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FD-32760

4-15-02

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April 15, 2002

BY HAND

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

1909 K STREET, N.W.
WASHINGTON, D.C. 20006-1101

MAIN TEL (202) 263-3000
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ADRIAN L. STEEL, JR.
DIRECT TEL (202) 263-3237
DIRECT FAX (202) 263-5237
asteel@mayerbrownrowe.com

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

ENTERED
Office of the Secretary

APR 15 2002

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Dear Secretary Williams:

The Burlington Northern and Santa Fe Railway Company ("BNSF") respectfully requests that it be granted a thirty (30) day extension of time to and until Wednesday, May 22, 2002, to file its submission showing cause why the Board should not dismiss its Petition for Clarification (BNSF-98) filed in the above-referenced proceeding for failure to state a claim. BNSF and UP have just recently responded to each other's requests for the production of documents relating to the adjustment of the trackage rights rates under the BNSF Settlement Agreement, and BNSF needs the requested additional time to review and analyze the documents produced by UP.

Counsel for UP has consented to the requested extension of time.

If you have any questions regarding this request, please contact the undersigned at (202) 263-3237. Thank you for your assistance.

Sincerely,

Adrian L. Steel, Jr.

ENTERED
Office of the Secretary

APR 15 2002

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cc: David M. Konschnik
J. Michael Hemmer, Esq.
All Parties of Record

STB

FD-32760

4-11-02

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UP/SP-396

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

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APR 11 2002

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**UP'S RESPONSES AND OBJECTIONS TO BNSF'S
REQUESTS FOR PRODUCTION OF DOCUMENTS TO UNION PACIFIC**

Union Pacific Railroad Company responds and objects to The Burlington
Northern and Santa Fe Railway Company's Requests for Production of Documents, served
March 27, 2002, as follows:

Subject to the objections set forth below, and pursuant to the Protective Order
entered in this proceeding, UP is producing non-privileged documents responsive to BNSF's
Document Requests contemporaneously with these written responses and objections. If
necessary, UP is prepared to meet with counsel for BNSF at a mutually convenient time and
place to discuss informally resolving its objections. UP has conducted a reasonable search for
responsive documents.

GENERAL OBJECTIONS

The following objections are made with respect to all of the Document Requests.
Any additional objections are stated at the beginning of the response to each document request.

1. UP objects to production of, and is not producing, documents subject to the attorney-client privilege or the work product doctrine.

2. UP objects to production of documents prepared in connection with possible settlements of this or any other proceeding. Notwithstanding this objection, as BNSF has requested documents relating to settlement agreements to which it is a party, UP will produce such documents based on its agreement with BNSF (i) that BNSF will not reveal any such documents or their contents to other persons unless BNSF is ordered to provide such information by the Surface Transportation Board and (ii) that if BNSF reveals any such documents or their contents in a submission to the Board, it will file its submission under seal along with a request for an appropriate protective order.

3. UP objects to the production of, and is not producing, documents that should be available to BNSF, including copies of publicly available documents and copies of pleadings, deposition transcripts, and material contained in document depositories established in this proceeding. Notwithstanding this objection, UP will produce any such documents specifically requested by BNSF.

SPECIFIC OBJECTIONS AND RESPONSES

Document Request No. 1:

Produce all documents reflecting communications, discussions or agreements between BNSF and UP, or among BNSF, UP and any third parties, regarding whether the costs related to the SP acquisition premium and/or costs related to section 9(c)(i) and (iii) capacity and capital improvements should be included in the URCS calculations required to create the adjustment factor pursuant to Section 12 of the BNSF Settlement Agreement.

Response:

Subject to and without waiving its objections, UP is producing responsive information to the extent reasonably available.

Document Request No. 2:

Produce all documents concerning or relating to whether UP and BNSF agreed to or intended that the negotiated level of BNSF's mills per ton mile charges would or would not include the costs related to the SP acquisition premium.

Response:

Subject to and without waiving its objections, UP is producing responsive information to the extent reasonably available.

Document Request No. 3:

Produce all documents concerning or relating to the intent of BNSF, UP or any third party that the costs related to the SP acquisition premium and/or costs related to Section 9(c)(i) and (iii) capacity and capital improvements should be included in the URCS calculations required to create the adjustment factor pursuant to Section 12 of the BNSF Settlement Agreement.

Response:

Subject to and without waiving its objections, UP is producing responsive information to the extent reasonably available.

Document Request No. 4:

Produce all documents concerning or relating to the intent of BNSF, UP or any third party in amending Section 12 of the BNSF Settlement Agreement in the Second Supplemental Agreement executed on June 27, 1996, and/or the purpose of such amendment.

Response

Subject to and without waiving its objections, UP is producing responsive information to the extent reasonably available.

Document Request No. 5:

Produce all documents relating to the effect of including the disputed costs (i.e., costs related to the SP acquisition premium and costs related to Section 9(c)(i) and (iii) capacity and capital improvements) in the Section 12 adjustment factor on BNSF's ability to provide competitive service pursuant to the BNSF Settlement Agreement.

Response

Subject to and without waiving its objections, UP is producing responsive information to the extent reasonably available.

Document Request No. 6:

Produce all documents relating to the impact of including the disputed costs (i.e., costs related to the SP acquisition premium and costs related to Section 9(c)(i) and (iii) capacity or capital improvements) in the Section 12 adjustment factor on the trackage rights fees to be paid by BNSF pursuant to the BNSF Settlement Agreement, including documents sufficient to identify the amount of the SP acquisition premium and all Section 9(c)(i) and (iii) capacity or capital improvements (by specific trackage rights line and specific improvement) which UP contends should be included in the Section 12 adjustment factor.

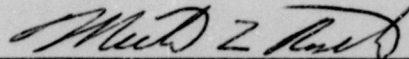
Response:

UP objects to this request as unduly burdensome. UP further objects to this request as calling for the preparation of a special study not already in existence. UP is producing information sufficient to identify the amount of the so-called "SP acquisition premium" by property account, but it does not have information that pushes down the purchase accounting adjustment to specific trackage rights lines. UP is also producing documents containing detailed summaries that reflect its merger-related capital expenditures. UP could not, without engaging in a burdensome special study, produce the extensive documentation that underlies the detailed summaries (e.g., work orders), which may be necessary in some instances to determine whether a particular project or portion of a project falls under the provisions of Section 9(c)(i) and (iii).

Respectfully submitted,

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

JAMES V. DOLAN
LOUISE A. RINN
LAWRENCE E. WZOREK
Law Department
Union Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
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J. MICHAEL HEMMER
MICHAEL L. ROSENTHAL
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-5578

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

April 11, 2002

CERTIFICATE OF SERVICE

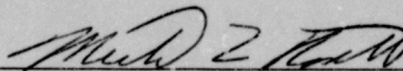
I hereby certify that on this 11th day of April, 2002, I caused a copy of "UP'S
Objections and Responses to BNSF's Requests for Production of Documents to Union Pacific"
to be served by hand on:

Erika Z. Jones
Adrian L. Steel, Jr.
Adam C. Slone
Mayer, Brown, Rowe & Maw
1909 K Street, NW
Washington, DC 20006

and by overnight delivery on:

Jeffrey R. Moreland
Richard E. Weicher
Sidney L. Strickland, Jr.
Michael E. Roper
The Burlington Northern
and Santa Fe Railway Company
2500 Lou Menk Drive, Third Floor
Ft. Worth, TX 76131-0039

and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all other
parties of record in Finance Docket No. 32760 (Sub-No. 21).



Michael L. Rosenthal

STB

FD-32760

4-9-02

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205159

PATTON BOGGS LLP
ATTORNEYS AT LAW

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Scott N. Stone
202-457-6335
sstone@pattonboggs.com

April 9, 2002

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



Re: Fin. 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

Dear Secretary Williams:

Enclosed are an original and 25 copies of CMA-16, the American Chemistry Council's Responses To Union Pacific's Requests for Production of Documents.

Also enclosed is a 3 1/2" diskette containing these filings in WordPerfect 5.x for Windows.

Please stamp the additional copy with the date of receipt and return with our messenger.

Sincerely,

Scott N. Stone

ENTERED
Office of the Secretary

APR 10 2002

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205159

CMA-16

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 CORPORATION AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

ENTERED
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APR 10 2002
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AMERICAN CHEMISTRY COUNCIL'S RESPONSES TO
UNION PACIFIC'S REQUESTS FOR PRODUCTION OF DOCUMENTS

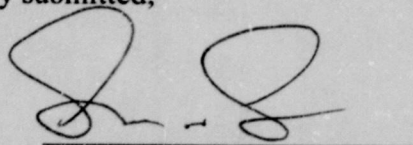
The American Chemistry Council ("the Council") attaches documents responsive to document request number 1 of UP/SP-395, Union Pacific's request for production of documents on the subject of the escalator used for the trackage rights fees ; aid by the Burlington Northern Santa Fe under the BNSF Settlement Agreement.

The Council has not located any documents responsive to requests 2 and 3 of UP/SP-395, and it is premature to respond to request 4 of UP/SP-395.

ORIGINAL

In the event the Council locates further responsive documents, it reserves the right to object to their production on the basis of any applicable privileges. To date, the Council has not located responsive documents subject to a privilege.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "S. Stone", written over a horizontal line.

David F. Zoll
Thomas E. Schick
American Chemistry Council
Commonwealth Tower
1300 Wilson Boulevard
Arlington, VA 22209

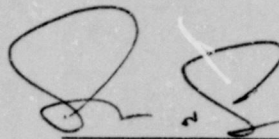
Scott N. Stone
John L. Oberdorfer
Patton Boggs, LLP
2550 M Street, N.W.
Washington, D.C. 20037

Counsel for the American
Chemistry Council

dated: April 9, 2002

CERTIFICATE OF SERVICE

This is to certify that I have, this 9th day of April, 2002, served copies of the foregoing filing by hand upon Washington counsel for the Burlington Northern Santa Fe and Union Pacific.

A handwritten signature in black ink, appearing to read 'S. Stone', written over a horizontal line.

Scott N. Stone

STB

FD-32760

4-9-02

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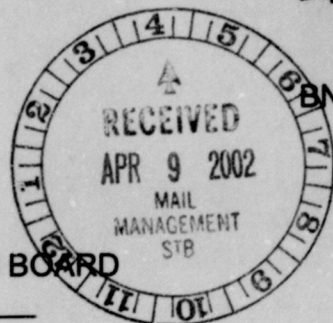
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Office of the Secretary

APR 10 2002

Part of
Public Record



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

OBJECTIONS AND RESPONSES OF THE
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO UNION PACIFIC RAILROAD COMPANY'S
REQUESTS FOR THE PRODUCTION OF DOCUMENTS

The Burlington Northern and Santa Fe Railway Company ("BNSF") objects as follows to Union Pacific Railroad Company's ("UP") Requests for the Production of Documents.

Subject to the objections set forth below and pursuant to the Protective Order entered in this proceeding, BNSF will produce non-privileged documents responsive to UP's Document Production Requests. If necessary, BNSF is prepared to meet with counsel for UP at a mutually convenient time and place to discuss informally resolving these objections. BNSF is continuing its efforts to locate and identify responsive documents and will supplement its response to the Document Production Requests when any such documents are located and identified.

GENERAL OBJECTIONS

BNSF objects to UP's Document Production Requests on the following grounds:

1. **Privilege.** BNSF objects to UP's Document Production Requests to the extent that they call for information or documents subject to the attorney work product doctrine, the attorney-client privilege or any other legal privilege.

2. **Relevance/Burden.** BNSF objects to UP's Document Production Requests to the extent that they seek information or documents that are not directly relevant to this proceeding, to the extent that a response would impose an unreasonable burden on BNSF, and to the extent that they seek information or documents that are as readily, or more readily, available to UP as BNSF.

3. **Settlement Negotiations.** BNSF objects to the production of documents prepared in connection with possible settlements of this or any other proceeding. Notwithstanding this objection, as UP has requested documents relating to settlement agreements to which it is a party, BNSF will produce such documents based on its agreement with UP (i) that UP will not reveal any such documents or their contents to other persons unless UP is ordered to provide such information by the Surface Transportation Board and (ii) that, if UP reveals any such documents or their contents in a submission to the Board, it will file its submission under seal along with a request for an appropriate protective order.

4. **Scope.** BNSF objects to UP's Document Production Requests to the extent that they attempt to impose any obligation on BNSF beyond those imposed by the General Rules of Practice of the Surface Transportation Board ("Board"), 49 C.F.R. § 1114.21-31.

OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

1. Produce all documents created prior to 1997 supporting BNSF's assertion that "when UP and BNSF agreed to the negotiated level of BNSF's mills per ton-mile charges in 1995, they were fully aware of the purchase premium, and the premium was to be part of the all-inclusive GTM mill rate.

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF states that the fact that UP had agreed to pay a purchase premium with respect to its acquisition of SP was reflected in a number of publicly-available documents issued by UP and/or SP in August and September of 1995, including, without limitation, press releases, filings with the Securities and Exchange Commission, and reports in the trade and general press. The fact of the purchase premium was also evident from a comparison of the price per share which UP agreed to pay for SP stock (\$25.00 per share) with the price per share of SP stock at the time of the August 4, 1995 announcement of the transaction (approx. \$19.62 per share). The fact that the purchase premium was to be included in the GTM mill rate is reflected in Section 9(a) of the BNSF Settlement Agreement.

Because the documents referenced above are as readily, if not more readily, available to UP as to BNSF, BNSF is not producing the documents at this time but is willing to discuss with counsel for UP the production of any of such documents.

2. Produce all documents created prior to 1997 reflecting communications, discussions or agreements between BNSF and UP, or among BNSF, UP and any third parties, regarding whether one or both of "the disputed items (i.e., costs related to the acquisition premium and costs related to Section 9(c)(i) and (iii) capacity improvements) should be excluded (in the years in which they would otherwise be included) from the URCS calculations required to create the Section 12 adjustment factor."

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF states that Sections 9(a) and 9(c)(i) and (iii) of the BNSF Settlement Agreement reflect the parties' agreement that the

disputed items should be excluded from the URCS calculations required to create the Section 12 adjustment factor.

3. Produce all documents created prior to 1997 regarding whether one or both of "the disputed items (i.e., costs related to the acquisition premium and costs related to Section 9(c)(i) and (iii) capacity improvements) should be excluded (in the years in which they would otherwise be included) from the URCS calculations required to create the Section 12 adjustment factor.

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF states that Sections 9(a) and 9(c)(i) and (iii) of the BNSF Settlement Agreement reflect that the disputed items should be excluded from the URCS calculations required to create the Section 12 adjustment factor.

4. Produce all documents, regardless of date, supporting BNSF's assertion that "the inclusion of the purchase premium and the capital expenditures UP was solely to fund" would increase the trackage rights fees that BNSF pays UP under the BNSF Settlement Agreement "in the range of approximately 0.2 mills."

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF is producing documents responsive to this request.

5. If BNSF files a pleading in response to the Surface Transportation Board's order to show cause why the Board should not dismiss the BNSF-98 clarification petition for failure to state a claim, produce when it serves its pleading all documents supporting any calculations and assertions about the intent of any party to any agreement that BNSF includes in its pleading.

Subject to and without waiving the General Objections stated above, and in particular the settlement negotiations objection, BNSF states that it will produce documents as it is required to do by the Board's rules and regulations.

Respectfully submitted,

Erika Z. Jones /als

Jeffrey R. Moreland
Richard E. Weicher
Sidney L. Strickland, Jr.
Michael E. Roper

Erika Z. Jones
Adrian L. Steel, Jr.
Adam C. Sloane

The Burlington Northern
and Santa Fe Railway Company
2500 Lou Menk Drive
Third Floor
Ft. Worth, Texas 76131-0039
(817) 352-2353 or (817) 352-2368

Mayer, Brown, Rowe & Maw
1909 K Street, NW
Washington, DC 20006
(202) 263-3000

Attorneys for The Burlington Northern and Santa Fe Railway Company

April 9, 2002

CERTIFICATE OF SERVICE

I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Objections and Responses to Union Pacific Railroad Company's Requests for Production of Documents (BNSF-102) are being served as follows:

By Hand:

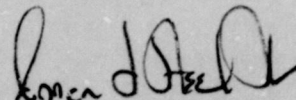
J. Michael Hemmer, Esq.
Michael L. Rosenthal, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

By Overnight Delivery:

Carl W. Von Bernuth
Union Pacific Corporation
1416 Dodge Street, Room 1230
Omaha, NE 68179

James V. Dolan
Louise A. Rinn
Lawrence E. Wzorek
Law Department
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

and by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all other parties of record in Finance Docket No. 32760 (Sub-No. 21).



STB

FD-32760

10-9-01/

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203690

MAYER, BROWN & PLATT

1909 K STREET, N.W.

WASHINGTON, D.C. 20006-1101

Erika Z. Jones

DIRECT DIAL: (202) 263-3232

DIRECT FAX: (202) 263-5232

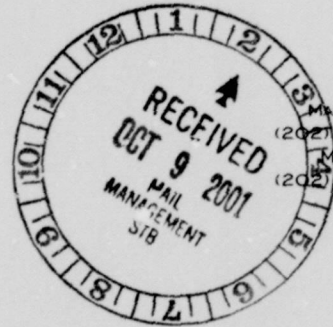
EJONES@MAYERBROWN.COM

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Office of the Secretary

OCT - 9 2001

Part of
Public Record

October 9, 2001



MAIN PHONE
(202) 263-3000
MAIN FAX
(202) 263-3300

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.

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings are the original and twenty-five (25) copies of The Burlington Northern and Santa Fe Railway Company's Reply Comments to the Reply Comments of the United States Department of Transportation (BNSF-96). 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

cc: All Parties of Record

CHARLOTTE CHICAGO COLOGNE FRANKFURT HOUSTON LONDON
LOS ANGELES NEW YORK PALO ALTO PARIS WASHINGTON

INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS

ENTERED
Office of the Secretary

OCT -9 2001

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 *2203690*



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 REPLY COMMENTS TO THE REPLY COMMENTS OF THE UNITED STATES
DEPARTMENT OF TRANSPORTATION

Jeffrey R. Moreland
Richard E. Weicher
Sidney L. Strickland, Jr.
Michael E. Roper

Erika Z. Jones
Adrian L. Steel, Jr.
Adam C. Sloane

The Burlington Northern
and Santa Fe Railway Company
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Mayer, Brown & Platt
1909 K Street, NW
Washington, DC 20006
(202) 263-3000

Attorneys for The Burlington Northern and Santa Fe Railway Company

October 9, 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

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

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
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 REPLY COMMENTS TO THE REPLY COMMENTS OF THE UNITED STATES
DEPARTMENT OF TRANSPORTATION

The Burlington Northern and Santa Fe Railway Company ("BNSF") submits the following comments in reply to the "Reply Comments of the United States Department of Transportation" (DOT-7), filed on September 19, 2001.¹

¹ As DOT explains (DOT-7, at 2 n.1), it did not express its "position on the merits" until the filing of its "reply" comments on September 19, 2001. Thus, until now, BNSF

INTRODUCTION

In its reply comments, DOT for the first time addresses the unresolved issues relating to the Restated and Amended BNSF Settlement Agreement, expressing its agreement with UP's views on the definitions of "2-to-1" points (DOT-7, at 7) and transload facilities (id. at 8-9), generally adopting the American Chemistry Council's position on the team tracks issue (id. at 9-10), supporting BNSF with respect to the Elvas-Stockton and Houston-Memphis-Valley Junction trackage rights restrictions issues (id. at 10-11), and suggesting that oversight in some form should continue, although UP and BNSF should no longer be required to file quarterly reports and the Board should reduce the level of detail required in the annual reports filed by the two carriers (id. at 12-13). DOT also recommends monitoring to assure that any increases or decreases in UP's costs are "properly reflected in the agreed-upon adjustments to the trackage rights fees." Id. at 12.

In the interests of brevity, and to avoid repeating arguments made elsewhere, BNSF will, in these reply comments, focus on DOT's views with respect to the first two issues – the definition of "2-to-1" points and the need for an authoritative and clear

has not had an opportunity to learn of, and respond to, DOT's views on the unresolved issues relating to the Restated and Amended BNSF Settlement Agreement. DOT's "traditional course" of reviewing the comments of other parties before offering its "substantive views" should not deprive BNSF of its right to respond to DOT's comments on the relevant issues. See Decision No. 16, Finance Docket No. 32760 (Sub-No. 21) at 14, which provides parties with the right to respond to the comments of interested parties. Accordingly, the comments filed herein are merely an extension of the reply comments filed by BNSF in its "Reply Comments to UP's Fifth Annual Oversight Report and on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement" (BNSF-94), and, as such, do not constitute an improper "reply to a reply." BNSF has filed these comments in compliance with 49 C.F.R. 1104.13(a) which provides for a twenty day period for the filing of replies.

definition of the transload facilities subject to the Board's existing and new transload conditions.²

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

DOT argues that UP's proposed definition of "2-to-1" points should be adopted because, in DOT's view, the condition granting BNSF access to shippers at "2-to-1" points was "addressed to that subset of competition directed at shippers that existed at specific sites prior to the merger that received service from UP and SP and no other carrier." DOT-7, at 7. DOT believes that merger-related competitive harms to shippers who benefited from their proximity to both SP and UP were to be addressed by the Board's conditions that protect so-called "indirect" competition – conditions such as the new facilities, build-in/build-out, and transload conditions. See id. DOT thus accepts UP's position that a geographic location cannot qualify as a "2-to-1" point for the purposes of the BNSF Settlement Agreement unless there was an actual "2-to-1" shipper at the location at the time of the UP/SP merger.

There are two principal problems with DOT's position. First, the presence of an actual "2-to-1" shipper at a particular location is irrelevant to whether other shippers at the location lost indirect rate and service competition as a result of the UP/SP merger, and DOT has pointed to no reason why the presence or absence of such a shipper should matter in that determination. Such competition was driven by the availability of,

² BNSF does note, however, that DOT rejects UP's positions (i) that the entry/exit restriction on the trackage rights lines north of Bald Knob and Fair Oaks, AR should remain in place, and (ii) that BNSF's trackage rights between Elvas and Stockton, CA should be overhead trackage rights only. DOT-7, at 11. In so doing with respect to the entry/exit restriction, DOT urges the Board to "hew to a fundamental purpose of its general conditions and permit BNSF the measure of flexibility that SP enjoyed, thereby replicating pre-merger competitive conditions to the extent possible." Ibid.

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 in a particular location served by both UP and SP – not by whether some unrelated shipper received service from both UP and SP.

Second and relatedly, contrary to DOT's position, the new facilities, build-in/build-out and transload conditions would not fully preserve the pre-merger indirect competition that existed at geographic locations defined by 6-digit SPLCs if a requirement is imposed that there must be an actual "2-to-1" shipper at the location. For instance, a shipper interested in constructing a new facility at such a location before the merger could have sited its facility on UP or SP, whether or not an existing "2-to-1" shipper was located nearby. However, unless a trackage rights line happens to run through the 6-digit SPLC,³ neither the new facilities nor the transload condition would preserve the pre-merger competition because, if DOT's position is adopted, the absence of an actual "2-to-1" shipper would prevent the location from qualifying as a "2-to-1" point.⁴ Likewise, the pre-merger competition that an existing transload provided to exclusively-served shippers at such a location could not be preserved by either the new facilities or transload condition – again because of the absence of an actual "2-to-1"

³ Even if that were the situation, pre-merger UP vs. SP siting competition would not be fully preserved because the shipper would be limited to placing its new facility on the trackage rights line – a limitation that both (i) did not exist pre-merger since the shipper could locate its new facility anywhere on the UP or SP lines at the 6-digit SPLC, and (ii) would deprive the shipper of the flexibility it needs to be able to place its new facility at the most efficient and economic site within the SPLC.

⁴ This would be so because, under the "2-to-1" definition advocated by DOT, the new facilities and transload conditions apply only to facilities on trackage rights lines or at locations with an existing "2-to-1" shipper.

shipper. Further, the build-in/build-out condition would not preserve the pre-merger siting competition that existed because it would by definition not apply to a shipper siting a new facility.

Accordingly, the adoption of a definition of "2-to-1" points that is based on 6-digit SPLCs and that does not require the presence of an actual "2-to-1" shipper provides the best assurance that all shippers who otherwise would have lost the benefits of indirect competition between SP and UP as a result of the UP/SP merger will have access to BNSF under the new facilities and transload conditions.

B. Definition of Transloads

DOT notes that the Board has already addressed the issue of transloads on several occasions and that the Board's decisions concerning transloads "in large measure appear to provide consistent support for BNSF's position" on the definition of transloads. DOT-7, at 8 (citing Decision Nos. 44, 61, and 75). Nevertheless, DOT believes UP's oft-raised concerns about the scope of the transload condition "continue[] to have merit" and that the "question is complex and circumstances are likely to vary depending on the situation." DOT-7, at 9. Accordingly, DOT concludes that the Board should decline to adopt either BNSF's or UP's position on the issue, but should instead "reaffirm its commitment to resolve such matters on a case-by-case basis until sufficient precedent is established." Id.

DOT's position, however, is a recipe for greater uncertainty and increased ambiguity about the meaning and scope of the transload condition. As BNSF and other parties have made clear, the Board's decisions on the transload condition have been clear and unequivocal and have fully addressed the very concerns adverted to by DOT

in its reply comments. See BNSF-94, at 12-16; BNSF-93, at 10-12; NITL-27, at 13-14; ACC-1, at 5; see also Decision No. 61 at 7 ("The transload condition should . . . be read literally: BNSF may serve any new transload facility, including those owned and operated by BNSF itself.") (emphasis added).

By leaving to case-by-case determination the question whether UP will succeed in its attempt to "engraft a new requirement [on the application of the transload condition], namely, that 'the operator of [the transload facility] has no ownership of the [product] being transloaded'" (NITL-27, at 13 (quoting UP-proposed alternative)), DOT's position would introduce a new source of uncertainty for shippers who have, or are planning to build, transloads to move their own products and who expect to avail themselves of BNSF service under the transload condition. This uncertainty is wholly unnecessary, because, as shown in BNSF's previous submissions, the currently applicable standards governing the transload condition clearly and unambiguously define the "legitimate" transloads to which the condition applies.

Moreover, DOT does not address the particular issue in dispute: UP's position that the operator of a transload facility -- whether existing or new -- may not have any ownership of the product being transloaded. BNSF and other parties have demonstrated (and DOT does not dispute) that, if UP's position were to be accepted, then there would be an unremedied loss in pre-merger competition at both "2-to-1" points and along the trackage rights lines, and DOT provides no explanation as to why the Board should not proceed to resolve that issue at this time so that shippers can be certain that the pre-merger competition which they would have enjoyed through the use of private transloads is protected and preserved.

There is, therefore, no basis for the Board to adopt DOT's recommendation that the Board leave the definition of "transloads" to the uncertainties of case-by-case adjudication.⁵

CONCLUSION

DOT's adoption of UP's position with respect to the definitions of "2-to-1" points and transloads is anomalous in light of the fact – made clear above and in the prior filings of BNSF, NIT League, Entergy and ACC – that UP's positions would result in a loss of pre-merger competition. This is especially so since DOT itself stated in its reply comments that the terms of the Restated and Amended BNSF Settlement Agreement must "at a minimum, enable BNSF to continue to replicate the direct and indirect competition that SP provided". DOT-7, at 6. The positions DOT proposes would simply not do that.

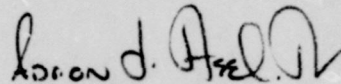
In addition, as BNSF maintained in its earlier comments, DOT recognizes that oversight should continue in some fashion, at least until the outstanding issues in fully implementing the Board's conditions and the BNSF Settlement Agreement are fully resolved.

Accordingly, for the reasons set forth above, BNSF respectfully submits that the Board should not adopt DOT's positions on the two issues because those positions

⁵ In addition, contrary to DOT's assertion, the Board has provided "definitive guidance" on the issues DOT claims are unresolved. For instance, the Board rejected UP's efforts to impose a minimum distance requirement on the transload condition in Decision No. 61, and it expressly stated, in response to the same concerns about access to exclusively-served shippers that DOT has expressed here, that the transload condition should be read literally to include "any new transload facility". It is not clear what more DOT could want in the way of "guidance" on the issues.

would not fully preserve pre-merger competition that undisputedly existed and would lead to uncertainty and ambiguity in the minds of shippers.

Respectfully submitted,



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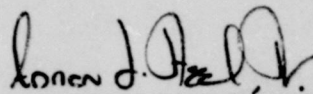
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Attorneys for The Burlington Northern and Santa Fe Railway Company

October 9, 2001

CERTIFICATE OF SERVICE

I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Reply Comments to the Reply Comments of the United States Department of Transportation (BNSF-96) are being served on all parties of record.

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

Adrian L. Steel, Jr.

STB

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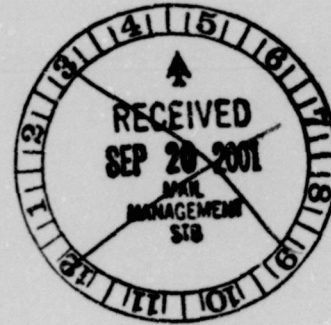
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Office of the Secretary

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Public Record**

September 20, 2001



VIA HAND DELIVERY

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

203508

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

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

Dear Secretary Williams:

The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby submits a 3.5 inch disk containing a corrected version, in WordPerfect 9 format, of BNSF's Reply to UP's Fifth Annual Oversight Report and on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement (BNSF-94). The only change made in the corrected version of BNSF-94 is the deletion of footnote 18. Because of the deletion of the footnote, the footnote numbers and page numbering of the electronic version differ from those of the paper version.

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

Sincerely,

Erika Z. Jones/als

Erika Z. Jones

Enclosures

cc: All Parties of Record

CHARLOTTE CHICAGO COLOGNE FRANKFURT HOUSTON LONDON
LOS ANGELES NEW YORK PALO ALTO PARIS WASHINGTON
INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS

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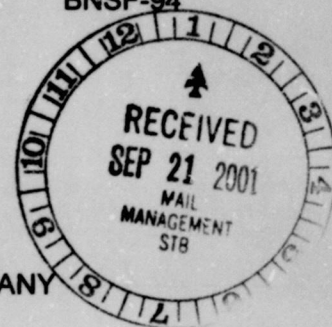
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

→ 203508

BNSF-94



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 REPLY COMMENTS TO UP'S FIFTH ANNUAL
OVERSIGHT REPORT AND ON UNRESOLVED ISSUES RELATING
TO THE RESTATED AND AMENDED BNSF SETTLEMENT AGREEMENT

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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
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(OVERSIGHT)

BNSF REPLY COMMENTS TO UP'S FIFTH ANNUAL
OVERSIGHT REPORT AND ON UNRESOLVED ISSUES RELATING
TO THE RESTATED AND AMENDED BNSF SETTLEMENT AGREEMENT

The Burlington Northern and Santa Fe Railway Company ("BNSF") submits the following reply comments to (i) UP's "Fifth Annual Oversight Report" filed on July 2, 2001 (UP/SP-384); (ii) UP's "Report on Issues Arising Under the BNSF Settlement

Agreement" also filed on July 2, 2001 (UP/SP-385); (iii) UP's "Opposition to Substantive Changes to the BNSF Settlement Agreement" filed on July 25, 2001 (UP/SP-387); and (iv) the comments filed on August 17, 2001, by various parties with respect to the unresolved issues relating to the Restated and Amended BNSF Settlement Agreement.¹

INTRODUCTION

In its Fifth Annual Oversight Report, UP presented information and data on the various public benefits it claims have been achieved as a result of the UP/SP merger. BNSF agrees that, after what UP itself has called an "infamous start," many of the benefits projected by the Applicants have been achieved, and that, overall, BNSF has been able to provide effective competitive service utilizing the rights it received pursuant to the BNSF Settlement Agreement and the conditions imposed by the Surface Transportation Board ("Board") on the merger. However, as set forth in BNSF's "Fifth Annual and Cumulative Progress Report" filed on July 2, 2001 (BNSF-PR-20), and in its "Comments on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement" filed on July 25, 2001 (BNSF-93), there are issues remaining as to whether the conditions the Board imposed "have effectively addressed the competitive issues they were intended to remedy." Decision No. 16, Finance Docket No. 32760 (Sub-No. 21), at 13. These issues need to be resolved before formal oversight is ended so that each individual shipper that lost two carrier competition as a

¹ The City Public Service Board of San Antonio, TX filed comments (CPSB-15) in which it noted that the proposed Restated and Amended BNSF Settlement Agreement does not conform in certain respects to the prior agreement reached between CPSB, UP and BNSF as to the language necessary to implement the Board's decisions concerning service by BNSF to CPSB's Elmendorf, TX station. As CPSB reports in its comments, BNSF and UP have agreed to incorporate the language previously agreed upon by CPSB, UP and BNSF in the final Restated and Amended BNSF Settlement Agreement.

result of the UP/SP merger can be assured that the competition will be preserved and so that BNSF has the ability to provide competitive replacement service to all such shippers both now and in the future.

Section I of these Reply Comments addresses the unresolved issues relating to the amendment of the BNSF Settlement Agreement. Section II discusses the status of the parties' discussions on other unresolved issues, including issues relating to the adjustment of the trackage rights fees and to the I-5 Proportional Rate Agreement. Finally, Section III addresses the need for the continuation of formal oversight until such time as the Board resolves the issues raised in oversight, including the amendment of the Settlement Agreement and any other pending issues.

I. AMENDMENT OF THE BNSF SETTLEMENT AGREEMENT

A. BNSF'S PROPOSED ALTERNATIVES DO NOT CONSTITUTE IMPERMISSIBLE SUBSTANTIVE CHANGES TO THE BNSF SETTLEMENT AGREEMENT

Much of UP's opposition to BNSF's proposed alternatives on the unresolved Settlement Agreement issues rests on the erroneous premise that BNSF's positions on the issues would result in "substantive changes" to the Settlement Agreement – changes that, in UP's view, would expand BNSF's rights and fundamentally alter the conditions imposed by the Board in approving the UP/SP merger. UP/SP-387, at 2. Based on that premise, UP asserts that the adoption of BNSF's alternatives would constitute unlawful retroactive regulation, contravene Board policy favoring private settlement agreements, and violate BNSF's promises in the BNSF Settlement Agreement. UP further argues that it would be unfair to impose additional conditions five years after consummation of the merger. As is shown below, however, UP's premise is without foundation, and, in any event, UP expressly accepted the possibility

of further conditions necessary to preserve competition even if BNSF's proposed alternatives could somehow be construed to be new or additional conditions on the merger.

1. UP Has Mischaracterized BNSF's Proposed Alternatives

UP's characterization of BNSF's proposed alternatives is clearly incorrect. As NIT League recognizes, BNSF is not seeking new rights or conditions. Instead, BNSF merely is seeking authoritative clarifications of its existing rights under the Settlement Agreement – clarifications necessitated and justified by the parties' long-standing and, as yet, unresolved disputes over key issues and definitions under the Agreement; various Board decisions explaining and elaborating upon the conditions imposed in the UP/SP merger; and, most importantly, the need to ensure that pre-merger competitive options which shippers enjoyed are preserved. See Reply Comments on Unresolved Issues Relating to the Revisited and Amended BNSF Settlement Agreement submitted by The National Industrial Transportation League (NITL-27), at 3-5. Thus, contrary to UP's characterization of BNSF's proposed alternatives, BNSF is, in fact, seeking only to codify the basic principles that have emerged from the Board's decisions and to clarify basic definitions and practices, so that (a) UP, BNSF, and the shipping community will have the benefit of the certainty that comes from clear, authoritative definitions and principles in the BNSF Settlement Agreement as modified by the Board and (b) all shippers who would have benefited from competition between UP and SP, and no other railroad, but for the UP/SP merger will have the benefit of such competition.²

² In addition, with respect to several of the unresolved issues, it is UP, not BNSF, that is seeking a change. For instance, UP seeks to impose a new restriction on the Board's transload condition that would exclude private transloads. Similarly, UP proposes to delete the language in Section 6c of the original Settlement Agreement

Further, according to UP's own statements and representations, the overall purpose of the BNSF Settlement Agreement was to preserve pre-merger competition for "every" shipper. See, e.g., Applicants' Rebuttal – Volume 1, Narrative (UP/SP-230), at 89 (Stating that, as a result of the BNSF Settlement Agreement, "every affected shipper will gain stronger competition") (emphasis in original); Transcript of UP/SP Oral Argument, July 1, 1996, at 45, 63 ("We are not eliminating rail option[s] for any shipper in the west through this merger. * * * All the shippers that have competition will have it preserved under the BN/Santa Fe settlement.")³ In light of these representations, it is disingenuous for UP to now claim that proposals intended to ensure the preservation of such competition for "every" shipper somehow constitute retroactive regulation, violate the Board's policy in favor of settlement agreements, or constitute a breach of BNSF's promises under the Settlement Agreement. Rather, having secured the Board's approval of the merger, UP seeks – as it has on numerous occasions throughout the 5-year oversight period – to have the BNSF Settlement Agreement and the Board's implementing conditions read narrowly rather than in a way that would protect "every potential competitive concern." See UP/SP-384, at 54 ("The Merger Conditions Addressed Every Potential Competitive Concern").

(Section 6(d) of the amended Settlement Agreement) that expressly incorporates the right of BNSF set forth in Section 9l (original) (Section 9(m) (amended)) to connect with its own lines from the trackage rights lines. And, UP wants to classify BNSF's trackage rights between Elvas and Stockton as overhead trackage rights even though it has already acknowledged BNSF's right to serve two new shipper facilities on that line. Thus, UP's concern about changes being made after the Board's decision approving the merger would seem to apply as much, if not more, to UP's proposals as to BNSF's proposals.

³ Excerpts of the oral argument transcript cited herein are included in Appendix 1 filed with these Reply Comments.

2. UP Has Expressly Accepted The Possibility Of Additional Conditions

Moreover, UP's extended arguments about the impropriety and unfairness of the retroactive imposition of conditions in this proceeding (UP/SP-387, at 3-8) are inconsistent with the explicit commitments that UP made prior to the Board's approval of the UP/SP merger. For instance, in oral argument, UP's counsel stated that, unlike "the case under the statute normally," the Board will "have unrestricted power to impose additional conditions, if appropriate," including divestiture. Transcript of UP/SP Oral Argument, July 1, 1996, at 59. Similarly, in the CMA Agreement, UP expressly agreed (i) that it would submit to an oversight process in which the Board would determine whether the Settlement Agreement "has effectively addressed the competitive issues it was intended to address" and (ii) that "[t]he Board shall have authority to impose additional remedial conditions." CMA Agreement ¶ 14 in UP/SP-219. See also UP/SP-230, at 21 ("The Board would have the authority to impose additional remedial conditions that it found to be called for."); Rebensdorf Rebuttal Verified Statement, at 11 (UP/SP-231, vol. 2, part C) (same). As set forth above, UP's pleadings and witnesses have stated that the BNSF Settlement Agreement was intended to preserve all existing pre-merger UP/SP competition. Accordingly, even if UP were correct in characterizing BNSF's proposed alternatives as requests for new conditions that in some other merger proceeding could not be imposed at this point, UP's retroactivity argument is unavailing here since BNSF's proposals are necessary to preserve such pre-merger competition.

In addition, UP's argument (UP/SP-387, at 3, 5) that BNSF's alternatives are unnecessary in light of BNSF's success in competing through its trackage rights operations is misconceived. The fact that BNSF's trackage rights operations are a

commercial success and that BNSF is generally an adequate competitive replacement for the loss of SP service does not mean that BNSF's proposals for the amended Settlement Agreement are unnecessary to assure that all shippers, including new shippers and users of new transloads in the future, are able to avail themselves of BNSF service to replace the loss of one of two competitive rail alternatives that otherwise would have resulted from the UP/SP merger. Further, the Board's conditions were intended to preserve competition and to enable BNSF to maintain sufficient traffic density on the trackage rights lines, not only in the present but also over the entire 99 year term of the Settlement Agreement. Thus, it is critical that all necessary modifications and clarifications be undertaken so that BNSF can provide fully competitive service over the long-term as a replacement for SP.⁴

B. BNSF'S PROPOSED ALTERNATIVES ARE NECESSARY TO PRESERVE PRE-MERGER COMPETITION AND TO MAINTAIN BNSF'S ABILITY TO PROVIDE FULLY EFFECTIVE REPLACEMENT COMPETITION

Turning to BNSF's specific proposals, UP generally does not assert that BNSF's proposed modifications are unnecessary to preserve pre-merger competition or to enable BNSF to achieve adequate traffic density over the long term – the two stated purposes of the Board-imposed conditions at issue. Rather, the focus of UP's opposition is (i) that, when the BNSF Settlement Agreement was executed, UP and BNSF did not intend to protect the particular pre-merger competition which BNSF's

⁴ In fact, the Board has previously rejected this argument by UP. In Decision No. 86, the Board held that the fact that it had recognized in its general oversight decisions that BNSF was providing fully competitive service did not mean, as UP claimed, that "the traffic density rationale can no longer 'be taken seriously'." Decision No. 86 (served July 12, 1999), at 5 (quoting UP/SP-365, at 2). The Board noted that the "new facilities condition was intended to be a permanent solution for both traffic density and competitive problems, and it continues to be necessary for both purposes." Ibid.

alternatives seek to protect, or (ii) that the Board has previously rejected BNSF's position. Neither ground justifies the denial of BNSF's proposed alternatives. As to the first, the Board's decisions override UP's and BNSF's intent and, if the Board determines, for example, that in order to fully preserve pre-merger indirect siting and transloading competition, "2-to-1" points should be defined by 6-digit Standard Point Location Codes ("SPLCs") regardless of whether an actual "2-to-1" shipper was located at the geographic point, the Board's determination would prevail.⁵ As to the second, UP is simply incorrect. The Board has not previously rejected BNSF's position on any of its proposed alternatives. In fact, as shown below, the Board has previously rejected a number of the positions UP has asserted in its pleadings.

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

UP argues that BNSF's proposed use of 6-digit SPLCs to define "2-to-1" points should be rejected because UP and BNSF negotiated the BNSF Settlement Agreement on the basis of a definition of such points which required the presence of at least one actual "2-to-1" shipper and because, in UP's view, the Board rejected a definition of such points based on 6-digit SPLCs in Decision No. 44. Neither reason justifies the denial of BNSF's proposed definition.⁶

⁵ See NITL-27, at 14 ("the scope of BNSF's rights * * * is [not] only a matter of the private agreement of the parties. * * * [The Board's] decisions converted that agreement from a private settlement to an integral part of the mechanism by which the Board implemented its own statutory responsibility to protect the public interest.")

⁶ As explained in BNSF's July 25th comments and as further established by NIT League in its comments, it is important that the Board clarify the definition of a "2-to-1" point so that the shipping community can determine with certainty whether new facilities, existing transloads and new transloads not on a trackage rights line are entitled to service from BNSF under the Settlement Agreement. See BNSF-93, at 3; NITL-27, at 9 and n.2. Further, there are instances in which UP's position deprives

a. Scope of the BNSF Settlement Agreement

Initially, even assuming that UP is correct in its view that the "basic structure" of the BNSF Settlement Agreement was to provide competition to all "2-to-1" shippers, that structure was altered by the Board's determination that indirect siting and transloading competition also needed to be preserved at "2-to-1" points. Decision No. 44, 1 S.T.B. 233, 391-93 (1996). In addition, as set forth in BNSF's July 25th comments (BNSF-93, at 6-8), UP's argument also contradicts the testimony of its witnesses in the UP/SP merger proceeding⁷ that they intended to preserve all pre-merger competition without any qualification that the presence of an actual "2-to-1" shipper was required.⁸

Further, UP's position is contrary to the agreed to language in Section 8(i) of the Restated and Amended BNSF Settlement Agreement that it is the intent of UP and BNSF to preserve two-carrier competition for all "shippers who had competition by means of siting, transload or build-in/build-out from only UP and SP pre-merger." See Joint Submission of Restated and Amended BNSF Settlement Agreement (UP/SP-386

shippers of their pre-merger competitive options. See BNSF-93, at 8 n.7 (Refrigerated Distribution Specialists example at Tracy, CA).

⁷ In this regard, it is possible that UP will submit a verified statement to try to qualify or explain the cited testimony. The Board, BNSF and shippers should, however, be entitled to rely on the testimony given during the proceeding rather than written statements crafted over five years later. In addition, any such effort by UP would be directly contrary to UP's statements in its pleadings that, for example, all transloading options would be preserved. See BNSF-93, at 4 n.2.

⁸ In addition, in Decision No. 44, the Board noted that UP did not restrict "2-to-1" points to those having at least one shipper that could be served directly or through reciprocal switching by UP and SP, and no other Class I railroad. Instead, as the Board stated, UP and SP "added points on shortline railroads reachable by connections to UP and SP, but by no other Class I railroad. Further, they added any point that had what they considered to be a bona fide build-in, build-out, or transload option prior to the merger." Decision No. 44, 1 S.T.B. at 391 n.127 (emphasis original).

and BNSF-92), at 33. As reflected by the inclusion of Reno, NV (where there was no actual "2-to-1" shipper at the time of the merger) as a "2-to-1" point, such competition existed regardless of the presence of such a shipper.

Finally, and most importantly, UP does not argue that such a definition is not needed to preserve pre-merger competition. The reason UP does not do so is obvious: indirect siting and transload competition existed before the merger regardless of whether or not there was an actual "2-to-1" shipper at a 6-digit SPLC location, and the Board quite rightly modified the BNSF Settlement Agreement to ensure that such competition would be preserved.⁹

Similarly, in its comments, NIT League points out that a

shipper considering locating today at a rail station listed for service in 1995 by both UP and SP would, but for the merger of UP and SP, have that "competitive pressure" available to obtain a rate and service package from the two railroads, regardless of whether there was another shipper at that location open to both UP and SP in 1995. Thus, it is necessary at this point in time to define "2-to-1" points as geographic locations that were open to service by both UP and SP in 1995 (regardless of the existence of a shipper open to both UP and SP in 1995), in order to replicate, through competition provided by BNSF today, the "competitive pressure" that would have existed today but for the changes wrought by the merger of the UP and SP.

⁹ Given the undisputed existence of such pre-merger indirect competition, UP should be required to explain how, if its position that there must be an actual "2-to-1" shipper at a geographic location were to be adopted, that indirect competition is to be preserved at locations where there is no such shipper. UP provides no such explanation in its July 25th Opposition or in the attached verified statement of John H. Rebensdorf.

NITL-27, at 10 (emphasis in original; quoting Decision No. 44, 1 S.T.B. at 393).¹⁰ See also American Chemistry Council's Comments Regarding Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement (ACC-1), at 3 ("BNSF's proposed definition is in accordance with the overall logic of the settlement agreements to preserve all forms of competition at two-to-one points").

b. NIT League's Position

In addition, UP's contention that the Board has previously rejected a proposal by NIT League to use 6-digit SPLCs to define "2-to-1" points is also incorrect. Rather, the Board rejected the proposals (which were not made by NIT League) to use BEAs and 4-digit SPLCs to "redefin[e] 2-to-1 points." Decision No. 44, 1 S.T.B. at 372.¹¹ As for 6-digit SPLCs, as NIT League explains, NIT League did not argue that 6-digit SPLCs should be used to define "2-to-1" points. See NITL-27, at 11. Instead, NIT League submitted evidence about 6-digit SPLCs in connection with its contentions about the "overall reduction in competition to be caused by the UP/SP merger, in support of the League's proposed remedy, namely, divestiture of various SP lines to other carriers." Ibid. The Board, however, found that, when put forward in support of an argument for divestiture, this approach tended to "aggregate traffic that will experience various types of competitive problems," and that a more nuanced, less intrusive approach than

¹⁰ NIT League also explains that the use of 6-digit SPLCs to define "2-to-1" points is "particularly appropriate because in 1995, both UP and SP held out to the shipping public, in their tariffs, that they each in fact served that geographic location." NITL-27, at 10 (emphasis in original).

¹¹ As NIT League points out, UP's block quotation of this portion of Decision No. 44 artfully omitted the terms "BEA" and "4-digit SPLC" in an apparent effort to make it look like the Board had expressly rejected the use of 6-digit SPLCs to define "2-to-1" points. See NITL-27, at 12 (discussing block quotation in UP/SP-387).

divestiture for addressing such competitive harms was appropriate. Decision No. 44, 1 S.T.B. at 392. Agreeing with various protestants that UP and SP had "not gone far enough" in addressing the loss of indirect competition which would occur as a result of the merger, the Board then proceeded to impose conditions designed to preserve that competition. Id., at 393.

