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FD-32760

(SUB 21)

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Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 32760 (Sub-No. 21)



**UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY -- OVERSIGHT**

**COMMENTS OF THE STATE OF UTAH ON
UNION PACIFIC'S FIFTH ANNUAL OVERSIGHT REPORT**

The State of Utah hereby provides the following comments in response to the "Union Pacific's Fifth Annual Oversight Report" filed by Union Pacific Corporation, Union Pacific Railroad Company ("UP"), and Southern Pacific Rail Corporation ("SP") (collectively "UP/SP"), UP/SP-384, dated July 2, 2001 (the "Report"). The State of Utah files these comments pursuant to the procedural schedule for the fifth year of oversight of the UP/SP merger established by the Surface Transportation Board ("STB" or "Board") in its December 15, 2000 decision. *Union Pac. Corp. et al - Control and Merger - Southern Pac. Rail Corp. et al.* Finance Docket No. 32760 (Sub-No. 21), Decision No. 16 (STB served Dec. 15, 1996) ("General Oversight Dec. No. 16") at 14.

The State of Utah is very appreciative of the contribution the Union Pacific Railroad has made to our economic development and standard of living over the last 132

years, and we look forward to many more years of a mutually beneficial relationship. The State of Utah has a continuing interest, however, in the impact from the UP/SP merger on the state. During the merger proceeding, the State of Utah, through its Governor, Governor Leavitt, requested that the Board impose certain conditions on the approval of the UP/SP merger. The conditions requested by Utah included: (1) placing The Burlington Northern Santa Fe Railway ("BNSF") trackage rights fee; (2) requiring an annual audit, paid for by UP/SP, of Utah rail rates; and (3) and establishing an oversight of at least 15 years. *See Union Pac. Corp. et al - Control and Merger - Southern Pac. Rail Corp. et al.*, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996) ("Decision No. 44") at 84.

In the STB's decision approving the UP/SP merger, the STB denied the conditions requested by the State of Utah primarily on the basis that the STB believed the requests were not competitively warranted. Decision No. 44 at 198. The STB's decision also stated that the oversight request "envisions an oversight regime lasting far longer than we hope will be necessary." *Id.* Utah agrees that it would be better for the State of Utah if no further oversight was necessary. However, the State of Utah believes that the oversight of the UP/SP merger should not be terminated at the end of this five year period. The State of Utah requests that the oversight be continued. In support of the State of Utah's request for the UP/SP merger oversight to continue, Utah submits a letter from Utah Governor Michael O. Leavitt, attached as Exhibit 1, and separate letters from Utah's United States Senators, Senator Orrin G. Hatch and Senator Robert Bennett.

In the Board's General Oversight Dec. No. 16, the STB stated that parties with competitive concerns should "present concrete evidence" of the competitive harm. *See*

General Oversight Dec. No. 16 at 10. This is exactly what the State of Utah is trying to complete. Accordingly, the State of Utah requests that the Board extend the oversight for another year and then reevaluate whether the oversight should be continued for another year. This process will not create a huge burden on UP and does not prejudice UP's service or operations. Instead, this process will give parties, such as the State of Utah, time to achieve resolution of outstanding issues regarding the merger.

During the continued oversight, the STB should continue to monitor the competitive impacts of the merger on the Central Corridor¹ and Utah in particular. The UP/SP's Western service crisis in 1997 and 1998, while over now, made a huge portion of time of the five year oversight unavailable for UP to focus on anything but service issues. As a result, parties such as the State of Utah, are still negotiating an agreement with the UP on ways in which to monitor and fix any competitive problems resulting from the merger. For example, UP and the State of Utah are still negotiating the implementation of the Utah rail rates audit that the State of Utah requested during the merger. See Exhibit 1, attachment A. (Letter between Governor Michael O. Leavitt and Richard Davidson, Chairman of the Union Pacific Railroad). Thus, the oversight should be continued to review the results of the Utah rate audit and to impose any relief as merited by the audit.

In addition, Utah believes that there has not been sufficient oversight of the UP/SP merger to fully assess the ability of the BNSF to be an effective competitor to UP in the Central Corridor. The State of Utah continues to be concerned that the BNSF trackage

¹ The Central Corridor means the rail line between Denver, Colorado and Northern California.

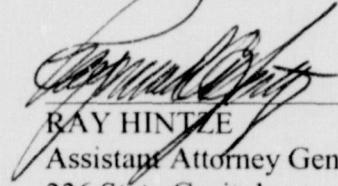
rights fee has not sufficiently permitted BNSF to be an effective competitor in the Central Corridor and for shipment of Utah coal. Utah believes that the competitive conditions imposed by the STB in the UP/SP merger should mandate that competition in the Central Corridor and Utah be vigorous and robust. There has not been sufficient evidence to maintain that there is such competition between UP/SP and BNSF in the Central Corridor or Utah. The Utah rate audit will be one method to determine the existing level of competition between UP/SP and BNSF. As a result, the STB should continue the oversight to evaluate these concerns.

CONCLUSION

The State of Utah is still anxious to work with UP, BNSF and the STB to resolve the competitive issues resulting from the UP/SP merger. Utah respectfully requests that the STB continue the oversight of the UP/SP merger to facilitate and protect Utah's interests in the competitive climate resulting from the UP/SP merger.

Respectfully submitted,

FOR THE STATE OF UTAH

A handwritten signature in dark ink, appearing to read "Ray Hinkle", is written over a horizontal line.

RAY HINTLE

Assistant Attorney General

236 State Capitol

Salt Lake City, UT 84114



STATE OF UTAH

OFFICE OF THE GOVERNOR
SALT LAKE CITY

84114-0601

MICHAEL O. LEAVITT
GOVERNOROLENE S. WALKER
LIEUTENANT GOVERNOR

August 15, 2001

The Honorable Linda J. Morgan, Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

**Re: Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corp., et al. –
Control and Merger – Southern Pacific Rail Corp., et al. -- Oversight**

Dear Chairman Morgan:

The State of Utah is very appreciative of the contribution the Union Pacific Railroad ("UP") has made to our economic development and standard of living over the last 132 years, and we look forward to many more years of a mutually beneficial relationship. I am writing to you at this time, however, to express my continued interest in the impact on the State of Utah resulting from the merger of UP and the Southern Pacific Railroad ("SP"), collectively ("UP/SP"). As you will recall, prior to the Surface Transportation Board's ("STB") approval of the UP/SP merger I requested that the STB impose certain conditions on the merger. These conditions included: (1) reducing The Burlington Northern Santa Fe Railway ("BNSF") trackage rights fee; (2) requiring an annual audit, paid for by UP/SP, of Utah rail rates; and (3) and establishing an oversight of at least 15 years.

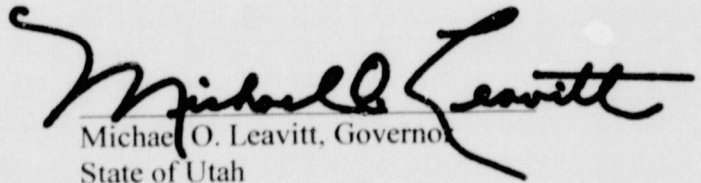
In the STB's decision approving the UP/SP merger, the STB denied these requested conditions primarily on the basis that the STB believed the requests were not competitively warranted. The STB's decision also stated that the oversight request "envisions an oversight regime lasting far longer than we hope will be necessary." While I agree that it would be better for the State of Utah if no further oversight was necessary, I do not believe that the oversight of the UP/SP merger should be terminated at the end of this five year period. On behalf of the State of Utah, I request that the oversight be continued.

During the continued oversight, the STB should continue to monitor the competitive impacts of the merger on the West and Utah in particular. The UP/SP's western service crisis in 1997 and 1998, while over now, made a large portion of time of the five year oversight unavailable for UP to focus on anything but service issues. As a result, parties such as the State

of Utah, are still negotiating an agreement with the UP on ways in which to monitor and fix any competitive problems resulting from the merger. For example, UP and the State of Utah are still negotiating on the implementation of the Utah rail rates audit that the State of Utah requested during the merger. See attachment A to this letter. (Letter between Richard Davidson, Chairman of the Union Pacific Railroad, and me). Thus the oversight should be continued to review the results of the Utah rate audit and to monitor any relief merited by the audit.

In addition, there has not been sufficient oversight of the UP/SP merger to fully assess the ability of the BNSF to be an effective competitor to UP in the Central Corridor (the Central Corridor means the rail line between Denver and Northern California). I continue to be concerned that the BNSF trackage rights fee has not sufficiently permitted BNSF to be an effective competitor in the Central Corridor for most commodities, including Utah coal. I believe that the competitive conditions imposed by the STB in the UP/SP merger should mandate that competition in the Central Corridor and Utah should be vigorous and robust. There has not been sufficient evidence to maintain that there is such competition between UP/SP and BNSF in the Central Corridor or Utah. The Utah rate audit agreement will be one method to determine the existing level of competition between UP/SP and BNSF. As a result, the STB should continue the oversight to evaluate these concerns.

Thank you for your attention to the concerns of the State of Utah. Utah is anxious to work with UP, BNSF and the STB to resolve the competitive issues resulting from the UP/SP merger. Utah looks forward to taking an active role in the review of the Utah rates audit and further assessing the competitive situation in the Central Corridor and Utah. The STB should continue the oversight of the UP/SP merger to facilitate and protect Utah's interests in the competitive climate resulting from the merger.



Michael O. Leavitt, Governor
State of Utah
210 State Capitol
Salt Lake City, UT 84114
801-538-1000

cc: Vice Chairman William Clyburn, Jr.
Commissioner Wayne G. Burkes

UNION PACIFIC CORPORATION



DICK DAVIDSON
PRESIDENT AND
CHIEF OPERATING OFFICER

June 27, 1996

The Honorable Michael O. Leavitt
210 State Capitol
Salt Lake City, Utah 84114

Dear Governor Leavitt:

To allay your concerns that Utah shippers will be disadvantaged compared to similarly situated shippers in other states with respect to future rail rates as a result of our proposed merger with the Southern Pacific, Union Pacific is willing to make the following commitment in consideration for your support of our merger:

Union Pacific agrees that for a period of ten years following consummation of our merger with the Southern Pacific, we will not increase our rail rates to shippers terminating or originating traffic in Utah by a percentage greater than increases for comparable shippers (comparability being determined by the usual factors, i.e., product and geographic market, length of haul, volume, cost and length of contractual commitment) located in other states in our rail system.

Compliance with this commitment will be verified by an audit conducted at the State's request no more than annually by an independent auditor mutually agreeable to Union Pacific and the State of Utah, the cost of which will be divided between us. Should the auditor find that any rates are in noncompliance, taking into account the above-mentioned comparability factors, he shall recommend appropriate adjustment in the form of restitution in the amount of the overcharge which shall be paid by Union Pacific to any affected shippers.

Obviously, given the highly-sensitive nature of the rate data to be reviewed by such an auditor, it is imperative that the data and the results of the audit be kept strictly confidential.

I trust that this will satisfy your concerns and that you and Utah will support our merger.

Very truly yours,

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments Of The State of Utah on Union Pacific's Fifth Annual Oversight Report were served this 17th day of August, 2001, by first class mail, postage prepaid or hand delivery, on all parties of record before the Surface Transportation Board in STB Finance Docket No. 32760 (Sub-No. 21).

Bridget Fine

STB

FD-32760

(SUB 21)

8-17-01

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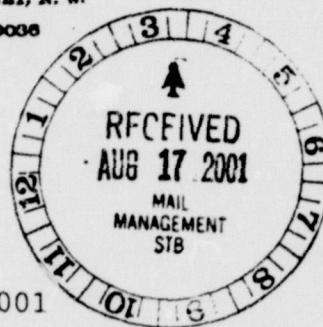
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August 17, 2001

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001

203164

Re: Finance Docket No. 32760, Union Pacific Corporation,
et. al. -- Control and Merger -- Southern Pacific
Transportation Company et. al., and Finance Docket
No. 32760 (Sub No. 21) - Oversight — 203165

Dear Secretary Williams:

Enclosed for filing in the above-referenced case please
find an original and twenty-five (25) copies of the Comments and
Objections of Entergy Services, Inc. and Entergy Arkansas, Inc.
("Entergy") on the "Amended and Restated BNSF Settlement Agreement"
(ESI-33).

Please note that Entergy's Comments and Objections are
being filed under seal, as they contain confidential information
relating to settlement arrangements between Entergy and Union Pa-
cific. Accordingly, also enclosed herewith are twenty-five (25)
copies of Entergy's Comments and Objections in redacted form, suit-
able for public dissemination (ESI-34).

A diskette containing Entergy's filing (both confidential
and redacted) in WordPerfect format is enclosed.

Sincerely,

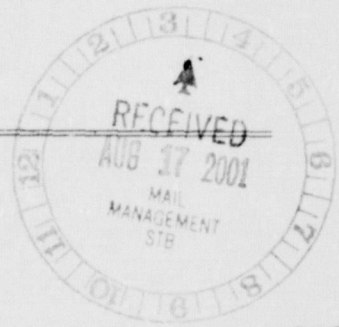
Donald G. Avery
An Attorney for Entergy Ser-
vices, Inc. and Entergy Arkan-
sas, Inc.

ENTERED
Office of the Secretary

AUG 17 2001

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



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)
RAILROAD COMPANY)

Finance Docket No. 32760 — 203164

UNION PACIFIC CORPORATION,)
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RAILROAD COMPANY)

Finance Docket No. 32760 — 203165
(Sub-No. 21)

(OVERSIGHT)

ENTERED
Office of the Secretary

AUG 17 2001

Part of
Public Record

COMMENTS AND OBJECTIONS OF
ENTERGY SERVICES, INC. AND ENTERGY ARKANSAS, INC.
REGARDING A SUBSTANTIVE CHANGE PROPOSED BY UP
TO THE UP/BNSF SETTLEMENT AGREEMENT

ENTERGY SERVICES, INC. and ENTERGY ARKANSAS, INC.
(collectively, "Entergy"), by their undersigned attorneys,
respectfully submit these, their comments and objections regard-
ing a substantive change proposed by Union Pacific Railroad
Company, et al. ("UP") to the "BNSF Settlement Agreement" under

which the Burlington Northern and Santa Fe Railway Company ("BNSF") provides a competitive alternative to UP as required by the Board's decision approving the UP-SP merger.

SUMMARY

As explained more fully below, Entergy's particular objection is to a change proposed by UP in § 6(c) (to be renumbered § 6(d)) of the Agreement, which as presently drafted allows BNSF to move freely between its own lines and the UP trackage rights lines, even on the otherwise-restricted portions of those lines running north from Bald Knob and Fair Oaks, Arkansas to the St. Louis Gateway. UP's change would abrogate that unfettered entry/exit right on its lines north of Bald Knob and Fair Oaks, thereby increasing the cost -- and reducing the competitiveness -- of BNSF service to Entergy's coal-fired electric generating station at White Bluff, Arkansas.

UP's proposed change to § 6(c) can have no purpose other than to restrict BNSF's ability to compete on an even playing field for Entergy's, and perhaps other shippers', traffic. By increasing the distance BNSF's trains must travel to reach White Bluff, UP's proposed change could significantly lengthen BNSF's cycle times on Entergy's traffic, increasing both BNSF's cost of service and Entergy's cost of equipment in comparison to those experienced with the competing UP service to White Bluff. Indeed, UP's change would effectively prevent BNSF from replicating, insofar as possible, the competitive alternative that SP offered for Entergy prior to the merger. UP's change

would thus conflict with the Board's goal of making post-merger BNSF-UP competition under the BNSF Settlement Agreement as effective as UP-SP competition would have been, had the merger not taken place. Moreover, by needlessly interfering with efficient BNSF service to White Bluff, UP's change would also undermine the commitments it made directly to Entergy just last year, in the context of settling court litigation between them. For both of these reasons, the Board should unequivocally reject UP's proposed change to § 6(c).¹

BACKGROUND

1. BNSF Trackage Rights, Houston-St. Louis Gateway. The final pre-merger version of the BNSF Settlement Agreement, filed in Finance Docket No. 32760 on June 28, 1996 (UP/SP-266, Exhibit A), granted BNSF a broad array of trackage rights over substantial portions of both UP's and SP's rail systems, in order to mitigate the loss of competition that would otherwise result from the proposed merger. Among the lines included in that grant were

¹BNSF, in addition to opposing UP's change in Section 6(c), has also proposed its own change, the effect of which would be to eliminate completely the existing restrictions on its entry and exit from the UP trackage north of Bald Knob/Fair Oaks. Under BNSF's proposal, it would be free to enter and exit, not only at junctions with its own, existing lines (and trackage rights lines), but also at junctions with new lines and lines owned by third parties.

As a matter of principal Entergy supports the changes advocated by BNSF, as they would increase BNSF's ability to compete with UP and thereby improve competition for shippers generally. However, because such further expansion would not directly affect Entergy, Entergy's primary focus must remain on preserving BNSF's existing entry/exit rights.

UP's and SP's lines running between Houston, Texas and the St. Louis area, via Pine Bluff and Little Rock, Arkansas, and Memphis, Tennessee. BNSF also received trackage rights over various connecting segments in the same areas, including UP's line between Little Rock and Pine Bluff. BNSF Settlement Agreement, § 6(a).

The trackage rights BNSF received under the Settlement Agreement - including those between Houston and St. Louis - were for the most part overhead rights, except that (as augmented by subsequent STB decisions) BNSF was also given access to new facilities and to "2-1" shippers and short line railroads (including those that would have had an opportunity to obtain 2-carrier competition via a build-out).² However, § 6(c) of the Agreement imposed an additional restriction on the northern portion of the Houston-St. Louis route, providing that "[e]xcept as provided in Section 9 of this Agreement," BNSF would not be allowed to enter or exit the portion of these lines situated north of Memphis, but rather would have to traverse the entire distance between Memphis and the St. Louis Gateway.³

²Several points at which the parties agreed such 2-1 competition had been present were identified in Appendix A to the Settlement Agreement, and included Pine Bluff.

³UP refers to this as the "Bald Knob/Fair Oaks" limitation, apparently because those stations are at about the same latitude as Memphis on the UP lines actually used for most of the BNSF movements. One of the other changes UP now proposes is to substitute references to those stations for the present reference to Memphis.

Section 9(c), to which the § 6(c) entry/exit restriction was expressly made subject, provided that notwithstanding the overhead nature of most of the trackage rights BNSF was receiving, BNSF would always have the right to enter and exit UP's tracks where they intersected with BNSF's then-existing lines.⁴ The net effect, then, of the Memphis-St. Louis restriction on entry and exit was to preclude BNSF from connecting with the lines of other carriers between those points, including short lines, even if it subsequently acquired ownership of or operating rights over such carriers' lines.⁵

2. BNSF Service to White Bluff. As the Board is aware, Entergy owns and operates a coal-fired electric generating

⁴Section 9(c) reads in pertinent part as follows:

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 lines it will purchase or be granted trackage rights over pursuant to this Agreement.

"First Supplemental Agreement" dated November 18, 1995 (amending the initial settlement agreement between UP and BNSF, dated September 25, 1995), at 7.

⁵Examples of such prohibited entry/exit points would be UP's connection with the Missouri & Northern Arkansas Railroad at Diaz, AR, and its connection with the Jackson & Southern Railroad at Delta, MO.

Initially, UP argued that the § 6(c) restriction also precluded BNSF from serving new shipper facilities on its lines north of Memphis, notwithstanding the broad access BNSF otherwise received to such facilities on other trackage rights lines, but the Board rejected that argument in its Decision No. 61, served November 20, 1996 (at sheet 11).

station known as the White Bluff Station, which is located on UP's Pine Bluff-Little Rock line, just north of Pine Bluff, Arkansas. UP controls the only rail line directly accessing White Bluff, and accordingly UP has always handled the delivery of coal to White Bluff. Since 1984 such deliveries have been covered by rail transportation contracts.

Because SP had also operated through nearby Pine Bluff prior to the UP/SP merger (and indeed had served the US Government's Pine Bluff Arsenal, which is located between White Bluff and Pine Bluff), thus giving Entergy a pre-merger build-out opportunity, the Board's decision approving the UP/SP merger not only awarded BNSF trackage rights to and through Pine Bluff as SP's replacement, but additionally allowed Entergy to obtain BNSF service by building out to the BNSF trackage rights lines. Union Pacific et al. - Control and Merger - Southern Pacific et al., Decision No. 44, 1 S.T.B. 233, at 429-30 and 469 (1996) ("UP/SP," Decision No. 44).

In the fall of 1997, UP's mushrooming service problems created significant disruptions in its delivery of coal to Entergy, and ultimately led Entergy to file suit against UP in federal court for breach of contract.⁶ While the court litiga

⁶The saga of Entergy's problems with UP and of the resultant litigation between them has been recounted in several filings in these proceedings and others, including, among others, these Finance Dockets (Petition of Entergy Services, Inc. and Entergy Arkansas, Inc. for Modification of Decision No. 44 or, in the Alternative, for Additional Condition, filed October 23, 1997), See also STB Ex Parte No. 573 and Service Order Nos. 1518 and 1518 (Sub-No. 1), Rail Service in the Western United States,

(continued...)

tion proceeded during the ensuing 2-3/4 years, Entergy also began its efforts to obtain access to BNSF as an alternative to UP for its coal delivery requirements at White Bluff. Such efforts, resisted vigorously by UP at every turn, included its successful prosecution of two actions before the Board: (1) a declaratory order proceeding to confirm Entergy's right to access BNSF by connecting to a former SP track near the Arsenal rather than building all the way into downtown Pine Bluff (UP/SP Decision No. 88, served March 21, 2000) and (2) a railroad construction proceeding authorizing that build-out (Finance Docket No. 33782, Entergy Arkansas and Entergy Rail - Construction and Operation Exemption - White Bluff to Pine Bluff, AR, Decision served May 4, 2000).

Last summer, Entergy and UP reached agreement on the settlement of Entergy's lawsuit. As part of that settlement, XX
 XX
 XX XXXXXXX XXXX X.

In reliance on UP's commitment, Entergy and BNSF have negotiated the terms of a rail transportation contract covering BNSF deliveries of Powder River Basin coal to White Bluff. However, BNSF has advised Entergy that UP's proposed modification of § 6(c) of the Settlement Agreement, if adopted by the Board,

⁶(...continued)
 Statement of Entergy Services, Inc. and Entergy Arkansas, Inc. (filed October 23, 1997), Second Supplemental Statement and Additional Request for Emergency Relief of Entergy Services, Inc. and Entergy Arkansas, Inc., filed May 18, 1998, and Petition for Service Order by Entergy Services, Inc. and Entergy Arkansas, Inc., filed July 28, 1998.

would seriously degrade the efficiency of BNSF's proposed service to White Bluff.

