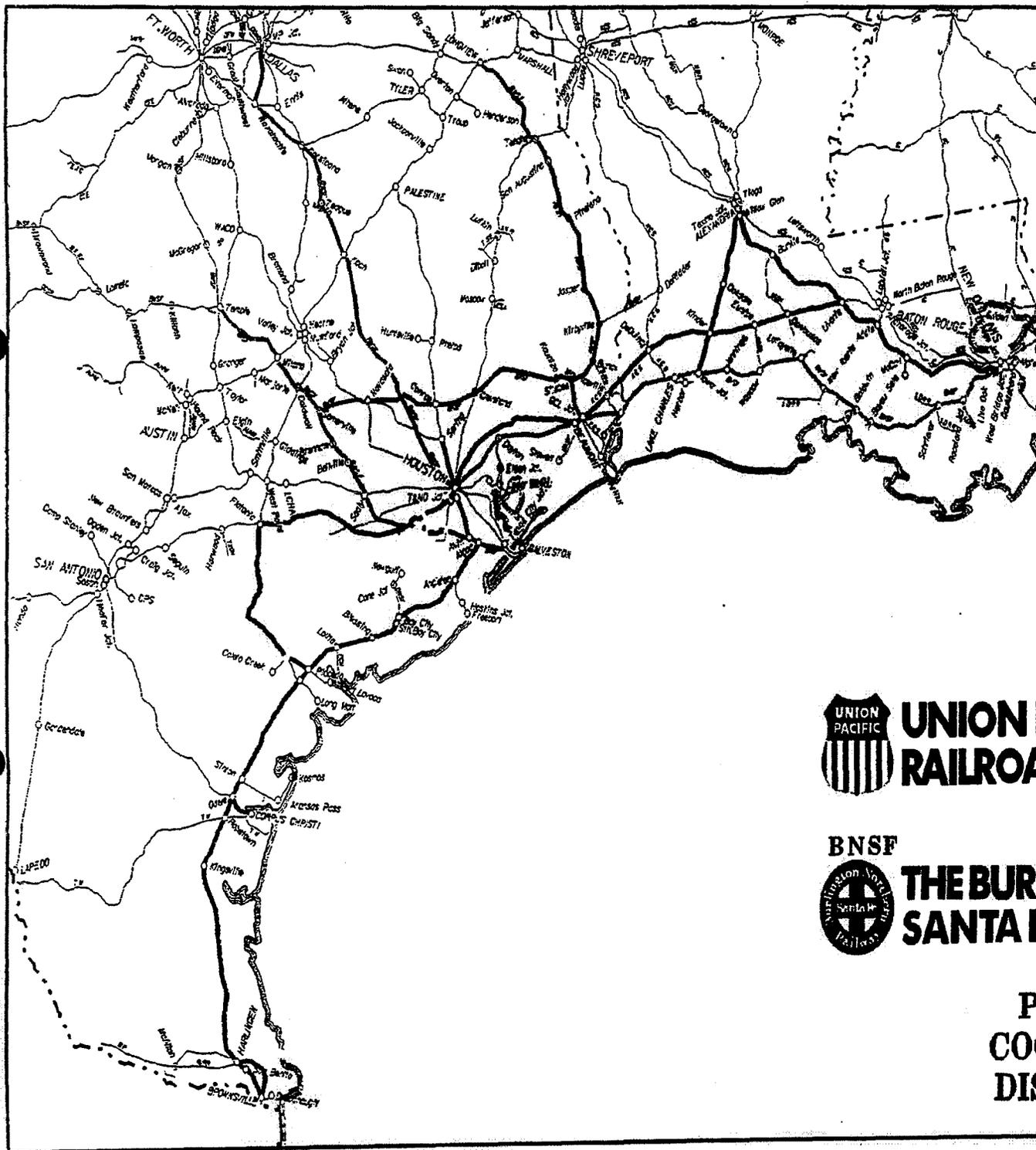
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By 
Title: Senior Vice President Operations

Attest: C.W. Safars
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY

By 
Title: EUPO



**UNION PACIFIC
RAILROAD**



**THE BURLINGTON NORTHERN &
SANTA FE RAILWAY**

EXHIBIT "A"
**PROPOSED
COORDINATED
DISPATCHING**

Dated February 12, 1998 FILE #: 0-0901.DGH
PEN: NONE

EXHIBIT B*

<u>Between:</u>	<u>Mileage</u>	<u>Roundtrip</u>	<u>Charges</u> <u>On/Off+Miles+Recip=Total/Car</u>
Origin and Destination	15	30	\$100+\$15+\$130 = \$245
Reciprocal Switch (per load) within Switching District	--	--	NA + NA + \$130 = \$130

* Provided for illustrative purposes only. Charges subject to annual adjustment in accordance with Settlement Agreement

EXHIBIT "C"

UP Dayton, TX – south side of mainline between MP 326.92 and MP 330.36
Orange, TX – south side of mainline between MP 258.21 and MP 258.91
Brimstone, LA – north side of mainline between MP 232.13 and 234.63
Lockmoor, LA – north side of mainline between MP 223.54 and 224.34
Lake Charles, LA – north side of mainline between MP 215.42 and MP 217.73

BNSF

Sheldon, TX -- in the vicinity of MP 343, sufficient property east of the San Jacinto
Bridge
Orange, TX – north side of main line between MP 255 and MP 259.
Lockmoor, TX – south side of main line between MP 222 and MP 226.

Exhibit F

03/01/02

RESTATED AND AMENDED AGREEMENT

This Restated and Amended Agreement ("Agreement") is entered into this ___ day of March, 2002, between UNION PACIFIC RAILROAD COMPANY ("UP"), a Delaware corporation, and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("BNSF"), a Delaware corporation.

WITNESSETH:

WHEREAS, UP and BNSF entered into an agreement dated September 25, 1995, as amended by supplemental agreements dated November 18, 1995, and June 27, 1996 (collectively, the "1995 Agreement"), in connection with UP's acquisition of Southern Pacific Rail Corporation and its affiliates ("SP") 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;

WHEREAS, the Surface Transportation Board ("STB") approved the common control and merger of UP and SP in Decision No. 44 in Finance Docket No. 32760 (served August 12, 1996) and in so doing imposed certain conditions on UP and SP, including, as modified by the STB, the April 18, 1996 settlement agreement among UP, BNSF and the Chemical Manufacturers Association (the "CMA Agreement");

WHEREAS, as a part of its oversight of the UP/SP merger in Finance Docket Nos. 32760, 32760 (Sub-No. 21), and 32760 (Sub-No. 26), the STB has modified and clarified certain of the conditions it imposed in Decision No. 44;

WHEREAS, UP and BNSF entered into a Term Sheet Agreement dated February 12, 1998 (the "Term Sheet Agreement"), pursuant to which UP and BNSF agreed to the joint ownership of the line of railroad between Dawes, TX and Avondale, LA, which joint ownership was effected by separate agreement dated September 1, 2000 (the "TX-LA Line Sale Agreement");

WHEREAS, UP and BNSF have reached agreement with respect to the implementation of the conditions imposed by the STB on the UP/SP merger, as modified and clarified, and certain other matters relating to their rights and obligations under the 1995 Agreement, the CMA Agreement, the Term Sheet Agreement and the TX-LA Line Sale Agreement; and

WHEREAS, UP and BNSF now wish to amend and restate the 1995 Agreement to incorporate the conditions imposed by the STB on the UP/SP merger (including the CMA Agreement, as modified by the STB) and the agreements they have reached relating to those conditions and other related matters.

NOW, THEREFORE, the parties agree to amend and restate the 1995 Agreement as follows:

DEFINITIONS

For purposes of this Agreement, the following definitions and terms shall apply:

Shipper Facilities shall mean all existing or new shipper or receiver facilities, including transload facilities as well as rail car storage and car service and repair facilities not owned, leased or operated by UP.

"2-to-1" Points shall mean all geographic locations at which at least one "2-to-1" Shipper Facility is located. Such points include, without limitation, the points listed in Section 8(i) of and on Exhibit A to this Agreement. The boundaries for such "2-to-1" Points shall be deemed to

include all areas within the switching limits of the locations as described in Section 9(g) of this Agreement.

“2-to-1” Shipper Facilities shall mean all Shipper Facilities that were open to both UP and SP, whether via direct service or via reciprocal switching, joint facility or other arrangements, and no other railroad when the 1995 Agreement was executed, regardless of how long ago the shipper or receiver at that facility may have shipped or received, or whether the shipper or receiver at that facility ever shipped or received, any traffic via either UP or SP. The “2-to-1 Point Identification Protocol” between the parties attached hereto as Exhibit E shall govern the process for identifying “2-to-1” Shipper Facilities open to BNSF as a result of the conditions imposed on the UP/SP merger.

New Shipper Facilities shall mean: (i) existing Shipper Facilities constructing trackage for accessing rail service for the first time; and (ii) newly constructed rail-served Shipper Facilities. New Shipper Facilities shall also mean previously-served Shipper Facilities that begin to ship by rail again where (i) there has been a change of owner or lessee, and (ii) the use of the facility is actually different in nature and purpose from the facility's prior use (e.g., there has been a change in the type of products shipped from or received at the facility). New Shipper Facilities shall not include expansion of or additions to an existing rail-served Shipper Facility, but do include (1) Shipper Facilities which, on September 25, 1995, were being developed or for which land had been acquired for that purpose in contemplation of receiving rail service by both UP and SP, and (2) Transload Facilities located after September 11, 1996, including those owned or operated by BNSF.