Thus, contrary to UP's claims, the Board's rejection of NIT League's 6-digit SPLC analysis did not constitute a conclusion that it is inappropriate to use 6-digit SPLCs to identify "2-to-1" points for the purposes of determining whether a new facility, an existing transload or a transload that is not built on a trackage rights line should be open to BNSF service under the Settlement Agreement in order to preserve pre-merger competition. Rather, as BNSF established in its July 25th Comments (and as NIT League persuasively argues in its Reply Comments), the use of 6-digit SPLCs for identifying geographic locations where pre-merger competition should be preserved is especially appropriate and logical, and there is nothing in the Board's decision which supports UP's position that there must be at least one actual "2-to-1" shipper at a location before the Board's remedies designed to protect pre-merger indirect siting and transloading competition apply.

2. Definition Of Transload Facilities

UP argues that BNSF's proposed definitions of "Existing Transload Facilities" and "New Transload Facilities" would potentially result in BNSF access to every exclusively-served industry on the trackage rights lines.¹² UP claims this would be contrary to the

¹² UP also questions whether there is a need for a definition of "Existing Transload Facilities" because, in its view, the parties have identified all such facilities at "2-to-1" points, and it is unlikely that any additional facilities will be identified. UP's argument is, however, based on its narrow definition of a "2-to-1" point, and if, as BNSF, NIT League,

Board's statement that the transload condition should be applied in a manner that "would not result in direct BNSF access" to such industries, and UP proposes to impose a restriction that would preclude the operator of a transload facility to which BNSF would have access from having any ownership interest in the product being transloaded. However, as explained in BNSF's July 25th comments, the Board has already addressed UP's concern in this regard and held that UP is adequately protected against this potential risk. UP's proposal to prohibit BNSF access to private transloads should therefore be rejected.

First, if BNSF serves a shipper's "private" transload facility, BNSF will not be obtaining direct access to what were UP's or SP's exclusively-served shippers along the trackage rights lines. Instead, from the shipper's point of view, the access that BNSF will be obtaining will be indirect and attenuated, because, under the "legitimate" transload condition the shipper will be required to incur significant additional expenses in shipping its product via the BNSF-served transload, over and above the "costs that would be incurred in providing [or obtaining] direct rail service." Decision No. 61, at 12. See also Decision No. 44, 1 S.T.B. at 372 ("Transloading * * * results in additional costs, as freight is first loaded into a truck, and then reloaded into a freight car, or the reverse.").

Second, as mentioned, the Board already has addressed "UP/SP's concern that a literal reading of the transload condition will allow BNSF to operate as if it directly

and ACC believe the Board should do, the Board adopts BNSF's definition of such a point, then it is important that a clear definition of an Existing Transload Facility be set forth so that qualifying facilities can receive the benefit of the two carrier competitive service they lost as a result of the UP/SP merger.

reached all exclusively served UP/SP shippers on the trackage rights lines." Decision No. 61, at 12 (emphasis original). The Board addressed this concern by imposing the requirement that a transload must be "legitimate" to qualify for BNSF service under the transload condition – that is, the transload must "entail both the construction of a rail transload facility as that term is used in the industry and operating costs above and beyond the costs that would be incurred in providing direct rail service." Id. (emphasis original); see also NITL-27, at 13 (noting that the Board addressed the concerns raised here by UP in Decision Nos. 61 and 75, when it stated and applied the requirement that a transload be legitimate in order to qualify for BNSF service under the UP/SP merger transload condition). What UP seeks to do here, however, is impose an additional requirement over and above the legitimate transload requirement. See NITL-27, at 13 ("UP would now have the Board engraft a new requirement, namely, that 'the operator of [the transload facility] has no ownership of the [product] being transloaded.'") (emphasis in original; quoting UP-proposed alternative on page 8 of the Red-Lined Version of the Proposed Restated and Amended BNSF Settlement Agreement, in UP/SP-386/BNSF-92).

UP's proposed additional requirement would deprive shippers of an option for obtaining two-carrier service that they would have had if the UP/SP merger had not occurred. After all, prior to the UP/SP merger an exclusively-served UP shipper could obtain SP service either by utilizing a transload operated by someone else (such as SP or an independent third party) or by constructing and operating its own "private" transload facility. Under UP's proposal, the latter option would not be available to shippers wishing to utilize a transload to obtain BNSF service (regardless of where they

located the transload). Thus, UP's proposed additional restriction on the application of the transload condition would be inconsistent with the Board's intent "to preserve the indirect UP vs. SP competition provided by * * * transload options." Decision No. 61, at 10. See also ACC-1, at 5 (BNSF's definition "better reflects the intention of the parties and the Board to replicate all actual and potential competition that existed between UP and SP pre-merger.").¹³

Further, UP's proposed prohibition on private transload facilities would detract from the other primary purpose of the transload condition – that is, to preserve BNSF's ability to secure and maintain sufficient traffic density. BNSF's ability to do so was a cause for concern to many parties in the UP/SP merger proceeding, and the Board acted to enhance and preserve that ability. The Board has rejected prior efforts by UP to narrow the new facilities and new transload conditions in ways that would adversely affect BNSF's ability to develop and maintain traffic density (See Decision No. 61, at 12; Decision No. 86, at 5), and it should do likewise here.

Finally, perhaps recognizing that the Board has previously rejected the premise of its argument that privately-owned transload facilities should not be within the scope of the transload condition, UP tries another argument that the Board has also previously rejected. UP argues that a "shipper whose facility was served by SP [sh]ould be required to build its transload facility on a line owned by UP before the merger or vice versa." UP/SP-387, at 22. The Board rejected precisely this argument by UP when it

¹³ As NIT League notes, UP's position would also impose an additional barrier on a shipper's use of the transload condition. In addition to meeting the other requirements imposed by the Board, the shipper would have to find an independent operator for the facility and overcome whatever operational problems might arise as a result of the facility's separate ownership and control. NITL-27, at 13.

denied UP's petition seeking clarification or reconsideration of the new facilities and transload conditions (UP/SP-275) in Decision No. 61, and held that the transload condition should be read literally to permit BNSF to "serve any new transload facility" on a trackage rights line. Decision No. 61, at 7 (emphasis added). It should again do likewise here.

Accordingly, the Board should reject UP's effort to relitigate the scope of the condition and to impose a new requirement on the condition. The Board should instead adhere to its prior ruling that the condition as imposed by the Board adequately protects UP while at the same time ensuring that the dual competition preservation and traffic density purposes of the condition are met.¹⁴ Indeed, the fact that there has not been any significant number of new private transload facilities built by exclusively-served shippers on the trackage rights lines indicates that the protection the Board imposed has worked and that there is no need to revise or restrict the condition. See also ACC-1, at 5 ("There is no reason at this late date to engraft upon the new facilities condition an exclusion of private transload facilities.").

3. Trackage Rights Restrictions

UP argues that the restrictions on BNSF's trackage rights between Elvas and Stockton, CA and in the Houston-Memphis-St. Louis corridor should remain in place because the restrictions were agreed to in the settlement agreement negotiations between UP, BNSF and, with respect to the Houston-Memphis-St. Louis corridor, CMA.

¹⁴ It should be noted that UP is incorrect in its assertion that the Board did not anticipate or intend that some exclusively-served UP shippers would be opened to BNSF as a result of the 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.

However, even assuming UP is correct, the conditions imposed by the Board to preserve pre-merger competition and to enable BNSF to achieve adequate traffic density would override any such intentions of the parties.

a. Elvas-Stockton Trackage Rights

While UP and BNSF disagree over the exact circumstances which led to the grant of trackage rights on the former SP line between Elvas and Stockton to BNSF,¹⁵ there is no doubt that those trackage rights were included in the BNSF Settlement Agreement when the Board held in Decision No. 44 that BNSF could "serve any new facility at any point on any SP or UP segment over which it has been granted trackage rights * * *." Decision No. 44, 1 S.T.B. at 373 (emphasis deleted and added). The Board could hardly have been any clearer in requiring that the new facilities condition apply to all of the trackage rights BNSF received under the Settlement Agreement.¹⁶

Indeed, as noted in BNSF's July 25th comments (BNSF-93, at 15), UP recognized the applicability of the new facilities condition to these trackage rights when

¹⁵ In this regard, UP continues to assert that it granted BNSF these trackage rights only as a "special accommodation" and that it should not be penalized for its "generosity" in enabling BNSF to avoid having to construct a difficult and costly connection to the UP line at Haggin Junction, CA. However, as explained in BNSF's July 25th Comments (BNSF-93, at 13-14), a competitive route from SP's line in the Central Corridor to Stockton where the trackage rights lines join BNSF's system is critical to BNSF's ability to provide competitive service in the Central Corridor, and BNSF should have the right to access new facilities on the former SP line -- just as it does on all other trackage rights lines -- in order to both preserve pre-merger competition and maintain traffic density.

¹⁶ The fact that the restrictions were set forth in the version of the Settlement Agreement that was before the Board when the Board approved the UP/SP merger does not, as UP argues, indicate in any way that the Board approved of the restrictions. The Board approved the Settlement Agreement only as modified by the Board's conditions, and the Board held the new facilities condition would apply to all trackage rights lines.

it granted BNSF access to new facilities constructed by Southdown Cement at Polk and Willamette Industries at Elk Grove. In its July 25th Opposition, UP asserted that it granted BNSF access to these two shippers to provide them with rail alternatives during UP's service crisis in 1997-98. UP/SP-387, at 20. However, access to the two shippers was not granted to BNSF by UP until 2000, well after the service crisis had abated. Moreover, if UP's grant of access had been based on reasons related to the service crisis, the access granted could have been expected to be temporary in nature rather than the permanent access which was granted.

Thus, UP's efforts to distinguish the Elvas-Stockton trackage rights from the other trackage rights granted in the Settlement Agreement should be rejected, and the Board should hold that the trackage rights are no different from any of the other trackage rights which the Board determined needed to be enhanced to enable BNSF to provide effective replacement competition.

b. Houston-Memphis-St. Louis Corridor Trackage Rights

UP argues that the restrictions on BNSF's use of its trackage rights on the UP and SP lines north of Bald Knob and Fair Oaks, AR should be retained. The two disputed restrictions which UP wishes to retain are, as stated in Section 6c of the BNSF Settlement Agreement, (i) a limitation on BNSF's ability to enter or exit the trackage rights lines between Memphis and Valley Junction, IL, and (ii) a geographic limit on traffic BNSF can handle on these lines to traffic to, from, or through Texas and Louisiana. UP's argument is based on its claim that UP, BNSF and CMA agreed that BNSF would use those trackage rights only to serve what UP has labeled "St. Louis Gateway" traffic. UP asserts that the two restrictions were imposed because CMA's concern was limited to BNSF's ability to compete effectively for St. Louis Gateway

traffic, and thus BNSF did not need to use the trackage rights lines for any other reason and would use its own lines between Memphis and St. Louis for traffic unrelated to the UP/SP merger. However, as explained below, the language of the existing Settlement Agreement and the Board's decisions do not support the restrictions, and the relevant concerns are broader than simply BNSF's ability to reach St. Louis in an effective competitive manner.

(i) Entry/Exit Restriction

First, as to the entry/exit restriction, UP has proposed to delete the existing language in Section 6c of the Settlement Agreement which expressly subjects the restriction to BNSF's separate right pursuant to Section 9l of the Settlement Agreement to connect with its own lines from the trackage rights lines. UP has, however, provided no justification as to why this language should be deleted. In fact, UP does not even mention the existence of the language in any of its pleadings.¹⁷ Moreover, the language of Section 9l giving BNSF the right to connect from the trackage rights lines to its own lines was included in the original September 25, 1995 BNSF Settlement Agreement, and it is clear from the language of Section 6c that, when the exit/entry restriction was subsequently included in the Second Supplemental Agreement, the parties intended that BNSF's previously-existing right to connect with its own lines would apply notwithstanding the restriction. Such an interpretation does not read the restriction on BNSF's right to exit or enter this portion of the trackage rights lines out of the Settlement Agreement since there were at least two shortlines (the Missouri & Northern Arkansas

¹⁷ Presumptively, UP will address this language in its reply comments, but, regardless of what UP may say, the fact remains that the plain meaning of the language (which was drafted by UP) gives BNSF the right to connect with its own lines pursuant to Section 9l.

Railroad at Diaz, AR and the Jackson & Southern Railroad at Delta, MO) operating at the time of the merge, to which the restriction would be applicable. Further, the Second Supplemental Agreement was executed by UP and BNSF in order to incorporate various terms and conditions from the CMA Agreement into the BNSF Settlement Agreement. However, contrary to UP's assertions, the CMA Agreement itself does not contain any restriction on BNSF's right to enter or exit these trackage rights lines or, for that matter, any of the other trackage rights lines.

Second, even assuming that the parties to the CMA Agreement were concerned primarily (or even exclusively) about BNSF's ability to compete effectively for St. Louis traffic when they granted BNSF trackage rights north of Bald Knob and Fair Oaks, the Board had broader concerns in mind when it enhanced BNSF's right to provide service in the Houston-Memphis-St. Louis corridor. For instance, as with all of the trackage rights lines, the Board was concerned about BNSF's ability to acquire and maintain sufficient traffic density in the corridor, and it rejected UP's attempt on reconsideration to restrict BNSF's right to serve new facilities on UP's line north of Bald Knob as inconsistent with the traffic density justification underlying the new facilities and transload conditions. See Decision No. 61, at 11. In fact, the Board noted that, by granting BNSF trackage rights over the UP line as well as the SP line in the corridor in order to address the problem of a directional flow handicap, UP exacerbated the insufficient traffic density problem. Ibid. The Board therefore refused "to jeopardize BNSF's ability to achieve sufficient traffic density on these lines", and allowing the exit/entry restriction to remain in place or otherwise restricting BNSF's use of the lines would jeopardize that ability as well since BNSF's ability to compete in the most

effective way (and to secure and maintain traffic density) would be adversely affected.

Ibid.

Third, the Board's expansion of the new facilities and build-in/build-out conditions in Decision No. 44 substantially enhanced BNSF's rights to serve shippers in the Houston-Memphis-St. Louis corridor, and, as Entergy and NIT League have pointed out in their comments (ESI-33, at 2, and NITL-27, at 15-16), the adoption of UP's position would significantly affect BNSF's ability to provide competitive service in the Houston-Memphis-St. Louis corridor by increasing BNSF's cost of service and shippers' cost of equipment.¹⁸ Not only would the restriction on entry and exit thereby prevent BNSF from providing a competitive replacement service for SP's pre-merger service, it would also eliminate specific pre-merger joint-line routings that BNSF could have offered by interchanging with SP at Jonesboro and UP at Hoxie.¹⁹

¹⁸ NIT League also urges the Board to "avoid where possible imposing unnecessary operational restrictions on BNSF's trackage rights." NITL-27, at 15.

¹⁹ In its comments, Entergy provides a specific example of how the entry/exit restriction could adversely affect BNSF's competitiveness to provide service to its White Bluff Station. As shown by Entergy (ESI-33, at 14 n.12), requiring BNSF to route Powder River Basin unit coal trains past Jonesboro to Memphis and then return back to the SP line and to do likewise from the UP line in returning to the Powder River Basin would add approximately 166 miles to BNSF's route. While UP can be expected to assert that this additional mileage would not affect BNSF's competitiveness, there is no doubt that, at least to some degree, BNSF will be less competitive because, not only would its routing have additional mileage involved, but Entergy's cost of equipment could increase, BNSF could potentially be required to utilize additional crews, and BNSF transit and cycle times and its ability to guarantee competitive levels of service could be adversely affected. In addition, BNSF would be forced to incur significant expenses to construct and/or rehabilitate the necessary connections and lines in Memphis, thereby further increasing its cost of service. As Entergy suggests, UP's position seems to "have no purpose other than to restrict BNSF's ability to compete on an even playing field * * *." ESI-33, at 2.

(ii) Geographic Limit

As to the second restriction which purports to limit the traffic BNSF can handle on the UP and SP lines north of Bald Knob and Fair Oaks to traffic to, from or through Texas and Louisiana, it should be noted that in its July 25th Opposition UP has interpreted the restriction to permit BNSF to use the lines to carry merger-related traffic involving points in Texas, Louisiana and Arkansas. UP/SP-387, at 17. However, even this reading of the restriction cannot stand since the Board gave BNSF the right to serve new facilities and transloads on all of its trackage rights lines, including both the UP and SP lines north of Bald Knob and Fair Oaks. For instance, if UP's position were to be adopted, then BNSF would be restricted in its ability to provide service to a new facility locating on either the UP or SP line in Missouri. Accordingly, BNSF should be able to carry traffic to and from points to which it has access located anywhere on the full length of its trackage rights lines in the Houston-Memphis-St. Louis corridor.

In sum, the Board should clarify that, by reason of the express language in the existing BNSF Settlement Agreement, BNSF has the right, pursuant to Section 9I, to interchange with its own lines from its trackage rights over the UP and SP lines north of Bald Knob and Fair Oaks. In addition, while it is not BNSF's intent to routinely route its traffic unrelated to the merger to and from the Southeast over these trackage rights lines, the Board should hold that the restriction on the traffic that can be carried over the subject trackage rights lines should be deleted from the BNSF Settlement Agreement so that BNSF will be able to have the routing flexibility it needs to implement and achieve the network system efficiencies and to maintain sufficient traffic densities in the corridor needed to effectively replace SP. At a minimum, the Board should hold that BNSF can use the trackage rights lines north of Bald Knob and Fair Oaks not only to provide

competitive service to all shippers located in the corridor to which BNSF obtained access (such as Entergy's White Bluff Station), but also to all merger-related traffic moving both within and beyond the corridor itself. Indeed, as mentioned, UP has recognized that BNSF should be able to use the trackage rights lines for merger-related traffic. See UP/SP-387, at 17.

4. Team Tracks

UP does not contest that UP and SP competed via team tracks before their merger. Rather, UP argues that it should not be required to sell unused team tracks to BNSF because the parties agreed to replicate the pre-merger competition that team tracks provided by enabling BNSF to build its own rail-served facilities along the trackage rights, including team tracks.

While it is true that BNSF has the right under the Settlement Agreement to build its own team tracks, the reality is, as explained in BNSF's July 25th Comments, that the process for establishing team tracks is far from the simplistic picture UP paints. See BNSF-93, at 18-20. For example, BNSF must first negotiate to locate and acquire property suitable for such a facility. It must then seek UP's approval of BNSF's engineering plans for the track and rely upon UP's engineering department to install connecting and access tracks and switches. It must then seek UP's approval of BNSF's proposed service plan. Such an extended process handicaps BNSF's ability to compete via team tracks, which are, as UP recognizes, often somewhat flexible and transitory.

A requirement that UP sell team tracks that it no longer uses to BNSF at normal and customary costs and charges would, notwithstanding UP's protestations, pose little burden on UP. In fact, one wonders why UP objects so strenuously to such a

requirement if it does not perceive that it will gain a competitive advantage by refusing to sell unused team tracks to BNSF. Further, UP's concern that it may want to use the tracks for some other purpose can be resolved simply by clarifying that UP's obligation to offer the unused team tracks to BNSF only arises if UP has no use whatsoever for the tracks, as team tracks or otherwise.

II. OTHER UNRESOLVED ISSUES

A. GTM MILL RATE DISPUTE

Since their July 2nd submissions, the parties have continued their discussions about and exchanged further correspondence concerning the proper method for the adjustment to be made annually to the trackage rights fees (GTM mill rate) which BNSF pays for the use of the trackage rights lines. While the parties have not yet resolved all of their differences with respect to their dispute, they have narrowed the differences and reached agreement on several points.

It is critical to BNSF's ability to provide competitive service over the trackage rights lines that this dispute be resolved in a way that fairly and accurately reflects changes in UP's costs. The present adjustment mechanism was agreed to by the parties and imposed by the Board as a condition of the UP/SP merger as a result of concerns expressed by CMA (now ACC), and the issue of the impact of the trackage rights fees on BNSF's ability to provide competitive operations over the trackage rights lines was of concern not only to ACC but also to numerous other parties to the UP/SP merger proceeding.

In the event BNSF and UP are unable to resolve their remaining differences with respect to the adjustment of the GTM mill rate, the ACC has indicated that it will consider invoking its rights under the CMA Agreement to request an audit of the

adjustment calculations. See ACC-1, at 8. Accordingly, given the importance of the proper resolution of this dispute, BNSF is prepared to take the necessary steps to have the issue promptly resolved.

B. I-5 PROPORTIONAL RATE AGREEMENT

Since their July 2nd submissions, the parties have also continued their discussions concerning the I-5 Proportional Rate Agreement. The parties are continuing to evaluate the results of the preliminary audit report of BNSF's compliance under the Agreement, and they have been able to make progress in resolving a number of their differences. In the event the parties are unable to resolve the remaining differences, those differences may need to be resolved through arbitration or by the Board.

III. CONTINUATION OF OVERSIGHT

As set forth in BNSF's July 25th Comments, oversight should continue until the unresolved issues relating to the amendment of the BNSF Settlement Agreement have been resolved. In addition, the outstanding issues relating to the parties' compliance with the BNSF Settlement Agreement and other merger conditions should be addressed by the Board before oversight ends if the parties can not resolve their differences. ACC has expressed its agreement with BNSF's view that oversight should continue until all such issues are resolved.²⁰ See ACC-1, at 8. ACC further agrees with BNSF's position that the Board should clarify that, "even after the formal oversight period ends, it will

²⁰ BNSF notes that the State of Utah has also requested that oversight be extended – for a period of one year – to, inter alia, permit the completion of an audit of Utah rail rates that the State requested during the UP/SP merger proceeding. The State asserts that the rate audit will enable the Board to evaluate whether the conditions imposed by the Board have enabled BNSF to be an effective competitor to UP in the Central Corridor.

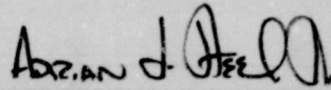
continue to entertain petitions to resolve disputes that the interested parties have been unable to resolve to interpret or enforce the merger conditions." Ibid. See also Comments of Cowboy Railroad Development Company (CRDC-1), at 3 (Board should clarify that "oversight jurisdiction will continue and will be exercised upon an appropriate request.").

CONCLUSION

For the reasons set forth in BNSF's July 25th comments and above, BNSF respectfully submits that the BNSF Settlement Agreement should be modified as proposed by BNSF, as supported by NIT League, ACC and Entergy, to ensure that BNSF can, over both the short and long term, provide the effective replacement competition which the Board envisioned and to which UP committed when the UP/SP merger was approved. BNSF further requests that oversight be continued until the disputed issues set forth above are resolved and that the Board confirm that, after oversight has ended, it will consider and promptly act upon issues of general applicability relating to BNSF's access to shippers under the BNSF Settlement

Agreement as well as issues relating to the parties' compliance with the merger conditions.

Respectfully submitted,



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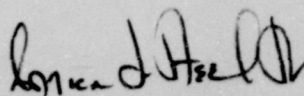
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September 19, 2001

CERTIFICATE OF SERVICE

I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Comments to UP's Fifth Annual Oversight Report and on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement (BNSF-94) are being served on all parties of record.

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

Adrian L. Steel, Jr.

ATTACHMENT 1

EXCERPTS FROM
JULY 1, 1996 ORAL ARGUMENT
FINANCE DOCKET NO. 32760

really unalloyedly positive.

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(1) if you look at the last 15 years, the (2) number of class one railroads has declined by two- (3) thirds in this country. (4) Now, has that led to increases in rates as (5) the anti-trust theorists of the Justice Department (6) might argue? No, it hasn't. There has been a 50 (7) percent decline in real rates, real rail rates. (8) And that can only happen if competition is (9) vigorous. You can't say well, it's because of (10) productivity or its because of deregulation because it (11) wouldn't be passed on to the shipper in lower rates if (12) the competition weren't forcing it to happen. (13) Now, you have ruled again and again that (14) two strong railroads is what is the sine qua non of (15) competition in the rail industry. (16) Now, railroading isn't like widget making. (17) You don't need and you can't have dozens of producers (18) in a market. We had a Mr. Sheppard here for some of (19) these parties and say there isn't any competition in (20) the market unless you have five players in the market. (21) Well, he hasn't seen railroading if that's (22) his opinion. Railroading is incredibly resource

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(1) capital intensive, tremendous fixed costs. And the (2) only way to achieve many efficiencies, not all (3) efficiencies, but many efficiencies, is through (4) merger. (5) You don't want to merge down to one. (6) Competition is vital. We are in favor of competition. (7) This merger is pro-competitive. We are not (8) eliminating rail option for any shipper in the west (9) through this merger. (10) Every shipper that has a choice today will (11) have a choice after this merger, and a better choice. (12) And I'm not denigrating competition. I'm (13) in favor of it. We believe in it. We think and (14) believe we're promoting it through this transaction.

(15) CHAIRPERSON MORGAN: But there are (16) opponents to this merger that are supporting (17) divestiture and indicate that divestiture would not (18) undercut the principal benefits of this merger. Would (19) you care to comment on that?

(20) MR. ROACH: I'd love to comment on that. (21) They are dead wrong. Divestiture will gut the (22) benefits of this merger. All the divestiture

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(1) proposals that are on the table will gut the benefits (2) of this merger. Now why -

(3) CHAIRPERSON MORGAN: And why is that?

(4) MR. ROACH: - is that? Why is that? (5) First of all divestiture will wipe-out single-line (6) service for hundreds of thousands of customers, (7) hundreds of thousands of shipments per year. (8) What you're doing is you're re-Balkanizing (9) the railroads. Instead of consolidating them and (10) achieving single-line service increases, you are (11) eliminating single-line service. (12) You are taking all those coal shippers in (13) Utah and Colorado, for example the MRLs divestiture (14) proposal, who today - even today, before this merger, (15) have single-line routes over the SP out of those (16) states and into the midwestern gateways, the west (17) coast, the south-central United States. (18) And you're eliminating those single-line (19) routes. You're saying, well now we're going to take (20) this line, the Rio Grande Line, and against your will, (21) involuntarily - because all the Utah coal producers (22) oppose divestiture.

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(1) We're going to take that and we're going (2) to force the Applicants to sell it to a fellow named (3) Dennis Washington who would like to make a lot of (4) money out of this transaction and run his own (5) railroad. (6) At that point, those coal shippers have (7) two line rail routes instead of single-line. And (8) furthermore, they've got routes that are much more (9) circuitous and much less efficient than the routes (10) that they'll have with this merger. (11) We're going to create a new coal route (12) straight out of Utah and Colorado across Kansas on (13) what UP called the KP line, which will be upgraded, (14) that saves hundreds of miles of mountainous circuitry (15) that the SP has to do now across either the Tennessee (16) Pass or down from Denver to Pueblo and back across (17) Kansas. (18) Mr. Washington's proposal would (19) reinstitute all those bad routes, plus add (20) interchanges in the middle of the congested Kansas (21) City terminal. (22) And you have the same thing at the west

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(1) end. Where we achieve mileage savings in the central (2) corridor and the divestiture wipes out those mileage (3) savings. (4) Now, what about in the south-central (5) region from Houston up to Memphis, for example, where (6) some of these parties would like to see divestiture? (7) We have serious capacity constraints in (8) those

markets. One of the big benefits of this merger (9) is that we will be able to run the lines from Memphis (10) down to Houston and various other lines in Texas on (11) what's called a directional basis. (12) UP has a single-line, single-track line. (13) SP has a single-track line. Today, they're both (14) operated in both directions, which yields a lot of (15) interference, train meets. It can be done. It's done (16) all the time. Dispatchers put trains in sidings, but (17) it limits your capacity sharply when you have to run (18) a single-track line in both directions. (19) With the merger, we can take one of those (20) routes and make it the northbound route, and one of (21) them to make it the southbound route. (22) We have two large, excellent,

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(1) classification yards: one in Pine Bluff and one in (2) Little Rock. Today, they're used by UP for both north (3) and southbound traffic, which complicates and lowers (4) the capacity of the yard. (5) And the same thing with SP. Under our (6) plan, the yard would be specialized for blocking in (7) one direction, tremendously increasing its capacity. (8) Now, you force us to divest one of those (9) lines, we're back with the inefficient operation. (10) We're back having to spend a lot of capital to add (11) capacity. We no longer can achieve the tremendous (12) improvements in blocking that this merger will bring (13) about. (14) Now "blocking" sounds sort of, you know, (15) technical and unexciting. But blocking is really one (16) of the parts of efficient railroading and switching. (17) You don't want to switch a car any more (18) times that you have to. It adds tremendously to (19) delay, tremendously to cost. (20) What you want to do is to pre-block as (21) early in the shipment as possible for as far down the (22) road as you can pre-block. You want to pre-block in

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(1) Houston to take it all the way to New York City or (2) Albany and so forth. (3) We can do that with this merger because we (4) consolidate volumes while preserving competition for (5) every shipper that has it now and retaining enough (6) traffic for BN/Santa Fe to be fully competitive. (7) But if you force the divestiture, you're (8) handing over a large chunk of the traffic that his (9) exclusively served. It's not competitive traffic. (10) What these divestiture people want is to (11) take over non-competitive traffic. (12) CHAIRPERSON MORGAN: But

size.

(6) MR. ROACH: Absolutely. And that's why we (7) have a five-year implementation period.

(8) VICE CHAIRPERSON SIMMONS: And we'll be (9) looking at you every year.

(10) MR. ROACH: Not - well, that's the (11) oversight and that's fine. But I'm referring to the (12) implementation period in the operating plan, and (13) that's five year, which is unusual. It's (14) traditionally three years. (15) We concluded we need five. WE need five (16) partly to just understand everything fully out there, (17) and part of it to achieve the capital investments (18) which are tremendous and very extensive to upgrade the (19) Southern Pacific system and get the potential out of (20) those routes that's sitting there unachieved for the (21) United States and international economy.

(22) CHAIRPERSON MORGAN: And let me stop you

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(1) there on oversight because there's a lot in the record (2) about oversight being meaningless and window-dressing (3) and so forth. (4) Is there a way to make that kind of (5) oversight provision have more meaning to it, if that (6) indeed is a concern. I know it's in the CMA (7) agreement.

(8) MR. ROACH: Well, I've got to tell you (9) that Union Pacific views the oversight process as (10) tremendously meaningful, indeed daunting if you like, (11) because really what it says is we may end up having (12) five more of those proceedings where all my friends in (13) the rail bar and Washington are having at us. (14) If we don't deliver for the shippers, if (15) BN/Santa Fe doesn't deliver, we're going to have (16) another proceeding. You're going to hear about it. (17) The shippers will come to you with complaints. (18) Now, you may be asking how do you need to (19) design the process to obtain information and how much (20) should you reach out? And that's important. (21) Although again, my first response is I don't think (22) you're going to have to try very hard. I think they

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(1) will come to you if they have concerns. (2) But secondly, I think it's fairly (3) straight-forward what you can do. You can direct (4) inquiries to UP/SP with respect to rates and service. (5) You can inquire of BN/Santa Fe. You can (6) inquire of the key shippers that have been parties in (7) this case. (8) And you will have unrestricted power to (9) impose

additional conditions if appropriate.

That is (10) not the case under the statute normally. There has to (11) be a showing of new evidence or material error or (12) significant change in circumstances. (13) So, this is a significant provision and a (14) significant proposal by the Applicants. That would (15) include divestiture. (16) We think divestiture is a horrendous idea. (17) We vigorously oppose it. But there's no reason that (18) in a year or two or three, if you conclude that it is (19) appropriate, you can't require it. (20) This isn't like a lot of anti-trust (21) lawyers would normally say you can't unscramble the (22) omelette. You can't order divestiture. These rail

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(1) lines are very discreet and distinct. (2) Locomotives are discreet and distinct. (3) And if two years from now you conclude that you want (4) to order the SP line from Houston to Memphis and an (5) appropriate number of locomotives, et cetera, to be (6) divested, there's no reason you can't do that.

(7) COMMISSIONER OWEN: Mr. Roach, along that (8) line, then why did Mr. Davidson be quoted in The (9) Washington Post recently about the divestiture and (10) then exactly what lines might you be talking about?

(11) MR. ROACH: Commissioner Owen, I have (12) notebook where I've collected all the false reports (13) during this case. I should say, a set of notebooks.

(14) COMMISSIONER OWEN: I have a few of those.

(15) MR. ROACH: I don't know the exact (16) quotation you're referring to, but the position of the (17) Applicants and what, to my knowledge, Mr. Davidson has (18) said to anyone who has asked, is that we vigorously (19) oppose divestiture. We have serious questions about (20) whether we could go forward with this transaction if (21) the divestiture proposals that have been put on the (22) table by Conrail or KCS or MRL were granted.

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(1) Now, you know, if you were to order to us (2) to divest five miles somewhere, we'd have a fiduciary (3) duty to our shareholders to think about whether we go (4) forward with the transaction. And I'm sure we would (5) go forward.

(6) COMMISSIONER OWEN: Along that line, it's (7) also been stated that Conrail might be the last one to (8) dispose of their property too or divest too. (9) If that were the case and they did equal (10) service on those other

lines, then would it not be (11) your responsibility fiduciary-wise to your (12) stockholders to sell to Conrail if that were the case, (13) if you ever got to that point?

(14) MR. ROACH: Well, it's a complicated (15) question in this sense: nobody has explained what the (16) process for divestiture would be. Part of the fault (17) there lies with Conrail and KCS because they (18) consciously chose not to file an application for this. (19) Instead they want to delay the case, so (20) they said let's have a second round of proceedings. (21) If you followed tradition and left it to (22) the Applicants to select the party to whom they would

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(1) sell, within their business judgement, with the Board (2) retaining authority to review that and decide whether (3) it passed muster, then UP would have to look - (4) assuming we went down this road at all, we might (5) conclude immediately that it just doesn't - the (6) numbers don't add up. (7) We would have to look at the economic (8) value of various alternatives. And part of that is (9) how much someone offers you. And part of it is how (10) much traffic he is going to take away if he buys the (11) line. (12) Now again, I don't think anybody has said (13) any railroad would be ruled out. And if they did, you (14) know, we have problems of understanding between (15) executives and reporters all the time and nuance. (16) But Conrail would cost UP/SP a lot more (17) than some other players simply because Conrail (18) exclusively serves the entire chemical industry in the (19) northeast. (20) And if they come down to Houston and serve (21) all the UP and SP points down there, you know, our (22) projections would indicate they're going to take very,

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(1) very large shares of that business. (2) Now, I come back to my basic question (3) which is why in heaven's name would you do this as a (4) competitive remedy? (5) These are shippers that are not losing (6) competition. All the shippers that have competition (7) will have it preserved under the BN/Santa Fe (8) settlement. And the very point of these divestiture (9) proposals is for the acquires to get their hands on (10) the shippers that are exclusively served. That's what (11) they want. (12) But those are the shippers that don't (13) experience any reduction in competition. There's a (14) complete disconnect there. There's no

competitive (15) problem. Or to put it in terms of your law, which is (16) important to precedence, it's egregiously over-broad. (17) It's like, you know, solving a problem (18) with a nuclear warhead instead of a surgical strike. (19) And no one has ever explained the rationale for that. (20) All you hear from the proponents of divestiture is (21) trackage rights aren't good enough. Let's have (22) divestiture.

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(1) But they never say, "And boy, will we ever (2) make out like bandits because these shippers who have (3) no say in the matter, are going to end up being served (4) by us instead of served by the railroad that serves (5) them now. And they're going to have worse service, (6) but too bad because they're not able to vote on this (7) matter." (8) CHAIRPERSON MORGAN: Now, let me stop you (9) right there. In terms of trackage rights, now one of (10) the concerns that the opponents have raised is that (11) the trackage rights agreement really represents (12) collusion between UP and BN/Santa Fe. Can you just (13) respond to that? (14) MR. ROACH: Yes. Let me comment on the (15) trackage rights agreement and also a little bit on (16) collusion. (17) I heard the Senator say earlier this (18) morning that it's a terrible thing to let UP choose (19) the party to whom it's going to grant rights. (20) Well, UP didn't want to grant rights to (21) BN/Santa Fe as a commercial matter. That's the last (22) thing UP would have wanted as a commercial matter.

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(1) BN/Santa Fe has a comprehensive western (2) rail network that exceeds that of any other railroad. (3) And if we had granted trackage rights to KCS, the (4) potential traffic diversion would have been a (5) fraction of what it would have been with BN/Santa Fe. (6) Why did we do it? We didn't do it because (7) of some sweetheart deal or collusion. We did it (8) because our shippers all told us that no one else (9) could fit the bill. There just wasn't anyone else (10) that could fit the bill. (11) Mr. Davidson talked to Exxon and the major (12) chemical shippers as we were in the process of (13) negotiating to determine - to find someone who would (14) take these trackage rights. (15) And he was uniformly told, "I don't want (16) a KCS. I don't want an IC. I want a railroad that (17) can get me where SP and UP can get me, or preferably (18) even more places."

Which is exactly what BN/Santa Fe (19) does. (20) I mean, the magic of this solution is that (21) you're talking here about shippers that are only (22) served by UP and SP today. So, what they have today

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(1) is a choice of access to UP points and SP points and (2) all the major gateways. (3) With the merger and the settlement, they (4) are better off because first of all, they've got UP (5) and SP merged and with greater efficiency, an (6) operating ratio that will drop five points, savings of (7) \$580 million a year in costs, much more efficient (8) operations with the directional running, et cetera, et (9) cetera. (10) And they've got service by BN/Santa Fe, (11) which gives them single-line access to Minot, North (12) Dakota and all kinds of places that they can't get to (13) now. (14) It's a boon for these shippers. It's a (15) tremendous improvement in competition. (16) CHAIRPERSON MORGAN: The concern that they (17) have raised is that because trackage rights is a (18) little bit different relationship from an ownership (19) situation, that somehow the landlord, which is in this (20) case UP/SP, has more power over operations, over (21) traffic, and over a whole lot of other things as it (22) relates to real competition. Could you respond to

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(1) that? (2) MR. ROACH: Yes. We have entered into a (3) comprehensive, written protocol to govern dispatching (4) of BN/Santa Fe trains and of UP trains on BN/Santa Fe (5) lines too. (6) CHAIRPERSON MORGAN: And that's on the (7) CMA? (8) MR. ROACH: That is attached to Mr. King's (9) rebuttal statement. And yes, it is referenced in the (10) CMA agreement. The final version of it is attached to (11) Mr. King's rebuttal statement. (12) Now, there's a history of this. As you (13) undoubtedly know, because it's been brought up by (14) parties to this case, SP some years ago, accused UP of (15) discriminating against its trains. (16) And UP took tremendous umbrage at that and (17) there was a huge proceeding on the subject in the (18) UP/CN&W merger case, and then off in federal court. (19) There was massive discovery. And in the end, what SP (20) concluded was that there had not been discrimination. (21) And SP paid the rent that they owed, \$60 (22) million, all before this merger was in anybody's mind.

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(1) It wasn't - it had nothing to do with trying to bury (2) an issue. (3) It was a full-scale inquiry and an (4) enlightened resolution. Now, were there delays to SP (5) trains? Yes, there were delays to SP trains, and (6) that's why it was a hard problem. (7) But the reason was, as it turned out when (8) the operating people got together and studied specific (9) incidents, studied the overall situation, it was a (10) communications problem more than anything else. (11) SP has primitive systems. They could not (12) and did not tell UP when a train was going to be (13) arriving or what priority it was supposed to have. (14) The train crew would end up sitting on a (15) siding and they would think they were being (16) discriminated against. (17) But the problem was that SP wasn't telling (18) UP, and UP wasn't doing enough to ask. And what we (19) did was we agreed on procedures that would ensure (20) communications. (21) Now that we have technological advances, (22) we can do a lot of this in real time. WE can have

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(1) computers on the trains and have a dispatching center (2) tied in directly. (3) And we took the base of those (4) understandings and built on them with BN/Santa Fe for (5) this case. And we added other features such that the (6) BN/Santa Fe manager will be physically in the Harriman (7) Dispatching Center in Omaha to see how the BN/Santa Fe (8) trains are dispatched. (9) He's not going to see any commercially (10) sensitive information or rates or anything like that. (11) But he's going to see his train arrive. He's going to (12) know it's priority and he's going to be able to (13) confirm that it's appropriately dispatched. (14) There are sanctions in the agreement. (15) There's reporting. There's monitoring, et cetera. (16) Now, the last thing I'll say because it's (17) something that any rail operating person would say, so (18) I had better say it, is that UP, SP and BN/Santa Fe (19) are not going to wrongfully hammer each other's trains (20) because they're dependent on the other just ask much (21) as the other is dependent on them. (22) And that isn't to say to there's going to

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(1) be collusion or anything bad. But it does say that - (2) you know, somebody said these rights are (3) unprecedented. They're not unprecedented at all. (4) All the railroads in the west and the east (5)

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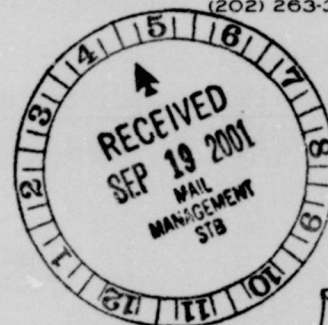
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September 19, 2001

VIA HAND DELIVERY

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



203484

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

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

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 Reply to UP's Fifth Annual Oversight Report and on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement (BNSF-94). 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

cc: All Parties of Record

CHARLOTTE CHICAGO COLOGNE FRANKFURT HOUSTON LONDON
LOS ANGELES NEW YORK PALO ALTO PARIS WASHINGTON

INDEPENDENT MEXICO CITY CORRESPONDENT: JAUREGUI, NAVARRETE, NADER Y ROJAS

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BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760 7203484

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 REPLY COMMENTS TO UP'S FIFTH ANNUAL
OVERSIGHT REPORT AND ON UNRESOLVED ISSUES RELATING
TO THE RESTATED AND AMENDED BNSF SETTLEMENT AGREEMENT

The Burlington Northern and Santa Fe Railway Company ("BNSF") submits the
following reply comments to (i) UP's "Fifth Annual Oversight Report" filed on July 2,
2001 (UP/SP-384); (ii) UP's "Report on Issues Arising Under the BNSF Settlement

Agreement" also filed on July 2, 2001 (UP/SP-385); (iii) UP's "Opposition to Substantive Changes to the BNSF Settlement Agreement" filed on July 25, 2001 (UP/SP-387); and (iv) the comments filed on August 17, 2001, by various parties with respect to the unresolved issues relating to the Restated and Amended BNSF Settlement Agreement.¹

INTRODUCTION

In its Fifth Annual Oversight Report, UP presented information and data on the various public benefits it claims have been achieved as a result of the UP/SP merger. BNSF agrees that, after what UP itself has called an "infamous start," many of the benefits projected by the Applicants have been achieved, and that, overall, BNSF has been able to provide effective competitive service utilizing the rights it received pursuant to the BNSF Settlement Agreement and the conditions imposed by the Surface Transportation Board ("Board") on the merger. However, as set forth in BNSF's "Fifth Annual and Cumulative Progress Report" filed on July 2, 2001 (BNSF-PR-20), and in its "Comments on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement" filed on July 25, 2001 (BNSF-93), there are issues remaining as to whether the conditions the Board imposed "have effectively addressed the competitive issues they were intended to remedy." Decision No. 16, Finance Docket No. 32760 (Sub-No. 21), at 13. These issues need to be resolved before formal oversight is ended so that each individual shipper that lost two carrier competition as a

¹ The City Public Service Board of San Antonio, TX filed comments (CPSB-15) in which it noted that the proposed Restated and Amended BNSF Settlement Agreement does not conform in certain respects to the prior agreement reached between CPSB, UP and BNSF as to the language necessary to implement the Board's decisions concerning service by BNSF to CPSB's Elmendorf, TX station. As CPSB reports in its comments, BNSF and UP have agreed to incorporate the language previously agreed upon by CPSB, UP and BNSF in the final Restated and Amended BNSF Settlement Agreement.

result of the UP/SP merger can be assured that the competition will be preserved and so that BNSF has the ability to provide competitive replacement service to all such shippers both now and in the future.

Section I of these Reply Comments addresses the unresolved issues relating to the amendment of the BNSF Settlement Agreement. Section II discusses the status of the parties' discussions on other unresolved issues, including issues relating to the adjustment of the trackage rights fees and to the I-5 Proportional Rate Agreement. Finally, Section III addresses the need for the continuation of formal oversight until such time as the Board resolves the issues raised in oversight, including the amendment of the Settlement Agreement and any other pending issues.

I. AMENDMENT OF THE BNSF SETTLEMENT AGREEMENT

A. BNSF'S PROPOSED ALTERNATIVES DO NOT CONSTITUTE IMPERMISSIBLE SUBSTANTIVE CHANGES TO THE BNSF SETTLEMENT AGREEMENT

Much of UP's opposition to BNSF's proposed alternatives on the unresolved Settlement Agreement issues rests on the erroneous premise that BNSF's positions on the issues would result in "substantive changes" to the Settlement Agreement – changes that, in UP's view, would expand BNSF's rights and fundamentally alter the conditions imposed by the Board in approving the UP/SP merger. UP/SP-387, at 2. Based on that premise, UP asserts that the adoption of BNSF's alternatives would constitute unlawful retroactive regulation, contravene Board policy favoring private settlement agreements, and violate BNSF's promises in the BNSF Settlement Agreement. UP further argues that it would be unfair to impose additional conditions five years after consummation of the merger. As is shown below, however, UP's premise is without foundation, and, in any event, UP expressly accepted the possibility

of further conditions necessary to preserve competition even if BNSF's proposed alternatives could somehow be construed to be new or additional conditions on the merger.

1. UP Has Mischaracterized BNSF's Proposed Alternatives

UP's characterization of BNSF's proposed alternatives is clearly incorrect. As NIT League recognizes, BNSF is not seeking new rights or conditions. Instead, BNSF merely is seeking authoritative clarifications of its existing rights under the Settlement Agreement – clarifications necessitated and justified by the parties' long-standing and, as yet, unresolved disputes over key issues and definitions under the Agreement; various Board decisions explaining and elaborating upon the conditions imposed in the UP/SP merger; and, most importantly, the need to ensure that pre-merger competitive options which shippers enjoyed are preserved. See Reply Comments on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement submitted by The National Industrial Transportation League (NITL-27), at 3-5. Thus, contrary to UP's characterization of BNSF's proposed alternatives, BNSF is, in fact, seeking only to codify the basic principles that have emerged from the Board's decisions and to clarify basic definitions and practices, so that (a) UP, BNSF, and the shipping community will have the benefit of the certainty that comes from clear, authoritative definitions and principles in the BNSF Settlement Agreement as modified by the Board and (b) all shippers who would have benefited from competition between UP and SP, and no other railroad, but for the UP/SP merger will have the benefit of such competition.²

² In addition, with respect to several of the unresolved issues, it is UP, not BNSF, that is seeking a change. For instance, UP seeks to impose a new restriction on the Board's transload condition that would exclude private transloads. Similarly, UP proposes to delete the language in Section 6c of the original Settlement Agreement

Further, according to UP's own statements and representations, the overall purpose of the BNSF Settlement Agreement was to preserve pre-merger competition for "every" shipper. See, e.g., Applicants' Rebuttal – Volume 1, Narrative (UP/SP-230), at 89 (Stating that, as a result of the BNSF Settlement Agreement, "every affected shipper will gain stronger competition") (emphasis in original); Transcript of UP/SP Oral Argument, July 1, 1996, at 45, 63 ("We are not eliminating rail option[s] for any shipper in the west through this merger. * * * All the shippers that have competition will have it preserved under the BN/Santa Fe settlement.")³ In light of these representations, it is disingenuous for UP to now claim that proposals intended to ensure the preservation of such competition for "every" shipper somehow constitute retroactive regulation, violate the Board's policy in favor of settlement agreements, or constitute a breach of BNSF's promises under the Settlement Agreement. Rather, having secured the Board's approval of the merger, UP seeks – as it has on numerous occasions throughout the 5-year oversight period – to have the BNSF Settlement Agreement and the Board's implementing conditions read narrowly rather than in a way that would protect "every potential competitive concern." See UP/SP-384, at 54 ("The Merger Conditions Addressed Every Potential Competitive Concern").

