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
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)

JOINT SUBMISSION OF RESTATED AND AMENDED
BNSF SETTLEMENT AGREEMENT

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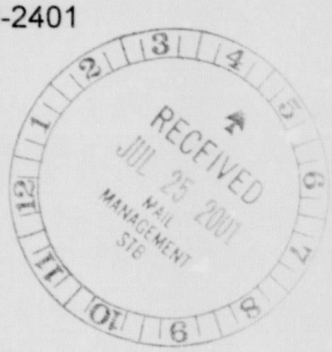

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July 25, 2001

UP/SP-386

BNSF-92

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

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SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
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COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

(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

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[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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July 25, 2001

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Principal Amendments to BNSF Settlement Agreement[1/]

Section(s)	Change
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

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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.

Section(s)	Change
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

Section(s)	Change
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 [illegible]ow (including both legs of the wye) and Mojave, CA.

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

(g) UP/SP shall work with BNSF to facilitate access by BNSF to the Ports of Los Angeles and Long Beach, CA. Other than as legally precluded, UP/SP shall (a) extend the term of the present agreement dated November 21, 1981, to continue until completion of Alameda Corridor, (b) amend that agreement to apply to all carload and intermodal traffic, and (c) grant BNSF the right to invoke such agreement to provide loop service utilizing UP's and Santa Fe's lines to the Ports at BNSF's option to allow for additional operating capacity. UP/SP's commitment is subject to available capacity. Any incremental capacity related projects necessary to accommodate BNSF traffic shall be the sole responsibility of BNSF.

(h) At least forty-five (45) days before initiating service to (i) a Shipper Facility open to BNSF at a point listed or described on Exhibit A to or in Section 8(i) of this Agreement, or (ii) any New Shipper Facility on a Trackage Rights Line, BNSF shall notify UP of its election, subject to Section 3(d) above, of the manner by which it proposes such service be provided and

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

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

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

- UP's line between Ajax and San Antonio, TX;
- UP's line between Houston (Algoa) and Brownsville, TX (with parity and equal access to the Mexican border crossing at Brownsville);
- UP's line between Odem and Corpus Christi, TX;
- UP's line between Ajax and Sealy, TX;
- SP's line between San Antonio and Eagle Pass, TX (with parity and equal access to the Mexican border crossing at Eagle Pass);
- UP's line between Craig Junction and SP Junction, TX (Tower 112) via Track No. 2 through Fratt, TX;

- SP's line between SP Junction (Tower 112) and Elmendorf, TX;
- 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 Ilmo, 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)

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

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

(b) BNSF and UP/SP will conduct a joint inspection to determine necessary connections and sidings or siding extensions associated with connections, necessary to implement the trackage rights granted under this Agreement. The cost of such facilities shall be borne by the party receiving the trackage rights which such facilities are required to implement.

Either party shall have the right to cause the other party to construct such facilities. If the owning carrier decides to utilize such facilities constructed by it for the other party, it shall have the right to do so upon payment to the other party of one-half (½) the original cost of constructing such facilities.

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

(i) UP/SP shall bear the cost of all capacity improvements that are necessary to achieve the benefits of its merger as outlined in the application filed with the ICC for authority for UP to control SP. The operating plan filed by UP/SP in support of the application shall be given presumptive weight in determining what capacity improvements are necessary to achieve these benefits.

(ii) Any capacity improvements other than those covered by subparagraph (i) above shall be shared by the parties based upon their respective usage of the line in question, except as otherwise provided in subparagraph (iii) below. That respective usage shall be determined by the 12 month period prior to the making of the improvement on a gross ton mile basis.

(iii) For 18 months following UP's acquisition of control of SP, BNSF shall not be required to share in the cost of any capital improvements under the provision of subparagraph (ii) above.

(iv) BNSF and UP/SP agree that a capital reserve fund of $25 million, funded out of the purchase price listed in Section 10 of this Agreement, shall be established. This capital reserve fund shall, with BNSF's prior consent

which will not unreasonably be withheld, be drawn down to pay for capital projects on the Trackage Rights Lines that are required to accommodate the operations of both UP/SP and BNSF on those lines, but in any event shall not be used for expenditures covered by subparagraph (i) above. Any disputes over whether a project is required to accommodate the operation of both parties shall be referred to binding arbitration under Section 15 of this Agreement.

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

decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the access to such industry or industries. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points more or less than the prior year's interest rate.

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

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

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

expressly made subject to the terms and conditions of this Agreement, and the owning carrier shall remain responsible as to the obligations imposed on it herein in the event the third party purchaser does not fulfill those obligations.

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

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

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

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

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

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

(ii) 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:

Line Segment	Purchase Price
Keddie-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)	

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

(i) the condition of the lines at closing shall be at least as good as their current conditions as reflected in the current timetable and slow orders (slow orders to be measured by total mileage at each level of speed restrictions).

(ii) includes track and associated structures together with right-of-way and facilities needed for operations.

(iii) indemnity for environmental liabilities attributable to UP/SP's prior operations.

(iv) standard provisions for sales of this nature involving title, liens, encumbrances other than those specifically reserved or provided for by this Agreement.

(v) assignment of associated operating agreements (road crossings, crossings for wire and pipelines, etc.). Non-operating agreements shall not be assigned.

(vi) removal by UP/SP, from a conveyance, within 60 days of the closing of any sale, of any non-operating real property without any reduction in the agreed upon purchase price.

(vii) the purchase will be subject to easements or other agreements involving telecommunications, fiber optics or pipeline rights or operations in effect at the time of sale.

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

(c) Prior to closing the sale of SP's Iowa Jct.-Avondale line (the "IJA Line"), representatives of UP/SP and BNSF shall conduct a joint inspection of the IJA Line to consider whether its condition at closing meets the standard established in Section 10(b)(i) of this Agreement. If the representatives of the parties are unable to agree that the condition of the IJA Line meets this standard, then BNSF shall place $10.5 million of the purchase price in escrow with a mutually agreed upon escrow agent, and closing shall take place. After closing the parties shall mutually select an independent third party experienced in railroad engineering matters (the "Arbitrator") who shall arbitrate the dispute between the parties as to whether the condition of the IJA Line is in compliance with Section 10(b)(i) of this Agreement. Arbitration shall be conducted pursuant to Section 15 subject to the foregoing qualification that the Arbitrator be experienced in railroad engineering matters. If the Arbitrator finds the IJA Line is below the

standard, the Arbitrator shall determine the amount (which shall not exceed $10.5 million) required to bring it in compliance with the standard and authorize the payment of such amount out of the escrow fund to BNSF with the balance, if any, paid to UP/SP. Any amount so paid to BNSF out of the escrow fund to bring the IJA Line into compliance with the standard shall be used by BNSF exclusively to that end (or to reimburse BNSF for funds previously expended to that end) and UP/SP shall not, as a tenant on the IJA Line be billed for any work undertaken by BNSF pursuant to the provisions of this Section 10(c).

11. **Term**

This Agreement shall be effective upon execution (which occurred on September 25, 1995) (the "Effective Date") for a term of ninety-nine years, PROVIDED, HOWEVER, that the grants of rights under Section 1 through 8 shall be effective only upon UP's acquisition of control of SP, and provided further that BNSF may terminate this Agreement by notice to UP/SP given before the close of business on September 26, 1995, in which case this Agreement shall have no further force or effect. This Agreement and all agreements entered into pursuant or in relation hereto shall terminate, and all rights conferred pursuant thereto shall be canceled and deemed void ab initio, if, in a Final Order, the application for authority for UP to control SP has been denied or has been approved on terms unacceptable to the applicants, PROVIDED, HOWEVER, that if this Agreement becomes effective and is later terminated, any liabilities arising from the exercise of rights under Sections 1 through 8 during the period of its effectiveness shall survive such termination. For purposes of this Section 11, "Final Order" shall mean an order of the STB, any successor agency, or a court with lawful jurisdiction over the matter which is no longer subject to any further direct judicial review (including a petition for writ of certiorari) and has not been stayed or enjoined.

12. **Adjustment of Charges**

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

The rates for reciprocal switching services established in Section 9(i) and for haulage service established in Section 8(m) shall be adjusted upward or downward each July I 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 Protocol

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

Points Referred to in Section 3(a)

Ontario CA
La Habra CA
Fullerton CA

Points Referred to in Section 4(b)

Brownsville TX
Port of Brownsville TX
Port of Corpus Christi
Harlingen TX
Corpus Christi TX
Sinton TX
San Antonio TX
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:	Move 1	Move 2
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)

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

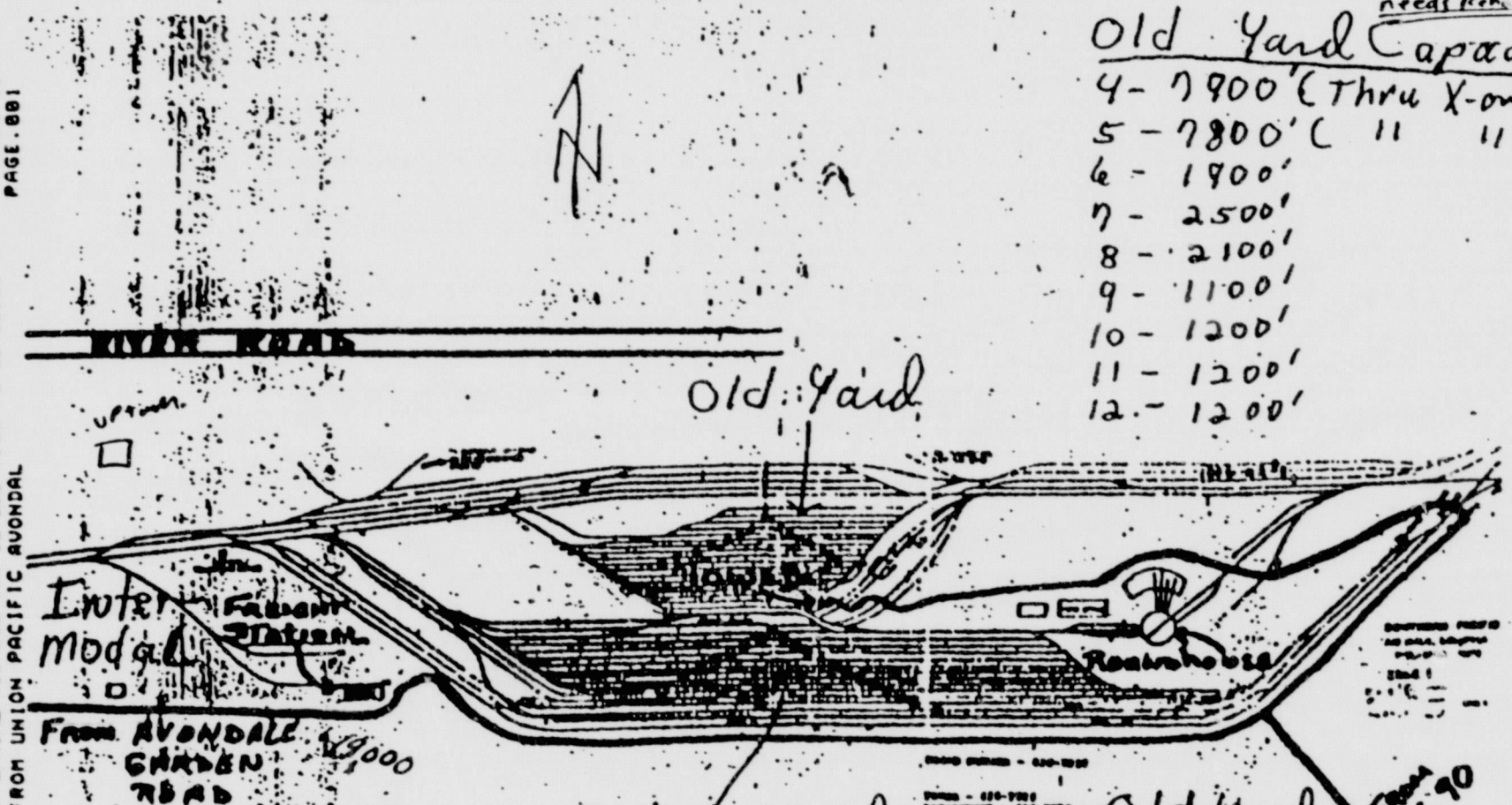
$$\frac{\frac{5000 \times 10}{1000 \times 100} + \frac{2000 \times 5}{500 \times 50}}{10 + 5} = \$0.06/\text{NTM}$$

B. Compute BNSF Division on a Specific Move

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

EXHIBIT C

S.P. Avondale Yard



Old Yard Capacity (needs Rehab)

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

New Yard

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

Old Yard

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

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, Topeka & 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

John H. Rebman

Date: June 24, 1998

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Peter J. Pelkofer

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.

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[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, ~~California~~CA; and
- ~~•~~ SP's line between Oakland and San Jose, ~~California~~CA.

(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" ~~ship,er 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 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 line~~Ne,, 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~~Facilities in Ogden and Salt Lake City. BNSF shall also have the right to access any shipper-owned soda ash ~~transload~~Transload ~~facilities~~Facilities in Ogden and Salt Lake City and to establish its own soda ash ~~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 (~~i~~x) ~~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 (~~ii~~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 ~~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~~c) ~~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 ~~BNSFs~~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, ~~California~~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) ~~b)~~ BNSF shall grant UP/SP overhead trackage rights on BN's line between Chemult and Bend, ~~Oregon~~OR for rail traffic of all kinds, carload and intermodal, for all commodities.

(c) ~~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. ~~3.~~ **Southern California Access**

(a) ~~a)~~ UP/SP shall grant access to BNSF to serve all "2-to-1" ~~shipper~~Shipper ~~facilities~~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:

- ~~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 ~~LaHabra~~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 LaHabra~~.

(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~~x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (~~ii~~y) 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.

(e) ~~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(~~iii~~d) ~~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 ~~MP~~Craig ~~0~~Junction 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 ~~FNM~~TFM. ~~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~~BNSF, subject to Section 9(c)(v) of this Agreement. The geographic limits within which (~~i~~x) ~~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 (~~ii~~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 ~~customers~~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 Track ~~or~~ge Rights Line, ~~or~~ BNSF shall notify UP of its election, subject to Section 4(~~iii~~c) ~~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 ~~FNM~~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~~j~~(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

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) ~~c) 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) ~~direct~~of this Agreement, or (ii) ~~through reciprocal switching~~any New Shipper Facility on a Trackage Rights Line, ~~or~~ BNSF shall notify UP of its election, subject to Section 5(~~iiic~~) ~~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, ~~through use~~UP 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-~~1~~; 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 8~~j~~(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 9~~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 9~~ 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 3573), 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 ~~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, 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~~x) New Shipper Facilities shall be open to BNSF service at points listed on Exhibit A to this Agreement and (~~ii~~y) 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 switch~~any New Shipper Facility on a Trackage Rights Line, ~~or~~ BNSF shall notify UP of its election, subject to Section 6(~~iiie~~) ~~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.

(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 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) ~~c)~~ 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 (~~ie~~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 SP.

(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, ~~Kan~~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 9~~h~~(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 (½) the original cost of constructing such facilities.

(c) ~~e)~~ Capital expenditures on the Trackage Rights Lines and on lines over which BNSF ~~has been~~is 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 sub[illegible]graph (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~~ 6~~c~~(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 ~~line~~to 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 ~~joint~~Joint ~~trackage~~Trackage as in its ~~judgement~~judgment may be necessary, expedient or proper for the operations thereof intended. Trains of the parties utilizing ~~joint~~Joint ~~trackage~~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.

~~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 ~~rights~~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) ~~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 ~~trackage~~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.~~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 ~~any~~all ~~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. ~~10.~~ **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:

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

11. ~~11.~~ **Term**

This Agreement shall be effective upon execution (whicl. 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 9~~h~~(i) and for haulage service established in Section 8~~j~~(m) shall be adjusted upward or downward each July I 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.

Adrian L. Steel, Jr.

MAYER, BROWN & PLATT

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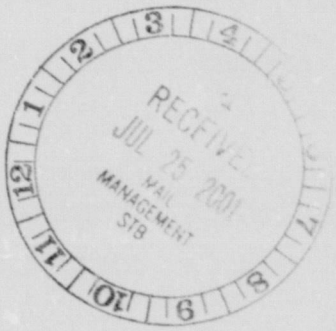


July 25, 2001

VIA HAND DELIVERY

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

Re: Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al. 202983

Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al. (Oversight) 202984

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty-five (25) copies of The Burlington Northern and Santa Fe Railway Company's Comments on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement (BNSF-93). Also enclosed is a 3.5 inch disk containing the text of the filing in WordPerfect 9 format.

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

Sincerely,

Erika Z. Jones/als

Erika Z. Jones

Enclosures

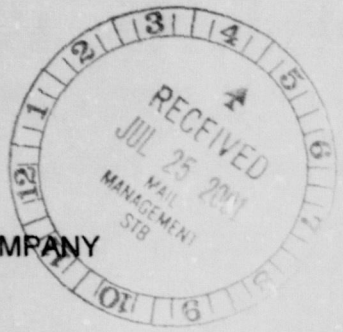
ENTERED
Office of the Secretary

JUL 26 2001

Part of
Public Record

cc: All Parties of Record

BNSF-93



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 – 202983

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) – 202984

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)

BNSF COMMENTS ON UNRESOLVED ISSUES RELATING TO THE RESTATED AND AMENDED BNSF SETTLEMENT AGREEMENT

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July 25, 2001

BNSF-93

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
RIO GRANDE WESTERN RAILROAD COMPANY

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)

BNSF COMMENTS ON UNRESOLVED ISSUES RELATING TO THE RESTATED AND AMENDED BNSF SETTLEMENT AGREEMENT

The Burlington Northern and Santa Fe Railway Company ("BNSF") submits the following comments on the issues that remain unresolved between BNSF and UP with respect to how the BNSF Settlement Agreement should be modified in order to incorporate the conditions imposed by the Surface Transportation Board ("Board") on the UP/SP merger and subsequent agreements between the parties.

INTRODUCTION

As reported to the Board and in accord with its direction, BNSF and UP have engaged in negotiations over the last several months to restate and amend the original BNSF Settlement Agreement. The process which BNSF and UP have undertaken is focused on updating the original September 25, 1995 Settlement Agreement so that it incorporates the terms of the First and Second Supplemental Agreements as well as the conditions imposed by the Board in Decision No. 44 and subsequent Board decisions interpreting and clarifying those conditions.

BNSF and UP have reached agreement on the majority of the changes to be made to the Settlement Agreement, and are jointly submitting a separate pleading which restates the Settlement Agreement, identifies all of the proposed changes, and sets forth BNSF's and UP's separate proposed alternatives concerning matters on which the parties have not reached final agreement.[1] These comments address the reasons why BNSF believes that its proposed alternatives should be adopted by the Board in order to ensure that BNSF is able to provide the full and effective replacement competition that the Board envisioned when it approved the UP/SP merger in 1996.

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[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.

A. Definition of "2-to-1" Points

BNSF has proposed that the Settlement Agreement be modified to include a definition of "2-to-1" points. Such points (which include, but are not limited to, the points listed in Section 8(i) of and on Exhibit A to the Settlement Agreement) are critical to the determination of the rights BNSF received pursuant to the merger. For example, BNSF received the right to serve "2-to-1" shippers, existing transloads and new shipper facilities at "2-to-1" points. Thus, a clear definition of the term is vital to ensuring that shippers will receive the full benefit of the Board's conditions.

BNSF's proposed language defines a "2-to-1" point 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 a location was open to or served by both UP and SP pre-merger. This approach reflects the fundamental economic fact that rate and service competition existed pre-merger at "2-to-1" points regardless of whether a particular shipper received or was open to service from both UP and SP. For instance, a shipper interested in constructing a new facility at a geographic location served only by UP and SP before the merger could have negotiated with each carrier to obtain the most favorable rate and service package it could, and the fact that some other shipper at that location may or may not have been receiving (or been open to) service by both carriers would have been totally irrelevant to the shipper's negotiations with UP and SP.

UP characterizes BNSF's proposal as an effort to significantly broaden the definition, and asserts that a geographic location is not a "2-to-1" point if no shipper at the location was actually served by or open to service by both UP and SP and no other

carrier prior to the merger. UP's proposed restriction, however, would deprive shippers and communities of the pre-merger rate and service competition which existed at such geographic locations. Such competition was driven by the availability of, for instance, build-out and transloading options for such shippers, as well as the flexibility shippers had in locating new facilities on UP or SP lines, thereby enabling such shippers to play UP and SP off against each other. Moreover, UP's position directly contradicts the deposition testimony of its principal witnesses given during the UP/SP merger proceeding that UP intended to preserve all forms of pre-merger competition at "2-to-1" points.[2] Accordingly, the Board should hold UP to the representations made by its witnesses to the Board in the UP/SP merger review proceeding. See Decision No. 44 at 12 n.14 ("Applicants must adhere to all of their representations.").

In Decision No. 44, the Board found that the UP/SP merger, as conditioned by the Board, would not diminish competition at "2-to-1" points. Decision No. 44 at 121-24. In reaching this conclusion, the Board identified and addressed several kinds of pre-merger competition that needed to be preserved at such points. These included direct service, service via reciprocal switching, siting competition, transloading competition, build-in/build-out competition, plant switching, and source competition. Id. at 122-24.

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[2] In addition, UP's position is contrary to the position expressed by the Applicants in their pleadings to the Board that there was no "location, anywhere, where a shipper has the option of transloading from UP to SP, or vice versa today, or of trucking from a non-rail served point to either UP or SP today" that will not continue to have such an option via BNSF after the merger. UP/SP-231, Vol. 2, Part B, V.S. Peterson (Tab 17) at 77 (emphasis original). See also UP/SP-260 at 24 ("there is simply no . . . instance" of a shipper being left without an independent transloading option comparable to its pre-merger UP or SP option). Shippers at 6-digit SPLC locations served by both UP and SP had such a transloading option before the merger regardless of whether another shipper actually received service from both carriers, and UP's current position would not preserve that option.

See also Decision No. 61 at 9-10. In so concluding and in determining which conditions to impose on the merger in order to preserve these various forms of competition, the Board never suggested (nor did its reasoning imply) that there must have been at least one shipper at a location that actually received, or was open to, both UP and SP service prior to the merger for a location to qualify as a "2-to-1" point for purposes of the Board's conditions (as UP now claims).[3] To the contrary, such a condition would have undermined the policy of preserving competition by failing to address the fact that, regardless of whether any shipper at such points had direct service from both UP or SP prior to the merger, various forms of indirect competition existed at such points.[4]

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[3] In this regard, NIT League argued to the Board in the UP/SP merger proceeding that the "2-to-1" shipper concept, as provided for in the original BNSF Settlement Agreement, was too narrow because the Agreement only protected shippers presently receiving service from both UP and SP (and no other carrier). See Decision No. 44 at 39. UP has asserted in the parties' negotiations that the Board rejected NIT League's argument on this point and thus that BNSF's position on the definition of a "2-to-1" point should correspondingly be rejected. However, the reason the Board did not accept NIT League's use of 6-digit SPLCs to evaluate the "2-to-1" impact of the merger was not because there was no loss of pre-merger competition at 6-digit SPLC locations served by only UP and SP before the merger, but because NIT League's analysis aggregated traffic that would experience different types of competitive problems that the Board thought were susceptible to different types of remedies. Dec. No. 44 at 123. In fact, the Board then acted to preserve exactly the type of indirect competition which NIT League claimed would have been lost at 6-digit SPLCs, and there is nothing in the Board's decision which would support UP's position that there had to be at least one dual-served shipper at such locations before the Board's remedies should apply.

[4] Indeed, the inclusion of Reno, NV as a "2-to-1" point on Exhibit A to the BNSF Agreement disproves UP's argument. There, BNSF received access to "only intermodal, automotive, transloading . . . , and new shipper facilities located on the SP line" (emphasis added). No shippers at Reno received service from both UP and SP at the time of the merger. Nonetheless, the parties recognized that BNSF access to transload and new shipper facilities was necessary to preserve the pre-merger indirect competition which was provided by the proximity of the SP line to the UP line, even though no shipper at Reno was actually served by or open to both UP and SP before the merger.

Further, UP's position that, in order for a geographic location to qualify as a "2-to-1" point for the purposes of the Board's conditions, there must have been at least one shipper at the location that was served by (or open to) UP and SP and no other carrier before the merger is inconsistent in several ways with the testimony given by its principal witnesses in the UP/SP merger proceeding.

First, Richard B. Peterson, UP's Senior Director - Interline Marketing at the time of the merger, testified that UP/SP "looked broadly, as broadly as we could imagine, at identifying two-to-one points" and that UP/SP intended to preserve all pre-merger competition at "2-to-1" points. Deposition of Richard B. Peterson (February 5-6, 1996) at 72-73 (hereinafter "Peterson Dep. at ____").[5]

Second, UP's position is at odds with the process that Mr. Peterson and John H. Rebensdorf, UP's Vice President of Strategic Planning at the time of the merger, used (and on which the Board relied) to identify the "2-to-1" points where pre-merger competition would need to be protected. Mr. Peterson testified that UP/SP began this process by including as "2-to-1" points all points that could be served by both UP and SP and no other railroad prior to the merger, regardless of whether any traffic was actually served by one or both of the two carriers. Peterson Dep. at 213. See also Deposition of John H. Rebensdorf (January 22-23, 1996) at 188 (hereinafter "Rebensdorf Dep. at ___") (a "2-to-1" point is "where both UP and SP and no other railroad has access"). Mr. Peterson then explained that 6-digit SPLCs were used to

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[5] Excerpts of deposition testimony cited herein are included in Appendix 1 filed with these Comments.

identify the geographic locations that would qualify as a "2-to-1" point. In Mr. Peterson's own words:

> And so we as I say embarked on an effort that was a joint effort with SP to identify all these standard point location codes on a six digit basis, where UP and SP were both present. Now, that would, in effect, identify all the cities and towns and suburbs, anyplace where our tracks happened to be there, whether or not the tracks crossed, whether or not they connected, or whatever. But we got all those points identified.

