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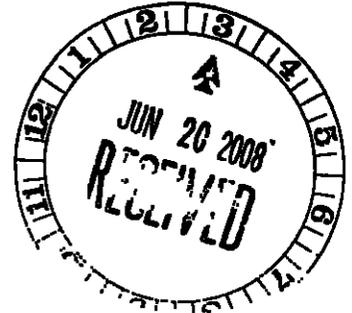
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June 20, 2008

BY HAND-DELIVERY

The Honorable Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

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JUN 20 2008
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Re: Finance Docket No. 32760, Union Pacific Corporation, et al. –
Control and Merger – Southern Pacific Rail Corporation, et al.

Dear Acting Secretary Quinlan:

BNSF Railway Company (“BNSF”) has received a copy of the letter submitted by Union Pacific Railroad Company (“UP”) on June 16, 2008, in response to a June 2, 2008 letter sent to the Board by the City of Richmond, California. In its letter, UP asserts that the City’s letter reflects several misconceptions regarding matters addressed in Decision No 103 served on May 1, 2008, in this proceeding, and UP attributes these asserted misconceptions to the apparent “incomplete information provided by BNSF” This letter is being written on behalf of BNSF in response to UP’s assertions

First, UP asserts that the City has incorrectly stated that BNSF negotiated the trackage rights at issue UP claims that BNSF did not negotiate those rights, but rather that BNSF is seeking to exploit a drafting error made by UP. The undisputed facts are, however, that the parties did voluntarily and mutually negotiate and agree to the Restated and Amended BNSF Settlement Agreement (“Restated Agreement”) and that UP is contractually bound by the terms and conditions of the Restated Agreement unless and until it is able to prevail in arbitration on its mistake defenses.¹

¹ In Decision No. 103, the STB denied UP’s Petition for Reformation as moot and stated that it was treating UP’s Petition as a “request for clarification” of the extent of trackage rights imposed and authorized in UP/SP Merger. In so doing, the Board did not address or resolve the issue of whether UP is entitled to relief under applicable state law on its mistake claims nor did it resolve the issue of the parties’ contractual intent. Further, the Board did not order or require that the Restated Agreement should be modified in any way. Accordingly, the Restated Agreement remains the governing contract which defines the parties’ obligations and rights

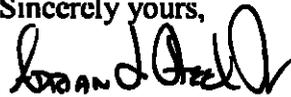
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Second, UP seeks to counter the City's concerns by arguing that BNSF never obtained the necessary Board authorization to exercise the broader trackage rights granted in the Restated Agreement. UP further asserts that the Board held that BNSF could not obtain such authorization unless the parties mutually agree to new trackage rights. Nowhere in Decision No. 103 did the Board make such a holding nor did the Board find that the parties had not reached a voluntary, mutual agreement. Rather, the Board simply held that BNSF would need to obtain Board authorization for any mutually agreed to broader trackage rights for BNSF intermodal trains over the Cal-P and Elvas-Stockton lines. To ensure there is common understanding between the parties on that point, BNSF has asked in its Petition for Clarification that the Board clarify that it did not intend to foreclose BNSF from seeking authorization from the Board for the broader trackage rights granted to BNSF by the Restated Agreement in the event BNSF's position is confirmed in arbitration.

Finally, UP asserts that BNSF never told the City that it had the right under the BNSF Settlement Agreement to build a new connection north of the City that would mitigate the impact of increased traffic on the City. However, as the Board has been made aware in this proceeding, BNSF had no need to route the intermodal trains to and from the Oakland International Gateway over the UP lines which have been of concern until 2004, and thus there was no reason to consider such a connection or to advise the City of BNSF's rights. In addition, by the time OIG traffic increased to a level that BNSF needed to use the Cal-P line, BNSF had been granted the right to do so in the Restated Agreement, and had operated over UP on the rights now in dispute avoiding operating through Richmond for some time until UP belatedly disputed BNSF's right to do so.

In addition, BNSF has always believed that UP's proposals for the construction of an alternative connection are inferior to the basic rights under the BNSF Settlement Agreement and is skeptical that they are workable and viable. There is no reason for the Board not to proceed to confirm that the broader trackage rights granted to BNSF in the Restated Agreement can form the basis for trackage rights authority under 49 U.S.C. § 11323.

Sincerely yours,



Adrian L. Steel, Jr.

cc Parties of Record
William Lindsay, City Manager
City of Richmond