Trackage Rights Lines shall mean the lines over which BNSF has been granted trackage rights pursuant to this Agreement, but shall not include any other lines over which UP/SP grants

BNSF trackage rights ("Overhead Trackage Rights") solely (i) to facilitate the parties' operation over Trackage Rights Lines, (ii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and points listed or described in Section 8(i) of this Agreement, or (iii) to permit BNSF's operation between a mutually-agreed upon BNSF junction point and a build-in/build-out line pursuant to Sections 4(a), 6(c) and 8(l) of this Agreement. The mutually-agreed upon junction point will be selected with the objective of minimizing the operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service. BNSF acknowledges that it shall not have the right to serve any existing or New Shipper Facility on a line over which BNSF has been granted Overhead Trackage Rights unless such right is specified in this Agreement or in any agreement implementing the Overhead Trackage Rights or unless BNSF has the right to serve a build-in/build-out line on such Overhead Trackage Rights line pursuant to the CMA Agreement or the conditions imposed on the UP/SP merger. All Overhead Trackage Rights Lines, as of the date of the execution hereof, are listed in Exhibit F to this Agreement, which exhibit may be amended and replaced from time to time by a new exhibit signed and dated by the parties. New Shipper Facilities shall be deemed to be "on" a Trackage Rights Line if the facility is either (1) adjacent to a Trackage Rights Line or (2) adjacent to a spur, an industrial track, or a yard that is itself served by such Trackage Rights Line. New Shipper Facilities are not "on" a Trackage Rights Line if they can be accessed only via a 49 U.S.C. 10901 "line of railroad" which is not a Trackage Rights Line.

Transload Facilities shall mean Shipper Facilities other than automotive or intermodal facilities or team tracks where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur) as defined by the STB in its decisions

in Finance Docket No. 32760. An “Existing Transload Facility” is a Transload Facility which was in existence on September 25, 1995.

1. **Western Trackage Rights**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP’s line between Denver, CO and Salt Lake City, UT;
- UP’s line between Salt Lake City and Ogden, UT;
- SP’s line between Ogden and Little Mountain, UT;
- UP’s line between Salt Lake City and Alazon, NV;
- UP’s and SP’s lines between Alazon and Weso, NV;
- SP’s line between Weso, and Oakland, CA via SP’s line between Sacramento, CA and Oakland referred to as the “Cal-P” (subject to traffic restrictions as set forth in Section 1(g));
- Overhead Trackage Rights on SP’s line between Binney Junction, CA and Roseville, CA in the vicinity of SP MP 106.6;
- SP’s line between Elvas (Elvas Interlocking) and Stockton, CA (subject to traffic restrictions as set forth in Section 1(g) and also excluding any trains moving over the line between Bieber and Keddie, CA purchased by BNSF pursuant to Section 2(a) of this Agreement);
- UP’s line between Weso and Stockton, CA; and
- SP’s line between Oakland and San Jose, CA.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) “2-to-1” Shipper Facilities and Existing Transload

Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facilities located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also receive the right to interchange with: the BHP Nevada Railroad Company at Shafter, NV; the Utah Railway Company at Utah Railway Junction, UT; Grand Junction, CO; and Provo, UT; the Utah Central Railway Company at Ogden; the Salt Lake, Garfield and Western at Salt Lake City; and the Salt Lake City Southern Railroad Company at Salt Lake City. BNSF shall also receive the right to utilize in common with UP/SP, for normal and customary charges, SP's soda ash Transload Facilities in Ogden and Salt Lake City. BNSF shall also have the right to access any shipper-owned soda ash Transload Facilities in Ogden and Salt Lake City and to establish its own soda ash Transload Facilities along the Trackage Rights Lines. BNSF shall have the same access as UP to all "2-to-1" Shipper Facilities and "2-to-1" Points between Salt Lake City, UT, and SP MP 755.1 north of Woods Cross, UT.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections,

sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 1(c) above, of the manner by which it proposes such service be provided and

the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) For Reno area intermodal traffic, BNSF may use SP's intermodal ramp at Sparks, NV with UP/SP providing intermodal terminal services to BNSF for normal and customary charges. If expansion of SP's Sparks intermodal facility is required to accommodate the combined needs of UP/SP and BNSF, then the parties shall share in the cost of such expansion on a pro rata basis allocated on the basis of the relative number of lifts for each party in the 12-month period preceding the date construction begins. If for any reason UP/SP vacates its Sparks intermodal facility, BNSF (i) may vacate the facility and independently establish one of its own, or (ii) shall be permitted by UP/SP to continue to occupy the Sparks facility upon entry into an agreement with UP/SP containing normal and customary terms and conditions (including, without limitation, rental) for the use of similar facilities. If UP elects to offer the Sparks intermodal ramp property for sale to a third party and/or receives an offer UP is willing to accept,

UP will offer to sell the property to BNSF on the same terms and conditions as are applicable to the third party. BNSF shall have thirty (30) days in which to advise UP whether or not it will buy the property on those terms. In the event BNSF declines to buy the property on those terms or fails to advise UP of its intentions within thirty (30) days, BNSF's right of first refusal will be extinguished, and UP may sell the property to the third party. BNSF will then be required to vacate the property within six (6) months, and UP's obligation to furnish BNSF with intermodal terminal services and access to a UP intermodal facility in the Sparks/Reno area will be extinguished.

(f) Except as otherwise herein provided, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) BNSF may operate only the following trains on SP's "Cal-P" line between Sacramento and Oakland: (i) intermodal and automotive trains composed of over ninety percent (90%) multi-level automobile equipment and/or flat cars carrying trailers and containers in single or double stack configuration and (ii) one overhead through manifest train of carload business per day in each direction. These BNSF manifest trains may be either I-5 Corridor or Central Corridor trains. On the Donner Pass line between Sacramento and Weso, BNSF may operate only intermodal and automotive trains as described in clause (i) and one overhead through manifest train of carload business per day in each direction. The manifest trains must be equipped with adequate motive power to achieve the same horsepower per trailing ton as comparable UP/SP manifest trains. BNSF may use helpers on these trains only if comparable UP/SP manifest trains use helpers; BNSF must provide the helper service. The restrictions set forth in this section do not apply to local trains serving Shipper Facilities to which BNSF has

access on the identified lines, and such trains shall not be considered in determining whether BNSF is in compliance with such restrictions. If UP grants its prior concurrence, BNSF's overhead through manifest trains shall be allowed to set out and pick up traffic to or from intermediate points on the identified lines.

(h) At BNSF's request, UP/SP shall provide train and engine crews and required support personnel and services in accordance with UP/SP's operating practices necessary to handle BNSF trains moving between Salt Lake City and Oakland. UP/SP shall be reimbursed for providing such employees on a cost plus reasonable additives basis and for any incremental cost associated with providing employees such as lodging or crew transportation expense. BNSF must also give UP/SP reasonable advance notice of its need for employees in order to allow UP/SP time to have adequate trained crews available. All UP/SP employees engaged in or connected with the operation of BNSF's trains shall, solely for purposes of standard joint facility liability, be deemed to be "sole employees" of BNSF. If UP/SP adds to its labor force to comply with a request or requests from BNSF to provide employees, then BNSF shall be responsible for any labor protection, guarantees or reserve board payments for such incremental employees resulting from any change in BNSF operations or traffic levels.

(i) UP/SP agree that their affiliate Central California Traction Company shall be managed and operated so as to provide BNSF non-discriminatory access to industries on its line on the same and no less favorable basis as provided UP and SP.

(j) If BNSF desires to operate domestic high cube double stacks over Donner Pass, then BNSF shall be responsible to pay for the cost of achieving required clearances. UP/SP shall pay BNSF one-half of the original cost of any such work funded by BNSF (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) if UP/SP

subsequently decides to begin moving domestic high cube double stacks over this route. If UP/SP initiates and funds the clearance program, then BNSF shall pay one half of the original cost (including per annum interest thereon calculated in accordance with section 9(c)(v) of this Agreement) at such time as BNSF begins to use the line for domestic high cube double stacks.

(k) BNSF agrees to waive its right under Section 9 of the Agreement dated April 13, 1995, and agreements implementing that agreement to renegotiate certain compensation terms of such agreement in the event of a merger, consolidation or common control of SP by UP. BNSF also agrees to waive any restrictions on assignment in the 1990 BN-SP agreement covering trackage rights between Kansas City and Chicago.

2. **I-5 Corridor**

(a) UP/SP shall sell to BNSF UP's line between Bieber and Keddie, CA. UP/SP shall retain the right to use the portion of this line between MP 0 and MP 2 for the purpose of turning equipment. UP/SP shall pay BNSF a normal and customary trackage rights charge for this right.

(b) BNSF shall grant UP/SP overhead trackage rights on BN's line between Chemult and Bend, OR for rail traffic of all kinds, carload and intermodal, for all commodities.

(c) The parties will, under the procedures established in Section 9(f) of this Agreement, establish a proportional rate agreement incorporating the terms of the "Term Sheet for UP/SP-BNSF Proportional Rate Agreement Covering I-5 Corridor" attached hereto as Exhibit B.

3. **Southern California Access**

(a) UP/SP shall grant access to BNSF to serve all "2-to-1" Shipper Facilities in Southern California at the points listed on Exhibit A to this Agreement.

(b) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Riverside and Ontario, CA; and

- UP's line between Basta, CA and Fullerton and La Habra, CA.

(c) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement.

(d) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(e) BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow (including both legs of the wye) and Mojave, CA.

(f) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) UP/SP shall work with BNSF to facilitate access by BNSF to the Ports of Los Angeles and Long Beach, CA. Other than as legally precluded, UP/SP shall (a) extend the term of the present agreement dated November 21, 1981, to continue until completion of Alameda Corridor, (b) amend that agreement to apply to all carload and intermodal traffic, and (c) grant BNSF the right to invoke such agreement to provide loop service utilizing UP's and Santa Fe's

lines to the Ports at BNSF's option to allow for additional operating capacity. UP/SP's commitment is subject to available capacity. Any incremental capacity related projects necessary to accommodate BNSF traffic shall be the sole responsibility of BNSF.

(h) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 3(d) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

4. **South Texas Trackage Rights and Purchase**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- UP's line between Ajax and San Antonio, TX;

- UP's line between Houston (Algoa) and Brownsville, TX (with parity and equal access to the Mexican border crossing at Brownsville);
- UP's line between Odem and Corpus Christi, TX;
- UP's line between Ajax and Sealy, TX;
- SP's line between San Antonio and Eagle Pass, TX (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Craig Junction and SP Junction, TX (Tower 112) via Track No. 2 through Fratt, TX;
- SP's line between SP Junction (Tower 112) and Elmendorf, TX;
- SP's line in San Antonio between SP Tower 105 and SP Junction (Tower 112);
- Overhead Trackage Rights on SP's Port Lavaca Branch, between Placedo and Port Lavaca, TX, for the purpose of reaching a point of build-in/build-out to/from Union Carbide Corporation's ("UCC") facility at North Seadrift, TX. UP/SP shall permit BN/Santa Fe or UCC to construct and connect to the Port Lavaca Branch, at their expense, a build-in/build-out line. BN/Santa Fe or UCC shall have the right to purchase for net liquidation value all or any part of the Port Lavaca Branch that UP/SP may abandon;
- UP's line between Kerr (connection to Georgetown RR) and Taylor, TX;
- Overhead Trackage Rights on UP's line between Round Rock and McNeil, TX for the purpose of interchanging with the Capital Metro Transit Authority, its successors or agent;

- UP's line between Temple and Waco, TX;
- UP's line between Temple and Taylor, TX;
- UP's line between Taylor and Smithville, TX; and
- SP's line between El Paso and Sierra Blanca, TX.