The problem created by UP is this: BNSF's most efficient routing for unit coal trains to White Bluff is to move loaded trains via its own lines to Jonesboro, Arkansas, thence southbound with the directional flow of UP traffic over the former SP line through Fair Oaks to Pine Bluff, then north over UP's Pine Bluff-Little Rock line to the White Bluff turnout. Empty trains would then move back onto the Pine Bluff-Little Rock line and continue north to Little Rock, where they would transfer to the northbound UP line from Houston to St. Louis and move -- again, with the flow of traffic -- through Bald Knob to Hoxie, Arkansas. At Hoxie they would exit back onto BNSF's own lines for the return movement to the PRB. UP, however, insists that BNSF may not enter or exit its lines at either Jonesboro or Hoxie, but rather must continue on its own lines all the way to Memphis before entering or leaving UP. This would force BNSF to operate over a significantly more circuitous and expensive routing.

As we shall see, UP's position has no basis in the current Settlement Agreement, and in fact runs directly counter to the express language of that Agreement. Its proposed change to § 6(c) is plainly designed to ratify, after the fact, the anticompetitive position it is taking, and thereby enhance its inherent advantage, as track owner and operator, in the nascent competition for Entergy's coal traffic.

ARGUMENT

I. BNSF PLAINLY HAS THE RIGHT TO SERVE WHITE BLUFF VIA ITS CONNECTIONS AT JONESBORO AND HOXIE.

A. The Unambiguous Language of the BNSF Settlement Agreement Authorizes BNSF to Enter and Exit the Trackage Rights Lines at Any and All Points Where They Intersect with BNSF's Own Lines, Including Hoxie and Jonesboro.

UP does not deny that BNSF has the right to use UP's tracks to deliver coal to Entergy's generating station at White Bluff once the requisite connection is completed. It does not deny that, in the Houston-St. Louis corridor, BNSF may use both the former SP line and the former UP line for such purposes, in order to avoid running against the directional flow of UP's traffic. It does not even deny that BNSF may use its "restricted" tracks north of Bald Knob and Fair Oaks for such purposes -- provided BNSF enters those tracks at one end or the other. Nevertheless, it insists that BNSF may NOT serve White Bluff via the connections at Jonesboro and Hoxie. Why? Because, UP blithely asserts, Jonesboro and Hoxie are north of Bald Knob and Fair Oaks, and under § 6(c) "BNSF ... may not move trains between its own lines and the UP trackage north of those two points [i.e., Bald Knob and Fair Oaks]. See UP/SP-266, Ex. A, §5d, p. 12 (amending §6c of the Agreement)." UP/SP-387, at 15.

In fact current § 6(c) has precisely the opposite effect -- it explicitly permits BNSF to enter and exit UP's lines north of Bald Knob and Fair Oaks, provided only that BNSF is entering from or exiting to its own existing lines (including

trackage rights lines). The very sentence in § 6(c) that imposes the intermediate entry/exit restriction makes this exception to the restriction clear by beginning "[e]xcept as provided in Section 9(....)"⁷ As previously noted, § 9(i) is the provision that authorizes BNSF entry and exit at all connections with its own lines.

UP offers no explanation for its apparent belief that the cross-reference to § 9(i) should be read out of § 6(c); it simply ignores the provision (though its proposed revision of the Agreement would delete it). In any event, because the language of the BNSF Settlement Agreement unambiguously grants BNSF the right to use the Jonesboro and Hoxie connections, there is no need for resort to extrinsic evidence of the parties' intent;⁸ the Board can and should forthwith confirm that right, and direct UP to allow BNSF's proposed routing of its White Bluff coal trains via those connections.

⁷The sentence in question, which appears at page 12 of Exhibit A to UP/SP-266, reads in full as follows:

Except as provided in Section 9(of this Agreement, BNSF shall not have the right to enter or exit at intermediate points between Memphis and Valley Junction, IL.

As noted *supra* at footnote 3, the reference to Memphis in § 6(c) has apparently been construed as meaning Bald Knob and Fair Oaks on the UP and SP lines, respectively.

⁸See, e.g., 3 Corbin on Contracts § 573 (1960); Restatement (2nd) of Contracts § 215 (1981).

B. UP Offers No Evidence that the Parties Intended § 6(c) to Preclude BNSF Entry or Exit at its Own Lines, Contrary to its Plain Language.

Even if existing § 6(c) of the BNSF Settlement Agreement were deemed ambiguous (which it is not), so that resort to extrinsic evidence of intent would be appropriate, the Board would still have to conclude that BNSF has the right to enter and exit the trackage rights lines at Jonesboro and Hoxie. This is so because UP offers no evidence whatsoever that the three parties to the negotiations leading to the Agreement -- UP, BNSF, and the Chemical Manufacturers' Association ("CMA") -- shared an intent that such entry and exit, the norm everywhere else on the trackage rights BNSF and UP were granting one another, would not be available on these particular track segments.⁹ This silence further undercuts UP's claim that the current Agreement precludes BNSF's use of the Hoxie and Jonesboro connections.

⁹UP's witness Rebensdorf states only that "[n]o one in the UP/SP proceeding ever suggested that BNSF needed a more direct route for traffic to and from any point other than St. Louis Gateway traffic," and that accordingly BNSF's use of the tracks north of Bald Knob and Fair Oaks was to be limited to traffic going all the way to St. Louis. (UP/SP-387, "Verified Statement of John H. Rebensdorf" ("Rebensdorf"), at 4.)

Mr. Rebensdorf's testimony is perhaps most significant for what he does not say. Mr. Rebensdorf does not say that the parties discussed BNSF's entry/exit rights vis-a-vis its own lines north of Bald Knob and Fair Oaks, and agreed that BNSF would not have such rights; indeed, he does not even say that UP itself focused on the matter and intended to prohibit such entry and exit.

II. UP'S PROPOSED ELIMINATION OF BNSF'S ENTRY/EXIT RIGHTS AT JONESBORO AND HOXIE WOULD UNDERMINE BNSF'S ABILITY TO COMPETE FOR ENTERGY'S COAL TRAFFIC AT WHITE BLUFF, CONTRARY TO BOARD DIRECTIVES THAT BNSF COMPETITION BE AN EFFECTIVE SUBSTITUTE FOR THE UP-SP COMPETITION THAT WAS LOST.

As noted earlier, UP's proposed amendment of § 6(c) is clearly intended to achieve what its untenable reading of the current provision cannot -- a complete ban on BNSF's entry or exit at intermediate points north of Bald Knob and Fair Oaks, even where the connection is with BNSF's own lines. However, this change is not simply anti-competitive, it runs directly against one of the Board's oft-stated goals in imposing the BNSF settlement as a condition on the UP/SP merger -- that BNSF-UP competition be as complete and effective as UP-SP competition could have been, had the merger not taken place. See e.g., UP/SP Decision No. 44, 1 S.T.B. at 384 and 419; UP/SP Decision No. 75, 2 S.T.B. 697, 699 (1997); UP/SP, Oversight Decision No. 10, 2 S.T.B. 703, 704-05 (1997).

Had SP and UP remained competitors, and had Entergy built out to SP to obtain direct SP service at White Bluff, SP could have offered such service in partnership with BNSF, from their connection at Jonesboro, and the resulting route would have been less circuitous than the route via Memphis that UP now seeks to impose on BNSF.

In order for BNSF to be able to compete with the same level of efficiency as a through BNSF-SP route could have but for the merger, BNSF must be allowed to replicate, insofar as possi-

ble, the same route and operational conditions. But for UP's post-merger imposition of directional flows, this would simply have required routing BNSF trains to White Bluff in both directions over the Jonesboro connection. Under directional flow conditions, however, BNSF must be allowed to substitute the paired northbound route and connection, i.e., UP's line to the connection at Hoxie.¹⁰ By preventing BNSF from routing its trains returning from White Bluff in that manner, UP's proposed amendment of § 6(c) would give itself a cost advantage vis-a-vis BNSF that it would not have enjoyed against a BNSF-SP through movement. This, by itself, should be enough to warrant rejection of UP's change.

III. UP'S PROPOSED AMENDMENT OF § 6(c), BY INTERFERING WITH BNSF'S ABILITY TO SERVE WHITE BLUFF EFFICIENTLY, WOULD UNDERMINE UP'S COMMITMENTS TO ENTERGY.

Finally, as noted earlier, just last year UP promised
Entergy XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXX
XX
XX
XX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXX
XX
XX
XXXX.

¹⁰It is worthy of note that the BNSF Settlement Agreement itself recognizes the need for BNSF to have access to both tracks in order to deal with directional flows efficiently. See Rebensdorf, *supra* footnote 9, at 2-3. UP's proposed change to prohibit BNSF's exit or entry at Hoxie and Jonesboro would prevent BNSF from using that recognized right on the White Bluff traffic.

At the time UP made those commitments to Entergy, BNSF had the right pursuant to § 9(i) of the BNSF Settlement Agreement to use the Jonesboro and Hoxie connections in providing such service. Entergy does not claim XXXXX XXXXXXXXXXXX XXXXXXXXXXX XXX XX XXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXX XX X XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXX XXXXX XXXXXXXXXXXXXXXXXXXX XXXXX.¹¹ However, it is hornbook law that a contracting party undertakes an implied obligation of good faith in carrying out its commitments, and violates that commitment when it takes deliberate action not contemplated by the contract to interfere with the other party's enjoyment of its bargained-for benefits. Restatement (2d) of Contracts § 205, Cmt. d (1981) (the obligation of good faith includes the avoidance of "interference with or failure to cooperate in the other party's performance"); Calamari and Perillo, Contracts § 11-38, at 510 (3rd ed. 1987). UP's efforts to reroute BNSF trains to White Bluff via an inefficient Memphis connection, if successful, would significantly reduce the benefits afforded Entergy by the BNSF service.¹²

¹¹XXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX XX XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX.

¹²To put the added circuitry that UP's proposed amendment of § 6(c) would cause in perspective, note that, according to the Rand McNally "Handy Railroad Atlas" (1988) map for Arkansas, BNSF's proposed routing would have its loaded trains travel a total of 157 miles over UP from Jonesboro to the White Bluff turnout, and 144 in the empty direction from the turnout to Hoxie, for a grand total of 301 miles. If forced to comply with UP's proposed restrictions, however, the distance from Jonesboro
(continued...)

The Board is, of course, not a court of law charged with enforcement of contracts or punishment of those who violate contracts. Nevertheless, the Board has committed itself during the oversight process to reviewing "vigilant[ly]" the implementation of the BNSF Settlement Agreement, and to taking all appropriate actions to remedy any dispute that "threatens to impede the ability of BNSF to provide competitive service" under the Agreement. UP/SP Oversight Decision No. 10, *supra*, 2 S.T.B. at 705, 711-12. Entergy respectfully submits that the Board should avoid becoming an unwitting partner in UP's undermining of its settlement with Entergy by sanctioning UP's proposed change to § 6(c). For this reason, as well as for the reasons discussed above, the Board should reject UP's attempt to eliminate BNSF's intermediate exit and entry rights at Jonesboro and Hoxie.

WHEREFORE, Entergy respectfully requests that the Board (1) confirm that BNSF has the right, under the present BNSF Settlement Agreement, to enter and exit UP trackage at Jonesboro and Hoxie, and (2) reject UP's proposal to delete the provisions of § 6(c) that give BNSF that right.

¹²(...continued)
to the turnout will swell to 214, while the distance from the turnout to Hoxie will increase to 253, for a grand total of 467 miles and an aggregate increase of 166 miles, or 55% of the BNSF-route mileage for this portion of the movement.

Respectfully submitted,

ENTERGY SERVICES, INC. and
ENTERGY ARKANSAS, INC.

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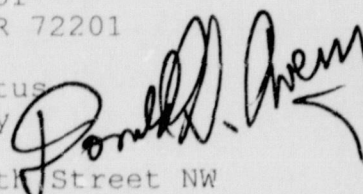
Of Counsel:

Slover & Loftus
1224 17th Street NW
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Dated: August 17, 2001

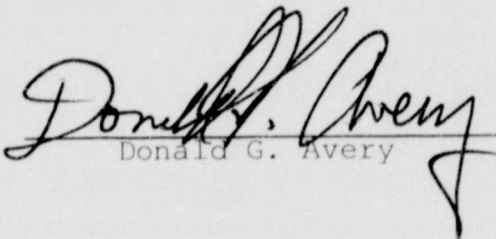
C. Michael Loftus
Donald G. Avery
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(202) 347-7170

A handwritten signature in dark ink, appearing to read "Donald G. Avery", is written over the typed name and address of Donald G. Avery.

Certificate of Service

I hereby certify that I have this 17th day of August, 2001, caused copies of the foregoing document to be served upon counsel for Union Pacific Railroad Company, and redacted copies to be served upon all other parties of record in Finance Docket No. 32760 (Sub-No. 21), by first class United States mail, in accordance with the Board's Rules of Practice.


Donald G. Avery

STB

FD-32760

(SUB 21)

8-17-01

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203161

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August 17, 2001

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001

Re: Finance Docket No. 32760, Union Pacific
Corporation, et. al. -- Control and Merger --
Southern Pacific Transportation
Company et. al. and Finance Docket No. 32760 — 203161
(Sub No. 21) - Oversight

Dear Secretary Williams:

Enclosed for filing in the above-referenced case please
find an original and twenty-five (25) copies of Comments of City
Public Service Board of San Antonio, Texas On The Restated and
Amended BNSF Settlement Agreement (CPSB-15).

Also enclosed is a diskette containing the filing in
Word Perfect format. Please date stamp the extra copy of this
filing and return it to our messenger.

Thank you for your attention to this matter.

Respectfully submitted,

John H. LeSeur

John H. LeSeur
An Attorney for City Public
Service Board of San Antonio,
Texas

JHL:cef
Enclosures

ENTERED
Office of the Secretary

AUG 17 2001

Part of
Public Record

CPSB-15

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNION PACIFIC CORPORATION, UNION
PACIFIC RAILROAD COMPANY, AND
MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER -- SOUTHERN
PACIFIC RAIL CORPORATION, SOUTHERN
PACIFIC TRANSPORTATION COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE
DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

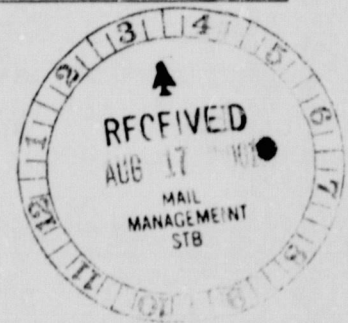
Finance Docket No. 32760 -- 203160
and Finance Docket
No. 32760 (Sub-No. 21) -- 203161
Oversight

COMMENTS OF THE
CITY PUBLIC SERVICE BOARD
OF SAN ANTONIO, TEXAS ON THE
RESTATED AND AMENDED
BNSF SETTLEMENT AGREEMENT

ENTERED
Office of the Secretary

AUG 17 2001

Part of
Public Record



CITY PUBLIC SERVICE BOARD
OF SAN ANTONIO, TEXAS
P.O. Box 1771
San Antonio, Texas 78296

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

By: William L. Slover
John H. LeSeur
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: August 17, 2001

Attorneys for City Public
Service Board of San Antonio

COMMENTS OF THE
CITY PUBLIC SERVICE BOARD
OF SAN ANTONIO ON THE
RESTATED AND AMENDED
BNSF SETTLEMENT AGREEMENT

In Decision No. 44, the Board imposed conditions relating to transportation service for City Public Service Board of San Antonio, Texas (the "CPSB Conditions"). See 1 S.T.B. 233, 469-71 (1996). The STB ordered CPSB, BNSF and UP to jointly negotiate and submit to the Board agreed-upon terms respecting implementation of the CPSB Conditions. Id. at 548.

UP and CPSB presented agreed-upon terms implementing the CPSB Conditions on August 23, 1996 (UP/SP-273/CPSB-9). BNSF concurred in these agreed upon terms with one exception relating to certain UP-imposed service restrictions on a line of track called "Track No. 2." See Decision No. 52, 1 S.T.B. 623, 627 (1996).

On September 10, 1996, the Board issued the following order concerning the CPSB Conditions:

2. BNSF is directed to accept the UP/SP-273 amendments agreed to by UP/SP and CPSB. Such acceptance will be without prejudice to BNSF's right to continue to object to the Track No. 2 facilities restriction.

3. UP/SP, CPSB, and BNSF may at any time vary, upon agreement of all three parties, the UP/SP-273 amendments agreed to by UP/SP and CPSB.

4. Except insofar as UP/SP, CPSB, and BNSF mutually agree otherwise, the CPSB conditions imposed in Decision No. 44 and reflected in the UP/SP-273 amendments agreed to by UP/SP and CPSB will become effective on September 11, 1996.

Id. at 629-30.

The Board subsequently resolved the outstanding Track 2 issue in its Decision No. 61, served on November 20, 1996. In this Decision the Board also requested UP, BNSF and CPSB to "make conforming agreements" to the BNSF Agreement. Decision No. 61 states in pertinent part:

In Decision No. 52, we directed BNSF to accept, pending our review of the UP/SP-275 petition, the Track No. 2 facilities restriction agreed to by UP/SP and CPSB. See Decision No. 52, slip op. at 5. The action we are taking today effectively nullifies this facilities restriction. We therefore anticipate that the relevant parties (UP/SP, BNSF, and CPSB) will make conforming amendments to the BNSF agreement....

Id. at sheet 11 n. 34.

Following the issuance of Decision No. 61, UP, BNSF and CPSB filed a "Joint Submission of the Parties Concerning the CPSB Condition." (UP/SP-321/CPSB-14/BNSF-83, Sept. 15, 1997). There, UP, BNSF and CPSB informed the Board that they had agreed on all terms implementing the San Antonio Conditions. The Joint Submission stated in pertinent part:

On July 1, 1997, UP submitted an amended and restated version of the BNSF Agreement. Although UP and BNSF are still attempting to resolve certain disagreements, UP, BNSF and CPSB have agreed on the amendments designed to conform that Agreement, insofar as it applies to the CPSB Condition, to Decision Nos. 52 and 61, which amendments are reflected in the July 1 filing.

Id. at sheet 3.

On July 25, 2001, BNSF and UP submitted a revised draft of the BNSF Agreement. That version of the Agreement does not conform to the prior agreement between CPSB, BNSF and UP. The

agreement between CPSB, BNSF and UP contained specific language amending the BNSF Agreement. Omitted from the July 25 version of this Agreement is (1) language concerning CPSB's use of its own trackage rights, (2) language making CPSB's Elmendorf, Texas facility a covered Exhibit A point, and (3) language including "SP's line in San Antonio between SP Tower 105 and SP Junction (Tower 112)" as a covered trackage rights line.¹

On August 14, 2001 counsel for CPSB wrote to counsel for UP and BNSF concerning the failure of the July 25, 2001 BNSF Agreement draft to conform to the agreed upon terms implementing the CPSB Conditions. Following receipt of this letter counsel for BNSF and UP promptly contacted each other. Counsel for BNSF and UP then reported to counsel for CPSB that BNSF and UP had inadvertently failed to correctly memorialize the CPSB Conditions in the July 25, 2001 Agreement draft. Counsel for BNSF and UP have also advised counsel for CPSB that UP and BNSF will correct this drafting oversight.

CPSB reserves the right to seek proper memorialization and enforcement of the CPSB Conditions should it become necessary to do so.

¹BNSF and UP have no authority to amend or revise the language BNSF, UP and CPSB have agreed upon to implement the CPSB Conditions without CPSB's prior consent. See, e.g., Decision No. 52, 1 S.T.B. at 630.

Respectfully submitted,

CITY PUBLIC SERVICE BOARD
OF SAN ANTONIO
P.O. Box 1771
San Antonio, Texas 78296

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

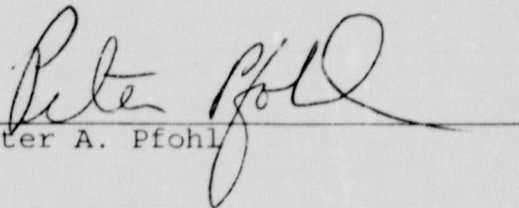
Dated: August 17, 2001

By: William L. Slover
John H. LeSeur *John Cole*
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Attorneys for City Public
Service Board of San Antonio

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2001 copies of the Comments of City Public Service Board of San Antonio, Texas on the Restated and Amended BNSF Settlement Agreement were served on counsel for Applicants and counsel for BNSF via hand delivery and on all other parties of record by postage prepaid first class mail.


Peter A. Pfohl

STB

FD-32760

(SUB 21)

8-17-01

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Office of the Secretary

CRDC-1

AUG 17 2001

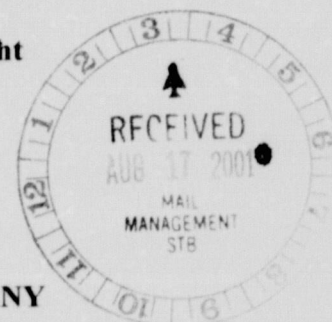
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Before the
Surface Transportation Board
Washington, DC 20423

In the Matter of:

Union Pacific Corporation, Union Pacific
Railroad Company, and Missouri Pacific
Company--Control and Merger--Southern
Pacific Rail Corporation, Southern Pacific
Transportation Company, St. Louis
Southwestern Railway Company, SPCSL
Corp., and the Denver and Rio Grande
Western Railroad Company

)
)
) Finance Docket No. 32760 (Sub-No. 21)
) Fifth Annual Oversight



COMMENTS OF
COWBOY RAILROAD DEVELOPMENT COMPANY

Cowboy Railroad Development Company ("CRDC") respectfully submits its comments to the Surface Transportation Board addressing certain competitive implications arising out of the merger of the Union Pacific Railroad ("UP") and the Southern Pacific ("SP"), and the Board's oversight of those merger conditions, related to the development of new railroad transportation services in the Western United States. These comments are submitted in accordance with the oversight program adopted in conjunction with approval of the UP/SP merger,¹ and pursuant to the procedural schedule adopted by the Board in its Decision arising out of the fourth annual round of the UP/SP general oversight proceeding.²

The Cowboy Railroad Development Company is a "grassroots" entity being formed by shippers for the purpose of developing alternative railroad transportation for Powder River Basin ("PRB") coal moving to the central United States. The CRDC takes its name from the former "Cowboy Line", running from Fremont, Nebraska to Wyoming. The sponsors of CRDC believe

¹ UP/SP, Finance Docket No. 32760, Decision No. 44 at 146, 231 (condition No. 6) (Served Aug. 12, 1996).

