

**SLOVER & LOFTUS LLP**

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036-3003

WILLIAM L. SLOVER  
C. MICHAEL LOFTUS  
JOHN H. LE SEUR  
KELVIN J. DOWD  
ROBERT D. ROSENBERG  
CHRISTOPHER A. MILLS  
FRANK J. PERGOLIZZI  
ANDREW B. KOLESAR III  
PETER A. PFOHL  
DANIEL M. JAFFE  
STEPHANIE P. LYONS  
STEPHANIE A. ARCHULETA

OF COUNSEL  
DONALD G. AVERY

**FEE RECEIVED**

DEC 22 2010

**SURFACE  
TRANSPORTATION BOARD**

TELEPHONE:  
(202) 347-7170

FAX:  
(202) 347-8619

WRITER'S E-MAIL:  
cml@sloverandloftus.com

December 22, 2010

**BY HAND DELIVERY**

Cynthia Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

Re: Docket No. 42127, Intermountain Power Agency  
v. Union Pacific Railroad Company

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding please find an original and ten (10) copies of Intermountain Power Agency's Complaint. We also are enclosing three disks containing electronic versions of the filing and enclosing the filing fee in the amount of \$350. Finally, we have enclosed an additional copy of the filing to be date-stamped and returned to the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,



C. Michael Loftus  
An Attorney for Intermountain Power Agency

Enclosures

cc: Counsel for Defendant

**FILED**  
DEC 22 2010  
SURFACE  
TRANSPORTATION BOARD

228525

**FILED**

DEC 22 2010

**SURFACE  
TRANSPORTATION BOARD**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

DEC 22 2010

INTERMOUNTAIN POWER AGENCY  
10653 South River Front Parkway, Suite 120  
South Jordan, Utah 84095

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY  
1400 Douglas Street  
Omaha, Nebraska 68179-1260

Defendant.

228525

Docket No. 42127

**FEE RECEIVED**

DEC 22 2010

**SURFACE  
TRANSPORTATION BOARD**

**COMPLAINT**

**INTERMOUNTAIN POWER AGENCY**

By: C. Michael Loftus  
Christopher A. Mills  
Andrew B. Kolesar III  
Daniel M. Jaffe  
Slover & Loftus LLP  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Of Counsel:

Slover & Loftus LLP  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Dated: December 22, 2010

Attorneys & Practitioners



unreasonable practice in violation of 49 U.S.C. §§ 10702 and 11101(b) and 49 C.F.R. Part 1300.

In support hereof, IPA states as follows:

1. IPA is a political subdivision of the State of Utah and is the owner of the Intermountain Power Project (“IPP”). IPP is located in the Great Basin of western Utah near Lynndyl, Millard County, Utah. The project generates more than 13 million megawatt hours of energy each year from its two coal-fired units and serves approximately 2 million customers. The two IPP generating units have a total capacity of 1,800 MW and consume a total of approximately 5 to 6 million tons of coal per year.

2. IPP’s output is committed, through long-term power sale contracts, to 36 utility entities located in Utah and California (which in turn serve customers in Utah, California, Colorado, Wyoming, Arizona, Nevada, and Idaho). In particular, IPP’s generation rights are held, respectively, by the Los Angeles Department of Water and Power (“LADWP”) (44.6%), five California cities (30%), twenty-three municipal Utah purchasers (14%), six cooperative Utah purchasers (7%), and one investor-owned Utah purchaser (4%). In addition to being the largest consumer of the electricity generated at IPP, LADWP also acts as the fuels purchasing and operating agent for IPP. Actual operation of IPP is carried out by the Intermountain Power Service Corporation.

3. UP is a common carrier railroad engaged in the transportation of freight in interstate commerce. UP is subject to the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10101, *et seq.*, and to the jurisdiction of the Board.

4. IPA anticipates that it will ship at least 2.5 to 3.5 million tons of coal per year from the issue origins/interchange over the next ten years. IPP will ship the balance of its coal supplies during that time period (*i.e.*, approximately 2.5 million tons per year) from non-issue origins. Following the expiration of its coal supply agreements for purchases from certain non-issue origins, IPA's annual transportation of coal from the issue origins/interchange could rise above the 2.5 to 3.5 million level.

5. All of the coal from the issue origins/interchange currently is delivered to IPP exclusively by rail, which is the only economically feasible means of transporting the substantial annual volumes required by IPP from such origins. The IPP plant is located along UP's main line between Salt Lake City, Utah, and Los Angeles, California and UP is the only rail carrier capable of serving the plant.

6. The Savage Coal Terminal ("Savage") is located near Price, Utah. Both UP and URC are capable of originating coal transportation service from Savage, but URC cannot deliver coal to the IPP plant. Instead, URC must interchange Savage coal to UP at Provo, Utah in order to complete the transportation to IPP. IPA and URC are parties to a long-term rail transportation contract governing the movement of coal from Savage and other URC-served Utah coal loadouts to Provo. Rail service is the only practical means of transporting substantial quantities of coal from Savage to IPP.

7. The Skyline Mine is located in Carbon County, Utah, approximately 18 miles west of Helper, Utah, and is directly served by UP. No other rail carrier can originate coal transportation service from Skyline. Historically, all Skyline coal moved to IPA in rail service via the Denver & Rio Grande Western Railroad ("DRGW") and UP.

From October 2000 through June 2001, a small volume of coal moved directly via truck from Skyline to IPA due to unusual circumstances associated with a change in IPA's coal supply arrangements. Rail service is the only practical means of transporting substantial quantities of coal from Skyline to IPP.

8. As noted above, the Provo, Utah interchange point is the location at which URC interchanges its contract coal traffic to UP for delivery to IPP. UP is the only rail carrier capable of receiving coal in interchange at Provo and transporting it to IPP. Rail carriage is the only viable means of transporting coal from Provo to IPP.

9. The only practical and economically feasible means by which the substantial IPP coal volumes from the issue origins/interchange can be transported is via rail. UP is the only railroad that is capable of providing coal delivery service to IPP. Neither motor carrier service nor any other transportation alternative presents effective competition for UP's rail transportation of such coal volumes from any issue origin/loadout to IPP. Accordingly, UP possesses "qualitative" market dominance over IPA's coal movements under 49 U.S.C. § 10707.

10. Over the years, UP has transported coal to IPP pursuant to a series of contracts that IPA negotiated with UP and entered into pursuant to 49 U.S.C. § 10709. The UP transportation contracts currently in effect, which are denominated as Contracts UP-C-5270 and UP-C-53328, will expire on December 31, 2010.

11. Given its need for unit train coal service from UP after 2010, IPA opened negotiations with UP over terms and conditions for a possible extension of or

successor agreements to Contracts UP-C-5270 and UP-C-53328. Despite such efforts, however, the parties were not able to reach agreement.

12. IPA made a formal written request to UP on October 29, 2010 for the establishment or disclosure of the rates and service terms that UP would apply to the transportation of coal to IPA in common carriage in shipper-supplied railcars, commencing January 1, 2011. *See Exhibit No. 1 hereto.*

13. By email dated November 4, 2010 (Exhibit No. 2 hereto), UP advised IPA that it would *not* provide the requested common carrier rates in accordance with the schedule set forth in the Board's regulations. *See 49 C.F.R. §§ 1300.2 and 1300.3.* UP instead claimed that the existence of the parties' rail transportation contract exempted UP from compliance with the regulations:

This will respond to the letter we received from your organization requesting the establishment of common carrier rates and other service terms from various mine origins or loadouts to your Power Plant at Lynndyl, Utah. *Currently rail transportation contracts with you are in effect until the end of 2010 and they supply the applicable rates and terms.* We will endeavor to provide common carrier rates and terms no later than December 1, 2010 unless IPA and UP are successful in establishing new rail contract rates and terms that would apply as a replacement for the expiring rail contract before then.

(Emphasis added).