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement and City Public Service Board of San Antonio, Texas Elmendorf facilities listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to interchange with: the Texas Mexican Railway Company at Corpus Christi and Robstown, TX; the Georgetown Railroad at Kerr; Transportacion Ferroviaria Mexicana ("TFM") at Brownsville (Matamoros, Mexico); Ferrocarril Mexicano ("FXE") at Eagle Pass; and the operator of SP's former line between Giddings and Llano at McNeil, TX. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as SP had on September 25, 1995. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the TFM. UP will designate a yard in Brownsville for sale to BNSF at such time as BNSF establishes its own trackage rights operations into Brownsville and at such time as the connection between UP and SP as a part of the Brownsville

relocation project is completed. In the event UP/SP determines to cease operations in the SP East Yard at San Antonio, TX, UP/SP will give first consideration to BNSF for taking over operation of the East Yard pursuant to a mutually-agreeable arrangement.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and

auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 4(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(f) In lieu of BNSF's conducting actual trackage rights operations between Houston, Corpus Christi, Harlingen and Brownsville, TX (including TFM interchange), UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8(m) of this Agreement. UP/SP shall accept, handle, switch and deliver traffic moving under haulage without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in UP/SP's account.

(g) UP/SP shall sell to BNSF UP's line between Dallas and Waxahachie, TX with UP retaining trackage rights to exclusively serve local industries on the Dallas-Waxahachie line.

(h) Upon the effectiveness of the trackage rights to Eagle Pass under this section, BNSF's right to obtain haulage services from UP/SP to and from Eagle Pass pursuant to the agreement between BNSF and SP dated April 13, 1995 and subsequent haulage agreement between those parties shall no longer apply, provided BNSF shall continue to have the right to use trackage at or near Eagle Pass as specified in that agreement for use in connection with trackage rights under this Agreement.

5. **Eastern Texas - Louisiana Trackage Rights and Purchase**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston and Iowa Junction in Louisiana, which trackage rights have been amended by the Term Sheet Agreement and the TX-LA Line Sale Agreement implementing UP's and BNSF's joint ownership of SP's line between Dawes, TX and Avondale, LA;

- SP's line between Beaumont and Port Arthur, TX;
- SP's line between Dayton and Baytown and East Baytown, TX;
- SP's Channelview Spur which connects to the SP's line between Houston and Iowa Junction near Sheldon, TX for the purpose, inter alia, of reaching a point of build-in/build-out to/from the facilities of Lyondell Petrochemical Company and Arco Chemical Company at Channelview, TX. UP/SP shall permit BN/Santa Fe or one or both shippers to construct and connect to SP's Channelview Spur, at their expense, a build-in/build-out line. BN/Santa Fe or the shippers shall have the right to purchase for net liquidation value all or any part of the Channelview Spur that UP/SP may abandon;
- SP's line between Mallard Junction and Harbor, LA;
- SP's line near Avondale (SP MP 14.94 and West Bridge Junction (SP MP 9.97);
- UP's Main Line No. 1 from UP MP 14.29 to MP 14.11 including crossover to SP's main line and UP's MP 10.38 to MP 10.2; and
- UP's line between West Bridge Junction (UP MP 10.2) and UP's Westwego, LA intermodal facility (approximately UP MP 9.2).

(b) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement,

and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Lake Charles, Rose Bluff and West Lake, LA, and traffic of shippers open to SP and KCS at West Lake Charles. BNSF shall also have the right to interchange with: the Acadiana Railway Company at Crowley, LA; and the Louisiana & Delta Railroad, Inc. at Lafayette, Raceland and Schreiver, LA. BNSF shall also have the right to interchange with and have access over the New Orleans Public Belt Railroad at West Bridge Junction, LA.

(c) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be

UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 5(c) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish

for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(e) UP/SP shall grant BNSF the right to use SP's Bridge 5A at Houston, Texas.

(f) Except as otherwise provided herein, trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(g) UP/SP shall sell to BNSF UP's Main Line No. 1 between MP 14.11 and 10.38, UP's Westwego intermodal terminal, SP's old Avondale Yard (together with the fueling and mechanical facilities located thereon) as shown on Exhibit C; and SP's Lafayette Yard.

6. **Houston, TX-Valley Junction, IL Trackage Rights**

(a) UP/SP shall grant to BNSF trackage rights on the following lines:

- SP's line between Houston, TX and Fair Oaks, AR via Cleveland and Pine Bluff, AR;
- UP's line between Fair Oaks and Bridge Junction, AR;
- SP's line between Brinkley and Briark, AR;
- UP's line between Pine Bluff and North Little Rock, AR
- UP's line between Houston and Valley Junction, IL via Palestine, TX;
- SP's line between Fair Oaks and Illmo, MO via Jonesboro, AR and Dexter Junction, MO; and

- UP's line between Fair Oaks and Bald Knob, AR.

(b) In lieu of conducting actual operations between Pine Bluff and North Little Rock, AR, UP/SP agrees, upon request of BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8(m) of this Agreement.

(c) BNSF shall have the right to transport unit coal trains (i) over the Trackage Rights Lines to and from a point of build-in/build-out to and from Entergy Services, Inc.'s plant at White Bluff, AR if and when such a build-in/build-out line is constructed by an entity other than UP/SP to connect such plant with an SP line, and (ii) to and from Entergy Services, Inc.'s plant at White Bluff (1) by entering and exiting the Trackage Rights Lines at Jonesboro and Hoxie, AR, respectively, and/or (2) by utilization of BNSF's line via Memphis, TN.

(d) The trackage rights granted under this section shall be bridge rights for the movement of overhead traffic only, except for the local access specified herein. BNSF shall receive access on such lines only to (i) "2-to-1" Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any New Shipper Facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement, and (iii) any New Shipper Facility located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines. BNSF shall also have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement and at points identified or described in Section 8(i) of this Agreement. In addition to the other restrictions and limitations set forth herein, as to UP's and SP's lines between Memphis and Valley Junction, IL: (1) BNSF shall not have the right to enter or exit at intermediate points north of Bald Knob and Fair Oaks, AR; and (2) BNSF traffic is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana. These two restrictions do not apply to traffic moving to or

from Shipper Facilities in the Houston-Memphis-St. Louis Corridor to which BNSF has access pursuant to this Section 6(d) or Section 8(i) below. The two restrictions also do not apply to the traffic that BNSF is permitted to handle pursuant to the remaining provisions of this Section 6(d), which remains subject to all other conditions and restrictions. BNSF shall also have the right to handle traffic of shippers open to all of UP, SP and KCS at Texarkana, TX/AR, and Shreveport, LA, to and from the Memphis BEA (BEA 73), but not including proportional, combination or Rule 11 rates via Memphis or other points in the Memphis BEA. In the Houston-Memphis-St. Louis corridor, BNSF shall have the right to move some or all of its traffic via trackage rights over either the UP line or the SP line, at its discretion, for operating convenience. BNSF shall also have the right to interchange: with the Little Rock and Western Railway at Little Rock, AR; the Little Rock Port Authority at Little Rock, AR; KCS at Shreveport, LA and Texarkana, TX/AR, for movements of traffic originated by KCS at or delivered by KCS to shippers or receivers at Lake Charles, West Lake, or West Lake Charles, LA; with KCS (y) at Shreveport, LA for movements of loaded and empty coal trains moving to and from Texas Utilities Electric Company's Martin Lake generating station, and (z) at Texarkana, TX/AR for movements of empty coal trains returning from Texas Utilities Electric Company's Martin Lake generating station; and with the Texas Northeastern Railroad at Texarkana, TX for the sole purpose of moving BNSF traffic to and from Shipper Facilities at Defense, TX.

(e) Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch, or, with UP/SP's prior agreement, through a third party contractor. Access to New Shipper Facilities open to BNSF on the Trackage Rights Lines shall be (i) direct; (ii) with UP/SP's prior agreement, through haulage for the shortest period of time necessary to allow BNSF to establish its own direct operating access after

initiating service to a New Shipper Facility, but not to exceed the later to occur of 90 days or the date upon which UP completes the construction of and accepts for service any connections, sidings or other support facilities to be paid for by BNSF that UP is then obligated to construct pursuant to this Agreement or the trackage rights agreements executed pursuant to Section 9(f) of this Agreement; (iii) with UP/SP's prior agreement, reciprocal switching where, at the time BNSF service is to commence, UP/SP already provides reciprocal switching on the portion of the Trackage Rights Line upon which the turnout to the facility is to be located; or (iv) with UP/SP's prior agreement, the use of a third party contractor; PROVIDED, HOWEVER, that it shall be UP/SP's sole decision whether BNSF's service will be provided by either haulage or reciprocal switching; and PROVIDED, FURTHER, that in no case shall UP/SP be required to initiate any new local service or increase its level of service to accommodate the level of service proposed by BNSF. New Shipper Facilities open to BNSF under this Agreement shall be open to both UP/SP and BNSF, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which (x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (y) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed in Section 8(i) of and on Exhibit A to this Agreement shall generally correspond to the territory within which, prior to the merger of UP and SP, a new shipper or receiver could have constructed a facility that would have been open to service by both UP and SP either directly or through reciprocal switch. Where switching districts have been established, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(f) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii)

any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 6(e) above, of the manner by which it proposes such service be provided and the specifics of its operating plan over UP/SP trackage. Within thirty (30) days of its receipt of BNSF's proposed operating plan, UP shall notify BNSF of its approval or disapproval of BNSF's plan. UP's approval of such plan shall not be unreasonably withheld. In the event UP disapproves of BNSF's proposed plan, UP shall provide an explanation in writing to BNSF of its reasons for disapproval, and UP shall propose an alternative operating plan that would be acceptable to UP and also be no more onerous than the operating plan that UP would establish for service provided by UP. If UP approves BNSF's plan but establishes conditions on that approval, those conditions shall be set forth in writing and shall be no more onerous than UP would establish for service provided by UP. BNSF shall have the right, upon one hundred eighty (180) days' prior written notice to UP/SP, to change its election; PROVIDED, HOWEVER, that BNSF shall not change any such election more often than once every five (5) years. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with any changed election.