(Section 6(d) of the amended Settlement Agreement) that expressly incorporates the right of BNSF set forth in Section 9l (original) (Section 9(m) (amended)) to connect with its own lines from the trackage rights lines. And, UP wants to classify BNSF's trackage rights between Elvas and Stockton as overhead trackage rights even though it has already acknowledged BNSF's right to serve two new shipper facilities on that line. Thus, UP's concern about changes being made after the Board's decision approving the merger would seem to apply as much, if not more, to UP's proposals as to BNSF's proposals.

³ Excerpts of the oral argument transcript cited herein are included in Appendix 1 filed with these Reply Comments.

2. UP Has Expressly Accepted The Possibility Of Additional Conditions

Moreover, UP's extended arguments about the impropriety and unfairness of the retroactive imposition of conditions in this proceeding (UP/SP-387, at 3-8) are inconsistent with the explicit commitments that UP made prior to the Board's approval of the UP/SP merger. For instance, in oral argument, UP's counsel stated that, unlike "the case under the statute normally," the Board will "have unrestricted power to impose additional conditions, if appropriate," including divestiture. Transcript of UP/SP Oral Argument, July 1, 1996, at 59. Similarly, in the CMA Agreement, UP expressly agreed (i) that it would submit to an oversight process in which the Board would determine whether the Settlement Agreement "has effectively addressed the competitive issues it was intended to address" and (ii) that "[t]he Board shall have authority to impose additional remedial conditions." CMA Agreement ¶ 14 in UP/SP-219. See also UP/SP-230, at 21 ("The Board would have the authority to impose additional remedial conditions that it found to be called for."); Rebensdorf Rebuttal Verified Statement, at 11 (UP/SP-231, vol. 2, part C) (same). As set forth above, UP's pleadings and witnesses have stated that the BNSF Settlement Agreement was intended to preserve all existing pre-merger UP/SP competition. Accordingly, even if UP were correct in characterizing BNSF's proposed alternatives as requests for new conditions that in some other merger proceeding could not be imposed at this point, UP's retroactivity argument is unavailing here since BNSF's proposals are necessary to preserve such pre-merger competition.

In addition, UP's argument (UP/SP-387, at 3, 5) that BNSF's alternatives are unnecessary in light of BNSF's success in competing through its trackage rights operations is misconceived. The fact that BNSF's trackage rights operations are a

commercial success and that BNSF is generally an adequate competitive replacement for the loss of SP service does not mean that BNSF's proposals for the amended Settlement Agreement are unnecessary to assure that all shippers, including new shippers and users of new transloads in the future, are able to avail themselves of BNSF service to replace the loss of one of two competitive rail alternatives that otherwise would have resulted from the UP/SP merger. Further, the Board's conditions were intended to preserve competition and to enable BNSF to maintain sufficient traffic density on the trackage rights lines, not only in the present but also over the entire 99 year term of the Settlement Agreement. Thus, it is critical that all necessary modifications and clarifications be undertaken so that BNSF can provide fully competitive service over the long-term as a replacement for SP.⁴

B. BNSF'S PROPOSED ALTERNATIVES ARE NECESSARY TO PRESERVE PRE-MERGER COMPETITION AND TO MAINTAIN BNSF'S ABILITY TO PROVIDE FULLY EFFECTIVE REPLACEMENT COMPETITION

Turning to BNSF's specific proposals, UP generally does not assert that BNSF's proposed modifications are unnecessary to preserve pre-merger competition or to enable BNSF to achieve adequate traffic density over the long term – the two stated purposes of the Board-imposed conditions at issue. Rather, the focus of UP's opposition is (i) that when the BNSF Settlement Agreement was executed, UP and BNSF did not intend to protect the particular pre-merger competition which BNSF's

⁴ In fact, the Board has previously rejected this argument by UP. In Decision No. 86, the Board held that the fact that it had recognized in its general oversight decisions that BNSF was providing fully competitive service did not mean, as UP claimed, that "the traffic density rationale can no longer 'be taken seriously'." Decision No. 86 (served July 12, 1999), at 5 (quoting UP/SP-365, at 2). The Board noted that the "new facilities condition was intended to be a permanent solution for both traffic density and competitive problems, and it continues to be necessary for both purposes." Ibid.

alternatives seek to protect, or (ii) that the Board has previously rejected BNSF's position. Neither ground justifies the denial of BNSF's proposed alternatives. As to the first, the Board's decisions override UP's and BNSF's intent and, if the Board determines, for example, that in order to fully preserve pre-merger indirect siting and transloading competition, "2-to-1" points should be defined by 6-digit Standard Point Location Codes ("SPLCs") regardless of whether an actual "2-to-1" shipper was located at the geographic point, the Board's determination would prevail.⁵ As to the second, UP is simply incorrect. The Board has not previously rejected BNSF's position on any of its proposed alternatives. In fact, as shown below, the Board has previously rejected a number of the positions UP has asserted in its pleadings.

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

UP argues that BNSF's proposed use of 6-digit SPLCs to define "2-to-1" points should be rejected because UP and BNSF negotiated the BNSF Settlement Agreement on the basis of a definition of such points which required the presence of at least one actual "2-to-1" shipper and because, in UP's view, the Board rejected a definition of such points based on 6-digit SPLCs in Decision No. 44. Neither reason justifies the denial of BNSF's proposed definition.⁶

⁵ See NITL-27, at 14 ("the scope of BNSF's rights * * * is [not] only a matter of the private agreement of the parties. * * * [The Board's] decisions converted that agreement from a private settlement to an integral part of the mechanism by which the Board implemented its own statutory responsibility to protect the public interest.")

⁶ As explained in BNSF's July 25th comments and as further established by NIT League in its comments, it is important that the Board clarify the definition of a "2-to-1" point so that the shipping community can determine with certainty whether new facilities, existing transloads and new transloads not on a trackage rights line are entitled to service from BNSF under the Settlement Agreement. See BNSF-93, at 3; NITL-27, at 9 and n.2. Further, there are instances in which UP's position deprives

a. Scope of the BNSF Settlement Agreement

Initially, even assuming that UP is correct in its view that the "basic structure" of the BNSF Settlement Agreement was to provide competition to all "2-to-1" shippers, that structure was altered by the Board's determination that indirect siting and transloading competition also needed to be preserved at "2-to-1" points. Decision No. 44, 1 S.T.B. 233, 391-93 (1996). In addition, as set forth in BNSF's July 25th comments (BNSF-93, at 6-8), UP's argument also contradicts the testimony of its witnesses in the UP/SP merger proceeding⁷ that they intended to preserve all pre-merger competition without any qualification that the presence of an actual "2-to-1" shipper was required.⁸

Further, UP's position is contrary to the agreed to language in Section 8(i) of the Restated and Amended BNSF Settlement Agreement that it is the intent of UP and BNSF to preserve two-carrier competition for all "shippers who had competition by means of siting, transload or build-in/build-out from only UP and SP pre-merger." See Joint Submission of Restated and Amended BNSF Settlement Agreement (UP/SP-386

shippers of their pre-merger competitive options. See BNSF-93, at 8 n.7 (Refrigerated Distribution Specialists example at Tracy, CA).

⁷ In this regard, it is possible that UP will submit a verified statement to try to qualify or explain the cited testimony. The Board, BNSF and shippers should, however, be entitled to rely on the testimony given during the proceeding rather than written statements crafted over five years later. In addition, any such effort by UP would be directly contrary to UP's statements in its pleadings that, for example, all transloading options would be preserved. See BNSF-93, at 4 n.2.

⁸ In addition, in Decision No. 44, the Board noted that UP did not restrict "2-to-1" points to those having at least one shipper that could be served directly or through reciprocal switching by UP and SP, and no other Class I railroad. Instead, as the Board stated, UP and SP "added points on shortline railroads reachable by connections to UP and SP, but by no other Class I railroad. Further, they added any point that had what they considered to be a bona fide build-in, build-out, or transload option prior to the merger." Decision No. 44, 1 S.T.B. at 391 n.127 (emphasis original).

and BNSF-92), at 33. As reflected by the inclusion of Reno, NV (where there was no actual "2-to-1" shipper at the time of the merger) as a "2-to-1" point, such competition existed regardless of the presence of such a shipper.

Finally, and most importantly, UP does not argue that such a definition is not needed to preserve pre-merger competition. The reason UP does not do so is obvious: indirect siting and transload competition existed before the merger regardless of whether or not there was an actual "2-to-1" shipper at a 6-digit SPLC location, and the Board quite rightly modified the BNSF Settlement Agreement to ensure that such competition would be preserved.⁹

Similarly, in its comments, NIT League points out that a

shipper considering locating today at a rail station listed for service in 1995 by both UP and SP would, but for the merger of UP and SP, have that "competitive pressure" available to obtain a rate and service package from the two railroads, regardless of whether there was another shipper at that location open to both UP and SP in 1995. Thus, it is necessary at this point in time to define "2-to-1" points as geographic locations that were open to service by both UP and SP in 1995 (regardless of the existence of a shipper open to both UP and SP in 1995), in order to replicate, through competition provided by BNSF today, the "competitive pressure" that would have existed today but for the changes wrought by the merger of the UP and SP.

⁹ Given the undisputed existence of such pre-merger indirect competition, UP should be required to explain how, if its position that there must be an actual "2-to-1" shipper at a geographic location were to be adopted, that indirect competition is to be preserved at locations where there is no such shipper. UP provides no such explanation in its July 25th Opposition or in the attached verified statement of John H. Rebensdorf.

NITL-27, at 10 (emphasis in original; quoting Decision No. 44, 1 S.T.B. at 393).¹⁰ See also American Chemistry Council's Comments Regarding Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement (ACC-1), at 3 ("BNSF's proposed definition is in accordance with the overall logic of the settlement agreements to preserve all forms of competition at two-to-one points").

b. NIT League's Position

In addition, UP's contention that the Board has previously rejected a proposal by NIT League to use 6-digit SPLCs to define "2-to-1" points is also incorrect. Rather, the Board rejected the proposals (which were not made by NIT League) to use BEAs and 4-digit SPLCs to "redefin[e] 2-to-1 points." Decision No. 44, 1 S.T.B. at 372.¹¹ As for 6-digit SPLCs, as NIT League explains, NIT League did not argue that 6-digit SPLCs should be used to define "2-to-1" points. See NITL-27, at 11. Instead, NIT League submitted evidence about 6-digit SPLCs in connection with its contentions about the "overall reduction in competition to be caused by the UP/SP merger, in support of the League's proposed remedy, namely, divestiture of various SP lines to other carriers." Ibid. The Board, however, found that, when put forward in support of an argument for divestiture, this approach tended to "aggregate traffic that will experience various types of competitive problems," and that a more nuanced, less intrusive approach than

¹⁰ NIT League also explains that the use of 6-digit SPLCs to define "2-to-1" points is "particularly appropriate because in 1995, both UP and SP held out to the shipping public, in their tariffs, that they each in fact served that geographic location." NITL-27, at 10 (emphasis in original).

¹¹ As NIT League points out, UP's block quotation of this portion of Decision No. 44 artfully omitted the terms "BEA" and "4-digit SPLC" in an apparent effort to make it look like the Board had expressly rejected the use of 6-digit SPLCs to define "2-to-1" points. See NITL-27, at 12 (discussing block quotation in UP/SP-387).

divestiture for addressing such competitive harms was appropriate. Decision No. 44, 1 S.T.B. at 392. Agreeing with various protestants that UP and SP had "not gone far enough" in addressing the loss of indirect competition which would occur as a result of the merger, the Board then proceeded to impose conditions designed to preserve that competition. Id., at 393.

Thus, contrary to UP's claims, the Board's rejection of NIT League's 6-digit SPLC analysis did not constitute a conclusion that it is inappropriate to use 6-digit SPLCs to identify "2-to-1" points for the purposes of determining whether a new facility, an existing transload or a transload that is not built on a trackage rights line should be open to BNSF service under the Settlement Agreement in order to preserve pre-merger competition. Rather, as BNSF established in its July 25th Comments (and as NIT League persuasively argues in its Reply Comments), the use of 6-digit SPLCs for identifying geographic locations where pre-merger competition should be preserved is especially appropriate and logical, and there is nothing in the Board's decision which supports UP's position that there must be at least one actual "2-to-1" shipper at a location before the Board's remedies designed to protect pre-merger indirect siting and transloading competition apply.

2. Definition Of Transload Facilities

UP argues that BNSF's proposed definitions of "Existing Transload Facilities" and "New Transload Facilities" would potentially result in BNSF access to every exclusively-served industry on the trackage rights lines.¹² UP claims this would be contrary to the

¹² UP also questions whether there is a need for a definition of "Existing Transload Facilities" because, in its view, the parties have identified all such facilities at "2-to-1" points, and it is unlikely that any additional facilities will be identified. UP's argument is, however, based on its narrow definition of a "2-to-1" point, and if, as BNSF, NIT League,

Board's statement that the transload condition should be applied in a manner that "would not result in direct BNSF access" to such industries, and UP proposes to impose a restriction that would preclude the operator of a transload facility to which BNSF would have access from having any ownership interest in the product being transloaded. However, as explained in BNSF's July 25th comments, the Board has already addressed UP's concern in this regard and held that UP is adequately protected against this potential risk. UP's proposal to prohibit BNSF access to private transloads should therefore be rejected.

First, if BNSF serves a shipper's "private" transload facility, BNSF will not be obtaining direct access to what were UP's or SP's exclusively-served shippers along the trackage rights lines. Instead, from the shipper's point of view, the access that BNSF will be obtaining will be indirect and attenuated, because, under the "legitimate" transload condition, the shipper will be required to incur significant additional expenses in shipping its product via the BNSF-served transload, over and above the "costs that would be incurred in providing [or obtaining] direct rail service." Decision No. 61, at 12. See also Decision No. 44, 1 S.T.B. at 372 ("Transloading * * * results in additional costs, as freight is first loaded into a truck, and then reloaded into a freight car, or the reverse.").

Second, as mentioned, the Board already has addressed "UP/SP's concern that a literal reading of the transload condition will allow BNSF to operate as if it directly

and ACC believe the Board should do, the Board adopts BNSF's definition of such a point, then it is important that a clear definition of an Existing Transload Facility be set forth so that qualifying facilities can receive the benefit of the two carrier competitive service they lost as a result of the UP/SP merger.

reached all exclusively served UP/SP shippers on the trackage rights lines." Decision No. 61, at 12 (emphasis original). The Board addressed this concern by imposing the requirement that a transload must be "legitimate" to qualify for BNSF service under the transload condition – that is, the transload must "entail both the construction of a rail transload facility as that term is used in the industry and operating costs above and beyond the costs that would be incurred in providing direct rail service." Id. (emphasis original); see also NITL-27, at 13 (noting that the Board addressed the concerns raised here by UP in Decision Nos. 61 and 75, when it stated and applied the requirement that a transload be legitimate in order to qualify for BNSF service under the UP/SP merger transload condition). What UP seeks to do here, however, is impose an additional requirement over and above the legitimate transload requirement. See NITL-27, at 13 ("UP would now have the Board engraft a new requirement, namely, that 'the operator of [the transload facility] has no ownership of the [product] being transloaded.'") (emphasis in original; quoting UP-proposed alternative on page 8 of the Red-Lined Version of the Proposed Restated and Amended BNSF Settlement Agreement, in UP/SP-386/BNSF-92).

UP's proposed additional requirement would deprive shippers of an option for obtaining two-carrier service that they would have had if the UP/SP merger had not occurred. After all, prior to the UP/SP merger an exclusively-served UP shipper could obtain SP service either by utilizing a transload operated by someone else (such as SP or an independent third party) or by constructing and operating its own "private" transload facility. Under UP's proposal, the latter option would not be available to shippers wishing to utilize a transload to obtain BNSF service (regardless of where they

located the transload). Thus, UP's proposed additional restriction on the application of the transload condition would be inconsistent with the Board's intent "to preserve the indirect UP vs. SP competition provided by * * * transload options." Decision No. 61, at 10. See also ACC-1, at 5 (BNSF's definition "better reflects the intention of the parties and the Board to replicate all actual and potential competition that existed between UP and SP pre-merger.").¹³

Further, UP's proposed prohibition on private transload facilities would detract from the other primary purpose of the transload condition – that is, to preserve BNSF's ability to secure and maintain sufficient traffic density. BNSF's ability to do so was a cause for concern to many parties in the UP/SP merger proceeding, and the Board acted to enhance and preserve that ability. The Board has rejected prior efforts by UP to narrow the new facilities and new transload conditions in ways that would adversely affect BNSF's ability to develop and maintain traffic density (See Decision No. 61, at 12; Decision No. 86, at 5), and it should do likewise here.

Finally, perhaps recognizing that the Board has previously rejected the premise of its argument that privately-owned transload facilities should not be within the scope of the transload condition, UP tries another argument that the Board has also previously rejected. UP argues that a "shipper whose facility was served by SP [sh]ould be required to build its transload facility on a line owned by UP before the merger or vice versa." UP/SP-387, at 22. The Board rejected precisely this argument by UP when it

¹³ As NIT League notes, UP's position would also impose an additional barrier on a shipper's use of the transload condition. In addition to meeting the other requirements imposed by the Board, the shipper would have to find an independent operator for the facility and overcome whatever operational problems might arise as a result of the facility's separate ownership and control. NITL-27, at 13.

denied UP's petition seeking clarification or reconsideration of the new facilities and transload conditions (UP/SP-275) in Decision No. 61, and held that the transload condition should be read literally to permit BNSF to "serve any new transload facility" on a trackage rights line. Decision No. 61, at 7 (emphasis added). It should again do likewise here.

Accordingly, the Board should reject UP's effort to relitigate the scope of the condition and to impose a new requirement on the condition. The Board should instead adhere to its prior ruling that the condition as imposed by the Board adequately protects UP while at the same time ensuring that the dual competition preservation and traffic density purposes of the condition are met.¹⁴ Indeed, the fact that there has not been any significant number of new private transload facilities built by exclusively-served shippers on the trackage rights lines indicates that the protection the Board imposed has worked and that there is no need to revise or restrict the condition. See also ACC-1, at 5 ("There is no reason at this late date to engraft upon the new facilities condition an exclusion of private transload facilities.").

3. Trackage Rights Restrictions

UP argues that the restrictions on BNSF's trackage rights between Elvas and Stockton, CA and in the Houston-Memphis-St. Louis corridor should remain in place because the restrictions were agreed to in the settlement agreement negotiations between UP, BNSF and, with respect to the Houston-Memphis-St. Louis corridor, CMA.

¹⁴ It should be noted that UP is incorrect in its assertion that the Board did not anticipate or intend that some exclusively-served UP shippers would be opened to BNSF as a result of the 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.

However, even assuming UP is correct, the conditions imposed by the Board to preserve pre-merger competition and to enable BNSF to achieve adequate traffic density would override any such intentions of the parties.

a. Elvas-Stockton Trackage Rights

While UP and BNSF disagree over the exact circumstances which led to the grant of trackage rights on the former SP line between Elvas and Stockton to BNSF,¹⁵ there is no doubt that those trackage rights were included in the BNSF Settlement Agreement when the Board held in Decision No. 44 that BNSF could "serve any new facility at any point on any SP or UP segment over which it has been granted trackage rights * * *." Decision No. 44, 1 S.T.B. at 373 (emphasis deleted and added). The Board could hardly have been any clearer in requiring that the new facilities condition apply to all of the trackage rights BNSF received under the Settlement Agreement.¹⁶

Indeed, as noted in BNSF's July 25th comments (BNSF-93, at 15), UP recognized the applicability of the new facilities condition to these trackage rights when

¹⁵ In this regard, UP continues to assert that it granted BNSF these trackage rights only as a "special accommodation" and that it should not be penalized for its "generosity" in enabling BNSF to avoid having to construct a difficult and costly connection to the UP line at Haggin Junction, CA. However, as explained in BNSF's July 25th Comments (BNSF-93, at 13-14), a competitive route from SP's line in the Central Corridor to Stockton where the trackage rights lines join BNSF's system is critical to BNSF's ability to provide competitive service in the Central Corridor, and BNSF should have the right to access new facilities on the former SP line – just as it does on all other trackage rights lines – in order to both preserve pre-merger competition and maintain traffic density.

¹⁶ The fact that the restrictions were set forth in the version of the Settlement Agreement that was before the Board when the Board approved the UP/SP merger does not, as UP argues, indicate in any way that the Board approved of the restrictions. The Board approved the Settlement Agreement only as modified by the Board's conditions, and the Board held the new facilities condition would apply to all trackage rights lines.

it granted BNSF access to new facilities constructed by Southdown Cement at Polk and Willamette Industries at Elk Grove. In its July 25th Opposition, UP asserted that it granted BNSF access to these two shippers to provide them with rail alternatives during UP's service crisis in 1997-98. UP/SP-387, at 20. However, access to the two shippers was not granted to BNSF by UP until 2000, well after the service crisis had abated. Moreover, if UP's grant of access had been based on reasons related to the service crisis, the access granted could have been expected to be temporary in nature rather than the permanent access which was granted.

Thus, UP's efforts to distinguish the Elvas-Stockton trackage rights from the other trackage rights granted in the Settlement Agreement should be rejected, and the Board should hold that the trackage rights are no different from any of the other trackage rights which the Board determined needed to be enhanced to enable BNSF to provide effective replacement competition.

b. Houston-Memphis-St. Louis Corridor Trackage Rights

UP argues that the restrictions on BNSF's use of its trackage rights on the UP and SP lines north of Bald Knob and Fair Oaks, AR should be retained. The two disputed restrictions which UP wishes to retain are, as stated in Section 6c of the BNSF Settlement Agreement, (i) a limitation on BNSF's ability to enter or exit the trackage rights lines between Memphis and Valley Junction, IL, and (ii) a geographic limit on traffic BNSF can handle on these lines to traffic to, from, or through Texas and Louisiana. UP's argument is based on its claim that UP, BNSF and CMA agreed that BNSF would use those trackage rights only to serve what UP has labeled "St. Louis Gateway" traffic. UP asserts that the two restrictions were imposed because CMA's concern was limited to BNSF's ability to compete effectively for St. Louis Gateway

traffic, and thus BNSF did not need to use the trackage rights lines for any other reason and would use its own lines between Memphis and St. Louis for traffic unrelated to the UP/SP merger. However, as explained below, the language of the existing Settlement Agreement and the Board's decisions do not support the restrictions, and the relevant concerns are broader than simply BNSF's ability to reach St. Louis in an effective competitive manner.

(i) Entry/Exit Restriction

First, as to the entry/exit restriction, UP has proposed to delete the existing language in Section 6c of the Settlement Agreement which expressly subjects the restriction to BNSF's separate right pursuant to Section 9l of the Settlement Agreement to connect with its own lines from the trackage rights lines. UP has, however, provided no justification as to why this language should be deleted. In fact, UP does not even mention the existence of the language in any of its pleadings.¹⁷ Moreover, the language of Section 9l giving BNSF the right to connect from the trackage rights lines to its own lines was included in the original September 25, 1995 BNSF Settlement Agreement, and it is clear from the language of Section 6c that, when the exit/entry restriction was subsequently included in the Second Supplemental Agreement, the parties intended that BNSF's previously-existing right to connect with its own lines would apply notwithstanding the restriction.¹⁸ Such an interpretation does not read the restriction on

¹⁷ Presumptively, UP will address this language in its reply comments, but, regardless of what UP may say, the fact remains that the plain meaning of the language (which was drafted by UP) gives BNSF the right to connect with its own lines pursuant to Section 9l.

¹⁸ Under the original September 25, 1995 BNSF Settlement Agreement, BNSF had the unqualified right to connect from its own lines with the former SP line at Jonesboro, AR and Rockview, MO under Section 9l of that Agreement. There is absolutely no

BNSF's right to exit or enter this portion of the trackage rights lines out of the Settlement Agreement since there were at least two shortlines (the Missouri & Northern Arkansas Railroad at Diaz, AR and the Jackson & Southern Railroad at Delta, MO) operating at the time of the merger to which the restriction would be applicable. Further, the Second Supplemental Agreement was executed by UP and BNSF in order to incorporate various terms and conditions from the CMA Agreement into the BNSF Settlement Agreement. However, contrary to UP's assertions, the CMA Agreement itself does not contain any restriction on BNSF's right to enter or exit these trackage rights lines or, for that matter, any of the other trackage rights lines.

Second, even assuming that the parties to the CMA Agreement were concerned primarily (or even exclusively) about BNSF's ability to compete effectively for St. Louis traffic when they granted BNSF trackage rights north of Bald Knob and Fair Oaks, the Board had broader concerns in mind when it enhanced BNSF's right to provide service in the Houston-Memphis-St. Louis corridor. For instance, as with all of the trackage rights lines, the Board was concerned about BNSF's ability to acquire and maintain sufficient traffic density in the corridor, and it rejected UP's attempt on reconsideration to restrict BNSF's right to serve new facilities on UP's line north of Bald Knob as inconsistent with the traffic density justification underlying the new facilities and transload conditions. See Decision No. 61, at 11. In fact, the Board noted that, by granting BNSF trackage rights over the UP line as well as the SP line in the corridor in

indication that the parties intended to deprive BNSF of that right, and in fact the parties did not. Instead, they included language in Section 6c which not only explicitly preserved BNSF's then existing right to connect with the former SP line, but also provided BNSF with the right to connect with the UP line.

order to address the problem of a directional flow handicap, UP exacerbated the insufficient traffic density problem. Ibid. The Board therefore refused "to jeopardize BNSF's ability to achieve sufficient traffic density on these lines", and allowing the exit/entry restriction to remain in place or otherwise restricting BNSF's use of the lines would jeopardize that ability as well since BNSF's ability to compete in the most effective way (and to secure and maintain traffic density) would be adversely affected. Ibid.

Third, the Board's expansion of the new facilities and build-in/build-out conditions in Decision No. 44 substantially enhanced BNSF's rights to serve shippers in the Houston-Memphis-St. Louis corridor, and, as Entergy and NIT League have pointed out in their comments (ESI-33, at 2, and NITL-27, at 15-16), the adoption of UP's position would significantly affect BNSF's ability to provide competitive service in the Houston-Memphis-St. Louis corridor by increasing BNSF's cost of service and shippers' cost of equipment.¹⁹ Not only would the restriction on entry and exit thereby prevent BNSF from providing a competitive replacement service for SP's pre-merger service, it would also eliminate specific pre-merger joint-line routings that BNSF could have offered by interchanging with SP at Jonesboro and UP at Hoxie.²⁰

¹⁹ NIT League also urges the Board to "avoid where possible imposing unnecessary operational restrictions on BNSF's trackage rights." NITL-27, at 15.

²⁰ In its comments, Entergy provides a specific example of how the entry/exit restriction could adversely affect BNSF's competitiveness to provide service to its White Bluff Station. As shown by Entergy (ESI-33, at 14 n.12), requiring BNSF to route Powder River Basin unit coal trains past Jonesboro to Memphis and then return back to the SP line and to do likewise from the UP line in returning to the Powder River Basin would add approximately 166 miles to BNSF's route. While UP can be expected to assert that this additional mileage would not affect BNSF's competitiveness, there is no doubt that, at least to some degree, BNSF will be less competitive because, not only

(ii) Geographic Limit

As to the second restriction which purports to limit the traffic BNSF can handle on the UP and SP lines north of Bald Knob and Fair Oaks to traffic to, from or through Texas and Louisiana, it should be noted that in its July 25th Opposition UP has interpreted the restriction to permit BNSF to use the lines to carry merger-related traffic involving points in Texas, Louisiana and Arkansas. UP/SP-387, at 17. However, even this reading of the restriction cannot stand since the Board gave BNSF the right to serve new facilities and transloads on all of its trackage rights lines, including both the UP and SP lines north of Bald Knob and Fair Oaks. For instance, if UP's position were to be adopted, then BNSF would be restricted in its ability to provide service to a new facility locating on either the UP or SP line in Missouri. Accordingly, BNSF should be able to carry traffic to and from points to which it has access located anywhere on the full length of its trackage rights lines in the Houston-Memphis-St. Louis corridor.

In sum, the Board should clarify that, by reason of the express language in the existing BNSF Settlement Agreement, BNSF has the right, pursuant to Section 9I, to interchange with its own lines from its trackage rights over the UP and SP lines north of Bald Knob and Fair Oaks. In addition, while it is not BNSF's intent to routinely route its traffic unrelated to the merger to and from the Southeast over these trackage rights lines, the Board should hold that the restriction on the traffic that can be carried over the

would its routing have additional mileage involved, but Entergy's cost of equipment could increase, BNSF could potentially be required to utilize additional crews, and BNSF transit and cycle times and its ability to guarantee competitive levels of service could be adversely affected. In addition, BNSF would be forced to incur significant expenses to construct and/or rehabilitate the necessary connections and lines in Memphis, thereby further increasing its cost of service. As Entergy suggests, UP's position seems to "have no purpose other than to restrict BNSF's ability to compete on an even playing field * * *." ESI-33, at 2.

subject trackage rights lines should be deleted from the BNSF Settlement Agreement so that BNSF will be able to have the routing flexibility it needs to implement and achieve the network system efficiencies and to maintain sufficient traffic densities in the corridor needed to effectively replace SP. At a minimum, the Board should hold that BNSF can use the trackage rights lines north of Bald Knob and Fair Oaks not only to provide competitive service to all shippers located in the corridor to which BNSF obtained access (such as Entergy's White Bluff Station), but also to all merger-related traffic moving both within and beyond the corridor itself. Indeed, as mentioned, UP has recognized that BNSF should be able to use the trackage rights lines for merger-related traffic. See UP/SP-387, at 17.

4. Team Tracks

UP does not contest that UP and SP competed via team tracks before their merger. Rather, UP argues that it should not be required to sell unused team tracks to BNSF because the parties agreed to replicate the pre-merger competition that team tracks provided by enabling BNSF to build its own rail-served facilities along the trackage rights, including team tracks.

While it is true that BNSF has the right under the Settlement Agreement to build its own team tracks, the reality is, as explained in BNSF's July 25th Comments, that the process for establishing team tracks is far from the simplistic picture UP paints. See BNSF-93, at 18-20. For example, BNSF must first negotiate to locate and acquire property suitable for such a facility. It must then seek UP's approval of BNSF's engineering plans for the track and rely upon UP's engineering department to install connecting and access tracks and switches. It must then seek UP's approval of BNSF's proposed service plan. Such an extended process handicaps BNSF's ability to

compete via team tracks, which are, as UP recognizes, often somewhat flexible and transitory.

A requirement that UP sell team tracks that it no longer uses to BNSF at normal and customary costs and charges would, notwithstanding UP's protestations, pose little burden on UP. In fact, one wonders why UP objects so strenuously to such a requirement if it does not perceive that it will gain a competitive advantage by refusing to sell unused team tracks to BNSF. Further, UP's concern that it may want to use the tracks for some other purpose can be resolved simply by clarifying that UP's obligation to offer the unused team tracks to BNSF only arises if UP has no use whatsoever for the tracks, as team tracks or otherwise.

II. OTHER UNRESOLVED ISSUES

A. GTM MILL RATE DISPUTE

Since their July 2nd submissions, the parties have continued their discussions about and exchanged further correspondence concerning the proper method for the adjustment to be made annually to the trackage rights fees (GTM mill rate) which BNSF pays for the use of the trackage rights lines. While the parties have not yet resolved all of their differences with respect to their dispute, they have narrowed the differences and reached agreement on several points.

It is critical to BNSF's ability to provide competitive service over the trackage rights lines that this dispute be resolved in a way that fairly and accurately reflects changes in UP's costs. The present adjustment mechanism was agreed to by the parties and imposed by the Board as a condition of the UP/SP merger as a result of concerns expressed by CMA (now ACC), and the issue of the impact of the trackage rights fees on BNSF's ability to provide competitive operations over the trackage rights

lines was of concern not only to ACC but also to numerous other parties to the UP/SP merger proceeding.

In the event BNSF and UP are unable to resolve their remaining differences with respect to the adjustment of the GTM mill rate, the ACC has indicated that it will consider invoking its rights under the CMA Agreement to request an audit of the adjustment calculations. See ACC-1, at 8. Accordingly, given the importance of the proper resolution of this dispute, BNSF is prepared to take the necessary steps to have the issue promptly resolved.

B. I-5 PROPORTIONAL RATE AGREEMENT

Since their July 2nd submissions, the parties have also continued their discussions concerning the I-5 Proportional Rate Agreement. The parties are continuing to evaluate the results of the preliminary audit report of BNSF's compliance under the Agreement, and they have been able to make progress in resolving a number of their differences. In the event the parties are unable to resolve the remaining differences, those differences may need to be resolved through arbitration or by the Board.

III. CONTINUATION OF OVERSIGHT

As set forth in BNSF's July 25th Comments, oversight should continue until the unresolved issues relating to the amendment of the BNSF Settlement Agreement have been resolved. In addition, the outstanding issues relating to the parties' compliance with the BNSF Settlement Agreement and other merger conditions should be addressed by the Board before oversight ends if the parties can not resolve their differences. ACC has expressed its agreement with BNSF's view that oversight should continue until all

such issues are resolved.²¹ See ACC-1, at 8. ACC further agrees with BNSF's position that the Board should clarify that, "even after the formal oversight period ends, it will continue to entertain petitions to resolve disputes that the interested parties have been unable to resolve to interpret or enforce the merger conditions." Ibid. See also Comments of Cowboy Railroad Development Company (CRDC-1), at 3 (Board should clarify that "oversight jurisdiction will continue and will be exercised upon an appropriate request.").

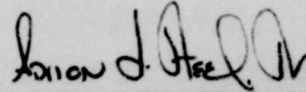
CONCLUSION

For the reasons set forth in BNSF's July 25th comments and above, BNSF respectfully submits that the BNSF Settlement Agreement should be modified as proposed by BNSF, as supported by NIT League, ACC and Entergy, to ensure that BNSF can, over both the short and long term, provide the effective replacement competition which the Board envisioned and to which UP committed when the UP/SP merger was approved. BNSF further requests that oversight be continued until the disputed issues set forth above are resolved and that the Board confirm that, after oversight has ended, it will consider and promptly act upon issues of general applicability relating to BNSF's access to shippers under the BNSF Settlement

²¹ BNSF notes that the State of Utah has also requested that oversight be extended – for a period of one year – to, inter alia, permit the completion of an audit of Utah rail rates that the State requested during the UP/SP merger proceeding. The State asserts that the rate audit will enable the Board to evaluate whether the conditions imposed by the Board have enabled BNSF to be an effective competitor to UP in the Central Corridor.

Agreement as well as issues relating to the parties' compliance with the merger conditions.

Respectfully submitted,



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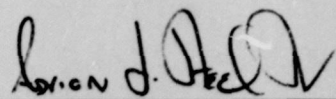
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September 19, 2001

CERTIFICATE OF SERVICE

I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Comments to UP's Fifth Annual Oversight Report and on Unresolved Issues Relating to the Restated and Amended BNSF Settlement Agreement (BNSF-94) are being served on all parties of record.



Adrian L. Steel, Jr.

APPENDIX 1

EXCERPTS FROM
JULY 1, 1996 ORAL ARGUMENT
FINANCE DOCKET NO. 32760

really unalloyedly positive.

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(1) If you look at the last 15 years, the (2) number of class one railroads has declined by two- (3) thirds in this country. (4) Now, has that led to increases in rates as (5) the anti-trust theorists of the Justice Department (6) might argue? No, it hasn't. There has been a 50 (7) percent decline in real rates, real rail rates. (8) And that can only happen if competition is (9) vigorous. You can't say well, it's because of (10) productivity or it's because of deregulation because it (11) wouldn't be passed on to the shipper in lower rates if (12) the competition weren't forcing it to happen. (13) Now, you have ruled again and again that (14) two strong railroads is what is the sine qua non of (15) competition in the rail industry. (16) Now, railroading isn't like widget making. (17) You don't need and you can't have dozens of producers (18) in a market. We had a Mr. Sheppard here for some of (19) these parties and say there isn't any competition in (20) the market unless you have five players in the market. (21) Well, he hasn't seen railroading if that's (22) his opinion. Railroading is incredibly resource

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(1) capital intensive, tremendous fixed costs. And the (2) only way to achieve many efficiencies, not all (3) efficiencies, but many efficiencies, is through (4) merger. (5) You don't want to merge down to one. (6) Competition is vital. We are in favor of competition. (7) This merger is pro-competitive. We are not (8) eliminating rail option for any shipper in the west (9) through this merger. (10) Every shipper that has a choice today will (11) have a choice after this merger, and a better choice. (12) And I'm not denigrating competition. I'm (13) in favor of it. We believe in it. We think and (14) believe we're promoting it through this transaction.

(15) CHAIRPERSON MORGAN: But there are (16) opponents to this merger that are supporting (17) divestiture and indicate that divestiture would not (18) undercut the principal benefits of this merger. Would (19) you care to comment on that?

(20) MR. ROACH: I'd love to comment on that. (21) They are dead wrong. Divestiture will gut the (22) benefits of this merger. All the divestiture

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(1) proposals that are on the table will gut the benefits (2) of this merger. Now why -

(3) CHAIRPERSON MORGAN: And why is that?

(4) MR. ROACH: - is that? Why is that? (5) First of all divestiture will wipe-out single-line (6) service for hundreds of thousands of customers, (7) hundreds of thousands of shipments per year. (8) What you're doing is you're re-Balkanizing (9) the railroads. Instead of consolidating them and (10) achieving single-line service increases, you are (11) eliminating single-line service. (12) You are taking all those coal shippers in (13) Utah and Colorado, for example the MRLs divestiture (14) proposal, who today - even today, before this merger, (15) have single-line routes over the SP out of those (16) states and into the midwestern gateways, the west (17) coast, the south-central United States. (18) And you're eliminating those single-line (19) routes. You're saying, well now we're going to take (20) this line, the Rio Grande Line, and against your will, (21) involuntarily - because all the Utah coal producers (22) oppose divestiture.

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(1) We're going to take that and we're going (2) to force the Applicants to sell it to a fellow named (3) Dennis Washington who would like to make a lot of (4) money out of this transaction and run his own (5) railroad. (6) At that point, those coal shippers have (7) two line rail routes instead of single-line. And (8) furthermore, they've got routes that are must more (9) circuitous and much less efficient than the routes (10) that they'll have with this merger. (11) We're going to create a new coal route (12) straight out of Utah and Colorado across Kansas on (13) what UP called the KP line, which will be upgraded, (14) that saves hundreds of miles of mountainous circuitry (15) that the SP has to do now across either the Tennessee (16) Pass or down from Denver to Pueblo and back across (17) Kansas. (18) Mr. Washington's proposal would (19) reinstitute all those bad routes, plus add (20) interchanges in the middle of the congested Kansas (21) City terminal. (22) And you have the same thing at the west

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(1) end. Where we achieve mileage savings in the central (2) corridor and the divestiture wipes out those mileage (3) savings. (4) Now, what about in the south-central (5) region from Houston up to Memphis, for example, where (6) some of these parties would like to see divestiture? (7) We have serious capacity constraints in (8) those

markets. One of the big benefits of this merger (9) is that we will be able to run the lines from Memphis (10) down to Houston and various other lines in Texas on (11) what's called a directional basis. (12) UP has a single-line, single-track line. (13) SP has a single-track line. Today, they're both (14) operated in both directions, which yields a lot of (15) interference, train meets. It can be done. It's done (16) all the time. Dispatchers put trains in sidings, but (17) it limits your capacity sharply when you have to run (18) a single-track line in both directions. (19) With the merger, we can take one of those (20) routes and make it the northbound route, and one of (21) them to make it the southbound route. (22) We have two large, excellent,

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(1) classification yards: one in Pine Bluff and one in (2) Little Rock. Today, they're used by UP for both north (3) and southbound traffic, which complicates and lowers (4) the capacity of the yard. (5) And the same thing with SP. Under our (6) plan, the yard would be specialized for blocking in (7) one direction, tremendously increasing its capacity. (8) Now, you force us to divest one of those (9) lines, we're back with the inefficient operation. (10) We're back having to spend a lot of capital to add (11) capacity. We no longer can achieve the tremendous (12) improvements in blocking that this merger will bring (13) about. (14) Now "blocking" sounds sort of, you know, (15) technical and unexciting. But blocking is really one (16) of the parts of efficient railroading and switching. (17) You don't want to switch a car any more (18) times that you have to. It adds tremendously to (19) delay, tremendously to cost. (20) What you want to do is to pre-block as (21) early in the shipment as possible for as far down the (22) road as you can pre-block. You want to pre-block in

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(1) Houston to take it all the way to New York City or (2) Albany and so forth. (3) We can do that with this merger because we (4) consolidate volumes while preserving competition for (5) every shipper that has it now and retaining enough (6) traffic for BN/Santa Fe to be fully competitive. (7) But if you force the divestiture, you're (8) handing over a large chunk of the traffic that his (9) exclusively served. It's not competitive traffic. (10) What these divestiture people want is to (11) take over non-competitive traffic. (12) CHAIRPERSON MORGAN: But

size.

(6) MR. ROACH: Absolutely. And that's why we (7) have a five-year implementation period.

(8) VICE CHAIRPERSON SIMMONS: And we'll be (9) looking at you every year.

(10) MR. ROACH: Not - well, that's the (11) oversight and that's fine. But I'm referring to the (12) implementation period in the operating plan, and (13) that's five year, which is unusual. It's (14) traditionally three years. (15) We concluded we need five. WE need five (16) partly to just understand everything fully out there, (17) and part of it to achieve the capital investments (18) which are tremendous and very extensive to upgrade the (19) Southern Pacific system and get the potential out of (20) those routes that's sitting there unachieved for the (21) United States and international economy.

(22) CHAIRPERSON MORGAN: And let me stop you

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(1) there on oversight because there's a lot in the record (2) about oversight being meaningless and window-dressing (3) and so forth. (4) Is there a way to make that kind of (5) oversight provision have more meaning to it, if that (6) indeed is a concern. I know it's in the CMA (7) agreement.

(8) MR. ROACH: Well, I've got to tell you (9) that Union Pacific views the oversight process as (10) tremendously meaningful, indeed daunting if you like, (11) because really what it says is we may end up having (12) five more of those proceedings where all my friends in (13) the rail bar and Washington are having at us. (14) If we don't deliver for the shippers, if (15) BN/Santa Fe doesn't deliver, we're going to have (16) another proceeding. You're going to hear about it. (17) The shippers will come to you with complaints. (18) Now, you may be asking how do you need to (19) design the process to obtain information and how much (20) should you reach out? And that's important. (21) Although again, my first response is I don't think (22) you're going to have to try very hard. I think they

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(1) will come to you if they have concerns. (2) But secondly, I think it's fairly (3) straight-forward what you can do. You can direct (4) inquiries to UP/SP with respect to rates and service. (5) You can inquire of BN/Santa Fe. You can (6) inquire of the key shippers that have been parties in (7) this case. (8) And you will have unrestricted power to (9) impose

additional conditions if appropriate.

That is (10) not the case under the statute normally. There has to (11) be a showing of new evidence or material error or (12) significant change in circumstances. (13) So, this is a significant provision and a (14) significant proposal by the Applicants. That would (15) include divestiture. (16) We think divestiture is a horrendous idea. (17) We vigorously oppose it. But there's no reason that (18) in a year or two or three, if you conclude that it is (19) appropriate, you can't require it. (20) This isn't like a lot of anti-trust (21) lawyers would normally say you can't unscramble the (22) omelette. You can't order divestiture. These rail

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(1) lines are very discreet and distinct. (2) Locomotives are discreet and distinct. (3) And if two years from now you conclude that you want (4) to order the SP line from Houston to Memphis and an (5) appropriate number of locomotives, et cetera, to be (6) divested, there's no reason you can't do that.

(7) COMMISSIONER OWEN: Mr. Roach, along that (8) line, then why did Mr. Davidson be quoted in The (9) Washington Post recently about the divestiture and (10) then exactly what lines might you be talking about? (11) MR. ROACH: Commissioner Owen, I have (12) notebook where I've collected all the false reports (13) during this case. I should say, a set of notebooks.

(14) COMMISSIONER OWEN: I have a few of those.

(15) MR. ROACH: I don't know the exact (16) quotation you're referring to, but the position of the (17) Applicants and what, to my knowledge, Mr. Davidson has (18) said to anyone who has asked, is that we vigorously (19) oppose divestiture. We have serious questions about (20) whether we could go forward with this transaction if (21) the divestiture proposals that have been put on the (22) table by Conrail or KCS or MRL were granted.

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(1) Now, you know, if you were to order to us (2) to divest five miles somewhere, we'd have a fiduciary (3) duty to our shareholders to think about whether we go (4) forward with the transaction. And I'm sure we would (5) go forward.

(6) COMMISSIONER OWEN: Along that line, it's (7) also been stated that Conrail might be the last one to (8) dispose of their property too or divest too. (9) If that were the case and they did equal (10) service on those other

lines, then would it not be (11) your responsibility fiduciary-wise to your (12) stockholders to sell to Conrail if that were the case, (13) if you ever got to that point?

(14) MR. ROACH: Well, it's a complicated (15) question in this sense: nobody has explained what the (16) process for divestiture would be. Part of the fault (17) there lies with Conrail and KCS because they (18) consciously chose not to file an application for this. (19) Instead they want to delay the case, so (20) they said let's have a second round of proceedings. (21) If you followed tradition and left it to (22) the Applicants to select the party to whom they would

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(1) sell, within their business judgement, with the Board (2) retaining authority to review that and decide whether (3) it passed muster, then UP would have to look - (4) assuming we went down this road at all, we might (5) conclude immediately that it just doesn't - the (6) numbers don't add up. (7) We would have to look at the economic (8) value of various alternatives. And part of that is (9) how much someone offers you. And part of it is how (10) much traffic he is going to take away if he buys the (11) line. (12) Now again, I don't think anybody has said (13) any railroad would be ruled out. And if they did, you (14) know, we have problems of understanding between (15) executives and reporters all the time and nuance. (16) But Conrail would cost UP/SP a lot more (17) than some other players simply because Conrail (18) exclusively serves the entire chemical industry in the (19) northeast. (20) And if they come down to Houston and serve (21) all the UP and SP points down there, you know, our (22) projections would indicate they're going to take very,

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(1) very large shares of that business. (2) Now, I come back to my basic question (3) which is why in heaven's name would you do this as a (4) competitive remedy? (5) These are shippers that are not losing (6) competition. All the shippers that have competition (7) will have it preserved under the BN/Santa Fe (8) settlement. And the very point of these divestiture (9) proposals is for the acquires to get their hands on (10) the shippers that are exclusively served. That's what (11) they want. (12) But those are the shippers that don't (13) experience any reduction in competition. There's a (14) complete disconnect there. There's no

competitive (15) problem. Or to put it in terms of your law, which is (16) important to precedence, it's egregiously over-broad. (17) It's like, you know, solving a problem (18) with a nuclear warhead instead of a surgical strike. (19) And no one has ever explained the rationale for that. (20) All you hear from the proponents of divestiture is (21) trackage rights aren't good enough. Let's have (22) divestiture.

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(1) But they never say, "And boy, will we ever (2) make out like bandits because these shippers who have (3) no say in the matter, are going to end up being served (4) by us instead of served by the railroad that serves (5) them now. And they're going to have worse service, (6) but too bad because they're not able to vote on this (7) matter." (8) CHAIRPERSON MORGAN: Now, let me stop you (9) right there. In terms of trackage rights, now one of (10) the concerns that the opponents have raised is that (11) the trackage rights agreement really represents (12) collusion between UP and BN/Santa Fe. Can you just (13) respond to that? (14) MR. ROACH: Yes. Let me comment on the (15) trackage rights agreement and also a little bit on (16) collusion. (17) I heard the Senator say earlier this (18) morning that it's a terrible thing to let UP choose (19) the party to whom it's going to grant rights. (20) Well, UP didn't want to grant rights to (21) BN/Santa Fe as a commercial matter. That's the last (22) thing UP would have wanted as a commercial matter.