Peterson Dep. at 74. See also Id. at 215 ("we looked first for all of these six-digit SPLCs where both UP and SP were present ... with no other railroad"); Rebensdorf Dep. at 396 (the so-called "Open and Prepay List" was used to identify "2-to-1" points).

Then, only after all geographic "2-to-1" points were identified, did UP/SP look to see exactly which customers were benefiting from two-carrier competition at those points. Peterson Dep. at 74; Rebensdorf Dep. at 398. The most obvious customers benefiting from such competition were those customers who were being served by both carriers either directly or by reciprocal switch before the merger. Peterson Dep. at 74. These were the traditional "2-to-1" shippers, and BNSF received access to them.

However, as Mr. Peterson noted, "it would have been a mistake to stop there." Id. at 75. There were other ways in which competition at these "2-to-1" points could be lost other than by the loss of direct or reciprocal switch service. This included transloads and source competition (as well as several other forms of competition.) Id. at 86-88. Nowhere in his discussion of competition at "2-to-1" points did Mr. Peterson state that the presence of an actual "2-to-1" shipper was a prerequisite to the existence of such competition (or for the definition of a "2-to-1" point). The reason he did not do

so is obvious -- such competition existed pre-merger whether or not such a shipper was present.[6]

Thus, it is clear that, under both the Board's requirement that indirect pre-merger competition be preserved and the process and definition used by Messrs. Peterson and Rebensdorf, 6-digit SPLC geographic locations where both UP and SP provided service before the merger are "2-to-1" points for purposes of the Board's conditions. Any other conclusion will perpetuate a clear loss of pre-merger competition.[7]

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[6] At the time of Mr. Peterson's deposition testimony, UP/SP had not yet added language to the BNSF Settlement Agreement which expressly granted BNSF the right to serve existing transloads at "2-to-1" points. At that time, the Agreement merely gave BNSF the right to build new "industries" at "2-to-1" points. See, e.g., Original BNSF Agreement at § 1c. However, at the rebuttal deposition of Mr. Rebensdorf, UP's lead counsel expressly stated that the BNSF Settlement Agreement would be amended to clarify that BNSF would have the right to serve both existing and new transload facilities at "2-to-1" points. See Deposition of John H. Rebensdorf (May 13, 1996) at 10-12. Neither UP's counsel nor the Second Supplemental Agreement, however, conditioned the additional right to serve existing transloads in any way on the presence of an actual "2-to-1" shipper.

[7] In its Report on Issues Arising Under the BNSF Settlement Agreement (UP/SP-385) filed on July 2, 2001, UP asserted that until recently the concept of "2-to-1" points has produced "little or no debate" and that there is no reason to expand the concept. UP/SP-385 at 11-12. There have, however, been instances where UP's position has resulted in the loss of pre-merger competition.

For example, a dispute arose in 1998 between BNSF and UP as to whether BNSF should have the right to serve a transload at Tracy, CA owned and operated by Refrigerated Distribution Specialists ("RDS"). This transload existed at the time of the UP/SP merger. Although Tracy is a 6-digit SPLC geographic location served by only UP and SP pre-merger, UP refused to allow BNSF access to the RDS facility because no other shipper at Tracy received (or was open to) service from both carriers. However, the RDS facility clearly provided pre-merger rate and service competition to shippers located on the nearby UP lines that could use its services, and UP's persistent refusal to acknowledge the loss of such competition eventually led to the shipper involved making other arrangements, thereby losing the benefits of the pre-merger competition that existed. Other examples of how UP's position has deprived shippers of such indirect pre-merger competition exist as well (e.g., situations where UP and SP competed pre-merger through captive short-lines).

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

The BNSF Settlement Agreement granted BNSF the right to serve existing and new transload facilities at "2-to-1" points. In Decision No. 44, the Board expanded the "new facilities" condition to also grant BNSF access to new transload facilities on trackage rights lines. Dec. No. 44 at 146. BNSF believes that, in order to provide greater certainty as to what types of facilities qualify as transload facilities under the Settlement Agreement, a definition of both existing and new transload facilities should be included in the Agreement. UP, on the other hand, believes that it is unnecessary to include a definition of existing transload facilities, asserting that all such facilities should have been identified by now.[8]

Even apart from this dispute between the parties as to whether definitions for both terms are necessary, there is a fundamental area of disagreement that separates the parties. The dispute centers around UP's position that, for a facility to qualify as a transload facility pursuant to the Settlement Agreement, the operator of the facility – whether existing or new – may not have any ownership of the product being transloaded and the facility must be open to the public.[9] As explained below, UP's position would

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[8] With respect to this point, while the majority of existing transload facilities at the "2-to-1" points listed on Exhibit A to the Settlement Agreement may well have been identified, such facilities at all other 6-digit SPLC locations where only UP and SP provided service pre-merger have not been identified because UP has refused to accept BNSF's definition of "2-to-1" points. The RDS facility at Tracy, CA discussed in Footnote 7 above is one example of such existing transload facilities.

[9] The requirement that the transload facility be open to the public is not expressly stated in UP's proposed alternative for the definition of a new transload facility, but it is inherent in UP's position that the owner can have no ownership of the transloaded product, and UP has argued on that basis. See UP's July 2 Report at 10.

significantly undercut the effectiveness of the Board's transload condition in preserving pre-merger competition.

First, when applied to existing and new transloads at "2-to-1" points, there is little doubt that a transload facility operated by a single shipper or receiver at a "2-to-1" point with an ownership interest in the product being transloaded would lose the UP versus SP competition it enjoyed before the merger if UP's position is accepted. For instance, a shipper located at a "2-to-1" point on a UP line pre-merger which also owned and operated a private transload facility located on an SP line pre-merger that handled the shipper's own products would clearly lose the benefit of the competition between UP and SP that it enjoyed pre-merger. It enjoyed that competition notwithstanding the facts that the shipper owned the product being transloaded and that its transload facility was not open to the public.

Second, with respect to new transload facilities on trackage rights lines, the Board has interpreted and applied the transload condition in a literal manner to require that BNSF have access to any new legitimate transload facility built on the trackage rights lines. See Decision No. 61 at 7 ("The transload condition should . . . be read literally"). The Board was aware of and took into consideration UP's concern – expressed once again in UP's July 2 Report (UP/SP-385 at 10) – that a literal reading of the new transload condition would enable BNSF to operate as if it had access to all exclusively-served shippers on UP's lines. Dec. No. 61 at 12-13. However, the Board concluded that the imposition of limitations that require the construction of improvements and operating costs above and beyond the cost of what it would cost to provide direct rail service would sufficiently protect UP against such a result without

compromising the Board's policy of ensuring that general pre-merger siting competition is preserved[10] and that BNSF is able to secure adequate traffic density over the long term.[11] The Board, however, nowhere indicated that the costs of new legitimate transloads should be artificially inflated by a gratuitous requirement that shippers wishing to construct new transloads must open them to the general public.

Third, UP's argument is contrary to the Board's prior decisions on this issue. Initially, in Decision No. 44, the Board noted that pre-merger transloading competition would be preserved "by allowing BNSF or third parties to locate transloading facilities anywhere on the lines where BNSF will receive trackage rights." Decision No. 44 at 124. Then, as noted, the Board stated in Decision No. 61 that: "[t]he transload condition should . . . be read literally: BNSF may serve any new transload facility, including those owned and operated by BNSF itself". Dec. No. 61 at 7 (emphasis added). The Board drew no distinction in either decision between public and private transloads as UP now proposes should be done. Likewise, in Decision No. 75, the Board did not hold that a distinction should be made between public and private transload facilities.

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[10] In fact, the Board expressly stated in Decision No. 61 that, by expanding BNSF's access rights to include all new facilities and transloads on trackage rights lines, it sought to "guarantee" that all pre-merger siting and transload competition would survive the merger. Decision No. 61 at 10.

[11] In this regard, it is not accurate to state – as UP has done in its July 2 Report (UP/SP-385 at 10) – that the Board did not anticipate or intend that some exclusively-served UP shippers would be opened to BNSF as a result of the new transload condition. Indeed, the Board expressly stated that "BNSF will be allowed to access exclusively served shippers only by a legitimate transload operation." Dec. No. 61 at 12

Thus, the Board should reject UP's effort to restrict transload facilities to only public facilities where the operator has no ownership of the product being transloaded. Transloading is a means of transportation which offers competition and is not dependent upon the identity of the party doing the transloading. The Board should therefore recognize that transloads operated by a single shipper or receiver with an ownership interest in the product being transloaded both benefitted from pre-merger competition and serve the purposes of the Board's new transload condition in exactly the same manner as other transloads.

C. Restrictions on BNSF's Trackage Rights

BNSF and UP disagree as to whether certain trackage rights which BNSF received pursuant to the Settlement Agreement and the Board's conditions should be restricted to overhead trackage rights or should otherwise be limited. In particular, UP contends that the trackage rights which BNSF received under Section 1a of the 1995 Agreement between Elvas (near Sacramento) and Stockton, CA should be overhead trackage rights only. UP also contends that the prohibition placed by Section 6c of the 1995 Agreement on BNSF's ability to enter or exit the UP and SP lines between Memphis and Valley Junction, IL in the Houston-Memphis-St. Louis corridor and the geographic limit on traffic that BNSF can handle on those lines to traffic to, from or through Texas and Louisiana should remain in place. There is, however, no legitimate basis for either of UP's contentions, and BNSF should be entitled to fully utilize the trackage rights lines at issue.

1. Elvas-Stockton Trackage Rights

With respect to BNSF's trackage rights between Elvas and Stockton, UP contends that BNSF's rights on those lines should be restricted to overhead rights only

because the rights were granted "voluntarily" by UP to BNSF "solely to save BNSF substantial amounts of money". UP/SP-385 at 10. However, as shown below, these trackage rights were not granted solely for such purpose and, more importantly, the rights are no different from any of the other trackage rights which the Board determined needed to be enhanced in order to enable BNSF to provide effective replacement competition.

As originally contemplated by BNSF and UP in their negotiations leading to the BNSF Settlement Agreement, BNSF was to receive Central Corridor trackage rights over not only UP's line from Weso, NV to Stockton, CA (via Sacramento), but also over SP's line from Weso to Oakland, CA (also via Sacramento). The principal reason for these dual trackage rights was UP's desire to limit BNSF's use of the UP line to high speed intermodal traffic and to require BNSF to route its merchandise trains over the SP line. While BNSF was agreeable to UP's proposal, BNSF advised UP that, since BNSF's base for much of its operations in Northern California is in Stockton, the trackage rights over the SP line would not be viable unless BNSF had a competitive routing to Stockton from the SP line. The parties initially believed that such a routing could be achieved by allowing BNSF to connect with the UP line at Sacramento (over which, as mentioned above, BNSF was to be granted trackage rights) and operate over the UP line into Stockton.

An inspection of the site, however, revealed that, while a connection might be technically possible, it would not be practical to construct since it would involve the closing of a street in Sacramento, and the City of Sacramento was opposed to any project that would increase train traffic in the city. In addition, the cost of construction

was thought to be prohibitive, and it was BNSF's position that forcing its trains to leave the SP line at Sacramento and operate through the existing connection to the UP line would significantly undercut BNSF's ability to compete via the SP line.

Given the situation and BNSF's concern as to its ability to provide competitive service, the parties decided that BNSF Central Corridor trains using the SP line should simply stay on the SP line at Sacramento and use that line to reach Stockton. In granting BNSF additional trackage rights on the SP line, the Second Supplemental Agreement provided that BNSF would not have access to new facilities on that portion of the SP line. It is UP's position that this restriction should remain in force.

However, the actions of the Board in Decision No. 44 modifying and enhancing the access rights which BNSF received under the Settlement Agreement and the CMA Agreement supercede the original understandings of the parties and any intent that UP may have had to try to limit the scope of certain of the trackage rights. The Board found that full BNSF access to all of the trackage rights lines was necessary to ensure the preservation of the indirect competition that would otherwise have been lost as a result of the merger and to ensure that BNSF could obtain sufficient traffic density to implement and maintain a fully competitive replacement service for SP.

Further, the Board has in the past rejected similar attempts by UP to constrict BNSF's trackage rights. For instance, in Decision No. 61, the Board rejected UP's efforts to restrict BNSF's trackage rights between Harlingen and Placedo, TX as well as BNSF's rights between Craig Junction and SP Junction at San Antonio, TX to overhead rights only. The Board held that the conditions that it imposed should be read literally to provide BNSF the right to serve new facilities (including transload facilities) anywhere

on the trackage rights lines and that it would not act to "jeopardize BNSF's ability to achieve sufficient traffic density". Decision No. 61 at 11.

Moreover, before the present dispute between the parties arose, UP itself recognized and agreed with BNSF that BNSF should have the right to serve new shipper facilities on the line between Elvas and Stockton and granted BNSF access to two such facilities on the line. For example, on January 5, 2000, BNSF requested access to and notified UP of its plan to serve Southdown Cement's new cement distribution terminal at Polk, CA. UP approved BNSF's request for access to Southdown Cement on March 29, 2000. In addition, BNSF funded track repairs on UP's industrial track on which Southdown Cement is located in order to enable BNSF to provide safe and efficient service to Southdown Cement's facility. Similarly, later in the year, BNSF also requested access to and notified UP of its plan to serve a new facility owned and operated by Willamette Industries at Elk Grove, CA. UP approved BNSF's request and service plan for Willamette Industries on August 4, 2000. After having agreed that BNSF should have access to these two new shipper facilities on the line between Elvas and Stockton, UP has now reversed its previous position and adopted the new position that BNSF should not have access to any additional new shipper facilities that locate on the Elvas-Stockton line from this point forward. The Board should not countenance such an obviously anti-competitive change of position by UP.

Accordingly, the Elvas to Stockton trackage rights form a critical component of BNSF's overall trackage rights operations in the Central Corridor, and BNSF should have the right to serve new facilities on the line in order to both preserve pre-merger competition and maintain traffic density.

2. Houston-Memphis-St. Louis Corridor

The restrictions on BNSF's trackage rights on the UP and SP lines between Memphis and Valley Junction were imposed by the Second Supplemental Agreement. As noted above, however, the Board, in Decision No. 61, rejected a prior attempt by UP to restrict BNSF's right to serve new facilities on UP's line. The Board did so because such a restriction would be inconsistent with one of the principal purposes of the new facilities condition – i.e., ensuring that BNSF could achieve sufficient traffic density not only in the short term but also over the long term. Decision No. 61 at 11. ("We do not intend to jeopardize BNSF's ability to achieve sufficient traffic density on these lines.") As explained below, UP's current proposal to restrict BNSF's ability to enter and exit these portions of the trackage rights lines and place geographic limitations on the traffic BNSF can carry over the lines would have the same effect.[12]

Moreover, restricting BNSF's ability to connect with the trackage rights lines at points north of Bald Knob and Fair Oaks would adversely affect BNSF's ability to compete in the Houston-Memphis-St. Louis corridor. For instance, unit coal trains from

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[12] In this regard, UP asserts that it is not making a new proposal, but that it is instead simply asserting that the existing language of the BNSF Settlement Agreement should be retained. UP's position is incorrect in a number of respects. First, it has proposed the deletion of a key phrase from the existing language. That phrase provides that the restriction on BNSF's right to connect with the UP and SP lines at issue is subject to the right of BNSF to connect with its own lines under Section 9l (Section 9(m) in the Restated and Amended BNSF Settlement Agreement). Thus, a literal reading of the existing language (which was drafted largely, if not entirely, by UP) indicates that, at least with respect to its own lines, BNSF can connect with the UP and SP lines north of Bald Knob and Fair Oaks. In the parties' negotiations, UP has asserted that this phrase is inconsistent with the imposed restrictions, and thus seeks to remove it from the language of the Settlement Agreement. While BNSF does not rest its argument that the restrictions should be discontinued solely on the presence of this qualifying phrase, it is disingenuous of UP to take the position that it is only seeking to retain the existing language.

the Powder River Basin ("PRB") that BNSF could move, in competition with UP, to electric utilities and generating stations located in the corridor, such as Entergy Services, Inc.'s White Bluff Station, near Pine Bluff, AR, would most efficiently move over BNSF's lines from the PRB to points of connection with the trackage rights lines at Hoxie and Jonesboro, AR. While BNSF may have other routes over which it could move such trains into the corridor, those routes are more circuitous and would not enable BNSF to compete as effectively against UP.[13]

In addition, UP's claim in its July 2 Report that BNSF and UP did not give BNSF the right to connect north of the two Arkansas junctions in the original Settlement Agreement because BNSF has its own network of lines in northeastern Arkansas and southeast Missouri (UP/SP-385 at 11) was rejected by the Board in Decision No. 61 as a basis for limiting BNSF's trackage rights. Decision No. 61 at 11. Similarly, UP's argument that BNSF's trackage rights were granted on UP's lines north of Bald Knob and Fair Oaks solely for purposes of operating convenience in order to allow BNSF to avoid problems that might occur from running "against the flow" in the Houston-Memphis corridor was likewise rejected by the Board. Ibid.

In sum, the restrictions on BNSF's right to connect with the UP and SP lines between Memphis and Valley Junction and the geographic limit on BNSF's rights to use those lines stem from a version of the BNSF Settlement Agreement that pre-dated the

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[13] Indeed, in Decision No. 88, the Board granted Entergy Services, Inc. the right to build out to an SP line from its White Bluff, AR station and to receive service from BNSF via that build-out line. The Board's decision to grant Entergy the ability to replicate its pre-merger build-in/build-out option would, however, be seriously undercut if UP could prevent BNSF from connecting with the SP line at Jonesboro, AR for in-bound unit trains and with the UP line at Hoxie, AR for out-bound unit trains.

expansion of BNSF's rights which the Board felt was compelled to ensure full replacement competition and long term traffic density. To the extent UP (and perhaps BNSF) originally intended BNSF's use of these trackage rights lines to be restricted, that intent has clearly been overridden by the Board's decisions. Accordingly, the Board should flatly reject the continuation of these artificial limitations.

D. Team Tracks

Before their merger, UP and SP competed at various locations through the use of public team tracks which function in a manner similar to transload facilities. For example, SP often competed for the traffic of shippers located on UP at or near "2-to-1" points by making available established public team tracks and then negotiating with shippers to handle traffic that they would have otherwise transported on UP. UP did likewise to compete for traffic that would have otherwise moved on SP. It is safe to say that, at nearly all recognized "2-to-1" points, both UP and SP maintained public team tracks for use by shippers not directly served by UP or SP at or near the "2-to-1" point. BNSF believes that, since the merger, UP has rationalized many such duplicate facilities because such intercarrier competition no longer exists.

While the original Settlement Agreement did not specifically address this loss of competition, there is no doubt that the competition provided by public team tracks was another form of competition that existed before the UP/SP merger. However, because the location and operation of team tracks are somewhat flexible and transitory, it would be difficult at this point to identify a specific list of team tracks that were used by UP and SP in 1995 prior to the merger and then, in order to preserve pre-merger competition, grant BNSF the ability to use those team tracks. Many of the tracks have likely been

closed, moved or modified, and thus it is necessary to devise another method of preserving the competition provided by team tracks.

BNSF's proposal for doing so is to change the Settlement Agreement to provide that UP would agree to sell team tracks that it no longer uses at "2-to-1" points to BNSF at normal and customary costs and charges. Having acquired any such team tracks, BNSF could replicate the pre-merger competition that was lost by offering shippers the option to move their traffic via the team tracks.

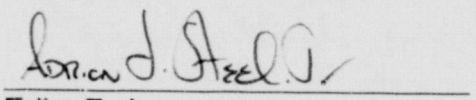
To the extent requiring UP to sell any team tracks it no longer uses to BNSF can be said to restrict UP's right to abandon, dispose of, or to make other use of the property, that is a consequence of the merger which UP and SP voluntarily proposed and entered into and, in any balancing of the interests at issue, the Board should seek to preserve the public's interest in preserving competition rather than UP's proprietary interests. Moreover, UP's claim in its July 2 Report that team tracks were excluded from BNSF access at "2-to-1" points because they can be easily constructed by BNSF (UP/SP-385 at 11) rests on a false premise. In order for BNSF to establish and serve a team track on its trackage rights lines in direct competition with UP, BNSF must negotiate with UP to locate and acquire property suitable for such a facility, seek UP's approval of BNSF's engineering plans for the track, rely upon UP's engineering department to install connecting and access tracks and switches, and seek UP's approval of BNSF's proposed service plan. As a practical matter, this process makes it extremely difficult, if not impossible, for BNSF to establish its own public team tracks on its trackage rights lines. BNSF is willing to forego imposing a requirement of BNSF access to all team tracks at "2-to-1" points, but there is no valid reason for not requiring

UP to offer team tracks that it no longer uses or needs at such points if – as it has represented numerous times to the Board – UP is willing to act to preserve all pre-merger UP versus SP competition.

CONCLUSION

For the reasons set forth above, the BNSF Settlement Agreement should be modified as proposed by BNSF to ensure that BNSF can, over both the short and long term, provide the effective competitive replacement which the Board envisioned and to which UP committed when the UP/SP merger was approved.

Respectfully submitted,



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July 25, 2001

CERTIFICATE OF SERVICE

I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Comments on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement (BNSF-93) are being served on all parties of record.

Adrian L. Steel, Jr.

APPENDIX 1

Richard B. Peterson February 5, 1996

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CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

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something else.
BY MR. MOLM:
Q. I'm talking about two-to-one absent the settlement.
A. Okay. At two-to-one locations, two-to-one points, let's leave it with that for now, two-to-one points, points where UP serves, SP serves, no other railroad serves, we have identified that that would open up to BN/Santa Fe over a billion dollars of our revenue. And we could translate that into tons, but it would be, you know, some tonnage number that would match up with that number.
Q. Is my understanding correct that that billion dollars represents approximately 50 percent of the traffic?
A. No.
Q. So you did not assume that BN/Santa Fe would take 50 percent of the traffic at those points?
MR. ROACH: Object to the form of the question.
THE WITNESS: I'm not sure what context you're in here. But – I'm not trying to evade your questions or anything. The statement

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regarding over a billion dollars of our traffic is our estimate, it's not precise, because this is a very complicated thing. But it's highly conservative I believe that the traffic at the two-to-one points, traffic at Salt Lake City, Utah, for example, that will be available for BN/Santa Fe to compete for will be such that, when added with all the other two-to-one points, would be well in excess of a billion dollars of our current business.
Now, that was actually -- that also includes I believe the New Orleans-Houston corridor which is a two-to-one corridor and probably the Houston-Memphis corridor. But it's primarily the two-to-one points that generate that.
Just to try to move things along and to be cooperative, in our traffic study we predicted different percentages that BN/Santa Fe would get of that business which in some cases were 50 percent, where in many cases were where they were going to be a head-to-head competitor.
BY MR. MOLM:
Q. Let me move on to a new area. Would you say that a diversion of revenue, for example,

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from Kansas City Southern to UP/SP that resulted from this merger indicates an impact on competition?
A. I believe that in my view it indicates a positive impact on competition by providing customers with an improved service product.
Q. So that, even if traffic is moved to the UP/SP system and moved off of the KCS system, that is not an effect on competition insofar as KCS?
A. Well, I don't know about insofar as KCS. But, as far as the customer is concerned, he is going to have his traditional KCS joint-line option or whatever it is, he'll have a new UP/SP option. We look at those two, we determine if the UP/SP option is going to be materially better for the shipper. If it is, we divert a percentage of the traffic over to the new route.
It is procompetitive for the shipper, procompetitive for the rail network. It may result in some lost revenue for KCS, but I don't see how that translates into KCS's competitiveness. Whether or not KCS loses a few million dollars should not affect its overall

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competitiveness.
Q. How about competition in general, this diversion of revenue?
A. How about it?
Q. Would there be an effect on competition?
MR. ROACH: Asked and answered.
THE WITNESS: It would be enhanced, competition would be enhanced. The shipper has, in addition to his existing products, a new and improved product to choose from.
BY MR. MOLM:
Q. What if, using this same example, KCS would not be able to make all of the capital investments it had planned to make because its revenues are less? Would that be an effect on competition?
A. I don't accept first of all that assumption. I don't think first of all, when a railroad loses business and gains business which happens as you know every day in the marketplace, we're probably winning or losing a contract and getting a phone call in Omaha to that effect while we're talking here today, that's more significant than any money you might be talking

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about here.
So, on the one hand, the number you're talking about is very minor and I can't envision it affecting KCS's capital budget. Secondly, KCS is one of the most profitable railroads in the country. And thirdly, when you do lose business, you adapt. You win some, you lose some. But, if you lose a million dollars in revenue, you may save $700,000 in costs because you're not running certain locomotives and consuming fuel and paying crews to handle that business. So the net impact here is not of a magnitude even beyond KCS's senior management's radar scope.
Q. What if it caused KCS to reduce service? Would that be an effect on competition?
A. If KCS's losses were so massive that it actually had to reduce some train service, possibly you could discuss that point further. But these losses in this case are small, they're fragmented, a lot of them are short-haul movements, movements coming out of Lake Charles and Port Arthur, and KCS is handing them off to us or SP up at Shreveport or somewhere.
And, you know, keep in mind something, our study was done on 1994 data. And we adjusted

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it as best we could to include KCS's settlement in BN/Santa Fe. But the gains that your people have talked about based on your settlement in that case are going to be significant and create far more business than you're going to lose here.
Q. Let's go to your definition of two-to-ones. We were discussing it earlier in connection with parallelism. Is it my understanding that UP looked at points served by both carriers in defining what is a two-to-one situation?
A. We looked broadly, as broadly as we could imagine, at identifying two-to-one points. And included in that broad analysis was an identification of points by use of standard point location codes, SPLCs, where we and SP served the same point.
Q. And by point do I take that to mean a customer at that point?
A. Well, it's a fairly complicated process that we went through. If you'd like me to explain it and that would shortcut some questions, I would be glad to do that. It's not as simple as – quite as simple as that.