(g) Except as otherwise provided herein, the trackage rights and access rights granted pursuant to this section shall be for rail traffic of all kinds, carload and intermodal, for all commodities.

(h) BNSF shall grant to UP/SP overhead trackage rights on BN's line between West Memphis and Presley Junction, AK. UP/SP shall be responsible for upgrading this line as necessary for its use. If BNSF uses this line for overhead purposes to connect its line to the trackage rights lines, BNSF shall share in one-half of the upgrading cost.

7. St. Louis Area Coordinations

(a) UP/SP agree to cooperate with BNSF to facilitate efficient access by BNSF to other carriers at and through St. Louis via The Alton & Southern Railway Company ("A&S"). If

BNSF requests, UP/SP agree to construct or cause to be constructed for the use of both BNSF and UP/SP a faster connection between the BN and UP lines at Grand Avenue in St. Louis, MO and a third track from Grand Avenue to near Gratiot Street Tower at the sole cost and expense of BNSF. Upon completion of such construction, UP/SP shall grant to BNSF overhead trackage rights on UP's line between Grand Avenue and Gratiot Street.

(b) UP wishes to secure dispatching authority for the MacArthur Bridge across the Mississippi River at St. Louis. Dispatching is currently controlled by the Terminal Railroad Association of St. Louis ("TRRA"). BNSF agrees that it will cause its interest on the TRRA Board or any shares it owns in the TRRA to be voted in favor of transferring dispatching control of the MacArthur Bridge to UP if such matter is presented to the TRRA Board or its shareholders for action. Such dispatching shall be performed in a manner to ensure that all users are treated equally.

(c) If BNSF desires to use the A&S Gateway Yard, upon transfer of MacArthur Bridge dispatching to UP, UP/SP shall assure that charges assessed by the A&S to BNSF for use of Gateway Yard are equivalent to those assessed other non-owners of A&S.

(d) UP/SP and BNSF agree to provide each other reciprocal detour rights between Bridge Junction-West Memphis and St. Louis in the event of flooding, subject to the availability of sufficient capacity to accommodate the detour.

(e) UP/SP shall provide BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO for the purpose of accessing Ameren UE's facility at Labadie. BNSF shall have the right to serve all "2-to-1" Shipper Facilities, New Shipper Facilities and Existing Transload Facilities at Labadie.

8. **Additional Rights**

(a) UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, CA for rail traffic of all kinds, carload and intermodal, for all commodities to enable BNSF to connect via SP's line with the Oakland Terminal Railroad ("OTR") and to access the Oakland Joint Intermodal Terminal ("JIT"), or similar public intermodal facility, at such time as the JIT is built. BNSF shall pay 50% of the cost (up to \$2,000,000 maximum) for upgrading to mainline standards and reverse signaling of SP's No. 1 track between Emeryville (MP 8) and Stege, CA (MP 13.1). Compensation for these trackage rights shall be at the rate of 3.48 mills per ton mile for business moving in the "I-5 Corridor," 3.1 mills per ton mile on all other carload and intermodal business, and 3.0 mills per ton mile for bulk business (as defined in Section 9(a) of this Agreement) escalated in accordance with the provisions of Section 12 of this Agreement. UP/SP shall assess no additional charges against BNSF for access to the JIT and the OTR.

(b) BNSF shall waive any payment by UP/SP of the Seattle Terminal 5 access charge.

(c) BNSF shall grant to UP overhead trackage rights on BN's line between Saunders, WI and access to the MERC dock in Superior, WI.

(d) BNSF shall grant UP the right to use the Pokegama connection at Saunders, WI (i.e., the southwest quadrant connection at Saunders including the track between BN MP 10.43 and MP 11.14).

(e) BNSF shall waive SP's requirement to pay any portion of the Tehachapi tunnels clearance improvements pursuant to the 1993 Agreement between Santa Fe and SP.

(f) BNSF shall allow UP to exercise its rights to use the Hyundai lead at Portland Terminal 6 without any contribution to the cost of constructing such lead.

(g) BNSF shall allow UP/SP to enter or exit SP's Chicago-Kansas City-Hutchinson trackage rights at Buda, Earlville, and west of Edelstein, IL. UP/SP shall be responsible for the cost of any connections required.

(h) BNSF will amend the agreement dated April 13, 1995, between BNSF and SP to allow UP/SP to enter and exit Santa Fe's line solely for the purposes of permitting UP/SP or its agent to pick up and set out interchange business, including reciprocal switch business at Newton, KS, and switching UP industries at that point.

(i) 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.

The parties recognize that some "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at "2-to-1" Points will not be able to avail themselves of BNSF service by virtue of the trackage rights and line sales contemplated by this Agreement. For example, "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities located at points between Niles Junction and the end of the joint track near Midway (including Livermore, CA, Pleasanton, CA, Radum, CA, and Trevarno, CA), Lyoth, CA, Lathrop, CA, Turlock, CA, South Gate, CA, Tyler, TX, Defense, TX, College Station, TX, Great Southwest, TX, Victoria, TX, Sugar Land, TX, points on the former Galveston, Houston & Henderson Railroad served only by UP and SP, Opelousas, LA and Herington, KS are not accessible under the trackage rights and line sales covered by this Agreement. Accordingly, UP/SP and BNSF agree to enter into arrangements under which, through trackage rights, haulage, ratemaking authority or other mutually acceptable means, BNSF will be able to provide competitive service

to "2-to-1" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at the foregoing points and at other "2-to-1" Points not along a Trackage Rights Line.

(j) BNSF shall have the right to interchange with any short-line railroad which, prior to the Effective Date of this Agreement, could interchange with both UP and SP and no other railroad.

(k) BNSF shall also have the right to interchange with any short-line railroad that constructs a new line to and establishes an interchange on a Trackage Rights Line subsequent to UP's acquisition of control of SP; PROVIDED, HOWEVER, that the short-line railroad must be a Class II or Class III railroad neither owned nor operated by BNSF or any BNSF affiliate. In addition, the new rail line must be either (i) an extension of an existing Class II or Class III carrier that does not connect with UP or (ii) a new Class II or Class III carrier. BNSF shall not be entitled to interchange traffic with a Class II or Class III carrier at such a new interchange on a Trackage Rights Line if the traffic originates or terminates at a Shipper Facility that is now served solely by UP unless the Shipper Facility qualifies as a New Shipper Facility or unless the new line qualifies as a build-in or build-out under this Agreement.

(l) In addition to the right to serve build-in/build-out lines specified in Sections 4(a), 5(a) and 6(c) of this Agreement, BNSF shall have the right to serve a new build-in/build-out line constructed to reach a facility that was, prior to September 11, 1996, solely served by either UP or SP and would be open to two railroad service upon construction of the build-in/build-out line (i) to a point on lines owned by SP on September 11, 1996, in the case of facilities solely served by UP, or (ii) to a point on lines owned by UP on September 11, 1996, in the case of facilities solely served by SP. UP shall grant BNSF Overhead Trackage Rights necessary for BNSF to reach the build-in/build-out line. The routing of such trackage rights shall seek to minimize the

operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service.

(m) Where this Agreement authorizes BNSF to utilize haulage to provide service, the fee for such haulage shall be \$.50 per car mile plus a handling charge to cover handling at the haulage junction with BNSF and to or from a connecting railroad or third party contract switcher. The handling charge shall be \$50 per loaded or empty car for intermodal and carload and \$25 per loaded or empty car for unit trains with unit train defined as 67 cars or more of one commodity in one car type moving to a single destination and consignee. UP/SP shall bill BNSF the \$50 per car handling charge for all cars and, upon receipt of appropriate documentation from BNSF demonstrating that business assessed the \$50 per car handling fee was a unit train, adjust prior billings by \$25 per car for each car BNSF demonstrates to have been eligible for the \$25 per car handling charge for unit trains. Where UP/SP is providing reciprocal switching services to BNSF at "2-to-1" Shipper Facilities as provided for in Section 9(i) of this Agreement, the per car handling charge shall not be assessed at the point where such reciprocal switch charge is assessed. The haulage fee and handling charge set forth above as of September 25, 1995, shall be adjusted upwards or downwards in accordance with Section 12 of this Agreement.

(n) In the event, for any reason, any of the trackage rights granted under this Agreement cannot be implemented because of the lack of sufficient legal authority to carry out such grant, then UP/SP shall be obligated to provide an alternative route or routes, or means of access of commercially equivalent utility at the same level of cost to BNSF as would have been provided by the originally contemplated rights.

(o) In the event UP determines to terminate or not renew a lease to an Existing Transload Facility to which BNSF gained access as a result of this Agreement or the conditions

imposed on the UP/SP merger and BNSF has previously entered into a contract to provide transportation services to the Existing Transload Facility, UP shall extend the lease for the remaining period of such transportation contract or for a period not to exceed 24 months, whichever period is shorter.

9. **Trackage Rights - General Provisions**

(a) The compensation for operations under this Agreement shall be set at the levels shown in the following table as subsequently indexed under the 1995 Agreement:

Table I
Trackage Rights Compensation
(mills per ton-mile)

	Keddie-Stockton/Richmond	All Other Lines
Intermodal and Carload	3.48	3.1
Bulk (67 cars or more of one commodity in one car type)	3.0	3.0

These rates shall apply to all equipment moving in a train consist including locomotives. The rates shall be escalated in accordance with the procedures described in Section 12 of this Agreement. The owning line shall be responsible for maintenance of its line in the ordinary course including rail relay and tie replacement. The compensation for such maintenance shall be included in the mills per ton mile rates received by such owning line under this Agreement.