² UP/SP, Finance Docket No. 32760 (sub-No. 21), Decision No. 16 at 14 (Served Dec. 15, 2000).

this project holds the promise of comparable benefits for central U.S. users of PRB coal as the pending expansion of the Dakota, Minnesota & Eastern Railroad PRB line extension holds for utilities in the upper Midwest.³

II. COMMENTS

In approving the UP/SP merger, the Surface Transportation Board went to great lengths to protect the pre-merger rail competitive opportunities which existed prior to consolidation of UP and SP. For example, conditions were imposed to protect the pre-merger competitive opportunity arising out of dual service by UP and SP ("2-to-1" points), build-in/build-out opportunities, facility location options for new plants and transloads, and to assure that BNSF, as the "replacement competitor" for SP, had both adequate infrastructure to serve the customer base (*e.g.*, storage-in-transit yards) and the opportunity for a critical mass of traffic to render efficient and economical operation (*e.g.*, contract reopening).

A recurring theme underlying the imposition of protective conditions imposed on the UP/SP merger was the notion of maintaining competition through preservation of neutral connections. The development of a third railroad line to bring PRB coal to the central U.S. will need such neutral connections, as described in the associated verified statement of CRDC's consultant, Michael A. Nelson.⁴

³ Finance Docket No. 33407, Dakota, Minnesota & Eastern Railroad Corporation -- Construction into the Powder River Basin.

⁴ In its Fifth Annual Oversight Report, UP attempted to impeach, in advance, Mr. Nelson's credibility with regard to any testimony he may present in this Fifth Annual Oversight proceeding. A fair reading of Mr. Nelson's message to his clients, produced as Exhibit 1 to the UP report, refutes UP's interpretation. Mr. Nelson, as discussed in Exhibit 1 to his Verified Statement, simply was advising clients of the type of information *required by the Board* to document loss of competitive opportunity for consideration in the oversight process. In its Decision in the Fourth Annual Oversight proceeding, the Board rejected "theoretical arguments," and further indicated that specific traffic studies would be required, citing to the availability of the 100% traffic tapes for use in developing information to present in the oversight proceeding. UP/SP, Finance Docket No. 32760 (sub-No. 21), Decision No. 16 at 10, 11. To

III. RELIEF REQUESTED

The Board established a five year period of oversight in approving the UP/SP merger. Barring any demonstration or need for continuation of that oversight on an annual basis, presumably the formal oversight process will be concluded with the Board's decision in this phase of the oversight proceeding. Regardless of the end of the formal oversight process, the conditions imposed upon approval of the UP/SP merger continue to apply, as do the consequential rights and opportunities of shippers and connecting carriers. To that end, the Cowboy Railroad Development Company wholeheartedly concurs with the Burlington Northern and Santa Fe Railroad Company, which requested the Board to

"... clarify that, in the future after oversight concludes, it will consider and act promptly upon issues of general applicability relating ... to the parties' compliance with the merger conditions."⁵

BNSF's request to the Board to clarify its continuing role in addressing issues of compliance arising out of the UP/SP merger conditions applies equally to shippers, other carriers and parties such as CRDC, as it does to BNSF; and CRDC accordingly urges the Board to clarify that oversight jurisdiction will continue and will be exercised upon an appropriate request.

characterize Mr. Nelson's invitation to those who believe they have suffered competitive loss due to the merger to participate in the type of analysis called for by the Board as having pre-determined the results of any study constitutes a thinly veiled attempt at character assassination.

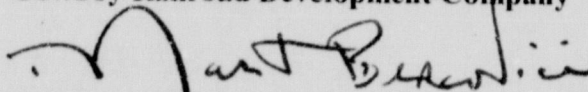
In any event, Mr. Nelson's Verified Statement does not reflect the result of a traffic study, nor seeks remedial relief with regard to any point or any corridor. Accordingly, UP's characterization regarding Mr. Nelson is completely inapplicable to the associated statement.

⁵ BNSF-PR-20 at 122 (Jul. 2, 2001).

WHEREFORE, THE PREMISES CONSIDERED, the Cowboy Railroad Development Company respectfully urges the Surface Transportation Board to clarify and affirm that the conditions imposed upon approval of the UP/SP merger were intended to assure preservation of pre-merger competitive opportunities, including neutral connections, on a continuing basis, and that oversight over the UP/SP merger and the conditions imposed by the Board in approving the merger will continue so long as those conditions are in force and affect.

Respectfully submitted,

Cowboy Railroad Development Company



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(202) 434-4144
It's Attorney

August 17, 2001

VERIFIED STATEMENT
OF
MICHAEL A. NELSON

1. Qualifications

My name is Michael A. Nelson. I am an independent transportation systems analyst with over 19 years of experience advising clients on rail transportation issues. My office is in North Adams, Massachusetts. Prior to February 1984, I was a Senior Research Associate at Charles River Associates, an economic consulting firm in Boston, Massachusetts.

I have directed or participated in numerous consulting assignments and research projects in the general field of transportation. My work typically involves developing and applying methodologies based on operations research, microeconomics, statistics and/or econometrics to solve specialized analytical problems.

Of particular relevance to this statement, I performed analyses related to competitive issues in six of the merger and acquisition cases that produced the separate SP and UP systems, including control of C&NW by Union Pacific (Finance Docket No. 32133), the acquisition by Rio Grande Industries of portions of the CM&W and Soo Line railroads (Finance Docket Nos. 31522 and 31505, respectively), the consolidation of Southern Pacific with DRGW (Finance Docket No. 32000), the acquisition of MKT by Union Pacific (Finance Docket No. 30800), and the proposed merger of Southern Pacific and Santa Fe (Finance Docket No. 30400). This work provided me with extensive exposure to the competition that existed between UP and SP prior to their merger.

I have also provided testimony before this Board regarding trackage rights compensation issues (in last year's UP/SP merger oversight proceedings); issues related to rail merger policy (in Ex Parte 582 (Sub-No. 1)); the proposal of the Dakota, Minnesota & Eastern Railroad (DM&E) to construct a third rail access to the Powder River Basin (in Finance Docket No. 33407); and the appropriate definition of Amtrak's "express" service (Finance Docket No. 33469). In addition, I have consulted to a number of

shippers, railroads and governmental bodies on railroad issues.

Outside of my rail experience, I have provided extensive testimony regarding methods for analyzing the cost structure of the U.S. Postal Service in five dockets before the Postal Rate Commission. In addition, I have assisted in the preparation of numerous other verified statements presented before various regulatory and legal bodies, and authored many technical reports and articles in transportation journals.

I received my bachelor's degree from the Massachusetts Institute of Technology in 1977. In 1978, I received two master's degrees from MIT, one in Civil Engineering (Transportation Systems) and one from the Alfred P. Sloan School of Management, with concentrations in economics, operations research, transportation systems analysis and public sector management. My curriculum vitae is attached as Exhibit A.*

2. Subjects Covered in This Statement

I have been asked by the Cowboy Railroad Development Company (CRDC) to analyze the effect of the UP/SP merger on the competitive outlets available to an additional railroad seeking to serve the Powder River Basin (PRB). As the Board undoubtedly is aware, the flow of utility steam coal from the PRB has come to represent one of the largest single sources of domestic rail traffic. In 1999, over 300 million tons of coal were produced in the Wyoming portion of the PRB alone. The vast majority of this tonnage moved by rail over long distances (often 1000 miles or more). These movements are extremely dependent upon the competitiveness of rail transportation, as there are no viable truck or barge alternatives.**

* In its Fifth Annual Oversight Report, UP sought to impeach my credibility based upon a message I had sent to clients soliciting participation in a study of the type prescribed by the Board as necessary to address competitive problems which shippers feel may exist. My response to the UP may be found at Exhibit 1 to this verified statement.

** The Board declined to prescribe a remedy for a 3-to-2 loss, relying in large part on its finding of truck competition for high value, service sensitive automotive and intramodal traffic flows. UP/SP Decision No. 44 at 120. Just as the Board "[did] not think it is valid to apply rate projections based on grain traffic to other categories of 3-to-2

To serve a portion of this traffic, the Board is already considering the application by DM&E for a new rail access to the PRB. As described in that application, DM&E's project would create a significant mileage advantage over UP and BNSF for a number of movements to the upper midwest, primarily involving portions of Minnesota and Wisconsin. The Board has already found that the creation of that new PRB access would be in the public interest.

Because the DM&E proposal is geographically oriented toward serving the upper midwest, its outlets were not materially affected by the UP/SP merger. In contrast to DM&E, CRDC is developing a plan to create a new PRB access that would traverse Nebraska, and effectively reach major coal markets in the central portion of the U.S. For the purpose of this testimony, I have been asked to assume that CRDC will have the capability to create a new route to Kansas City that has favorable terrain and lower mileage in comparison with the routes currently operated by BNSF and UP. I have reviewed relevant portions of CRDC's plans, and believe that this is a reasonable assumption.

In this statement I document the ways in which the markets able to be served by a new PRB carrier with an efficient route to Kansas City have been foreclosed by the loss of SP's independent competitive influence. For reasons discussed below, I believe that the Board should explicitly reserve and extend oversight jurisdiction with respect to these flows.

3. The Dynamic Aspect of Competition

The DM&E application and CRDC plans illustrate a dynamic aspect of marketplace competition that is often overlooked, particularly in the railroad industry. At any given point in time, market competition is reflected in the price/service options available to shippers. Over a period of time, however, those price/service options tend to change as the result of efforts by individual firms to improve their market position and profitability. Such changes are typically driven by different forms of innovation. In a competitive marketplace, firms that don't

traffic that have markedly different transportation characteristics," *id.*, so too there is no credible basis for a comparable treatment of PRB coal flows.

set or keep the pace of such innovation are unlikely to prosper or even survive in the longer term.

In the rail industry, many types of innovations may contribute over time to the availability to shippers of improved price/service options. These include, for example, productivity improvements (e.g., introduction of 286,000 lb. cars); mergers, trackage/haulage rights or marketing agreements among carriers that enhance the effectiveness of competing routes; and build-outs and build-ins to add competitors at specific points or areas.

An illustration of this process is provided by the PRB itself. In the 1970's BN was the only rail carrier able to originate coal from the PRB. C&NW formulated a plan that ultimately involved a combination of collaboration with UP and capital investment in the Connector Line (to UP) and Joint Line to create the second PRB access. With the addition of a competitor (as well as the subsequent proliferation of productivity improvements), many PRB coal flows now have better price/service options than they would have had if BN had remained the only carrier in the Basin. Shippers and the economy as a whole thus benefited materially from the entry of a new carrier to this market.

4. Growing PRB Volumes and Limits on the Effectiveness of Competition between UP and BNSF Foster the Potential for Entry by One Or More New Competitors

In comparison with late 1970's (when plans for the second PRB access were being developed), the market for PRB coal has grown explosively, and now materially exceeds most or all of the volume projections made at the time. The growth trend appears to be continuing, as many utilities have already planned or implemented increases in PRB coal consumption over 1999 levels. Projected plant conversions, changes in blend ratios and proposals for new coal-fired generation all contribute to increases in the volume of coal used to generate electricity and/or the share of that coal that is expected to originate in the PRB.

At the same time, the competition between UP and BNSF for many PRB flows is imbalanced in a way that prevents shippers from realizing the theoretical benefits of even 2-carrier competition. As recognized by the Board in the UP/SP merger decision, the competitiveness of a route for moving PRB coal trains is determined largely by its

mileage. In the case of Wyoming PRB coal moving eastward, UP enjoys a significant mileage advantage over BNSF for movements to most points in a broad geographical area. This is illustrated by Table 1, which shows UP and BNSF mileages for movements from a reference point in the PRB to various gateways.

Table 1

UP/BNSF Mileage to Gateways

Destination	Mileage from Black Thunder via		UP Advantage	Airline Mileage	UP Circuitry (%)
	BNSF	UP			
Kansas City	829	763	66	645	18.3
St. Louis	1,163	1,046	117	863	21.2
Chicago	1,156	1,108	48	908	22.0
Minneapolis	1,085	976	109	605	61.3

The general mileage disadvantage of BNSF in these flows is exacerbated by the fact that the BNSF route across Nebraska (especially between Crawford and Alliance) has less favorable grade and operating cost characteristics in comparison with the UP route. In these flows, UP and BNSF are not close to being equal competitors, and UP has significant latitude in its pricing and operating practices.

The table also shows that the UP advantage over BNSF is not the result of any type of extraordinarily efficient route layout. If anything, the UP routes themselves are fairly circuitous. This is not surprising, since the route out of the Basin that UP now operates (via the Connector Line) was basically a second-best solution that was born of necessity when C&NW was unable to fund its preferred approach, namely rehabilitation of the Cowboy Line. While the volume has grown dramatically, UP still operates a circuitous route built from a patchwork design, constrained only by a BNSF route that is even weaker.

Absent the competitive influence of a third carrier to the central U.S., neither incumbent carrier has taken steps to materially change this situation. The development of this type of complacency is a risk when there are only two carriers. The incumbents have had plenty of time to become familiar with each other's competitive practices. This familiarity is further facilitated by the fact that, as shown in the FRA rail network, there are now over 6,400 rail line segments that are shared by UP and BNSF, generally with one as the landlord and the other as the tenant.

Under these conditions, it is not surprising that economic support would develop for the introduction to the Basin of one or more efficient new rail carriers to bring the benefits of stronger competition to these large and important flows. When incumbent suppliers are unwilling or unable to perform up to the standards that a competitive market can support, the market will tend to attract new suppliers. To preserve the functioning of this competitive process in the rail industry, the STB must act to ensure that viable new entrants are not inappropriately hindered by mergers or other actions by the incumbent carriers.

5. The Economic Pressure for New Entry Is At Least Partially Frustrated By The Results Of Past Rail Mergers, Including the UP/SP Merger

Since the time the second rail access to the PRB was conceived and implemented, numerous rail mergers have occurred. In some instances, these mergers have materially affected the ability of individual plants to benefit from the new transportation options that could be introduced by a new PRB carrier.

The viability of new access is ultimately determined by the effectiveness of the new transportation options it can bring to different markets. To the extent that viable independent service to different markets has been eliminated by past mergers, the ability of the marketplace to sustain new PRB access has been compromised. In hindsight, there appears to be a tension between the creation of new PRB access on the one hand, and the treatment of third carrier issues in some of the past merger cases. Of direct relevance to the UP/SP merger oversight process, the ability of a new PRB access of the type contemplated by CRDC to reach significant markets was

diminished by the UP/SP merger (even with the conditions that were originally imposed).

In its Decision No. 44 in the UP/SP merger, the Board recognized the important role that an independent SP could play as a participant in competitive, low-mileage routes for the movement of PRB coal. It specifically granted the request of TXU for BNSF to have access over SP's line south of Shreveport to replicate the ability of an independent SP to participate in a BNSF-Kansas City-KCS-Shreveport-SP-Tenaha-BNSF route to serve TXU's Martin Lake plant near Henderson, TX.

The type of SP competitive role identified by the Board and addressed by this condition is illustrative of the potential competition that was lost in the context of a third PRB entrant. Put another way, if there were a change of circumstance in which a new PRB carrier that could reach Kansas City came into existence, SP had the ability and incentive to provide effective entry by such a carrier into several markets served by BNSF and/or UP. A hidden consequence of the UP/SP merger was that UP acquired the ability to interfere with the creation of a third PRB carrier, at least with respect to such flows.

6. Specific Flows Where SP's Potential Competitive Role As A Neutral Connection For A New PRB Carrier Was Eliminated

Assuming the existence of a new PRB outlet with an efficient and low-mileage route to Kansas City, there are several specific flows of PRB coal for which the UP/SP merger eliminated the ability of SP to provide a meaningful competitive role. These include:

- a. Flows to several major plants generally east and/or south of St. Louis that would make use of SP's trackage rights over UP from Kansas City to reach rail connections at St. Louis***;
- b. Flows to a number of major plants in the vicinity of the SP line southwest of Thebes, IL;
- c. Flows that would make use of SP line northeast of Texarkana to connect (assumed via KCS) to the new outlet at Kansas City;

*** For a number of reasons, it cannot be assumed that the remaining "neutral" routes connecting Kansas City and St. Louis (KCS; NS) would be effective options for a new PRB carrier.

- d. Flows to plants that would make use of the SP line between Texarkana and Pittsburg, TX to shorten the length of a KCS routing from Kansas City;
- e. Flows to the vicinity of the Martin Lake plant that would make use of the SP line southwest of Shreveport to connect (assumed via KCS) to the new outlet at Kansas City; and,
- f. Flows to several plants in the vicinity of the SP line south of Corsicana, TX that would make use of the rights SP acquired in the BN/ATSF merger (to operate over the former ATSF line from Kansas City to Fort Worth, TX via Olathe and Cassoday, KS, as acknowledged by the Board in Appendix B of Decision No. 47 in Finance Docket No. 32549) to produce a highly competitive routing.

The SP lines associated with these flows are shown in Figure 1.

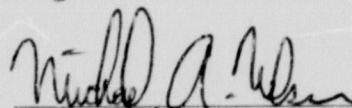
CRDC considers the identity of its individual members and retail customers, and their volume projections, to be highly confidential. In the aggregate, CRDC has authorized me to disclose to the Board that the cumulative tonnage at issue in the flows described above, for which SP could have played an important competitive role given a new PRB outlet at Kansas City, is in excess of 160 million tons/year.

7. Recommendation

To prevent UP from foreclosing the ability of a third PRB carrier to reach markets that could have been reached by a neutral SP, it is likely that some form of conventional remedy, such as trackage rights, will be required. However, the CRDC plans are not yet sufficiently developed to support a specific request. To preserve competitive rail options available at the time of the UP/SP merger, and to make those options available to enhance the efficiency of domestic energy supply, I believe it would be in the public interest for the Board to extend oversight with respect to these flows.

I certify under penalty of perjury the foregoing to be true and correct, based on my knowledge and information.

August 15, 2001

A handwritten signature in dark ink, appearing to read "Michael A. Nelson", written over a horizontal line.

Michael A. Nelson

Comment on UP's Footnote 4

In Footnote 4, page 3 of its Oversight Report, UP took what I view as the highly unusual step of criticizing my solicitation of shippers to participate in a traffic study that was to have been submitted in these proceedings. In its decision last year, the Board specifically identified such a study as being needed to document the existence of any competitive problems stemming from this merger.

I agree with the Board that a traffic study would be useful in resolving issues related to the existence - or lack of existence - of competitive problems stemming from this merger. It would be useful precisely because it would be based on real traffic analyzed using methods that would be subject to review, criticism and correction.

These same characteristics make UP's bias claims meaningless. My past studies of competition among western railroads, along with more recent comments and anecdotes provided to me by numerous knowledgeable shipper and railroad representatives, leads me to believe that there likely are some markets where careful study would reveal an increase in rail market power as a result of the UP/SP merger. There is no way to know precisely what markets have been affected, and by how much, without actually performing the study.

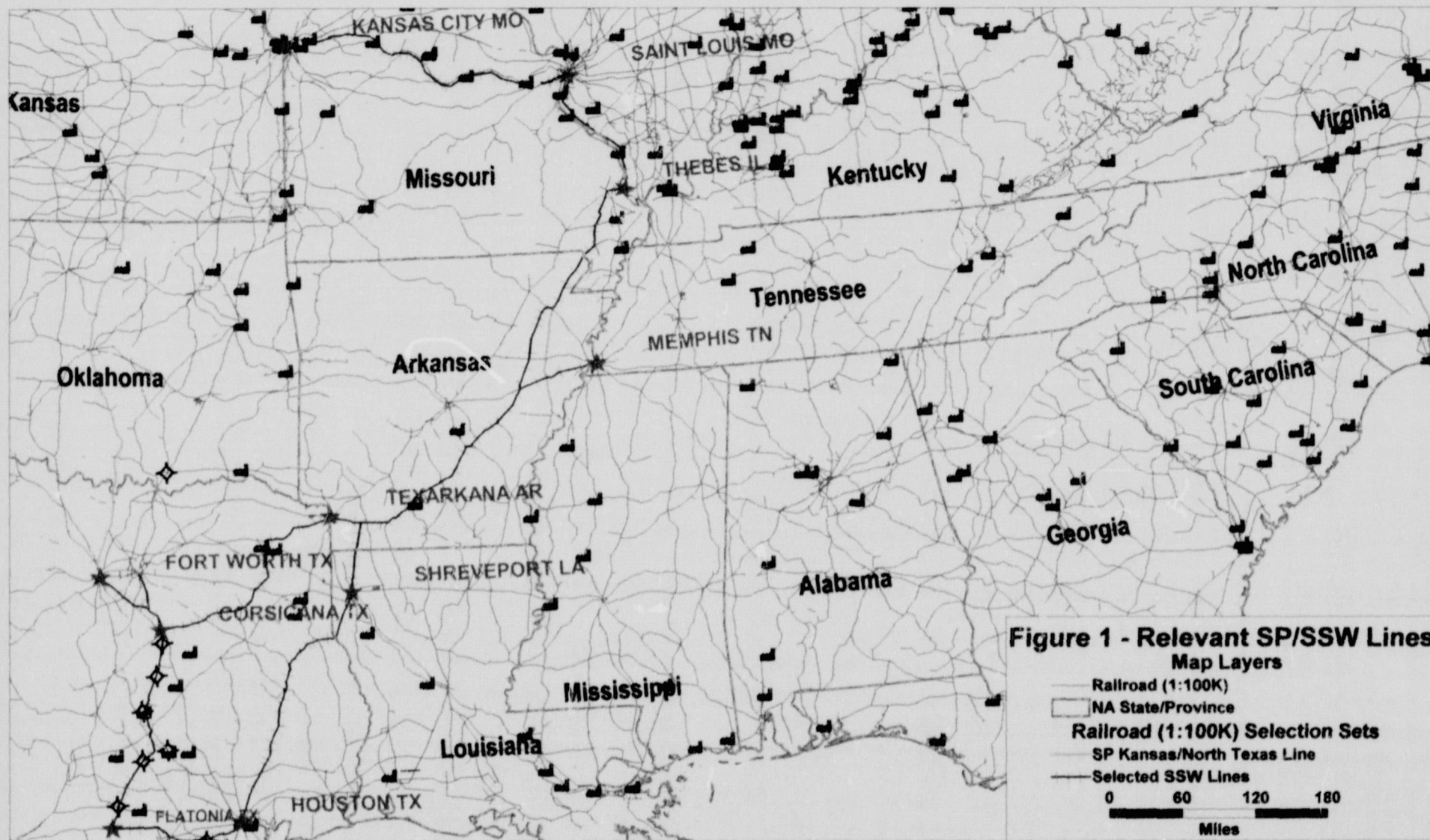
By the same token, without a traffic study, there is no way for this Board to reliably conclude that there have been no competitive problems. For reasons that are unclear, the Board has strayed from the view of oversight articulated by Chairman Morgan in the original decision:

"The Board will not depend upon shippers and affected parties to do its monitoring." [Finance Docket No. 32760, Decision No. 44 at 240.]