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Q. Explain it.
A. Okay. Our goal was to identify all two-to-one competitive situations between UP and SP. We first looked at as you say two-to-one points. And we thought now how are all the ways that UP and SP compete for shippers' business at these two-to-one points.
And we thought, well, one way is by intermodal service, TOFC, COFC service, so we did an analysis of that and found that, with new intermodal service at Salt Lake City and at Reno and BN/Santa Fe's very extensive existing network of intermodal terminals, all intermodal situations would be covered.
We then did the same for automotive business and found pretty much the same answer. With BN/Santa Fe's ability to put in intermodal terminals – intermodal and automotive facilities at any of the two-to-one points but especially Salt Lake City and Reno, where we and SP both had them, that would cover the SP/UP territory. And we made a complete review of this.
Then we said, well, now we have carload business, your individual carload shippers and how are they served jointly. And really the

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primary way is through reciprocal switching. And so we as I say embarked on an effort that was a joint effort with SP to identify all these standard point location codes on a six digit basis, where UP and SP were both present.
Now, that would, in effect, identify all the cities and towns and suburbs, anyplace where our tracks happened to be there, whether or not the tracks crossed, whether or not they connected, or whatever. But we got all those points identified. Then we said, okay, now within those points as you're suggesting how do you find out which customers are, in fact, benefiting from two-railroad service and which aren't.
And so we first looked at reciprocal switching and we got all the reciprocal switching tariffs of UP and SP which generally list all the customers that are open to switching. And we were fortunate because, in the last year and a half, the AAR has led an industry effort for each railroad to identify all its industries that are open and provide them into a national database which is going to become one of many national railroad databases to streamline a lot of

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administrative functions in railroading.
And we're a participant in that study and that was helpful because we had already done a lot of that work and we put that to good use and identified all the shippers who are open to reciprocal switching at each of these terminals and then got the SP people involved and that made some good cross-checks and we did that.
But it would have been a mistake to stop there. As we discussed earlier, joint facility agreements between railroads allow joint service. And so a guy on my staff got – and again we're fortunate because our joint facility group has in the last couple years computerized all our joint facility agreements so we have them on summaries of each one in a computer database.
We got those out, they're in my work papers. We went through each one of them to identify the actual areas and customers where there is a joint facility agreement that says SP will run a switch engine and serve the industries on behalf of both UP or SP or whatever.
And we also cast out to our regional salespeople and asked them if they could think of anyplace that we might have missed. And then

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finally we looked for places which are generally pretty well-known, where both UP and SP have a direct rail spur into the shipper. So you don't – you don't have a joint facility agreement, you don't need reciprocal switching, you just both go to the shipper. And there are a few of those. Not many, but a few.
And those created our database which initially was computed so that we could generate volumes of business in a computer format that we then provided to all the numerous parties that we negotiated with, provided the data to KCS and to Montana Rail Link and Wisconsin Central and Utah Railway and BN/Santa Fe and others, RailTex and others. So that has become our database of these two-to-one shippers.
And then we looked for two-to-one corridors where you have only two railroads connecting towns that may or may not have more than two railroads. And we found two, we found New Orleans to Houston. New Orleans has a lot of railroads, Houston has a lot of railroads, but we and SP have the only direct routes between the two. KCS as you know can connect them, but they were a little too circuitous so we called that a

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two-to-one corridor. We could have argued that, but we didn't.
And then New Orleans to Memphis we identified as a two-to-one corridor. BN/Santa Fe serves that corridor and I and others argued internally that that was really a three-to-two corridor. But in the end it was felt that we and SP had the shorter routes and it was identified also as a two-to-one corridor.
MR. ROACH: You said New Orleans to Memphis.
THE WITNESS: Okay. I always do that. Houston to Memphis, I'm sorry, Houston to Memphis.
BY MR. MOLM:
Q. I thought that was a whole new area.
A. Sorry. And that identified our two-to-one universe. Mr. Barber and others have done a lot of work on source competition and so forth to see if that would enter into the decisions, but we didn't find any problems there. So that created the two-to-one situation which was used by our people that were involved in the negotiations with the various railroads for settlement.

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Q. Did you consult with Mr. Barber making this analysis of two-to-one points and two-to-one corridors?
A. No. He didn't – well, let me qualify. As far as identifying the two-to-one points, two-to-one shippers, intermodal, automotive, we did that at UP with involvement from SP. The only reason I mentioned Mr. Barber is that he's been looking at source competition. And I suppose, if he had come up with some, you know, very difficult situation, that he and others would have discussed with the attorneys the significance of that in the case. But I'm not aware of that, I'm just speculating that that might have happened.
Q. Let's put aside the corridors for a moment and talk about the points. You mentioned three different ways both carriers could access a shipper at a point, they were reciprocal switching, joint facility agreements, or spur lines; is that correct?
A. Correct.
Q. And that point was confined to that point, you didn't look at whether that point was within a BEA and whether all shippers located

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frac sand from the upper Midwest?
A. Oh, boy, do I ever.
Q. To the south Texas drilling fields?
A. Yes, I do remember that vividly.
Q. I represent to you this is a copy of one of your verified statements in that proceeding. Would you review the sentence I have underlined at least partially on page 5.
MR. ROACH: This is verified on July 10, 1987.
THE WITNESS: I just want to get the context again. Yes.
BY MR. MOLM:
Q. And would you read that sentence I have partially underlined into the record, please.
A. The start of a paragraph, second, frac sand from Illinois origins provides intense competition against frac sand from Minnesota/Wisconsin origins for sales in these south Texas drilling fields and must also be included in the market.
Q. Does that suggest, in evaluating competition, your analysis in that case was much broader in origin point?
MR. ROACH: Object to the form of the

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question.
THE WITNESS: Our analysis here was in response to Dr. Pittman's assertion that there would be some competitive impact on the moving of all frac sand from the upper Midwest to this BEA, this big BEA in south Texas. Believe me, it's big. it would take all day to drive across it. And that was the purpose of this work, to respond to that and to point out the factors, you know, involved in these movements, as to why the UP/Katy merger would not have a negative impact on competition.
BY MR. MOLM:
Q. When you evaluated the markets in this proceeding and which you identified them as two-to-one, we have discussed some of the factors, did we discuss all intermodal movements where the shipper may use truck transload to another carrier?
A. I did not get to that. And maybe that was an omission on my part and I apologize. When we finished – all right. We looked at the two-to-one points, then we looked at the two-to-one corridors. And then the next step to sort of complete the comprehensive look would

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involve transloading and source competition.
As far as transloading, we first made sure that we understood that the BN/Santa Fe settlement allows BN/Santa Fe to have bulk transloading facilities, transloading facilities, at each of the two-to-one points, at Salt Lake City or San Antonio, wherever.
Then we looked at the coverage of that network including all of BN/Santa Fe's existing coverage against the current SP map and any transloading opportunities and found that there weren't any gaps, where a shipper today that could say truck to SP and transload, even though he is exclusively served on SP, where he would lose that, he would be able to truck generally to the same point and do it on BN/Santa Fe but, of course, have the benefit of a much better railroad to work with as far as getting to a broader array of markets and being able to provide good service.
Q. So you're saying that a shipper, even though he might not truck transload today in order to access SP, if he could have, you would have counted that as a two-to-one?
A. Well, I mean our review indicates that

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the two – I wouldn't state it the way you've stated it. Okay. You've got all the two-to-one points that are there, you've got the existing BN/Santa Fe network. We could not identify any existing customers nor the likelihood of any significant customers that would be disadvantaged from a truck transload standpoint versus where they are today, by trucking in to the BN/Santa Fe point as opposed to trucking to an SP point today. We looked at the numerous existing transloads and we also scoured the map by sort of plotting semicircles over them and couldn't find a place where even a future shipper would be disadvantaged.
Q. Am I correct in understanding then that, so long as the shipper was not disadvantaged, he could reach BN/Santa Fe as well as he could have reached SP?
A. Yeah, or maybe UP in a situation.
Q. In a reverse?
A. Yeah, UP or SP.
Q. Would you go to page 42 of your testimony. I want to recall this correctly, but earlier we were discussing a movement in a corridor where you stated BN and Santa Fe had

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entered into a haulage agreement and that that particular movement had taken a lot of business away from SP. Do you recall that?
A. Yes.
Q. Is that a fair summary or do I need to add anything to it?
A. Well, I don't – I mean you haven't listed all the factors that you pointed to for the change in market shares. But, in fact, it was a route that had – you know, Santa Fe going from Memphis to Avard then Los Angeles to Memphis so most of the route was Santa Fe's and then the much smaller segment was haulage. That route has been successful, had been successful, now even more successful with the BN/Santa Fe merger but had been successful in taking market share from SP, that's right.
Q. So it was competitive?
A. In that particular case, given SP's problems, their circuity, their service problems, their other problems, yes, it was certainly a competitor in that market.
Q. And, on page 42 of your testimony, correct me if I'm wrong, you discuss several reasons why joint-line service is inferior, do

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you not?
A. Yes, inferior to – you say inferior but I think –
Q. Relative to single line?
A. Full single-line rail service, yes.
Q. And some of the reasons are the mechanics of the interchange, delays because of negotiations, coordination of billing, et cetera?
A. Yes. Many other factors, but those would be included.
Q. Are there factors other than what's listed here?
A. Well, we've listed other factors. And I think importantly as we indicate that railroads inevitably and inescapably have different priorities, either based on length of haul, based on the horizon of their decisions, where they're trying to look to the near term to generate as much as they can or whether they have a long-term perspective on building up business and making money.
Not only the interchange delays, but I think we, if not here but elsewhere, sort of talk about the watershed – well, we do talk about it here, I'm sorry, the gateway watershed problem,

Richard Peterson February 6, 1996

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PREPARED BY:

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planned to reenter that market but now with their merger with Santa Fe, of course they will be reentering the market, which Santa Fe never left, and they will just bring the strength of BN to the merged system.
Q. Does this example reflect in part that railroads sometimes may decide, in assessing whether to serve a particular market, that their opportunity costs associated with diversion of equipment from other more profitable markets might be a factor?
A. Could you repeat that question, please? That was too long for me, I'm sorry.
THE REPORTER: "Question: Does this example reflect in part that railroads sometimes may decide, in assessing whether to serve a particular market, that their opportunity costs associated with diversion of equipment from other more profitable markets might be a factor?"
THE WITNESS: The answer to that is that the opportunity costs of diversion of equipment from another market might be a factor. The opportunity costs associated with diversion of equipment might be a factor. I'm not sure exactly what you mean by diversion of equipment,

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first of all.
BY MR. STONE:
Q. Let me try to rephrase the question. In assessing whether to serve a particular market in your experience, do railroads ever consider whether serving that market might require them to use equipment or facilities that might more profitably be used to serve another market?
A. That is a consideration, can be a consideration.
Q. I would like to refer generally to your testimony yesterday, Mr. Peterson, about the study that UP did on build-ins. And using that general area of testimony as a point of departure, could you tell me, in your experience, whether shippers are ever successful in using the threat of a build-in to obtain a lower rate on UP or any other railroad?
A. Yes, they are.
Q. Have they sometimes been successful in using that threat to obtain a lower rate on the UP?
A. Yes.
Q. Have they been successful in obtaining such lower rates, notwithstanding UP's study that

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build-ins were not economically feasible? And I don't mean to do anything other than attempt to paraphrase your testimony. Your testimony is what it is on that subject.
A. Would you repeat that question, please?
Q. Yes. Have shippers on the UP used the threat of build-ins to negotiate lower rates, notwithstanding that UP's own internal analysis showed that build-ins in most circumstances were not economically feasible?
A. I'll try to restate your question a little more clearly. I'm not – I don't think any UP study, general studies of build-outs are relevant to the first part of your question. As far as specific build-outs, typically if a build-out is feasible or might be feasible, then certainly UP will consider that in its decision making. However, it's UP's own assessment as to whether or not the build-in, that specific build-in is feasible, whether it has any likelihood of taking place as to whether or not UP factors that into its decision making.
Q. Just so the record is clear, have any shippers used the threat of build-ins or

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build-outs to obtain lower rates on the UP since 1988?
A. I'm not an expert on this. I think that there probably have been instances.
Q. Referring to page 164 of your testimony, your verified statement in this proceeding, you refer in the first full paragraph, second sentence, to your position that "some '2-to-1' shippers enjoy such strong truck or source competition or make such minimal use of one or both of their rail alternatives that they will lose little or no competition as a result of the merger."
Was that a fair reading of your testimony?
A. Yes.
Q. Could you tell me which 2-to-1 shippers enjoy this strong truck or source competition?
A. Well, we didn't undertake an exhaustive analysis of all such shippers. I mean, it's clearly some shippers at some 2-to-1 locations ship predominantly by truck, use rail occasionally, may use it only to one market and truck to all other markets or the shipper can't even compete in other markets.

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And that's the basis for this statement. I know in our specific work, we came across a lot of shippers that are shipping very small volumes. However, they're in the switching tariff, they're open to two railroads and we considered them competitive with two considers but they may ship a trivial amount of traffic by rail but, nonetheless, we've included those as 2-to-1 shippers.
Q. Forgive me if I'm going over your testimony yesterday but my understanding of your testimony yesterday was that you had included as 2-to-1 points all points that could be served by both UP and SP and no other railroads prior to the merger, regardless of whether or not there was any traffic actually shipped by one or both of those carriers. Is my understanding correct or not correct?
A. Your understanding is correct, that as far as 2-to-1 points, 2-to-1 locations, we included all such locations. It's I think an unprecedented step. I don't recall any prior merger where all 2-to-1 points were opened to a new competitor but we've done that.
Q. Since we're on this subject, I would

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like to have marked as an exhibit a list which I prepared and is so marked at the bottom.
(Peterson Exhibit No. 1 was marked for identification.)
BY MR. STONE:
Q. Now, for the record, I will say that this list is a list – and let me just distribute copies to the others, and first to your counsel, Mr. Peterson.
This is a list that was prepared for my client and it, to my understanding, is derived from both publicly available sources of stations and SPLCs and to some extent perhaps confirmed by the UP and SP traffic tapes in this proceeding.
Could I just ask you to go down the list here, and let me say further, because I perhaps didn't, we believe that these are 2-to-1 points, that is, these SPLCs are served by both the UP and the SP and no other railroad currently.
Could you go down the list and tell me whether you've considered these points and made any determination about whether they are or should be 2-to-1 points?
A. Okay. First, let me indicate our process for identifying 2-to-1 points and I think

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that will help the explanation as we go along. We looked first for all of these six-digit SPLCs where both UP and SP were present and then present with no other railroad. So you're correct, this is a good jumping off point to the analysis. This is the first of many steps required to identify customers that are actually 2-to-1 customers. Could take – well, Woodland, California is a good example. I could take several others. We would look at Woodland, California, that SPLC would show both UP and SP. Actually, it would show now probably an SP shortline serving Woodland and a spinoff from SP. And then we would embark on the real essence of our study and that is to determine competitively served customers. And those customers could be served in a number of ways. They could be served by TOFC/COFC service and would determine that Woodland is near ramps of UP and SP and Santa Fe so it's not 2-to-1 in that regard. For automotive traffic, auto ramps could be located at nearby points and cover a town of this size. And then you turn to the car load traffic. And I think, as we discussed

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yesterday, car load business can be served to reciprocal switching, it can be served through a joint facility agreement or, in fact, it can be a case where an industry has direct industry spurs from both carriers. The situation at Woodland is that there is no physical track connection between UP, and again, it's a UP shortline, which is another reason this wouldn't be a 2-to-1 point because that shortline will be able to connect to BN/Santa Fe at west Sacramento following the settlement.

Q. You referred to a UP shortline and previously you referred to an SP shortline.

A. Right.

Q. Did you mean UP shortline?

A. Yes. Woodland is actually on the north California railroad, which is an SP shortline, and the Yolo shortline, which is a UP spinoff. But Yolo I believe will be free to interchange with BN/Santa Fe at west Sacramento, California after the settlement. But leaving those factors aside, there is no physical track connection at Woodland. There is a highway between them. In fact, a

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quick store has been built between our track and the SP's and along with some other things, would make it impossible to build a track connection, so that none of the industries have the benefit of reciprocal switching because there is no interchange there. We then checked the joint facility agreements to see if perhaps some industries were covered by an agreement where SP would switch our cars and deliver them to us at some point but no such agreement exists and there are no industries that have direct spurs from both UP and SP. So there are no 2-to-1 customers at Woodland. I believe the similar explanation would apply to most of these points. Most of these are – many of these are points where there is no rail traffic. I'm looking at the second to the last City of Industry, California is a place where there is a lot of rail traffic. Again, there is no physical track connection between UP and SP, no interchange takes place, no jointly served industries of any kind. Texarkana, I believe that's an error. KCS serves Texarkana. I would be glad to take

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your list back and provide information. I don't have it all on the tip of my tongue but I think what you're going to find, though, is that in most cases, there are not any industries that are served by SP and UP and no other carrier. Austin, Texas is an interesting one. Austin is served by UP. It's also served by a shortline but the shortline only connects to UP, hasn't operated to SP for many, many years. And so while you will find in some cases that, yes, there is UP there and then there is another railroad there, maybe a shortline, that shortline needs to be able to effectively connect to SP and no other railroad for it to be a 2-to-1 point. We did have a number of those. We had, I believe some points in Kansas where it would be on one railroad and then a shortline feeder of the other and we counted those as 2-to-1 points.

Q. Let me just say that I'm happy to get a response on this in any way. We may just, to protect ourselves, give a formal interrogatory, and that may be to the applicant's liking too.

MR. ROACH: That may be the best.

MR. STONE: Is it best to handle this

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through interrogatory?

MR. ROACH: I think that might be best, then everyone can have our response on each of these in an orderly fashion.

BY MR. STONE:

Q. Let me ask you a few questions, though, about your protocol, Mr. Peterson. You just mentioned with respect to Austin that Austin is served by a shortline that connects with SP but hasn't operated for many years. Has there been a formal abandonment of that shortline?

A. I don't know whether there has but actually, there has been a total abandonment of service on that shortline because the – I believe because the shortline operator that was operating it under contract for the city is no **longer doing so and they're endeavoring to find a new operator.**

Q. To your knowledge, has there been an ICC-approved embargo on service on the line?

A. There has been in effect an embargo, whether it's been formal or informal, in that there has been no service over the track. And of course the track is impassable. But I don't know whether the railroad has filed a formal embargo

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or not.

MR. ROACH: I'll just make a comment. I think there may be some confusion here. The witness said that the shortline had not connected to SP for some years. He did not say it had not connected to UP. Then there is the issue of the most recent discontinuance of service and I think you may be mixing two issues there. If that's not helpful, you're free to ignore it.

BY MR. STONE:

Q. Well, let me perhaps clarify. Is Austin served by the UP, Mr. Peterson?

A. Yes.

Q. Is it also served by a shortline that connects to the Southern Pacific?

A. No. And because the track is – that goes quite a ways over to the SP interchange at Giddings, Texas, it has been out of service for many, many years, is impassable but I cannot answer your specific question as to whether there has been a formal abandonment of common carrier service or an embargo. But as I said, it's been effectively an embargo in that there has been no service over there for many, many years.

Q. Just to clarify another portion of the

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SP, either directly or through reciprocal switch.
Q. So that would BN/SF have access to a new customer where service would have been opened – where the facility would have been opened to service by both UP and SP but in this case also an additional railroad?
A. Are you defining a three-to-two point?
Q. I don't think so. I'm trying to get some particularity here and perhaps I'm not being precise. When you define two-to-one points, I thought you earlier told me that that was a point at which a customer was served by both UP and SP and no other railroad; is that right?
A. That is correct.
Q. In the situation described in paragraph C which relates to geographic limits on access to new industry, where UP and SP could have provided service to a newly constructed facility prior to the merger, does BN/SF have access to that new facility, whether or not it is only UP and SP that provided service prior to the merger?
MR. ROACH: Well, I object to the form of the question. We're dropping the context, we're dropping the context. We're only talking

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about stations that are reached by only UP and SP. You're asking him a broad question. This isn't in the context.
MR. HUT: That's what I'm asking. I guess I don't quite see the context and that was what the question attempted to get at. It was actually his answer that sort of suggested a new meaning from the context that you just posited, Arvid.
MR. ROACH: I think it's plain. I shouldn't be jumping in, but it's a point open to BN/SF is the premise of all this. And those points are listed in Exhibit A. And then you get to the issue of new industries at those points. But none of those points are served by a third railroad.
BY MR. HUT:
Q. Is that right?
A. That's correct.
Q. And again I think you said this once before, let me just run over it one more time, you define a two-to-one point where both UP and SP and no other railroad has access either by direct or reciprocal switch; is that correct?
A. That's correct.

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Q. And, with respect to the election to be made 45 days prior to initiating service, again, so far as you know, no such election with respect to any shipper has as yet been made?
A. To the best of my knowledge.
Q. So you have no knowledge how any particular shipper would be served when such service is available?
A. No.
Q. With respect to subparagraph 3 of paragraph D and the opportunity to use a third party contractor to perform switching for itself or both railroads, what factors will determine whether UP/SP gives its agreement?
A. I think that would have to be addressed on a case-by-case basis. If I had to say what are the major factors that would be considered, it would, number one, be the service that could be provided and, number two, the costs.
Q. Would you look at page 334. And let me turn your attention to what I believe is paragraph 9h on that page. It says, quote, if requested by BN/SF, UP/SP will provide the BN/SF reciprocal switching services at the two-to-one points covered in this agreement at rates which

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will fully reimburse UP/SP for its costs plus a reasonable return. In your understanding does that provision obligate UP/SP to provide reciprocal switching services to BN/SF on request for purposes of serving individual shippers?
A. I believe that that was the intent, yes.
Q. If you would turn to page 354, you'll see that the section 9h has been amended in its entirety. It now reads, quote, the rates for reciprocal switching services provided by UP/SP to BN/SF pursuant to the terms of the agreement shall fully reimburse UP/SP for its costs plus a reasonable return. Do you have any understanding, Mr. Rebensdorf, whether UP/SP under amended section 9h continues to be obligated to provide reciprocal switch services for BN/SF on request?
A. I would think we're still obligated under the provision that says 45 days before initiating service BN/SF must elect whether its service shall be direct, through reciprocal switching, or without prior agreement through the use of a third party.
Q. What is it about the language that you

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just read to me in your understanding obligates UP/SP to provide reciprocal switch?
A. Because it's saying they will either provide it direct or we will provide it for them through reciprocal switching.
MR. ROACH: We'll stipulate to that, that this language was deleted as redundant of the separate paragraphs 2, 3, 4 and 5.
BY MR. HUT:
Q. And it's your understanding that BN/SF's requirement to elect whether it will provide direct or through reciprocal switch imposed upon UP/SP an obligation to provide it, if that is the election?
A. That is correct.
Q. Would you turn please to paragraph 7 on page 328. We earlier had some discussion about the BN/SF route Memphis to St. Louis. Would you describe for me whether it goes on the east or west side of the river?
A. The BN/SF route is on the west side of the river.
Q. And where are the UP or UP/SP routes?
A. The UP/SP route is a trackage rights on the east side of the river.

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Q. Does the BN/SF route at some point utilize the MacArthur Bridge to cross the river before delivery at the yard used in St. Louis?
A. They can use the MacArthur Bridge or they can use the bridge which is up river which comes into – or ties into the Madison yard.
Q. Do you have an understanding which they use with greater frequency?
A. I believe right now they're using the bridge up river that goes into Madison principally.
Q. For what reason does UP want to secure dispatching authority for the bridge across the Mississippi River?
A. What you have is a small stretch of a couple of miles over the MacArthur Bridge where UP/SP have the A&S yard on the other side and then have the dispatching beyond Gratiot Street in St. Louis.
Q. When you say the other side, we're talking the east side?
A. The Alton southern gateway yard is on the east side and Gratiot Street at the foot of the MacArthur Bridge on the west side. So what you have is a very short segment in here which is

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AFTERNOON SESSION
(1:10 p.m.)
Whereupon,
JOHN H. REBENSDORF,
the witness on the stand at the time of recess,
having been previously duly sworn, was further
examined and testified as follows:
EXAMINATION BY COUNSEL FOR SAVE THE
ROCK ISLAND COMMITTEE, INC. (STRICT)
BY MR. SULLIVAN:
Q. Mr. Rebensdorf, my name is John
Sullivan from the law firm of Jackson & Jessup, I
represent a group called Save the Rock Island
Committee, Inc. Are you aware of the aims of
that group?
A. My understanding is that this is the
group that's trying to acquire the Kansas
City-St. Louis line.
Q. Or at least see it preserved as a unit
and reactivate it.
I'd just like to ask you a few
questions. If we can focus on the two-to-one
aspect, I believe probably the key sentence in
here is that, on page 2 of your statement,
under the bold heading, the second sentence, to

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that end we identified all geographic points on
the combined UP/SP system where both UP and SP
and no other railroad provided service to one or
more customers. Can you explain how you
identified those customers or actually I guess
identified the points?
A. We took a look at the station list for
both UP and SP and then our marketing folks went
through and identified specifically point by
point where there was a customer that was served
by both UP and SP.
Q. So by served do you mean that had in
the past gotten rail service from both UP and SP?
A. That currently at the present time is
being served by both UP and SP.
Q. I'm sure you'll agree that customers
get service on a periodic basis. How far back do
you have to go to find out whether UP or SP
currently served that customer?
MR. ROACH: Objection to form of the
question.
You can answer, if you can.
THE WITNESS: Restate the question.
BY MR. SULLIVAN:
Q. Well, let me try and understand, your

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last response was that your marketing people then
went down a list or whatever of stations and
identified that there were customers that both UP
and SP served at those stations, correct?
A. That's correct.
Q. Did the marketing people have any
instruction as to what was meant by served as far
a time period?
A. I believe there's such a thing as an
open and prepared list of stations that are
open. And that is maintained by both railroads.
It is A listing of stations that are currently
served by both railroads. Now, that doesn't
necessarily mean that anything has moved into
that station say within the last six months or 12
months, but it is an open station on that
railroad.
Q. Okay. So if a customer would get
service on one of the stations at the open and
prepared list?
A. Yes.
Q. And UP and SP both served that station,
you would consider that customer a two-to-one
customer?
A. That's correct.