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(1) BN/Santa Fe has a comprehensive western (2) rail network that exceeds that of any other railroad. (3) And if we had granted trackage rights to KCS, the (4) potential traffic diversion would have been a (5) fraction of what it would have been with BN/Santa Fe. (6) Why did we do it? We didn't do it because (7) of some sweetheart deal or collusion. We did it (8) because our shippers all told us that no one else (9) could fit the bill. There just wasn't anyone else (10) that could fit the bill. (11) Mr. Davidson talked to Exxon and the major (12) chemical shippers as we were in the process of (13) negotiating to determine - to find someone who would (14) take these trackage rights. (15) And he was uniformly told, "I don't want (16) a KCS. I don't want an IC. I want a railroad that (17) can get me where SP and UP can get me, or preferably (18) even more places."

Which is exactly what BN/Santa Fe (19) does. (20) I mean, the magic of this solution is that (21) you're talking here about shippers that are only (22) served by UP and SP today. So, what they have today

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(1) is a choice of access to UP points and SP points and (2) all the major gateways. (3) With the merger and the settlement, they (4) are better off because first of all, they've got UP (5) and SP merged and with greater efficiency, an (6) operating ratio that will drop five points, savings of (7) \$580 million a year in costs, much more efficient (8) operations with the directional running, et cetera, et (9) cetera. (10) And they've got service by BN/Santa Fe, (11) which gives them single-line access to Minot, North (12) Dakota and all kinds of places that they can't get to (13) now. (14) It's a boon for these shippers. It's a (15) tremendous improvement in competition. (16) CHAIRPERSON MORGAN: The concern that they (17) have raised is that because trackage rights is a (18) little bit different relationship from an ownership (19) situation, that somehow the landlord, which is in this (20) case UP/SP, has more power over operations, over (21) traffic, and over a whole lot of other things as it (22) relates to real competition. Could you respond to

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(1) that? (2) MR. ROACH: Yes. We have entered into a (3) comprehensive, written protocol to govern dispatching (4) of BN/Santa Fe trains and of UP trains on BN/Santa Fe (5) lines too. (6) CHAIRPERSON MORGAN: And that's on the (7) CMA? (8) MR. ROACH: That is attached to Mr. King's (9) rebuttal statement. And yes, it is referenced in the (10) CMA agreement. The final version of it is attached to (11) Mr. King's rebuttal statement. (12) Now, there's a history of this. As you (13) undoubtedly know, because it's been brought up by (14) parties to this case, SP some years ago, accused UP of (15) discriminating against its trains. (16) And UP took tremendous umbrage at that and (17) there was a huge proceeding on the subject in the (18) UP/CN&W merger case, and then off in federal court. (19) There was massive discovery. And in the end, what SP (20) concluded was that there had not been discrimination. (21) And SP paid the rent that they owed, \$60 (22) million, all before this merger was in anybody's mind.

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(1) It wasn't - it had nothing to do with trying to bury (2) an issue. (3) It was a full-scale inquiry and an (4) enlightened resolution. Now, were there delays to SP (5) trains? Yes, there were delays to SP trains, and (6) that's why it was a hard problem. (7) But the reason was, as it turned out when (8) the operating people got together and studied specific (9) incidents, studied the overall situation, it was a (10) communications problem more than anything else. (11) SP has primitive systems. They could not (12) and did not tell UP when a train was going to be (13) arriving or what priority it was supposed to have. (14) The train crew would end up sitting on a (15) siding and they would think they were being (16) discriminated against. (17) But the problem was that SP wasn't telling (18) UP, and UP wasn't doing enough to ask. And what we (19) did was we agreed on procedures that would ensure (20) communications. (21) Now that we have technological advances, (22) we can do a lot of this in real time. WE can have

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(1) computers on the trains and have a dispatching center (2) tied in directly. (3) And we took the base of those (4) understandings and built on them with BN/Santa Fe for (5) this case. And we added other features such that the (6) BN/Santa Fe manager will be physically in the Harriman (7) Dispatching Center in Omaha to see how the BN/Santa Fe (8) trains are dispatched. (9) He's not going to see any commercially (10) sensitive information or rates or anything like that. (11) But he's going to see his train arrive. He's going to (12) know it's priority and he's going to be able to (13) confirm that it's appropriately dispatched. (14) There are sanctions in the agreement. (15) There's reporting. There's monitoring, et cetera. (16) Now, the last thing I'll say because it's (17) something that any rail operating person would say, so (18) I had better say it, is that UP, SP and BN/Santa Fe (19) are not going to wrongfully hammer each other's trains (20) because they're dependent on the other just ask much (21) as the other is dependent on them. (22) And that isn't to say to there's going to

Page 70

(1) be collusion or anything bad. But it does say that - (2) you know, somebody said these rights are (3) unprecedented. They're not unprecedented at all. (4) All the railroads in the west and the east (5)

STB

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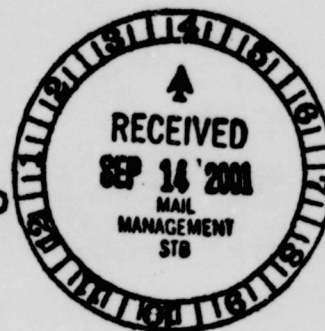
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203440

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Public Room

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



203440
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**

203441
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)

**UTAH CENTRAL RAILWAY COMPANY COMMENTS ON ISSUES RELATING
TO BNSF SERVICE TO TRANSLOAD OPERATION AT OGDEN, UTAH**

Utah Central Railway Company ("UCRC") submits the following comments to assist the Board in understanding the facts surrounding the relocation of the transload at Ogden, UT. Burlington Northern and Santa Fe Railway Company ("BNSF") appears to misunderstand these facts and the dealings between UCRC and Transwood, Inc.

Transwood, Inc. presently operates a transload in Ogden on property leased from Union Pacific ("UP"). BNSF uses the transload to compete for soda ash produced in southwestern Wyoming at points served exclusively by UP. BNSF complains that UP's cancellation of Transwood's lease without offering to pay to relocate the facility threatens this competition. (BNSF-PR-20, PP.91-92)

If BNSF's transload options diminish, it will be BNSF's fault, not the result of any anticompetitive conduct by UP. UCRC and Transwood have been discussing Transwood's relocation to UCRC property since early 1999 – well before UP indicated any intent to cancel Transwood's lease – and they reached a tentative agreement to relocate the facility prior to UP's notice that it intended to terminate Transwood's track and property leases. Under the agreement, UCRC is providing the real estate and improvements Transwood

needs, and Transwood is providing the equipment to take full advantage of its new location.

Transwood's relocation to UCRC property should benefit all of the parties involved. Transwood's current location is too small to allow it to do much more than transload soda ash for BNSF. Transwood's new location is larger, and planned upgrades of plant and equipment will allow Transwood to handle a greater volume and a wider variety of commodities for a larger number of customers, all of whom will have the option of routing via either BNSF or UP. The new transload facility would maintain existing competition, expand market opportunities, and open new avenues for BNSF and UP to compete with each other and for traffic that is currently moving by truck.

UP recognized the benefits associated with Transwood's relocation, and it has been extremely cooperative. UP allowed Transwood to remain at its existing site while UCRC acquired real estate and completed the necessary site engineering and construction. In order to accommodate UP's need to put Transwood's current site to a different use, UCRC and Transwood have entered into an agreement whereby UCRC will provide

Transwood with a temporary site to allow its current operations to continue until the larger, permanent facility is completed. UCRC's engineering of both the sites has been completed, and Transwood is scheduled to relocate in September.

In sum, the relocation plan was the product of a voluntary agreement between Transwood and UCRC. The entire cost to relocate, engineer and construct the new facility will be borne by Transwood and UCRC, as the parties agreed. UP's decision to cancel Transwood's existing lease thus in no way jeopardizes existing transload competition.

If anything affects Transwood's operations, it will be BNSF's apparent attempt to turn UP's cancellation of Transwood's lease into an advantage in either the merger proceedings or its business dealings with UCRC and Transwood.

In May 2001, UCRC met with BNSF officials to discuss Transwood's relocation and UCRC's proposed switching charges. At that meeting, BNSF informed UCRC that any increase in cost to existing traffic from Transwood could jeopardize the continued movement. In an effort to maintain the existing business, UCRC

responded by proposing to reduce its switching charges for the traffic. BNSF never responded to UCRC's proposal.

In August, however, Transwood officials notified UCRC of their intent to place the relocation on hold. BNSF had apparently told Transwood that it would raise rates on transload traffic if Transwood relocated to UCRC, even though a rate increase would likely result in a loss of the business.

UCRC does not expect BNSF to handle traffic at a loss, but in light of BNSF's communications with UCRC, Transwood, and in its filing with the STB, it appears that this is not BNSF's true concern. BNSF appears to be trying to play UP, UCRC, and Transwood against one another in the hope of obtaining either an advantage in commercial negotiations with UCRC and Transwood or in the UP/SP oversight proceedings. In its filing with the Board, BNSF argues that UP should pay for Transwood's relocation – it does not argue that it will be unable to compete because of the costs of serving Transwood's new location. In its discussions with UCRC and Transwood, however, BNSF focuses on its cost of service – it has not expressed concern for Transwood's relocation costs.

UCRC believes that transload facilities like Transwood's play an important role in providing competition and thus serve the public interest. It is important to keep in mind, however, that it is not only rail competition between UP and BNSF that serves the public interest - competition between rail and trucks also benefits the public. Transwood's relocation to an improved facility will increase both intramodal and intermodal competition. Transwood's relocation would preserve BNSF's existing transload option and expand both BNSF and UP access to transloaded products, all to the benefit of the public.

Despite BNSF's claim that it will lose its existing business, UCRC and Transwood intend to proceed with Transwood's relocation. We anticipate that Transwood's new operations will commence on September 30th or sometime shortly thereafter. Even if the economics of transporting soda ash have suddenly changed to make transloading uneconomical, the Transwood facility will be available to both BNSF and UP for use with respect to a wide variety of other products.

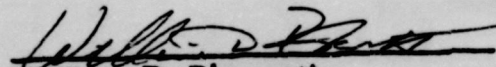
UCRC finds it difficult to believe that BNSF will truly be unable to economically serve the current users of Transwood's service once

their business is relocated to the new UCRC site. UCRC finds it difficult to understand how an 80,000 annual ton movement of soda ash would suddenly become economically unfeasible. Although it is only speculation, it seems more likely that BNSF is either trying to pressure UCRC and Transwood into giving BNSF a better deal, or it is attempting to stymie Transwood's relocation efforts – either to prevent UP from enjoying the benefits that Transwood's relocation would provide or for some other reason. Whatever BNSF's logic, the Board should not allow BNSF to use these proceedings to further its goals.

The Board need not worry about the issues BNSF raised regarding UP's cancellation of Transwood's lease and Transwood's relocation costs. As Transwood and UCRC have been engaged in plans to relocate their facility to UCRC lines for some time, UP's termination of the current Transwood lease had no impact. Both BNSF and UP, as well as Transwood and UCRC, stand to benefit from Transwood's new, expanded facility. The public interest will also be better served. Should the existing business that BNSF handles be lost, it will be due to market factors, not anticompetitive conduct by UP.

UCRC believes that the BNSF business will not be lost – that BNSF is simply engaged in gamesmanship. UCRC also believes that this situation will be resolved much more quickly if the Board makes clear that BNSF's tactics will not provide an advantage in the oversight proceeding.

Respectfully Submitted



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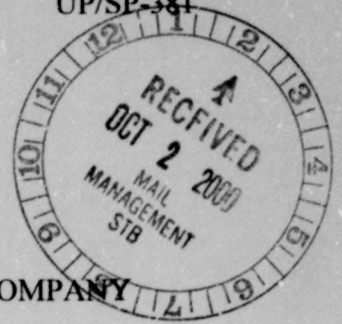
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

UNION PACIFIC'S THIRD QUARTER 2000 PROGRESS
REPORT WITH RESPECT TO MERGER CONDITIONS

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October 2, 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

UNION PACIFIC'S THIRD QUARTER 2000 PROGRESS
REPORT WITH RESPECT TO MERGER CONDITIONS

UPC and UPRR^{1/} hereby submit their third quarter 2000 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 . . .").

^{1/} Acronyms used herein are the same as those in Appendix B of Decision No. 44.

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 abbreviated in nature than the more comprehensive presentation that we filed on July 3, 2000.

I. BNSF, TEX MEX AND UTAH RAILWAY CONDITIONS

A. BNSF

BNSF Trackage Rights and Haulage. BNSF continues to use its trackage rights to handle substantial volumes of traffic. As shown in Charts #1, #2 and #3 in Appendix A, BNSF averaged 853 trackage rights trains per month in June, July and August, compared with 826 in the prior three months.^{2/} The monthly tonnage handled on those trains averaged about 4.7 million tons in June, July and August, compared with 4.8 million in the prior three months. And monthly loaded and empty cars on BNSF through trackage rights trains averaged 58,861 in June, July and August, compared with 60,195 in the prior three months. BNSF continued to operate at least daily through trackage rights train service in all major corridors.

BNSF and UTAH operated 487 local trains in June, July and August, handling 12,848 loaded and empty cars and 1.01 million tons of freight, compared with the previous three months' totals of 496 trains, 11,393 cars and 938,453 tons of freight.

^{2/} In the first quarter of 2000, UP/SP began monitoring both BNSF and Tex Mex trackage rights traffic using information obtained from UP/SP's AEI scanners, as well as information provided by BNSF and Tex Mex. UP/SP previously relied largely on data provided by the trackage rights tenants, and it believes the new data will be more accurate. As a result of this change in data collection methodology, the data presented in this report are not directly comparable with the data provided by UP/SP prior to the first quarter of 2000, although UP/SP believes that any differences should be minor.

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 June 30, 2000, are presented in Appendix B.

Implementation Steps. The UP-BNSF Joint Service Committee met most recently on June 15, 2000. UP and BNSF discussed trackage rights train performance data, the development of additional train performance measurements, and the status of capital expenditures on various lines. UP and BNSF continued to discuss issues regarding BNSF's use of former SP Gulf Coast SIT facilities.

Line Sales. UP and BNSF finalized their Houston-New Orleans line sale, under which BNSF and UP exchanged 50% undivided interests in BNSF's Iowa Junction-Avondale line and UP's line between Iowa Junction and Dawes, Texas. On September 1, 2000, UP and BNSF signed the operating agreement and completed the exchange of interests in the line.

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

Definition of "2-to-1" Points and Opening 50% of Contract Traffic at "2-to-1"

Points to BNSF. UP continues to respond in a timely fashion to BNSF inquiries in accordance with the applicable protocol, and UP continues to be in compliance with the contract reopener condition, as clarified in Decision No. 57, served Nov. 20, 1996. On June 21, 2000 AmerenUE filed a petition with the Board seeking reconsideration regarding the Board's decision that the contract modification provision does not apply to AmerenUE. UP responded to this petition.

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

Build-In/Build-Out Condition. In Decision No. 88 served March 21, 2000, the Board found that BNSF had the right to buildout from trackage rights formerly granted by SP near Pine Bluffs, Arkansas to the Entergy plant at White Bluff, Arkansas. On August 31, 2000 UP and BNSF amended their trackage rights agreement to provide access to the White Bluff plant using the BNSF Settlement trackage rights and allowing BNSF and Entergy to avoid the cost of a buildout.

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.^{3/} Tex Mex averaged 61 through trains per month in June, July and August, compared with 63 in the prior three months. The monthly tonnage handled on those trains averaged 290,832 tons in June, July and August, compared with 319,366 tons in the prior three months. Monthly loaded and empty cars on Tex Mex through trackage rights trains averaged 3,806 in June, July and August, compared with 4,407 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. On August 11, 2000 Tex Mex submitted a petition seeking the Board's authorization or an exemption so that it can consummate the sale and

^{3/} See note 2, supra.

trackage rights grant. On September 14, 2000, UP submitted a letter supporting Tex Mex's petition. The parties are proceeding under the MOU.

C. Utah Railway

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 constrain UP rates.

II. ABANDONMENTS

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

III. LABOR PROTECTIVE CONDITIONS

UP and its labor organizations have completed merger implementing agreements covering all crafts and territories with only the three exceptions previously reported. UP has also reached agreement with the Union Pacific Union Yardmasters Council concerning the consolidation of functions at Salt Lake City, Dallas and Los Angeles.

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. 11:

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 nationwide 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 were put on hold pending a City of Reno legal determination, and the city has not since contacted UP.

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

B. Corridor Mitigation

14. EPA Emissions Standards. EPA promulgated national locomotive emissions rules. UP is working with locomotive industry suppliers to develop a 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, 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 September 26, 2000 there were no calls to the noise monitoring hot line in the third 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 has conveyed, or is in the process of conveying or leasing other properties as specified in the MOU.

22. City of Reno. The MOU between UP and Reno is being implemented in accordance with its terms. The Environmental Impact Statement ("EIS") for the

depressed trainway should be complete by December. The City decided not to issue bonds to finance the project until the EIS is issued.

23. City of Wichita/Sedgwick County. The MOU between UP and City of Wichita/Sedgwick County is being implemented in accordance with its terms, and UP has made substantial payments as requested by the city.

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. A permit application for East LA is in progress. No construction or operating changes are planned for the Chicago 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.

40. UP has hired a contractor who is currently operating on the property.

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

42. UP has hired a contractor who is currently operating on the property.

- 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.

- 51. The new connection is in place at Girard. NHPA work will follow.
- 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

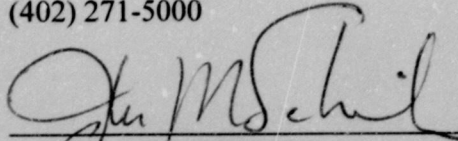
62-108. As construction projects are carried out, UP will comply with all conditions. UP has developed a process to ensure that contractors and railroad personnel comply with all general conditions. Progress on specific construction provisions is reported below.

- 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, as previously reported.
- 89. This condition has been satisfied, as previously reported.
- 92. This condition has been satisfied, as previously reported.
- 97. This condition has been satisfied, as previously reported.
- 98. This condition has been satisfied, as previously reported.
- 99. This condition has been satisfied, as previously reported.
- 100. This condition has been satisfied, as previously reported.
- 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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October 2, 2000

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 June 30, 2000, the latest date for which the data have thus far been compiled.

	<u>Texas, Louisiana, Arkansas, Missouri and Illinois</u>	<u>California and Central Corridor</u>
REVENUE		
Trackage Rights Fees	\$11,974,575	\$138,196,176
Capacity Improvement Fees	<u>0</u>	<u>0</u>
Total Revenue	<u>\$11,974,575</u>	<u>\$138,196,176</u>
EXPENSES		
Maintenance	\$15,331,369	\$226,516,946
Depreciation	15,017,151	225,257,265
Capital Expenditures	(Not reported)	(Not reported)
Accounting Expenses	<u>11,892</u>	<u>166,488</u>
Total Expenses	<u>\$30,360,412</u>	<u>\$451,940,699</u>

Chart #1
**BNSF Trackage Rights
Number of Through Trains**

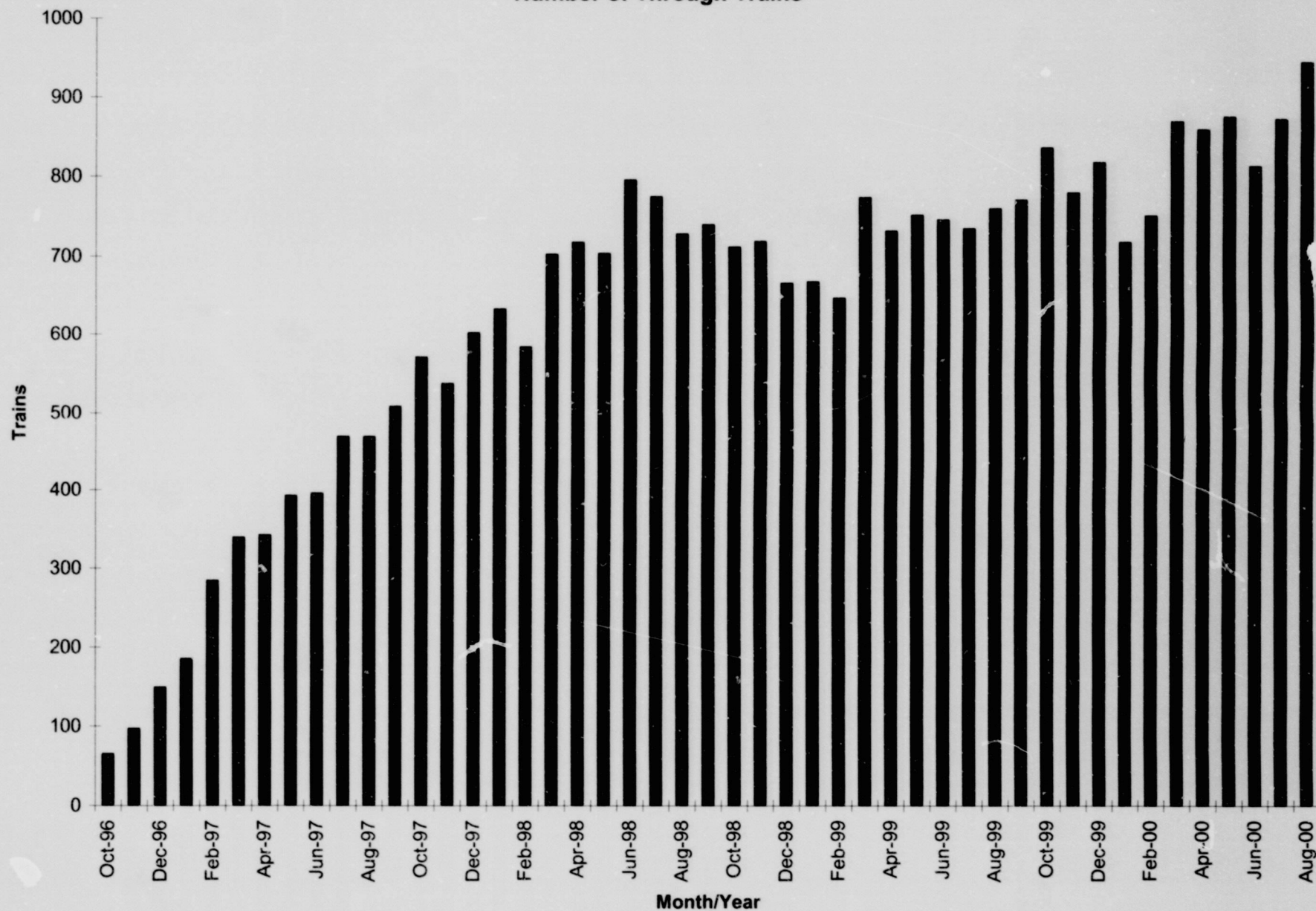


Chart #2
BNSF Trackage Rights
Number of Cars (Through Trains)

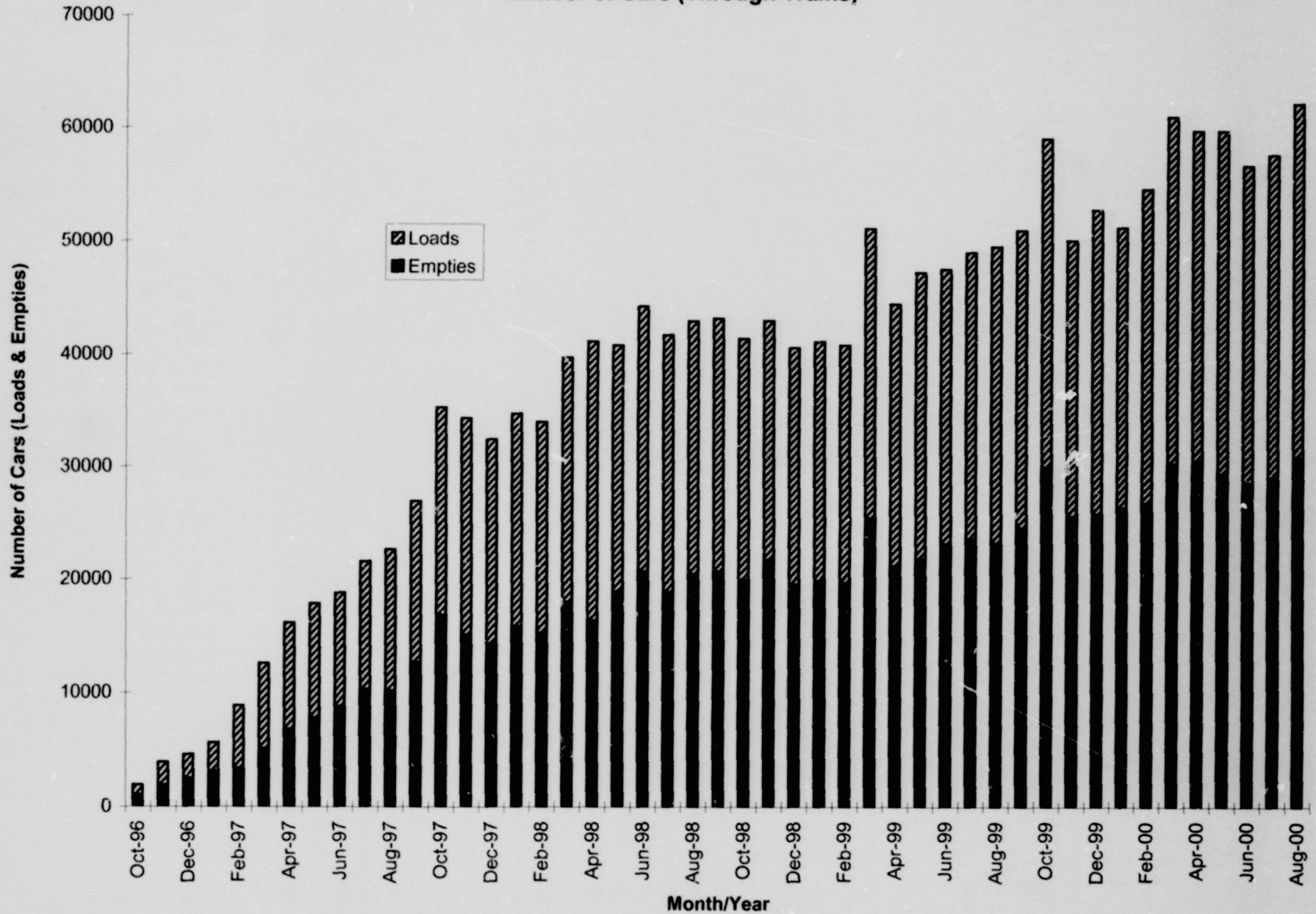


Chart #3
BNSF Trackage Rights
Gross Tons (Through Trains)

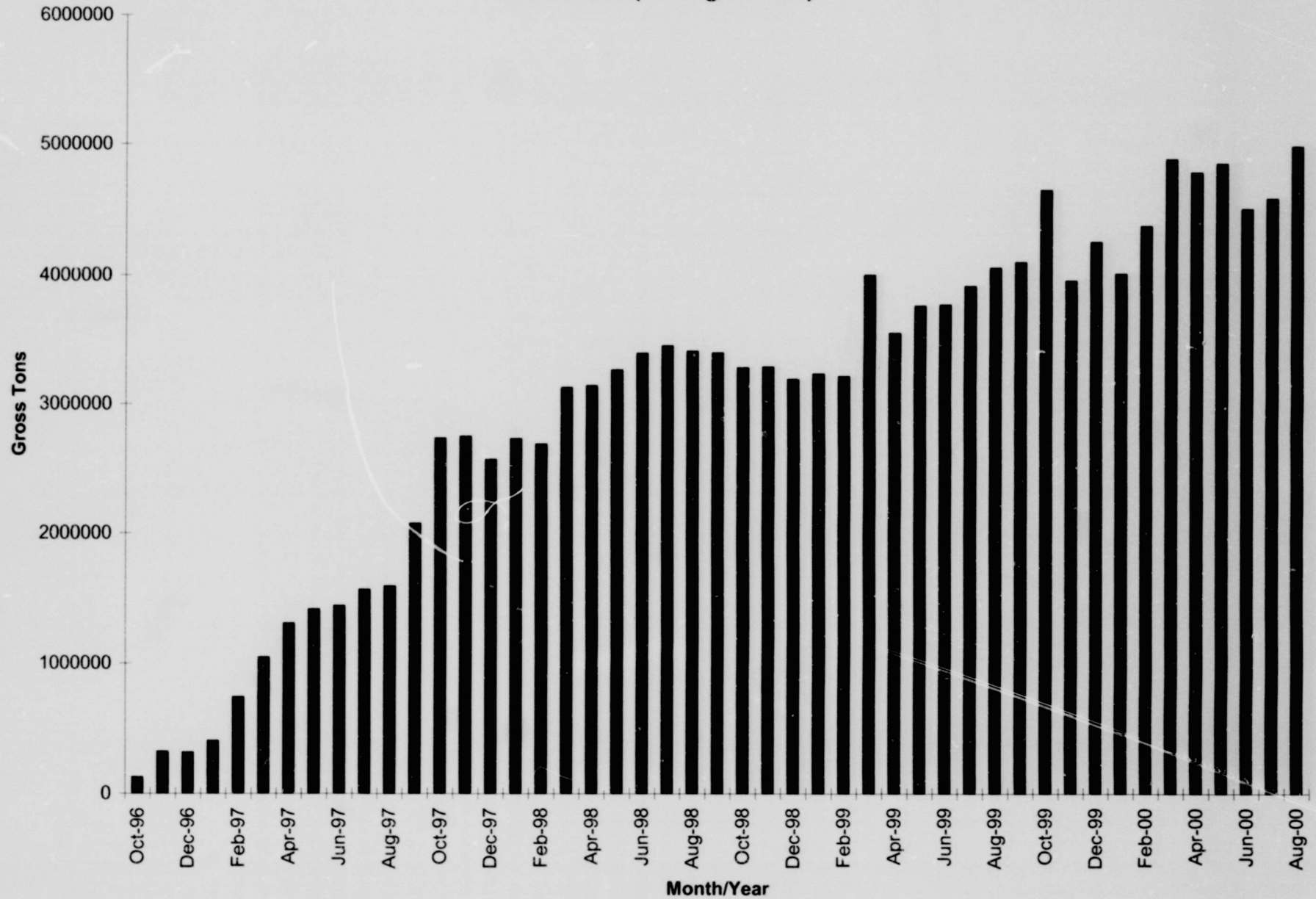


Chart #4
Tex Mex Trackage Rights
Number of Through Trains
 (All Traffic Included)

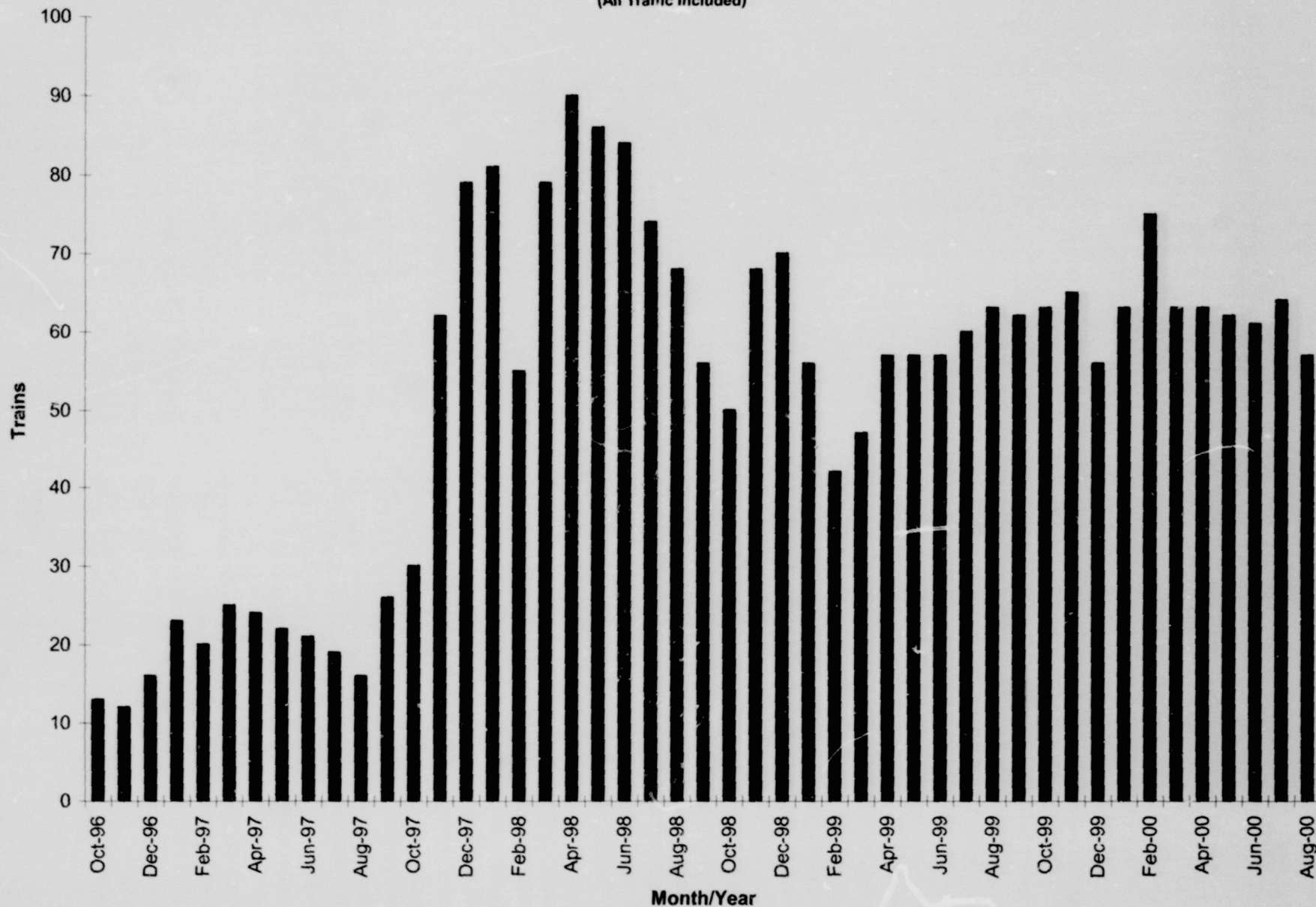


Chart #5
Tex Mex Trackage Rights
Number of Cars (Through Trains)
 (All Traffic Included)

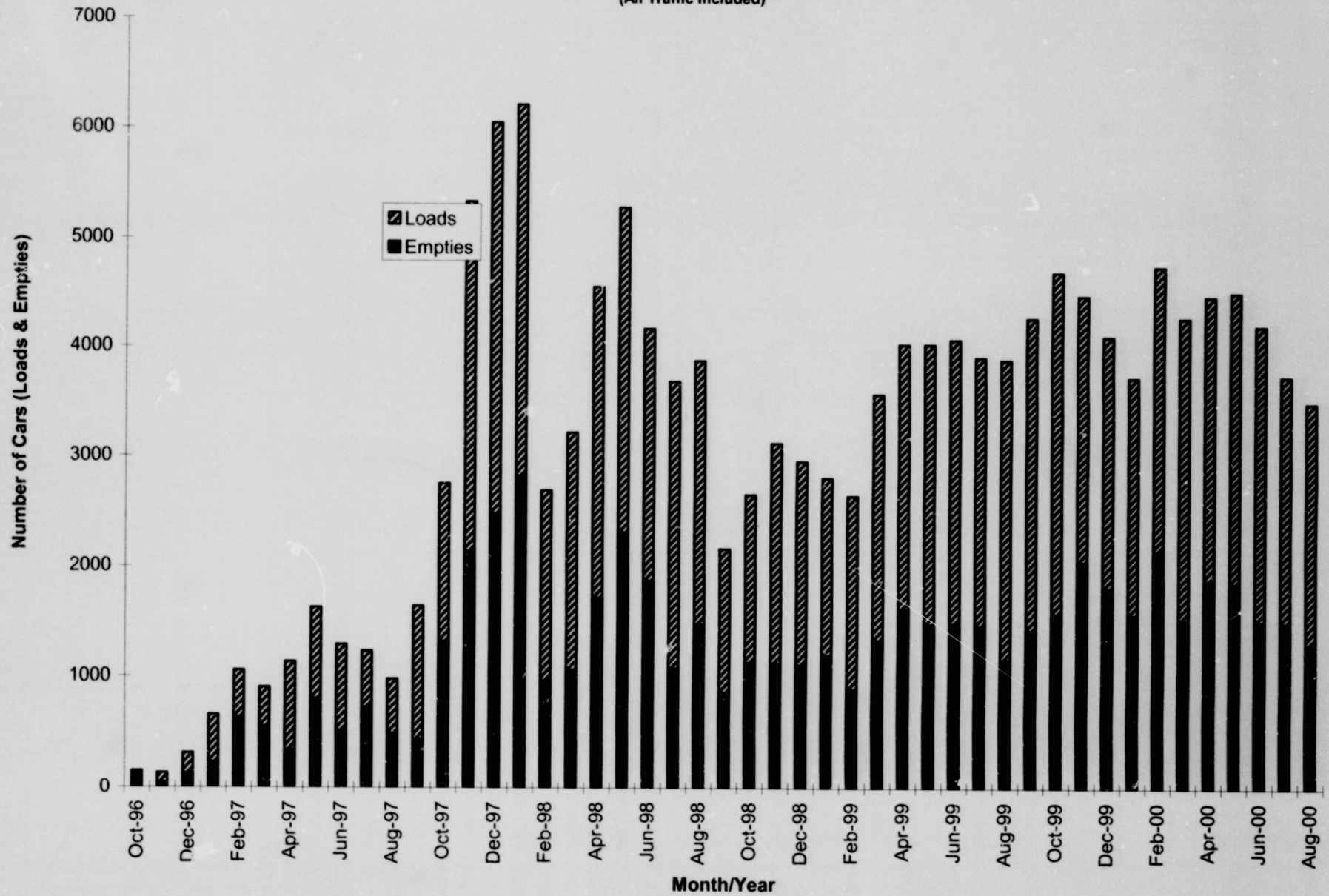


Chart #6
Tex Mex Trackage Rights
Gross Tons (Through Trains)
(All Traffic Included)

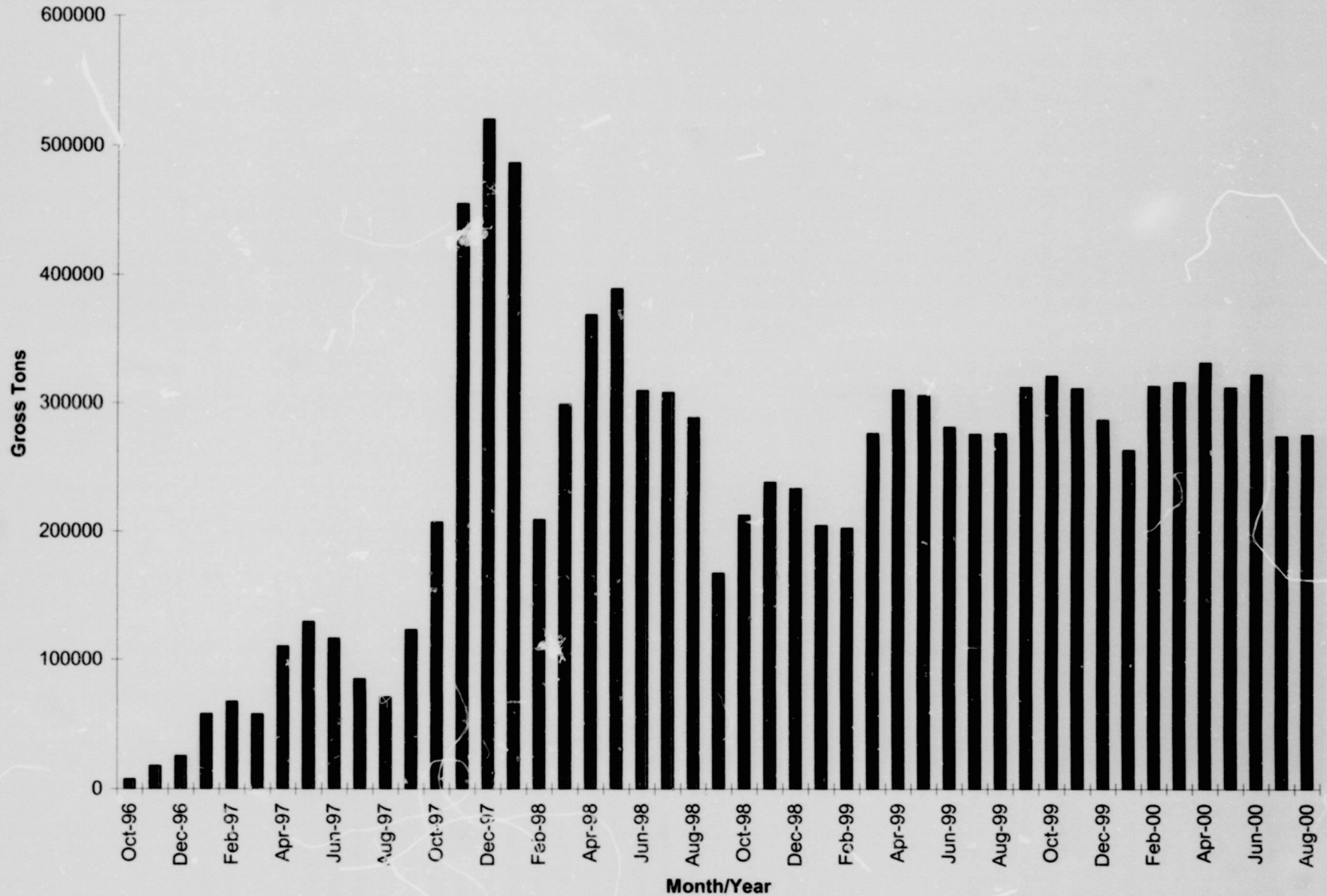


Chart #7
Tex Mex Trackage Rights
Number of Through Trains
(Estimated Service-Order-Related Traffic Excluded)

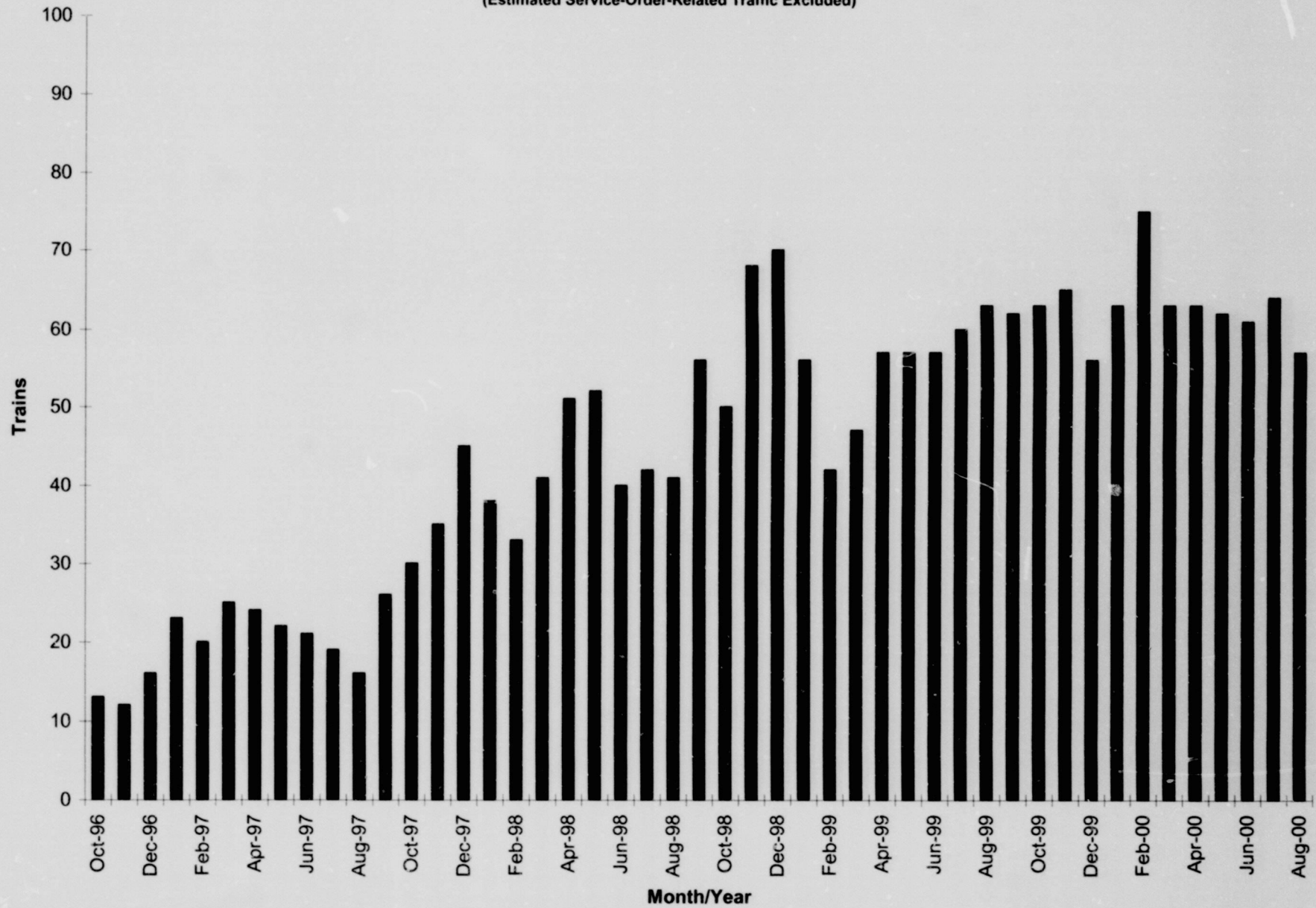


Chart #8

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

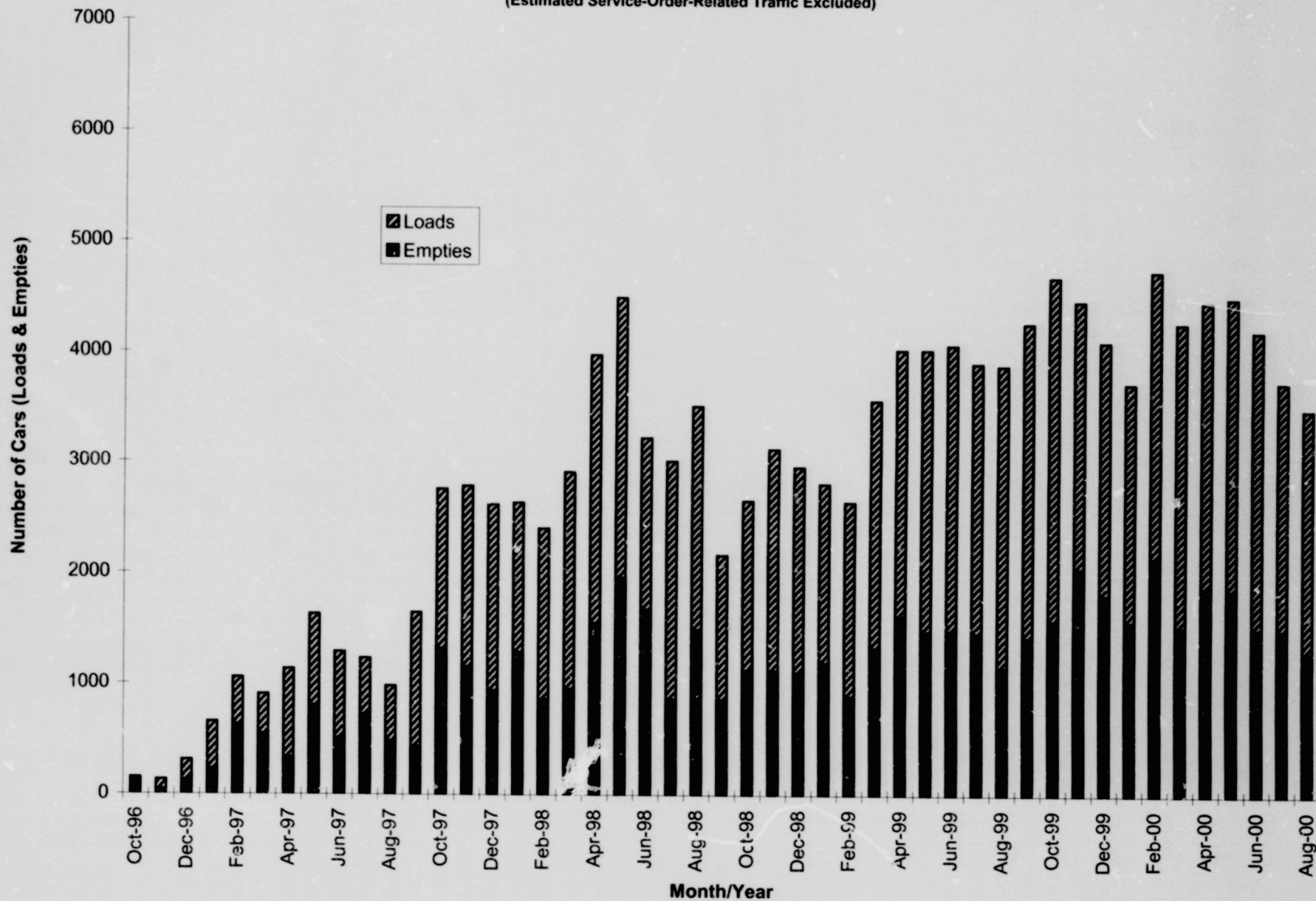


Chart #9
Tex Mex Trackage Rights
Gross Tons (Through Trains)
 (Estimated Service-Order-Related Traffic Excluded)