14. On November 8, 2010, IPA wrote to UP to advise it that its refusal to respond to IPA's common carrier rate request was contrary to the Board's regulations and precedent and to request that UP comply with the regulations. *See Exhibit No. 3 hereto.*

15. On November 10, 2010, UP responded to IPA's November 8, 2010 letter, again arguing that it was exempt from complying with the Board's regulations. See Exhibit No. 4 hereto. To that end, UP argued that the existence of its expiring contract with IPA excused it from any obligation to provide common carrier rates within ten business days. *Id.* ("STB rules provide in 49 C.F.R. § 1300.3 that a carrier must promptly establish and provide to the requester a common carrier rate and applicable service terms 'in the absence of an existing rate for particular transportation.' In our November 4, 2010 response to your correspondence dated October 29, 2010, UP explained that contract rates currently exist for the particular transportation about which you inquired and that those rates will continue to apply to IPA's traffic through December 31, 2010.").

16. In correspondence dated December 1, 2010, UP provided its common carrier rates to IPA. See Exhibit No. 5 hereto.<sup>1</sup> UP's common carrier rates for service to IPP in shipper-supplied cars from the issue origins/interchange, as set forth in UP's December 1, 2010 correspondence, are as follows:

<u>Origin/Interchange</u>	<u>286k Capacity Cars</u>	<u>263k Capacity Cars</u>
Savage, Utah	\$10.20/ton	\$10.40/ton
Skyline, Utah	\$10.60/ton	\$10.79/ton
Provo, Utah	\$7.13/ton	\$7.27/ton

---

<sup>1</sup> By letter dated December 10, 2010, IPA advised UP that it intends to ship coal in 2011 from the Skyline Mine, and IPA requested that UP publish its rates for service from Skyline in Item 6200. See Exhibit No. 6 hereto. On December 14, 2010, UP responded to IPA's request and provided a new Item 6200-A to Tariff 4222. See Exhibit Nos. 7 and 8 hereto.

17. UP's common carrier rate quotations are subject to a fuel surcharge. See Exhibit No. 8 at 6 ("Rates shall be subject to the fuel surcharge as published in Item 695-series of Tariff UP 6007-series, unless otherwise specified in the Rate Item."); *id.* at 8 ("Prices are subject to Fuel surcharges").

18. All common carrier transportation charges established by UP in its December 1, 2010 rate quotation are substantially in excess of 180% of the variable cost of the associated service. Accordingly, the jurisdictional threshold established under 49 U.S.C. § 10707(d) is satisfied.

19. Because UP possesses market dominance over coal transportation to IPP from the issue rail origins, the Board has jurisdiction to adjudicate the reasonableness of UP's rates, rules and practices applicable to that transportation.

## COUNT I

### **UP'S RATES, CHARGES AND SERVICE RULES ARE UNREASONABLE AND UNLAWFUL**

20. The common carrier transportation rates established by UP in its December 1, 2010 common carrier rate quotation as applied to IPA's coal traffic exceed the maximum reasonable levels permitted under 49 U.S.C. §§ 10107(d)(1) and 10702, and therefore are unlawful.

21. In accordance with 49 C.F.R. § 1111.1(a), the reasonableness of UP's rates should be examined using the Constrained Market Pricing principles set forth in *Coal Rate Guidelines – Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom.*

*Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987) (“*Guidelines*”), as subsequently interpreted and applied in proceedings before the Board. The use of the Constrained Market Pricing principles is appropriate because coal shipments to IPP via UP involve high volume, repetitive unit train traffic.

22. This Complaint shall be deemed to apply to and likewise challenge any changes to the provisions of UP’s common carrier rate quotations for the issue service, or any tariffs, circulars or publications referenced therein, that affect the level of the challenged rates, as well as to any new tariffs or circulars that affect the level of the rates applied to the issue coal transportation service to IPP.

## COUNT II

### **UP VIOLATED ITS COMMON CARRIER OBLIGATIONS SET FORTH UNDER TITLE 49 AND THE STB’S REGULATIONS**

23. Section 11101(b) of Title 49 provides that “[a] rail carrier shall also provide to any person, on request, the carrier’s rates and other service terms” and further provides that “[t]he response by a rail carrier to a request for the carrier’s rates and other service terms shall be – (1) in writing and forwarded to the requesting person promptly after receipt of the request; or (2) promptly made available in electronic form.” *See also* 49 U.S.C. § 11101(f) (“The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for *immediate disclosure and dissemination* of rates and service terms, including classifications, rules, and practices, and their effective dates.”) (emphasis added).

24. In its implementing regulations set forth at 49 C.F.R. Part 1300, the Board drew a distinction between the disclosure of “existing rates” (*see* 49 C.F.R. § 1300.2) and the establishment of a “new rate” (*see* 49 C.F.R. § 1300.3). The Board’s regulations require the “immediate” disclosure of existing rates. 49 C.F.R. § 1300.2(b). Responses to requests for the establishment of new rates are to be provided “as soon as reasonably possible, but no later than 10 business days from the receipt of the request.” 49 C.F.R. § 1300.3.

25. Both the existing rates identified in Section 1300.2 and the newly established rates identified in Section 1300.3 are common carrier rates, as Section 1300.1(c) explicitly confirms. *See* 49 C.F.R. § 1300.1(c) (“The provisions of this part do not apply to any transportation or service provided by a rail carrier under a contract authorized under 49 U.S.C. 10709 . . .”).

26. The phrase “the absence of an existing rate for particular transportation” in Section 1300.3 refers to the absence of an existing *common carrier* rate for particular transportation, not an existing contract rate. Moreover, the phrase “particular transportation” in Section 1300.3 refers to the transportation that is the subject of the shipper’s request, not to transportation that precedes the time period identified in the shipper’s request.

27. As of the date of IPA’s October 29, 2010 request for disclosure of common carrier rates, there were no “existing rates” for the transportation that was the subject of IPA’s request (*i.e.*, common carrier transportation service from the subject origins/interchange to IPA beginning on January 1, 2011). In addition to the fact that

there were no existing common carrier rates for this transportation, there also were no existing contract rates for this post-January 1, 2011 transportation. Consequently, UP's failure to disclose its rates within ten business days of October 29, 2010 constituted a violation of the Board's regulations and the common carrier obligation under Title 49.

28. Neither this proceeding nor the granting of the relief requested herein will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, Complainant IPA prays that Defendant UP be required to answer the charges herein, and that after a hearing and investigation conducted pursuant to 49 U.S.C. § 10704(a)(1) and the Board's implementing regulations, the Board: (1) find the challenged rates to be unreasonable in violation of 49 U.S.C. §§ 10701(d)(1) and 10702; (2) prescribe lawful maximum rates and charges, and, to the extent shown to be necessary, reasonable rules and practices, as requested by IPA and demonstrated by the evidence to be adduced herein; (3) award reparations to IPA pursuant to 49 U.S.C. § 11704(b), to be calculated based on the record of this proceeding; (4) declare that UP's refusal to provide common carrier rates on the timetable required by the Board's regulations was an unreasonable practice; and (5) grant to IPA such other and further relief as the Board may deem proper based on said record.

Respectfully submitted,

INTERMOUNTAIN POWER AGENCY

By:

C. Michael Loftus   
Christopher A. Mills  
Andrew B. Kolesar III  
Daniel M. Jaffe  
Slover & Loftus LLP  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Of Counsel:

Slover & Loftus LLP  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Dated: December 22, 2010

*Attorneys for Intermountain Power  
Agency*

**CERTIFICATE OF SERVICE**

In accordance with 49 C.F.R. § 1111.3, I hereby certify that this 22nd day of December, 2010, I have caused a copy of the foregoing Complaint to be served on the Chief Legal Officer of the Defendant via overnight courier at the following address:

J. Michael Hemmer, Esq.  
Sr. VP-Law and General Counsel  
STOP 1580  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, Nebraska 68179

  
Andrew B. Kolesar III

Department of Water and Power



the City of Los Angeles

ANTONIO R. VILLARAIGOSA  
*Mayor*

Commission  
LEE KANON ALPERT, *President*  
THOMAS S. SAYLES, *Vice-President*  
ERIC HOLOMAN  
CHRISTINA E. NOONAN  
JONATHAN PARFREY  
BARBARA E. MOSCHOS, *Secretary*

AUSTIN BEUTNER  
*General Manager*  
RAMAN RAJ  
*Chief Operating Officer*

October 29, 2010

Mr. Jeffrey W. Maier  
AVP - Energy  
Union Pacific Railroad Company  
1400 Douglas Street  
STOP 1260  
Omaha, NE 68179-1260

Dear Mr. Maier:

Subject: Common Carrier Rate Request

In accordance with 49 U.S.C. § 11101 and 49 C.F.R. Part 1300, Intermountain Power Agency ("IPA") hereby requests that Union Pacific Railroad Company ("UP") either: (a) disclose the existing common carrier rates, charges, and service terms that will apply to the transportation described in Attachment A to this letter; or (b) establish and disclose reasonable common carrier rates, charges and service terms for application to said transportation. Please provide the requested information, in writing, to the undersigned as soon as possible and, in any event, in compliance with the above-referenced requirements. If you require clarification of any aspect of our request, please contact me in writing at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Nick C. Kezman".