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Q. So, for instance, and I don't have any
of the shipper statements with me, as you may be
aware there are a number of shipper statements in
there which shippers say they have basically
given up at least for the time being on SP
because of whatever problems, service problems,
whatever.
Despite that fact, that the shipper has
not used SP during that period of time, they
would still be considered a two-to-one shipper,
even though, as long as they fell under your
previous description of using a station that's on
the open and prepared list – if they fell under
your previous description of using a station that
is on the open and prepared list of both UP and
SP?
A. What is your question?
Q. That, even though they hadn't used SP
in awhile because of say, for example, the
problems cited in some of the shipper statements,
they would still be considered a two-to-one
shipper?
A. This is the second time I'm going to
answer that question. The answer is yes.
MR. ROACH: Can I hear the question

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before this one and the answer, please.
THE REPORTER: "Question: And UP and
SP both served that station, you would consider
that customer a two-to-one customer?
"Answer: That's correct."
MR. SULLIVAN: I'm happy with the
answer, I'm ready to move on.
MR. ROACH: Let's go off the record for
a second.
(Discussion off the record.)
MR. SULLIVAN: I'm ready to go.
THE WITNESS: Okay. Let me clarify
then. We identified the points that were served
by both UP and SP. At those points we identified
the shippers that were served by both UP and SP.
It is possible at a given point that a
customer – you could have UP and SP being the
only railroad serving that point, but the
customer is not served by both railroads.
What we looked at first identified the
two-to-one points then went through to identify
the specific customers at a given point that were
served by both UP and SP.
BY MR. SULLIVAN:
Q. And then I questioned you on what do

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you mean by served, historically served, could be
served?
A. What's the question?
Q. What do you mean in doing this
analysis, what was your definition of served?
A. That are currently served by both UP
and SP.
Q. To be currently served, how far past
going back in the past did they have to get
traffic from one or the other carrier?
A. I can't answer that. You'll have to
ask Mr. Peterson.
Q. Just a few more questions on this. You
said something to the effect that your marketing
people did this analysis of points and
customers?
A. That's correct.
Q. Would that have generated any – would
they have generated any documents or studies that
you used?
A. I was provided the two-to-one listing,
that's all I needed to do my job. You would have
to ask the people that did that study.
Q. Who would those people be?
A. Mr. Peterson.

REDACTED

John H. Rebensdorf May 13, 1996 HIGHLY CONFIDENTIAL

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that was included with the applicant's rebuttal states that the applicants are negotiating with parties regarding sale of all or some of the former Rock Island line; is that still the case? A. We have had negotiations with the party that STRICT is looking to to operate this line if STRICT is successful in acquiring it. Q. One more thing, the service commitments, do you know if these could, in fact, be met if instead of using the UP lines the Rock Island line was used? And I'm speaking specifically about the B, St. Louis-Labadie. A. I don't know. MR. SULLIVAN: That's it. Thank you. EXAMINATION BY COUNSEL FOR THE KANSAS CITY SOUTHERN RAILWAY COMPANY BY MR. MOLM: Q. Mr. Rebensdorf, my name is John Molm, I'm with Troutman Sanders, and we represent Kansas City Southern in this case. I want to set this line of questions in context. One of the purposes of your statement is to describe the process for implementing the settlement agreement and, on page 2 of your testimony, in the second full paragraph, you state, at the end of that

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paragraph, that we made this a very high priority project and that you began your efforts to implement this agreement shortly after the first of the year. Do you recall when this implementing process or implementation process commenced? A. We assembled the teams on the UP/SP side beginning in February. I believe BN/Santa Fe assembled their teams in approximately the same time period. There were several calls that went back and forth. The first face-to-face meeting that kicked off the process was in the first week of March. Q. Would it surprise you that BN/SF people have a different date in mind? MR. ROACH: Object to the form of the question. THE WITNESS: I don't know what BN/SF people would have said. BY MR. MOLM: Q. On page 6, the top bullet, toward the end of that description, if you will, the second to the last sentence beginning toward the end of the line, five lines up from the bottom, states we will also clarify the definition of a new

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facility to specify that it does not include expansions of or additions to existing facilities or loadouts or transload facilities. Let's focus on the last two parts of that. What's a loadout facility? A. A loadout facility would typically be where, in mining, for example, you would drive with heavy load trucks to a facility where the material would be loaded then onto railcars. Q. And what distinguishes a loadout from a transload facility? A. A transload facility could be a facility – typically it's looked upon as a facility where you would load a railcar or unload a railcar to another means of transportation. They might be viewed as one and the same. Q. So your definition of two-to-one, just so I understand it, does not include loadout or transload facilities? MR. ROACH: Object to the form of the question. BY MR. MOLM: Q. You may answer. A. I'm not sure I understand your question. If you could rephrase it.

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Q. Does the definition of two-to-one points include loadout facilities or transload facilities? MR. ROACH: Same objection. THE WITNESS: I don't recall that there is any specific mention of a loadout facility in the definition of a two-to-one. MR. ROACH: Mr. Molm, if I could make a statement for the applicants just for the record, I think you may be taking this sentence out of context. What this is saying is that, for the overhead rights, where there is a new agreement with CMA to serve new industries, that will not include loadouts and transloads. We say very clearly in the narrative that we're going to make it clear for anyone who has any doubt about it that, at the two-to-one points, BN/Santa Fe has the right to serve existing and new transload facilities. MR. MOLM: But only where a new facility is constructed, that then it does not include? MR. ROACH: No. The only place it doesn't include transloads is on the overhead portions of the rights, where we agreed with CMA

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to extend a new right to BN/Santa Fe to serve new industries on the SP owned lines where BN/Santa Fe has overhead trackage rights. MR. MOLM: I'm sorry, I'm confused then. And I genuinely am, I'm trying to get it straight. The statement reads we will also clarify the definition of a new facility to specify that it does not include expansions of or additions to existing facilities. Oh, that's existing facilities, not new facilities, is that the distinction you're making? MR. ROACH: What I'm saying is that that sentence about clarifying the definition is meant to modify the first couple of sentences of that bullet point which deal with the new right that we are granting to BN/Santa Fe to serve new industries on the overhead portions on the SP owned lines. That is not at two-to-one points, that is on the overhead portions of the SP owned lines, where BN/Santa Fe gets trackage rights. In contrast, at the two-to-one points, we have said that we will clarify the agreement to make clear that BN/Santa Fe can serve existing and new transloading facilities. And I do apologize if this is ambiguous, but that is the

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intent. MR. MOLM: All right. I think I understand that. BY MR. MOLM: Q. Going to page 9, the first full bullet on that page, entitled segregated fund for trackage rights fees, provides that UP/SP will place 100 percent of the ton mile fees received from BN/Santa Fe into two segregated funds, one to Texas, Louisiana, Arkansas, and the other for all other states. MR. ROACH: I object to the form of the question. The first one actually includes Missouri and Illinois. MR. MOLM: Missouri and Illinois, I'm sorry. BY MR. MOLM: Q. The funds will be spent on, A, maintenance of the lines and, B, offsetting depreciation on the lines. Stopping right there, what does offsetting depreciation on the lines mean? A. All railroads for maintenance of way are under depreciation accounting. And there is an element of depreciation on the investment base

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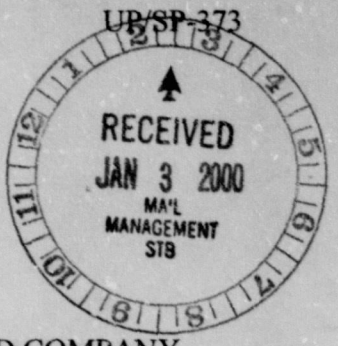
UP/SP-373



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
RIO GRANDE WESTERN RAILROAD COMPANY

APPLICANTS' FOURTH QUARTER 1999 PROGRESS REPORT WITH RESPECT TO MERGER CONDITIONS

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January 3, 2000

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
RIO GRANDE WESTERN RAILROAD COMPANY

APPLICANTS' FOURTH QUARTER 1999 PROGRESS REPORT WITH RESPECT TO MERGER CONDITIONS

Applicants UPC, UPRR and SPR[1] hereby submit their fourth quarter 1999 progress report with respect to the conditions imposed on the Board's approval of the UP/SP merger in Decision No. 44, served August 12, 1996. Submission of this progress report was required by ordering paragraph 10 of Decision No. 44. See also id., p. 146 ("We require as a condition that applicants submit on or before October 1, 1996, a progress report and implementing plan regarding their compliance with the conditions to this merger, and further progress reports on a quarterly basis."); Finance Docket No. 32760 (Sub-No. 21), Decision served Nov. 29, 1999, p. 10 ("UP and BNSF shall continue to report quarterly . . . .").

As in our prior quarterly reports, items are included only if there have been developments since the prior report, and the information contained in this report is more

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[1] Acronyms used herein are the same as those in Appendix B of Decision No. 44.

abbreviated in nature than the more comprehensive presentation that Applicants filed on July 1, 1999.

I. BNSF, TEX MEX AND UTAH RAILWAY CONDITIONS

A. BNSF

BNSF Trackage Rights and Haulage. BNSF trackage rights traffic continued to grow during the past quarter. As shown in Charts #1, #2 and #3 in Appendix A, BNSF averaged 795 trackage rights trains per month in September, October and November, compared with 746 in the prior three months. The monthly tonnage handled on those trains averaged more than 4.2 million tons in September, October and November, compared with 3.9 million in the prior three months. And monthly loaded and empty cars on BNSF through trackage rights trains averaged 53,356 in September, October and November, compared with 48,637 in the prior three months. BNSF continued to operate at least daily through trackage rights train service in all major corridors.

Local train volumes of BNSF and its agent, UTAH, remained strong. BNSF and UTAH operated 608 local trains in September, October and November, handling 14,338 loaded and empty cars and 1.3 million tons of freight, compared with the previous three months' totals of 730 trains, 23,814 cars and 1.9 million tons of freight. The local volume numbers shifted downward this past quarter because BNSF is now using through trains to handle traffic that had been moving in local service.

UP's expenditures on the lines over which BNSF has trackage rights have continued to exceed substantially the fees received from BNSF. The latest available data, through September 30, 1999, are presented in Appendix B.

Implementation Steps. The UP-BNSF Joint Service Committee met most recently in December. UP and BNSF discussed trackage rights train performance data, data integrity issues, and the development of additional train performance measurements. UP and BNSF also agreed to review billing issues that are contributing to problems with service levels in the Sacramento area. UP and BNSF continued to discuss issues regarding BNSF's use of former SP Gulf Coast SIT facilities and performance measures for reciprocal switching. Finally, UP and BNSF reviewed the status of the $25 million joint capital reserve fund and the New Orleans line sale.

Since the last quarterly progress report, UP and BNSF have resolved issues regarding BNSF's access to Econorail and BNSF's practice of delivering cars for UP haulage at locations where no haulage arrangement exists.

Line Sales. All of the UP/SP line sales to BNSF provided for in the merger settlement agreement have closed. UP and BNSF continue to finalize their New Orleans line sale, under which BNSF and UP will exchange 50% undivided interests in BNSF's Iowa Junction-Avondale line and UP's line between Iowa Junction and Dawes, Texas.

Connections. UP work on connections to facilitate BNSF trackage rights operations is complete at all locations.

Definition of "2-to-1" Points. UP continues to respond in a timely fashion to BNSF inquiries in accordance with the applicable protocol.

Opening 50% of Contract Traffic at "2-to-1" Points to BNSF. UP continues to be in compliance with this condition, as clarified in Decision No. 57, served Nov. 20, 1996.

New Facilities and Transloading Condition. UP continues to be in compliance with this condition.

Build-In/Build-Out Condition. On June 30, 1999, Entergy filed a petition for exemption in connection with a proposed build-out from its White Bluff, Arkansas, facility to an island of former SP track located near Pine Bluff, Arkansas, in Finance Docket No. 33782, Petition for an Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line Between White Bluff and Pine Bluff, Arkansas. UP filed comments opposing Entergy's petition on August 31, 1999. Entergy filed a reply to UP's opposition on September 20, 1999. On October 28, 1999, the Board instituted a proceeding to consider Entergy's exemption petition. Finance Docket No. 33782, Entergy Arkansas & Entergy Rail — Construction & Operation Exemption — White Bluff to Pine Bluff, AR, Decision served Oct. 28, 1999. Also on September 20, Entergy filed a petition in the UP/SP merger docket seeking a determination from the Board that Entergy would have the right to obtain BNSF service upon completion of its proposed build-out. UP filed a response on October 12, 1999, demonstrating that Entergy was seeking to place BNSF in a more favored position than SP occupied prior to the merger and that its petition must therefore be denied.

B. Tex Mex

Tex Mex has continued to use its trackage rights to handle significant volumes of traffic, as shown in the charts in Appendix A. As can be seen in Charts #4 through #9, traffic levels reflect strong, effective competition by Tex Mex. Tex Mex averaged 63 through trains per month in September, October and November, compared with 60 in the prior three months. The monthly tonnage handled on those trains averaged 314,316 tons in September, October and November, compared with 278,357 tons in the prior three months. Monthly loaded and empty cars on Tex Mex through trackage rights trains averaged 4,470 in September, October and November, compared with 3,951 in the prior three months.

On November 16, 1999, UP entered into a Memorandum of Understanding with Tex Mex and KCS concerning the sale of UP's Victoria-Rosenberg line and the grant of related trackage rights to Tex Mex. The STB had encouraged the parties to proceed with this transaction in its Houston/Gulf Coast oversight proceeding. See Finance Docket No. 32760 (Sub-No. 21), Union Pacific Corp., Union Pacific R.R. & Missouri Pacific R.R. -- Control & Merger — Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Ry., SPCSL Corp., & Denver & Rio Grande Western Ry., Decision served Dec. 21, 1998, p. 27

C. Utah Railway

As already discussed, UTAH has moved substantial volumes of local trains as BNSF's agent in the Utah Valley area. In addition, potential UTAH-BNSF coal routings continue to act as a check on UP rates.

II. ABANDONMENTS

There have been no significant merger-related abandonment activities during the past quarter.

III. LABOR PROTECTIVE CONDITIONS

UP implemented the Southwest hub agreement, which encompasses Tucson, El Paso and Dalhart, on October 1, 1999. The Los Angeles hub agreement is scheduled to be implemented in January 2000. Negotiations with BLE and UTU are continuing on the second phase of the Portland hub, which is the final new hub planned.

As previously reported, most agreements for all other crafts are in place. UP has recently reached an agreement with the signalmen to establish a single collective bargaining agreement for the entire UP system effective February 1, 2000. Implementing agreements have also been reached covering the consolidation of yardmaster work at Portland, Kansas City, and Stockton.

IV. ENVIRONMENTAL MITIGATION CONDITIONS

The following is a report on steps taken, and plans for future steps, in regard to the environmental mitigation conditions, which are addressed in the order they are listed in Appendix G to Decision No. 44:

A. System-wide Mitigation

1-9. These conditions have been satisfied as previously reported.

10. Security Forces. As previously reported, UP has extended to SP territory its policy of "zero tolerance" of vagrancy and trespassing on railroad property. UP is participating in a new nation-wide initiative by Operation Lifesaver to reduce trespassing on railroad property. UP met with the Reno Police Department regarding a "zero tolerance" program in late June of 1997; these discussions are on hold pending a City of Reno legal determination.

11-13. These conditions have been satisfied as previously reported.

B. Corridor Mitigation

14. EPA Emissions Standards. EPA's national locomotive emissions rule was published in the Federal Register on April 16, 1998. Since no appeals were filed by the June 15, 1998 deadline, the rule is now final. UP is working with locomotive industry suppliers to develop its compliance plan.

15. Consultations With Air Quality Officials. UP has held detailed discussions with environmental officials in the states of Arizona, Colorado, Illinois, Nevada, Oregon, Texas, Washington and Wyoming. Dialogue between UP and California officials continues to address ongoing improvement in UP/California air quality issues.

16. Noise Impacts. UP implemented a noise comment hotline and re-notified each affected county and requested comments in the first part of 1999. UP monitors the noise hotline and compiles and analyzes data to determine if a noise abatement plan is

required. Through December 13, 1999 there were no calls to the noise monitoring hot line in the fourth quarter.

17. Use of Two-Way-End-of-Train Devices. This condition has been satisfied, as previously reported.

C. Rail Line Segment Mitigation

18. Priority List for Upgrading Grade Crossing Signals. UP provides train density information to states on a regular basis, which they use to prioritize their grade crossing improvements. UP provides the states of Arizona, California, Kansas, Nevada, Oregon, Texas and Colorado with train density data for approximately 500 individual crossing improvements annually.

19. East Bay Regional Park District MOU. The MOU is being implemented in accordance with its specifications. UP is reviewing the Crockett Trail Feasibility Study and is awaiting property descriptions from the District for all trails.

20. Town of Truckee MOU. The MOU is being implemented in accordance with its specifications. UP has completed construction of its portion of the bridge at the I-80 Central Truckee off ramp and is working with the city on roadway approaches. The railroad continues to work with local and federal agencies in the development of a Truckee River hazardous material spill response plan.

21. Placer County MOU. The MOU is being implemented in accordance with its specifications. UP continues to meet and work with the City of Roseville. UP has installed train control mechanisms to facilitate passenger operations. Several improvement

projects specified in the MOU have been completed while others have been deferred or canceled at the request of the county and/or city involved. UP is in the process of conveying or leasing properties as specified in the MOU.

22. City of Reno. The MOU is being implemented in accordance with its specifications.

23. City of Wichita/Sedgwick County. The MOU is being implemented in accordance with its specifications.

D. Rail Yards and Intermodal Facilities

24. Noise Abatement Plans for Rail Yards. Before UP undertakes any rail yard construction at the specified locations, UP will contact appropriate state and local officials and will report to SEA on the results of those consultations. No construction is planned for these facilities at this time.

25. Intermodal Facilities. Before any changes are made at the specified intermodal facilities, UP will contact appropriate state and local air quality officials in the states of California and Illinois and will report to SEA on the results of those consultations. No construction or operating changes are planned for these facilities at this time.

E. Abandonments

26-61. As abandonments are carried out, UP will comply with all conditions. UP has developed a process to ensure that contractors and railroad personnel comply with all general conditions. Progress on specific abandonment conditions is reported below.

41. This condition has been satisfied, as previously reported.

43. This condition has been satisfied, as previously reported.

44. This condition has been satisfied, as previously reported.

47. This condition has been satisfied, as previously reported.

48. This condition has been satisfied, as previously reported.

49. This condition has been satisfied, as previously reported.

50. This condition has been satisfied. There is no bridge at this location. The line has been sold to Norfolk Southern.

52. This condition has been satisfied, as previously reported.

55. This condition has been satisfied, as previously reported.

57. This condition has been satisfied, as previously reported.

58. Suman-Benchley, TX. UP has decided to retain this line. The Board vacated the abandonment exemption for the line on June 12, 1998. This condition is no longer applicable

59. This condition has been satisfied, as previously reported.

60. This condition has been satisfied, as previously reported.

61. This condition has been satisfied, as previously reported.

F. Construction Projects

62-108. As construction projects are carried out, UP will comply with all listed conditions. UP has developed a process to ensure that contractors and railroad personnel comply with all general conditions. Progress on specific construction provisions is reported below.

70. This condition has been satisfied, as previously reported.

78. This condition has been satisfied, as previously reported.

79. This condition has been satisfied, as previously reported.

80. This condition has been satisfied, as previously reported.

81. This condition has been satisfied, as previously reported.

83. This condition has been satisfied, as previously reported.

84. This condition has been satisfied, as previously reported.

88. This condition has been satisfied.

89. This condition has been satisfied.

92. This condition has been satisfied, as previously reported.

97. This condition has been satisfied, as previously reported.

98. This condition has been satisfied.

99. This condition has been satisfied.

100. This condition has been satisfied.

101. This condition has been satisfied, as previously reported.

107. This condition has been satisfied, as previously reported.

108. This condition has been satisfied, as previously reported.

Respectfully submitted,

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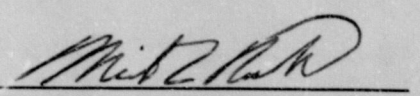

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Attorneys for Union Pacific Corporation,
Union Pacific Railroad Company and
Southern Pacific Rail Corporation

January 3, 2000

EXHIBIT A

Chart #1

BNSF Trackage Rights
Number of Through Trains

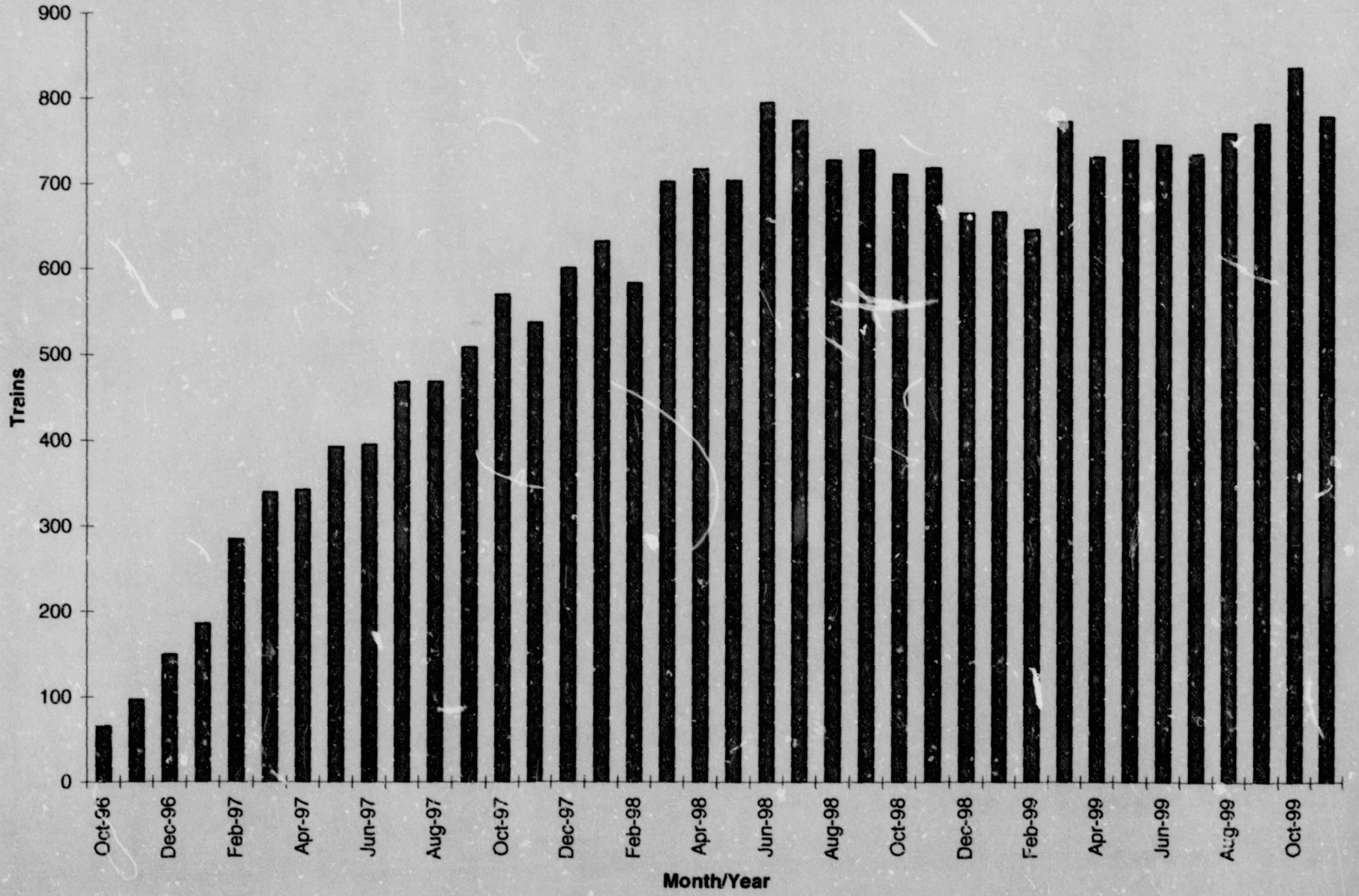


Chart #2

BNSF Trackage Rights
Number of Cars (Through Trains)