(b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement. Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have

the right to do so upon payment to the other party of one-half (½) the original cost of constructing such facilities.

(c) Capital expenditures on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights will be handled as follows:

- (i) UP/SP shall bear the cost of all capacity improvements that are necessary to achieve the benefits of its merger as outlined in the application filed with the ICC for authority for UP to control SP. The operating plan filed by UP/SP in support of the application shall be given presumptive weight in determining what capacity improvements are necessary to achieve these benefits.
- (ii) Any capacity improvements other than those covered by subparagraph (i) above shall be shared by the parties based upon their respective usage of the line in question, except as otherwise provided in subparagraph (iii) below. That respective usage shall be determined by the 12 month period prior to the making of the improvement on a gross ton mile basis.
- (iii) For 18 months following UP's acquisition of control of SP, BNSF shall not be required to share in the cost of any capital improvements under the provision of subparagraph (ii) above.
- (iv) BNSF and UP/SP agree that a capital reserve fund of \$25 million, funded out of the purchase price listed in Section 10 of this Agreement, shall be established. This capital reserve fund shall, with BNSF's prior consent which will not unreasonably be withheld, be drawn down to pay for capital projects on the Trackage Rights Lines that are required to

accommodate the operations of both UP/SP and BNSF on those lines, but in any event shall not be used for expenditures covered by subparagraph (i) above. Any disputes over whether a project is required to accommodate the operation of both parties shall be referred to binding arbitration under Section 15 of this Agreement.

- (v) If both UP/SP and BNSF intend to serve New Shipper Facilities located subsequent to UP's acquisition of control of SP as authorized by Sections 1(b), 3(c), 4(b), 5(b), 6(d), and 8(i) of this Agreement, they shall share equally in any capital investment in such connections and sidings and siding extensions or other support facilities required by both UP and BNSF to provide rail service to such New Shipper Facility. If only one railroad initially provides such service, the other railroad may elect to provide service at a later date, but only after paying to the railroad initially providing such service 50% of any capital investment (including per annum interest thereon) made by the railroad initially providing rail service to the New Shipper Facility. Per annum interest shall be at a rate equal to the average paid on 90-day Treasury Bills of the United States Government as of the date of completion until the date of use by the other railroad commences. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the percentage increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the

access to such industry or industries. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points more or less than the prior year's interest rate.

(d) Subject to the terms of the Dispatching Protocols attached hereto as Exhibit D and incorporated herein, the management and operation of the lines over which the parties have granted trackage rights to each other pursuant to this Agreement ("Joint Trackage") shall be under the exclusive direction and control of the owning carrier, and the owning carrier shall have the otherwise unrestricted power to change the management and operations on and over Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing Joint Trackage shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier. Trains operating in the Houston terminal shall be routed over the most efficient routes as necessary to avoid delays and congestion, even routes over trackage over which the operating carrier has no operating rights.

The owning carrier shall keep and maintain the Joint Trackage at no less than the track standard designated in the current timetable for the applicable lines subject to the separate trackage rights agreement. The parties agree to establish a joint service committee to regularly review operations over the Joint Trackage lines.

In the event the owning carrier determines to sell or remove from service a Joint Trackage line and/or any associated facilities, the owning carrier shall provide the other carrier with reasonable written notice of such determination. Any such sale to a third party shall be expressly made subject to the terms and conditions of this Agreement, and the owning carrier

shall remain responsible as to the obligations imposed on it herein in the event the third party purchaser does not fulfill those obligations.

(e) Each party shall be responsible for any and all costs relating to providing employee protection benefits, if any, to its employees prescribed by law, governmental authority or employee protective agreements where such costs and expenses are attributable to or arise by reason of that party's operation of trains over Joint Trackage. To the extent that it does not violate existing agreements, for a period of three years following acquisition of control of SP by UP, BNSF and UP/SP shall give preference to each other's employees when hiring employees needed to carry out trackage rights operations or operate lines being purchased. The parties shall provide each other with lists of available employees by craft or class to whom such preference shall be granted. Nothing in this Section 9(e) is intended to create an obligation to hire any specific employee.

(f) The trackage rights grants described in this Agreement and the purchase and sale of line segments shall be included in separate trackage rights and line sale agreement documents respectively of the kind and containing such provisions as are normally and customarily utilized by the parties, including exhibits depicting specific rail line segments, and other provisions dealing with maintenance, improvements, and liability, subject to more specific provisions described for each grant and sale contained in this Agreement and the general provisions described in this section. BNSF and UP/SP shall elect which of their constituent railroads shall be a party to each such trackage rights agreement and line sale and shall have the right to assign the agreement among their constituent railroads. The parties shall use their best efforts to complete such agreements by June 1, 1996. If agreement is not reached by June 1, 1996 either party may request that any outstanding matters be resolved by binding arbitration with the

arbitration proceeding to be completed within sixty (60) days of its institution. In the event such agreements are not completed by the date the grants of such trackage rights are to be effective, it is intended that operations under such grants shall be commenced and governed by this Agreement.

(g) All locations referenced herein shall be deemed to include all areas within the switching limits of the location designated by tariff, clarified to the extent necessary by publicly-available information, in effect as of September 25, 1995, and access to such locations shall include the right to locate and serve new auto and intermodal facilities at such locations.

(h) The tenant carrier on the Joint Trackage shall have the right to construct, or have constructed for it, for its sole use exclusively owned or leased facilities, including, without limitation, automobile and intermodal facilities, storage in transit facilities, team tracks and yards along the Joint Trackage pursuant to the following terms and conditions:

- (i) The party wishing to construct such exclusively owned facilities for its sole use shall submit its plans to the other party for its review and approval, which approval shall not be unreasonably withheld or delayed;
- (ii) In the case of the construction of team tracks and ancillary facilities, including loading facilities and necessary track connections, the parties shall work cooperatively with each other to enable such construction;
- (iii) Such exclusively owned or leased and used facilities shall not (i) impair the other party's use of the Joint Trackage, (ii) prevent or unduly hinder the other party's access to existing or future customers or facilities served from the Joint Trackage, or (iii) impair access to other exclusively owned facilities then in existence; and

(iv) If jointly owned or leased and used property is to be used for the construction of such exclusively owned or leased and used facilities, the party so constructing such exclusively owned or leased and used facilities shall reimburse the other party for its ownership of the jointly owned property so utilized at 50% of its then current fair market value. If the tenant carrier uses property of the owning carrier for the construction of exclusively owned or leased and used facilities, the tenant carrier shall reimburse the owning carrier for its ownership of the property at 100% of its then current fair market value.

(i) Where UP/SP provides reciprocal switching services to BNSF under this Agreement, UP/SP will do so at a rate of no more than \$130 per car as of September 25, 1995, adjusted pursuant to Section 12 of this Agreement, and all such reciprocal switching services shall be provided on an impartial basis. In the event BNSF's access to a Shipper Facility pursuant to this Agreement is effected by means of a third party contractor, (i) any associated third party switch fee shall be paid by UP/SP, (ii) BNSF shall pay to UP/SP the applicable reciprocal switch fee established between the parties to this Agreement, and (iii) BNSF shall neither be entitled to become an assignee of UP/SP nor become eligible to enter into a separate agreement with the shipper so served.

(j) It is the intent of the parties that BNSF shall, where sufficient volume exists, be able to utilize its own terminal facilities for traffic handled by BNSF under the terms of this Agreement. These locations include Salt Lake City, Ogden, Brownsville and San Antonio, and other locations where such volume develops. Facilities or portions thereof presently utilized by UP or SP at such locations shall be acquired from UP/SP by lease or purchase at normal and

customary charges. Upon request of BNSF and subject to availability and capacity, UP/SP shall provide BNSF with terminal support services including fueling, running repairs and switching. UP/SP shall also provide intermodal terminal services at Salt Lake City, Reno, and San Antonio. UP/SP shall be reimbursed for such services at UP's normal and customary charges. Where terminal support services are not required, BNSF shall not be assessed additional charges for train movements through a terminal. BNSF shall also have equal access, along with UP/SP, to all SP Gulf Coast storage in transit facilities ("SIT") (i.e., those SP facilities at Dayton, East Baytown, and Beaumont, TX), on economic terms no less favorable than the terms of UP/SP's access, for storage in transit of traffic handled by BNSF under the terms of this Agreement, including, but not limited to, traffic to or from Shipper Facilities to which BNSF gained access under the terms of this Agreement. UP/SP agree to work with BNSF to locate additional SIT facilities on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line as necessary.

(k) BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line.

(l) BNSF shall have the right to inspect the UP and SP lines over which it obtains trackage rights under this Agreement and require UP/SP to make such improvements under this section as BNSF deems necessary to facilitate its operations at BNSF's sole expense. Any such inspection must be completed and improvements identified to UP/SP within one year of the effectiveness of the trackage rights.

(m) BNSF shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including

existing trackage rights) intersect with Trackage Rights Lines or lines it will purchase pursuant to this Agreement. UP/SP shall have the right to connect, for movement in all directions, with its present lines (including existing trackage rights) at points where its present lines (including existing trackage rights) intersect with lines over which it will receive trackage rights pursuant to this Agreement. BNSF shall also have the right, at the option of the City Public Service Board of San Antonio, TX, to connect for movement to and from Elmendorf, TX, where BNSF's trackage rights granted pursuant to this Agreement intersect at SP Junction (Tower 112) with the existing trackage rights SP has granted to City Public Service Board of San Antonio, TX.

(n) In the event UP/SP institute directional operations over any Trackage Rights Line or on lines over which BNSF is granted Overhead Trackage Rights, (i) UP/SP shall provide BNSF with reasonable notice of the planned institution of such operations and shall adjust, as appropriate, the trackage rights granted to BNSF pursuant to this Agreement so as to avoid impairing BNSF's ability to provide competitive service on a Trackage Rights Line, and (ii) BNSF shall operate in accordance with the flow of traffic established by such directional operation; PROVIDED, HOWEVER, that any rights granted to BNSF as a result of UP/SP's institution of directional operations shall be Overhead Trackage Rights only, and PROVIDED FURTHER that BNSF shall have the right, on any Trackage Rights Line over which directional operations have been instituted (including lines on which BNSF received Overhead Trackage Rights to serve a point listed or described in Section 8(i) of this Agreement or a build-in/build-out line), to operate against the flow of traffic if it is reasonably necessary to do so for BNSF to provide competitive service to shippers on the line which are accessible to BNSF (including service to New Shipper Facilities and build-in/build-out lines) over such line including but not

limited to circumstances where UP operates against the flow of traffic with trains of the same or similar type for the same shipper(s) or for shipper(s) in the same general area.