Nick C. Kezman  
Operating Agent

Attachment

c: C. Michael Loftus  
Slover & Loftus LLP  
Lance C. Lee  
John L. Aguilar

**Water and Power Conservation ... a way of life**

111 North Hope Street, Los Angeles, California 90012-2607 Mailing address: Box 51111, Los Angeles 90051-5700  
Telephone: (213) 367-4211 Cable address: DEWAPOLA



**ATTACHMENT A**

**Commodity:** Coal classified as bituminous or sub-bituminous and transported under STCC 11, or Dried, Enhanced, or Beneficiated Coal transported under STCC 29-911-91

**Origins/Interchange:** The following UP-served origins or points of interchange:

- (a) the Powder River Basin of WY;
- (b) Black Buttes, WY;
- (c) Colorado's North Fork Branch;
- (d) Levan, UT;
- (e) Skyline, UT;
- (f) Savage, UT;
- (g) Provo, UT.

**Destination:** Intermountain Power Agency, Power Plant at Lynndyl, UT

**Volume:** Trainload service with annual volumes generally consistent with historic levels moved via UP to Destination

**Equipment Supply:** Shipper-supplied rail cars

**Car Capacity:** Please provide separate rates from each origin/point of interchange: (i) for cars rated for 263,000 pounds gross weight on rail; and (ii) for cars rated for 286,000 pounds gross weight on rail. All cars shall be suitable for use at the loading and unloading facilities

**Train Length:** 104 car minimum

**Unloading:** Six hours free time

**REDACTED**

Exhibit No. 2

**From:** Jeff W. Maier [<mailto:JWMAIER@up.com>]  
**Sent:** Thursday, November 04, 2010 3:15 PM  
**To:** Lee, Lance; Aguilar, John  
**Cc:** Franklin D. Sams; Louise A. Rinn  
**Subject:** Reply to Letter of October 29, 2010

Lance and John:

This will respond to the letter we received from your organization requesting the establishment of common carrier rates and other service terms from various mine origins or loadouts to your Power Plant at Lynndyl, Utah. Currently rail transportation contracts with you are in effect until the end of 2010 and they supply the applicable rates and terms. We will endeavor to provide common carrier rates and terms no later than December 1, 2010 unless IPA and UP are successful in establishing new rail contract rates and terms that would apply as a replacement for the expiring rail contract before then.

Please pass this information to those in your organization, including Mr. Kezman.

Thank you,

Jeff

Jeff Maier  
Union Pacific Railroad  
1400 Douglas St. STOP 1260  
Omaha, NE 68179-1260  
(402) 544-4502  
(402) 203-5495 (cell)  
e-mail: [jwmaier@up.com](mailto:jwmaier@up.com)

\*\*

This message and any attachments contain information from Union Pacific which may be confidential and/or privileged. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is strictly prohibited by law. If you receive this message in error, please contact the sender immediately and delete the message and any attachments.

\*\*

-----Confidential by Notice-----  
This electronic message transmission contains information from the Los Angeles Department of Water and Power which may be

Department of Water and Power



the City of Los Angeles

ANTONIO R. VILLARAIGOSA  
Mayor

Commission  
LEE KANON ALPERT, *President*  
THOMAS S. SAYLES, *Vice-President*  
ERIC HOLOMAN  
CHRISTINA E. NOONAN  
JONATHAN PARFREY  
BARBARA E. MOSCHOS, *Secretary*

AUSTIN BEUTNER  
*General Manager*  
RAMAN RAJ  
*Chief Operating Officer*

November 8, 2010

Mr. Jeffrey W. Maier  
AVP - Energy  
Union Pacific Railroad Company  
1400 Douglas Street  
STOP 1260  
Omaha, NE 68179-1260

Dear Mr. Maier:

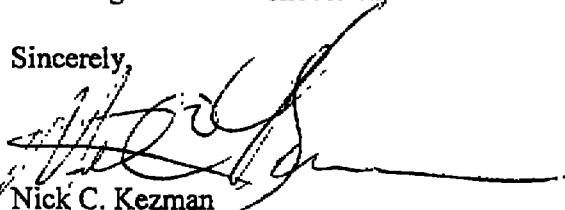
Subject: Common Carrier Rate Request

We are in receipt of your email correspondence dated November 4, 2010 in which Union Pacific (UP) declines to provide common carrier rates in response to our October 29, 2010 request apparently on the grounds that Intermountain Power Agency (IPA) and UP have a contract that will remain in effect until the end of the year. UP proposes to delay its required responses until December 1, 2010.

UP's delay in responding to our request is contrary to the Surface Transportation Board's (STB) regulations and precedent, and will hamper IPA's ability to plan for post-2010 coal deliveries. We are currently within only a few weeks of the termination of our current contract and our discussions, to date, with UP regarding a replacement contract have not been productive. Consequently, there are no rates currently in existence that would govern the transportation of IPA's substantial coal volumes on or after January 1, 2011. Under these circumstances, IPA renews its request that UP provide the requested rates within ten business days after the date of our request (*i.e.*, by Friday, November 12, 2010). *See* 49 C.F.R. § 1300.3.

Given our significant need for these rates, IPA is prepared to seek the STB's assistance in resolving this matter should that become necessary.

Sincerely,



Nick C. Kezman  
Operating Agent

c: C. Michael Loftus  
Slover & Loftus LLP  
Lance C. Lee  
John L. Aguilar

**Water and Power Conservation ... a way of life**

111 North Hope Street, Los Angeles, California 90012-2607 Mailing address: Box 51111, Los Angeles 90051-5700  
Telephone: (213) 367-4211 Cable address: DEWAPOLA

**REDACTED**

Exhibit No. 4  
Page 1 of 2

**From:** Jeff W. Maier [<mailto:JWMAIER@up.com>]  
**Sent:** Wednesday, November 10, 2010 6:42 PM  
**To:** [Raquel.Lopez@ladwp.com](mailto:Raquel.Lopez@ladwp.com); Lee, Lance; Aguilar, John; Michael Loftus  
**Cc:** Doug Glass; Franklin D. Sams; Louise A. Rinn  
**Subject:** UP Reply

City of Los Angeles Department of Water and Power:

This letter responds to your letter of November 8, 2010, which claims that Union Pacific would be acting contrary to Surface Transportation (STB) rules if it does not provide Intermountain Power Agency (IPA) with certain requested common carrier rates by November 12, 2010. Union Pacific has complied, and will continue to comply, with STB rules.

STB rules provide in 49 C.F.R. § 1300.3 that a carrier must promptly establish and provide to the requester a common carrier rate and applicable service terms "in the absence of an existing rate for particular transportation." In our November 4, 2010 response to your correspondence dated October 29, 2010, Union Pacific explained that contract rates currently exist for the particular transportation about which you inquired and that those rates will continue to apply to IPA's traffic through December 31, 2010. We also advised that no common carrier rates currently exist for the transportation at issue, but that Union Pacific would endeavor to provide such rates by December 1-one month before they could possibly apply to any shipment by IPA.