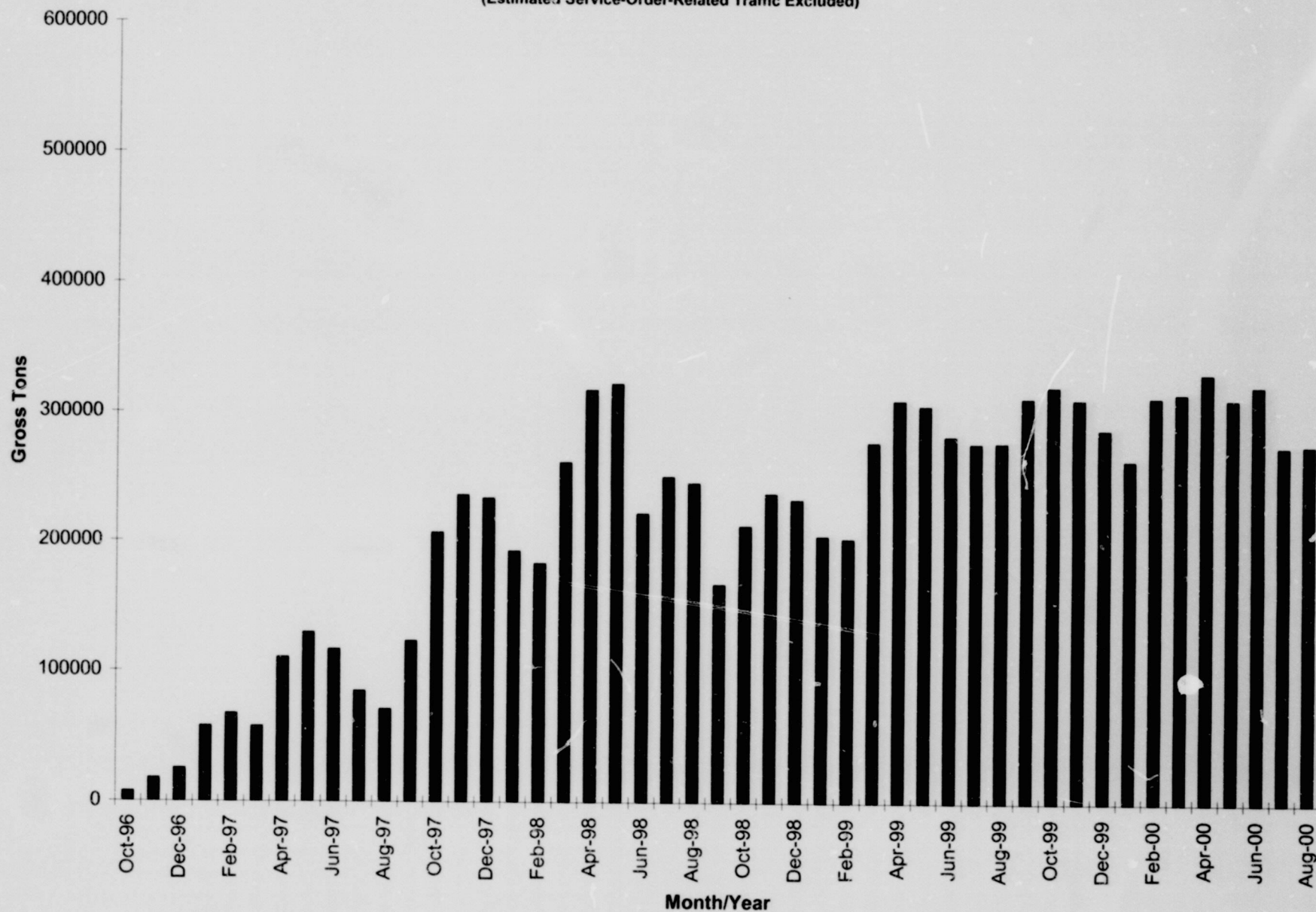


Chart #10
Tex Mex Laredo Traffic
(Loaded Cars)

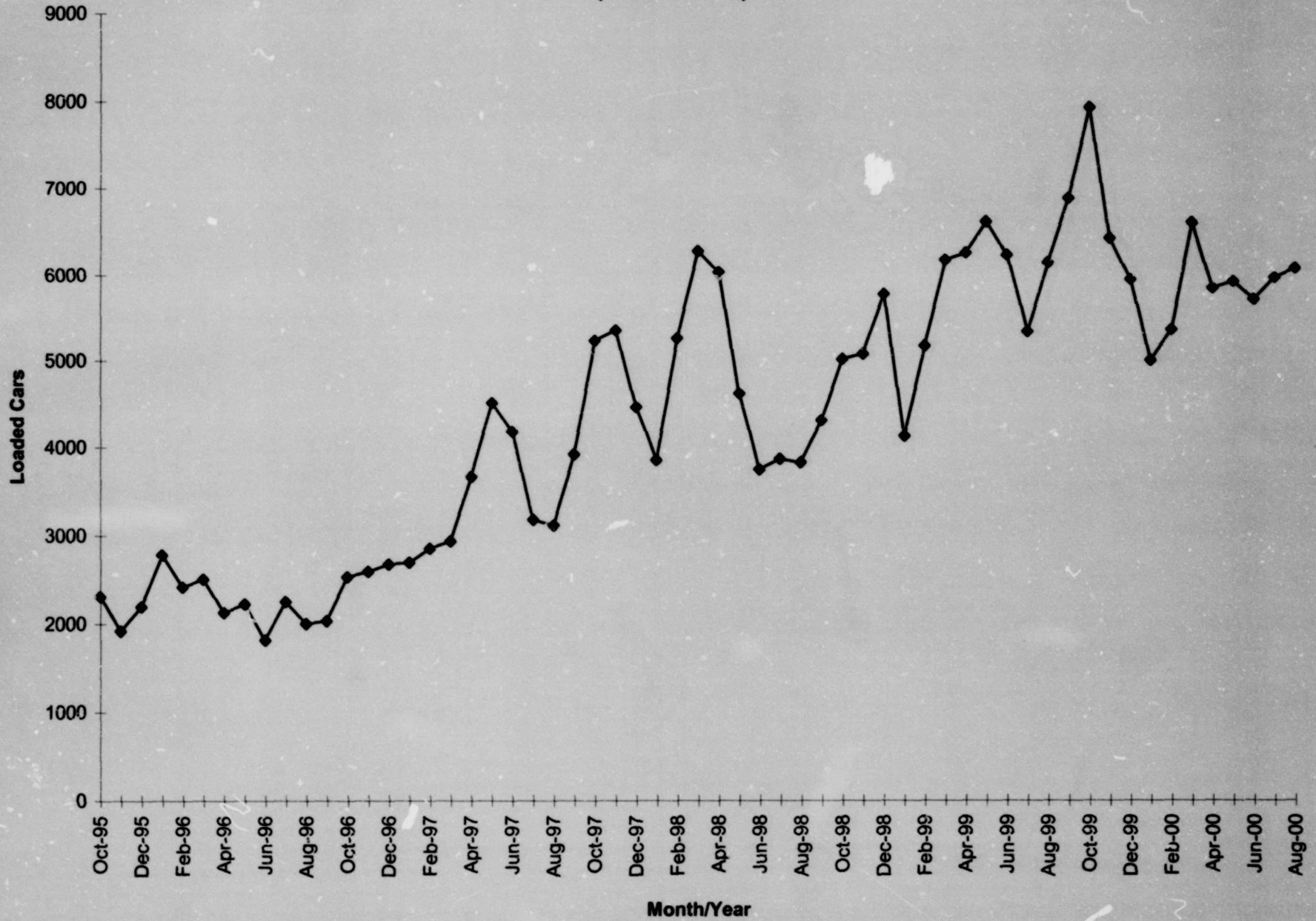
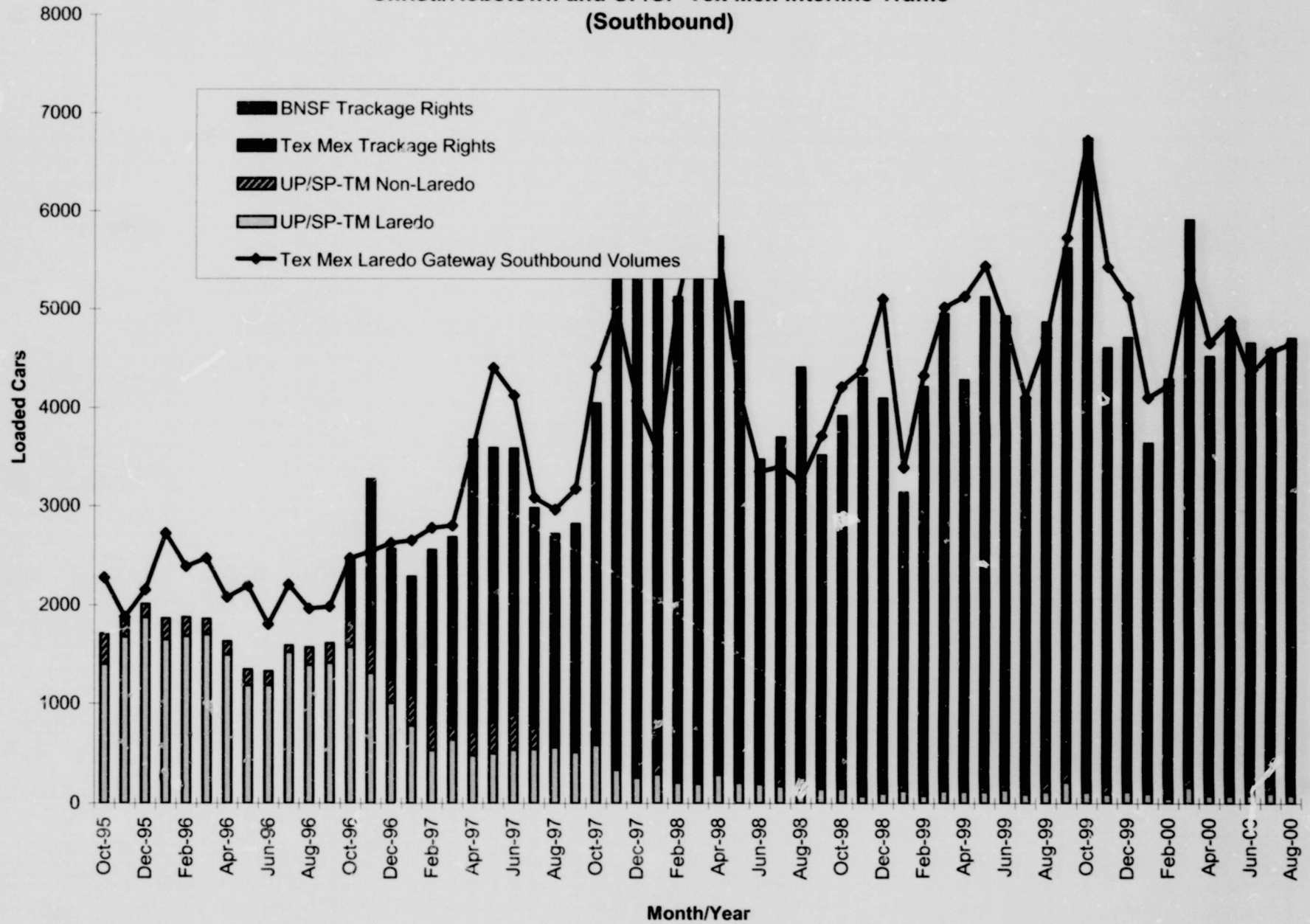


Chart # 11

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

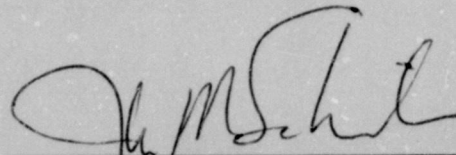


CERTIFICATE OF SERVICE

I, John M. Scheib, certify that, on this 2nd day of October, 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

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



John M. Scheib

STB

FD-32760

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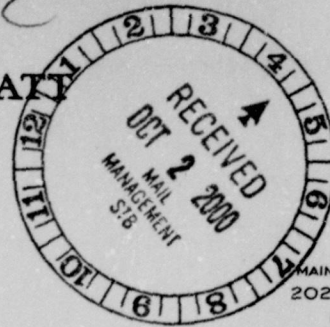
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October 2, 2000

VIA HAND DELIVERY

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

ENTERED
Office of the Secretary

OCT 03 2000
Part of
Public Record

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-17). Also enclosed is a 3.5 inch disk containing the text of the Quarterly Progress Report 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

Erika Z. Jones

Enclosures

cc: All Parties of Record

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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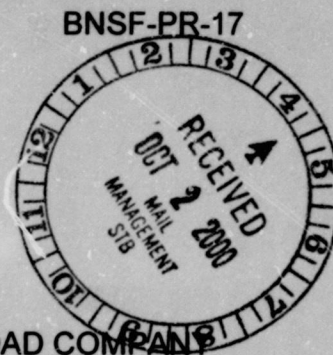
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Attorneys for The Burlington Northern and Santa Fe Railway Company

October 2, 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

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 seventeenth 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).

This Progress Report describes various changes that have occurred in BNSF's operations on its trackage rights lines and purchased lines (the "UP/SP lines") since the filing of BNSF's last Progress Report on July 3, 2000 (BNSF-PR-

16). As documented by this Report, BNSF continued its aggressive efforts over the past three months to compete with UP on the UP/SP lines. As described in Section I, there have been no significant revisions to BNSF's transportation service plan on the UP/SP lines during the third quarter; however, BNSF agreed to temporarily revise operations on certain corridors in order to accelerate completion of UP's maintenance-of-way activities. BNSF continues to adjust its operating and service plans as necessary in order to align those plans with market conditions and customer needs.

Section II provides an update on BNSF's capital investments along the UP/SP lines. Section III discusses BNSF's marketing and industrial development initiatives during the third quarter as they relate to the UP/SP lines. BNSF launched and announced several significant marketing and growth initiatives during the quarter, including a cross-functional business development team dedicated to attracting and growing business on the I-5 Corridor.

In Section IV, BNSF provides updates concerning recent developments and issues affecting the implementation of the Board's conditions on the UP/SP merger, including the initiation of BNSF unit coal train service to AmerenUE at Labadie, MO. UP's announced termination of a transload lease at Ogden, UT, and recent service problems on the Houston-Brownsville and Temple-Eagle Pass Corridors. As discussed in Section IV, BNSF is monitoring closely any

effect upon BNSF and its customers of the current service issues on UP's lines in south Texas and working with UP to minimize those effects for all customers.

I. CHANGES IN BNSF'S OPERATIONS SINCE ITS LAST PROGRESS REPORT

This section describes revisions to BNSF's train operations and service over the UP/SP lines that have occurred during the period from July 3, 2000, through September 30, 2000. There were no significant changes to BNSF's trackage rights operations in the Gulf and Central Corridors during the quarter. BNSF and UP did, however, agree to temporarily revise some trackage rights train operations in these corridors in order to expedite scheduled maintenance activities that will ultimately benefit both carriers.

A. Gulf Corridor

On September 21, BNSF agreed to UP's request to shift some BNSF trackage rights trains operating between Temple and Corpus Christi, TX from the regular route via UP's Angleton and Brownsville subdivisions between Alcoa and Corpus Christi to an alternate route over UP's Flatonia and Port Lavaca subdivisions between Caldwell and Placedo via Flatonia. The agreement allows BNSF to operate one trackage rights train per day in each direction over the alternate trackage rights corridor between Caldwell and Placedo. This change was made in order to address congestion problems on UP's lines in south Texas, and expedite the completion of maintenance work between Alcoa and Bloomington on UP's Houston-Brownsville line. UP expects that the

maintenance work will be completed on or about December 1, 2000, and that BNSF's trackage rights trains will revert to their normal routing at that time. BNSF began using the alternate trackage rights on September 22. BNSF does not anticipate that this temporary arrangement will impair its ability to effectively operate its trackage rights trains to and from Corpus Christi and Laredo.

In order to avoid congestion on UP's Waco Subdivision between Waco and Smithville, TX, and on UP's Smithville Subdivision between Smithville and Sealy, TX, BNSF began rerouting its unit rock trains that operate between Kerr, TX and Houston. These trains normally operate on the trackage rights between Kerr and Sealy via Taylor and Smithville. BNSF is now operating these trains via a slightly longer (by approximately 22 miles) -- but less congested -- route using UP trackage rights between Kerr and Temple, then via BNSF's line from Temple to Houston. BNSF rerouted one unit rock train via Temple in August, and seven unit rock trains via Temple in September.

B. Central Corridor

BNSF is offering regularly-scheduled eastbound merchandise train service daily between Riverbank, CA and Denver, CO (train symbol M-RRBDEN), and regularly scheduled westbound high-priority merchandise train service daily between Denver and Stockton, CA (train symbol H-DENSTO). The previously reported increases in eastbound frequency on the M-RRBDEN train during the second quarter 2000 contributed to increased velocity and improved

on-time performance on eastbound traffic moving to Nevada and Utah. For example, transit times for traffic moving between the Pacific Northwest and customers in Nevada via the I-5 and Central Corridors averaged 8.2 days at the conclusion of the second quarter. At the close of the third quarter, these average transit times have been reduced by nearly 48 hours, to 6.3 days, as a result of improved connections and increased train frequency. Similarly, transit times between the Pacific Northwest and customers in Utah previously averaged 9.1 days, but have been reduced by about 24 hours to an average of 8.1 days as a result of BNSF's service design enhancements on the I-5 and Central Corridors.

BNSF agreed on September 21 to UP's request to temporarily modify the Denver, CO to Stockton and San Jose, CA trackage rights agreement to allow no more than two eastbound trackage rights trains -- one manifest train and one empty unit steel train -- per day between Roseville, CA and Weso, NV. This temporary modification to the trackage rights agreement was made in order to expedite the completion of UP's scheduled maintenance work on the joint trackage between Keddie and Virgilia, CA, and is an example of BNSF's and UP's efforts to work together to ensure that necessary trackage and maintenance work is handled without adversely impacting either carrier's customers. This work is scheduled to end on or about December 1, 2000, and BNSF anticipates that the temporary restrictions will be terminated at that time.

BNSF anticipates that the restrictions will be transparent to customers and does not expect that the restrictions will impair its ability to continue providing sufficient train capacity in this corridor to accommodate existing and projected business volumes.

C. I-5 Corridor

BNSF added two additional trains to its I-5 Corridor service plan during the third quarter. These changes were implemented in order to accommodate BNSF's growing traffic levels on this key corridor and to improve transit times and service consistency for BNSF's customers in Northern California, Southern California, Nevada and Utah.

BNSF currently operates three daily southbound merchandise trains over the I-5 Corridor, including H-EVEBAR (Everett, WA to Barstow, CA), H-PASBAR (Pasco, WA to Barstow, CA), and M-PASBAR (Pasco, WA to Barstow, CA). BNSF also operates three daily northbound merchandise trains over the I-5 Corridor, including H-BARVAW (Barstow, CA to Vancouver, WA), H-BARPAS (Barstow, CA to Pasco, WA), and M-RRBVAW (Riverbank, CA to Vancouver, WA).

During the third quarter, BNSF and UP agreed to allow BNSF to begin temporarily detouring certain northbound and southbound I-5 Corridor merchandise trains via UP's Portland-Eugene-Chemult line. Under this agreement, beginning September 17, BNSF rerouted southbound merchandise

trains H-EVEBAR and H-PASBAR, and northbound trains H-BARVAW, H-BARPAS, and M-RRBVAW, via UP's Eugene line. These detours are being made in order to accommodate BNSF's extensive track maintenance work at Paxton Hill, on its I-5 Corridor between Wishram, WA and Chemult, OR. The detours are planned to remain in effect through October 25.

II. BNSF INVESTMENTS IN TRACKAGE RIGHTS AND PURCHASED LINES

The following summarizes investments and improvements made by BNSF during the third quarter on the UP/SP lines.

- *Baytown Branch -- Construct Second Main Track, Milepost 0.2 to Milepost 3.8.* On August 4, UP and BNSF completed construction of the new, second main track between Milepost 0.2 and Milepost 3.8 on the Baytown Branch near Dayton, TX. BNSF's portion of the \$5.2 million estimated cost of the project is approximately 26 percent, based on previous usage and subject to recalculation.
- *Baytown Branch -- Construct Interchange Tracks.* BNSF completed its final engineering design work to construct an interchange track in each of the four switching zones south of the Dayton storage-in-transit facility on the Baytown Branch. These tracks will be located at Baytown, Eldon Junction, Cedar Bayou, and Mont Belvieu. Construction of the interchange tracks was delayed due to a number of permitting and property acquisition issues. These issues have been resolved, resulting in revised alterations and track design plans for

three of the four tracks. BNSF has received bids for the construction of all four tracks and has identified the low bidder. BNSF anticipates that construction of the interchange tracks, which will be funded 100 percent by BNSF, will commence during the second week of October. The Baytown and Eldon Junction tracks should be completed by the end of the fourth quarter 2000, and the Cedar Bayou and Mont Belvieu tracks should be completed by the end of the fourth quarter 2001. This added capacity, designed to support BNSF's access to customers on the former SP Baytown and Cedar Bayou Branches, will improve service for all customers by improving the operations of both BNSF and UP on these lines.

- *Lafayette Subdivision Rehabilitation and Maintenance Program.* BNSF continued the ongoing maintenance and rehabilitation projects on the jointly-owned former SP Lafayette Subdivision between Avondale and Iowa Junction, LA. Specifically, during the third quarter, BNSF installed ties at various locations and began a mechanized tie renewal program between Avondale and Ramos, LA. Further, there was continued focus on bridge rebuild work, including a bridge near Bayou Sale at M.P. 96.17.
- *Fernley, NV Operating Track.* BNSF previously reported its intent to commence construction of a 1,495-foot operating track along its Central Corridor trackage rights at Fernley, NV. This operating track will support BNSF's service to customers in the Fernley-Sparks NV area, including

Quebecor Printing, Valley Joist Corporation, and BNSF's Quality Distribution Facility at Sparks, NV. As discussed in BNSF's July 2000 Progress Report, the project encountered delay when UP informed BNSF that UP's contractor -- rather than BNSF's contractor -- would have to perform all of the necessary turnout installation. During the third quarter, BNSF forwarded to UP \$154,479 to fund the installation of the two turnouts. Further, BNSF instructed its contractor to commence construction of 1,295 feet of track that will connect the two turnouts. BNSF now anticipates that this project will be completed and placed in service late in the first quarter of 2001. BNSF estimates that its total investment to construct the new operating track at Fernley will be approximately \$332,000. As an interim solution to resolve concerns about support capacity for customers at Fernley, BNSF is leasing a track from UP at Rye Patch, NV. BNSF understands that this arrangement will continue until the new track at Fernley is placed in service.

- *Angleton and Brownsville Subdivisions.* BNSF continued discussions with UP concerning improvements -- and funding for such improvements -- to several bridges on UP's Angleton and Brownsville subdivisions between Angleton and Odem, TX. These improvements will allow 286,000 pound gross weight (car plus lading) equipment to be operated over this line. (The current weight restriction on this line is 268,000 pounds.) Currently, UP can send heavier 286,000 pound shipments to Corpus Christi and Brownsville via

its San Antonio to Corpus Christi and Odem to Brownsville lines, and to Laredo via its San Antonio to Laredo line than BNSF can accommodate over its route. However, BNSF (and Tex-Mex -- which also operates over this route) are at a competitive disadvantage for shipments moving to each of these destinations, because it is restricted to a route that cannot handle the heavier shipments. (Both BNSF and UP are subject to 268,000 pound gross weight restrictions on the Spofford to Eagle Pass, TX line; however, BNSF understands that the upgrade work to allow the heavier, 286,000 pound shipments on this line will be completed during the third quarter of 2000).

III. BNSF'S MARKETING PLANS AND EFFORTS

A. Recent Activities

During the third quarter, BNSF introduced several new marketing and growth initiatives designed to aggressively promote system-wide intramodal and intermodal competition, including on the UP/SP lines, with particular emphasis on growth in the I-5 Corridor. The following is a summary of the initiatives which relate to the UP/SP lines.

- *I-5 Corridor Business Development Team.* During June and July, BNSF formed a new, cross-functional team consisting of marketing, operating, service design, customer solutions, engineering, network development, and industrial development representatives that will focus upon innovative strategies to foster growth throughout the I-5 Corridor, through enhanced

rail/rail and rail/highway competition. The I-5 Corridor Team is led by BNSF's Director of I-5 Corridor Business Development. This new position, which was created specifically for the purpose of growing BNSF's business on the I-5 Corridor, operates outside of traditional departmental-oriented reporting structures.

- *Web Applications.* On August 21, BNSF announced the introduction of a new web-based application that will provide carload customers with access to estimated transit times between any BNSF-served city or point where BNSF interchanges with another railroad. This industry-first application allows customers to determine the scheduled carload transit time from the release or interchange of the shipment to the placement of the shipment at destination. Customers now have direct access to carload transit times between the nearly 7,000 stations that comprise the BNSF rail system, including stations on the UP/SP lines.
- *Web-Based Business-to-Business Directory.* On August 22, BNSF announced the introduction of its Business-to-Business Directory ("B2B Directory"): a new, web-based search capability designed to assist its customers in developing new sales opportunities. The tool enables customers to locate new sales opportunities by product or by location. By completing a brief registration form posted to BNSF's web site, customers can create a web presence that promotes their product or service offering.

Once registered, a customer's information becomes available to potential business partners through the directory's flexible search features. For example, a lumber salesperson in the Pacific Northwest can use the directory to identify a list of potential receivers served by BNSF in Arizona or any other geographic area. Additionally, a receiver on BNSF's system could access a list of potential suppliers from the B2B Directory.

- *Loading Origin Guarantee Program ("LOGs")*. On August 23, BNSF announced that it had reached agreement with Norfolk Southern Railway Company ("NS") and CSX Transportation, Inc. ("CSXT") to extend BNSF's LOGs program to all destinations on NS and CSXT. The LOGs program was initially introduced by BNSF in January 2000 to enhance equipment efficiency. The program allows customers to secure centerbeam railcar capacity 4 to 26 weeks in advance of a designated shipping period through a weekly auction. BNSF guarantees the availability of empty centerbeam cars for the scheduled shipping period and pays a penalty if it is unable to fill the order. The LOGs program, which provides all customers with an equal opportunity to participate, helps BNSF predict car demand and better allocate its equipment fleet. Efficiencies gained from this enhanced planning are shared with BNSF customers through an incentive program for future shipments. This program is designed to make BNSF more competitive with UP and with motor carriers for forest products traffic along the I-5 Corridor

and other corridors. BNSF's agreements with NS and CSXT were effective on August 28, coinciding with BNSF's second 26 week LOGs offering to customers.

- *Acquisition of High-Tech Refrigerated Cars.* BNSF announced on August 25 that it would acquire 700 high-technology refrigerated boxcars over the next two years. BNSF will place the first cars of this new fleet in service by the end of 2000. The cars will have an interior length of 72 feet and offer 8,000 cubic feet of capacity -- approximately twice the capacity of BNSF's existing 50-foot refrigerated boxcars. The new boxcars also feature a more reliable, fuel-efficient refrigeration system that operates only as needed. In addition, the new cars use a global positioning system to provide precise location information. A two-way satellite communications system is able to detect temperature fluctuations and make any necessary adjustments. BNSF anticipates that the new refrigerated boxcars will allow it to aggressively compete for the fast-growing perishables market.
- *BNSF Spanish-Language Internet Web Site.* On September 8, BNSF announced the introduction of a direct link on its Internet web site that will enable customers to conduct business with BNSF in Spanish, a first in the rail industry. This bilingual capability will provide car tracing, shipment monitoring, and links to Ferrocarril Mexicano ("FXE") and Transportacion Ferroviaria Mexicana ("TFM") -- BNSF's rail transportation partners in Mexico.

Furthermore, the Spanish-language site directs customers to BNSF marketing contacts in Mexico and the United States who can provide rate and service packages for rail shipments moving to and from Mexico. BNSF anticipates that this feature of its web site will provide Spanish-language customers a significant opportunity to take advantage of BNSF's Mexico service offerings.

- *I-5 Corridor "5-5-7" Service.* In conjunction with its new I-5 Corridor business development growth initiative, BNSF announced its new "5-5-7" service offerings for carload business on the I-5 Corridor. BNSF now offers 5-day dock-to-dock service between Vancouver, British Columbia and the San Francisco Bay Area in Northern California; 5-day dock-to-dock service between Vancouver, British Columbia and the Los Angeles area in Southern California; and 7-day dock-to-dock service between Vancouver, British Columbia and Phoenix, AZ.
- *I-5 Corridor Carload Service Assurance Program.* Also in conjunction with its new I-5 Corridor business development growth initiative and "5-5-7" transit time program, BNSF announced a new "Carload Service Assurance Program". Features of the program include:
 - **Guaranteed Service:** offering 100-percent money-back guarantees of on-time delivery and equipment availability for traffic moving at a 10- 15 percent premium in select lanes.

- Service Insurance: offering cash-back allowances of between 10 and 15 percent for each carload that arrives behind schedule or that does not arrive on time for a 5 percent premium or a 15 percent volume increase.
- No-Strings Option: allowing shippers to take advantage of BNSF's normal published rates for point-to-point transportation services, without the need for long-term contracts or time or volume commitments.

B. Traffic Volumes

BNSF traffic volumes over the lines to which BNSF received access as a result of the UP/SP merger have continued to grow. See the chart attached hereto as Attachment 1. The charts attached hereto as Attachments 2 to 11 reflect the volumes of traffic for each of the major traffic lanes to which BNSF received access. Attachment 12 shows the breakdown by general commodity groups of this traffic.

BNSF is aware that several organizations and specific shippers have recently expressed concerns over BNSF's ability to serve as an effective competitor in the Central Corridor. BNSF welcomes meaningful, constructive dialogue with any interested party concerning the implementation of the Board's conditions in the Central Corridor or elsewhere on the UP/SP lines. It should be noted that, at all times, BNSF has many market initiatives underway to develop

because it has a considerably shorter route to the port at Longview, WA. BNSF currently handles approximately 870 carloads of potash per year from Little Mountain.

- *IMC Salt, Inc.* BNSF has competed aggressively on price and service for the magnesium chloride business from IMC Salt at Ogden/Little Mountain, UT. BNSF currently handles virtually all of IMC Salt's business to United States and Canadian non-local UP destinations. This amounts to approximately 450 carloads annually.
- *Chevron.* BNSF's share of business originated and terminated at Chevron's Salt Lake City refinery has increased from 30 percent in BNSF's first year of access to the refinery to approximately 90 percent. BNSF currently handles approximately 2,900 carloads annually at the Salt Lake City refinery. Chevron has noted that price, service and ease of doing business drive BNSF's success at Salt Lake City.
- *Honeywell.* BNSF now handles more than 50 percent of Honeywell's business from Salt Lake City. During September 2000, BNSF was awarded a contract for 200 cars from Honeywell after head-to-head bidding against UP.
- *Inland Refining.* BNSF was awarded a one-time movement of product from Southern California to Salt Lake City after bidding against UP (and

additional business and to provide more competitive service for its customers. These initiatives apply to all regions of BNSF's network, including the Central Corridor. BNSF markets its transportation services in the Central Corridor in the same manner as it markets to the other corridors and areas served by BNSF. These marketing efforts are ongoing, and no differentiation is made between the Central Corridor and other BNSF service territories.

Allegations that BNSF is not interested in providing competitive service in the Central Corridor are simply unfounded and untrue. BNSF continues to make the same efforts in the Central Corridor as it does elsewhere and has enjoyed considerable success. Examples of such success are described in more detail below:

- *Kennecott Copper.* Kennecott, a shipper of sulfuric acid, awarded BNSF the discretionary acid business under Kennecott's current contract with UP. Both BNSF and UP bid on these discretionary volumes, with BNSF emerging as the successful bidder as a result of its competitive pricing. BNSF currently handles approximately 1,500 carloads of acid per year from Magna and Garfield, UT.
- *IMC Potash, Inc.* IMC Potash, a potash producer, awarded BNSF approximately 30 percent of its rail potash movement from Little Mountain, UT. BNSF bid against UP for all domestic, non-local UP business. UP was awarded the larger export portion of IMC Potash's business, primarily

The "2-to-1" Point Identification Protocol" that was jointly-developed by BNSF and UP in June 1998 has continued to work very effectively for processing BNSF's requests for access to "2-to-1" customers and facilities on the UP/SP lines. During the third quarter, BNSF confirmed access to the following customers and facilities.

Additional Customer Locations

- Kronos, Inc. at West Lake Charles, LA (confirmed and added to the list of BNSF-accessible customers on September 18)
- Pioneer Pipe at Geneva, UT (confirmed and added to the list of BNSF-accessible customers on September 19)

Additional Transloads

- Transwood, Inc. at Ogden, UT (confirmed and added to the list of BNSF-accessible customers on September 22).

With respect to the development of new facilities along BNSF's trackage rights lines, BNSF continued its ongoing efforts to identify or locate new customer facilities on the UP/SP lines. At the conclusion of the third quarter, more than 20 industrial development projects involving new customer facilities at "2-to-1" points and along trackage rights lines were in various stages of research, discussion, planning, or implementation.

IV. ISSUES AFFECTING BNSF'S IMPLEMENTATION OF TRACKAGE RIGHTS

The following summarizes issues that have affected BNSF's implementation of the merger conditions during the third quarter and updates the status or disposition of previously reported issues.

A. Houston-New Orleans Line Sale Agreement

UP and BNSF finalized their Houston-New Orleans line sale, pursuant to which BNSF and UP are exchanging 50 percent undivided interests in BNSF's line between Iowa Junction and Avondale, LA, and UP's line between Iowa Junction and Dawes, TX. UP and BNSF signed the operating agreements and revised trackage rights agreements for these lines on September 1, 2000. UP and BNSF executed the property exchange agreement, bills of sale, and other conveyance documents on September 8, 2000. The line sale and all related appurtenant documents are effective as of September 1, 2000.

B. BNSF-UP Joint Service Committee

The BNSF-UP Joint Service Committee did not meet during the third quarter. Due to scheduling conflicts, BNSF and UP mutually agreed to reschedule this meeting for October 24 in Omaha.

C. AmerenUE – Labadie, MO

BNSF has previously reported to the Board on the matter of competitive access and service to a coal-fired power generating facility owned and operated by Union Electric Company (d/b/a AmerenUE) at Labadie, MO. Pursuant to the Board's June 1, 2000 decision finding that AmerenUE is a "2-to-1" shipper

entitled to service from an additional rail carrier, BNSF submitted a proposal to UP on June 7 that would provide for direct and competitive BNSF service to the Labadie facility. UP did not agree to BNSF's initial proposal, but countered with a proposal of its own to lift restrictions on the Missouri Central Railroad between St. Louis (Vigus) and Labadie in order to provide BNSF interim access to the Labadie facility until a mutually acceptable long-term solution could be negotiated. At the conclusion of the second quarter, BNSF was evaluating UP's counterproposal. After conferring with officials of the Missouri Central concerning the ability of the Missouri Central line to handle loaded unit coal trains, BNSF concluded that UP's offer was not a viable alternative for providing immediate access to the Labadie plant.

After further discussions, which delayed BNSF's initiation of service to the Labadie facility by 6 weeks, BNSF and UP agreed upon a mutually acceptable arrangement to provide BNSF with direct access to the Labadie plant via a grant of haulage rights on approximately 42 miles of UP's main line between St. Louis (Grand Avenue) and Labadie. On August 4, BNSF and UP signed a haulage agreement to provide for BNSF with interim access to the Labadie plant. The haulage agreement provides for the operation by BNSF of two pairs of unit coal trains (*i.e.*, two loaded/empty cycles) per week. BNSF is required to provide a minimum horsepower-per-trailing ton (HPTT) ratio of 1.0 if DC-traction locomotives are used, or 0.73 HPTT with AC-traction locomotives. BNSF crews

must have a minimum of 6 hours on-duty time remaining upon entering the haulage corridor at St. Louis and at Labadie.

Using this haulage agreement, BNSF has been able to successfully implement the Board's ruling providing for competitive access to the AmerenUE plant at Labadie. BNSF delivered its first 135-car unit coal train, symbolled as the C-NAMWLL0-01 (Loaded Coal, Nacco Junction, WY to Labadie), to the Labadie plant on August 31. Between August 31 and September 30, BNSF successfully delivered 7 loaded unit coal trains to the Labadie plant, or slightly more than one unit train per week, on average. During this period, BNSF had one set of utility-provided coal equipment in service between Wyoming's Powder River Basin and the Labadie plant. Near the end of the quarter, BNSF received a second set of coal equipment from AmerenUE, which should allow BNSF to increase weekly deliveries to Labadie during the fourth quarter to approximately two loaded unit trains per week.

BNSF, UP and AmerenUE have begun discussions concerning BNSF's long-term access to the Labadie plant. BNSF and UP anticipate the construction of a new track connection between the BNSF and UP main lines at or near Pacific, MO to facilitate BNSF's access. Assuming that such a connection is built, UP and BNSF would terminate the current haulage agreement, and BNSF would commence service to the Labadie plant via approximately 9 miles of trackage rights on UP's Jefferson City Subdivision between Pacific and West

Labadie, MO. During the third quarter, BNSF and UP operating and engineering personnel identified two alternatives for achieving such a connection and developed cost estimates for each alternative. BNSF and UP will continue to work together during the fourth quarter to finalize plans for the connection.

D. Entergy Arkansas, Inc. -- White Bluff, AR

BNSF and UP concluded a trackage rights agreement that will effectively implement the Board's decision ensuring that Entergy's White Bluff plant will receive access to two competing rail carriers. On August 31, BNSF and UP signed a supplemental agreement to the Houston, TX to Valley Junction, IL trackage rights agreement. The supplemental agreement provides that, subsequent to construction by Entergy Arkansas, Inc. or an affiliated company of a south leg to the track connection that currently connects Entergy Arkansas, Inc.'s White Bluff plant to the line between Little Rock and Pine Bluff, thus creating a wye track, but no sooner than January 1, 2002, UP will grant BNSF non-exclusive rights to provide direct rail service to White Bluff plant. BNSF's loaded and empty unit coal trains would operate directionally over the trackage rights corridor, thus requiring the completion of the wye track.

E. Transwood, Inc. Transload -- Ogden, UT

Transwood, Inc. operates a transload at Ogden, UT, a "2-to-1" point, on property that Transwood leases from UP. Transwood commenced operations at this Ogden facility in 1989 and has conducted transloading operations at this site

continuously since that time. Currently, the principal commodities handled by Transwood at Ogden include soda ash from southwestern Wyoming and potato flakes from southern Idaho, which originate at points directly and exclusively served by UP. BNSF has provided rail service to Transwood's Ogden transload, in competition with UP's direct service to the traffic origins as SP did prior to the UP/SP merger, since the commencement of BNSF's Central Corridor trackage rights operations.

On August 15, UP sent a letter to Transwood informing the company that its lease of the Ogden transload site would be terminated effective November 1, 2000. UP's letter stated that it was providing additional time beyond the 30-day notification called for in the lease agreement in order to allow Transwood to find alternative locations for the traffic that currently moves via the Ogden transload. BNSF was informed by Transwood -- not UP -- of UP's decision to terminate the lease.

Research by BNSF revealed that Transwood's Ogden transload had been inadvertently omitted from the list of "2-to-1" customers and transloads to which BNSF gained access as a result of the merger conditions.¹ Therefore, on September 15, BNSF wrote to UP pursuant to the terms of the "2-to-1" Point Identification Protocol" and requested that Transwood be added to the official list

¹ In 1997, BNSF sent a letter to UP requesting a list of all existing transload facilities at "2-to-1" points and along trackage rights lines to which BNSF would

of BNSF-accessible customers at Ogden, UT. UP responded on September 22 to confirm BNSF's access to the Ogden transload and, as reported elsewhere in this report, Transwood was subsequently added to the official customer list. UP also notified BNSF of its decision to terminate Transwood's track and real estate leases.

BNSF is now working with Transwood to identify alternative sites for a transload facility in the Ogden area, and has identified several promising locations. BNSF will communicate these locations to UP as soon as BNSF and Transwood have developed sufficient information to make a proper site selection. BNSF expects that UP will take whatever measures are necessary to ensure that the transition to a new site is as smooth as possible, with no noticeable or measurable impact on Transwood's and BNSF's operations.

BNSF understands UP's desire and right to seek uses of its property that are most closely aligned with UP's overall corporate objectives in appropriate circumstances. In the future, however, BNSF expects that UP will notify BNSF and its customers -- and consult with BNSF -- sufficiently in advance of any decision by UP to close a transload at a "2-to-1" point or along trackage rights lines -- prior to that decision -- so that adequate opportunity to preserve competitive alternatives is afforded.

have access as a result of conditions imposed on the UP/SP merger. UP supplied that list, but apparently neglected to include Transwood's Ogden facility.

F. Broken Arrow Environmental -- Aragonite, UT

BNSF continues to work with Broken Arrow Environmental to locate a waste transload facility at Aragonite, UT, west of Salt Lake City, on BNSF's Central Corridor trackage rights line. As BNSF reported in its second quarter 2000 progress report, BNSF submitted a revised operating plan to UP on June 15 for service to the new Broken Arrow transload at Aragonite. This revised plan was provided by BNSF following UP's rejection in April 2000 of BNSF's original operating plan, which proposed to use BNSF merchandise trains to stop on UP's main line to set out and pick up railcars at the Broken Arrow facility. The revised plan called for Utah Railway, acting as BNSF's third-party agent, to switch the Broken Arrow facility with a local train service originating at Midvale, UT. This revised operating plan was designed to provide for more effective and efficient use of resources and to avoid BNSF's reliance on UP to supply a crew to handle the cars between Salt Lake City and Aragonite.

UP initially provided verbal approval for BNSF's revised operating plan; however, when pressed to formalize its approval in writing, UP changed its position. On August 17, UP informed BNSF that it would agree to BNSF's proposal only on the condition that BNSF agree to lease to UP trackage at a BNSF yard in Louisiana for operating purposes and for car storage. BNSF was not agreeable to UP's counterproposal and subsequently informed UP of its

intent to serve the Broken Arrow transload directly utilizing either a turn-around local originating at Provo or a Provo-to-Elko through local. UP approved BNSF's second revised operating plan on September 15.

BNSF and UP remain in disagreement as to whether BNSF has the right under the BNSF Settlement Agreement and the Board's merger conditions to serve the Broken Arrow transload facility through the use of a third-party agent. BNSF will continue to work with UP to resolve this issue or, if necessary, will pursue an appropriate remedy to ensure that BNSF is able to provide competitive service to shippers such as Broken Arrow.

G. Dunphy, NV Turnouts

BNSF previously reported to the Board concerning the installation by UP of two mainline turnouts to serve Newmont Gold Company's new petroleum transload and distribution facility at Dunphy, NV. The first of the two turnouts (the west turnout) was installed and placed into service during the second quarter. BNSF anticipated that UP would complete the installation of the second turnout to this facility (the east turnout) by late July 2000. As of the date of this Report, the second turnout has not been installed and placed into service.

H. Capital Metropolitan Transportation Authority ("CMTA") -- McNeil, TX

BNSF previously reported to the Board concerning the ongoing efforts of BNSF, UP, CMTA, and Trans-Global Solutions (CMTA's interim operator of the former Longhorn Railway, now known as the Austin Area Terminal Railroad,

"AUAR") to devise a mutually acceptable solution to accommodate a BNSF-AUAR interchange at McNeil, TX, in order to implement the condition imposed by the Board in Decision No. 10 of the Houston/Gulf Coast oversight proceeding. On June 15, UP advised BNSF that UP had approved CMTA's plans for the construction of a new interchange track in the northeast quadrant of the UP-AUAR crossing at McNeil. BNSF understands that during the third quarter, CMTA finalized an agreement to secure the property required for the new interchange track. BNSF also understands that CMTA and UP reached final agreement on the construction of the new track, and that CMTA provided notice to proceed to UP on the acquisition of track components and materials for the new interchange track.

I. Texas Service Issues

During late August and September, BNSF and UP train operations on UP's line between Houston and Brownsville were severely impacted by, among other factors, track maintenance issues resulting from record heat and drought conditions in central and south Texas. In response to these issues, UP imposed 25-mph slow orders, primarily between Algoa and Corpus Christi. These slow orders remain in effect until UP's track maintenance personnel can repair or correct problems in the track subgrade caused by the extended period of record-setting hot, dry weather. (BNSF is experiencing similar weather-related

maintenance issues on certain of its own lines in Texas, and has taken swift action to minimize impacts on operations and service to customers.)

The slow orders and maintenance-of-way windows on the Houston-Brownsville line have contributed to an overall slowing of BNSF and UP train operations in this corridor. The slowdown has prevented many trains from reaching their destinations within the time limits of the federal Hours of Service Law, resulting in abnormally high recrew rates. Some trains have been parked in sidings, making these sidings unavailable for train meets and passes and effectively reducing the capacity of the line. During this period, BNSF's trackage rights trains operating between Algoa and Robstown experienced, on average, one recrew per train (i.e., two crews were required to complete a trip that could be completed by one crew under normal operating conditions).

BNSF trains operating along its trackage rights in the Temple-Eagle Pass Corridor also continue to incur congestion-related delays on UP's Waco, Lockhart, and Austin subdivisions, between Temple and San Antonio. These delays have forced frequent recrewings of trains in order to comply with the federal Hours of Service Law. Recently, one and sometimes two more crews than normal are required for a train to complete its trip over the trackage rights line. BNSF and UP continue to discuss this matter and are now evaluating possible solutions to improve service and reduce congestion on this corridor.

As a further illustration of the congestion-related impacts on BNSF's operating costs and service performance on the UP/SP lines in Texas, on September 13, BNSF operated 10 trackage rights trains on the Fort Worth-to-Waxahachie, Temple-to-Eagle Pass, and Houston-to-Brownsville Corridors. Eight crews on these 10 trains went "dead on the law" ("DOL") under the federal Hours of Service law. BNSF operated 11 trackage rights trains along these corridors on September 19 and 20, and experienced 7 and 6 DOLs, respectively. On September 26, BNSF operated 13 trackage rights trains with 9 DOLs.

In addition, BNSF's service to customers at the important San Antonio, TX terminal (a "2-to-1" point) has been adversely affected by congestion problems on UP. As an example, under an operating plan jointly-developed and agreed upon by both BNSF and UP described in BNSF's previous quarterly reports, BNSF's trackage rights trains operating between Temple and Eagle Pass via San Antonio set out cars for customers at San Antonio at Adams Siding. UP then pulls the cars from this siding and switches them to customers under a reciprocal switching agreement.² BNSF has elevated its concerns about this

² On September 19, BNSF southbound train M-TPLEAP1-19 was not allowed to set out 8 loaded cars destined to BNSF customers at San Antonio. As a result, BNSF was forced to handle the cars through to Eagle Pass, for delivery to San Antonio on the next available northbound train. On September 21, BNSF's northbound train M-EAPTPL1-21 attempted to deliver the 8 loaded cars to Remount Siding at San Antonio, which is where BNSF normally receives outbound cars originating at San Antonio from UP. Again, BNSF was refused the opportunity to set out the 8 cars, thus forcing BNSF to handle the cars through to Temple. As a result, all 8 of the cars failed to meet the trip plan and

incident to appropriate levels of UP's organization and expects that such incidents will not be repeated.