10. **Compensation for Sale of Line Segments**

(a) BNSF shall pay UP/SP the following amounts for the lines it is purchasing pursuant to this Agreement:

<u>Line Segment</u>	<u>Purchase Price</u>
Keddie-Bieber	\$ 30 million
Dallas-Waxahachie	20 million
Iowa Jct.-Avondale MP 16.9 (includes UP's Westwego intermodal yard; SP's old Avondale yard; and SP's Lafayette yard)	100 million

(b) The purchase shall be subject to the following terms:

- (i) the condition of the lines at closing shall be at least as good as their current conditions as reflected in the current timetable and slow orders (slow orders to be measured by total mileage at each level of speed restrictions).
- (ii) includes track and associated structures together with right-of-way and facilities needed for operations.
- (iii) indemnity for environmental liabilities attributable to UP/SP's prior operations.
- (iv) standard provisions for sales of this nature involving title, liens, encumbrances other than those specifically reserved or provided for by this Agreement.

- (v) assignment of associated operating agreements (road crossings, crossings for wire and pipelines, etc.). Non-operating agreements shall not be assigned.
- (vi) removal by UP/SP, from a conveyance, within 60 days of the closing of any sale, of any non-operating real property without any reduction in the agreed upon purchase price.
- (vii) the purchase will be subject to easements or other agreements involving telecommunications, fiber optics or pipeline rights or operations in effect at the time of sale.

BNSF shall have the right to inspect the line segments and associated property to be sold and records associated therewith for a period of ninety days from the Effective Date of this Agreement to determine the condition and title of such property. At the end of such period, BNSF shall have the right to decline to purchase any specific line segment or segments. In such event, UP/SP shall grant BNSF overhead trackage rights on any such segment with compensation to be paid, in the case of Avondale-Iowa Junction on the basis of the charges set forth in Section 9(a) of this Agreement, and in the case of Keddie-Bieber on a typical joint facility basis with maintenance and operating costs to be shared on a usage basis (gross ton miles used to allocate usage) and annual interest rental equal to the depreciated book value times the then current cost of capital as determined by the ICC times a usage basis (gross ton miles). In the case of Dallas-Waxahachie, operations would continue under the existing trackage rights agreement.

(c) Prior to closing the sale of SP's Iowa Jct.-Avondale line (the "IJA Line"), representatives of UP/SP and BNSF shall conduct a joint inspection of the IJA Line to consider

whether its condition at closing meets the standard established in Section 10(b)(i) of this Agreement. If the representatives of the parties are unable to agree that the condition of the IJA Line meets this standard, then BNSF shall place \$10.5 million of the purchase price in escrow with a mutually agreed upon escrow agent, and closing shall take place. After closing the parties shall mutually select an independent third party experienced in railroad engineering matters (the "Arbitrator") who shall arbitrate the dispute between the parties as to whether the condition of the IJA Line is in compliance with Section 10(b)(i) of this Agreement. Arbitration shall be conducted pursuant to Section 15 subject to the foregoing qualification that the Arbitrator be experienced in railroad engineering matters. If the Arbitrator finds the IJA Line is below the standard, the Arbitrator shall determine the amount (which shall not exceed \$10.5 million) required to bring it in compliance with the standard and authorize the payment of such amount out of the escrow fund to BNSF with the balance, if any, paid to UP/SP. Any amount so paid to BNSF out of the escrow fund to bring the IJA Line into compliance with the standard shall be used by BNSF exclusively to that end (or to reimburse BNSF for funds previously expended to that end) and UP/SP shall not, as a tenant on the IJA Line be billed for any work undertaken by BNSF pursuant to the provisions of this Section 10(c).

11. **Term**

This Agreement shall be effective upon execution (which occurred on September 25, 1995) (the "Effective Date") for a term of ninety-nine years, PROVIDED, HOWEVER, that the grants of rights under Section 1 through 8 shall be effective only upon UP's acquisition of control of SP, and provided further that BNSF may terminate this Agreement by notice to UP/SP given before the close of business on September 26, 1995, in which case this Agreement shall have no further force or effect. This Agreement and all agreements entered into pursuant or in relation hereto shall terminate, and all rights conferred pursuant thereto shall be canceled and

deemed void ab initio, if, in a Final Order, the application for authority for UP to control SP has been denied or has been approved on terms unacceptable to the applicants, PROVIDED, HOWEVER, that if this Agreement becomes effective and is later terminated, any liabilities arising from the exercise of rights under Sections 1 through 8 during the period of its effectiveness shall survive such termination. For purposes of this Section 11, "Final Order" shall mean an order of the STB, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

12. **Adjustment of Charges**

All trackage rights charges under this Agreement shall be subject to adjustment upward or downward July 1 of each year by the difference in the two preceding years in UP/SP's system average URCS costs for the categories of maintenance and operating costs covered by the trackage rights fee. "URCS costs" shall mean costs developed using the Uniform Rail Costing System.

The rates for reciprocal switching services established in Section 9(i) and for haulage service established in Section 8(m) shall be adjusted upward or downward each July 1 of each year to reflect fifty percent (50%) of increases or decreases in Rail Cost Adjustment Factor, not adjusted for changes in productivity ("RCAF-U") published by the Surface Transportation Board or successor agency or other organizations. In the event the RCAF-U is no longer maintained, the parties shall select a substantially similar index and, failing to agree on such an index, the matter shall be referred to binding arbitration under Section 15 of this Agreement.

The parties will agree on appropriate adjustment factors if not covered herein for switching, haulage and other charges.

Upon every fifth anniversary of the effective date of this Agreement, either party may request on ninety (90) days notice that the parties jointly review the operation of the adjustment mechanism and renegotiate its application. If the parties do not agree on the need for or extent of adjustment to be made upon such renegotiation, either party may request binding arbitration under Section 15 of this Agreement. It is the intention of the parties that rates and charges for trackage rights and services under this Agreement reflect the same basic relationship to operating costs as upon execution of this Agreement (September 25, 1995).

13. **Assignability**

This Agreement and any rights granted hereunder may not be assigned in whole or in part without the prior consent of the other parties except as provided in this section. No party may permit or admit any third party to the use of all or any of the trackage to which it has obtained rights under this Agreement, nor under the guise of doing its own business, contract or make any arrangement to handle as its own trains, locomotives, cabooses or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of that party. In the event of an authorized assignment, this Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties. This Agreement may be assigned by either party without the consent of the other only as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets.

14. **Government Approvals**

The parties agree to cooperate with each other and make whatever filings or applications, if any, are necessary to implement the provisions of this Agreement or of any separate agreements made pursuant to Section 9(f) and whatever filings or applications may be necessary to obtain any approval that may be required by applicable law for the provisions of such

agreements. BNSF agrees not to oppose the primary application or any related applications in Finance Docket No. 32760 (collectively the “control case”), and not to seek any conditions in the control case, not to support any requests for conditions filed by others, and not to assist others in pursuing their requests. BNSF shall remain a party in the control case, but shall not participate further in the control case other than to support this Agreement, to protect the commercial value of the rights granted to BNSF by this Agreement, and to oppose requests for conditions by other parties which adversely affect BNSF; PROVIDED, HOWEVER, that BNSF agrees to reasonably cooperate with UP/SP in providing testimony to the ICC necessary to demonstrate that this Agreement and the operations to be conducted thereunder shall provide effective competition at the locations covered by the Agreement. UP/SP agree to support this Agreement and its implementation and warrant that it has not entered into agreements with other parties granting rights to other parties granted to BNSF under this Agreement. UP/SP agree to ask the ICC to impose this Agreement as a condition to approval of the control case. During the pendency of the control case, UP and SP shall not, without BNSF’s written consent, enter into agreements with other parties which would grant rights to other parties granted to BNSF or inconsistent with those granted to BNSF under this Agreement which would substantially impair the overall economic value of rights to BNSF under this Agreement.

15. **Arbitration**

Except as otherwise provided by any decision of the STB or by separate agreement, unresolved disputes and controversies concerning any of the terms and provisions of this Agreement or the application of charges hereunder shall be submitted for binding arbitration under Commercial Arbitration Rules of the American Arbitration Association which shall be the exclusive remedy of the parties.

16. **Further Assurances**

The parties agree to execute such other and further documents and to undertake such acts as shall be reasonable and necessary to carry out the intent and purposes of this Agreement.

17. **No Third Party Beneficiaries**

This Agreement is intended for the sole benefit of the signatories to this Agreement. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

Exhibits to Restated and Amended BNSF Settlement Agreement

Exhibit A – List of “2-to-1” Points

Exhibit B -- Term Sheet for UP/SP-BNSF Proportional Rate Agreement Covering I-5 Corridor

Exhibit C – Schematic drawing of UP’s Main Line No. 1 between MP 14.11 and 10.38, UP’s Westwego intermodal terminal, and SP’s old Avondale Yard (together with the fueling and mechanical facilities located thereon)

Exhibit D -- Dispatching Protocols

Exhibit E -- “2-to-1 Point Identification Protocol”

Exhibit F -- Overhead Trackage Rights Lines

EXHIBIT A

EXHIBIT A

LIST OF "2-TO-1" POINTS

Points Referred to in Section 1(b)

Provo UT
Salt Lake City UT
Ogden UT
Ironton UT
Gatex UT
Pioneer UT
Garfield/Smelter/Magna UT (access to Kennecott private railway)
Geneva UT
Clearfield UT
Woods Cross UT
Relico UT
Evona UT
Little Mountain UT
Weber Industrial Park UT
North Salt Lake City UT
American Fork UT
Orem UT
Points on paired track from Weso NV to Alazon NV
Reno NV (only intermodal, automotive [BNSF must establish its own
automotive facility], transloading, and new shipper facilities)
Herlong CA
Johnson Industrial Park at Sacramento CA
West Sacramento CA (Farmers Rice)
Port of Sacramento CA
Points between Oakland CA and San Jose CA (including Warm Springs CA,
Freemont CA, Elmhurst CA, Shinn CA, Kohler CA, and Melrose CA)
San Jose CA

Points Referred to in Section 3(a)

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4(b)

Brownsville TX
Port of Brownsville TX
Port of Corpus Christi
Harlingen TX
Corpus Christi TX
Sinton TX
San Antonio TX
Elmendorf TX
Halstead TX (LCRA plant)
Waco TX
Points on Sierra Blanca-El Paso line

Points Referred to in Section 5(b)

Baytown TX
Amelia TX
Orange TX
Mont Belvieu TX (Amoco, Exxon, Chevron plants)
Eldon, TX (Bayer plant)
Harbor, LA

Points Referred to in Section 6(d)

Camden AR
Pine Buff AR
Fair Oaks AR
Baldwin AR
Little Rock AR
North Little Rock AR
East Little Rock AR
Forrest City, AR
Paragould AR
Dexter MO

EXHIBIT B

EXHIBIT B

TERM SHEET FOR UP/SP-BNSF PROPORTIONAL RATE AGREEMENT COVERING I-5 CORRIDOR

Concept

BNSF trackage rights in the "I-5" corridor will allow BNSF to handle traffic on a single line basis that currently moves via joint BN-SP routes. This Agreement will enable UPSP to compete with BNSF for that traffic and to make rates, using the proportional rates, to and from all points UP/SP serves in the covered territory described below.