My experience leads me to agree with the position that the Board should not rely on shippers to speak out about competitive problems. Shippers who actually experience increases in railroad market power are generally quite reluctant to identify themselves publicly, based on the

very real fear that the increased market power will be exercised to their further disadvantage.

When UP criticizes and attempts to undercut the credibility of a study I haven't even performed yet, I believe its intent is to chill the willingness that some shippers may have had to pursue relief of competitive problems through support of the proposed study and participation in the oversight process. UP's brazen willingness to use the Board's own proceeding to dissuade shippers from participating in the process speaks volumes about the degree of influence that UP now believes it holds.



MICHAEL A. NELSON

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EDUCATION

M.S. Civil Engineering, Massachusetts Institute of Technology

M.S. Management, Alfred P. Sloan School of Management, Massachusetts Institute of Technology

B.S. Management, Massachusetts Institute of Technology

Concentrations in transportation systems, economics and operations research.

EXPERIENCE

Mr. Nelson is an independent transportation systems analyst. He provides management and economic consulting and litigation support. His work typically involves developing and applying methodologies based on operations research, microeconomics, statistics and/or econometrics to solve specialized analytical problems, as illustrated by the following examples of his experience:

A. Railroad

On behalf of a group of major electric utilities and power producers, Mr. Nelson is directing the design of a billion-dollar project to create a new railroad access across northern Nebraska to coal mines in the Powder River Basin (PRB) area of Wyoming.

Also for electric utilities and power producers, Mr. Nelson has performed detailed analyses of rail transportation options for a total of over 30 large coal-fired generating stations. The results of these analyses have served as the basis for management decisions that are projected to save many millions of dollars in fuel costs.

On behalf of the Town of Easton (MA), Mr. Nelson performed a preliminary evaluation of a report issued by the Massachusetts Bay Transportation Authority (MBTA) describing its analysis of the "Attleboro Bypass" option for providing new commuter rail service to New Bedford/Fall River. Mr. Nelson identified a series of methodological deficiencies that appear to materially influence the results and conclusions presented in the report.

On behalf of Arkansas Electric Cooperative Corporation, Mr. Nelson submitted a statement to the Surface Transportation Board (STB) in Finance Docket 32760 (Sub-No.21). This statement addressed competitive issues resulting from the Union Pacific/Southern Pacific (UP/SP) railroad merger, with a particular focus on the effect of trackage rights compensation levels.

On behalf of the Committee to Improve American Coal Transportation (IMPACT), Mr. Nelson submitted a statement to the STB in Ex Parte 582 (Sub-No. 1). This statement addressed a wide range of issues related to rail merger policy.

For a major Class 1 railroad, Mr. Nelson assisted senior management staff in the design and evaluation of a potential construction project.

For the Mid-States Coalition for Progress (a group of landowners), Mr. Nelson analyzed the proposal by the Dakota, Minnesota and Eastern Railroad (DM&E) to construct an extension of its line into the PRB. Mr. Nelson developed estimates of DM&E's volumes and unit revenue levels on the basis of a plant-by-plant analysis, taking into account likely future market conditions and the competitive capabilities of the UP and Burlington Northern Santa Fe (BNSF). Mr. Nelson's analysis was filed at the STB (Finance Docket No. 33407).

For the National Railroad Passenger Corporation (AMTRAK), Mr. Nelson investigated issues related to the definition of "express" traffic that AMTRAK is permitted to carry (STB Finance Docket No. 33469). Mr. Nelson analyzed relevant data from the STB Rail Waybill Sample and the Census of Transportation, and investigated the factors affecting use of Amtrak by the U.S. Postal Service. The definition of "express" eventually adopted by the STB was consistent with Mr. Nelson's findings.

For the Moffat Tunnel Commission (Colorado), Mr. Nelson analyzed the factors affecting future railroad use of that tunnel, which traverses the Continental Divide and serves the principal Colorado coal fields on the UP line that formerly was the Denver and Rio Grande Western Railroad (DRGW) main line west of Denver. The tunnel had historically been owned by the Commission (and leased to the railroad), but under sunset legislation was being offered for public sale. Mr. Nelson's analysis included study of the utilization of Colorado/Utah vs. PRB coals in the context of the central corridor conditions imposed by the STB in the UP/SP merger.

For Canadian Pacific Railway (CP), Mr. Nelson performed detailed studies of competitive and traffic issues associated with the acquisition and break-up of Conrail by Norfolk Southern and CSX (Finance Docket No. 33388). These studies included analyses of competitive issues in the area served by the former Delaware and Hudson (now a CP subsidiary) and in the midwest, competitive issues involving coal traffic throughout the Conrail service area, and traffic impacts associated with potential remedial conditions. CP relied upon the results of Mr. Nelson's studies in reaching its settlements with Applicants in that case.

For SP, Mr. Nelson provided expert testimony before the Interstate Commerce Commission (ICC) in Finance Docket No. 32133 (the proposed control of C&NW by UP). This testimony was based primarily on Mr. Nelson's analyses of data from the Rail Waybill Sample, which identified substantial numbers of specific flows for which the proposed transaction created different types of potential competitive problems (including losses of point-to-point competition, source competition, competition in grain originations, and shipper leverage). In addition, Mr. Nelson's testimony utilized Rail Waybill Sample data to demonstrate the occurrence of merger-related foreclosure from previous UP acquisitions, and provided statistical support for SP's traffic study. Mr. Nelson also conducted a detailed investigation of the impact of the merger on source competition for western coal.

For Rio Grande Industries (RGI), Mr. Nelson provided expert testimony before the ICC in Finance Docket No.'s 31505 (the proposed acquisition by RGI of Soo's Kansas City - Chicago

line) and 31522 (the proposed acquisition by RGI of the Chicago, Missouri and Western line between St. Louis and Chicago) based on his analysis of Rail Waybill Sample data. This testimony involved analysis of potential cumulative anti-competitive effects from the proposed transactions, development of time-series estimates of rail traffic volumes and carrier shares in different flows, and assessment of the statistical reliability of the portions of the testimony of other RGI witnesses that were based on Rail Waybill Sample data.

Also for RGI, Mr. Nelson provided expert testimony before the ICC in Finance Docket No. 32000, the consolidation of SP and DRGW. This testimony involved analysis of Rail Waybill Sample data to determine rail traffic volumes in different flows, the statistical reliability of studies conducted by other RGI witnesses, and potential competitive problem flows associated with a consolidation of SP and KCS.

For DRGW, Mr. Nelson provided expert testimony before the ICC in Finance Docket No. 30800 (the acquisition of MKT by UP) based on his analysis of Rail Waybill Sample data. This testimony involved examination of intramodal competition in the central corridor, development of traffic flow databases utilized by other witnesses, assessment of the statistical reliability of other witnesses' studies, and analysis of issues related to use of market share data from waybill samples to evaluate the competitive impact of the proposed merger.

Also for DRGW, Mr. Nelson provided extensive expert testimony before the ICC regarding a number of issues raised by the proposed merger of SP with ATSF (Finance Docket No. 30400):

* Mr. Nelson provided a detailed comparison of the economic and operating characteristics of the intercity trucking and railroad industries, with a particular focus on long-haul markets. Mr. Nelson's analysis of the trucking industry utilized the National Motor Transport Data Base (NMTDB). For this study, Mr. Nelson developed and implemented analytical techniques that compensate for the non-random sampling procedures employed in the gathering of the NMTDB, making it possible to use this source to reliably conduct studies at the industry and corridor level. The Commission adopted the results of Mr. Nelson's

study verbatim in its analysis of the anti-competitive consequences of the proposed merger.

* Using the NMTDB and the Rail Waybill Sample, Mr. Nelson analyzed the extent to which rail pricing and services on selected traffic are determined by competing intercity trucking alternatives available to shippers. This analysis was conducted at a highly detailed level, and included explicit accounting for the handling characteristics of each rail commodity and the operating economics of the corresponding truck equipment needed.

* Mr. Nelson analyzed the tests applied by various economists in the proceedings, including those of the U.S. Departments of Justice and Transportation, to identify rail traffic that would most likely be subject to anti-competitive effects in the wake of the proposed merger. Mr. Nelson identified circumstances under which these tests systematically yield invalid results, and provided guidelines for their proper application.

* Mr. Nelson identified improvements needed in the merger applicants' initial methodology for estimating the rail traffic diversions that likely would result from the proposed merger.

* In addition to this expert testimony, Mr. Nelson served as principal investigator for several studies underlying testimony offered by other witnesses, addressing issues related to intramodal (rail) competition, product and source competition, shipper benefits and leverage and trackage rights compensation. Mr. Nelson also conducted a number of special studies on request for other witnesses and counsel.

For a private client, Mr. Nelson participated in a study of the purchase and utilization of jumbo covered hopper cars by shippers and railroads. This study involved extensive analysis of the Rail Waybill Sample and other data sources, and included a detailed examination of historical car shortages in light of economic and traffic conditions, and other related factors. The results of Mr. Nelson's work were incorporated in testimony before the ICC.

As a subcontractor to consulting firms, Mr. Nelson has participated in a number of other rail-related studies. These include (1) analysis of Rail Waybill Sample data to

address issues stemming from traffic protective conditions at the Jacksonville (FL) gateway between FEC and CSX, and (2) analysis of CN's Port Huron-Sarnia tunnel project and the alternative of a tunnel at Detroit-Windsor.

B. Postal Service

For Magazine Publishers of America (MPA), Mr. Nelson analyzed several issues related to the transportation costs incurred by the Postal Service in its movement of periodicals. This included identification of feasible cost reductions and efficiency improvements, as well as development of needed refinements in the methods used by the Postal Service to analyze transportation costs. The results of this work were presented to the Postal Rate Commission (PRC) in the R2000-1 omnibus rate case.

Mr. Nelson identified and developed opportunities for a major publisher to create more efficient and desirable price/service options by avoiding selected costs in its mailings of periodicals. This work included consideration of transportation, delivery and unfunded retirement liability costs.

For Foster Associates (under contract to the Postal Service), Mr. Nelson worked in the following areas:

* Delivery costing - Mr. Nelson developed a series of refinements in delivery cost analysis procedures. These refinements included analysis of driving time on motorized letter routes, collection costing and extensive revision of costing for special purpose routes and special delivery messengers. In support of the new methodologies, Mr. Nelson developed data collection plans and assisted in the development of survey instruments and innovative procedures to gather new field data from carrier and messenger operations. He conducted extensive analysis of the new data, including development of data cleaning and weighting procedures, analysis program logic, and specifications for new econometric models. He also identified an overlap in costing systems that produced a "double-count" of delivery activity performed by personnel other than special delivery messengers but charged to LDC 24 (Cost Segment 9). He developed spreadsheet modifications needed to incorporate the costing refinements and new data, and eliminate the "double-count" problem. The results of Mr. Nelson's delivery costing work were presented before the PRC in the

R97-1 omnibus rate case. The PRC adopted 9 out of 10 of Mr. Nelson's recommended methodological changes, 2 with commendations.

* New products - Mr. Nelson identified the cost basis for a number of potential new product offerings involving Express Mail and Priority Mail, and developed the analytical framework and information needed to support their implementation. This included design and analysis of a new field study of relevant Express Mail piece characteristics, which was also presented by Mr. Nelson in the R97-1 rate case.

* Litigation support - In Docket No. R94-1, Mr. Nelson reviewed intervenor testimony regarding city delivery carrier and transportation issues, and developed discovery and cross-examination topics for Postal Service counsel.

* IOCS - Mr. Nelson developed refinements in IOCS data gathering procedures to improve the validity and precision of available information regarding Express Mail activities. Mr. Nelson then interpreted the initial results from the new data and provided suggestions for improvements in Express Mail costing procedures.

* Postal AMR - Mr. Nelson developed a plan for analyzing the street time costs associated with a proposal to have postal vehicles perform automated meter reading for utility companies.

* Eagle Network - Mr. Nelson developed a potential methodology for attributing the costs of dedicated air transportation services procured by the Postal Service.

For United Parcel Service (UPS), Mr. Nelson provided extensive expert testimony before the PRC in Docket No. R90-1. This testimony presented Mr. Nelson's studies of cost causality and/or elasticity within the city delivery carrier, special delivery messenger, vehicle service driver, purchased highway transportation and expedited air network operations of the Postal Service. These studies, which involved application of operations research techniques and development of econometric models and other statistical analyses based on postal data, were referenced and relied upon extensively by the PRC in its Opinion and Recommended Decision. To a considerable degree, these studies represented extensions and refinements of Mr.

Nelson's previous studies, which were presented before the PRC in Mr. Nelson's testimony in Docket No. R87-1, and in Docket No. RM87-2B, a rulemaking proceeding established in part to explore issues raised in testimony before the PRC in Docket No. R84-1 for which Mr. Nelson served as principal investigator.

C. Other

Mr. Nelson participated in an airport master planning study for Sydney, Australia. For this study, he developed a comprehensive set of site selection criteria and evaluation measures.

Until February 1984, Mr. Nelson was a Senior Research Associate at Charles River Associates (CRA), an economic research and consulting firm, where his work experience included the following:

Freight Transportation

Mr. Nelson served as Manager of Consulting Services for the National Motor Transport Data Base (described above), which at the time was sponsored by CRA. In this position, he was responsible for handling client requests for information from the database, including problem definition, sampling issues, conduct of analyses and reporting of results. He conducted specific analyses for a number of public and private clients.

Mr. Nelson served as principal investigator for a study of motor carrier safety and traffic characteristics. This study involved extensive analysis of a number of databases, including the FHWA "Loadometer" Study, the 1977 Census of Transportation, the ICC "Empty/Loaded" Survey, and the NMTDB. The results of his work were incorporated in testimony before the U.S. District Court on behalf of a private client engaged in litigation with a state over the use of twin trailers.

Mr. Nelson participated in several other projects providing support for motor carriers involved in litigation cases. For these clients he performed detailed financial analyses of motor carrier operations and traffic in different settings, and assisted in the preparation of testimony and briefs. Mr. Nelson also served as an internal consultant on

a number of CRA's other motor carrier, railroad, and freight transportation studies.

For the U.S. Department of Transportation (DOT), Mr. Nelson was principal investigator of a study to develop a conceptual framework and data collection strategy for analyzing the impacts of the motor carrier regulatory reforms implemented under the Motor Carrier Act of 1980. For this project, Mr. Nelson was responsible for identifying and selecting specific research issues, data requirements, data sources and analytical techniques.

In a study for the Office of the Secretary of Transportation, Mr. Nelson made extensive use of probabilistic modeling techniques to develop quantitative estimates of potential fuel conservation resulting from selected aspects of proposed motor carrier regulatory reforms.

For DOT, Mr. Nelson was principal investigator for a study of the merits of alternative approaches that could be utilized by the ICC to implement the inflation-based index for allowable rate adjustments by railroads mandated by the by the Staggers Rail Act of 1980. For this study he analyzed the ICC's proposed approach and developed specific conclusions and recommendation in a number of issue areas, including selection of the basic index, productivity adjustments, treatment of profit and non-recurring expenses, frequency of index adjustment, rate averaging, regional differences, collective ratemaking and fuel surcharges. The results of this study were used by DOT in formulating its response to the ICC's proposed approach.

For a private client, Mr. Nelson analyzed the logistical considerations involved in siting a plant to process imported high-value mineral ores. This study, which was part of a larger study to assess the overall economic feasibility of plant construction and operation, involved comparisons of costs and other attributes of a variety of modes and modal combinations, including rail, inland waterway, motor carrier and TOFC.

In a study of urban freight consolidation alternatives conducted for the U.S. Department of Energy (DOE), Mr. Nelson utilized principles of network analysis, simulation and queuing theory to evaluate and critique the merits of

previous studies, and recommend research approaches for analysis of route and terminal consolidation strategies.

Also for DOE, Mr. Nelson was a major contributor to a study of potential fuel-use changes that could occur in response to dramatic fuel price increases. Mr. Nelson's work focused on the freight and intercity passenger transportation sectors and included analyses of opportunities for improvements in fuel efficiency by each mode under different fuel price increase scenarios, as well as modal shifts and net traffic reductions caused by resulting cost (and rate) increases.

Passenger Transportation

Mr. Nelson served as principal investigator for a series of Service and Management Demonstration Evaluations conducted for DOT. For three parallel assessments of the feasibility of user-side subsidies, and one demonstration of taxicab regulatory reforms and paratransit service innovations, he developed instruments for and implemented several surveys, conducted data analysis and prepared Final Evaluation Reports. For an assessment of alternative transit transfer policies, he developed research issues and data requirements, selected and supervised interviews of over 40 transit properties, and wrote or was responsible for all major deliverables. He assisted DOT in the development of research issues to be addressed in demonstrations of innovative checkpoint paratransit services and in the review of a proposed paratransit policy.

Also for DOT, Mr. Nelson was principal investigator of a study of methods to improve transit productivity and cost-effectiveness. This study involved the identification and documentation of 146 distinct productivity-enhancement measures that have been implemented at U.S. transit properties, assessment of the transferability of each measure to different settings, and development of impact magnitude estimates. Prior to this project, Mr. Nelson developed over two dozen ideas for possible innovations to improve transit productivity and cost effectiveness.

Mr. Nelson participated in a financing study of the New York Metropolitan Transportation Authority's proposed multi-billion dollar capital improvement program. Mr. Nelson's responsibilities in this project involved econometric analysis of operating costs, with a particular

emphasis on identifying the variability of different cost components with alternative future levels of rapid rail, bus, and commuter rail activity. The results of his work were incorporated in the MTA's Official Statement for the successful initial offering of \$250 million in transit revenue bonds.

For DOT, Mr. Nelson participated in a study to develop technical guidelines for use by local planners to satisfy alternatives analysis requirements. For this study he developed a matrix-based method for determining data requirements in different scenarios, and played a major role in the development of a method for generating locally responsive alternatives to high-capital transit investments using multicriteria decision techniques.

For the Massachusetts Port Authority, Mr. Nelson participated in a study to forecast future levels of passenger and air cargo activity at Logan International Airport. For this study, Mr. Nelson supervised data collection efforts, developed methods for synthesizing data from diverse sources (FAA, CAB, Port Authority records, etc.) to yield relevant market segment size estimates, and analyzed seasonality and short-term peaking phenomena.

Mr. Nelson also participated in a quantitative assessment of the market penetration potential and associated impacts of electric vehicles for the Electric Power Research Institute (EPRI).

Thesis

In his graduate thesis at M.I.T., which fulfilled the thesis requirements for two Master's degrees, Mr. Nelson developed a comprehensive review of the theoretical and practical shortcomings encountered in the use of linear programming in a real time multiple vehicle routing and scheduling system (dial-a-ride). Based on network analysis techniques, he then developed a set of heuristic algorithms that avoided the shortcomings inherent in the linear programming (LP) approach. The performance of these algorithms was simulated by computer and found to meet or exceed the LP's performance in a variety of scenarios drawn from actual operating data.

TESTIMONY

Surface Transportation Board, Finance Docket No. 32760
(Sub-No. 21)

- Verified Statement, 8-18-00

Postal Rate Commission, Docket No. R2000-1

- Direct Testimony, MPA-T-3, 5-22-00

Surface Transportation Board, Ex Parte 582 (Sub-No. 1)

- Statement, 5-16-00

Surface Transportation Board, Finance Docket No. 33407

- Verified Statement, 8-31-98

- Supplemental Verified Statement, 10-28-98

Surface Transportation Board, Finance Docket No. 33469

- Verified Statement, 11-10-97

- Reply Verified Statement, 11-25-97

Postal Rate Commission, Docket No. R97-1

- Direct Testimony, USPS-T-19, 7-10-97

Interstate Commerce Commission, Finance Docket No. 32133

- Verified Statement, SP-20 (Volume 2), 11-29-93

- Rebuttal Verified Statement, SP-41 (Volume 2), 7-28-94

Postal Rate Commission, Docket No. R90-1

- Direct Testimony, UPS-T-1, 7-16-90

- Rebuttal Testimony, UPS-RT-1, 10-1-90

Interstate Commerce Commission, Finance Docket No. 31505

- Verified Statement, RGI-14/SOO-14 (Volume 2), 9-15-89

- Rebuttal Verified Statement, RGI-55/SOO-55, 2-15-90
- Interstate Commerce Commission, Finance Docket No. 31522
- Verified Statement, RGI-7/CMW-7 (Volume 2), 8-25-89
- Interstate Commerce Commission, Finance Docket No. 32000
- Verified Statement, RGII-10, 2-22-88
 - Verified Opposition and Rebuttal Statement, RGII-59, 6-1-88
- Postal Rate Commission, Docket No. R87-1
- Direct Testimony Concerning Special Delivery Messenger and City Delivery Carrier Street Time Costs, UPS-T-1, 9-14-87
 - Rebuttal Testimony, UPS-RT-5, 11-23-87
 - Statement Regarding SDWAFS Analyses, 12-1-87
- Interstate Commerce Commission, Finance Docket No. 30800
- Verified Statement, DRGW-13, 4-7-87
 - Verified Statement, DRGW-24, 7-13-87
- Postal Rate Commission, Docket No. RM86-2B
- Direct Testimony Concerning City Delivery Carrier Street Time Costs, UPS-T-1, 12-1-86
- *
Interstate Commerce Commission, Finance Docket No. 30400
- Verified Opposition Statement, DRGW-20, 11-21-84
 - Verified Opposition Statement, DRGW-23, 12-10-84 (with Paul H. Banner)
 - Verified Rebuttal Statement, DRGW-33, 5-29-85

SELECTED PUBLICATIONS

Reports Prepared for Charles River Associates

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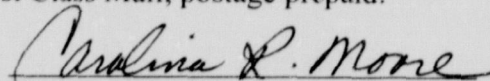
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Department of Civil Engineering and Alfred P. Sloan School
of Management.