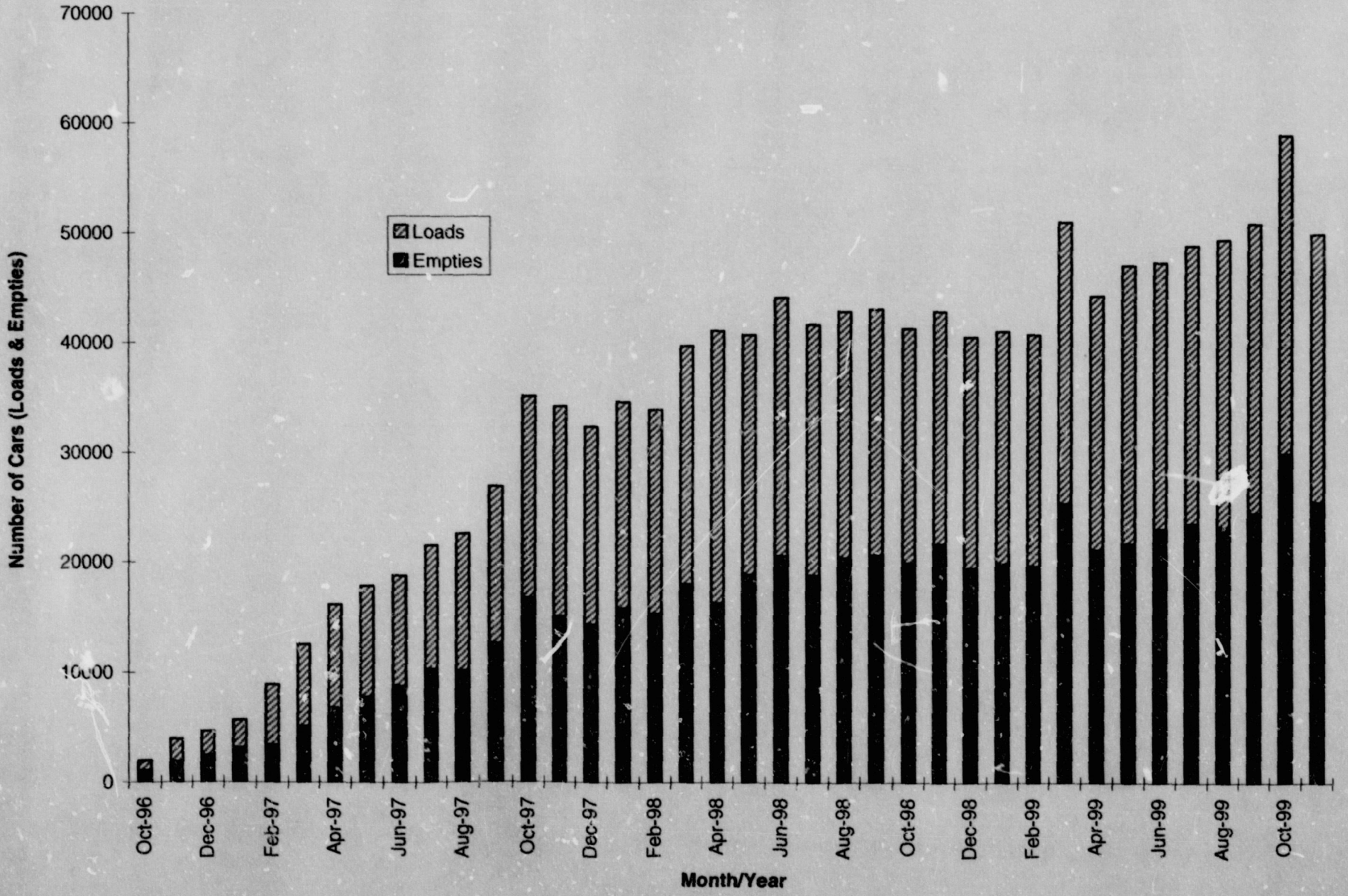


Chart #3

BNSF Trackage Rights
Gross Tons (Through Trains)

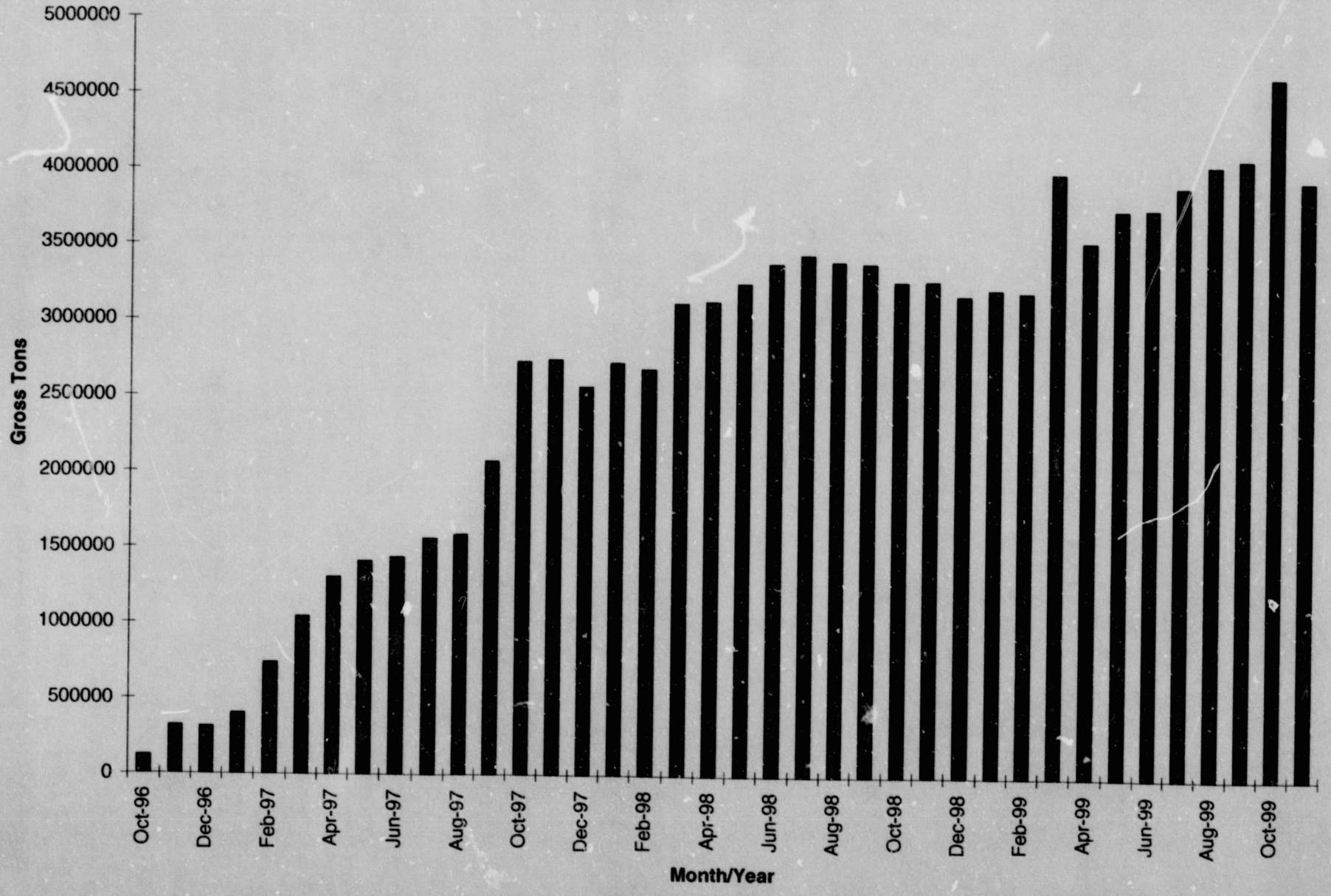


Chart #4

Tex Mex Trackage Rights
Number of Through Trains
(All Traffic Included)

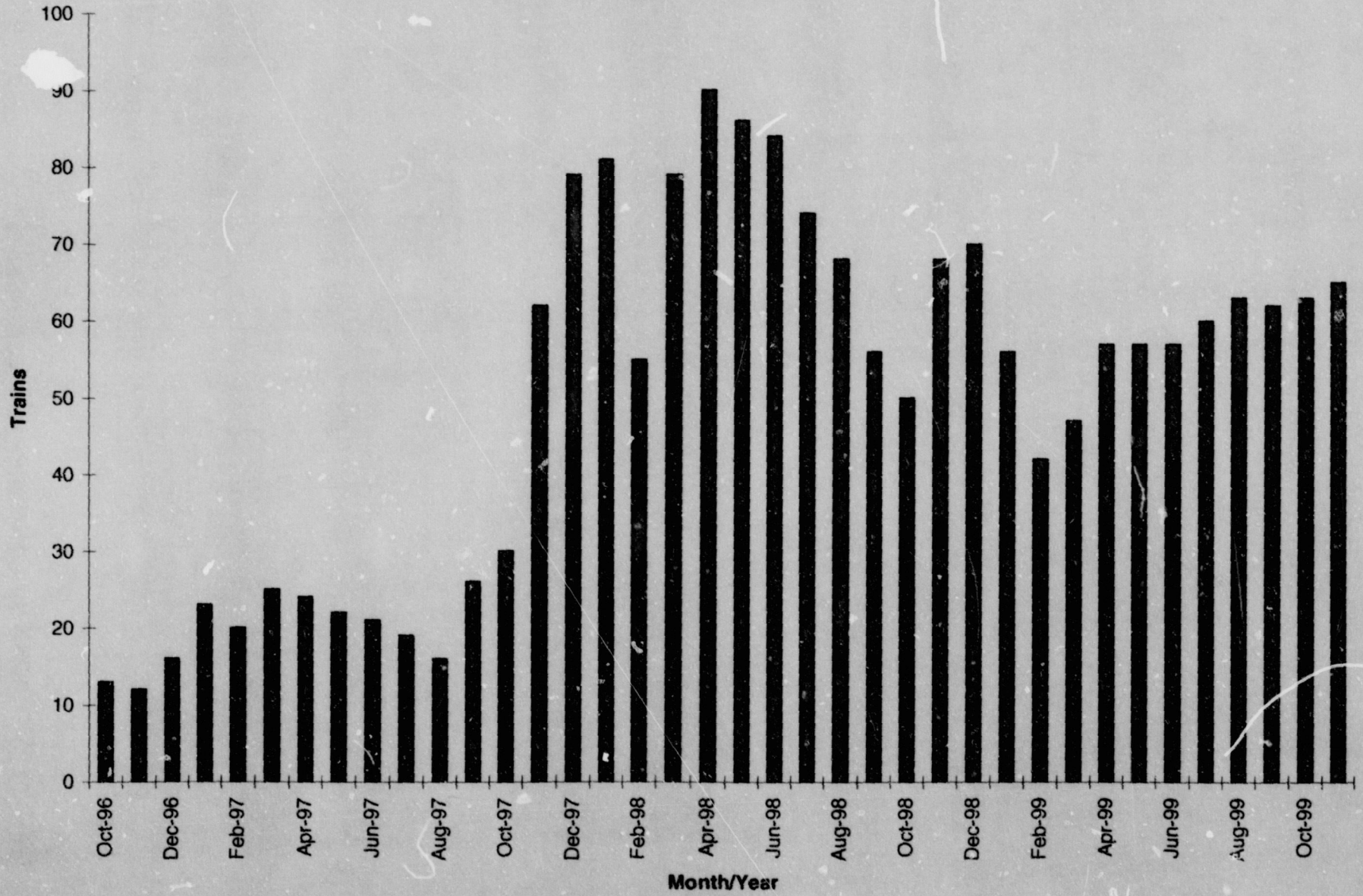


Chart #5

Tex Mex Trackage Rights
Number of Cars (Through Trains)
(All Traffic Included)

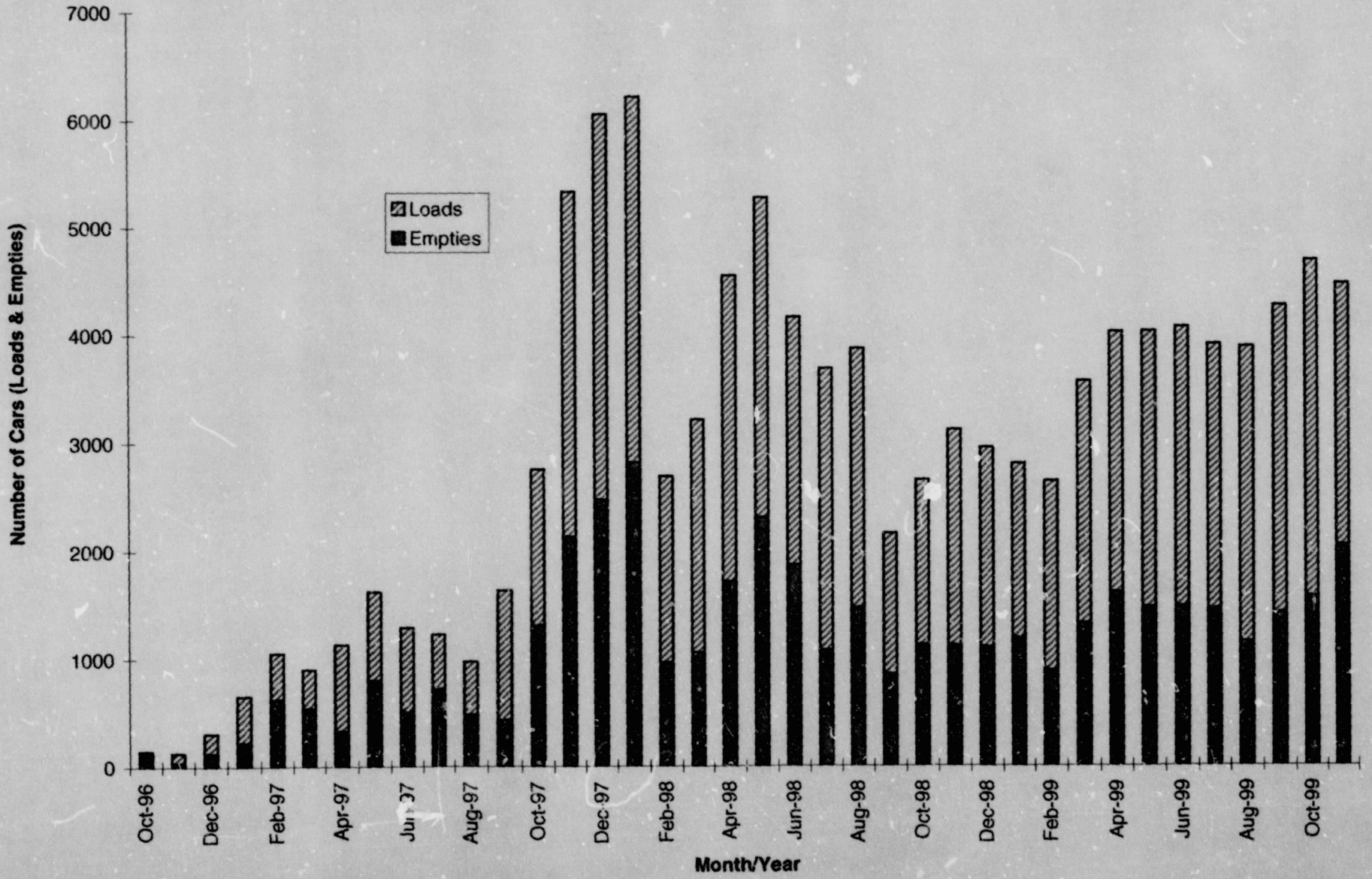


Chart #6

Tex Mex Trackage Rights
Gross Tons (Through Trains)
(All Traffic Included)

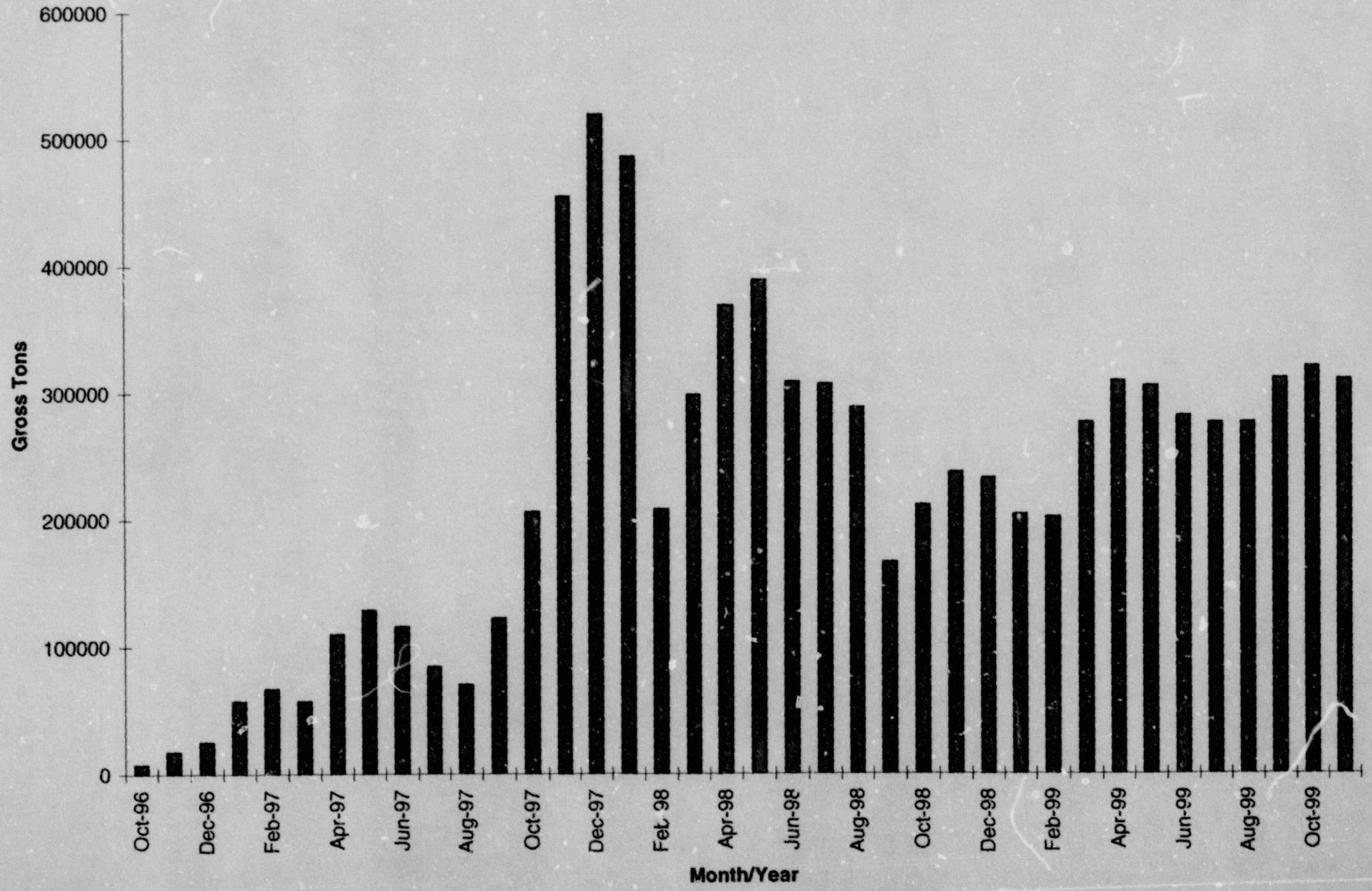


Chart #7

Tex Mex Trackage Rights
Number of Through Trains
(Estimated Service-Order-Related Traffic Excluded)

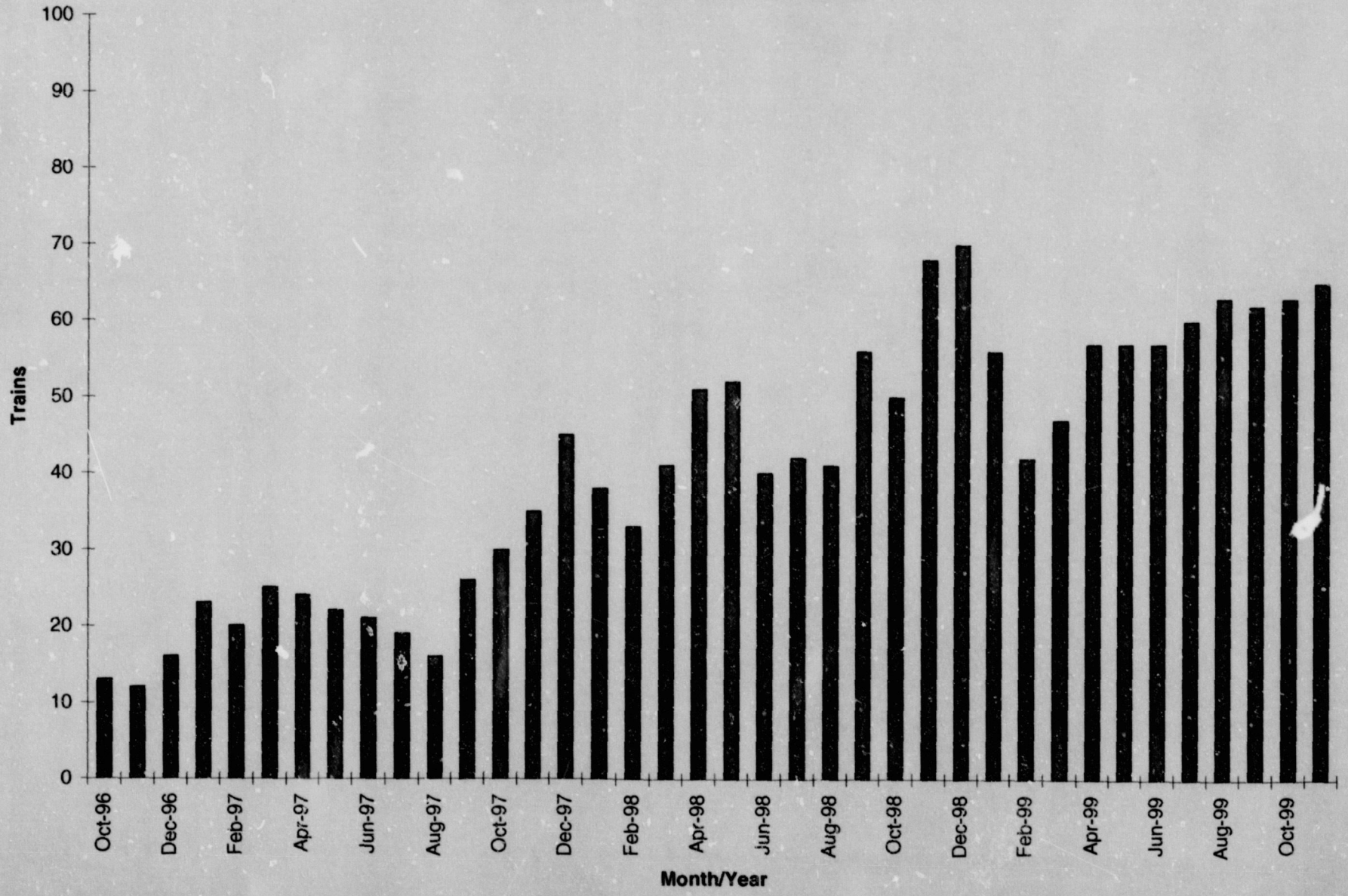


Chart #8

Tex Mex Trackage Rights
Number of Cars (Through Trains)
(Estimated Service-Order-Related Traffic Excluded)

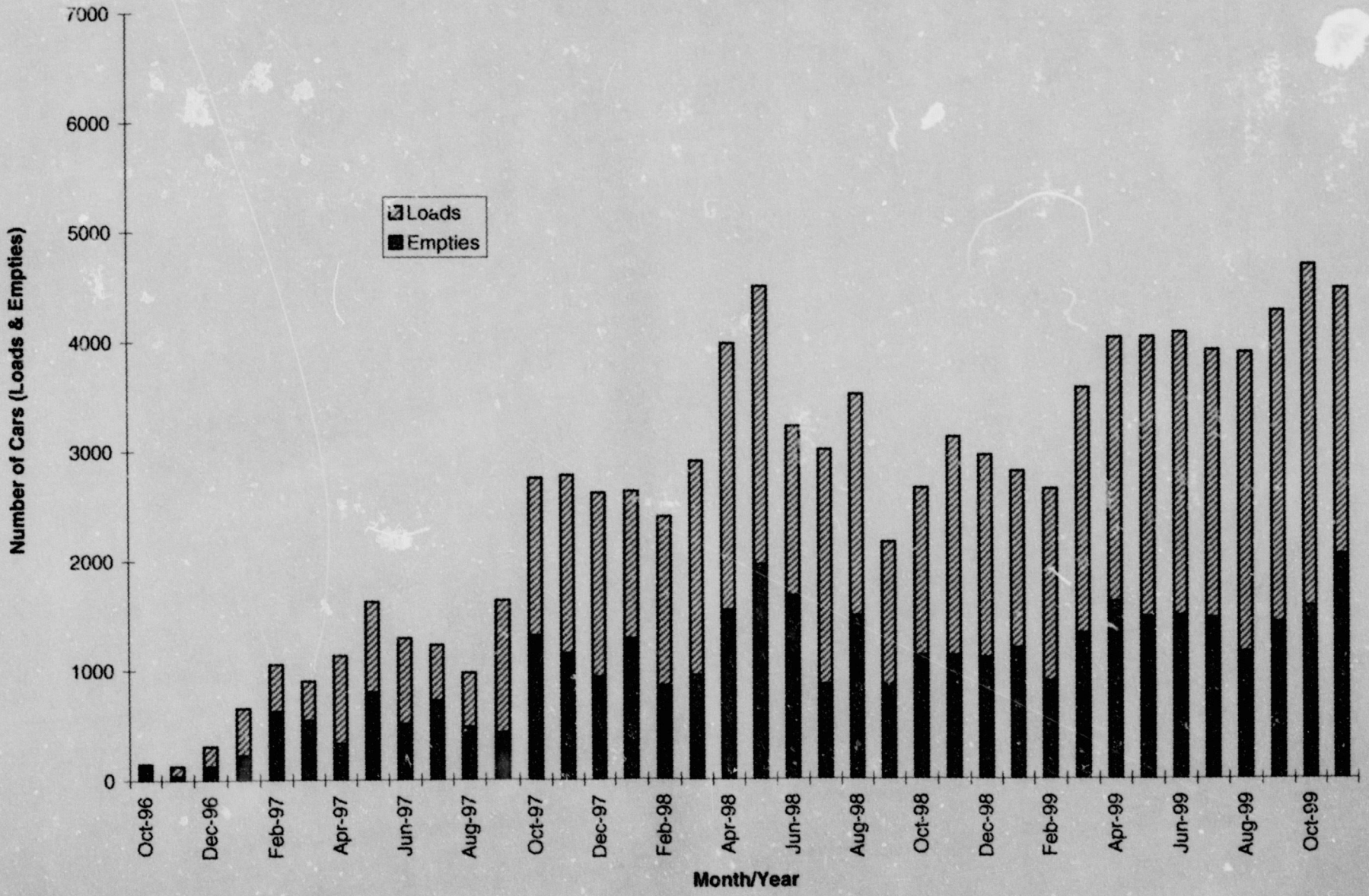


Chart #9

Tex Mex Trackage Rights
Gross Tons (Through Trains)
(Estimated Service-Order-Related Traffic Excluded)