Covered Territory

Traffic moving between the following areas north of Portland, Oregon and west of Billings and Havre, Montana:

- Canadian interchanges in Vancouver area
- Points north of Seattle and west of Cascades
- Points south of and including Seattle and west of Cascades
- Washington points east of Cascades and west of and including Spokane
- Points east of Spokane and west of Billings and Havre

and points in

- Arizona,
- California,
- Colorado,
- New Mexico,
- Nevada,
- Oregon,
- Utah,
- Texas west of Monahans and Sanderson, and
- connections to Mexico at El Paso and to the west.

Traffic Covered

Traffic covered will be all commodities (carload, intermodal and bulk) moving both southbound and northbound. All cars loaded or made empty on BNSF lines in the Covered Territory (including reloads) and cars received in interchange.

Proportional Rates

A third party, such as a major accounting firm or other established transportation consultant (the "consultant"), will be employed to compute the proportional rates. The mileage prorate shall be the ratio of (a) BNSF miles between areas north of Portland or interchange north of Portland and SP interchange at Portland to (b) BNSF single-line miles from BNSF origin or interchange to BNSF destination or interchange.

The consultant will develop a table of net ton mile rates (net of refunds, allowances, and rebates). This table will be in matrix form based on commodity, car type, and area north of Portland, Oregon. The rates shown in the matrix will be by commodity at the 3-digit STCC level and by car type for movement between each of the areas north of Portland, Oregon, and the Portland interchange. The net ton mile rates will be based on movements between each of the areas north of Portland and the group of states (including connections to Mexico) listed above. The initial rates will be derived based on the BN-SP portion of BN-SP interline rates (net of refunds, allowances, and rebates) in effect in the quarter preceding acquisition of SP by UP.

The net ton mile rate for each commodity/car type shall be a weighted average of the rates applicable to movements of each such commodity/car type between the points listed above. An example of this computation is attached.

New rates will be derived each subsequent quarter. In subsequent quarters, the rates will include a prorate of both SP-BNSF interline rates (net of refunds, allowances, and rebates) and BNSF single-line rates (net of refunds, allowances, and rebates). At such time as a rate can be developed for a particular commodity/car type on the basis of a BNSF single-line rate then future rate adjustments for such commodity/car type shall be based solely on BNSF single-line rates. All computations of net ton mile rates will be based on rates that actually moved traffic.

UP/SP agree that any rate it publishes will reflect the proportional rate from the latest quarterly study and BNSF's division shall be that amount. Movements using proportional rates shall be interline BNSF-UP/SP movements and will be billed accordingly. Proportional rates used by UP/SP in contracts will be escalated on the same basis as UP/SP's rates are escalated. BNSF and UP/SP will establish procedures to ensure that in settling interline accounts UP/SP's and BNSF's revenue south of Portland is not disclosed to the other.

Application

The net ton mile rates in each cell of the matrix will be applied to the BN mileage and the associated net tons from areas north of Portland to Portland interchange to develop the proportional rate to the Portland interchange.

Service

BNSF shall accept, handle, switch and deliver traffic moving under this Agreement without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic moving in BNSF's account. UP/SP has the right to provide equipment. BNSF will work with UP/SP to establish and provide trackage for strategically located car distribution points in BN territory. To the extent justified by business volumes, BNSF will continue operating Vancouver, BC-Portland (SP interchange) trains comparable to BN Nos. 111 and 112. BNSF will cooperate with UP/SP to establish necessary blocks to provide efficient and competitive service on traffic moving under the proportional rate.

Third Party Consultant

The third party consultant shall be jointly employed by UP/SP and BNSF. The parties will share equally in the expense of employing such third party consultant. Both UP/SP and BNSF shall have the right to audit the work of the third party consultant and agree to share in any irregularities found in this work and cooperate to work with the third party consultant to establish procedures to promptly correct those deficiencies. The third party consultant shall be required to remain impartial between UP/SP and BNSF. Any breach of the impartiality requirement shall result in the termination of such third party consultant and the selection of a new consultant by the parties.

Example of Revenue Per Ton Mile
 Calculation by Origin-Destination Cell
 Cell Includes Car Type and Commodity

Assumption:	<u>Move 1</u>	<u>Move 2</u>
1. BNSF Revenue Per Car From O/D Areas North of Portland to Destination States	\$5000	\$2000
2. BNSF Miles From O/D Areas North of Portland to Destination States	1000	500
3. BNSF Net Tons From O/D Areas North of Portland to Destination States	100	50
4. BNSF Number of Carloads From O/D Areas North of Portland to Destination States	10	5
5. BNSF Miles Between Actual Point of Origin to Interchange and Portland	300	200

A. Revenue/NTM Factor (Computed by Consultant for Each Call in Matrix)

$\frac{\sum (1) \times (4)}{\sum (2) \times (3)}$ (for all moves)

$$\frac{\frac{5000 \times 10}{1000 \times 100} + \frac{2000 \times 5}{500 \times 50}}{10 + 5} = \$0.06/\text{NTM}$$

B. Compute BNSF Division on a Specific Move

(A) x (5) x (3)
 \$0.06 x 300 x 100 = \$1800
 \$0.06 x 200 x 50 = \$ 600

EXHIBIT C

660-888
352-280

S.P. Avondale Yard

3911-048
Crescent
MILWAUKEE

needs Rehab

Old Yard Capacity
4- 7900' (Thru X-over)
5- 7800' C 11 "
6- 1900'
7- 2500'
8- 2100'
9- 1100'
10- 1200'
11- 1200'
12- 1200'



New yard
Trk 40-5300'
37-39-4000'
30-36-2000'
29-1500'
28-1200'
27-1150'
26-1100'
25-900'

Old yard
13. 1300'
14. 1400'
15. 1800'
16. 1700'
17. 1600'
18. 1500'
19. 1400'
20. 1300'
21. 1200'
22. 1100'

not to scale
not entirely
accurate

EXHIBIT D

April 24, 1996

BNSF - UP/SP DISPATCHING PROTOCOLS

As agreed: Dave Clifton - BNSF
Hank Jay - SP
Steve Barkley - UP

1. **Scope:** These protocols apply on all rail line segments where Burlington Northern Railroad Company or The Atchison, Topcka & Santa Fe Railway Company (which will be referred to jointly or individually as "BNSF") has trackage rights over tracks of the entity or entities resulting from the merger of the rail affiliates of Union Pacific Corporation and Southern Pacific Rail Corporation (which will be referred to jointly or individually as "UP/SP") and on all rail line segments where UP/SP has trackage rights over tracks of BNSF. All such rail lines will be referred to as "joint trackage and will include all current joint line trackage rights."
2. **Purpose:** To ensure that BNSF and UP/SP trains operating on joint trackage are given equal dispatch without any discrimination in promptness, quality of service or efficiency and that the competitiveness of tenant operations on joint trackage is not adversely affected by the fact that the other railroad owns the track.
3. **General Instructions:** BNSF and UP/SP will issue written instructions to all personnel (including supervisors) responsible for train dispatching on joint trackage that trains of the tenant are to be dispatched exactly as if they were trains of the same class of the owner and given equal treatment with trains of the owner. These instructions will be issued at agreed intervals or at the request of either party.
4. **Monitoring Systems:** At the request and expense of the tenant, the owner will make available computer terminals, facilities or capabilities comparable to those available to its own dispatchers showing joint trackage it dispatches so that the tenant can monitor the handling of its trains by the owner.
5. **Train Information:** The tenant will provide to the owner, and regularly update, information about its expected train operations and schedules (including priorities, time commitments, horsepower per trailing ton, etc.) over joint trackage, preferably using electronic data interchange. Parties will establish run time standards by train category based on expected train volumes for each line segment. If train volumes are different than expected then adjustments to run time standards will be made by mutual agreement. The tenant will provide reliable and current information about trains approaching joint trackage, including train arrival time and train characteristics, preferably by providing at its expense computer terminals, facilities or capabilities showing trains approaching joint trackage, sufficiently in advance to allow dispatchers to plan for them. The owner will provide to the tenant advance notice of planned maintenance-of-way projects, line closures and train or equipment restrictions. BNSF and UP/SP will cooperate to develop a process for discussing maintenance windows in advance and agree upon so as not to adversely affect schedules of one carrier more than the other.