CERTIFICATE OF SERVICE

I Carolina Moore, a secretary in the law firm of Keller and Heckman, LLP do hereby certify that a copy of the foregoing COMMENTS OF COWBOY RAILROAD DEVELOPMENT COMPANY was served this 17th day of August on all parties of record by mailing, U.S. First Class Mail, postage prepaid:


Carolina R. Moore

STB

FD-32760

(SUB 21)

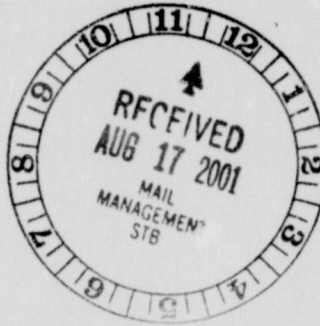
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August 17, 2001

BY HAND

The Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW Suite 700
Washington, DC 20423-0001

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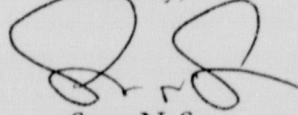
Re: Finance Docket No. 32760 (Sub-No. 21) — 203158

Dear Secretary Williams:

Enclosed for filing in this docket are the original and 25 copies of American Chemistry Council's Comments Regarding Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement. Also enclosed is a computer diskette containing a copy of this filing in WordPerfect 5.x.

Please acknowledge receipt of this filing by date-stamping the enclosed duplicate copy and returning it with our messenger. Thank you.

Sincerely,



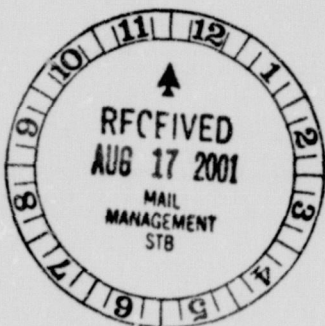
Scott N. Stone

Enclosures

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Office of the Secretary

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 — 203157

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

Finance Docket No. 32760 (Sub-No. 21) — 203158

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

(OVERSIGHT)

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Office of the Secretary

AUG 17 2001

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AMERICAN CHEMISTRY COUNCIL'S COMMENTS
REGARDING UNRESOLVED ISSUES RELATING TO
THE RESTATED AND AMENDED BNSF SETTLEMENT AGREEMENT

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August 17, 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

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
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Finance Docket No. 32760 (Sub-No. 21)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
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- CONTROL AND MERGER -

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TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
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(OVERSIGHT)

AMERICAN CHEMISTRY COUNCIL'S COMMENTS
REGARDING UNRESOLVED ISSUES RELATING TO
THE RESTATED AND AMENDED BNSF SETTLEMENT AGREEMENT

The American Chemistry Council¹ ("the Council") respectfully comments on the four issues left unresolved in the negotiations between the UP and BNSF regarding the restated and

¹ The American Chemistry Council represents the leading companies engaged in the business of chemistry. Council members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. The Council is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$460 billion a year

amended BNSF settlement agreement. The four issues are: (1) the definition of "two-to-one" points, (2) the definitions of "existing transload facilities" and "new transload facilities," (3) the scope of BNSF trackage rights,² and (4) BNSF's proposal to require UP to sell unused team tracks to BNSF. In addition, the Council comments on whether an audit should be performed to ensure that the trackage rights fees BNSF is paying to UP are in accordance with the agreement. Finally, the Council suggests that the Board clarify that it will continue to entertain petitions to interpret or enforce the restated BNSF agreement and the other conditions imposed in the UP/SP merger to preserve competition.

A. Definition of Two-to-One Points

BNSF proposes language defining two-to-one points to be:

All geographic locations (as defined by 6-digit Standard Point Location Codes ("SPLCs")) served in any manner by both UP and SP before the merger, regardless of how long before the merger shippers may have availed themselves of that service, and regardless of whether any shipper at such location was open to or served by both UP and SP pre-merger.

BNSF-93 at 3. BNSF argues that this definition is necessary to capture, and permit BNSF to replicate, all of the actual and potential competition between UP and SP prior to the merger. For example, BNSF points out that UP and SP in some instances competed through existing transload facilities on either UP or SP that gave shippers physically located on one of the two lines a choice to use the second carrier.

enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for 10 cents out of every dollar in US exports. Chemistry companies invest more in research and development than any other business sector. The Council was, prior to June 12, 2000, known as the Chemical Manufacturers Association ("CMA").

² The Council comments on the trackage rights between Memphis and Valley Junction, Illinois and between Bald Knob and Fair Oaks, Arkansas, but takes no position on the issue of trackage rights between Elvas and Stockton in California.

UP opposes the proposed definition because it claims that the Board rejected the use of SPLCs to define two-to-one points. The UP argues that the Board, rather than define two-to-one points, decided to impose as conditions the various provisions of the BNSF settlement agreement, as supplemented by the CMA agreement and further expanded by the Board.

The Council respectfully disagrees with the UP's position. Although the Board declined to define two-to-one points in its decision, the question remains how two-to-one points should be defined for purposes of the BNSF and CMA agreements, which are now, together with subsequent revisions and clarifications, being recodified into a single amended and restated BNSF settlement agreement. The Council submits that BNSF's proposed definition is in accordance with the overall logic of the settlement agreements to preserve all forms of competition at two-to-one points, and with the specific intention expressed by UP during the Board's review of the merger. As BNSF sets out in detail (BNSF-93 at 6-8), UP witnesses Peterson and Rebensdorf made it clear that UP was going to define two-to-one points very broadly, in a manner that would not stop with the 6-digit SPLCs at which one or more shippers was open to both UP and SP. As BNSF points out (BNSF-93 at 5, n.4), the inclusion of Reno, Nevada as a two-to-one point on Exhibit A to the BNSF settlement agreement evidences UP's contractual intent, because no shipper at Reno was actually served by or open to both UP and SP before the merger.

In sum, the Council supports BNSF's position on the definition of 2-to-1 points.

B. Definitions of "Existing Transload Facilities" and "New Transload Facilities"

The issue of BNSF access to transload facilities is one on which the Board has played an active role. The Board expanded the original CMA agreement by permitting BNSF to serve new

transload facilities (including BNSF-owned transload facilities) on UP and former SP lines over which BNSF received trackage rights. Decision No. 44 (served August 12, 1996), slip op. at 145-46. Subsequently, in Decision No. 86 relating to the new facility constructed by Four Star Sugar Co., the Board clarified that the new facilities open to BNSF included facilities located on a spur, industrial track or yard served by a line over which BNSF obtained trackage rights in the merger. Decision No. 86 (decided July 9, 1999), slip op. at 4.

1. Existing Transload Facilities

BNSF proposes that existing transload facilities be defined as set out in BNSF's and UP's Joint Submission, UP/SP-386, BNSF-92, at 5-6. UP takes the position that no definition of existing transload facilities is necessary.

BNSF's definition would make clear that the existing transload facilities to which BNSF has access at 2-to-1 points would include private transload facilities maintained for the exclusive benefit of a single company. BNSF argues that such facilities created actual or potential competition pre-merger, and that those competitive benefits should be preserved post-merger. BNSF-93 at 10. UP responds that defining existing transload facilities is unnecessary because "the parties have identified all such facilities." UP/SP-387 at 21.

The Council agrees with BNSF that including private transload facilities in the definition of existing transload facilities is consistent with the original intention of the parties and the Board to preserve all forms of competition between UP and SP that existed pre-merger. Furthermore, contrary to UP's position, UP and BNSF have not identified and jointly agreed on all such points. BNSF specifically points to the RDS facility at Tracy, California as a transload facility on which UP and BNSF have not agreed. See BNSF-93 at 8, fn. 7 and 9, fn. 8. There may be other cases in which existing transload facilities are hereafter discovered by BNSF.

Therefore, it would be helpful to clarify the definition of existing transload facilities to govern current and future disputes on this issue.

In sum, the Council believes that "existing transload facilities" should be defined as suggested by BNSF or, alternatively, that the Board should clarify that existing transload facilities include both public and private facilities.

2. New Transload Facilities

UP and BNSF propose alternative definitions of "new transload facilities" to be included in the amended and restated agreement. See UP/SP-386, BNSF-92 at 6-7. The BNSF definition would include both public transload facilities and transload facilities dedicated to the use of a single shipper/receiver. The UP definition would effectively exclude private transload facilities from the definition, because it would exclude facilities handling products in which the owner of the transload facility has an ownership interest. Both definitions would adopt the key elements of Decision No. 75 in which the Board noted that an eligible new transload facility would be ones that entailed at least some new construction, as well as operating costs above and beyond the costs that would be incurred in providing direct rail service.

For the reasons previously stated, the Council believes that the BNSF definition, which would include private transload facilities as well as public, better reflects the intention of the parties and the Board to replicate all actual and potential competition that existed between UP and SP pre-merger. Contrary to UP's position, the Board has not ruled that private transload facilities are outside of the definition of new facilities to which BNSF has access on its trackage rights line. Rather, the Board ruled in Decision No. 61 (slip op. at 7) that the new facilities condition should be read literally to include transload facilities. There is no reason at this late date to engraft upon the new facilities condition an exclusion of private transload facilities.

C. Scope of BNSF Trackage Rights

UP and BNSF disagree on whether BNSF's rights to use the UP/SP lines between Memphis and Valley Junction, IL (St. Louis) and between Bald Knob and Fair Oaks, AR should be limited to overhead trackage rights. UP argues that the original intent of the CMA Agreement was solely to enhance BNSF's trackage rights in the corridor between Texas and Louisiana on the south and Memphis and St. Louis on the north. For that reason, UP argues, the trackage rights on those segments were intended to be overhead rights only. BNSF argues that the Board has already rejected the position that these trackage rights are limited to overhead traffic.

The Council agrees with BNSF. In Decision No. 61 (at 11) the Board clarified that the new facilities condition would apply to these trackage rights lines. In other words, the Board clarified that BNSF had access to traffic originating and terminating on these lines, and was not limited to using the lines for the movement of overhead traffic originating and terminating in Texas and Louisiana.

The Board's rationale was that the competitive conditions imposed in the UP/SP merger were designed both to permit BNSF to rectify the loss of competition on particular lines, and also to enable BNSF to achieve sufficient densities of traffic on its trackage rights lines to be competitive. Decision No. 61 at 11. For the same reason, the Council supports BNSF's position that it should have the flexibility to use the lines between Memphis and Valley Junction, IL and between Bald Knob and Fair Oaks, AR for traffic originating and terminating at points other than in Texas and Louisiana.

D. BNSF Proposal to Require UP to Sell Unused Team Tracks

BNSF acknowledges that nothing in the original BNSF settlement agreement addressed the issue of replicating pre-merger competition between UP and SP that may have occurred by shippers' use of team tracks. Nonetheless, BNSF argues that such competition existed, and that its proposal to require UP to offer to sell unused team tracks to BNSF would preserve at least some of that competition. BNSF argues that it is difficult to replicate such competition through building its own team tracks because of the difficulty of obtaining UP approval for the construction and operation of such tracks.

UP takes the position that the team track proposal (1) would amount to creating a new contractual provision rather than restating existing provisions, (2) would constitute an intrusion into UP's right to own and operate its system, (3) would be difficult to implement because many tracks are used temporarily as team tracks and (4) is contrary to the provision of the BNSF settlement agreement that requires BNSF to construct its own rail-owned facilities unless UP consented to provide them. In addition, UP argues that BNSF is free to construct its own team tracks along UP/SP lines:

BNSF does not need UP's former team tracks in order to compete. Team tracks are inexpensive to construct. They require only a switch, a small area of land, and a short segment of track.

UP/SP-387 at 9.

The Council shares UP's view that BNSF's team track proposal would venture into an area not specifically addressed by the BNSF or CMA settlement agreements. In addition, for the reasons stated by UP, it would be difficult and intrusive to implement. Significantly, however, UP acknowledges in the passage quoted above that BNSF has the ability to construct team tracks along UP/SP lines. The Council believes that, due to BNSF's expressed concern about delays in

obtaining UP approvals in connection with team track construction, the Board should clarify that UP must work cooperatively with BNSF to enable BNSF to construct team tracks and ancillary facilities, including loading facilities and necessary connections with UP/SP tracks.

E. Audit of Trackage Rights Fees

BNSF has raised the issue of whether UP has correctly adjusted the trackage rights fee charged to BNSF for the use of UP's tracks. See BNSF-PR-20. Accurate calculation of this fee is important to ensuring that BNSF can compete on an equal footing with UP over the trackage rights lines.

In the event that BNSF and UP are unable to resolve their current dispute over the adjustment of the trackage rights fee, the Council will consider invoking its rights under the CMA agreement to request an audit of the adjustment calculations. The Council respectfully requests that the Board reaffirm the continuation of the Council's audit right under the Restated and Amended BNSF Settlement Agreement.

F. Continuation of Jurisdiction to Resolve Disputes and Enforce Competitive Conditions

The Council concurs with BNSF's request (BNSF-PR-20 at 120) that the Board continue its oversight proceeding until pending issues are resolved.


In addition, because issues of interpretation will undoubtedly arise in the future with respect to the restated BNSF settlement agreement and the other conditions imposed by the Board to preserve competition, the Board should clarify that, even after the formal oversight period ends, it will continue to entertain petitions to resolve disputes that the interested parties have been unable to resolve to interpret or enforce the merger conditions.

Conclusion

For the reasons stated above, the Board should (1) adopt BNSF's proposed definitions of 2-to-1 points, (2) adopt BNSF's proposed definitions of existing and new transload facilities, (3) clarify that BNSF's use of the trackage rights lines between Memphis, TN and Valley Junction, IL and between Bald Knob and Fair Oaks, AR is not restricted to overhead traffic originating or terminating in Louisiana or Texas, (4) clarify that UP must cooperate with BNSF in instances in which BNSF notifies UP of its desire to construct team tracks along a UP or former SP line, (5) clarify that the right of the Council to audit the adjustment calculations of the trackage rights fee charged by UP to BNSF will continue under the restated BNSF settlement agreement and (6) clarify that the Board will continue to entertain petitions to interpret or enforce the restated BNSF agreement or the other conditions imposed in the UP/SP merger to preserve competition.

Respectfully submitted

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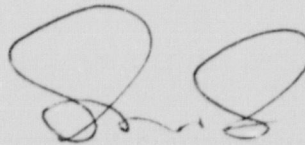
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Counsel for American Chemistry Council

August 17, 2001

CERTIFICATE OF SERVICE

This is to certify that I have, this 17th day of August, 2001, caused copies of the foregoing comments to be served by hand upon counsel for UP and BNSF and upon all other parties of record by first class mail.

A handwritten signature in black ink, consisting of two large, stylized loops followed by a horizontal line and a small flourish.

Scott N. Stone

STB

FD-32760

(SUB 21)

7-25-01

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202986

1 of 3

UP/SP-386

BNSF-92

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 — 202985

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

Finance Docket No. 32760 (Sub-No. 21) — 202986

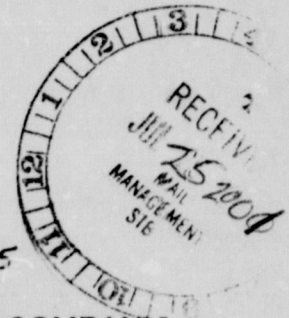
UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
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-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
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(OVERSIGHT)

JOINT SUBMISSION OF RESTATED AND AMENDED
BNSF SETTLEMENT AGREEMENT



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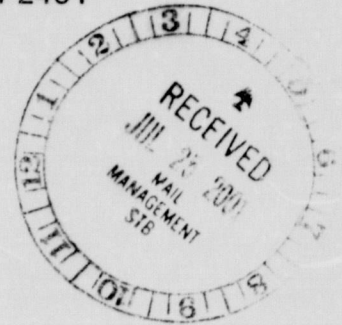
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July 25, 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

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
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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
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(OVERSIGHT)

JOINT SUBMISSION OF RESTATED AND AMENDED
BNSF SETTLEMENT AGREEMENT

The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union
Pacific Railroad Company ("UP") submit the attached Restated and Amended BNSF

Settlement Agreement for review and approval by the Surface Transportation Board. As UP and BNSF have previously advised the Board and all parties of record to these proceedings, UP and BNSF have engaged in negotiations over the past several months to update the original September 25, 1995 Settlement Agreement (as amended by the first and second supplemental agreements) to incorporate the conditions imposed by the Board in Decision No. 44 and subsequent Board decisions interpreting and clarifying those conditions.

UP and BNSF have reached agreement on the majority of the changes to be made to the Settlement Agreement, and a list of the principal changes proposed to the Settlement Agreement is attached hereto. The issues that remain unresolved are as follows: the definition of "2-to-1" Points; the definition of "Existing" and "New Transload Facilities"; restrictions on certain BNSF trackage rights lines; and BNSF access to team tracks.¹ UP and BNSF are each separately filing comments addressing the reasons why they believe that their proposed alternatives should be adopted by the Board.

The attached Restated and Amended BNSF Settlement Agreement contains the proposed changes on which UP and BNSF have agreed, and it also contains UP's and BNSF's separate proposals on the four issues where the parties have been unable to reach final agreement. Also attached is a red-lined version of the Restated and Amended BNSF Settlement Agreement which identifies the proposed changes from the original 1995 Settlement Agreement (as supplemented). UP and BNSF propose that interested parties file their comments on the proposed Restated and Amended BNSF

¹ It should be noted that BNSF and UP have resolved their differences with respect to the definition of "New Shipper Facilities" since their July 2, 2001 submissions.

Settlement Agreement on August 17, 2001, together with their comments on UP's and BNSF's Annual Reports. UP and BNSF will then reply to each other and to comments from the other parties on September 4, 2001.

Respectfully submitted,

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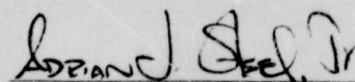
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July 25, 2001



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Principal Amendments to BNSF Settlement Agreement^{1/}

<u>Section(s)</u>	<u>Change</u>
Definitions	Adds definition of "Shipper Facilities"
Definitions	Adds definition of "'2-to-1' Points"*
Definitions	Adds definition of "'2-to-1' Shipper Facilities"
Definitions	Adds definition of "New Shipper Facilities"
Definitions	Adds definition of "Trackage Rights Line"
Definitions	Clarifies when New Shipper Facilities are "on" a Trackage Rights Line
Definitions	Adds definition of "Existing Transload Facilities"***
Definitions	Adds definition of "New Transload Facilities"*
1(a)	Adds Overhead Trackage Rights between Binney Jct. and Roseville, CA for directional operations
1(a)	Designates BNSF trackage rights between Elvas (Elvas Interchange) and Stockton, CA as Overhead Trackage Rights*
1(c), 3(d), 4(c), 5(c) and 6(e)	Clarifies BNSF's access at "2-to-1" Points and on Trackage Rights Lines
1(d), 3(h), 4(d), 5(d) and 6(f)	Conforms language to corresponding preceding sections
1(e)	Provides certain rights to BNSF in the event UP vacates its Sparks, NV intermodal facility
1(g)	Restates traffic restrictions on "Cal-P" and Donner Pass lines

^{1/} The amendments identified in this chart are in addition to those made by the First and Second Supplements to the original September 25, 1995 BNSF Settlement Agreement.

* BNSF and UP offer alternative proposals with respect to this issue.

** UP does not agree that this new definition is required.

<u>Section(s)</u>	<u>Change</u>
4(a)	Adds BNSF trackage rights to CPSB Elmendorf plant
4(a)	Adds BNSF trackage rights between Round Rock and McNeil, TX for interchange with CMTA operator
4(b)	Changes CMTA operator interchange from Elgin to McNeil
4(b)	Provides for sale of yards in Brownsville and San Antonio, TX
5(a)	Includes reference to Term Sheet Agreement
5(a)	Adds trackage rights to Port Arthur, TX and Harbor, LA
5(b)	Removes CMA Agreement restrictions on BNSF access to Lake Charles area shippers
5(g)	Deletes provision concerning sale of SP's line between Iowa Junction and Avondale to BNSF
6(c)	Adds language to implement Entergy build-in/build-out condition
6(d)	Adds and deletes language to implement (i) BNSF right to interchange Lake Charles area traffic with KCS at Shreveport and Texarkana and (ii) TUE access condition
7(e)	Adds BNSF Overhead Trackage Rights between Pacific and Labadie, MO
8(i)	Clarifies that the parties' intention is to preserve competition for "2-to-1" customers and all other shippers who had direct competition or competition by means of siting, transload or build-in/build-out pre-merger
8(i)	Clarifies that BNSF has access to "2-to-1" Shipper Facilities, Existing Transload Facilities and New Shipper Facilities at omnibus points
8(k)	Adds BNSF right to interchange with certain short-lines establishing a new post-merger interchange on a Trackage Rights Line
8(l)	Adds expanded CMA Agreement build-in/build-out condition

<u>Section(s)</u>	<u>Change</u>
8(o)	Adds language to provide that if UP determines not to renew a BNSF-served transload facility's lease, UP is required to renew the lease for the remaining term of the contract (up to 24 months) between BNSF and the facility
8(p)	Adds BNSF language to provide BNSF with right to purchase or lease unused team tracks at "2-to-1" points***
9(d)	Adds language incorporating dispatching protocols
9(d)	Adds Houston "clear route" language
9(d)	Adds language providing for owner notification to tenant if a Joint Trackage line and/or associated facility is to be sold or retired and providing that the sale be made subject to the Settlement Agreement
9(g)	Clarifies that all referenced locations include areas within switching limits designated by tariff in effect on 9/25/95
9(h)	Adds language specifically providing that tenant carrier has the right to build yards and other facilities to support its trackage rights operations
9(j)	Adds BNSF equal access to SP Gulf Coast SIT facilities
9(n)	Adds provision on directional operations

*** UP does not agree that the new language is needed.

PROPOSED RESTATED AND AMENDED BNSF SETTLEMENT AGREEMENT

RESTATED AND AMENDED AGREEMENT

This Restated and Amended Agreement ("Agreement") is entered into this _____ day of July, 2001, 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.

BNSF and UP do not agree on the definition of "2-to-1" Points.