J. Settlement Agreement Issues

In reviewing the BNSF Settlement Agreement and other conditions on the UP/SP merger, as well as subsequent Board decisions interpreting and clarifying these conditions, BNSF believes that a number of issues between BNSF and UP need to be defined and clarified and specific processes put in place to eliminate the lack of clarity and differences of opinion which lead to delays in responding to the needs of its customers. In the coming months, BNSF will work with UP to reach mutual agreement on these issues.

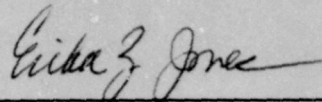
V. CONCLUSION

Throughout the third quarter, BNSF has continued its efforts to provide reliable, dependable and consistent service over the UP/SP lines. BNSF has continued to focus on capital investments to and marketing of the UP/SP lines, and has introduced several initiatives designed to improve its service offerings over these lines. Although BNSF's marketing efforts and service improvements have led to increased competition and new business opportunities, a number of issues must be resolved with UP in order for BNSF to be fully responsive to customer needs and fully implement the pro-competitive and service oriented

delivery goals that BNSF had promised to its customers, each of the cars incurred more than 700 miles of out-of-route mileage, and BNSF incurred additional operating costs.

goals of the Board's UP/SP merger conditions. BNSF will continue to work with UP on resolution of these issues or pursue appropriate remedies to resolve those situations or issues as necessary to serve BNSF's customers.

Respectfully submitted,



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Sidney L. Strickland, Jr.
Michael E. Roper

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Attorneys for The Burlington Northern and Santa Fe Railway Company

October 2, 2000

CERTIFICATE OF SERVICE

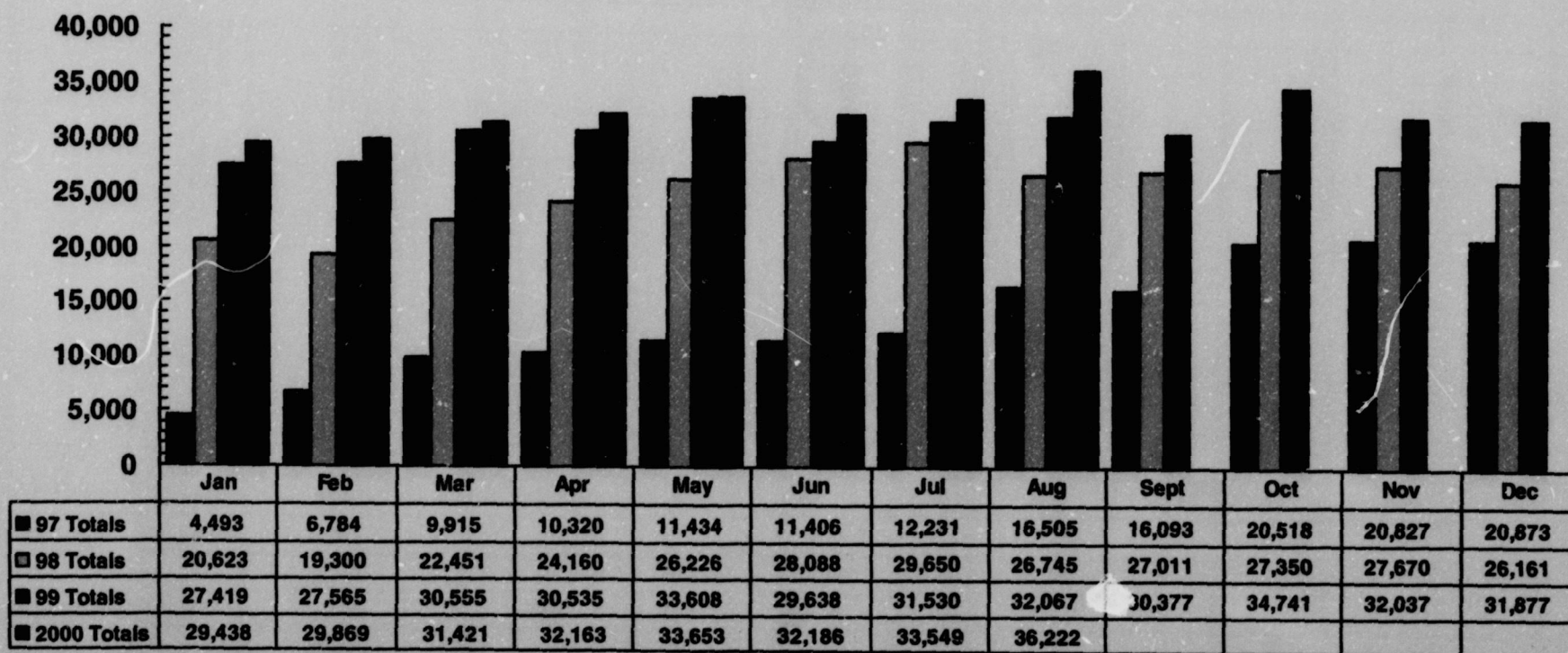
I do hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Quarterly Progress Report (BNSF-PR-17) are being served on all parties of record.

Kelley E. Campbell
Kelley E. Campbell

ATTACHMENT 1

Total 1997-00 BNSF Loaded Units On UPSP Merger Condition Lines

Loads

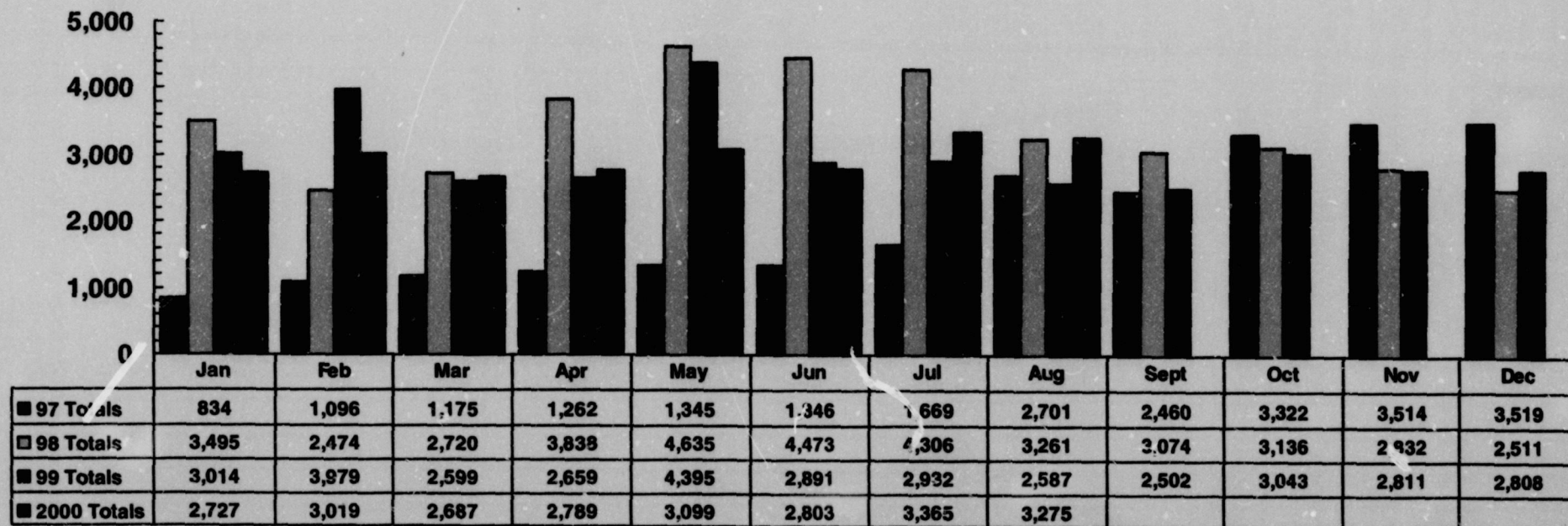


09/29/2000

ATTACHMENT 2

1997-00 BNSF Loaded Units On UP/SP Trackage Rights Corridors Central Corridor

Units

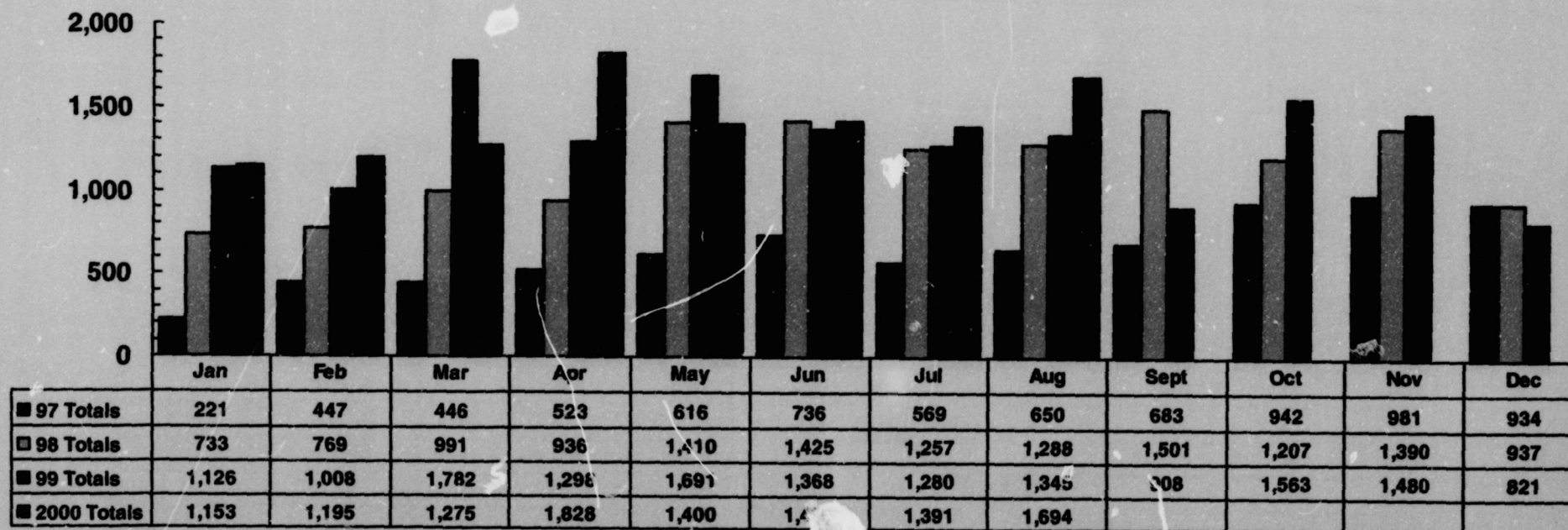


09/29/2000

ATTACHMENT 3

1997-00 BNSF Loaded Units On UP/SP Trackage Rights Corridors Central Texas Corridor

Units

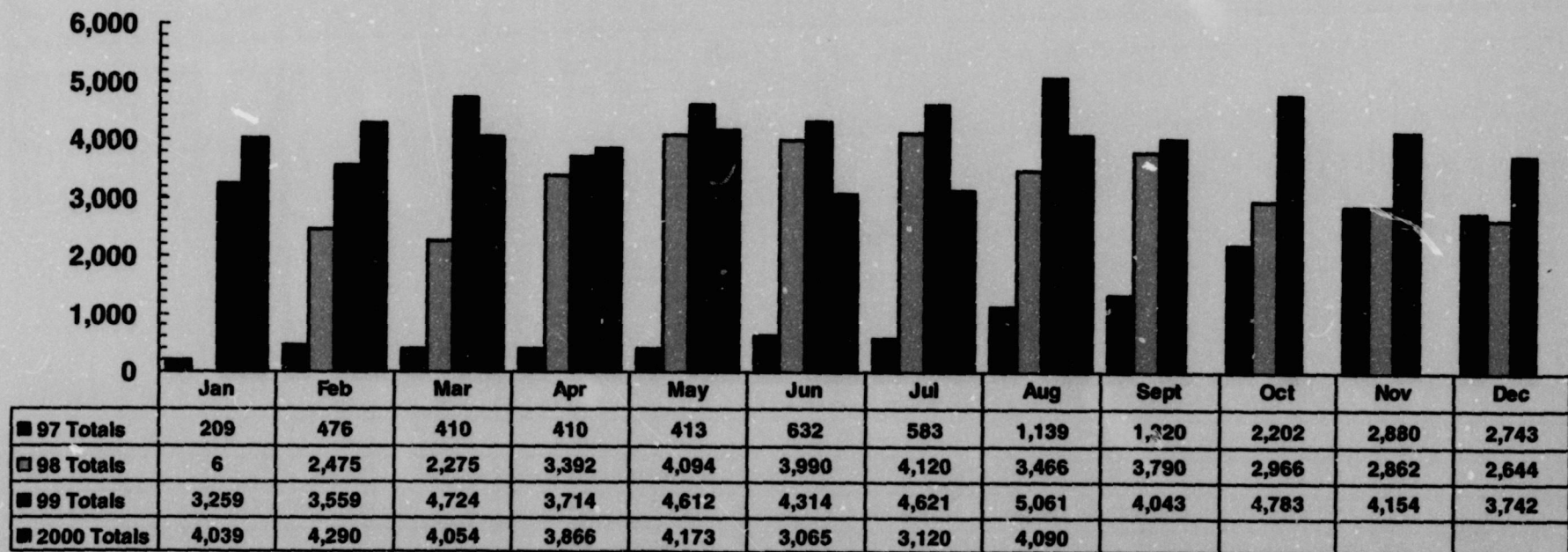


09/29/2000

ATTACHMENT 4

1997-00 BNSF Loaded Units On UP/SP Trackage Rights Corridors Eagle Pass Corridor

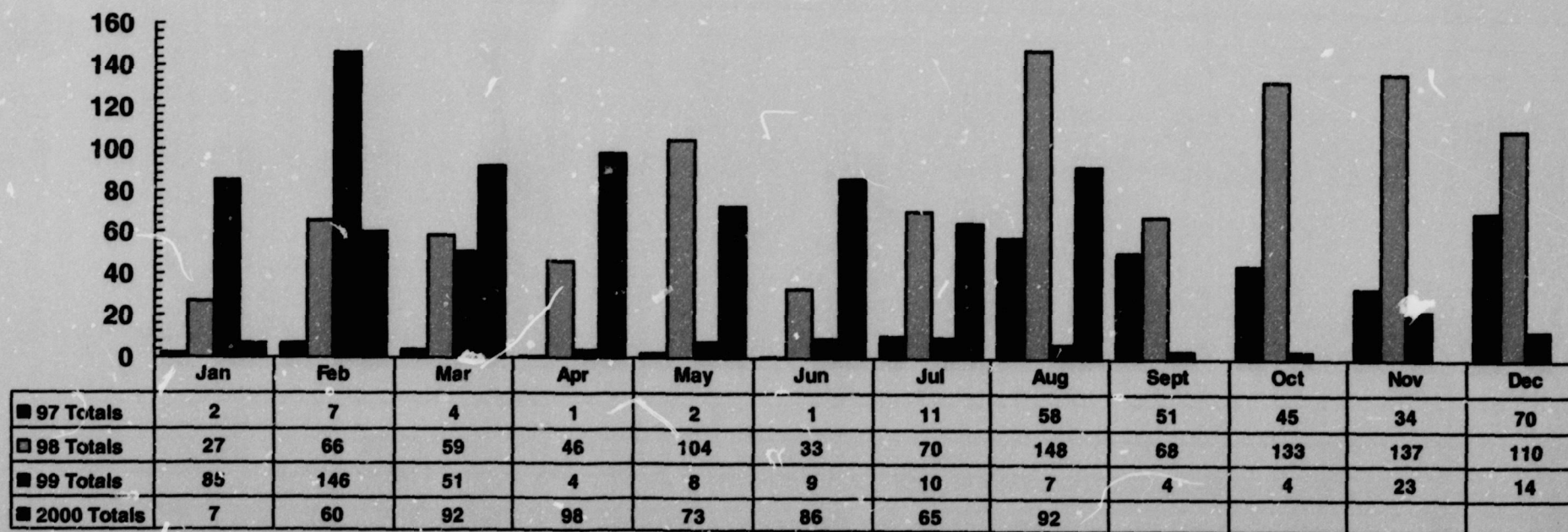
Units



ATTACHMENT 5

1997-00 BNSF Loaded Units On UP/SP Trackage Rights Corridors El Paso Corridor

Units

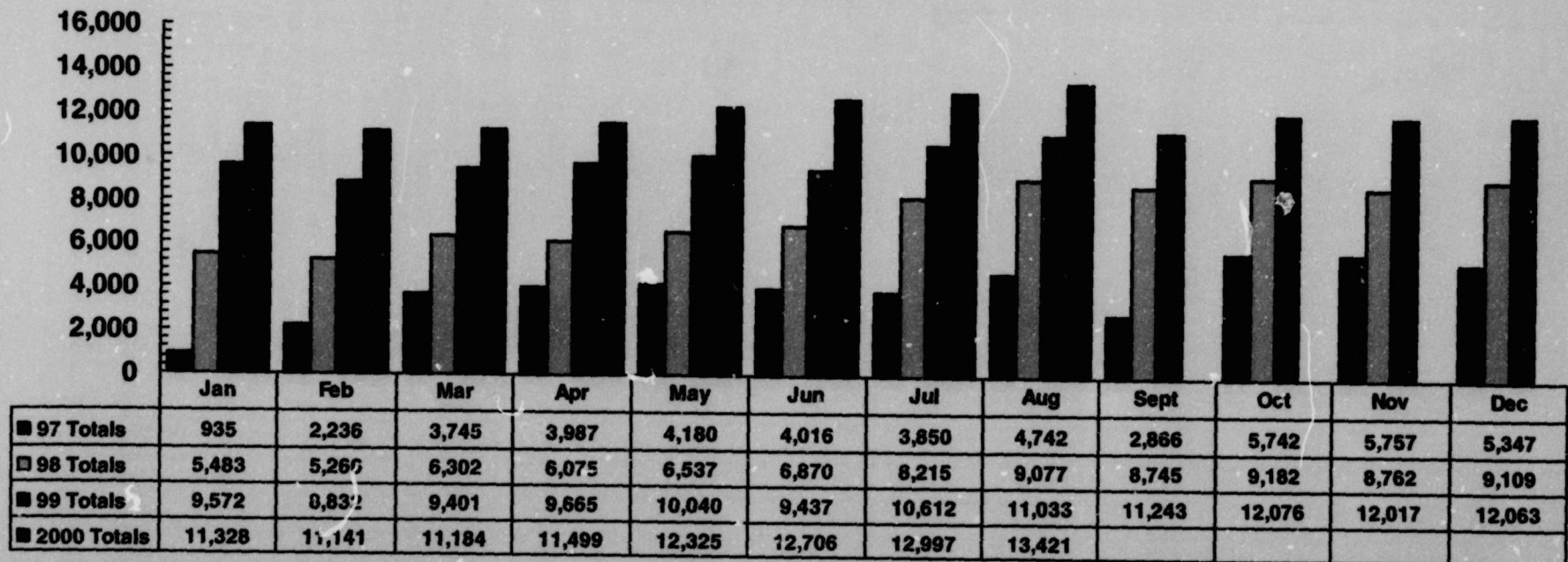


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ATTACHMENT 6

1997-00 BNSF Loaded Units On UP/SP Trackage Rights Corridors Gulf East Corridor

Units

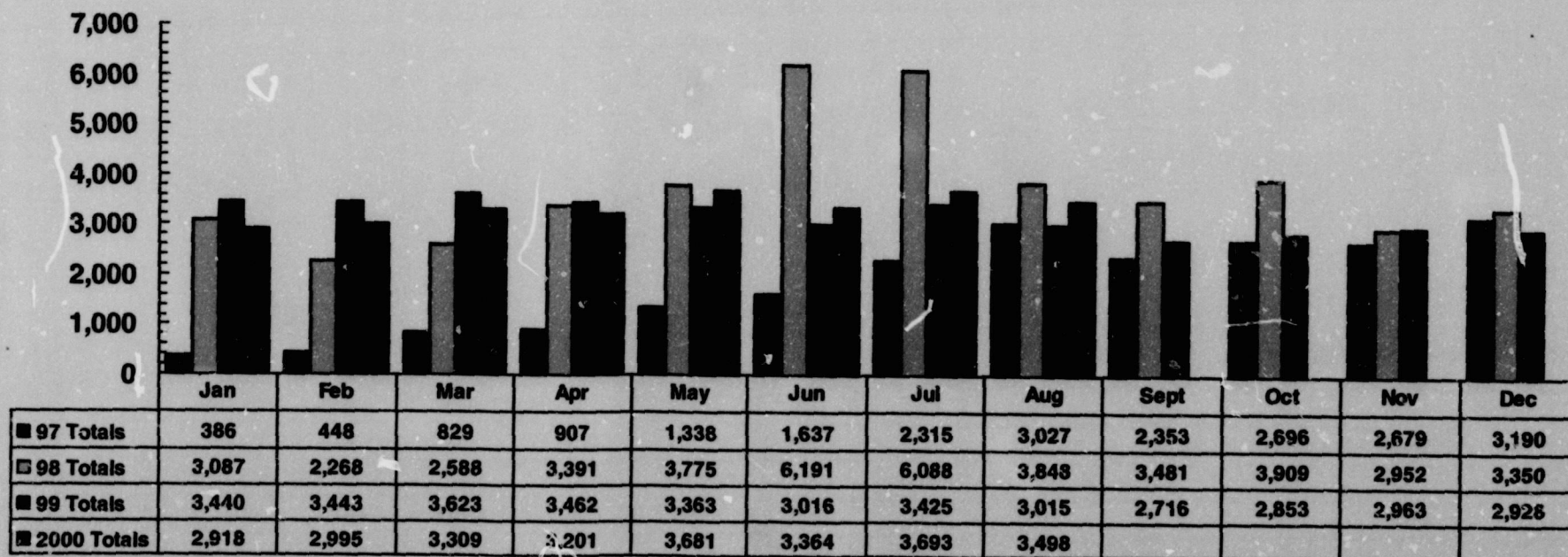


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ATTACHMENT 7

1997-00 BNSF Loaded Units On UP/SP Trackage Rights Corridors Gulf North Corridor

Units

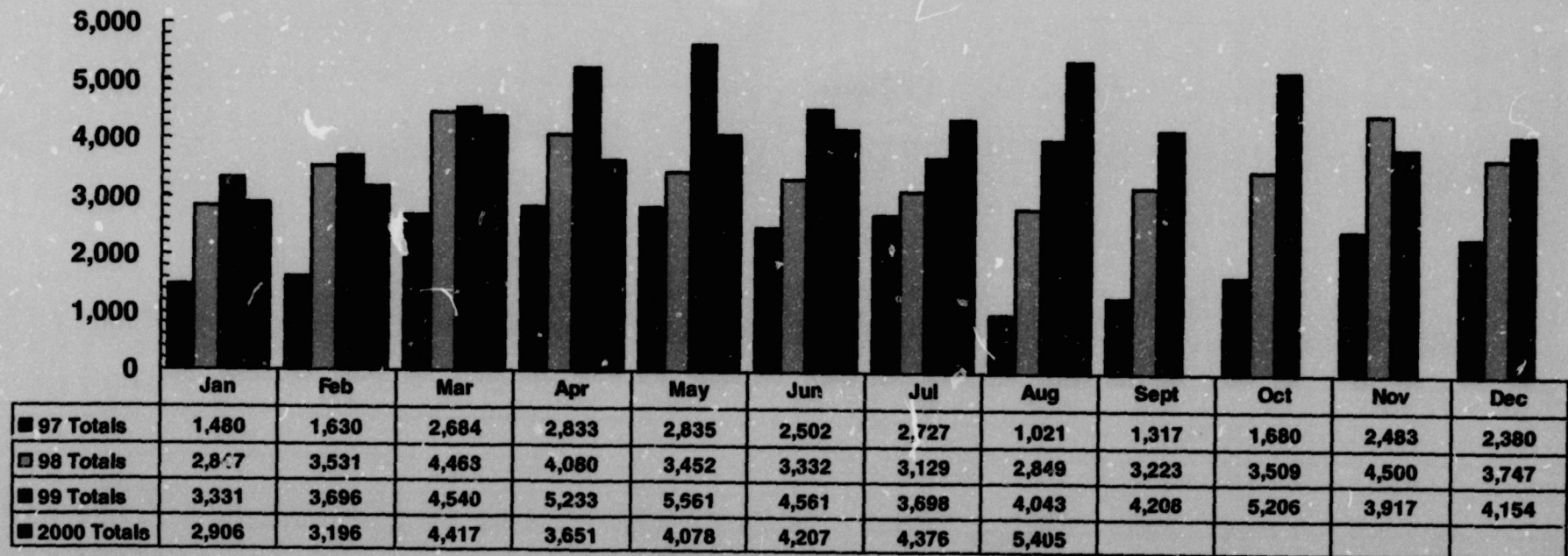


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ATTACHMENT 8

1997-00 BNSF Loaded Units On UP/SP Trackage Rights Corridors Gulf South Corridor

Units

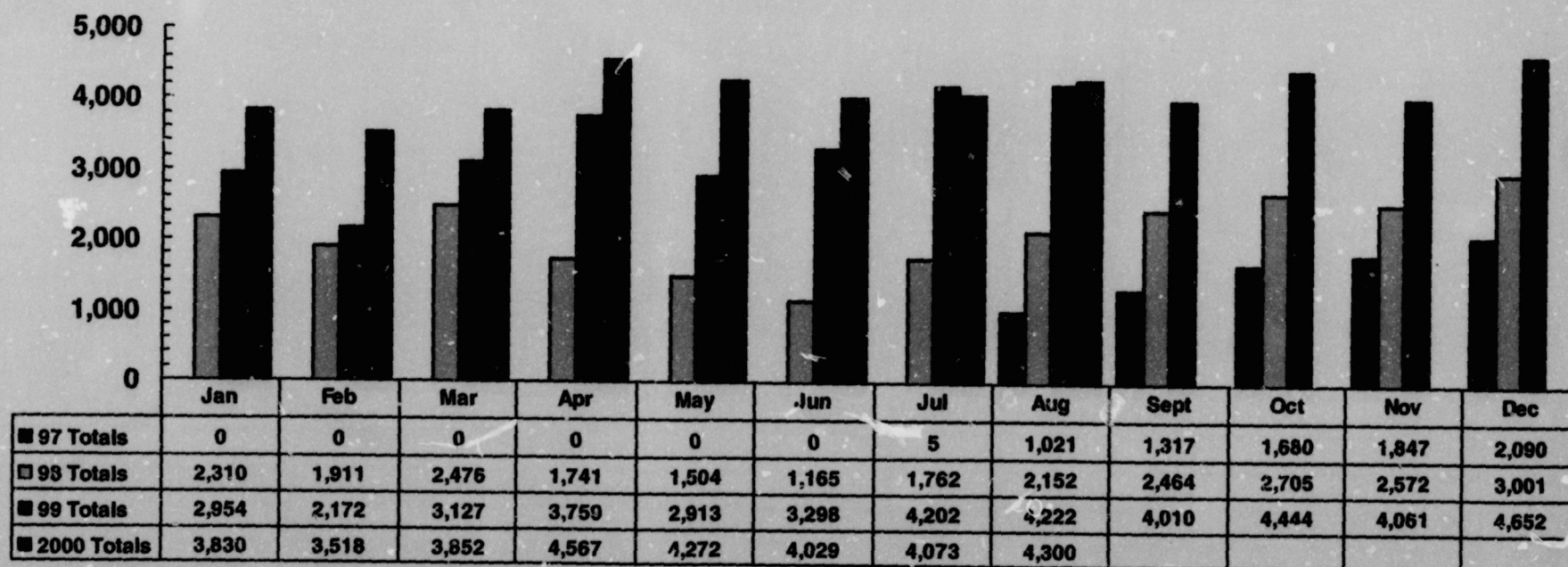


09/29/2000

ATTACHMENT 9

1997-00 BNSF Loaded Units On UP/SP Trackage Rights Corridors I-5 Corridor

Units



09/29/2000

STB

FD-32760

10-2-00

D

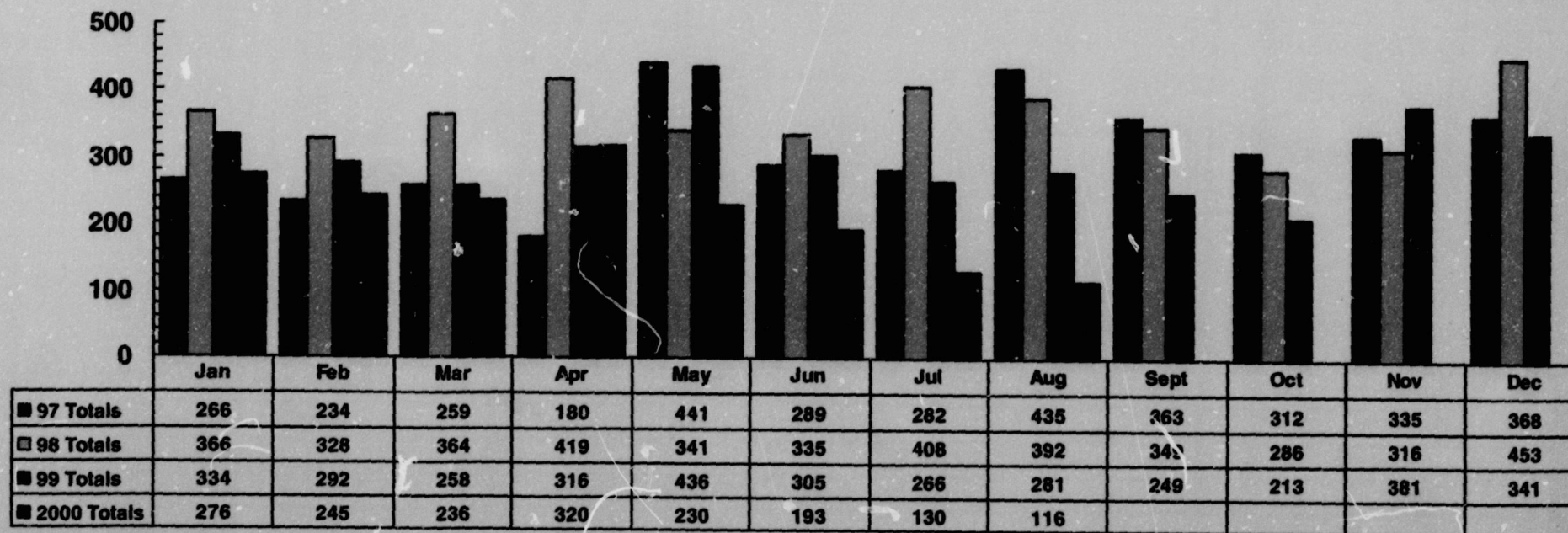
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ATTACHMENT 10

1997-00 BNSF Loaded Units On UP/SP Trackage Rights Corridors Southern California Corridor

Units



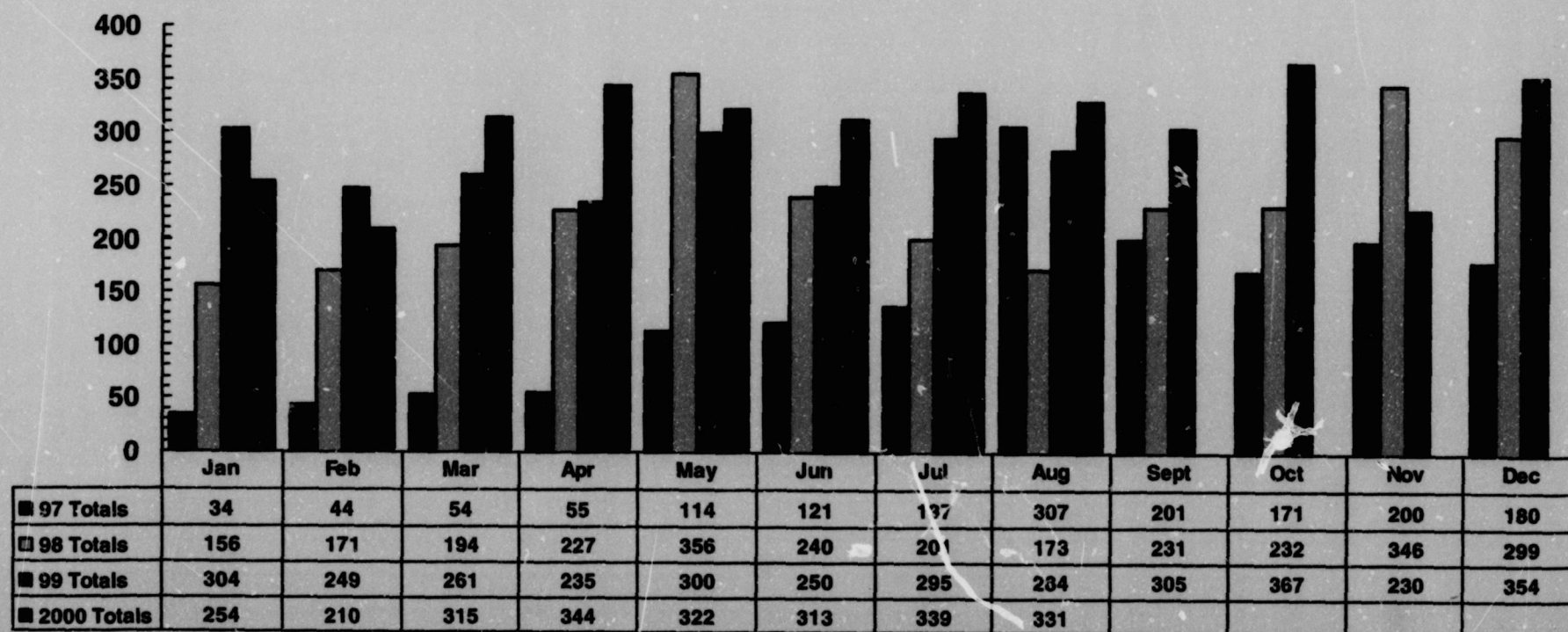
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ATTACHMENT 11



1997-00 BNSF Loaded Units On UP/SP Merger Condition Lines By Corridor Bay Area Corridor

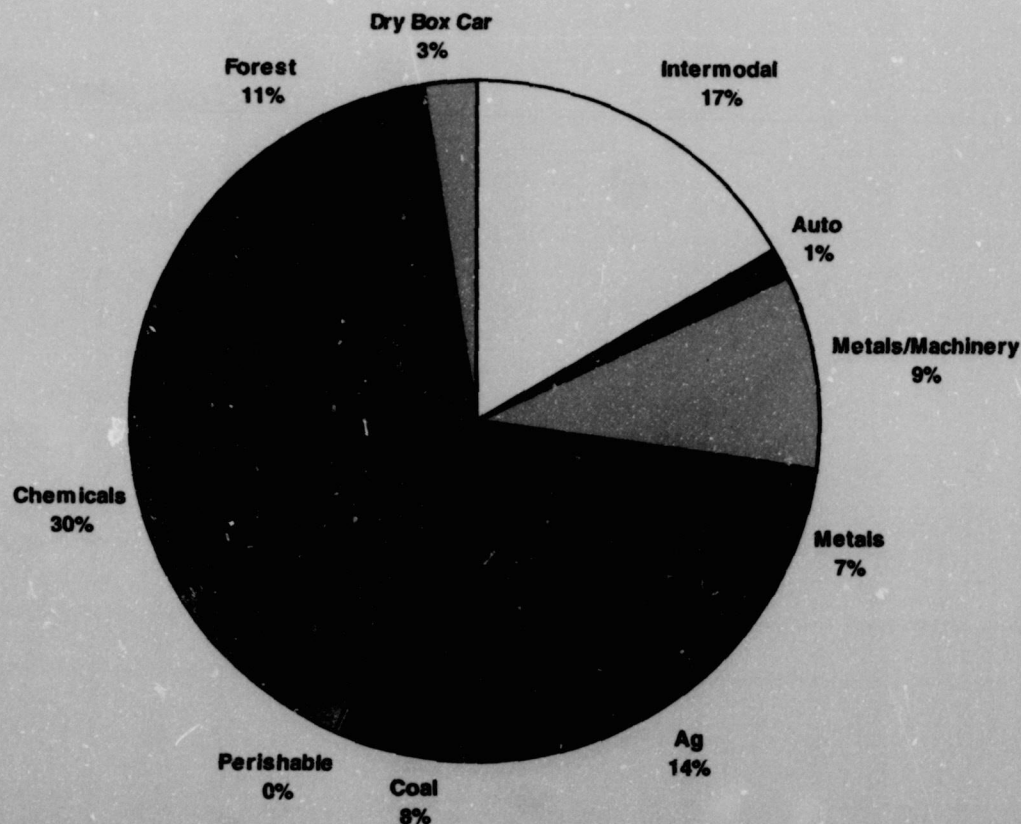
Units



09/29/2000

ATTACHMENT 12

Commodities Handled To/From and Via UP/SP Merger Condition Lines All Loaded Units January-August 2000



09/29/2000

ATTACHMENT 13

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

Customer	Station	State	Status
Gilchrist Bag	Camden	AR	2:1
International Paper Bag Pak	Camden	AR	2:1
Intl Paper Southern Kraft	Camden	AR	2:1
Riceland Foods	Fair Oaks	AR	2:1
Planters Cotton Oil Mill Inc	Forrest City	AR	2:1
3M Industrial Mineral Prod (3M Arch St)	Little Rock	AR	2:1
3M Industrial Mineral Prod (3M Road)	Little Rock	AR	2:1
ADM Processing	Little Rock	AR	2:1
AFCO Steel Bond Street Plant	Little Rock	AR	2:1
AFCO Steel South Shop	Little Rock	AR	2:1
AFCO Steel Thomas Street Shop	Little Rock	AR	2:1
Aiman, Sol Co	Little Rock	AR	2:1
Arkansas Power & Light	Little Rock	AR	2:1
Asphalt Products	Little Rock	AR	2:1
Barrett Hamilton	Little Rock	AR	2:1
Choctaw Inc	Little Rock	AR	2:1
Colonial Baking, Earth Grains Div (Facility Vacant)	Little Rock	AR	2:1
Darragh Co	Little Rock	AR	2:1
Georgia Pacific Corp	Little Rock	AR	2:1
Goff Distribution Warehouse	Little Rock	AR	Transload
Grobmyer Lumber	Little Rock	AR	2:1
Harcros Chemical Inc.	Little Rock	AR	2:1
Kaufman Lumber Whse (7th St)	Little Rock	AR	2:1
Northwest Hardwoods	Little Rock	AR	2:1
Sears Roebuck & Co	Little Rock	AR	2:1
Smith Fiberglass Prod Inc	Little Rock	AR	2:1
Smurfit Stone Container Corp	Little Rock	AR	2:1
Sterling Paint Inc (6th St)	Little Rock	AR	2:1
Sysco Food Svcs of Arkansas	Little Rock	AR	2:1
Thibault Milling	Little Rock	AR	2:1
Unisource	Little Rock	AR	2:1
Winburn Tile Mfg Co	Little Rock	AR	2:1
Central Terminal Distributing Centers, Inc	North Little Rock	AR	2:1
Koppers Industries Inc.	North Little Rock	AR	2:1
Mid South Seeds	North Little Rock	AR	2:1
Mountaire Feeds Inc	North Little Rock	AR	2:1
Oakley Bruce Inc	North Little Rock	AR	2:1
Onesource Home Building Center	North Little Rock	AR	2:1
PGI Nonwovens Polymer Group, Inc. Chicopee Div, Plant 1	North Little Rock	AR	2:1
PGI Nonwovens Polymer Group, Inc. Chicopee Div, Plant 2	North Little Rock	AR	2:1
S F Services Inc	North Little Rock	AR	2:1
S F Services Inc (Cooperative Mills Inc)	North Little Rock	AR	2:1
S F Services Inc (S F Svcs Fertilizer)	North Little Rock	AR	2:1
Southern Cotton Oil Co Div of ADM	North Little Rock	AR	2:1
Tenenbaum, A Co	North Little Rock	AR	2:1
Zeneca Agricultural Prod	North Little Rock	AR	2:1
ACF Industries	Paragould	AR	2:1
Amerl Steel (Florida Steel)	Paragould	AR	2:1
Century Tube Corporation	Pine Bluff	AR	2:1
Cloud Oak Flooring	Pine Bluff	AR	2:1
Gaylord Container Paper	Pine Bluff	AR	2:1
General Chemical Corp	Pine Bluff	AR	2:1
Global Materials Svcs LLC (GMSFOUR)	Pine Bluff	AR	2:1
Global Materials Svcs LLC (GMSMAIN)	Pine Bluff	AR	2:1

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

Global Materials Svcs LLC (GIMSONE)	Pine Bluff	AR	2:1
Hixson Lumber Sales	Pine Bluff	AR	2:1
Hixson Lumber Sales	Pine Bluff	AR	2:1
Hoover Treated Wood Prod	Pine Bluff	AR	2:1
International Paper Mill	Pine Bluff	AR	2:1
Johnson Metal Recyclers	Pine Bluff	AR	2:1
Mid America Packaging Inc. - Div of Gaylord	Pine Bluff	AR	2:1
Pine Bluff Arsenal	Pine Bluff	AR	2:1
Planters Cotton Oil Mill	Pine Bluff	AR	2:1
Planters Cotton Seed	Pine Bluff	AR	2:1
Southern Bag	Pine Bluff	AR	2:1
Southern Compress Whse	Pine Bluff	AR	2:1
Strong Company Inc.	Pine Bluff	AR	2:1
Sun Grove Horticulture	Pine Bluff	AR	2:1
T W Pelton & Co	Pine Bluff	AR	2:1
Terra International Inc	Pine Bluff	AR	2:1
Tyson Foods Feedmill	Pine Bluff	AR	2:1
Tyson Foods Protein Blend Plant	Pine Bluff	AR	2:1
Viking Bag	Pine Bluff	AR	2:1
Commercial Stg & Distribution Corp	Texarkana	AR	Agreement
Cooper Tire & Rubber Corp	Texarkana	AR	Agreement
General Electric Railcar Repair	Texarkana	AR	Agreement
Tri State Iron & Metal Corp	Texarkana	AR	Agreement
Willamette Industries	Elk Grove	CA	New Facility
California Cereal (Nabisco Brands)	Elmhurst	CA	2:1
Fleenor Packing	Elmhurst	CA	2:1
Fleischman's Yeast	Elmhurst	CA	2:1
Longview Fibre Co	Elmhurst	CA	2:1
Pacific America Whse	Elmhurst	CA	2:1
General Motors	Fremont	CA	2:1
New United Motor Manufacturing	Fremont	CA	2:1
Toyota Logistics Svcs	Fremont	CA	2:1
Toyota Logistics Svcs	Fremont	CA	2:1
United States Gypsum	Fremont	CA	2:1
Cargill Inc. (Refinery)	Fullerton	CA	2:1
Hunt Wesson (Bldgs 18, 22 & 28)	Fullerton	CA	2:1
U S Army, Sierra Army Depot	Herlong	CA	2:1
Standard Iron & Metals Co	Kohler	CA	2:1
Sunshine Biscuit - Vacant Bldg	Kohler	CA	2:1
Christian Salveson Inc. (CSI)	La Habra	CA	2:1
Lucky Sav-On Distribution Center	La Habra	CA	2:1
Vacant (Lucky Food Stores)	La Habra	CA	2:1
U S Army, Sharpe Depot	Lathrop	CA	2:1
Brown Strauss Steel	Livermore	CA	2:1
G S Roofing Products	Livermore	CA	2:1
Gaylord Graphics	Livermore	CA	2:1
Livermore Whse	Livermore	CA	2:1
Salinas Reinforcing Inc	Livermore	CA	2:1
Mid-City Iron & Metal Corp	Los Angeles	CA	2:1
American Brass & Iron (ABI)	Melrose	CA	2:1
Armour Equipment Sales	Melrose	CA	2:1
Mother Cake & Cookies	Melrose	CA	2:1
Nabisco Brands	Oakland	CA	2:1
Kruse (O H) Grain & Milling Co	Ontario	CA	2:1
Intermod Industries	Ortega	CA	2:1
Kaiser Sand Gravel	Pleasanton	CA	2:1
California Builders Supply Co	Sacramento	CA	2:1

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

Capitol Plywood	Sacramento	CA	2:1
Continental Chemical Co	Sacramento	CA	2:1
Sacramento Bee (McClatchy Newspaper)	Sacramento	CA	2:1
Burke Flooring Products, Div Burke Industries	San Jose	CA	2:1
Coors Distributing Co of Santa Clara	San Jose	CA	2:1
Del Monte Corp, Plant #3	San Jose	CA	2:1
Ecolab Inc	San Jose	CA	2:1
Floor Service Supply	San Jose	CA	2:1
Frank Lin Distillers Products Ltd	San Jose	CA	2:1
Frito Lay	San Jose	CA	2:1
International Paper Bag Pak Div	San Jose	CA	2:1
Markovits & Fox	San Jose	CA	2:1
Northern California Fertilizer	San Jose	CA	2:1
Red Wing Co Inc (National Preserve)	San Jose	CA	2:1
Safety Kleen Corp	San Jose	CA	2:1
San Jose Distribution Services	San Jose	CA	2:1
Stapleton-Spence Packing	San Jose	CA	2:1
Sun Garden Packing Co	San Jose	CA	2:1
U S Pollution Control	San Jose	CA	2:1
Western Beverage Co	San Jose	CA	2:1
Truck Rail Handling	Snoboy	CA	Transload
Chem-World Supply Inc	South Gate	CA	2:1
EKA Chemicals/EKA Nobel	South Gate	CA	2:1
Los Angeles Chemical Co (LACCO)	South Gate	CA	2:1
P Q Corporation	South Gate	CA	2:1
Titan Terminal & Transport	South Gate	CA	2:1
Hardwoods Inc	Trevarno	CA	2:1
Trans Western Polymers	Trevarno	CA	2:1
A L Gilbert	Turlock	CA	2:1
Americold Plant 1	Turlock	CA	2:1
Facility vacant/for lease (Snider L)	Turlock	CA	2:1
Feedstuffs Processing Co.	Turlock	CA	2:1
International Paper	Turlock	CA	2:1
Purina Mills Inc	Turlock	CA	2:1
Rogers Food (Div Universal Foods)	Turlock	CA	2:1
Tab Products Co	Turlock	CA	2:1
Turlock Fruit	Turlock	CA	2:1
Truck Rail Handling	Warm Springs	CA	Transload
Capital City Warehouse	West Sacramento	CA	2:1
Capital Coors	West Sacramento	CA	2:1
Cargill	West Sacramento	CA	2:1
Crum & Crum Enterprises Inc	West Sacramento	CA	Transload
Farmers Rice Coop	West Sacramento	CA	2:1
Karrolton Envelope	West Sacramento	CA	2:1
Montgomery Ward & Co Distr Ctr	West Sacramento	CA	2:1
PFX Pet Supply	West Sacramento	CA	2:1
Port Of Sacramento (Yolo Port Dist)	West Sacramento	CA	2:1
The Ink Company	West Sacramento	CA	2:1
Treasure Chest	West Sacramento	CA	2:1
Unocal	West Sacramento	CA	2:1
American Metals Corp	Yolo Port	CA	2:1
California Distribution Center	Yolo Port	CA	2:1
Weyerhaeuser Lumber	Yolo Port	CA	2:1
Conoco Inc	Durham	CO	New Facility
Total Petroleum	Durham	CO	New Facility
American Soda, L.L.P.	Parachute	CO	New Facility
Agri Producers	Herington	KS	2:1