6. **Specific Instructions:** The owner will permit the tenant to transmit instructions regarding the requirements of specific trains and shipments to designated dispatching center employees responsible for handling those trains.
7. **Train Priorities/Run Time Standards:** BNSF and UP/SP will at all times provide to each other current procedures for assigning dispatching priorities or rankings to their trains and information sufficient to show how those procedures are applied to their own trains. The tenant will assign priorities or rankings to its trains operating on joint trackage using the owner's procedures, and the owner will dispatch tenant trains in accordance with those priorities or rankings. It is understood that technological advances in computer aided dispatching might result in changes to priority assignment methodologies. The parties agree to discuss technological changes which might affect priority assignment methodologies prior to implementation. The Joint Service Committee will be responsible for reviewing these assignments to ensure that they are applied equitably by both railroads. It is agreed that a three member panel from each carrier will make up the Joint Service Committee. Suggestions for three member panel are representatives from Joint Facilities, VP Transportation, and Joint Trackage Rights Operations.
8. **Entry to Joint Trackage:** At points where tenant trains enter joint trackage, entry will be provided by the owner on a first-come, first-served basis, taking into consideration the relative priorities of affected trains and the specific needs and operating characteristics of individual trains of both railroads. [If operating circumstances make strict application of this principle difficult or uncertain, BNSF and UP/SP may jointly establish standards for determining sequence of entry to joint trackage.] Parties will communicate daily on any conflicts concerning entry to joint trackage to gain resolution.
9. **Communications:** BNSF and UP/SP will provide to each other, and keep current, lists of dispatching personnel responsible for dispatching each segment of joint trackage and contact numbers. For each segment, BNSF and UP/SP will designate supervisory employees to serve as the day-to-day contacts for communications about operating changes, service requests and concerns. Where feasible and economical, dedicated phone lines or computer links will be established for these communications.
10. **Access to Dispatching Centers:** Appropriate officials of either railroad will be admitted at any time to dispatching facilities and personnel responsible for dispatching joint trackage to review the handling of trains on joint trackage and will be provided an office in the other railroad's dispatching center (although both railroads will take reasonable steps to prevent disclosure of proprietary information not relevant to that review). In order to support BNSF operations over UP/SP trackage rights granted in connection with the UP/SP merger, UP/SP will pay BNSF an amount equal to the reasonable and conventional salary of one supervisory employee to be placed by BNSF at UP/SP's Harriman dispatching center. It is understood that management and supervision of dispatching operations is the responsibility of the owning carrier.

11. **Performance Measurement:** BNSF and UP/SP will cooperate to develop train performance evaluation methods under which train performance of tenant trains on joint trackage segments can be compared to train performance of the owner's trains on the same segments for the same train category and priority.
12. **Personnel Incentives and Evaluation:** In evaluating the performance of employees and supervisors responsible for dispatching joint trackage, both BNSF and UP/SP will consider train performance of tenant trains and effectiveness in cooperating with tenant personnel and meeting tenant service requirements in the same manner as such factors are considered with respect to the owner's trains, personnel and requirements. If bonuses, raises or salaries of those persons are affected by performance of the owner's trains, performance of the tenant's trains shall be considered on the same basis to the extent feasible.
13. **Disagreements:** The designated contact supervisors are expected to raise questions, disagreements, concerns or disputes about compliance with these protocols promptly as and when any such matters arise and to use their best efforts to resolve them. If a matter is not resolved to the satisfaction of both parties, it will be presented to the Joint Service Committee. If a satisfactory resolution cannot be achieved by the Joint Service Committee, the matter will be submitted to binding summary arbitration before a neutral experienced railroad operating official within fourteen days. The parties will agree in advance on the sanctions available to the arbitrator to address failures to comply with these protocols.
14. **Modifications:** As the ultimate objective of these protocols is the equal, flexible and efficient handling of all trains of both railroads on joint trackage, these protocols may be modified at any time by mutual agreement, consistent with that objective.

EXHIBIT E

2-To-1 Point Identification Protocol

As a condition of the Surface Transportation Board's (STB) approval of the consolidation of Union Pacific Railroad Company (UP) and Southern Pacific Transportation Company (SP), The Burlington Northern and Santa Fe Railway Company (BNSF) was granted the right to serve all shipper facilities, that as of September 25, 1995, were open to both UP and SP, and no other railroad, whether via direct service, reciprocal switching, joint facility or other arrangements. Since the consolidation was consummated, BNSF and UP have been working to identify a complete list of 2-to-1 shipper facilities to which BNSF is entitled to access. The purpose of this protocol is to establish procedures and mechanisms for further identifying 2-to-1 shipper facilities open to BNSF as a result of the conditions imposed in the UP/SP merger. Those procedures and mechanisms are as follows:

1. BNSF shall submit to UP, by written or electronic communication, the name and address of any facility to which access is sought. In addition to the name and address of the facility, BNSF shall furnish any additional information relating to the facility's identity and location that is in BNSF's possession when the request for access is made. BNSF shall also provide any information in its possession at such time pertaining to the rail service options that were available to the facility on or before September 25, 1995. UP will handle for BNSF any traffic en route to the facility pending UP's determination of BNSF's right to access the facility in question. If UP determines that BNSF is not entitled to access a particular facility, BNSF will terminate any BNSF direct routing of traffic to that facility. UP shall be compensated for any traffic en route in accordance with the method of compensation set forth in Paragraph 7, below.

2. UP shall have five (5) business days from the date of such communication to respond by written or electronic communication to any request for access, provided that, if BNSF shall request a determination on more than five shipper facilities on a single day or, if a single request pertains to more than five (5) shipper facilities, BNSF shall identify the five (5) shipper facilities that need immediate attention, and the five (5) business day requirement shall apply to those shipper facilities, with the remaining shipper facilities request or requests to be responded to within ten (10) business days after the date of the request(s).

3. If UP fails to respond to an access request by the close of business of the fifth business day or, in the case of requests for which UP has ten business days to respond, by the close of the tenth business day, BNSF shall be deemed to have access to such facility or facilities as set forth in Paragraph 4 below, and UP shall be deemed to have waived any claims that BNSF is not entitled to serve the facility or facilities.

4. If UP approves BNSF's request for access, BNSF shall immediately be authorized to serve the facility either directly, through reciprocal switching, or, with UP's prior approval, a third party contractor, as provided for in the UP/BNSF Settlement Agreement dated September 25, 1995, as amended. No less than five (5) business days prior to the date that BNSF proposes to begin service to a facility, BNSF shall elect the mode of service that it intends to utilize and shall notify UP in writing or electronically of its election. BNSF shall have the right, upon 180 days prior written notice to UP, to change its election; provided, however, that BNSF shall (i) not change its election more often than once every five years, and (ii) shall reimburse UP for any costs incurred by UP in connection with such changed election. UP may not reverse a prior decision approving

BNSF's request for access to a facility without either BNSF's consent or approval by the STB.

5. If UP declines to approve a BNSF request for access to any facility, and BNSF believes that UP has an insufficient or inappropriate reason to decline access, BNSF may so notify UP, either in writing or by electronic communication, of the reasons why BNSF believes it is entitled to such access, and upon such notice, may seek an order from the STB finding that BNSF was entitled to access to that facility.

6. UP shall approve all such requests where, on the basis of all available information, UP concludes that a particular facility was open to service by both UP and SP, either directly or through reciprocal switching, joint facility or other arrangements and by no other rail carrier, as of September 25, 1995. If UP declines to approve a BNSF request for access to any facility, UP shall provide as part of its notification to BNSF a statement in writing or by electronic communication of its reasons and of the specific evidence supporting its determination that BNSF should not have access to the facility. A statement that UP lacks sufficient information to make a determination as to whether a facility is a 2-to-1 facility is not an adequate reason to deny a BNSF request for access to a facility. At any time after UP's notification, BNSF may request UP to reconsider its decision declining to approve BNSF's request for access.

7. If BNSF transports traffic to or from a shipper facility pursuant to paragraph 1 above and it is later determined that BNSF is not entitled to access to that facility, BNSF shall compensate UP for the movement of such traffic as follows: If a joint through rate is available, then UP is entitled to \$3 per car mile for the loaded move from the applicable junction in the price document. If multiple junctions are available, BNSF

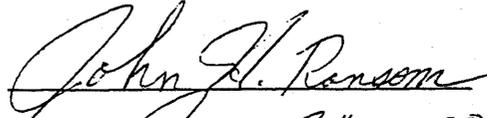
receives its longest haul and UP receives \$3 per car mile beyond that junction. If no joint through rate exists, BNSF receives its longest haul via junctions in existence between UP and BNSF, prior to the date of UP control over SP, September 11, 1996, and UP receives \$3 per car mile beyond. UP must file a claim with BNSF to recover revenues under this section making reference on the claim to this section of the joint 2-to-1 Point Identification Protocol.

8. BNSF and UP shall identify an individual or individuals within their respective organizations as the person or persons to whom all communications pursuant to this protocol shall be directed.

9. The parties agree to submit any disputes under this protocol to the STB for resolution or, with the consent of both parties, to arbitration, as described in the UP/BNSF Settlement Agreement dated September 25, 1995, as amended.

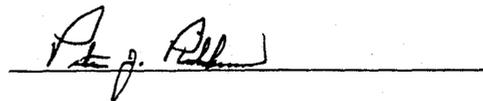
AGREED TO AND ACCEPTED BY:

UNION PACIFIC RAILROAD COMPANY



Date: June 24, 1998

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY



Date: June 26, 1998

EXHIBIT F

EXHIBIT F

LIST OF OVERHEAD TRACKAGE RIGHTS

1. Western Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Valley Subdivision between MP 141.9 near Binney Junction, CA and Roseville, CA in the vicinity of SP's Valley Subdivision MP 106.6.

2. South Texas Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on the following lines:

- a) SP's Port Lavaca Branch, between Placedo, TX in the vicinity of MP 14.2, and a point of build-in along said branch in the vicinity of MP 6.93 at Kamey, TX; and
- b) UP's line between Round Rock, TX, in the vicinity of UP's Austin Subdivision Milepost 161.79, and McNeil, TX, in the vicinity of UP's Austin Subdivision Milepost 166.1.

3. Eastern Texas – Louisiana Trackage Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on UP's Beaumont Subdivision between MP 458.69 in the vicinity of Beaumont, TX and MP 377.98 (Gulf Coast Junction) in the vicinity of Houston, TX.

4. Additional Rights

- A. UP/SP shall grant BNSF Overhead Trackage Rights on SP's Martinez Subdivision between approximately MP 2 in the vicinity of Oakland, CA and approximately MP 13 in the vicinity of Richmond, CA.

5. Rights to Omnibus Points

- A. UP/SP shall grant BNSF Overhead Trackage Rights over UP/SP's Jefferson City Subdivision between MP 34.8 near Pacific, MO and MP 43.8 near Labadie, MO.