Your letter insists that we establish common carrier rates by November 12, which would be some seven weeks before IPA could possibly use them, and you claim that any delay will somehow hamper IPA's ability to plan for post-2010 coal deliveries. However, IPA could not assume that any rates we might establish by November 12 would remain in place on or after January 1, 2011. Under STB rules, Union Pacific is permitted to change its common carrier rates and applicable service terms on 20 days notice. In other words, even if STB rules required Union Pacific to provide common carrier rates by November 12, we could still establish new rates after that date and put them into effect on January 1, 2011. Pressing Union Pacific to establish common carrier rates before we can complete our analysis of appropriate and lawful common carrier rate levels would defeat your asserted objective of obtaining reliable information about the rates we would actually change once IPA's current contract expires on December 31, 2010.

We believe that our commitment to provide IPA with common carrier rates by December 1 is consistent with STB rules and will give us sufficient time to satisfy ourselves that the rates we establish are lawful. If IPA concludes that the rates we establish exceed a maximum reasonable level, then IPA's obtaining the rates on December 1 rather than November 12 would not have a significant impact on IPA's planning process: IPA would still face the uncertainties involved in pursuing a rate case. However, if the additional time allows us to complete our analysis and provide rates that IPA

concludes would withstand STB scrutiny, then both parties will have avoided unnecessary legal costs, and IPA will still have a month's time before any traffic would move under those rates.

In summary, Union Pacific believes that we are in compliance with both the letter and the spirit of STB rules regarding the establishment of common carrier rates. We will provide common carrier rates and terms for IPA's traffic no later than December 1, 2010.

Sincerely,

Jeff Maier  
Union Pacific Railroad  
1400 Douglas St. STOP 1260  
Omaha, NE 68179-1260  
(402) 544-4502  
(402) 203-5495 (cell)  
e-mail: [jwmaier@up.com](mailto:jwmaier@up.com)

\*\*

This message and any attachments contain information from Union Pacific which may be confidential and/or privileged. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is strictly prohibited by law. If you receive this message in error, please contact the sender immediately and delete the message and any attachments.

\*\*



Via E-mail  
December 1, 2010

Mr. Nick C. Kezman  
Operating Agent  
Los Angeles Department of Water and Power  
Box 51111  
Los Angeles, CA 90051-5700

Dear Mr. Kezman:

This letter responds to your request that Union Pacific establish and disclose common carrier rates, charges and service terms that will apply to the transportation of coal to your Intermountain Power Agency, Generating Station at Lynndyl, UT.

Enclosed in the icon below are a draft copy of UP Tariff 4222 and Item 6200, which would apply to coal originated at Levan or Savage, Utah, or received in interchange from the Utah Railway at Provo for movement beyond to Lynndyl. Those are the origins that IPA has identified as originating coal in its previously provided forecast. The Rate Item will become effective January 1, 2011. Rates are subject to increase on 20 days' notice; the applicable fuel surcharge may change on the first day of each month depending on what happens to the price of fuel.

We are also quoting common carrier rates for those origins that were not included in your written forecast for 2011 coal originations but were included in your request for disclosure of rates, charges and terms:

<u>Cars:</u>	<u>286 Capacity Cars</u>	<u>263 Capacity</u>
<u>Rate Quote(s):</u>		
SPRB UP served Mines, WY, (train size 120 cars)	\$25.05 NT	\$25.72 NT
Black Buttes, WY, (train size 114 cars)	\$15.85 NT	\$16.17 NT
Colorado's North Fork Branch, (train size 104 cars)	\$18.05 NT	\$18.41 NT
Skyline, UT, (train size 104 cars)	\$10.60 NT	\$10.79 NT

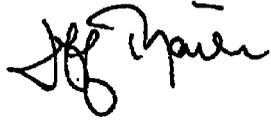
Should you decide to ship from the above origins, please furnish your revised annual forecast by origin mine so that we can arrange for resources to handle the traffic. (To the extent that decision would reduce the volume you plan to take from Levan, Savage or via the Utah Railway, please advise of those adjustments.) These rates are subject to same terms, conditions, and fuel surcharge as those in UP Tariff 4222 and Item 6200. The rate(s) can be published promptly in Item 6200, and are subject to increase on 20 days' notice.

Jeff W. Maier  
Assistant Vice President - Energy

UNION PACIFIC RAILROAD  
1400 Douglas Street, Stop 1260, Omaha, Nebraska 68179-1260  
ph. (402) 544-4502 fr. (402) 233-3039  
jwmaier@up.com

Should you have any questions and/or require additional information, please do not hesitate to call me at (402) 544-4502 or Franklin Sams at (402) 544-4504.

Sincerely,



**Jeff W. Maier**  
Assistant Vice President - Energy

**UNION PACIFIC RAILROAD**  
1400 Douglas Street, Stop 1260, Omaha, Nebraska 68179-1260  
ph. (402) 544-4502 ex. (402) 233-3039  
jwmaier@up.com



## **UP TARIFF 4222**

### **UNIT TRAIN COAL COMMON CARRIER TARIFF**

**Publication of rates, terms and conditions applying on:**

**Unit Coal Trains with movement from, to or via the  
Union Pacific Railroad Company**

**Issued By:  
G. A. NAVALKAR - MANAGER PRICING SERVICES**

**Union Pacific Railroad Company  
1400 Douglas Street Omaha, NE 68179**

**Issued: June 22, 2010  
Effective: July 1, 2010**

**UP 4222**



UP 4222

**Item: 1**  
**DEFINITION OF ITEM SYMBOLS**

**DEFINITION OF ITEM SYMBOLS**

A or [a] = Add  
C or [c] = Change  
D or [d] = Decrease  
I or [i] = Increase  
X or [x] = Expire

Issued: June 22, 2010  
Effective: July 1, 2010

UP 4222

Page: 1 of 1  
Item: 1  
Concluded on this page



UP 4222

Item: 5  
GOVERNING RULES

GOVERNING RULES DOCUMENTS

This publication is governed, except as otherwise specifically provided herein, by the provisions of publications below as amended from time to time:

Bureau of Explosives	BOE 6000-series
Directory of Hazardous Materials Shipping Description	(Issued by RAILINC)
Official Railroad Station List	OPSL 6000-series
Official Railway Equipment Register	RER-series
Standard Transportation Commodity Code	STCC 6001-series
Uniform Freight Classification	UFC 6000-series
Union Pacific Railroad Company Accessorial Tariff	UP 6004-series
Union Pacific Railroad Governing Rules for Regulated Traffic	UP 6007-series
Union Pacific Railroad General Rules for Coal Trains	UP 6602-series; UP 6603-series; and UP 6605-series
Association of American Railroads "AAR Interchange Rules" Manual	(Issued by AAR)
Association of American Railroads "Open Top Loading Rules Manual"	(Issued by AAR)

Issued: June 22, 2010  
Effective July 1, 2010

UP 4222

Page: 1 of 1  
Item: 5  
Concluded on this page



UP 4222

Item: 11  
REVISIONS/CANCELLATIONS

**REVISIONS/CANCELLATIONS**

Unless otherwise provided, as this Pricing Document (or items contained herein) is revised, current letter suffixes cancel prior suffixes. Letter suffixes will be used in alphabetical sequence starting with A. Example: Pricing Document 3000-A cancels 3000, 3000-B cancels 3000-A; item 100-A cancels Item 100, Item 100-B cancels Item 100-A.

Issued: June 22, 2010  
Effective: July 1, 2010

UP 4222

Page: 1 of 1  
Item: 11  
Concluded on this page



UP 4222

Item: 100  
GENERAL RULES AND DEFINITIONS

## General Rules and Definitions

For purposes of applying this Tariff, the following will govern.

**Commodity/Coal:** Coal, a mineral substance whose Standard Transportation Commodity Code (STCC) as set forth in the Standard Transportation Commodity code tariff ICC STCC 6001-Series, begins with the two digits 11.

**Origin(s):** Coal mine origins as specified in individual Rate Items.

**Destination(s):** Rail station capable of receiving trainloads of Coal as specified in individual Rate Items.

**Shipper:** Party who is paying the freight charges under this Tariff. Shipper shall have the same meaning as Customer.

**UP:** Union Pacific Railroad Company

**Railroad:** UP and any other rail carrier that is a party to this Tariff for a joint rate to the specified Destination as listed in Items 1000-9999 of this Tariff.