BNSF Alternative:

"2-to-1" Points shall mean all geographic locations that were commonly served by 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 before such date shippers or receivers at a geographic location may have shipped or received any traffic via UP or SP, or whether any shippers or receivers at a geographic location were open to or served by both UP and SP prior to September 25, 1995. Such points include, without limitation, the points listed in Section 8(i) of and on Exhibit A to this Agreement. Six-digit Standard Point Location Codes ("SPLCs"), in effect on September 25, 1995, shall be used to identify geographic locations that qualify as "2-to-1" Points, and such locations shall be deemed to include all areas within the switching limits of the locations as described in Section 9(g) of this Agreement.

UP Alternative:

"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, including New Transload 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) New 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.

BNSF and UP do not agree on whether a definition of Existing Transload Facilities is necessary. BNSF believes that such definition is necessary while UP believes otherwise.

BNSF Alternative:

Existing Transload Facilities shall mean a Shipper Facility, other than automotive or intermodal facilities or team tracks in existence on September 25, 1995 (i) that provides services to a single shipper/receiver or to the general shipping public on a for-hire basis to ship or receive freight, including, but not limited to, facilities of commonly recognized transload service

providers, (ii) where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur), (iii) leased, owned or continuously operated by the same transload operator for at least twelve (12) months, (iv) on which improvements have been constructed that permit its use as a transload operation, and (v) which incurs operating costs above and beyond the costs that would be incurred in providing direct rail service.

BNSF and UP do not agree on the definition of New Transload Facilities.

BNSF Alternative:

New Transload Facilities shall mean a Shipper Facility other than automotive or intermodal facilities or team tracks (i) that provides services to a single shipper/receiver, or to the general shipping public on a for-hire basis, to ship or receive freight, including, but not limited to, facilities of commonly recognized transload service providers, (ii) where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur), (iii) that requires the construction of improvements to provide transloading services, and (iv) which incurs operating costs above and beyond the costs that would be incurred in providing direct rail service. By way of example, BNSF would not be able to construct a truck transload facility adjacent to an exclusively served coal mine and then truck the coal a short distance (e.g., 100 feet) from the mine to the facility.

UP Alternative:

New Transload Facilities shall mean a Shipper Facility, other than automotive or intermodal facilities or team tracks (i) that requires the construction of improvements to provide transloading services, including, but not limited to, facilities of commonly recognized transload service providers, (ii) where freight is transferred from one railcar to another or from one mode

to another (short term incidental storage may also occur), (iii) the operator of which has no ownership of the product being transloaded, and (iv) which incurs operating costs above and beyond the costs that would be incurred in providing direct rail service. By way of example, BNSF would not be able to construct a truck transload facility adjacent to an exclusively served coal mine and then truck the coal a short distance (e.g., 100 feet) from the mine to the facility.

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;

BNSF and UP do not agree as to whether BNSF's trackage rights over SP's line between Elvas (Elvas Interlocking) and Stockton, CA should be Overhead Trackage Rights.

BNSF Alternative:

- 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 Alternative:

- Overhead Trackage Rights on 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; **[UP Alternative if BNSF's trackage rights between Elvas (Elvas Interlocking) and Stockton, CA are Overhead Trackage Rights: PROVIDED, HOWEVER, that BNSF shall have the right to serve Willamette Industries at Elk Grove, CA and Southdown Cement at Polk, CA.]** 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 New 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 (Alga a) 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;
- 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 the Elmendorf facilities of the City Public Service Board of San Antonio, TX ("CPSB"), (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 empty and loaded coal trains 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.

BNSF and UP do not agree as to whether BNSF's rights to use UP's and SP's lines north of Bald Knob and Fair Oaks, AR and UP's and SP's lines between Memphis and Valley Junction, IL should be restricted. BNSF believes that there should be no restrictions on its

rights to use those lines. UP believes that, with modifications, the restrictions contained in the original BNSF Settlement Agreement should remain in place.

(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. **[BNSF Alternative: Except as provided in Section 9l of this Agreement, BNSF shall not have the right to enter or exit at intermediate points on UP's and SP's lines between Memphis and Valley Junction, IL. Traffic to be handled over the UP and SP lines between Memphis and Valley Junction, IL is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana except that traffic originating or terminating at points listed on Exhibit A under the caption "Points Referred to in Section 6c" may also be handled over these lines.] [UP Alternative: Except as provided in Section 9l of this Agreement, BNSF shall not have the right to enter or exit at intermediate points north of Bald Knob and Fair Oaks, AR on UP's and SP's lines between Memphis and Valley Junction, IL. Traffic to be handled over the UP and SP lines between Memphis and Valley Junction, IL is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana, except that traffic originating or terminating at points listed on Exhibit A under the caption "Points Referred to in Section 6(d)" may also be handled over these lines.] 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.

BNSF and UP do not agree on whether BNSF should be able to purchase or lease team tracks at "2-to-1" Points no longer used by UP.

(p) **BNSF Alternative:**

If UP no longer uses a team track at a "2-to-1" Point, it agrees to sell or lease the track to BNSF at normal and customary costs and charges.

UP Alternative:

It is UP's position that BNSF's proposed provision should not be added to the Settlement Agreement.

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)

	Keddle-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 ($\frac{1}{2}$) 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) 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
- (iii) 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. 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.

(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, 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>
Keddle-Bieber	\$ 30 million
Dallas-Waxahachie	20 million
Iowa Jct.-Avondale MP 16.9 (includes UP's Westwego	100 million

intermodal yard; SP's old Avondale yard; and SP's Lafayette yard)	
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- (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

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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, Fremont 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
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)

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

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

B. Compute BNSF Division on a Specific Move

$$\begin{aligned} & (A) \times (5) \times (3) \\ & \$0.06 \times 300 \times 100 = \$1800 \\ & \$0.06 \times 200 \times 50 = \$ 600 \end{aligned}$$

EXHIBIT C

660-3882
392-2280

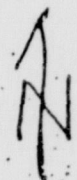
S.P. Avondale Yard

9/12/84
Crandall
350-7150

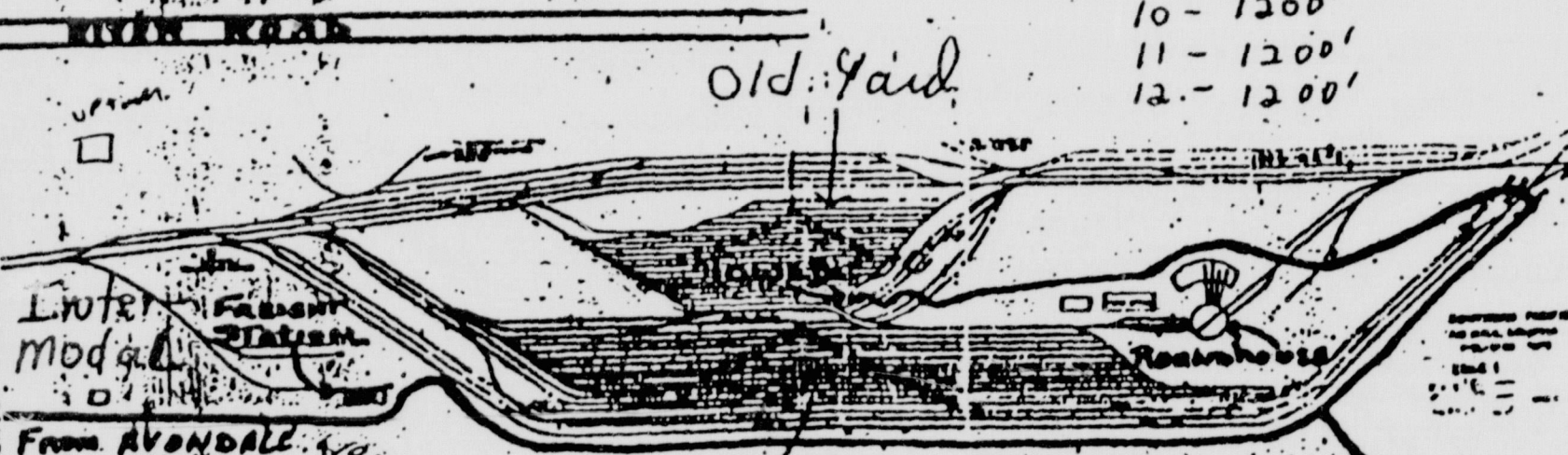
needs Rehab

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

== TOTAL PAGE 001 ==
== TOTAL PAGE 001 ==



Old Yard



New Yard

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

Old Yard

13.	1800'	
14.	1400'	
15.	1800'	23.) 1000'
16.	1700'	24.) 900'
17.	1600'	
18.	1500'	
19.	1400'	
20.	1300'	
21.	1200'	
22.	1100'	

From AVONDALE GARDEN ROAD
2 intermodal
16,400' each

FROM US 90

Not to scale
not entirely
accurate

EXHIBIT C

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

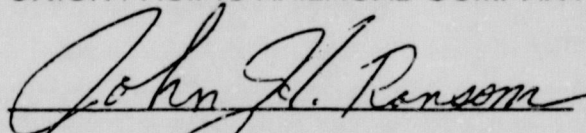
receives its longest haul and UP receives \$3 per car mile beyond that junction. If no joint through rate exists, BNSF receives its longest haul via junctions in existence between UP and BNSF, prior to the date of UP control over SP, September 11, 1996, and UP receives \$3 per car mile beyond. UP must 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.

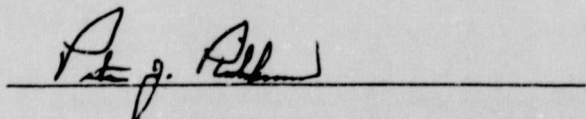
AGREED TO AND ACCEPTED BY:

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 the following lines:
- (a) 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; and
 - (b) **[SP's Fresno Line between MP 136.2 in the vicinity of Elvas (Elvas Interlocking) and MP 88.9 in the vicinity of Stockton, CA.¹]**

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.

¹

Subject to certain traffic restrictions.

**RED-LINED VERSION OF THE PROPOSED RESTATED AND AMENDED BNSF
SETTLEMENT AGREEMENT**

RESTATED AND AMENDED AGREEMENT

(original BNSF Settlement Agreement as modified
by First and Second Supplements)

This Restated and Amended Agreement ("Agreement") is entered into this 25th _____ day of ~~September~~July, 1995,2001, between ~~Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company~~UNION PACIFIC RAILROAD COMPANY (collectively referred to as "UP"), and ~~Southern Pacific Rail Corporation, Southern Pacific Transportation Company, The Denver & Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company and SPCSL Corp.~~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 referred to as "SP", the "1995 Agreement"), in connection with both UP and SP also hereinafter referred to collectively as "UP/SP"), on the one hand, and Burlington Northern Railroad Company ("BN") and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), hereinafter collectively referred to as "BNSF", on the other hand, concerning the proposed's acquisition of Southern Pacific Rail Corporation by UP Acquisition Corporation, and the resulting common control of UP and SP pursuant to the application pending before the Interstate Commerce Commission and its affiliates ("ICC/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, ~~in consideration of their mutual promises, UP/SP and BNSF~~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.

BNSF and UP do not agree on the definition of "2-to-1" Points.

BNSF Alternative:

"2-to-1" Points shall mean all geographic locations that were commonly served by 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 before such date shippers or receivers at a geographic location may have shipped or received any traffic via UP or SP, or whether any shippers or receivers at a geographic location were open to or served by both UP and SP prior to September 25, 1995. Such points include, without limitation, the points listed in Section 8(i) of and on Exhibit A to this Agreement. Six-digit Standard Point Location Codes ("SPLCs"), in effect on September 25, 1995, shall be used to identify geographic locations that qualify as "2-to-1" Points, and such locations shall be deemed to include all areas within the switching limits of the locations as described in Section 9(g) of this Agreement.

UP Alternative:

"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, including New Transload 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) New 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.

BNSF and UP do not agree on whether a definition of Existing Transload Facilities is necessary. BNSF believes that such definition is necessary while UP believes otherwise.

BNSF Alternative:

Existing Transload Facilities shall mean a Shipper Facility, other than automotive or intermodal facilities or team tracks in existence on September 25, 1995 (i) that provides services to a single shipper/receiver or to the general shipping public on a for-hire basis to ship or receive freight, including, but not limited to, facilities of commonly recognized transload service

providers, (ii) where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur), (iii) leased, owned or continuously operated by the same transload operator for at least twelve (12) months, (iv) on which improvements have been constructed that permit its use as a transload operation, and (v) which incurs operating costs above and beyond the costs that would be incurred in providing direct rail service.

BNSF and UP do not agree on the definition of New Transload Facilities.

BNSF Alternative:

New Transload Facilities shall mean a Shipper Facility other than automotive or intermodal facilities or team tracks (i) that provides services to a single shipper/receiver, or to the general shipping public on a for-hire basis, to ship or receive freight, including, but not limited to, facilities of commonly recognized transload service providers, (ii) where freight is transferred from one railcar to another or from one mode to another (short term incidental storage may also occur), (iii) that requires the construction of improvements to provide transloading services, and (iv) which incurs operating costs above and beyond the costs that would be incurred in providing direct rail service. By way of example, BNSF would not be able to construct a truck transload facility adjacent to an exclusively served coal mine and then truck the coal a short distance (e.g., 100 feet) from the mine to the facility.

UP Alternative:

New Transload Facilities shall mean a Shipper Facility, other than automotive or intermodal facilities or team tracks (i) that requires the construction of improvements to provide transloading services, including, but not limited to, facilities of commonly recognized transload service providers, (ii) where freight is transferred from one railcar to another or from one mode

to another (short term incidental storage may also occur), (iii) the operator of which has no ownership of the product being transloaded, and (iv) which incurs operating costs above and beyond the costs that would be incurred in providing direct rail service. By way of example, BNSF would not be able to construct a truck transload facility adjacent to an exclusively served coal mine and then truck the coal a short distance (e.g., 100 feet) from the mine to the facility.

1. 1. — **Western Trackage Rights**

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

- — SP's line between Denver, ~~Colorado~~CO and Salt Lake City, ~~Utah~~UT;
- — UP's line between Salt Lake City, ~~Utah~~ and Ogden, ~~Utah~~UT;
- — SP's line between Ogden, ~~Utah~~ and Little Mountain, ~~Utah~~UT;
- — UP's line between Salt Lake City, ~~Utah~~ and Alazon, ~~Nevada~~NV;
- — UP's and SP's lines between Alazon and Weso, ~~Nevada~~NV;
- — SP's line between Weso, ~~Nevada~~ and Oakland, ~~California~~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;

• — ***BNSF and UP do not agree as to whether BNSF's trackage rights over SP's line between Elvas (Elvas Interlocking) and Stockton, CA should be Overhead Trackage Rights.***

BNSF Alternative:

- 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 Alternative:

- Overhead Trackage Rights on 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, Nevada and Stockton, CaliforniaCA; and
- •——SP's line between Oakland and San Jose, CaliforniaCA.

(b) 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 facilitiesShipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) any existing or future transloading facilityNew 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 facility located subsequent to UP's acquisition of control of SP at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement (except the lineNew Shipper Facilities located subsequent to UP's acquisition of control of SP on the Trackage Rights Lines; [UP Alternative if BNSF's trackage rights between Elvas (Elvas

Interlocking) and Stockton), CA are Overhead Trackage Rights: PROVIDED,
HOWEVER, that BNSF shall have the right to serve Willamette Industries at Elk Grove,
CA and Southdown Cement at Polk, CA.] 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 Northern Railroad Company at Shafter, NV; with
the Utah Railway Company at the Utah Railway Junction, UT; Grand Junction, CO; and Provo,
UT; with the Utah Central Railway Company at Ogden, UT; and with the Salt Lake, Garfield and
Western at Salt Lake City, UT; 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~~ Transload facilities in Ogden and Salt Lake
City. BNSF shall also have the right to access any shipper-owned soda ash ~~transload~~ Transload
facilities in Ogden and Salt Lake City and to establish its own soda ash ~~transload~~ transload
facilities New Transload Facilities along the ~~trackage rights granted under this section.~~ Trackage
Rights Lines. For purposes of this Agreement, ~~"2-to-1 shipper facilities" shall mean all~~
~~industries 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 Agreement was~~
~~executed, regardless of how long ago a shipper may~~ BNSF shall have shipped, or whether a
~~shipper ever shipped, any traffic via either UP or SP.~~ Also for purposes of this Agreement, ~~"new~~
~~shipper facility" does not include expansion of or additions to an existing facility.~~ 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) e) ~~Access to industries at points~~ Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch. ~~New customers locating at points open to BNSF under this Agreement shall be open to both UP/SP and BNSF, 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 (ix) new shipper facilities and future transloading facilities New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (iiy) 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 customer 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 they, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) ~~d~~—~~Forty~~At least forty-five (45) days before initiating service to (i) a customer, Shipper Facility open to BNSF must elect whether its service shall be at a point listed or described on Exhibit A to or in Section 8(i) direct of this Agreement, or (ii) through reciprocal switch any New Shipper Facility on a Trackage Rights Line, or BNSF shall notify UP of its election, subject to Section 1(iii) with 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 prior agreement proposed operating plan, using a third party contractor to perform switching for itself UP shall notify BNSF of its approval or both railroads 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~~ PROVIDED, however HOWEVER, that BNSF shall (x) not change its any such election more often than once

every five (5) years ~~and (y)~~. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with ~~such~~ any changed election.

(e) 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 ~~this~~ 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) ~~f~~—Except as ~~hereinafter~~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) ~~g~~—~~On SP'~~BNSF may operate only the following trains on SP's "Cal-P" line between Weso and Oakland via the "Cal-P," BNSF shall be entitled to move only Sacramento and Oakland: (i) intermodal trains moving between (x) Weso and points east or Keddie and points north and (y) Oakland and (ii) one manifest train/day in each direction. Intermodal trains are comprised 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. Manifest These BNSF manifest trains shall 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 and shall 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. Helpers shall not be used unless BNSF may use helpers on these trains only if comparable UP/SP manifest trains use helpers in which case; BNSF trains may be operated in must provide the same fashion provided that BNSF furnishes the necessary helper service. BNSF may also utilize the "Cal-P" for one manifest train per day moving to or from Oakland via Keddie and Bieber; provided, however, that BNSF may only operate one manifest train/day in each direction via the "Cal-P" regardless of where the train originates or terminates. The requirement to use helpers does restrictions set forth in this section do not apply to movement over local trains serving Shipper Facilities to which BNSF has access on the "Cal-P

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) ~~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) ~~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) ~~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) 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. 2.——**I-5 Corridor**

(a) a)——UP/SP shall sell to BNSF UP's line between Bieber and Keddie, CaliforniaCA. 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) b)——BNSF shall grant UP/SP overhead trackage rights on BN's line between Chemult and Bend, OregonOR for rail traffic of all kinds, carload and intermodal, for all commodities.

(c) e)——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. 3.——**Southern California Access**

(a) a)——UP/SP shall grant access to BNSF to serve all "2-to-1" shipperShipper facilitiesFacilities 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:

- ~~b) — UP/SP shall grant BNSF overhead trackage rights on UP's line between Riverside and Ontario, CA for the sole purpose of moving rail traffic of all kinds, carload, and intermodal, for all commodities to "2-to-1" shipper facilities at Ontario.~~
- ~~c) — UP/SP shall grant BNSF overhead trackage rights on UP's line from between Basta, CA to and Fullerton and La Habra La Habra, CA for the sole purpose of moving rail traffic of all kinds, carload and intermodal, to "2-to-1" shipper facilities at Fullerton and La Habra.~~

(c) ~~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~~ Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) ~~any existing or future transloading facility~~ 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 at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP)~~ 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) e) — Access to ~~industries~~ Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch. ~~New customers locating at points, 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 ~~(i) new shipper facilities and future transloading facilities~~ (i) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (ii) BNSF shall have the right to establish and exclusively serve intermodal and auto facilities at points listed on Exhibit A to this Agreement, 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 ~~customer~~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, ~~these~~such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(c) ~~f)~~——BNSF shall grant UP/SP overhead trackage rights on Santa Fe's line between Barstow (including both legs of the wye) and Mojave, California ~~for rail traffic of all kinds, carload and intermodal for all commodities, 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) ~~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) ~~h)~~——Forty ~~At least forty-five~~ (45) days before initiating service to (i) ~~a customer pursuant~~Shipper Facility open to Sections 3a and 3b, BNSF ~~must elect whether its service shall be at a point listed or described on Exhibit A to or in Section 8(i) direct of this Agreement, or~~ (ii) ~~through reciprocal switch~~any New Shipper Facility on a Trackage Rights

Line, or BNSF shall notify UP of its election, subject to Section 3(iiiid) with 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 prior agreement proposed operating plan, using a third party contractor to perform switching for itself UP shall notify BNSF of its approval or both railroads 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 PROVIDED, however HOWEVER, that BNSF shall (x) not change its any such election more often than once every five (5) years and (y). BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with such any changed election.

4. 4. — South Texas Trackage Rights and Purchase

(a) 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);
- ~~•~~ ——— SPUP's line between ~~MPCraig 0Junction~~ and ~~MP 12.6 for the sole purpose of serving the City Public Service of San Antonio plants at Elmendorf, TX;~~ ——— SP Junction, TX (Tower 112) via Track No. 2 through Fratt, TX;
- SP's line between SP Junction (Tower 112) and Elmendorf, TX;
- ~~•~~ ——— Overhead Trackage Rights on SP's Port Lavaca Branch, between Placedo, TX, and Port Lavaca, TX, for the sole 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) ~~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~~Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement ~~and the Elmendorf facilities of the City Public Service Board of San Antonio, TX ("CPSB")~~, (ii) any ~~existing or future transloading facility~~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 at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on SP-owned the lines listed in Section 4a~~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 ~~(w):~~ the Tex-Mex~~Texas Mexican Railway Company~~ at Corpus Christi and Robstown, ~~(x)~~TX; the Georgetown Railroad at Kerr; Transportacion Ferroviaria Mexicana (y"~~TFM")~~the FNM at Brownsville (Matamoros, Mexico)~~and;~~ Ferrocarril Mexicano ("FXE") at Eagle Pass; and ~~(z) at Elgin;~~ the operator of SP's former line between Giddings and Llano ~~should service be reinstituted on that line to Elgin~~at McNeil, TX. BNSF's access and interchange rights at Corpus Christi and Brownsville shall be at least as favorable as

~~SP has currently had on September 25, 1995. BNSF shall have direct access to the Port of Brownsville, the Brownsville and Rio Grande International Railroad, and the ENMTFM. BNSF shall have the right to purchase for fair market value~~UP will designate a yard at Brownsville to support trackage rights operations 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) ~~e) — Access to industries at points~~Access to Shipper Facilities at points listed on Exhibit A to this Agreement open to BNSF shall be direct or through reciprocal switch. New customers locating at points, 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 (ix) new shipper facilities and future transloading facilities New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (iiy) 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 customer 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 they, such districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) ~~d)——Forty~~ At least forty-five (45) days before initiating service to (i) a customer, Shipper Facility open to BNSF must elect whether its service shall be at a point listed or described on Exhibit A to or in Section 8(i) direct of this Agreement, or (ii) through reciprocal switch any New Shipper Facility on a Trackage Rights Line, or BNSF shall notify UP of its election, subject to Section 4(iic) with 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 prior agreement proposed operating plan, using a third party contractor to perform switching for itself UP shall notify BNSF of its approval or both railroads 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~~ PROVIDED, ~~however~~ HOWEVER, that BNSF shall (~~x~~) not change ~~its~~ any such election more often than once every five (5) years ~~and (y)~~. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with ~~such~~ any changed election.