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

Cairo Coop Equity Exchange	Preston	KS	2:1
Crowley American Transport	Harbor	LA	2:1
Farmers Rice Milling Co Inc	Harbor	LA	2:1
Lake Charles Carbon Co, Div Reynolds Metals	Harbor	LA	2:1
Lake Charles Stevedores	Harbor	LA	2:1
M I Drilling Fluids	Harbor	LA	2:1
Calcasieu Steel & Pipe Inc	Lake Charles	LA	Agreement
Lake Charles American Press	Lake Charles	LA	Agreement
Lake Charles Harbor Terminal	Lake Charles	LA	Agreement
Lake Charles Public Elevator	Lake Charles	LA	Agreement
Allen Millwork Inc	Shreveport	LA	Agreement
Bell Industries	Shreveport	LA	Agreement
Custom Bilt Cabinet & Supply #1	Shreveport	LA	Agreement
G S Roofing Products Co Inc	Shreveport	LA	Agreement
Georgia Pacific Corp	Shreveport	LA	Agreement
Hart Lumber Co Inc	Shreveport	LA	Agreement
Murphy Bonded Whse Inc	Shreveport	LA	Agreement
National Biscuit Co (Nabisco)	Shreveport	LA	Agreement
Purina Mills Inc	Shreveport	LA	Agreement
S F Services Inc	Shreveport	LA	Agreement
Sears Roebuck & Co	Shreveport	LA	Agreement
Southwestern Electric Power Co	Shreveport	LA	Agreement
Conoco (Gulf Coast Lube Plant)	Sulphur	LA	Agreement
Arco Chemical (Olin Corp)	West Lake	LA	Agreement
Condea Vista Co	West Lake	LA	Agreement
Conoco Inc	West Lake	LA	Agreement
Dunham Price Inc	West Lake	LA	Agreement
Excel Paralubes	West Lake	LA	Agreement
Holnam Inc	West Lake	LA	Agreement
Jupiter Chemicals/Jupiter Nash	West Lake	LA	Agreement
M I Drilling Fluids	West Lake	LA	Agreement
Martin Marietta Aggregates	West Lake	LA	Agreement
Montell USA	West Lake	LA	Agreement
P&G Industries Inc	West Lake	LA	Agreement
R E Heldt Construction	West Lake	LA	Agreement
Reagent Chemical & Research	West Lake	LA	Agreement
Tetra Chemicals	West Lake	LA	Agreement
ABB Randall Corp	West Lake Charles	LA	Agreement
Baroid Drilling Fluids	West Lake Charles	LA	Agreement
Baroid Petroleum Services	West Lake Charles	LA	Agreement
Cit Con Oil	West Lake Charles	LA	Agreement
Citgo Petroleum Corp	West Lake Charles	LA	Agreement
Conoco Inc, Coke Termi	West Lake Charles	LA	Agreement
Equistar Chemicals LP	West Lake Charles	LA	Agreement
Firestone Synthetic Rubber & Latex	West Lake Charles	LA	Agreement
Grace Davison (W R Grace)	West Lake Charles	LA	Agreement
Kronos Inc.	West Lake Charles	LA	Agreement
Southern Ionics Inc	West Lake Charles	LA	Agreement
Venco Conoco, Calcining Plant	West Lake Charles	LA	Agreement
West Lake Petrochem'cals	West Lake Charles	LA	Agreement
West Lake Polymers	West Lake Charles	LA	Agreement
West Lake Styrene	West Lake Charles	LA	Agreement
Ag Processing	Dexter	MO	2:1
Cargill	Dexter	MO	2:1
Hudson Foods	Dexter	MO	2:1
Monarch Feed Mills	Dexter	MO	2:1
Union Electric Company (dba Ameren UE)	Labadie	MO	2:1

**UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement**

Baker Hughes Inteq
 Saga Exploration Co
 Atlas Towing Co
 M I Drilling Fluids
 Sierra Chemical NV
 Cortez Gold Mines
 Fleischli Oil Corp
 SS Supply
 Union Pacific Fuels Inc
 Anschutz Marketing Transport
 Continental Lime
 Dust Chemical
 Kilborn International
 Thatcher Chemical Co - Nevada
 Turner Gas
 Baroid Drilling Fluids
 Kennecott Utah Copper
 Mine Service & Supply
 Newmont Gold Company Inc.
 Alpark Petroleum
 Ash Grove Cement Co
 Blach Distributing
 Cashman Equipment
 Franklin Lumber Bldg Supply
 Nevada Freeport
 Nevada Ice & Cold Storage
 Par Gas
 Petro Source
 Petro Source Asphalt Terminal
 Tricon Metals & Services, Inc.
 Quebecor Printing Nevada Inc
 Valley Joist Corp
 Continental Lime
 Diamond Plastics Co
 U S Barium
 Kennecott Utah Copper
 Transwood Inc
 Kennecott Utah Copper
 Transwood Inc
 Coastal Chemical
 Sierra Chemical Of Nevada
 BNSF Nevada Quality Distr Center (QDC)
 Crown Pacific Corporation dba Reno Lumber Co.
 Sierra Pacific Power
 Dupont
 Van Waters & Rogers
 Mobil Chemical
 Econo Rail Corp
 Exxon Chemical Americas
 Exxon Chemical Plastics
 Exxon Company USA
 Jindal United Steel Corp
 Rhodia
 SAW Pipes USA Inc
 Seapac Inc
 United States Steel/USX
 Thompson Consumer Electronics (RCA)

Argenta	NV	2:1
Barth	NV	2:1
Battle Mountain	NV	New Facility
Battle Mountain	NV	2:1
Battle Mountain	NV	2:1
Beowawe	NV	2:1
Beowawe	NV	2:1
Beowawe	NV	2:1
Beowawe	NV	2:1
Carlin	NV	2:1
Carlin	NV	2:1
Carlin	NV	2:1
Carlin	NV	2:1
Carlin	NV	2:1
Carlin	NV	2:1
Dunphy	NV	2:1
Dunphy	NV	2:1
Dunphy	NV	2:1
Dunphy	NV	New Facility
Elko	NV	2:1
Elko	NV	2:1
Elko	NV	2:1
Elko	NV	2:1
Elko	NV	2:1
Elko	NV	2:1
Elko	NV	2:1
Elko	NV	2:1
Elko	NV	2:1
Elko	NV	2:1
Elko	NV	2:1
Fernley	NV	New Facility
Fernley	NV	New Facility
Golconda	NV	2:1
Golconda	NV	2:1
Golconda	NV	2:1
Jayhawk	NV	2:1
Jayhawk	NV	2:1
Redhouse	NV	2:1
Redhouse	NV	2:1
Rennox	NV	2:1
Rennox	NV	2:1
Sparks	NV	New Facility
Sparks	NV	New Facility
Valmy	NV	2:1
Vivian	NV	2:1
Vivian	NV	2:1
Amelia	TX	2:1
Baytown	TX	2:1
Baytown	TX	Agreement
Baytown	TX	Agreement
Baytown	TX	Agreement
Baytown	TX	2:1
Baytown	TX	2:1
Baytown	TX	2:1
Baytown	TX	2:1
Baytown	TX	2:1
Belen	TX	New Facility

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

City Of Brownsville	Brownsville	TX	2:1
Milwhite	Brownsville	TX	2:1
Premier Services Corp	Brownsville	TX	2:1
Tex Mex Cold Storage	Brownsville	TX	2:1
Farstad Oil	Buford	TX	2:1
Lopez Scrap Metal	Buford	TX	2:1
El Paso Valley Cotton Assn	Clint	TX	2:1
T & R Chemicals Inc	Clint	TX	2:1
Valley Feed Mills	Clint	TX	2:1
Citgo Petroleum East Plant	Corpus Christi	TX	2:1
Citgo Petroleum West Plant	Corpus Christi	TX	2:1
Coastal Refining & Marketing	Corpus Christi	TX	2:1
Elementis Chromium	Corpus Christi	TX	2:1
Encycle Texas Inc.	Corpus Christi	TX	2:1
ESCO Distributors Inc	Corpus Christi	TX	2:1
Koch Refining Company, East Plant	Corpus Christi	TX	2:1
Nueces Grain Company	Corpus Christi	TX	2:1
US Interstate Grain Corp., Port Terminal	Corpus Christi	TX	2:1
Zarsky Lumber Co.	Corpus Christi	TX	2:1
Defense Distribution Depot	Defense	TX	2:1
Penreco	Dickinson	TX	2:1
Gulf States Asphalt	Dumont	TX	2:1
Houston L&P #1	Dumont	TX	2:1
Houston L&P #3	Dumont	TX	2:1
South Houston Lumber	Dumont	TX	2:1
General Tire	East Waco	TX	2:1
Four Star Sugars	El Paso	TX	New Facility
Amoco Chemical	Eldon	TX	Agreement
Bayer Chemical	Eldon	TX	Agreement
Borden Chemical	Eldon	TX	2:1
Chevron Chemical	Eldon	TX	Agreement
City Public Service Board of San Antonio	Elmendorf	TX	2:1
Richard Bills Feedlot	Fabens	TX	2:1
Romney Implement	Fabens	TX	2:1
Swig Cotton Compress	Fabens	TX	2:1
Ashland Chemical	Genoa	TX	2:1
Pioneer Concrete Texas	Genoa	TX	2:1
Sunbelt Asphalt Materials	Genoa	TX	2:1
Amc Warehouses	Great Southwest	TX	2:1
Boise Cascade	Great Southwest	TX	2:1
Carry Companies	Great Southwest	TX	2:1
Carry Companies (Imperial Sugar)	Great Southwest	TX	2:1
Champion Recycling	Great Southwest	TX	2:1
Coors Brewing	Great Southwest	TX	2:1
D D Recycling	Great Southwest	TX	2:1
D S Plastics	Great Southwest	TX	2:1
DSC Logistics	Great Southwest	TX	Transload
DSC Logistics (Lever)	Great Southwest	TX	Transload
DSC Logistics (Pillsbury)	Great Southwest	TX	Transload
Frito Lay	Great Southwest	TX	2:1
G E Appliances	Great Southwest	TX	2:1
General Hardwoods	Great Southwest	TX	2:1
Ink	Great Southwest	TX	2:1
Intsel Southwest	Great Southwest	TX	2:1
LMD Warehouse Distribution	Great Southwest	TX	2:1
Mackie Automotive Southwest	Great Southwest	TX	2:1
Matlack Systems	Great Southwest	TX	2:1

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

McGregor Printing	Great Southwest	TX	2:1
National Distribution Center	Great Southwest	TX	2:1
National Gypsum Co	Great Southwest	TX	2:1
National Starch Chemical	Great Southwest	TX	2:1
Packaging Corp of America	Great Southwest	TX	2:1
Pennzoil Prod	Great Southwest	TX	2:1
Pepsi Cola	Great Southwest	TX	2:1
Porter Warner Ind	Great Southwest	TX	2:1
Professional Food Systems	Great Southwest	TX	2:1
Quality Logistics Services	Great Southwest	TX	2:1
Solvay Engineered Polymers (DS Plastics)	Great Southwest	TX	2:1
Sigma Network Inc.	Great Southwest	TX	2:1
Texas Plywood Lumber	Great Southwest	TX	2:1
Tucker Housewares	Great Southwest	TX	2:1
Tulco Oil	Great Southwest	TX	2:1
Uvtec	Great Southwest	TX	2:1
Wainwright Ind	Great Southwest	TX	2:1
Western Reclamation	Great Southwest	TX	2:1
Weyerhaeuser	Great Southwest	TX	2:1
Willamette Industries Bag	Great Southwest	TX	2:1
Willamette Industries Corrug	Great Southwest	TX	2:1
LCRA Plant	Halsted	TX	2:1
Alamo Forest Products Inc.	Harlingen	TX	2:1
Cameron Ashley Building Products	Harlingen	TX	2:1
Earthgrains Co	Harlingen	TX	2:1
Georgia Pacific Corp	Harlingen	TX	2:1
Harlingen Valley Compress Co., Inc.	Harlingen	TX	2:1
Joiner Foodservice Inc.	Harlingen	TX	2:1
Rio Grande Oil Mill	Harlingen	TX	2:1
Valley Compress Co., Inc.	Harlingen	TX	2:1
Valley Coop Oil Mill (Valco Chemical)	Harlingen	TX	2:1
Valley Morning Star	Harlingen	TX	2:1
M G Building Materials	Heafer	TX	2:1
Wheelwright & Associates	League City	TX	2:1
Exxon Chemical Americas	Mont Belvieu	TX	Agreement
Allied Signal	Orange	TX	2:1
Bayer Fibers Additives/Rubber	Orange	TX	2:1
Chevron Chemical	Orange	TX	2:1
Dupont De Nemours, E I	Orange	TX	2:1
Equitable Bag	Orange	TX	2:1
Firestone Syn Rubber Latex	Orange	TX	2:1
Lewis Plastics	Orange	TX	2:1
Neches Inc	Orange	TX	2:1
Orange City Of	Orange	TX	2:1
Orange Port Of	Orange	TX	2:1
Orange Shlp Building	Orange	TX	2:1
Precinct One Orange County	Orange	TX	2:1
PrintPak (James River)	Orange	TX	2:1
Rescar Inc	Orange	TX	2:1
Sabine Warehouse	Orange	TX	2:1
Schulman Plant (Burnett St)	Orange	TX	2:1
Schulman Plant (Thomas St)	Orange	TX	2:1
Texas Polymer Services	Orange	TX	2:1
West Orange City Of	Orange	TX	2:1
Wilson Warehouse	Orange	TX	2:1
Alamo Iron Works	San Antonio	TX	2:1
Allen & Allen Co	San Antonio	TX	2:1

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

BFI (Browning Ferris Industries)	San Antonio	TX	2:1
Big Tex Grain	San Antonio	TX	2:1
Block Distributing, Wine Div	San Antonio	TX	2:1
California Fruit Co	San Antonio	TX	2:1
Crystal Cold Storage	San Antonio	TX	2:1
Dittmar Lumber Corp	San Antonio	TX	2:1
Fiesta Warehousing Distribution	San Antonio	TX	Transload
Fite Distribution Services	San Antonio	TX	2:1
Georgia Pacific Corp	San Antonio	TX	2:1
GLI Distributing	San Antonio	TX	2:1
Halo Distributing	San Antonio	TX	2:1
Hart Lumber	San Antonio	TX	2:1
Hood Clays Vr	San Antonio	TX	2:1
Imperial Bedding	San Antonio	TX	2:1
Lone Star Brewing	San Antonio	TX	2:1
Newell Industries Inc	San Antonio	TX	2:1
Newell Recycling of San Antonio, L.P.	San Antonio	TX	2:1
Pearl Brewing	San Antonio	TX	2:1
Pioneer Flour Mills	San Antonio	TX	2:1
Salt Exchange Inc	San Antonio	TX	2:1
Savage Industries, Industrial Rail Services	San Antonio	TX	Transload
South Texas Liquid Terminal	San Antonio	TX	Transload
Southern Merchandise Stge Co	San Antonio	TX	2:1
Star Seed & Grain	San Antonio	TX	2:1
Superior Tomato-Avacado Co Inc	San Antonio	TX	2:1
Trinity Industries Inc	San Antonio	TX	2:1
Westland Specialty Oil Company Inc	San Antonio	TX	2:1
Wright Oil	San Antonio	TX	2:1
Merco Joint Venture	Sierra Blanca	TX	2:1
San Patricio County Commissioner, Pricinct 1	Sinton	TX	2:1
A E Staley @ Imperial Holly facility	Sugar Land	TX	2:1
Imperial Holly	Sugar Land	TX	2:1
Nalco Exxon Energy Chemicals, L.P.	Sugar Land	TX	2:1
J J S Distributing	Texarkana	TX	Agreement
Kerr McGee Chemical Corp	Texarkana	TX	Agreement
Miller Bowie County Farmers (Willis St)	Texarkana	TX	Agreement
Texarkana Milling Supply	Texarkana	TX	Agreement
Amrail Services	Tornillo	TX	Transload
Drake Enterprises	Tornillo	TX	2:1
American Plant Food Co	Tyler	TX	2:1
Bonar Packaging	Tyler	TX	2:1
Cameron Ashley Building Products	Tyler	TX	2:1
Jewell Concrete Products	Tyler	TX	2:1
Kelly Springfield Tire	Tyler	TX	2:1
Sunbelt Cement	Tyler	TX	2:1
Transit Mix Concrete Material	Tyler	TX	2:1
Kamin Furniture	Victoria	TX	2:1
Cameron Ashley Building Products	Waco	TX	2:1
Central Forwarding Co	Waco	TX	2:1
Central Texas Iron Works	Waco	TX	2:1
Central Warehouse Co	Waco	TX	2:1
CertainTeed	Waco	TX	2:1
Continental General Tire	Waco	TX	2:1
Equalizer	Waco	TX	Transload
Exporters & Traders Compress & Whse Co	Waco	TX	2:1
Fleetwood Homes	Waco	TX	2:1
Fleetwood Traller Co	Waco	TX	2:1

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

Gross Yowell Lumber	Waco	TX	2:1
Gulf States Paper	Waco	TX	2:1
Jarvis Paris Murphy	Waco	TX	2:1
Jewell Concrete Products	Waco	TX	2:1
M Lipsitz	Waco	TX	2:1
M M Mars	Waco	TX	2:1
Metro Lumber Industries	Waco	TX	2:1
Mid State Beverage Inc	Waco	TX	2:1
Owens Brockway	Waco	TX	2:1
Tejas Warehouse System	Waco	TX	2:1
Terra Nitrogen Corp (Terra Intl Inc)	Waco	TX	2:1
Vacant Facility (McCoys Bldg Supply Center)	Waco	TX	2:1
Veterans Administration	Waco	TX	2:1
Houston Shell & Concrete	Webster	TX	2:1
McCoys Bldg Supply Center	Webster	TX	2:1
Sunbelt Asphalt Materials	Webster	TX	2:1
Custom House Manuvering Svcs	Ysleta	TX	2:1
Featherlite Building Products Corp	Ysleta	TX	2:1
International Paper, Container Div	Ysleta	TX	2:1
Rhinehart Oil	American Fork	UT	2:1
Alpine Transfer	Clearfield	UT	2:1
Americold	Clearfield	UT	2:1
Ashland Chemical	Clearfield	UT	2:1
Birmingham Bolt	Clearfield	UT	2:1
Bulkmatic Transport	Clearfield	UT	2:1
Del Monte Foods	Clearfield	UT	2:1
DSC Logistics	Clearfield	UT	2:1
Excel Mining	Clearfield	UT	2:1
FABPRO Oriented Polymers Inc	Clearfield	UT	2:1
Freeport Center	Clearfield	UT	2:1
Freeport Cold Storage	Clearfield	UT	2:1
Gatx Logistics	Clearfield	UT	2:1
Lifetime Products	Clearfield	UT	2:1
Malnove	Clearfield	UT	2:1
Naptech Inc	Clearfield	UT	2:1
Oborn Transfer & Storage	Clearfield	UT	2:1
Poli Twine	Clearfield	UT	2:1
Quintex	Clearfield	UT	2:1
Ryerson Son J T	Clearfield	UT	2:1
Tech Steel	Clearfield	UT	2:1
Thiokol	Clearfield	UT	2:1
Watkins Shepard	Clearfield	UT	2:1
Geneva Steel	Geneva	UT	2:1
LaRoche Industries	Geneva	UT	2:1
Pioneer Pipe	Geneva	UT	2:1
Western Pipe Coaters (c/o Geneva Steel)	Geneva	UT	2:1
Reilly Industries	Ironton	UT	2:1
Great Salt Lake Minerals	Little Mountain	UT	2:1
Kennecott Utah Copper Corp	Magna	UT	2:1
Flying J Inc	North Salt Lake City	UT	2:1
Red Man Pipe & Supply Co	North Salt Lake City	UT	2:1
American Nutrition	Ogden	UT	2:1
Atlas Steel	Ogden	UT	2:1
Cache Commodities DRGW	Ogden	UT	2:1
Cargill Flour Milling	Ogden	UT	2:1
Cargill Nutrena Feeds	Ogden	UT	2:1
Cereal Food Processors	Ogden	UT	2:1

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

David Grant Trucking Inc	Ogden	UT	Transload
Defense Depot	Ogden	UT	2:1
Durbano Metals	Ogden	UT	2:1
Dyce Chemical Ind	Ogden	UT	2:1
Great Salt Lake Minerals	Ogden	UT	2:1
Harsac	Ogden	UT	2:1
Kimberly Clark	Ogden	UT	2:1
Koch Agri Services West	Ogden	UT	2:1
L Bloom & Sons	Ogden	UT	2:1
McNabb Grain	Ogden	UT	2:1
Nutrena Feed	Ogden	UT	2:1
Transwood Incorporated	Ogden	UT	Transload
Wasatch Distributing	Ogden	UT	2:1
Western Gateway Storage	Ogden	UT	2:1
Pipe Fabricating	Pioneer	UT	2:1
A Y Building Supply	Provo	UT	2:1
Atlas Steel	Provo	UT	2:1
Big Four Distributing	Provo	UT	2:1
Pacific States Cast Iron Pipe	Provo	UT	2:1
Pitt Des Moines (PDM)	Provo	UT	2:1
A K Railroad Materials	Salt Lake City	UT	2:1
Alta Industries	Salt Lake City	UT	2:1
American Excelsior	Salt Lake City	UT	2:1
Amerigas Propane Lp	Salt Lake City	UT	2:1
Amoco Oil	Salt Lake City	UT	2:1
Asphalt Systems Inc	Salt Lake City	UT	2:1
Associated Food Stores	Salt Lake City	UT	2:1
Atlas Steel Inc	Salt Lake City	UT	2:1
Baker Hughes Inteq	Salt Lake City	UT	2:1
Bee Hive Brick	Salt Lake City	UT	2:1
Benergy dba Star Carbon Divn	Salt Lake City	UT	2:1
Border Steel	Salt Lake City	UT	2:1
Bruce Transfer & Storage	Salt Lake City	UT	2:1
Capitol Lumber	Salt Lake City	UT	2:1
Cenex Land O Lakes	Salt Lake City	UT	2:1
Cereal Food Processors	Salt Lake City	UT	2:1
Certified Warehouse Transfer	Salt Lake City	UT	2:1
Chevron Products	Salt Lake City	UT	2:1
Chris & Dicks Lbr & Hardware	Salt Lake City	UT	2:1
Church Of Jesus Christ LDS	Salt Lake City	UT	2:1
Conoco Inc	Salt Lake City	UT	2:1
Corp Of The President (LDS Church)	Salt Lake City	UT	2:1
Corporation Of The Presiding	Salt Lake City	UT	2:1
Crawford Door Sales	Salt Lake City	UT	2:1
Crus Distributing	Salt Lake City	UT	2:1
E F Mariani	Salt Lake City	UT	Transload
Eaton Metal Product	Salt Lake City	UT	2:1
Eimco Process Equipment	Salt Lake City	UT	2:1
Engelhard	Salt Lake City	UT	2:1
Farwest Steel	Salt Lake City	UT	2:1
General Distributing	Salt Lake City	UT	2:1
General Felt Industries	Salt Lake City	UT	2:1
Great Western Chemical	Salt Lake City	UT	2:1
Harrington Trucking Inc	Salt Lake City	UT	Transload
Hill Brothers Chemical	Salt Lake City	UT	2:1
Holnam	Salt Lake City	UT	2:1
Liquid Sugars	Salt Lake City	UT	2:1

UP/SP Served Facilities Accessed By BNSF
Other Than As A Result of "5-/50 Line" Agreement

Mark Steel (W 200)	Salt Lake City	UT	2:1
Marmon Keystone	Salt Lake City	UT	2:1
May Foundry	Salt Lake City	UT	2:1
Metro Group Inc	Salt Lake City	UT	2:1
Mountain Cement	Salt Lake City	UT	2:1
Nalco Chemical	Salt Lake City	UT	2:1
Newspaper Agency	Salt Lake City	UT	2:1
Pacific Steel	Salt Lake City	UT	2:1
Packaging Corp of America	Salt Lake City	UT	2:1
Pax	Salt Lake City	UT	2:1
Peerless Oil	Salt Lake City	UT	2:1
Petrolane	Salt Lake City	UT	2:1
Pioneer Wholesale Supply Inc	Salt Lake City	UT	2:1
Resource Net (aka Western Paper Co)	Salt Lake City	UT	2:1
Salt Lake Auto Auction	Salt Lake City	UT	2:1
Semling Menke	Salt Lake City	UT	2:1
Smurfit Stone Container Corp	Salt Lake City	UT	2:1
Specialized Rail Service	Salt Lake City	UT	Transload
Sport Court	Salt Lake City	UT	2:1
Steelco	Salt Lake City	UT	2:1
Sutherland Lumber	Salt Lake City	UT	2:1
Terminal Freight Handling	Salt Lake City	UT	2:1
Thatcher Company	Salt Lake City	UT	2:1
Transwood	Salt Lake City	UT	Transload
United States Postal Service	Salt Lake City	UT	2:1
United States Welding	Salt Lake City	UT	2:1
Utah Barrel	Salt Lake City	UT	2:1
Utah Metal Works	Salt Lake City	UT	2:1
Utah Paper Box	Salt Lake City	UT	2:1
Valley Steel Processing Inc	Salt Lake City	UT	2:1
Van Water Rogers	Salt Lake City	UT	2:1
Westinghouse Electric Co	Salt Lake City	UT	2:1
Weyerhaeuser (Matl Dist)	Salt Lake City	UT	2:1
Weyerhaeuser (Recycling)	Salt Lake City	UT	2:1
Wholesale Stationers Corp	Salt Lake City	UT	2:1
Wholesale Transfer & Whse	Salt Lake City	UT	2:1
Inland Refining Inc	Woods Cross	UT	2:1
Koch Performance Asphalt Co	Woods Cross	UT	2:1
Peak Profile	Woods Cross	UT	2:1
Phillips 66W	Woods Cross	UT	2:1

"2-To-1" Pointes Where UP Has Advised BNSF Has Access To "All Customers"

Customer	Station	State	Status
All Customers	Altamont	CA	2:1
All Customers	Hearst	CA	2:1
All Customers	Livermore	CA	2:1
All Customers	Midway	CA	2:1
All Customers	Niles Jct	CA	2:1
All Customers	Pleasanton	CA	2:1
All Customers	Radum	CA	2:1
All Customers	Trevarno	CA	2:1
All Customers	Alazon	NV	2:1
All Customers	Barth	NV	2:1
All Customers	Beowawe	NV	2:1
All Customers	Carlin	NV	2:1
All Customers	Coin	NV	2:1
All Customers	Deeth	NV	2:1
All Customers	Dunphy	NV	2:1
All Customers	Elburz	NV	2:1
All Customers	Elko	NV	2:1
All Customers	Ellison	NV	2:1
All Customers	Golconda	NV	2:1
All Customers	Hunter	NV	2:1
All Customers	Jayhawk	NV	2:1
All Customers	Kampos	NV	2:1
All Customers	Knight	NV	2:1
All Customers	Nardi	NV	2:1
All Customers	Pardo	NV	2:1
All Customers	Rasid	NV	2:1
All Customers	Redhouse	NV	2:1
All Customers	Rennox	NV	2:1
All Customers	Russells	NV	2:1
All Customers	Ryndon	NV	2:1
All Customers	Tulasco	NV	2:1
All Customers	Weso	NV	2:1
All Customers	Buford	TX	2:1
All Customers	Clint	TX	2:1
All Customers	Dickinson	TX	2:1
All Customers	Dumont	TX	2:1
All Customers	Fabens	TX	2:1
All Customers	Fondren	TX	2:1
All Customers	Ft Hancock	TX	2:1
All Customers	Genoa	TX	2:1
All Customers	Great Southwest	TX	2:1
All Customers	Gypsum Spur	TX	2:1
All Customers	Hulen Park	TX	2:1
All Customers	Iser	TX	2:1
All Customers	La Marque	TX	2:1

"2-To-1" Pointes Where UP Has Advised BNSF Has Access To "All Customers"

All Customers	League City	TX	2:1
All Customers	McDonough	TX	2:1
All Customers	McNary	TX	2:1
All Customers	Olcott	TX	2:1
All Customers	Sierra Blanca	TX	2:1
All Customers	Texas City Jct	TX	2:1
All Customers	Tornillo	TX	2:1
All Customers	Webster	TX	2:1
All Customers	Ysleta	TX	2:1

**Customers Accessed By BNSF Directly
On Lines Purchased As A Result Of The UP/SP Merger**

<u>Customer</u>	<u>Station</u>	<u>State</u>	<u>Status</u>
Baroid Corp	Berwick	LA	Direct
Ico Tubular	Boeuf	LA	Direct
J Ray McDermott	Boeuf	LA	Direct
M I Drilling Fluids	Boeuf	LA	Direct
Pipe Distributors	Boeuf	LA	Direct
Tuboscope Vetco International	Boeuf	LA	Direct
Monsanto Co	Boutte	LA	Direct
Anchor Drilling Fluids USA Inc	Cade	LA	Direct
J & L Cameco Honiron Div	Jeanerette	LA	Direct
Lafayette Power Plant	Lafayette	LA	Direct
Broussard Rice Mill Inc	Mermentau	LA	Direct
Environmental Treatment Team	Morgan City	LA	Direct
Patterson Truck Lines	Morgan City	LA	Direct
Port of Morgan City	Morgan City	LA	Direct
Tenneco	Morgan City	LA	Direct
Tuboscope	Morgan City	LA	Direct
Texaco Inc	Paradis	LA	Direct

Customers Accessed By BNSF Located
On "2-To-1" Shortlines/Regional Carriers

<u>Customer</u>	<u>Station</u>	<u>State</u>	<u>Serving Carrier</u>	<u>Status</u>
Continental Grain Corp	Danville	AR	LRWN	2:1 SL
Green Bay Pkg Inc Ark Kraft Div	Danville	AR	LRWN	2:1 SL
Wayne Poultry & Feed (Div Continental Grain)	Danville	AR	LRWN	2:1 SL
American Fiber Industries	Little Rock	AR	LRPA	2:1 SL
Ben E Keith of Arkansas	Little Rock	AR	LRPA	2:1 SL
Best Foods Div CPC Intl Inc	Little Rock	AR	LRPA	2:1 SL
Democrat Printing & Lithographing Co	Little Rock	AR	LRPA	2:1 SL
G E Appliances	Little Rock	AR	LRPA	2:1 SL
Interstate Highway Sign Co	Little Rock	AR	LRPA	2:1 SL
Little Rock Distributing	Little Rock	AR	LRPA	2:1 SL
Logistics Services Inc. (LSI)	Little Rock	AR	LRPA	2:1 SL
Logistics Svcs Inc (LSI) (Ryan Walsh Inc)	Little Rock	AR	LRPA	2:1 SL
National By Products	Little Rock	AR	LRPA	2:1 SL
Oneal Steel Inc.	Little Rock	AR	LRPA	2:1 SL
Pind Supply Inc	Little Rock	AR	LRPA	2:1 SL
Recycle America	Little Rock	AR	LRPA	2:1 SL
River Cement	Little Rock	AR	LRPA	2:1 SL
Safety Kleen	Little Rock	AR	LRPA	2:1 SL
Schick Steel	Little Rock	AR	LRPA	2:1 SL
Schueck Steel	Little Rock	AR	LRPA	2:1 SL
Sloane, George Fischer Mfg Co Inc	Little Rock	AR	LRPA	2:1 SL
Southern Bldg Products	Little Rock	AR	LRPA	2:1 SL
Southern Scrap	Little Rock	AR	LRPA	2:1 SL
Southland Products	Little Rock	AR	LRPA	2:1 SL
Vincent Metals Div Rio Algom Inc	Little Rock	AR	LRPA	2:1 SL
Vinyl Building Products	Little Rock	AR	LRPA	2:1 SL
Wheatland Tube - Omega Div	Little Rock	AR	LRPA	2:1 SL
Deltic Timber Corp	Ola	AR	LRWN	2:1 SL
Ameri Gas	Perry	AR	LRWN	2:1 SL
Green Bay Packaging Inc Arkansas Kraft Div	Perry	AR	LRWN	2:1 SL
Collins Pine	Chester	CA	AL	2:1 SL
Riviana Food Inc	Abbeville	LA	LD RR	2:1 SL
Cargill Salt	Baldwin	LA	LD RR	2:1 SL
Morton Salt	Baldwin	LA	LD RR	2:1 SL
Twin Bros Marine	Baldwin	LA	LD RR	2:1 SL
Cabot Corp	Bayou Sale	LA	LD RR	2:1 SL
Columbian Chemicals Co	Bayou Sale	LA	LD RR	2:1 SL
Enterprise Products	Breaux Bridge	LA	LD RR	2:1 SL
Helena Chemical Co	Bunkie	LA	AKDN	2:1 SL
Acadiana Scrap Salvage	Crowley	LA	AKDN	2:1 SL
Falcon Rice Mill	Crowley	LA	AKDN	2:1 SL
Francis Drilling Fluids Ltd	Crowley	LA	AKDN	2:1 SL
G & H Seed	Crowley	LA	AKDN	2:1 SL
Helena Chemical	Crowley	LA	AKDN	2:1 SL
Krielow Bros	Crowley	LA	AKDN	2:1 SL
Liq Quick Fertilizer	Crowley	LA	AKDN	2:1 SL
Riceland Foods (ADM)	Crowley	LA	AKDN	2:1 SL
Southwest Rice Mill	Crowley	LA	AKDN	2:1 SL
Southwest Rice Mill	Crowley	LA	AKDN	2:1 SL
Supreme Rice Mill Inc	Crowley	LA	AKDN	2:1 SL
International Paper Co	Elks	LA	LD RR	2:1 SL
C & E Supply	Eunice	LA	AKDN	2:1 SL
Mowata Farm Supply	Eunice	LA	AKDN	2:1 SL
Rice Co of Eunice	Eunice	LA	AKDN	2:1 SL

Customers Accessed By BNSF Located
On "2-To-1" Shortlines/Regional Carriers

Miller Brands	Harahan	LA	NOPB	2:1 SL
Ribelin Distribution Inc	Harahan	LA	NOPB	2:1 SL
Lincoln Big Three	Harvey	LA	NOPB	2:1 SL
M I Drilling Fluids Co	Harvey	LA	NOPB	2:1 SL
Shield Coat Inc	Houma	LA	LDRR	2:1 SL
Cajun Distributing	Jefferson	LA	NOPB	2:1 SL
Distron	Jefferson	LA	NOPB	2:1 SL
Liberty Rice	Kaplan	LA	LDRR	2:1 SL
Transoceanic Shipping/ Intl Export Packers of La	Kenner	LA	NOPB	2:1 SL
A & E Scrap Materials Inc	Lafayette	LA	LDRR	2:1 SL
American Manufacturing	Lafayette	LA	LDRR	2:1 SL
Branch Warehouse	Lafayette	LA	LDRR	2:1 SL
Catalyst Recovery	Lafayette	LA	LDRR	2:1 SL
Chastant Brothers Inc	Lafayette	LA	LDRR	2:1 SL
Elks Concrete Products	Lafayette	LA	LDRR	2:1 SL
Halliburton	Lafayette	LA	LDRR	2:1 SL
Lafayette Distributors	Lafayette	LA	LDRR	2:1 SL
Louisiana Sw Scrap & Salvage	Lafayette	LA	LDRR	2:1 SL
Mike Baker Brick Co	Lafayette	LA	LDRR	2:1 SL
Northpark Industrial Park	Lafayette	LA	LDRR	2:1 SL
Oneal Steel Inc	Lafayette	LA	LDRR	2:1 SL
OSCA Inc	Lafayette	LA	LDRR	2:1 SL
Quality Brands Inc	Lafayette	LA	LDRR	2:1 SL
Schilling Distributing Co Inc	Lafayette	LA	LDRR	2:1 SL
Lockport Thermostats	Lockport	LA	LDRR	2:1 SL
Nicolas Paper	Lockport	LA	LDRR	2:1 SL
Olin	Lockport	LA	LDRR	2:1 SL
Raceland Sugar	Lockport	LA	LDRR	2:1 SL
Allen Tank	New Iberia	LA	LDRR	2:1 SL
Ambar Inc	New Iberia	LA	LDRR	2:1 SL
Bayou Pipe Coating	New Iberia	LA	LDRR	2:1 SL
Carbo Ceramics	New Iberia	LA	LDRR	2:1 SL
Coastal Chemical	New Iberia	LA	LDRR	2:1 SL
Coastal Timbers	New Iberia	LA	LDRR	2:1 SL
Creole Fermentation	New Iberia	LA	LDRR	2:1 SL
Degussa Carbon Black Corp	New Iberia	LA	LDRR	2:1 SL
Iberia Sugar	New Iberia	LA	LDRR	2:1 SL
Iberia Threading	New Iberia	LA	LDRR	2:1 SL
Liberty Connell	New Iberia	LA	LDRR	2:1 SL
Olin	New Iberia	LA	LDRR	2:1 SL
Premiere Casing	New Iberia	LA	LDRR	2:1 SL
A To Z Paper Co	New Orleans	LA	NOPB	2:1 SL
Advance Paper Co Janitorial	New Orleans	LA	NOPB	2:1 SL
Baroid Sales Co (NI Ind)	New Orleans	LA	NOPB	2:1 SL
Barriere Construction Co	New Orleans	LA	NOPB	2:1 SL
Better Boxing	New Orleans	LA	NOPB	2:1 SL
Bourg Wilson Lbr & Bldg Inc	New Orleans	LA	NOPB	2:1 SL
Bubbas Produce	New Orleans	LA	NOPB	2:1 SL
Bulk Materials Transfer	New Orleans	LA	NOPB	2:1 SL
Cargill	New Orleans	LA	NOPB	2:1 SL
Citadel Cement/ Laforest Co	New Orleans	LA	NOPB	2:1 SL
Crown Oil Chemical	New Orleans	LA	NOPB	2:1 SL
Dbi R Equine Feed Supply	New Orleans	LA	NOPB	2:1 SL
Deavo Lime Pellican Divn	New Orleans	LA	NOPB	2:1 SL
Depuy Stg & Fwd	New Orleans	LA	NOPB	2:1 SL
Dravo Basic Materials	New Orleans	LA	NOPB	2:1 SL
Equitable Shipyards	New Orleans	LA	NOPB	2:1 SL

Customers Accessed By BNSF Located
On "2-To-1" Shortlines/Regional Carriers

Gats Masonry	New Orleans	LA	NOPB	2:1 SL
Glazer Steel and Aluminum	New Orleans	LA	NOPB	2:1 SL
Halter Marine	New Orleans	LA	NOPB	2:1 SL
Holnam	New Orleans	LA	NOPB	2:1 SL
Horizon Intl	New Orleans	LA	NOPB	2:1 SL
Hug Condon & Mayflower Moving & Storing	New Orleans	LA	NOPB	2:1 SL
Lane & Co	New Orleans	LA	NOPB	2:1 SL
Lengsfeld Bros - Lengsfeld Pkg	New Orleans	LA	NOPB	2:1 SL
Levitz Furniture	New Orleans	LA	NOPB	2:1 SL
Liquid Sugars Inc	New Orleans	LA	NOPB	2:1 SL
Marzoni & Associates	New Orleans	LA	NOPB	2:1 SL
Missionary Expeditors Inc	New Orleans	LA	NOPB	2:1 SL
Namasco	New Orleans	LA	NOPB	2:1 SL
Neeb Kearney Inc	New Orleans	LA	NOPB	2:1 SL
New Orleans Cold Storage	New Orleans	LA	NOPB	2:1 SL
New Orleans Distribution	New Orleans	LA	NOPB	2:1 SL
New Orleans Marine Cont	New Orleans	LA	NOPB	2:1 SL
New Orleans Metal Works	New Orleans	LA	NOPB	2:1 SL
North Star Steel Co	New Orleans	LA	NOPB	2:1 SL
Orleans Mats Equipment Co	New Orleans	LA	NOPB	2:1 SL
Patent Scaffolding	New Orleans	LA	NOPB	2:1 SL
Paulsen-Weber	New Orleans	LA	NOPB	2:1 SL
Pelican Paper	New Orleans	LA	NOPB	2:1 SL
Pelican Tomato Co	New Orleans	LA	NOPB	2:1 SL
Pennzoil Products	New Orleans	LA	NOPB	2:1 SL
Plymouth Cordage	New Orleans	LA	NOPB	2:1 SL
Plywood Panels	New Orleans	LA	NOPB	2:1 SL
Pontchartrain Matl Corp	New Orleans	LA	NOPB	2:1 SL
Port Cargo Service	New Orleans	LA	NOPB	2:1 SL
Public Bulk Terminal	New Orleans	LA	NOPB	2:1 SL
Puerto Rican Marine Mgt	New Orleans	LA	NOPB	2:1 SL
Reilly Chemical Co	New Orleans	LA	NOPB	2:1 SL
Reilly Wm B - Blue Plate Fine Foods	New Orleans	LA	NOPB	2:1 SL
Ribelen Sales Inc	New Orleans	LA	NOPB	2:1 SL
Rippner Inc	New Orleans	LA	NOPB	2:1 SL
Ryan Timber Co	New Orleans	LA	NOPB	2:1 SL
Sealand	New Orleans	LA	NOPB	2:1 SL
Second Harvester	New Orleans	LA	NOPB	2:1 SL
Sequoia Supply Inc	New Orleans	LA	NOPB	2:1 SL
Sewerage & Water Board of New Orleans	New Orleans	LA	NOPB	2:1 SL
Southeast Recycling	New Orleans	LA	NOPB	2:1 SL
Southern Scrap Matl Co	New Orleans	LA	NOPB	2:1 SL
Southern Steel & Aluminum	New Orleans	LA	NOPB	2:1 SL
Standard Coffee	New Orleans	LA	NOPB	2:1 SL
T & R Pa Mills	New Orleans	LA	NOPB	2:1 SL
Triple E Transport Inc	New Orleans	LA	NOPB	2:1 SL
Turner Marine Bulk Inc	New Orleans	LA	NOPB	2:1 SL
US Army Corp of Engineering	New Orleans	LA	NOPB	2:1 SL
US Gypsum Co	New Orleans	LA	NOPB	2:1 SL
W R Grace	New Orleans	LA	NOPB	2:1 SL
Benhard Warehouse	Opelousas	LA	AKDN	2:1 SL
Cal-Chlor Inc	Opelousas	LA	AKDN	2:1 SL
Emick Prejean & Son Inc	Opelousas	LA	AKDN	2:1 SL
FMC	Opelousas	LA	AKDN	2:1 SL
Galennie Lumber	Opelousas	LA	AKDN	2:1 SL
James Corp of Opelousas	Opelousas	LA	AKDN	2:1 SL
Lou Ana Foods	Opelousas	LA	AKDN	2:1 SL

Customers Accessed By BNSF Located
On "2-To-1" Shortlines/Regional Carriers

PMG Inc	Opelousas	LA	AKDN	2:1 SL
Prairie Construction Co	Opelousas	LA	AKDN	2:1 SL
Southwest Feed & Farm Supply	Opelousas	LA	AKDN	2:1 SL
Southwest Feed Farm	Opelousas	LA	AKDN	2:1 SL
Patout M A & Son Ltd	Patoutville	LA	LDRR	2:1 SL
Dufrene Building Materials Inc	Raceland	LA	LDRR	2:1 SL
Krielow Brothers	Roanoke	LA	AKDN	2:1 SL
Tri-State Delta Inc	Schriever	LA	LDRR	2:1 SL
Cabot Corp	Tate Cove	LA	AKDN	2:1 SL
National Beverage	Thibodaux	LA	LDRR	2:1 SL
Evangeline Farmers Coop	Ville Platte	LA	AKDN	2:1 SL
Union Tank Car	Ville Platte	LA	AKDN	2:1 SL
BHP Copper	Riepetown	NV	BHP	2:1 SL
Agua Dulce Grain Co	Agua Dulce	TX	TM	2:1 SL
Aqua Dulce Co-op	Agua Dulce	TX	TM	2:1 SL
Barr Iron & Metal	Alice	TX	TM	2:1 SL
Bell Processing	Alice	TX	TM	2:1 SL
Dowell Schlumberger Inc	Alice	TX	TM	2:1 SL
Halliburton Energy Svc	Alice	TX	TM	2:1 SL
Hammock Distribution	Alice	TX	TM	2:1 SL
Milchem	Alice	TX	TM	2:1 SL
Santrol	Alice	TX	TM	2:1 SL
Tetra Oil & Gas Svc	Alice	TX	TM	2:1 SL
Tetra Services Inc	Alice	TX	TM	2:1 SL
Titan Services	Alice	TX	TM	2:1 SL
Western	Alice	TX	TM	2:1 SL
ABC Supply	Austin	TX	LHRR	2:1 SL
Acco Waste Paper	Austin	TX	LHRR	2:1 SL
Alar Distribution	Austin	TX	LHRR	2:1 SL
Alliant Foodservice	Austin	TX	LHRR	2:1 SL
Austin Steam Train Assn	Austin	TX	LHRR	2:1 SL
Boonesborough Inc	Austin	TX	LHRR	2:1 SL
Brown Dist	Austin	TX	LHRR	2:1 SL
Capital Beverage	Austin	TX	LHRR	2:1 SL
Foxworth - Galbraith	Austin	TX	LHRR	2:1 SL
Huntsman Chemical Corp	Austin	TX	LHRR	2:1 SL
J Pinelli Corp	Austin	TX	LHRR	2:1 SL
Kraft Food Service	Austin	TX	LHRR	2:1 SL
Quartermaster Logistics, LLP	Austin	TX	AUAR	2:1 SL
Shiner	Austin	TX	LHRR	2:1 SL
Warren Furniture	Austin	TX	LHRR	2:1 SL
Banquete Co-op	Banquete	TX	TM	2:1 SL
Banquete Grain & Elevator	Banquete	TX	TM	2:1 SL
McCoy Building Supply Center	Belton	TX	GRR	2:1 SL
Amfels Inc	Brownsville	TX	BRG	2:1 SL
Anbel Corporation	Brownsville	TX	BRG	2:1 SL
Best Group Marine	Brownsville	TX	BRG	2:1 SL
Brownsville Navigation	Brownsville	TX	BRG	2:1 SL
Brownsville Refining	Brownsville	TX	BRG	2:1 SL
Carl & Carol Meyer	Brownsville	TX	BRG	2:1 SL
Chem USA Corp	Brownsville	TX	BRG	2:1 SL
Columbia Western Clay	Brownsville	TX	BRG	2:1 SL
Comercializadora Lajunta	Brownsville	TX	BRG	2:1 SL
Dix Industries Inc	Brownsville	TX	BRG	2:1 SL
Duopaper Bag Mfg	Brownsville	TX	BRG	2:1 SL
Elgo Internacional	Brownsville	TX	BRG	2:1 SL
Frontier Services	Brownsville	TX	BRG	2:1 SL

Customers Accessed By BNSF Located
On "2-To-1" Shortlines/Regional Carriers

Galbreath Inc	Brownsville	TX	BRG	2:1 SL
Garva Corp	Brownsville	TX	BRG	2:1 SL
Global Stone Lc	Brownsville	TX	BRG	2:1 SL
Groendyke Transport	Brownsville	TX	BRG	2:1 SL
Gulf Facilities Inc	Brownsville	TX	BRG	2:1 SL
Gulf Stream Marine Of Brownsville	Brownsville	TX	BRG	2:1 SL
Gulmar Inc	Brownsville	TX	BRG	2:1 SL
Inter Transfer	Brownsville	TX	BRG	2:1 SL
Interlube Terminals	Brownsville	TX	BRG	2:1 SL
International Shipbreaking	Brownsville	TX	BRG	2:1 SL
International Stainless Steel	Brownsville	TX	BRG	2:1 SL
Itapco Border Termi	Brownsville	TX	BRG	2:1 SL
Itapco Bville Termi	Brownsville	TX	BRG	2:1 SL
Itapco Tejano Termi	Brownsville	TX	BRG	2:1 SL
John Houlihan	Brownsville	TX	BRG	2:1 SL
Liberty Engr Inc	Brownsville	TX	BRG	2:1 SL
Lower Valley Trans	Brownsville	TX	BRG	2:1 SL
Marine Scrap Corp	Brownsville	TX	BRG	2:1 SL
Oglebay Norton	Brownsville	TX	BRG	2:1 SL
Open Sesame Commodity	Brownsville	TX	BRG	2:1 SL
Penn Octane Corp	Brownsville	TX	BRG	2:1 SL
Petrol liquids Terminal	Brownsville	TX	BRG	2:1 SL
Plitt Crane & Equipment Inc	Brownsville	TX	BRG	2:1 SL
Port Elevator Brownsville	Brownsville	TX	BRG	2:1 SL
Port Of Brownsville	Brownsville	TX	BRG	2:1 SL
Quimica Fluor Sa	Brownsville	TX	BRG	2:1 SL
R M Walsdorf Co	Brownsville	TX	BRG	2:1 SL
Rio Plastics Inc	Brownsville	TX	BRG	2:1 SL
Roll & Hold	Brownsville	TX	BRG	2:1 SL
RR Maintenance & Constru	Brownsville	TX	BRG	2:1 SL
Sanco International Inc	Brownsville	TX	BRG	2:1 SL
Satellite I Inc	Brownsville	TX	BRG	2:1 SL
South Pacific Plywood Lumber	Brownsville	TX	BRG	2:1 SL
South Texas Grain	Brownsville	TX	BRG	2:1 SL
South Texas Grain (Tip O Tex Elevator)	Brownsville	TX	BRG	2:1 SL
Southwest Grain	Brownsville	TX	BRG	2:1 SL
STG Leasing Co	Brownsville	TX	BRG	2:1 SL
Texas International Ry	Brownsville	TX	BRG	2:1 SL
Transforma Marine	Brownsville	TX	BPG	2:1 SL
TransMontaigne Terminating Inc	Brownsville	TX	BRG	2:1 SL
Trico Technologies Corp	Brownsville	TX	BRG	2:1 SL
Valley Warehousing	Brownsville	TX	BRG	2:1 SL
Hoover Building Supply	Burnet	TX	LHRR	2:1 SL
Pioneer Concrete of Tx Inc	Burnet	TX	LHRR	2:1 SL
Aimcor (Applied Industrial Materials)	Corpus Christi	TX	CCTR	2:1 SL
Alamo Concrete Products Limited	Corpus Christi	TX	TM	2:1 SL
Alford Refrigerated Whse	Corpus Christi	TX	TM	2:1 SL
Andrews Distributing Company Inc	Corpus Christi	TX	TM	2:1 SL
Atlas Iron & Metal Company	Corpus Christi	TX	TM	2:1 SL
Auto Warehousing Co	Corpus Christi	TX	CCTR	2:1 SL
Baker Hughes Inteq	Corpus Christi	TX	TM	2:1 SL
Barnup & Simms of Texas Inc	Corpus Christi	TX	TM	2:1 SL
BFI Waste Systems	Corpus Christi	TX	TM	2:1 SL
Big Three Welding Co	Corpus Christi	TX	TM	2:1 SL
Block Distributing Company	Corpus Christi	TX	TM	2:1 SL
Butt H E Grocery	Corpus Christi	TX	TM	2:1 SL
City Delivery Service & Storage	Corpus Christi	TX	TM	2:1 SL