**Rates:** Are in U.S. dollars and cents per net ton of 2,000 lbs. Rates apply only for Coal consumed at the station(s) noted in the Item Description of the Rate Item, unless otherwise provided. Railroad may adjust or cancel Rates subject to 20 days' notice for increases.

**Rate Item:** Schedule of Rates, charges, and terms applicable to particular Destination, as listed in Items 1000-9999 of this Tariff.

**Diversions:** Diversions may be permitted under certain circumstances, as provided in UP Circular 6602-series; 6603-series or 6605-series.

**Request for Service:** Transportation under this Tariff will take place on lines which are subject to intense use and operational limitations. In order to maximize the utilization of the rail lines and loading facilities for the benefit of all parties involved in transportation of Coal from Origins, UP must coordinate with the mine operators and Shippers. Shipper requesting transportation under this Tariff must provide a "Monthly Coal Tonnage Forecast" as provided in Item 250 of UP Circular 6602-series; 6603-series or 6605-series. That Item defines the monthly process for the submission of forecasts by both the receivers of coal and the producers who will load those tons for shipment via UP. This condition applies in addition to any specific notice requirements stated in this Tariff.

**Shipper Owned or Leased Equipment:** Railcars owned, leased or otherwise furnished by Shipper for transportation under this Tariff.

**Railroad Owned or Leased Equipment:** Railcars owned, leased or otherwise furnished by Railroad, subject to availability, for transportation under this Tariff.

**Equipment:** If Rate Item for Destination specifies Shipper Owned or Leased Equipment, Shipper will provide suitable equipment at no charge to Railroad. Railcars shall be compatible with the loading facility and the unloading facility.

All railcars used for transportation under this Tariff shall be open-top hopper or gondola railcars, and shall have a marked capacity sufficient to meet the Minimum Lading Weight per Railcar as specified in the Rate Item for

Issued: June 22, 2010  
Effective: July 1, 2010  
Expiration: December 31, 2025

UP 4222

Page: 1 of 3  
Item: 100  
Continued on next page

**Destination.**

Loaded railcars shall not exceed the maximum gross-weight-on-rail ("GWOR") associated with the route of movement, but in no case greater than 286,000 lbs. In some corridors the GWOR will be less than 286,000 lbs, in which case Railroad will note in the applicable Rate Item the maximum weight capability on the route of movement.

Such railcars shall also meet or exceed the Association of American Railroads ("AAR") Interchange Rules, as amended from time to time, and shall have been inspected and approved by UP for safety in accordance with Federal Railroad Administration ("FRA") regulations, as amended from time to time. Railcars must also comply with Item 226 of UP 6602-series; 6603-series and 6605-series.

Transportation under this Tariff is subject to the provisions of the AAR Interchange Rules, including those rules governing railcar repair, maintenance, damage, or destruction, in a manner prescribed by the "Field Manual of Interchange Rules" and the "Office Manual of Interchange Rules" adopted by and currently in use by the AAR.

**Maximum Volume:** The maximum volume that Railroad will transport under each Rate Item is specified in the Rate Item.

**Trainsets:** UP reserves the right, in its sole judgement, to limit the number of trainsets that will be in service pursuant to each Rate Item in order to retain fluidity or to meet loading schedules, or if adding trainsets in active service would not materially increase delivered tonnage.

**Annual Volume Estimate:** For planning purposes, Shipper shall advise Railroad of its intent to ship under this Tariff as specified in Monthly Coal Tonnage Forecast. In addition, not later than July 1 each year, Shipper shall provide to Railroad an estimate of tons of Coal anticipated to be loaded in the next calendar year by month ("Annual Volume Estimate"). This information should include tons from each of its suppliers and origins as soon as it is known. The nominated tonnage must be ratable. A monthly nomination is ratable if it is no more than 10% greater or 10% less than one-twelfth of the annual total. If Shipper decides to begin shipments within any time-frame other than a full calendar year basis, then Shipper shall provide Railroad an Annual Volume Estimate for the remaining months of that calendar year, at least ninety calendar days prior to the first shipment, unless otherwise mutually agreed. The Annual Volume Estimate must be submitted electronically via UP's secured website ([www.uprr.com/customers/energy Bulk Train Planner](http://www.uprr.com/customers/energy/BulkTrainPlanner)), and may be revised at any time prior to October 1 each year.

**Service:** Railroad shall use reasonable efforts to transport Coal based on the circumstances when the transportation occurs. Railroad shall not be responsible for delays due to weather, track maintenance or construction, equipment failures, embargoes, Acts of God, labor activities, including strikes, denial of or limitation of access to track controlled by any party other than Railroad, excessive demand, or events outside the control of the Railroad. Railroad intends to use reasonable efforts to deliver the Annual Volume Estimate and the Monthly Coal Tonnage Forecast furnished by Shipper but has no binding obligation to comply with these planning estimates.

In no event shall Railroad be liable for any service guarantee. Further, to the extent allowed by law, under no circumstances will Railroad be liable for any direct, indirect, actual or consequential damages or any other liability, or additional costs of any kind arising out of or caused by service interruptions, reductions, or excessive demand.

**Freight Charges:** Freight charges shall be calculated based on the greater of the actual lading weight of all Coal in a train as determined by weighing pursuant to the rules in UP Circular 6602-series; 6603-series or 6605-series, or the minimum tender per shipment weight, which is specified by Destination in the Rate Item. Rates shall be subject to the fuel surcharge as published in Item 695-series of Tariff UP 6007-series, unless otherwise specified in the Rate Item.

**Payment:** Railroad may invoice Shipper by means of mail or electronic transfer of documentation. Shipper shall pay the amount invoiced by means of mail or electronic transfer of funds within 15 calendar days after date of invoice. Late payment and other credit terms shall be in accordance with UP's credit terms as published in Rule 62 of UFC 6000-series. If Shipper fails to pay in accordance with the requirements or if, in UP's sole discretion, adverse credit conditions occur which could affect Shipper's ability to meet payment terms, UP may revoke credit privileges and institute any one or more of the Revocation of Credit and Other Remedies procedures outlined in UFC 6000-series.

Issued: June 22, 2010  
Effective: July 1, 2010  
Expiration: December 31, 2025

UP 4222

Page: 2 of 3  
Item: 100  
Continued on next page

**Notices:** Notices to UP should be addressed to:

Attn: General Director- Logistics and Demand  
Union Pacific Railroad  
Marketing and Sales Energy Group  
Stop 1260  
1400 Douglas Street  
Omaha, NE 68179  
Fax (402) 501-0163

**Other General Rules:** Shipments made under this Tariff shall be subject to Circular UP 6602-series; 6603-series or 6605-series or their successors, which contain the General Loading Rules, Accessorial Charges and Fuel Surcharge for Coal Trains moving via UP, and related items.

Services or other matters not specifically addressed in this Tariff shall continue to be governed by and paid for in accordance with rules, regulations, statutory provisions and provisions of the applicable tariffs, rules circulars, publications or in other applicable rate and service terms established under 49 U.S.C. Section 11101 or 10702. Such rules, regulations and provisions, as amended from time to time, are herein incorporated by reference without being specifically listed. To the extent any such rules, regulations or provisions as they relate to the parties hereto are inconsistent with the terms of this Tariff, the terms of this Tariff shall govern. When reference is made in this Tariff to tariffs, circulars, items, notes, rules, etc., such references are continuous and include revisions and supplements to and successive issues of such tariffs, circulars, items, notes, rules, etc.

In the event of any conflict between the terms of this Tariff and the terms of the Rate Item, the provisions of the Rate Item shall govern.