(e) e) — The 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) f) — In lieu of BNSF's conducting actual trackage rights operations between Houston, Corpus Christi, Harlingen and Brownsville, TX (including ~~FNMTFM~~ interchange), UP/SP agrees, upon request by BNSF, to handle BNSF's business on a haulage basis for the fee called for by Section 8j(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) 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) 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. ~~5.~~ **Eastern Texas - Louisiana Trackage Rights and Purchase**

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

- ~~•~~——SP's line between Houston, ~~Texas~~ 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, ~~Texas~~ and Baytown, ~~Texas~~ and East Baytown, TX;
- ~~•~~——SP's Channelview Spur which connects to the SP's line between Houston, ~~TX~~ and Iowa Junction, ~~LA~~ near Sheldon, TX for the sole 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, Louisiana LA intermodal facility (approximately UP MP 9.2).

(b) ~~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~~ Shipper Facilities and Existing Transload Facilities at points listed on Exhibit A to this Agreement, (ii) ~~any existing or future transloading facility~~ 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 at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the SP-owned lines listed in Section 5a~~ 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~~ 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

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KCS at West Lake Charles, LA; the foregoing rights at Lake Charles, West Lake, and West Lake Charles, LA shall be limited to traffic (x) to, from and via New Orleans, and (y) to and from points in Mexico, with routings via Eagle Pass, Laredo (through BNSF shall also have the right to interchange with Tex-Mex at Corpus Christi or Robstown), or Brownsville, TX. In addition to all other charges to be paid by BNSF to UP/SP herein, at West Lake and West Lake Charles, BNSF shall also be required to pay a fee to UP/SP equal to the fee that UP pays KCS as of the date of this Agreement to access the traffic at West Lake, adjusted upwards or downwards in accordance with Section 12 of this agreement 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) e) — ~~Access to industries at points~~ 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 customers locating 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 points 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~~BNSF~~, subject to the terms of Section 9(c)(v) of this Agreement. The geographic limits within which ~~(ix) new shipper facilities and future transloading facilities~~New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and ~~(iiy)~~ 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 ~~customer~~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~~they, such~~ districts (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(d) ~~d)~~ ~~Forty~~At least forty-five (45) days before initiating service to (i) a ~~customer,~~Shipper Facility open to BNSF must elect whether its service shall be at a point listed or described on Exhibit A to or in Section 8(i) directof this Agreement, or (ii) through recipoeal switchingany New Shipper Facility on a Trackage Rights Line, or BNSF shall notify UP of its election, subject to Section 5(iiic) withabove, 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 prior agreementproposed operating plan, through useUP shall notify BNSF

~~of a third party to perform switching for itself its approval or both railroads 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 PROVIDED,~~
~~however HOWEVER, that BNSF shall (x) not change its any such election more often than once~~
~~every five (5) years and (y). BNSF shall reimburse UP/SP for any costs incurred by UP/SP in~~
~~connection with such any changed election.~~

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

(f) ~~f)——~~Trackage ~~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) ~~g)——~~UP/SP shall sell to ~~BNSF~~ SP's line between Iowa Junction in Louisiana
and near Avondale, Louisiana (SP MP 14.94). UP/SP shall retain full trackage rights including
the right to serve all local industries on the line for the trackage rights charges set forth in Section
9a of this Agreement. UP/SP shall retain rights for the Louisiana and Delta Railroad (L&D) to
serve as UP/SP's agent between Iowa Junction and points served by the L&D. BNSF agrees that
the purchase of this line is subject to contracts between SP and the L&D. UP/SP shall cause

~~L&D to pay BNSF compensation equal to that set forth in Table I in Section 9 of this Agreement for operations between Lafayette and Iowa Junction.~~

(h) ~~h)~~——UP/SP shall sell to BNSF UP's Main Line No. 1 between MP 14.11 and 10.38, UP's Westwego, Louisiana intermodal terminal, SP's old Avondale Yard (together with the fueling and mechanical facilities located thereon) as shown on Exhibit C-4; and SP's Lafayette Yard.

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

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

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

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

(c) BNSF shall have the right to transport empty and loaded coal trains 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.

BNSF and UP do not agree as to whether BNSF's rights to use UP's and SP's lines north of Bald Knob and Fair Oaks, AR and UP's and SP's lines between Memphis and Valley Junction, IL should be restricted. BNSF believes that there should be no restrictions on its rights to use those lines. UP believes that, with modifications, the restrictions contained in the original BNSF Settlement Agreement should remain in place.

(d) e) — 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 at points listed on Exhibit A to this Agreement,~~ (ii) ~~any existing or future transloading facility~~ 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 at points listed on Exhibit A to this Agreement (including but not limited to situations where, when the Agreement was signed, a shipper facility was being developed or land had been acquired for that purpose, with the contemplation of receiving rail service by both UP and SP), and (iv) any new shipper facility located subsequent to UP's acquisition of control of SP at points other than those listed on Exhibit A to this Agreement on the SP-owned lines listed in Section 6a (except the line between Fair Oaks, AR and Illmo, MO). Except as provided in Section 94~~ 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 Alternative: Except as provided in Section 91 of this Agreement, BNSF shall not have the right to enter or exit at intermediate points on UP's and SP's lines between Memphis and Valley Junction, IL.

~~Traffic to be handled over the UP and SP lines between Memphis and Valley Junction, IL is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana except that traffic originating or terminating at points listed on Exhibit A under the caption "Points Referred to in Section 6c" may also be handled over these lines.] [UP~~
Alternative: Except as provided in Section 91 of this Agreement, BNSF shall not have the right to enter or exit at intermediate points north of Bald Knob and Fair Oaks, AR on UP's and SP's lines between Memphis and Valley Junction, IL. Traffic to be handled over the UP and SP lines between Memphis and Valley Junction, IL is limited to traffic that moves through, originates in, or terminates in Texas or Louisiana, except that traffic originating or terminating at points listed on Exhibit A under the caption "Points Referred to in Section 6(d)" may also be handled over these lines.] 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 5573), 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 its 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, and 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) d) — Access to ~~industries~~ 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 customers locating~~ 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 ~~point~~ 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 (i) ~~new shipper facilities and future transloading facilities~~ (ii) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (iiy) BNSF shall have the right to establish and

exclusively serve intermodal and auto facilities at points listed ~~on Exhibit A to this Agreement, 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 ~~customer~~ 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 ~~they, such districts~~ (as described in Section 9(g)) shall be presumed to establish these geographic limitations.

(f) ~~e)——Forty~~At least forty-five (45) days before initiating service to (i) a ~~customer, Shipper Facility open to BNSF must elect whether its service shall be at a point listed~~ or described on Exhibit A to or in Section 8(i) ~~direct of this Agreement, or (ii) through reciprocal~~ switchany New Shipper Facility on a Trackage Rights Line, ~~or BNSF shall notify UP of its~~ election, subject to Section 6(iii) ~~with~~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 ~~prior agreement~~proposed operating plan, using a third-party contractor to ~~perform switching for itself~~UP shall notify BNSF of its approval or ~~both railroads~~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~~PROVIDED, ~~however~~HOWEVER, that BNSF shall (x) not change itsany such election more often than once

every five ~~(5) years and (y)~~. BNSF shall reimburse UP/SP for any costs incurred by UP/SP in connection with ~~such~~any changed election.

(g) ~~f)~~——~~The~~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) ~~g)~~——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. ~~7.~~——**St. Louis Area Coordinations**

(a) ~~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) ~~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) ~~e)~~——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) ~~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. 8.——Additional Rights

(a) ~~a)~~——UP/SP shall grant BNSF overhead trackage rights on SP's line between Richmond and Oakland, ~~California~~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," ~~and 3.1-3.1~~ 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) ~~b)~~——BNSF shall waive any payment by UP/SP of the Seattle Terminal 5 access charge.

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

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

(e) ~~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 SF.

(f) ~~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) ~~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, ~~Illinois~~IL. UP/SP shall be responsible for the cost of any connections required.

(h) ~~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, ~~Kansas~~KS, and switching UP ~~industry~~industries at that point.

(i) ~~i)~~——It is the intent of the parties that this Agreement result in the preservation of ~~service~~competition by two ~~competing railroad companies~~rail carriers for all customers ~~(a) all "2-to-1" Shipper Facilities at points listed on Exhibit A to this Agreement presently served by both~~ 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 and no other railroad (2-to-1 customers) pre-
merger.

The parties recognize that some ~~2-to-1 customers~~ "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 customers" 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~~ provide competitive service to "2-to-1 customers" Shipper Facilities, Existing Transload Facilities, and New Shipper Facilities at the foregoing points and ~~to any at other "2-to-1 customers who are" Points not located at points expressly referred to in this Agreement or Exhibit A to this Agreement~~ along a Trackage Rights Line.

(j) BNSF shall have the right to interchange with any short-line railroad which, prior to the date 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) ~~j)~~—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" facilities Shipper Facilities as provided for in Section 9h(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) k)——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.

BNSF and UP do not agree on whether BNSF should be able to purchase or lease team tracks at "2-to-1" Points no longer used by UP.

(p) BNSF Alternative:

If UP no longer uses a team track at a "2-to-1" Point, it agrees to sell or lease the track to BNSF at normal and customary costs and charges.

UP Alternative:

It is UP's position that BNSF's proposed provision should not be added to the Settlement Agreement.

9. 9.—Trackage Rights - General Provisions

(a) 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) 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 (1/2) the original cost of constructing such facilities.

(c) e)——Capital expenditures on the Trackage Rights Lines and on lines over which BNSF has been granted trackage rights pursuant to this Agreement (the trackage rights lines) Overhead Trackage Rights will be handled as follows:

- (i) 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) 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) 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) ~~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~~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) ~~v)~~—If both UP/SP and BNSF intend to serve ~~new shipper facilities or future transloading facilities~~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), ~~and 6e(d)~~, and 8(i) of this Agreement, they shall share equally in any capital investment ~~necessary~~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~~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~~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) ~~d)——The 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 heto each other pursuant to this Agreement ("Joint Trackage") shall be under the exclusive direction and control of the owning carrier. The, and the owning carrier shall have the otherwise unrestricted power to change the management and operations on and over jointJoint trackageTrackage as in its judgementjudgment may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing jointJoint trackageTrackage 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.~~

~~Owner~~The owning carrier shall keep and maintain the ~~trackage rights lines~~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 ~~trackage~~Joint rightsTrackage 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.

(c) 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~~Joint trackageTrackage. 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 9.9(e) is intended to create an obligation to hire any specific employee.

(f) 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) ~~g~~—All locations referenced herein shall be deemed to include all areas within the ~~present designated~~ 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 ~~and to build yards or other facilities to support trackage rights operations.~~

(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) 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
- (iii) 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) ~~h) — If requested by BNSF, UP/SP will provide to BNSF~~Where UP/SP provides reciprocal switching services at “2-to-1” shipper facilities covered in 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. 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) i) —It is the intent of the parties that BNSF shall, where sufficient volume exists, be able to utilize its own terminal facilities ~~to handle such local~~ 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, to facility at Dayton for storage in transit of traffic handled by BNSF under the terms of this Agreement, TX 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) j)——BNSF may, subject to UP/SP's consent, use agents for limited feeder service on the ~~trackage rights~~Trackage Rights Lines and on lines over which BNSF is granted Overhead Trackage Rights to serve a build-in/build-out line.

(l) k)——BNSF shall have the right to inspect the UP and SP lines over which it obtains trackage rights under this ~~agreement~~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) l)——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 ~~or be granted trackage rights over~~ pursuant to this Agreement. UP/SP shall have the right to connect, for movement in ~~anyall direction~~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 be granted trackage rights over pursuant to this Agreement~~receive trackage rights pursuant to this Agreement.

(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, 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. 40. — Compensation for Sale of Line Segments

(a) 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 "New" yard; and SP's Lafayette yard)	100 million

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

(i) (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) ~~(ii)~~—includes track and associated structures together with right-of-way and facilities needed for operations.
- (iii) ~~(iii)~~—indemnity for environmental liabilities attributable to UP/SP's prior operations.
- (iv) ~~(iv)~~—standard provisions for sales of this nature involving title, liens, encumbrances other than those specifically reserved or provided for by this Agreement.
- (v) ~~(v)~~—assignment of associated operating agreements (road crossings, crossings for wire and pipelines, etc.). Non-operating agreements shall not be assigned.
- (vi) ~~(vi)~~—removal by Seller~~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) ~~(vii)~~—the purchase will be subject to easements or other agreements involving telecommunications, ~~fibrefiber~~ 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 ~~date~~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, ~~operation~~operations would continue under the existing trackage rights agreement.

(c) e)——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. ~~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~~PROVIDED, ~~however~~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~~PROVIDED, ~~however~~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 ~~Interstate Commerce Commission~~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. ~~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 additional fee BNSF must pay UP/SP pursuant to Section 5b of this Agreement shall be subject to this same adjustment.~~

The rates for reciprocal switching services established in Section 9h(i) and for haulage service established in Section 8j(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 ~~operations~~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. ~~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~~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. ~~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~~ PROVIDED, ~~however~~ 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. ~~15.~~ — **Arbitration**

~~Unresolved~~ 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. ~~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. ~~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: _____

SOUTHERN PACIFIC

TRANSPORTATION COMPANY

By: _____

Title: _____

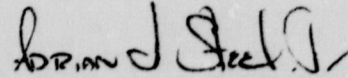
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____

Title: _____

CERTIFICATE OF SERVICE

I do hereby certify that copies of the Joint Submission of Restated and Amended BNSF Settlement Agreement (UP/SP-386/BNSF-92) are being served on all parties of record.

A handwritten signature in dark ink, appearing to read "Adrian L. Steel, Jr.", written over a horizontal line.

Adrian L. Steel, Jr.

STB

FD-32760

(SUB 21)

7-10-01

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ORIGINAL

COVINGTON & BURLING

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RAYMOND A. ATKINS
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RATKINS@COV.COM

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ENTERED
Office of the Secretary

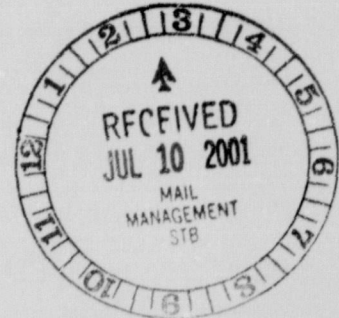
July 10, 2001

JUL 10 2001

Part of
Public Record

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, D.C. 20423-0001



Re: Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Rail Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railway Company

Dear Mr. Williams:

The enclosed verification of Stephen R. Barkley, signed and notarized on June 28, 2001, should have been included with the verifications of Richard B. Peterson and Woodruff F. Sutton to Union Pacific's Fifth Annual Oversight Report filed July 2, 2001. Mr. Barkley's verification was misplaced and we are sending you the original and 50 copies now. Please date stamp the extra copy of this letter and return it with the messenger who delivered this filing.

We apologize for any inconvenience this may cause.

Sincerely,

Raymond A. Atkins

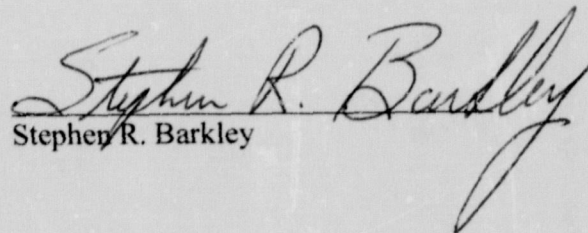
RAA/bat
Enclosure

cc: All parties of record


VERIFICATION

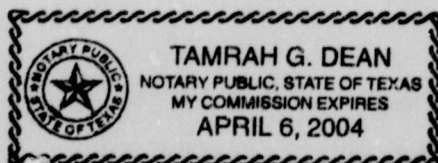
STATE OF TEXAS)
) ss:
COUNTY OF HARRIS)

I, Stephen R. Barkley, Regional Vice President- South of Union Pacific Railroad Company, state that I am familiar with the contents of Part II.B. of the Applicants' Fifth Annual Report on Merger and Condition Implementation in STB Finance Docket No. 32760 (Sub-No. 21). To the best of my knowledge and belief those contents are true as stated.


Stephen R. Barkley

Subscribed and sworn to before me by
Stephen R. Barkley this 28th day of
June, 2001.


Notary Public



STB

FD-32760 (SUB 21)

7-2-01

D

202804

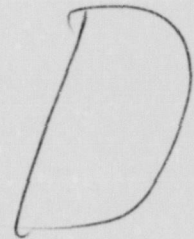
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UP/SP-385



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 (Sub-No. 21)



UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY
-- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY -- OVERSIGHT

ENTERED
Office of the Secretary

JUL 03 2001

Part of
Public Record

**UP'S REPORT ON ISSUES ARISING UNDER
THE BNSF SETTLEMENT AGREEMENT**

For five years the BNSF Settlement Agreement has facilitated and enhanced BNSF-UP competition. The two railroads have solved the vast majority of the disputes that have arisen under the agreement, calling on the Board to resolve only a few especially contentious problems. With the UP/SP oversight period drawing to a close, however, both railroads elected to identify and attempt to resolve as many disputes and uncertainties as possible.

BNSF and UP have as yet been unable to resolve issues in several categories. Most of these issues are not appropriate for Board action or consideration. A few will require Board action unless BNSF and UP resolve them during the next few weeks.

The disputes fit into four categories: Operating Issues, Adjustment Issues, Proportional Rate Issues, and Amendment Issues. Only the Amendment Issues may call for Board action.

- The Operating Issues are run-of-the-mill disputes that arise whenever one railroad operates over another. In its oversight reports, BNSF has repeatedly complained about UP's allegedly prejudicial behavior. BNSF's complaints generally were mistaken. The parties have been able to resolve legitimate concerns in the normal course of business. We will respond to BNSF's latest complaints, though we believe the Board should direct the parties to continue to resolve their own disputes cooperatively, as they have in the past.
- The Adjustment Issues are new disagreements about how to adjust trackage rights fees over time under the BNSF Settlement Agreement.
- The Proportional Rate Issues arise out of an almost-completed audit of BNSF's performance of its obligations under the Proportional Rate Agreement for the I-5 Corridor.
- The Amendment Issues consist of a few remaining points on which BNSF and UP disagree about how their Settlement Agreement should be modified to conform to Board decisions and subsequent agreements. The parties negotiated in good faith and resolved many of these issues. Only a few items remain. The parties will continue to negotiate -- indeed, they are doing so now -- and propose a procedure to resolve any leftover items.

1. Operating Issues

BNSF complained in April 2001 about UP's treatment of BNSF trains in Texas. BNSF alleged that UP had impaired, delayed, or discriminated against BNSF trains. Like most complaints about train operations and alleged discrimination, BNSF's complaints reflect incomplete facts. The complaints pertained to three UP routes.

a. Temple - Eagle Pass, Texas. BNSF stated that UP had "arbitrarily" restricted BNSF's interchanges with FXE at Eagle Pass for one week in March 2001. See BNSF-PR-19, p. 23. BNSF omits the cause of this dust-up: BNSF caused a derailment by engaging in unsafe operating practices. On March 20, 2001, BNSF combined two trains into

one huge 207-car train. This train was 57 cars longer than the 150-car limit for safe operations at Eagle Pass. When BNSF tried to deliver this oversized train to FXE, it derailed 12 cars, blocking all rail service through Eagle Pass. A local UP operating official temporarily restricted BNSF interchange movements to 115 cars. After UP obtained a report on the derailment and discussed it with BNSF, UP reinstated the prior limit of 150 cars.

BNSF also alleges that UP blocked the interchange to FXE on March 26, 2001. See BNSF-PR-19, p. 23. BNSF is mistaken. Congestion on FXE caused the problem. FXE simply could not take additional BNSF cars that day.

BNSF further complains that congestion in San Antonio delayed BNSF trains. See BNSF-PR-19, p. 23. BNSF is partially correct. Track work delayed both BNSF and UP trains, not just BNSF trains. UP replaced rail and ties on the SP mainline through San Antonio, raising the speed limit from 20 to up to 60 m.p.h. BNSF now benefits from faster operations.

Finally, BNSF complains that UP improperly refused to allow two BNSF trains to set out cars in San Antonio. See BNSF-PR-19, p. 23. Again, UP and BNSF trains received equal treatment. UP restricted operations to one track while a crossing gang worked on the other track. To avoid severe congestion, UP barred all trains, including UP trains, from setting out or picking up cars during this project. UP notified BNSF of the work in advance.

b. Temple-San Antonio, Texas. BNSF complains about delays to its trains in this corridor. See BNSF-PR-19, p. 15. BNSF acknowledges that operations have

improved. To reduce delays further, though, BNSF wants to use a mainline that UP reconstructed in 1998 at substantial cost.¹

UP will grant BNSF rights over this line as soon as BNSF contributes to jointly used rail infrastructure in Texas. BNSF could contribute to UP's cost of reconstructing the second mainline. Better yet, UP has urged BNSF to add a second track to its Mykawa Subdivision south of Houston. UP trains using the Mykawa Subdivision suffer severe delays because the BNSF line lacks adequate capacity. BNSF should invest its fair share in reducing rail congestion in the Gulf area.

c. Kerr - Sealy, Texas. BNSF rerouted trains off this UP segment due to slow orders and lower speed limits. BNSF alleges that the slow speeds violate the BNSF Settlement Agreement and other UP/BNSF agreements, which require UP to maintain pre-merger levels of service. See BNSF-PR-19, p. 22.