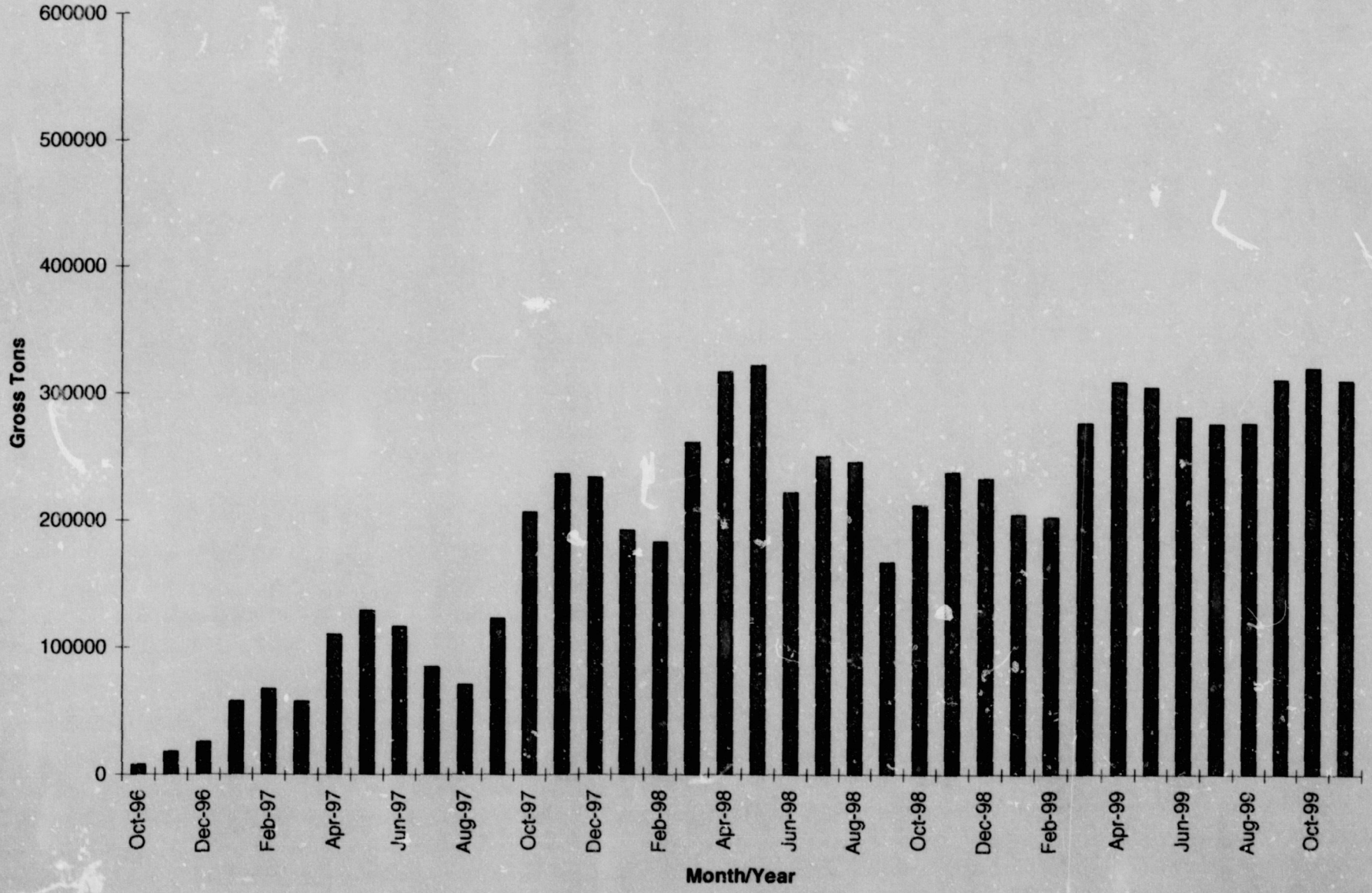


Chart #10

Tex Mex Laredo Traffic
(Loaded Cars)

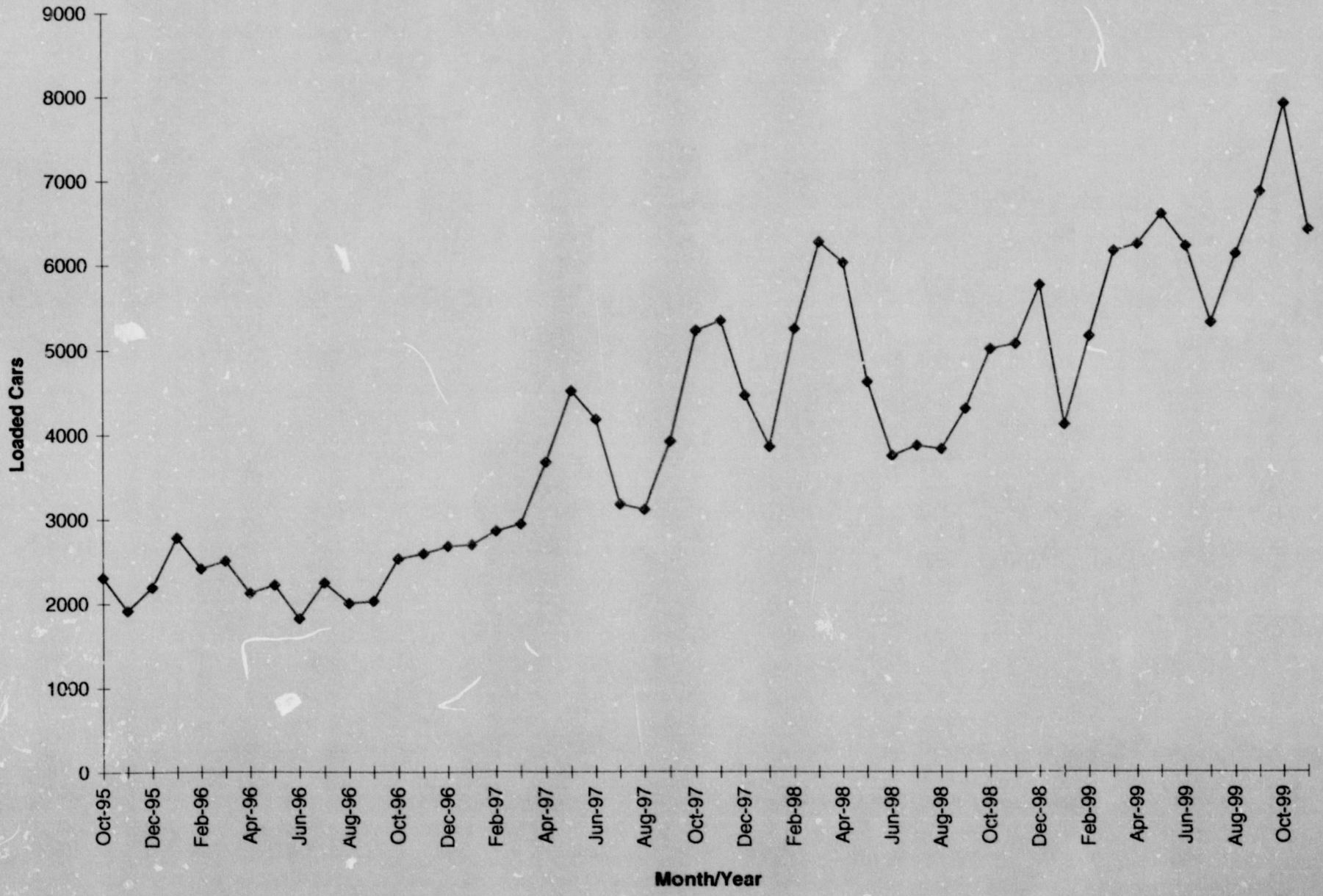


Chart # 11

Tex Mex and BNSF Trackage Rights Traffic to Corpus Christi/Robstown and UP/SP-Tex Mex Interline Traffic (Southbound)

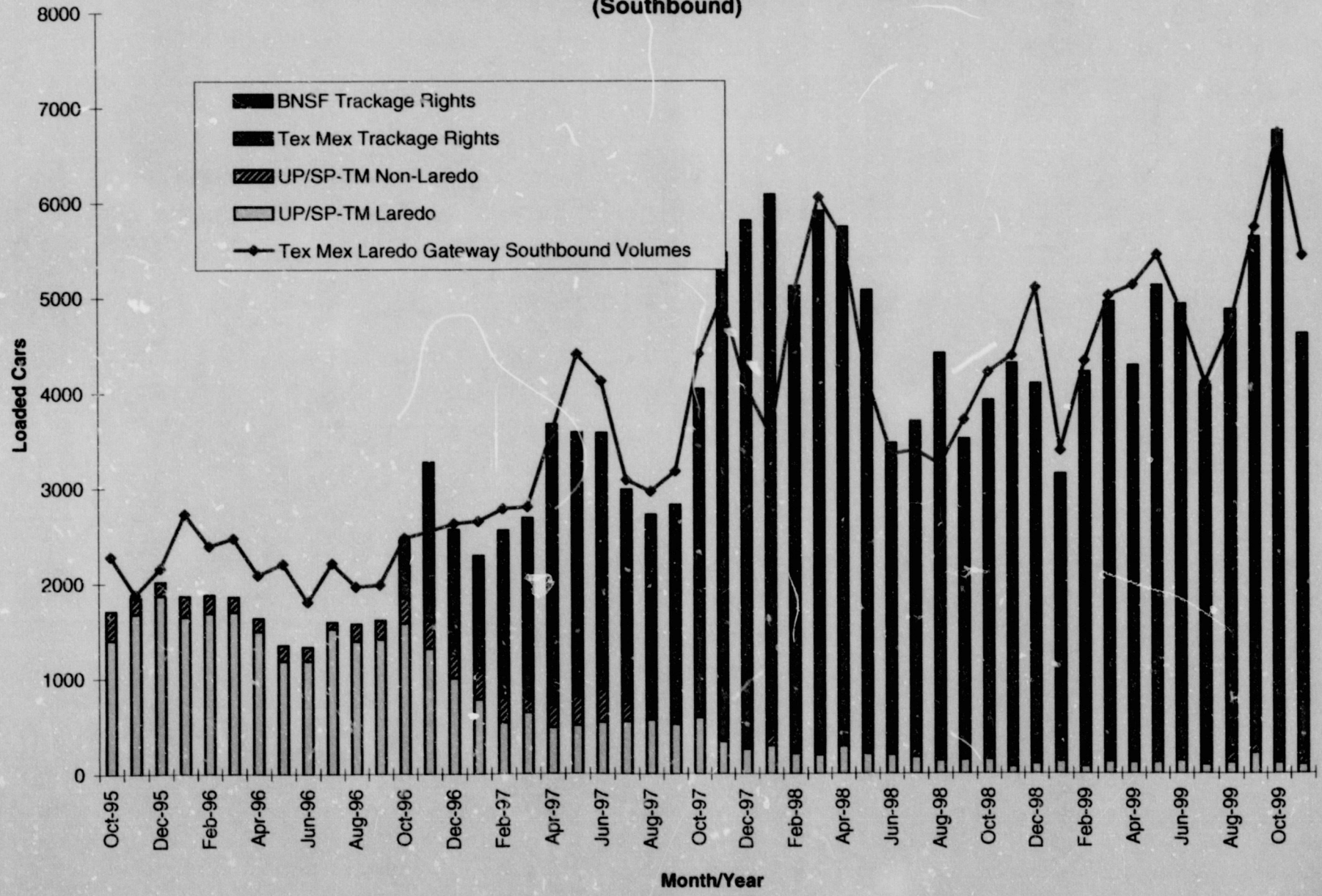


EXHIBIT B

TRACKAGE RIGHTS FUNDS

In Section 6 of Applicants' settlement agreement with CMA, Applicants agreed to place trackage rights fees received under the BNSF settlement agreement into two dedicated funds, one with respect to the trackage rights lines in Texas, Louisiana, Arkansas, Missouri and Illinois and one with respect to the trackage rights lines in the Central Corridor and California. Applicants agreed that the money in those funds would be spent on (a) maintenance on those lines, (b) offsetting depreciation of those lines, (c) capital improvements on those lines, and (d) costs for accounting necessary to administer the two funds. The following table provides information regarding the two funds through the quarter ending September 30, 1999, the latest date for which the data have thus far been compiled.

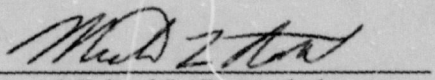
	Texas, Louisiana, Arkansas, Missouri and Illinois	California and Central Corridor
REVENUE		
Trackage Rights Fees	$49,060,284	$50,193,259
Capacity Improvement Fees	0	0
Total Revenue	$49,060,284	$50,193,259
EXPENSES		
Maintenance	$103,823,533	$73,324,343
Depreciation	102,519,924	77,685,888
Capital Expenditures	(Not reported)	(Not reported)
Accounting Expenses	65,406	65,406
Total Expenses	$206,408,863	$151,075,637

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 3rd day of January 2000, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on parties of record in Finance Docket No. 32760, and on:

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580



Michael L. Rosenthal

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July 1, 1999

VIA HAND DELIVERY

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

Re: Finance Docket No. 32760, Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty-five (25) copies of The Burlington Northern and Santa Fe Railway Company's Quarterly Progress Report (BNSF-PR-12). Also enclosed is a 3.5-inch disk containing the text of the Quarterly Progress Report in WordPerfect 5.1 format.

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

Sincerely,

Erika Z. Jones/ds

Erika Z. Jones

Enclosures

cc: All Parties of Record

BNSF-PR-12

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
RIO GRANDE WESTERN RAILROAD COMPANY

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S QUARTERLY PROGRESS REPORT

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July 1, 1999

BNSF-PR-12

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
RIO GRANDE WESTERN RAILROAD COMPANY

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S QUARTERLY PROGRESS REPORT

Pursuant to the Surface Transportation Board's ("Board") Decision No. 44 in Finance Docket No. 32760, The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby submits its twelfth Quarterly Progress Report. Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al., Fin. Dkt. No. 32760, Decision No. 44 at 147 (served Aug. 12, 1996).

Further, in accordance with Decision No. 13 served by the Board on December 21, 1998, in Finance Docket No. 32760 (Sub-No. 21), this Progress Report provides a

comprehensive summary of BNSF's service over the past year using the trackage rights and other rights on the lines of UP and SP (the "UP/SP lines") that BNSF was granted in the UP/SP merger proceeding.[1/]

Specifically, this Progress Report will address the steps that BNSF has undertaken since its April 1, 1999 Progress Report (BNSF-PR-11) to implement the rights it received, from both marketing and operating standpoints and the marketplace results of those actions. In addition, this Report will provide a summary of the principal steps BNSF has taken over the past year to implement the rights it received as well as a summary of BNSF's current operations along the UP/SP lines. Finally, this Progress Report will update the status of various issues relating to BNSF's ability to provide reliable, dependable and consistent service over the UP/SP lines.

As documented by this Report, BNSF has aggressively continued its efforts to compete with UP on the UP/SP lines. Generally, BNSF continues to be effective in marketing its services over those lines. However, as discussed below, there have been several recent occasions when UP has applied the terms of various operating and other agreements between UP and BNSF as a competitive tool in an apparent attempt to prevent, or at least inhibit, the full extent of competition by BNSF envisioned by the BNSF Settlement Agreement and the conditions imposed by the Board on the UP/SP merger. If BNSF is to compete fully and effectively as a replacement for SP, it needs to be able to do so without such unnecessary interference by UP.

1/ In Decision No. 13, the Board indicated that UP and BNSF should continue to file quarterly reports, "with comprehensive summary presentations included in their progress reports due on July 1, 1999."

I. Second Quarter Changes in Operations

This section summarizes BNSF's changes in operations along the UP/SP lines between April 1, 1999, and June 30, 1999.

A. Gulf Corridor

- On May 10, 1999, BNSF increased its local Lafayette-Lake Charles-Lafayette, LA service from 5 to 6 days per week to provide shippers in the Lake Charles area with a more clearly competitive choice to and from this important market via BNSF linehaul.
- On May 24, 1999, UP notified BNSF that UP desired to end the temporary "haulage" rights (BNSF power and crews were used throughout) that UP had provided BNSF during the service crisis over former SP trackage between Caldwell, TX, and San Antonio, TX, via Flatonia, TX, effective July 1, 1999. As of that date, BNSF's trackage rights operations will be reinstituted between Temple and San Antonio via Smithville, TX. The timing of UP's request was tied to the completion of the second main line project on UP's Austin Subdivision between Mileposts 220.0 and 236.7 as well as other operational changes made on the line, permitting a return to normal scheduled operations. BNSF has made the necessary changes to its operations for Elmendorf, San Antonio and Eagle Pass, TX, to resume using the permanent trackage rights route as UP has requested. BNSF intends to closely monitor the operational situation and will advise UP if service via the reinstituted route leads to a degradation of BNSF service

in this corridor as compared to the use of the temporary trackage rights between Caldwell and San Antonio via Flatonia.

- BNSF and UP have reached agreement on restructuring local operations in the San Antonio area. Under the new arrangement, which will take effect on July 1, 1999, along with the change in trackage rights outlined above, BNSF will pick up originating BNSF San Antonio traffic from UP at Remount, TX, on the former MKT line at San Antonio. BNSF will set out local BNSF traffic destined to San Antonio for UP reciprocal switch delivery at Adams, TX, on the UP (former Missouri Pacific) line at San Antonio. These changes will result in more efficient operations in the San Antonio area once the trackage rights line shift is implemented.

  In addition, BNSF and UP have agreed that eastbound BNSF trains will operate over the former SP line between Withers/Heafer Junction and Tower 112 at San Antonio instead of over the UP line between Withers/Heafer Junction and Tower 105. This change will enable eastbound BNSF trains to avoid operating through UP's SoSan Yard at San Antonio and to operate over double track instead of single track, reducing sources of potential congestion in this area for both BNSF and UP.

- As of May 17, 1999, BNSF began operating loaded unit coal trains with distributed power over UP's line between Fort Worth and Waxahachie, TX. Previously, BNSF operated the trains over the Dallas Area Rapid Transit

("DART") commuter line between Fort Worth and Dallas and then via the BNSF line from Dallas to Waxahachie. Initially, UP required BNSF to power the rerouted trains with four locomotive units, but later agreed with BNSF that three units were sufficient.

- At New Orleans, the New Orleans Public Belt ("NOPB") completed clearance improvements at St. Claude Avenue and opened this routing to doublestacks and autoracks on June 14, 1999. BNSF, CSX, NOPB and the Port of New Orleans collaborated in the funding of this project. Prior to the completion of this clearance project, BNSF's Los Angeles-to-New Orleans intermodal train terminated at BNSF's Avondale Yard. At Avondale, separate blocks for the CSX and NS were switched out and interchanged by BNSF roadswitchers to CSX's Gentilly Yard and NS's Oliver Yard. Due to the restricted clearance on NOPB at St. Claude Avenue, the roadswitchers had to use NS's "Back Belt" track between East Bridge Junction/Shrewsbury and Oliver Yard, which is a shorter but more congested route. The clearance project increased the overhead clearance at St. Claude Avenue from 17 feet, 6 inches above top of rail ("ATR") to 21 feet, 3 inches ATR. BNSF subsequently revised its intermodal operations at New Orleans to take advantage of the more efficient NOPB route. Under the new operating plan, BNSF's intermodal train operates directly to NOPB, which delivers the cars to the CSX and NS, thus avoiding the less-efficient route via the Back Belt.

B. Central Corridor

- During the second quarter of 1999, BNSF and UP agreed to several operational changes in Nevada, designed to improve service for customers which BNSF accesses through UP haulage/reciprocal switc' In April, BNSF and UP agreed to service standards for cars handled by UP for BNSF between Elko and Winnemucca, depending on whether specific customer locations are switched on the UP or former SP side of the paired track in this area. Also, UP train crews were instructed to provide all reporting of BNSF traffic in Elko Yard to UP's National Customer Service Center in St. Louis, which provides BNSF's Field Support Center with track updates as inventories fluctuate. This helps by placing all cars for BNSF in Elko in one track, depending on inventory, and simplifies the work order process. Once a train call notice is posted, BNSF's Field Support Center issues work orders based on current car standing order of the track indicated by UP's NCSC; BNSF's work orders include the specific track number where the BNSF cars are located, instead of a "phantom" track number as previously provided. This has helped eliminate incomplete setouts and pickups by BNSF trains in Elko.

C. I-5 Corridor

In an effort to further improve service and build business in the I-5 Corridor, on June 15, 1999, BNSF added new, five-day/week southbound merchandise train service from Vancouver, WA, to Barstow, CA designated H-VAWBAR. This new service, in

conjunction with the existing merchandise train service, the H-PASBAR/H-BARPAS (Pasco-Barstow), is designed to handle existing carload growth in the I-5 Corridor and to encourage further growth by improving transit time speed and consistency. Prior to the introduction of this new train service, Southern California business originating at locations in western Washington (e.g., Everett, Tacoma, Longview) moved to Pasco, in southeast Washington, for classification and handling on the H-PASBAR. The new H-VAWBAR service eliminates the out-of-route mileage and additional day of transit time that was required to classify this business at Pasco. BNSF's I-5 Service Redesign Team is continuing to look for additional operational or commercial actions BNSF can take to further build and secure growth between the Pacific Northwest, California, and Arizona.

II. Annual Summary of BNSF's Service Over Trackage Rights Lines and Results of Marketing Efforts

This section provides a summary of BNSF's service over the lines to which it was granted access under the Board's Decision No. 44, including the principal steps that BNSF has taken to implement service over those lines and the results of its marketing efforts over the past year.

A. Train Operations

The following table details BNSF's current scheduled through daily service in major trackage rights lanes:

SCHEDULED THROUGH TRAIN OPERATIONS ON TRACKAGE RIGHTS

June 30, 1999

Line Segment	Train Service - Each Direction
Central Corridor	Daily merchandise service, with intermodal service provided on merchandise trains between Denver and Salt Lake City
I-5 Corridor	Daily merchandise service
Gulf East/Southern Corridor - Houston - Lafayette	Daily merchandise service Daily intermodal service
Gulf North Corridor - Houston - Memphis (including IC via Effingham)	Daily merchandise service
Gulf South Corridor - Temple - Corpus Christi	Daily merchandise service
Eagle Pass Corridor	Six days/week merchandise service

Lists identifying the specific trains currently running over BNSF's trackage rights lines in the corridors referred to above are attached hereto as Attachment 1.

The following summarizes the major train service additions and changes on BNSF's trackage rights lines (other than those described in Section I above) which have been implemented since July 1, 1998.

- In July 1998, BNSF began direct delivery and receipt of intermodal traffic to CSX and NS at New Orleans, thereby bypassing BNSF's Westwego intermodal facility. This operation continued through June of 1999, when

BNSF began delivering intermodal traffic to NOPB at New Orleans for interchange to CSX and NS as described above. The Westwego facility continues to be used for local New Orleans traffic

- On August 4, 1998, BNSF began rerouting westbound through manifest traffic off of the Central Corridor to BNSF's "Transcon" route through Arizona and Southern California. On August 6, BNSF eliminated its daily Galesburg, IL-Stockton, CA (H-GALSTO-1) merchandise train. On August 10, BNSF replaced its Galesburg-Stockton service with a daily Denver-Stockton merchandise service (H-DENSTO), scheduled to operate over the former SP Donner Summit route six days per week, and via the UP route through Portola, CA, one day per week to provide service as needed to a "2-to-1" customer at Herlong, CA.
- On August 13, 1998, BNSF initiated a plan designed to improve the flow of merchandise traffic from the Pacific Northwest, Southern California, Colorado and Wyoming into Texas and Mexico. Under the plan, switching for trains destined to Houston and Silsbee, TX, and Lafayette, LA, is being handled at Temple, TX. BNSF's facilities at Saginaw, TX, are being used as a clearinghouse for traffic destined to south Texas and Mexico.
- Commencing September 6, 1998, BNSF improved merchandise service between New Orleans and Houston by building destination direct trains at Lafayette and by eliminating switching for this traffic at Silsbee, TX.