Issued: June 22, 2010  
Effective: July 1, 2010  
Expiration: December 31, 2025

UP 4222

Page: 3 of 3  
Item: 100  
Concluded on this page

	<p>UP 4222</p>	<p>Item: 6200 Item Desc: UT, Lynndyl, IPA Generating Station</p>	
<p>Unit Coal Trains from Origins in Utah to IPA Generating Station, Lynndyl, UT</p>			
<p>For billing purposes use the following rate authority: UP 4222-6200</p>			
<p>STCC/GROUP</p>	<p>STCC</p>	<p>DESCRIPTION</p>	
<p>11</p>		<p>Coal</p>	
<p>Prices are subject to Fuel surcharges.</p>			
<p><b>GENERAL RULE ITEM 6200</b></p>			
<p>The Maximum Volume that Railroad will transport under this item is 6,500,000 Net Tons per calendar year.</p>			
<p>Shipper shall provide its Annual Volume Estimate for 2011 to Railroad by December 31, 2010</p>			
<p>Rates for trains interchanged to UP at Provo, Utah are contingent on utilization of UP locomotives and a new run-through power agreement between UTAH and UP.</p>			
<p><b>GENERAL APPLICATION RULES FOR ITEM 6200</b></p>			
<ol style="list-style-type: none"> <li>1. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks.</li> <li>2. Mileage allowance payment on private equipment will not apply.</li> <li>3. Free time to unload will be 6 hour(s).</li> </ol>			
<p>APPLICATION AND RATES</p>			
<p>COLUMN</p>	<p>RATE APPLICATION RULES</p>		
<p>1.</p>	<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 100 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p> <p>Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11, AND Applies when immediately prior movement was via rail on the UTAH.</p>		
		<p>Col 1 Rate</p>	<p>Route Code/Group</p>
<p>STCC: 11 Coal From: UT, PROVO To: UT, LYNN DYL</p>		<p>727</p>	<p>UP</p>
<p>Issued: Effective: January 1, 2011 Expiration: December 31, 2025</p>	<p>UP 4222</p>		<p>Page: 1 of 3 Item: 6200 Continued on next page</p>

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	Rates are in U.S. dollars Per Net Ton.  Subject to a minimum lading weight of 115 tons per car.  Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).  Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11, AND Applies when immediately prior movement was via rail on the UTAH.	
	Col 1 Rate	Route Code/Group
STCC: 11 Coal From: UT, PROVO To: UT, LYNN DYL	7.13	UP

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	Rates are in U.S. dollars Per Net Ton.  Subject to a minimum lading weight of 100 tons per car.  Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).	
	Col 1 Rate	Route Code/Group
STCC: 11 Coal From: UT, SAVAGE To: UT, LYNN DYL	10.40	UP

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	Rates are in U.S. dollars Per Net Ton.  Subject to a minimum lading weight of 115 tons per car.  Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).	
	Col 1 Rate	Route Code/Group
STCC: 11 Coal From: UT, SAVAGE To: UT, LYNN DYL	10.20	UP

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	Rates are in U.S. dollars Per Net Ton.  Subject to a minimum lading weight of 100 tons per car.  Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).	

Issued:  
Effective: January 1, 2011  
Expiration: December 31, 2025

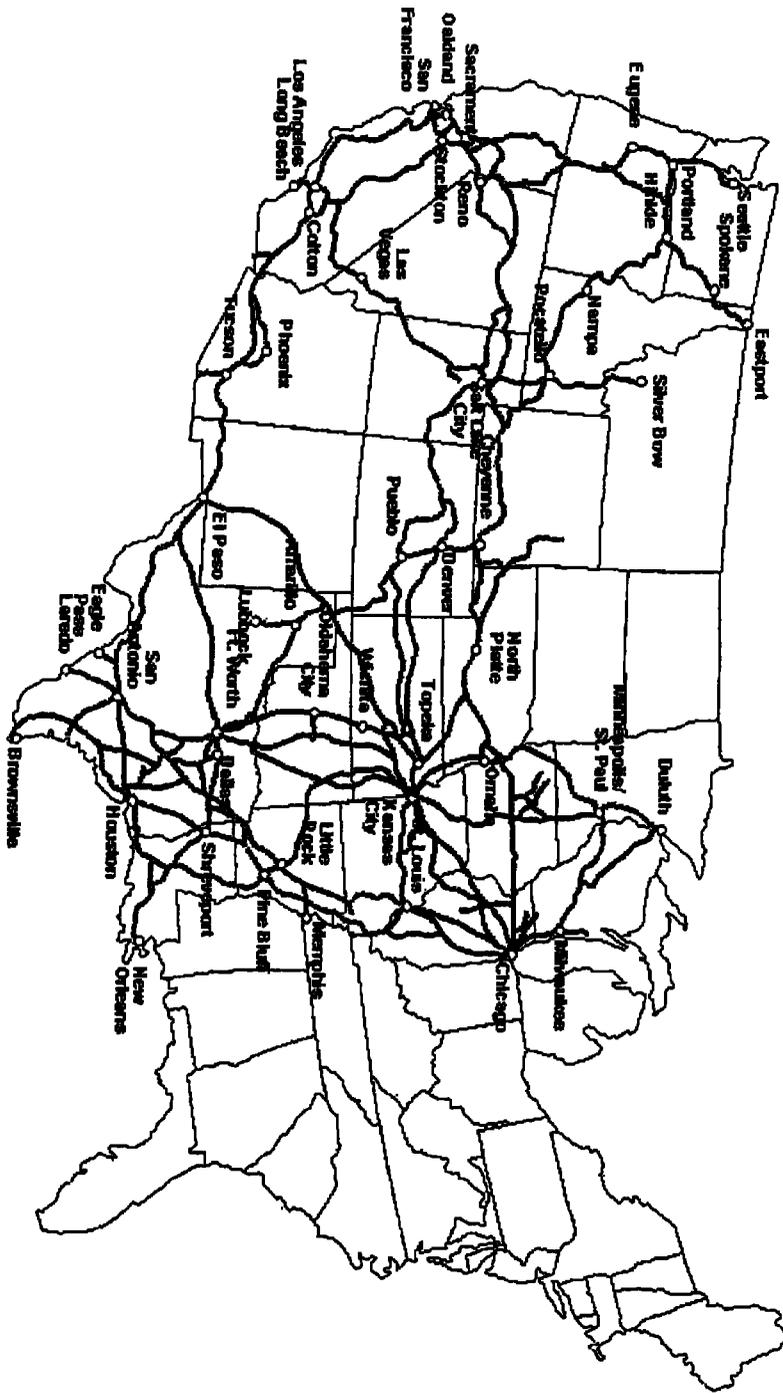
UP 4222

Page 2 of 3  
Item: 6200  
Continued on next page

	Col 1 Rate	Route Code/Group
STCC: 11 Coal From: UT, SHARP To: UT, LYNN DYL	3.49	UP

APPLICATION AND RATES		
COLUMN	RATE APPLICATION RULES	
1.	Rates are in U.S. dollars Per Net Ton.  Subject to a minimum lading weight of 115 tons per car.  Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).	
	Col 1 Rate	Route Code/Group
STCC: 11 Coal From: UT, SHARP To: UT, LYNN DYL	3.37	UP

# Union Pacific Railroad



Department of Water and Power



the City of Los Angeles

ANTONIO R. VILLARAIGOSA  
Mayor

Commission  
LEE KANON ALPERT, *President*  
THOMAS S. SAYLES, *Vice-President*  
ERIC HOLOMAN  
CHRISTINA E. NOONAN  
JONATHAN PARFREY  
BARBARA E. MOSCHOS, *Secretary*

AUSTIN BEUTNER  
*General Manager*  
RAMAN RAJ  
*Chief Operating Officer*

December 10, 2010

Mr. Jeffrey Maier  
Assistant Vice President – Energy  
Union Pacific Railroad Company  
1400 Douglas Street, STOP 1260  
Omaha, Nebraska 68179-1260

Dear Mr. Maier:

Subject: Union Pacific (UP) Tariff 4222 and Item 6200

In your December 1, 2010 letter to Intermountain Power Agency (IPA), you provided copies of UP Tariff 4222 and Item 6200, and you also provided rates for service from certain additional mines not referenced in Item 6200 (*i.e.*, “origins that were not included in [IPA’s] written forecast for 2011 coal originations but were included in [IPA’s] request for disclosure of rates”).

You request that if IPA decides to ship from these origins, we should furnish our revised annual forecast by origin mine so that UP can arrange for resources to handle the traffic. You also state that the rates that you have provided for these additional origins “can be published promptly in Item 6200 . . . .”