BNSF acknowledges that UP undertook maintenance-of-way work to eliminate the delay. See BNSF-PR-19, p. 22. UP crews finished the repairs as scheduled before June 30, 2001. Like every railroad, UP attempts to minimize delays caused by track maintenance work, but every rail line needs occasional repairs.

d. UP Problems on BNSF. BNSF regularly delays UP trains where UP has trackage rights on BNSF, but we do not view those delays as issues for the Board. We do not complain to the Board, for example, when BNSF track work delays UP trains. We do not complain that UP's trains require from 2.1 hours to 4.8 hours to traverse 19.4 miles of

¹ Finance Docket No. 33611, Union Pacific R.R. -- Petition for Declaratory Order -- Rehabilitation of Missouri-Kansas-Texas R.R. Between Jude and Ogden Junction, TX, Decision served August 21, 1998.

BNSF's Mykawa Subdivision, even though BNSF acknowledges that the trip should take only 1.5 hours.

Similarly, we do not expect the Board to address the biggest cause of congestion in the Houston area: BNSF's lack of capacity at South Yard in Houston. Because of inadequate space in South Yard, BNSF builds trains on one of the two mainlines next to the yard. UP's mainline trains suffer delays as a result. Also, BNSF's yard often cannot accept inbound movements, so they block mainline tracks approaching the yard. UP agreed to help fund a third mainline next to South Yard, but this partial solution has been delayed by the United States Army Corps of Engineers, which must approve construction of a new bridge.

The BNSF-UP Joint Service Committee meets regularly to address problems such as these and to find ways to improve service for both carriers on trackage rights lines. This committee is an effective mechanism for resolving disputes. As UP/SP oversight comes to an end, the Board should rely on interline cooperation to solve operating problems, as it has for several years.

2. Adjustment Issues

On February 6, 2001, BNSF accused UP of overcharging BNSF for trackage rights under the BNSF Settlement Agreement. The trackage rights fees had not increased above the original level, and had declined in some years. BNSF believed that they should have been adjusted downward since 1997. BNSF not only argued that it was being overcharged but also withheld the disputed amounts. The amounts in dispute exceed \$9 million.

UP believes that BNSF's arguments are incorrect. UP has adjusted trackage rights fees annually in accordance with Section 12 of the agreement, employing the URCS

variable cost calculation that UP described during the merger proceedings and that the Board found to be correct. BNSF did not take issue with the method for calculating the URCS costs when UP explained them.

As the attached letter to BNSF explains in detail, BNSF's arguments are mistaken in numerous other respects as well. See Attachment 1. For example, BNSF's adjustments reflect changes in transportation costs that are not included in the trackage rights fees. BNSF also adjusted the URCS calculation by substituting depreciation and investment costs from later years for the actual depreciation and investment costs.

BNSF owes UP a response to UP's analysis. If the parties are unable to resolve their disagreements, they must arbitrate their disputes under the arbitration provision of the BNSF Settlement Agreement. BNSF has not yet tendered an arbitration demand.

3. Proportional Rate Issues

In its report served January 2, 2001, UP raised concerns about whether BNSF had properly implemented the I-5 Proportional Rate Agreement. This agreement is essential for UP to compete against BNSF's new single-line route between the Pacific Northwest and points in California and the Southwest. UP considered asking the Board to discard the agreement and adopt alternative solutions. For the moment, however, UP is willing to pursue its remedies under the agreement.

Although BNSF defended its actions to the Board in its April report, a BNSF letter dated January 26, 2001, acknowledges many corrections to BNSF procedures were required. For example, BNSF implemented system changes on December 6, 2000, to correct inaccurate shipment weights. BNSF pledged to make additional changes so that it can identify actual shipment weights. BNSF also changed its information systems to correct inaccurate mileages in its rate calculations. It made additional changes to correct its

handling of voided waybills. It found a more accurate data source to allocate allowances that are deducted from rates. In short, BNSF corrected many of the defects in its procedures that UP had identified. BNSF admitted, however, that it will not correct all of its information systems until sometime in 2002. See Attachment 2.

In a letter dated June 28, 2001, BNSF again emphasized that it "is engaged in an ongoing process to develop and refine systems." See Attachment 3. Under Section 2.g.(3) of the Proportional Rate Agreement, however, BNSF was obligated "to develop systems necessary to produce a rate matrix derived from actual rather than estimated data" more than two years ago.

Over the last several months, BNSF and UP have cooperated with auditors from KPMG Peat Marwick as they conducted a detailed audit of BNSF's procedures. BNSF and UP are awaiting a final report of the audit. The audit is not yet complete because the auditors are still waiting for information from BNSF on one major item.

KPMG recently provided the parties with a preliminary report. That report identified a number of modest problems and one very important failure.

According to KPMG, BNSF has never performed its contractual obligation to develop information systems that would allow BNSF to offset its refunds and rebates to shippers against the prices it charges shippers. Section 2.b of the Proportional Rate explicitly states that the rate matrix is to reflect rate factors "net of all refunds and rebates." According to the initial audit report, BNSF has not developed such systems, and it is not deducting all refunds and rebates.

In its recent letter, BNSF indicated that it declines to reduce revenues for the "refunds and rebates" under its "QDC" program. See Attachment 3. BNSF asserts that it

grants these refunds and rebates in order to provide competing rates to shippers at "UP exclusively served points."

This assertion, even if true, is no excuse. BNSF is contractually obligated to subtract rebates and refunds. Otherwise, I-5 rates to all points will be too high. Moreover, the assertion is inaccurate: The QDC program is not limited to shippers served only by UP. As a result, the proportional rates that UP must use to compete against BNSF are significantly higher than the rates BNSF charges on its lines, giving BNSF an unfair competitive advantage.

UP also objects to a BNSF program that prohibits BNSF shippers from using BNSF's most desirable freight cars under the I-5 Proportional Rate Agreement. BNSF has committed the majority of its 81-foot centerbeam cars to a program called LOGS. On its internet site, BNSF expressly prohibits shippers from using most of its centerbeam cars for interline routings involving UP. When UP objected to this practice, BNSF's outside counsel advised us that UP (although not the shippers) could secure cars through the LOGS program. Although UP considered this solution unacceptable and in violation of the I-5 Proportional Rate Agreement, it nevertheless attempted to use the remedy. BNSF personnel then refused to allow UP to obtain cars under the LOGS program.

BNSF now refuses to allow UP to participate in LOGS on any basis, offering no explanation for overriding its counsel's representation. BNSF shippers cannot use the LOGS fleet for movements under the Proportional Rate Agreement. BNSF's conduct violates the express terms of the I-5 Proportional Rate Agreement.

BNSF's newest defense of its behavior is difficult to comprehend. BNSF acknowledges that it "has the same obligation to supply equipment for traffic moving under

the Proportional Rate Agreement as it has for traffic that does not move under the Proportional Rate Agreement." Attachment 3 (emphasis added). Nevertheless, BNSF forbids its shippers to use most of its centerbeam cars for movements under the Proportional Rate Agreement. BNSF apparently believes that it can divert as many of its cars as it wishes into restricted programs as long as it leaves a few cars available for unrestricted service. UP believes that BNSF'S withdrawal of cars from the I-5 agreement violates the agreement. It clearly undermines competition that the Board intended to preserve. UP again will pursue its rights through arbitration under the Proportional Rate Agreement.

4. Amendment Issues

BNSF and UP devoted considerable effort in recent weeks to conforming the BNSF Settlement Agreement to Board decisions and subsequent agreements that clarify and implement the agreement. Through extensive good-faith negotiations, the railroads developed language for most affected provisions. Negotiations continue in an effort to resolve not more than half a dozen disputed issues.

BNSF and UP will jointly present a revised form of Settlement Agreement to the Board and all parties within the next three weeks. We respectfully propose the following procedures: BNSF and UP will present new versions of the agreement showing all changes to which the carriers agreed, as well as any remaining items on which they continue to disagree. With respect to those remaining items, both parties will brief their positions. All interested parties will then have ample opportunity to comment on August 16. UP and BNSF will reply to each other and to comments from other parties on September 4.

BNSF and UP continue to disagree on six matters:

a. Definition of "New Transload Facilities". UP and BNSF disagree on the definition of "New Transload Facilities." The Board defined "Existing Transload

Facilities" as facilities where the operator "has no ownership of the product being trans-loaded." In other words, a transload is a facility that offers services to the shipping public, not a private loading facility.

UP believes that the definition of "New Transload Facilities" should contain the same limitation. Otherwise, an existing shipper could build a transloading facility ten feet from its current loading facility and BNSF would automatically gain access to the new "transload." That would transform the UP-BNSF Settlement Agreement from a tool designed to mitigate any potential anti-competitive effects of the UP/SP merger into a tool to force "open access" on UP where BNSF has trackage rights. The Board rejected any such intention. See Decision No. 10, 2 S.T.B. 703, 715 (1997) ("It was not our intention to open up UP's and SP's existing exclusively served traffic to direct BNSF service through this condition.").

b. Elvas-Stockton Restriction. UP voluntarily granted BNSF overhead trackage rights over an extra segment of SP track solely to save BNSF substantial amounts of money. The Settlement Agreement had given BNSF trackage rights over UP's line from Nevada to Stockton via Sacramento. It also had given BNSF rights over SP's line from Reno to Oakland, a line that crosses the UP line on an overpass in Sacramento. BNSF wanted to be able to move between the SP line and the UP line at Sacramento. UP was willing to allow this movement, but BNSF needed to build an extremely expensive connection.

To save BNSF money and to enhance BNSF's ability to compete in the Central Corridor, UP voluntarily agreed to allow BNSF to run its trains on an SP line from Sacramento (Elvas Tower) to Stockton, rendering the connection unnecessary. However,

UP granted only overhead rights on the SP segment. UP believes BNSF should respect the restriction it negotiated and that UP should not be penalized for helping BNSF.

c. Bald Knob/Fair Oaks Restriction. The Settlement Agreement, as modified by the CMA Agreement, expressly limits BNSF's use of UP trackage rights between East St. Louis (Valley Jct., Illinois) and two junction points in Eastern Arkansas, Bald Knob and Fair Oaks, in one respect. Under Section 6(c) of the agreement, BNSF cannot move trains on or off the UP trackage rights north of the two Arkansas junctions. BNSF and UP agreed to this restriction because BNSF has its own network of lines in north-eastern Arkansas and southeastern Missouri and does not need to use UP's lines. It can provide service over its own lines.

The Board imposed the Settlement Agreement with this express restriction. BNSF would benefit from using UP lines at will, but we do not understand the Board to have granted such broad rights.

d. BNSF Access to Team Tracks. BNSF and UP disagree about BNSF's access to team tracks at "2-to-1" locations. The Settlement Agreement specifically exempted automotive ramps, intermodal facilities, and team tracks at those locations from the facilities to which BNSF gained access. It did so because BNSF can easily construct new facilities if the market requires them. There is no basis for revising that judgment.

e. Definition of 2-to-1 Points. Until recently, the concept of the "2-to-1" point has produced little or no debate. UP and SP developed their merger application and negotiated the BNSF Settlement Agreement on the premise that "2-to-1" points are those locations where both UP and SP served the same shipper facility. Both carriers might serve the facility, or one might provide reciprocal switching for the other. If such a facility

existed, the point qualifies as a "2-to-1" point, and BNSF gained several rights under the Settlement Agreement at that point. We believe the parties have now identified every such point.

There is no reason 5 years later the merger to expand this concept. BNSF apparently wishes to broaden that definition significantly. We are unable to define the breadth and scope of BNSF's new concept. We will respond to BNSF's new perspective once BNSF gives it flesh later this month.

f. Definition of "New Shipper Facilities". The Board ruled that several factors should be considered in deciding whether a reopened facility is a "New Shipper Facility." UP believes that any definition of the term must include one essential condition: the facility must be used for a new purpose. Otherwise, BNSF would gain access to facilities that simply close or cease shipping for a time.

The Board's decisions so hold. In UP/SP Decision No. 75, the Board granted BNSF access to a warehouse facility near Sparks, Nevada, so that BNSF could serve a R.R. Donnelley facility near Reno. The Board based its decision in part on the fact that the new facility "will be entirely different in nature and purpose from that of the facility's prior use." 2 S.T.B. 697, 701 (1997). In addition, the Board clarified in Oversight Decision No. 10 that its decision in the R.R. Donnelley & Sons case was premised on the fact that "the transloading operation will be entirely different in nature and purpose from that of the facility's prior use." 2 S.T.B. 703, 716 (1997). This is the central concept in deciding whether an old facility can be a "new" one.

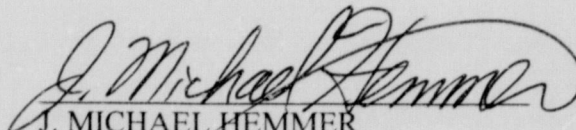
CONCLUSION

UP is hopeful that it can resolve all of these disputes with BNSF without the need for Board intervention.

Respectfully submitted,

CARL W. VON BERNUTH
Union Pacific Corporation
1416 Dodge Street, Room 1230
Omaha, Nebraska 68179
(402) 271-6304

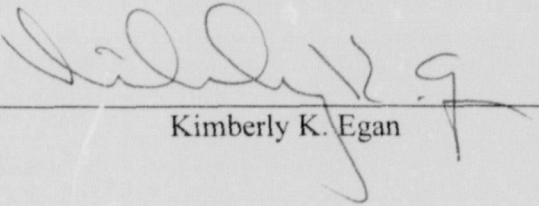
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*Attorneys for Union Pacific Corporation
Union Pacific Railroad Company and
Southern Pacific Rail Corporation*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of July, 2001 a copy of the foregoing "UP's Report On Issues Arising Under the BNSF Settlement Agreement" was mailed, postage prepaid, to all parties of record.



Kimberly K. Egan

UNION PACIFIC RAILROAD COMPANY



June 4, 2001

Ms. Julie Piggott
Assistant Vice President and Assistant Controller
The Burlington Northern and Santa Fe Railway Company
2500 Lou Menk Drive
AOB Second Floor
Fort Worth, TX 76137

Re: Trackage Rights Fee Adjustment

Dear Ms. Piggott:

UP has reviewed the information in your February 6, 2001 letter explaining how BNSF has calculated the adjustment of the trackage rights fee under the Merger Settlement Agreement ("Agreement"). We have also reviewed the language of the Agreement and how UP has calculated the adjustment. Based on our review, UP does not concur with the modifications BNSF has made. This letter explains why we conclude BNSF has incorrectly calculated the adjustments to the trackage rights fees and why the amounts UP billed are correct.

The relevant part of Section 12 of the Agreement says:

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.

The determination of the appropriate categories of maintenance and operating costs covered by the trackage rights fee was settled by the STB in the decision approving the UP/SP merger. While approving the original trackage rights fee, the STB expressly found that the applicants correctly used URCS to develop UP/SP system average operating expense associated with the trackage rights. Decision No. 44 at 141, served August 12, 1996. The BNSF calculation departs from the Agreement because it:

1. modifies 1995 and 1996 URCS costs by substituting 1997 investment and depreciation costs;

Ms. Julie Piggott

Page 2

2. combines UP and SP costs before the carriers consolidated by simple addition rather than using a weighted average based on respective trackage rights miles;
3. includes equipment and other transportation costs that are not covered by the trackage rights fees;
4. uses non-URCS costs for dispatching expense; and
5. applies a percentage change rather than the specified "difference in the two preceding years... in UP/SP's system average URCS costs".

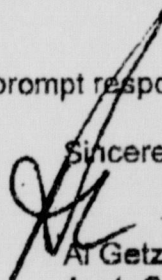
The effect of all these departures is that the BNSF calculation overstates the amount of the adjustment and therefore understates the rate. In contrast, UP's calculation of the adjustment follows the same methodology to calculate the URCS costs covered by the trackage rights fees used in the merger application and approved by the STB. UP also relies on the difference between the URCS costs for the two preceding years to determine whether and how much of an adjustment is required.

We conclude that UP's adjustment conforms with the terms of the Agreement and that BNSF's adjustment does not. Accordingly, the amounts UP billed in the past applied the correct rates and BNSF should not be withholding any payments now.

UP previously provided the workpapers associated with its calculation of the adjustments and how the costs were calculated for the application. If you require any additional explanation, please advise. With the information provided, you can satisfy yourself that the merger trackage rights fees were adjusted properly and BNSF was billed correctly. We are hopeful it will not be necessary to arbitrate over this issue, but are prepared to do so if necessary.

I look forward to your prompt response so that we can resolve this matter expeditiously.

Sincerely,



Al Getz

Asst. Controller, Financial Reporting

BNSF



RICHARD E. WEICHER
Vice President & Sr. Regulatory Counsel

The Burlington Northern and
Santa Fe Railway Company

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Phone: 817/352-2368
Fax: 817/352-2397

June 28, 2001

Mr. James Dolan
Vice President-Law
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179

Re: I-5 Proportional Rate Agreement

Dear Jim:

This is in response to your letter of June 20 concerning the results of the audit of the I-5 Proportional Rate Agreement. In general, we do not agree with many of the assertions in your letter, and offer the following comments at this point.

My understanding is that the report is a preliminary, not final report, and I am not sure we have had the benefit of joint review and discussion of its results. The audit report confirms BNSF's previous statements that it has been engaged in an ongoing process to develop and refine systems. BNSF has been working, and will continue to work, to develop and refine systems that provide data to the matrix, consistent with its obligation to provide data the same as it uses for other business purposes. While I am sure there is always room for improvement, we disagree that BNSF has failed to carry out its commitments under the Proportional Rate Agreement to develop information systems that will offset refunds, credits, and rebates against the rates in the Proportional Rate Matrix. The Agreement also requires that BNSF continue refining the accuracy of its estimating systems used to produce the rate matrix, and as UP acknowledges, the audit confirms that BNSF has done so.

With respect to the specific allegations raised in your letter, you state that the audit shows that the rates in cells have not been reduced to reflect "hundreds of dollars of credits" that BNSF offers the shippers. I would appreciate your indicating which movements in the preliminary report relating to the QDC or LOGS programs you believe were not properly handled. Neither program includes credits to shippers which are not being deducted from the revenue that is included in the matrix. With respect to the QDC program, that program is directed at competing with UP exclusively served points for which distribution service costs are properly included. With respect to the LOGS program, BNSF's revenue is reduced by the LOGS freight deduction amount up front. Therefore, for shipments moving under the LOGS program, BNSF's net revenue amounts in the matrix have already been reduced by the amount of the LOGS discount.

With respect to the issue you raise concerning provision of equipment under the LOGS program, section 4 of the Agreement states that BNSF has the same obligation to supply equipment for traffic moving under the Proportional Rate Agreement as it has for traffic that does not move under the Proportional Rate Agreement. We are not aware of any legal, contractual, regulatory or other obligation upon BNSF to offer a LOGS program to any shipper or carrier. Under section 4 (c) of our Agreement, BNSF believes that UP has the right to provide equipment of its own for movement under the Agreement, and if UP wishes to implement a LOGS type program of its own for origins served under this agreement, BNSF is open to discussing its implementation.

We are continuing to review the assertions in your letter and will offer any follow-up comments or suggestions for modifications to the implementation of the program when that review is complete.

Very truly yours,

Rich Weicher

Richard E. Weicher

cc: Larry Wzorek
Mike Hemmer
Mike Roper
Adrian Steel

JAMES V. DOLAN
Vice President-Law

UNION PACIFIC RAILROAD COMPANY



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June 20, 2001

Via UPS Overnight & Fax (817) 352-2397

Richard E. Weicher, Esq.
Vice President and General Counsel
The Burlington Northern and Santa Fe
Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76248

Re: I-5 Proportional Rate Agreement

Dear Rick:

BNSF and Union Pacific have received the preliminary I-5 Rate Matrix Report prepared by KPMG. This audit report confirms that the repairs BNSF made in the last year have been effective, although a number of discrepancies remain. The report highlights one major concern, however, and UP calls on BNSF to correct it promptly.

The audit makes it clear that BNSF has failed to carry out its promise under the Proportional Rate Agreement to develop information systems that will offset refunds, credits, and rebates against the rates in the Proportional Rate matrix. Under Section 2.g.(3) of the Agreement, BNSF was required "to develop systems necessary to produce a rate matrix derived from actual rather than estimated data" more than two years ago. Section 2.b explicitly states that the rate factors are to be net of all refunds and rebates. As the audit shows, the rates in the cells have not been reduced to reflect hundreds of dollars of credits that BNSF offers the shippers. As a result, the rates charged to UP shippers are substantially higher for all affected movements. This has significant repercussions for UP.

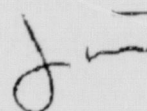
In particular, two BNSF programs are involved. BNSF's failure to remove the costs or refunds associated with moves under the QDC Program and the LOGS equipment program leaves inflated rates in the matrix. This is especially true of the QDC program, where the distribution services costs (e.g., storage, transloading, and drayage) are included in the revenue, thereby significantly increasing the matrix rates. This prevents UP from competing with BNSF via the Proportional Rate Agreement.

Because BNSF is violating an express term of the Agreement, UP expects BNSF to commit to develop or adjust its information systems and processes at the earliest possible date. During the interim, BNSF must immediately implement adjustments to the rates in the matrix (even if that work must be done manually) so that the matrix reflects the correct rates.

I also ask that BNSF immediately clarify the availability of rail cars in the LOGS program for use by BNSF customers under the Proportional Rate Agreement. As I understand it, a substantial majority of certain BNSF centerbeam flat cars are dedicated to the LOGS program. Section 4 of the Proportional Rate Agreement states that BNSF has the same obligation to supply equipment for traffic moving under this agreement as it has for traffic that does not move under the Agreement. Nevertheless, shippers tell us that they are unable to obtain LOGS cars from BNSF for movements under the Agreement, even though BNSF is a line-haul carrier in these moves. Your outside counsel in Washington, D.C., Adrian Steel, confirmed that BNSF shippers cannot obtain these cars for movements under the Agreement, but he states that UP itself can participate in the LOGS program and obtain cars for its customers. Those at BNSF who administer the LOGS program tell UP that it cannot participate in LOGS or obtain cars.

As you know, the Surface Transportation Board and UP gave BNSF a single-line route in the I-5 Corridor on the premise that the carriers would compete on a level field. BNSF's inaction has tilted the field in favor of BNSF. UP intends to report to the Board regarding BNSF's responses to this situation on July 2. Accordingly, please provide your response and commitment not later than the close of business on June 27, 2001. Absent a prompt and satisfactory resolution of this problem, we intend to institute arbitration proceedings in accordance with our Agreement.

Very truly yours,



cc: Mike Roper (via fax)
Adrian Steel (via fax) (202)263-5237
Larry Wzorek
Mike Hemmer