- On September 24, 1998, BNSF increased its PTRA merchandise train service from Temple (M-TPLPTR) to daily service.
- On November 12, 1998, BNSF commenced six day/week local service between Stockton and Sacramento, CA, in order to improve service to customers for traffic to and from Sacramento, West Sacramento and the Port of Sacramento, replacing service provided by UP haulage between these same points.
- BNSF and UP initiated a new operating plan to serve all customers accessible to BNSF on the former SP Baytown and Cedar Bayou Branches between Dayton, TX, and Baytown, TX, effective March 1, 1999. Under this plan, BNSF no longer uses UP haulage service to serve any customers located along the Baytown and Cedar Bayou Branches. Instead, BNSF operates three local trains daily (six days/week) from its Dayton facility to serve all customers on these lines. These locals currently provide direct switching service to four customers: Martin Gas, Dynergy, Texas Eastern and Enterprise. In order to facilitate BNSF's service to customers via reciprocal switch, the Baytown Branch has been divided into five reciprocal switching zones, identified as Baytown, Cedar, Eldon, Mt. Belvieu and Dayton. BNSF serves all other Baytown Branch and Cedar Bayou Branch customers via reciprocal switch performed by UP, with BNSF traffic set out and picked up on tracks jointly agreed to by BNSF and UP. Based on BNSF's experience to date, this new service arrangement

appears to be working well, and customers are satisfied with the arrangement. UP further agreed to lease trackage to BNSF for use by BNSF to set out and pick up reciprocal switching traffic and to tie up its locomotive, pending BNSF construction of tracks to support the new operational plan at Dayton, Mont Belvieu, Eldon, and Baytown. BNSF and UP are currently working on the plans for the additional BNSF tracks, and BNSF's construction of the tracks will be coordinated with UP's own infrastructure development in this area.

The only problems BNSF has had with this operation have been related to data issues impacting UP as well as BNSF -- customers releasing cars for plastic storage without billing, with UP storing cars intended for BNSF in remote SIT facilities not directly accessible to BNSF, including Defense and Spring, TX; and Eagle Mills, AR. BNSF and UP trackage and haulage teams have generally been able to work through operating interchange points to handle this traffic when identified and released which does not require UP to return shipments to BNSF at Dayton, TX, for interchange, which would result in substantial delay and out-of-route handling on the part of both UP and BNSF.

- The Spring Center's joint and coordinated dispatching operations continued to work well in 1999. During January 1999, UP relocated to the Spring Center dispatching responsibility for its lines between: Spring and Valley Junction; Hearne, TX, and Houston; Houston and Shreveport, LA; the

Sunset Route between Houston and San Antonio, and between San Antonio and El Paso; and the Austin Subdivision between Laredo and central Texas. Pursuant to the Board's order in Finance Docket No. 32760 (Sub-No. 26) (served December 21, 1998), the Spring Center has continued to route traffic through the Houston Terminal via the best available route during the second quarter, and the ability to use a clear routing has resulted in reduced congestion and delay.

B. BNSF Investments in Trackage Rights and Purchased Lines

Major capital investments in BNSF's trackage rights and purchased lines during the past year included:

- During the past year, BNSF continued its multi-year project to rehabilitate and bring the Layfayette Subdivision (the former SP route between Iowa Junction, LA, and Avondale, LA) up to industry standards. This extensive rehabilitation program involves mainlines, sidings, and yard tracks at Avondale and Lafayette, as well as supporting infrastructure including communication systems, highway-railroad grade crossings, bridges and structures, and other support facilities. This project has replaced approximately 220,000 crossties, renewed approximately 20,000 linear feet of curve rail, and rehabilitated about 400 highway-railroad grade crossings with new ties and planking plus asphalt approaches. In addition, BNSF invested approximately $3 million during the past 12 months as part of a continuing program to reconstruct, rehabilitate, and upgrade bridges along

this key route. Ultimately, under their joint ownership of the former SP Houston-Avondale route, BNSF and UP will share in maintenance, capital upgrading and capacity expansion of this rail corridor.

- During the fourth quarter of 1998, BNSF completed construction of nine new tracks at Midvale, UT. This additional needed yard space assisted BNSF and its agent, Utah Railway, in handling increasing traffic flows in the Salt Lake City area and across much of the Central Corridor, and reduced congestion at other points along this route.
- During the first quarter of 1999, BNSF installed power switches at Stockton, CA. The remaining power switch work with Centralized Traffic Control installation was completed at El Pinal, CA, north of Stockton in April 1999. The temporary addition of hand thrown crossovers with an assigned BNSF switch tender at Stockton also reduced the amount of time it takes trains to travel outbound and inbound onto and off of the UP route. Installation of power switches at Stockton, which eliminated the need for the temporary crossovers and the switch tender and further improved operations, was completed early in May. BNSF and UP have also had success in coordinating maintenance of way windows on UP routes, resulting in a more consistent operation of trains. This has benefited both UP and BNSF operations through this area.
- In addition to the two 9,000 foot tracks BNSF previously built at its Dayton, TX interchange facility, BNSF completed the construction of three

additional 7,500 foot tracks in March 1999 to support local operations on the former SP Baytown and Cedar Bayou branches.

- BNSF and the Acadiana Railway Company, a "2-to-1" shortline, completed the construction of a new interchange at Crowley, LA, in March, 1999, to replace the prior very restricted interchange there. This new interchange has improved operations on the Houston-New Orleans line jointly-owned with UP, and will permit further traffic growth between BNSF and Acadiana.

C. Marketing Activities

During the past year, BNSF continued its intensified marketing activities with respect to a number of points on the UP/SP lines, with particular focus on customer identification and contact for customers located along the Baytown Branch; in the Lake Charles, LA area; between El Paso and Sierra Blanca, TX; in Brownsville, Defense, Harlington, San Antonio, Texarkana and Tyler, TX; in the Sacramento area; and in the Shreveport, LA area. These efforts have included field surveys, face-to-face or telemarketing customer contacts, and follow-through designed to acquaint customers with BNSF's services and capabilities, as well as to acquaint BNSF with the customers' transportation needs. Further, BNSF continues to issue service updates to its customers which are faxed directly to customer locations and posted on the Internet.

Major marketing developments in the past year included:

- BNSF cooperated last fall with public and private interests in the State of Louisiana, as well as the Louisiana & Delta Railroad ("LDRR"), in the operation of sugar cane trains on expedited schedules from the Lake

Charles area to receivers on LDRR reached over BNSF's Iowa Junction-Avondale route. LDRR operated a daily "sugar cane train" over BNSF's route which continued until mid-January, 1999. This marked the second year of this program, designed to both assist in increasing cane production and refining in southern Louisiana, and remove large and growing volumes of sugar cane from the region's highway system. Upon review of last season's sugar cane campaign, LDRR advised BNSF that an estimated 124,072 tons of sugar cane were handled, and every train kept 54 trucks off of Louisiana highways. LDRR and BNSF never missed an arrival window at the destination sugar mills, a critical factor in transporting this time-sensitive, perishable commodity, while working together. Based on the 1998 successes, the preliminary outlook for the Fall 1999 sugar cane harvest campaign is for additional cane traffic to move by rail.

- On December 22, 1998, BNSF and the Texas Mexican Railway Company ("Tex Mex") reached agreement on a five-year interline divisional arrangement for traffic moving between the two carriers via Robstown to and from Mexico via Laredo. This agreement has provided for stable per-unit divisions on both carload and intermodal traffic, and permits BNSF and Tex Mex to work more closely together over its term, as partners, in providing competitive service to shippers to and from Mexico in conjunction with Transportacion Ferroviara Mexicana ("TFM").

D. Traffic Volumes

BNSF traffic volumes over the lines to which BNSF received access as a result of the merger have continued to grow. See Attachment 2 hereto. The charts attached hereto as Attachments 3 to 12 reflect the volumes of traffic for each of the major traffic lanes to which BNSF received access. Attachment 13 shows the breakdown by general commodity groups of this traffic.

BNSF has also experienced traffic growth where BNSF works with "2-to-1" shortlines and regional carriers to reach customers along the trackage rights lines. BNSF enjoys a growing working partnership in business generation with these carriers. BNSF has also steadily grown its traffic volumes for traffic which BNSF or its agent (for example, Utah Railway) switch customers directly.

E Customer Identification and Access Pursuant to Merger Conditions

BNSF has also continued its efforts to identify all UP/SP customer facilities to which it received access as a result of the UP/SP merger. These facilities include access to "2-to-1" and other customers and transload facilities on its trackage rights lines and facilities which can be served by the seventeen "2-to-1" shortlines to which it received access. Current listings of all such facilities are attached as Attachment 14.

During the past year, BNSF and UP agreed to add the following customers and facilities to those which can be accessed by BNSF as a result of the BNSF Settlement Agreement and merger conditions:

Additional Customer Locations:

Campbell Soup, Sacramento, CA

Capital City Warehouse, West Sacramento, CA

Colonial Baking, Earth Grains Division (facility vacant), Little Rock, AR

Custom House Maneuvering Service, Ysleta, TX

Diamond Plastics Co., Golconda, NV

Dittmar Lumber, San Antonio, TX

Drake Enterprises, Tornillo, TX

Dust Chemical, Carlin, NV

Grobmyer Lumber, Little Rock, AR

J. E. Higgins Lumber Co., Sacramento, CA

Jindal United Steel Corporation, Baytown, TX

Key Container Co., South Gate/Patata, CA

Lopez Scrap Metal, Buford, TX

Mells Cargo Supply, Inc., Sacramento, CA

Mine Service & Supply, Dunphy, NV

Montgomery Ward & Co. Distribution Center, West Sacramento, CA

Nevada Freeport, Elko, NV

Nevada Ice & Cold Storage, Elko, NV

Owens Corning Fiberglas, South Gate/Patata, CA

Par Gas, Elko, NV

Saga Exploration Co., Barth, NV

Terra International, Inc., Pine Bluff, AR

Thatcher Chemical Co-Nevada, Carlin, NV

Treasure Chest, West Sacramento, CA

U. S. Barium, Golconda, NV

United States Gypsum Company, South Gate, CA

Western Beverage Co., San Jose, CA

Weyerhaeuser Wastepaper Recycling Plant, Salt Lake City, UT

Zeneca Agricultural Products, North Little Rock, AR

Additional Transloads:

Savage Industries, San Antonio, TX

South Texas Liquid Terminal, San Antonio, TX

With respect to the development of new facilities, BNSF is working with a number of customers and has achieved several successes during the past year. UP has agreed that BNSF has access to new customer facilities along trackage rights lines including Romark at Waco, TX; the Tahoe-Reno Industrial Center at Patrick, NV; ANDALEX Resources, Inc., at Wellington, UT; a proposed BNSF Quality Distribution Center ("QDC") at Eagle Pass, TX; Crown Energy Corporation at Gary, CO; Quebecor Printing at Fernley, NV; RCA/Thompson Electronics at Belen, NM; Southdown, Inc. at Sacramento, CA; Total Petroleum and Conoco at Durham (Grand Junction), CO; Valley Joist at Fernley, NV; and Qualitech Steel, Inc. (when completed) at Corpus Christi, TX.[2/] UP has

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[2/] UP also has maintained that BNSF should not have access to Four Star Sugar Co., a new facility constructed in 1998 along BNSF's trackage rights on the former SP line between El Paso and Sierra Blanca, TX. UP's position that BNSF is not entitled to access because the new Four Star Sugar facility is located off of an industrial yard lead rather than directly on the former SP line is incompatible with the merger settlement agreements, conditions, and Board decisions concerning access to new facilities along trackage rights lines. BNSF has filed a Petition for Clarification requesting access to Four Star Sugar and requesting clarification that BNSF's right to serve new facilities "on" trackage rights lines includes the right to serve such new facilities and transloads that

provided tentative approval, pending final site location and submission of an operating plan, for BNSF to access a new MDF Molding & Millwork facility at Kilgore, TX, Newmont Mining Company at Dunphy, NV, and Trex Company at Fernley, NV. UP has denied BNSF access to a potential new Merey-Sweeney Limited Partners petroleum coke production and loading facility at Sweeney, TX, based on information provided to date.

BNSF is continuing to investigate and pursue opportunities for build-ins/build-outs, new facilities, transloads and expansions of existing facilities at "2-to-1" points and is currently engaged in discussions with a number of interested customers concerning such facilities and expansions. Further, over 20 additional projects involving new customer facilities along the trackage rights lines are also in various phases of discussion, planning or implementation.

BNSF's efforts to identify customer facilities have included direct customer contact both with customers located on the trackage rights lines as well as with customers throughout the nation which ship to or from "2-to-1" points, and telephone surveys and on-the-ground site reviews of "2-to-1" points by BNSF teams. As a result of these efforts, BNSF now has access to nearly 1,240 customer facilities pursuant to the UP/SP merger conditions.

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are adjacent to spurs, industrial tracks and yards that are in turn adjacent to trackage rights lines. The Petition has been supported by The National Industrial Transportation League, The Society of the Plastic Industries, and the Chemical Manufacturers Association.

F. Service Problems and Data Exchange Issues

Major service problems and data exchange issues addressed by BNSF and UP during the past year included:

- BNSF/UP Joint Service Committee meetings were held on several occasions during the past year to review a variety of operational issues involving BNSF operations over its trackage rights lines as well as other issues. Major issues discussed included train performance measures, the new operations plan for the Baytown and Cedar Bayou Branches, dispatching and maintenance issues, specific operating issues, and the status of capital projects.
- BNSF is experiencing recurring problems with UP spotting cars for Sacramento-area customers. These cars are delivered to UP at Sacramento by BNSF's Stockton-Sacramento local, and then spotted by UP at the customer's facility. BNSF expects that these cars will be spotted within 48 hours of delivery to UP; however, some cars are being spotted to the customer 3 or 4 days after they are delivered to UP. BNSF and UP are working to resolve shipment-specific problems through the problem resolution process in place between BNSF's and UP's Trackage & Haulage teams, and BNSF and UP continue to work to find long-term operational solutions to these problems.
- There continue to be some minor problems related to data exchange, including waybilling errors, delayed cars, and misrouted cars; however,

much improvement has been noted during the second quarter. UP has been very receptive and willing to work with BNSF's customer service and support staff to successfully resolve these problems.

III. ISSUES AFFECTING BNSF'S IMPLEMENTATION OF TRACKAGE RIGHTS

The following describes issues relating to BNSF's operations over its trackage rights lines.

UP's Application of Agreements to Preclude or Inhibit BNSF Competition.

In the recent several months, BNSF has noticed a number of occasions on which it appears that UP is applying the terms of various operating and other agreements to attempt to forestall or even preclude full competition by BNSF under the Board's conditions. See also BNSF-PR-9 at 34-35 (UP's practice of crewing its own trains first despite its obligation to provide sufficient crews to BNSF in the Central Corridor hindered BNSF's ability to compete). For instance, under the BNSF Settlement Agreement, BNSF has the right to elect to serve a customer to which it has gained access under the Agreement by either direct BNSF service or by reciprocal switch provided by UP. BNSF has elected to serve Econorail on the Baytown Branch by UP reciprocal switch. UP has, however, advised BNSF that UP will not perform such switching for BNSF and has demanded that BNSF commence direct service to Econorail. UP's refusal to abide by the clear terms of the Settlement Agreement in dictating how BNSF can serve a "2-to-1" customer is clearly outside of the terms of the Agreement and, if applied in other instances, would clearly impact BNSF's ability to provide competitive service to these customers. In the majority of cases, rail customers want to be served by one, not two,

rail carriers due to issues of coordination, potential downtime while a facility is switched, record-keeping, and safety issues.

Another example of UP's misinterpretation of agreements to affect BNSF's ability to compete include UP's abrupt announcement in early June that it would, effective immediately, refuse to spot and pull BNSF cars, or permit BNSF to access, a track in Eagle Pass designated as a CES, or Centralized Examination Station, for customs inspection of incoming shipments when required by the United States Customs inspectors. BNSF traffic using this facility has been averaging two cars per week. UP maintained its position, disrupting BNSF traffic on a day-by-day basis, until BNSF was able to refer UP to the Settlement Agreement language, stating that BNSF would be accorded "parity and equal access to the Mexican border crossing at Eagle Pass" (Settlement Agreement, Section 4(a)). An agreement has now been worked out between the two carriers, providing for compensation to UP for this service and BNSF's continued access to this facility, with a review to occur if volumes materially increase.

In May, UP notified Coastal Corporation that UP intended to exercise its option to cancel Coastal's lease of UP property in Corpus Christi, TX, the location of Coastal's asphalt railcar loading racks, because Coastal was routing outbound asphalt via BNSF from this "2-to-1" designated customer. UP provided Coastal the option of returning the asphalt traffic to UP, and eliminating or reducing BNSF's linehaul, in return for an extension of the property lease. This issue was resolved in late June when UP agreed to extend the lease with Coastal and not require Coastal to switch its asphalt traffic back to UP from BNSF.

If UP continues to fail to adhere to its obligations under these and other agreements which implement the Board's conditions, BNSF will face an increasingly difficult challenge in providing the fully effective competitive service the Board envisioned when it approved the UP/SP merger. BNSF is continuing to work with UP to resolve these issues on a case-by-case basis, and will, in the absence of a successful resolution, pursue its remedies before the Board or otherwise.

Communications Between UP and BNSF.

In the past year, BNSF has identified a pattern of UP "delivering messages" or negotiating with BNSF concerning BNSF's right to access customers through customers, rather than directly with BNSF. BNSF has previously reported to the Board on this concern (see BNSF-PR-11 at 14), and it remains difficult for BNSF to deal with UP on such access issues when UP fails to communicate directly with BNSF. BNSF has raised this concern with UP on several occasions, but UP continues this practice.

Houston and Gulf Coast Area.

During the past year, BNSF has continued to use UP haulage to serve customers south of Corpus Christi. With the cessation of the service crisis, that haulage service has improved and enabled BNSF to provide competition to UP for shippers at Harlingen, Brownsville, and to and from a connection with TFM at Matamoros. Nonetheless, BNSF is continuing to monitor its traffic levels in order to determine whether it should commence trackage rights operations between Robstown, TX, Harlingen, Brownsville, TX and Matamoros, Mexico. Further, BNSF and Brownsville & Rio Grande International Railroad ("BRGI") remain concerned about the impacts of the construction of the Port of

Brownsville rail bypass on the routing of BNSF's trains in the area, and they are closely following the project so that any adverse impacts can be avoided or minimized.

Sacramento

As reported above, BNSF continues to operate six day per week local service between Stockton and Sacramento, CA. The reopening of the former SP Roseville Yard at the end of May did not improve service for customers electing to route via BNSF to and from the Sacramento area, including those on the Central California Traction Co. ("CCT") in the Lodi and Fruitridge/Polk, CA area. Because of elimination of switching capacity on the UP (former SP) at Sacramento following the Roseville reopening, cars from these customers were sporadically moved by UP through Roseville, adding days and inconsistencies to transit times in conjunction with BNSF. Starting in mid-June, BNSF began operating its Stockton-Sacramento local entirely on the former SP route between those points, replacing the prior operation using both the UP and SP routes. This appears to have improved service, but BNSF notes, and has handled for resolution on a shipment-specific basis with UP, the continuing sporadic movement of BNSF shipments through Roseville. BNSF further met with UP at the end of June to discuss these issues and to propose alternative interchange plans with UP to fully eliminate the unnecessary looping of BNSF Sacramento, Polk, and Fruitridge, CA traffic through the reopened Roseville yard.

CONCLUSION

Throughout the past year, BNSF has continued its efforts to provide reliable, dependable and consistent service over its trackage rights lines. BNSF's capabilities and business continue to grow steadily as a result of BNSF's proactive approach in resolving problems, its commitment to infrastructure and operational improvements to provide better service, and the continuing support of its customers. As a result of these efforts, many customers are benefiting from BNSF's new access. However, while BNSF remains fully committed to securing new business and additional business from its customers in the future, it is important that the agreements between the parties and the conditions imposed by the Board not be construed or applied in ways which prevent or inhibit BNSF's ability to fully compete with UP as envisioned by shippers and by the Board in approving the UP/SP merger.

Respectfully submitted,

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July 1, 1999

CERTIFICATE OF SERVICE

I hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Quarterly Progress Report (BNSF-PR-12) have been served on all Parties of Record.

Lorien J Hall

ATTACHMENT 1

BNSF TRAIN SYMBOLS ON UP/SP TRACKAGE RIGHTS
CENTRAL CORRIDOR - JUNE 28, 1999

TRAIN SYMBOL	ORIGIN	DESTINATION	DAYS OF WEEK
H-DENSTO1-A1	Denver CO	Stockton CA	-- -- -- -- -- X --
H-DENSTO1-A2	Denver CO	Stockton CA	X X X X X -- X
L-NCA0211-B1	Stockton CA	Stockton CA	X X X X X X --
L-NCA5051-A1	Sparks NV	Sparks NV	X X X X X X --
M-PVODEN1-A1	Provo UT	Denver CO	X X -- X -- X X
M-PVOLIN1-A1	Provo UT	Lincoln NE	-- -- X -- X -- --
M-RRBDEN1-A2	Riverbank CA	Denver CO	X -- X -- X -- --
R-COL2111-A1	Provo UT	Provo UT	X -- X -- X -- --
R-COL2111-A2	Provo UT	Provo UT	-- X -- X -- X --
R-COL3091-A1	Midvale UT	Midvale UT	X X X X X -- X
R-COL3101-A1	Midvale UT	Midvale '	X X X X X X --
R-COL3111-A1	Midvale UT	Midvale	X X X X X X --
R-COL3121-A1	Midvale UT	Midvale UT	X X X X X -- X
R-COL4001-A1	Grand Junction CO	Grand Junction CO	X X X X X -- --
R-COL4001-A2	Grand Junction CO	Grand Junction CO	-- -- -- -- -- X --
R-COL5101-A1	Ogden UT	Ogden UT	X X X X X -- --
R-COL5111-A1	Ogden UT	Ogden UT	X X X X X -- --
R-COL6111-A1	Provo UT	Ogden UT	-- X -- X -- -- X
R-COL6121-A1	Ogden UT	Provo UT	X -- X -- X -- --

KEY: H = High-Priority Merchandise; L = Local; M = Merchandise; R = Roadswitcher

NOTE: Train symbols with no days of week specified operate on an "as-needed" basis.

BNSF TRAIN SYMBOLS ON UP/SP TRACKAGE RIGHTS
I-5 CORRIDOR - JUNE 28, 1999

TRAIN SYMBOL	ORIGIN	DESTINATION	DAYS OF WEEK
B-PTLLAC5-A1	Portland OR	Los Angeles CA	-- X -- X -- -- X
B-SEALAC5-A1	Seattle WA	Los Angeles CA	-- -- X -- -- -- --
B-SSELAC5-A1	South Seattle WA	Los Angeles CA	X -- -- -- -- -- --
H-BARPAS1-A1	Barstow CA	Pasco WA	X X X X X X X
H-PASBAR1-A1	Pasco WA	Barstow CA	X X X X X X X
H-VAWBAR1-A1	Vancouver WA	Barstow CA	-- X X X X X --
M-KLFSTO1-A1	Klamath Falls OR	Stockton CA	-- X X X X X X
M-RRBPAS1-A1	Riverbank CA	Pasco WA	-- X X X X X X

KEY: B = Bare Table; H = High-Priority Merchandise; M = Merchandise

BNSF TRAIN SYMBOLS ON UP/SP TRACKAGE RIGHTS
GULF EAST/SOUTHERN CORRIDOR (HOUSTON-NEW ORLEANS) - JUNE 28, 1999

TRAIN SYMBOL	ORIGIN	DESTINATION	DAYS OF WEEK
H-LALHOU1-A1	Lafayette LA	Houston TX	X -- -- X -- X --
H-LALHOU1-A2	Lafayette LA	Houston TX	-- -- X -- X -- X
H-NWOBAR1-A1	New Orleans LA	Barstow CA	X X -- X -- X X
H-NWOBAR1-A2	New Orleans LA	Barstow CA	-- -- X -- X -- --
H-TPLNWO1-A1	Temple TX	New Orleans LA	X X X X X X X
L-GFC1811-A1	Silsbee TX	Silsbee TX	-- X X X X X X
M-HOUSSB1-A1	Houston TX	Silsbee TX	-- X -- X -- X --
M-SSBHOU1-A1	Silsbee TX	Houston TX	X -- X -- X -- --
P-LACNWO1-B1	Los Angeles CA	New Orleans LA	-- X X X X X X
P-NWOLAC1-A1	New Orleans LA	Los Angeles CA	X X -- X -- -- --
P-NWOLAC1-A2	New Orleans LA	Los Angeles CA	-- -- -- -- -- X --
R-GFC0231-A1	Lafayette LA	Lafayette LA	X X X X X X X
R-GFC0233-A1	Avondale LA	Avondale LA	X X X X X X X
R-GFC0235-A1	Lafayette LA	Lafayette LA	X X X X X X X
R-GFC0237-A1	Schriever LA	Schriever LA	X X X X X X --
R-GFC0241-A1	Dayton TX	Dayton TX	X X X X X -- X
R-GFC0311-A1	Dayton TX	Dayton TX	X X X X X X --
R-GFC0321-A1	Dayton TX	Dayton TX	X X X X X X --
R-GFC0331-A1	Dayton TX	Dayton TX	X X X X X X --
R-GFC3111-A1	Lafayette LA	Lafayette LA	X X X X X X --
S-CLONWO3-xx	Clovis NM	New Orleans LA	-- -- -- -- -- -- --
S-LAHNWO4-A1	Los Angeles CA	New Orleans LA	X -- -- -- -- -- --

KEY: H = High-Priority Merchandise; L = Local; M = Merchandise; P = Premium Intermodal; R = Roadswitcher; S = Doublestack

NOTE: Train symbols with no days of week specified operate on an "as-needed" basis.