IPA is able to advise you at this time that it intends to ship coal in 2011 from the Skyline Mine. Accordingly, please publish your rates for service from Skyline in Item 6200. We will try to determine this month whether we will be shipping coal in 2011 from the other origins listed in your letter, although it may not be possible to do so within this time frame. We will provide our Annual Volume Estimate for 2011 to UP by December 31, 2010, in accordance with your General Rule Item 6200.

Sincerely,

Nick C. Kezman  
Coal Business Manager

- c: C. Michael Loftus
- Slover & Loftus
- William W. Engels
- Lance C. Lee
- John L. Aguilar

**Water and Power Conservation . . . a way of life**

111 North Hope Street, Los Angeles, California 90012-2607 Mailing address: Box 51111, Los Angeles 90051-5700  
Telephone: (213) 367-4211 Cable address: DEWAPOLA

**REDACTED**

**From:** Jeff W. Maier [<mailto:JWMAIER@up.com>]  
**Sent:** Tuesday, December 14, 2010 9:48 AM  
**To:** Lopez, Raquel  
**Cc:** Michael Loftus; [FDSAMS@up.com](mailto:FDSAMS@up.com); Aguilar, John; Lee, Lance; Engels, William; Louise A. Rinn  
**Subject:** Re: Union Pacific (UP) Tariff 4222 and Item 6200

Mr. Kezman:

Per your request in your letter dated December 10, please find enclosed in the icon below a copy of UP Tariff 4222 and an updated copy of Item 6200-A, which has been amended to include rates from the Skyline Mine:

*(See attached file: UP 4222 Item 6200A Lynndyl.pdf)*

Should you have any questions and/or require additional information, please do not hesitate to call me at (402) 544-4504 or Franklin Sams at (402) 544-4504.

Thank you.

Jeff Maier  
Union Pacific Railroad  
1400 Douglas St. STOP 1260  
Omaha, NE 68179-1260  
(402) 544-4502  
(402) 203-5495 (cell)  
e-mail: [jwmaier@up.com](mailto:jwmaier@up.com)

\*\*

This message and any attachments contain information from Union Pacific which may be confidential and/or privileged. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is strictly prohibited by law. If you receive this message in error, please contact the sender immediately and delete the message and any attachments.

\*\*



## **UP TARIFF 4222**

### **UNIT TRAIN COAL COMMON CARRIER TARIFF**

**Publication of rates, terms and conditions applying on:**

**Unit Coal Trains with movement from, to or via the  
Union Pacific Railroad Company**

**Issued By:  
G. A. NAVALKAR - MANAGER PRICING SERVICES**

**Union Pacific Railroad Company  
1400 Douglas Street Omaha, NE 68179**

**Issued: June 22, 2010  
Effective: July 1, 2010**

**UP 4222**



UP 4222

Item: 1  
DEFINITION OF ITEM SYMBOLS

Exhibit No. 8  
Page 2 of 11

**DEFINITION OF ITEM SYMBOLS**

A or [a] = Add  
C or [c] = Change  
D or [d] = Decrease  
I or [i] = Increase  
X or [x] = Expire



UP 4222

Item: 5  
GOVERNING RULES

Exhibit No. 8  
Page 3 of 11

GOVERNING RULES DOCUMENTS

This publication is governed, except as otherwise specifically provided herein, by the provisions of publications below as amended from time to time:

Bureau of Explosives	BOE 6000-series
Directory of Hazardous Materials Shipping Description	(Issued by RAILINC)
Official Railroad Station List	OPSL 6000-series
Official Railway Equipment Register	RER-series
Standard Transportation Commodity Code	STCC 6001-series
Uniform Freight Classification	UFC 6000-series
Union Pacific Railroad Company Accessorial Tariff	UP 6004-series
Union Pacific Railroad Governing Rules for Regulated Traffic	UP 6007-series
Union Pacific Railroad General Rules for Coal Trains	UP 6602-series; UP 6603-series; and UP 6605-series
Association of American Railroads "AAR Interchange Rules" Manual	(Issued by AAR)
Association of American Railroads "Open Top Loading Rules Manual"	(Issued by AAR)

Issued: June 22, 2010  
Effective: July 1, 2010

UP 4222

Page: 1 of 1  
Item: 5  
Concluded on this page



UP 4222

Item: 11  
REVISIONS/CANCELLATIONS

Exhibit No. 8  
Page 4 of 11

**REVISIONS/CANCELLATIONS**

Unless otherwise provided, as this Pricing Document (or items contained herein) is revised, current letter suffixes cancel prior suffixes. Letter suffixes will be used in alphabetical sequence starting with A. Example: Pricing Document 3000-A cancels 3000, 3000-B cancels 3000-A; item 100-A cancels Item 100, Item 100-B cancels Item 100-A.

Issued: June 22, 2010  
Effective: July 1, 2010

UP 4222

Page: 1 of 1  
Item: 11  
Concluded on this page



UP 4222

Item: 100  
GENERAL RULES AND DEFINITIONS

Exhibit No. 8  
Page 5 of 11

## General Rules and Definitions

For purposes of applying this Tariff, the following will govern.

**Commodity/Coal:** Coal, a mineral substance whose Standard Transportation Commodity Code (STCC) as set forth in the Standard Transportation Commodity code tariff ICC STCC 6001-Series, begins with the two digits 11.

**Origin(s):** Coal mine origins as specified in individual Rate Items.

**Destination(s):** Rail station capable of receiving trainloads of Coal as specified in individual Rate Items.

**Shipper:** Party who is paying the freight charges under this Tariff. Shipper shall have the same meaning as Customer.

**UP:** Union Pacific Railroad Company

**Railroad:** UP and any other rail carrier that is a party to this Tariff for a joint rate to the specified Destination as listed in Items 1000-9999 of this Tariff.

**Rates:** Are in U.S. dollars and cents per net ton of 2,000 lbs. Rates apply only for Coal consumed at the station(s) noted in the Item Description of the Rate Item, unless otherwise provided. Railroad may adjust or cancel Rates subject to 20 days' notice for increases.

**Rate Item:** Schedule of Rates, charges, and terms applicable to particular Destination, as listed in Items 1000-9999 of this Tariff.

**Diversions:** Diversions may be permitted under certain circumstances, as provided in UP Circular 6602-series; 6603-series or 6605-series.

**Request for Service:** Transportation under this Tariff will take place on lines which are subject to intense use and operational limitations. In order to maximize the utilization of the rail lines and loading facilities for the benefit of all parties involved in transportation of Coal from Origins, UP must coordinate with the mine operators and Shippers. Shipper requesting transportation under this Tariff must provide a "Monthly Coal Tonnage Forecast" as provided in Item 250 of UP Circular 6602-series; 6603-series or 6605-series. That Item defines the monthly process for the submission of forecasts by both the receivers of coal and the producers who will load those tons for shipment via UP. This condition applies in addition to any specific notice requirements stated in this Tariff.

**Shipper Owned or Leased Equipment:** Railcars owned, leased or otherwise furnished by Shipper for transportation under this Tariff.

**Railroad Owned or Leased Equipment:** Railcars owned, leased or otherwise furnished by Railroad, subject to availability, for transportation under this Tariff.

**Equipment:** If Rate Item for Destination specifies Shipper Owned or Leased Equipment, Shipper will provide suitable equipment at no charge to Railroad. Railcars shall be compatible with the loading facility and the unloading facility.

All railcars used for transportation under this Tariff shall be open-top hopper or gondola railcars, and shall have a marked capacity sufficient to meet the Minimum Lading Weight per Railcar as specified in the Rate Item for

Issued: June 22, 2010  
Effective: July 1, 2010  
Expiration: December 31, 2025

UP 4222

Page: 1 of 3  
Item: 100  
Continued on next page

Destination.

Loaded railcars shall not exceed the maximum gross-weight-on-rail ("GWOR") associated with the route of movement, but in no case greater than 286,000 lbs. In some corridors the GWOR will be less than 286,000 lbs. in which case Railroad will note in the applicable Rate Item the maximum weight capability on the route of movement.