Customers Accessed By BNSF Located
On "2-To-1" Shortlines/Regional Carriers

Clemtex Inc	Corpus Christi	TX	TM	2:1 SL
Coastal Storage Inc	Corpus Christi	TX	TM	2:1 SL
Commercial Metals Company	Corpus Christi	TX	TM	2:1 SL
Coors Distributing Co of Corpus Christi	Corpus Christi	TX	TM	2:1 SL
Corpus Christi Disposal Service	Corpus Christi	TX	TM	2:1 SL
Corpus Christi Grain Co	Corpus Christi	TX	TM	2:1 SL
Corpus Christi Produce Co Inc	Corpus Christi	TX	TM	2:1 SL
Corpus Christi Public Compress	Corpus Christi	TX	CCTR	2:1 SL
Corpus Christi Public Elevator	Corpus Christi	TX	CCTR	2:1 SL
Corpus Christi Wholesale Mart	Corpus Christi	TX	TM	2:1 SL
Delta Steel Inc	Corpus Christi	TX	TM	2:1 SL
Dix-Fairway Terminals	Corpus Christi	TX	CCTR	2:1 SL
Farrell Cooper Mining	Corpus Christi	TX	CCTR	2:1 SL
Featherlite Building Products	Corpus Christi	TX	TM	2:1 SL
G N I Group (Disposal System)	Corpus Christi	TX	TM	2:1 SL
Griffin Industries	Corpus Christi	TX	TM	2:1 SL
Gulf Coast Bearing & Supply Co	Corpus Christi	TX	TM	2:1 SL
Gulf Compress	Corpus Christi	TX	UP/TM	2:1 SL
Gulf Concrete	Corpus Christi	TX	TM	2:1 SL
Gulf Iron Works	Corpus Christi	TX	TM	2:1 SL
Haas Anderson Construction Inc	Corpus Christi	TX	TM	2:1 SL
Hausman, Sam Meat Packer	Corpus Christi	TX	TM	2:1 SL
Hitox Corp	Corpus Christi	TX	CCTR	2:1 SL
Industrial Stainless & Alloys	Corpus Christi	TX	TM	2:1 SL
Ingram Readymix Inc	Corpus Christi	TX	TM	2:1 SL
Koch Material Co	Corpus Christi	TX	CCTR	2:1 SL
M G Building Materials Inc.	Corpus Christi	TX	TM	2:1 SL
Milwhite Company Inc	Corpus Christi	TX	CCTR	2:1 SL
Mineral Processing & Marketing	Corpus Christi	TX	TM	2:1 SL
National Sanitary Supply Company (Century Paper)	Corpus Christi	TX	TM	2:1 SL
Naylor Farm & Ranch Supply	Corpus Christi	TX	TM	2:1 SL
Omni Fluids Co	Corpus Christi	TX	TM	2:1 SL
Penland Distributing Co	Corpus Christi	TX	TM	2:1 SL
Port of Corpus Christi Authority	Corpus Christi	TX	CCTR	2:1 SL
Port of Corpus Christi Authority - Bulkmaterials Dock	Corpus Christi	TX	CCTR	2:1 SL
Ray West Warehouses Inc	Corpus Christi	TX	TM	2:1 SL
Safety Kleen Corporation	Corpus Christi	TX	TM	2:1 SL
Scholl Forest Industry Inc.	Corpus Christi	TX	CCTR	2:1 SL
Sears Roebuck & Co	Corpus Christi	TX	TM	2:1 SL
Skips Industrial Salvage	Corpus Christi	TX	TM	2:1 SL
South Texas Recycling Co	Corpus Christi	TX	TM	2:1 SL
Southeastern Public Service Co	Corpus Christi	TX	TM	2:1 SL
Star Fire Port Services Inc	Corpus Christi	TX	CCTR	2:1 SL
Sterett Supply Co	Corpus Christi	TX	TM	2:1 SL
Sunland Furniture Co	Corpus Christi	TX	TM	2:1 SL
Swift-Train Company	Corpus Christi	TX	TM	2:1 SL
Texas Industries Inc. (TXI)	Corpus Christi	TX	TM	2:1 SL
Texas Lehigh Cement	Corpus Christi	TX	CCTR	2:1 SL
Thorpe Insulation (Thorpe Company)	Corpus Christi	TX	TM	2:1 SL
Timet	Corpus Christi	TX	CCTR	2:1 SL
United Masonry Supply Inc.	Corpus Christi	TX	TM	2:1 SL
Valls Shipping Company	Corpus Christi	TX	CCTR	2:1 SL
Van Waters & Rogers	Corpus Christi	TX	TM	2:1 SL
Vista Trading	Corpus Christi	TX	CCTR	2:1 SL
Wallace Inc	Corpus Christi	TX	TM	2:1 SL
Wester Steel Co	Corpus Christi	TX	TM	2:1 SL
Wholesalers, Inc.	Corpus Christi	TX	TM	2:1 SL

Customers Accessed By BNSF Located
On "2-To-1" Shortlines/Regional Carriers

Wuensche Grain & Elevator	Corpus Christi	TX	TM	2:1 SL
84 Lumber	Decker	TX	LHRR	2:1 SL
Acme Brick	Elgin	TX	LHRR	2:1 SL
Elgin Butler Brick	Elgin	TX	LHRR	2:1 SL
Elgin Warehousing Corp	Elgin	TX	LHRR	2:1 SL
Greenline Chemical Co	Elgin	TX	LHRR	2:1 SL
U S Brick	Elgin	TX	LHRR	2:1 SL
Valcones Recycling	Elgin	TX	LHRR	2:1 SL
Austin Powder Corp	Feld	TX	GRR	2:1 SL
Calcasieu Lumber Co	Feld	TX	GRR	2:1 SL
Dyno Nobel Mid America	Feld	TX	GRR	2:1 SL
Team Track Feld	Feld	TX	GRR	2:1 SL
Austin Marble	Georgetown	TX	GRR	2:1 SL
Hope Lumber Co	Georgetown	TX	GRR	2:1 SL
McCoy Lumber	Georgetown	TX	GRR	2:1 SL
Transit Mix Inc	Georgetown	TX	GRR	2:1 SL
Ambar Inc	Hebbronville	TX	TM	2:1 SL
Baker Hughes Inteq	Hebbronville	TX	TM	2:1 SL
M I Drilling Fluids Co	Hebbronville	TX	TM	2:1 SL
Brennan & Co	Laredo	TX	TM	2:1 SL
Caseo Guerra	Laredo	TX	TM	2:1 SL
Chemical Leaman	Laredo	TX	TM	2:1 SL
Continental Exim (G Bolano)	Laredo	TX	TM	2:1 SL
Despachos del Norte	Laredo	TX	TM	2:1 SL
Fernando Garcia Whse	Laredo	TX	TM	2:1 SL
Flores R L	Laredo	TX	TM	2:1 SL
Galveston Paper Inc	Laredo	TX	TM	2:1 SL
Gateway Transfer	Laredo	TX	TM	2:1 SL
J O Alvarez CHB	Laredo	TX	TM	2:1 SL
Laredo Moving & Storage	Laredo	TX	TM	2:1 SL
MB Forwarding	Laredo	TX	TM	2:1 SL
Mesa Processing	Laredo	TX	TM	2:1 SL
Milwhite Inc	Laredo	TX	TM	2:1 SL
Pasquel Hermanos	Laredo	TX	TM	2:1 SL
Texas Intl Forwarding	Laredo	TX	TM	2:1 SL
Cactus Canyon Quarries Inc	Marble Falls	TX	LHRR	2:1 SL
Capitol Aggregates (Delta)	Marble Falls	TX	LHRR	2:1 SL
Chemical Lime	Marble Falls	TX	LHRR	2:1 SL
J M Huber	Marble Falls	TX	LHRR	2:1 SL
Texas Granite	Marble Falls	TX	LHRR	2:1 SL
Abbott Labs	McNeill	TX	LHRR	2:1 SL
Guthrie Lumber	McNeill	TX	LHRR	2:1 SL
J H Supply	McNeill	TX	LHRR	2:1 SL
Anglo Iron & Metal	Port of Brownsville	TX	BRG	2:1 SL
Brownsville Gulfside Warehouse	Port of Brownsville	TX	BRG	2:1 SL
Duro Bag	Port of Brownsville	TX	BRG	2:1 SL
Garva Corp	Port of Brownsville	TX	BRG	2:1 SL
Gulf Facilities Inc	Port of Brownsville	TX	BRG	2:1 SL
Guimar Inc	Port of Brownsville	TX	BRG	2:1 SL
Schaefer Stevedoring	Port of Brownsville	TX	BRG	2:1 SL
STF Inc	Port of Brownsville	TX	BRG	2:1 SL
Texas Intl Rwy (Rail Transport Svcs)	Port of Brownsville	TX	BRG	2:1 SL
Union Carbide	Port of Brownsville	TX	BRG	2:1 SL
Westway Terminal (Trading)	Port of Brownsville	TX	BRG	2:1 SL
Wright Materials Inc	Robstown	TX	TM	2:1 SL
Calcasieu Lumber Company	Round Rock	TX	GRR	2:1 SL
Alar Distribution	Scobee	TX	LHRR	2:1 SL

Customers Accessed By BNSF Located
On "2-To-1" Shortlines/Regional Carriers

Capital Beverage	Scobee	TX	LHRR	2:1 SL
Foxworth - Galbraith	Scobee	TX	LHRR	2:1 SL
McCoy Corp	Scobee	TX	LHRR	2:1 SL
Top Dollar Cement	Weir	TX	GRR	2:1 SL
Boise Cascade	City Limits	UT	SLGW	2:1 SL
Certified Warehouse	City Limits	UT	SLGW	2:1 SL
Comstar International	City Limits	UT	SLGW	2:1 SL
National Distribution	City Limits	UT	SLGW	2:1 SL
Pacific Cold Storage	City Limits	UT	SLGW	2:1 SL
Sauder Woodworking	City Limits	UT	SLGW	2:1 SL
Pacificorp	Gadsby	UT	SLGW	2:1 SL
Western Zirconium (Westinghouse Electric)	Little Mountain	UT	UCRY	2:1 SL
Butterfield Bldg Matl (Lumber)	Midvale	UT	SL	2:1 SL
Amalgamated Sugar Co LLC	Ogden	UT	UCRY	2:1 SL
BMC West	Ogden	UT	UCRY	2:1 SL
Infiltrator Systems	Ogden	UT	UCRY	2:1 SL
Intermountain Grain	Ogden	UT	UCRY	2:1 SL
Pioneer Door Sales	Ogden	UT	UCRY	2:1 SL
Centennial Gas Liquids	Ogden Sugar Works	UT	UCRY	2:1 SL
Larkin Cattle Co	Ogden Sugar Works	UT	UCRY	2:1 SL
McFarland Cascade Corp	Ogden Sugar Works	UT	UCRY	2:1 SL
Northwest Trading Co	Ogden Sugar Works	UT	UCRY	2:1 SL
Round Butte Products	Ogden Sugar Works	UT	UCRY	2:1 SL
Trinity Industries Inc	Ogden Sugar Works	UT	UCRY	2:1 SL
Constar International	Salt Lake City	UT	SLGW	2:1 SL
Dunn Oil Company	Salt Lake City	UT	SL	2:1 SL
Georgia Pacific Corp	Salt Lake City	UT	SL	2:1 SL
Henderson Wheel & Whse Supply	Salt Lake City	UT	SL	2:1 SL
Hudson Printing Blaire	Salt Lake City	UT	SL	2:1 SL
Intermountain Furniture	Salt Lake City	UT	SL	2:1 SL
Intermountain Lumber Co	Salt Lake City	UT	SL	2:1 SL
Mountain Fuel Supply	Salt Lake City	UT	SLGW	2:1 SL
Pacific Cold Storage	Salt Lake City	UT	SLGW	2:1 SL
Pacificorp	Salt Lake City	UT	SLGW	2:1 SL
Sears Roebuck & Co	Salt Lake City	UT	SL	2:1 SL
Standard Builders Supply	Salt Lake City	UT	SL	2:1 SL
Utah State Board Education	Salt Lake City	UT	SLGW	2:1 SL
Valley Oil Transportation	Salt Lake City	UT	SLGW	2:1 SL
Wasatch Metal Salvage	Salt Lake City	UT	SL	2:1 SL
Wasatch Shippers	Salt Lake City	UT	SL	2:1 SL

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

Customer	Station	State	Status
Trailer Marine Transport Corp	Harbor	LA	98 Agreement
City of Lafayette	Lafayette	LA	98 Agreement
Conco Food Distributors	Lafayette	LA	98 Agreement
Butcher Distributors Inc	Lake Charles	LA	98 Agreement
East Lake Oil Inc/Eastlake Oils	Lake Charles	LA	98 Agreement
Milpark Drilling Fluids (Baker Hughes)	Lake Charles	LA	98 Agreement
Spartech Polycorn	Lake Charles	LA	98 Agreement
Transit Mix Concrete & Matl Co of LA	Lake Charles	LA	98 Agreement
Century Steps Inc, Sulphur Div	Sulphur	LA	98 Agreement
Entergy Inc/Gulf States Utilities	Sulphur	LA	98 Agreement
B W Services	West Lake	LA	98 Agreement
Certainfeed Corp	West Lake	LA	98 Agreement
Port of Lake Charles Bulk Terminal 1	West Lake Charles	LA	98 Agreement
Betz Dearborn Hydrocarbon	Amelia	TX	98 Agreement
Doguet Rice Milling Co	Amelia	TX	98 Agreement
Koppers Ind	Amelia	TX	98 Agreement
Pipe Distributors	Amelia	TX	98 Agreement
Huntsman Petrochemical Corp	Audrey	TX	98 Agreement
Sunbelt Works Inc	Audrey	TX	98 Agreement
Inman Service Co	Baytown	TX	98 Agreement
International Group Inc	Baytown	TX	98 Agreement
Baxter Oil Co	Beaumont	TX	98 Agreement
Beaumont Brick & Stone	Beaumont	TX	98 Agreement
Beaumont Rice Mills Inc	Beaumont	TX	98 Agreement
Burris Transfer & Storage	Beaumont	TX	98 Agreement
Cargill Steel & Wire	Beaumont	TX	98 Agreement
Chevron Chemical	Beaumont	TX	98 Agreement
Continental Grain Co	Beaumont	TX	98 Agreement
Cowboy Concrete	Beaumont	TX	98 Agreement
Eastex Farm & Home	Beaumont	TX	98 Agreement
Equistar Chemicals LP	Beaumont	TX	98 Agreement
Giglio Distributing Co	Beaumont	TX	98 Agreement
Gilchrist Polymer Center	Beaumont	TX	98 Agreement
L D Construction	Beaumont	TX	98 Agreement
Mobil Chemical, Petrochemical Div	Beaumont	TX	98 Agreement
National Concrete Products Inc	Beaumont	TX	98 Agreement
Port of Beaumont	Beaumont	TX	98 Agreement
Ritter Lumber Co	Beaumont	TX	98 Agreement
Sampson Steel Corp	Beaumont	TX	98 Agreement
Southern Iron & Metal Co	Beaumont	TX	98 Agreement
Transit Mix Concrete & Matl (Dollinger)	Beaumont	TX	98 Agreement
Transit Mix Concrete & Matl (Longhorn Rd)	Beaumont	TX	98 Agreement
Wilson Warehouse Co	Beaumont	TX	98 Agreement
Gulf States Utilities	Bobsher	TX	98 Agreement
A & A Fertilizer	Chaison	TX	98 Agreement

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

Chemical Waste Management	Chaison	TX	98 Agreement
Econo Rail Corp	Chaison	TX	98 Agreement
Elf Atochem North America	Chaison	TX	98 Agreement
Martin Gas Sales Inc	Chaison	TX	98 Agreement
Mobil Chemical Specialty (Mobil Oil Corp)	Chaison	TX	98 Agreement
Neches Industrial Park	Chaison	TX	98 Agreement
Olin Corp	Chaison	TX	98 Agreement
Poly Glycol (Oxychem)	Chaison	TX	98 Agreement
R J Gallagher Co	Chaison	TX	98 Agreement
Transit Mix Concrete & Matl (South Plant)	Chaison	TX	98 Agreement
Entergy Services	China	TX	98 Agreement
Wedco Inc	China	TX	98 Agreement
Trinity Industries Inc	Connell	TX	98 Agreement
A to Z Terminal Corp	Crosby	TX	98 Agreement
Enfab Industries Inc	Crosby	TX	98 Agreement
KMCO Inc	Crosby	TX	98 Agreement
Seaberg Rice Co	Dayton	TX	98 Agreement
Trevor Boyce	Dayton	TX	98 Agreement
Amoco Chemical Co	Dayton SIT	TX	98 Agreement
Chevron Chemical Co	Dayton SIT	TX	98 Agreement
Dayton Plastic Storage	Dayton SIT	TX	98 Agreement
Exxon Chemical Americas	Dayton SIT	TX	98 Agreement
Fina Oil & Chemical Co	Dayton SIT	TX	98 Agreement
Millennium Petrochemicals Inc	Dayton SIT	TX	98 Agreement
Montell USA Inc	Dayton SIT	TX	98 Agreement
Phillips Chemical	Dayton SIT	TX	98 Agreement
Redland Stone Prod	Dayton SIT	TX	98 Agreement
Engineered Carbons (Div of Ameripol Synpol)	Echo	TX	98 Agreement
River Cement Co	Echo	TX	98 Agreement
Baychem International	Eldon	TX	98 Agreement
Engineered Carbons (Div of Ameripol Synpol)	Eldon	TX	98 Agreement
Houston Light & Power Co	Eldon	TX	98 Agreement
Progress Rail Service	Eldon	TX	98 Agreement
U S Ink	Eldon	TX	98 Agreement
G & G Enterprise	Francis	TX	98 Agreement
Transit Mix Concrete & Materials	Francis	TX	98 Agreement
Wilson Warehouse Co of Texas	Francis	TX	98 Agreement
X L Systems	Guffey	TX	98 Agreement
Houston Brick & Tile	Houston	TX	98 Agreement
Texas Steel Compressor	Houston	TX	98 Agreement
Tuboscope Vetco Intl	Houston	TX	98 Agreement
A & R Logistics	Houston (Fauna)	TX	98 Agreement
BMA / Sunrise Plastics	Houston (Fauna)	TX	98 Agreement
Tek Rap Inc	Houston (Fauna)	TX	98 Agreement
Horsehead Resource Development	Korf	TX	98 Agreement
North Star Steel Co	Korf	TX	98 Agreement
Liberty Forge Inc	Liberty	TX	98 Agreement
Mississippi Chemical	Liberty	TX	98 Agreement

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

Dynegy Inc	Mont Belvieu	TX	98 Agreement
Enterprise Products	Mont Belvieu	TX	98 Agreement
Ferrell North America	Mont Belvieu	TX	98 Agreement
Pol-Tex International	Mont Belvieu	TX	98 Agreement
Texas Eastern	Mont Belvieu	TX	98 Agreement
Ultramar Diamond Shamrock (Martin Gas)	Mont Belvieu	TX	98 Agreement
Dupont de Nemours, E I (marked whse)	Orange	TX	98 Agreement
Offshore Pipeline	Orange	TX	98 Agreement
Trinity Industries	Orange	TX	98 Agreement
Chevron	Port Arthur	TX	98 Agreement
City of Port Arthur	Port Arthur	TX	98 Agreement
Motiva Enterprises LLC	Port Arthur	TX	98 Agreement
Star Enterprise	Port Arthur	TX	98 Agreement
Transit Mix Concrete & Materials	Port Arthur	TX	98 Agreement
A & A Tubular Services Inc	Sheldon	TX	98 Agreement
Arrow Trucking Co	Sheldon	TX	98 Agreement
Baker Hughes Inteq	Sheldon	TX	98 Agreement
Champion Pipe & Supply	Sheldon	TX	98 Agreement
Cypress Creek Pipe	Sheldon	TX	98 Agreement
Delta Tubular Processing	Sheldon	TX	98 Agreement
Donohue Industries Inc	Sheldon	TX	98 Agreement
Donohue Recycling Corp	Sheldon	TX	98 Agreement
E L Farmer & Co	Sheldon	TX	98 Agreement
Evans Cooperage Co Inc	Sheldon	TX	98 Agreement
Five Star Transportation	Sheldon	TX	98 Agreement
ICO Tubular Services	Sheldon	TX	98 Agreement
J D Fields & Co	Sheldon	TX	98 Agreement
LA Utilities	Sheldon	TX	98 Agreement
Luzenac America	Sheldon	TX	98 Agreement
Mandel Kahn Industries	Sheldon	TX	98 Agreement
North Star Steel of Houston	Sheldon	TX	98 Agreement
Premier Pipe Inc	Sheldon	TX	98 Agreement
Quality Trucking Inc	Sheldon	TX	98 Agreement
Quality Tubing Inc	Sheldon	TX	98 Agreement
Sheldon Pipe Yard	Sheldon	TX	98 Agreement
T K Pipe & Rail Inc	Sheldon	TX	98 Agreement
Tex Fab Inc	Sheldon	TX	98 Agreement
Texas Oilfield Pipe Svcs	Sheldon	TX	98 Agreement
Total Pipe Service Inc	Sheldon	TX	98 Agreement
Triad Transport Inc	Sheldon	TX	98 Agreement
Tuboscope Vetco Intl Inc	Sheldon	TX	98 Agreement
Turner Brothers Trucking Co	Sheldon	TX	98 Agreement
Uni Form Components	Sheldon	TX	98 Agreement
Union Tank Car	Sheldon	TX	98 Agreement
Venture Trucking	Sheldon	TX	98 Agreement
W M Dewey & Son Inc	Sheldon	TX	98 Agreement
Woodard Transportation	Sheldon	TX	98 Agreement
BASF Corp Ag Prod Div	Viterbo	TX	98 Agreement

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

County of Jefferson	Viterbo	TX	98 Agreement
Chevron Chemical Co	West Port Arthur	TX	98 Agreement
Clark Refining & Mktg	West Port Arthur	TX	98 Agreement
Gulf Maritime Whse Co	West Port Arthur	TX	98 Agreement
KM Tex/KM Co	West Port Arthur	TX	98 Agreement
L & L Oil Co Inc	West Port Arthur	TX	98 Agreement
Port of Port Arthur	West Port Arthur	TX	98 Agreement
Equistar (Millennium Petrochemical)	Williams	TX	98 Agreement

STB

FD

32760

2-3-97

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37-207

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
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ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036

ENTERED	
Office of the Secretary	
TUE-21	
FEB 4 1997	
<input checked="" type="checkbox"/> S	Part of Public Record

202 347-7170

February 3, 1997

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423



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

Dear Mr. Secretary:

This letter constitutes Texas Utilities Electric Company's ("TUE") response to UP/SP's "Reply to Submissions of TUE, BNSF and KCS Concerning Implementation of TUE Condition" (UP/SP-299), dated January 29, 1997.

(1) In Decision No. 44 (served August 12, 1996) the STB promulgated Condition No. 32 ("TUE Condition"). That Condition directed UP/SP, BNSF, KCS and TUE to file proposed implementing conditions by December 12, 1996. In Decision No. 64, the December 12, 1996 due date was extended to January 24, 1997.

(2) On January 24, 1997, UP/SP, TUE, BNSF and KCS filed proposed implementing terms and conditions. On January 29, 1997, UP/SP filed a document self-styled "reply" to the TUE, BNSF and KCS submissions.

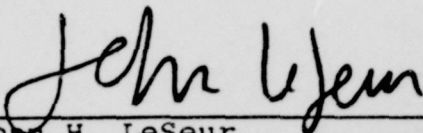
(3) Decision No. 44 makes no provision for "reply" filings. If UP/SP want to make such a filing, the proper procedure is to file a motion requesting permission to accept the reply. See, e.g., UP/SP-276 (filed August 30, 1996); CPSB-10 (filed September 4, 1996).

TUE shall utilize the same abbreviations as set forth in Decision No. 44.

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Reply to Applicants' TUE Condition Submissions on counsel for UP/SP, BNSF and KCS via hand delivery.

Dated this 3rd day of February, 1997 at Washington,
D.C.



John H. LeSeur

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036

TUE-21

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KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

General Secretary

4, 1997

February 3, 1997

202 347-7170

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423



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

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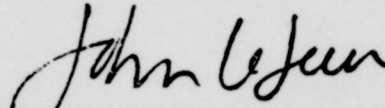
TUE shall utilize the same abbreviations as set forth in Decision No. 44.

Hon. Vernon A. Williams
February 3, 1997
Page 2

Page 2

(4) Though UP/SP have not followed proper procedure, TUE has no objection to the Board's acceptance of UP/SP's reply, provided the STB also considers the reply submitted by TUE.

Respectfully submitted,



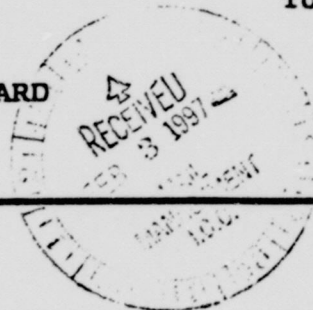
John H. LeSeur
An Attorney for Texas Utilities
Electric Company

JHL:mfw
Enclosures

cc: Governing Service List

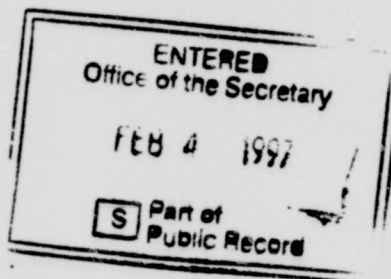
TUE-22

BEFORE THE
SURFACE TRANSPORTATION BOARD



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

Finance Docket No. 32760



MOTION FOR LEAVE TO
FILE A REPLY TO APPLICANTS'
TUE CONDITION SUBMISSION

OF COUNSEL:

WORSHAM, FORSYTHE & WOOLDRIDGE
1601 Bryan Street
30th Floor
Dallas, Texas 75201

SLOVER & LOFTUS
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: February 3, 1997

By: John W. McReynolds
Worsham, Forsythe & Wooldridge
1601 Bryan Street
30th Floor
Dallas, Texas 75201
(214) 979-3000

John H. LeSeur
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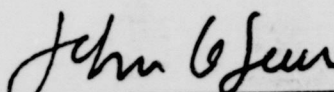
Attorneys for Texas Utilities
Electric Company

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Motion for Leave to File a Reply to Applicants' TUE Condition Submission on counsel for UP/SP, BNSF and KCS via hand delivery.

Dated this 3rd day of February, 1997 at Washington,

D.C.



John H. LeSeur

TUE-23

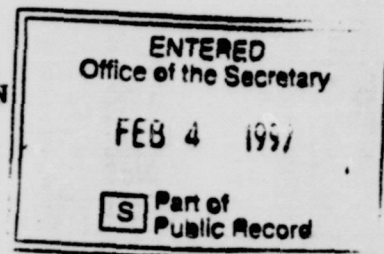
BEFORE THE
SURFACE TRANSPORTATION BOARD



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

Finance Docket No. 32760

REPLY TO APPLICANTS'
TUE CONDITION SUBMISSION



OF COUNSEL:

WORSHAM, FORSYTHE & WOOLDRIDGE
1601 Bryan Street
30th Floor
Dallas, Texas 75201

SLOVER & LOFTUS
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: February 3, 1997

By: John W. McReynolds
Worsham, Forsythe & Wooldridge
1601 Bryan Street
30th Floor
Dallas, Texas 75201
(214) 979-3000

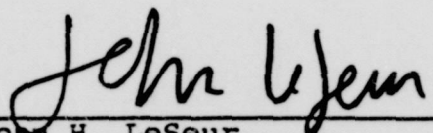
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Frank J. Pergolizzi
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for Texas Utilities
Electric Company

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Reply to Applicants' TUE Condition Submissions on counsel for UP/SP, BNSF and KCS via hand delivery.

Dated this 3rd day of February, 1997 at Washington,
D.C.



John H. LeSeur

STB

FD

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1-29-97

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COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

TELEFAX: (202) 662-6291

TELEX: 89-593 (COVING WSH)

CABLE: COVING

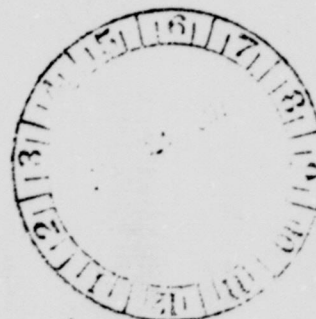
DAVID L. MEYER

DIRECT DIAL NUMBER

(202) 662-5582

LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLANDTELEPHONE 44-171-495-5655
TELEFAX 44-171-495-3101BRUSSELS CORRESPONDENT OFFICE
4- AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE 32-2-512-9890
TELEFAX 32-2-502-1598

January 29, 1997

BY HANDHon. Vernon A. Williams
Secretary
Surface Transportation Board
Twelfth Street and Constitution Ave., N.W.
Washington, D.C. 20423

1-29-97

Re: Finance Docket No. 32760

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and 20 copies of Applicants' Reply to Submissions Concerning Implementation of TUE Condition (UP/SP-299). Kindly date stamp the extra copy of this filing and return it with our waiting messenger.

Also enclosed is a disk containing a copy of UP/SP-299 in WordPerfect 5.1 format of TUE, BNSF and KCS.

Sincerely,

David L. Meyer

cc: Counsel for TUE,
BNSF and KCS

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UP/SP-299

BEFORE THE
SURFACE TRANSPORTATION BOARD

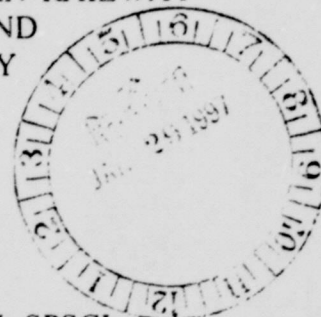
Finance Docket No. 32760

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, SPSCL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

APPLICANTS' REPLY TO SUBMISSIONS
OF TUE, BNSF AND KCS CONCERNING
IMPLEMENTATION OF TUE CONDITION



The primary applicants, UPC, UPRR, ~~SPF~~, SPT, SSW, SPSCL and

DRGW,¹ submit this reply to the submissions of TUE (TUE-20), BNSF (BN/SF-78)
and KCS (KCS-72) addressing the terms for implementing the TUE condition.

Those submissions reflect an overreaching attempt to convert the
narrow condition imposed by the Board to preserve a BNSF-KCS interline routing
option for TUE coal trains into a supposed entitlement to the "most efficient" route.
See, e.g., TUE-20, n. 16; KCS-72, pp. 1-2. This is pure bootstrapping that has no
foundation in any adverse effect of the UP/SP merger or in any reasonable
interpretation the Board's TUE condition.

¹ The acronyms used herein are the same as those in Appendix B to Decision
No. 44. MPRR merged into UPRR on January 1, 1997.

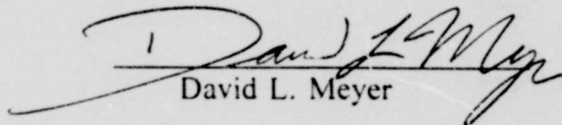
CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Decision No. 64, I have this 29th day
January, 1997, served the foregoing document by hand on:

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January 29, 1997

BY HAND

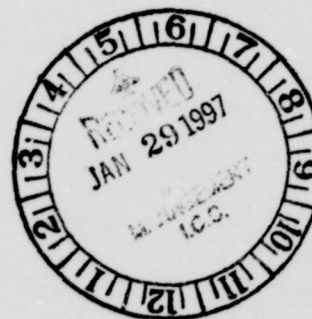
Hon. Vernon A. Williams

Secretary

Surface Transportation Board

Twelfth Street and Constitution Ave., N.W.

Washington, D.C. 20423

**Re: Finance Docket No. 32760**

Dear Secretary Williams:

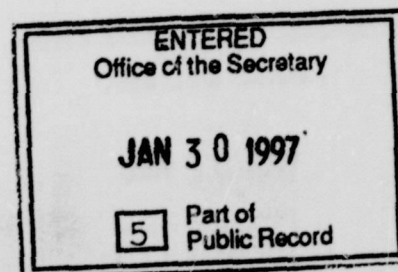
Enclosed for filing in the above-captioned docket are the original and 20 copies of Applicants' Reply to Submissions Concerning Implementation of TUE Condition (UP/SP-299). Kindly date stamp the extra copy of this filing and return it with our waiting messenger.

Also enclosed is a disk containing a copy of UP/SP-299 in WordPerfect 5.1 format of TUE, BNSF and KCS.

Sincerely,

David L. Meyer

cc: Counsel for TUE,
BNSF and KCS



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UP/SP-299

BEFORE THE
SURFACE TRANSPORTATION BOARD

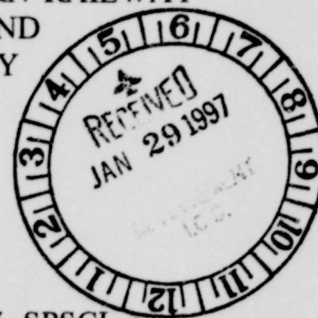
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DRGW,^{1/} submit this reply to the submissions of TUE (TUE-20), BNSF (BN/SF-78)
and KCS (KCS-72) addressing the terms for implementing the TUE condition.

Those submissions reflect an overreaching attempt to convert the
narrow condition imposed by the Board to preserve a BNSF-KCS interline routing
option for TUE coal trains into a supposed entitlement to the "most efficient" route.
See, e.g., TUE-20, p. 16; KCS-72, pp. 1-2. This is pure bootstrapping that has no
foundation in any adverse effect of the UP/SP merger or in any reasonable
interpretation the Board's TUE condition.

^{1/} The acronyms used herein are the same as those in Appendix B to Decision
No. 44. MPRR merged into UPRR on January 1, 1997.

TUE and BNSF acknowledge that operation of TUE coal trains in both directions over the former-SP route between Tenaha and Shreveport -- the only route over which TUE sought rights in its condition application -- would be operationally feasible and thereby preserve TUE's pre-merger routing options. TUE-20, p. 12 & Dunn, pp. 12-13; BN/SF-78, pp. 4-5 & Hord, pp. 4-6. Nevertheless, beginning with the premise that the Board gave BNSF the option of operating TUE coal trains directionally, thereby using two interchanges with KCS rather than the one TUE sought, they reason incorrectly and illogically that, because directional operations would require additional expenditures for new connections (TUE-20, pp. 10-11, 15; BN/SF-78, p. 4), BNSF should be permitted to operate TUE coal trains in both directions using a single route that is different from and more efficient than the former-SP route that TUE had before the merger. This reasoning is overreaching in the extreme. The only correct conclusion is that -- as Applicants have explained in their initial submission respecting implementation of the TUE condition (UP/SP-296) -- if BNSF wishes to operate TUE coal trains in both directions over a single route rather than directionally, it should be required to use the former-SP Tenaha-Shreveport route, which was the only interline route TUE sought to preserve. TUE's proposed terms, by contrast, would improve rather than preserve TUE's pre-merger options, to Applicants' competitive disadvantage. See UP/SP-296, pp. 6-9.

For the most part, the specific arguments of TUE, BNSF and KCS in support of TUE's proposed terms are addressed in Applicants' initial submission. Applicants would offer four further points in reply:

1. TUE at times appears to suggest that it needs a BNSF-KCS interline route to compete against a UP single-line route that is currently in place. See, e.g., TUE-20, pp. 15-16. TUE loses sight of the fact that UP does not have access to the Martin Lake facility today, and will not be able to handle TUE's future PRB coal trains or bid on that traffic unless and until a new six-mile connection is built between Martin Lake and UP's line at Henderson, at a cost which TUE estimates at between \$6.5 and \$12 million, over and above the cost of necessary upgrading of the UP branch that serves Henderson. Sharply improving BNSF's route will only diminish the chance that the build-out will ever occur. See UP/SP-296, p. 8.

2. TUE and BNSF have predicated many of their arguments on a misunderstanding of Applicants' position regarding BNSF's obligation to operate TUE coal trains in a "directional" manner. Applicants have not insisted that BNSF operate TUE coal trains only with the current of flow. To the contrary, Applicants have acknowledged that BNSF would be able to use the new interchange rights granted by the Board to operate those trains either (1) directionally, using both the Shreveport and Texarkana interchanges, with southbound trains moving via Shreveport and Tenaha and northbound trains moving via Longview and Texarkana,

or (2) in both directions over the Tenaha-Shreveport segment that comprised part of the BNSF-SP-KCS interline route that TUE feared it would lose as a result of the merger. See UP/SP-296, pp. 5-6. What Applicants oppose is TUE's demand that BNSF be permitted to use the Texarkana interchange to operate TUE coal trains in both directions over the Longview-Texarkana segment, thereby dispensing with the former-SP Tenaha-Shreveport route altogether.

As a result, TUE is simply incorrect in contending that Applicants are arguing that the Board "mandated" directional running. See TUE-20, pp. 6-7. Likewise, TUE and BNSF are incorrect in asserting that Applicants' position would require construction of four new connections in order for BNSF to handle TUE coal trains using its new rights -- i.e., both at Tenaha and Shreveport and at Longview and Texarkana. See TUE-20, pp. 10-11, 15; BN/SF-78, p. 4. To the contrary, under Applicants' proposed terms, BNSF would need connections at all four of these points only if BNSF were to choose to operate TUE's coal trains in a directional manner using both of its new KCS interchanges. The fact, which TUE labors to prove, that the facilities costs of directional running would be greater than those of bi-directional running is thus irrelevant. TUE (or BNSF) would incur those costs only because the benefit of more efficient operations would outweigh them.

3. TUE and BNSF devote considerable attention to establishing the operational feasibility of operating TUE coal trains "against the flow" between Tenaha and Shreveport and between Longview and Texarkana. TUE-20, p. 12 &

Dunn VS, pp. 12-13; BN/SF-78, pp. 4-5 & Hord VS, pp. 4-6. Applicants agree with these conclusions.^{2/} These parties' proof as to feasibility of operations in both directions between Tenaha and Shreveport only confirms that allowing BNSF to use its new Shreveport interchange rights to handle TUE coal trains in both directions on that segment will amply preserve the BNSF-SP-KCS interline route that TUE would have had without the merger.

4. TUE and BNSF both argue that their demand that BNSF be permitted to handle TUE coal trains in both directions over the Texarkana-Longview segment is supported by the BNSF settlement agreement and implementing trackage rights agreement, which they assert contemplate that BNSF will be able to operate its trains in both directions under certain circumstances. TUE-20, pp. 8-10; BN/SF-78, p. 3 n.4. This argument is incorrect. The Board gave BNSF the right to interchange TUE coal trains at Texarkana against the backdrop of the implementing trackage rights agreement between Applicants and BNSF,^{3/} which provides that, "at such time

^{2/} TUE is apparently confused about Applicants' position regarding the feasibility of BNSF's operation of TUE coal trains on the Longview-Texarkana segment. Although Applicants did point out some operating issues raised by movement of loaded (i.e., southbound) coal trains on that segment, those issues related to the nature of the trains and not the fact that the trains would be operated "against the flow." Applicants' opposition to TUE's demand that BNSF be permitted to operate loaded TUE coal trains over this segment was at all times grounded in the impropriety of TUE's effort to improve its routing options at Applicants' expense, not in operating concerns.

^{3/} That agreement was before the Board when Decision No. 44 was rendered. See UP/SP-266.

as UP/SP begins directional operations over the Joint Trackage, it is the parties' intent that [BNSF's] traffic shall operate with the current of flow along with UP/SP traffic." Houston, Texas to Valley Junction, Illinois Trackage Rights Agreement, June 1, 1996, § 2(c).

TUE and BNSF's reliance on the BNSF agreements is also a non sequitur. Those agreements gave BNSF no right to interchange TUE coal trains with KCS at Shreveport or Texarkana. Even if the BNSF agreements had given BNSF the operating flexibility to operate other trains in the Texas-St. Louis and Texas-Memphis corridors using either or both of the former-UP and -SP lines, the proper scope of the TUE condition would remain to be determined. As Applicants have demonstrated, allowing BNSF to use its new KCS interchange at Texarkana for TUE coal trains moving in both directions on the Longview-Texarkana segment -- thereby forsaking entirely the former-SP route between Tenaha and Shreveport -- would unjustifiably give TUE a far more efficient route than it would have had absent the merger. See UP/SP-296, pp. 6-9.

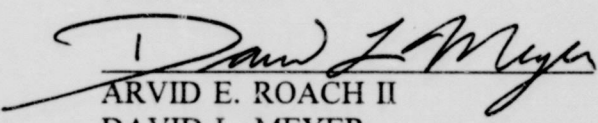
CONCLUSION

For the foregoing reasons, the Board should implement the TUE condition on the terms proposed by Applicants, as set forth in the Appendix to UP/SP-296.

Respectfully submitted,

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Attorneys for Applicants

January 29, 1997

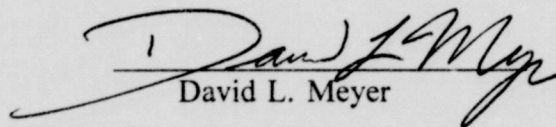
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January 28, 1997

BY HAND

Hon. Vernon A. Williams

Secretary

Surface Transportation Board

Twelfth Street and Constitution Ave., N.W.

Washington, D.C. 20423



Re: **Finance Docket Nos. 32760 & 32760 (Sub-No. 10)**

Dear Secretary Williams:

Enclosed for filing in the above-captioned dockets are the original and 20 copies of Applicants' Reply to Submissions of BNSF and Longhorn Pursuant to Decision No. 67 (UP/SP-298). Kindly date stamp the extra copy of this filing and return it with our waiting messenger.

Also enclosed is a disk containing a copy of UP/SP-298 in WordPerfect 5.1 format.

Sincerely,

David L. Meyer

cc: Counsel for CMTA,
BNSF and Longhorn

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UP/SP-298

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
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Finance Docket No. 32760 (Sub-No. 10)

RESPONSIVE APPLICATION -- CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY

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BEFORE THE
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UP/SP-297
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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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APPLICANTS' REPLY TO VERIFIED STATEMENT
OF GEORGE W. CARTER, JR.

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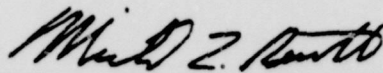
January 28, 1997

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that, on this 28th day of January, 1997, 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 all parties of record in Finance Docket No. 32760, and on

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

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



Michael L. Rosenthal

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UP/SP-297

BEFORE THE
SURFACE TRANSPORTATION BOARD

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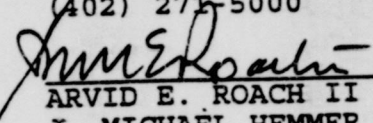
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January 28, 1997

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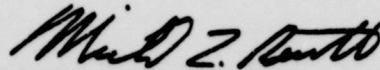
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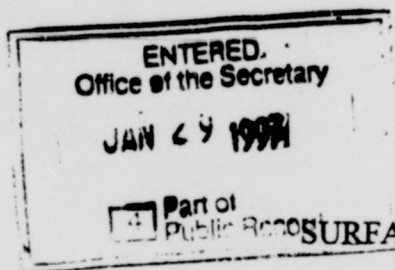
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Antitrust Division
Suite 500
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Washington, D.C. 20530

Premarmer Notification Office
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Washington, D.C. 20580



Michael L. Rosenthal



UP/SP-298

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SURFACE TRANSPORTATION BOARD



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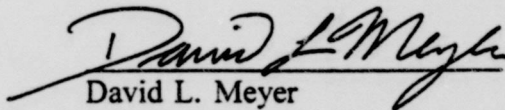
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Erika Z. Jones, Esq.
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Mayer, Brown & Platt
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Washington, D.C. 20006
Attorneys for BNSF

and by Federal Express on:

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The Longhorn Railway Company
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Austin, TX 78728


David L. Meyer

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ERIKA Z. JONES
202-778-0642

January 24, 1997

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th Street & Constitution Ave., NW
Room 2215
Washington, DC 20423



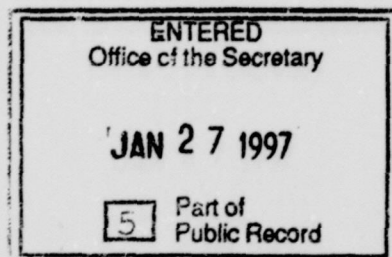
Re: Finance Docket No. 32760, Union Pacific Corp., et al. --
Control and Merger -- Southern Pacific Rail Corp., et al.

Dear Secretary Williams:

FD 32760-SUB 9 - 89717

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 and The Kansas City Southern Railway Company's Notice of Agreement on Terms Respecting Implementation of Terminal Trackage Rights (BN/SF-77/KCS-71). Also enclosed is a 3.5-inch disk containing the text of this pleading 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.

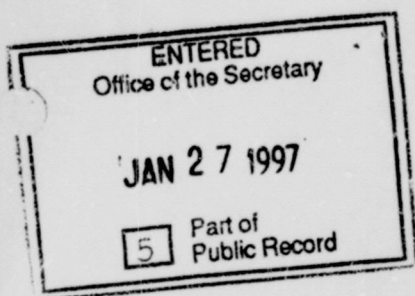


Sincerely,

Erika Z. Jones
Erika Z. Jones

Enclosures

cc: William A. Mullins, Esq.



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760 - 89216
and
Finance Docket No. 32760 (Sub-No. 9) - 89217



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
AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
NOTICE OF AGREEMENT ON TERMS RESPECTING
IMPLEMENTATION OF TERMINAL TRACKAGE RIGHTS

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760
and
Finance Docket No. 32760 (Sub-No. 9)

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
AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
NOTICE OF AGREEMENT ON TERMS RESPECTING
IMPLEMENTATION OF TERMINAL TRackage RIGHTS

The Burlington Northern and Santa Fe Railway Company (collectively, "BN/Santa Fe") and The Kansas City Southern Railway Company ("KCS") hereby notify the Board that they have reached an agreement respecting the implementation of the terminal trackage rights awarded to BN/Santa Fe in ordering paragraph 22 of Decision No. 44 in this proceeding.

Respectfully submitted,

William A. Mullins/cus

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Attorneys for The Burlington Northern
and Santa Fe Railway Company

January 24, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 1997, I caused to be served via First Class Mail a copy of BN/SF-77/KCS-71 on all parties of record in Finance Docket No. 32760.

Shirley J. [Signature]