BNSF TRAIN SYMBOLS ON UP/SP TRACKAGE RIGHTS
GULF NORTH CORRIDOR (HOUSTON-MEMPHIS) - JUNE 28, 1999

TRAIN SYMBOL	ORIGIN	DESTINATION	DAYS OF WEEK
B-MEMPEA1-A1	Memphis TN	Pearland TX	-- -- -- -- -- -- --
H-HOUMEM1-A1	Houston TX	Memphis TN	X X X X X X X
H-MEMLGV1-A1	Memphis TN	Longview TX	-- X -- X -- X --
H-MEMLGV1-A2	Memphis TN	Longview TX	X -- X -- X -- X
H-MEMPTR1-A1	Memphis TN	Houston (PTRA) TX	X X X X X X X
H-SSBMEM1-A1	Silsbee TX	Memphis TN	X X X X X X X
L-GFC5511-A1	Little Rock AR	Memphis TN	X -- X -- X -- --
L-GFC5521-A1	Pine Bluff AR	Little Rock AR	-- X -- X -- X --

KEY: B = Bare Table; H = High-Priority Merchandise; L = Local

NOTE: Train symbols with no days of week specified operate on an "as-needed" basis.

BNSF TRAIN SYMBOLS ON UP/SP TRACKAGE RIGHTS
GULF SOUTH CORRIDOR (TEMPLE-CORPUS CHRISTI) - JUNE 28, 1999

TRAIN SYMBOL	ORIGIN	DESTINATION	DAYS OF WEEK
C-BTMHAFx-xx	Black Thunder Mine WY	Halsted TX	-- -- -- -- -- -- --
C-CDMHAFx-xx	Cordero Mine WY	Halsted TX	-- -- -- -- -- -- --
C-CKMHAFx-xx	Coal Creek WY	Halsted TX	-- -- -- -- -- -- --
C-CRMHAFx-xx	Rojo Caballo Mine WY	Halsted TX	-- -- -- -- -- -- --
E-HAFBTMx-xx	Halsted TX	Black Thunder Mine WY	-- -- -- -- -- -- --
E-HAFCDMx-xx	Halsted TX	Cordero Mine WY	-- -- -- -- -- -- --
E-HAFCKMx-xx	Halsted TX	Coal Creek WY	-- -- -- -- -- -- --
E-HAFCRMx-xx	Halsted TX	Rojo Caballo Mine WY	-- -- -- -- -- -- --
G-ABICPS1-A1	Abilene KS	Corpus Christi TX	-- -- -- -- -- -- --
G-ABILAR1-A1	Abilene KS	Laredo TX	-- -- -- -- -- -- --
G-FTWCPS1-A1	Fort Worth TX	Corpus Christi TX	-- -- -- -- -- -- --
G-HASCPS1-A1	Hastings NE	Corpus Christi TX	-- -- -- -- -- -- --
G-HASLAR1-A1	Hastings NE	Laredo TX	-- -- -- -- -- -- --
G-TPLCPS1-A1	Temple TX	Corpus Christi TX	-- -- -- -- -- -- --
G-WLMFLM1-A1	Willmar MN	Flatonia TX	-- -- -- -- -- -- --
G-WLMLAR1-A1	Willmar MN	Laredo TX	-- -- -- -- -- -- --
L-TEX3011-A1	Temple TX	Temple TX	X X X X X -- --
M-CPSTPL1-A1	Corpus Christi TX	Temple TX	X X X X X X X
M-CPSTPLx-xx	Corpus Christi TX	Temple TX	-- -- -- -- -- -- --
M-FTWCPS1-A1	Fort Worth TX	Corpus Christi TX	-- X -- X -- X X
M-FTWCPS3x-xx	Fort Worth TX	Corpus Christi TX	-- -- -- -- -- -- --
M-TPLELG1-A1	Temple TX	Elgin TX	-- X -- X -- -- --
U-HOUKTX1-A2	Houston TX	Kerr TX	-- X -- X -- X --
U-KTXHOU1-A4	Kerr TX	Houston TX	X -- X -- X -- --

KEY: C = Unit Coal Loads; E = Unit Coal Empties; G = Unit Grain Loads; L = Local; M = Merchandise; U = Other Unit Loads/Empties

NOTE: Train symbols with no days of week specified operate on an "as-needed" basis.

BNSF TRAIN SYMBOLS ON UP/SP TRACKAGE RIGHTS
EAGLE PASS CORRIDOR - JUNE 28, 1999

TRAIN SYMBOL	ORIGIN	DESTINATION	DAYS OF WEEK
C-CDMELDx-xx	Cordero Mine WY	Elmendorf TX	-- -- -- -- -- -- --
E-ELDCDMx-xx	Elmendorf TX	Cordero Mine WY	-- -- -- -- -- -- --
G-FTWEAPx-xx	Fort Worth TX	Eagle Pass TX	-- -- -- -- -- -- --
G-LINEAPx-xx	Lincoln NE	Eagle Pass TX	-- -- -- -- -- -- --
G-TPLEAPx-xx	Temple TX	Eagle Pass TX	-- -- -- -- -- -- --
M-EAPTPL1-A1	Eagle Pass TX	Temple TX	X -- X -- X -- --
M-EAPTPL3-xx	Eagle Pass TX	Temple TX	-- -- -- -- -- -- --
M-FTWEAP1-A1	Fort Worth TX	Eagle Pass TX	X -- X -- X X --
R-TEX0321-A1	Eagle Pass TX	Eagle Pass TX	X X X X X -- X

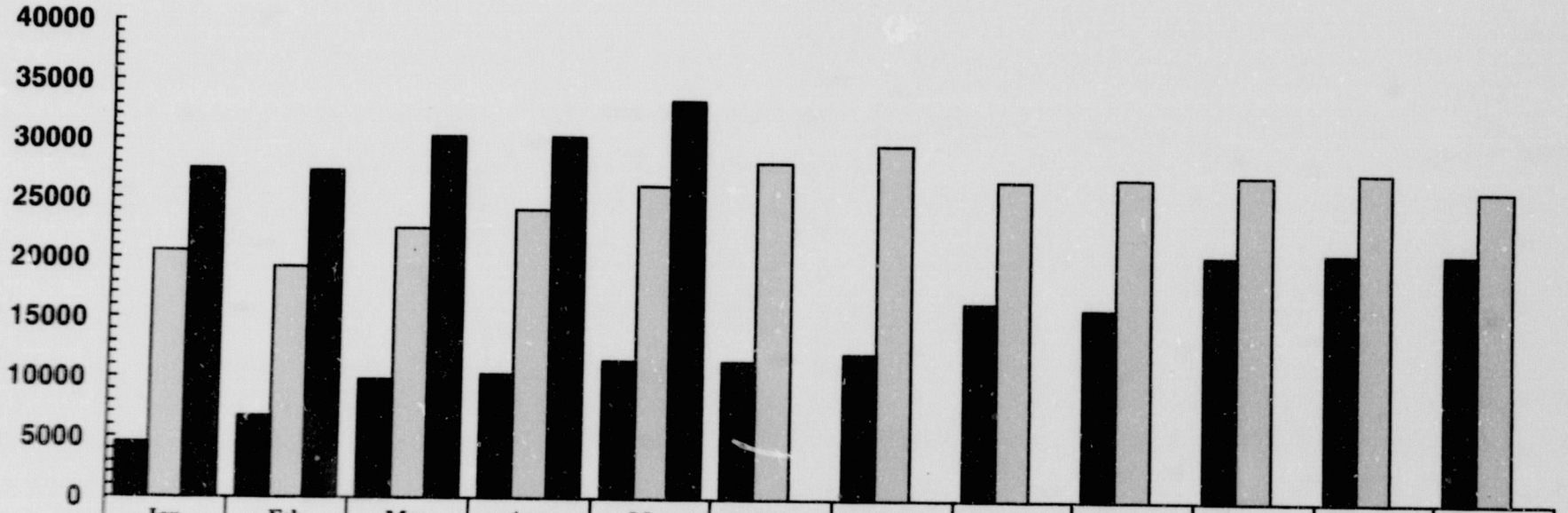
KEY: C = Unit Coal Loads; E = Unit Coal Empties; G = Unit Grain Loads; M = Merchandise; R = Roadswitcher

NOTE: Train symbols with no days of week specified operate on an "as-needed" basis.

ATTACHMENT 2

Total 1997-99 BNSF Loaded Units On UPSP Merger Condition Lines

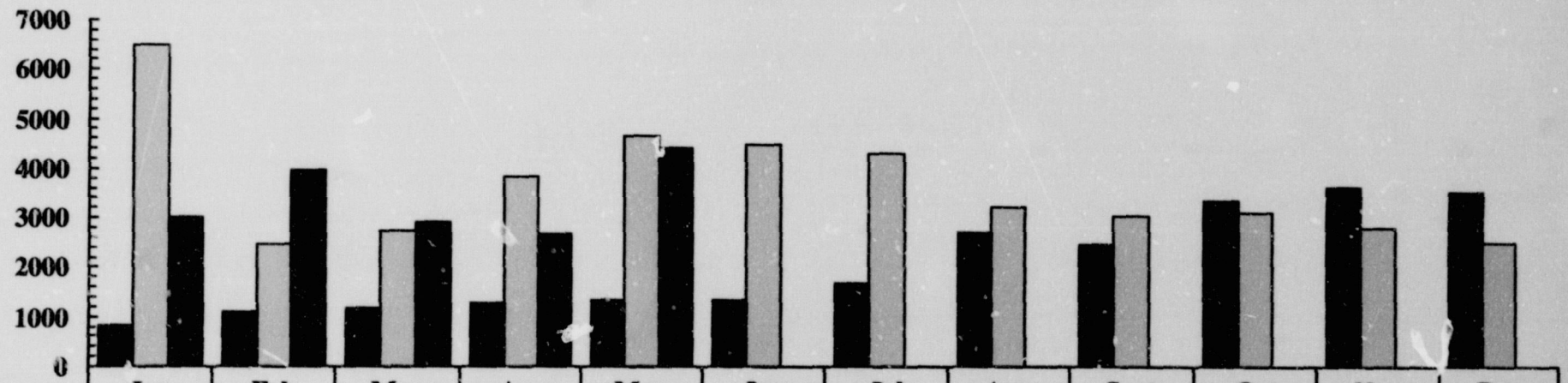
Loads



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
97 Totals	4,494	6,782	9,916	10,324	11,450	11,421	12,238	16,504	16,098	20,560	20,952	20,933
98 Totals	20,626	19,301	22,430	24,155	26,212	28,186	29,651	26,738	26,988	27,316	27,670	26,161
99 Totals	27,441	27,293	30,366	30,346	33,419							

ATTACHMENT 3

1997-99 BNSF Loaded Units In Trackage Rights Corridors
Central Corridor



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
97 Totals	834	1,096	1,176	1,262	1,344	1,343	1,667	2,706	2,466	3,333	3,612	3,522
98 Totals	6,494	2,473	2,721	3,839	4,637	4,469	4,291	3,210	3,053	3,100	2,794	2,502
99 Totals	3,012	3,950	2,898	2,659	4,395							

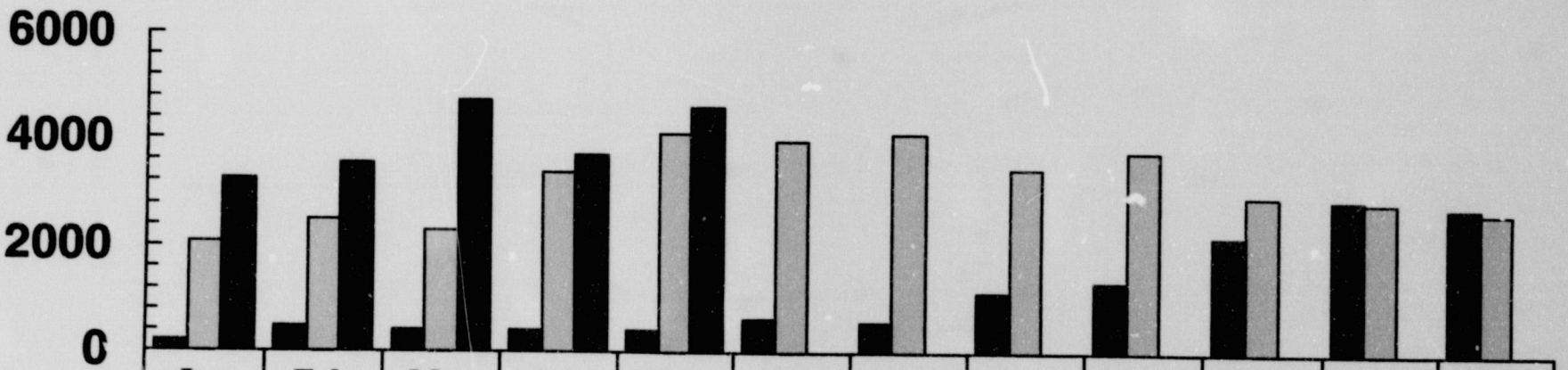
ATTACHMENT 4

1997-99 BNSF Loaded Units In Trackage Rights Corridors
Central Texas Corridor

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
■ 97 Totals	221	447	446	523	616	736	569	649	682	942	981	934
□ 98 Totals	733	769	991	936	1,408	1,425	1,257	1,288	1,501	1,207	1,390	937
■ 99 Totals	1,125	1,006	1,782	1,298	1,691							

ATTACHMENT 5

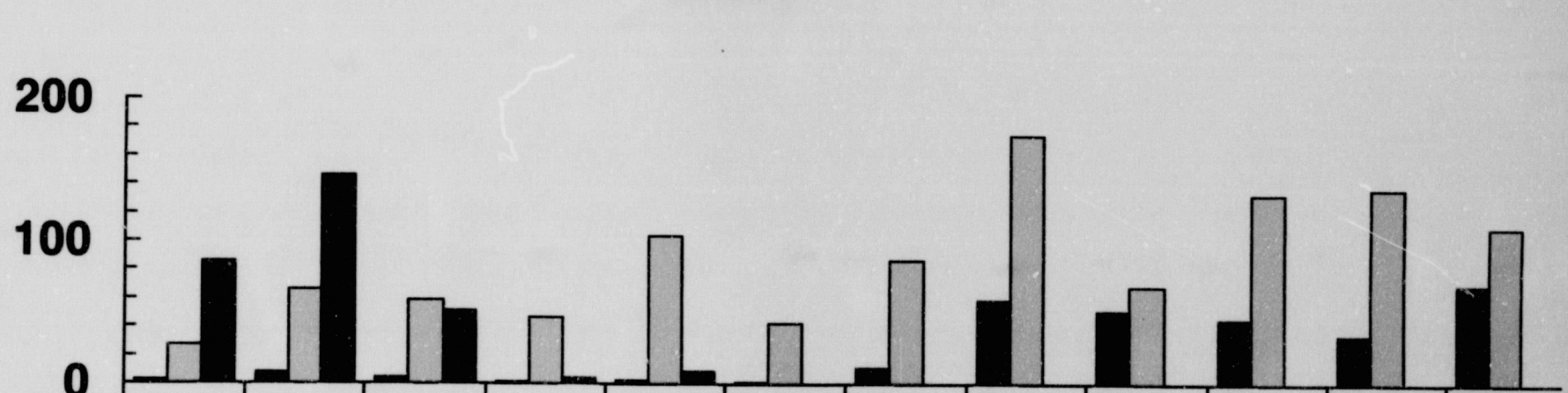
1997-99 BNSF Loaded Units In Trackage Rights Corridors
Eagle Pass Corridor



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
97 Totals	209	476	411	410	413	634	580	1,138	1,318	2,203	2,882	2,747
98 Totals	2,063	2,474	2,272	3,392	4,096	3,989	4,101	3,452	3,782	2,957	2,862	2,644
99 Totals	3,259	3,559	4,724	3,714	4,612							

ATTACHMENT 6

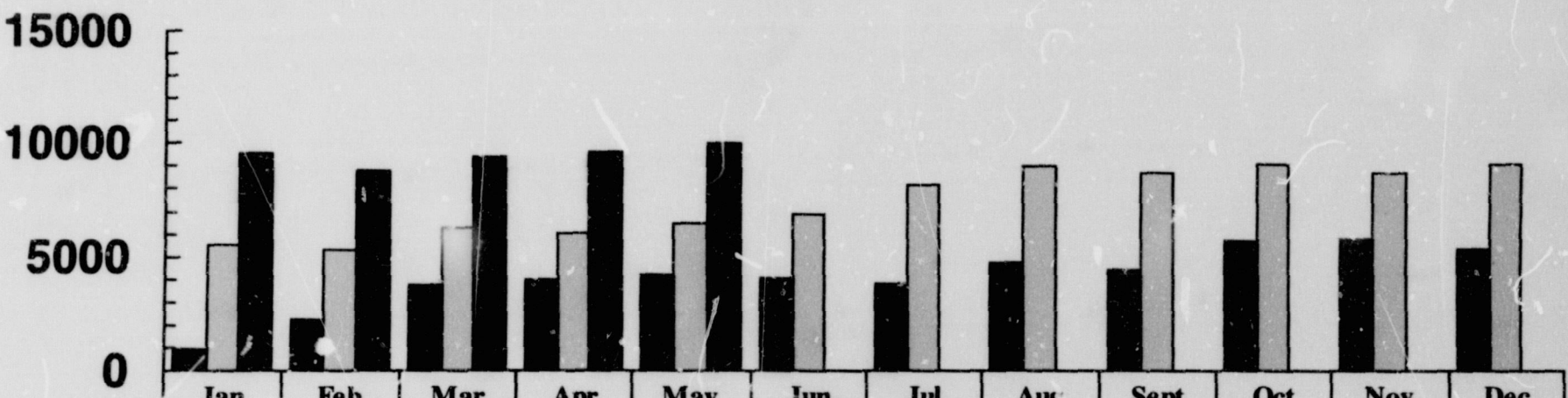
1997-99 BNSF Loaded Units In Trackage Rights Corridors
El Paso Corridor



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
■ 97 Totals	2	7	4	1	2	1	11	58	51	45	34	70
□ 98 Totals	27	66	59	46	104	43	86	175	68	133	137	110
■ 99 Totals	85	146	51	4	8							

ATTACHMENT 7

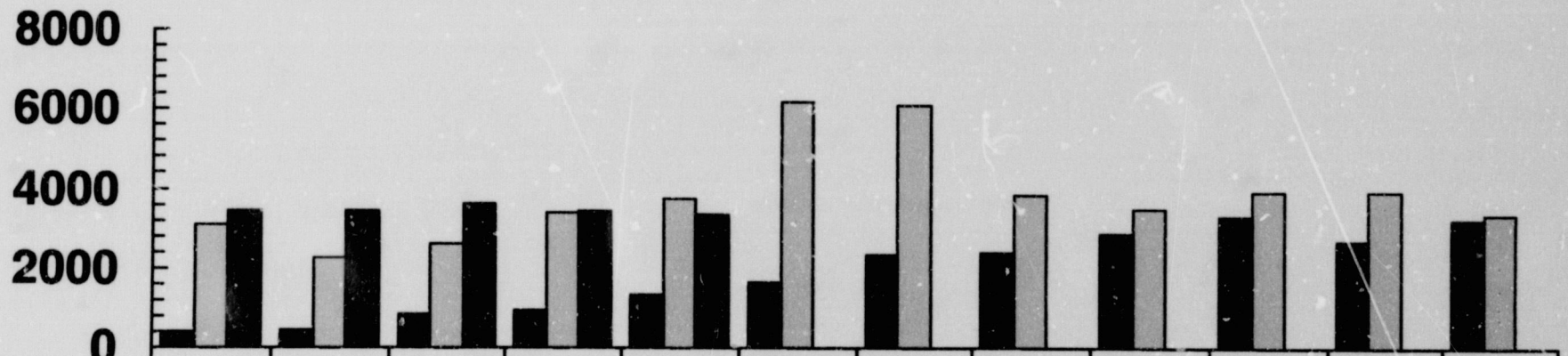
1997-99 BNSF Loaded Units In Trackage Rights Corridors
Gulf East Corridor



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
97 Totals	935	2,236	3,745	3,987	4,186	4,021	3,854	4,744	4,442	5,750	5,797	5,375
98 Totals	5,486	5,268	6,280	6,070	6,537	6,851	8,198	9,049	8,714	9,135	8,762	9,109
99 Totals	9,572	8,791	9,401	9,666	10,040							

ATTACHMENT 8

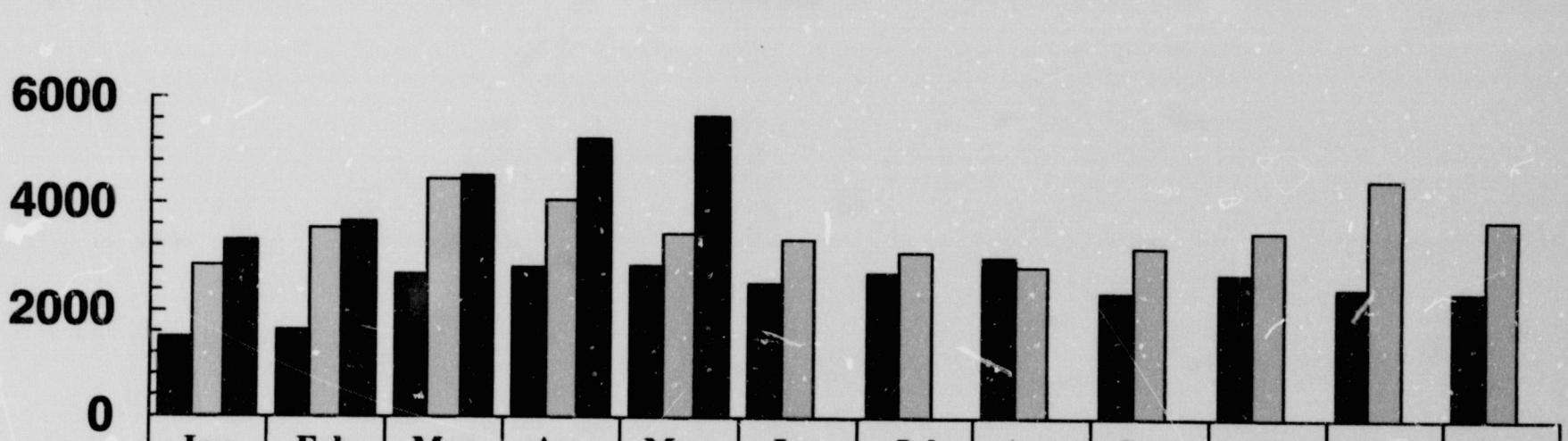
1997-99 BNSF Loaded Units In Trackage Rights Corridors
Gulf North Corridor



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
■ 97 Totals	387	448	830	911	1,346	1,636	2,321	2,373	2,868	3,318	2,686	3,214
□ 98 Totals	3,087	2,267	2,588	3,391	3,775	6,199	6,089	3,851	3,486	3,921	3,952	3,350
■ 99 Totals	3,463	3,469	3,623	3,462	3,363							

ATTACHMENT 9

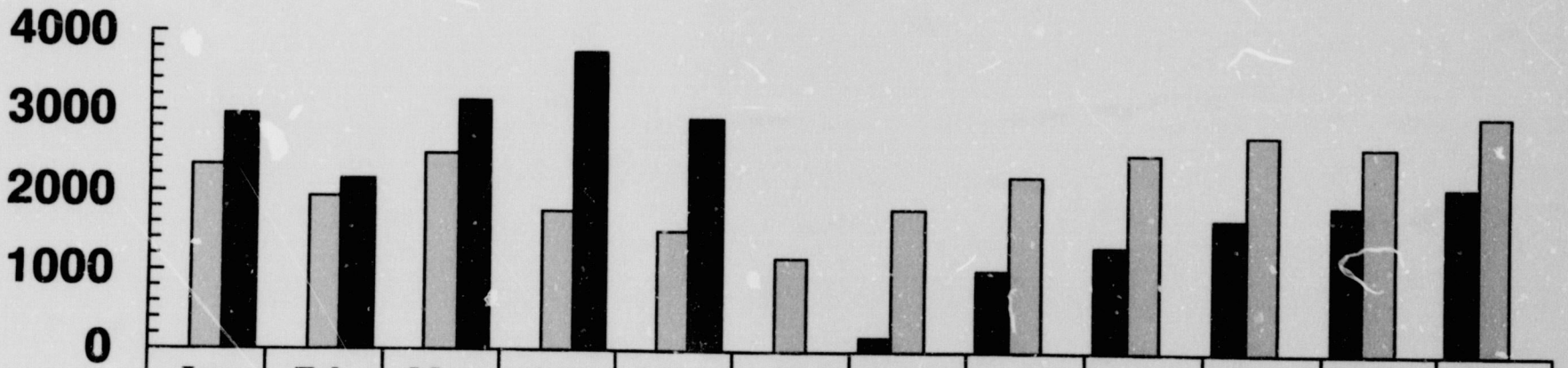
1997-99 BNSF Loaded Units In Trackage Rights Corridors
Gulf South Corridor



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
97 Totals	1,480	1,630	2,684	2,834	2,838	2,508	2,727	3,026	2,353	2,711	2,462	2,375
98 Totals	2,846	3,531	4,468	4,080	3,452	3,333	3,130	2,844	3,222	3,515	4,500	3,747
99 Totals	3,331	3,696	4,540	5,233	5,661							

ATTACHMENT 10

1997-99 BNSF Loaded Units In Trackage Rights Corridors
I-5 Corridor



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
97 Totals							177	1,024	1,317	1,680	1,847	2,096
98 Totals	2,312	1,912	2,476	1,741	1,504	1,173	1,782	2,200	2,492	2,738	2,610	3,010
99 Totals	2,956	2,135	3,128	3,759	2,913							

ATTACHMENT 11