Such railcars shall also meet or exceed the Association of American Railroads ("AAR") Interchange Rules, as amended from time to time, and shall have been inspected and approved by UP for safety in accordance with Federal Railroad Administration ("FRA") regulations, as amended from time to time. Railcars must also comply with Item 226 of UP 6602-series; 6603-series and 6605-series.

Transportation under this Tariff is subject to the provisions of the AAR Interchange Rules, including those rules governing railcar repair, maintenance, damage, or destruction, in a manner prescribed by the "Field Manual of Interchange Rules" and the "Office Manual of Interchange Rules" adopted by and currently in use by the AAR.

**Maximum Volume:** The maximum volume that Railroad will transport under each Rate Item is specified in the Rate Item.

**Trainsets:** UP reserves the right, in its sole judgement, to limit the number of trainsets that will be in service pursuant to each Rate Item in order to retain fluidity or to meet loading schedules, or if adding trainsets in active service would not materially increase delivered tonnage.

**Annual Volume Estimate:** For planning purposes. Shipper shall advise Railroad of its intent to ship under this Tariff as specified in Monthly Coal Tonnage Forecast. In addition, not later than July 1 each year, Shipper shall provide to Railroad an estimate of tons of Coal anticipated to be loaded in the next calendar year by month ("Annual Volume Estimate"). This information should include tons from each of its suppliers and origins as soon as it is known. The nominated tonnage must be ratable. A monthly nomination is ratable if it is no more than 10% greater or 10% less than one-twelfth of the annual total. If Shipper decides to begin shipments within any time-frame other than a full calendar year basis, then Shipper shall provide Railroad an Annual Volume Estimate for the remaining months of that calendar year, at least ninety calendar days prior to the first shipment, unless otherwise mutually agreed. The Annual Volume Estimate must be submitted electronically via UP's secured website ([www.uprr.com/customers/energy Bulk Train Planner](http://www.uprr.com/customers/energy/BulkTrainPlanner)), and may be revised at any time prior to October 1 each year.

**Service:** Railroad shall use reasonable efforts to transport Coal based on the circumstances when the transportation occurs. Railroad shall not be responsible for delays due to weather, track maintenance or construction, equipment failures, embargoes, Acts of God, labor activities, including strikes, denial of or limitation of access to track controlled by any party other than Railroad, excessive demand, or events outside the control of the Railroad. Railroad intends to use reasonable efforts to deliver the Annual Volume Estimate and the Monthly Coal Tonnage Forecast furnished by Shipper but has no binding obligation to comply with these planning estimates.

In no event shall Railroad be liable for any service guarantee. Further, to the extent allowed by law, under no circumstances will Railroad be liable for any direct, indirect, actual or consequential damages or any other liability, or additional costs of any kind arising out of or caused by service interruptions, reductions, or excessive demand.

**Freight Charges:** Freight charges shall be calculated based on the greater of the actual lading weight of all Coal in a train as determined by weighing pursuant to the rules in UP Circular 6602-series; 6603-series or 6605-series, or the minimum tender per shipment weight, which is specified by Destination in the Rate Item. Rates shall be subject to the fuel surcharge as published in Item 695-series of Tariff UP 6007-series, unless otherwise specified in the Rate Item.

**Payment:** Railroad may invoice Shipper by means of mail or electronic transfer of documentation. Shipper shall pay the amount invoiced by means of mail or electronic transfer of funds within 15 calendar days after date of invoice. Late payment and other credit terms shall be in accordance with UP's credit terms as published in Rule 62 of UFC 6000-series. If Shipper fails to pay in accordance with the requirements or if, in UP's sole discretion, adverse credit conditions occur which could affect Shipper's ability to meet payment terms, UP may revoke credit privileges and institute any one or more of the Revocation of Credit and Other Remedies procedures outlined in UFC 6000-series.

Issued: June 22, 2010  
Effective: July 1, 2010  
Expiration: December 31, 2025

UP 4222

Page: 2 of 3  
Item: 100  
Continued on next page

**Notices:** Notices to UP should be addressed to:

Attn: General Director- Logistics and Demand  
Union Pacific Railroad  
Marketing and Sales Energy Group  
Stop 1260  
1400 Douglas Street  
Omaha, NE 68179  
Fax (402) 501-0163

**Other General Rules:** Shipments made under this Tariff shall be subject to Circular UP 6602-series; 6603-series or 6605-series or their successors, which contain the General Loading Rules, Accessorial Charges and Fuel Surcharge for Coal Trains moving via UP, and related items.

Services or other matters not specifically addressed in this Tariff shall continue to be governed by and paid for in accordance with rules, regulations, statutory provisions and provisions of the applicable tariffs, rules circulars, publications or in other applicable rate and service terms established under 49 U.S.C. Section 11101 or 10702. Such rules, regulations and provisions, as amended from time to time, are herein incorporated by reference without being specifically listed. To the extent any such rules, regulations or provisions as they relate to the parties hereto are inconsistent with the terms of this Tariff, the terms of this Tariff shall govern. When reference is made in this Tariff to tariffs, circulars, items, notes, rules, etc., such references are continuous and include revisions and supplements to and successive issues of such tariffs, circulars, items, notes, rules, etc.

In the event of any conflict between the terms of this Tariff and the terms of the Rate Item, the provisions of the Rate Item shall govern.



UP 4222

Item: 6200-A  
Item Desc: UT, Lynndyl, IPA Generating Station

Exhibit No. 8  
Page 8 of 11

Unit Coal Trains from Origins in Utah  
to IPA Generating Station, Lynndyl, UT

For billing purposes, use the following rate authority: UP 4222-6200-A

STCC/GROUP	STCC	DESCRIPTION
11		Coal

Prices are subject to Fuel surcharges.

**GENERAL RULE ITEM 6200**

The Maximum Volume that Railroad will transport under this item is 6,500,000 Net Tons per calendar year.

Shipper shall provide its Annual Volume Estimate for 2011 to Railroad by December 31, 2010

Rates for trains interchanged to UP at Provo, Utah are contingent on utilization of UP locomotives and a new run-through power agreement between UTAH and UP.

**GENERAL APPLICATION RULES FOR ITEM 6200-A**

1. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks.
2. Mileage allowance payment on private equipment will not apply.
3. Free time to unload will be 6 hour(s).

**APPLICATION AND RATES**

**1. COLUMN 1 RATE APPLICATION RULES**

1. Rates are in U.S. dollars Per Net Ton.  
Subject to a minimum lading weight of 100 tons per car.  
Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).  
Price must be used in combination with other prices for the portion of the shipment prior to specified origin  
Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11, AND Applies when immediately prior movement was via rail on the UTAH.

**2. COLUMN 2 RATE APPLICATION RULES**

STCC: 11 Coal			
From: UT, PROVO			
To: UT, LYNDYL		7.27	UP

Issued: December 10, 2010  
Effective: January 1, 2011  
Expiration: December 31, 2025

UP 4222

Page: 1 of 3  
Item: 6200-A  
Continued on next page

APPLICATION AND RATES		
COMMODITY	RATE	APPLICATION RULES
1.		<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 115 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p> <p>Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11, AND Applies when immediately prior movement was via rail on the UTAH.</p>
STCC: 11 Coal		
From: UT, PROVO		
To: UT, LYNN DYL		7.13 UP

APPLICATION AND RATES		
COMMODITY	RATE	APPLICATION RULES
1.		<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 100 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p>
STCC: 11 Coal		
From: UT, SAVAGE		
To: UT, LYNN DYL		10.40 UP

APPLICATION AND RATES		
COMMODITY	RATE	APPLICATION RULES
1.		<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 115 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p>
STCC: 11 Coal		
From: UT, SAVAGE		
To: UT, LYNN DYL		10.20 UP

APPLICATION AND RATES		
COMMODITY	RATE	APPLICATION RULES
1.		<p>Rates are in U.S. dollars Per Net Ton.</p> <p>Subject to a minimum lading weight of 100 tons per car.</p> <p>Applies if minimum tender per shipment is 91 Car(s) and maximum not greater than 104 Car(s).</p>



# Union Pacific Railroad

